

STATE OF VERMONT
DEPARTMENT OF EDUCATION

SPECIAL EDUCATION)
Case No. DP09-24 - J.S.)

This due process case was heard on the merits by Donald R. Powers, Hearing Officer, on February 4, February 5, and February 12, 2010. Parents were present in person and represented by Attorney Gregory Van Buiten. Grand Isle Supervisory Union was represented by Jeremy Grenon, Case Manager, and Beth Hemingway, Special Education Coordinator, and by Attorney Georgianna Miranda.

Based on the evidence presented and the arguments and memoranda submitted by the parties, the Hearing Officer makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Student was born on 05/07/95.
2. Student is a resident of Grand Isle, Vermont. Her Parents and her younger sister are also residents of Grand Isle. (Parent)
3. For grades K-8 Student attended public school in Grand Isle. (Parent)
4. Student became eligible for special education services in November, 2003 and graduated from the 8th grade of the Grand Isle Elementary School in June 2009.
5. During her 4th grade year, Student was evaluated by the Stern Center for Language and Learning in Williston, Vermont. (D 62-76) The Diagnostic Evaluation Report identified several areas of concern, including academic issues and borderline clinically significant levels of Anxiety Problems. (D 68-71)
6. The Stern Center report indicates that a copy was sent to the School District in Grand Isle. (D 76)
7. Student's Parents provided private tutoring through the Stern Center in order to supplement the services Student received at school. (Parent)
8. An IEP developed for Student during her 6th grade school year included present levels of performance related to anxiety, needs related to anxiety, an annual goal related

to anxiety, short term objectives related to anxiety, and a rubric under Vermont Standard 3.14 related to anxiety. (D 99, D 100, D 106, D 107)

9. Student's 6th grade IEP includes counseling as a related service. (D 109)

10. Beginning at the latest in November of 2006 when Student's 6th grade IEP was developed, the District was aware that Student had issues related to anxiety. (D 98-115)

11. The 7th grade IEP Team minutes of 11/12/07 meeting described the Student as a hard worker, motivated, cooperative, aware, organized, as well as socially very well liked. It was also noted the Student was beginning to recognize she was anxious rather than sick from other causes. Accommodations for her anxiety included visiting the guidance counselor. (D.pps. 125-126)

12. At the end of the Student's 7th grade and beginning of 8th grade year, (2007-08, 2008-09) a bullying situation arose between the Student and another student. The District intervened, separated the students, placed them in different core classes, and generally supervised their activities to avoid confrontation. (JG Affidavit)

13. At the November 5, 2008 IEP meeting, she was described as well liked, motivated and works hard, advocates for herself and uses her time wisely. (D.pps. 132-135) Her IEP reflects achieving several goals in reading and making gains in dealing with anxiety. (D.p. 137) This IEP covered her 8th grade year through the beginning of her 9th grade. (D.p. 132-135)

14. In 8th grade the Student began complaining of headaches and feeling unwell and the Parents reported that she was not willing to come to school because of anxiety. The records reflect increased anxiety during the middle of her 8th grade year. However, the Student was popular at school, had many friends, played on the basketball team, and was voted most dramatic by her classmates. (D.p. 146, 148, JG Affidavit)

15. Student was scheduled to graduate in June, 2009. The Grand Isle School District is a K-8 school and a member of the Grand Isle Supervisory Union which is comprised of five school districts, all maintaining elementary schools only. There being no high school on Grand Isle, all Grand Isle students have the right to choose the high school they wish to attend. Most are tuitioned by the District to a variety of public high schools chosen by the students and their families. Parents who place their student in a private or residential school may only receive state average high school tuition. (JG, BH)

16. The District begins to address Student's IEP, transition services, and placement off Grand Isle during the Student's last elementary school year. For students receiving special education services, an IEP is prepared with the services the student needs; the document is completed with all the additional information when it is understood what facility the student will be attending. When the high school is identified,

the student's elementary school IEP Team meets with the personnel of the high school, the Parents, and Student. During a transition meeting, the local teams work with appropriate personnel at the receiving school, confirm the availability of the proposed services and facilitate transition. At this point, the student's choice becomes the Team's choice. If the student's choice cannot meet the student's needs, alternatives are considered in relation to the necessary services. (JG, BH)

17. On 12/15/08 the Parent requested the District conduct an early 3 year evaluation prior to the October 2009 due date. It was agreed a meeting for this purpose would occur after the school break. The deadline for completing a reevaluation is the 3 year due date. (DoE Reg. 2362.2.4(a), D.p. 189A, JG Affidavit)

18. On 12/22/08 the Parent requested a copy of the Student's special education file for Dr. Patricia Stone, a psychologist in private practice. (D.p. 190)

19. On 02/05/09 and 02/12/09, pursuant to Parent agreement that a meeting was unnecessary, the 11/05/08 IEP was amended to include more direct services in the area of reading and math respectively. (D.pps. 165-167)

20. At the 02/12/09 EPT meeting, the Team agreed to look for a specific learning disability (SLD) and a speech or language impairment. Parents volunteered to have the Student's physician confirm attention deficit disorder and/or anxiety disorder, believing these disorders would fall under Other Health Impairment. The Parents signed permission to evaluate the Student (D. p. 163) according to the questions raised in an Evaluation Plan (D.pps. 154-162). Following the meeting, Case Manager Jeremy Grenon had a further conversation with Father to confirm that the Team had agreed to not do a psychological evaluation because Team Members believed a doctor's note would be sufficient. (JG, Parent D.pps. 150-153) John Donnelly, Ph.D., PLLC, was contacted to perform the evaluation.

