

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Ridgefield Board of Education

Appearing on behalf of the Parents: Attorney Jennifer D. Laviano  
Jennifer D. Laviano, P.C.  
77 Danbury Road, Suite C-6  
Ridgefield, CT 06877

Appearing on behalf of the Board: Attorney Nicole A. Bernabo  
Sullivan, Schoen, Campano & Cannon, LLC  
646 Prospect Avenue  
Hartford, CT 06105-4286

Appearing before: Attorney Mary Elizabeth Oppenheim  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Board failed to evaluate the Student.
2. Whether the Board improperly exited the Student from special education.
3. Whether the Board failed to identify and provide an appropriate program for the Student for the 2003-2004 school year.
4. Whether the Board failed to offer an appropriate program to the Student for the extended school year 2004 and the 2004-2005 school year.
5. If so, whether the Parents are entitled to reimbursement for the extended school year 2004, and the 2004-2005 school year at Villa Maria.
6. Whether the Board violated the procedural safeguards in the failure to reschedule, failure to hold and the failure to convene PPTs.

The Parents limited their claims to within two years of the filing of the request for due process.

**PROCEDURAL HISTORY:**

The Parent requested this hearing on September 2, 2004, and the matter was assigned to this hearing officer on September 7. A prehearing conference was held on September 14. The hearing proceeded on October 7, October 8, November 8, November 12, December 1, December 2, December 6, December 13, December 14 and December 22. The parties submitted briefs on January 25. All dates were scheduled at the request of both parties, and in accordance with requests for extensions of the mailing date of the decision.

The Parents' witnesses were: the Mother; Eileen Cassidy of Villa Maria; Diana O'Brien, clinical social worker; and Dr. Michael Westerveld, neuropsychologist.

The Board's witnesses were: Karen Dewing, former school psychologist; Mary Ellen Nasinka, Board speech language pathologist; Jane Cerone, Board occupational therapist; Janessa Biondi-Greenwood, Board first grade teacher; Maureen Veteri, Board kindergarten teacher; Margaret Thorne<sup>1</sup>, Board special education teacher; Stephen Ewing, Board school psychologist; and Deidre Aarons, Board administrative assistant.

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

**SUMMARY:**

The Student is a 7 year old girl who has been unilaterally placed at Villa Maria Education Center by the Parents. The Student has a complicated medical history, born as a fraternal twin with substantial medical intervention at birth. When she was twelve months old, the Student was diagnosed as having communicated hydrocephalus and a shunt was placed.

In pre-kindergarten and kindergarten the Student was eligible for special education as developmentally delayed and was receiving occupational therapy. At the conclusion of her kindergarten year, the Student was exited from special education as she had mastered her goals and objectives and progressed well in kindergarten. At the exit PPT meeting, the Parents discussed their request for memory testing of the Student due to the concerns they had in the home. While the Board members of the PPT did not agree that the Student experienced memory difficulties, they agreed to proceed with that evaluation of the Student. All the members of the PPT, including the Parents, agreed to hold off on that evaluation until the Student acclimated to first grade in mid-October.

In first grade, the PPT convened in October and recommended a comprehensive evaluation. The Parents insisted on proceeding with a neuropsychological evaluation at Yale, and sought Board funding for that evaluation, which was approved.

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<sup>1</sup> The Parent also called Ms. Thorne as a witness in their rebuttal case.

The Yale evaluation report, completed in mid-February, found that the Student's medical history impacted her education, and recommended various regular education and resource room strategies. The Parents requested an out of district placement for the Student. The Parents brought this hearing request to challenge the appropriateness of the Board's program; asserted that the Board committed various procedural violations in exiting the Student, failing to evaluate the Student, failure to follow appropriate procedure in PPT meetings and scheduling, and in failing to identify the Student; and sought reimbursement from the Board for the placement at Villa Maria.

**FINDINGS OF FACT:**

1. The Student is 7 years old, and has been unilaterally placed at Villa Maria Education Center by the Parents.
2. The Student was born as a fraternal twin, and at birth required immediate ventilation due to breathing difficulties. She received extracorporeal membrane oxygenation for two weeks until it was discovered that she had a congenital heart disease. At that point, she underwent open heart surgery. [Exhibit B-23]
3. When the Student was 12 months old, she was diagnosed as having communicated hydrocephalus, and a shunt was placed at that time. [Exhibit B-23]
4. The Student received services from the State of Michigan's Birth to Three program, and was discharged at age 3. [Testimony Mother, Exhibit B-1]
5. Between age three and age four, the Student received no services. The Student moved with her family from Michigan to Ridgefield, Connecticut in August 2001, shortly after her fourth birthday in July. [Testimony Mother]
6. In January 2002, the Parents contacted the Board to share their concerns regarding the Student's speech development. The Parents also informed the Board that the Student had received occupational therapy from the time she was three months old until age three, at which time the Student was discharged. [Testimony Mother, Exhibit B-1]
7. At the intake meeting the Parents shared their concern about the Student, which they identified as possible articulation problems. In the intake form, the Parents also noted other childhood problems including that the Student is always intentionally stepping on toys and has temper tantrums. The intake form also noted, with extra emphasis, that the Student has problems with whining and jealousy. On the form the Parents shared that they wanted to "correct any problems early to avoid discomfort or stigma for [the Student] if it isn't corrected, especially because her [twin sister] is advanced for their age." [Exhibit B-1]

8. The Parent testified several times about the comparison with the Student's twin sister. She noted that it's "natural for a parent of twins to compare." [Testimony Mother] The Parent noted that the Student's twin would brag as to what level of reading book she was on to the Student, causing the Student consternation. [Testimony Mother]
9. The Planning and Placement Team [PPT] met on February 11, 2002, and all members of the team, including the Parent, agreed that the Student would undergo a comprehensive evaluation. The school psychologist, Karen Dewing, indicated that since the Student had a significant and complicated medical history, a thorough evaluation should be completed to consider all of the Student's needs in a comprehensive manner. [Testimony Mother, Ms. Dewing; Exhibit B-4]
10. The speech-language evaluation completed on February 20, 2002, concluded that no therapy services were recommended at the time, but noted that expressive vocabulary skills should be monitored. [Exhibit B-5]
11. The psychological evaluation was completed by Ms. Dewing in February 2002. It was noted in the evaluation that the Student was recommended for this testing due to concerns about memory, attention, following directions and fine motor skills. On the Wechsler Preschool and Primary Scale of Intelligence – Revised (WPPSI-R) the Student scored in the low average and borderline range. The evaluator noted, however, that noncompliance was a significant factor in lowering the Student's scores on all tests. It was noted that the Student's verbal reasoning skills were in the average range, and her lower score on the nonverbal reasoning tasks was largely due to fine motor difficulties. [Exhibit B-6] The school psychologist noted that the predictability of the IQ test is very difficult. It's more important to look at scores for processing, not for intellectual ability, she noted. [Testimony Ms. Dewing]
12. The occupational therapy evaluation completed in February and March, 2002, concluded that the Student's fine motor planning skills and processing time tended to be slow. It was noted that the Student scored in the percentile rank of 16 on the Visual Motor Integration test [VMI]. [Exhibit B-7]
13. The PPT reconvened on April 4, 2002 to review the Student's evaluations. [Exhibit B-9] The school psychologist explained that the WPPSI was not as reliable at the Student's young age, and cautioned the Parents not to rely on the scores. [Testimony Ms. Dewing] The speech language pathologist concurred that the Student was not intellectually disabled, based on her testing of the Student. [Testimony Ms. Nasinka] The team agreed that the Student was eligible for special education and related services under the designation of Developmentally Delayed. The PPT developed an IEP for the Student, which provided for one hour of occupational therapy per week. [Exhibit B-9] The Parents agreed with the recommendations, and consented to the initial placement of the Student in the special education program. [Testimony Ms. Dewing, Exhibit B-9]

14. At the April 2002 PPT, the Parents were concerned about the “label of special education.” The Parents had concerns regarding the testing completed by Ms. Dewing, the school psychologist, as they did not want the Student classified as intellectually disabled. The Parents were concerned that the Student was going to be treated as “not able to handle the regular education program.” [Testimony Mother]
15. The Student received occupational therapy services from Sharon Wu, an occupational therapist at the Board’s elementary school. The services were provided in 30 minute sessions, two times per week. When another student was added to the OT sessions, the Parent objected to this. The Board offered to change the location of the sessions, so that the services could be provided one on one. The Parent agreed to this proposal. [Testimony Mother]
16. The Student continued to receive OT services as part of her IEP in kindergarten during the 2002-2003 school year. [Exhibit B-9] The Student’s kindergarten teacher had reviewed the Student’s IEP before the Student began kindergarten. The Student, one of 11 students in the kindergarten class, was described by her kindergarten teacher as cute, reticent, impish and hardworking. During kindergarten, the Student received literacy support as a regular education intervention. [Testimony Ms. Veteri]
17. The kindergarten teacher met with the Parents for scheduled conferences at various time, and the Parent never expressed concerns about classroom performance until the May 2003 PPT meeting. The Parents also never shared the family’s concerns about the Student’s behaviors out of school. [Testimony Ms. Veteri]
18. The Student progressed well in kindergarten. In her final progress report, the classroom teacher noted that the Student had enjoyed lots of growth in kindergarten. [Exhibit B-17] The Student had made continual progress all year long, which was evident in her assessments throughout the Student’s kindergarten year. [Testimony Ms. Veteri]
19. The Parent indicated that the Student’s kindergarten year was adequate, and the Parent credited the classroom teacher as being outstanding. The Parent felt fortunate that the Student was placed in a low enrollment classroom. Nevertheless, and despite failing to address this issue during the academic year with the Student’s teacher, the Parent testified that she had academic concerns in kindergarten. The Parent explained that she was able to ascertain the Student’s academic progress by comparing her with her twin sister, noting that the twin sister’s schoolwork would be completely different from the Student’s schoolwork. [Testimony Mother]

