

## FINDINGS OF FACT AND DECISION

Case Number: 55385

Student's Name: A.W.

Date of Birth: January 11, 1995

District: Middletown Enlarged City School District

Hearing Requested By: Parents

Dates of Hearing: August 31, 2010  
October 28, 2010  
June 13, 2011  
June 14, 2011  
August 10, 2011

Hearing Officer: Christine Moore, Esq.

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NAMES AND TITLES OF PERSONS WHO APPEARED ON AUGUST 31, 2010

Michael Sussman	Attorney	Parent
M.W.	Parent	
E.	Godfather	Parent
Samuel Sussman	Observer	Parent
James P. Drohan	Attorney	District
Selena Fischer	Director of Pupil Personnel Services	District

NAMES AND TITLES OF PERSONS WHO APPEARED ON OCTOBER 28, 2010

Michael Sussman	Attorney	Parent
A.W.	Student	
M.W.	Parent	
E.	Godfather	Parent
James P. Drohan	Attorney	District
Selena Fischer	Director of Pupil Personnel Services	District
Britta Rothschild	CSE Chairperson	District
Patrick Queenan	Assistant Director Glenholme	District

NAMES AND TITLES OF PERSONS WHO APPEARED ON JUNE 13, 2011

Michael Sussman	Attorney	Parent
M.W.	Parent	
Rebecca Hays	Clinical Director Franklin	Parent
Julie Bazemore	Learning Specialist Franklin	Parent
James P. Drohan	Attorney	District
Selena Fischer	Director of Pupil Personnel Services	District
Patrick Queenan	Assistant Director Glenholme	District

NAMES AND TITLES OF PERSONS WHO APPEARED ON JUNE 14, 2011

Michael Sussman	Attorney	Parent
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M.W.	Parent	
James P. Drohan	Attorney	District
Selena Fischer	Director of Pupil Personnel Services	District

NAMES AND TITLES OF PERSONS WHO APPEARED ON AUGUST 10, 2011

Michael Sussman	Attorney	Parent
M.W.		
James P. Drohan	Attorney	District
Selena Fischer	Director of Pupil Personnel Services	District
Sarah Satalino	Social Worker Glenholme	District

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### **PROCEDURAL HISTORY**

On August 31, 2010, October 28, 2010, June 13, 2011, June 14, 2011 and August 10, 2011, I conducted an impartial hearing at the offices of the Middletown Enlarged City School District Administration Building located in Middletown, New York pursuant to the Individual with Disabilities Education Act ("IDEA"), 20 C.F.R. 1400 *et seq.*, regarding the special education program of A.W. (hereinafter referred to as "the student"). A list of persons in attendance and documents received in evidence are appended hereto.

The proceeding was initiated at the request of the parent by due process complaint notice dated May 12, 2010 wherein it is alleged that the Middletown Enlarged School District ("Middletown") failed to offer the student a free and appropriate public education ("FAPE") for the 2009/10 and 2010/11 school years and seeks tuition reimbursement to the Franklin Academy ("Franklin") for a portion of the 2009/10 school year and the 2010/11 school year (Ex. i).<sup>1</sup>

The Middletown Board of Education appointed me as hearing officer on May 19, 2010. An answer to the due process request was interposed on the behalf of the district on May 10, 2010 (Ex. ii). The matter was not resolved during the resolution period and a pre-hearing telephone conference was held on June 8, 2010 wherein based on the availability of the parties, a hearing date was scheduled for August 31, 2010.

The impartial hearing commenced on August 31, 2010 and additional hearing dates were scheduled in order for the parties to have a full and fair opportunity to present its positions. At the conclusion of those hearing days, an additional hearing day was required in order for the district to complete the presentation of its position by way of a rebuttal witness. The hearing concluded on August 10, 2011.

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<sup>1</sup> References to Hearing Exhibits are prefaced with "Ex."

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The parties sought to submit post-hearing Briefs. By mutual agreement it was determined that post-hearing submissions were to be received on September 12, 2011. The district's unopposed request for an extension of time for the submission of briefs was granted. Briefs were received on or before September 19, 2011 and are appended as Hearing Officer Exhibit iii and iv.

The parties moved to extend the compliance dates during the course of the hearing. In considering the requests I weighed the cumulative impact of the relevant factors and found that the need of the parties for additional time to prepare and present its positions in accordance with the requirements of due process was greater than any delay in the resolution of the matter. Accordingly the requests for extensions of the compliance dates were granted due to the availability of witnesses and the extensive testimony and issues presented in this proceeding. The current record close date is September 28, 2010 and the compliance date for issuing a decision is October 12, 2010.

#### **BACKGROUND**

The student is seventeen years old and is classified with a learning disability (Ex. 9). The student's classification is not in dispute. The student was diagnosed over the years with multiple disorders including: neurological impairment with left brain strengths and right brain weaknesses, Pervasive Developmental Disorder -Not Otherwise Specified, Asperger's Disorder, Autism Spectrum Disorder, Nonverbal Learning Disorder, Oppositional Defiant Disorder, Executive Dysfunction, Bipolar Disorder, Depression and Attention Deficit Hyperactivity Disorder (Ex. Y at 1).

At seven years old the student was diagnosed with Asperger's Disorder (T: 521)<sup>2</sup> The student attended several schools throughout elementary and early middle school, including Green Chimneys during fourth and fifth grades (Ex. F at 3; T: 523). In or about November 2005, the student was placed at the Devereux Glenholme School ("Glenholme"), a private residential school on the New York State approved list located in Connecticut (Ex. 3). The Assistant Director of the School testified that Glenholme is

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approved by New York State to service those students with the profile of a “complex fragile child” (T: 243-244). The student with parental consent attended Glenholme for sixth through tenth grades and by all accounts made progress in the program (Ex. 3, 4, 6, 7, 8, 13; T: 206, 265, 524, 527-528).