21. On 03/03/09 the Parents informed Mr. Grenon that the Student was being tutored at the Sylvan Center. They also provided a release to share information with Rock Point School (D.p. 180) and requested a copy of the Student's file for Rock Point School. (D.p. 189A)

22. Rock Point is a private day and residential school operating in the Burlington area, where the Parent works. It is not approved for special education services and does not follow IEPs. (D.p. 362-3) Mr. Grenon and Special Education Coordinator Beth Hemingway were not informed the family wanted a residential placement for the Student. (JG, BH)

23. On 03/04/09 the Parents discussed concerns about reading levels with Mr. Grenon and whether Rock Point would wait for the 3 year reevaluation results scheduled for May 12, the earliest date the District's evaluator was available. (D.p. 191a) Mr. Grenon discussed the Student's functional performance with the Rock Point director on 03/12/09, confirming that the Student was capable of writing, that she had gaps in math and reading skills, and discussing anxiety related to bullying. (JG, D.p. 191)

24. On 03/30/09 Mr. Grenon administered the Woodcock Reading Mastery test at Parental request. At that time he believed that the family was focusing on sending the Student to Rock Point. The Student's scores reflected below grade level scores in Word Identification and Passage Comprehension; above grade level scores in Word Attack and Word Comprehension. Her basic skill level fell at or above grade level (JG, DP.pps. 183, 186) and she was found to be functioning in the average range. The Student's end of the year report card also reflected gains. (D.p. 187, 195) The Student made progress at Grand Isle. (D.pps. 130, 187, 198, JG, BH)

25. In late April 2009, Student's Mother contacted Mr. Grenon, the District's special educator, to ask whether Student's evaluation could be done faster. Mr. Grenon replied that May 12 was the soonest Student could be evaluated by Dr. Donnelly. (D 191A)

26. Father discussed with the School District whether Patricia A. Stone, Ph.D. could conduct a cognitive assessment of Student. The District agreed to this. (Parent)

27. Sometime before April 6, the Parents arranged for Dr. Stone to conduct a psycho-diagnostic evaluation of the Student on 04/06/09 and 04/27/09. Although Mr. Grenon provided copies of the Student's records for Dr. Stone, (D.p. 189A) he was not informed this evaluation occurred until a June IEP meeting. (JG, D.pps. 221-223)

28. Using the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), Dr. Stone obtained a Full Scale I.Q. of 108 for Student, within the upper end of the average range, and a General Ability Index of 116 which is at the 86th percentile. (D 235)

29. Dr. Stone found that there were no indications of severe emotional disturbance throughout her Personality Assessment Inventory. (D 237)

30. Dr. Stone found that Student clearly showed an Anxiety Disorder, and that her anxiety is fairly generalized to a broad range of issues. (D 238)

31. Dr. Stone shared her concerns regarding Student attending a large public high school, given the nature of her difficulties. (D 238)

32. Dr. Stone stated that Student needs a very small, highly structured and nurturing environment, with a great deal of individualized instruction and work on social-emotional variables and heightened independence and maturity. (D 238)

33. Dr. Stone felt that Student should be in regular counseling to address her anxiety. (D 238)

34. At the end of the 2008-2009 school year, the nurse's records reflect 41 visits over 180 school days. The Student complained of being sick, having migraines or headaches as the most frequent complaints. She also complained twice about her braces, having hit her head, or other pains. She returned to class 20 times; she went home 19 times, two for outside appointments. At some point, nurse and Parents decided she should stay in school as often as possible. (D.pps. 188-189, Father)

35. The guidance records of the 8th grade 1st semester, not generally shared with other school personnel, reflect that:

- a. the Student was 'scared her Father will be mad' because she received all 'C's for her grades
- b. Parents are hard on weight and how she dresses (D.p. 377)
- c. she worried about 'what Father thinks'
- d. she was considered a hard worker (D.pps. 378, 383)
- e. before 11/06/08 the family was exploring a residential placement 11/06/08 (D.p. 379)
- f. she and her Mother had physical fights (D.p. 379)
- g. Student was depressed and anxious (D.p. 380)
- h. Student was taking anti-depressant meds (D.p. 380)
- i. wanted a sleep away school to get away from Parents (D.p. 380)
- j. teachers feel she is very organized (D.p. 381)

36. John W. Donnelly, Ph.D., PLLC is a psychologist who works with school districts in the Chittenden County area and is regularly engaged in evaluating Grand Isle S.U. students. He noted that although the Student was anxious when he evaluated her, which may have depressed her GIA score, his assessment scores were not too different from Dr. Stone's and consistent with earlier evaluation scores. At the time of his evaluation, neither the District nor Dr. Donnelly were aware of a diagnosis of Anxiety Disorder. (JG, BH, JD) As he works in other schools in the region, he is familiar with their programs and agreed that the Student could receive a FAPE in a number of local high schools. He did not believe the Student needed a residential program. (JD)

37. On 06/05/09 the Parent provided the customary release to the Grand Isle School records clerk authorizing the District to send the Student's records to Rock Point School. (D.p. 197)

38. On or about June 9, Father hand-delivered a letter from Marjorie Carsen, M.D. (Parent)

39. The letter from Dr. Carsen, dated June 9, 2009, indicated that Student had been under Dr. Carsen's care for an anxiety disorder since 05/31/05. The letter indicated that the anxiety disorder affected Student across domains. (D 200) The letter from Dr. Carsen was shared with the IEP Team at a meeting on 06/11/09.

40. On 06/11/10, the EPT met to determine eligibility, considered results of the District's evaluation and the letter from the Student's psychiatrist, Dr. Marjorie Carsen, regarding anxiety. (D.p. 200) The reading evaluation did not reveal a specific learning disability based on a significant discrepancy of 1.5 standard deviations nor did the speech and language evaluation reveal a speech or language impairment. The Team agreed to wait until receipt of Dr. Stone's IEE before reaching an eligibility decision. (D.pps. 122-223)

41. Up to this time, District personnel were unaware the Student had been seeing a psychiatrist or had been on psychiatric medication since May, 2005. The doctor's notes reflect that the Student was seen "due to a history of anxiety, separation fears, low-self esteem, poor focus in school and intense fussiness about grooming and clothing. Anxiety attacks and constant worry seems to reduce functioning." (D.p. 301) Other notes reflect the Student was "well behaved, no emotional issues at school", "works hard", "lower achievement", her "reading has improved" and she "worries a lot", (D.p. 304); under the word "consequences" is the comment about the Student's Father being "more strict, yells a lot". (D.p. 304) Later notes reflect weight gains (D.pps. 327-330), distress over weight gain (D.p. 328), continuing anxiety even during summer vacation despite use of three medications, Abilify, Lamactin and Nortriptyline, as well as medication for migraines. (D.pps. 329, 332)

42. The Doctor's letter did not mention ADD or ADHD as a diagnosis which is included in the disability of Other Health Impaired, (DoE Reg. 2362.1(g)) but indicated the Student had been treated for an anxiety disorder since May, 2005. Following the meeting, Ms. Hemingway consulted with Department of Education personnel and was advised that Anxiety Disorder would fall under the category of Emotional Disturbance not OHI. This information was shared with the Parents. (DP.p. 191A)

43. At the June 11th IEP Team meeting, the Father noted they would continue with Sylvan Learning, a commercial tutoring service located in Burlington, were looking at Rock Point, and were working with the State to waive the non-funding law for Rock Point. (D.p. 222) Despite the Principal's suggestion to contact Ms. Hemingway for assistance, she was never contacted. (BH)

44. The Student's Parent testified the family was looking at a residential placement at Rock Point for the Student's first year of high school. District staff were unaware the family intended the Student to reside at Rock Point. (JG, BH) Dr. Carsen's notes of 05/19/09 reflect that the Student was accepted at Rock Point (DP. p. 338), as does a Rock Point letter. (D.p. 364) District staff had not been told by Parents that Student was accepted at Rock Point.

