

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Wilton Board of Education

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Appearing Before: Attorney Justino Rosado, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is the program offered for the 2005-2006 school year appropriate and provide the Student with FAPE as required in 20 USC §1401 et seq? If not;
2. Does the program at Eagle Hill offer the Student FAPE?
3. Should the Board be required to reimburse the Parents for a unilateral evaluation of the Student?
4. Is the program offered by the Board for the summer of 2005 appropriate?
5. Was the program offered for the 2004-2005 school year appropriate and provide the Student with FAPE as required in 20 USC §1401 et seq?

PROCEDURAL HISTORY:

At the April 19, 2005 IEP meeting, the Parents rejected the program offered to the Student for the 2005-2006 school year and requested an out-of-district placement of the Student at Eagle Hill School, Southport, Connecticut. On April 20, 2005, the Parents requested a due process hearing and also alleged that the Student did not receive a free and appropriate public education for the 2004-2005 school year. The Parents requested compensatory education for that school year.

On April 21, 2005, a Hearing Officer was appointed. A pre-hearing conference was held on April 28, 2005 and agreed upon hearing dates of May 19, 23 and 27, June 1, 2005 were scheduled, additional hearing dates of June 20, 22, July 20, 21 and August 10 and 17, 2005 were agreed on by all parties.

The parties agreed to the cancellation of May 27 and June 22, 2005 hearing dates.

The Parents presented exhibits marked as P-1 and P-2 for identification. These exhibits were diagnostic assessments performed on the Student in 2001 and 2004 respectively. The Board objected to these exhibits on the grounds that they needed authentication as to how the assessments were administered and their contents. The mother testified that the assessments were given to her. The Board's objection to these exhibits was sustained and P-1 and P-2 were not received as full exhibits.

The Board in a letter dated October 21, 2005, requested that the Appendices of the Parents' Closing Brief submitted on September 30, 2005, be stricken from the record and any arguments made in reference to the Appendices be ignored. The Parents filed a timely objection to this Motion to Strike. The Board prior to the Parents submitting their response revised their Motion and accepted Appendix "A" as an admissible reference in the Parents' Brief.

The Parents' attorney argued that the Appendices should be admitted the same way as "legal cases, treatise or scholarly articles would be permissible."

The purpose of submitting such articles and cases are to refresh the recollection of the hearing officer or the court to well known facts. Usually if presented during the course of the trial the hearing officer or the court could take judicial notice of the legal case, treatise or scholarly article or government publication. In this matter judicial notice was not requested because the articles in Appendices "B" and "C" were not presented during the course of the trial in this matter. In *Pandolphe's Auto Parts, Inc. v. Town of Manchester*, (181 Conn. 217), the plaintiff made reference to a governmental publication in his brief which *might* (emphasis added) have formed a basis of a court's decision to take judicial notice of the rate of inflation. The plaintiff argued that the court in not using the inflation rate in the valuation of a property was reversible error. The court stated that the plaintiff presented no such evidence to the trial court and made no request of the court to take judicial notice of any particular rate of inflation and no error was found.

The articles presented in the Appendices refer to testimony which was presented during the trial and are being used to "support and expand argument" of the Parents' attorney. The issuance of material to support one's position or conclusion is evidence, *Winchester v. Connecticut State Board of Labor Relations*, 175 Conn. 349, 365-66, 402 A.2d 332 (1978).

The hearing officer grants the Board's Motion to Strike and orders the Parents' attorney to revise the Post Trial Brief and remove any reference to Appendices "B" and "C".

The Parents' attorney had until November 10, 2005 to revise the Parents' Post Trial Brief. The Parents' Post Trial Brief was revised and sent to the hearing officer in a timely manner.

An issue was raised as to a standardized test called, "Degrees of Reading Power" (DRP). The parties stipulated that the students whose desks were nearest the Student, who is the subject of this Due Process Hearing, scored 63, 68 and 71 (Board's Exhibit¹ # 184) in their DRP test.

The Parents requested that the Student be allowed to testify as to the testing. This request was denied.

