

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. East Haddam Board of Education

Appearing on behalf of the Parents: Attorney Lawrence W. Berliner
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Appearing on behalf of the Board: Attorney Susan Scott
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Appearing before: Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Student was eligible for identification for special education at the PPT meeting held on November 2, 2004.
2. Whether the Board's failure to identify the Student as eligible for special education and related services at that time was a violation of the Board's child find obligation.
3. Whether the Parents' placement of the Student at Cheshire Academy during the 2004-2005 school year was appropriate.
4. Whether the Parents shall be reimbursed for the placement of the Student at Cheshire Academy.
5. Whether the Board has offered the Student an appropriate program for the 2005-2006 school year.
6. If not, whether the Parents' placement of the Student at Hope Academy or a similar placement for the 2005-2006 school year is appropriate.
7. If so, whether the Parents are entitled to reimbursement for the cost of the placement.

SUMMARY:

The Parents requested that the Student, currently in eighth grade, be identified as eligible for special education in November 2004. The Parents provided the Board with a psychoeducational evaluation which concluded that the Student had a learning disability. After the Board completed its own evaluation of the Student, it determined that the Student was not eligible for special education at a planning and placement team [PPT] meeting in January 2005. The Board agreed to have the Student undergo an independent evaluation, and after review of this evaluation, the Student was found eligible for special education at a PPT meeting in May 2005. Before drafting goals and objectives for the Student, the Board members of the PPT recommended that the Student be placed at the Board middle school for the 2005-2006. The Parents rejected that placement.

The Board drafted goals and objectives after the PPT meeting, and without the Parents' input in May 2005, and drafted additional goals and objectives in August 2005, again without the Parents' input, and without the Parents in attendance at the PPT meeting.

The Parents brought this request for hearing challenging the appropriateness of the Board's proposed program and seeking placement for the Student at Hope Academy. The Parents also assert that the Board's actions constitute procedural violations.

PROCEDURAL HISTORY:

The Parents requested this hearing on July 27, which request was received by the Board on July 28. [Exhibit H.O.1]

The mailing date of the decision was extended by request of the parties to schedule additional hearing dates for presentation of their case. The hearing convened on nine dates, from September through November 2005.

On the sixth hearing date, the Parents' attorney requested that Issue number 3 and Issue number 4 be withdrawn, as Cheshire Academy refused to provide cooperation and testimony.¹ The Parents' attorney proposed that the issues be withdrawn with prejudice, and the Board's attorney stipulated that those issues could be withdrawn with prejudice. This request to withdraw these issues was granted.

The Parents' witnesses were the Father; the Mother; Kathleen Laundry, Psy.D.; David Scata, Board director of pupil services; Susan Santora, educational evaluator; and Victoria Elliott, Hope Academy special education teacher.

¹ While it was suggested by the hearing officer that the representatives of Cheshire Academy and its documents about the Student could be subpoenaed for this hearing, neither counsel availed themselves of this procedure. Regardless of the status of the Parents' financial situation with Cheshire Academy, a private school, it was unfortunate that the Academy failed to cooperate in this hearing.

The Board's witnesses were David Scata, Board director of pupil services; Carole Duffy, Board special education teacher; and Carol Rusch, Board school psychologist.

The Parents' attorney and Board's attorney presented closing argument at the conclusion of the hearing, in lieu of submission of briefs.

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

FINDINGS OF FACT:

1. The Student is a 14 year old eighth grader currently attending Hope Academy. [Testimony Father, Exhibit B-35]
2. In its general procedures, the Board follows certain steps to attempt to meet its "child find" obligations. Notice is given to pediatricians within the town and surrounding towns, as well as day care facilities within the town. Also, three private schools in the area, Mercy, Xavier and the Independent Day School, receive notices from the Board that if there are concerns, the Board should be contacted for evaluations, planning and placement team [PPT] meetings, and services. [Testimony Mr. Scata] The Student was not identified through these child find procedures.
3. The Student attended the Country Day School, a private school, starting in pre-kindergarten. [Testimony Father] In the beginning of the Student's first grade in September and October 1998, the Parents attended two PPT meetings with the Board due to concerns that the private school had expressed to the Parents. The Student was evaluated and determined ineligible for services at that time. At that time the Student was having difficulties with reading, spelling and keeping up with the class. The Parents hired a tutor at that time to assist the Student in these difficulties. [Testimony Mother]
4. In fourth grade, while the Student continued to attend the Country Day School, the Student was struggling with some academic issues, and the private school staff indicated that the public school might have more resources to assist the Student. [Testimony Father] The Student entered the Board schools in March 2002, during his fourth grade year. The Board's enrollment card indicates this date of enrollment, and notes no subsequent transfer or reason for withdrawal on it. The Parents never signed a form withdrawing the Student from the Board schools at any time. [Testimony Mr. Scata; Exhibit B-1] In fourth grade at the Board schools the Student received Title I services for assistance with reading difficulties. [Testimony Father]
5. The Student attended the Board schools at the beginning of fifth grade during the 2002-2003 school year. [Testimony Father] In October 2002, the Student took

