

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. New Fairfield Board of Education

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Appearing on behalf of the Board: Attorney Rebecca R. Santiago  
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Appearing before: Attorney Patricia M. Strong, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Board should have identified the Student as eligible for special education at any time during the 2007-2008 school year?
2. If so, whether the Parents are entitled to an award of compensatory education in the form of an additional year of placement at Villa Maria Education Center (“Villa Maria”) in Stamford as a remedy for the denial of a free appropriate public education (“FAPE”) during that school year?
3. Whether the Board should have identified the Student as eligible for special education for the 2008-2009 school year at the August 26, 2008 planning and placement team (“PPT”) meeting?
4. If so, are the Parents entitled to reimbursement for their unilateral placement of the Student at Villa Maria School in Stamford, including tuition and transportation expenses?
5. Whether the individualized education program (“IEP”) proposed by the PPT on June 22, 2009 for the 2009-2010 school year was appropriate?
6. If not, are the Parents entitled to reimbursement for their unilateral placement of the Student at Villa Maria, including tuition and transportation expenses?
7. Whether the Board violated the Parents’ procedural rights under the IDEA and, as a result, deprived the Student of a FAPE in one or more of the following respects:
  - a. By not scheduling a PPT meeting in October 2007 after the Parents first raised questions about the Student’s difficulties with homework?

- b. By not providing the Parents with a copy of the Procedural Safeguards in October 2007?
  - c. By not specifically informing the Parents of their right to request an independent educational evaluation in October 2007?
  - d. By not providing prior written notice of its refusal to conduct testing in 2007?
  - e. By not conducting appropriate evaluations of the Student in 2008 and 2009?
8. Whether the Parents are entitled to reimbursement for the evaluations by Meryl Aronin, speech/language pathologist, and Miriam Cherkes-Julkowski, Ph.D.?
  9. Whether the Parents are entitled to reimbursement for the costs of reading instruction at Sylvan Learning Center in 2008, speech/language therapy provided by Arlene Jacobs from May 2008 through August 2009 and an FM receiver purchased in September 2008 for the Student?

### **SUMMARY:**

The Student (also referred to as E.) is a 12 year-old student who attended elementary school in New Fairfield until September 2008 when the Parents unilaterally placed her at Villa Maria. At an initial PPT meeting on May 16, 2008, the Parents presented a psychological evaluation by Jeanne C. Dietrich, Ph.D., and a neurological report by Martin Kutscher, M.D. The PPT recommended conducting additional evaluations by Board staff. After reviewing the evaluations at the PPT meeting on August 26, 2008, the school-based team found the Student ineligible for special education services. The Parents disagreed and placed the Student at Villa Maria soon after. The Board agreed to pay for an independent speech language evaluation by Joan Jalbert in March 2009. At the PPT meeting on June 22, 2009, Ms. Jalbert's evaluation was reviewed and the Student was found eligible for special education services under the IDEA category of speech and language impairment. The PPT drafted an IEP, which the Parents rejected and placed the Student at Villa Maria for the 2009-2010 school year. The Parents requested evaluations from Dr. Cherkes-Julkowski in August 2009 and from Mr. Aronin in October 2009. On October 19, the Parents filed this due process complaint to establish that the Board has not provided a FAPE in the last three school years. The Board contends that the Student was not eligible for special education services for the 2007-2008 and 2008-2009 school years and that it offered the Student a FAPE for the 2009-2010 school year.

### **PROCEDURAL HISTORY:**

The Parents' attorney requested this hearing by faxing a letter to the State Department of Education (SDE) on October 16, 2009. Hearing Officer (HO) Exhibit 1. The Board received a copy on October 19, 2009. This Hearing Officer was assigned to the case on that date. The Parents' attorney filed an appearance on October 21, 2009. The Board's attorney filed an appearance on October 28, 2009. A prehearing conference was held on November 4, 2009. The attorneys reported that the parties agreed to mediation, but it had not yet been scheduled. The mailing date of the final decision was established as January 4, 2010. Hearing dates were agreed on for December 2, 4 and 10, 2009. On November 13, 2009, the Parents' attorney sent a letter requesting to add claims for reimbursement for the evaluations by Dr. Cherkes-Julkowski and Mr. Aronin to the hearing request. The SDE notified the Hearing Officer

that mediation was scheduled on November 24, 2009. On November 25, 2009, the Parents' attorney notified the Hearing Officer that mediation was not successful, that the Parents would proceed with the hearing on December 2, 2009 and that additional hearing dates would be needed. He also filed a motion for permission to take testimony by telephone of Dr. Cherkes-Julkowski who was located in Arizona. The Parents filed Exhibits P-1 through P-46 and their witness list. These exhibits included Exhibits P-19A and P-40A. The Board filed Exhibits B-1 through B-49 and its witness list. On December 1, 2009, the Board's attorney filed an objection to the motion for telephone testimony.

The hearing convened on December 2, 2009. The October 16, 2009 hearing request and the November 13, 2009 letter were entered into the record as Exhibits HO-1 and HO-2. The motion for telephonic testimony was withdrawn. The Board objected to Exhibits P-40 and P-42. They were marked for identification only. Exhibits P-1 through P-39, P-40A, P-41 and P-43 through P-46 were entered into the record as full exhibits. The Parents objected to Exhibits B-45 and B-46. They were marked for identification only. Exhibits B-1 through B-44 and B-47 through B-49 were entered into the record as full exhibits. The Parents offered new exhibits, P-47 and P-48, which were marked for identification only. The Parents' attorney requested that the objections to Parent exhibits be heard and that several reimbursement issues be added to the case. The Board objected and further requested that reimbursement issues in the complaint be removed because the Board had offered to pay for them. She also objected to any testimony from Dr. Cherkes-Julkowski or Mr. Aronin because of relevance and unfair prejudice to the Board. After hearing argument on these issues, the Hearing Officer ruled that the Parents would be permitted to present testimony from those witnesses and that Exhibits P-40 (Dr. Cherkes-Julkowski's report); P-47 (her curricula vitae) and P-42 (Mr. Aronin's report) would be admitted as full exhibits. Exhibit P-48 would remain identification only. The Parents were allowed to add reimbursement requests for the FM system for the costs of finding the Villa Maria placement. Costs relating to Villa Maria for the 2010-2011 school year were allowed only as to the compensatory education issue regarding the alleged denial of a FAPE for the 2007-2008 school year. The attorneys presented opening statements. Additional hearing dates were agreed on for January 14, 19, 21, 26 and 29, 2010. The mailing date for the final decision was extended to February 22, 2010. The Parents then presented direct testimony from the Mother for the remainder of the day.

The hearing continued on December 4, 2009. The Parents offered an amended version of Exhibit P-40, which contained the referenced, but omitted illustrations and Exhibit P-44A, which was marked for identification only. The Parents presented testimony from Dr. Cherkes-Julkowski. New Board Exhibits B-50 and B-51 were entered into evidence during her cross-examination. The hearing continued on December 10, 2009 with the completion of direct testimony and some cross-examination of the Mother. Her testimony was interrupted to hear testimony from Mr. Aronin.

On January 8, 2009, the Parents filed a supplemental witness list and a Motion for Permission to Take Testimony of Parent Witness by Telephone. The Board filed an objection to the motion on January 12, 2010. The hearing continued on January 14, 2010. The Parents offered additional Exhibits P-49 through P-51. Exhibit P-49 was admitted as a full exhibit. The Parents presented testimony from Donna Geffner, Ph.D. Following that, the Hearing Officer granted the Parents' request to add a witness—Eileen Cassidy, Educational Director at Villa Maria—and heard argument on the motion for telephonic testimony from Ms. Cassidy. The parties were advised that a written ruling would be issued the next day. Exhibits P-50 and P-51 were admitted into evidence over the Board's objection. The Mother completed her testimony and the Father testified on direct examination. On January 15, 2010, the

Hearing Officer denied the Parents' motion because Ms. Cassidy was in Stamford, which is less than 50 miles from the hearing location and if she would not voluntarily appear, the Parents could subpoena her. The Parents argument that they could not subpoena Ms. Cassidy because it would violate their contract with Villa Maria was rejected.

The hearing continued on January 19, 2010. The Parents' attorney filed a Motion for Reconsideration of the January 15, 2010 ruling. He attached a copy of the Villa Maria contract and also requested alternatively that the Hearing Officer order the witness' testimony be taken by videotaped deposition. The Board's attorney objected for the same reasons as her January 12, 2010 objection and because a videotaped deposition in Stamford would cause additional expense for Board staff and its attorney. A ruling was reserved until the Hearing Officer had an opportunity to review the papers. The Father continued his testimony. Following a recess for lunch, the Hearing Officer ruled that telephonic testimony was denied for the same reasons set forth in the January 15, 2010 ruling and that the videotaped deposition was denied based on the Board's objection to the expense. The Father's testimony was completed and the Parents rested their case. An additional hearing date was agreed on for March 5, 2010 and the mailing date for the final decision was extended to March 29, 2010. The Board began its case with direct testimony from Elizabeth Antonelli.

The hearing continued on January 21, 2010. The Parents offered Exhibit P-52, which was admitted into evidence. The Parents' attorney requested that Joan Jalbert bring "her entire file" to the hearing. The request was denied since her name had been on the Board's witness list since November 24, 2009 but he had not asked the Board to provide it until the day Ms. Jalbert was scheduled to testify. Mrs. Antonelli's testimony was completed. This was followed by testimony from Ms. Jalbert. The hearing continued on January 26, 2010 with testimony from Mary Joram. On January 28, 2010, the Parent's attorney filed a supplemental witness list seeking to add Dr. Geffner via telephonic testimony and, if that request was denied, to call Mr. Aronin as rebuttal witnesses. The Board filed an objection to telephonic testimony and to rebuttal testimony by either witness since they had both previously testified.