The Parents' attorney in their Post Trial Brief remedies requested compensatory education for the 2003-2004 school year. That school year was not an issue raised at the pre-hearing telephonic conference or at the hearing. The only issues raised and which will be decided in this decision and order are those cited in the Issues Section of this decision.

At the request of the parties the date for the filing of the Final Decision and Order was extended in order to accommodate the filing of a Final Decision and Order after the hearing dates. The Final Decision and Order date was again extended in order to give the Parents time to respond to the Board's objection to the Parents' Brief and to give the Hearing Officer time to review the Motion and Objection and file a decision on the Motion to Strike.

The date for the Final Decision and Order was extended by agreement of the parties to November 28, 2005.

SUMMARY :

The Student is a 11 years and 3 month young man who has been identified with specific learning disability and is entitled to receive a free and appropriate public education ("FAPE") as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.

The Student had been previously deemed eligible for accommodations under Section 504 of the Rehabilitation Act) on the basis of his ADHD which limited his ability to learn in the classroom. In May 2004, the IEP team proposed a special education placement for the Student which was agreed to by the Parents. The Parents are of the opinion that the Student has not progressed in the public school setting. Despite a great deal of intervention the Parents allege that the Student has lost several years when he could have and should have received services when the district failed to evaluate or identify him, despite repeated requests from his Parents. The Parents are requesting placement at a private special education school that specializes in teaching children with learning disabilities. This request was denied by the Board. The Parents' due process issues are granted in part and denied in part.

This Final Decision and Order sets forth the Hearing Officer's summary, procedural history findings of fact and conclusions of law. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. For reference, see *SAS Institute Inc. v. S. & H.*

¹ Hereafter Board's Exhibits will be referred to as "B".

Computer Systems, Inc., 605 F.Supp. 816 (M.D.Tenn. 1985) and *Bonnie Ann F. v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D.Tex. 1993).

FINDINGS OF FACTS:

1. The Student is a 11 years and 3 month young man who has been identified with specific learning disability and is entitled to receive a free and appropriate public education (“FAPE”) as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.
2. The Student is now in the 5th grade. The Student in September of 1999 was deemed eligible to receive special education and related services as uncategorized. (B-34)
3. The Student in 1999 was evaluated by a psychologist who recommended a structured classroom. (B-43). The psychologist again evaluated the Student in January 2001 and recommended a supportive reading program and if there was no progress, the Student should be enrolled in a summer reading program. (B-55).
4. A PPT was held in March 2001. The Parents requested that the Student not be promoted to the 2nd grade but be allowed to repeat the 1st grade. The Student’s psychologist recommended a speech and language screening of the Student. The Board agreed to the screening and also scheduled an educational evaluation and a reading observation. The Parents agreed to the evaluations and assessments. The Board provided the Student with reading supports and the Parents were responsible for sending the Student to a summer reading program. The results of the speech and language evaluation showed that the Student scored a 91 and was reading at an age equivalent of 4.1 years. The Student at the time of testing was at a chronological age of 6.8 years. (B-57A, B-57, B-58)
5. The Student in May 2001 was found not eligible for special education and related services. The Board had completed a 1st grade assessment of the Student. The Student had progressed in his reading. In his assessment, he showed good strategies and his fluency and expression were good. Even though the Student showed impulsivity to responses he revealed solid academic skills. It was recommended that discussions should continue about the establishment of a Section 504 of the Rehabilitation Act plan for the Student. (B-64A, B-86)
6. The Parents requested that the Board pay for the Student to attend a summer reading course at Eagle Hill School. The PPT rejected this request because the Student had been found no longer eligible to receive special education and he had been exited from special education. The PPT advised the Parents to

enroll the Student in the summer program at their own expense. The Parents enrolled the Student at Eagle Hill School for reading. (Testimony of Father, B-64A)