- the Connecticut Mastery Test. The Student's math score on the CMT was 55, compared with the class, school and district average of 83.6. His writing score of 34 was below the class, school and district average of 51. In his reading comprehension, he did not meet the mastery criteria, scoring a 1 of 10, 3 of 7 and 4 of 13 on the clusters of forming and initial understanding, developing and interpretation and demonstrating a critical stance. His editing and revising clusters were also below mastery, scoring 8 of 18 on composing/revising and 4 of 18 on editing. [Exhibit B-3] According to the Board director of pupil services, the CMT scores indicate definite areas of concern for the Student. [Testimony Mr. Scata] The only action that the Board took in response to these scores was to forward them to the school the Student attended in the second half of the 2002-2003 school year.²
6. The Student's first quarter report card grades issued in November 2002 were C- in language arts, C in social studies, D- in math, F in science, and P in art, health, library, music and physical education. [Exhibit B-4] In light of the Student's difficulties in school at this time, the Parents decided to transfer the Student to a private parochial school in December 2002. [Testimony Father, Exhibit B-5]
 7. The Board received the CMT scores in January or February 2003. [Testimony Mr. Scata] These scores were forwarded to St. Sebastian, the parochial school, on February 6, 2003. [Exhibit B-8] The Parents did not receive the CMT scores at that time. [Testimony Father]
 8. At the private parochial school, the Student was in a classroom of eight children, and received a modified academic program. With this modified curriculum, the Student continued to struggle academically. The Student's modifications included reading of fewer books, modified homework and modified tests. [Testimony Father] The Student's grades at St. Sebastian School for the fifth grade year were: religion, C+; reading, C-; language arts, C-; spelling, C+; handwriting, C; mathematics, F; social studies, C; science, C-; Spanish, C+; art, C-; music, B; physical education, B; technology, B-. [Exhibit B-7]
 9. During the 2002-2003 school year, the Parents referred the Student to Kathleen Laundry for a psychoeducational evaluation due to the Student's increasing academic difficulties throughout fifth grade, both at the Board school and at St. Sebastian School. [Testimony Father, Dr. Laundry; Exhibit B-9] Dr. Laundry is a licensed clinical psychologist who has a bachelor's degree in special education and a doctorate in clinical psychology. [Testimony Dr. Laundry]
 10. Dr. Laundry's evaluation was completed in January and March 2003. She administered the Wechsler Intelligence Scale for Children III [WISC-III] to the Student, which resulted in a full scale IQ of 104, a verbal of 108 and a

² In this era of *No Child Left Behind* with increased attention paid on testing of students, it would behoove the Board to ensure that parents are fully aware of the CMT scores, whether or not the Student is attending the Board schools when the scores are released. That was not done in this case.

- performance of 98. In the profile scores, the Student received a standard score of 111 on verbal comprehension; 104 on perceptual organization, 93 on freedom from distractibility and a standard score of 88 on processing speed. In her report, Ms. Laundry noted that the processing speed score was significantly below the Student's other profile scores, suggesting that something was interfering with the Student's ability to problem solve efficiently. The evaluator noted that the coding subtest score, the Student's lowest on the performance scale, gave clues as to why his processing speed scores are low. The evaluator noted that the labored approach to learning the symbol systems required for reading suggests a receptive and expressive language disability. [Testimony Dr. Laundry, Exhibit B-9]
11. Dr. Laundry also administered the Wechsler Individual Achievement Test [WIAT] resulting in a total composite score of 95, reading of 91, mathematics of 91, language of 114, and a writing score of 85. The writing composite score was well below average. In further review of the subtest scores of the WIAT, the Student's basic reading score was 86, mathematics reasoning of 95, spelling was 82, reading comprehension was 102, numerical operations was 100; listening comprehension was 104; oral expression was 118; written expression was 100. The evaluator noted that the Student's scores on basic reading and spelling subtests further illustrate the pattern of discrepancy between his written language and his other achievement test scores. [Testimony Dr. Laundry, Exhibit B-9]
 12. The evaluator stressed that the Student's achievement test scores lend strong evidence that the Student has at least average intelligence, and is struggling with a reading and written language disability. The evaluator completed a personality assessment and noted that the Student was at risk for developing low frustration tolerance and threat to his self esteem if his written language deficits are not actively addressed. The evaluator noted that the Student functions well socially and gets along well with people. He did not appear to be a child with low self esteem. [Testimony Dr. Laundry, Exhibit B-9]
 13. Dr. Laundry recommended that the Student receive specific tutoring to help him learn to decode, encode and produce written language. The individualized tutoring would assist the Student in learning strategies in how to decode more efficiently. She also recommended that the Student have untimed testing to reveal more about the Student's true mastery of the subject material. The evaluator recommended that if the Student showed any signs of distress as he entered middle school, the Student should receive counseling on an as needed basis. She saw no need for counseling at the time of her evaluation. [Testimony Dr. Laundry; Exhibit B-9]
 14. Dr. Laundry concluded that the Student was a bright normal kid who has dyslexia. She explained that the Student can't show what he knows academically due to that. She predicted that as he is headed into middle school, he would experience more difficulties if he had no remediation. [Testimony Dr. Laundry]

15. Dr. Laundry is familiar with the state guidelines for identifying students with a specific learning disability, but she does not use the guidelines in making her diagnosis. Her diagnosis of a learning disability is based on the DSM IV-TR diagnosis. [Testimony Dr. Laundry]
16. For the Student's sixth and seventh grade, during the 2003-2004 and 2004-2005 school year, the Student was enrolled at Cheshire Academy, and received academic support through daily tutoring. The Student received the academic support/tutoring in accordance with Dr. Laundry's recommendations. The Student was tutored for every class, and received tutoring five days per week for one hour per day. [Testimony Father] The Board special education teacher testified that the Student's private tutoring at Cheshire Academy was similar to the Board's resource room services. [Testimony Ms. Duffy]
17. Cheshire Academy has failed to cooperate with the Parents and the Board in attempts to obtain information as to the Student's program at the school. Cheshire Academy indicated to the Board director that because a financial issue had not been resolved with the Parents, they would not divulge anything regarding the Student either orally or in writing. [Testimony Mr. Scata]
18. At the beginning of the 2004-2005 school year, the Parents requested that the Board convene a planning and placement team [PPT] meeting concerning the Student's academic needs. [Testimony Father, Exhibit B-12, B-15] The date of the initial PPT was scheduled at the convenience of all parties. [Testimony Mr. Scata]
19. The PPT convened on November 12, 2004. The Parents shared Dr. Laundry's report with the PPT, requested that the Student be found eligible for special education based on the report, and requested that the Board fund the private placement of the Student at Cheshire Academy. [Testimony Father, Exhibit B-14] The Board members of the PPT rejected the Parents' request for eligibility and placement at Cheshire Academy, indicating that the Board would conduct an initial evaluation of the Student. The Parents consented to the Board's evaluation. [Testimony Mr. Scata, Exhibits B-14, B-17]
20. The school psychologist and the special education teacher did not review Dr. Laundry's written evaluation before or during the PPT, although, inexplicitly they made a determination that they had insufficient information to determine whether the Student had a disability. It belies reasoning that they found that they had insufficient information without reviewing the information that it had been presented by the Parents. At the PPT meeting, the school psychologist deferred to the special education teacher who determined that more information was needed to be received in order to determine eligibility. While the school psychologist confers with the special education teacher, the special education teacher determines which assessments are necessary. [Testimony Ms. Rusch, Ms. Duffy] The school psychologist testified that in their school district, the school