The hearing continued on January 29, 2010. The Parents offered Exhibits P-53 and P-53A, which were admitted into evidence without objection. The Board presented testimony from Barbara Longobardi. Following the lunch recess, argument was heard on the request to add rebuttal witnesses and the Board's objection. The Hearing Officer ruled that Dr. Geffner would be permitted to testify by telephone from New York if she had relevant testimony to offer in rebuttal to Ms. Joram's testimony regarding the Connecticut Guidelines for Speech and Language Programs. The Parents' attorney was given the opportunity to send a transcript of Ms. Joram's testimony to Dr. Geffner in order ascertain whether she could offer testimony within those parameters. The Board offered Exhibits B-52 and B-53. The Board withdrew Exhibit B-52 after the Parents' attorney raised objections to its admission. Exhibit B-53 was marked for identification and, if the Parents did not raise any objection within five days, it would be admitted as a full exhibit. The Board then presented direct testimony from Cynthia Ferguson. The Parents' attorney stated that Dr. Geffner was available at 10:00 a.m. on March 5, 2010 and that one of the Parents would offer brief rebuttal testimony.

On February 5, 2010, the Parents' attorney wrote to the Hearing Officer that the Parents did object to Exhibit B-53 and outlined the reasons. On February 8, the Board's attorney responded with reasons in support of admitting the exhibit. On February 19, 2010, the Parents' attorney advised the Hearing Officer by e-mail that Dr. Geffner would offer a rebuttal to Ms. Joram's testimony about how speech and language test scores should have been reported. On February 22, 2010, the Board's attorney

filed a written objection. On February 26, 2010, the Hearing Officer granted the requests for Dr. Geffner's rebuttal testimony by telephone and outlined the procedure to be followed.

The hearing continued on March 5, 2010. Ms. Ferguson completed her testimony. Exhibit B-53 was admitted as a full exhibit over the Parents' objection. Although the Board had another witness, the Parents were allowed over the Board's objection to present rebuttal testimony from Dr. Geffner by telephone at noon in order to accommodate her teaching schedule at St. John's University. The Parents reported that they had settled the issues regarding reimbursement for the evaluations by Drs. Dietrich, Kutscher, Geffner and Forman and transportation expenses. They withdrew Exhibits P-44 and P-44A. The Board presented testimony from Aimee Turner and rested its case. The Parents presented rebuttal testimony from the Mother and rested their case. The parties requested time to file briefs. The attorneys were asked to present the briefs in a format of proposed fact, conclusions of law and order, along with any separate legal argument they wished to make. Simultaneous briefs limited to 50 pages were due on April 5, 2010. Simultaneous reply briefs limited to 10 pages were due on April 12, 2010. The decision deadline was extended to May 6, 2010 by agreement of the parties.

The Hearing Officer sent the attorneys a letter on March 11, 2010 confirming these dates. The briefs were timely filed. On April 9, 2010, the Parents' attorney filed a motion to strike the Board's brief because it exceeded the page limit by including its proposed findings of fact and conclusions of law on several single-spaced pages. In the alternative, he asked for additional time to file a reply brief. The Board's attorney filed an objection because the Hearing Officer did not prohibit single-spaced pages. In the alternative, she requested the same additional time to file a reply brief. The motion to strike was denied and both parties were allowed until April 16 to file reply briefs. The mailing date for the final decision was extended to May 10, 2010. The reply briefs were timely filed, however the Parents' attorney filed two documents—a 10-page reply to the Board's proposed findings of fact, and a 16-page reply to the Board's legal arguments. On April 20, 2010, the Board's attorney filed a motion to strike the Parents' reply to the Board's legal arguments because it violated the Hearing Officer's order regarding page limits. In the alternative, she asked that the reply to the Board's proposed findings of fact be stricken and that every page after the first 10 be stricken from the reply to the Board's legal arguments. On April 21, 2010, the Parents' attorney filed an objection to the motion to strike and in the alternative requested permission to file a new reply brief limited to 10 pages. On April 27, 2010, the Hearing Officer granted the motion to strike in part. Since both parties had disregarded the page limits, the Plaintiff's attorney was allowed until May 3, 2010 to file a replacement reply brief in a single document not to exceed 13 pages. Both April 16 reply documents were stricken from the record. The mailing date for the final decision was extended to May 27, 2010.

On March 24, 2010, the Parents' attorney filed the Notary's statement regarding the March 5, 2010 testimony by Dr. Geffner. This document is entered into the record as Exhibit HO-3. On May 27, 2010, the Hearing Officer advised the parties that additional time until June 1 was needed to complete the decision.

The Findings of Fact incorporate various portions of the Parties' Proposed Findings of Fact. To the extent that the findings of fact are conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to their given labels. Bonnie Ann F. v. Callahen Independent School Board, 835 F.Supp. 340 (S.D. Tex. 1993). The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record. Id.

**FINDINGS OF FACT:**

1. The Student has a birth date of April 9, 1998, is 12 years old and has been attending Villa Maria since September 2008. Prior to that, she was enrolled in the Board's public schools. Testimony of Mother.
2. The Student was diagnosed with acute disseminated encephalomyelitis ("ADEM") on or about April 2002 at age four. Id.; and Exhibit P-1. An MRI in December 2002 showed considerable improvement. Exhibit P-2.
3. The Parents noticed that the Student was having difficulty with homework in the first grade. The Parents worked with E. at home to re-teach material "over and over." Testimony of Mother.
4. In the summer 2007, the Parents received the Student's scores on the Connecticut Mastery Test ("CMT"), which had been administered in March of her third-grade year. The Student scored at goal level in writing and at the proficient level in reading and mathematics. Exhibit P-5.
5. The Student's third grade report card shows that in the subjects that had letter grades, she received an A+ in spelling, A in physical education, and A- in reading/literature, process writing and mathematics. The teacher's comments were positive. Exhibit P-6.
6. In September 2007, E. began fourth grade. The Parents observed that difficulties with homework continued and became more prominent because there was more work. The Student struggled when presented with new material. Testimony of Mother.
7. The Parents were concerned about E.'s academic performance and contacted her fourth grade social studies teacher, Pamela Lionetti, in late September 2007; Id.; and Exhibit P-45 at 1-2; and her classroom teacher, Mrs. Antonelli, on October 5, 2007. Id.; and Exhibit P-45 at 3.
8. On October 11, 2009, the Parents met with Mrs. Antonelli and the special education teacher, Mrs. Longobardi. The Parents told them about the Student's medical history. The teachers said that her IQ was average to above average and not to be concerned. Testimony of Mother.
9. Mrs. Antonelli has been teaching fourth grade in New Fairfield since 2001. Since 2003, her classroom has been "inclusive," meaning that she works collaboratively with special educators to modify curriculum to meet IEP goals of students with various disabilities. She uses differentiated teaching strategies to meet the needs of diverse learning styles. Testimony of Mrs. Antonelli; and Exhibit B-43. She received a Bachelor of Science degree in inclusive elementary and special education, summa cum laude, from Syracuse University in 2001. In 2006, she received a Master of Science degree in reading education from Western Connecticut State University. Id. She is certified by the State of Connecticut in elementary education (K-6), comprehensive special education ((K-12) and integrated early childhood/special education (N-K, 1-3). Id.

10. Mrs. Longobardi is a special education teacher who collaborates with Mrs. Antonelli in the classroom, working with students daily in regular and special education. Testimony of Mrs. Antonelli.
11. Mrs. Longobardi received a Bachelor of Arts degree in speech pathology magna cum laude from Long Island University in 1978 and a Master of Arts degree in learning disabled/neurologically impaired from New York University in 1979. She is certified by the State of Connecticut in elementary education (K-6) and comprehensive special education (Pre-K-12). Testimony of Mrs. Longobardi; and Exhibit B-48.
12. She has been employed as a teacher in New Fairfield since 1985. From 1998-2005, she taught fourth grade as a regular education classroom teacher. Id. Since September 2005, she has been a special education teacher assigned to a team of six regular education teachers and two paraprofessionals. She is responsible for the IEPs of students in the team, team teaching, co-teaching, small group pull-outs, reading assessments and conducting evaluations. Id.
13. The team meets once or twice monthly and reviews all students on the team. If any need support, this is discussed. Id. Most of Mrs. Longobardi's time is spent in the regular education classroom. About 1.5 hours/day she is outside of the regular classroom. Id.
14. She is familiar with central auditory processing disorders and has worked with children with this condition. She is also familiar with the IDEA, including FAPE in the regular education environment and with the child find requirement to have a process for locating, finding and evaluating children for disabilities. Id.
15. New Fairfield uses the response to intervention ("RTI") model, which is a three-tiered system of regular education interventions to provide assistance to children who are struggling. A child study team ("CST") with the principal, classroom teacher, special education teacher, the parents and if needed, a reading or math consultant or curriculum consultant would review the student's work and brainstorm on things to try. Id.
16. In Mrs. Antonelli's class, Mrs. Longobardi taught spelling once/week and sometimes math. She also provided pull-out services for one student in the class. She also provides Writing Boot Camp, which is six weekly pull-out sessions of 45 minutes for up to 10 children who need help with time management and writing techniques in order to improve performance on writing prompts. In addition, she provides a Math Boot Camp. Id.
17. Mrs. Antonelli saw E. daily and found her to be a sweet, polite, friendly girl who got along with her peers, a typical fourth-grade girl. Mrs. Antonelli had frequent contacts with E.'s Parents, who were anxious, had high expectations and wanted perfection. Testimony of Mrs. Antonelli.
18. Mrs. Antonelli did some testing of all her students in September for reading and writing skills. On sight vocabulary, E. was reading at grade 4 independent and grade 5 instructional levels, in fluency she was at grade 4 instructional, on comprehension she was at grade 5 independent and grade 6 instructional. She scored 4 out of 8 on the

narrative writing prompts. Id.; and Exhibit B-40 at 42. Mrs. Antonelli referred E. to Mrs. Longobardi for Writers Boot Camp, which E. completed in November. Following that, E. scored 8 out of 12 on the narrative writing prompts, which is the CMT goal. Id.

