STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Region No. 9 Board of Education

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Appearing before: Attorney Christine B. Spak
Due Process Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board had violated the IDEA's Child Find requirements through its failure to refer the Student to a PPT for a prompt evaluation after it had received information from the Parents during June, August and September, 2006 establishing that the Student may require special education and related services?

2. Whether the Board improperly found the Student ineligible for special education under the emotional disturbance or other category at the February 8, 2007 PPT meeting?

3. Whether the Board denied the Student FAPE for the 2006-07 school year?

4. Whether the Board had improperly denied the Parents requests for placement at Second Nature and Vista at Dimple Dell and reimbursement of their costs for those placements?

5. Whether the Parents are entitled to the remedy of compensatory education should the Hearing Officer find gross procedural violations?

SUMMARY:

At the time of the hearing the Student was 17 years old and had spent most of her academic career as a high achieving student in private schools. During the 2004-2005 and most of the 2005-2006 school years, the Student was a boarding student at Dana Hall, a private, college-

preparatory boarding school located in Wellesley, Massachusetts. In late May 2006, the Student was asked to leave Dana Hall following an accusation that she and some other students had been involved in the theft of soft drinks. On June 16, 2006 the Student registered for classes at the Board's school and successfully participated in the required summer preparation for an advanced placement English class that she desired to take in the fall of 2006. She also successfully completed a private study abroad program in France during the month of July 2006. A couple of weeks after returning home she attempted suicide which resulted in her admission to a psychiatric hospital that led to a number of out of state placements for which the Parents now seek reimbursement from the Board as well as the prospective costs of continued placement. The Board did not convene a PPT until February 2007, after the Parents, thru counsel, requested one. At the PPT the Board refused to identify the Student for reason that they maintained they needed to evaluate her in Region 9 for a learning disability and the Parents maintained that it was not safe for the Student to travel back to Connecticut for evaluation. After the PPT the Parents offered to pay Board staff to travel to Utah, or alternatively, suggested that the Board hire personnel in Utah of the Board's choosing to conduct any evaluations the Board felt necessary. The Board declined maintaining that the Student must return to Connecticut for the evaluation to take place. The Board further maintained that because the Student never entered the Board's school building at the start of the 2006-2007 school year, the Student was not a student of the Board's and the Board had no Child Find responsibilities in regard to her. At issue in this regard was what information the Board had regarding the Student and when did the Board receive the relevant information. After the close of evidence, in their post-hearing brief, the Board argued for the first time that the matter should be dismissed for lack of subject matter jurisdiction claiming that the federal regulations required the Parents to seek their evaluation and identification in Utah rather than Connecticut.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S&H Computer Systems, Inc., 605 F. Supp. 816, (March 6, 1985)* and *Bonnie Ann F. v. Callallen Independent School District*, 835 F.Supp.340 (S.D.Tex. 1993).

PROCEDURAL SUMMARY:

By letter dated May 10, 2007, the Parents' attorney requested a due process hearing, raising the issues that are set forth herein. A pre-hearing conference was held on April 16, 2007, during which hearings were scheduled by agreement of the parties. Hearings were subsequently held on May 21, June 11, 14, 19, 21 and July 3, 2007. Prior to the May 21st hearing, the Parents submitted sixteen exhibits and the Board submitted eleven, to which it subsequently added two additional documents.

During the course of the hearing, the Parents called as witnesses the Student's mother, a privately retained educational placement consultant, the Student's psychiatrist, representatives from the Vista and Second Nature programs, and the high school nurse. In turn, the Board called as witnesses the school nurse, the head of the high school's guidance department, the school's social worker, and the Board's pupil personnel director. The Parents then recalled the Student's mother for a brief rebuttal.

A schedule was set for post hearing briefs and after receiving and reviewing the briefs the Hearing Officer requested reply briefs, the last of which was received on August 17, 2007. The date set for mailing of the final decision is August 26, 2007.

FINDINGS OF FACT:

1. The Student was 17 at the time of the hearing. From the middle of her fourth grade year through eighth grade, she went to Wooster School, a private school in Danbury, Connecticut, and in ninth and tenth grades she attended Dana Hall, a private girls school in Wellesley, Massachusetts. Mother Test.

2. During her years in school, the Student has participated in a number of summer programs for gifted students. For example, during the summer after her fifth-grade year, she was invited to participate in a John Hopkins University study. She did so well on her PSAT examination that Brown University wrote to her inviting her to consider them when she was considering college. In ninth grade at Dana Hall, she was on the equestrian team and made it to the nationals in Maryland. Id.

3. The Student left Dana Hall on a medical leave in October 2005 after the school psychologist informed the Parents that she believed the Student was bulimic and suicidal. On November 7, 2005, they placed the Student at Four Winds Hospital in Katonah, New York, where she remained until just before Christmas. Dana Hall sent her a thick stack of school work and despite her hospitalization the Student was able to complete the work. When the Student returned to Dana Hall in January 2006, she was 'in a better frame of mind.' Id..

4. During the second trimester of the 2005-2006 school year, which covered the time the Student was in Four Winds, she earned the following grades: Literature and Composition II – A-; French III – B; Geometry – C; Biology – C-; East Asian Studies – B; Chorus – B+. B-4. This was a drop in grades from what the Student had previously attained in grade nine, but the Parents considered that this was pretty good considering that she had . . . been out of school for two months while she was at [Four Winds] and had not been able to attend lectures and do labs. Mother's Test.

5. The Student was asked to leave Dana Hall three weeks before the conclusion of the 2005-2006 school year due to the school's belief that she and some other girls had been involved with the theft of some soft drinks. Id. Subsequently, in late May 2006, the mother contacted Anne Kipp, the head of the Board's high school's Guidance Department, and requested that the high school administer the Student's finals from Dana Hall. Id. Ms. Kipp agreed to permit the Student to take her Dana Hall finals in a proctored environment at the Board's high school. Id., Kipp. Test., The mother never told Ms. Kipp the real reason why the Student had left Dana Hall. Kipp Test. The mother instead told Ms. Kipp that the Student had been feeling stress at Dana Hall and was interested in going to a co-educational school. Mother's test.

6. The Mother claimed at hearing that the Student failed her final exams but no documentation of this was introduced at hearing and in any case this information was not provided to the Board during the summer or fall of 2006. Testimony of Mother. Record as a whole.

7. On June 16, 2006, the Student and her mother met with Ms. Kipp and registered for the 2006-2007 school year. B-11 During that June 16 meeting, the mother told Ms. Kipp that the Student would be leaving on June 28, 2006 to study at La Sorbonne in Paris. The Student spent the month of July 2006 studying at La Sorbonne through a program run by the American Institute of Foreign Study, which was affiliated with the Institute for the Gifted programs that the Student had previously participated in. She left for Paris on June 28, 2006 and returned on July 29. While at La Sorbonne, she took courses in French grammar and French conversation and received "Bs" in both of them. Testimony of Mother.

