

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Suffield Board of Education

Appearing on behalf of the Parents: Attorney Courtney P. Spencer, Klebanoff & Alfano, P.C.,
433 South Main Street, Suite 102, West Hartford, CT 06110

Appearing on behalf of the Suffield Board of Education: Attorney Julie C. Fay, Shipman &
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Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

This hearing was requested on June 20, 2005. This hearing officer was assigned to the case on June 21. A prehearing conference was held on July 5, 2005 with the Parents' attorney and Dr. Anne C. Loughrain, Director of Pupil Services. Hearing dates were scheduled for July 20 and 26 and August 16 and 18. The Parents' attorney requested an extension of the decision deadline, which was granted. The decision deadline was extended from August 5 to September 12, 2005. On July 6 Atty. Fay appeared for the Board and requested a postponement of the July 20 hearing. The request was granted and hearing dates were added on July 27 and 29. The parties were directed to file witness lists and exhibits by July 19, which the Parents did. The Parents filed Exhibits P-1 through P-6. The Board filed Exhibits B-1 through B-69 on July 20. On July 21 the Board filed Exhibits B-70, B-71 and B-72. On July 25 the Board filed Exhibit B-73.

The hearing convened on July 26, 2005. The first matter heard was objections to exhibits. The Board objected to Exhibit P-7, which had been filed by the Parents less than 5 days prior to the hearing. The Exhibit was entered subject to the 5-day rule. The Parents' attorney had no objections to Exhibits B-1 through B-72. She objected to Exhibit B-73 because it was filed less than 5 days prior to the hearing. That Exhibit was entered subject to the 5-day rule. The Parents' attorney requested that the Board state what student records were not part of the Board exhibits. A discussion was had on that topic. The June 20 request for due process was marked as Hearing Officer Exhibit (HO) 1. Because it did not contain any statement of issues, the Parents' request for mediation dated May 23, 2005, which did set forth issues, was entered as HO-2. The Parents' attorney waived an opening statement. The Board's attorney reserved her opening statement until commencement of the Board's case. The Parents then presented testimony from the Mother. She completed her testimony on July 27 and 29. Jill O'Donnell,

Director of Education at Intensive Education Academy (“IEA”) also testified on July 27. On July 29 Michael D. Powers, Psy.D., pediatric psychologist and Director of the Center for Children with Special Needs, testified. The Parents rested their case. The Board’s attorney presented her opening statement and called Nancy P. Lampros, Speech and Language Pathologist, Suffield schools, to testify on direct examination. Since she was not available for cross-examination on the last two hearing dates, a hearing date was scheduled on August 23. The decision deadline was extended to September 16.

On August 9, the Board’s attorney filed Exhibits B-74 through B-78. On August 16, the next hearing date, Exhibits B-75 through B-78 were entered into evidence without objection. The Parents objected to B-74, which was marked for identification only. The Board continued its case on August 16 with testimony from Karli J. Emery, Occupational Therapist, Suffield schools and direct examination of Jeff Wasilewski, Special Education Teacher. During Mr. Wasilewski’s testimony, the Board offered Exhibit B-74, records of a Planning and Placement Team (“PPT”) meeting on July 25, 2005, as evidence. The Hearing Officer heard the Parents’ objection and ruled the document inadmissible. Ms. Emery’s resume was entered by Exhibit B-79. An additional hearing date was agreed on for August 29. The decision deadline was extended to September 23, 2005. On August 18, Mr. Wasilewski completed his testimony. The Board then presented Michelle Killam, Language Arts and Science Teacher. Dr. Loughrain began her testimony on August 18. On August 23 Ms. Lampros completed her testimony followed by Natalie Donais, Inclusion Specialist, Suffield schools. Dr. Loughrain also testified on August 23 and completed her testimony on August 29. Both parties rested. The Board’s attorney requested two weeks to file simultaneous briefs, which was agreed upon after the Parents’ attorney conferred with her clients.

Briefs were due on September 12 and the decision deadline was extended to October 7, 2005 with agreement of both parties. Timely briefs were filed on September 12.

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 Suffield Board of Education offer the student a free appropriate public education (“FAPE”) for the 2005-2006 school year?
2. If not, does the program and placement at Intensive Education Academy provide the student with an appropriate program to meet her needs?
3. Is the Suffield Board of Education financially responsible for the program and placement at Intensive Education Academy for the 2005-2006 school year?
4. Did the Suffield Board of Education offer the student an appropriate program for the summer of 2005? If not, was Camp Shriver appropriate? If not, are the Parents entitled to compensatory education for the summer of 2005?

SUMMARY

The Student is a 13 year-old girl who completed her fifth grade at the public middle school in June. She has been in the Suffield school system since preschool. The parties agree that she is entitled to special education under the category of autism. As of the close of the hearing on August 29, the Parents had not decided whether to send the Student to the public middle school for sixth grade or to unilaterally place her at IEA. The Suffield schools have an "inclusion" model for integrating special education students into classrooms with non-disabled peers. The classes are co-taught by a regular education teacher and a special education teacher, with paraprofessional support staff as may be appropriate to the individual class. The Student has been part of inclusion classes for her academic subjects for several years. In the classes of 21-22 students, 8, including the Student, are special education students. The Parents believe that this model is no longer appropriate for the Student because the gap between her abilities and those of her non-disabled peers is increasing. Her academic abilities in reading, spelling and math are between the first and second grade level. The Parents want her placed at IEA where she would receive intensive academic and social skills instruction in a small classroom setting of 6 to 8 students with similar abilities to hers. The focus is on functional skills. The Board believes that the Student benefits from exposure to the regular education curriculum and to her non-disabled peers. The Board believes the program offered complies with and is required by the least restrictive environment ("LRE") mandate of the Individuals with Disabilities in Education Act ("IDEA"). The Parents contend that the LRE for this Student is not in the inclusion classrooms, but at IEA where she can learn without the distractions of large classrooms in a large school.

FINDINGS OF FACT

1. The Student, also referred to as A. herein, has a birth date of September 24, 1992 and is currently 13 years old. She recently completed the fifth grade at Suffield Middle School. Testimony of Mother; Exhibit B-63.

2. The Student began receiving services through the Birth to Three program at age 28 months. Exhibit B-1. She began attending the Board's public schools in preschool at age 3, which she attended for three years. Testimony of Mother; Exhibits B-1 through B-5. The Suffield preschool program was an integrated program, which she attended four mornings per week for two hours. The Parents had concerns that the intensity and structure of the program were insufficient to meet their daughter's needs. Exhibit B-2.

3. A. attended kindergarten at age 6 and spent two years in first grade at ages 7 and 8. Thereafter, A. attended grades two through five for one year in each grade. In grade five, she moved to the Suffield Middle School, which houses grades five through eight. Testimony of Mother.

4. Dr. Powers is a pediatric psychologist. He has Bachelor's and Master's degrees in special education as well as a Doctorate in psychology and post-Doctoral training in pediatric psychology. He has specialized in the assessment and treatment of children with autism since 1978, including teaching, supervising and training staff, being a program director and a faculty member at Yale, a position he currently holds. Testimony of Dr. Powers and Exhibit P-6. His

Curriculum Vitae lists the numerous conferences he has given as well as books and publications he has authored. He estimated that he had evaluated between two and three thousand children, with approximately 90% on the autism spectrum. He has been hired many times by school districts as a consultant. Id.

5. Dr. Powers has evaluated the Student four times: in 1996, 1999, 2002 and 2005. Exhibits B-2, B-6, B-50, B-56 and B-71; Testimony of Dr. Powers. The Parents paid for the 1996 evaluation. The Board paid for the other three. Testimony, Dr. Loughrain. On March 29, 1996 when she was 3 years, 6 months, he confirmed the diagnosis of autism made by Dr. Alex Geertsma in May 1995. On the Bayley Scales of Infant Development, A. achieved a mental age of 22 months. On the Vineland Adaptive Behavior Scales, she achieved a composite standard score of 54, with an age equivalent of 1 year, 6 months. On the Childhood Autism Rating Scale (CARS) she had total score of 40.5, which placed her within the range of children who are more substantially affected by symptoms of autism. The Behavior Development Questionnaire (BDQ) was administered to her Parents to assess the subtypes within the Autism spectrum. The responses placed her in the passive subtype. Dr. Powers made the diagnosis of Autistic Disorder and offered several recommendations, including that she will benefit from a “highly structured full-day language based program emphasizing behaviorally based teaching procedures, with a one-to-one aide.” Discrete trial teaching was also recommended. Exhibit B-2.