45. On 06/15/09 Mr. Grenon contacted the Parent to schedule an EPT meeting to develop another Evaluation Plan to assess the area of anxiety and emotional disturbance. The Parent indicated that he felt his prior consent of 02/12/09 would still be pertinent; Mr. Grenon's understanding was that Father consented to an evaluation for emotional disturbance and that a new release would be necessary because the 02/12/09 Evaluation Plan did not address E.D. assessment components. (D.p. 191A) On this day, a release was signed by the Parent for the District's behavior specialist to do an Achenbach, which would have been part of the new Evaluation Plan. (P.D. 133)

46. On 06/15/09 Mr. Grenon and Father spoke on the telephone. Parent stated a preference of not identifying Student with an emotional disturbance. (D 191A) Despite this preference, Parent signed a release to allow the District to gather information via Achenbach testing. (D 242A)(P.D. 133)

47. Parent was hopeful that based on an upcoming Dr. Stone Basic Skills evaluation, Student could still be identified as a student with a specific learning disability. (D 191A, Parent)

48. On 06/16/09 the Parent called Mr. Grenon and stated he did not want to pursue the disability category of emotional disturbance; he would rather go with the learning disability category. He stated that Dr. Stone felt certain her evaluation would reveal an SLD diagnosis. (p.191A)

49. On 06/22/09 the Student was seen for a follow up basic skills evaluation by Dr. Stone in response to the school District's evaluation results. The District received the second IEE in mid to late July after receiving the results of the first evaluation. (D.pps 249-262, Dr. Stone) Neither of the IEE's included standard scores which would reflect which skill areas had the most number of standard deviations to include in the Evaluation

Report as well as determine the primary area of disability. Dr. Stone was reluctant to do the score calculations herself on grounds they would require further expense and time. (D.p. 192, JG)

50. Dr. Stone found severe discrepancies between Student's cognitive ability as measured by the WISC-IV and Student's achievement levels. Severe discrepancies were shown in the areas of reading decoding, written language, math calculations, listening comprehension and reading fluency. (D 252)

51. Dr. Stone found that the nature of Student's Specific Learning Disability is a language-based specific learning disability which can best be subsumed under a diagnosis of Developmental Dyslexia. (D 252)

52. Dr. Stone repeated the recommendation in her first evaluation of a small, highly structured and nurturing school environment, with extensive professional individualized instruction and work on social/emotional variables and increased independence and maturity. (D 252)

53. Dr. Stone obtained standard scores of 86 or lower in 16 areas. (D 257-259)

54. Dr. Donnelly obtained standard scores of 86 or lower in all 12 areas listed under "Discrepancies". (D 219-220)

55. The main difference between the evaluations conducted by Dr. Donnelly and Dr. Stone was in the cognitive measure. Dr. Stone and Dr. Muzio testified that the WISC-IV is a better instrument for measuring cognitive ability in this situation, because the WJ III is not as accurate or sensitive. (Stone, Muzio)

56. Muzio has a good discussion of the differences between the WJ III and the WISC IV in her report. (P M 9-13)

57. The WISC IV allows the evaluator to test a student's Verbal Comprehension and Perceptual Reasoning, without taking into account a student's Working Memory and Processing Speed. The first two are the essential ingredients of thinking ability, and the latter two are often seen in students with disabilities and so they are really measurements of the disability more than cognitive ability. (Stone, Muzio, D 240)

58. When asked what the real difference was, Dr. Donnelly testified that the real difference to Student was that with his testing Student would not be eligible, and with Dr. Stone's she would be. (Donnelly)

59. Dr. Stone, Dr. Muzio, and Dr. Donnelly were all credible on this point.

60. The parties differ about when the School District obtained copies of the Dr. Stone reports. Father called Mr. Grenon on 07/14/09 about the results of Dr. Stone's Basic Skills Evaluation. (D 191A)

61. On 07/14/09 Mr. Grenon explained the process for independent evaluations at public expense and Father indicated he did not mind paying for the evaluation. (D 191A)

62. After receiving Dr. Stone's Basic Skills Evaluation, Student's Parents contacted the Rock Point School and asked to be excused from the contract because they did not feel that Rock Point could meet Student's academic needs. Rock Point agreed. (Parent)

63. On 07/14/09 the Parent notified Mr. Grenon that Dr. Stone had stated the Student's scores would result in a diagnosis of SLD. The Parents were again informed of the process for and their rights to request an independent evaluation. (D.p. 191A)

64. On 07/19/09 without notice to the District, the Student filed an application to attend Kildonan. (D.p. 342-350) Kildonan offered admission to the Student for the 2009-2010 school year on 07/28/09. (D.p. 352)

65. On 08/13/09 the EPT met to consider the independent evaluation reports addressing cognitive abilities and basic skills and determine the Student's eligibility. The Parents were offered and refused a copy of Parental Rights. The Team discussed the School District's evaluation and both the independent evaluators' reports. There was a substantial discrepancy in the cognitive scores between Dr. Donnelly's report and Dr. Stone's report. The District agreed to use Dr. Stone's report for purposes of determining and ensuring eligibility. A discussion also arose as to which high school the Student would be attending so that collaboration could occur with the receiving school to address transition and complete the IEP. (JG, BH, D.p. 279-285) The Parents expressed interest in Champlain Valley Union High School (CVU), but they believed there was no space; Ms. Hemingway offered to communicate with CVU to pursue a placement. The Parents did not follow up and no other school was mentioned. (BH) A further meeting was scheduled for 08/18/09 to develop an updated IEP. (D.p. 244-248, BH)