8. When the Student registered for the 2006-2007 school year she enrolled in the Advanced Placement English during the 2006-2007 school year, and her English teacher from Dana Hall wrote her a letter of recommendation. The Advanced Placement English course at the Board's school had required summer work which the Student participated in and completed in a satisfactory manner. As a required part of that course, the Student read various works of literature, *The Atlantic Monthly* magazine, and editorials from the *New York Times*. Additionally, she had to make entries on a blog that had been set up by the teacher of the AP course, responding to various articles as well as other students' comments about them. The Student completed this work between the end of July and August 13, 2006. Testimony of Mother. The teacher of the AP course told Ms. Kipp that the Student "was doing beautifully" on her blog entries. Kipp Testimony. The Student also completed the Board's summer math packet in order to be prepared for Algebra II. Testimony of Mother. The Board's Pupil Personnel Director, Susan Haig, did not know that the Student had completed the summer work for the Advanced Placement English course until Ms. Haig learned that it was so during testimony in the course of this hearing. Testimony of Haig.

9. During the night of August 13, 2007, the Student attempted to commit suicide by taking sleeping pills and was found by her father. The Student is the Parents' only child. She was taken to Danbury Hospital. She was then transferred on August 14 to Silver Hill Hospital in New Canaan. Silver Hill is a psychiatric hospital. Id.

10. Any new student coming into a high school is required by state law to have a physical and submit a State of Connecticut Department of Education Health Assessment Record form. Testimony of Gorman. On August 17, 2007, the mother met with the Board's nurse and submitted this form to her. The mother filled it out on June 8, 2006 but subsequently re-dated it August 17, 2006, the day she submitted it to the nurse. Testimony of Mother, Testimony of Gorman, B-10. The mother had checked off that the Student had been diagnosed with the chronic disease of depression. There is a section on the form which has a box to check if a parent "Would …like to discuss anything about your child's health with the school nurse?" The mother had checked this box. The school nurse testified she "absolutely" would have discussed this with the mother if the latter had asked to do so. Testimony of Gorman. The nurse could not recall if she and the mother had a discussion. However, the mother could recall and

she testified in a credible manner, that is completely consistent with the uncontested facts that the mother had checked the box and was now meeting with the nurse, that she told the nurse that the Student was in the hospital for depression and she wasn't sure when the Student would be coming to school but it wouldn't be the first day. The nurse recommended a different medication that some students have taken with positive results. On the Health Assessment Record that the mother completed on June 8, 2006, she also noted that during "the Fall of 2005 [the Student] was diagnosed with bulimia + depression for which she was placed on medical leave." B-10(1). See also Testimony of Mother. The mother added that "The Bulimia is no longer a problem" but went on to describe the continuing problem with depression by documenting at length the search for a proper pharmaceutical intervention for the depression. With respect to the fall 2005 medical leave, the mother wrote that the Student "was readmitted to school in January," which was eight months prior to the date she submitted the Health Assessment Record. Id. The school nurse testified in a manner that was not credible stating that she did not consider it unusual that the Student was on antidepressants as there are other students in the school who are on medication for depression. Upon close examination the nurse acknowledged that in the student body of nearly one thousand students she was aware of only ten who were on antidepressants. It is concluded that contrary to the nurse's testimony it was a highly unusual event for the nurse to be informed that a student was on antidepressants, an event that occurs approximately only one percent of the time in this student population. Testimony of Gorman. The nurse did not take any notes of her conversation with the mother, seek to learn more about the Student's condition, seek a release of information from the mother or inform her of the Student's procedural safeguards, or refer the Mother to any Board staff who would do any of these things, again because the nurse did not consider that she had any responsibility for the Student until the Student physically entered the school building. The Board did not offer to evaluate the Student while she was hospitalized at Silver Hills or offer homebound tutoring instruction at that time or anytime thereafter. Testimony of Mother.

11. The second page of the Health Assessment Record was completed by Dr. Jennifer Holloway following "a complete history and physical exam on 8/7/06." B-10(2). Dr. Holloway is the Student's primary care physician. Dr. Holloway did not check the Student as having any chronic condition but the form had already had the front side completed by the mother and that did include 'depression'. . B-10. The Health Assessment Record contains the following entry: "This student has the following problems which may adversely affect his or her educational experience," followed by various boxes, one of which is "Emotional/Social" and another of which is "Behavior." Id. Dr. Holloway did not check either box. Dr. Holloway noted that "[t]his student may participate fully in the school program." Id. Similarly, Dr. Holloway checked "yes" in response to the following: "Based on this comprehensive health history and physical examination, this student has maintained his/her level of wellness." Id.. Finally, Dr. Holloway did not indicate that there was any information in her report that she "would like to discuss . . . with the school nurse." Id. None of Dr. Holloway's entries are inconsistent with all the other information presented about this Student's health condition as of the date that Dr. Holloway completed the form, August 7, 2006. It is uncontested that a great, and perhaps sudden, change occurred in the Student's mental health between August 7, 2006 and the date of her suicide attempt, August 13, 2007.

12. The School Nurse did not have any response to the Parents' answers to the nine (9) questions on the Health Assessment Form. Testimony of Gorman. It was not a common occurrence for a parent to answer all nine (9) questions on that form in the affirmative. *Id.* The School Nurse did not ask the Parents any questions regarding the diagnostic information, treatment, medication regimen, or psychiatric hospitalization that was recorded by the Parents on that form. Id.

13. The School Nurse believed she had no responsibility to discuss the information that the Parents had provided to her with Board personnel or check attendance because the Student had not physically entered the building at Joel Barlow High School, and therefore was not considered to be a student, even though she had registered for the 2006-07 school year. Testimony of Gorman.

14. The Student's attendance would not be a concern of the school nurse unless the Student had physically entered the school building. Testimony of Gorman. The school nurse first testified that this position was based upon Board Policy, Id. However, when given a recess to locate such Board Policy, the school nurse was unable to do so and stated it was probably her informal unwritten practice that was not based upon any legal authority such as Board Policy but rather what she had been told by someone years earlier when she first began her employ with the Board. Id. Susan Haig confirmed that an official Board Policy did not exist. Testimony of Haig.

15. The Parents have never signed the Board's form officially withdrawing the Student from Joel Barlow High School. Testimony of Haig.