6. Triennial testing was conducted in 1998, when A. was in the Suffield Public Schools Integrated Preschool. Exhibits B-3, B-4, and B-5. According to the triennial report by Karen Boscarino, A.’s special education teacher, “[s]ince one does not always obtain valid scores on standardized assessments administered to autistic children, [the] PPT requested a Battelle Developmental Inventory be completed for the purpose of determining an approximate baseline as well as understanding of the specific skills which [A.] is capable of completing.” Exhibit B-3. Ms. Boscarino compared the results of the Batelle evaluation done by Birth to Three on May 22, 1995 with those of her May 1998 evaluation. At a chronological age of 31 months, A. achieved a total score of 9 months age equivalent (1%ile). At chronological age of 68 months, A. achieved a total score of 25 months (1%ile), a growth of 19 months in approximately 37 months. She scored at age appropriate range in the attention domain. Overall adaptive skills increased 22 months, motor skills 19 months, communication skills 12 months and cognitive skills 16 months. Exhibit B-3.

7. The Speech and Language evaluation conducted in 1998 also indicated that use of “standardized testing instruments is difficult to perform due to [A.’s] behavior and attention deficits.” Exhibit B-4. The tests administered were the Rossetti Infant-Toddler Language Scale and the Receptive-Expressive Emergent Language Scale (REEL-2). On the Interaction-Attachment and Pragmatics areas she demonstrated solid skills at the 15 to 18 month level. On the Gesture portion, she demonstrated solid skills at the 24 to 27 month level. On the Play portion, she showed solid skills at the 30 to 33 month level. On the REEL-2 she was functioning at approximately the 27 to 30 month level for language comprehension and “has a broad scattering of skills for expression between the 24 to 30 month age levels.” She demonstrated “very good gains in the overall intelligibility of her speech.” Exhibit B-4.

8. Dr. Powers completed a reevaluation of A. on July 29, 1999. Exhibit B-6. At that time, A. was scheduled to attend first grade in a combined special education/regular education

program, with both special education and regular education teachers assigned to the classroom. She had a one-to-one instructional assistant, speech and language services of 90 minutes per week, occupational therapy of 60 minutes per week and a summer program in 1999 of 2.5 hours per day, five days per week for six weeks. The Parents were “pleased with the program model developed by Suffield, and appreciate[d] the opportunities for both systematic instruction and also for integration and social teaching available to their daughter.” In his report, Dr. Powers noted that “social interaction and communication skills have improved, . . . [e]ye contact is much better. . . and social recognition skills have improved as well.” Her “most obvious gains” were in the area of vocal and gestural strategies and “[w]hile behavioral stereotypies remain, they are significantly reduced over my last evaluation.” Id.

9. Dr. Powers’ 1999 evaluation included the following assessments: Leiter International Performance Scale; Stanford-Binet Intelligence Scale; Vineland Adaptive Behavior Scale; Developmental Test of Visual Motor Integration; CARS and the BDQ. Id.

10. On the Leiter Scale, A. successfully passed all items at the year four level, with scattered passes at the five and six year levels. She achieved a mental age equivalent of five years, at a chronological age of six years, 10 months score, placing her nonverbal reasoning skills in the borderline range (Ratio IQ = 73). While a direct comparison between the Leiter score and the previously achieved score on the Bayley Scales “is not possible,” he concluded that the “non-verbal reasoning skills identified today represent a significant improvement over those overall developmental abilities identified in my 1996 evaluation.” Id.

11. Results of the Stanford-Binet Intelligence Scale: Fourth Edition administered in 1999 indicated the following standard scores: Verbal Reasoning (62); Abstract/Visual Reasoning (57); Quantitative Reasoning (66); Short-Term Memory (54) and a Test Composite score of 51. Id. Dr. Powers explained at hearing that because A. received a raw score of “0” on the Absurdities subtest (which would typically be included in computing the overall Verbal Reasoning Score), this subtest was not factored into the overall score for the Verbal Reasoning, thus artificially inflating the Verbal Reasoning Score. Based upon the results of the 1999 testing, Dr. Powers de-emphasized the results of the Stanford-Binet Test Composite, instead recommending that the PPT focus on the profile or pattern of A.’s strengths and weaknesses, rather than on the Test Composite Score since her overall abilities “are less accurately described in a total or composite format.” Exhibit B-6.

12. Results from Dr. Powers’ 1999 administration of the Vineland were as follows:

Communication	56	age equivalent 3 years, 3 months
Daily Living	51	age equivalent 3 years, 3 months
Socialization	67	age equivalent 3 years, 6 months
Adaptive Behavior Composite	53	age equivalent 3 years, 4 months

Id. According to Dr. Powers, the results of the 1999 Vineland, when compared to his 1996 scores, indicate that “modest gains have been made in all areas.” In the 40 months between the two tests, A. had gains of 23 months in the Communication and Daily Living domains and 28 months in Social gains. Id.

13. In 1999, Dr. Powers also reported a standard score of 63 on the Developmental Test of Visual-Motor Integration (“VMI”), corresponding to an age equivalent of four years, two months. A.’s performance on the VMI “today indicates visual motor integration deficits that are significant, and compromise her graphomotor, near-point copying, and other perceptual motor tasks. On-going intervention will be needed in this area as well.” Id.

14. Dr. Powers also reported a score of 33 on the CARS in 1999, placing A. within the range of children “more mildly affected by the symptoms of their Autism Spectrum Disorder.” Id. On the BDQ she placed within the passive subgroup within the Autism Spectrum. In A.’s case, “she shows interest in other children, but does not adequately comprehend or use the rules of social engagement, initiation, or response in order to start, sustain, or terminate such interaction opportunities.” Id.

15. Dr. Powers reported that A.’s “learning style remains essentially consistent with that which was described in [his] last evaluation, but with the addition of several new perspectives. Her problems with attention and attention shifting are now more evident than they were in the past.” He modified A.’s diagnosis to Atypical Autism and concluded that the results of the evaluation suggested the presence of a Central Auditory Processing Disorder. He recommended that a central auditory processing evaluation (“CAP”) be done, either at Southern Connecticut State University or at the University of Connecticut at Storrs. He was “quite supportive” of the co-taught classroom model, stating that the “availability of typical peer[s] and specialized instruction in the same setting offers the opportunity for the ‘best of both worlds’ as long as [A] has sufficient adaptation and accommodation of classroom lessons to meet her needs.” He recommended the use of resource room support on a pullout basis for reading, math and handwriting. He also recommended IEP objectives for social interaction skills, including social stories and Touch Math. Id.

16. In accordance with Dr. Powers’ recommendation, A. was referred to the University of Connecticut Speech and Language Clinic for a CAP evaluation in 2000 and again in 2002. Exhibits B-7 and B-11. Due to A.’s difficulties completing some of the tests, UConn was unable on both occasions to diagnose or completely rule out a processing disorder. Nonetheless, UConn made recommendations to the PPT to accommodate processing weaknesses, including the use of a personal FM system, which was incorporated into her program. Id. and Exhibits B-8 and B-71; Testimony of Dr. Loughrain.