20. On May 1, 2003, the occupational therapist administered the Visual Motor Integration test. The Student scored in the average range, at the 53 percentile and at an age equivalence of 5 years, 10 months. The Student was also administered the Peabody Developmental Motor Scales, scoring in the average range on both the grasping and visual motor sections. In the occupational therapy annual review note, the therapist noted that the Student had made very good progress, and mastered 11 out of 13 objectives. In her annual review note, the occupational therapist recommended the Student for discharge from special education at that time. [Testimony Ms. Cerone, Exhibit B-14]
21. On May 29, 2003, the PPT convened for the Student's annual review. The classroom kindergarten teacher reported that the Student participated in class, and has progressed in her writing. She noted that the Student was comfortable and confident in the classroom. The occupational therapist shared information about the Student's mastery of her objectives, and that the Student had good fine motor and graphomotor skills. She recommended to the team that the Student be discharged from special education. At the PPT, the Parent noted concerns regarding the Student's short term memory. The classroom teacher indicated that she did not see memory problems in the classroom. All members of the PPT, including the Parent, agreed that memory testing would be completed in mid-October, once the school year had commenced, and after the Student had an opportunity to acclimate to first grade. [Testimony Mother, Ms. Dewing, Ms. Veteri; Exhibit B-15]
22. The kindergarten teacher noted that all of the members of the PPT decided to wait for the testing, as the Student was reticent with new situations and people. This would allow the Student time to become comfortable with first grade prior to the testing. No other areas of concern, aside from memory issue were brought up by the Parents at this PPT. The first time that the memory issues were brought up was at the PPT meeting in May 2003. [Testimony Ms. Veteri]
23. At the May 2003 PPT meeting, the classroom teacher concurred that the Student could be released from special education as the Student had made across the board progress in kindergarten, and she was ready for first grade. The kindergarten teacher was well aware that the transition from kindergarten to first grade can be difficult, but she truly believed that the Student should be exited from special education due to the progress she had made. [Testimony Ms. Veteri] The Student was exited from special education at this PPT meeting with no objection from the Parents. [Testimony Ms. Dewing, Exhibit B-15]
24. The Parents did not want the Student to undergo any further testing at that time, as she was having allergy testing that summer. The Parents were also concerned that the Student was falling apart emotionally at that time, and didn't want to push the Student any further than she was emotionally capable of handling. [Testimony Mother]

25. The Student's occupational therapy services continued through the end of the school year, and, as the Student was being exited from special education, the Student received no services from the school for the summer. The Parent did not provide any services to the Student in the summer because she was balancing the Student's emotional state. The Parent noted that the Student was having difficulty realizing that she was different from other children, particularly her twin sister. [Testimony Mother]
26. The Parent noted that the Student's first grade transition was difficult for the Student, and stressed that the Student was very petite which made the transition very overwhelming for her. The Parent noted that the Student's twin sister was not very supportive of the Student, and claimed this lack of support was "just like any other seven year old." [Testimony Mother]
27. The Parent noted that the Student had wetting accidents in first grade. [Testimony Parent] According to the classroom teacher, at the beginning of school the Student had wet herself on one day. The Student was quiet about it, but the classroom teacher noticed it, so she went over to the Student to discuss it. The Student said she didn't make it to the bathroom, so she went to the nurse to change. At the beginning of the year, first graders sometimes are afraid to go down to the hall to the bathroom, or are caught up in what they are doing and don't make it to the bathroom. It's a common occurrence for first graders, according to the teacher. [Testimony Ms. Biondi-Greenwood]
28. At the time, the Student began seeing Diana O'Brien, a clinical social worker. The Parents began this counseling for the Student to help the Student deal with the stress that the Parents felt the Student was under. The Parents did not seek the Board's assistance regarding a possible referral for counseling as the Parent didn't see the school as qualified to recommend counselors. The Parent testified that she does her own research herself. [Testimony Mother]
29. At the beginning of the Student's first grade school year, the Student's classroom teacher noticed that the Student was not fully engaged in the classroom. School had commenced around September 10 during that year, and within about 10 days of the beginning of school, the classroom teacher notified the Parents of her concerns regarding the Student. The teacher noted that the Student had difficulty completing work. [Testimony Ms. Biondi-Greenwood, Mother; Exhibit P-6]
30. The Parent did not request that the memory testing go forward earlier than the mid-October timeframe planned in the PPT meeting in the spring. [Testimony Mother] The classroom teacher was aware that memory testing of the Student was suggested in the kindergarten year. [Testimony Ms. Biondi-Greenwood]
31. The classroom teacher referred the Student to the Child Study Team for recommendations due to her concerns. [Testimony Mother, Ms. Biondi-Greenwood] The Child Study Team met regarding the Student, and the Student

- was referred to a PPT meeting. [Exhibit B-49] The notice of PPT was sent to the Parents on October 10, 2003, scheduling the PPT for October 20, 2003. [Exhibit B-18]
32. The school psychologist was aware that the WRAML testing of the Student's memory was to be completed in the 2003-2004 school year after the school psychologist built rapport with the Student, and the Student became more comfortable in first grade. In the first discussions with the classroom teacher, however, there were concerns that the Student needed a more comprehensive evaluation. The comprehensive evaluation was the issue to be discussed at the PPT. [Testimony Mr. Ewing; Exhibits B-18, B-19]
  33. The Child Study Team recommended that supports be put into place in the classroom, which supports were implemented immediately by the classroom teacher. The classroom teacher gave the Student preferential seating in the classroom to have close contact with her. The teacher ensured that the Student had visual models to follow, and placed the Student near students who could be good models to take cues as to what was appropriate and expected at the time. The Student was also receiving services from the literacy teacher at this time, with goals set up by the Child Study Team. The goals for literacy team and the preferential seating were effective supports for the Student. [Testimony Ms. Biondi-Greenwood]
  34. Prior to the PPT being convened, the Parents had already made an appointment to have a neuropsychological evaluation at Yale. [Testimony Mother] The Student's neurosurgeon had told the Parents that it would be important to do a full neuropsychological evaluation given the fact that the Student had a brain shunt, so the Parents asked Dr. Duncan for a referral to a neuropsychologist. The Parents had met with the neurosurgeon in September, when he recommended that the testing of the Student should proceed at this time. The Parents wanted the neuropsychological testing to be conducted at Yale only; the Parents did not want and would not have agreed to an evaluation by any other neuropsychologist, as they wanted the Student on familiar territory for the testing. The Student had treated with other physicians at Yale, as her cardiologist and neurologist were affiliated with Yale. [Testimony Mother]
  35. The Parents did not tell anyone at the school that they were proceeding with scheduling the neuropsychological testing prior to the PPT on October 20, although the appointment was already scheduled by that date. [Testimony Mother]
  36. The PPT convened on October 20, 2003 to discuss evaluation of the Student. At the PPT, the Parents requested that the Student be evaluated by a Yale neuropsychologist, as had been recommended by the Student's neurologist. [Testimony Mother] The Board members of the PPT agreed that the Student should be evaluated, but indicated that the Board was prepared to go forward with



- its own testing. [Testimony Ms. Cerone, Mr. Ewing; Exhibit B-19] The Board's school psychologist did not deny the Parent's request for the Yale evaluation, but indicated that the Board's director of special education, who was not present at the meeting, would have to approve the out of district testing. [Testimony Mr. Ewing, Ms. Biondi-Greenwood]
37. On October 24, 2003, the Parents contacted the Student's kindergarten and first grade teacher to request that they complete the recommendation form for the Villa Maria Education Center. [Exhibit P-3]
38. On October 24, the Parents also sent a correspondence to the Board's Director of Special Education, indicating that in October, the Student's neurosurgeon referred the Student for a neuropsychological evaluation. The Parents noted that they were submitting applications on the Student's behalf to school for children with learning disabilities. The Parents also noted that they were not agreeing to any testing by the school district as it would be "cruel to force [the Student] to undergo additional testing by the school district merely because it is district policy." [Exhibit B-20] The Board director of special education agreed to fund the neuropsychological testing, indicating that "of course the district will pay for it," because "we are not qualified" to do a neuropsychological evaluation, according to the Parent. [Testimony Mother] The vendor approval form was faxed to Yale on October 27 by the administrative secretary of special education at the direction of the director of special education. The next day, on October 28, Dr. Westerveld's office at Yale faxed back the vendor approval form. [Testimony Ms. Aarons, Exhibit B-53] The approval of the Yale evaluation was done promptly, and processing for payment thereof was commenced within one week of the October 20 PPT meeting.
39. The date of the evaluation was not delayed by the Board awaiting approval for the evaluation. The Parents had made the appointment with the neuropsychologist by the time the PPT met in October 2003. The neuropsychologist initially could not see the Student until January. The Parents "begged" for an earlier appointment, and were given a December 2003 date. The Parents knew that they would have to wait for the Yale appointment, and chose to wait for the Yale evaluation as they felt that other neuropsychologists would not be as thorough. [Testimony Mother]
40. It is undisputed that the Parent did not want the school district to undergo any additional testing until the Yale testing was completed. [Testimony Mother, Exhibit B-20]
41. The Board director was on medical leave subsequent to her approval of the testing by Yale. [Testimony Mother] The director was on medical leave from November 3 through mid-January. [Testimony Ms. Aarons] The fact that the director was on medical leave had absolutely no bearing on the scheduling of the evaluation and did not delay the testing of the Student, nor the receipt of the report.

