

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Monroe Board of Education

Appearing on behalf of the Parent: *Pro Se*

Appearing on behalf of the Board: Christine Sullivan, Esq.  
Berchem, Devlin and Moses, PC  
75 Broad Street  
Milford, CT

Appearing before: Sylvia Ho, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the Board provide an appropriate program for the 2014-2015 school year?
2. Did the Board provide an appropriate program for the 2015-2016 school year?
3. Did the Board provide an appropriate program for the 2016-2017 school year?
4. Is the Occupational Therapy Evaluation appropriate?
5. Is the Psychoeducational Evaluation appropriate?
6. Is the Academic Evaluation appropriate?
7. Is the Reading Evaluation appropriate?
8. If any of the District Evaluations are not appropriate, are Parents entitled to an Independent Educational Evaluation and/or an independent neuropsychological evaluation at public expense?

**PROCEDURAL HISTORY:**

The Parent filed the Due Process Complaint/Hearing Request Case No. 16-0486 on April 25, 2016. The Hearing Officer was appointed on April 26, 2016 and conducted a Prehearing Conference on May 10, 2016 wherein the hearing issues # 1 and 2 above were identified. The Board filed a Sufficiency Challenge, which was granted. Subsequently, the Hearing Request was amended on May 12, 2016 and issue 3 was added. On May 9, 2016, the Parents requested that the Board fund an Independent Educational Evaluation. The Board denied their request. On June 17, 2016, the Board filed a Due Process Complaint/Hearing Request 16-0617 to defend its evaluation. Both cases were consolidated on June 27, 2016.

The hearing convened over 12 days on August 22, September 21, September 28, October 26, November 16, December 23, 2016 and January 26, February 3, February 16,

March 17, March 31 and April 28, 2017. The Mother testified on behalf of the Parents. The Board presented the following witnesses: Marianne Gentile, 4<sup>th</sup> Grade Regular Education Teacher; Donald Casey, Special Education Teacher; Christine Asaro, School Psychologist; Kay Moser, Director of Pupil and Personnel Services; Patricia Suto, Reading Specialist; Megan Weller, Special Education Teacher; Jon Battista, Assistant School Superintendent.

The Board's exhibits #1-87 were admitted as full exhibits. The Parent exhibits Parent Exhibit A through E were admitted as full exhibits. A second Parent Exhibit E was a cell phone recording was transcribed.

This Hearing Officer granted the parties' requests for extension of the mailing dates of the Final Decision as follows: On July 23, 2016, the mailing date was extended to September 1, 2016 so the parties could mediate. On August 19, 2016, the mailing date was extended to September 30, 2016 add additional days for hearing. Thereafter, the mailing dates were extended to October 28, 2016, November 28, 2016, December 28, 2016, January 27, 2017, February 26, 2017, April 7, 2017 and May 5, 2017 to add hearing dates. On April 28, 2017, the mailing date of the Final Decision was extended to June 9, 2017 to allow the parties to submit briefs.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of facts actually represent conclusions of law, they should so be considered and vice versa. See *SAS Institute Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993). All motions that were not previously ruled upon are hereby denied.

### **SUMMARY:**

The Student is eligible for special education under the category of OHI/ADHD. He transferred into the school district in spring of third grade and was academically performing below grade level. After an incident on the school bus, the Student rode the special education van. Later the Student received one to one tutoring from a special education teacher in the resource room due a schedule change that became necessary because the Mother had a conflict with the classroom teacher. Later, the Parents withdrew the Student from school before the end of the school year. The Parents claim that the school provided an inappropriate program because the Student failed to make progress. They also claim that the administration isolated the Student because of his race or disability. They claim that the school failed to properly diagnose the Student's disability of Dyslexia.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§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 April 13, 2005, and is now twelve years of age. At the time of the Hearing Requests filed by the Parents and Board, the Student was eleven years of age and attending Six to Six Magnet School in Bridgeport as a student of the Monroe School District. In August of 2016, the Parents withdrew the Student from the Monroe School District and enrolled Student in Hamden Public Schools. (Testimony Mother).
2. As of the time of this decision, the Student is attending the sixth grade at Hamden School District. During her testimony, the Mother stated that the Student is now able to read at grade level at his school in Hamden is satisfactorily progressing. (Testimony, Mother)
3. The Parents' complaint against Monroe School District has been stated in testimony and in a final submission on mobile phone text message. It is summarized as follows:
4. The Parents believed that the Board failed to diagnose a disability of Dyslexia and therefore provided an inappropriate program.
5. The Parents believed that the Student was inappropriately isolated from peers and spent most of his time in the resource room because he was being discriminated on account of race or disability.
6. The Parents believe that the Student was placed in the resource room to punish him even though the Student was bullied on a daily basis.

*Educational history before attending Monroe School District*

7. Student attended Southeast Elementary School of Mansfield Public Schools for Kindergarten. In final report card in June summarized Student's academic skills as follows:
  - a. *phonological awareness* - rhymes words, blends sounds, segments words - usually
  - b. *decoding*- sometimes; applies knowledge of spelling - usually
  - c. *communication* - tells story in a beginning, middle and end, incorporate vocabulary, speaks in complete sentences - sometimes. (B-1)
9. Teacher's comments stated as follows:
 

"He has mastered all his letters and sounds and all the kindergarten sight words ..Although he continues to read below grade level expectations he is demonstrating

stronger reading skills I believe inconsistent attendance has prevented him from progressing as quickly as I hoped in the SWEIT reading program. I highly recommend that [Student] participate in this or another alternative reading intervention program next year to continue to build his confidence and help him make connections. ... Writing is also difficult for [Student] as he cannot maintain focus on the task and subsequently forgets what he was writing about. He is also easily distracted during most work times and preferential seating next year is highly recommended. .. I recommend a meeting occur early next year to develop a plan to help him work to his potential in the first grade.” (B-1)