7. During the Student's 2002-2003 school year he showed progress. The Student's reading assessment (Degree of Reading Power) showed that the Student was in the 78% nationally with a score of 38. In the spring of his 2nd grade the Student's national percentile was 74 with a score of 44. The Student showed a foundation in the application of decoding skills and an understanding for reading through verbal and written responses. (P-5, B-76, B-77)
8. The Student showed difficulty in the 2003-2004 school year. The Parents requested that the Student be tested to see if he was eligible for special education and related services. In September of 2003, the Student's 3rd grade, he was tested in reading and auditory comprehension, word analysis, writing mechanics and mathematics. The Student's ability to use context clues to determine the meaning in an auditory passage and a written passage was characterized as developing. His test results as to understanding and analyzing written text and communicating his understanding in writing was also found to be characterized as developing. The Student's test showed deficits in his ability to recognize misspelled words and pronoun use, verb form and tense. (B-84)
9. The father testified that in the third grade the Student was given homework but by the time the Student got home from school, he was mentally exhausted and the Parents had problems redirecting him. It would take the Student 1 ½ hours to do homework that should have taken ½ an hour. (Testimony of Father)
10. In September of 2003, a Pupil Study Team identified the Student as a student in need of services due to his performance in reading and writing. He was determined to be eligible for a 504 Plan. The Student's ADHD limited his ability to learn in the classroom. The Student was given various accommodations. Despite the interventions established by the 504 plan, the Student's third grade teacher noticed that he was struggling more and more as the year progressed. The teacher testified that the Student is a multi-sensory type of learner. The Student can receive all the information he is given if it is broken down and given in a structured manner. (B-85, B-86, B-87 and Testimony of Third Grade Teacher)
11. The teacher noticed that the Student's penmanship did not improve even though different modifications were attempted; one style was not better than another. The Student was given special penmanship paper, highlighting and index cards as accommodations for his handwriting. The Student's handwriting went from sloppy to poor. There were no special

accommodations at the beginning of the school year for reading and mathematics because it was early in the year although his reading inventory indicated he was reading at a 2nd grade instructional level. The Student's psychologist diagnosed the Student with dyslexia. (Testimony of Third Grade Teacher, B-85 & B-91)

12. In October 2003 the Student was again evaluated by his psychologist and it was found as stated by his 3rd grade teacher that the Student was reading adequately at a year below his current grade. The psychologist recommended an intensive remedial reading program and reassessment at the end of the Student's academic year. (B-90)
13. In March 2004 a PPT was called to evaluate the Student and determine his eligibility for special education and related services. (B-97) The Student was evaluated by the school psychologist. The evaluation showed that the Student demonstrates important areas of weakness that may explain his difficulties learning in school. When faced with novel social reasoning challenges, visually complex material or highly detailed stories, he presents with significant weaknesses. Given such tasks as recalling story details, organizing detailed visual material or providing a detailed understanding of everyday events, the Student appeared confused or at a loss for words. He recalled only the most basic information, with details often incorrect. The Student was found to need an environment that provides proper structure for managing complex details and adequate support to assist him when he is confused. The Student was found to have weak memory skills and problems organizing information and later retrieving it. (Testimony of School Psychologist, B-108)
14. In response to the March 2004 PPT, the special education teacher administered the academic evaluation, using the Woodcock-Johnson III, the Slingerland Screening Tests for Identifying Children with Specific Language Disability, and classroom observations. The special education teacher discovered that although the Student's overall academic achievement is in the average range, he did have relative weaknesses in reading and writing as well as the fluency with which he performed academic tasks. The Student's third grade test scores showed broad written language at a level of second grade, fourth month, broad reading at third grade, second month and academic fluency at second grade, sixth month. Further testing indicated that the Student experienced the most difficulty on tasks involving visual perception, discrimination and memory. He was more successful on tasks which did not require a kinesthetic response. (B-116 Testimony of Special Education Teacher)
15. In March 2004, the Student was given a speech and language evaluation by the speech and language pathologist. As part of the evaluation, she preformed the SCAN, a screening measure, of central auditory processing disorders. It is not a diagnostic tool of itself. She found that the Student's profile indicated

weakness in receptive language skills and auditory processing of individual sounds in words, and that overall he had good expressive language skills. She noted that he does well in an environment that is structured and predictable with clearly defined expectations. She recommended that careful management of his environment and teaching of organizational processing strategies would help the Student process information more successfully in class. This test also suggested that the Student has normal development and maturation of the auditory pathways. The Student showed difficulty in understanding word meanings or auditory words and accessing information at times. (B-118 and Testimony of Speech and Language Pathologist)