19. In preparation for the November Parent/Teacher conferences, Mrs. Antonelli sent a form home to parents entitled “Keeping on Track.” The Parents wrote on their form that E. “absolutely loves writing boot camp & has become very excited about writing.” In response to the question: “As your child’s teacher, how can I better serve your child?” The Parents stated: “You are doing great. The extra support that you have given her in writing & social studies have helped! Thanks!” Exhibit B-2. The form was discussed at the conference, as well as grades for the first quarter. Testimony of Mrs. Antonelli. The Student had an A in social studies and art, A- in reading/literature, spelling and science, a B+ in math and a B in process writing. Exhibit B-28.
20. Mrs. Antonelli told the Parents that E. was succeeding in class. She was performing well on daily assignments done in class in math, reading and writing. Sometimes E. needed reminders to stay on task, extra time or rephrasing questions. Testimony of Mrs. Antonelli.
21. On November 29, the Mother wrote to Mrs. Antonelli regarding an assignment on Charlotte’s Web. The Mother was worried and asked if Mrs. Antonelli was also and if she thought E. needed testing in language arts. Id.; and Exhibit P-8. Mrs. Antonelli advised her that that assignment was done on a computer, which was the first time the class had done this. She told the Mother that she saw no need for testing at that time. Testimony of Mrs. Antonelli.
22. The Parents expressed no concerns in December or January, except some questions on science. Id.; and Exhibit P-45 at 4-5. The students had portfolios where they collected their work and reflected on their progress during the year. In January, E. reviewed her narrative writing prompts. Exhibit B-40 at 75. E. was proud of her work and improvement in that area. Id.; and Testimony of Mrs. Antonelli.
23. In an e-mail dated February 1, 2008, the Mother asked if she could meet with Ms. Antonelli to talk about what she described as a disconnect between how she thought that her daughter was doing and her report card reported she was doing. Exhibit P-45 at 8-9. The Mother indicated she needed to understand what was going wrong so that she could address it better at home. Id. Mrs. Antonelli replied on or about February 5, 2010 with a detailed explanation of how grades on report cards were computed and indicated that the scores the Student was getting in daily class work were lower than she received for the work done at home “because of the time constraints we have in school.” Id. at 7-8. The Parents were upset because E.’s grades were less than they expected—A- in science rather than A; A- in spelling rather than A or A+; and B- in math rather than A-. Id. at 8-9. After receiving Mrs. Antonelli’s e-mail, the Mother thanked her and said a meeting was not necessary. The Mother also indicated to Mrs. Antonelli in that e-mail that:

...it is important that you understand that one of the things that holds [the Student] back is her understanding of language. This is



one of the reasons that I am worried about her and spend hours working with her. I hope that the more that we interact, the more her understanding will improve. She often does not understand what is being asked verbally or in writing. She needs clarification. When she gets something wrong, she often gets it wrong because she either misunderstands the question or misunderstands the choices provided in a multiple choice test....Have you ever had a child with that kind of problem? Will it get better? Is there any kind of support she can be given here? It is holding her back in math, science and reading. Id. at 6-7.

24. Mrs. Antonelli responded on February 8 that she would ask Mrs. Longobardi what she thinks about [the Student's] reading and get back to the Mother. She also reported that E. had a great week in class and was participating more. Id. at 6.
25. The Parents had the Student tested at the Sylvan Learning Center ("Sylvan") on February 14, 2008. Exhibit P-9. Sylvan prepared a Summary of Diagnostic Assessment, which reported that the Student tested in the 5th percentile in reading comprehension on the Gray Oral Reading Test 3 (GORT-3) which equates to below grade equivalent of 1.9. The other GORT-3 scores in rate, accuracy and passage were average and above average. Her total reading quotient was below average (percentile 88). She was at the 4.5 grade equivalent in vocabulary (percentile 52) and 4.3 grade equivalent in comprehension (percentile 48) for a total grade equivalent of 4.5 (percentile 51) on the California Achievement Test. The document contains a note at the bottom of page 1, which states: "\*SLC administers standardized tests on an individual basis for placement within a Sylvan program. Results reported as grade equivalent are not expected to equal the classroom grade level." On the testing date, E. was 9 years, 10 months and her current grade was 4.5. Id. No one from Sylvan testified to explain the meaning of its diagnostic assessment.
26. The Student was tutored in reading at Sylvan from the beginning of March through July 2008 for four hours per week. Testimony of Mother.
27. The Parents sent an e-mail to Mrs. Antonelli dated February 27, 2008 stating that the Mother was spending a considerable amount of time each evening teaching math concepts to the Student. Exhibit P-45 at 10. The Parents indicated further that:

At this point, I am willing to accept support in any form you can provide, including special education services. At this point in time, telling me that there is nothing you can do for her is completely unacceptable. Please let me know where we stand so that I can pursue this further – with the administration – if necessary. Id. (Emphasis added).

28. Mrs. Antonelli forwarded the Parents' e-mail to the school Principal, Sarah McLain, questioning how she would like her to handle it. Id. at 12.
29. Mrs. Antonelli also forwarded the Parents' e-mail to Mrs. Longobardi, with the note: "Just thought you might want to see this. I'll let you know what comes of it." Id.
30. Mrs. Antonelli responded to the Parents with an explanation of the math instruction and upcoming test. She offered to retest the Student the following week. She also advised the Parents that she had notified Ms. McClain and Mrs. Longobardi about their concerns and that both could attend a conference. Id. at 18-19.
31. The Parents replied to Mrs. Antonelli on February 28 and stated that they would like to meet with school staff earlier than the scheduled conferences and that they believed that the Student continued to receive decent grades because of the extra work the Parents provided after school. Id. at 18. Mrs. Antonelli responded later that day and offered some possible times for a meeting. Id.
32. On March 4, 2008, a meeting was held with the Parents, Mrs. McLain, Mrs. Antonelli and Mrs. Longobardi. Exhibit B-6. The Parents brought a seven-page agenda with their concerns about the Student. Id. at 3-9. The Parents reported on E.'s medical history of ADEM and provided a copy of the Sylvan test results. Id. at 6-7. The school staff shared assessments, including class participation and classroom work, demonstrating that E. was performing "average or above average in all subject areas." Id. at 1.
33. The participants agreed to a 6 to 8 week plan where the Parents would limit the amount of time they were spending on homework to one and one-half hours daily and would send in any incomplete work or work she didn't understand for teachers to work with her on it. Id. at 2. This would allow the school to "potentially see the problems that [the Parents] were seeing at home." Testimony of Mrs. Antonelli and Mrs. Longobardi. School staff was not "seeing the types of concerns that the Parents had at that time." Testimony of Mrs. Antonelli. It was agreed that, if concerns arose before 6-8 weeks, E. would be referred to a PPT. Id. Aimee Turner, special education supervisor, would review E.'s progress. Exhibit B-6 at 2.
34. Mrs. Antonelli completed a Child Study Team form so that a CST meeting would be held in 6 -8 weeks. Exhibit B-8; and Testimony of Mrs. Antonelli.
35. Correspondence from the Parents continued in March. Exhibit P-45 at 21-27. On March 27, 2008, a Parent/Teacher conference was held at which time the Mother said that she could not continue to scale back the amount of time spent on homework. Testimony of Mrs. Antonelli. On April 1, the Father sent an e-mail to Mrs. Antonelli requesting a copy of "all of E[.]'s 2<sup>nd</sup> quarter grades." He attached an excel spreadsheet outlining the specific items he wanted. Exhibit P-45 at 28 and 30. Mrs. Antonelli responded on April 2 that she had provided an explanation of the 2<sup>nd</sup> quarter grades in a previous e-mail. Id. at 28. He replied on April 3 renewing his request. Id. at 29. Mrs. Antonelli requested that Mrs. McLain assist her in responding. Id.

36. On April 8, the Father sent an e-mail to Mrs. Antonelli requesting that she grade E.'s math test again by eliminating four answers that he said she supplied to E. Id. at 34. Mrs. McLain responded and asked to discuss his concern about grades on the telephone the following day. Id. at 32. The Father sent an angry response to her. Id. at 33.
37. On April 11, a meeting was held with the Parents, Mrs. McLain and Ms. Turner. Exhibit B-11. Mrs. McLain outlined the supports that had been put in place following the March 4 and 27 meetings. Id. At this meeting, the Parents requested a referral to PPT and evaluative testing. Id.; and Testimony of Ms. Turner. Ms. Turner described the types of testing that would be discussed at the PPT meeting and then could be conducted, if the PPT agreed it was appropriate. Testimony of Father and Ms. Turner. A PPT meeting was scheduled for April 17, 2008. Exhibit B-11. Mrs. McLain completed the form for referral to determine E.'s eligibility for special education and related services. Exhibit B-12.
38. Later in the afternoon on April 11, the Parents called Ms. Turner and requested that the PPT meeting be postponed because they had commissioned an outside evaluation that they wished to have completed prior to convening the PPT. Testimony of Ms. Turner. She did not send a written notice of a PPT meeting for April 17. Id. Mrs. McLain sent an April 11 e-mail to the Parents advising them that the PPT meeting would be scheduled on April 29. Exhibit B-12 at 3. A notice of the scheduling of the PPT meeting on April 29 at 2:00 p.m. was mailed to the Parents along with a copy of their procedural safeguards on April 18. Exhibit B-13.
39. On April 22, the Father requested that the April 29 PPT meeting be postponed for two weeks. He reported that E. had completed the neuropsychological testing, but that the doctor's formal report would take another two weeks. Exhibit B-14. The PPT meeting was rescheduled on May 16. Exhibit B-17 at 2.
40. The Parents retained Jeanne C. Dietrich, Ph.D. to conduct a psychological examination. She conducted a variety of tests in March and April 2008 and had conferences with the Parents on April 21 and May 5. Exhibit B-53. Dr. Dietrich did not review the Student's educational records, visit or speak with the school. Testimony of Mother. The testing showed that the Student's academic skills were actually above the level predicted by her IQ, which was in the upper end of average. Id. at 15. "Her weak scores in language processing would put her at a disadvantage in a school district in Fairfield County yet she might not meet criteria for learning disability requiring classification or placement in a special education program or group based on national standards." Id. Testing by Alan J. Strohmayer, Ph.D. on May 5, 2008, which was attached to Dr. Dietrich's report as Appendix C, found that E. did not qualify for a diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD"). Id. at 33.
41. Dr. Dietrich updated her report on May 30. Exhibit P-35. She repeated her conclusion that E. did not meet criteria for learning disability. Id. at 2. The Connors' Teacher Rating Scale, which is an assessment tool that prompts the teacher to provide information about a child's behavior in the classroom, was filled out by Mrs. Antonelli on May 8,

