

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Region 6 Board of Education

Appearing on behalf the Parent:

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Appearing on behalf of the Board:

Attorney Christine Chinni
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Appearing before:

Attorney Brette Fitton
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Was the evaluation conducted by the District appropriate, thereby relieving the Board of its' obligation to provide an Independent Educational Evaluation ("IEE") at Public expense?
2. Did the District fail to provide student with a Free Appropriate Public Education ("FAPE") for the Extended School Year ("ESY") in the summer of 2013?
3. Did the District fail to provide Student with a FAPE for the 2013-2014 academic year?
4. Did the District fail to provide student with a FAPE for the ESY in the summer of 2014?
5. Did the District fail to provide Student with a FAPE for the 2014-2015 academic year?
6. Did the District fail to provide student with a FAPE for the ESY in the summer of 2015?
7. Does the District's proposed program for the 2015-2016 school year fail to provide Student with a FAPE?
8. Did the District fail to evaluate the Student in all areas of suspected disability under the IDEA?
9. Did the District fail in its affirmative duty to "find" the Student as eligible for Special Education and related services under the IDEA (20 USC § 1412(a)(3) and 34 CFR §300.11)?
10. Is the District liable under the IDEA for the reimbursement to the Parents for the private tutoring services provided to the Student?
11. Were the evaluations conducted by Dr. Heitzman and Patricia Bennett-Bigham at Parents' expense Independent Educational Evaluations ("IEE") under the IDEA, and if so, are Parents entitled to reimbursement for the evaluations and related costs of attendance by these providers at Planning and Placement Team ("PPT") meetings and consultation costs?
12. Does the IDEA provide that Parents should be reimbursed for the Heitzman and Bennett-Bigham evaluations and related costs of attendance by these providers at PPTs and consultation costs, even if they are not IEEs as defined by the IDEA?

13. Did the District violate Student's rights under Section 504 of the Rehabilitation Act ("Section 504") with "deliberate indifference" or otherwise (including but not limited to providing excessive time accommodations and failing to provide Special Education and related aids and services) during the period beginning July 2, 2012 to the date of the filing of Parents' due process hearing request on July 2, 2015?
14. Did the District fail to evaluate the Student in all areas of suspected disability under Section 504?
15. Did the District violate Student's rights under Title II of the Americans with Disabilities Act ("ADA") with "deliberate indifference" or otherwise (including but not limited to providing excessive time accommodations and failing to provide Special Education and related aids and services) during the period beginning July 2, 2012 to the date of the filing of Parents' due process hearing request on July 2, 2015?
16. Did the District fail to evaluate the Student in all areas of suspected disability under Title II of the ADA?
17. Did the District violate Student's rights under Section 504 with "deliberate indifference" or otherwise by proposing a program for Student which provides excessive time and accommodations, and which fails to provide Special Education and related aids and services for the 2015-2016 school year?
18. Did the District violate Student's rights under Title II of the ADA with "deliberate indifference" or otherwise by proposing a program for Student which provides excessive time and accommodations, and which fails to provide Special Education and related aids and services for the 2015-2016 school year?

PROCEDURAL HISTORY:

On June 16, 2015, the Student received a Special Education Due Process Hearing Request filed by the Board and this Hearing Officer was appointed. During the prehearing conference held on June 25, 2015, the above hearing dates were set and the deadline for mailing the Final Decision and Order was established as July 30, 2015. On June 25, 2015, the Board submitted a request for a thirty day extension of the mailing deadline of the Final Decision and Order. The request for an extension of the mailing deadline was granted and a new deadline of August 28, 2015 was established. On July 2, 2015, Parents filed a request for a Due Process hearing, which was assigned to Hearing Officer Rosado. Hearing Officer Rosado granted the request of the parties to consolidate the matter with Hearing Officer Fitton and ordered the consolidation of the two cases on July 7, 2015. On November 19, 2015, the Board filed a Motion to Preclude Testimony from Parents' Proposed Witness seeking to disallow testimony from Student's current teachers, this Motion was denied, but orders were given to Counsel to limit the scope of inquiry to awareness of and implementation of Student's 504 accommodation plan and Student's current progress. On August 12, 2015, Attorney for the Parents filed Parent's Brief in Support of the Hearing Officer's Jurisdiction to Determine the Parents' claims pursuant to the IDEA, Section 504, the ADA and Section 1983. On August 14, 2015, Attorney for the Board filed a Motion of Regional School District No. 6 to Dismiss Certain Issues from Case No. 16-0011 which sought dismissal of those claims grounded in the Section 504, the ADA and Section 1983. Board's Motion to Dismiss was denied in part and granted in part on September 9, 2015, and the surviving issues were the subject of this hearing. On August 17, 2015, Attorney for the Parents filed a motion to amend their due process request to include the 2015-2016 academic year, which was granted over the Board's objection on August 31, 2015. On August 24, 2015, Parents filed a Joint

Stipulation of Uncontested Facts. Successive requests for extension of the mailing deadline were made during the pendency of the hearing. A joint request for extension of the December 24, 2015 mailing deadline was made on December 14, 2015 on the record and was granted. The new deadline was January 22, 2016. On December 22, 2015, the last hearing date, a briefing deadline of February 1, 2016 was set and the jointly requested extension of the mailing deadline from January 22, 2016 to February 19, 2016 was granted. On January 27, 2016, the parties jointly requested an extension of the briefing deadline from February 1, 2016 to February 5, 2016 and an extension of the mailing deadline from February 19, 2016 to March 4, 2016. These requests were granted on January 28, 2016.

The hearing took place over four months on the following dates: September 9, 2015, October 2, 2015, October 7, 2015, October 16, 2015, October 23, 2015, October 26, 2015, November 13, 2015, November 23, 2015, December 7, 2015, December 11, 2015, December 14, 2015, and December 22, 2015.

The Parents' witnesses were the Mother; Dr. Timothy Heitzman, Pediatric Neuropsychologist; Ms. Julie Swanson, Parents' Advocate; Ms. Ronda Ranft (fka Ms. Hanecak), Student's Seventh Grade English Teacher; Mr. Scott Brady, Region 6 Eighth grade History Teacher; Ms. Sandra Newbury, Region 6 School Psychologist; Ms. Joanne Woodington, Region 6 Kindergarten through Sixth grade Language Arts Coordinator and Reading Interventionist; Mr. Mark Yanaway, Student's Ninth Grade History Teacher; Ms. Katlin Marchand (fka Ms. Butryman), Student's Sixth Grade teacher; Ms. Stacy Carrocio, Legal Assistant for the Law Offices of Jennifer Laviano, LLC; and Ms. Patricia Bennett-Bigham, Parents' School and Reading Consultant.

The Board's witnesses were Mr. Kevin Hollis, Region 6 Director of Special Services; Ms. Kristin Lutz, Region 6 School Psychologist; Ms. Christine Fenn, Region 6 Wamogo High School Counselor; Ms. Christine Concilio, Student's eighth grade teacher; Ms. Jane Elizabeth Smith-Vaniz, Student's ninth grade English teacher; Ms. Paige Davenport, Student's eighth grade Math teacher; Ms. Leah Smith, Assistant Principal of Wamogo High School,

Hearing Officer Exhibits included the original hearing request filed by the Region 6 Board of Education, (HO-1), the first request for hearing filed by Student (HO-2), Student's amended request for hearing (HO-3) and the Joint Stipulation of Facts (Joint Stipulation).