10. Mansfield School District’s First Grade March progress report stated as follows - “[Student] has increased his sight words from 17 grade 1 words in September to 51 words at this point in the school year. [Student] demonstrates progress in his sight word recognition and is currently able to read 78% of the first grade sight words independently. [Student continues to progress with identifying short vowel sounds within words, using a variety of activities to help hi with this objective. With prompting [Student] can identify and locate short vowels within words in text, sort words by the specific short vowel sound and sound out words with short vowel recognition. He was working toward identifying long vowel sounds with basic digraphs (th, sh, ch) (B-3)
11. Mansfield School District staff initiated a referral for initial evaluation to determine eligibility for special education; however the school was unable to be conduct the evaluation because the Mother did not consent (B-13)
9. Student was absent 31 days of the 2<sup>nd</sup> marking period and 8 days of first marking period. He was withdrawn from school on May 3, 2017. (B-6). In total Student missed 75 school days in the first grade, almost a half year of school.
10. For the second grade to April of the third grade, Student attended Quinnipiac School in the New Haven school district. (B-7)
11. A Planning and Placement Team meeting (PPT) convened in January of the Second Grade as a result of a referral to special education by Mother. Mother expressed concerns regarding Student’s attention, reading, writing and math abilities. (B-11)
12. New Haven School District conducted a psychoeducational evaluation and a speech and language evaluation. The psychoeducational evaluation consisted of the following: review of school records, observations, student interview, interviews with the Mother and Regular Education teachers and Conners Rating Scale Third Edition (Conners-3) Parent and Teacher Report; Kaufman Assessment Battery for Children- Second Edition (KABC-2) and Weschler Individual Achievement Test- Third Edition (WIAT-III). (P-1)
13. Teachers reported that Student did not meet grade level academic standards in basic reading skills, reading comprehension, mathematics calculation, mathematics reasoning, written expression, spelling and oral expression. Student met age/grade

level expectancies in listening comprehension, which were noted by his classroom teacher to be an area of strength. (P-1)

14. Student read at a DRA level 12 compared to a DRA level 38 to be proficient at his grade level. Reading fluency impeded his ability to pass to higher levels. He also performed below grade level in math and his writing was very limited. His teacher was concerned about his attention span and need for frequent redirection. Behaviorally, he struggled to stay focused; at times, shouted out and displayed temper tantrums in the classroom. His teacher also reported that he frequently stuttered. (P-1)
15. The school psychologist reported in the Psychoeducational Evaluation Report that during the administration of assessments, Student frequently needed redirection to attend to the task due to his tendency to initiate conversation that were unrelated and distracting to the task at hand. He also displayed some fidgety behaviors, at times rocking back and forth. At times he stuttered however his speech was always intelligible. (P-1)
16. The KABC-2 measures cognitive ability. Student scored within the average to high average and high average ranges of functioning except in the area of short-term memory (Sequential/Gs) where he performed in the low average range. He had particular problems with recalling and repeating a series of numbers in proper sequence that the examiner verbally dictated to him. (P-1)
17. The WIAT-III assesses areas of academic achievement and skills. Student performed in the borderline deficient range in all academic areas except in two areas. In spelling skills Student performed in the low average range. In writing, Student performed in the average range. (P-1)
18. The Conners - 3<sup>rd</sup> edition is a behavioral rating profile. Both the Mother and the classroom teacher provided at home and in classroom behavior information.
19. The teacher observed that the Student demonstrated behaviors characteristic of ADHD in the classroom and school environment to a significant degree of concern including the following: poor concentration and attention, poor social skill and defiant/aggressive behaviors with peers. These behaviors were reported as “very elevated” indicating that there were more concerns than are typically reported. Teacher reported that these behaviors had an adverse impact on friendships and relationships with peers. Teacher report also indicated some presence of anxious and depressive behaviors. (P-1)
20. In the home setting, the Mother reported that Student struggled with starting and finishing projects and displayed poor planning and organizational skills. The Mother did not social issues or aggressive behavior. (P-1)

21. The school psychologists summarized Student' evaluation results as follows: In the classroom, Student struggled in all academic subjects. He also struggled with sustaining attention to task and was described as extremely distractible. Verbal aggression (i.e. noncompliant behaviors were also an area of concern. Student's performance on standardized instruments revealed the following: His overall cognitive abilities were average, which meant that he was capable of learning. Academic skills that were borderline deficient in reading, writing, math and in the average range for spelling. The evaluator concluded that the Student's performance on the standardized instruments indicated the Student was cognitively capable of learning; however his academic performance did not reflect his ability. His academic weaknesses appeared to be impacted by his tendency to become distracted in the learning environment.(P-1)
22. The Speech and language evaluation assessments were: Clinical Evaluation of Language Fundamentals, 5<sup>th</sup> Edition (CELF-5) and Stuttering Severity Instrument for Children and Adults - Third Edition (SSI-3). Speech and Language evaluation results were in the average to above average range of receptive and expressive language skills and stuttering falling into the "very mild" range. (B-13).
23. On March 28, 2014, the New Haven School District convened a PPT to review the results of the educational evaluation and determine eligibility. The Mother attended the PPT by telephone. The Student was determined to be eligible under the category of Other Health Impairment- ADD/ADHD. The PPT developed an Individualized Education Program (IEP) consisting of 1.5 hours of special education services per day for a total of 7.5 hours of special education to be delivered in the resource room and .5 hours a week of services with a social worker. (B-14)
24. The Mother agreed to special education services but refused social work services. Student's IEP goals # 1-2 were for reading/decoding and written expression and were delivered through individual or small group instruction for one hour per day. Goal #3 addressed math and Student received a half hour per day of individual or small group instruction. (B-14)
25. At Quinnapac School, the IEP provided 7.5 weekly hours of special education services away from non-disabled peers and 23.75 weekly hours with non-disabled peers. (B-14)

*Attendance at Monroe School District*

26. Less than a month after the New Haven school district PPT, Student's family moved to Monroe School District and began to attend the spring term of the 3<sup>rd</sup> grade at Stepney Elementary School. (B-16)
27. A PPT was convened on April 28, 2014. In attendance were Mother, Bruce Lazar, School Administrator, Anne Ryan, Special Education Teacher, Christine Asaro, School Psychologist and Rachel Grindrod, Regular Education Teacher. The PPT reviewed the Student's IEP and Ms. Grindrod, the classroom teacher discussed

Student's adjustment to the classroom. The Special Education teacher reported that she had noticed that the Student had difficulties with focus and attention. The Mother reported that the Student had been diagnosed as having Attention Deficit Disorder by a psychiatrist but was not then seeing the psychiatrist nor taking any medication for the condition. (B-16)

28. The Team recommended implementing the IEP developed by New Haven School District. Student would receive an hour daily in the resource room to meet the reading and writing goals# 1 and #2. Student would receive half hour more of math instruction. This math instruction would be delivered in the general education classroom setting. (B-16)
29. The Monroe District third grade IEP provided for 10 special educational hours weekly with 5 hours weekly in the resource room with a special education teacher and 27.5 hours of 32.5 hours with nondisabled peers.
30. The PPT agreed to reconvene in six weeks to review progress. However, this PPT was postponed to the beginning of the next school year due since the Mother was unavailable having given birth of the Student's younger sibling.