2008. Exhibit P-19A. The results were summarized and analyzed by Dr. Dietrich. Exhibit P-19. Dr. Dietrich's summary of the ADHD index indicates that the Student's score of 71 was markedly atypical, indicating a significant problem and at risk for ADHD. Id. at 3. Dr. Dietrich updated her report on June 6, 2008 to include the rating scales information. Exhibit P-18 at 24.
42. Martin Kutscher, M.D., PLLC, a Pediatric Behavioral Neurologist, treated the Student's acute disseminated encephalomyelitis in 2002 and prepared a report dated May 13, 2008. Exhibit P-21 at 3-5; and Testimony of Mother. He mentioned that Dr. Dietrich diagnosed the Student with receptive and expressive language processing difficulties. Exhibit P-21 at 4. The Parents reported that E. received 60's and 70's on her class work and was performing better on tests due to mom's spending 20-25 hours per week preparing her for each one. Id. In his neurological examination, he noted that she reads a fourth grade passage with good comprehension, that math facts were deficient, that her attention span was adequate and that recent and remote memory was intact as appropriate for her age. Id. He recommended additional formal Central Auditory Processing ("CAPD") testing. Id. at 5. He did not make any comments regarding E.'s eligibility for special education, nor did he review any school records. He ended his report with the following: "I do not think any other medical tests are required. We will see her back at the latest at the end of September with reports from her teachers." Id. Dr. Kutscher's report was sent to Ms. Turner with a cover letter from the Parents also dated May 13, 2008. Id. at 1-2. Dr. Kutscher's report was reviewed at the PPT meeting on May 16, 2008. Exhibit B-17 at 3.
43. Standardized assessments given to E. at school in the winter and the spring of her fourth grade year indicated that she continued to perform at or above grade level. Exhibit B-40 at 42; and Testimony of Mrs. Antonelli. Grades received for class work done independently without preparation or assistance from her Parents were A's and B's, which indicated that she was meeting grade level expectations. Exhibit B-9; and Testimony of Mrs. Antonelli. CMT scores from March 2008 showed the Student was at goal in mathematics and writing and at proficient level in reading. Exhibit B-5; and Testimony of Mrs. Longobardi. The Student took the CMTs without accommodations or modifications and within the time allotted. Testimony of Mrs. Antonelli. The Student's score in reading doesn't mean she wasn't at grade level. Id. She had a Degrees of Reading Power (DRP) score of 60, which indicates she was reading at grade level. Id.; and Exhibits B-5 at 2 and B-51 at 34. By the end of fourth grade, they like to see DRP scores of 55 or higher. Testimony of Mrs. Antonelli.
44. On May 16, 2008 a PPT meeting was convened with Ms. Turner, the Parents, Mrs. Lionetti, Mrs. Longobardi, Cynthia Ferguson, school psychologist, Mary Joram, school speech/language pathologist, and Mrs. McClain. Exhibit B-17 at 2. The Parents shared medical information from Dr. Kutscher and the original evaluation by Dr. Dietrich. Id. at 3; Exhibit B-53; and Testimony of Ms. Ferguson. The PPT also reviewed reports from the school nurse and E.'s teachers, as well as a report from Sylvan dated May 12. Exhibit B-17 at 6-18. In May prior to the PPT meeting, Mrs. Antonelli went on maternity leave and Mary Emerich took over her class. Testimony of Mrs. Antonelli. She did, however, complete a teacher report for the PPT meeting. Exhibit B-17 at 13-14. Mrs. Antonelli

noted that E. had problems at times in math with application of principle and word problems. She was attentive with reminders. Mrs. Antonelli used management techniques, which included changing her seat, offering extra help, changing group placement, using positive/negative reinforcement, redirecting the Student's activities and meeting with Parents. She used the additional strategies of clarifying directions, asking E. to restate process and reminders to focus on task as needed. Id.

45. The PPT recommended conducting evaluations by the speech/language pathologist, school psychologist and special education teacher to assess E.'s receptive/expressive language, fluency, following directions and processing. Id. at 1 and 3; and Testimony of Ms. Joram. The PPT members discussed the types of testing that would be conducted by each evaluator. Testimony of Ms. Ferguson and Ms. Joram. At this meeting, the Parents were accompanied by E.'s aunt, who is a special education teacher. Testimony of Father. She was present during the discussion concerning testing. Id.; and Testimony of Ms. Ferguson. The Parents signed a consent form at the PPT meeting for these evaluations. Exhibit B-17 at 1. A regular education intervention plan, which incorporated many of Dr. Dietrich's recommendations was reviewed and put in place at the PPT meeting. Id. at 5; and Testimony of Mrs. Longobardi. Mrs. Longobardi worked on developing the plan and was responsible for the cuing system. She notified all of E.'s teachers of the plan and began a log of notes on her interactions with E. Exhibits B-19 and B-20; and Testimony of Mrs. Longobardi.
46. The Mother prepared a homework log at the suggestion of school staff to document the difficulties the Student was having with homework and the amount of time the family was working with her on homework. Exhibit P-25; and Testimony of Mother. This log, for the period from May 17 through June 1, was sent to Mrs. Longobardi. Id. at 1-3; and Exhibit B-20.
47. In June, the Parents retained Donna Geffner, Ph.D., CCC-SP/A, a speech pathologist and audiologist who is licensed to practice in New York, to conduct an "Auditory and Language Processing Evaluation." Exhibit B-22; and Testimony of Mother. In order to conduct her evaluation, Dr. Geffner obtained information from the Parents and Dr. Kutscher. Exhibit B-22 at 1; and Testimony of Dr. Geffner. She did not review the student's report card or the regular education plan that was in place. She did not conduct an observation of E. in the classroom or speak to anyone in the New Fairfield Public Schools. She only saw "one or two" work samples that were provided to her by the Parents. Testimony of Dr. Geffner. Dr. Geffner concluded, based on her evaluation, that the Student had an auditory processing disorder, a receptive language and a language processing disorder in the areas of short-term memory, following directions, sequencing, understanding semantic relationships and auditory comprehension. Exhibit B-22 at 6-7. Dr. Geffner recommended that the Student be classified as Speech and Language Impaired under IDEA due to auditory processing and receptive and expressive language deficits. Id. at 7. She indicated that the Student's disabilities must be remediated through a special education program. Testimony of Dr. Geffner. She found that E. needed classroom and testing accommodations and speech-language therapy direct treatment two

times/week in school and privately. Id.; and Exhibit B-22 at 8. She suggested a personal FM system, placement in the Lindamood Bell Reading Program for the summer, use of the Earobics computer program home version, and a visual tracking and ocular motor evaluation. She also recommended monitoring attention in the classroom and, if it became an issue, to consider pharmacological intervention. Exhibit B-22 at 8.

48. The Student's Report Card for the 2007-2008 school year indicated that the Student was receiving A's and B's in all subjects. Exhibit B-28. The Report Card did not reflect the difficulties the Parents were having at home with the Student. Testimony of Mother.
49. Fran Sunter, special education teacher in the school district, performed a special education evaluation of the Student on June 17, 2008. Exhibit B-23. The testing was limited to the areas determined by the May 16 PPT and based on the concerns of the Parents. Id. The Student was given four subtests from the Woodcock Johnson III (WJ-III) Tests of Achievement (Form B). These included the three fluency tests in math, reading and writing and understanding directions test. Id. The Student scored 96 on reading fluency (average range), 89 (top of the low average range) on understanding directions, 83 (low average range) on math fluency and 108 (top of the average range) on writing fluency. Id.
50. Mary Joram, MS CCC/Speech and Language Pathologist for the school district, conducted an evaluation in July of the Student's receptive and expressive language at the request of the PPT. Exhibit B-24. She is responsible for grades three through five, including assessments after a PPT determines the need for an evaluation, deciding what tests are appropriate and administering them, writing reports, presenting reports to PPTs, speaking with parents, administrators, developing IEP goals and implementing therapy. Testimony of Ms. Joram. Id.; and Exhibit B-24. The tests given by Ms. Joram were standardized tests that measure her receptive and expressive language abilities as compared to a typical fourth grader of E.'s age. Testimony of Ms. Joram. E. scored in the high average to moderately high range (111) on the receptive vocabulary test (Peabody Picture Vocabulary Test-4 A). On the spoken vocabulary test (Expressive One Word Picture Vocabulary—2000), she also scored in the high average to moderately high range (111). Id.; and Exhibit B-24 at 2. On the Language Processing Test, which is a test that examines a student's ability to "attach meaning to information that's presented verbally and the student's ability to formulate a response", E. scored in the average range on all six subtests and received a total score of 102, also in the average range. Id.; and Exhibit B-24 at 3.
51. On the Clinical Evaluations of Language Fundamentals IV (CELF IV), which tests overall language abilities, including the understanding of language (receptive skills) and the ability to express oneself (expressive skills), E's core language or index scores were all in the average range. In order to calculate the core language score and the index score, Ms. Joram included the three subtest scores that were obtained by Dr. Geffner. Dr. Geffner administered only certain subtests of the CELF IV, but did not give the entire test. Ms. Joram administered five subtests not done by Dr. Geffner. On those subtests, E. scored in the average range on four and above average range on one (Word Definitions).