16. On or about August 22, 2006, the mother informed Ms. Kipp in the high school's Guidance Department that the Student had been admitted to Silver Hill. Testimony of Kipp. The mother acknowledged that she did not tell Ms. Kipp that the Student had attempted suicide. Testimony of Mother. However, Ms. Kipp testified that the mother gave no reason for the Student's admission to Silver Hill and this is completely lacking in reliability given the uncontroverted evidence that the mother had already informed the Board, through the health form (B-10) that the Student had the chronic disease of depression. It makes no sense at all that the mother wouldn't tell Ms. Kipp that the Student was being treated for depression. Further, the Board did not explain why Ms. Kipp did not inquire about the nature and reasons for the hospitalization from the mother. If the school only has one percent of its student body informing the school about antidepressant usage it is fair to assume that the number of students admitted to a psychiatric hospital is also a very small number and is therefore an unusual enough event that it should have raised a red flag to the Board staff that further inquiry was in order. Ms. Kipp has been a guidance counselor for thirty years and only if she goes back many years did she have a student with suicide issues and that was just suicidal ideation so it is concluded that a suicide attempt requiring hospitalization is a very rare event in the student population at Joel Barlow High School. Ms. Kipp did not ask the mother for more information, for a release to gather more information or tell the mother about the Student's procedural safeguards. Testimony of Mother, Testimony of Kipp.

17. The mother had another conversation with Ms. Kipp on or about August 28, 2006 at which time she told Ms. Kipp that the Student had been placed at Youth Care in Utah for

"suicide intervention". Anne Kipp did not request the Parents to provide Joel Barlow with any specific information regarding the Student's well-being and only requested that the Parents' to "keep us informed." Testimony of Kipp. Ms. Kipp subsequently informed Cherie Schutt in the high school's student services department. Id..

18. On or about August 23, 2006 a social worker from Silver Hills had contacted the Parents and advised them that the Student would have to be discharged on August 24, 2006 because their insurance coverage would expire on that date. Testimony of Mother.

19. The Parents were provided with a one day extension to August 25, 2006 by their insurance company and were asked by the Silver Hill social worker to choose between two therapeutic programs that would be appropriate in assisting with the Student's treatment, provide her with a safe environment and would educate her. The Parents eventually selected the Youth Care program where she was placed on August 25, 2006. Testimony of Mother.

20. The Parents have never signed the Board's form officially withdrawing the Student from Joel Barlow High School. Testimony of Haig.

21. Sometime during the Student's stay in Utah Dr. Robin Weiner administered a psychological evaluation. P-2. The report is dated September 11, 2006 but it was not made clear in the record, by either side, whether this was the date the report was completed, begun or provided to the Parents. The Parents provided it to the Board on January 5, 2007. B-3; Testimony of Haig. Dr. Weiner was not a Board employee, nor did the Board or the PPT commission her to conduct the evaluation as they did not convene an initial PPT until many months later, in February 2007. Likewise, the Board has individuals on its staff who can conduct psycho-educational evaluations but the Board did not do or offer to do one during the summer or fall of 2006. Testimony of Haig, testimony of Mother.

22. On September 18, 2006 Maryanne Pieratti, School Social Worker called the Parents because the Student had not been attending Joel Barlow High School. The Student's mother again explained during that conversation information that the Board already had in one form or another, namely that the Student had attempted suicide on August 14, 2006; that she had been discharged from the Silver Hill Hospital on August 25, 2006; that she had been placed at Youth Care in Utah per that hospital's discharge planning. As the result of that conversation, the Board was again made aware that the Student had been diagnosed with depression, was in Youth Care's intensive suicide intervention program, was being evaluated by Youth Care staff, had been taking anti-depressant medications, that she had been in therapy, and that her grades had significantly declined from Grade Nine (9) to Grade Ten (10). Ms. Pieratti testified that in her six years as a social worker at Joel Barlow High School she did not recall ever being the first person to discuss the difference between 504 and IEP with a parent. Ms. Pieratti had mentioned either a Section 504 Plan or an IEP to the Student's mother during this conversation, but there was no referral to a PPT nor was there any follow up by the Ms. Pieratti or any other Board staff following that conversation. The school social worker was uncertain if the Parents had understood the "IEP special education" or "Section 504" jargon" that she had used during the September 18, 2006 conversation. It is concluded Ms. Pieratti is inexperienced in this regard and does not do this as a part of her job responsibilities and did not have an adequate discussion with

the mother. The Parents had no prior dealings with the special education referral process since the Student had been in gifted programs in previous school years. Ms. Pieratti attempted to shift responsibility onto the Parent by not convening a PPT or requesting releases but rather suggesting that after the mother obtained the treatment plan from Youth Care that she contact Patricia Roszko, the Chair of the Special Education Department at Joel Barlow High School. Testimony of Pieratti. Immediately following that conversation, Ms. Pieratti notified Ms. Roszko that she had advised the Parents to contact her. The Parents had not received their procedural safeguards at any point up to this date and Ms. Pieratti did not give them to the mother or in any sufficient way make her aware of them. At the conclusion of this conversation with Ms. Pieratti the Parents were not aware of the process for scheduling either a Section 504 or PPT meeting. Testimony of Pieratti, testimony of mother.

23. On October 4, 2006, approximately two weeks after Ms. Pieratti's conversation with the mother, Attorney Howard Klebanoff wrote Ms. Roszko, informing her that his office "represent[s] [the Parents] in connection with the special education of their daughter," and requesting copies of the Student's educational records. B-1.

24. During the 2006-2007 school year, the high school maintained the Student's schedule because during the September 18, 2006 conversation with Ms. Pieratti, the mother indicated that she did not know when the Student would be attending the high school, and the school did not want the Student to lose her slot in the classes she had selected. Thus, although the school took her out of enrollment, it did not take her out of her schedule. On December 7, 2006, the high school sent a notice to the Parents regarding the truancy of the Student. This was sent to all Parents and was not targeted specifically at the Parents or the Student although this was not apparent from the document sent. Id.

25. The Director of Pupil Services, Ms. Haig, testified that the high school has had other students admitted to Silver Hill, but the fact that a student was hospitalized does not, in and of itself, entitle them to special education services. Testimony of Haig.

26. The Board sent the Parents interim progress reports that listed teacher's comments (Teacher Morton) and reported 18 absences as of October 3, 2006 and teacher's comments (Teacher Bielizna) and reported 63 absences as of December 8, 2006. P-4, P- 8(2); Testimony of Mother.

27. The Student remained at Youth Care until November 4, 2006 when the Parents decided to place her at the John Dewey Academy, a therapeutic boarding school located in Massachusetts due to the Student's and Parents' disagreement over the education program, treatment, lack of a therapeutic relationship with the therapists, extreme weight gains, and the medication regimen at Youth Care. Testimony of Mother.