#### *School bus Incident*

31. On April 29, 2014, the day after the PPT, Student was involved in a verbal altercation with two other students on the school bus on his way home.
32. On April 30, 2014, the school Principal received a complaint from the parent stating that there had been a violent threat to her daughter.
33. School staff conducted an investigation and interviewed all of the students involved. The principal's notes of the investigation revealed that all three students confirmed what was said during the verbal exchange. The Student (identified as Student C) was rapping. Student A stated "That's not rapping." The Students and another Student (Student B) engage in conversation. Student tells Student B to stop talking. Student B asks "why can't I talk" Student tells Student B that he would cut the other's student's lips off with a knife. (B-17)
34. The Principal told the other student's parents that Student would be moved to the front of the bus, call the bus company and speak with the Superintendent.
35. A meeting was convened with the Parents, Principal, Superintendent and the Director of Pupil Services. The meeting resulted in an arrangement of special transportation and one to one professional being assigned to ride the school bus. (B-17).
36. On May 2, 2014, the School ordered special transportation for the Student. On the same day, two other parents called the principal to report incidents with the Student but these were determined to be the same incident as the one previously investigated. (B-17)

37. The school drafted an “Agreement to Change Individualized Education Program without Convening a Planning and Placement Team Meeting”. Prior Written Notice page 3 of the IEP was attached to the form. (B-18)
38. A check was placed under the “other “ box under the section for “Reasons for actions proposed section to the amendment to IEP Prior Written Notice page 3 with the words “Change transportation to special transportation”. Under the section “Evaluation procedure, assessment, records, or reports used as a basis for actions proposed (dated)” boxes for “Review of Records” and “Teacher Reports” were checked with dates of “4/28/2014”, the day before the school bus incident. (B-18).
39. The form was presented to the Mother. The Mother refused to sign the form. The document states that “\*Parent will not sign. Feels her son did nothing wrong and should not be put on the van.” (B-18)
40. At the hearing, the Mother stated that the Student did not need the services of the van because she believed that he had a learning disability that does not require the services of a special education van. Further, the Mother testified that she thought that the purpose of the van was to isolate him for racial reasons. (Testimony, Mother).
41. Student continued to take the special education van with a one to one paraprofessional until December 1, 2014. The Parents requested a change to regular school bus transportation in November of 2014 and the IEP was changed to reflect this without convening a PPT. (B-28)
42. Student completed the Third Grade at Stepney Elementary School. The year-end report cards shows that Student was progressing toward grade level standard consistently in the English Literature, Informational Text. He progressed consistently in use of grade level vocabulary, understanding and identifying main ideas and details from text read aloud. (B-19)
43. He inconsistently progressed in Foundational skills such as grade level phonics, word analysis in decoding skills, reading to support comprehension; English Language Arts such as grammar and usage, writing, applying grade level words in writing. (B-19)

*Fourth Grade- 2014-2016 School year*

44. The PPT convened at the beginning of the 4<sup>th</sup> grade to review the Student’s individualized education program. In attendance were the Mother, Student’s 4<sup>th</sup> grade classroom teacher Marianne Gentile, Administrator Bruce Lazar, Special Education Teacher, Anne Ryan, School Psychologist Christine Asara, Special Education Teacher Donald Casey and Occupational Therapist intern Sara Steinagel.
45. Donald Casey who was assigned to be Student’s special education teacher and case manager conducted a baseline reading benchmark assessment in September 2014. Mr. Casey reported that Student was reading at Fountas and Pinnell Level G. (B-22; Testimony, Casey) Goals were reviewed and revised to add 2.5 hours of special education services including 45 minutes per day of pull out for reading; 1 hour of pull out of math per day and 45 minutes per day of writing instruction in the regular education classroom. The Student was provided one to one instruction with a

certified reading specialist and direct one to one instruction in reading. The Student's accommodations also included access to a computer and a computer skills class. (Testimony, Casey).

46. Measureable Annual Goal #1 addressed the area of reading with a baseline at Fountas and Pinnell Level G directed to reading performance to Fountas and Pinnell Level J. Objective #1 addressed phonological awareness. It called for Student to be able to decode and encode and spell short and long vowel words with 80% or better at Level J. (B-22)
47. Objective #2 addressed semantics of language and calls for the Student to be able to answer both literal and inferential comprehension questions in writing and obtain a score of 2 of 3 in the Level J writing rubric. (B-22).
48. Objective #3 addressed syntax and the mechanics of writing approaching grade level. It calls for Student to be able to stay focused and compose a composition with appropriate organization, mechanics and grammar and obtain a score of 1 out of 4 in the 4<sup>th</sup> grade writing rubric. (B-22)
49. Measureable Annual Goal #2 addressed writing. Objective #1 cumulatively addressed the syntax and the semantics of writing. It called for Student to be able to demonstrate the ability to write a piece on a given topic with proper grammar, punctuation, capitalization and supporting details with 80% or better accuracy and achieve a score of 1 or better. (B-22)
50. Progress reports revealed that reading instruction was directed at decoding skills through drill practice of all phonetic sounds and identifying short vowel sounds, initial and final blends in the first marking period. In the second marking period Student worked on phonetic rules, suffixes and prefixes and was showing improvement in weekly quizzes. In the third marking period, Mr. Casey noted that Student was able to retain his phonetic skills during daily drills and practice and was able to write a variety of sentences. He was able to write sentences properly containing capitalization and punctuation marks and was participating in a poetry-writing unit. (B-29)
51. The PPT met on November 27, 2014 at Parents' request. Parents were concerned with the Student's academic progress. The team agreed to conduct a reevaluation consisting of cognitive assessments and academic assessments. (B-27)
52. Academic assessments were conducted Mr. Casey. Results revealed the following: Student scored in the average range for quantitative concepts and in the low average range for calculation but had difficulty with math fluency primarily because of low processing speed during the three minute timed test. (B-34)
53. In language arts, Student showed weaknesses in areas of writing fluency (because he could not stay focused during the timed interval); passage comprehension and spelling. Student scored in the average range for writing samples and "word attack". His score showed that he had improved his phonetic skills and was able to decode and read nonsense words presented to him such as "wheeg, gusp, grawl". (B-34)