17. Triennial testing was repeated for A. in 2002. Exhibits B-9, B-10, B-11 and B-12. At the time, A. was in a co-taught second grade class taught by a regular education teacher, a special education teacher and two educational assistants. During second grade, she also received OT, speech therapy and adaptive physical education. Exhibit B-11. As part of her triennial, Katherine Wagar, the school psychologist, repeated the Stanford-Binet Intelligence Scale; Vineland Adaptive Behavior Scale and CARS, which had previously been administered by Dr. Powers. Ms. Wagar’s evaluation, which occurred on February 11, March 20 and 21, 2002, also included direct observation of A. in the classroom setting. In contrast to earlier testing, A. was able to achieve a score on the Absurdities subtest of the Verbal Reasoning section of the Stanford-Binet. The score of 22, when combined with lower scores on Vocabulary and Comprehension, yielded a Verbal Reasoning Score of 46. The scores on the remaining subtests were lower in 2002 than 1999, except for the Copying subtest, which was the same at 29. The

overall test composite score for 2002 was 44, compared to 51 in 1999. Exhibit B-10. Based on these results, Ms. Wagar concluded that her “overall composite score reflects intellectual deficits in all areas and considerable impairment compared to same aged peers.” However, she further noted that it is important to note that A.’s “day to day functioning and performance within the classroom setting and at home is somewhat different than what is reflected on standardized testing.” Id.

18. Results from Ms. Wagar’s 2002 administration of the Vineland were as follows:

Communication	44	age equivalent 3 years, 8 months
Daily Living	45	age equivalent 4 years, 9 months
Socialization	53	age equivalent 4 years, 6 months
Adaptive Behavior Composite	44	age equivalent 4 years, 6 months

These standard scores were all lower than the 1999 scores obtained by Dr. Powers. In terms of age equivalent scores, in a span of approximately 31 months between the 1999 and 2002 testing, A. had 5 months of gains in Communication, 18 months of gains in Daily Living, 12 months of gains in Socialization, for a Composite gain of 14 months. Exhibits B-6 and B-10.

19. An educational evaluation was also done as part of A.’s triennial in 2002, which included administration of the Woodcock-Johnson Mastery Test. Scores from the Woodcock-Johnson were reported in terms of standard scores, as well as age equivalents. The standard scores ranged from 29 to 84, with an age equivalent range of 3 years, 3 months to 7 years, 4 months. At the time of the evaluation, A. was 9 years, 5 months old. Exhibit B-11. The educational evaluation also reported A.’s present levels of academic functioning with respect to Suffield’s benchmark testing, used at the elementary level to periodically assess academic skills such as reading and spelling. Testimony of Dr. Loughrain. Results at that time indicated that she was able to memorize sight words and was able to fluently read books at an Early 3 reading level according to Suffield’s benchmarks. Recommendations included focusing on sight words, rather than phonics, in future reading instruction; use of visual cues; continuation of peer models; use of organizers and flashcards, and using Touch Math for addition and subtraction. Exhibit B-11.

20. Dr. Powers evaluated A. on April 18, 2002, after the evaluations conducted by the Suffield Public Schools as part of A.’s triennial evaluations. Exhibit B-71. He administered the Leiter International Performance Scales and the Stanford-Binet Intelligence Scale: Fourth Edition, Selected Subtests. Results on the Leiter indicated that A. had passed all items at the five and six year levels, with “scattered passes at years seven and eight.” Her non-verbal IQ was 75, “corresponding to a mental age equivalent of 7 yrs. 2 months, leading Dr. Powers to conclude that while her non-verbal reasoning skills are below age expectations, they are “somewhat better developed due to the absence of a motor planning demand during the assessment.” Id.

21. In his 2002 evaluation, Dr. Powers reviewed the results of the Stanford-Binet administered by Ms. Wagar and reiterated that while the overall test composite score difference between the 2002 and 1999 scores appears significant, “these differences are largely an artifact of the additional scoring of the one subtest [absurdities] within the verbal reasoning domain, and the imposition of a more substantial motor planning and visual perceptual demand on the Bead

Memory subtest.” He administered two subtests from the Stanford-Binet, which were not used by Ms. Wagar, the Matrices subtest and the Memory for Objects subtest. Her scores were 42 and 44, both falling within the low average range. Based upon the cumulative data, Dr. Powers concluded that A.’s non-verbal and cognitive problem solving abilities “are better understood as being below average but not falling within the mentally retarded range, while her verbal reasoning skills represent an area of significant compromise, at greater than three standard deviations below the mean.” Id.

22. Dr. Powers’ did not repeat the Vineland testing in 2002. However, his 2002 report does contain a direct comparison of the Vineland scores from his 1999 evaluation with those reported by Ms. Wager in 2002. Id. He noted that the 2002 scores represent functioning that is substantially below age expectations. He concluded that A.’s “gains have been modest,” reporting these gains in measures of age equivalent growth (i.e. 5 months gain in communication skills; 18 months gain in daily living skills; 12 months gain in social communication skills). “These discrepancies highlight the need for more extensive efforts to expand communication skills and social interaction skills into more functional and adaptive settings, and to further expand direct instruction in daily living skills appropriate for a child of nearly ten years of age.” He recommended that she continue in the co-taught classroom with pullout resource room to address reading needs. He also recommended a six-week full day summer program with four hours of academic instruction in the morning and a community-based recreational experience in the afternoon. Id. Many of his recommendations were not followed, including the one-to-one instructional aide in the co-taught classroom and expanding the program’s focus on daily living skills. Testimony of Dr. Powers.

23. A.’s 2005 Triennial Evaluations were planned at the November 9, 2004 PPT meeting. Exhibit B-32. Evaluations were recommended in the areas of Speech and Language; Occupational Therapy and Psychological testing. Specifically, the PPT recommended that a WISC-IV be conducted to obtain updated IQ information. Exhibit B-33. The PPT agreed to have Dr. Powers conduct the psychological portion of the triennial testing and to fund that evaluation. Exhibits B-34 and B-36.

24. Dr. Powers conducted this evaluation of the Student on February 7, 2005. Exhibit B-56. He sent his recommendations to Dr. Loughrain in advance of the April 4, 2005 PPT meeting so the team would have them available when planning for the 2005-06 program. Exhibit B-50. Ms. Lampros sent Dr. Powers the test scores that had been completed as of February 4. Exhibit B-45. In his 2005 evaluation, he reported that A.’s Composite score on the Stanford-Binet was 53, substantially below average performance. He reported that A.’s adaptive behavior, evaluated by the Vineland was similarly compromised, with an Adaptive Behavior Composite of 48. He recommended that the co-taught model, which had been somewhat successful in the past, be replaced by a parallel curriculum in a small, highly structured classroom. He recommended referral for services from the Connecticut Department of Mental Retardation since A.’s performance on the cognitive and adaptive portions of the evaluation were greater than three standard deviations below the mean. Exhibit B-50.

25. Dr. Loughrain and Mr. Wasilewski reviewed Dr. Powers’ preliminary report prior to the April 4 PPT meeting and wrote a rebuttal for presentation to the Parents and other team

members. Exhibit B-51. They claimed that the current program addressed her needs. Testimony of Dr. Loughrain and Mr. Wasilewski. On April 4, 2005, a PPT meeting was held and an IEP was drafted for the sixth grade year. Exhibit B-52. Dr. Powers' recommendations were reviewed at the April 4, 2005 PPT. Testimony of Mother. She disagreed with the team about their reports of her daughter's progress. She said that although the Student had decreased her whining during the year, it had returned, as did her hand flapping.

26. The April 4, 2005 IEP contains goals and objectives, modifications and a complete page listing services to begin on April 11, 2005 and end on April 4, 2006. Exhibit B-52 at 16. Every year since at least the 2002-03 school year, the Student's program for the next year was created at a PPT in April of the previous year. Exhibits B-17 and B-25. The only PPT meeting occurring, which was not an annual review meeting in April, was the November 9, 2004 PPT meeting, which the Mother had requested on October 21 for the purpose of discussing A's schedule and her progress. Exhibit B-29. The record of the November 9 PPT meeting indicates that the Parent wanted to remove her daughter from Spanish class and to request a one-to-one aide for A. Exhibit B-32. The PPT refused both requests. No changes were made to the IEP. The upcoming triennial evaluation was planned. Id.; and Testimony of Mother and Mr. Wasilewski.

27. The Parent felt that the mainstream program offered by Suffield was no longer appropriate because the gap between the Student and her peers is getting larger and she is seeing regression in different areas. She requested placement of her daughter at the Intensive Education Academy beginning in the summer of 2005 at the April 4, 2005 PPT. Testimony of Mother; Exhibits B-52 and B-53.