42. In November, the Student was still struggling in all aspects of the classroom. The classroom teacher continued to implement strategies from the Child Study Team, and kept in contact with the Student's kindergarten teacher to obtain suggestions of how to effectively work with the Student. [Testimony Ms. Biondi-Greenwood]
43. The PPT reconvened on December 5. At this time, the Yale evaluation had not yet been administered. The Board members of the team suggested that the Student be placed in the learning center as a "diagnostic placement" until the evaluations were completed. The Parents agreed to this placement of 15 hours per week in the learning center, and signed consent to the "initial special education placement in the learning center under a diagnostic placement." [Testimony Parent, Exhibit B-23] The Parents initially did not want any changes to the Student's program until the Yale report was concluded, but the Board members of the PPT suggested that it would be best for the Student to receive the resource room services in language arts and math. [Testimony Ms. Biondi-Greenwood] The Parent agreed to this initial placement as a compromise while awaiting the results of the Yale evaluation. [Testimony Mr. Ewing]
44. The PPT also formally agreed to fund the Yale evaluation at the December 5 meeting. Waiting until December 5 to formally approve the evaluation did not delay the Yale evaluation date, which had been pending since October, and the Board had agreed to fund the evaluation more than a month before this PPT. [Testimony Mr. Ewing, Mother; Exhibit B-23]
45. When the Student began to attend the learning center she started coming out of her shell, according to the classroom teacher. The Student began to ask the classroom teacher for help with work when she was struggling. The Student started to voluntarily choose a book and sit with other children. She seemed comfortable and happy. The classroom teacher reported those changes to the Parents. The classroom teacher also started a communication journal in December, and stayed in close contact with the Parents in that journal on an almost daily basis. The resource room teacher also included input in the communication journal. [Testimony Ms. Biondi-Greenwood]
46. The Student was provided with support in reading, writing and math in the learning center. The number of students in the learning center varied, but the range was from four to nine students, with two full time paraprofessionals present with the resource room teacher. [Testimony Ms. Thorne]
47. The Yale evaluation was administered in one day on December 18, 2003. [Exhibit B-23]
48. As of December 22, the Board had not received the neuropsychological report from Yale, and Steven Ewing, the school psychologist and case manager, had concerns about the delay. Mr. Ewing requested permission to contact Yale to find out the status, and to get information on the specific tests that were

- conducted. [Testimony Mr. Ewing] Mr. Ewing also suggested that another PPT meeting be scheduled as soon as possible to discuss the Student's status and schedule additional Board evaluations. [Testimony Mr. Ewing; Exhibits B-25, B-27]
49. Prior to receiving the written report from Yale, the Board received a list of the tests administered to the Student during the neuropsychological evaluation on January 14, 2004. [Exhibit B-26] The school psychologist had indicated that he wanted to do additional testing if necessary, so the list of testing was requested from Yale. [Testimony Mother, Mr. Ewing] In reviewing the list of tests completed by Yale, the school psychologist noted that no speech/language and occupational therapy evaluations were completed, so the school psychologist suggested that the Board should supplement the Yale evaluation with these assessments. [Testimony Mr. Ewing]
50. The PPT convened on January 20, 2004, at which time it was agreed that occupational therapy and speech/language evaluations were to be conducted. [Testimony Mr. Ewing, Exhibit B-28] At this meeting, the Student's progress in the learning center placement was discussed. It was noted that the Student was adjusting well to the change at school. [Exhibit B-28] The Student's classroom teacher reported that the Student's academic areas were progressing nicely. [Testimony Ms. Biondi-Greenwood]
51. In fall 2003, the Parent did not want the Student to undergo any speech language testing, as the Parent solely wanted the Yale evaluation. The Parent subsequently changed her position, and indicated in January 2004 that she wanted speech and language testing completed by the Board. [Testimony Ms. Nasinka]
52. The speech and language evaluation was conducted on January 27 and 29. The speech language pathologist concluded that the Student's comprehension and expressive language skills were very good, and her vocabulary knowledge is also good, with testing reflecting high average or above average scores. The speech language pathologist recommended that no speech-language therapy services were warranted. [Exhibit B-29]
53. While the Parents did not want to Student to undergo an occupational therapy evaluation in October and December 2003, in January 2004 the Parents were prepared to go forward with an OT evaluation. [Testimony Ms. Cerone] The occupational therapy reevaluation was completed over the course of three sessions on January 27, February 2 and February 5. The tests were given over three days for shorter periods to ensure that the Student had the best attention span. The occupational therapist concluded that the Student was functioning overall in the average range for fine motor ability. [Testimony Ms. Cerone, Exhibit B-30]
54. The Board's speech/language and occupational evaluations were completed within a couple of weeks of the PPT meeting in January. [Testimony Mr. Ewing]

- In mid-February the Yale evaluation was received. The school psychologist met with the Parents to discuss the evaluation, at the Parents request. The PPT meeting to discuss the Yale evaluation was scheduled initially for March 5, in accordance with the Parents' request. [Testimony Mr. Ewing, Exhibit B-50] That date was rescheduled due a scheduling conflict to March 12. [Testimony Mr. Ewing, Exhibit B-31]
55. Michael Westerveld, Ph.D., ABPP, a pediatric neuropsychologist, and Angela O'Shea, Ph.D. , a neuropsychology fellow, conducted the Student's neuropsychological evaluation at Yale in December 2003. [Testimony Dr. Westerveld, Exhibit B-23] The testing did not occur until December because there is a three to four month waiting list for the Yale neuropsychological assessment appointments. [Testimony Dr. Westerveld]
56. The Student was administered the Wechsler Intelligence Scale for Children, third edition, (WISC-III) in order to assess cognitive functioning. She was evaluated with a full scale IQ of 100, which placed her within the average range of functioning and at the 50<sup>th</sup> percentile. The 14 point difference between her Verbal IQ score of 107 and her performance IQ score of 93 was described as statistically significant, indicating that the Student's verbal expression and comprehension skills are significantly better developed than her nonverbal, visual motor skills. [Exhibit B-23]
57. In his report, Dr. Westerveld noted that the greatest area of weakness for the Student was in the area of executive function. Specifically Dr. Westerveld reported that the Student demonstrates extreme difficulty with her ability to shift and make transitions, to resist acting on impulses and to modulate her emotional responses. She struggles in her ability to problem solve flexibly and with her capacity to hold information in mind for the completion of the tasks, which was described by Dr. Westerveld as essential for completing multistep activities, computing mental arithmetic and following complex verbal commands. In school, it was noted in the report that the Student's planning and organizing difficulties may manifest themselves as difficulty in organizing her thoughts, difficulty keeping track of work, being easily overwhelmed by large amounts of information and exhibiting a low frustration tolerance. [Exhibit B-23]
58. In his report, Dr. Westerveld noted that the Student was showing *early signs of cognitive patterns typically seen in children with shunted hydrocephalus*. [Exhibit B-23, Emphasis added] The report noted that the gap between the verbal and nonverbal skills could widen, with the Student's nonverbal skills declining. The report noted, however, that the Student's nonverbal skills currently fall within the average range.
59. Dr. Westerveld recommended that the Student be placed in a full day learning environment that can offer structure, consistency and routine, which would include teaching on an individual basis as well as in small work groups. Dr.

Westerveld recommended that the professional working with the Student work closely so that routines and strategies for learning are reinforced in the same way and consistently across settings, suggesting a home/school book to facilitate communication. [Exhibit B-23]

60. Dr. Westerveld suggested that learning new material would be facilitated for the Student when the routines and instructions are presented in a manner that is clear, simple and brief; task requirements are clearly specified for her and the response format is structured; strategies are made explicit for her, particularly when the material is novel or difficult; the presentation of work materials is not overwhelming; she is allowed enough time to process new concepts and complete assignments and exercises are designed such that harder items are interspersed among easier ones. Dr. Westerveld also recommended that the Student be given sufficient time to allow for provision and repetition of instructions. He noted that the educational interventions that assist the Student in breaking down complex nonverbal information would benefit the Student. [Exhibit B-23]
61. Dr. Westerveld noted that hands on learning would assist the Student in acquiring the information and generalizing the learned strategies. He suggested that the extraneous distractions and noise be removed from the Student's work environment, recommending that a special workstation with less distraction could occur in the learning center at school. [Exhibit B-23]
62. Visual supports as well as verbal cues were considered critical for helping the Student to develop internal mechanisms for organization, according to Dr. Westerveld. In his report, Dr. Westerveld reiterated that the Student should be provided with consistent classroom routines and rules, as well as consistent places that assignment materials are kept and collected. The Student should be provided with organization support, such as assignment books and notebooks that are color coded, and visual reminders to help guide her through tasks or to monitor her activity. [Exhibit B-23]
63. Dr. Westerveld recommended that the Student be praised when she displays positive learning behaviors, and suggested that an adult can continue to provide guidance as necessary. In his report, Dr. Westerveld noted that the availability of a counselor/social worker at school would be helpful in monitoring the Student's academic progress, coordinating services, and acting as a liaison between home and school. It was also recommended that the Student continue to receive counseling outside of school in order to address behavioral difficulties she is exhibiting at home with her sister.
64. The Yale evaluative report was subsequently clarified in a one page report. In that addendum, it was noted that the evaluation was completed over the course of one day as the evaluators felt it was important to observe fluctuations in a child's skills throughout the day. In discussing the Student's neurological condition, it was noted that it was going to be extremely important to begin building on the