Since Dr. Geffner's assessment had been completed recently, it was appropriate to utilize her scores rather than re-administering those subtests. Id.; and Exhibit B-24 at 4-5. On the HELP, which tests general language skills across six areas of semantic and syntactical skills in the context of school related language, all her scores were in normal limits as was her total score. Id.; and Exhibit B-24 at 5. On the Test of Language Development, which tests oral language skills in the areas of speaking, listening, semantic language and syntax, her subtest and composite scores were all in the average range. Id.; and Exhibit B-24 at 6. This test was given in response to concerns raised by Dr. Geffner and Dr. Dietrich that auditory skills and listening comprehension were areas of weakness. Testimony of Ms. Joram.

52. Ms. Joram concluded that, based on the assessments she had given, E.'s receptive and expressive language skills were in the average to above average range. Ms. Joram noted that some language processing skills were weaker when compared to her overall skills in the average to high average range. Her weaker areas of performance, which occurred in the subtests given by Dr. Geffner for which Dr. Geffner recommended remediation, are typically addressed by classroom management accommodations to enhance listening opportunities such as preferential seating, reducing classroom noise, or the provision of an assistive listening device. Id.; and Exhibit B-24 at 6-7. These strategies, also suggested by the test developers, were in place for E. in the regular education plan. Id.; and Exhibit B-18.
53. Cynthia Ferguson, school psychologist for the district, conducted a cognitive evaluation of the Student in June and July 2008. Exhibit B-25. Ms. Ferguson conducted testing (WJ-III Psycho-Educational Battery) and made two observations of the Student in her classroom. Id. at 2. Ms. Ferguson is the school district's head psychologist and the psychologist assigned to the school that E. attended. Testimony of Ms. Ferguson. Ms. Ferguson also reviewed E.'s educational records, met with her to conduct a clinical interview and met with her Mother to obtain background information and parental concerns. Id.; and Exhibit 25.
54. Prior to the testing sessions, Ms. Ferguson observed E. twice in the mainstream classroom. She observed a sustained silent reading period where students were expected to select a book and read quietly at their desks. During the 30-minute block, she was off-task about 10 times for varying lengths of time. Exhibit B-25 at 2. She was easily distracted, somewhat inattentive and restless. During the second observation, the class was involved in a math lesson, then led into small groups, selecting and playing a math game relevant to the skills being reviewed that week. E. appeared attentive to the teacher's directions and appeared motivated to select a favored game. Her group, however, was the last to get organized and start playing. Two of the four girls left the group as they wished to begin, leaving E. and the other girl. E. and her partner needed teacher prompting to begin and several prompts to continue. E. was distracted with objects on her desk and disregarded two adult prompts to put the items away. She put her head down on the desk several times. During the 45-minute period, she was actively involved in the math game for about 15 minutes. Id. at 2. The math game was

approximately 25 minutes. Testimony of Ms. Ferguson. The teacher, Ms. Emerich, reported that E.'s behavior was not typical. She was uniquely distracted because she had been absent the day prior and was playing with a goody bag of toys that had been left on her desk from a program that occurred while she was absent. Id. The observations were done in June at the end of the school year when there is general restlessness with most students, but E. was more so to a marked degree. Id.

55. E. was tested during three sessions after school adjourned for the summer. She received a General Intellectual Ability score of 95, which is in the average range for children her age. She received standard scores ranging from low to superior with all subtest scores except two falling within the low average to high average range. Exhibit B-25 at 3. The clinical cluster of Phonemic Awareness (121 superior range) was a significant strength. Id. On the Auditory Processing cluster (114 high average), "in addition to well-developed sound blending skills, she was able to accurately identify words presented orally against an increasingly loud background much as you would find in a large classroom or cafeteria." Id. Three areas of concern were Cognitive Efficiency cluster (83 low average range), Cognitive Fluency cluster (76 low range) and Processing Speed cluster (77 low range). Id. at 3-4. Ms. Ferguson made several recommendations: 1) in-class supports through regular education channels; 2) a behavior management system to help E. learn to self-monitor attention to task and her successes within the school day, participation in a small group program for children with similar weaknesses; 3) compensatory strategies for weaknesses in processing when under time constraints, such as several she listed; 4) meet with E. to discuss her testing results; 5) monthly meetings with Parents and school personnel to monitor progress and review modifications to her program to encourage cooperation; 6) determine whether E. needs to wear her glasses at school; and 7) if private tutoring is continued, limit to one-hour sessions to reduce E.'s fatigue. Id. at 4-5; and Testimony of Ms. Ferguson.
56. A Neuro-ophthalmic consultation was requested by the Parents and conducted by Scott Forman, M.D. on July 17, 2008. In his evaluation dated July 21, Dr. Forman found no deficiencies in visual tracking and ocular motor skills. Exhibit P-31. It was paid for by the Parents. Testimony of Father.
57. On July 15, a notice of a PPT meeting for July 29 was sent to the Parents. Exhibit B-31. On August 8, another notice was sent rescheduling the PPT meeting to August 26, 2008. Exhibit B-32 at 1. Attending were the Parents accompanied by an attorney, Ms. Turner, Mrs. Longobardi, Ms. Ferguson, Ms. Joram, Mrs. McLain, Roberta Linkletter (regular education teacher) and the Board's attorney. The purpose of the meeting was to update the Student's progress since the May PPT meeting, review evaluations and determine eligibility. Id. at 3. Mrs. Longobardi outlined the Student's progress at the end of the school year including portfolio data, math, reading and writing assessments. The PPT reviewed the evaluations by Board staff: Ms. Joram, Ms. Ferguson and Ms. Sunter, the evaluations obtained by the Parents from Dr. Geffner, and Dr. Forman and letters from Dr. Geffner and Dr. Kutscher. Ms. Joram disagreed with the findings in Dr. Geffner's report and Dr. Geffner, as stated in her August 15 letter, disagreed with Ms. Joram's



evaluation. Dr. Kutscher did not think medication should be a first choice to address the Student's inattentiveness given her complex neurologic medical history and recommended the use of the FM system. The PPT then completed the speech/language checklist to determine eligibility using norm-based evaluations as data. Id. at 4. The school-based team determined, using the checklist, that the Student did not qualify for speech/language services. Id.; and Exhibit B-33. The Parents disagreed with the PPT's decisions on the checklist and although they did not have evidence based on the evaluations, said that their experiences at home reflect the need for services. Exhibit B-32 at 4. The Parents' attorney requested placement in a private school at district expense. Ms. Turner stated that the regular education plan would continue after the school year began and that a Child Study Meeting would be scheduled to review accommodations to support E. The school would provide the FM system as a regular education intervention. The Parents' attorney stated that they intended to place the Student in a private school and seek reimbursement. Id.

58. The Student was placed in the Villa Maria School following the August 26, 2008 PPT meeting and attended fifth grade there during the 2008-2009 school year. Testimony of Mother. Villa Maria is a State-approved special education school. Id. The Parents believe that the Villa Maria program was appropriate to the Student's educational needs in that the classes have only four students, she was happy in the school, she could study independently, and she made progress. Id.; and Testimony of Father.
59. The Parents requested an independent speech/language evaluation in March 2009. Testimony of Father. In May 2009, the Parents and the Board agreed to have an independent speech language evaluation by Joan Jalbert, CCC/SLP, conducted at Board expense. Testimony of Mother. Following that a PPT meeting that would be held to discuss E.'s sixth grade educational program and to review eligibility for special education and related services. Id.
60. Ms. Jalbert was first contacted by the Father, who said the Board had agreed to have her sent to Ms. Turner on June 5, 2009. A copy was sent to the Parents. Exhibit P-37; and Testimony of Father. The Parents agreed with Ms. Jalbert's assessment. Testimony of Mother. Ms. Jalbert reviewed the prior psychoeducational, speech and language and auditory evaluations and tested E. in two sessions on May 15 and 21, 2009. Exhibit P-37 at 2. The first session lasted about two hours and was done at her office; the second session occurred at Villa Maria. As part of the evaluation, Ms. Jalbert spoke to E., the Parents, some staff at Villa Maria and some staff from the Board. Testimony of Ms. Jalbert. Ms. Jalbert's evaluation focused on E.'s higher level language skills. Her basic language skills are solidly within the average range, as shown by [Ms. Sunter's] July 2008 evaluation. Ms. Jalbert found that at the end of fifth grade, E. was in the below average range for higher-level tasks in receptive and expressive language skills. Id.; and Exhibit P-37 at 6-8. "Higher level language is language that has more abstraction, or is more complex. . . it's inferential reasoning. It's critical thinking, idiomatic language." Testimony of Ms. Jalbert. Higher level language becomes more a part of the curriculum in the upper grades that E. was about to enter. Id. Ms. Jalbert made a number of

recommendations for E. to have strategies and direct instruction in higher-level language on a daily basis in a variety of settings across the school day. Exhibit P-37 at 8-9.