28. The program offered for the 2005-06 school year is the same co-taught model that was provided during the previous year. The number of hours for special education were the same: 8.4 hours/week of Language Arts and 4.2 hours/week of Math, 100 minutes/week of Speech & Language and 0.5 hours/week of Occupational Therapy (OT). All services were delivered in the regular classroom, except for one 50-minute period of speech and language services in the "MILL" (Multiple Intelligences Literacy Lab). The Student was spending 32 hours, 50 minutes per week in the regular classroom. Fifteen minutes of OT were listed as outside of the regular classroom, presumably in the MILL. Exhibits B-25 at 15 and B-52 at 16. In 2004-05 the Student had four goals; in the 2005-06 IEP there were six goals. Id. The four goals were: 1) improve literacy skills; 2) improve social communication skills; 3) improve math skills and 4) demonstrate improved sensory motor integration and fine motor skills for greater academic success. Exhibit B-25 at 4-12. The six goals were: 1) improve reading comprehension skills in the areas of Health, Science and Social Studies; 2) improve vocabulary skills both orally and in writing; 3) develop the understanding and correct use of syntax/morphological rules in unstructured conversational speech and in independent writing activities; 4) improve reading comprehension skills with essential reading comprehension tasks from 2.0 readability level to 2.6 readability level; 5) improve math skills; and 6) demonstrate improved fine motor and organizational skills for greater academic success. Exhibit B-52 at 5-15. The Extended School Year (ESY) program for summer 2004 was two hours per day for five weeks. Exhibit B-25. The ESY program for summer 2005 was three hours per day for five weeks for maintenance of

academic and social skills. Exhibit B-52. In grade six the Student would have a schedule that rotated every day. Testimony of Mother.

29. The IEP for 2005-06 was based on A.'s teacher reports, review of records, OT evaluation, Speech and Language evaluation and Dr. Powers' evaluation. Exhibit B-52 at 3. The team recommended an Evaluation of Educational Achievement on a criterion-referenced test and a referral for a CAP-D Evaluation to UConn Speech & Language Clinic. A follow-up PPT meeting was scheduled for June 13, 2005. Id. at 1.

30. Ms. Lampros did the Speech and Language Evaluation on March 8, 2005. Exhibit B-46. On the Expressive One-Word Picture Vocabulary Test ("EOWPVT"), which is a norm-referenced assessment, A. earned a standard score of 66, which placed her at the 1st percentile. Her previous score from 2002 was 67. Ms. Lampros concluded this indicated that she was retaining the vocabulary she was learning. A. received a standard score of 68 on the Receptive One-Word Picture Vocabulary Test ("ROWPVT"), which placed her at the 2nd percentile. Based on her tested IQ of 53, Ms. Lampros felt A. was performing above her cognitive level on these tests. Id.; and Testimony of Ms. Lampros.

31. The Peabody Picture Vocabulary Test was also administered as part of A.'s Speech and Language evaluation. A. received a raw score of 57, which fell short of the minimum score of 62 required in order to arrive at a standardized score. The version used in 2005 (Form M) was a different version than that administered in 2002 (Form III A), due to A.'s change in age. The content of the test changes as a student gets older since results are normed against same-aged peers. In 2002, A. achieved a standard score of 64. However, on the 2005 version of the test, she was not able to answer enough questions correctly in order to reach the normative base. This meant that no standard score could be achieved. Nonetheless, this test provided important information with respect to the types of words A. comprehended, and the kinds of mistakes she made, along with the respective age equivalent information. She comprehended all words through the age 5 level, 80% at 5 ½ and 6 year levels, 60% at age 6 ½ and 7 year levels, 20% at age 8, 10 and 11 year levels and 0 at age 9 level. Testimony of Ms. Lampros; and Exhibit B-46 at 6.

32. The Oral and Written Language Scales ("OWLS") was also administered. This test consists of three scales, two of which were given to A. The Written Expression portion was not administered. A. achieved a standard score of <40 on the Listening Comprehension, achieving no score on the percentile. She achieved a standard score of 41 on the Oral Expression, which resulted in less than 0.1 percentile. Detailed information regarding the nature of her correct and incorrect answers were also recorded and shared with the PPT. Exhibit B-46.

33. The final speech assessment conducted in 2005 was the Comprehensive Assessment of Spoken Language ("CASL"). The CASL battery is another norm-referenced assessment, which provides information on oral language skills "that adolescents need to become literate as well as to succe[ed] in school and in the work environment." Id. Standardized scores and percentile rank for each of the subtests were as follows:

Antonyms 49	less than 0.1
Grammatical Morphemes 53	0.1
Sentence Comprehension 62	1
Non-Literal Language 51	less than 0.1
Pragmatic Judgment 40	less than 0.1
CASL Score Composite 43	less than 0.1

Ms. Lampros' conclusion that these scores were "below average ability" is an understatement. Id. at 2-3 and 7. The results of the CASL were consistent with Ms. Lampros' observations of A. with respect to her work and classroom performance. Overall, they indicated her ability to use a number of oral language skills, however, areas such as pragmatics continue to be areas of particular difficulty for A. Id.; and Testimony of Ms. Lampros.

34. An OT evaluation was also conducted by Karli J. Emery as part of A.'s triennial evaluation. Exhibit B-48. At the time of testing, A. was 12 years, 4 months. The report is dated March 12, 2005. On the Beery Developmental Test of Visual-Motor Integration, A. achieved a standard score of 67 (based upon a raw score of 17), which is in the very low range. Previously, in 2002, she had scored a standard score of 71 (based upon a raw score of 12). The change from 71 to 67 is not clinically significant. Testimony of Ms. Emery. Nonetheless, the decrease in standard score does not mean that A.'s skills have decreased since the testing designs become more difficult and the expectations as to what a child can do increases as a child gets older. In 2005, A. was being asked to do more complex designs than in 2002, when she was three years younger. The increase in the raw score from 12 to 17 indicates that she has improved by five designs, and is therefore learning, although her overall skills are still in the very low performance range. Exhibit B-48 at 2.

35. On the Bruininks-Oseretsky Test of Motor Proficiency administered in 2005, A. achieved a standard score of 8 on the Visual Motor Control component, placing her at an age equivalent of 8 years, 5 months. This subtest had not been performed earlier. On the Upper Limb Speed and Dexterity test, A. earned a standard score of 6, placing her at an age equivalent of 8 years, 11 months. Age equivalent for this test in 2002 was 5 years, 8 months, thus indicating growth of more than 3 years in a three-year time span. Both test scores were below average. Id. at 3. Ms. Emery, who has been A.'s OT for the last two years, believes that A.'s actual classroom performance is better than indicated by the test results since testing designs really isolate the fine motor skills in a clinical setting. Testimony of Ms. Karli.

36. Dr. Powers sent his complete report and recommendations to Dr. Loughrain on April 28, 2005. Exhibit B-56. Results of his 2005 administration of the Vineland Adaptive Behavior Scales indicate the following:

Communication	50	(age equivalent 6 yrs., 4 mo)
Daily Living	52	(age equivalent 6 yrs., 6 mo)
Socialization	53	(age equivalent 4 yrs., 11 mo)
Adaptive Behavior Composite	48	(age equivalent 0 yrs., 0 months)

Id. at 5. The results were based on reports from the Parents. With respect to A.'s adaptive skills, Dr. Powers noted that A. can now tell time by 5 minute segments, use the microwave to prepare simple preferred food items, demonstrated emerging abilities to use household cleaning products appropriately and can dress, bathe and engage in personal care and hygiene independently. Id. at 6. A. had also demonstrated an "emerging ability to respond appropriately when introduced to strangers, for controlling her hurt or angry feelings independently, for following time limits set for her by others, and for emerging understanding of the importance of returning borrowed items." Id. While Dr. Powers stated that A.'s adaptive behaviors continue to be low in all domains, he reports that in the 35 months since the March 2002 Vineland testing by Ms. Wagar, there were 32 months gain in the area of Communication; 21 months gain for Daily Living Skills; and 5 months gain for social interaction skills. He did not provide a composite age equivalent score. The "0 years, 0 months" should be disregarded. Id.