28. The Student was placed at John Dewey Academy on November 6, 2006 and she remained at that school until December 23, 2006 when she was placed at the Berkshire Medical Center psychiatric unit due to suicidal ideations. She remained there during the holidays and wanted to return home but was told by her Parents that was not an option. Id.

29. The Student was unable to return to John Dewey and the Parents placed her at the Second Nature Program, a therapeutic wilderness program in Utah on January 4, 2007 following her discharge from the Berkshire Medical Center. Id.

30. The Student remained at the Second Nature program until March 13, 2007 when she was discharged and placed by the Parents at the Vista at Dimple Dell therapeutic program. Id.

31. On January 5, 2007 the Parents, through counsel, requested a PPT meeting for the purpose of "discussing [the Student's] needs and to determine her eligibility for special education and related services" . This letter also enclosed the evaluation of Dr. Weiner and provided notice of the Parents' intent to place the Student at the Second Nature therapeutic program located in Utah and request reimbursement for these costs. B-3

32. The Board did not respond to the Parents' January 5th letter. Testimony of Mother.

33. The Parents, through counsel, wrote the Board on January 22, 2007 regarding the status of their January 5th PPT request. P-11.

34. The Board mailed a PPT meeting Notice dated January 31, 2007 for a PPT meeting on February 8, 2007. B-6. There is no record that the Parents were provided with a copy of their IDEA or Section 504 procedural safeguards prior to the January 31st PPT Notice. Testimony of Mother.

35. The Board could not explain the delays in scheduling the Parents' PPT request other than to state that the scheduling was longer than what was typical. Testimony of Haig.

36. The Board would not have initiated the scheduling of a PPT meeting if the Student had returned to Joel Barlow High School following her discharge from Silver Hill until it saw an adverse impact upon the Student's education. Testimony of Haig.

37. Even with the knowledge of the Student's repeated absences, the information contained in the Board's Health Assessment Form, the information provided to the School Nurse on August 17, 2006, the information provided to Ms. Kipp, the guidance counselor, on or about August 22 and August 28, 2006, the information provided by the Parents to the school social worker on September 18, 2006 and the information in Dr. Weiner's report; the Board did not initiate a referral to a PPT '…because the Student was not here. The Student was not yet a student in this school. She had not arrived the first day of school.' Testimony of Haig. The Board never made a prompt referral to a PPT and only scheduled the PPT in response to the Parents' January 5, 2007 letter requesting such a meeting. Id.

38. The Board convened a PPT meeting on February 8, 2007. B-7.

39. The Parents, their counsel, and Dr. Rocco Marotta via telephone participated in the PPT meeting. While the Student was an inpatient at Four Winds in 2005, the Parents had retained Dr. Marotta as an independent psychiatrist regarding medication issues and to evaluate side effects from certain medication. Dr. Marotta had continued to treat the Student after she had returned to Dana Hall and thereafter and had prescribed Wellbutrin, Effexor, and Zomeg for depression, mood disorder, and migraine headaches. Dr. Marotta had last seen the Student in August and had spoken to her twice in the fall to winter of 2006. Dr. Marotta had discussed the Student's clinical history, medication, psychiatric hospitalizations, Dr. Weiner's report, and both the psychiatrist and Parents had requested that PPT to find the Student eligible for special education under the emotional disturbance category and had disputed the Board's contention that there was a need for further evaluations in order to evaluate the Student. The Parents' attorney asserted that the PPT could and should accept Dr. Weiner's evaluation as a basis for identifying the Student as eligible for special education. He further claimed that the Board had not satisfied its child find obligation, that an evaluation should have been conducted sooner, and that there was ample documentation to establish eligibility under the category of emotional disturbance. B-7, testimony of Mother, testimony of Dr. Marotta.

40. Attending the PPT from the Board were Cherri Schutt, regular education teacher Ken Craw, Ms. Haig, Ms. Kipp and school psychologist Dale Bercham as well as Board counsel. The Board members of the PPT noted that Dr. Weiner's report contained 'many indications of a non-verbal learning disability.' Consequently, the Board believed that additional evaluations were necessary, including an observation, a cross-battery assessment, and a clinical interview, and that they wanted to conduct them. The PPT stated that would like to evaluate the Student with the Board's staff when she returned to Connecticut. B-7.

41. It was clear from Dr. Marotta's participation at the PPT and through his testimony that he believed she clearly qualified for identification under the emotional disturbance category and that, if she also qualified for a learning disability this would be a secondary identification. Testimony of Dr. Marotta, B-7.

42. The Parents advised the PPT that they were intending to place the Student at the Vista at Dimple Dell program. P-13. The Board requested instead an opportunity to evaluate the Student at Joel Barlow High School where the Board staff could observe her for a week interacting with her peers at that school, even though the Parents and Dr. Marotta had stated that the Student was not medically stable enough to travel to Connecticut. An observation of the Student was not required by the IDEA in order to determine if the Student was eligible under the emotional disturbance category, but it was the Board's "practice" to conduct such an observation. Testimony of Haig. In the spirit of compromise, Dr. Marotta suggested that the Board retain the staff from Second Nature to complete the Board's evaluation, assuming that there was a need for an additional evaluation based upon Dr, Weiner's report; or alternatively, that the Board retain an independent professional in Utah if Second Nature staff was not acceptable to the Board. The Board refused these suggestions, refused to identify the Student and refused to place her at the therapeutic residential program. B-7, testimony of mother, testimony of Marotta, testimony of Haig.

43. Most of the tests listed on the Board's consent form, B-7(18) were a duplicate of the test instruments that Dr. Weiner had completed on September 11, 2006. The Board testified that the test instruments selected by Dr. Weiner in her evaluation of the Student were items that the Board would have selected if it was evaluating the Student at the time of that evaluation. Haig Testimony. The Board acknowledged that emotional disturbance was a distinct possibility based upon a review of Dr. Weiner's report. Haig Testimony. The Board acknowledged that Dr. Marotta had offered a professional opinion during the February 8, 2007 PPT that the Student met the criteria for an emotional disturbance as defined by the IDEA. Haig Testimony.