54. The academic assessment report also revealed that Student had improved 3 levels from the baseline Fountas and Pinnell level G in September. In four months, as of January 16, 2015, Student was reading at Fountas and Pinnell level I. (B-34)
55. Mrs. Patti Suto, the reading specialist, administered the Wilson Assessment of Decoding and Encoding Reading Screening. Student showed strength in reading and spelling sight words, dipgraphs/trigraphs, vowels, welded sounds and weaknesses in areas of spelling and nonsense word reading. Again, Mrs. Suto's assessment confirmed that Student was reading at Fountas and Pinnell Level I as of January 2015. (B-33)
56. The educational record reveals a second incident on February 18, 2015 in which Student threatened another student with a knife. The principal investigated a report the Student said to another student in the hallway to the cafeteria "Where is my knife? How long is your neck?" The Student admitted to saying this. (B-3)
57. As of March 19, 2015, Student was working at Fountas and Pinnell Level J. At the time of the Annual Review on March 19, 2015, Student had mastered his goals. Extended School Year services were recommended. The annual goals were revised with Level J as a baseline and called for Student to be able to successfully read at 3 levels higher at Fountas and Pinnell Level N at a higher accuracy rate of 85%. Objective #1 added a rate of reading accuracy from the baseline of 31 per minute to 50 words per minute. (B-38)
58. Objective #2 called for Student's reading fluency from 33% at Level J to 66% or better on a curriculum based assessment.(B-38\_
59. Objective #3 called for Student's oral comprehension at Level J at 71% to 80% of comprehension on a curriculum based assessment.
60. Writing goals were revised to increase the demand to 85% accuracy in syntax and grammar and capitalization on curriculum based assessments. The team added a objective to introduce a graphic organizer to assist Student in the planning of ideas in writing compositions. (B-38)

*Hallway incident*

61. Approximately a month after the Annual Review, Student was involved in another incident with peers when he left a line to retrieve something in the classroom and was prevented by another student from going back to the same spot in the line. An altercation took place. (Testimony, Gentile)
62. The classroom teacher's call to the Parents was met with anger by the Mother who felt her child was being treated unfairly. The Parents did not understand why their child was required to go to the back of the line. The Classroom Teacher explained her view that generally students who leave the line lose the spot. The parents did not agree with the teacher's perspective. After this incident, the Mother wanted the Student removed from the teacher's class. It is clear from the testimony of Mother and other witnesses that Mother's trust in the school had been lacking for some time and began with the bus incident. In addition, she believed that the Student was making unsatisfactory progress because Student continued to have difficulties academically. The Mother has stated on the record that the Student's treatment at

the hands of school and peers was unfair and racially motivated. She believed that either the school district is incompetent or unfair to the Student for reasons of racial discrimination. (Testimony, Gentile; Testimony, Mother; Testimony, Battista)

63. A meeting occurred between the School Superintendent, the Assistant School Superintendent and the Parents to discuss the Parents' request for removal of the Student from the classroom teacher's class. The Mother recorded the meeting and did not inform the others at the meeting. The Mother submitted this as Parent Exhibit E which has been transcribed as part of the record of the hearing. It is clear from reviewing the recording and transcription that the School Superintendent and Assistant Superintendent were trying to provide a solution that the Parents wanted while trying to keep the Student with Mr. Casey, the special education teacher. (P-Exh. E; Testimony, Battista)
64. Mr. Battista, the Assistant School Superintendent testified that in his experience when a parent is unhappy with a classroom teacher, it did not benefit the child to remain in the classroom teacher's classroom. During the meeting, Mr. Battista and the School Superintendent stated that they could not simply replace the Student's classroom time in the other 4<sup>th</sup> grade teacher's classroom because their schedules were different. They proposed having writing inclusion time with Mrs. Mulcahy, the other 4<sup>th</sup> grade classroom teacher and hiring a special education teacher to tutor the Student in social studies and science. The Student would receive additional one to one tutoring in reading while learning the social studies and science curriculum. At the outset of the suggestion, the Mother appeared to agree. Later in the conversation however, the Mother's attention turned to how she suspected a teacher of giving out her private information to parents of children on the school bus in the previous year and the Mother stated that she would have to see. (Testimony, Battista; P-Exh. E).
65. The following day the school principal mailed the new schedule to the Mother. On April 29, 2015, an "Agreement to Change an Individualized Education Program Without Convening A Planning and Placement Team Meeting" was sent to the Parents. The Mother testified that she refused to sign because she believed that the school was trying to isolate her son. (Testimony, Mother; B-40)
66. The schedule change was implemented. The school staff updated the Mother on the Student's progress on a weekly basis. (Testimony, Casey)
67. On May 20, 2015, the Parents met again with the School Superintendent and the Assistant Superintendent. During this meeting, the Mother complained that the Student was too isolated and that he had been subject to a racial slur by another student and that she had been made to feel unwelcome at the school. The Mother wanted to take the Student out of the school for homeschooling until the remainder of the year. (Testimony, Battista; B-42)
68. The School Superintendent and Assistant School Superintendent offered an alternative, to attend another elementary school in the district, Fawn Hollow Elementary for the remainder of the year and also proposed Six to Six Magnet School in Bridgeport the following year. At the end of the meeting, the School Superintendent had thought that the Parents and they had agreed to modifications in the Student's schedule for the remainder of the school year. After this meeting, the