- psychologist does not determine which assessments are used to determine eligibility, but defers to the special education teacher's determination. [Testimony Ms. Rusch]
21. The special education teacher selected the assessment areas and the tools for the assessment. [Testimony Ms. Rusch, Ms. Duffy] The special education teacher selected the Test of Written Language, the Detroit Test of Learning Aptitude, Test of Reading Comprehension to administer to the Student, and the Parents consented to assessment in the areas of written expression, reading comprehension, decoding, and processing and expressive and receptive language if necessary. [Exhibits B-14, B-17] The special education teacher testified that the Board uniformly uses the DTLA to determine if students have a processing disorder. The special education teacher testified that she didn't know why she used the DTLA to determine whether the Student as a processing disorder, rather than relying on the processing speed score from Dr. Laundry's evaluation. Testifying on this issue, she said that she didn't know why the Board always uses the DTLA, but that they just do it. [Testimony Ms. Duffy]
 22. The Board director testified that the Board did not find that the Student was eligible for special education at the November 2004 PPT based on Dr. Laundry's evaluation, as her evaluation did not meet the criteria set forth in the state guidelines. The director testified that the state guidelines for identifying students with a specific learning disability require a severe discrepancy to exist between ability and achievement, based on overall IQ scores and composite scores, and that there must be a finding of an overall processing disorder. In reviewing Dr. Laundry's report, the processing speed score indicates that the Board needed to test further to make the determination on whether the Student was eligible. According to the director, processing speed is not the sole indicator of a processing disorder, as it is the speed of gathering the information. [Testimony Mr. Scata] The special education teacher noted that she didn't know why they did not conclude that the processing speed standard score of 88 from the WISC would be sufficient for identification of the Student as eligible, as it wasn't her area of expertise. [Testimony Ms. Duffy] The Board school psychologist noted that the processing speed score on the WISC-III would be a sign of a processing disorder, but that she would like additional testing to determine whether it is a disorder. [Testimony Ms. Rusch]
 23. The PPT meeting summary authored by the Board director of pupil services noted that the Student currently was attending Cheshire Academy, and was struggling in the areas of language arts and math. The Parents were paying for private tutoring at the current school, according to the PPT summary. The director noted that the issue of child find was brought up at the PPT. [Exhibit B-14]
 24. Within two weeks of the PPT meeting, the Student was available for testing at the Board school. The Student was available the entire week of Thanksgiving, as Cheshire Academy was on break during that time. On the morning of the

- scheduled testing date, the Student had eaten breakfast, and was well rested from the night before. The Father dropped him off on the morning of the testing at 8 a.m., and picked him up around 2 p.m. [Testimony Father] The Student was not fatigued prior to or at the conclusion of the testing. [Testimony Father, Mother] The Student had no qualms about undergoing the evaluation. [Testimony Mother]
25. The educational evaluation was completed by Carole Duffy, the Board special education teacher, on November 23, 2004. Ms. Duffy administered the Test of Word Reading Efficiency [TOWRE], Detroit Test of Learning Aptitude [DTLA-4], Test of Reading Comprehension [TORC], Test of Written Language [TOWL-3], and Kaufman Test of Education Achievement [KTEA] for math skills. In the report, Ms. Duffy stated the previous WISC-III scores, but noted that while the Student was previously administered the WIAT, “no scores were given,” although Dr. Laundy’s report did include the WIAT scores. [Testimony Ms. Duffy, Exhibits B-20, B-9]
 26. On the TOWRE, the Student received a standard score of 90 for sight word efficiency, 83 for phonemic decoding efficiency, with a total word reading efficiency of 84. In the TORC, the Student’s reading comprehension quotient was a 78 standard score, noted as a poor score in the descriptor. His standard scores for general vocabulary was 6, syntactic similarities was 7, paragraph reading was 8 and sentence sequencing was 6. On the TOWL, the Student had an average contrived writing quotient standard score of 109, with a very poor spontaneous writing quotient of 68 and a 73 in the overall writing quotient. The Student scored in the average range on the DTLA, with one area of basic information in the below average range. The composites for the DTLA were in the average range for all domains. The evaluator noted that it was feasible to conclude the testing in one day, testifying that when a youngster is not part of her daily life, she usually completes the testing in “one fell swoop.” [Testimony Ms. Duffy, Exhibit B-20]
 27. The Board special education teacher attempted to call Cheshire Academy to obtain information about the Student three times without success. It didn’t occur to her to try to write to them to request information, although Cheshire Academy might have information that would be relevant to her as an evaluator. [Testimony Ms. Duffy]
 28. The Board special education teacher never read or reviewed Dr. Laundy’s evaluation of the Student, although the teacher relied on Dr. Laundy’s results in her determination that the Student did not have a learning disability. [Testimony Ms. Duffy] The special education teacher also did not look through the Student’s records, grades or CMT scores in her evaluation. She testified that since the Student was not part of their school system, she used the information provided at the PPT meeting solely, and did not follow up on anything regarding the Student in her evaluation. [Testimony Ms. Duffy]