37. The Stanford-Binet results were expressed as standard age scores: Verbal Reasoning 48, Abstract/Visual Reasoning 75, Quantitative Reasoning 62, Short-Term Memory 51 and Test Composite 53. Her performance showed considerable variability across and within subtests. She has better-developed non-verbal reasoning skills than verbal reasoning skills, but both were substantially below age expectations. "Overall, while A[.]'s performance identifies cognitive limitations in several important domains, the variability within her performance profile argues strongly for a highly individualized, small group instructional experience that will modify curricula and materials according to her information processing weaknesses, and further provide visual cues that can be used with greater independence in order to reduce prompt dependencies." Id. at 4-5.

38. He concluded that A. requires a comprehensive specialized educational program to appropriately address her extensive learning challenges. Id. at 6. The results of Ms. Lampros' testing raised concerns about a central auditory processing disorder. He recommended a comprehensive evaluation of all academic domains, written language, handwriting, and understanding and use of academic concepts in multiple formats. He stated that if a small, individualized educational experience in a special education classroom was not available in Suffield, that the team and Parents may well consider outplacement to a more specialized facility. Id. at 7. Dr. Powers also emphasized the need for a full-year program, including an ESY program of at least 7-8 weeks, "given the extensive learning challenges that she faces, short-term working memory deficits, and the need to pre-teach academic content in preparation for the upcoming grade curriculum." Id.

39. He pointed out that her communication deficits are "substantial" and emphasized problem areas such as "difficulty with the use and understanding of figural speech, inference, drawing conclusions, initiating topic, maintaining topic, and switching topic in conversation." Id. at 8. The necessity of communication therapies "cannot be overstated. A comprehensive communication evaluation by a clinician with expertise in evaluating students with autism is needed. Id. at 8.

40. Small group instruction should be paramount. Large group lecture or discussion formats must be avoided. Math and reading curricula should be functional. They will be parallel rather than adapted curricula. They should be taught to mastery following criterion-referenced

assessment from the triennial educational evaluation. He recommended that a reading specialist become involved in the student's program. Id. at 8. There was no evidence that this had been done previously. Testimony of Dr. Powers.

41. Her ability to memorize is an asset, but he did not have confidence that she could apply that memorized information to a given situation, that her problem solving abilities are compromised and that's the reason for generalization training and extended school year programming. Id.

42. The Student has an overlay of anxiety, similar to being dropped into a foreign culture with a foreign language without the preparation, pre-teaching or prior experience to know what to do. A. is more likely to "act in" as opposed to "act out," meaning that she will internalize her feelings. Her behavior when she is confused is giggly, silly, cute behavior. This is not a good strategy, will be misinterpreted and will not get her the information she needs. A person without experience in autism could perceive this as the Student having a happy attitude as opposed to being totally confused within a situation. The Student's propensity to repeat what she has heard (echolalia, a component of autism) could be misinterpreted as learning or comprehension when it is more likely an affirmation or a question. Id.

43. A one-on-one aide was necessary to keep her in the co-taught classes. That is because the Student's inability to process information would not be evident at the moment it was occurring, and people could make assumptions that she is understanding when she is not, which would build a weak foundation for later skills. Given her motor planning difficulties, as well as her language processing deficits, she is at high risk for this occurring. The ideal one-on-one aide would know when to intervene and assist and when to let the student work independently. Dr. Powers was not aware at the time of his evaluation that the District was not providing a one-on-one aide. Id.

44. While a co-taught model is a really good prototype under the right circumstances, it is not right for the Student at this time. Because her written expression is compromised, there would not be an effective way to measure comprehension of the information being provided to the mainstream class. There is a danger in having someone else write for her, as it is easy to over-interpret because she will not correct you and she will not provide you with well-formed information. The aide should not be writing for her. A more effective strategy would be to find alternative means of expressing written work. Id.

45. Dr. Powers had concerns that his recommendations in 2002 had not been implemented, specifically that for the next few years she was placed in the team-taught classroom but was not provided with pull-out, intensive direct instruction opportunities as he had recommended. He also had concerns that the school had not followed his recommendations for summer programming. A. is best served in a 12-month program. You cannot simply apply a regression model to this Student's learning. You must apply a compensatory and proactive model for preparation for her upcoming academic experience. She could not independently apply any of the skills learned during the school year with fluency. Academically, she is not where she needs to be. Without substantial summer supports, she is at risk for being even further behind at the beginning of the school year. Id.

46. A full summer program for the Student, is needed for strong academics with an additional community based, social program that includes direct teaching of social skills. Although the Student is interested in other people, which is a great asset, outside of being able to say hi and hello she does not have appropriate conversation strategies including the flexibility to change topics. Her occupational and speech therapy needs would not disappear over the summer and such services would be an important part of her program. Dr. Powers did not have any concerns about fatigue during the summer program, which had been raised by the District as a reason for shortening the program. Behaviors such as claiming fatigue or other sensory seeking behaviors are a red flag that the routine, structure, order and predictability of the program has collapsed and she is looking for them. Id.

47. A. has not made adequate progress in social skills. A comprehensive social skills curriculum is essential in autism and critical for this Student. "It's a core deficit in autism." Id.

48. A. did not make appropriate progress in the area of daily living skills. There was movement in age scores because she has grown older, but there was relatively no movement in her standard scores. Age equivalent scores are not very useful. Standard scores tell the story. It looks like she is scoring at around a six year old level, but there is vast variability between what six year olds can do. Therefore, such a measure is not helpful. When comparing her 2005 scores to those in 1999, they had lowered in the area of socialization and communication and stayed the same in daily living skills. This meant she was not keeping up with herself, that she was not progressing sufficiently. Id.

49. The Student had mastered only 29% of her goals and objectives on her 2004-05 IEP. This was not sufficient. The Vineland scores would be expected to increase if her goals and objectives were mastered. The Vineland is about functional skills. The scores would increase if the IEP addressed these areas. Similarly, the Stanford-Binet measures social comprehension on a particular subtest, which requires knowledge of things such as what do you do during a fire drill. If she had mastered goals and objectives in this area, that score would increase. Id.

50. Based on Dr. Powers' recommendation, Mr. Wasilewski was asked to conduct an educational evaluation. He was A.'s 5th grade special education teacher in the 2004-05 school year. That was his first year of teaching in Suffield. He administered the Brigance Diagnostic Comprehensive Inventory of Basic Skills – Revised (CIBS-R) on June 9 and 10, 2005. Exhibit B-69. "The CIBS-R is a standardized and validated test for five to thirteen year olds and provides information about student skill levels, as well as validated grade-equivalent, and age-equivalent scores, percentile ranks and quotients." Id. It tests a number of different academic skills sets in the areas of writing, mathematics, and reading. Testimony, J. Wasilewski. Results of the CIBS-R were reported in grade equivalent scores as follows:

Grade Equivalent

Word Recognition	2.8
Reading Vocabulary Comprehension	1.6
Comprehends Passage	2.0
Computational Skills	2.6
Problem Solving	<1.0
Spelling	2.6
Sentence-Writing	1.0

Mr. Wasilewski concluded that the results of the educational evaluation align with her in-class performance in several areas, including computational ability and reading comprehension. Her level of performance in sentence writing and problem solving are higher in the classroom, where instructional strategies such as manipulatives or illustrated story problems are used. Exhibit B-69 at 4. Comparing the 2002 educational evaluation with the 2005 evaluation, there was one year or less progress, depending on the specific area tested. In 2002 the Woodcock Johnson was administered, and scores were expressed in age equivalents not grade level. Exhibits B-11 and B-69.

51. Mr. Wasilewski and Ms. Lampros reported on A.'s progress on her goals and objectives in her IEP on March 24, 2005. This was the annual review on her goals and objectives for the 2004-05 school year. Exhibit B-49. She mastered four of nine objectives on her literacy goal. She mastered both objectives on her social communications goal. She mastered two of seven objectives on her math goal. The OT goal was referenced as a separate document, but was not in the record. In the March 2005 report she had mastered an objective that had her produce in writing, with and without a model, present progressive, past and future tenses. Id. On the CIBS-R, when given the words "cat", "play", "fun", part of what was incorrect about her sentence was the inability to write the correct verb tense. Exhibit B-69 at 3. When questioned about the remaining objectives, it was clear that even with, at times extreme, cueing she was only able to make progress, not master even the most basic goals, such as answering a "when" question when the instructor is pointing to the answer. Exhibit B-49 at 2. An example of an objective that was mastered is objective F under goal 1 that required her to repeat and copy an answer that she was given to a "why" question. Id.