Superintendent and Assistant Superintendent went to visit the Stepney Elementary School staff to explain how actions of school staff might be interpreted as being unwelcoming. (Testimony, Battista; B-42)

69. The day after the meeting, it was brought to the Superintendent the Parents planned to retain the Student at home. The Superintendent wrote to the Parents of his obligations under truancy laws and to seek clarity as to the Parents' intentions. The letter concludes with a statement that the school district wanted to work with the Parents to support the Student's education. (B-42).
70. On May 30, 2015, the Parents withdrew the Student from school and requested ten hours of weekly homebound tutoring for the remainder of the school year. (B-43). The Mother testified that she had no choice because she did not want her son to continue to be in the school district she considered to be racist. (Testimony, Mother).
71. The Student missed 19 school days in the spring term.
72. The Parents claim that the Student was bullied on a daily basis and was put into the resource room because he was a victim of bullying or discrimination or to isolate him. At the hearing, the Mother stated in her summation that she had reviewed the transcript of Mr. Casey's testimony and that Mr. Casey had testified that he was placed in the resource room to protect the Student from bullying and agreed to submit page numbers of the transcripts in the final submissions. In the Final Submission text message, the Mother repeated this allegation that the Student was bullied by other students but she did not submit any references to the transcriptions. A review of the transcript of Mr. Casey's testimony does not support the Parent's statement. Mr. Casey testified that the Student was being placed in the resource room because he was told that the Mother did not want the Student to be with the classroom teacher and Mr. Casey was told that the Student would be spending his time with Mr. Casey. (Testimony, Casey). The transcript of the recording admitted as Parent Exhibit E is also enlightening. The administrators discussed the scheduling difficulties with changing the Student's classroom teacher and stated that they would be hiring a special education teacher for the resource room because of the second classroom teacher did not teach science and social studies at the same time. The administrators offered to specially hire a special education teacher to help Student with reading because the Mother had been concerned with the Student's reading progress. The Mother agreed to the plan. But later the Mother directed the conversation to other parents and a teacher she did not like and changed her tone. It is amply clear that the Mother was involved in a continuing conflict with other students' parents and she suspected that the teachers and administrators were aligning themselves with the other parents with whom she had conflict. The Student's educational needs were tangential once the Mother began to get suspicious and angry. (Parent Exhibit-E)

*Fifth grade- Six to Six Magnet - 2015-2016 School year*

73. The Student attended Six to Six Magnet in Bridgeport for the fifth grade. A PPT convened on September 24, 2015. The PPT was attended by Parents, reading tutor/regular education teacher, special education teacher, school psychologist, assistant school principal, principal of Six to Six Magnet, special education teacher

of Six to Six Magnet, two parent attorneys and Board counsel. The team agreed to implement the Monroe IEP and convene again in November when Six to Six Magnet had fully assessed the Student's educational needs. (B-45)

74. In November of 2015, the Student was involved in an incident with another student on the school van to Six to Six Magnet. The Mother called Monroe Schools to make a complaint. Kay Moser, the Director of Pupil and Personnel Services and Mr. Battista, the Assistant School Superintendent went to investigate. As a result, a bus aide/monitor was put on the bus. (Testimony, Battista; B-49)
75. A PPT convened on December 17, 2015 to review Student's progress. The attendees were Mother, Kay Moser, Monroe Director of Pupil Services, Six to Six Magnet special education teacher, principal and parent and Board attorneys. The staff at Six to Six reviewed the Student's current level of performance and reviewed the reading phonics program, Megawords, being used in reading. The Student had mastered all the goals in the Monroe IEP. At this time, the Student was reading at Level M of Fountas and Pinnell and independently at Level L. At this time, the Student had improved his math and was performing at a 4<sup>th</sup> grade instructional math level. New goals were proposed. (B-55)
76. Annual Measurable Goal #1 expounded on decoding skills necessary for reading for information and understanding. Objective #1 called for Student to increase his ability to use syllabification patterns and to accurately multisyllabic words. Objective #2 called for Student to increase his ability to self-correct word recognition. Objective #3 called for Student to increase his ability to make appropriate inference with a story or text read at his instructional level. Objective #4 was directed at the Student's ability to identify major text features.
77. Annual Measurable Goal #2 addressed written language skills necessary to written expression and understanding and contained 7 objectives. Objective #1 addressed spelling patterns. Objective #2 addressed the Students to encode multisyllabic words. Objective #3 addressed capitalization and punctuation. Objectives #4-7 addressed Student's ability compose and sets out components of skills necessary to write an essay. (B-55).
78. Megan Weller was Student's special education teacher at Six to Six Magnet. She testified that she conducted the following assessments to determine the new goals and objectives for Student in December of 2015: CORE Assessment for Language Arts, Words Their Way Spelling Assessment, Fontas and Pinnell Reading A to Z. At the time, the Student was beginning to read on Fountas and Pinnell Level L. (Testimony, Weller)
79. She testified that Student made great progress in the fall of 2015 and increased three levels in fluency and accuracy in a short time. From December 2015 to the end of the 2015-2016 school year, Student had was reading at Fountas and Pinnell Level M. Student had difficulty with multisyllabic words in decoding and encoding and struggled with multisyllabic words in paragraph texts. She used the Megawords program and systematic phonics program to address these issues. (Testimony, Weller).