66. Minutes from the 08/13/09 meeting indicated that Mr. Grenon would write the Evaluation Summary to include all areas that Student had a score low enough to reveal a specific learning disability, based on Dr. Stone's results. (D 247)

67. The minutes from the 08/13/09 meeting state that the Evaluation report and

Student's IEP should reflect that she has scores in several areas that show she has a specific learning disability, based on a standard deviation of 1.5. (D 247)

68. At the conclusion of the 08/13/09 Cynthia Werth requested that an IEP be written ASAP. (D 245)

69. At the meeting of 08/13/09 Parents indicated they were looking at the Kildonan School. (Parent)

70. Beth Hemingway indicated she was more than willing to meet prior to high school to develop an IEP and agreed to help with advice on high schools. (D 246)

71. By the time Student's eligibility was decided on August 13, 2009, the start of school was less than three weeks away. (Parent, D 244)

72. At the conclusion of the August 13 meeting, the next meeting was set for August 18, 2009. (D 248)

73. The IEP team met on August 18, 2009 to begin work on an IEP. (D 279, Parent, Grenon, Hemingway)

74. A brainstorming session using large white sheets of paper resulted in a variety of ideas and possible items for inclusion in Student's IEP with respect to her present levels of performance, Student's needs, general descriptions of a placement, and ideas about services. (D 279-283, D 383-385, Parent, Hemingway)

75. Student's Parents brought their own specific written input to the meeting and provided it to the District. (Parent, D 276-277)

76. All parties expected that there would be another meeting to continue work on the IEP. (Parent, Hemingway)

77. Ms. Hemingway assumed that there would be Parent feedback to the IEP document. (Hemingway)

78. Minutes of the 08/18/09 meeting end with a note regarding the next meeting date and time to check with Beth for 08/31 or 09/01. (D 283)

79. No final agreements about an IEP for Student were made on 08/18/09.

80. There was no discussion at the meeting of August 18, 2009 about a specific

school for Student to attend, and neither the minutes of the meeting nor the white charts contain any mention of a specific school for Student to attend. (Parent, Hemingway, D 279-283, D 383-385)

81. The Advocate also requested a meeting “to help T. and J. decide on which high school might be best for [student]”. (D.p. 244-48, JG, BH)

82. When the IEP Team met on 08/18/09 to develop an IEP, a list of components was presented by the Parents’ Advocate for discussion. The list, the evaluations, and Team members’ input, including Parents and their advocate, were used to develop flip charts from which Mr. Grenon would draft the IEP. (JG, BH)

83. The advocate raised the question of residential placement, which was addressed in consideration of LRE; Ms. Hemingway noted that residential is the most restrictive environment and she would consider least restrictive environments first. She also noted, without making specific recommendations, that programs that were available at different area high schools would be able to meet the Student’s identified needs and provide a FAPE despite the perception that they were “large” schools. The parties concluded their discussion with the understanding that Ms. Hemingway would work with the Parents to find a good match and Mr. Grenon would develop draft goals and send them out by August 28, 2009. He would also contact the SLP for goals to be included. (D.p. 282, JG, BH)

84. On 08/28/09 Mr. Grenon mailed the draft IEP to team members for response. Because it was a draft and the high school had not been identified, another meeting was anticipated. (D.p. 284-298, JG) It was not known at that time that the family had decided to enroll the Student in Kildonan.

85. The Parents’ 08/31/09 letter informed the District that the Student was being enrolled at Kildonan, a residential placement in Dutchess County, New York. (D.pps. 298A-C) The letter notes the IEP does not include ‘a lot of the things we have on our list...’ It also notes “We are going to start her there as soon as we can.” (298B), and “...we just want you to know where we stand.” Both Mr. Grenon and Ms. Hemingway were surprised by the letter, having had no prior notice about Kildonan. (D.pps. 398 A-C, JG, BH) This was the first time the District had a residential placement during Ms. Hemingway’s 5 year tenure as Coordinator.

86. The Parents signed a contract for admission to Kildonan School on 08/31/09. The Father testified that he had decided he wanted the Student to attend a residential placement in part because “there was not enough structure at home.” (D.p. 353)

87. On 09/2/09 the District rejected the Parent request for tuition reimbursement because the proposed IEP had all of the components necessary to provide a FAPE at many local public high schools. The unilateral placement was not the LRE and did not address the Student's issues of anxiety and community support. Other reasons for not supporting the unilateral placement are that Kildonan is not state approved for special education and does not serve regular education students. (D.p. 298D-E, BH)

88. The IEP process, including the important transition component, was not completed because of the unilateral placement. (BH, JG) However the IEP met the criteria for a FAPE and local high schools were capable of providing an appropriate program. (BH, JD, JG)

CONCLUSIONS OF LAW

Least Restrictive Environment (LRE): When an IEP is developed through IDEA's procedures, it must be "reasonably calculated to enable the child to receive educational benefits". Bd. of Educ. v. Rowley, 458 U.S. at 206. As noted in D.F. v. Ramapo Cent. Sch. Dist., 430 F.3rd 595, 598 (2nd Cir., 2005) the IEP must be "likely to produce progress, not regression."

According to DoE Reg. 2364.1, each school district shall ensure that a student eligible for special education services shall be educated with his or her non-disabled chronological age peers, to the maximum extent appropriate in the school he or she would attend if he or she did not have a disability.

Further, special classes, separate schooling or other removal of children with disabilities from the regular educational environment shall occur only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Finally, when selecting the LRE, consideration shall be given to any potential harmful effect on the student or on the quality of services that he or she needs.

In addressing the Continuum of Alternative Placements, the school district shall ensure that a continuum of alternative placements is available to meet the needs of children who are receiving IEP services and the continuum shall include instruction in regular classes, special classes, special schools, independent schools, home instruction and instruction in hospitals, and residential facilities.