16. At the PPT meeting of May 17, 2004, the team completed a multidisciplinary evaluation report where they found a severe discrepancy in the Student's ability and achievement only in the area of written language, not in math or in reading. The team found that the Student had deficits in memory organization and visual perception that impeded the Student's academic success. The team proposed a special education placement and the Parents accepted it. The Student was identified as specific learning disability as defined in IDEA. An IEP was developed to address the remainder of the 2003-2004 school year as well as the succeeding year. The program proposed for the following school year, 2004-2005, required the removal from the mainstream for about 15.5 hours per school week:
 - a. Modified math, 5.0 hours per week
 - b. Writing resource 1.5 hours per 6 day cycle
 - c. Collaborative writing 1.5 hours per 6 day cycle
 - d. Phonics 2.5 hours per week
 - e. Collaborative reading, 5.0 hours per weekThe program also included .5 hours month of language consult, offsite testing, extended time, respond in the test book. (B-120A, B-121)
17. At the end of the 3rd grade, the Student's reading specialist reported an improvement in his ability to decode multi-syllable word. The Student's comprehension was still inconsistent and his tracking and fluency still were areas of concern. The Student was promoted to the 4th grade. (B-129, B-132)
18. The Student's reading skills are assessed twice a year. Once in the fall and again in the spring. The Board utilized the Degrees of Reading Power ("DRP") for this assessment. On these tests, in the fall of 2003 the Student had scored a 40; the Student scored a 43 in the spring of 2004 and a 41 in the fall of 2004. His score decreased two points from the spring 2004 to the fall of 2004 and only increased 1 point from the fall 2003 to the fall 2004 despite his attendance at Eagle Hill in the summer of 2004. According to the reading specialist with such scores the Student showed no benefit from having attended Eagle Hill during the summer between the two tests. DRP is specifically reading and it helps show growth. This is a comprehension based

test but the Student would require decoding skills in order to establish the comprehension. (B-132, B-134, Testimony of Reading Specialist)

19. In February of 2004, a writing assessment was also performed on the Student by the reading specialist. This assessment is done in the spring of the Student's 3rd and 5th grade. All students do this periodic writing test known as ERB ("Educational Records Bureau"). The purpose of the test is to assess student's writing skills in six areas or "strands. The goal is to achieve a score of at least 24 out of a possible 36 points. The Student received a score of "18" on the ERB. (B-132, B-181, Testimony of Special Education Teacher)
20. In June 2004, the Parents expressed their disagreement with the Student's educational program. The Parents requested placement at Eagle Hill School for the 2004-2005 school year and reimbursement for a summer program at Eagle Hill School. (B-130A)
21. During the 2004-2005 school year, the PPT met five times to review and revise the Student's IEP. At the September 14, 2004 meeting, another goal was added pertaining to the development of self-advocacy skills. Also, the team decided to conduct two additional evaluations: an occupational therapy assessment and assistive technology evaluation. (B-142)
22. The PPT reconvened on January 24, 2005 to discuss the results of these evaluations. The assistive technology specialist found that the Student did not want to use a keyboard and preferred to write by hand. The Student was provided with keyboard instruction, a word prediction program and assistance in completing homework assignments. The evaluator felt no further interventions were required at that time. The evaluator for the occupational therapy assessment did not recommend any occupational therapy for the Student. The Student continued to require special education and would receive 15.50 hours of special education and would spend 19 hours with non-disabled peers. The Student was not found eligible for extended school year services (ESY). The mother requested that the Student be placed in an Orton Gillingham or Wilson reading program. The Parents requested an independent evaluation of the Student. These were denied by the PPT. (B-148, B-149, B-152, B-154, B-163, P-8, P-10, Testimony of Father)
23. The Parents were concerned with the Student's abilities in mathematics. The IEP provided for 5 hours a week of modified mathematics instructions in the resource room. The Parents complained that the mathematics instruction was not paralleling the curriculum. The Parents requested that the Student be given more work at home to help him catch up. There was concern that the Student's direct instruction is not being carried over to the general curriculum. (Testimony of Father, B-163, P-12)