80. Ms. Weller utilized the CORE reading assessments to determine that Student was performing on grade level on some reading assessments. Student could read sight words at a 5<sup>th</sup> grade level. He could understand content at a 5<sup>th</sup> grade reading level. (B-63; Testimony, Weller)
81. Ms. Weller administered the Quality of Reading Assessment (QRA), which required Student to read out loud and answer specific question types. On the QRA, Student scored at the 5<sup>th</sup> grade instructional level at the end of the 5<sup>th</sup> grade.
82. Student's struggles with reading comprehension specifically concerned the decoding of multisyllabic words in text. This was the skill that Student was working on. Though he struggled with multisyllabic words which would slow the pace of his reading, Student had gain the skills to apply the rules of decoding unfamiliar words in text as he read. (Testimony, Weller; B-63).
83. In summary, in the 5<sup>th</sup> grade, the Student could comprehend concepts and content at a 5<sup>th</sup> grade level and understood text read to him at a 5<sup>th</sup> grade level. He knew and could read 5<sup>th</sup> grade vocabulary words in text. He could read text aloud and understand the text he was reading at an instructional 5<sup>th</sup> grade level. (Testimony, Weller; B-63)
84. What prevented the Student's ability to read independently at grade level was his inability to decode multisyllabic words in the text. Confronting unfamiliar multisyllabic words in text would slow Student down and interfere with reading comprehension. However, Student had the ability to apply the rules of decoding to unfamiliar text and he would apply the rules. He was specifically working on decoding multisyllabic words in text. He needed to decode these words to improve his reading comprehension. He was able to read with easily at an independent third grade reading level. (Testimony, Weller; B-63)
85. A PPT convened on March 18, 2015 for an annual review. It appears from the summary notes that this was a very difficult meeting. The Parents and Parent attorneys were focused on the Fountas and Pinnell independent reading grade level as a measure of success of the IEP. On the other hand, the special education staff was focus on progress in components parts of skill-based areas as measures of progress. In the staff's view, acquired skills in decoding, encoding, fluency and the rate of increase of reading level progress were signs that the IEP's goals and objectives were appropriate. The disconnect between the different views of educational progress is obvious from reviewing the summary narrative in the IEP. These differing views of educational progress was also fueled by the Parents' distrust of the school system since the Parents felt that the Student was a victim of discrimination by the Board. (B-60)
86. At this meeting, the Parents requested out of district private placement. The School team recommended extended school year services in Monroe. The Mother refused because she felt that Monroe Schools were discriminatory. The school team recommended a reevaluation to be conducted in the fall. (B-60)
87. The Parents filed a Due Process Complaint on April 25, 2016- Case No. 16-0486.

88. On May 9, 2016, Parents through the attorney requested a Independent Educational Evaluation. Specifically the Parents requested a neuropsychological and educational evaluation. (P-70) The Board brought Case No. 16-0617 on June 17, 2016.
89. A PPT convened on June 14, 2016 at Parent request. In attendance were Mother, Six to Six Magnet special education teachers, school psychologist, regular education teacher and principal, Monroe school psychologist, Board attorney and Parent attorney. The Parent attorney requested extended school year services at Eagle Hill School for 2016 and reiterated the refusal of summer school in Monroe School District. (B-67)
90. At the beginning of the hearing, the Board agreed to pay for an independent neuropsychological evaluation and withdrew Due Process Complaint No. 16-0617. The Parents chose Dr. LaShanda B. Harvey, PsyD. as the Independent Educational Evaluator. Dr. Harvey is a licensed Neuropsychologist administered a number of assessments during the period of time of the hearing in October and November of 2016. In contrast the Board's educational evaluation in the 4<sup>th</sup> grade in which the evaluator administered the WISC-IV Assessment, Dr. Harvey administered the WISC-V assessment when the Student was in the 6<sup>th</sup> grade. The Parents argue that the Student lost working memory and had a lower processing speed on the WISC-V assessment as a result of the Board's inappropriate programming. The Mother testified that she did not speak to Dr. Harvey to arrive at this conclusion but relied on the "expertise" of an attorney that the Parent's consulted with. In any event, there was no testimony by any professional on this issue. (Testimony, Mother; P-Exh.A and P-Exh. B)
91. The WISC is a cognitive assessment. It measures intelligence and subcomponents of the Student's cognitive functioning. It is not a gage of academic performance, which is the most relevant measure of whether the Student has received a free appropriate public education (FAPE). The relevant questions for a FAPE analysis relate to whether Student is accessing the grade level general education curriculum and whether the Student is progressing from year to year. It does not involve whether the Student's working memory is "damaged" or "decreased" which is a function of brain activity and not academic instruction. (Testimony Mother; P-Exh. A and P-Exh. B)
92. Nevertheless, a review of the two assessments, which were administered two years apart reveals a consistent cognitive profile of a student with ADHD. Indeed, Dr. Harvey's recommendations in the independent neuropsychological evaluation were related to addressing the Student's ADD disability. (P-Exh. A)
93. The Student's scores in both assessments are generally consistent and paint a consistent profile of the Student's cognitive functioning in different areas. Each composite in the WISC has a mean of 100 with a standard deviation of 15 and therefore, average is between 90 and 110. (P-Exh. A and P-Exh. B)
94. With respect to the issue of working memory, the Student's functioning in the WISC-IV in the 4<sup>th</sup> grade was in the low average range while in the 6<sup>th</sup> grade was in the borderline range. At first blush the results may appear to be very different.

However, the variance between the way the Student performed is very small and is more consistent than not. (B-Exh. A and P-Exh.)

95. Working memory involves the Student's ability to sustain attention and concentrate. It was noted in the 4<sup>th</sup> grade that there was a 95% confidence level that Student's true working memory level was between 77 (borderline) and 92 (average). In the 6<sup>th</sup> grade, Dr. Harvey found that even though Student's working memory level was 76 (borderline) and there was a 95% confidence that Student's true working memory was between 70 (borderline) and 86 (average). This paints a consistent cognitive profile of a Student's disability when it comes to sustaining attention and concentration. Both Ms. Asaro and Dr. Harvey analyzed this to be a trait of a student with the disability of Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (ADD/ADHD). (P-Exh. A and P-Exh. B)
96. The Parents withdrew the Student from Monroe Schools in the fall of 2016 and moved to Hamden, Connecticut. (Testimony, Mother; P- Exh. C). The Parents Exhibit A and C were admitted over the objection of the Board. However, they are relevant in they bear in the appropriateness of Monroe's IEPs. Parent Exhibit C is an educational evaluation administered about 4 months after leaving Monroe School District in which the Student was already performing within the average range in both math and reading. In March of the 5<sup>th</sup> grade, the Student was able to comprehend, read sight words, read paragraphs at an instructional 5<sup>th</sup> grade level with an independent reading level of Fountas and Pinnell Level M due to his inability to break down multisyllabic words. By January, just nine months later Student had overcome that difficulty and was reading at a Level T and an instructional 5<sup>th</sup> grade level. As with the 4<sup>th</sup> grade, Student continued to struggle with writing and getting his ideas on paper. He decoded words in a below average range but now he was able to decode multisyllabic words. It is significant to note that the Student's performance on phonological processing subtest was in the average range on the Kaufman Test of Education Achievement Third Edition. (KTEA-III). He was able to segment words into syllables, break apart words, sounds and blend sounds together to make words. (P-Exh. C).
97. The Parents argue that the Student can read at an average level because he is now in an appropriate program in the new school district and that Student was somehow misdiagnosed. The underlying assumptions underlying this argument that reading, writing and literacy is that there is a quick fix to Student's disability and the "correct" diagnosis would have garnered a quicker result. This argument is not convincing. Educating students with disabilities is an ongoing task that requires persistence and commitment from both parents and teaching professionals. (Testimony, Mother; P-Exh. C).
98. The Student came to Monroe School District unable to decode and encode short vowels and struggled with single syllable words. He was also performing poorly in math. He was significantly below grade level in all areas. His learning was impeded by ADHD. By the end of the 2014-2015 school year, Student had made a year's academic gain in reading and was on his way to performing grade level in math. In the 2015-2016 school year, Student made another year's worth academic gain. His struggle in math was largely behind him. He had overcome his difficulty in reading