In Gavriety v. New Lebanon Cent. Sch. Dist., 53 IDELR 152 (N.D. N.Y. 2009), Parents sought reimbursement for two years of services at the Kildonan School. The Court ruled that to obtain reimbursement for the cost of the private school, the parents must establish 1) that the IEP the District proposed was inappropriate, and 2) that private placement was appropriate to the child's needs, citing Burlington v. Department of Educ. of Mass. 471 U.S. 359, 370 (1985) and Gagliardo v. Arlington Cent. Sch. Dist. 489 F. 3rd 105, 112 2d. Cir. 2007). The Court stated that the party who commences a due process hearing bears the burden of persuasion, citing Schaffer v. Weast 546 U.S. 49, 57-58 (2005). The Court indicated that even if the parents satisfy the two factors aforementioned, an award of tuition reimbursement remains within the Court's discretion, citing 20 U.S.C. §1412(a)(1)(C)(ii). Finally, the Court noted "equitable considerations are relevant in fashioning relief under the IDEA" citing M.C. Ex. Rel. Mrs. C. v. Voluntown Bd. of Ed., 226 F. 3rd 60, 68 (2d. Cir. 2000) (quoting Burlington, at 374).

As set forth in Gavriety, Id., the first step for Parents is to demonstrate the proposed IEP would be inappropriate. In this case the IEP was reasonably calculated to enable the Student to receive educational benefits.

Much like the matter at hand, the Gavriety family sought enrollment in a particular private program (Kildonan) but failed to be clear about their interest in that program. Despite an opportunity to pursue another meeting, the plaintiffs rejected the IEP and enrolled the Student in Kildonan. The Hearing Officer and the State Review Officer found that the IEP recommended a program with appropriate special educational services that was reasonably calculated to enable the Student to receive educational benefits. Reimbursement was denied.

As raised in this case, the Court addressed the necessity of having an IEP available at the beginning of the school year. (DoE Regs. 2363.2(d)). The Court, relying on Grim v. Rhinebeck Cent. Sch. Dist., 366 F. 3rd 377, 381-382 (2d. Cir. 2000), found that there was no evidence that the plaintiffs would have changed their decision to send the Student to Kildonan if the IEP had been ready for the start of the school year. Id. at 772.

Our circumstances differ as the 2008-2009 IEP was already in place and would have continued to meet the Student's needs. Further, the August 28 document contained sufficient components to demonstrate the District's ability to meet the Student's needs. Moreover, as the District had demonstrated in the winter of 2009, the document could have been amended to include additional services based upon new evidence.

The Court emphasized that the CSE (the New York version of an IEP team) was obligated to recommend the least restrictive environment in which the student could make meaningful progress, even where the CSE agrees the more restrictive placement would benefit the student. The Court concluded that the preponderance of evidence was that placement in the local elementary school with special education and resource room services and other accommodations provided an IEP that was reasonably calculated to enable the child to receive educational benefits in the least restrictive environment. (p. 773)

The Court recognized placement in the least restrictive environment fulfills the IDEA mandate that “[t]o the maximum extent appropriate, children with disabilities. . . are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of the child is such that the education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.” 20 U.S.C. §1412(a)(5)(A). (p. 773). See also Vt. DoE Reg. 2364.1 et seq. The proposed IEP demonstrates that a small, highly structured, nurturing environment can exist in a large high school.

The proposed IEP herein demonstrated that the District considered the Student’s needs. The record reflects that the Student made progress with services that were provided to her in the past and that the local public high schools that were available to her could meet her needs. The District demonstrated that its efforts were successful even in light of the newly revealed information about the Student’s mental health. The proposed IEP met the state and federal requirements that the Student should be educated in the least restrictive environment. The proposed IEP, which adopted many of the Parents’ suggestions, had the Student participate in the mainstream educational environment with her age-related peers, as well as have access to small class or one on one instruction to aid her improvement in reading, writing and math as well as social interaction. Accommodations to meet her anxiety level were also provided. The testimony of Ms. Hemingway and Dr. Donnelly demonstrated that despite the schools’ labels as “large”, there were many individual small programs designed to meet the specific needs of this Student. Generally, due weight must be given District witnesses. Walczack v. Florida Union Free Sch. Dist., 142 F.3d 119, 122 (2d Cir. 1998, 27 IDELR 1135; Grim v. Rhinebeck, supra; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186 (2d Cir. 2005), 44 IDELR 89, and T.Y. v. NYC DoE, infra.

Testimony also reflected that the process of developing a comprehensive IEP for the Student was complex and the parties anticipated a second meeting to complete the process. By choosing an alternative placement, the Parents effectively stalled completion of the process in time for the fall 2009 semester. (DoE Reg. 2363.3)

Reimbursement Issues: Early IDEA reimbursement disputes involving unilateral placements were decided by Courts in reliance on School Comm. of Burlington v. Dept. of Ed. of Mass., 471 US 359 (1985). In Burlington, the Court allowed parents to unilaterally place their children in a school other than the local school if the local school failed to provide an appropriate program for the student. More recent cases have addressed unilateral placements of students in residential private schools by considering a broader number of factors than were considered in Burlington.

In Forest Grove S.D. v. TA, 129 SC. 2484 (2009) 52 IDELR 151, the Court considered whether a family could be reimbursed for a unilateral placement if the school district found the student was not eligible for special education services and an independent evaluator found the student met the criteria of eligibility. The Hearing Officer ordered the school district to pay for the residential placement. The District Court (43 IDELR 189) overturned the Hearing Officer and that decision was appealed. The 9th Circuit (at 523 F.3d 1078 (50 IDELR 1)), reversed the District Court on the grounds the District Court had relied on the wrong statute. The case went to the U.S. Supreme Court which remanded the case to the District Court with instructions to consider the decision in light of the correct statute. In its closing comments, the Supreme Court instructed the lower Court as follows:

“When a court or hearing officer concludes that a school district failed to provide a FAPE and the private placement was suitable, it must consider all relevant factors, including the notice provided by the parents and the school district’s opportunities for evaluating the child, in determining whether reimbursement for some or all of the cost of the child’s private education is warranted. As the Court of Appeals noted, the District Court did not properly consider the *equities* in this case and will need to undertake that analysis on remand.” (Emphasis supplied.)