- Student's complex nonverbal problem solving skills now, and recommended that it was extremely important to continue any type of intervention she is receiving during the school year into the summer months in order to provide consistency, which is particularly important given her neurological risk factors. [Exhibit B-23] In this clarification, the evaluators again stressed that intervention is especially important because the Student is "already showing early signs of cognitive pattern typically seen in children with shunted hydrocephalus." [Exhibit B-23]
65. Dr. Westerveld concluded that the Student has a neurological disability that affects her learning. [Testimony Dr. Westerveld] Dr. Westerveld doesn't know whether or not the Board has implemented these recommendations as he had not reviewed the IEP that was developed after this evaluation. [Testimony Dr. Westerveld]
66. The Parent testified that she was satisfied with the testing results of Dr. Westerveld, and stated that she believed the testing was comprehensive. The school psychologist met with the mother to review the Yale report prior to the PPT meeting to discuss the evaluations. [Testimony Mother, Mr. Ewing]
67. The PPT convened on March 12, 2004 to review the evaluation results and determine eligibility for special education. [Exhibit B-34] Some of the Board members of the PPT had concerns about the Yale evaluation, including that it was completed in one day. [Testimony Ms. Dewing, Ms. Cerone]
68. After concluding her testing, the speech language pathologist found that she didn't see that any speech-language services were warranted, as the Student's speech and language skills were at an age appropriate level. [Testimony Ms. Nasinka] The speech language pathologist, who has a clinical background in evaluating children with hydrocephalus, was confident in her recommendation for the child. She felt that the Yale evaluation recommendation that a speech-language therapist be on call is akin to being available to work with special education teacher and offer strategies as necessary. [Testimony Ms. Nasinka]
69. The Board occupational therapist was concerned with the Yale evaluation as the last test scores obtained by Yale were very low. Through her clinical affiliations, the occupational therapist was trained to administer testing in a certain order, and, therefore, knew that the lowest score was for the last administered test. She was concerned that a six year old is unable to have appropriate attention for that time period. In addition, the Yale evaluation did not disregard the lowest and highest subtest scores according to the protocol to take into account attentional issues. [Testimony Ms. Cerone]
70. At the March PPT meeting, the team reviewed the evaluation results and determined that the Student was eligible for services under the category of Other Health Impaired based on the testing results. The Yale evaluation concluded that medical factors were impacting the Student's education. [Testimony Mr. Ewing;

- Exhibits B-23, B-34] The learning center teacher reviewed the Student's progress in her classroom, and discussed the accommodations that she had been providing to the Student. The team reviewed the learning center teacher's suggestions, the Yale evaluation and other input that was provided in order to draft goals and objectives. [Testimony of Mr. Ewing, Ms. Nasinka, Ms. Thorne, Mother] Diana O'Brien, the Student's outside therapist was also at this meeting and gave input to the team as to her therapy goals. The Parents proposed an outside placement, and expressed their concerns about having the Student continue at the Board elementary school. [Exhibit B-34] The team denied the Parents request for an out of district placement, because, based on the Student's evaluation and her performance, the Board could provide a program at school. [Testimony Mr. Ewing]
71. The classroom teacher reviewed the evaluation and noted that many of the recommendations were already part of the classroom routine or already implemented for the Student. The first grade classroom has a consistent structure and routine. The day is very structured, and the routine for the day is posted and discussed. The Student understood the routine of the first grade classroom. [Testimony Ms. Biondi-Greenwood, Exhibit B-23]
72. The first grade classroom provided appropriate opportunities for social interaction and facilitation of social relationships in fairly structured and supervised activities as was recommended by Dr. Westerveld. The students have opportunities for social interaction, when partnered with a classmate for schoolwork, and reading with partners in free time. The Student definitely had friends in the classroom. [Testimony Ms. Biondi-Greenwood, Exhibit B-23]
73. The classroom teacher ensured that there was close communication with the Parents, as was recommended by Dr. Westerveld, as she already had instituted a home/school communication book which was used on a regular basis. [Testimony Ms. Biondi-Greenwood, Exhibit B-23] The resource room teacher was in contact with the classroom teacher on an almost daily basis, and would confer about any concerns with the classroom teacher, which could then be forwarded to the home in the communication book. [Testimony Ms. Thorne]
74. The classroom teacher noted that she did not see any negative behaviors exhibited at school, as were described as occurring at home. The Student was coping well at school. [Testimony Ms. Biondi-Greenwood]
75. The classroom teacher had also implemented the Yale recommendations to facilitate learning new material. Routines for the classroom and instructions are given to all children. If the students are working on a project, it is broken up so as not to be overwhelming. The teacher gives one direction at a time, one paper at a time. The classroom teacher and the paraprofessionals in her classroom would ensure that all the children, including the Student, were able to stay focused on the

- task. The teacher also would intersperse difficult materials with the easier items. [Testimony Ms. Biondi-Greenwood, Exhibit B-23]
76. The classroom teacher had implemented the Yale recommendations to address the Student's difficulty with working memory. The teacher would have the Student repeat directions to her to ensure that she understood the task. The teacher would check in with the Student to ensure that she knew what she was doing. To assist the Student in breaking down complex information, the teacher ensured that the Student had a model, so that she could visualize what needed to be done. Her tasks were also broken down to show her one step at a time. [Testimony Ms. Biondi-Greenwood, Exhibit B-23]
77. As was recommended by the Yale report, the classroom teacher presented her materials in the classroom as hands on learning. For example, she used manipulatives to show addition and subtraction. [Testimony Ms. Biondi-Greenwood, Exhibit B-23]
78. In her classroom, the Student's teacher had already implemented the Yale recommendations to reduce extraneous distractions, in that the Student was placed in a seat on the end to lessen the distractions. In addition, when working on a specific task, the board in front of the classroom would be clear, except for the task that they were working on. [Testimony Ms. Biondi-Greenwood, Exhibit B-23] The time in the learning center also lessened distractions as was recommended by Dr. Westerveld. [Testimony Ms. Thorne, Exhibit B-23] While the Mother claimed that the learning center did not meet this requirement, it is found that the learning center is an appropriate learning environment which would lessen the distractions for the Student. [Testimony Mother, Ms. Thorne]
79. The classroom teacher allowed the Student to take breaks as necessary, as the Student would get fidgety in her chair. These breaks implemented in the classroom met the Yale recommendation for frequent breaks. [Testimony Ms. Biondi-Greenwood, Exhibit B-23]
80. The classroom teacher used positive reinforcement, which had been recommended by the Yale evaluation. She reinforced each step taken on a task, so that the Student learned that every step was important. The Student was rewarded with stickers for working hard on a project. The classroom teacher had good rapport with the Student, helping to guide her so that the Student could experience success. This was also a recommendation by Dr. Westerveld. [Testimony Ms. Biondi-Greenwood, Exhibit B-23]
81. Most of the recommendations set forth in the Yale evaluation had already been implemented in the classroom before the PPT had convened to discuss the evaluation. Many of the recommendations were already part of the regular routine for the first grade class, or strategies the classroom teacher had already implemented for the Student. [Testimony Ms. Biondi-Greenwood] The classroom



- teacher and the resource room teacher adjusted some strategies to ensure that they were meeting the Yale recommendations, such as in using color coding to assist the Student with organization. [Testimony Ms. Biondi-Greenwood]
82. The Yale evaluation conclusions, in terms of programming, were to provide the Student with strategies that are provided in the Student's regular and special education classrooms. [Testimony Mr. Ewing]
83. At the time of this March PPT, the Student was doing well in her resource room placement. She was making progress in all areas, and blossoming as a student. The structure, routine and consistency which had been set forth in the Yale recommendations were what the Student was receiving in the learning center. [Testimony Ms. Thorne]
84. The occupational therapist recommended OT services of one session per week at the March 2004 PPT. This recommendation of a half hour of OT per week was accepted by the Parent. [Testimony Ms. Cerone]
85. Subsequently, the Parent objected to the amount of OT services as they wanted an additional half hour to address the visual perception issue noted in the Yale evaluation. The occupational therapist added an additional goal to address the concerns. The PPT agreed to an additional half hour of OT services, although the occupational therapist did not believe the Student required a second half hour. [Testimony Ms. Cerone]
86. The Student's private counselor had no information on the Board's program for kindergarten or first grade, and has never spoken with any of the Student's doctors. She never observed the Student in school. Her only information that the Student was not functioning well at school was based on information that the Parents told her. Her opinion that the Student needs a smaller environment is given little weight because the counselor has no background and experience in education. Furthermore, her conclusions are illogical. She opined in her testimony that because the teachers are reporting that the Student was doing well at school, that means she's "highly defended" and "overcompensating" at school, concluding that a report that she is doing fine at school means that she's not doing well at school. The private counselor's testimony is absolutely unpersuasive. [Testimony Ms. O'Brien]
87. At the March PPT meeting, the Board members of the PPT disagreed that an out of district placement was necessary, and proposed an Individualized Educational Program that had the following goals: to improve overall math skills, to improve overall reading skills, to improve performance in the area of written language, to maintain age appropriate fine motor skills and to improve overall aspects of emotional functioning in the school environment. It was recommended that the Student be placed in the learning center for 16.25 hours per week, receive

- occupational services for .5 hours per week and to receive counseling for .5 hours per week. [Exhibit B-34]
88. The goals and objectives were developed with the input of the classroom teacher and the resource room teacher, and were based on the Student's individual needs. The members of the PPT discussed these goals at the March PPT meeting. [Testimony Ms. Biondi-Greenwood, Ms. Thorne] The goals as written were appropriately individualized for the Student's needs.
89. The Parent requested that the school psychologist and the private counselor confer so that there was consistency in the Student's counseling. The Parent was critical of the manner in which the school psychologist provided services to the Student, because the Parent felt she did not receive sufficient feedback about the counseling sessions. The Parent felt that he wasn't communicating to her at the level that she would expect from a counselor. [Testimony Mother]
90. A release to permit the Board to speak with the private counselor was delivered to the Board on or about March 29, 2004. [Exhibit B-36] Through no fault of either party the counselors did not communicate until the beginning of May. [Testimony Mr. Ewing, Ms. O'Brien] The counseling by Mr. Ewing did not commence until May 2004 to be responsive to the Parent's concern that the counselors communicate prior to Mr. Ewing commencing counseling. [Testimony Mother, Mr. Ewing, Ms. O'Brien] After the counseling commenced, the Student would willingly go to Mr. Ewing's office for support, without any problem. [Testimony Ms. Biondi-Greenwood]
91. The IEP was implemented effectively after this PPT. The classroom teacher and the special education teacher used appropriate strategies which were consistent with the Yale recommendations. [Testimony Ms. Biondi-Greenwood, Ms. Thorne; Exhibit B-23]
92. While the Parent complained of the lack of communication with the resource room teacher, the Parent was the person who stopped using the home-school communication book with the resource room teacher. [Testimony Mother]
93. The Parent disagreed with the Yale proposal to have a special work station for the Student. She didn't want the Student to "put a dunce cap on her head" by working in a special work station. [Testimony Mother]
94. The Parent disagreed with the IEP that was proposed, and sent letters indicating this disagreement. [Exhibits B-35, B-37, B-38] The Mother, an attorney, chose to use her firm letterhead in one of the correspondence to set forth her objection to the IEP because the "advantage to using firm letterhead is that people actually might listen to what the letter says." [Testimony Mother]