52. Mr. Wasilewski had nine children, including A., on his caseload. He was responsible for providing an appropriate educational environment for the Student. He was the person primarily responsible for modifying the Student's work. The Student had four co-taught classes in grade five: language arts, math, science and social studies. There were three adults in the co-taught classes: the special education teacher, the regular education teacher and a paraprofessional person. The environment of the classroom is sometimes noisy. Sometimes her seat had to be moved due to the level of noise. In fifth grade there was a lecture-based format used. Testimony, Mr. Wasilewski.

53. Language arts was a double block (90 minute period) at the beginning of the day. A typical day in A.'s language arts classroom would include having the children sit in class while the regular education teacher gave an introduction in a lecture format to the entire class of

21-22 students. Sometimes the children would be split into groups that would include a mix of regular education and special education peers. He spent an average of 20 minutes working one-to-one with A. in that class. Generally each adult interacted with a small group. During one activity the small group would listen to a book on tape and answer questions. The Student would not be able to answer the questions that the other children were answering. The questions would have to be modified. The Student frequently raised her hand, but had no answer prepared. She expected to get called on every time she raised her hand. Every time she raised her hand in class an adult would go up to her and ask what her answer was to make sure she had an answer to give. "Sometimes" she was able to answer appropriately in class, but not the majority of the time. When she did not get the right answer, she would look disappointed in herself, but would continue to raise her hand. Within the group of children with disabilities, her functional level was in the middle. Id.

54. In math class, when the fifth graders were working on fractions, she would work on fractions because she could comprehend them "at some level." There was more group work in math, but in language arts there might be overall discussion about a topic in the class. She needed adult assistance every couple of minutes, and with some curriculum items, she would need direct one-on-one support. Sometimes A.'s work was completely different than that of her peers. Her written products are not of the same level. He agreed with the math teacher's assessment that A. needs to have reminders to stay on task, she is distracted by her peers and that she works quickly and therefore does not come up with the correct answers. She imitates both good and bad behavior. Id.

55. In the geography class, the Student could only comprehend a lesson if it was very direct. Otherwise, the intended outcome of the lesson was "more of punctuation, practice spacing, capital letters." Id.

56. In science class initially the children would read from the fifth grade science textbook to get directions for the experiment. Then the children would work in groups. He generally floated among all of the children unless it was an extremely difficult experiment. The expected outcomes for A. were different than the other children in her small group. Id.

57. Ms. Killam, the Student's grade five science teacher, testified that in small groups, the other children would give the Student the answers and show her where to write them on her paper. If she needed to copy off the board, they would show her where to put the information, as she was not able to figure out where to put it. She was not able to come up with the answers in the group. Testimony of Ms. Killam.

58. The Student completed a project with a group of boys. Although she could not remember the topic of the presentation, Ms. Killam testified that while the group was doing research, the Student read a second grade level book, possibly a Charlie Brown book. She was not sure if the Student actually wrote even a sentence of the project. A. held up the poster and pointed to items on the poster as her group was presenting. Id.

59. Ms. Killam, along with other members of the school based team, didn't feel that the Student needed the assistance of a special education teacher in mainstream science for the 2005-06 school year. Id.

60. The Student attended Spanish class as an "exploratory class." Although the Parents objected to it, Mr. Wasilewski felt it benefited the Student. One of the benefits of taking Spanish was exposure and that "exposure is extremely important for any student, especially [the student]. There were approximately 23-24 students in her Spanish class. Spanish and the other exploratory classes—art, music, physical education-- were not co-taught classes. Testimony, Mr. Wasilewski. In the 2005-06 IEP, the program is basically the same in terms of co-taught classes, special education and related services. Id. and Exhibits B-25 and B-52.

61. In the beginning of the 2004-05 school year A. was placed in an unstructured study hall without adult assistance. After the Parents complained, A. worked with either Mr. Wasilewski or a paraprofessional on homework. The amount of time each spent with the Student was not specified. Although Ms. Lampros was primarily responsible for the Student's socialization goal, Mr. Wasilewski observed that the Student's social interactions with peers were concrete in nature and included only about three exchanges. Testimony, Mr. Wasilewski.

62. Dr. Powers was disturbed by A.'s scores on the education evaluation conducted by Mr. Wasilewski. She was in a mainstream fifth grade class, so although she was reading at a second grade level, she was expected to do fifth grade work. While some things could be modified, the fifth grade curriculum had to be modified and adapted to the content and concepts she can grasp, putting her at risk for a patchwork understanding of any instructional unit. There was a large discrepancy between the instructional level in a fifth grade class and her instructional level. The regular education classroom may actually be a more restrictive environment for A. than a special education resource room. If social cognition had been addressed with her and if she had had the prerequisite skills to appropriately model social behavior, then it would have been beneficial socially for the Student to be with non-disabled peers. The regular education curriculum would not benefit her because her content processing level is very discrepant from the typical children in the classroom. When you get to middle school and beyond, the efficacy and type of setting takes precedence. Testimony, Dr. Powers.

63. The Student's central auditory processing issues cause difficulty in a mainstream class because there's "too much language going on simultaneously that may clash with other types of . . . stimulation that would obscure her ability to understand what's being said." She doesn't screen in and screen out the most relevant information either socially, or to a greater extent, auditorily. It's not just a problem with actually hearing the information presented clearly, it's also a problem for her to process and understand the information she's hearing. A.'s scores in listening comprehension on Nancy Lampros' 2005 evaluation demonstrate significant difficulty with listening comprehension and oral expression. The District should look elsewhere than UConn for getting an updated central auditory processing evaluation. He had given several names of evaluators with experience in evaluating autistic children to Dr. Loughrain. Id. On March 11, 2002, UConn had stated in its central auditory report that "We do not recommend A[.] return for further testing due to the conflict with autism and interpretation of results." Exhibit B-12 at 3. On July 21, 2005, Dr. Loughrain faxed the two previous CAP reports and Dr. Powers'

2005 evaluation to UConn and asked whether they could reevaluate A. The response was negative. Exhibit B-72.

64. The Student would have made better growth in reading had the school implemented his previous recommendations. A much more in-depth reading assessment should have been given than the testing performed by the special education teacher in 2005. Id.

65. The Board held the follow up PPT on June 13, 2005, as had been planned in April 2005. Exhibits B-59 and B-61. Since the April PPT, additional information had become available, including Dr. Powers' final report, the results of the Brigance testing, and the end-of-the year teacher reports. Exhibits B-56, B-60 and B-69. Testimony, Mr. Wasilewski. The central auditory processing evaluation had not been done. The District had again chosen UConn to do the evaluation and the Parents had not signed the consent form presented on April 4 until May 26, 2005. A.'s mother left the June PPT meeting once the team tried to start discussing the IEP, because the parties had started "litigation." Testimony of Mother. The PPT did not go forward in the absence of the parents, nor were any changes made to the IEP at the time. Exhibit B-61.

66. Following the June PPT, A.'s mother called Dr. Loughrain to ask if A. could attend Camp Shriver for the summer of 2005. Testimony of Mother. The Board agreed to support A.'s participation in Camp Shriver for ESY 2005 and provided daily transportation to the program. Testimony, Dr. Loughrain.

67. Camp Shriver is a six-week summer camp-type program for children and adults who are developmentally delayed or have other related disabilities. It is located in Enfield and operates from 9:00 a.m. to 3:00 p.m. It has an academic component for one hour in the morning, geared towards working on IEP goals and objectives and a strong recreational and social piece for the remainder of the day. Exhibits B-66 and B-70; Testimony, Dr. Loughrain, and Natalie Donais. The program is open to nondisabled students and has a high ratio of counselors to students. Testimony, Dr. Loughrain. The camp enrolls students of all ages and separates them largely by age and ability. Dr. Loughrain and Mrs. Donais visited Camp Shriver and observed A. in that program over the summer. During their visit, they observed A. doing math activities and later playing whiffleball. Id. She was "very involved" and having a good time. Testimony, N. Donais. The report from Camp Shriver at the end of the summer indicated that A. had a very positive experience and had "done well in all areas." Testimony, Dr. Loughrain. There was no written report in the record.