On remand, after quoting the above language, the District Court concluded that the equities did not support reimbursement in the case and again reversed the decision of the Hearing Officer. 53 IDELR 213 (D.C. Or. 2009)

The District Court acknowledged the need to “consider all relevant factors in determining whether to grant reimbursement and the amount of reimbursement” pursuant to §1415(i)(2)(C) citing Forest Grove II, 523 Fed. 3rd at 1088-89 and that the Court “must consider all relevant factors” citing Forest Grove III, 129 S.Ct. at 2496 (Opinion, p. 1056). The relevant factors included parents’ notice to the School District of the unilateral placement as well as the existence of other, more suitable placements, the efforts expended by parents in securing alternative placements, and the general cooperative or uncooperative position of the School District. Also considered as

relevant factors to the determination that reimbursement is improper were the Hearing Officer's conclusion that the student was placed at the residential facility for reasons unrelated to the student's disability, i.e. substance abuse and behavioral problems at home.

The Court found the parents did not provide notice until well after the change of placement was completed. Based on this fact, the Court concluded that reimbursement was not available for the period before the Team evaluated the student, citing Ash v. Lake Oswego S.D. #7J (Ash 1), 766 F. Supp. 852, 864 (holding that the right to reimbursement did not arise until after the School District was asked to provide services, completed an evaluation process, and failed to provide a free appropriate education).

The Court found that the parents failed to make significant exploration of alternative placements but chose the most expensive one ten days after the family evaluator recommended the school. The parents did not appear to have done significant research into schools specializing in dealing with children with ADHD and depression. The Court noted that the District had been cooperative in evaluating the student and had missed a significant note in the files and no evaluation was ordered to address that particular issue. This was considered evidence that the District was uncooperative.

However, the Court found as the decisive factor that the parent appeared to have enrolled the student in a program not because of the disability recognized by IDEA, but because of drug abuse, behavioral problems and running away from home. The Court then found that the district's responsibility under IDEA is to remedy the learning related symptoms of a disability, not to treat the underlying disability or to treat other, non-related symptoms (p. 1056). The Court was particularly forceful in asserting that the district cannot begin treating a student's underlying medical disability whether mental or physical. In balancing the equities, the Court held against the parents and in favor of the school district.

In another 9th Circuit case, CS v. Governing Board of Riverside Unified School District, 52 IDELR 122 (2009), the Court, relying on its prior ruling in Forest Grove, 50 IDELR 1, 523 F.3d 1078 (9th Cir. 2008), ruled that the parents conduct and lack of cooperation during the IEP process precluded the Court from awarding relief on equitable grounds in that the parents did not give the district the opportunity to make the student a formal offer of placement. As in Seladori v. Bellair 53 IDELR 153 (S.D. OH 2009), the Court found that the parents' lack of cooperation prevented the district from finalizing their offers. The same could be said for the case herein.

In T.Y. v. New York City Dept. of Educ. 53 IDELR 69 (C.A. 2d Cir. 2009), the Court rejected the parents' application for reimbursement to a unilateral placement where the record reflected that the parents rejected two offers of placement made by the District and failed to explore the recommended alternatives. The Court concluded that:

"The parents then enrolled their child in the [alternative placement] without allowing the [NYCDOE] an opportunity to offer yet another school." "The parents' actions suggest that they seek a "veto" over school choice, rather than "input" - - a power the IDEA clearly does not grant them. See White, [v. Ascension Parish Sch. Bd., 343 F.3d 373, (5th Cir. 2003)] at 380. (IEP failure to identify a specific school location will not constitute a per se violation of the IDEA.)"

In the instant case, the Parents withheld information important to the Student's welfare. The School District was unaware of the Student's treatment by a psychiatrist, the fact that her anxiety apparently stemmed from sources across domains, her medications and their side effects, and her Parents interest in arranging a residential placement. The District was not provided with the date and time of the first IEE, and although formal consent to an evaluation for emotional disturbance was offered, Parents made it clear that they did not want an emotional disturbance label and preferred to wait and rely on a second evaluation by Dr. Stone to establish a specific learning disability.

When the Team met, the family participated in the development of the IEP; the School District adopted many of the proposed recommendations actively provided by the Parents. At the end of the meeting the Parents had a carbon copy of the Team Meeting Minutes which included specific components for the IEP. The minutes, beginning at D.p. 279 reflect many of the requests provided by the advocate from documents beginning at D.p. 276. On D.p. 281, there are references to goals for math, for writing, for spelling, and a notice of intention to get input from the SLP on figurative and expressive language related to social cognition. The Student is provided with five times weekly direct instruction in math and written expression, spelling, vocabulary, literacy, (reading comprehension and fluency) as well as a number of accommodations which were intended to provide her with small group setting, class support, modified assignments, a scribe and reader for her testing, and study guides, to name a few of the accommodations designed to assist her both in mastering the subject and accommodating her anxiety.

In the instant case, consideration of the equities must reflect the following acts and omissions of both Parents and the District:

1. Parents did not timely inform the District that the Student was being

treated by a psychiatrist;

2. Parents did not timely disclose to the District medications that were being prescribed which often have side effects, in this case possibly weight gain which could have contributed to the Student's anxiety;
3. Parents never complained about the Student's prior IEP's;
4. Parents did not identify all of the schools that they were considering;
5. Parents did not timely advise the District of their desire to place the Student in a residential facility;
6. Parents indicated an interest in Rock Point but did not inform the District that the Student declined to enroll;
7. Parents did not inform the District of the existence of the first Stone Evaluation until they disagreed with the Donnelly evaluation;
8. Parents consented to but clearly did not want a psychological evaluation which hindered the District's understanding of the nature of the Student's anxiety and its relation to her learning disability;
9. Parents used evaluators who did not contact anyone at the school, thereby depriving the process of more accurate information; and
10. Parents' evaluator declined to provide standard scores which might have served as significant indicators of the nature of the Student's disability.
11. The District acted responsibly to protect the Student from bullying;
12. The District agreed to amend the 2008-2009 IEP to provide for more one on one services in reading;
13. The District agreed to amend the 2008-2009 IEP to include more one on one services in math;
14. The District agreed to return the Student to the classroom to avoid missing school when a pattern of behavior relating to trips to the nurse's office became evident;

15. The District agreed to an early evaluation by Dr. Donnelly;
16. The District provided two sets of documents to the Parents without cost;
17. The District agreed to contact Rock Point and provide positive information about the Student;
18. The District agreed to wait for the Stone evaluation before determining eligibility despite the delay;
19. The District agreed to substitute Dr. Stone's evaluation for Dr. Donnelly's evaluation to ensure eligibility;
20. The District agreed to incorporate the advocate's recommendations in the development of the IEP;
21. The District agreed not to pursue the psychological evaluation in deference to the Parent wishes;
22. The District was prepared to meet and finalize the draft August 2009 IEP before being informed of the unilateral placement.