44. The Board testified that it did not contract with individuals who were acceptable to the Board in Utah to complete the Board's evaluation of the Student, even though it was aware during the February 8, 2007 PPT meeting that the Student was medically unstable and unable to travel to Connecticut, maintaining throughout the PPT and hearing that they had the right to evaluate and do "our own" evaluation. Testimony of Haig. The Board acknowledged that there was no impediment such as Board Policy that prevented it from contracting with individuals or organizations in Utah to complete the Board's evaluation. Subsequent to the PPT, in an effort to bridge the impasse the Parents offered to pay for the Board's travel expenses to Utah if the Board insisted that only Board personnel could evaluate the Student. The Board rejected the Parents' offer to pay the Board's travel expenses, B-9, testimony of Mother. The Parents returned the Board's consent form for the initial evaluation dated March 26, 2007 and they have not refused the Board's request to evaluate the Student. The Board has not evaluated the Student within forty-five (45) school days after receiving the Parents' consent form. Testimony of Mother, testimony of Haig.

45. The Parents and Jason Capel, the Student's therapist reported that the Second Nature therapeutic wilderness program was appropriate for the Student; that it met her needs; and she made appropriate progress and was no longer suicidal or had urges of self-injury at the time of discharge. Testimony of Mother, testimony of Capel.

46. Carol Maxym, the Parents' education consultant and former Dean of Students at John Dewey Academy had testified that the Vista at Dimple Dell program was appropriate for the Student, was meeting her needs, that she was making appropriate progress in that therapeutic placement, and that her anxiety and extreme depression had improved so she could actively participate in the pace of the academic and other programs that were available at that program. Testimony of Maxym.

47. The Parents and Steven Sawyer, the Student's therapist at the Vista at Dimple Dell program, reported that the program was appropriate for the Student, that the treatment plan was meeting her needs, that her educational needs were being met, and that she continued to make "good" progress in that highly structured therapeutic and educational placement. Testimony of Mother, testimony of Sawyer.

48. At no time during the hearing or before did the Board raise the claim that the hearing officer did not have subject matter jurisdiction.

CONCLUSIONS OF LAW:

1. This is a dispute over whether the Student should have been referred for evaluation, whether she should have been found eligible for special education and related services and whether she should have been identified as eligible under the emotional disturbance category.

2. The Board has the burden of persuasion in this matter pursuant to state regulations. RCSA §10-76h-14. The Supreme Court's decision in *Schaffer v. Weast,* 546 U.S. 49, 126 S.Ct 528 (2005) has not altered the Board's obligation to establish the appropriateness of the program or services it has offered.

3. The purpose of the Individuals with Disabilities Education Act (hereafter IDEA) is to ensure that the rights of students and parents are protected with respect to the provision of a free and appropriate education (hereinafter FAPE). 20 U.S.C. §1400 (d) (1) 4. The IDEA contains substantive and enforceable rights to FAPE. *Honig v. Doe,* 484 U.S. 305, 310 (1988).

5. The key element to the provision of FAPE is the IEP which includes a comprehensive statement of the Student's educational needs, specially designed instruction and related services in order to meet those needs. *Burlington v. Dept. of Ed.,* 471 U.S. 359, 368 (1985). The IEP is suppose to be "the centerpiece of the statute's education delivery system for disabled children" and is supposed to be a collaborative process between the parents and school district. *Honig v. Doe,* 484 U.S. 305, 311 (1988).

6. Compliance with the IDEA's requirements is the responsibility of the Board, not the Parents. *Unified Sch. Dist. v. State Dept. of Ed.,* 64 Conn. App. 273,285, 35 IDELR 30 (2001).

7. Compliance with the IDEA's procedural requirements is not a mere formality since those requirements are designed to ensure that the Student's IEP is tailored to meet the Student's unique needs and to guarantee against arbitrary and erroneous decision making. *Daniel R.R. v. State Bd. of Ed.,* 874 F.2d 1036, 1041 (5th Cir. 1989).

8. The Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§1400 *et seq*. ["IDEA"], contains "Child find" provisions that mandate that each local educational agency ["LEA"] "locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private . . . schools located in the school district served by the LEA." 34 C.F.R. §300.131(a). In turn, parentally placed private school children with disabilities are defined as "children with disabilities enrolled by their parents in private . . . schools or facilities." 34 C.F.R. §300.130. The LEA's obligation to "locate, identify, and evaluate" includes "parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located." 34 C.F.R. §131(f). "Child find also must include--(1) Children who are *suspected of* being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and (2) Highly mobile children, including migrant children." [emphasis added] 34 C.F.R. §300.111. *Department of Education, State of Hawaii v. Carl Rae S.,* 158 F. Supp 2d 1190, (D. Haw. 2001), 35 IDELR 90 (citing *W.B. v. Matula,* 67 F.3d 484, 501 (3d Cir. 1995)) ("child find duty requires children to be identified

and evaluated within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability."); *Corpus Christi Sch. Dist.,* 31 IDELR 41 (SEA 1/19/99).

9. Section 300.8 defines a child with a disability.
"(a) General. (1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having … a serious emotional disturbance (referred to in this part as "emotional disturbance")… and who, by reason thereof, needs special education and related services.
(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.
…
(4)(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
(C) Inappropriate types of behavior or feelings under normal circumstances.
(D) A general pervasive mood of unhappiness or depression.
(E) A tendency to develop physical symptoms or fears associated with personal or school problems.
(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section."

10. Connecticut has adopted the IDEA's definition of emotional disturbance. *Conn. Gen. Stat.* § 10-76a (11). Connecticut has not promulgated any formal regulations to expand upon this definition.

11. State regulations required the Board to make a prompt referral to a PPT for any student whose behavior, attendance, or progress in school is considered to be unsatisfactory or at a marginal level of acceptance. RCSA § 10-76d-7.

12. The Board's argument that the Student was not their responsibility because she had not yet entered the school building is not supported by law and not even by any written Board policy. Rather, it is an antiquated and misguided position that does not reflect our society's growing reliance on electronic communication and participation. More importantly, it does not even reflect the Board's own reliance on electronic communication and participation. It is not disputed that the Parents registered the Student for the Board's high school on June 16, 2007 and that the Student applied for and was admitted into the Board's Advanced Placement English class which had summer requirements that were to be completed on-line. It was the Board's teacher that set the parameters for participation and she set the requirement that participation be accomplished electronically. It is further not disputed that the Student completed the

requirements and did a "beautiful job" doing so, although the Director did not know this until learning it during the hearing testimony. Consistent with the requirements of the course the Student participated electronically, as is the rapidly growing practice in education and business. To say that she was any less a student than if she had been seated at a desk in a classroom would be to say, for example, that employees should not be paid for teleconferences their employers require; pleadings filed by email don't count as timely filed; and distance-learning master's degrees do not qualify teachers for higher pay grades. None of this is true and neither is it true that the Student's status is driven by the site of the summer course. It is driven by the fact that a Board registered student was admitted to a Board sponsored course, taught by a Board teacher, taught in a method, common today, that the teacher selected and that the registered and admitted Student complied "beautifully" with the requirements of the course. Additionally, if this Board's argument that the Student is not their responsibility because she never set foot in the building were valid, then it would mean that if the Parents did not have the funds to unilaterally place the Student and she sat home indefinitely the Board would never have to consider convening an initial PPT because she never set forth in the building. None of this is supported by law and it underpins a serious violation of the Student's procedural rights. That every Board witness, including the Director, cited the same misinformation and acted in accord with this misconception demonstrates that it is a Board-wide problem of a very serious nature.