In and around November 2009 the student's mother requested a meeting be held at Glenholme to address some of her concerns regarding the student's current and future program at Glenholme as well as the availability and administration of her medication (T: 533-537; Ex. L). The Assistant Director at Glenholme testified that he believed at the time of the meeting up until the student withdrew from the program, that the school was an appropriate placement for the student and that the program continued to address the student's needs (T: 260-262; 267). Subsequent to that meeting the parent testified that she contacted Middletown's Director of Pupil Personnel Services, to notify her that she would begin to look for another school for her daughter that was less restrictive and afforded her daughter greater independence, but still continue to provide support (T: 540-541).

By email dated November 17, 2009, the student's social worker at Glenholme communicated to the parent that she and others observed the student disengaging from the program because “she had her sights set on leaving” (Ex. O). The student's mother testified that up until this point she had not discussed with the student the possibility of a change in placement (T: 545). The student, however, testified that she did not want to be at Glenholme from the beginning of the 2009/10 school year and felt that it was time to leave (T: 180). Further testimony indicated that she discussed this with her social worker, teachers and mother (T: 182).

After the November meeting, the parent telephoned Dr. Ninivaggi, the student's psychiatrist while she attended Glenholme, to discuss his opinion regarding whether the student was ready to leave to Glenholme (T: 548). According to the parent, Dr. Ninivaggi

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<sup>2</sup> References to the hearing transcript are prefaced with “T:” followed by the page number in the hearing transcript.

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said that Glenholme worked for the student because it was very rigid, but that she no longer needs the rigidity and it is "just serving to frustrate her" (T: 550).

In or around January 12, 2010, the parent sought a neuropsychological evaluation for her daughter to clarify her current needs (Ex. X; T: 610). According to the parent a neuropsychological evaluation had never been performed (T: 610). The district's Director of Pupil Personnel Services was unable to recall when the last neuropsychological evaluation was conducted (T: 102). On January 23, 2010, prior to the completion of the evaluation, the student completed an application to Franklin for the 2010/2011 school year (T: 551; Ex. F at 2-11).

The district sought to schedule a meeting of the Committee on Special Education ("CSE") during the week of February 15, 2010; however, the parent stated that she was obtaining a neuropsychological evaluation and requested the meeting be deferred until the report was available for review by the CSE (Ex. X; T: 642-643). By email dated March 17, 2010, the parent notified the district that the evaluation "is about ready" (Ex. DD).

On March 29, 2010, the parent withdrew the student from Glenholme citing a series of incidents that caused her to lose trust in the school (Ex. 11; T: 563). Specifically, the parent references Glenholme's alleged lapses in medical care, an incident involving the forcible removal of a book from the student and the confiscation of a note from the student (T: 563-566; Ex. I, J, K, M, N, EE, Z).

The district's Director of Pupil Personnel, Selena Fischer, by email dated April 6, 2010 to the student's mother, indicates that prior attempts to schedule the CSE meeting were not met with success due to scheduling conflicts on the part of the parent and the need for a CSE review remains (Ex. MM). Also by email dated April 6, 2010, the parent notified Ms. Fischer that she is willing to review any proposed placement, but that if an appropriate placement is not located, she will unilaterally enroll her daughter in Franklin (Ex. NN).

By email dated April 7, 2010, the parent through her attorney sought home instruction until a different placement was located or the student began attending Franklin on May 3, 2010 (Ex. 23). While home instruction was not provided to the student, the

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mother testified that she recalled the district offering home instruction and declining the services due to her daughter's emotional state at the time (T: 700; 702-703).

On April 26, 2010 the CSE convened for an annual review and program review (T: 141; Ex. 9, 22). Discussion at the meeting regarding a change in placement, resulted in a CSE "recommendation for a placement in a New York State approved residential program" (Ex. 9, 22). The IEP states "[t]he student will be placed on home instruction pending acceptance into an appropriate residential program" (Ex. 9).

The Director of Pupil Personnel, Selena Fisher, testified that packets regarding the student were sent to a number of schools prior to the CSE meeting on April 26, 2010 and emails dated April 27, 2010, indicate that the district continued the referral process seeking an emergency interim placement for the student (T: 87, Ex. A). The parent testified that she visited the Grove School and telephoned the Charlton School, finding neither to be appropriate (T: 573-574).

Further testimony indicated that the CSE did not approve any school for the student for the 2009/10 or the 2010/11 school years (T: 575). In fact, Ms. Fischer testified that the CSE never met after April 26, 2010 and that no Individualized Education Program ("IEP") was generated for the 2010/11 school year (T: 98, 110). However, an IEP dated April 26, 2010 identified as an Annual Review for the eleventh grade, recommends "home instruction pending completion of a proposed Impartial Hearing initiated by the parent" (Ex. E). The CSE Chairperson, Britta Rothschild, testified that she prepared the comments section of the IEP and did not believe that she wrote in sum and substance that the "[p]arent plans on unilaterally placing the student in the Franklin Academy." (T: 149-151; Ex. E). The record fails to establish who created this IEP.

The parent unilaterally placed the student at Franklin and the student began attending Franklin on May 3, 2010 and continues to do so (T: 72, 192, 572).