The Parent submitted exhibits P-1 to P-124. P-46 was withdrawn by Parent and excluded. Board's objections to the admission of P-66, P-74, P-85, and P-97 were sustained and the exhibits excluded. The remaining Parent exhibits were entered as full exhibits. The Board submitted exhibits B-1 to B-30, which were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

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. For reference, *see SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

SUMMARY:

Student was repeatedly referred for Special Education, first by the District and later by Parents, but Student was never found eligible, mainly on the basis of Student's achievement in the classroom and average achievement testing results. Student's struggles to complete reading and written work persisted throughout her time in District. Student was diagnosed with Dyslexia and Dyscalculia in 2014. These diagnoses were the result of a thorough and detailed neuropsychological evaluation which was not properly considered by the PPT. While Student's achievement testing and grades appeared to demonstrate adequate progress through the curriculum, the complex nature of Student's disability, as revealed through her recent diagnosis and evaluations, requires remediation in order address significant deficits that were not easily discovered due to the complexity of Student's presentation.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (CGS) §10--76h and related regulations, 20 USC §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act, CGS §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. Student was born on November 24, 2001. (Joint Stipulation)
2. Student resides in Warren, Connecticut, a town that is part of the Region 6 School District and Student had attended Region 6 schools since entering Kindergarten in 2006. (Joint Stipulation) Student is enrolled in ninth grade in the Wamogo Regional High School. (Id.)
3. Parents have expressed concern about Student's educational progress since Kindergarten. (Testimony of Mother) Parents observe that homework takes an extraordinary amount of time and that struggles with work at home has had negative emotional consequences for Student. (Id.) Parents have also expressed concern that Student's struggles in school are masked by the District's retake policy and 504 accommodations. (HO-2, HO-3; Testimony of Mother) By the time Student was in sixth grade, Mother found she had to provide a significant amount of help at home by reading Student's books to her and scribing for her so that she could complete assignments. (Testimony of Mother, 9/9/2015) Mother has since faded this support. (Testimony of Mother, 9/9/2015)
4. Since enrolling in the Region 6 School District, Student has been the subject of several referrals for Special Education, none of which have resulted in Student being found eligible for Special Education. (Joint Stipulation) The first two referrals were made by Region 6 staff members and subsequent referrals were made by Parents. (Id.)
5. Student was first referred for Special Education eligibility testing by her Kindergarten teacher in the 2006-2007 academic year. (Joint Stipulation) The District conducted testing pursuant to this referral and the PPT did not find Student eligible for Special Education. (Id.) A second staff referral was generated by Student's second grade teacher

- in the 2008-2009 academic year (Id.) Testing was again conducted by the District and Student was again found ineligible for Special Education. (Id.)
6. In November of 2011, Parents requested Special Education eligibility testing, which was performed by the District. (Joint Stipulation) The testing results were reported at a PPT meeting on May 17, 2011, and Student was again determined to be ineligible for Special Education. (Joint Stipulation; B-4)
 7. On February 28, 2013, during Student's sixth grade year, Parents filed another referral for Special Education eligibility testing. (Joint Stipulation) On March 17, 2013, a PPT meeting was held during which Mother withdrew her referral. (B-5) Parents renewed their request for a referral for Special Education on March 25, 2013. (Joint Stipulation) Testing was conducted by the district which was reported at a PPT Meeting on June 4, 2013 at which Student was again found ineligible. (Joint Stipulation; B-9)
 8. Pursuant to an order from the Connecticut State Department of Education ("CSDE") that the PPT meet again and reconsider the June 2013 eligibility determination after providing Parents with Response to Intervention ("RTI") and Scientific Research Based Interventions ("SRBI") information they had been requesting, the PPT met again on November 20, 2013, Student's seventh grade year, and again found Student ineligible. (Joint Stipulation; B-10)
 9. On May 13, 2014, a PPT meeting was held to review eligibility based on Reading assessments conducted in February 2014. (B-19) The PPT again found that Student was not eligible for Special Education. (B-19)
 10. On January 28, 2015, and May 28, 2015 respectively, PPT meetings were held during which Student was determined to be ineligible for Special Education. (Joint Stipulation; B-12; B-14)
 11. Student received reading intervention services in Kindergarten (2006-2007), the summer after Kindergarten, first grade (2007-2008), the summer after first grade, second grade 2008-2009, third grade (2009-2010) fourth grade (2010-2011), fifth grade (2011-2012) and sixth grade (2012-2013). (Testimony of Mother 9/9/2015; Joint Stipulation) During middle school, Student worked with a Reading and Math Interventionist who did reading intervention in an "on and off way". (Testimony of Assistant Principal, 12/14/2015)
 12. In November 2011, a Section 504 plan was created based on executive functioning deficits and concerns regarding Student having Anxiety. (Joint Stipulation) In May of 2011, Student's 4th grade year, 504 Intervention began to address anxiety and executive functioning and give Student extra time on testing. (Testimony of Mother, 9/9/2015) The amount of extra time to be afforded Student was not specified under the 504 plan. (Id.) Accommodations under the plan included additional time on tasks and tests, quarterly meetings to discuss progress, additional copy of math textbook for home, quarterly monitoring for RTI data, behavior rating scales as needed, use of study guides, provision of class notes, use of calculator, hard copies of work when possible, 45 minutes of counseling per week and use of bookshare.org for English class. (P.94)
 13. Parents hired an Orton-Gillingham tutor during the summer of 2015. (P.86, p.1-8)
 14. Over the course of Student's enrollment in the District, several evaluations of Student have been conducted as Parents and the District have worked to understand Student as a learner. (B-2, B-3, B-7, B-8, B-11, B-13, B-18; P-7)
 15. In kindergarten, the testing done as a result of a referral for special education placed Student in the average range. (Testimony of Mother, 9/9/2015) In second grade, the

testing done as a result of a referral for special education placed Student in the average range in all but two areas where she tested below average. (Id.) In the area of reading readiness, the Student tested above average. (Id.)

16. At a PPT meeting on December 4, 2010, the District agreed to Parents' request for an outside evaluation of Student to rule out Autism Spectrum Disorder, to conduct in-district evaluations of Student's phonological awareness and pragmatic language and to assess Student's behavior through the completion of behavior ratings scales. (B-1)
17. On April 22, 2011, a psychoeducational evaluation report obtained by the District pursuant to the December 14, 2010 PPT meeting was issued by Dr. Erik Mayville, Clinical Psychologist. (Testimony of Parent Advocate; B-2) During the course of his evaluation, Dr. Mayville administered the Childhood Autism Rating Scale (CARS) assessment, after which he ruled out Autism. (B-2, p. 26) Dr. Mayville's report noted that Student results on the Weschler Intelligence Scale for Children ("WISC") were average in all areas with the exception of processing speed which was in the low average range. (B-2, p. 16) Reading fluency and decoding tasks, as well as math fact fluency were noted as challenges. (B-2, p. 16) Student was also noted as being at great risk for developing a mood and/or anxiety disorder as well as further difficulties in academics. (B-2, p.17) Dr. Mayville recommended a low-stress working environment, regular social skill programming at school, programming to increase self-management through self-monitoring, participation in online remedial reading programs, direct instruction in the areas of spelling and writing, monthly parent and school team meetings for generalizing strategies across the home and school environments, regular assistance at school in areas where Student struggles and a weekly review. (B-2, pp. 17-21) He also recommended consultation with a neuropsychologist and/or behavior analyst with experience with executive function difficulties for assisting staff. (B-2, p.17)
18. On May 4, 2011, Dr. Mayville issued an addendum to his psychoeducational evaluation report at Mother's request, in which he clarified statements in his evaluation regarding Student's risk for mood disorders and anxiety and her risk for further difficulties in academics. (Testimony of Mother, October 2, 2015, B-2, pp. 20-21) Dr. Mayville clarified that the risk for mood and anxiety disorders was quantified as great based on Student's scores in the 90th percentile for mood and 81st percentile for anxiety. (B-2, p.20) He then clarified that despite Student's cognitive and academic standardized test scores she may display learning disability-level difficulties in the area of writing. (B-2, p.20) Dr. Mayville noted the disparity between Student's performance on standardized tests compared with her difficulty with school work as the basis for the concern about writing. (B-2, p.20) While Dr. Mayville suggested that this disparity could suggest a Disorder of Written Expression, he did not make that diagnosis, indicating that the Student's educational team should begin to do a functional assessment in that skill area, including a curriculum-based assessment in order to analyze whether Student's functional skills would make her eligible for Special Education under the category of learning disability. (B-2, p.21)
19. On May 10, 2011, a District school psychologist, Ms. Kristin Lutz, evaluated Student's behavior and social skills within the school setting through observations and administration of the Behavior Assessment System for Children, Second Edition ("BASC-2"), classroom observation and student interview. (B-3, pp.1-6) Student did not display behaviors of concern during the observations by Ms. Lutz. (B-3, p.1) Student was