95. On April 2, 2004, the Parents sent a letter to the Board requesting a PPT meeting. In the letter, the Parents noted that they agreed in general to the IEP for the Student's last three months of the current school year, but noted that they did not believe that the Board staff could provide an appropriate education to the Student. By this correspondence, the Parent informed the Board that they believed the goals and objectives were too vague. The Parent followed up with a correspondence on April 9, stating that they do not agree with the IEP, and requesting a PPT. [Testimony Mother; Exhibits B-38, B-40]
96. A PPT was held on April 20, 2004, in response to the Parents' request. At the PPT meeting, the special education teacher reported that the Student was making good progress in the classroom. The Parents' requests to revise the IEP were agreed to by the PPT, and the changes were incorporated into the document and program. [Testimony Mother, Exhibit B-43] The IEP as drafted prior to this PPT was appropriate, and the revisions which included making the measurable goals more specific were completed in response to the parental concerns. [Testimony Mr. Ewing, Ms. Biondi-Greenwood, Ms. Thorne] The classroom teacher and the resource room teacher also reported to the members of the PPT that the Student was making good progress. The classroom teacher noted that there was a drastic increase in her progress, and the Student was demonstrating skills and knowledge that the teachers had not seen before this point. [Testimony Ms. Biondi-Greenwood] The PPT also recommended summer services for the Student at this meeting to include language arts and math. [Exhibit B-43]
97. The Parent questioned the authenticity of the Student's work that was brought home from resource room, indicating that the Student wasn't capable of some of the work that was brought home completed. The Parent, however, did not speak with the resource room teacher regarding her concerns regarding the authenticity of the work. [Testimony Mother] The Student's work that was complete and returned home is not found to be manufactured or inauthentic, despite the Parent's assertions.
98. The Parent also claims that the Board's progress reports for first grade were a "significant overestimate or exaggeration of what [the Student] could do at the time." [Testimony Mother] It is found that the Board did not exaggerate the Student's progress, despite the Parent's claims.
99. The Student's classroom teacher noted that while the Student was quiet and reserved at the beginning of the year, she presented herself as a happy first grader by the end of the year, skipping down the hall. [Testimony Ms. Biondi-Greenwood]
100. The Parents notified the Board on May 18, 2004 that they had made the decision to outplace the Student at Villa Maria for the 2004-2005 school year, and were seeking the Board to fund this outplacement. The Parents felt that the Student required the placement because it is a very small school, and the Parents felt that

- they had to battle with the Board employees every step in the first grade. [Testimony Mother, Exhibit B-44] The Yale evaluation does not recommend such a restrictive placement.
101. In June 2004, the PPT was scheduled to convene. The Parents contacted the Board that they had retained an attorney to represent them, and wanted the attorney to attend the PPT. [Testimony Mother] The Parent's attorney sent a letter to the Board's attorney indicating that she was unavailable to attend the PPT due to a previously scheduled PPT in Westport, and requesting that his office call her legal assistant to reschedule the PPT. [Exhibit B-46] The Parent sent emails to the Board requesting that the meeting be rescheduled for the attorney's schedule. [Exhibit B-50] The last email from the Board indicated that it would not reschedule the PPT due to conflicts with the Board's participants. [Exhibit B-50] The Board's attorney had notified the Parent attorney that the meeting was to proceed. [Exhibit B-45a] The Parents never indicated that they were unable to attend the scheduled PPT.
  102. The PPT was held on June 17, and the Parents did not attend. If the Parents would have attended the PPT, they would not have changed their position as to their request for outplacement of the Student. [Testimony Mother]
  103. At the June 17 PPT meeting, the Board members of the PPT recommended that the academic support would continue in the learning center, and the Student would be provided one hour per week of OT and counseling by Mr. Ewing, the school psychologist. The Villa Maria placement was discussed, and the request was denied. [Testimony Ms. Thorne, Exhibit B-45a] At that time, the Student was ready to enter second grade with the support of the learning center. The Student was blossoming in the program, and the program designed implemented the Yale recommendations. [Testimony Ms. Thorne]
  104. The school psychologist shared his report with the members of the PPT at the June meeting. The teacher ratings noted that the Student was at risk for concerns for anxiety and somatization. The rating scales by the Parents included many at risk behavioral concerns, and some that were clinically significant. The school psychologist cautioned that the Parent's rating had an F-Index which was in the caution or extreme caution range, which would indicate that the rater may have had the tendency to be excessively negative. [Testimony Mr. Ewing, Exhibit B-48] The school psychologist also noted that in terms of his check-ins with the Student, the Student seemed to be doing well, his rapport with her was good, the Student was blossoming academically and her confidence was up. The school psychologist received no negative reports from the school regarding the Student's behavior. [Testimony Mr. Ewing]
  105. According to the classroom teacher, the Student's program had been very successful. The Student had the foundations to enter the second grade, based on the benchmarks. The first grade teacher knew which second grade teacher was

- assigned to the Student, and felt that the teacher was an appropriate fit for the Student. In the class assignment for second grade, the Board ensured that there would be at least someone in the class who also would go to the learning center, to help in having a secure routine for the Student. [Testimony Ms. Biondi-Greenwood]
106. The classroom teacher noted that she didn't support the outplacement for the Student, as the Student had made so much progress with the support that was given, based on her needs. The Student was coming into her own, and had the program she needed at the Board school. With the outplacement, the Student would be leaving her neighborhood school, her friends and her twin sister. [Testimony Ms. Biondi-Greenwood]
107. At the June PPT, the Board recommended a half hour per week of OT for the summer, as well as an extended school year Summer Academy program. [Exhibit B-45a] The Student did receive services over the summer from Sharon Wu, a licensed OT. [Testimony Ms. Cerone]
108. The Student enrolled in the Villa Maria program for the 2004-2005 school year. Prior to the school year, the Student was administered a diagnostic inventory of reading and math for placement. Most of the percentiles on the report showed that the Student had weaknesses in comprehension and attention, but scored at or close to her age equivalence. [Testimony Ms. Cassidy, Exhibit P-1]
109. The Parent repeatedly stressed her concern about the size of the Student, indicating that she now weighs 42 pounds. [Testimony Mother] The Student's size did not inhibit her in any way, according to the occupational therapist. [Testimony Ms. Cerone] The objective size of the Student is not a reason to program differently for the Student, or place the Student in a different classroom or school setting.

### **CONCLUSIONS OF LAW:**

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq. The Student was identified as eligible for services under the category of Other Health Impaired in accordance with 34 C.F.R. Sec. 300.7(c)(9) at a PPT meeting on March 12, 2004. [Exhibit B-34]
2. The Parents claim that the Board improperly exited the Student from special education services at the end of the 2002-2003 school year. The Parent consented to exiting the Student from special education services at the end of her kindergarten year. Moreover, this PPT decision is appropriate because the Student met all of the goals and objectives and met the exit criteria set forth in her IEP. Therefore, the Student was properly exited from special education at the end of her kindergarten year.

3. The Parents have challenged the appropriateness of the Board's program and placement for the Student. The Board has the burden of proving the appropriateness of the Student's program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. Sec. 10-76h-14. The Board has met its burden in this case.
4. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. The second inquiry is a determination of whether the Individualized Educational Plan [IEP] is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.
5. As to the first inquiry, the *Rowley* court did not treat procedure as an end in itself, but only as a means to the "full participation of concerned parties" which will assure "what Congress wished in the way of substantive content in an IEP." *Rowley* at 206. IEPs must be strictly scrutinized to ensure their procedural integrity. *Roland M. v. Concord School Committee*, 910 F. 2d 983, 994 (1<sup>st</sup> Cir. 1990), cert denied, 11 S. Ct. 1122 (1991) Strictness, however, must be tempered by considerations of fairness and practicality: procedural flaws do not automatically render an IEP legally defective. *Id.* Before an IEP is set aside, there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the evaluation process, or caused a deprivation of educational benefits. *Id.*
6. In the instant case, the Board attempted to obtain meaningful participation from the Parents in every aspect of the development of the Student's program, and assented to their requests for evaluations, revisions of IEPs and rescheduling of PPTs. Notwithstanding, the Parents raise many issues of procedural noncompliance including, *inter alia*, improperly exiting the Student from services, failure to evaluate, failure to convene PPT meetings, failure to convene IEP meetings on an annual basis, and failure to hold duly constituted PPTs.
7. First, the Parents contend that the initial evaluations conducted by the Board were flawed. At the time the Student was initially evaluated, she was approximately four years old and all of the Board witnesses testified that she was not responsive to the evaluators.<sup>2</sup> Notwithstanding, the kindergarten teacher reports indicated that the

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<sup>2</sup> To the extent that the Parent is contesting these specific evaluations, the statute of limitation applies. Connecticut General Statutes Sec. 10-76h(a)(3). Since the evaluations were conducted in March 2002 and reviewed by the PPT in approximately April 2002, more than two years have elapsed barring these claims. Notwithstanding the limitations bar, the Parent may raise a failure to evaluate claim at any time. The record is clear, however, that the Parent didn't request any evaluations during the Student's kindergarten school year, nor did the Board witnesses testify that the Student's performance during the kindergarten year warranted additional evaluation. Mrs. Veteri stated that she didn't see any issues. The Parents' next

Student was on grade level throughout the year and she had no reason to recommend additional testing based on her observations of the Student. [Testimony of Ms. Veteri, P-29] During the Student's kindergarten school year, the Parent admitted that she had no complaints, attributing the Student's progress during this school year to the kindergarten teacher. [Testimony of Parent] The record is devoid of any evidence that the Student's 2002-2003 program during the kindergarten school year was deficient in any way as a result of a failure to evaluate by the Board.