68. A PPT meeting was held on Monday, July 25, 2005. Exhibit B-68; Testimony of Mother. The Parent received notice of the PPT on July 19th, the previous Tuesday, and had confirmed with Dr. Loughrain's office that she would be attending. Id.; and Testimony of Dr. Loughrain. The PPT discussed A.'s current ESY placement at Camp Shriver and reviewed Dr. Powers' final report as well as the educational testing completed by Mr. Wasilewski in June. The PPT also discussed social stories, speech services and the Best Buddies program that A. would be participating in during sixth grade. A new social communication goal was written in direct relation to some of Dr. Powers' recommendations and additional educational objectives were written based upon the results of the educational testing by Mr. Wasilewski. Testimony, J.

Wasilewski. The revised IEP included the addition of a social skills group to be coordinated by the social worker and Ms. Lampros. Testimony, N. Lampros. Formal monthly meetings with the Parents were also officially added to the IEP, which A.'s mother had been requesting. Testimony of Mother. A.'s proposed schedule for sixth grade was also reviewed. Exhibit B-65; Testimony, J. Wasilewski. The Parents felt that the continuation of the co-taught classes was inappropriate for A. and continued to object to her still being with "those same kids." Testimony of Mother. The July 25, 2005 PPT lasted for nearly two hours, after which time the Mother left. Id. The due process hearing began the next morning.

69. Intensive Education Academy ("IEA") is a state accredited private special education school in West Hartford, CT. IEA currently enrolls students from Kindergarten through age 21 and currently has 51 students, all of whom are students with disabilities. IEA can accommodate up to 63 students. Students attending IEA are eligible for special education under a range of categories, including intellectually disabled, specific learning disability, autism, severe emotional disturbance and other health impaired (i.e., anxiety, school phobia, genetic disorders). Students at IEA come from 30-35 different school districts, with a few coming from as far away as Massachusetts and Branford, CT. Exhibit P-5; Testimony, Jill O'Donnell.

70. Ms. O'Donnell is the Director of Education at IEA and has 18 years experience there. She described the program at the IEA. The classes generally consist of eight children. The day begins with a social skills class, and then reading, language and math in the morning. Science and social studies take place in the afternoon as well as computer, physical education, culinary arts and music class. The social skills class involves role-playing or discussion. Then those skills that are addressed are taught throughout the day. The schedule is the same every day, and many children are given their own visual schedule. Id.

71. Of the 51 students, approximately 15% are on the autism spectrum. The majority of students are placed by school districts. Social skills are taught through visual mapping of cause and effect for problem solving and social behaviors. They utilize the Carol Gray social stories, in addition to other social programs. They also have an incentive program where students are given awards on a monthly basis from an area attorney for demonstrating themes such as honesty. Additionally, if an incident occurs any time throughout the day, the teacher stops and teaches to the moment. Many of the children keep social story books that they can review daily, and some utilize cognitive therapy to help with social skills. At the end of the day there is an organization skills and social time where students may have a planned game to teach, working on turn taking and eye contact. They also have mandatory clubs on Wednesdays that include a yearbook, community service and sports club to work further on social skills. Id.

72. In sixth and seventh grades, the focus is on academic and daily living skills such as a math lesson focused around problem solving, measurement for cooking or understanding mileage. Written language skills would be focused around being able to communicate through writing, for example writing a letter. Children in eighth and ninth grade utilize a transition class and begin to work at small jobs around the school and as they get older, they are placed in jobs throughout the community to prepare for employment and independent living. IEA utilizes assistive technology including computers, the Internet, co-writer and alpha smart processors, in addition to multiple software programs. Id.

73. The Student visited IEA for three days in May of 2005. She met with Ms. O'Donnell and attended classes. She socialized well with the students in her class, but she struggled with reading a second grade book. If she attended IEA, A. would be in a more functional skills classroom and would utilize some of the tools being used by Suffield such as Touch Math. The class planned for the Student currently had six children, including A., but could have two more. A teacher and a teaching assistant would be assigned to the class. If necessary, other aides could be added to the class, depending on the needs of the children. They keep the atmosphere distraction free, very quiet and structured. If a student is having a problem, they address it quickly so that noise does not continue. The Student would be grouped with students who are functioning at the second, third and fourth grade levels and who would be between eleven and thirteen years old. The teacher that would be assigned to her has a Master's degree in Special Education, has been teaching at IEA for more than nine years and is an excellent visual teacher. Ms. O'Donnell gave the example that when teaching the students how the U.S. was settled, she created an overlay so the students would have a visual of the process and that in science she always utilizes a hands on project. Id.

74. Her class would socialize with another group with different social skills and go to lunch with four other classes. The Student would socialize with children with higher social skills than she. IEA does not accept children with serious behavioral issues. She would be socializing with at least one other girl her age, along with other female students within the school. IEA has programs where visitors come in and speak on different topics. Id.

75. If A. needed direct instruction in reading or math, they would provide that support. The teaching involves constant repetition, constant spiraling, not just teaching a concept and leaving it. For speech and language, she would work with the speech pathologist or a Bachelor's level speech pathologist contracted through Futures on direct speech and language and small group pragmatics, depending on her needs. For occupational therapy, she would work with an occupational therapist assistant who is directly supervised by an occupational therapist. The staff collaborates constantly with the related service staff, some of the aides observe the direct service provision and the skills are carried over throughout the week. The related service staff also work with the teachers to come up with physical and programmatic modifications to meet the needs of the children. Id.

76. All of the staff have experience with children on the autism spectrum, including attending numerous trainings and working with outside specialists that have been hired by school districts. Dr. Powers is a consultant to IEA. The entire staff collaborates every Wednesday. Id.

77. The Student has been accepted at IEA, subject to obtaining a contract with Suffield. IEA could implement her current IEP, making any necessary changes after they begin working with her. Id.

78. The summer program offered at IEA is scheduled from 9 a.m. to 1 p.m. every day for five weeks. Although Jill O'Donnell testified that she teaches in the summer school program, no information was provided about the nature of the structured program, the content covered, the number of students who would have participated in this program and what, if any, opportunities

there were for social or recreational activities. She said that the summer program can be supplemented with a district program or camp. Id.

79. Dr. Powers believes that IEA could provide the program he has recommended for the Student. IEA is “a very good school for kids with learning disabilities and learning difficulties and information-processing weaknesses. Their special instruction is excellent. . . it’s a small community of classroom environment that is well organized for instruction and. . .they do a very good job with the kids that I have had that are placed there.” Testimony, Dr. Powers.

80. Dr. Loughrain testified that it is far better to educate children in their home school with non-disabled peers. There was no student she could think of that she would not work to have included in the general curriculum. Testimony, Dr. Loughrain. Mrs. Donais, the District’s Inclusion Specialist, has never recommended out-of-district placement for a disabled student. Testimony, Mrs. Donais. The District is very proud of their inclusion program and has received a “Spotlight” grant from the SDE, which was used to develop the MILL.

81. The ESY program recommended for summer 2005 was three hours per day for five weeks for maintenance of academic and social skills. Exhibit B-52. It would have been taught by Patty Gates, a special education teacher who taught A. in the summer of 2004. Exhibit B-27. If A. had attended the ESY program with Ms. Gates in 2005, she would have received intensive, specialized instruction as recommended by Dr. Powers. There does not appear to be any social skills instruction involved. The Student would work one-to-one or sometimes two-to-one with Ms. Gates. During breaks the Student would play basketball with Ms. Gates if there were no other students available. The social skills component in this proffered ESY program is only incidental. The Mother felt that she had to choose the program with a social component. Testimony of Mother.

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 A. is a child with autism. 34 C.F.R. Section 300.7(c)(1).

2. The Board has the burden of proof on the appropriateness of the program for the 2005-06 school year, including the 2005 ESY program. 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*.