- rated in the At Risk range by Parent in the composite areas of Internalizing Problems and Adaptive skills. (B-3, p.2) Student was rated as clinically significant in the composite area of Internalizing Problems. (B-3, p.2) Student self-reported spelling as hard during her interview with the school psychologist. (B-2, p.2)
20. In the spring of 2013, the PPT agreed to conduct a full evaluation of Student.(B-6) Ms. Lutz conducted a psychoeducational evaluation as a result of this decision and issued a report on May 20, 2013. (B-7) As part of the evaluation, Ms. Lutz had the Parent and a teacher complete the BASC-2 scales again and had Student complete the self-report scale as well. (B-7, pp. 4-5) Parent and teacher rated Student in the Average range for all composite areas. (B-7, p. 5) Student's self-report was average in all composite areas but critical items noted were responses of "Sometimes" in response to the statements: "No one understands me", "I feel sad" and "I hate school." (B-7, p. 5) In her interview with Ms. Lutz, Student stated that spelling, writing, grammar and punctuation were hard. (B-7, p. 5) Student tested as having a full scale IQ of 91, which is within the average range, per her results on the WISC-IV. (B-7, p.2) Significant discrepancies were noted between Student's score in the area of Processing speed which fell in the borderline range and placed Student in the 5th percentile and Student's scores in the average range for all other composite scores. (B-7, p.2) Ms. Lutz also administered achievement testing through the Weschler Individual Achievement Test - Third Edition ("WIAT-III"). (B-8, pp. 4-5) Student's score on the Reading Composite was in the average range (25th percentile). (B-8, p.5) Student's composite score in Written Expression was also average (47th percentile), although it should be noted that this composite score was derived from extremely divergent scores on the subtests from below average (13th percentile) on Spelling to above average (88th percentile) in sentence composition. (B-7, p.4) Student's Mathematics composite score was average (55th percentile), while her Math fluency composite score was significantly lower (4th percentile) and which fell in the below average range. (B-7, p.4) Ms. Lutz noted that it was the speed at which Student was able to complete the tasks, not her accuracy, that had resulted in such a low score. (B-7, p.4)
21. A language evaluation of Student was conducted by Ms. Marcena Sass, M.S, CCC-SLP, a member of the Region 6 staff, and a written report was issued on May 9, 2013. (B-8, p. 1-3) Only one test, the Clinical Evaluation of Language Fundamentals - 4th edition ("CELF-4") was administered for this evaluation. (Id.) This test assessed Student's language competency in the areas of semantics and syntax; Student scored within the average range for all subtests. Such subtests scores are combined to generate a "Core Language Score" which reflects Student's overall language competency. (Id.) Student's Core Language Score was also in the solidly average range. (Id.) Direct language intervention was deemed unnecessary by the evaluator based on the CELF-4 results. (B-8, p.3)
22. On February 23, 2014, the District's Language Arts Coordinator conducted an assessment of Student's written language. (B-11, pp. 1-2) The Language Arts Coordinator administered the Test of Written Language ("TOWL-4"). (Id.) Student's scores were average and above average on all of the subtests of the TOWL-4 that were administered, with the exception of the spelling subtest, on which Student scored a 7 which put her at below the average range of 8-12. (B-11, p.1) Student's composite writing scores in both contrived and spontaneous writing were above average. (B-11, p.2) Student's overall writing score was also above average. (Id.) The evaluator identified

- spelling as an area of relative weakness for Student and recommended Student be permitted to keep a word list and dictionary with her for reference while writing. (Id.)
23. The Language Arts Coordinator also conducted a Qualitative Reading Inventory (“QRI-5”) during the spring of 2014, the results of which were reported at a PPT meeting held on May 13, 2014. (B-18; B-19, p. 3) Student required extra time to complete the QRI-5 and with the extra time her comprehension was on grade level. (Id.) Student’s fluency was slightly below average. (Id.) Recommendations based on the QRI-5 were to permit use of audio books, some support at home with oral reading of text to strengthen fluency, and extra time to read novels for class assignments. (B-18)
 24. On April 10, 2015, an Occupational Therapy/Assistive Technology Screening was completed by Ms. Eve Moura, MS, OTR/L, who worked for Education Connection, one of Connecticut’s Regional Education Service Centers. (B-13, pp.1-4) This was not a full assistive technology evaluation, but rather a pre-screening evaluation conducted to determine whether or a full assistive technology screening was necessary. (B-13, p.1) Ms. Moura administered the Wide Range Assessment of Visual Motor Abilities (“WRAVMA”) during this evaluation. On the WRAVMA, Student scored in the average range in the subtest of Drawing as a test of Visual-Motor skills (68th percentile) and in the subtest of Pegboard which tests Fine Motor skills (16th percentile). (B-13, pp.1-2) Student’s score in the subtest of Matching, which tests Visual-Spatial skills, was in the below average range as it fell in the 9th percentile. (Id.) Student’s composite on the WRAVMA was in the average range. (B-13, p.2) The disparity between the scores was not analyzed in the evaluation. Ms. Moura did note that applications and programs might assist her in the classroom with note taking as “...Student’s pace of work hinders her performance.” (B-13, p.2)
 25. In the Fall of 2014, Parents retained the services of Timothy Heitzman, Ph.D. to conduct a Neuropsychological Evaluation. (P.22, p.1-12) Dr. Heitzman holds a PhD from the University of Rhode Island in School Psychology, an M.A. in Clinical Psychology from Loyola College, MD, and a B.S. in Psychology from La Salle University. (P-96) Dr. Heitzman was also a Postdoctoral Fellow and then an Advanced Fellow at Boston Children’s Hospital for a period of five years. (Id.) Based on Dr. Heitzman’s experience, training and the quality of his report, his analysis and recommendations were given significant weight.
 26. On September 30, 2015 and October 1, 2014, Dr. Timothy Heitzman conducts a neuropsychological evaluation of Student and subsequently generates a report of his findings. (Joint Stipulation; P-22) Dr. Heitzman obtained information in the form of completed BASC forms from District staff, but did not speak with anyone from the District nor observe Student in an educational setting prior to completing his report. (Joint Stipulation) As of the date of Dr. Heitzman’s evaluation in the Fall of 2014, Mother reported Student’s anxiety is under control. (P-22)
 27. Dr. Heitzman arranged for Parent, Teacher and Student to complete the BASC-2 again. (P.22, p.3-4) Mother did not report significant problems but noted an at-risk level of social withdrawal. (Id.) Student’s history teacher reported no significant or at risk problems, however Student’s Language Arts teacher endorsed at-risk levels of attention and learning problems, as well as atypical behavior and low levels of leadership. (Id.) Student endorsed a high level of frustration with school and a poor attitude to school in general.