24. The Student was evaluated by his clinical psychologist on 2/24, 3/21 and 4/7/2005. The Doctor's evaluation showed that the Student's reading skills were significantly impaired. The psychologist has diagnosed the Student with dyslexia and an attention deficit disorder. The psychologist's evaluation from February to April of 2005 was a diagnostic test, not intended to measure the Student's progress during the school year. One of the tests he administered in February of 2005 was the Gray Oral Reading Test, Fourth Edition ["GORT"], a test to assess the reading skills of rate, accuracy, fluency and comprehension. When the psychologist evaluated the Student again in June of 2005, he administered another version of the GORT. This was the only test he administered in June of 2005 that would enable a comparison of scores over a three month period of time. The clinical psychologist did not assess the progress of the Student's writing skills in June of 2005. He also did not assess the Student's mathematic skills in June of 2005. (Test. of Clinical Psychologist, B-172 P-17)
25. The clinical psychologist corrected his report of the GORT test in June of 2005. There was an error in calculating fluency. The results were a one point improvement in rate, the same scores for accuracy and fluency, and a one point drop in comprehension. There was no statistical significance in the difference between the scores. Although these scores did not document a dramatic improvement in three months, the clinical psychologist did not expect improvement over such a small period of time. He was of the opinion that the Student's growth would be slow and it would be better to track his progress over the period of a school year rather than a mere three months. (Testimony of Clinical Psychologist, P-17, B-172)
26. The clinical psychologist was of the opinion that the Student needs a total program to address writing and reading skills. This program should provide:
 - i. intensive remediation to improve decoding and fluency, phonological awareness, speed as well as assistance with writing and spelling skills;
 - ii. he needs classroom accommodations or support to address remedial skills in reading and writing;
 - iii. he needs information to be presented so that he remains on task;
 - iv. an aide that would help him with decoding text would help in the mainstream classroom;
 - v. teachers need to be able to spend more time with him to make sure that he understands the material presented;
 - vi. small group reading- 1 hr /day, small group writing- 1 hr /day, and small group math- 1 hr /day;
 - vii. the accommodations and support in mainstream oriented classes are to compensate for his deficiencies but should be done in a way that is not stigmatizing; and

- viii. the Student should have the same program over a long period of time. This is important for a reading intervention, changing strategies is not good for the Student.

The psychologist was of the opinion that the Student would benefit from placement at Eagle Hill School. The Student could also make progress in a mainstream program if provided with sufficient modifications and related services. (Testimony of Clinical Psychologist)

27. In the April 19, 2005 PPT meeting the Board felt they needed further assessments before deciding the Parents' request for summer instruction at Eagle Hill. The Parents requested an independent evaluation of the Student which was rejected by the Board. The Student's resource writing was increased 1 hour per week. (P-8, B-173)
28. In May of 2005, the Board performed another writing prompt/ERB and the Student scored 21.5 points. The difference from the February test shows improvement in his writing skills. His writing was neater and he used more of the strategies he had been taught in the second test. The Student was also administered the Gates-MacGinite Reading test which showed he was still one year behind his age level. (B-182, Testimony of Special Education Teacher)
29. The Student also was administered a DRP test in May 2005. The Student scored a 58 in this test; this was a 17 point increase from his fall of 2004 score. The Student's special education teacher was surprised with this high score. The Parents felt that the Student had copied from other students. The parties stipulated to the scores of the students who sat near the Student while he was taking the test. The clinical psychologist did not feel the gain shown by the test was correct. (B-178, B-184, Testimony of Special Education Teacher, Testimony of Clinical Psychologist)
30. During the 2004-2005 school year the Student was able to master Goals 1, 2, 3 and 4 which were his mathematics goals in his IEP. The Student's special education aide was surprised the Student was able to master everything by the end of the year. The Student was able to master Goal 6 in his reading goals. The Student made progress in all his other goals. (Testimony of Special education Teacher and Special Education Aide)
31. A PPT was held on July 26, 2005 to finalize the Student's IEP. The recommendations of the clinical psychologist were included in the Student's IEP. The Parents rejected the IEP and requested placement of the Student at Eagle Hill School for the 2005-2006 school year and a 2005 summer at Eagle Hill School. These were refused by the Board. (Board's Post Trial Brief 51, P17, B-183)