29. The evaluator claims that the poor results of the TORC were invalid, as the Student was fatigued for that portion of the test. The testimony presented does not demonstrate that the Student's poor results on the TORC were related to any perceived fatigue. The special education teacher's assertions regarding this claim are unconvincing. [Testimony Ms. Duffy, Father, Mother; Exhibit B-20]
30. While the report noted that Ms. Duffy asked to see the Student an additional time to verify what she perceived as errors in the testing, the testimony presented at the hearing does not support this claim in her report. The Parents never refused to have the Student tested an additional time, and were never asked to do so. [Testimony Ms. Duffy, Father; Exhibit B-20]
31. The Board special education teacher's conclusions regarding her evaluation were unsupported by her results, and the results of Dr. Laundry. Whenever the Student fared poorly in an assessment, the evaluator inexplicitly attributed it to bad habits not a disability, that he was a sloppy writer in her "professional judgment" or that the score didn't "ring true," or that the Student suddenly was fatigued in a portion of the test. Her conclusions don't ring true. While the Student's phonemic decoding efficiency was a standard score of 83, and his total word reading efficiency was 84, the evaluator erroneously concluded that "he possesses the tools of phonics and sight words to tackle reading tasks." [Testimony Ms. Duffy, Exhibit B-20]
32. The special education teacher testified that she also "took some liberty" in interpreting the Student's math scores, as she felt that he probably hadn't reviewed fractions and decimals from the previous year, so she discounted results of difficulty in that portion of the math testing. [Testimony Ms. Duffy]
33. The special education teacher testified that she used her professional judgment in her determination of which tests should be used in the evaluation, but in her view, professional judgment does not come into play when determining whether the Student is eligible for special education. The record also does not reflect that any professional judgment was used in the special education teacher's determination of which assessments the Student would be administered, as he merely was given the standard battery of tests. The evaluator also lacked appropriate professional judgment when she failed to follow up on the further language evaluation to which the Parents had consented. [Testimony Ms. Duffy]
34. In her evaluation, the special education teacher recommended that (1) the Student read daily for at least 20 minutes to improve vocabulary; (2) write all assignments, which need to be handed in, on a computer in order to use grammar and spell check; (3) proofread all writing assignments along with the computer to learn why there are mistakes. [Exhibit B-20]
35. In analyzing whether the Student was eligible for special education under the designation learning disabled, the special education teacher testified that she

- always looks for a discrepancy between ability and achievement of 22 points, which is the number that had always been used “forever, since I’ve been alive.” Ms. Duffy’s evaluation indicated this discrepancy, but she found that the Student was not eligible as the DTLA did not indicate a processing disorder. [Testimony Ms. Duffy]
36. The PPT reconvened on January 7, 2005 to review the education evaluation. [Exhibit B-19] At that meeting, Ms. Duffy reiterated her conclusion that the difficulties were due to habits and weaknesses, not a learning disability. [Testimony Father, Exhibit B-19] The test results showed discrepancies between ability and achievement, but the Board members of the PPT continued to assert that there was no processing disorder. [Testimony Mr. Scata] The Board members of the PPT did not recommend that the Student be determined eligible for special education and related services. The Parents disagreed, and requested that the Student be found eligible for special education and that the Board fund the Student’s placement at Cheshire Academy. The Board and the Parents agreed to an independent evaluation of the Student. [Testimony Mr. Scata; Exhibit B-10]
37. On March 8, 2005, the independent education evaluator completed her assessment of the Student. [Exhibit B-27] The independent evaluator has 30 years of experience in special education, and works as a consultant completing evaluations, teaching and consulting with schools. [Testimony Ms. Santora; Exhibit P-3] The evaluative measures administered by this evaluator included the Peabody Picture Vocabulary Test, Third Edition; Comprehensive Test of Phonological Processing [CTOPP], the Woodcock Johnson Tests of Achievement, Third Edition [WJ III]; and Gray Oral Reading Tests – 4th edition [GORT-4] In the Peabody, which measures vocabulary development through receptive language, the Student obtained an average score of 100, 50th percentile. The CTOPP, which measures awareness of sound structure in words, phonological coding of information for temporary storage in short term memory, efficient retrieval of phonological information from long-term memory and rapid naming, the Student’s phonological awareness, phonological memory and rapid naming were all in the below average range. According to the evaluator, these are the basic sub skills of reading, and low scores are indicative of a reading disability. The evaluator noted that the Student’s performance on the WJ-III was low in basic reading and basic writing skill, with standard scores of 79 and 80, respectively. Of note, in the subtests of letter-word identification the Student received a standard score of 76, with a standard score of 80 on editing, and 67 on punctuation and capitalization. On the GORT, the Student’s reading rate, word accuracy and fluency scores were below average. [Testimony Ms. Santora; Exhibit B-27]
38. The evaluator concluded that the nature and number of errors the Student made on the basic reading and writing tasks are indicative of a specific language disability, alternatively known as a reading disability or dyslexia. Inherent in the Student’s disability, the evaluator explained, are deficits in his phonological and

- orthographic processing. The evaluator identified an extensive number of instructional recommendations in her evaluation. [Exhibit B-27] The recommendations were for the Student to have direct instruction in the areas of deficiency. The evaluator recommended that the Student have direct teaching of a code emphasis approach and a word study approach. [Testimony Ms. Santora]
39. The PPT reconvened on May 6, 2005 to review the independent evaluation. At that meeting, the Board agreed that the Student should be identified as eligible for special education under the designation of Specific Learning Disability. The Board members of the PPT indicated that the Board could provide an appropriate program for the Student at the middle school. The Parents requested a placement at Cheshire Academy, Ben Bronz Academy or a similar program. [Exhibit P-1, Testimony Father] No goals and objectives were discussed at this PPT meeting. [Testimony Father]
40. The conclusion of the Board members of the PPT that the Student was eligible under the designation of SLD was the same conclusion that Dr. Laundry had made in her report which was available to the PPT six months earlier. [Testimony Mr. Scata] Dr. Laundry had indicated in her report that there were deficits in decoding and that processing speed was an issue. [Testimony Mr. Scata]
41. The Board members of the PPT determined at this meeting that the Student was eligible for special education because the results of the CTOPP confirmed that the Student had a processing disorder, which was the missing piece to the determination, according to the Board director of pupil services. The Board did not complete the CTOPP because they don't normally do the CTOPP, which is a speech/language assessment. [Testimony Mr. Scata] When the Board had completed its assessment of the Student, the school based members of the PPT deferred to the special education teacher to determine which assessments were completed. The special education teacher failed to complete a language assessment, although the Parents had consented to all assessments, including a language assessment "if warranted". [Testimony Mr. Scata; Exhibit B-17] The CTOPP and the DTLA do not evaluate the same types of issues, according to the independent evaluator. The DTLA does not look at the sub skills of reading and writing, the area of issue for the Student. The results of the CTOPP identify different processing disorders than the DTLA, according to the independent evaluator. The DTLA might not indicate a significant processing disorder, while the CTOPP, looking at other sub skills, could show significant processing disorders, as in this case. [Testimony Ms. Santora] The CTOPP or a similar assessment should have been completed at the time of the Board's assessment in November 2004.
42. At the May 6 PPT meeting, the Parent signed consent to special education eligibility, but indicated that he disagreed with the placement of the Student. [Testimony Father; Exhibit B-28]