13. As of the August 22, 2006 the Board staff had had at least three conversations about the Student with the mother, had received the health assessment form from the mother and had had the Student in one of their classes. As of this date they knew that this Student had been hospitalized eight months earlier for an emotional problem, had missed weeks of school as a result, suffered a drop in grades as a result, was now in a psychiatric hospital again and would not start on the first day of school. Ms. Haig is absolutely correct that the fact that a student was hospitalized does not, in and of itself, entitle them to special education services. However, the issue here is not whether the Board should have known on August 22, 2006 whether the Student qualified for special education services but rather only whether the Board should have convened a PPT to begin to evaluate that possibility. Child find requires that the Board locate, identify and evaluate students who are *suspected of* being a child with a disability even though they are advancing from grade to grade. The nurse's testimony established that it was uncommon for a parent to check off all nine boxes on the health assessment form and only about one percent of the student population informed her about being on antidepressants. It is reasonable to conclude that an admission to a psychiatric hospital is at least as rare for a Joel Barlow student, and in this case the Board had notice of the fact that this Student had been admitted to psychiatric hospitals not once but twice in less than a year. The fact that there was other information that may have ultimately established that the Student did not qualify for special education does not alter the fact that the Board had an obligation to evaluate this Student because there was ample evidence as of August 22, 2006 and probably before that should have given this Board reason to suspect that the Student might have a disability and that is all the law requires for the Board to conduct an evaluation. Board witness after Board witness testified to the effect that the Student was not their responsibility and not one of them at any time prior to the PPT correctly informed the Parents of their procedural safeguards; alternatively, if they actually believed that Utah was the correct place to pursue evaluation and identification they never shared this information with the Parents. The IDEA has a detailed regulatory scheme to help ensure parent participation in the IEP process and IDEA anticipates that the parties will collaborate with each other and certainly

good faith in that regard is implied. If the Board actually believed that Utah was the correct place to pursue evaluation and identification they had an obligation to tell the Parents and they are not relieved of this obligation by the fact that a parent hires representation. In the special education area representation can mean able counsel and it can mean unlicensed advocates. It would be a dangerous slippery slope to hold that if a student has representation then the Board is no longer responsible for the duties imposed on them by IDEA and there is nothing in the IDEA or the case law that flows from IDEA that removes responsibility from the Board to comply with the IDEA when the student has representation. 34 C.F.R. 300.111 (a), (c), see also 34 C.F.R. §300.322

14. Much of what followed the August 22, 2006 conversation only adds to the Board's obligation to refer the Student for evaluation, a duty they never timely discharged. On August 28, 2006 the Board was told that the Student was being treated for suicide intervention, a fact they could and should have discovered earlier by requesting releases from the Parents. Again, pursuant to the September 18, 2006 conversation between the school social worker and the Parents, the Board again was given information to suspect that the Student may be in need of special education and related services, B-12; 34 C.F.R. 300.111 (a), (c); yet it did not contact that Parents or otherwise initiate the referral process in order to evaluate the Student after that date. The Board knew that the Student's attendance was unacceptable on October 3, 2007, P-4, yet it did not make a prompt referral to a PPT on or after that date as required by state law. RCSA § 10-76d-7. Instead, the only reason that the Board even scheduled a PPT meeting on February 8, 2007, was in response to the Parents' January 5, 2007 letter requesting such a meeting.

15. The Board should have made a prompt referral to a PPT after it knew on October 3, 2006 and again on December 3, 2006 that the Student's attendance was unsatisfactory. RCSA §10-76d-7, P-4, P-8(2). The Board has not provided a satisfactory explanation for its decision not to make a prompt referral to a PPT at that time other than to state that it had no responsibility because the Student was not in the building.

16. The Board did not discharge its Child Find obligations consistent with the IDEA when it failed to locate, identify or refer the Student to a PPT beginning at least on August 22, 2006. As of August 22, 2006 the Board was the responsible school district in that the Student was both a resident in a Region 9 town and was a Student in the Region 9 high school. Therefore, the Board's claim of lack of subject matter jurisdiction is without merit because the Student was the Board's responsibility at the time when the referral for evaluation should first have been made and that is when jurisdiction attached. Also, by their actions, including asking the Parents in February 2007 for consent to evaluate, the Board acted in a manner inconsistent with their post hearing position that there is no subject matter jurisdiction. The Board is the responsible school district for the Student and it should have convened a PPT in order to evaluate the Student for special education and related services since FAPE is at issue. 34 C.F.R. §300.111(a),(c), 34 C.F.R. §300.148 (a)(b).

17. The IDEA prescribes the evaluation procedures for conducting an initial evaluation. 34 C.F.R. §300.304(b), (c). The IDEA requires the PPT to review existing evaluation data as part of the initial evaluation and here the Board seemed to disregard the evaluation data provided by the

Parents even though the evaluative data was done in a sound and professional manner using many of the test instruments the Board would have used and the Board did nothing prior to the PPT to obtain evaluative data.. 34 C.F.R. §300.305 (a).

18. Hearing officers have authority to award tuition reimbursement to parents who place their child with a disability in a private school if the school district has denied the student FAPE. 34 C.F.R. §300.148 (c).

19. The limitations on the reimbursement of the private school tuition authorized by 34 C.F.R. §300.148 (c), are not applicable if the Board has failed to provide the Parents with notice of their procedural safeguards. 34 C.F.R. §300.148(e) (1) (ii).

20. There is no evidence that the Board had provided the Parents with notice of or a copy of their procedural safeguards prior to the January 31, 2007 PPT Notice. B-7. Therefore, the Parents are not precluded from being reimbursed for their costs incurred prior to the date they had actually received their IDEA procedural safeguards.

21. The Board has not offered the Student an appropriate program or for that matter any program for the 2006-07 school year. 34 C.F.R. §300.148(b).

22. The standard of determining whether the Board has offered the Student FAPE was established by a two part test enunciated in *Rowley v. Bd. of Ed.,* 458 U.S. 176 (1982). The first prong requires a determination as to whether the Board has complied with the IDEA's procedural requirements; and the second requires a determination as to whether the Board's IEP was reasonably calculated to allow the Student to receive educational benefit. *Rowley, supra,* at 206-07.