61. On June 22, 2009, a PPT meeting was held to review her evaluation and determine eligibility for special education. Exhibit B-38 at 2. Those in attendance were: the Parents, their attorney, Ms. Turner, Mrs. Antonelli, Ms. Sunter, Ms. Ferguson, Ms. Joram and the Board's attorney. Id. The PPT reviewed Ms. Jalbert's evaluation and the reports from Villa Maria regarding E.'s progress and the goals that were implemented there during fifth grade. Id. at 3; Exhibit B-37; and Testimony of Ms. Joram. Included in the materials from Villa Maria was information stating that she had mastered goals in pragmatic and social language and that her social skills were age appropriate. Exhibit B-37; and Testimony of Ms. Joram. After discussion, the PPT determined that E. was eligible for special education and related services as speech language impaired due to her weaknesses in the area of higher level language. Exhibit B-38 at 3, 21-22; and Testimony of Ms. Joram. The Parents signed the consent form for initial placement in special education on July 4, 2009. Exhibit B-38 at 1.
62. The PPT recommended 45 minutes per week of direct speech/language instruction by a speech/language therapist in a resource/related service room, a monthly consult for one hour on a quarterly basis by the speech pathologist with E.'s teachers and a directed study period where E. would have extra help on a daily basis from a regular education and a special education teacher. Id. at 3 and 16; and Testimony of Ms. Joram. The sixth grade curriculum addresses higher language skills (sarcasm, idioms, inferential thinking). E.'s needs could be met by modifications in the regular education classroom. Exhibit 38 at 3. The PPT developed IEP goals and objectives in inferencing, problem solving and critical thinking, sequencing, and oral recall. Id. at 10-12; and Testimony of Ms. Joram. The PPT also determined accommodations and modifications to enable E. to achieve the goals and objectives and to make progress in the general education curriculum with non-disabled peers. Exhibit B-38 at 13. The PPT recommended that E. attend the district's middle school for sixth grade. Id. at 3 and 6; and Testimony of Ms. Joram. The Parents disagreed and requested placement at Villa Maria. Id.
63. The goals and objectives in the June 22, 2009 IEP were appropriate to meet E.'s individualized needs and consistent with the recommendations in Ms. Jalbert's evaluation report. The IEP has appropriate accommodations and modifications and the appropriate amount of direct instruction. Testimony of Ms. Jalbert. E. should be in the public middle school because she was functioning at grade level and making progress and therefore should not be removed from her neighborhood school and segregated in a facility that serves only students who are struggling in public schools. Exhibit B-38; and Testimony of Mrs. Antonelli, Ms. Joram, Ms. Ferguson, Mrs. Longobardi and Ms. Turner.
64. E. attended Villa Maria in sixth grade for the 2009-2010 school year through a unilateral placement by her Parents. Testimony of Ms. Joram.
65. Ms. Jalbert is qualified as an expert in the areas of (1) speech pathology, (2) drafting speech and language goals and objectives, (3) the eligibility requirements for the speech

language impairment category of eligibility under the IDEA and (4) in speech pathology assessment. Exhibit B-44; and Testimony of Ms. Jalbert. She has certifications from the American Speech Hearing Association (“ASHA”), the Connecticut Departments of Education and Public Health. Id. She worked as a speech pathologist in the New Canaan Public Schools from 1995 through 2007 and since then as a consultant to public schools and Parents in Connecticut. Id.

66. Ms. Joram has certifications from ASHA and the Connecticut Departments of Education and Health. Exhibit B-47; and Testimony of Ms. Joram. She has been employed as a speech and language pathologist by the New Fairfield Public Schools since 1982. Id. She has had professional training during that time to maintain her national and state certifications. Testimony of Ms. Joram. She currently has 10-12 students on her caseload with central auditory processing disorders. Id.
67. Ms. Turner has a Bachelor of Science and Master’s of Science degrees in special education, as well as a 6<sup>th</sup> Year Certificate Advanced Degree in administration. She has professional certifications from the State of Connecticut as an administrator, special education teacher (K-12) and elementary education teacher (K-6). She has been the Director of Elementary Pupil and Personnel Services for the Board since June 2008 and the Elementary Special Education Supervisor from August 2007 through June 2008. Exhibit B-41; and Testimony of Ms. Turner. Prior to that, she was a special education teacher, extended school year coordinator and least restrictive environment coordinator from August 2001 through June 2007 for the Region 15 Public Schools in Middlebury. She was a special education teacher for Waterbury Public Schools from August 1999 through August 2001 and for Devereux Glenholme School, a private special education school in Washington, CT, from May 1997 through August 1999. Id. She is responsible for training and overseeing special education teachers and special services personnel for Pre-K – 8, collaborating with building principals, the Director of Special Education and the Director of Secondary Pupil and Personnel Services. Testimony of Ms. Turner. She frequently attends PPT meetings, including all transition from grade 5 to grade 6 PPT meetings, and meets weekly with building principals to discuss problem students. Id.
68. Ms. Ferguson has been employed as a school psychologist by the New Fairfield Public Schools since 1985. For the last eight or nine years, she has been the Head Psychologist for the district. Testimony of Ms. Ferguson. She has professional certifications from the National Association of School Psychologists and the State of Connecticut as a school psychologist. She has bachelor and master’s degrees in psychology. Id.; and Exhibit B-49. She performs psychological and educational evaluations, drafts goals and formulates IEPs, attends and chairs PPT meetings, does group and individual counseling and is a member of the District RTI (response to intervention) Taskforce, which looks at all students’ scores and forms small groups for intervention pre- and post-testing. Testimony of Ms. Ferguson. Since the 2008-2009 school year, the State requires RTI. Id.

69. The Parents requested an independent educational evaluation from Miriam Cherkes-Julkowski, Ph.D. in August 2009. Exhibit P-40. Based on her qualifications, experience and publications, Dr. Cherkes-Julkowski is an expert in the area of language-based disabilities. Testimony of Dr. Cherkes-Julkowski; and Exhibit P-47. The Parents also requested an independent educational evaluation from Meryl Aronin, M.A., CCC-SLP, in October 2009. Exhibit P-42. Neither evaluation was presented for review by a PPT meeting, although the Board did send a PPT notice. Testimony of Mother; and Exhibit B-45. Dr. Cherkes-Julkowski reviewed E.'s June 2008 evaluation by Ms. Ferguson, Dr. Dietrich's March 2008 evaluation, Dr. Geffner's June 2008 evaluation, Ms. Jalbert's June 2009 evaluation, Villa Maria's IEP dated October 2, 2009 and spoke with the staff at Villa Maria for three quarters of an hour to an hour. She administered several standardized tests and tasks including reading a page from a 6<sup>th</sup> grade level textbook. Exhibit P-40 at 5. Based on this data, she concluded that the Student was eligible for special education because of auditory and language processing disorders and a learning disability. Id. at 21. She also concluded that the Board should have found the Student eligible in the fall of 2007 based on E.'s 3<sup>rd</sup> grade CMT score in reading at proficiency level, rather than goal level. Id. at 3. She also concluded that the Villa Maria program was appropriate. Testimony of Dr. Cherkes-Julkowski.
70. Mr. Aronin has a Masters in Speech Language Pathology, a sixth-year degree in administration and supervision, a Certificate of Clinical Competence from ASHA, and is licensed in Connecticut in Speech/Language Pathology. He had five years of experience in public schools, followed by 30 years of experience in private schools. Testimony of Mr. Aronin. Mr. Aronin is an expert in the area of speech/language pathology and auditory listening comprehension. Id. He spent three to three and one-half hours with the Student interviewing and testing her, reviewed her records and wrote a report. Id.; and Exhibit P-42. He concluded that E. has an auditory/language processing disorder, which interferes with her learning. His findings confirmed previous evaluators in that regard. Id. E. should have been found eligible for special education at the August 26, 2008 PPT meeting. Id. The June 2009 IEP was not adequate because it did not include six additional areas in his report's recommendations. Id. He agreed that Villa Maria was appropriate for E. Testimony of Mr. Aronin.
71. The Parents purchased an FM system for the Student in September 2008 at a cost of \$775, but the Board has refused reimbursement for it. Testimony of Mother. The Parents are asking for reimbursement for the Villa Maria tuition, the expenses related to applying for admission and the expenses related to transporting the Student to Villa Maria during the application process and school year. Id. They are also requesting reimbursement for the evaluations by Dr. Cherkes-Julkowski and Mr. Aronin. Id. The requests for reimbursement for the evaluations by Dr. Dietrich, Dr. Kutscher, Dr. Geffner and Dr. Forman and for transportation expenses were settled on the last hearing date. The Parents withdrew Exhibits P-44 and P-44A, which outlined their expenses.

## CONCLUSIONS OF LAW

1. The Parents argue that the Student should have been identified as eligible for special education in October 2007 and that because she was not identified until June 2009, the Board has violated federal law. Congress enacted the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et. seq. (“IDEA”) “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs ...[and] to ensure that the rights of children with disabilities and parents of children and parents of such children are protected.” 20 U.S.C. § 1400(d)(1)(A) & (B); see also, Forest Grove Sch. Dist. v. T.A., \_\_\_ U.S. \_\_\_, 129 S.Ct. 2484, 2491-2492 (2009) (discussing the purposes of the IDEA); Winkelman v. Parma City School Dist., 550 U.S. 516, 523 (2007). States receiving federal funding under the IDEA are required to make a free appropriate public education (“FAPE”) available to all children with disabilities residing in the state. 20 U.S.C. § 1412(a)(1)(A). To this end, IDEA requires that public schools create for each student covered by the Act an individualized education program (“IEP”) for the student’s education at least annually. 20 U.S.C. § 1414(d)(2)(A).

2. Under IDEA all public education agencies are also required to satisfy their “Child Find” obligation through policies and procedures that ensure that:

All children with disabilities residing in the State, including children who are homeless or wards of the state and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located and evaluated and a practical method is developed and implemented to determine which children are currently receiving needed special education and related services. 20 U.S.C. § 1412(a)(3)(A). The Child Find duty extends to all children suspected of having a disability under § 34 C.F.R. 300.8 and in need of special education even though they are advancing from grade to grade. 34 C.F.R. § 300.111(c)(1). The duty is triggered when the local education agency has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. New Paltz Central Sch. Dist. v. St. Pierre, 307 Supp. 2d 394, 400 (N.D.N.Y. 2004). The Board has proven by a preponderance of evidence that it had no reason to suspect that the Student had a disability in October 2007. The Mother notified the classroom teacher that the Student was having difficulties with homework. The Student was receiving A’s and B’s on her report cards and the teacher saw no problem in class. The teacher met with her and had the special education teacher attend the meeting. She offered supports to the Student, which were done with any student in the class. The supports were effective for the Student. In November 2007, the issue raised by the Mother regarding a specific assignment was explained by the teacher, who also offered to meet with her. The Mother thanked the teacher for her help and declined a meeting.