43. At the conclusion of the May 6 meeting, the Parents received a 4 page document which included the PPT cover page, meeting summary, present levels of educational performance and the prior written notice. [Testimony Father, Mr. Scata; Exhibit P-1]
44. The Board members of the PPT initially suggested that the Student could have a program at the Board middle school for the remainder of the 2004-2005 school year, but then the Board decided that it would be too late in the year to provide a program for the Student at the middle school. [Testimony Father] No program was offered to the Student for the end of the school year, according to the Board director of pupil services. The Board did not offer to fund any services to the Parents for the remainder of the school year, if the Student remained at Cheshire Academy for the conclusion of the 2004-2005 school year. [Testimony Mr. Scata] The Board members of the PPT offered the placement at the Board middle school for the 2005-2006 school year. [Testimony Mr. Scata] This offer of placement was proposed prior to the drafting of any goals and objectives for the Student.
45. Several days after the May 6 PPT meeting, the Parents received a correspondence in the mail from Mr. Scata, the Board director of pupil services dated May 11, 2005. In that correspondence Mr. Scata stated, “[a]s per the PPT meeting of May 6, 2005, enclosed please find a draft of [the Student’s] Individualized Education Plan for the 2005-2006 school year.” Attached to that correspondence were three pages of measurable annual goals and short term objectives. [Testimony Father, Exhibit P-2] The Board never drafted goals and objectives for the remainder of the 2004-2005 school year. These goals and objectives sent by the Board director to the Parents were not discussed at a PPT meeting. The Parents were not involved in the development of these goals and objectives; their input was not considered. [Testimony Father] In this correspondence, the director did not indicate any need to reconvene a PPT meeting to discuss the Student’s IEP goals and objectives and details of his special education and related services. At the May 6 PPT meeting the director never indicated that the school team would develop goals and objectives and mail them at a later date. [Testimony Father, Mr. Scata] No further PPT meeting was planned to draft the goals and objectives, and plan the Student’s program, as evidenced by the PPT meeting form, where the date of the next projected PPT meeting was left blank on the form. [Exhibit B-26] The director testified that the goals and objectives were not developed at the May 6 PPT meeting. [Testimony Mr. Scata] The special education teacher developed these goals for the 2005-2006 school year after the PPT meeting, with no input from the Parents. [Testimony Ms. Duffy, Mr. Scata] The special education teacher did not incorporate Ms. Santora’s recommendations into the goals and objectives for the Student. [Testimony Ms. Duffy] In fact, much of what is set forth in the goals and objectives drafted by the special education teacher were her recommendations that she set forth in her evaluation of the Student in November 2004, when she determined that the Student was not eligible for special education, as he didn’t have a learning disability. [Testimony Ms. Duffy] These goals were

- not reasonably calculated to enable the Student to obtain educational benefit, and they were not individualized to address the Student's strengths and weaknesses.
46. The independent evaluator testified that the goals and objectives do not reflect her report, and no one from the school contacted her to solicit input on the goals. Ms. Santora offered to assist the team in developing goals and objectives, but there was no response from the Board. [Testimony Ms. Santora]
 47. The Board made no efforts to contact the Parents to schedule a PPT between May 6 and July 28. [Testimony Mr. Scata]
 48. On June 29, the Parents and the Board submitted their dispute to the state Department of Education for mediation. [Testimony Mr. Scata; Exhibit B-30]
 49. After the June 29 request for mediation, and prior to the request for this hearing, the Board was aware that the Parents were requesting that the Student be placed at Hope Academy. [Testimony Mr. Scata]
 50. Subsequently, the Parents requested this hearing by letter dated July 27, received by the Board on July 28. [Exhibit H.O -1]
 51. On July 28, the date of the receipt of the request for hearing, the Board sent a letter to the Parents requesting to conduct a PPT meeting on August 22, 23 or 24. In the correspondence, the director of pupil services indicated that "[t]he intent of the Planning and Placement Team meeting is to develop a program for [the Student] for the 2005-2006 school year. [Exhibit B-31] At that time of this correspondence the Father was in the ICU at Middlesex Hospital due to kidney failure, and was unable to respond to the director's letter. [Testimony Father]
 52. On August 15, The Board director of pupil services sent another letter to the Parents, indicating that he had scheduled the PPT meeting for August 23, 2005. A notice of PPT meeting was enclosed with that correspondence, which indicated that the Board attorney was also invited to the PPT meeting. [Exhibit B-33] At the time of this correspondence from the Board the Father was in the ICU due to severe high blood pressure related to his end stage renal failure. [Testimony Father]
 53. On August 18, 2005, the Mother wrote a letter to the Board in response to the two letters the Parents had received from the Board dated July 28 and August 15. In that letter, the Mother apologized for the delay in responding to the letters, as the Father has been hospitalized in the intensive care unit, which has been her first priority. In the letter, the Mother also indicated that her attorney was on vacation the week of August 22, and that she did not want to attend a meeting without her attorney, as the matter was in due process at this time. She requested that another date be scheduled for the PPT meeting. [Testimony Mother, Exhibit B-34] The request to reschedule the meeting was reasonable, particularly in light of the fact