23. Failure to refer for evaluation a student who is suspected of having a disability is a procedural violation of IDEA. The Board's decision not to propose an IEP at the February 8, 2007 PPT meeting has foreclosed the hearing officer's traditional role of reviewing the IEP to determine if it satisfied the second prong of the *Rowley* standard.

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24. The Parents and Dr. Marotta had presented emotional disturbance as the Student's suspected disability during the February 8, 2007 PPT meeting and requested a finding of eligibility because they believed that the Student had met the IDEA's criteria. 34 C.F.R. § 300.8 (a) (4). The Board was required to consider the concerns and input of the Parents regarding the education of the Student. 34 C.F.R. §300.324 (a)(ii). The IDEA anticipates strong parental input during the PPT meeting and a collaborative process between the parents and the school district in developing an IEP. *Schaffer v. Weast,*546 U.S. 49,53, 126 S. Ct 528 (2005).

25. Instead of considering the concerns of the Parents with respect to whether the Student presented emotional disturbance as a suspected disability, the Board elected to focus on whether the Student also presented a non-verbal learning disability, even thought Dr. Moratta's professional psychiatric opinion as to the Student's emotional disturbance was never contradicted or even challenged by another psychiatrist or physician retained by the Board. B-7 (2),(3).

26. Based on the information available to the Board at the February 8, 2007 PPT over a nine month period that spanned two school years the Student had spent weeks in a psychiatric hospital, her grades had dropped, she tried to commit suicide, she was readmitted to another psychiatric hospital, she continued to need suicide intervention at various periods and she was again in a hospital for psychiatric problems as recently as late December 2006. Additionally the Board had a thorough and comprehensive evaluation by a psychologist who utilized many of the tests the Board would have used and also, a psychiatrist who had treated the Student participated in the PPT and gave his opinion that she should be identified under the category of emotionally disturbed. The Board, which never convened a PPT in a timely manner, did not have any evaluation to refute the information or opinions of either doctor. The Board had ample information available to it to support the identification of this Student as eligible for special education in the category of emotional disturbance and they should have done so.

27. The Board was obligated to develop an IEP that would be reasonably calculated to provide the Student with FAPE. *Rome Sch. Comm. v. Mrs. B.,* 247 F. 3d 29, 33 (1st Cir. 2001). In this case, the Board elected not to develop an IEP at the February 8, 2007 PPT meeting even though it had sufficient evaluative information from Dr. Weiner's report, information from the Parents, and information from Dr. Marotta regarding the Student's psychiatric and psychological history since at least the 2005-06 school year and the adverse impact upon the Student's education during that school year and the 2006-07 school year at issue in order to determine whether the Student had an Emotional Disturbance and could benefit from special education and related services.

28. Even if the Board was obligated to rule out the existence of the non-verbal learning disability as a suspected disability, the Board has not provided the Hearing Officer with any cogent rationale for its insistence on using only Board personnel to complete the Board's evaluation when it knew that the Student was medically unstable and unable to return to Joel Barlow High School for an observation and evaluation. Instead, the Board has insisted that it has an unqualified and absolute right to use its personnel to complete its evaluation and to do that in Region 9 rather than traveling even at parent expense. Finding of Facts Nos. 77, 78, supra.

29. Ordinarily the Board may insist upon the use of qualified professionals who are acceptable to the Board complete an evaluation of the Student. See, *P.S. v. Brookfield B.O.E.,* 364 F. Supp. 2d 237 (D. Conn. 2005), *aff'd* 186 Fed. Appx. 79 (2d Cir 2006). In the present matter, however, the Board has not called into question the professional credentials of Dr. Weiner or Dr. Marotta, the evaluators selected by the Parents. Instead, it has simply maintained that it has an absolute right to use its own personnel to evaluate the Student at its high school. The Board has not provided the Hearing Officer with any cogent rationale for insisting that the Student leave her therapeutic placement and return to Connecticut when the Parents and Dr. Marotta had indicated that the Student was medically unstable and had offered reasonable alternatives such as using staff at Second Nature, locating an acceptable professional in Utah, or using a Utah school district to complete the assessments that the Board had requested or the reason that it had refused the Parents' offer to pay the Board's travel expenses.

30. The Board had requested an opportunity to observe the Student in a classroom as part of its evaluation of the Student's emotional disturbance according to its practice. The IDEA does not require the Board to observe a student in a classroom setting at Joel Barlow High School as part of an initial evaluation in order to determine if the Student qualifies for special education and related services as a student with an emotional disturbance. 34 C.F.R. §300.8 (b) (4), 34 C.F.R. §300.304. The IDEA only requires the Board to observe the Student in a classroom setting as part of an evaluation in order to determine if the Student qualifies for special education and related services as a student with a specific learning disability. 34 C.F.R. §300.310(a). There is no legal basis for the Board to arbitrarily impose additional eligibility and evaluation requirements that were inconsistent with the IDEA's evaluation requirements to evaluate whether the Student had an emotional disturbance and then conclude that the Student was not eligible for special education.

31. There is a record that the Board had made a *single* request that the Parents produce the Student for an evaluation during the February 8, 2007 PPT meeting. B-7.

32. The Board had sixty (60) days after it had received the Parents' consent form dated March 26, 2007 to complete its initial evaluation. 34 C.F.R. §300.301(c) (1) (i).

33. The Board has not completed its initial evaluation within the time prescribed by the IDEA.

34. The Parents have asserted that they have produced the Student for an evaluation, albeit at the Second Nature program and later at Vista at Dimple Dell based upon the unique facts and circumstances namely that the Student was medically unstable to return to Connecticut in order to be evaluated by Board personnel.

35. At issue is whether the Parents had made the Student available for an evaluation following the February 8, 2007 PPT meeting. 34 C.F.R. §300.310(d) (1). This regulation excuses the Board from compliance with the sixty (60) evaluation timeline if the Parents have repeatedly failed or refused to produce the Student for an evaluation. There is no evidence that the Parents have repeatedly failed or refused the Board's request to make the Student available for the initial evaluation.

36. There was a single evaluation request from the Board presented to the Parents at the February 8, 2007 PPT meeting. The Parents had offered a fair compromise that balanced the Student's therapeutic needs and the Board's need for additional information when they had offered to pay the reasonable travel expenses of Board personnel to travel to Second Nature and evaluate the Student or through Dr. Marotta's recommendation that the Board either use Second Nature professional staff, use staff from a local Utah school district or retain qualified professionals in Utah to complete the Board's assessment. The Board acted unreasonably in refusing these suggestions.