Other Claims: Parents have raised several miscellaneous claims as follows:

Notice: At various times during the course of this litigation, claims were made or implied that the School District failed to provide the family with appropriate notice. There are several occasions when parental rights were offered or brought to the Parents' attention.

On 03/03/09, at D.p. 180, Parents signed permission to release records to Rock Point. The document suggests reference to the parental rights in education and offers another copy of parental rights if necessary, providing a phone number and address for such a request.

On July 14, 2009, at D.p. 191A, Mr. Grenon offered the Parent a copy of the parental rights packet.

On August 13, 2009, at D.p. 244, parental rights were offered to the Parents and they were refused.

Further, the fact that the Parents sought the assistance of a special education advocate supports an inference of notice of Parental Rights.

Parents also complain that the District failed to provide appropriate notice of a refusal as required under DoE Reg. 2365.1.1. This reference is to Ms. Hemingway's September 2, 2009 letter (D.p. 298d,e) denying their request to reimbursement of Kildonan tuition. According to the regulation, the letter should contain

- a. a description of the action refused;
- b. an explanation why;
- c. a description of other options the Team considered;
- d. a description of the procedures, tests, etc.;
- e. a description of other factors that are relevant;
- f. a reference to the parental rights if the notice is not pertaining to an initial referral for evaluation;
- g. sources for the Parent to contact to obtain assistance;
- h. written in language understandable to the Parents.

The letter, written in English, describes the District's refusal to pay tuition for Kildonan based on an IEP Team meeting at which the comprehensive special education program for the Student was discussed and included a review of her needs and a decision regarding the goals, services and placement. In referencing the comprehensive special education program, Ms. Hemingway contemplated the procedures and IEE's that were relied on for the Team's decision to develop an IEP which resulted in a regular educational placement.

The letter further notes as a relevant factor that the public schools available to the Student could meet the needs outlined in the IEP and notes that the Team would have designated a specific school to meet the Student's needs if the local schools could not have done so.

The letter also points out that many public high schools have programs embedded in their daily schedule, with small environments, support and remedial services and a social and emotional component which the Student is being deprived of by the enrollment in the private school.

The letter also raised concerns that the Parents' unilateral placement failed to consider the Student's social and emotional well being and her ability to access her community connections.

A reference to state regulations relating to a unilateral placement was provided, noting that the District is not obligated to reimburse for tuition, room, board, travel expenses, as a result of the unilateral placement.

Parents had already demonstrated an awareness of alternative resources for the Parents to contact as they were working with an advocate who represents herself to be experienced in the area of special education. The letter does not address a reference to parental rights because the Parents were already working with an advocate and they had refused a copy of their parental rights at the August 13, 2009 meeting. This omission did not deprive the Student of a FAPE.

DoE Reg. 2368.4(b) provides that reimbursement for a unilateral independent school placement may be ordered if a FAPE is not made available by the local school. Subsection (c) requires that the parents must give notice to the School District that they are rejecting the placement proposed by the School District *at the most recent IEP meeting or in writing ten business days prior to the removal of the child from the public school.*

The Parents could have so informed the School District on the 18th of August when they participated in the development of the IEP. At meeting's end they received a copy of the minutes that indicated the Team agreed that the Student was going to be with her regular education peers with necessary support in the mainstream classes. They chose not to provide notice according to the 2368(c)(1)(i) at any time up to the time they received the draft IEP. Whether removal occurred at the time of graduation or at the time of parents' notice that the student was being placed at Kildonan, parents did not give notice at the most recent IEP meeting or ten days prior to the removal.

Ms. Hemingway testified the usual practice in Grand Isle is for the Team to develop an IEP and collaborate with the receiving school at "this time of year, meaning February and March. By the end of the school year the students belonged to a different school, because they had graduated. Accordingly, the Parents failed to meet either of the two prongs of the notice requirements. In that circumstance, consistent with case law on the subject, their unilateral placement cannot be financially supported. See, for example, Hunt v. Bureau of Special Ed Appeals and City of Newton, 53 IDELR 83 (D.C. Mass. 2009) and Shipler v. Maxwell, 52 IDELR 279 (D.C. Md. 2009).

In Shipler, the Court noted that the family was required to give notice to the school district at least 10 days before the beginning of the school district opening day which is a variation on the language in our regulations. (P. 1424) Further, because an IEP was already in place, Parents could not rely on the argument they were waiting for the new IEP. Shipler also held the parents could have provided notice of their intent even though the district was in the process of developing an IEP. Consequently, they were not entitled to tuition reimbursement. (p. 1424) In our case the family gave the School District at least 10 days notice before the Student went to the new school on September 15. However, if the IEP was intended to provide services for the Student in a regional public school, their notice would have arrived after the school year began in which event they provided late notice.

Another interesting ruling regarding notice in the Shipler case is that the parents claimed they mentioned to the public school personnel that they were exploring private schools in the spring of the school year. However, the Court found that merely mentioning they were exploring private schools does not constitute notice. (p. 1425) A parallel situation seems to have occurred in this case.

Failure to Name a Specific School: Parents complain that the August 28 IEP is inappropriate because it failed to identify a specific educational placement. In T.Y. v. N.Y.C. DoE. Region Four, 53 IDELR 69 (2nd Cir. 2009), it was determined that the educational placement means the type of program and not the facility. Accordingly, the Court held that it was not a violation or a deprivation of FAPE to omit the name of the facility.

Parental Requests: Parents complain that the District failed to accommodate all of their requests for inclusion in the IEP. The Court in E.H. v. Bd. of Ed. of Shendehowa Cent. Sch. Dist., 53 IDELR 141 (2nd Cir. 2009) affirmed the hearing officer's conclusions that the District did not have to provide every service requested as long as it provided FAPE in the LRE.

The District Failed to Identify the Student's Disability: The Complaint alleges that the District failed to identify the Student's disability because it did not include Anxiety Disorder as a disability in the IEP. Although the District had an evaluation from Dr. Stone which indicated an anxiety disorder and a letter from Dr. Carsen which indicated an anxiety disorder, the District was not permitted to do its own evaluation of that identification. Anxiety Disorder, according to the Department of Education, is not a disability under the heading of Other Health Impairment (OHI) as was proposed by the Parents. Because the characteristics of Anxiety Disorder can be found under two separate criteria for Emotional Disturbance, DoE Reg 2362.1(h) (1)(iii) and (1)(v), the District sought to pursue an ED evaluation. It was informed by the Parent on more than

one occasion, and as well by the advocate, that the Parents preferred not to have the Student identified as emotionally disturbed.