28. On the Behavior Rating Inventory of Executive Functioning (“BRIEF”), Mother did not identify significant problems with Student’s emotional self-regulation, but had high concern with Student’s regulation of skills such as initiation, working memory and organization of materials. (P-22, p.4) Student’s teachers reported Student had difficulty with initiation and working memory and was at-risk or had significant trouble with planning. (Id.) The Language Arts teacher reported difficulty with self-monitoring as well.
29. On Dr. Heitzman’s administration of the WISC-IV, Student’s scores placed her in the average range for her General Ability Index with a 108. (P-22, p. 5) Student’s working memory and processing speed test results varied from average to below average, with coding being a particular weakness in the area of processing speed. (Id.)
30. Dr. Heitzman utilized the Delis-Kaplan Executive Function System (“D-KEFS”) and the Conner’s Continuous Performance Test (“CPT-II”) to evaluate Student’s attention and executive functioning. (P-22, p. 5) Student’s performance on the CPT-II placed her in the average range for attention functioning. (Id.) Student’s performance on the D-KEFS varied from average to deficient executive functioning. (Id.)
31. The Rey-Osterreith Complex Figure (“ROCF”) and the Beery-Buktenia Developmental Test of Visual-Motor Integration (“VMI”) were administered by Dr. Heitzman to assess Student’s nonverbal processing. Student’s score on the VMI was average, but her scores on the ROCF exposed weaknesses in encoding as the complexity of the test increased. (P-22, p.6)
32. The Comprehensive Test of Phonological Processing (“CTOPP-2”) and the Developmental Neuropsychological Evaluation (“NEPSY-II”) were used to assess Student’s verbal processing. The NEPSY-II subtest utilized showed Student has below average receptive language skills and the CTOPP-2 scores placed Student well below average in her phonological processing skills. (P.22, p. 7)
33. Student’s learning and memory scores on the Children’s Memory Scale (“CMS”) ranged from below average to average. (P.22, pp. 7-8)
34. Academic skills and achievement were measured through administration of the Gray Oral Reading Test-5 (“GORT-5”), Test of Word Reading Efficiency -2 (“TOWRE-2”), and Weschler Individual Achievement Test (“WIAT-III”) (P.22, p.8-9) Achievement weaknesses were evident in areas of basic reading, reading efficiency, spelling and math calculations and fluency. (P-22, p.8)
35. Dr. Heitzman’s evaluation diagnosed Student with Dyslexia and Dyscalculia. (P-22, pp. 9-10) His clinical impressions identified Student as having an anxious temperament, rather than an anxiety disorder. (P-22, p. 10)
36. Dr. Heitzman’s recommendations included specialized instruction, including a reading program which is specifically designed to address Student’s reading disorder of Dyslexia and specialized instruction in math fact and calculation fluency. (P-22, p.11) Other recommendations include continued use of a calculator as a support in math class and use of audible textbooks through programs such as bookshare.org. (Id.) In order to address Student’s executive functioning deficits, Dr. Heitzman provided a list of suggested tasks to be implemented at home and in school, including chunking long assignments, writing out instructions, use of preferential seating, and use of extra time. (P.22, p. 11-12) Dr. Heitzman recommended summer programming for Student to provide the opportunity for Student to catch up with her peers. (P.22, p.12) He also recommended a foreign language

- waiver and counseling to address her anxiety. (Id.) Monitoring of progress consisting of standardized testing taking place at yearly intervals and a follow up neuropsychological in 2 years was recommended. (P.22, p.11)
37. Upon receipt of Dr. Heitzman's written report, in which Student was diagnosed with Dyslexia and Dyscalculia, Parents shared the report with the District and requested another PPT meeting. (Joint Stipulation).
 38. In early 2015, Parents retained the services of Patricia Bennett-Bigham, an Orton-Gillingham practitioner and school and reading consultant (Testimony of Bennett-Bigham 10/16/2015) Ms. Bennett-Bigham holds a BA in Psychology from Duquesne University, an MA in Clinical Psychology from the University of Dayton, and an MBA from Rutgers University. (Testimony of Bennett-Bigham 10/16/2015, p.23; P-8, p.2). Having completed 45 hours of coursework and 100 hours of practicum, Ms. Bennett-Bigham, earned the "Associate" level certification from the Academy of Orton-Gillingham Practitioners and Educators in 2004. (Testimony of Bennett-Bigham, 10/16/2015, p.29) Although she completed additional training and practicum hours, Ms. Bennett-Bigham has not applied for the "Certified" level offered by the Academy. (Testimony of Bennett-Bigham, 10/16/2015, p.29) Ms. Bennett-Bigham began consulting with school districts in 2003 and continues to do so, in addition to her work with parents. As part of her consultation work she conducts assessments. (Testimony of Bennett-Bigham, 10/16/2015, p.26 and p.29)
 39. Ms. Bennett-Bigham's experience and training as well as the quality and detail of her report were found to be considerable and testimony weighed accordingly, although as an Orton-Gillingham practitioner, her recommendation of that specific program for Student was weighed with consideration that such a recommendation may be based in part in self-interest.
 40. On April 18, 2015, Patricia Bennett-Bigham generated a document titled Comprehensive Reading and Math Assessment. (Testimony of Bennett-Bigham, 10/16/2015, p.37; P-7, pp.1-29) As part of her assessment, Ms. Bennett-Bigham reviewed Student's report cards, as well as school and private assessments, which included the reports of Dr. Mayville and Dr. Heitzman. (Testimony of Bennett-Bigham, 10/16/2015, p.36 and p. 54; P-7, p.1)
 41. Ms. Bennett-Bigham met with Student on four occasions between February 20, 2015 and March 20, 2015 during Student's eighth grade year. (Testimony of Bennett-Bigham, 10/16/2015 p.36, p.47; P-7, p.1) She also met with Mother. (Testimony of Bennett-Bigham, 10/16/2015 p.36, P-7, p.1)
 42. Ms. Bennett-Bigham did not have any contact with District staff, nor she did she observe Student in any educational settings, prior to completing her evaluation. (Joint Stipulation)
 43. As part of her assessment Ms. Bennett-Bigham administered the Word Identification and Spelling Test-Secondary Level Grades 6-12 ("WIST"). (Testimony of Bennett-Bigham, 10/16/2015, p.36; P-7, p.5-8) The WIST standard scores have a mean of 100 and a standard deviation of 15. (P-7, p.5) The standard score average range is 90 to 110. (Id.) Student's composite score on the WIST is referred to as the Fundamental Literacy Index. (Testimony of Bennett-Bigham, 10/16/2015, p. 41; P-7, p. 8) Student's composite score was a 77 based on age and a 71 based on grade. (P-7, pp. 7-8.) These scores placed Student in the poor range. (P-7, p.7) Student's scores fell in the poor range on the WIST subtests of Word Identification, on which Student scored a 79 based on age and a 70 based on grade level, and Spelling, on which Student scored a 78 based on age and a 74

based on grade level. (Testimony of Bennett-Bigham, 10/15/2015, P-7, p. 8) Student's scores on the Supplemental Sound-Symbol Knowledge Subtest fell in the very poor range with Student scoring a 68 based on her grade level and a 62 based on her age. Student showed strength in the area of irregular non-phonetic sight words and she was able to read these words with automaticity and accuracy. (P-7, p.6) Student was only able to identify the sounds of 20 of 25 consonants and 10 of 15 of the sounds for basic vowels and only 18 of 48 vowel combinations when given this subtest and her results placed her at a first grade level. (Testimony of Bennett-Bigham, 10/15/2015, pp. 44-45). Student's results in all areas were below a fifth grade level. (Testimony of Bennett-Bigham, 10/15/2015, P-7, p.8)

44. The second test administered by Ms. Bennett-Bigham was the Qualitative Reading Inventory ("QRI-5). (Testimony of Bennett-Bigham, 10/15/2015, pp. 45-46; P-7, pp. 9-13) Student's scores on the QRI-5 Word List tests identified her as able to read 3rd through 5th grade word lists at the independent level (90-100% accuracy). (P-7, p.9) Student's ability to read the 6th grade word lists placed her at the instructional level (70-80% accuracy) and when tested on Upper Middle School and High School words her performance placed her at the frustration level (below 70% accuracy). (Testimony of Bennett-Bigham, 10/15/2015, pp. 46; P-7, p.9)
45. Student's scores on the QRI-5 indicated that for a fiction passage leveled at Grade 7-8 Student's accuracy and comprehension was at the instructional level. (Testimony of Bennett-Bigham, 10/15/2015, p. 51; P-7, p.10) Student's accuracy score when reading the non-fiction passage was also at the instructional level, however her comprehension score was at the frustration level. (Id.) With both passages, Student's comprehension rose to independent when she was permitted to look back through the text in order to respond to questions. (P-7, p.11)
46. The third test administered by Ms. Bennett-Bigham was the Test of Word Reading Efficiency-2, Form B ("TOWRE-2") which tests the ability to pronounce printed words accurately and fluently. (P-7, p.13) The average score on this test is 100 with a standard deviation of 15, resulting in an average score range of 90-110. (Id.) Student's sight word efficiency subtest score placed her in the 7th percentile, at the grade equivalent of third grade and in the poor range. (Testimony of Bennett-Bigham, 10/15/2015, pp. 52-53; P-7, p.13) Student's score on the Phonemic Decoding Efficiency subtest placed her in the 13th percentile and also at a third grade equivalent and in the below average range. (Id.) Student's composite Total Word Reading Efficiency Index score placed her in the poor range and in the 8th percentile. (P-7, p.14)
47. The next test administered by Bennett-Bigham were the Memory for Digits and Non-word Repetition subtests of the Phonological Memory Composite. Phonological Memory subtest of Comprehensive Test of Phonological Processing ("CTOPP"). (P-7, p.15) CTOPP subtests of Phonological Awareness and Rapid Naming had been administered by Dr. Tim Heitzman within a year (10/2014) of Bennett-Bigham's administration of the Phonological Memory subtest, and so were not administered by her, although the results of Heitzman's administration were noted and analysis of these were included in Bennett-Bigham's assessment. (P-7, pp.14-15) Student's composite score for Phonological memory placed her in the 16th percentile and in the below average range. (Testimony of Bennett-Bigham, 10/15/2015, pp. 45; P-7, 15.