The first communication from the Parents regarding special education was on February 27, 2008, when the Mother complained about the time spent helping the Student with math homework and asked for any help including special education. The teacher promptly referred the note to the school principal. Within a week, a meeting was held on March 4 with the Parents, school principal and both teachers. They agreed to a six to eight week period to explore the Student's performance with reduced assistance at home. In April, when the Parents expressed dissatisfaction with the classroom supports, another meeting was promptly held on April 11 and the Parents were offered a PPT meeting on April 17, which was postponed until May at their request. Throughout this period from October 2007 to May 2008, the Student continued to receive A's and B's and to perform grade level work in class and on standardized testing.

3. The Parents argue that the Board unreasonably delayed the evaluation and identification of the Student as eligible for special education. Conn. State Regs., § 10-76d-7 provides in relevant part: "Before a child is referred to a planning and placement team, alternative procedures and programs in regular education shall be explored and, where appropriate, implemented." Section 10-76d-6 provides in relevant part: "Determination of a child's eligibility to receive special education and related services shall be based on documented evidence, as required by these regulations, that the child requires special education." The Board had no documented evidence of the Student's eligibility for special education, but a referral to a PPT was made as soon as the Parents requested it in April 2008. When a child is identified as potentially requiring special education services, the LEA has a duty to complete the evaluation process and failure to complete the process constitutes a denial of a FAPE. 20 U.S.C. § 1414(b)(2)(A)(i); see, *N.G. v. Dist. of Columbia*, 556 F. Supp.2d 11, 16 (D.D.C. 2008). The LEA must evaluate the student within 60 days of receiving parental consent, or if the State establishes a timeframe, the evaluation must be done within that timeframe. 34 C.F.R. § 300.301(c)(1). The State regulations allow 45 school days to complete the process, exclusive of the time required for parental consent. Sections 10-76a and 10-76d-13. The PPT convened on May 16, 2008, reviewed the evaluations presented by the Parents, determined what further evaluations were necessary and obtained parental consent for them on that date. The Board completed the evaluations and convened a PPT to determine eligibility on August 26, 2008, well within the 45 school days allowed. There was no unreasonable delay in evaluating and determining eligibility of the Student after the Parent requested in April, and therefore, no denial of FAPE as to the 2007-2008 school year.

4. The Parents claim that the Board denied FAPE by not informing the Parents of their rights under IDEA, specifically the right under IDEA that "a parent of a child .... may initiate a request for an initial evaluation to determine if the child is a child with a disability." 34 C.F.R. § 300.301(b). See 20 U.S.C. § 1414(a)(1)(B). Parents assert that at the meetings on November 20, 2007, March 4 and April 11, 2008, the Board was obligated to inform them that they had a right to request an independent educational evaluation and that they were not informed until the May 16, 2008 meeting. They also claim that the Board violated IDEA by not providing prior written notice after each of these meetings of its refusal to provide testing and their right to request an evaluation when the Board refused testing. Only the May 16, 2008 meeting was a PPT meeting

and prior written notice was provided for the proposed action of conducting an initial evaluation. The November 20 meeting apparently refers to the Parent-Teacher conference that Mrs. Antonelli held with all her students' parents. The credible evidence in this record is that the Parents were provided with a copy of their Procedural Safeguards on April 18, enclosed with the notice of a PPT meeting for April 29. They had been offered a PPT meeting on April 17, but they requested delays to obtain private evaluations. The Parents have not cited any case law in support of the idea that every meeting between a teacher and parents to discuss concerns about their child should trigger IDEA requirements particularly where, as here, the child is in regular education and performing at grade level in class and on standardized tests. A.P. v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221, 229 (D. Conn. 2008). There was no procedural violation of IDEA in not providing procedural safeguards or a prior written notice following the November, March and April meetings. The "IDEA is not an absolute liability statute, and the 'Child Find' provision does not ensure that every child with a disability will be found." Id. at 225. Therefore, a parent bringing a child find claim "must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate." Bd. of Educ. v. L.M., 478 F.3d 307, 313 (6th Cir. 2007) (quotation marks omitted).

5. The Parents claim that the Board failed to prove that it properly determined the Student's eligibility for special education for the 2008-2009 school year. The IDEA demands that either the state or a local educational agency "shall conduct a full and individual initial evaluation .... before the initial provision of special education and related services to a child with a disability under this part." 20 U.S.C. § 1414(a)(1)(A). They argue that the Board failed to prove it evaluated the student "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities" as required by 20 U.S.C. Section 1414(b)(3)(B). See 34 C.F.R. §§ 300.300 through 300.311. They point to the speech and language evaluation as deficient because it failed to adequately assess the discrepancy between the receptive and expressive language scores, areas including short term memory deficit, concepts and following directions and areas she was having difficulty – auditory skills, directions, understanding spoken paragraphs, and short term memory. They also fault the evaluation because Ms. Joram did not make a classroom observation. They say that the school psychologist failed to grasp the significance of the Student's extremely slow processing speed. They also claim the PPT failed to use the evaluations obtained by the Parents from Drs. Geffner, Dietrich and Kutscher in making the determination. The evidence in the record shows that the PPT reviewed the reports from Drs. Dietrich and Kutscher at the May 16 PPT meeting, scheduled additional evaluations by Board staff in the areas of receptive and expressive language, fluency, following direction, cognition and processing based on the information received from these reports, the Student's teachers, and the Parents. The evaluators described the tests that would be conducted to the Parents, who were included in the conversation about the evaluations. E.'s aunt, who is a special education teacher, assisted the Parents at this meeting. At the PPT meeting on August 26, 2008, the PPT reviewed these evaluations by the Board's special education teacher, speech and language pathologist, and head psychologist, Dr. Geffner's evaluation and her letter critiquing the Board's evaluations, Dr. Forman's report, Dr. Kutscher's letter, teacher reports and other updated information about the Student and listened to the Parents' concerns. The credible evidence in this record is that the

Board conducted a full and individual evaluation of the Student as required by the federal statute and regulations. 34 C.F.R. § § 300.301, 300.304 and 300.305. The Parents' reliance on the State Guidelines for Speech and Language Programs to support their attack on Ms. Joram's evaluation is misplaced. The guidelines were offered to help school districts determine eligibility under IDEA. See Exhibit P-53 at 6. The issue here is whether the Board complied with IDEA. It should be noted that none of the Parents' evaluators did a classroom observation and they relied on Parents' information about school performance and did not review school records or speak to Board staff.

6. The Parents claim that Ms. Joram determined that the Student was not eligible and that her conclusion was based exclusively on standardized testing and composite scores on such testing. This is not accurate. She made no determination of eligibility in her evaluation and stated that the PPT would need to determine the educational impact of any communication weaknesses found. In regard to the disability involved in this case, a child with a disability means "a child with . . . a speech or language impairment . . . and who, by reason thereof, needs special education and related services." 20 U.S.C. § 1401(3)(A)(emphasis added); 34 C.F.R. § 300.8(a). "Speech or language impairment means a communication disorder . . . that adversely affects a child's educational performance." 34 CFR § 300.8(c)(11). All of the school-based PPT members were of the opinion that the Student did not have a speech or language impairment that adversely affected her educational performance. The Parents, accompanied by an attorney, admitted at the PPT meeting that they had no evidence to support a contrary conclusion. The Board did not violate IDEA in its August 26, 2008 determination that the Student was not eligible for special education. The PPT included the Parents and qualified professionals who considered the requisite factors set forth in 34 CFR § 300.306. The PPT further determined that while the evaluations demonstrated some weaknesses, they could be addressed through the Student's regular education intervention plan. Because the PPT appropriately determined that the Student was not eligible for special education and related services, the Board had no obligation to offer the Student a FAPE for the 2008-09 school year.

7. After the PPT, the Parents unilaterally placed the Student at Villa Maria for the 2008-09 school year (fifth grade). As a result of an agreement between the parties, an independent speech and language evaluation was conducted in the Spring 2009 by Joan Jalbert. The PPT met on June 22, 2009 to review the evaluation and to determine whether the Student qualified for special education and related services, and, if so, to plan an IEP for the 2009-2010 school year (sixth grade). The PPT determined that the Student was eligible for special education and related services under the category of speech or language impairment. The PPT developed an IEP and recommended placement in the Board's middle school. The Parents agreed with the Student's identification, but requested placement at Villa Maria. The Parents contend that the IEP offered on June 22 was not adequate or appropriate. The Board contends that the IEP was appropriate and offered the Student a FAPE in the least restrictive environment ("LRE") for the 2009-2010 school year.

8. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is "reasonably calculated to enable the child to receive educational



benefits.” Id. at 206-207. “IDEA requires only that school districts provide an ‘appropriate’ IEP, gauged by whether the IEP is ‘sufficient to confer some educational benefit.’” Id. In this Circuit, the Court of Appeals has said that the proper gauge for determining educational progress is “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2<sup>nd</sup> Cir. 1997). The Court of Appeals has also cautioned that meaningful education benefits are “not everything that might be thought desirable by loving parents.” Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2d Cir. 1989). Moreover, the Court has made clear that any advancement or progress by the student must be “viewed in light of the limitations imposed by the child’s disability.” Mrs. B. v. Milford, *supra* at 1121. The Board has the burden of proof on the appropriateness of the 2009-2010 IEP. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998). In Connecticut, the party who requested a due process hearing has the “burden of going forward” with the evidence. Conn. Agencies Regs. Section 10-76h-14. The Parents, as the party who requested this due process hearing, have the burden of producing evidence in support of their claims.

9. Pursuant to the IDEA, a hearing officer presented with a complaint regarding a child’s special education program must make a decision “on substantive grounds based on a determination of whether the child received a free appropriate public education.” 20 U.S.C. § 1415(f)(3)(E). Where parents allege a procedural violation under the IDEA, a hearing officer may find a denial of FAPE “only if the violation ‘(I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.’” Winkelman v. Parma City Sch. Dist., 127 S. Ct. 1994, 2001 (2007) (quoting Sections 1415(f)(3)(E)(i)-(iii)). See also 34 C.F.R. § 300.513(a). With the reauthorization of the IDEA in 2004, Congress made clear that a procedural violation under IDEA, in itself, cannot equal the denial of FAPE. As courts within this circuit have held since the 2004 amendments, “[p]rocedural flaws do not automatically require a finding of a denial of FAPE.” Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp.2d 415, 419 (S.D.N.Y. 2007).