The District refrained from pursuing that evaluation primarily because of Parents' preference that the Student be eligible as a Specific Learning Disabled (SLD) Student rather than emotionally disturbed. However, it should be noted that IDEA is concerned with the provision of a FAPE, not labels. Consider, for example, the case of Heather S. v. Wisconsin, 125 F. 3rd 1045, 1055, (7th Cir. 1997). This case was recognized in Sch. Dist. of Dells v. Z.S., 35 IDLER 157 (W.D. Wis. 2001) in which the Court recognized that the student met all but one of the criteria of emotional disturbance, making him eligible for services and noting that the correctness of his label was irrelevant.

504 Violations: The Parents claim that the District violated the Rehabilitation for the Handicapped Act otherwise known as §504. This allegation is coupled with their IDEA claims and as a consequence must fail. To show a §504 violation, more than a mere failure to provide FAPE as required by IDEA is required. In fact, the Parents must show bad faith or gross misjudgment. See Torrence v. D.C., 53 IDELR 223 p.1091 (D.D.C. 2009), where 504 claims were dismissed as duplicative of the IDEA claims, citing Monahan v. Nebraska, 687 F. 2nd 1164, 1170 and 1171, (8th Cir. 1982).

The District's ability to provide FAPE: The District demonstrated that the Student made progress under the prior IEP's and evidence demonstrates that progress would be made with the new IEP. It is also evident that the Student was anxious when being tested, thus producing lower scores than her capability. However her class grades reflected progress as did her IEP's. The claim that harassment would continue ignores the fact the bully is in another school and concerns about anxiety have been addressed based on the District's clearer understanding of her anxiety. The new IEP considered her anxiety and made many accommodations to meet her anxiety needs. The accommodations relating to her anxiety exceed those that were provided in the prior IEP.

In Kasenia R. v. Brookline Sch. Dist., 51 IDELR 218 (D.C. NH 2008), the Court considered how well the District might have been able to serve the Student had she not been unilaterally placed. The Court recognized that the student had made progress while enrolled in the school placement. The Court commented "even if Kasey required more intensive services than those offered in the November 5, 2004 IEP and accompanying placement proposal, which is not the case, minor adjustments likely would have brought it into IDELR compliance. See Linda W. v. Ind. Dep't. of Educ., 200 F. 3rd 504, 506-07 (7th Cir. 1999)) which held that denying reimbursement after finding that the proposed IEP would have been appropriate had the services been slightly altered." However, the New Hampshire Court found that even if the District desired to

make adjustments to Kasey's IEP, the process was derailed by Kasey's parents' refusal to cooperate with its attempts to have her evaluated by trained professionals. Citing Schoenfeld v. Parkway Sch. Dist., 138 F. 3rd 379, 382 (8th Cir. 1998), where the School District was denied an opportunity to formulate an appropriate IEP, "it cannot be shown that it had an inadequate plan under IDEA").

In this case the District was discouraged from conducting a psychological evaluation to determine the impact of the Student's anxiety on her performance in school. The IEP process was also stalled just before the start of the school year by the unilateral placement.

District Errors: Given the complexity of providing special education services to a student, it is permissible for an IEP to be imperfect. However, a School District meets its obligations to provide a FAPE "so long as the program that it offers to a disabled student is "reasonably calculated" to deliver "educational benefits"". Kasenia, supra, at p. 1161.

The Court in Kasenia also noted:

"The IDEA does not promise perfect solutions to the vexing problems posed by the existence of learning disabilities in children and adolescents. The Act sets more modest goals; it emphasizes an appropriate rather than ideal education; it requires an adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest obtainable level or even the level needed to maximize the child's potential. Lenn v. Portland School Committee, 998 F.2d 1083, 1086 (1st Cir. 1993)." (p. 1161)

In Kasenia, the Court also noted that the parents did not argue the Perkins School was the least restrictive environment. Instead they emphasized the reasons why it was well suited to educate the student. The Court found that even if the child made academic progress at this private school, that fact does not establish that a placement is appropriate. Relying on the fact that all of the Courts have been emphasizing the need to provide a mainstream placement for disabled children to the maximum extent possible, the Court held that the residential placement for the student was not appropriate particularly in view of the fact that the statutes mandate that disabled children should be educated with children who are not disabled. (20 U.S.C. §1412(a)(5)(A).

Home Controversy: The record reflects that some of the Student's anxiety

stems from home. The Guidance Counselor talked to the Parents about criticisms that they directed toward the Student and the impact it had on her. Additionally, Dr. Carsen's notes reflect controversy within the home. For example, they described reports of aggression towards her sister (at D.p. 319, 320); that she was oppositional with her Parent, at D.p. 322; and also reflect some physical disagreements at home. Father indicated that one reason Parents wanted a residential placement was that there was not enough structure at home.

There are several cases which support the concept that home controversy does not justify a residential placement at School District expense. Those cases include the Forest Grove, District Court decision on remand, supra; Ashland Sch. Dist. v. Parents of Student EH 53 IDELR 177 (9th Cir. 2009); Baltimore County Public School 53 IDELR 174 (Sea MD 2009); Ashland School Dist. v. Parents of Student RJ 53 IDELR 176 (9th Cir. 2009) and RH v. Fayette County Sch. Dist. 83 IDELR 86 (N.D. Ga 2009).

The District has established that they were unaware that the family was considering placing the Student in a residential placement. They were also unaware that the Student was being treated by a psychiatrist with psychiatric medications. Their efforts to evaluate an anxiety disorder noted by both Dr. Carsen and the Stone evaluation were discouraged. Nevertheless, the District established an IEP for the Student despite the fact the process was interrupted. Had the District been able to complete the process, it would have produced a completed IEP which would have provided a FAPE in the LRE.

ORDER

Based on the foregoing, the application of the Parents for reimbursement for the unilateral placement and all other claims raised by the Parents are hereby denied.

Dated at Middlebury, Vermont, this 5th day of March, 2010.

By: _____
Donald R. Powers, Hearing Officer