except for decoding more difficult words in text he was reading. He was functioning at a 5<sup>th</sup> grade instructional level in reading. He was able to access the 5<sup>th</sup> grade general education curriculum and was becoming a more independent learner. Just a short nine months later, Student was overcoming his difficulty with multisyllabic words. All the pieces set in place by the Monroe and Six to Six Magnet IEPs had come together and Student was making rapid progress. He was reading at a Fountas and Pinnell instructional 5<sup>th</sup> grade level, no doubt aided by the fact that he was decoding multisyllabic words and applying the rules of reading provided to him in direct instruction. At the time of near the end of testimony at the hearing, the Mother reported that the Student was reading at the 6<sup>th</sup> grade level. None of this could have been possible if the Monroe IEP had been inappropriate in the incremental gains which were slow at the beginning but rapid as Student began to catch up to his peers. (B-16; B-25; B-34; B-37; B-45; B-47; B-55; Testimony, Casey; Testimony, Weller; P- Exh. B and C).

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. The Amended Complaint contained claims for monetary damages under the Americans with Disabilities Act; Section 1983 of the Civil Rights Act and Section 504 of the Rehabilitation Act. The Board filed a Motion to Dismiss. This is granted because the Hearing Officer lacks jurisdiction to determine issues arising from these statutes. §10-76h of the Connecticut General Statutes confines the jurisdiction of Hearing Officers to confirming, modifying or rejecting the identification, evaluation or educational placement of or the provision of FAPE to a child, to determining the appropriateness of a unilateral placement of a child or to prescribing alternative special education programs for a child.
2. There is no dispute that Student is eligible to receive a free and appropriate public education (FAPE) and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C Sec 1401, et seq. and its implementing regulations codified at 34 CFR §300 et. Seq., and under Conn. Gen. Stat. Sec. 10-76.
3. The purpose of the IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes “special education and related services designed to meet their unique needs” and “prepare them for further education, employment and independent living” and “to ensure that the rights of children with disabilities and parents of such children are protected...” 20 U.S.C. §1400(d)(1).
4. The Act defines FAPE as special education and related services which “(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State Educational Agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under Sec. 614(d).” 20 U.S.C. §1401 (8).

5. 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. Regulation of Connecticut State Agencies (R.C.S.A.) Sec 10-76h-14.
6. 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). The first question to be determined is whether the Board complied with the procedural requirements of the Act? The second question to be determined is whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U S at 206-207.
7. The United States Supreme Court has recently expounded on the level of "educational benefits" in the *Rowley* determination in its opinion in *Endrews v. Douglas County School District*, holding that the school's obligation to provide "educational benefits" is more than *de minimus* but that "to meet its substantive obligation under the Individuals with Disabilities Education Act, a school must offer an "individualized education program" reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Docket No 17-827, 580 U.S. \_\_ (2017), slip. op. at 9-16.
8. Addressing the first prong of the Rowley inquiry, the initial procedural inquiry is not a formality. As the Supreme Court noted in Rowley, Congress's emphasis in the IDEA "upon the full participation of concerned parties throughout the development of the IEP," together with the requirement for federal approval of state and local plans, reflects a "conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of a substantive content in an IEP." 458 US at 206. " *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998). The procedural guidelines of the IDEA are designed to guarantee that the education of each child with disabilities is tailored to meet the child's unique needs and abilities. 20 U.S.C. § 1412 and 1415. These procedural guarantees are procedural safeguards against arbitrary and erroneous decision-making. *Daniel R.R. v State Board of Education*, 874 F.2d 1036, 1041 (5<sup>th</sup> Cir. 1989). Compliance with the IDEA's procedural requirements is the responsibility of the board and not the parents. *Unified Sch. Dist. V. Dept. of Ed.*, 64 Conn. App. 273. 285 (2001).
9. The Board violated these procedural requirements by failing to convene a PPT when the Parents refused to sign the Agreement to Change IEP without Convening PPT forms in April of the 3<sup>rd</sup> grade to transportation. The Mother testified that she did not agree to the change. The document clearly states that the Parent did not agree to make this change. A PPT should have been convened. See 34 CFR §300.324(a)(4) comments:" The provisions in section 614(d)(3)(D) of the [IDEA] are intended to benefit parents by providing the flexibility to amend an IEP without convening an IEP team meeting. See also: State Department of Education guidance 2006 "Use of ED 634 AGREEMENT TO CHANGE INDIVIDUALIZED EDUCATION PROGRAM WITHOUT CONVENING A PLANNING AND PLACEMENT TEAM MEETING" addressing the question of whether a district can put IEP

changes into effect after obtaining verbal agreement from the parent before a parent has signed the form. Connecticut SDE provided guidance that the form is valid only when signed as documentary proof that the Parent agreed to the change.