- that the Board's attorney was an invitee to the PPT meeting. [Exhibit B-34] The Mother delivered this letter to the post office in the early morning of August 19, sending it certified, return receipt requested. The Board received this letter on August 19, as evidenced by the signature verifying receipt by the Board on that date. [Testimony Mother]
54. Despite the Board director of pupil services' knowledge that the Parents were not able to participate in this PPT meeting, the PPT convened on August 23. The PPT meeting was conducted without the Board responding to the Parents to indicate that their request for a rescheduled PPT meeting would not be honored. [Testimony Mr. Scata, Mother, Father, Ms. Rusch, Ms. Duffy; Exhibit B-35] Prior to August 23, Mr. Scata did leave one message with one of the Parents' children, but made no phone call on the morning of August 23 to the Parents. [Testimony Mr. Scata]
55. The Board director of pupil services decided to convene the August 23 PPT to discuss the hours of the Student's program, to implement the IEP, and to delineate the services that would be appropriate for the Student for the 2005-2006 school year. The Board director felt they must proceed with the PPT meeting on August 23 to set up a program for the Student prior to the beginning of the school year. The school year did not commence, however, until approximately two weeks later on September 6, the day after Labor Day. [Testimony Mr. Scata] The Board director should have rescheduled the PPT meeting to a mutually convenient date and time as there was sufficient time to do so prior to the commencement of the 2005-2006 school year.
56. At the PPT meeting on August 23, the members of the PPT waited 20 minutes for the Parents to appear. The director indicated to the Board staff present at the meeting that he had permission from the Parents to proceed. The Board director did not share the information that he had received a letter from the Parents requesting that the PPT rescheduled. The special education teacher who was in attendance at this meeting was not aware that the Father was ill at the time of this PPT meeting. At this PPT the Board members of the PPT added two additional goals, and identified the hours for special education and related services for the Student. The Board also completed the accommodations/modifications page for the Student. [Testimony Ms. Rusch, Ms. Duffy; Exhibit B-35] The two additional goals were for organization and counseling. The Parents did not provide any input into the goals developed. [Testimony Mr. Scata; Exhibit B-35] These two goals were not individualized for the Student but were standard goals as, according to the Board special education teacher, oftentimes students with learning disabilities have self esteem issues, have difficulty retrieving papers and organizing deadlines, and require an agenda book. These were added to the Student's goal, according to the special education teacher's testimony, since any student would require this. In further explanation in testimony, the teacher noted that if a youngster is deemed to have organizational issues, we organize his life, and that's what we would do. [Testimony Ms. Duffy]

57. The organization goal is not the type of organizational assistance that the Student requires, according to the independent evaluator. His organizational needs are in the area of organizing information, in the process of reading information and writing. That organizational issue is not addressed in either version of the Board's goals and objectives for the Student. [Testimony Ms. Santora] Nothing in the record supports the conclusion that the organization goal drafted by the Board members of the PPT at the August 23 PPT meeting was appropriate for this particular Student.
58. The Parent did not express any concern of the Student's self esteem at any of the PPT meetings. [Testimony Mr. Scata] The Board staff never proposed that the Student's emotional status should be evaluated, and the independent evaluator did not assess the Student's emotional state. [Testimony Father] The Student had no change in his emotional status between the May 6 and the August 23 PPT meetings, and the Parents shared no concerns regarding his emotional status during this time. [Testimony Father] The Student's social/emotion/behavioral status was also noted as age/grade appropriate on the PPT meeting summaries. [Testimony Father, Exhibit B-26, B-35] As of the August 23, 2005 meeting, the Board had added self esteem as an issue under concerns/needs in the PPT minutes. [Testimony Father, Exhibit B-35] The school psychologist, who drafted the counseling/self esteem goal, had no current information on the Student's emotional state when she drafted that goal. [Testimony Ms. Rusch] No evidence presented supports the conclusion that this goal was appropriate for this Student.
59. At the PPT meeting in August 23, the Board also discussed the Parents' request that the Board fund the Student's placement at Hope Academy. [Testimony Mr. Scata]
60. The Board determined at this PPT to implement the Student's Individualized Educational Plan [IEP] on August 29, 2005. [Testimony Mr. Scata]
61. The Parents never gave the Board permission to proceed without them at the August 23 PPT meeting. [Testimony Mother] The Board did not attempt to contact the Parents via telephone on the date of this PPT. The Mother testified that her caller ID and her voice mail indicated no calls from the Board on the date of the August 23 PPT meeting. [Testimony Mother] On the date of this PPT, the Father continued to be hospitalized in the ICU. [Testimony Father]
62. For the 2005-2006 school year, the Parents placed the Student at Hope Academy, a state approved special education school. The Student's class size at Hope Academy is six students. [Testimony Father, Ms. Elliott] Hope Academy provides special education services to students with learning disabilities and ADD. All teachers at Hope Academy are special education certified. Each program is tailored to meet the students' needs at Hope, and the Student's

program is appropriately individualized to his strengths and needs. [Testimony Ms. Elliott]

DISCUSSION/CONCLUSIONS OF LAW:

The Individuals with Disabilities Education Improvement Act of 2004 [IDEA of 2004], and its predecessor the Individuals with Disabilities Education Act [IDEA] provide for services to children with disabilities, from birth through age 21. This hearing relates to actions that occurred primarily under the IDEA, before IDEA of 2004 was effective on July 1. The new regulations have not yet been promulgated, so references to any regulations relate to the current regulations, not the proposed regulations that are not yet effective.

I. Burden of Proof

The Supreme Court recently addressed the issue of the burden of proof for IDEA cases in *Schaffer v. Weast*, 546 U.S. ____, No. 04-698 (U.S. 2005). In *Schaffer*, the Court noted that states have responsibility generally for establishing fair hearing procedures. The plain text of IDEA is silent in the allocation of the burden of persuasion, as was the Maryland state law. Under those circumstances the Court found that the burden of persuasion/burden of proof falls upon the party seeking the relief. The Court declined to decide the issue of the burden of proof when states have their own laws or regulations which place the burden on the school district.

In Connecticut, the regulations expressly state that the Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec.10-76h-14 In a

careful reading of the Court's decision in *Schaffer*, it is found that the Board continues to have the burden of proof in this state as is specifically stated in the regulations³. The Board has not met its burden in this case, except in the issue of child find, and whether it failed to identify the child at the first PPT meeting in November 2004.

II. Child Find

The "child find" provisions of IDEA provide that the Board must have programs in place to ensure that "[a]ll children with disabilities . . . including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated." 20 U.S.C. §1412(a)(3)(A) The Board had a procedure to identify, locate and evaluate children, and the fact that the Student was not identified as of the November 2004 PPT meeting was not a violation of the Board's child find obligation. The Board's procedural violations, as will be discussed *infra*, including the manner in which the Student was evaluated by the Board, did result in a deprivation of educational opportunity and a denial of the Student's free appropriate public education.