48. Bennett-Bigham also administered the Test of Written Language-4 - Form B- ("CTOWL-4"). (Testimony of Bennett-Bigham, 10/15/2015, p. 55; P-7, pp.16-17) Student's overall writing composite score was in the average range (P-7, p. 17) Student's composite score for contrived writing was within the average range and within the 45th to 50th percentile based on Student's age and grade level. (Id.) A strength for Student was reflected in her scoring in the superior range for her spontaneous writing. (Testimony of Bennett-Bigham, 10/15/2015, pp. 55-56; P-7, pp. 16-17)
49. The Test of Reading Comprehension-3 ("TORC-3") was administered by Bennett-Bigham during her assessment and Student scores on all subtests were within the average range. (P-7, p. 18) Student's composite score of 92 on the Reading Comprehension Quotient fell in the low end of the average range and in the 30th percentile. (P-7, p. 18-19)
50. Bennett-Bigham concluded her assessment with administration of the Key Math-3 Diagnostic Assessment ("Key-Math-3 DA"). Student scored in the average range in the three areas tested, Basic Concepts, Operations and Applications. In Basic Concepts, Student's score fell in the 37th percentile. In Operations, Student's score fell in the 27th percentile and in Applications Student's score was in the 47th percentile. Bennett-Bigham noted that Student cannot automatically retrieve math facts for addition, subtraction multiplication or division. (P-7, pp.22-23) She noted that completion of the multiplication and division worksheet took an exorbitant amount of time (at least twice the normal administration) and that Student had inefficient means of solving problems involving these operations. (Testimony of Bennett-Bigham, 10/15/2015, p. 63; P-7, p.22)
51. As a result of her testing and review of Student's records, Bennett-Bigham confirmed Dr. Heitzman's diagnoses of Dyslexia and Dyscalculia. (Joint Stipulation) To address Student's needs based on these diagnoses, Bennett-Bigham recommended age-appropriate, focused intensive, direct and explicit instruction in decoding and encoding both in isolation and in connected text whether for reading or for written expression. With such instruction to be multisensory in nature and taught in a sequential and cumulative way by a specialist, certified in a multisensory in language based program who has at least 5 years of experience with both middle and high school students. (P-7, p. 25). Bennett-Bigham indicated that such instruction should be delivered for an hour to 90 minutes a day five days a week and would likely take two years. (Testimony of Bennett-Bigham, 10/15/2015, pp. 73-75) She also recommended progress monitoring built into the explicit instruction on a daily basis and annually. (Testimony of Bennett-Bigham, 10/15/2015, pp. 77-78)
52. Bennett-Bigham also recommended explicit instruction in spelling, assistance with the acquisition of math facts, and an Assistive Technology Evaluation. (P-7, p. 26)
53. Bennett-Bigham included a list of suggested accommodations for Student, grounded in her overall recommendations. (P-7, pp. 25-27) These accommodations included exemption from foreign language requirement, extra time for quizzes and tests, access to a computer and spellcheck at all times, use of a calculator for all math work and assessments, class notes and study guides for all classes, materials presented orally and visually, multisensory teaching, oral response when written response is incomplete and the ability to expand on written responses orally on all work and assessments, repetition of directions and key points, chunking of long assignments into several shorter ones,

- connection of new information and learning to meaningful prior knowledge and the provision of a reader or audio reader for all class work, home work and assessments.
54. When Bennett-Bigham completed her report, Parents shared it with the District and requested a PPT meeting. (Joint Stipulation)
 55. On June 8, 2015, Ms. Bennett-Bigham generated a second document titled "Extended School Year Recommendation", in which she recommended that Student receive three to four hours a day four to five days a week instruction in the modality and by a provider with the experience levels described in her comprehensive evaluation. (Testimony of Bennett-Bigham, 10/15/2015, p.83, P-11) Implementation of this intensive regimen would reduce the time needed to address Student's needs down from the two years anticipated in her report. (Testimony of Bennett-Bigham, 10/15/2015, p.83)
 56. Student's performance on the Connecticut Mastery Test ("CMT") in third grade placed her at the basic level for Math and Reading and Writing. (P-73) Student's performance on the Connecticut Mastery Test ("CMT") in fourth grade placed her at goal for Math and Reading and proficient in Writing. (B-21, p.2) These scores represented growth in these areas since Student was tested in third grade. (B-21, p.4) Student's performance on the CMT in fifth grade placed her at the proficient level for Mathematics and Reading and at goal for Writing and Science. (B-21, p.6) These scores represented growth in these areas since Student was tested in fourth grade, although growth in the area of reading was much lower (only 4 points) than the growth in the prior year (68 points). (B-21, p.8) Student's performance on the CMT in sixth grade placed her at goal for Math and Reading and Writing. (B-21, p.10) These scores represented growth in these areas since Student was tested in third grade. (B-21, p.4)
 57. During the time Student was enrolled in middle school, beginning in the 2013-2014 school year) the District began to implement progress monitoring in Math and Reading through a computer program called the STAR program. (Testimony of Assistant Principal, 12/14/2015) STAR testing when it is utilized for progress monitoring is generally done on a monthly basis. (Testimony of Assistant Principal, 12/14/2015) On occasion, a teacher may have a Student take the test again (before the next monthly test date) if Student is observed to have an off day or the teacher feels that particular score is not reflective of Student's true ability. (Testimony of Assistant Principal, 12/14/2015) The Assistant Principal, who was in charge of implementation of the Star assessment program in the District, has found it puzzling that STAR test results can be lower at the end of the year than at earlier points during the year, and that such lower results do not always accurately reflect what teachers believe students are capable of in the classroom. (Id.)
 58. Student's scores on STAR testing are erratic and do not follow a pattern. (Testimony of Assistant Principal, 12/14/2015)
 59. Student's STAR progress monitoring results for the 7th grade year show a rise and then fall over the course of the year. (B-17) Student scored a scaled score of 455 in September a 609 2013. In November 2013 she score a 609 and in December 2013, she scored an 849. She dropped to an 819 in January 2014, after which she scored a 715 in March, 2014 and 737 in April, 2014. (B-17, p.2)
 60. A STAR student progress monitoring report was generated on May 13, 2014 reflecting student's progress in STAR assessments in her seventh grade year to date. (B-17) Student's test results over this period of time varied widely from a low scaled score of