#### **THE DISTRICT'S POSITION**

It is the district's position that the last agreed upon placement at Glenholme was an appropriate placement, that Franklin is not an appropriate placement and that the equities do not support the parent (T: 31). The district maintains that despite the parent's



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unilateral withdrawal of the student, Glenholme continued to be an appropriate placement for the student during the 2009/10 and 2010/11 school years (District's Brief hereinafter referred to as "Dis. Br." 13). The district asserts that the recommended placement at Glenholme was reasonably calculated to provide a free, appropriate public education ("FAPE") in the least restrictive environment in that Glenholme is a state approved school serving students with a profile similar to this student (Dis. Br. 14). That the program and services provided to the student at Glenholme yielded significant gains and progress both behaviorally and academically (Dis. Br. 15-16).

Moreover, the district submits that equitable considerations do not support an award of tuition reimbursement because the parents did not cooperate with the district (Dis. Br. 17). Specially, the district contends the parent unilaterally withdrew the student from Glenholme without allowing for a CSE meeting and failed to inform the district of the student's application and acceptance to Franklin (Dis. Br. 17-18). That there is adequate proof that parent had "predetermined" the student would attend Franklin and had no intention of enrolling the student anywhere other than Franklin (Dis. Br. 18-19).

Finally, the district maintains that the parent failed to sustain their burden of proving the appropriateness of Franklin (Dis. Br. 20). The district submits that Franklin fails to provide individualized supports to meet this student's academic or behavior needs and as such the parent has failed to sustain her burden of proving the appropriateness of Franklin (Dis. Br. 21-22).

#### **THE PARENTS' POSITION**

It is the parent's position the district failed to carry its burden of proof to establish the appropriateness of the recommend placement (Parents' Brief hereinafter referred to as "Par. Br." 31). The parent alleges that following the CSE meeting on April 26, 2010, the district eliminated the student's placement at Glenholme and recommended home instruction (Par. Br. 32). Further, the parent submits that for the following year, the district did not offer a timely IEP and maintained home instruction as its proposed placement (*Id.*).

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The parent submits that after four years at Glenholme, the student needed greater independence and that the level of restriction inherent in the Glenholme program made the program increasingly inappropriate for the student (Par. Br. 2). Moreover, the parent contends that Glenholme was not properly meeting the student's medical needs to further alienate both the parent and student and that specific interventions were inappropriate and unduly restrictive (*Id.*).

It is also the parent's position that the services selected by the parent are appropriate to meet this student's needs (Par. Br. 32). The parent contends that the student's placement at Franklin is appropriate and that the placement was selected in accord with the advise of the student's psychiatrist and a current neuropsychological evaluation (Par. Br. 33). The parent submits that the student body at Franklin exhibits a profile similar to this student and this student is a strong candidate for the program (*Id.*). Finally, the parent asserts that Franklin is a less restrictive environment responding to the student's growing need for independence in a supportive structure and as such has progressed socially and academically at Franklin (*Id.*).

Finally, the parents maintain that the equities support full tuition reimbursement (Par. Br. 34). The parent submits that as early as November 2009, the parent notified the district that she was considering another placement for her daughter, explained why and requested a CSE meeting (*Id.*). The parent seriously considered suggested placements offered in March 2010 and found each to be inappropriate (Par. Br. 34-35). The parent asserts that timely notice was provided the district of the student's placement at Franklin and the district failed to provide an alternative placement (Par. Br. 35).

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **I. DID THE DISTRICT PROVIDE THE STUDENT WITH A FAPE FOR THE 2009/10 AND 2010/11 SCHOOL YEARS**

The purposes of the IDEA (20 U.S.C. §§ 1400-1482) are to ensure that students with disabilities have available to them a free appropriate public school education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent

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living; and to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; *Schaffer v. Weast*, 546 US 49 [2005], *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when the board of education complies with the procedural requirements set forth in the IDEA, and the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (*Rowley*, 458 U.S. at 206-07; *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 192 [2d Cir. 2005]). While school districts are required to comply with all IDEA procedures, not all procedural errors render an IEP legally inadequate under the IDEA (*A.C. v. Bd. of Educ.*, 553 F.3d 165, 172 [2d Cir. 2009]; *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 381 [2d Cir. 2003]; *Perricelli v. Carmel Cent. Sch. Dist.*, 2007 WL 465211, at \*10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if a procedural violation is alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies impeded the student's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the student, or caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; *E.H. v. Bd. of Educ.*, 2008 WL 3930028, at \*7 [N.D.N.Y. Aug. 21, 2008]; *Matrejek v. Brewster Cent. Sch. Dist.*, 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007] *aff'd*, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

The IDEA directs that, in general, an impartial hearing officer's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (*Rowley*, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (*Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 [2d Cir. 1998]; see *Rowley*, 458 U.S. at 189). The statute ensures an "appropriate" education, "not

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one that provides everything that might be thought desirable by loving parents" (*Walczak*, 142 F.3d at 132, quoting *Tucker v. Bay Shore* 11, 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see *Grim*, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (*Rowley*, 458 U.S. at 189, 199; *Grim*, 346 F.3d at 379; *Walczak*, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (*Cerra*, 427 F.3d at 195, quoting *Walczak*, 142 F.3d at 130 [citations omitted]; see *P. v. Newington Bd. of Educ.*, 546 F.3d 111, 118-19 [2d Cir. 2008]; *Perricelli*, 2007 WL 465211, at \*15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (*Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1120 [2d Cir. 1997]; see *Rowley*, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 C.F.R. §§ 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see *Newington*, 546 F.3d at 114; *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105, 108 [2d Cir. 2007]; *Walczak*, 142 F.3d at 132; *E.G. v. City Sch. Dist. of New Rochelle*, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; *Patskin v. Bd. of Educ.*, 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs (34 C.F.R. § 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals related to those needs (34 C.F.R. § 300.320[a][2]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (34 C.F.R. § 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see *Application of the Dep't of Educ.*, Appeal No. 07-018; *Application of a Child with a Disability*, Appeal No. 06-059; *Application of the Dep't of Educ.*, Appeal No. 06-029; *Application of a Child with a Disability*, Appeal No. 04-046; *Application of a Child with a Disability*, Appeal No. 02-014; *Application of a Child with a Disability*, Appeal No. 01-095; *Application of a Child Suspected of Having a Disability*, Appeal No. 93-9). Subsequent to its development, an IEP must be properly implemented (8 NYCRR 200.4[e][7];

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*Application of a Child with a Disability*, Appeal No. 08-087).