CONCLUSIONS OF LAW:

1. There is no dispute that the Student is eligible to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE) pursuant to IDEA, the Individual with Education Disabilities Act, 20 U.S.C. §§ 1400 *et seq.*, and Connecticut General Statute, Section 10-76d(a)(1).
2. The Board has the burden of demonstrating by a preponderance of the evidence that it has complied with the requirements of IDEA, Regulations of Connecticut State Agencies ("Regulations"), Section, 10-76h-14.
3. IDEA represents "an ambitious federal effort to promote the education of handicapped children." *Board of Educ. v. Rowley*, 458 U.S. 176, 179, 73 L. Ed. 2d 690, 102 S. Ct. 3034 (1982). Because the statute expresses that disabled children should be educated alongside non-disabled peers "to the maximum extent appropriate," special education services must be provided in the least restrictive environment consistent with the child's educational plan. Only when "'the nature or severity' of a child's disability is such 'that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily' should a child be segregated." *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir. 1998) (*quoting* 20 U.S.C. § 1412(5)). In order to ensure that the balance of services required to meet these goals is specifically fitted to the particular child, the IDEA requires that each child receive an individualized education program. The IEP is intended to be "the result of collaborations between parents, educators, and representatives of the school district." *Lillbask v. Connecticut Dep't. of Educ.*, 397 F.3d 77, 2005 U.S. App. (2d Cir. Feb. 2, 2005). While the IEP does not have to maximize the child's educational potential, it must provide "meaningful" opportunities and the possibility for more than "trivial advancement." *Walczak*, 142 F.3d at 130.
4. The Supreme Court in *Rowley* identified a two part test for determining whether an LEA such as the Board has provided FAPE. The first inquiry is whether the LEA has complied with the procedural requirements of the IDEA, particularly those pertaining to the development of the IEP. The second inquiry is whether the IEP proposed by the LEA at issue is "reasonably calculated" to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 206-207
5. The inquiry as to the first prong of the *Rowley* standard, a finding of a procedural violation in and of itself does not render an IEP legally defective. Rather, "there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits." *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990), *cert.denied*, 499 U.S. 912 (1991).
6. The Parent argues that the Board failed to properly identify the Student as a student requiring special education and related services in a timely manner. The Parent in

their Post Trial Brief ¶5 state that the Student did not receive any special education but in fact the Board, in 1999, had found him eligible for special education as uncategorized. (Findings of Facts # 2) Almost 2 years later, the Board found him not requiring special education and related services and exited the Student from special education. During the 2002-2003 school year, the Student was doing well in his classes. . (Findings of Facts # 7) It was during the Student's 3rd grade that his reading, writing and mathematics seemed to be deteriorating. (Findings of Facts # 8, 9, 10 & 11) The Board did not ignore his downward trend but continued to test him and provided the Student with a 504 Plan. The Board evaluated the Student and toward the end of the 2003-2004 school year once again found him eligible for special education and related services. There were no procedural violations that compromised the Student's rights to a free and appropriate public education.