III. Evaluation and Eligibility

The next issue to be decided is whether the Student was eligible for special education at the PPT meeting held on November 2, 2004, or at some time prior to the determination of his eligibility by the Board in May 2005.

³ Interestingly, in his dissent, Justice Breyer indicated he would remand the case because the state ALJ should have considered state law under the rules of state administrative procedures and the body of state administrative law, rather than looking to federal law for a burden of persuasion rule. Justice Breyer pointed out that the IDEA says that the establishment of procedures is a matter for states, and that the administrative hearing is to be conducted by the State or local educational agency. The statute as a whole foresees state implementation of federal standards. *Schafer, Id.*

The Student would be eligible for special education if, after an evaluation, the Student is found to be a “child with a disability.” The term “child with a disability” means a child (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services. 20 U.S.C. Sec. 1401(3), 34 C.F.R. Sec. 300.17(a)(1)

A. Identifying a child with a Specific Learning Disability.

After six months lapsed after the initial PPT meeting in November 2004, the Board eventually determined that the Student was eligible for special education as a child with a specific learning disability. The federal regulations provide that the team may determine that a child has a specific learning disability *if* the child does not achieve commensurate with his or her age and abilities in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child’s age and ability levels; *and* (2) the team finds that the child has a severe discrepancy between achievement and intellectual ability in on or more of the following areas: (i) oral expression, (ii) listening comprehension, (iii) written expression, (iv) basic reading skill, (v) reading comprehension, (vi) mathematics calculation, (vii) mathematics reasoning. 34 C.F.R. Sec. 300.541 The Connecticut regulations further state that having an identifiable learning disability “means a child who demonstrates a severe discrepancy between educational performance and measured intellectual ability and who exhibits a disorder in one or more of the basic psychological processes as indicated by a diminished

ability to listen, speak, read, write, spell or do mathematical reasoning.” Conn. Agencies Regs. Sec. 10-76a-2(d)

In making its determination that the Student was not eligible for special education and related services, the Board staff heavily relied upon their knowledge of the Connecticut State Department of Education’s *Guidelines for Identifying Children with Learning Disabilities. (1999, 2nd Edition)* These guidelines were not enacted as law, nor promulgated as regulations. The guidelines may provide Board staff with some assistance, but they do not have the force of law. In fact, the guidelines state that the determination of a severe discrepancy cannot always be made on a strictly statistical basis as. . . *[p]rofessional judgment must be applied to an analysis of all available information. Guidelines, page 22.* Recent state guidance further addressed the use of professional judgment in the evaluation procedures for specific learning disabilities, noting that “the Guidelines document addresses the need for the PPT to exercise its professional judgment in identifying a learning disability where the child meets the criteria for a learning disability except for the severe discrepancy between achievement and intellectual ability.” [Exhibit P-5] It was further noted that the IDEA of 2004 incorporates this standard, and that the districts should not rely solely on the discrepancy formula to make determinations as to whether a child has a learning disability. [Exhibit P-5]

B. Evaluation

The Board does have the reasonable opportunity to conduct its own evaluation of the Student, and a board does not have to rely solely on a parent’s evaluation of the student. *See, Patricia P. v. Oak Park*, 203 F.3d 462 (7th Cir. 2000) The Board, however,

must conduct an appropriate and comprehensive evaluation of the Student, a full and individual evaluation, in accordance with 20 U.S.C. §1414(a)(1) and 34 C.F.R. Sec. 300.531.

In conducting its evaluation, the Board shall ensure that a complete evaluation study is conducted for each child referred. Conn. Agencies Regs. Sec. 10-76d-9(a) The evaluation study shall include reports concerning the child's educational progress, structured observation, and such psychological, medical, developmental and social evaluations as may be appropriate in determining the nature and scope of the child's exceptionality. Conn. Agencies Regs. Sec. 10-76-9(a)

In evaluating the student, the Board must utilize a variety of assessment tools and strategies to gather relevant functional and developmental information about the child. 34 C.F.R. Sec. 300.532(b) The student should be assessed in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. 34 C.F.R. Sec. 300.532(g) The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category. 34 C.F.R. Sec. 300.532(h)

In interpreting evaluation data, the Board shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive behavior; and ensure that information obtained from these sources is documented and carefully considered. 34 C.F.R. Sec. 300.535

In this case, it was perplexing that the Parents presented an evaluation to the Board, and the Board members failed to read it, review it or consider it. The special education teacher who conducted the Board's evaluation relied upon the WISC-III results of Dr. Laundry's evaluation, but never even glanced at the evaluation report to confirm the results, or review any of the other results on the report. Moreover, the school psychologist never reviewed the prior evaluation, nor did she contribute any suggestions on assessments of the child. The special education teacher selected the assessments based on the fact that the Board always uses certain instruments, and not whether such assessments were appropriate for the child. And, the special education teacher did not do anything other than conduct her assessments. She did not solicit further information from the Student's current school or obtain information from any other sources to conduct her assessment. This was not an appropriate comprehensive evaluation of the Student. This rather cursory evaluation resulted in an unnecessary delay in identifying the Student as eligible for special education, and resulted in yet another evaluation to confirm what Dr. Laundry's evaluation had confirmed months ago, that the Student had a learning disability.

After completing the assessments, and considering the evaluation at the PPT in January 2005, the Board erroneously concluded that the Student was not eligible for special education and related services. The Board's evaluation concluded that the Student did demonstrate a severe discrepancy between educational performance and measured intellectual ability. Dr. Laundry's evaluation had confirmed that the Student had a disorder in one or more of the basic psychological processes, even if one instrument administered by the Board, the DTLA, did not evidence such a disorder. The Board

failed to appropriately identify the Student as eligible for special education and related services at the time of the PPT meeting in January 2005.

III. Free Appropriate Public Education

The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. The second inquiry is a determination of whether the Individualized Educational Plan [IEP] is “reasonably calculated to enable the child to receive educational benefits.” 458 U.S. at 206-207.