The New York State Legislature amended the Education Law to place the burden of production and persuasion upon the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of production and persuasion regarding the appropriateness of such placement (Educ. Law § 4404[1][c], as amended by Ch. 583 of the Laws of 2007). The amended law took effect for impartial hearings commenced on or after October 14, 2007; therefore, it applies to the instant case (see *Application of the Bd. of Educ.*, Appeal No. 08-016).

The parent testified that subsequent to a meeting on or about November 9, 2009 with Glenholme personnel including the school psychologist, headmaster and the student's social worker, that she felt Glenholme was no longer appropriate for her daughter (T: 534, 538, 540; Ex L). She also testified that subsequent to the meeting, she contacted Selena Fischer, the Director of Pupil Personnel Services, and expressed to her dissatisfaction with Glenholme and that she was going to begin looking for other schools (T: 541, 546). The parent testified that in response, Ms. Fischer said they would have a meeting after the winter vacation (T: 547).

On or about January 12, 2010, the district attempted to schedule a CSE meeting during the week of February 15, 2010; however, the parent stated that she was obtaining a neuropsychological evaluation and requested the meeting be deferred until the report was available for review by the CSE (Ex. X; T: 642-643). According to the parent a neuropsychological had never been performed and the district representative was unable to recall when the last neuropsychological evaluation was conducted (T: 102, 610). In or around January 12, 2010, the parent sought a neuropsychological evaluation for her daughter to clarify her current needs (Ex. X; T: 610). By email dated March 17, 2010, the parent notified the district that the evaluation "is about ready" (Ex. DD).

By email dated April 6, 2010, the district's Director of Pupil Personnel, Selena Fischer contacts the student's mother and states that prior attempts to schedule the CSE meeting were not met with success due to scheduling conflicts on the part of the parent, but that the need for a CSE review remains (Ex. MM). The parent responds indicating

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that she is “available Wednesday or Thursday morning” and will be out of town until after the 20<sup>th</sup> (*Id.*). The parent also notes that she has also been trying to schedule a meeting (*Id.*).<sup>3</sup>

The CSE met on April 26, 2010 for a “Reevaluation/Program Review” for the student’s tenth grade (Ex. 9). The CSE reviewed the results of the psychoeducational conducted by Glenholme and the neuropsychological evaluation performed by Dr. McGuffog. The CSE agreed that the student continues to be eligible for classification as Learning Disabled due to continued weaknesses in the areas of Nonverbal Reasoning and Mathematics.

The student’s teacher from Glenholme stated that the student does well within the structure of the classroom setting. In Math, the student was reported to be working on a ninth grade instructional level, using a variety of strategies to remember math concepts. The student was reported to enjoy peer editing and employs various supports to assist with written work. Discussion was held regarding her lack of current participation in her current online course and inconsistent effort in her Spanish 3 class. The student’s social worker at Glenholme reported that the student is continuing to work on increasing her frustration tolerance and implementing coping skills, but that she has made excellent behavior progress and is functioning at a “Self-Directed” level in the program’s behavioral component.

It is also reported in the comments section of the IEP, that the parent expressed concerns regarding the administration of the student’s medication at Glenholme and her daughter’s anxiety surrounding this issue. Further, the parent stated that her daughter’s needs would be better met in a less behaviorally oriented residential placement that would assist her in continuing to develop independent skills.

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<sup>3</sup> This is supported by the fact that on March 25, 2010, the parent requested a meeting with the district and Glenholme and asked Ms. Fischer to attend, based on her availability (T: 555-556; Ex. MM). Ms. Fischer was unable to attend and it appears the primary purpose of the meeting was to discuss the administration of the student’s medications at Glenholme (T: 556-557).

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It is recorded in the comments section of the IEP, that the CSE discussed a change in placement and that discussion resulted in a recommendation for placement in a New York State approved residential program. It is also stated that the student will be placed on home instruction pending acceptance into an appropriate residential placement.

Britta Rothschild, the CSE Chairperson, testified that the CSE discussed the appropriateness of the Glenholme program for the student and while it could have recommended it as a placement, it did not (T: 145, 166). Further testimony indicated that the CSE did not recommend Glenholme because "the parent was not interested in sending her daughter back to Devereux", aka Glenholme (T: 162). Ms. Rothschild also testified that home instruction was recommended because no appropriate placement was available at the time of the CSE meeting and the CSE did not know where the student would be accepted (T: 167). Finally, Ms. Rothschild testified that she did not know when, if ever, the CSE made a specific recommendation of a proposed approved New York State placement (T: 152). Selena Fischer, Director of Pupil Personnel Services, also testified that the CSE never met after the April 26, 2010 meeting (T: 98).

According to the student's mother the district did not provide the student with home instruction (T: 696, 700). This testimony is undisputed, except in so far that the parent also testified that at one point the district did offer the student home instruction, but that the parent responded that the student was not available due to her emotional state and/or she was attending Franklin (T: 699, 703-704). Nevertheless, it remains, that given the student's social/ emotional needs home instruction was rejected by the parent as inappropriate (T: 573). The evidence supports a finding that home instruction for an extended period was inappropriate to meet this student's needs and that while it may have been appropriate as an emergency interim placement, an appropriate residential program was never identified and home instruction was the only program recommendation.