7. The second prong of *Rowley* requires a close look at the Student's IEP and how it would allow the Student to benefit from it. Since *Rowley*, courts have clarified the requirements of FAPE to hold that individualized educational programs offered to children with disabilities must provide more than a trivial educational benefit. The Fourth Circuit Court agreed "*Rowley* implicitly recognized that Congress did not intend a school system to be able to discharge its duty by providing a program that produces some minimal academic achievement, no matter how trivial." *Hall v. Vance County Board of Education*, 774 F.2d 629, 630 (4th Cir. 1985). While the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit, the *Hall* court held that grade promotions and test scores are not always enough to show educational progress. 774 F.2d at 635. The Court in *Hall* considered the student's capabilities, intellectual progress, and what the school had offered him, in making a decision about the appropriateness of the district's program. (See *Polk v. Central Susquehanna Intermediate Unit* 16,853 F.2d 171 (3rd Cir. 1988), cert. denied 488 U.S. 1030 (1989) and *Oberti v. Board of Education of the Borough of Clementon*, 995 F.2d 1204 (3rd Cir. 1993)) However, the IDEA does not require that the educational potential of each child be maximized. (*Rowley* at 189). An IEP is a work in progress which may require adjustments periodically. The Board held 5 PPTs during the Student's 2004-2005 school year, some of these were at the Parents' request. There seems to be conflicts in the testing that was done of the Student. His DRP showed a dramatic increase in May 2005 of his reading ability. This is in direct conflict with the testing that the clinical psychologist had performed on the Student and his opinion that the Student's reading abilities were impaired. Even the Student's special education teacher was surprised with the DRP score. (Boards' Post Trial Brief ¶ 51, P17, B-183)

8. In 2003 the Student was found to be reading at a grade level below his grade and 2 years less than his chronological age. (Findings of Facts # 11, 14) When tested again in 2005, he continued to read one year less than his grade level. In that 2 year period with a 504 Plan and with an IEP, the Student had shown no growth, even though a much higher score in his DRP. (Findings of Facts #14) The Board has continuously denied providing the Student with a summer reading program even though in the fall of 2004 he showed a 1 point drop in his DRP scores with a summer reading program provided by the Parents. The summer program enabled the Student to maintain his current reading level with little

if no regression. The Parents' expert's continuous evaluations of the Student consistently show a deficit in the Student's reading capabilities which the PPT has not been able to bridge. I do not find that the 2004-2005 IEP provide the Student with FAPE.

9. The 2005-2006 IEP, although more calculated to assist the Student to progress in his 5th grade reading program, incorporates the recommendation of the Parents' expert but also lacks a summer program for the Student. I therefore find that the 2005-2006 IEP will not provide the Student with an appropriate educational program.

10. The Parents requested that the Student be placed at Eagle Hill School. Only the Parents' expert testified as to the program at Eagle Hill School and he is not an employee of the school nor could he clearly state the program the Student would receive there. The expert could only state that the program at Eagle Hill would be individualized. 34 C.F.R. § 300.550(b)(2) requires, "That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." The Student's disability does not require removal to a residential placement. The Parents' attorney argues that the LRE of a Student is not the governing factor which requires one to forego educational appropriateness for the sake of integrating the Student's with non-disabled peers. I agree, but in the present case the father testified that the Student loves sports and has friends. Placing the Student in a more restrictive environment would not be in the Student's best interest. Socialization is an integral part of the Student's education and I have not been shown that the Board is not committed to this Student's education and cannot provide the Student with an educational program that will allow the Student to progress from one year to another with proper educational services and accommodations. There has not been sufficient evidence to show that the program at Eagle Hill is appropriate.

11. I do not find compensatory education is a proper remedy in this case.

FINAL DECISION AND ORDER:

1. The Program offered by the Board for the 2004-2005 school year is not appropriate.
2. The Program offered by the Board for the 2005-2006 school year was not appropriate.
3. The Program at Eagle Hill School as proposed by the Parents is not appropriate.
4. The Board shall reimburse the Parents for the summer program at Eagle Hill for the summer of 2004 and for the summer of 2005.

5. The Board shall reimburse the Parents for the evaluations performed by their expert clinical psychologist in April and June 2005.

6. The Board shall call for a PPT within 3 weeks to change the Student's 2005-2006 IEP to include a summer program. The summer program does not have to be at Eagle Hill School but should be an appropriate program decided by the PPT to insure that the Student does not regress.