10. The Parents raised claims of procedural violations in regard to the June 2009 IEP in their brief: The Board failed to comprehensively evaluate the Student prior to determining eligibility and writing an IEP. The only professional who had recently evaluated her, Ms. Jalbert, was not invited to the meeting. Ms. Jalbert had not observed the Student in school. The Board failed to gather relevant functional and developmental information about the child (see, 34 C.F.R. § 300.304(b)(1)), failed 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. § 300.304(c)(6)) and failed to include a “timely and meaningful consultation” with the private school representative and/or invite representatives from Villa Maria School to the PPT meeting as required by Section 1412(a)(10)A(iii) and the holding in Shapiro v. Paradise Valle Unified Sch. Dist., 317 F.3d 1072, 1076 (9<sup>th</sup> Cir. 2003). Parents’ Brief at 44-45. The Board argues that the Parents did not raise procedural violations in their due process request or at the hearing and should not be permitted to raise them post-hearing. Procedural violations are not pleaded in the due process complaint as it pertains to the June 2009 IEP. The only procedural violations, which could arguably be considered as raised during the hearing are the Board’s failure to invite Ms. Jalbert

and Villa Maria to the PPT meeting and its reliance on the 2008 evaluations. The PPT properly met to consider the independent education evaluation of Ms. Jalbert, which the Parents had requested and agreed to. The Parents haven't cited IDEA provisions that would mandate the Board to invite Ms. Jalbert or Villa Maria. Their presence at the PPT meeting would have been at the discretion of the Board or the Parents. 34 C.F.R. § 300.321(a)(6). The PPT had the written report from Ms. Jalbert, the records from Villa Maria and the Parents' input. There was adequate information about the present levels of the Student's performance. There is no requirement that the Board conduct evaluations in these circumstances. Unless the Board and the Parents agree, evaluations may not be done more than once per year. 34 C.F.R. Section 300.303(b). The record demonstrates that the Parents were provided with their procedural safeguards prior to the June 22, 2009 PPT meeting, participated fully and were represented by able counsel in the PPT meeting. There are no procedural flaws that would require a finding that FAPE was denied. Winkelman v. Parma City Sch. Dist., supra.

11. The IEP serves as the centerpiece of a student's entitlement to special education under the IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child's current performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of "measurable annual goals, including benchmarks or short term objectives related to ...(1) meeting the child's individual needs." 20 U.S.C. § 1414(d)(1)(A)(ii). E.'s IEP for the 2009-2010 school year contained the essential components under the IDEA and state law. The IEP included: 1) a statement of E.'s present levels of [academic and functional] performance; 2) annual goals and short-term objectives; 3) the specific educational services to be provided; 4) an explanation of the extent to which E. would not participate in the regular education programs; 5) objective criteria and evaluation procedures for determining whether objectives are being met; and 6) the projected initiation date and duration of proposed services. Id.; Walczak v. Florida Union Free Sch. Dist., supra.

12. When evaluating the appropriateness of an IEP, courts must also consider whether the program is "individualized on the basis of the student's assessment and performance." A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), aff'd, 47 Fed. Appx. 615 (2d Cir. 2002) (citing M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp. 2d 289, 292 n.6 (D. Conn. 2000)). The Parents did not object to any of the IEP goals and objectives, but argue that they were insufficient to address all of her needs. The Board argues that the needs not specified in the IEP could and would be addressed in the regular education curriculum. The Parents' experts—Dr. Geffner, Dr. Cherkes-Julkowski and Mr. Aronin were of the opinion that these needs should be specifically addressed in the IEP. None of them attended the PPT meeting. In a case where the school district's and the Parents' expert witnesses disagreed, the federal court in this district stated that: "IDEA requires great deference to the views of the school system rather than those of even the most well-meaning parent." A.S. and W.S. v. Trumbull Board of Education, 414 F. Supp. 2d 152 (D.Conn. 2006), citing A.B. ex rel. D.B. v. Lawson, 354 F.3d 315, 328 (4th Cir. 2004). See also Hartmann by Hartmann v. London Cty. Bd. of Educ., 118 F.3d 996, 1001 (4th Cir. 1997), cert. denied, 522 U.S. 1046 (1998) ("local educators deserve latitude in determining the individualized education program most appropriate for a disabled child"). Ms. Jalbert, as well as the PPT's school-based members, who are all qualified and experienced in public schools, believe that, in their professional judgment, the IEP is appropriate. The opinion

of the Parents' experts, which is not based on any direct knowledge of the Board's curriculum or methods of instruction in that curriculum, is not entitled to more weight than Ms. Jalbert's and the PPT's professionals. This IEP is, therefore, sufficient to satisfy the second prong of Rowley.

13. Ensuring that a child with a disability is educated in the least restrictive environment ("LRE") is also necessary to the provision of FAPE. Whether the recommended program is administered in the LRE is one of the factors courts will consider when determining whether an IEP is reasonably calculated to provide a meaningful educational benefit. See M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp.2d 289, 292 n.6 (D.Conn. 2000). 34 CFR § 300.114(a). FAPE must be provided to disabled children "in the least restrictive appropriate environment." Polera v. Bd. Of Educ., 288 F.3d 478, 481 (2d Cir. 2002). The Student would be placed in the mainstream classroom for the maximum extent possible, as the goals and objectives in that IEP would be implemented in 45 minutes per week of direct instruction in the resource room and within the regular education curriculum when appropriate. Because the Student would be in the regular education classroom for nearly the entire school day, the Student would take advantage of modeling the behavior and language of her non-disabled peers. Such modeling is important, and these higher level language skills should not be addressed only in isolation; they should also be generalized into the classroom. The Student would likely benefit from watching her peers' skills in inferencing, sarcasm, and problem solving. The Student also would be provided with the opportunity to practice these skills in interactions with peers who possess stronger higher level language skills. Modeling is important to the Student's development, and, therefore, the appropriateness of the Student's IEP. Further, there was no evidence in the record that the Student requires placement in a segregated school in order for her to be educated. The IEP program and placement proposed by the Board for the 2009-2010 school year offered the Student a FAPE in the LRE.

14. Parents dissatisfied with a school board's proposed placement of their child may, at their own risk, unilaterally place their child in a private school. Such action is at their own risk in the sense that the parents are "entitled to reimbursement only if [1] a federal court concludes both that the public placement violated IDEA and [2] that the private school placement was proper under the Act." Florence County School District v. Carter, 510 U.S. 7, 15 (1993); see also 20 U.S.C. § 1412(a)(10)(C)(ii). In regard to the first criterion, if a court finds that a school offered a student FAPE, the court does not reach the question of whether the Student's current school is an appropriate unilateral placement. See Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 374 (1985) ("If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility." (citing 34 C.F.R. § 300.403)); Briggs v. Bd. of Educ., 882 F.2d 688, 693 (2d Cir. 1989) ("Because we conclude that the Board had offered James an appropriate placement, the Briggs are not entitled to reimbursement of the costs of sending James to The Soundings."); A.P. v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221, 233 (D. Conn. 2008). Since the Board offered the Student a FAPE, there is no need to decide whether Villa Maria is an appropriate placement.

15. "It is well established that 'equitable considerations are relevant in fashioning relief' under the IDEA." M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Educ., 226 F.3d 60, 68 (2d Cir.

2000) (quoting Burlington v. Dep't of Educ., 471 U.S. 359, 374 (1985)). “Some circuit courts have held that appropriate relief may also include ‘compensatory education,’ or replacement of educational services that should have been provided to a child before. Reid v. District of Columbia, 365 U.S. App. D.C. 234, 401 F.3d 516, 518, 522 (D.C. Cir. 2005) (citing cases).” P. v. Newington Bd. of Educ., 512 F.Supp.2d 89 (D. Conn. 2007). In Bruno v. Greenwich Bd. of Educ., 45 IDELR, 106 LRP 4075 (D.Conn. 2006), the Court stated that once procedural or substantive violations of the IDEA are found, the decision maker must consider whether the plaintiff is entitled to compensatory education and reimbursement for an independent evaluation. In this case, no procedural or substantive violations of IDEA have been found. Since no violations of IDEA have been found, compensatory education, is not appropriate.

16. The Parents’ requests for reimbursement of the costs of Sylvan, private speech and language therapy, the cost of the FM system and expenses from Villa Maria, including transportation, are denied.

17. The Parents are requesting reimbursement for the evaluations by Dr. Cherkas-Julkowski and Mr. Aronin. Under the IDEA, parents may obtain independent evaluations at public expense in certain circumstances, which are not applicable here. 34 C.F.R. § 300.502(b). The Parents retained them to conduct private evaluations and serve as expert witnesses at the due process hearings. The Parents argue they are entitled to reimbursement for these independent educational evaluations because the Board failed to advise the Parents of their right to an independent evaluation from October 11, 2007 until May 16, 2008, and failed to conduct comprehensive and timely evaluations in connection with the May 16, 2008 and June 22, 2009 PPT meetings. Since the Parents have not been successful on these claims, it follows that these evaluations are not reimbursable. It is true that 34 C.F.R. § 300.502(c)(2) provides that parent initiated evaluations “[m]ay be presented by any party as evidence at a hearing on a due process complaint...” The Parents were permitted to place the evaluations into evidence and have Dr. Cherkas-Julkowski and Mr. Aronin testify. There is no basis to require the Board to pay for their evaluations.

## **FINAL DECISION AND ORDER**

1. The Student was not eligible for special education during any portion of the 2007-2008 school year.
2. The Student was not eligible for special education for the 2008-2009 school year.
3. The Student’s 2009-2010 IEP offered the Student with a FAPE in the LRE.
4. The Parents are not entitled to reimbursement for any of the expenses claimed.