It is undisputed that Ms. Fischer sent packages regarding the student to a number of schools both before and after the CSE meeting on April 26, 2010; it is also undisputed that the CSE did not meet again after April 26, 2010 to recommend a specific residential program (T: 83-85, 88, 98; Ex. A). Ms. Fischer testified that consistent with an email

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dated April 27, 2010, packets regarding the student were sent out seeking an emergency interim placement, but that none of the four schools solicited approved the student's admission (Ex. A; T: 87-88, 100).

Moreover, subsequent to review of the student's referral packet, both Randolph Academy and Hopevale, Inc. found that the placement of the student in their respective programs inappropriate (Ex. B, C). The parent testified that she contacted the Chamberlain School (see Ex. 19) and was informed by a representative of the school that the program was more restrictive than Glenholme (T: 579). As such the program was rejected as inappropriate to meet the student's needs (T: 580). Similarly, the parent rejected the Charlton School due to the fact that the majority of the student population had "endured serious and intense trauma" and where "nearly half the students are in a drug program" (Ex. KK). The parent also testified that she followed up on all the schools the district proposed before and after the April 26, 2010 CSE meeting (T: 580). (See Ex. 20 indicating school's inability to arrange for interview).

Based on the foregoing, I find that the district failed to offer the student an appropriate program or residential placement for that portion of the 2009/10 school year the student attended Franklin and seeks tuition reimbursement. While the district argues that Glenholme was an available and appropriate placement, it was not the placement recommended by the CSE at the April 26, 2010 meeting (Ex. E; T: 162). This conclusion is also supported by the credible testimony of the CSE Chairperson, Britta Rothschild, that Glenholme was not recommended at the meeting and that there was no specific recommendation at the CSE meeting (T: 145, 152, 162).

Although the district argues that the placement at Glenholme was appropriate and available, it was not the CSE's recommendation and the district cannot in retrospect unilaterally change the CSE's recommendation. Assuming arguendo, the CSE had recommended Glenholme, as it had in prior years (See Ex. 6, 7, 8), there is sufficient credible evidence in the record to establish that the program at Glenholme no longer met the student's needs.

Specifically, after four years at Glenholme, the student had reached a point in her



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development where she needed greater independence in order to begin the transition from the protective environment of a therapeutic boarding school to the demands of post-secondary living (Ex. Y at 59). There is also sufficient credible evidence in the record to establish that Glenholme no longer met the student's needs because both the student and the parent were dissatisfied with the level of restriction inherent in the program (Ex. F at 4, 29; T: 174, 189-190, 550, 567-568). For example, the parent and the student found interventions to punish the student for reading a book and passing a note inappropriate and excessive (T: 183-185, 553-554). Further, their increased perception that Glenholme was not properly meeting the student's medical needs caused both the parent and student anxiety so as to interfere with the student's participation in the educational program (T: 178, 545, 553; Ex. Z, I, K, M, N, EE).

With respect to the 2010/11 school year, the CSE did not meet or develop an IEP for the student. Home instruction was not provided and an appropriate residential placement was not recommended.

Accordingly, I find the district failed to offer the student a FAPE for the 2009/10 and 2010/2011 school years.

## **II. IS FRANKLIN AN APPROPRIATE PLACEMENT FOR THE STUDENT**

Having found that the district failed to provide a FAPE, I now consider whether the parent met its burden that Franklin offers an educational program that is appropriate to meet the education needs of this student, and that equitable considerations support the parent's claim.

The parent bears the burden of proof with regard to the appropriateness of the services selected for the student (*Gagliardo v. Arlington Cent. School Dist.*, 489 F.3d 105, 112 [2<sup>nd</sup> Cir. 2007] and *M.S. v. Bd. of Educ.*, 231 F.3d 96, 104 [2<sup>nd</sup> Cir. 2000]). In order to meet that burden, the parent must show that the private school offers an educational program that meets the student's special education needs (*Burlington*, 471 U.S. 359, 370 [1985]). To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their

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child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction (*Gagliardo*, 489 F.3d 105, 112 [2<sup>nd</sup> Cir. 2007] and *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 364-365 [2<sup>nd</sup> Cir. 2006]).

While parents are not held as strictly to the standard of placement in the least restrictive environment as school districts are, the restrictiveness of the parental placement may be considered in determining whether the parents are entitled to an award of tuition reimbursement (*Rafferty v. Cranston Pub. Sch. Comm.*, 315 F.3d 21, 26-27 [1st Cir. 2002]; *M.S. ex rel. SS v. Board of Educ. Of the City School Dist. Of the City of Yonkers*, 231 F.3d 96, 105 [2d Cir. 1999]).

The district submits that the parent failed to sustain its burden of proving that Franklin is appropriate, while the parent asserts that the student's placement at Franklin is appropriate. In support the parent submits that in selecting Franklin she considered the advice of the student's psychiatrist at Glenholme and a recent neuropsychological evaluation. That the students enrolled at Franklin have needs that are similar to this student and the school also believed the student to be a strong candidate for the program providing a less restrictive environment, while maintaining a supportive structure.

On behalf of the parent, Rebecca Hays, the clinical director at Franklin in Connecticut, testified that she has been affiliated with the school since it opened in 2003 (T: 360-361). There are 87 students enrolled in the school and the student's profile is consistent with the majority of students enrolled who have a non-verbal learning disability and/or Asperger's Disorder (T: 361). A neuropsychological evaluation is required for all applicants to guide school personnel regarding patterns of cognitive strengths and weakness (T: 362). Students admitted to the school are reasonably self-directed and are able to independently request adult assistance as needed (T: 362).