8. The Board did not improperly exit the Student from special education. The Board is required to evaluate a child with a disability before determining that the child is no longer a child with a disability. 20 U.S.C. 1414(c)(5) The Student was appropriately evaluated by the occupational therapy prior to her discharge from special education. All members of the PPT team agreed to the discharge, including the Parents. All members of the PPT team agreed to wait until the fall 2003 to proceed with memory testing, including the Parents. The Board members of the PPT did not see any evidence of memory issues at school, but acceded to the Parents' wishes to administer the testing. The Parents agreed to these actions at the PPT meeting, and cannot now seek to challenge these actions which were taken with their agreement.
9. The Parents are also asserting that the Board failed to convene the PPT at least annually, in holding the May 2003 annual review 13 months after the April 2002 PPT meeting. The Board did not convene the review within 12 months. While this might be construed as a technical violation of 20 U.S.C. 1414(d)(4) which requires that the IEP team meet "not less than annually" to review a revise a student's IEP, it is not found to constitute a violation which resulted in a denial of a free appropriate public education to the Student. On at least two occasions prior to the PPT, this meeting was rescheduled. [Exhibits B-12, B13] In the notice of PPT meeting, it states "[t]he meeting can be rescheduled at a mutually agreed upon time and place." Neither party noted in testimony why this PPT had been rescheduled on at least two occasions. This one month delay is a mere technical violation of this provision. Moreover, the school district is not required to conduct its annual review on or around the anniversary date of the last review or establishment of the IEP, as long as the requirement for review at least annual is met. *Letter to Sheridan*, 20 IDELR 1163 (OSEP 1993) The dates of the PPT meetings sufficiently meet this requirement.
10. At the commencement of first grade in the 2003-2004 school year, it is uncontested that the Parents adamantly refused to allow the Board to evaluate the Student and was seeking an outside neuropsychological evaluation.<sup>3</sup> The Parents went so far as to claim that "[i]t is *cruel* to force [the Student] to undergo additional testing by the

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request for an evaluation was at the end of the Student's kindergarten year and the Parent admitted that she agreed at the PPT that such evaluation(s) should be conducted after the Student began her first grade year.

<sup>3</sup> Courts that have considered the issue of testing, however, are unanimous: if a student's parents want him to receive special education under IDEA, they must allow the school to evaluate the student. See Dubois v. Connecticut State Bd. of Educ., 727 F.2d 44, 48 (2d Cir. 1984) (before a school system becomes liable under the [Act] for special placement of a student, it is entitled to up-to-date evaluative data); Zvi D. v. Ambach, 694 F.2d 904, 907 (2d Cir. 1982) (no school system liability for unilateral placements by parents); 34 C.F.R. § 300-320; Connecticut Agencies Regs. § 10-76d-9.

school district merely because it is “district policy.” [Exhibit B-20, *emphasis added*] Yet, the Parents contend that the Board failed to evaluate the Student while, at the same time, “[imp]loring the Board] to cooperate with [the Student’s] medical team to assure that they conduct the testing necessary to provide [the Student] with the education to which she is entitled.” [Id.]<sup>4</sup>

11. It is well-settled that the Board has the right to conduct its own evaluation of the Student and cannot be forced to rely solely on an independent evaluation conducted at the Parents’ request. *Andress v. Cleveland Independent School Dist.*, 64 F.3d 176, 178 (5<sup>th</sup> Cir. 1995) (citing *Gregory K. v. Longview School Dist.*, 811 F.2d 1307, 1315 (9<sup>th</sup> Cir. 1987) (“If the parents want [the student] to receive special education under the Act, they are obliged to permit such testing.”); *Dubois*, 727 F.2d at 48 (“[T]he school system may insist on evaluation by qualified professionals who are satisfactory to the school officials.”); *Vander Malle v. Ambach*, 673 F.2d 49, 53 (2d Cir. 1983) (School officials are “entitled to have [the student] examined by a qualified psychiatrist of their choosing.”)). Notwithstanding settled case law on the Board’s right to evaluation, the Board in this case agreed to the Parents’ hand-picked evaluator and entered into a contract so that the independent neuropsychological evaluation could go forward, as scheduled. [Testimony of Ms. Aarons; Exhibit B-53] The PPT documented such agreement in December 2004. [B-22]<sup>5</sup>
12. At the hearing the Parent was clearly confident in the testing results of Dr. Westerveld, and stated that she believed the testing was comprehensive. In addition, the Parent raised no disagreement with the subsequent Board evaluations, and presented no evidence that additional evaluations were either necessary or were requested that were not agreed to by the Board. [Testimony of Mother, Ms. Cerone, Ms. Nasinka, Mr. Ewing] Moreover, Dr. Westerveld’s report noted that the Student was showing *early signs of cognitive patterns typically seen in children with shunted hydrocephalus*. [Exhibit B-23, *Emphasis added*] The report noted that the gap between the verbal and nonverbal skills could widen, with the Student’s nonverbal skills declining. The report noted, however, that the Student’s nonverbal skills currently fall within the average range. Nothing in Dr. Westerveld’s report indicated that the Board was not proceeding in a timely fashion in evaluating the Student or failed to evaluate the Student earlier. Rather, Dr. Westerveld noted that these early signs were coupled with nonverbal skills in the average range. Thus, if it is the Parents’ claim that the Board failed to evaluate in light of the Student’s presentation and performance, this claim also fails.

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<sup>4</sup> It is significant that the Student’s medical team at Yale did not recommend any further testing to be conducted other than what was completed during the December 2004 neuropsychological evaluation. [Testimony of Dr. Westerveld, Mother]

<sup>5</sup> The Director of Special Education spoke with the mother directly about the request for a neuropsychological evaluation and agreed during the telephone conversation in late October. Although the agreement – outside of the PPT process - may be considered a procedural violation, the PPT later ratified this agreement at a properly noticed meeting in December and the Parent testified that the evaluation was not delayed as a result of the PPT’s initial disagreement because she was planning to go forward with the evaluation in any event, and the evaluation was already scheduled. [Testimony of Mother] In this regard, there was no harm to the Student as a result of the decision making process.



13. The Board comprehensively evaluated the Student and considered all of the evaluations in determining the Student's program for the 2003-04 school year. It is found that the evidence in the record shows that the Board met the requirements in 34 C.F.R. Sec. 300.532, which sets forth the minimum evaluation procedures required of the state and local educational agencies prior to placement of a child in a special education program.
14. The PPT also agreed to place the Student in a diagnostic placement pending the results of the evaluations in December 2003. [Exhibit B-22] The Board failed to follow the prescribed procedures for a diagnostic placement in accordance with the Connecticut Regulations. Regs. Conn. Agencies Sec. 10-76d-14(b) Nevertheless, the Student was not denied an appropriate public education by this failure; the Student received great benefit from this placement during the delay in receiving the report from the Parents' chosen evaluator. The Student was placed in the learning center and was also receiving literacy support in the regular education classroom. Information was gleaned about the Student's learning style during this timeframe, and Mrs. Thorne had an opportunity to observe her firsthand both in the special education and regular education settings when recommending, as part of the PPT process, the initial goals and objectives for the IEP.
15. While it is recommended that the Board should revise its procedures in the future to allow for the necessary PPT follow-up while the students are placed in diagnostic placements, in this case, the Student obtained the benefit of learning center supports from December through March. The Board cannot be penalized for providing services to the Student, with the agreement of the Parents, which provided educational benefit, when it did not follow the technical procedures set forth in the regulations. In this instance, this procedural inadequacy did not compromise the Student's right to an appropriate education, did not hamper the Parents' opportunity to participate and caused no deprivation of educational benefits. Moreover, while designated a "diagnostic placement," the Student's placement in the learning center pending the outcome of the Parents' requested evaluation, with the agreement of the Parents, is more akin to a placement pending educational program recommendations, which provides that the parents and the board can agree in writing on an appropriate temporary placement. Regs. Conn. Agencies Sec. 10-76d-16(b)
16. As a general matter, it is inappropriate, under the IDEA, for parents to seek cooperation from a school district, and then to seek to exact judicial punishment on the school authorities for acceding to their wishes. See Cleveland Heights-Univ. Heights City Sch. Dist. v. Boss, 144 F.3d 391, 398 (6<sup>th</sup> Cir. 1998) (referring to parental request to defer development of IEP until November). The Board waited in good faith to conduct its evaluations, as requested by the Parents, until after the neuropsychological had been conducted.<sup>6</sup> Even assuming *arguendo* that the Board

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<sup>6</sup> In this regard, the Board cannot be found to have developed an inappropriate IEP during the 2003-04 when the Parents refused to allow the Board to conduct its evaluation between October 2003 – January

failed to comport with the specific requirements of the Act by not promptly evaluating the Student, it is found that the Parents' claims against the Board for failure to evaluate would nevertheless fail in light of the fact that the Board acted in good faith to provide the Parents with the specific evaluations that were requested. In their brief, the Parents now fault the Board for failing to suggest another neuropsychologist or another group other than Yale. This claim that the Board failed in such a way is spurious. The Parents insisted that the Student be evaluated at Yale, only Yale, and at no other facility. It is indeed ludicrous to assert that the Board should have provided another evaluator in light of the Parents' unwavering resolve to proceed with the Yale evaluation.