- 455 in September of 2013 to a high of 849 in December and then back down to scores in the 700 range in March and April of 2014 (Id.) The trend line calculated by the program after 4 tests have been taken indicated that Student was on growth trajectory. (Id.)
61. In Student's eighth grade year, her STAR results also lacked a clear pattern. On September 12, 2014, Student scored a 552, which placed her in the 12th percentile. (P-2) On October 20, 2014, Student scored a 787, which placed her in the 35th percentile. (Id.) On November 10, 2010, Student scored a 653, which placed her in the 22nd percentile. (Id.) On November 25, 2014, Student scored a 545, which placed her in the 11th percentile. (Id.) On January 21, 2015, Student scored a 655, which placed her in the 20th percentile. (Id.) On February 23, 2015, Student scored a 792, which placed her in the 32nd percentile. (Id.) On April 10, 2015, Student scored an 847 on this test, which placed her in the 35th percentile. (Id.) On November 10, 2015, Student scored a 653, which placed her in the 22nd percentile. (Id.)
 62. The STAR program characterized Student's April 10, 2015 score of 847 as placing Student in a category called "On Watch". (P.13) On May 11, 2015, A STAR student progress monitoring report was administered to Student. (P-2) Student scored a 647 on this test which the report indicated put her on a Lexile measure of 895L and which placed her in the 17th percentile and within the zone where intervention was needed. (Id.)
 63. On May 25, 2015, the Assistant Principal sent an email to Mother with the latest STAR results, in which she noted the 200 point drop in score from the prior test and asked Mother if she wants Student to take the test again. (P-4) Mother responded that she does not want to have her retake it and indicated that Student reported she did not have extra time on the test and that was why her score was so low. (Id.) Mother explained her belief that extra time is why Student is successful. (Id.)
 64. On September 10, 2015, Student's freshman year in high school, Student had a scaled score of 702 on the STAR reading test, which according to the STAR program is the grade equivalent of 6.3, with an independent reading level of 5.9. (B-28) When tested two months later, on November 13, 2015, Student scored a 799 which placed her at a grade equivalent of 7.0 with an independent reading level of 6.3. (B-28 ,p.1) The results of this, according to the STAR program, are that Student in the 26th percentile, which is at the bottom of the average range. (B-28, p.2)
 65. STAR Math results from testing on November 9, 2015 placed Student in the 9th percentile. (B-28, p.3; P-21)
 66. The District had a very liberal retake policy in place while Student was enrolled in middle school. This policy was applied to all Students regardless of identification under Section 504 or IDEA. The conditions under which a Student could retake an assessment or redo an assignments during Student's seventh and eighth grade year were not specified by the District, and each teacher could make his or her determination of when retakes could be done. (Testimony of Assistant Principal, 12/14/2015) Student's eighth grade history teacher permitted retakes on all of his assignments. Student's ninth grade English teacher reported that the 2015-2016 school-wide policy had been refined so that it was made clear that students are permitted to retake anything once. (Testimony of Region 6 grade 9 English Teacher, 12/14/2015) The Assistant Principal also clarified that the new policy that had been put into place at the end of September or early October 2015, set a 5 day time limit in which retakes could be requested. (Testimony of Assistant Principal, 12/14/2015) Despite the existence of the retake policy, there are students in the District

- who do receive grades lower than As and Bs. (Testimony of Assistant Principal, 12/14/2015) Student avails herself of retakes, but not on a more frequent basis than other students. (Testimony of ninth grade English Teacher, 12/14/2015)
67. During the 2014-2015 school year, Student retook approximately 50% of her tests and quizzes. (Testimony of eighth grade History teacher) Had Student not retaken those assessments her grades on those assignments would have ranged from a 54%-74%.
 68. Student's final grades while enrolled in the District have been for the most part in the A to B range. (B-15, p.1) (Id.) Challenges for Student have been noted outside the grading process. English teacher reported she was slow in her reading. (Testimony of Assistant Principal, 12/14/2015). Math (when aided by a calculator) appears to be a particular strength for Student, who did well in eighth grade and continues to succeed in the classroom. (Testimony of Student's eighth and ninth grade Math teacher 12/14/2015; B-15)
 69. Student's Seventh Grade English Teacher reached out to Parent in October of 2013 after Student did poorly on a vocabulary test to ask about what had worked for Student in the prior year. (Testimony of Student's Seventh Grade English Teacher) This teacher worked with Student to identify the learning modalities and strategies that worked for her, specifically writing, talking it out, and working with a peer and repetition. (Id.) These strategies addressed Student's initial difficulty with vocabulary in her seventh grade year. (Id.) Student's writing was below average compared with peers in seventh grade; elaboration in particular was a struggle. (Testimony of Student's Seventh Grade English Teacher).
 70. Student's May 2015 progress report for Student's performance in English was issued by Wamogo Regional High School which indicated Student was performing at a level of good or excellent in all areas except the quality of her written assignments and her test and quiz scores in which the teacher characterized her performance as both fair and good. (P-3) Student needed to elaborate and explain why the examples she used were important in a written assignment targeting the skill of comparison. (Id.) The teacher noted that Student's performance on quizzes fluctuated and depended on the level of Student's preparation. (Id.)
 71. A May 2015 progress report for Student's performance in US History was issued by Wamogo Regional High School which indicated Student was performing at a level of good or excellent in all areas except the quality of her written assignments in which the teacher characterized her performance as fair and good and Student's test and quiz scores in which the teacher characterized her performance as fair. (P-1) Student's writing was described by the teacher as being solid but lacking the use of more history specific vocabulary. (Id.) The teacher noted that Student often retakes traditional quizzes. (Id.)
 72. Student's January 28, 2015 Pupil Progress Report for US History in eighth grade reflects that Student's performance falls in the excellent or good categories with the exception of Test/Quiz Scores and Notebook/Note Taking. Student's performance in the Test/Quiz Scores merited the checking of both the Good and Fair boxes and a comment that Student struggled a bit on the final three interim assessments for the quarter. (P-14) Student's performance in Notebook/Notetaking was listed as fair with the comments: "Student struggles a bit to ascertain what is important for historical texts. She tends to use peer notes as a guide." Teacher also noted that Student had not seen teacher for extra help

- recently (although he marked her performance in seeking help as good), and that Student can get distracted and is self-distracted easily. (Id.)
73. Student's performance in English for the first half of ninth grade (2015-2016) is average. (Testimony of Student's Ninth Grade English Teacher, 12/11/2015) Student's Section 504 accommodations are implemented by the Student's Ninth Grade English Teacher. (Id.) Student's current writing ability, as observed by her English teacher, is quite good and she demonstrates a very good command of sentence structure. (Id.) Student's objective test scores in freshman English show she is not retaining all of the information. (Id.) Student utilizes the retake policy in freshman English. (Testimony of Student's ninth grade English Teacher, 12/14/2015)
74. There can be no doubt that the relationship between the Parents and the District has broken down. The tenor and content of PPT meetings over time declined in civility. Both sides have circled the wagons, taking aim and letting fly barbs and accusations, which has only resulted in pushing the parties further apart. At times during the hearing, the focus on the child who purportedly was at the center of the dispute was lost amidst attempts to demean and disparage the professionalism of witnesses on both sides. At this point, determining who fired the first shot is a wasted exercise. The testimony regarding the behavior of Counsel and the Parent Advocate at PPT meetings is credited, and found to be evidence of strong advocacy on both sides and weighed as such.
75. By December 1, 2010, Parents felt they needed to hire an advocate to assist them in advocating for their child's needs. Parent requested a referral for Special Education on December 1, 2010. (Testimony of Mother, 9/9/2015) On December 14, 2010, during Student's fourth grade year (2010-2011), a PPT meeting was held. (Testimony of Parent Advocate, 11/13/2015; B-1) The purpose of the meeting was to review the referral of Student for Special Education and plan an initial evaluation. (B-1, pp. 1-2)
76. Parent concerns raised via the Parent Advocate at the December 14, 2010 PPT meeting included that Student was reading at a level 34 when the grade four benchmark was a level 40, weaknesses in Student's spelling, and the amount of guidance Student needed to organize her thoughts before writing. (Testimony of Parent Advocate, 11/13/2015) The Advocate also expressed concerns stemming from the fact that as of the December 14, 2010, PPT meeting, Student was in a tier two intervention which she had been in since November 19, 2010. The PPT team summary indicated that Student required extra time on all of her assignments due to a processing speed weakness. (B-1, p.2)
77. At the December 14, 2010 PPT meeting, the team agreed to have an outside evaluation conducted to rule out Autism Spectrum Disorder. (B-1, p.2) The team also agreed to have the school psychologist facilitate the completion of behavior rating scales, and conduct an observation of Student across school settings. (Id.) It was also decided that the speech pathologist would evaluate phonological awareness and pragmatic language. (Id.) This testing was done completed and reviewed at a subsequent PPT meeting
78. A PPT meeting was held on June 4, 2013. (B-9, p.1) In attendance were Mother, Student's sixth grade teacher, School Psychologist, special education teacher, Region 6 Speech and Language Professional, Attorney for the Board, Region 6 Reading Interventionist, a guidance counselor from Wamogo middle school and two seventh grade teachers, as well as the Parent's Special Education Advocate. (B-9, p. 1-2) As indicated on the IEP, the purpose of this PPT meeting was to review the recent evaluations of Student. (Id.) The PPT meeting summary indicates that the school psychologist and

speech and language professional reported the results of their evaluations at the meeting (B-9, p.2) Aside from a weakness in the area of processing speed which the school psychologist characterized as “borderline”, Student had average scores in the subtests of the WISC and an overall average score of 91. (B-9, p.2) Although determining eligibility was not noted as the purpose of the meeting on the IEP, the PPT determined Student did not qualify for special services. (Joint Stipulation, B-9, p.2) Student’s educational performance was cited as the reason for determining the Student was not eligible for Special Education. (B-9, p.3) The PPT indicated that this determination was based on achievement, cognitive testing, communication testing and classroom observation of Student. (Id.) Parent requested an outside evaluation at this PPT, but withdrew it during the meeting. (B-9, p. 3)