Ms. Hays is a member of the admissions committee and assessed the student, finding her profile to be consistent with that of other students attending the school (T: 365-366). The student, like other students attending the school, exhibits a high level of

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achievement in the verbal range and a slow processing speed with deficits in executive functioning (T: 366; Ex. Y at 51).

To address student's needs, the school employs a team based program where each team consisting of twenty-four students, six to eight adults and support staff work together to assist the students academically and residentially (T: 365). Instruction is provided in a direct and explicit manner using repetition to re-enforce strategies employed in classes with an 8:1 ratio of students to teacher (T: 367). A consulting psychiatrist is available and each team has a counselor (T: 413, 454).

The school does not operate a token reward system, but rather continuously assesses the individual student implementing appropriate adult support based interventions as needed (T: 460-461). Core classes occur from 9 AM to 3:40 PM, an hour of homework is mandatory each day and students are required to be in the dormitory by 10 PM with lights out between 10PM and 11 PM (T: 468). There are expectations regarding timeliness, cleanliness, academics and chores and behavioral consequences are imposed when infractions occur (T: 461, 469-470).

Joule Bazemore, a learning specialist at Franklin, oversees and implements the program and placement of students (T: 372, 374). Ms. Bazemore and the team meet three times a week to assess each student and then create a plan that will address each student's needs (T: 379). The student participates with the team in the development of their individual plan (T: 379). The student's primary issues are identified as weaknesses in executive functioning, social deficits and emotional deregulation, specifically with anxiety (T: 378).

Her social deficits and emotional regulation are addressed by working on her being able to tolerate her experiences, respond more appropriately to change and to work on more positive coping mechanisms (T: 378). To implement these strategies, the student is encouraged to verbally label behaviors and provide immediate feedback (T: 380). The student is encourage to not only label her behaviors, but her thoughts to make a connection between her thoughts, feelings and behaviors (T: 381). She is provided with an "emotional regulation processing" sheet to fill out when she is having some kind of

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discomfort and she is encouraged to use readiness checks when she starts to initiate an activity (T: 381).

The student is described as making appreciable progress in the areas related to her behavior, neurology, and social/emotional functioning (Ex. F at 59). She has also made progress in taking responsibility for her actions and choices and has a greater awareness of her needs and the needs of the group (T: 392; Ex. F at 60). During a trip to the Grand Canyon in June, the student was observed challenging herself and realizing improvement in her ability to interact in group and regulate her anxiety with transitions (T: 384-385).

Additional progress is evidenced by her acceptance into the Franklin Learning Institute ("FLI") program for the 2011/12 school year (T: 389). To qualify for the program the student demonstrated overall accountability for her behaviors and actions (T: 391). She also demonstrated leadership skills and the ability to tolerate feedback at a more intimate level (T: 391). In the FLI program she will live in a dormitory with less supervision and be expected to manage her own independent living skills (T: 389-390).

Academically, the student has progressed as shown by her Progress Reports for the 2009/10 and 2010/11 school years (Ex. F at 21, 57-59). The student received passing grades in her subjects with the exception of an Applied Math class that she did not complete in the third Quint of the 2010/11 school year. (Ex. F at 57; T: 392-393). The student is taking an honors level course in history and received a passing grade in this subject (T: F at 57). It is expected that the student will graduate and attend college (T: 440).

Both the student and the parent testified that Franklin is meeting the student's needs and that the student is making progress in the program. Specifically, the student testified that she has more freedom, is able to socialize with peers and is permitted to carry her nebulizer (T: 192-193, 197). Academically, the student continues to do well and is working to achieve a "high pass" in her classes (T: 195). The student is looking forward to participating in the FLI program during the 2011/12 school year where she will live in a satellite dorm with other students also preparing for college (T: 203). Finally, the student testified that she is less anxious at Franklin (T: 202).

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The student's mom has visited Franklin on numerous occasions, has taken classes offered for parents and has frequent contact with the school's staff (T: 582-583). The parent believes the school's emphasis on support as opposed to discipline is beneficial for her daughter (T: 583). The parent has observed her daughter better able to self-regulate and calm herself and have more insight into her own behavior (T: 587). The parent also testified that the student is less anxious about medication issues (T: 588).

The program offered at Franklin is consistent with the findings and recommendations of the most recent neuropsychological evaluation performed during January 2010 by Dr. McGuffog (Ex. Y).<sup>4</sup> Dr. McGuffog assessed the student's intellectual functioning via the Wechsler Intelligence Scale for Children –Fourth Edition (“WISC-IV”) finding the student's average range Full Scale IQ to not be reflective of her intellectual functioning given the discrepancy between her Very Superior range Verbal Comprehension Index and her Low Average range Perceptual Reasoning Index (Ex. Y at 51). Thus concluding that she is significantly more proficient at interpreting verbal as opposed to visual/perceptual information, “a finding consistent with a diagnosis of a Nonverbal Learning Disability (*Id.*).

In her evaluation, Dr. McGuffog finds the student also meets criteria for a diagnosis of Asperger's Disorder, Attention-Deficit/Hyperactivity Disorder, Combined Type and is at risk for a Generalized Anxiety Disorder (*Id.* at 57-58). The recommendation is a residential program with expertise in working with students with a Nonverbal Learning Disability and/or Asperger's Disorder (*Id.* at 58). Moreover, it is recommended that the student should not be in an environment with students whose primary disability is emotional, as interventions appropriate for students whose primary disability is emotional are inappropriate for students whose disability is primarily neurologically based (*Id.*).