Procedural flaws do not automatically require a finding of a denial of a free appropriate public education [FAPE]. Procedural inadequacies, however, that result in the loss of educational opportunity or seriously infringe on the parents’ opportunity to participate in formulating the Individualized Education Program [IEP], clearly result in a denial of FAPE. *Shapiro v. Paradise Valley Unified School District No. 69*, 317 F. 3d 1072, 38 IDELR 91 (9th Cir. 2003), citing *W.G. v. Board of Trustees of Target Range School District No. 23*, 960 F. 2d 1479, 18 IDELR 1019 (9th Cir. 1992), accord, *W.A. v. Pascarella*, 153 F. Supp. 2d 144, 35 IDELR 91 (D.Conn 2001)

The procedural inadequacies were prevalent in this case. The Board failed to conduct an appropriate and comprehensive evaluation, the Board staff completely lacked the appropriate consideration of the Parents’ evaluation of the Student, the Board drafted the IEP after the PPT meeting without the Parents’ input, and the Board failed to convene a PPT meeting at a mutually agreed upon time and place so that the Parents could have

input into the Student's program. The Board ignored the Parents' request for a postponement of the PPT meeting, and failed to inform the Parents that it was going forward with the meeting, despite their request to reschedule it.

Congress, in the 1997 reauthorization of the IDEA, heavily stressed the importance of parental participation in the decisional process. See, for example, 20 U.S.C.

§1400(c)(5)(B) (research and experience have demonstrated that educating children with disabilities is made more effective by "strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate..."); 20 U.S.C.

§1414(d)(1)(B)(i) (parents shall be members of the IEP Team); 20 U.S.C. §1414(f)

(Board shall ensure that parents "are members of any group that makes decisions on the educational placement of their child."). The importance of such parental participation was reiterated in the IDEA of 2004, wherein Congress noted, that "[a]lmost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home. Sec. 601 It is clear that the parents' right to participate is an essential aspect of IDEA, and that in this case the Parents' ability to contribute in the development of an appropriate IEP for the Student was thwarted by the Board.

These procedural inadequacies in this case did result in the loss of educational opportunity to the Student and seriously infringed on the Parents' opportunity to participate in formulating the IEP. Due to these inadequacies, the Student was denied a free appropriate public education.

In determining whether the second prong of *Rowley* met, the requirement of a free appropriate public education is satisfied by “providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Board of Education v. Rowley*, 458 U.S. at 201 Such instruction and services must be provided at public expense, must meet the State’s educational standards, must approximate the grade levels used in the State’s regular education, and must comport with the child’s IEP. *Board of Education v. Rowley*, 458 U.S. at 203

The IEP should be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Hendrick Hudson v. Rowley* 458 U.S. at 204 When the child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade is one important factor in determining educational benefit. *Mrs. B. ex rel M.M. v. Milford Board of Education*, 103 F. 3d 1114, 1121 (2d Cir. 1997), citing *Board of Education v. Rowley, Id.* This standard, however, contemplates more than mere trivial advancement. *Id.*

The Board’s proposed IEP for the 2005-2006 school year, whichever version is considered⁴, was not appropriate. It was not reasonably calculated to enable the Student to obtain education benefit. It was not drafted based on the Student’s individual needs. The IEP for the 2005-2006 did not offer the Student a free appropriate public education.

When it is determined that the Board’s program is inappropriate, the parent is entitled to reimbursement if the parent’s private school placement is appropriate. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985). The Board has asserted that the Parents’ proposed placement is too restrictive. As to the restrictive nature of Hope Academy, parents seeking an alternative placement are not subject to the

⁴ The IEP sent to the Parents in May 2005, and the one drafted in August 2005 were both inappropriate.

same mainstreaming requirements as a school board. *M.S. ex rel S.S. v. Board of Education of the City of Yonkers*, 33 IDELR 183 (2nd Cir. 2000), citing *Warren G. v. Cumberland County School District*, 190 F. 3d 80, 84 (3d Cir. 1999) (The test for the parents' private placement is that it is appropriate, and not that it is perfect) Under the appropriate standard, a disabled student is not required to demonstrate that he cannot be educated in a public setting. *Ridgewood Board of Education v. N.E.*, 30 IDELR 41 (3d Cir. 1999), citing *Florence County School District Four v. Carter*, 501 U.S. 7 (1993) Under IDEA, the relevant question is not whether a student could in theory receive an appropriate education in a public setting but whether he will receive such an education. *Id.* The Student would not receive an appropriate education in the program proposed by the Board. The Parents' placement of the Student at Hope Academy for the 2005-2006 school year is appropriate.

IV. Compensatory Education as a remedy

An award of compensatory education is permitted when a school district commits a gross and egregious IDEA violation. *Garro v. State of Connecticut*, 23 F. 2d 734, 21 IDELR 126 (2d Cir. 1994) Compensatory education is an proper remedy in an appropriate situation of enforcing educational rights. *Mrs. C v. Wheaton*, 916 F. 2d 69, 16 IDELR 1394 (2nd Cir. 1990) In this case, the Board's procedural violations have risen to the level of a denial of FAPE, and constitute gross and egregious violations of the IDEA. The Parents are entitled to an award of compensatory education, which shall be reimbursement for the daily tutoring provided to the Student during the 2004-2005 school year while attending Cheshire Academy.

FINAL DECISION AND ORDER:

1. The Board did not violate its child find obligation.
2. The Board failed to properly identify the Student as eligible for special education and related services as of the January 2005 PPT meeting.
3. The Board did not offer the Student an appropriate program for the Student for the 2005-2006 school year.
4. The Parents' placement of the Student at Hope Academy for the 2005-2006 school year is appropriate.
5. The Parents are entitled to reimbursement for the cost of the placement of the Student at Hope Academy for the 2005-2006, along with the cost of transportation to Hope Academy.
6. The Parents are entitled to reimbursement for the tutoring the Student received at Cheshire Academy for the 2004-2005 school year as compensatory education to remedy the Board's failure to identify the Student as eligible for special education in January 2005, and for the additional procedural violations as set forth in this Final Decision and Order.

COMMENT ON THE CONDUCT OF THE PROCEEDINGS:

The Parents' attorney and the Board's attorney are commended for the professional and civil manner in which they conducted themselves in this hearing. Both counsel demonstrated cooperation and civility throughout the course of this hearing.