79. At the June 4, 2013 meeting, the Parent Advocate wished to discuss Student’s RTI program and SRBI information, but Attorney for the Student “...refused to allow this discussion because it was outside the realm of the PPT, which was to review the evaluation and determine eligibility for special services.” (B-9, p.2)
80. Mother, when she did not receive the RTI and SRBI information, filed a Complaint with the Connecticut State Department of Education (“CSDE”) which resulted in an order that the information be supplied to Mother and that another PPT meeting be held to discuss the results and determine eligibility. (Joint Stipulation) The CSDE also ordered the completion of the Multidisciplinary Evaluation Report for Students Suspected of Having a Specific Learning Disability form. (Id.)
81. Pursuant to the order from the CSDE, the District convened another PPT meeting. (Joint Stipulation) Again, Student was found ineligible. (Id.) Parents requested an IEE including educational, speech, psychological and reading evaluations. (Id.) The District refused these requests but did file a request for a Due Process hearing at this time. (Id.)
82. On May 13, 2014, at the end of Student’s 7th grade year another PPT meeting was held at the request of Parents to review evaluations and determine eligibility. (Joint Stipulation, B-19, p.1) Mother, Attorney for the Parent, Attorney for the Board, Director of Special Services, a regular education teacher, a special education teacher, a guidance counselor, Language Arts Coordinator and Leah Smith were in attendance. (Id.)
83. The PPT again found that the Student was not eligible for Special Education. (Joint Stipulation, B-19, p.2) The PPT based its ineligibility determination on teacher reports and the evaluation conducted in February. (B-19, p. 5) Parent requested an Independent Educational Evaluation (“IEE”) including speech and language assessments and a more thorough reading comprehension assessment. (B-19 pp. 4 and 6) The IEE request was refused by the PPT on the basis that Student’s educational performance and the evaluations that had been done by District staff. (Joint Stipulation, B-19, p. 6) The District filed a request for a Due Process hearing which was assigned to Hearing Officer Rosado, but subsequently dismissed by him without prejudice on July 28, 2014, when Parents withdrew their request for an IEE on July 2, 2014. (Joint Stipulation)
84. After the January 28, 2015 PPT meeting found Student ineligible, a Section 504 meeting was held immediately after the PPT per Parents’ request. (Joint Stipulation)
85. On February 13, 2015, Mother sent a letter to the Special Education Director which she asked to be appended to the minutes for the PPT meeting held on January 28, 2015. (P-12) In this letter Mother indicated that the minutes failed to include that Parents discussed Student’s avoidance of reading due to the arduous time consuming nature of the task and

that despite a reference in the minutes to Mother reading aloud, Mother indicated this was not discussed at the meeting at all. (Id.) Mother also wished it noted that the school's reading specialist did not attend the PPT meeting, that the school psychologist did not have Student's STAR test results before the PPT meeting and that the special education teacher had not reviewed records before the meeting and did not contribute at the meeting. (Id.) Mother noted the minutes did not reflect that there was discussion of the Fall STAR assessment results and the concerns expressed by Mother and her attorney about the results. (Id.) Mother also noted that concerns about the evaluation of writing assignments be noted. (Id.)

86. At the May 2015 PPT Meeting, Dr. Heitzman was in attendance via telephone and Ms. Bennett-Bigham was present. At this PPT meeting, Bennett-Bigham began to present her findings to the PPT, and was told to stop and provide only a summary by the District's attorney. (Testimony of Bennett-Bigham, 10/15/2015) Ms. Bennett-Bigham could not recall any of the School Based PPT members asking her any questions about her report. (Id.) Similarly Dr. Heitzman's clarification or input was not solicited by school staff. (Testimony of Dr. Heitzman) Given the extensive amount of detail in Dr. Heitzman and Ms. Bennett-Bigham, the breadth of the instruments used in their assessments, and the presence of a new diagnosis flowing from the neuropsychological evaluation, the lack of any questions or substantive conversation about the reports at the meeting was notable. (Testimony of Dr. Heitzman and Ms. Bennett-Bigham) Further the affirmative action of Attorney for the Board in limiting Ms. Bennett-Bigham's presentation showed a disregard for her input from the outset of the meeting. (Testimony of Ms. Bennett-Bigham) The PPT concluded that Student did not qualify for Special Education Services. (Joint Stipulation) Parents requested an IEE in Assistive Technology and this request was refused by District. (Id.) A request to convene a Section 504 meeting after the PPT meeting concluded was refused by District. (Id.)
87. On July 31, 2015, the Board granted the Parents request for an IEE and withdrew the request for a due process hearing that had been assigned Case Number 15-0594. (Joint Stipulation)

CONCLUSIONS OF LAW AND DISCUSSION:

This case presents a Dickensian tale of two Students. The dichotomy which must be reconciled in this decision is that the Board's Student, by virtue of her grades and the support of her Section 504 plan is progressing without issue through the curriculum and thus needs no specialized instruction, while the Parent's Student, in contrast, is totally overwhelmed by academic demands which she is only able to meet because there are no time constraints on her work-product and her grades reflect endless revisions. The reality, as in most endeavors, lies somewhere in between the battle lines drawn by Counsel.

1. Dismissal of 15-0594 - Region 6 Board of Education v. Student. As an initial matter, the issue of whether or not the evaluation conducted by the District was appropriate was withdrawn by the Board on July 31, 2015, and thus, is dismissed.

2. FAPE for the 2013-2014 and 2014-2015 School Years and as Proposed for 2015-2016 School Year. The standard of review of special education programs for individual students with disabilities was established by the U.S. Supreme Court in the case of *Board of Education of the*

Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). That case established two tests: 1) were the procedural requirements of the Act complied with; and 2) was the educational program developed for the child reasonably expected to provide educational benefit. The IDEA establishes numerous procedural safeguards that are designed to allow parents of children with disabilities to have meaningful involvement in the education services provided to their children. *Christopher P. v. Marcus*, 16 IDELR 1347 (2d Cir. 1990) Procedural violations that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE." *Target Range*, 960 F.2d at 1484 The Hearing Officer finds that the Board denied parents meaningful input in the PPT process and violated 34 CFR §300.502 when Dr. Heitzman's and Ms. Bennett-Bigham's were all but ignored during the May 2015 PPT meeting. (Finding of Fact 86) Under the IDEA, if parents obtain an independent educational evaluation at public expense or shares with the District an evaluation obtained at private expense, the evaluation (1) must be considered by the District, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and (2) may be presented by any party as evidence on a due process complaint. 34 CFR §300.502. But for Attorney for the Board's action of interrupting Ms. Bennett-Bigham to ask that she give a summary of her findings only rather than details, there appeared to be no substantive interaction or intent to consider the information provided. (Finding of Fact 86) This denial of meaningful input resulted in a denial of FAPE, in that the bases for Student's diagnosis and the recommendations to remediate deficiencies having been rejected wholesale were not implemented, thus delaying Student receiving the gap-filling direct instruction she needs. Having provided no instruction to Student to remediate her basic reading and math calculation deficits, the Board has also committed a substantive denial of a FAPE.