Other recommendations, such as feedback regarding how her neurocognitive profile impacts her process that in turn impacts her emotions, relationships and learning

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are consistent with the program and services offered at Franklin (Ex. Y at 58). Recommendations such as repetition, explicit systematic instruction in academics and social skills and a comprehensive transition program are also implemented at Franklin (Ex. Y at 58-59).

Based on the foregoing, I find the parent has met its burden of proving that Franklin is an appropriate placement for the student.

### III. DO THE EQUITIES SUPPORT FULL REIMBURSEMENT

The final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (*Burlington*, 471 U.S. at 374; *M.C. v. Voluntown*, 226 F.3d 60, 68 [2d Cir. 2000]; see *Carter*, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; see *S.W. v. New York City Dep't of Educ.*, 2009 WL 857549, at \*13-14 [S.D.N.Y. March 30, 2009]; *Thies v. New York City Bd. of Educ.*, 2008 WL 344728 [S.D.N.Y. Feb. 4, 2008]; *M.V. v. Shenendehowa Cent. Sch. Dist.*, 2008 WL 53181, at \*5 [N.D.N.Y. Jan. 2, 2008]; *Bettinger v. New York City Bd. of Educ.*, 2007 WL 4208560, at \*4 [S.D.N.Y. Nov. 20, 2007]; *Carmel Cent. Sch. Dist. v. V.P.*, 373 F. Supp. 2d 402, 417-18 [S.D.N.Y. 2005], *aff'd*, 2006 WL 2335140 [2d Cir. Aug. 9, 2006]; *Werner v. Clarkstown Cent. Sch. Dist.*, 363 F. Supp. 2d 656, 660-61 [S.D.N.Y. 2005]; see also *Voluntown*, 226 F.3d at n.9; *Wolfe v. Taconic Hills Cent. Sch. Dist.*, 167 F. Supp. 2d 530, 533 [N.D.N.Y. 2001]; *Application of the Dep't of Educ.*, Appeal No. 07-079; *Application*

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<sup>4</sup> The CSE Chairperson testified that there was no dispute at the CSE meeting with

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of the Dep't of Educ., Appeal No. 07-032).

The IDEA allows that reimbursement may be reduced or denied if parents do not provide notice of the unilateral placement either at the most recent CSE meeting prior to removing the student from public school, or by written notice ten business days before such removal, "that they were rejecting the placement proposed by the public agency to provide a [FAPE] to their child, including stating their concerns and their intent to enroll their child in a private school at public expense" (20 U.S.C. § 1412[a][10][C][iii][I]; see 34 C.F.R. § 300.148[d][1]). This statutory provision "serves the important purpose of giving the school system an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate plan, and determine whether a [FAPE] can be provided in the public schools" (*Greenland Sch. Dist. v. Amy N.*, 358 F.3d 150, 160 [1st Cir. 2004]). Although a reduction in reimbursement is discretionary, courts have upheld the denial of reimbursement in cases where it was shown that parents failed to comply with this statutory provision (*Greenland*, 358 F.3d at 160; *Ms. M. v. Portland Sch. Comm.*, 360 F.3d 267 [1st Cir. 2004]; *Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 523-24 [6th Cir. 2003]; *Rafferty v. Cranston Public Sch. Comm.*, 315 F.3d 21, 27 [1st Cir. 2002]); see *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 376 [2d Cir. 2006]; *Voluntown*, 226 F.3d at 68; *Lauren V. v. Colonial Sch. Dist.*; 2007 WL 3085854, at \* 13 [E.D. Pa. Oct. 22, 2007]).

It is the district's position that the equities do not support tuition reimbursement due to the parent's lack of cooperation. In support of its position, the district cites to the parent's unilateral withdrawal of the student from Glenholme, failure to inform the district of application to Franklin and lack of cooperation in the scheduling of the CSE meeting. Moreover, the district submits that the parent had "predetermined" the student would attend Franklin.

The parent testified that after a meeting on or about November 9, 2009 with Glenholme personnel, she came to believe that Glenholme was no longer appropriate for

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respect to Dr. McGuffog's evaluation (Tr. 102).

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her daughter (T: 534, 538, 540; Ex L). The parent credibly testified that subsequent to the meeting, she contacted Selena Fischer, the Director of Pupil Personnel Services, and expressed her dissatisfaction with Glenholme (T: 540-541, 546-547). She also informed Ms. Fischer that she was going to begin looking for other schools that were less restrictive and would afford her daughter greater independence, but would continue to provide support (T: 540-541, 546-547). The parent testified that in response, Ms. Fischer said they would have a CSE meeting after the winter vacation (T: 547).

On or about January 12, 2010, the district attempted to schedule a CSE meeting during the week of February 15, 2010; however, the parent stated that she was obtaining a neuropsychological evaluation and requested the meeting be deferred until the report was available for review by the CSE (Ex. X; T: 642-643). According to the parent a neuropsychological had never been performed and the district representative was unable to recall when the last neuropsychological evaluation was conducted (T: 102, 610). In or around January 12, 2010, the parent sought a neuropsychological evaluation for her daughter to clarify her current needs (Ex. X; T: 610). By email dated March 17, 2010, the parent notified the district that the evaluation "is about ready" and asks when the CSE will convene (Ex. DD). On January 23, 2010, prior to the completion of the evaluation, the student applied to Franklin for admission for the following school year (T: 551; Ex. F at 2-11).

On March 19, 2010 the student came home for the weekend and stayed home a few extra days due to illness (T: 559-561). On March 21, 2010, the parent sent Ms. Fischer a letter expressing numerous concerns about Glenholme and requests she attend a meeting on March 25, 2010 to hear from the student directly (Ex. MM). Ms. Fischer was unable to attend the meeting and it appears the discussion at the meeting primarily concerned the administration of the student's medications at Glenholme (T: 556-557).