3. As for the first prong of the Rowley inquiry, nothing in the record supports any claim for a violation of the Parents' procedural rights. The Parents received proper notice of, and fully participated in, all PPT meetings. They received a copy of their procedural safeguards at each PPT meeting. As required by the IDEA, the Board reviewed A.'s needs at various PPTs on an individualized basis at appropriate intervals. Finally, the Parents have never alleged any procedural violations by the Board until the post-hearing brief. See Tobi K. v. Independent Sch. Dist. No. 196, 27 IDELR 482 (D. Minn. 1998) (school district complied with the procedural requirements of the IDEA with regard to the education of a six-year old child with autism. The child's parent fully participated in the IEP process and in all decisions regarding the child). Therefore, the Board has satisfied the first part of the Rowley test by meeting the procedural requirements of the IDEA.

4. The second prong of Rowley requires a finding that the IEP is "reasonably calculated to enable the child to receive educational benefits." 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.'" Board of Education of the Hendrick Hudson Central School District v. Rowley, *supra*. 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.

5. 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 U.S. 912 (1991).

6. In developing an IEP, the PPT must consider the strengths of the child, the concerns of the parents, the results of the most recent evaluations, any results from district assessments, and whether the student requires any assistive technology devices and services. See 34 C.F.R. Section 300.346. Courts must also consider whether the program is "individualized on the basis of the student's assessment and performance" when determining the appropriateness of an IEP. See A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2d Cir. 2002) (citing M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ.,

122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000). Based on the evidence, including the triennial evaluations and Dr. Powers' assessments, and the legal standard, it is concluded that the current IEP is not appropriate to produce meaningful educational benefits.

7. 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 middle school for all content areas. The Connecticut District Court held that a program that provided modifications such as having teachers or aides read and write for a student may have facilitated passing grades and advancement from grade to grade, however it failed to confer meaningful educational benefits by ignoring the student's well documented need to learn to read at a more appropriate level. R.R. ex rel. M.R. v. Wallingford Board of Education, 35 IDELR 32 (D. Conn. 2001). If a child's program requires so much alteration that it does not resemble the general education program, it is no longer appropriate. Jay School Dept v. Maine State Educational Agency, 39 IDELR 259 (Me. 2002).

8. The Fifth Circuit established a two-part test to determine when mainstreaming is appropriate. First, a student should only be removed from the mainstream "when 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." 34 C.F.R. § 300.550(b)(2); Daniel R.R. v. State Board of Educ., 874 F.2d, 1036, 1048 (5th Cir. 1989). Second, if placement outside of regular education is necessary for the child to benefit educationally, the PPT must also determine "whether the school has mainstreamed the child to the maximum extent appropriate." Daniel R.R., 874 F.2d at 1048.

9. Under the Daniel R.R. test, which has been followed by courts in the Second Circuit, “the appropriate yardstick is whether [the student], with appropriate supplemental aids and services, can make progress towards her IEP goals in the regular classroom setting.” A.S. v. Norwalk Bd. of Educ., 183 F.Supp.2d 534, 546 (D. Conn. 2002). When determining the appropriateness of a given placement, courts will also consider evidence of a student’s progress in that placement. Here the Board modified her work, to the point of reading exams to her, having staff and other students provide her answers and grading her purely on effort, not on understanding of content. Instead of providing relevant instruction at her level, they took fifth grade material and modified it so severely that it is not clear what she learned. It is clear that under the instruction of the Suffield staff, the Student is not able to perform even the most basic academic skills without being given pictures and prompts and often being shown the answer. The extreme program modifications have led to a complete lack of adequate educational progress. When A. visited the IEA in May 2005, she struggled with a second grade reader. This follows six years of placements in co-taught regular education classrooms. In this case, A.’s disability requires removal from regular education classes in order for her to receive an appropriate education. Accordingly, the level of mainstreaming in the IEP intended for A. is no longer appropriate or in compliance with the mandates of the IDEA.

10. Every school district must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, including resource room and special schools. 34 CFR §300.551(a). Board witnesses and the Mother testified that nothing other than the co-taught program was offered to the Student. A continuum of placements was not considered or offered to the Parent.

11. The Board had an obligation to provide a program designed to meet the Student’s unique needs. 34 C.F.R. §300.1. The District fit the Student into the existing model they have for all children, as they offer no other alternatives. The Board did not offer an appropriate program and the program they offered cannot be made appropriate.

12. The Sixth Circuit reversed a lower court decision which had overturned the decision of a hearing officer that found a district did not provide FAPE in large part because they would not consider other teaching methods for children with autism outside of the general program they offered to every child with autism. Deal v. Hamilton County Bd. of Ed., 392 F.3d 840 (6th Cir. 2004). In this case, the District ignored the opinion of a recognized expert on autism who was paid by them to do an evaluation of the Student. Despite his opinion that the Student likely had a central auditory processing disorder and that UConn was not the place to refer the Student, the District nevertheless referred the Student to UConn, which declined to attempt a third evaluation.

13. A district must make any placement and service decisions for a child based on their individual needs. 34 C.F.R. 300.300(a)(3)(ii), *see also* Oberti v. Board of Education of Borough of Clementon School District, 995 F.2d 1204,1214 (3d Cir. 1993). A comparison must be made between the educational benefits the child will receive in the regular classroom and the benefits the child will receive in a segregated program. Id. at 1220. If a child’s program requires so much alteration that it does not resemble the general education program, it is no longer appropriate. Id. at 1221-222; Jay School Dept v. Maine State Educational Agency, 39 IDELR

259 (2002). A separate setting may be the most appropriate and least restrictive environment for a student. DeVries v. Fairfax County School Board, 882 F.2d 876 (Cir. 1989). It is well settled that the least restrictive environment for a child depends on her unique needs. The current program does not meet A.'s needs.

14. While the Board is understandably proud of its inclusion program, it shouldn't be used as a "one size fits all" program. The individual needs of the Student require intensive academic and social skills instruction. The inclusion classes are no longer appropriate for A. Since the 2005-06 IEP is premised on placement in those classes, it does not provide A. with a FAPE. The Board has failed to carry its burden of proof on the appropriateness of the IEP for the 2005-06 school year.

15. The Board has ignored the recommendations of its own agreed upon evaluator, Dr. Powers. The Student must be referred to a qualified evaluator with experience in working with autistic children to perform a central auditory processing evaluation. The Board should obtain the names of such evaluators from Dr. Powers, who has already stated that he is willing to provide these names. The Board should pay for this evaluation.

16. The program at IEA offers the components necessary for the child to receive an appropriate education as described by Dr. Powers such as small, structured, distraction free classrooms, consistent scheduling, social skills taught throughout the day and availability of related services in speech and language and occupational therapy. Therefore, the program offered by IEA is the appropriate environment for the student. The PPT should work with IEA to develop an appropriate IEP for the Student for the current school year.

17. While the initial ESY program recommended by the PPT in April 2005 had a stronger academic component (three hours per day) than Camp Shriver, it lacked the social skills component. The ESY program at IEA was not sufficiently outlined to determine whether it would have provided the requisite academic and social skills components. A's program at Camp Shriver was appropriate to meet her social needs for the summer, but it was deficient in academics (one hour per day). Based on the evidence as a whole, neither the ESY program offered nor the ESY program at Camp Shriver, which the Student attended, was so deficient as to deny the Student a FAPE. Therefore, compensatory education is denied on the claim of denial of FAPE for the ESY 2005.

FINAL DECISION AND ORDER

1. The Student was not offered a FAPE for the 2005-06 school year.
2. The program and placement at IEA is appropriate for the 2005-06 school year. The Board shall pay for placing the Student at IEA including transportation for the 2005-06 school year. The PPT shall work with IEA to develop an appropriate IEP for the Student.
3. The Board shall refer the Student for a central auditory processing evaluation by an evaluator recommended by Dr. Powers. The Board shall pay for the evaluation.
4. Compensatory education for the ESY 2005 is denied.

COMMENTS ON CONDUCT OF HEARING

The parties are commended for presenting their respective positions in a difficult case. As Dr. Powers testified, the LRE requirement cuts to the heart of this case.