17. The Parents assert that the failure to have the director of special education present at the October 2003 PPT was also a procedural violation. The IDEA defines an IEP team and specifies who must be present in order for the team to be duly constituted. The IEP team must include, among other members, the parents, and "a representative of the local educational agency who . . . is knowledgeable about the availability of resources of the local educational agency." 20 U.S.C. Sec. 1414(d)(1)(B) The October 2003 PPT meeting was convened to review the referral and plan an evaluation. The Parents did not indicate to the Board in any manner that they were seeking funding for a neuropsychological evaluation prior to the PPT meeting, although by the time of the meeting the Student's evaluation appointment was scheduled. The school psychologist and the school based members of the team were prepared to plan a Board evaluation, and commit the necessary resources to proceed with the planning of the Student's comprehensive evaluation. The school psychologist, who was the administrator designee at the October 2003, was uncomfortable approving or rejecting the Parents' requested neuropsychological evaluation at the PPT, and forwarded the request to the director for processing. Within 10 days of the PPT, funding for the Parents' selected evaluator was being processed. Assuming *arguendo* that the failure to have the director present at the PPT was a procedural violation, there was absolutely no harm to the Student. This did not delay the evaluation by the neuropsychologist the Parents insisted should conduct the assessment, and the approval of the funding was completed without any delay, as the funding was approved more than one month prior to the evaluation.
18. The Parents claim as a procedural violation that the Board failed to reschedule PPT meetings and/or include them in the Student's program. The IDEA provides "an opportunity for the parents of a child with a disability . . . to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." 20 U.S. C. Sec. 1415(b)(1), *see also* 20 U.S.C. Sec. 1414(d)(1)(B)(i) defining IEP team to include parents of child with disability); 34 C.F.R. Sec. 300.552. The Parents contend that the Board violated the IDEA's procedural requirements because the Board failed to consider the Parents' input into the program and placement of the Student for the 2004-05 school year when the June 2004 PPT was not rescheduled.

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2004. See, e.g. *Patricia P. v. Bd. Of Ed. Of Oak Park*, 203 F.3d 462, 468 (7<sup>th</sup> Cir. 2000); *Schoenfeld v. Parkway Sch. Dist.*, 138 F.3d 379, 382 (8<sup>th</sup> Cir. 1998).

[Exhibits P-26, P-27, P-28] This claim is without substance. The Parent asserted in several letters to the Board and in her testimony at the hearing that she was seeking for the Board to place the Student at an outplacement for the following school year. [Exhibits P-3, B-20, B-34, B-43] The Parents insisted on a June PPT meeting with specific Board staff and then failed to attend the previously agreed-upon meeting date. Furthermore, the mother admitted at the hearing that she did not request another PPT meeting after becoming aware that the June PPT meeting was convened in her absence. This latter point belies the Parents' alleged concern about the scheduling of this meeting particularly since the Mother stated at the hearing that her position regarding outplacement would not have changed even if the Board rescheduled the PPT meeting to make changes to the Student's program and placement.

19. It is significant that there is no evidence that the Parents would have accepted any FAPE offered by the Board that did not include a recommendation to place the Student in an out-of-district placement. Moreover, it is undisputed that the Parents – either one or both - participated in every other PPT team meeting at which the availability and merits of a variety of placements for the Student were debated, including the outplacement at Villa Maria where the Student has ultimately been placed. The failure to reconvene another June meeting did not violate the IDEA's procedural requirements. In actuality, the Parents' procedural argument boils down to an assertion that the Board members of the PPT must agree to the Parents' proposed placement decision to avoid a violation of the IDEA's procedural requirements, regardless of the extent of the parent's participation in IEP meetings. The statute's procedural protections do not sweep that broadly. See *Blackmon v. Springfield R-XII School District*, 198 F.3d 648, 657-58 (8<sup>th</sup> Cir. 1999) (noting that IDEA "does not require school districts simply to accede to parents' demands without considering any suitable alternatives" and that failure to agree on placement does not constitute a procedural violation of IDEA); *Yates Charles County Board of Education*, 212 F.Supp.2d 470, 472 (D.Md. 2002) ("[P]arents who seek public funding for their child's special education possess no automatic veto over a school board's decision"); *Rouse v. Wilson*, 675 F.Supp. 1012 (W.D.Va. 1987); 34 C.F.R. Pt. 300 App. A, at 105 ("The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive [a free appropriate public education].").
20. It is concluded that the one meeting held without the Parents' attendance is of no import given the facts of this case. The Parents participated sufficiently in the development of the Student's individualized education program to satisfy the IDEA's procedural requirements, and therefore, it is concluded that the Board complied with the procedural requirements of the Act.
21. Furthermore, the reason that the Parents requested the Board to reschedule the June PPT was that their attorney could not attend the PPT, not that the Parents had a conflict. It is accurate that Congress heavily stressed the importance of parental participation in the decisional process in the IDEA. See, for example, 20 U.S.C. §1400(c)(5)(B) (research and experience have demonstrated that educating children

with disabilities is made more effective by "strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate..."); 20 U.S.C. §1414(d)(1)(B)(i) (parents shall be members of the IEP Team); 20 U.S.C. §1414(f) (Board shall ensure that parents "are members of any group that makes decisions on the educational placement of their child."). It is clear that the Parents are an integral part of the IEP team. The Parents' attorney, however, is not an essential team member. The regulation commentary discusses attorney participation at IEP meetings, noting that a statutory provision provides that attorneys' fees may not be awarded for an IEP team meeting unless the meeting is convened as the result of an administrative proceeding or judicial action. 34 C.F.R. Sec. 300.344, *Comment*. The fact that the Parents' attorney is attending a PPT at another school district is insufficient reason to reschedule a PPT, particularly near the end of the school year when summer schedules will limit the ability to convene the PPT with the appropriate team members. It is unfortunate that the Parents chose not to attend the PPT due to their attorney's schedule. The Parents were not unsophisticated. The Mother is an attorney, the Father is an executive. They have advocated their positions with vigor throughout their relationship with the Board, and could have done so at this PPT meeting. Moreover, there can be no claim that they required their attorney to attend, due to some undue influence of opposing counsel. The Board's attorney did not attend the PPT. There was no reason to reschedule the June PPT, and the Board is not found to have denied the Student FAPE due to the Parents failing to participate in the PPT meeting.

22. As has been noted, any procedural inadequacies in this case have not compromised the pupil's right to an appropriate education, have not hampered the parents' opportunity to participate in the evaluation process and have not caused a deprivation of education benefits. Therefore, the Board sufficiently complied with the procedural requirements of the Act.<sup>7</sup>
23. The second inquiry is the determination of whether the IEP is reasonably calculated to enable the child to receive educational benefits. The Parents argue that the IEPs were not reasonably calculated to provide educational benefit and thus do not meet the substantive requirement of the IDEA. The Parents put forth several arguments to support their claims that the IEPs failed to provide a FAPE.<sup>8</sup>
24. It is important to note from the outset that the Individuals with Disabilities Education Act (IDEA) does not itself articulate any *specific* level of educational benefits that must be provided through an IEP. The Supreme Court however, has specifically rejected the contention that the "appropriate education" mandated by IDEA requires

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<sup>7</sup> While the Board has not impaired the Student's right to an appropriate education, has not hampered the Parents' opportunity to participate in the process and has not caused of education benefits, the Board should carefully review its procedures. The procedural inadequacies in this case were *de minimus*. Nevertheless, the Board should review its procedures and train all necessary staff to avoid these procedural inadequacies in the future.

<sup>8</sup> The statute of limitations bars any claims of FAPE – procedural and substantive – prior to the filing of this hearing request on or about September 2004. See Connecticut General Statutes Sec. 10-76h(a)(3).

states to “maximize the potential of handicapped children.” *Walczak v. Florida Union Free School District*, 27 IDELR 1135 (2<sup>nd</sup> Cir. 1998), citing *Rowley, supra*. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* The goal of IDEA is not to maximize a special education child’s potential, but rather to provide access to public education for such children. *K.P. v. Juzwic*, 891 F.Supp. 703, 718 (D.Conn. 1995).

25. Throughout the hearing the Parents contended that the goals set forth in the Student’s IEPs for the 2002-03 (kindergarten) and 2003-04 (1<sup>st</sup> grade) school years failed to envision sufficient progress for their daughter because she would still be behind her peers and, more importantly, her twin sister. The Court in *Rowley* pointed out, however, that the intent behind the IDEA was not to equalize educational opportunity, but to assure that every handicapped or disabled child has access to public education that will provide a benefit. *Rowley*, 458 U.S. at 198-200. “The annual goals in the IEP are statements that describe what a child with a disability can reasonably be expected to accomplish within a twelve-month period in the child’s special education program.” 34 C.F.R. Sec. 300.34, App.C, No. 38. Testimony in the record from all Board witnesses indicates that the goals and objectives included in the IEPs were appropriate and directed at providing the Student with educational benefit. Indeed, the Parent specifically requested several changes to the IEP goals and objectives during the 2003-04 school year, [Exhibits B-38, B-43] and such changes were incorporated into the IEP at their behest. The continuation of the 2003-2004 IEP into the initial stages of the Student’s second grade year – 2004-2005 – was a natural and appropriate decision by the PPT for the purpose of providing continuity to a Student who had demonstrated difficulty dealing with transitions. It is also important to note that because the IEP was initially developed in March 2004, the IEP proposed in June 2004 was not necessarily ripe for an annual review. There was no legal requirement for the PPT to develop an entirely new IEP for another full school year at that time.
26. A review of the Student’s IEPs reveals that the strengths and weaknesses of the Student refer back to the evaluations conducted by Dr. Westerveld, the speech language pathologist, and the occupational therapist, and consider input by school staff and the Student’s outside therapist. [B-34, B-43, B-54a] These specific references to the evaluations, coupled with the more general statements, meet the IDEA requirements. *O’Toole v. Olathe Dist. Sch. Unif. Sch. Dist. No. 233*, 144 F.3d 692, 703 (10<sup>th</sup> Cir. 1998). Moreover, the PPT appropriately incorporated into the IEP the goals and objectives that were recommended by Dr. Westerveld, the Student’s outside therapist, the special education teacher, the regular education teacher, the school psychologist, the occupational therapist, and the Parents.
27. Indeed, no witness with educational expertise testified on behalf of the Parents to rebut the goals and objectives proposed by the PPT during any of the school years at issue.<sup>9</sup> Even the Parents did not state with any specificity to what they were objecting in the IEP, other than the specific placement of the Student and the fact that her twin

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<sup>9</sup> Dr. Westerveld testified that he had not seen any of the IEP documents; nor had he observed the Student in her program.

sister would continually compare her status in the Ridgefield public schools to the Student. As to the first reason, the Parent claimed that the setup of the classrooms were distracting to the Student and she did not prefer her daughter to be educated in the special education classroom with other disabled students who were in different grade levels. These reasons are insufficient, in and of themselves, to warrant a finding that the Board denied FAPE to the Student. In addition, Ms. Thorne and Ms. Biondi-Greenwood both testified that the Student sincerely enjoyed her placement in the special education classroom and was blossoming nicely. She was following through on her work and was engaged in the classroom. Ms. Biondi-Greenwood testified that the Student transitioned into her first grade classroom beautifully after being in the learning center, and exhibited more and more confidence in herself as the year progressed. Mr. Ewing was also available to the Student on an as-needed basis and at designated times if the Student was exhibiting anxiety. The Student established a rapport and these services were appropriate.