37. The Parents had requested placement at the Second Nature and Vista at Dimple Dell programs through their January 5, 2007 letter to the Board and their requests presented at the February 8, 2007 PPT meeting. Parents who make unilateral placements at private schools

without the consent of the public school official, do so at their own financial risk. *Burlington v. Dept. of Ed.,* 471 U.S. 359, 373-74 (1985); *Florence County Sch. Dist. v. Carter,* 510 U.S. 7, 15 (1993). Both of those programs are private therapeutic placements located in Utah and approved by the appropriate licensing agencies in that State and they are accredited by the Northwest Association of Accredited Schools. Parent selected therapeutic programs and placements that provide extensive counseling and training outside of a regular classroom environment have been found in some cases to constitute FAPE. See, *Bd. of Ed. of Montgomery County v, S.G.,* 2006 WL 544529 (D. Md. 2006).

38. In order to properly evaluate whether the Parents are entitled to be reimbursed for the costs of the two private schools they had selected, the Hearing Officer has to evaluate whether the Board's IEP would have provided the Student with FAPE; and whether the private schools selected were appropriate for the Student's needs. *M.C. v. Voluntown B.O.E.,* 226 F. 3d 60, 66 (2d Cir. 2000).

39. An IEP cannot provide FAPE if it was never offered to the Student. *Camp Hill Sch. Dist.,* 38 IDELR 113 (SEA 11/22/02).

40. In the present matter, it is clear that the Board did not offer the Student an IEP and that fact has precluded the Hearing Officer from determining if it would have provided the Student with FAPE. *See. Rowley, supra.* The Parents have presented testimony from the Mother, Carol Maxym, Steve Sawyer, Jason Capel and Dr. Marotta that was essentially unchallenged by the Board regarding the appropriateness of the Second Nature and Vista at Dimple Dell programs, the progress that the Student made in both programs, and how each program had met the Student's needs. The two private programs selected by the Parents were appropriate for her needs. *Burlington v. Dept. of Ed.,* 471 U.S. at 370; *M.S. v. Voluntown, supra.*

41. The fact that neither the Second Nature nor the Vista at Dimple Dell programs were mainstream programs does not automatically preclude the Parents from being reimbursed for their costs. *M.S. v. B.O.E., City of Yonkers,* 231 F. 3d 96, 104 (2d Cir. 2000), 33 IDELR 183. Private schools are not held to the same mainstreaming requirements as a public school. *M.S. v. B.O.E., City of Yonkers, supra,* (citing *Warren G. v. Cumberland County Sc. Dist.,* 190 F. 3d 80, 84 (3d Cir. 1999)). There is no requirement that the Parents' choice of a private placement be perfect, only that it has to be appropriate for the Student's needs.

42. The Parents have sought an award of compensatory education as a remedy in this matter. Hearing officers have authority to award compensatory education as an equitable remedy to remedy a denial of FAPE. *Inquiry of Kohn,* 17 IDELR 522 (OSEP)(1990).

43. Compensatory education is generally available to remedy gross and egregious procedural violations. *Mrs. C. v. Wheaton,* 916 F. 2d 69 (2d Cir. 1992); *Garro v. State of Conn.,* 23 F. 2d 734, 21 IDELR 126 (2d Cir. 1994).

44. The record in this case is replete with the Board's gross and pervasive procedural violations. The Board had sufficient knowledge by at least August 22, 2006 to suspect that the Student may be a child with a disability, yet the Board never informed the Parents of the PPT or

evaluation process or procedures. The Board did not initiate any referral to the PPT for an evaluation at that time. The Board knew or should have known that based upon the information in the interim from the September 18, 2006 conversation with the mother, and again from the progress reports issued during October and December; that the Student's attendance in school was unsatisfactory, yet it did not contact the Parents and inform them of the PPT or evaluation process or procedures. Even when the Parents had contacted the Board through their counsel's January 5, 2007 letter and requested a PPT, the Board waited almost a month to schedule that PPT meeting. When the Board was presented with an opportunity to develop an IEP at the February 8, 2007 PPT, it elected instead to unreasonably delay the process further by insisting upon evaluating whether the Student had a non-verbal learning disability, with its staff, at its high school when the evidence of an emotional disturbance was clear and compelling.

45. Procedural flaws do not automatically require a hearing officer to find that a denial of FAPE had occurred. Instead, the hearing officer has to determine if the procedural non-compliance had resulted in the loss of educational opportunity or seriously infringed upon the parents opportunity to participate in the formulation of the student's IEP. *Shapiro v. Paradise Valley Unified Sch. Dist.,* 317 F.3d 1072(9th Cir. 2003) 38 IDELR 91). In the absence of the Board making a timely referral to the PPT following the August 22, 2006 conversation between the school guidance counselor and Mother, coupled with its failure to determine whether the Student was eligible for special education during the February 8, 2007 PPT meeting, and its failure to arrange or complete any evaluation after the Parents' March 26, 2007 consent form, the Hearing Officer finds that a loss of educational opportunity has occurred through the entire school year and that the Parents were deprived of a meaningful opportunity to participate in the development of the Student's IEP prior to the February 8, 2007 PPT meeting. 34 C.F.R. §300.513 (a) (2). Compensatory education is an appropriate remedy for the Board's failure to comply with the IDEA's procedural and other requirements.

FINAL DECISION AND ORDER

1. The Board failed to properly refer and evaluate the Student in a timely manner after at least August 22, 2006 the date it had sufficient information to place it on notice that the Student had a suspected disability and therefore failed to discharge its child find responsibility under federal and state law.

2. The PPT had sufficient information on February 8, 2007 in order to determine whether the Student was eligible under the emotional disturbance category.

3. The Board should have offered the Student an IEP program and placement at the February 8, 2007 PPT that was appropriate to the identified needs and the concerns of the Parents.

4. The Board has denied the Student FAPE for the 2006-07 school year.

5. The Board is responsible for the costs of the Second Nature and Vista at Dimple Dell programs from the date the Board had received notice of the Student's placement.

6. The Board shall convene a PPT meeting within ten (10) days in order to develop an IEP for the Student that incorporates the concerns of the Parents, the recommendations of Dr. Marotta and the staff from the Vista at Dimple Dell program.

7. The Board has engaged in gross procedural violations through its failure to provide the Parents with their procedural safeguards prior to January 31, 2007; through its failure to refer the Student to a PPT in a timely manner based upon the information that the Parents had provided on and before August 22; and through its failure to provide the Student with FAPE at the February 8, 2007 PPT meeting. The Parents are entitled to an award of compensatory education. The Board shall reimburse the Parents' reasonable educational and therapeutic expenditures incurred after August 22, 2006 through the date of the Second Nature placement.