10. The IEP was changed again in the 4<sup>th</sup> grade to accommodate the Parents' desire to remove Student from the 4<sup>th</sup> grade teacher's classroom. The IEP changed to add more reading instruction with a special education teacher. Here, it appears that procedural requirements were met and the Parent provided this proof of her agreement in the cell phone recording of the meeting with the Superintendent and Assistant Superintendent which was submitted as a Parent exhibit. (Findings of Fact No. )
11. Nevertheless, a procedural violation of the IDEA does not, in and of itself, warrant a change in the child's educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. See *Burke County Bd. Of Educ. v. Denton*, 895 F.2d 973, 982 (4<sup>th</sup> Cir. 1999); *Evans v. District No. 17*, 841 F.2d 824, 830 (8<sup>th</sup> Cir. 1988). Procedural flaws do not automatically require the Hearing Officer to find that a denial of FAPE has occurred, instead, the hearing officer must determine if the procedural inadequacies resulted in the "loss of educational opportunities or seriously infringed upon the parent's opportunity to participate in formulating the [IEP]..."
12. Here, even though there was a procedural violation by failing to convene a PPT, it did not result in a loss of educational opportunity. Convening a PPT in the third grade over the Student's transportation may likely have resulted in the same transportation arrangement. The educational record from New Haven District contains teacher reports that the Student could be verbally aggressive. If the PPT had convened, it would have likely resulted in a team discussion about the Student's behavior and disability and whether he required reminders and assistance of an aide rather than suspension or expulsion from the school bus, as would be the case with a nondisabled student. The Student did not receive discipline but had to be accompanied by an aide on the special education van. The Parents have argued that the Student's real disability was Dyslexia and he did not need a special education van. The educational record as well as Parent's own IEE provide evidence to the contrary, that the Student's primary disability is not Dyslexia but OHI/ADHD. The Student could be impulsive and aggressive with peers no matter the reason for provocation. A response of using a knife to hurt another person cannot be excused. For a student without a disability, the same behavior would have been the subject of discipline. In this case, the school treated such an extreme response as a condition of ADHD, which is both compassionate and appropriate. (Findings of Fact No. 95 )
13. As to the second inquiry of whether the IEPs were reasonably calculated to enable the child to receive educational benefits, the 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 states to "maximize the potential of handicapped children " *Walczak v Florida Union Free School District*, 27 IDELR 1135 (2d Cir 1998), citing *Rowley, supra.*; *KP v Juzwic*, 891 F Supp 703,

71 8 (D Conn 1995). The IDEA requires "the door of public education [to] be opened for a disabled child in a "meaningful" way." *Walczak*, 142 F.3d at 130. However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132. An IEP is appropriate when it is "reasonably calculated to enable the child to make progress in light of the circumstances." *Andrew v. Douglas County School District*, Docket No 17-827, 580 U.S. \_\_\_ (2017), slip. op. at 9-16.

14. An appropriate public education under IDEA is one that is likely to produce progress, not regression. *Id.* Whether the program is "individualized on the basis of the student's assessment and performance" is also considered when determining the appropriateness of an IEP. *See A.S. v. Board of Education of West Hartford*, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2d Cir. 2002) (*citing M.C. ex rel Mrs. C. v. Voluntown Bd. of Educ.*, 122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000).
15. Viewed in light of these standards, the Monroe School District 4<sup>th</sup> and 5<sup>th</sup> grade IEPs were appropriate. The Student made progress. The IEPs were tailored to the Student's unique needs in ADHD and problems with phonological processing issues. That the Parents now argue that the Student's real disability is dyslexia does not change this conclusion because the Student's IEP contained goals and objectives that could be considered the appropriate instruction for dyslexic students. (Findings of Fact No. 44-60 and 73-75 )
16. The International Dyslexia Association (IDA) has adopted the term Structured Literacy to describe explicit reading instruction that are marked by several elements. These include phonological awareness, syllable instruction, morphology (the meaning of smallest units of language), syntax (grammar and the mechanics of language) and semantics (instruction on the comprehension on written language). The 4<sup>th</sup> and 5<sup>th</sup> grade IEPs contained all of these components. See Frequently asked questions State Department of Education website "What is Structured Literacy" (Findings of Fact Nos. 44-60 and 73-77)
17. The IDA also states that Structured Literacy instruction is systematic and cumulative. Explicit instruction, the deliberate teaching of all concepts with continuous student-teacher interaction, is provided. The testimony of both special education teachers provided ample evidence that this was provided by the Student's IEP and implemented. (Findings of Fact No. 45, 52, 77-81)
18. Structured Literacy also requires "Diagnostic Teaching" from a teacher adept at individualized instruction who continuously assesses the student informally and formally using standardized measures of progress monitoring to allow the student to attain a level of automaticity so that the student's attention and cognitive resources are freed for comprehension and expression. The evidence is clear that this was the approach of both 4<sup>th</sup> and 5<sup>th</sup> grade special education teachers. (Findings of Fact No. 45, 50, 52, 53-55, 77-82)
19. The fact the Student made gains in 4<sup>th</sup> and 5<sup>th</sup> grade and ultimately was reading at grade level before the end of 6<sup>th</sup> grade validates the conclusion that the Monroe IEPs provided Student with a free and appropriate education under the IDEA.

**FINAL DECISION AND ORDER:**

1. The Board provided an appropriate program for the 2014-2015 school year.
2. The Board provided an appropriate program for the 2015-2016 school year.
3. The question of whether the Board provide an appropriate program for the 2016-2017 school year was not presented since the Parents withdrew the Student from Monroe School District and no IEP was completed for that school year.
4. Issues 4-8 above are DISMISSED because of the Board's withdrawal of Case No. 16-0617.

**COMMENTS ON THE CONDUCT OF THE HEARING, PURSUANT TO R.C.S.A. §10-76h-16(b)**

On March 17, 2017, the Parents requested the Hearing Officer recuse herself from the case on the basis of bias. The request and discussion was made on the record of the hearing. At the same time the Parents stated the court recording company was removing statements from the record because the transcripts contained in complete and ungrammatical sentences. The Hearing Officer denied the request. The Hearing Officer stated on the record that she had not made any decision and was continuing to hear evidence. Thereafter, the Hearing Officer requested recordings of all of the hearings from Post Reporting and made them a part of the record. Additionally, all subsequent hearings were recorded continuously so that there would be no unrecorded conversation.