28. As to the necessity to remove the Student from the Board schools to avoid comparison to her twin sister, it is important to note that all of the Board witnesses testified that the Student and her sister got along remarkably well in school and the Student did not present as having any issues regarding competition with her sister. The Parents appear to want the Student and her twin sister on equal footing. This was evident from the outset of the Parents' contact with the Board, when noting on the initial intake form that they wanted to "correct any problems early . . . especially because her [twin sister] is advanced." The Parent noted several times in her testimony that she would compare the Student to her twin sister, stating it's "natural for a parent of twins to compare." This need to compare the Student with her twin, and close the academic gap between the twins is not an appropriate reason to transfer the Student to another school, and obtain reimbursement from the Board.
29. The issues at home between the twins may be a concern to the Parents that is ongoing and longstanding. In the intake form filled out in 2002, the Parent did note that the Student has problems with jealousy, which was noted with extra emphasis. The Parents also noted that the Student was always intentionally stepping on toys. The Parent testified that the sibling issues continued. These home issues, not seen at school, are also not a reason to find that the Board program is not appropriate, and that the Board should provide reimbursement for a private placement. Counseling is included in the Board's proposed program, and could address any issues or frustrations the Student might be experiencing, including issues with her twin sister.
30. Other than the Parent's subjective testimony, there was simply no evaluative evidence, or other reliable testimony, to say that the Student's program and placement at Ridgefield Public Schools was inappropriate at any time.<sup>10</sup>

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<sup>10</sup> It should be noted that the mother is not certified to teach by the State of Connecticut and has no educational background that would support a finding that she is an expert as to her opinions regarding the Student's educational program.

31. To the extent the Parents rely on Ms. O'Brien's testimony to support their contention that the IEP was inappropriate, it has been found that her testimony is not reliable. Ms. O'Brien does not have an educational background, is unfamiliar with the specific academic goals, and has not observed the Student learning in the classroom. Dr. Westerveld also testified that he had not reviewed the IEP and was not aware of her program at the Board school.
32. Moreover, it is extremely significant that the IEPs at issue are being developed for a Student who is at a very young developmental age – first and second grade – and who is still in the initial stages of educational programming as a special education student. Based on the initial assessments during the first few months of the Student's IEP (March to April 2004), all the Board witnesses testified that she progressed in all academic areas and social skills. It is logical that the PPT would continue to recommend changes to these initial goals and objectives based on the Student's performance as she progresses, and revise the IEP, as necessary. An IEP must provide an opportunity for more than "trivial advancement" and a free appropriate public education (FAPE) under the IDEA is one that is "likely to produce progress, not regression." *Mrs. B. v. Milford Board of Education*, 103 F.3d 1114, 1121 (2d Cir. 1997); *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245, 248 (5<sup>th</sup> Cir. 1997); cert. denied. 118 S.Ct. 690 (1998). It is found that the Board's 2003-04 and 2004-05 IEPs are appropriate.
33. The Parents also attempted to claim at the hearing that the time allocated to provide the Student with special services was insufficient. The Board has a duty, however, to balance special services and mainstream education. See *Poolaw v. Bishop*, 67 F.3d 830, 835-36 (9<sup>th</sup> Cir. 1995). The Board was willing, however, to increase special services time outside of regular class in March 2004 when the Board thought it was necessary for the Student to make beneficial progress. [Testimony of Mr. Ewing] Indeed, at the hearing, the Parents did not contend that they objected to the placement of the Student in the special education classes for core academic and in the 1<sup>st</sup> grade classroom for science and social studies.<sup>11</sup> In light of the benefits that the Student received from his regular class attendance – group work in science and social studies [Testimony of Mrs. Biondi-Greenwood], it was reasonable for the Board to recommend that the Student be placed in various settings as deemed appropriate by the planning and placement team. See *Gregory K.*, 811 F.2d at 1314-15 (holding that placement in mainstream classes for various subjects was reasonably calculated to provide educational benefit.)
34. The Parents also contend that the Board's failure to provide extended school year services to the Student during the 2003-04 school year is a denial of FAPE. Under the IDEA, "[e]xtended school year services must be provided *only* if a child's IEP determines . . . that the services are necessary for the provision of FAPE to the child."

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<sup>11</sup> In addition, the Parents demanded in a letter, B-38, that the related services time for occupational therapy be increased to one hour – to make up for any alleged lost time from the previous year - which was agreed to at the PPT over objection of the occupational therapist. [B-43]

34 C.F.R. §300.309(a)(2)(emphasis added). In turn, “ESY Services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.” *JH v. Henrico County Sch. Bd.*, 326 F.3d 560, 565-66 (4<sup>th</sup> Cir. 2003)(quoting *MM v. Sch. Dist of Greenville County*, 303 F. 3d 532,538 (4<sup>th</sup> Cir. 2002), *See also Todd v. Duneland Sch. Corp.*, 299 F.3d 899, 906-07 (7<sup>th</sup> Cir. 2002). The Board offered to the Student ESY services from July 6, 2004 through July 29, 2004 for three times per week for a two hours session. [Exhibit B-45a]. In addition, occupational services were offered for .5 hours per week during the same timeframe. The summer school instructor was a certified special education teacher who was familiar with the Student’s learning styles, [Testimony of Ms. Thorne], and the Student’s previous occupational therapist, Mrs. Wu, was the assigned OT. There was no evidence presented that the Student regressed over school vacations or after long weekends. Dr. Westerveld did opine that interventions should be given during the summer months for consistency. His concerns are addressed in the ESY program that was offered to the Student. The summer school services offered by the Board for the summer 2004 were appropriate to allow the Student to carry the skills that she gained during her previous academic year to the second grade.

35. In evaluating a program, the appropriate standard is whether the Student can derive meaningful educational benefit from the proposed program, not everything that might be thought desirable by loving parents. *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2<sup>nd</sup> Cir. 1989) While the Parents have been active participants in the Student’s educational program, and appear to truly want to maximize her educational experience, that is not the appropriate standard. The Board exercised appropriate discretion in formulating and implementing the Student’s IEPs. The records support the conclusion that the Student’s IEPs were carefully drafted so that the Student can derive such meaningful educational benefit.
36. In addition to the free appropriate public education requirement IDEA’s preference is for disabled children to be educated in the least restrictive environment capable of meeting their needs. *Walczak, supra*. IDEA sets forth a strong congressional preference for integrating children with disabilities in the regular classrooms. *Oberti v. Board of Education*, 995 F.2d 1204 (3d Cir. 1993) School districts must evaluate whether a child with a disability can be educated in a regular education classroom if provided with supplementary aids and services. *Oberti*, 995 F.2d at 1216; *Mavis v. Sobol*, 839 F.Supp. 968, 985-986. The Act’s least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the “maximum extent possible.” *Oberti*, 995 F.2d at 1217. The Student can be educated in the regular classroom for a substantial portion of the week with appropriate supports, modifications, accommodations as set forth in the Board’s IEP. Moreover, the Student would truly benefit from the peer modeling and experiences of the regular education setting. Dr. Westerveld’s evaluation recommendations support peer modeling with nondisabled peers. Given the Parent’s complaints about the Student’s behavior with typically developing peers, it is important to have her model



appropriate behaviors in a regular, mainstream environment as is being proposed by the school district. In addition, the counseling services recommended by the PPT include opportunities for the Student to discuss social relationships and stressors in the school which will most likely include any difficulties with peers.

37. The program proposed by the Board is appropriate for the Student, considers her strengths and weaknesses, is developed so that the Student can derive meaningful educational benefit, and will be delivered in the least restrictive environment. The Student's program was individually designed after careful review of all evaluations, to place the Student in regular classes with resource room support, adjusted curriculum classes, and appropriate modifications, accommodations and related services.
38. As the Board's program is appropriate, it is not necessary to determine the appropriateness of Parent's proposed placement. *See, Burlington School Committee v. Dept. of Ed.*, 471 U.S. 359 (1985), *Florence Co. School District v. Carter*, 114 S.Ct. 361 (1993) (Reimbursement for private school placement is only awarded when the *district's program was not appropriate* and that the private placement could provide an appropriate educational program for the child.)

**FINAL DECISION AND ORDER:**

1. The Board did not fail to evaluate the Student.
2. The Board properly exited the Student from special education.
3. The Board did not fail to identify the Student.
4. The Board provided an appropriate program for the Student for the 2003-2004 school year.
5. The Board offered an appropriate program to the Student for the extended school year 2004 and the 2004-2005 school year.
6. The Parents are not entitled to reimbursement for the extended school year 2004 and the 2004-2005 school year at Villa Maria.
7. The Board did not violate the Student's and the Parents' procedural safeguards.