3. FAPE for the ESY in 2013, 2014, 2015. Under the IDEA, ESY is defined as special education and related services that (1) are provided to a child with a disability (i) beyond the normal school year of the public agency; (ii) in accordance with the child's IEP; and (iii) at no cost to the parents of the child and (2) meets the standards of the SEA. 34 CFR § 300.106 (b). As a practical matter, Districts are not required to develop IEPs (with or without included ESY services) for Students they have determined are not eligible for Special Education. When as in this case, a student has not been identified, analysis of this issue and all of the other ESY issues, requires a determination of whether or not the District erred when it made its eligibility determination. If the District's decision not to identify the Student was appropriate, Student is not entitled to ESY services and the analysis ends there. If the District erred by failing to identify a Student, then an analysis of whether ESY services would have appropriately been on Student's IEP is the next step. The Hearing Officer finds that ESY would have been appropriate for at least one year, based on the recommendations of Ms. Bennett-Bigham, and finds that since Student didn't receive any ESY programming there was a denial of FAPE for the years in question. (Finding of Fact 55)

4. Child Find and Evaluation of Child in All Areas of Suspected Disability. The District did not fail in its affirmative duty to "find" the Student as eligible for Special Education and related services under the IDEA (20 USC §1412(a) (3) and 34 CFR §300.111) Under the IDEA, a request for an initial evaluation to determine whether a child is a student with a disability may be initiated either the Parent or the District. 34 CFR §300.301(b). While the legislation and regulations contemplate that a Parent may bring a child's potential disability to the attention of a District, the District has an independent, affirmative and ongoing obligation, referred to

generally and hereinafter as the “child find” obligation, to identify students with disabilities. 20 USC §§1401 (3); 1412(a)(3); 34 CFR § 300.111; and R.C.S.A. §10-76d-7(c). The District’s child find duty is triggered when the local education agency (“LEA”) has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. *Regional School District No. 9 Board of Education v. Mr. and Mrs. M., as Parents and Next Friends of M.M. a Minor Child* 53 IDELR 8; 109 LRP 51058 (2009) U.S. District Court, Connecticut; citing *New Paltz Central Sch. Dist. v. St. Pierre*, 307 F. Supp. 2d 394, 400 (N.D.N.Y. 2004). The District, initially at the initiative of its staff, and later at the request of Parents, held multiple PPT meetings to determine Student’s eligibility for Special Education. (Finding of Fact 4) The District over the course of Student’s enrollment conducted numerous evaluations, even after initial evaluation request by Parent did not produce a diagnosis, and Student’s progress in school was as far as the grades suggested was adequate. (Finding of Fact 14) As illustrated in Parents’ private evaluations, Student’s recent diagnosis presents itself through a complex array of disparate scores across a variety of instruments. (Findings of Fact, 28-34) In such instances, a school’s failure to diagnose a disability at the earliest possible moment is not per se actionable, especially in cases where a disability is difficult to diagnose or is the subject of controversy among experts (See *A.P. ex rel. Powers v. Woodstock Bd. of Educ.*, 572 F. Supp. 2d 221, 226 (D. Conn. 2008)). Given the number of evaluations conducted by District staff and consultants and the number of PPT meetings that have been held to make eligibility determinations for this Student, the Hearing Officer finds that the District has taken reasonable steps to determine whether or not the Student had a disability and evaluated the Student that areas it suspected Student might have a disability and as such the Board is in compliance with its obligations under child find.

5. Reimbursement for Dr. Heitzman’s and Patricia Bennett-Bigham’s Evaluations and Tutoring. Dr. Heitzman’s and Ms. Bennett-Bigham’s evaluations were not Independent Educational Evaluations under the IDEA and thus Parents are not entitled to reimbursement for the costs of the evaluations nor costs associated with attendance of evaluators at PPT meetings or consultation. Pursuant to 20 USC §1415(b)(1) and (d)(2)(A) and 34 CFR §300.502, parents of a child with a disability have the right to obtain an IEE at public expense if the parents disagree with an evaluation obtained by the District, subject to certain conditions. Upon receipt of a request for an IEE, the District has two options, it may either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense. 34 CFR §300.502(b)(2)(3) If the District’s evaluations are found at a due process hearing to be appropriate, Parents are entitled to a private evaluation, but not at public expense. 34 CFR §300.502(b)(3)

The District’s right to due process as a means to defend its evaluation is codified in this regulation, and as such Parents were required to notify the District of their disagreement with the District’s evaluation before the obligation to reimburse the Parents attached. The record shows that while two times IEE requests were made, both were subsequently withdrawn. At the June 4, 2013, PPT meeting Parents requested but then withdrew their request for an evaluation. (Finding of Fact 78) On July 2, 2014, Parents withdrew their then pending request for an IEE. (Finding of Fact 83) Where the evaluations were obtained in the absence of an expressed disagreement with the District or Parents have withdrawn their request for an IEE, Parents are not entitled to seek reimbursement under IDEA. Parents had requested IEEs on prior occasions, the first request having resulted in the District obtaining Dr. Mayville’s evaluation in 2010, demonstrating their familiarity with the process, their decision to withdraw their request carried the attendant risk of

financial responsibility for same. The Hearing Officer finds that reimbursement for summer tutoring might be ordered under compensatory education, but declines to make such an order for the tutoring that was obtained was not conducted in the manner recommended by Parent's evaluators.

6. Dismissal of Issues 13-18. The Hearing Officer finds persuasive the guidance in Circular Letter: C-13, Series 2008-09, which states that a Hearing Officer may address Section 504 claims, "...only as necessary to resolve the claims under the IDEA." Circular Letter C-13, Mark McQuillan, Series 2008-2009 Reissue (May 20, 2009). This Hearing Officer has already engaged in an analysis of whether the resolution of any non-IDEA issues might be necessary to decide any of the IDEA issues presented in her ruling on the Board's Motion to Dismiss, which resulted in the inclusion of issues 13 through 18 in the hearing. After an analysis of the evidence, presented at the hearing, the Hearing Officer finds that it was not necessary to decide any of the 504 or ADA issues in order to decide the IDEA issues. Having found that there was a denial of FAPE which entitled Student to relief under the IDEA, analysis of the Section 504 issues presented in Parent's request for a due process hearing was not required. Parents may pursue such claims through the dispute resolution procedures offered under Section 504 and if aggrieved by any portion of this decision will have exhausted their administrative remedies and free to pursue those claims in Superior or Federal Court. Thus, issues 13-18 are dismissed.

FINAL DECISION AND ORDER:

1. The issue of whether or not the evaluation conducted by the District was appropriate, having been withdrawn by the Board, is hereby dismissed.
2. The District failed to provide Student with a FAPE for the ESY in the summer of 2013.
3. The District failed to provide Student with a FAPE for the 2013-2014 academic year.
4. The District failed to provide student with a FAPE for the ESY in the summer of 2014.
5. The District failed to provide Student with a FAPE for the 2014-2015 academic year.
6. The District failed to provide student with a FAPE for the ESY in the summer of 2015.
7. The District's proposed program for the 2015-2016 school year fails to provide Student with a FAPE.
8. The District did not fail to evaluate the Student in all areas of suspected disability under the IDEA.
9. The District did not fail in its affirmative duty to "find" the Student as eligible for Special Education and related services under the IDEA (20 U.S.C. Section 1412(a) (3) and 34 C.F.R. Section 300.11).
10. The District is not liable for the reimbursement to the Parents for the private tutoring services to the Student under the IDEA.
11. The evaluations conducted by Dr. Heitzman and Patricia Bennett-Bigham at Parents' expense were not Independent Educational Evaluations (IEE) under the IDEA and therefore, Parents are not entitled to reimbursement and the Hearing Officer declines to order reimbursement pursuant to her authority under compensatory education.
13. Issues 13 through 18 are dismissed.
14. The District is ordered to immediately convene a PPT meeting and find the Student eligible for Special Education under the disability category of Specific Learning Disabilities/Dyslexia and to develop an appropriate Individualized Educational Program addressing those reading, math, processing and executive functioning deficits, only those

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areas where Student tested below average, identified Dr. Heitzman's evaluation.
Student's IEP shall include intensive one on one reading instruction for the ESY of 2016.

15. Monthly parent-teacher meetings shall take place to monitor Student's progress in goal areas on Student's IEP.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).


Hearing Officer Signature

Brette H. Fitton
Hearing Officer Name in Print