Thereafter on March 29, 2010, the parent withdrew the student from Glenholme citing to a series of incidents that caused her to lose trust in the school (Ex. 11; T: 563). However, up until that date it appears the student's mother had not decided to withdraw the student from Glenholme. A series of emails from March 26, 2010 to March 28, 2010



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to and from Glenholme and the parent indicates the parent's ambivalence regarding the student's return to Glenholme (Ex. GG, HH). The parent states on the one hand that she is keeping her daughter home until she receives orders from the doctor, and on the other hand, she expresses her lack of trust and disappointment in Glenholme (Ex. GG, HH). Ultimately, the student did not return to Glenholme and began attending Franklin on May 3, 2010 (T: 697; Ex D, 23).

By email dated April 6, 2010, the district's Director of Pupil Personnel, Selena Fischer contacts the student's mother and states that prior attempts to schedule the CSE meeting were not met with success due to scheduling conflicts on the part of the parent, but that the need for a CSE review remains (Ex. MM). The parent responds indicating that she is "available Wednesday or Thursday morning" and will be out of town until after the 20<sup>th</sup> (*Id.*). The parent also notes that she has also been trying to schedule a meeting (*Id.*). This is supported by the fact that the parent asked Ms. Fischer to attend the meeting with the district and Glenholme held on March 25, 2010 (T: 555-556; Ex. MM).

Also by email dated April 6, 2010, the parent advises the district that the student was accepted at Franklin, but that she will review/visit any placement proposed by the district (Ex. NN). The parent did investigate several of the recommended placements, finding them to be inappropriate for the student (T: 573, 579; Ex. KK, OO). The CSE meeting was held on April 26, 2010 and a "Reevaluation/Program Review" was conducted for the student's tenth grade; home instruction was recommended pending acceptance into an appropriate residential program (Ex. 9). Ultimately, the district never made a specific recommendation for a residential placement and there is no evidence to establish that the student was admitted into a suggested placement (T: 152).

Based on the foregoing I am not persuaded that the equities do not support tuition reimbursement. To the contrary, I find that the parent cooperated with the district and had not "predetermined" that the student would attend Franklin. As early as November 2009, the parent alerted the district that she was considering another placement, explained why and requested a meeting of the CSE (T: 540-541, 546-547).

The parent obtained at her own expense a neuropsychological evaluation to acquire

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greater clarity regarding her daughter's current needs; there is no evidence of a prior neuropsychological evaluation ever being conducted (T: 102, 610, 642; Ex. X).

Understandably, the parent requested the CSE meeting be deferred until the evaluation was complete (Ex. X). The parent notified the district as soon as the evaluation was anticipated to be complete, provided the district with a copy of the evaluation and inquired when the CSE would convene (Ex. DD, 9; T: 576).

The record establishes that the district contacted the parent via email on April 6, 2010 at 7:52 PM, stating that the district has attempted to schedule a CSE without success (Ex. MM). That very same evening the parent replies, that she is available "Wednesday or Thursday morning", but will be out of town until the 20<sup>th</sup> (*Id.*). She also notes her own efforts to schedule a meeting and attaches a letter dated March 21, 2010 wherein she expresses her concerns to Ms. Fischer regarding Glenholme and inquires if she is able to attend a meeting on March 25, 2010 (*Id.*).

The parent attended the CSE meeting on April 26, 2010 and considered the placements suggested by the district both before and after the CSE meeting (T: 87, 573, 579; Ex. 19, KK). There is no evidence that the student was admitted to a program or did anything to adversely impact that decision.

The parent applied to Franklin in January 2010 for the 2010/11 school year (T: 562). There was much discussion with Glenholme and the student's social worker regarding the possible change in placement and letters were obtained from the student's teachers at Glenholme at part of the application process to Franklin (Ex. F at 10, O, W). The parent's emails to Ms. Satalino, the student's social worker at Glenholme, during the last week of March reflects the parents ambivalence in withdrawing the student from Glenholme and is in direct contradiction to the district's assertion that the parent's placement of the student at Franklin was "pre-determined" (Ex. GG, HH).

The parent's testimony is credible that she did not plan to withdraw the student from Glenholme until a series of incidents caused her to lose trust in the school (T: 563). Specifically, the parent refers to Glenholme's alleged lapses in medical care, an incident involving the forcible removal of a book from the student and the confiscation of a note

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from the student (T: 563-566; Ex. I, J, K, M, N, EE, Z). All of these incidents in combination with the perception that the school was unduly restrictive, that specific interventions were inappropriate, that the student required greater independence, had grown unhappy at the school and was observed to be disengaged from the program contributed to the parent's reasonable decision to withdraw the student from Glenholme (Ex. F at 29, O, Y).

In sum, I find the record does not support any equitable adjustment to the tuition reimbursement award.

**ORDER**

Accordingly, it is **Ordered** that the district shall, upon proof of payment, provide the parent tuition reimbursement for that portion of the 2009/10 school year the student attended Franklin and 2010/11 school year in its entirety.

Dated: October 11, 2010

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CHRISTINE MOORE, ESQ.  
Impartial Hearing Officer

**PLEASE TAKE NOTICE**

**Within 35 days of the date of this decision, the parent and/or the New York City Department of Education has a right to appeal the decision to the State Review Officer of the New York State Education Department under Section 4404 of the Education Law and the Individuals with Disabilities Education Act.**

**“The notice of intention to seek review shall be served upon the school district not less than 10 days before service of a copy of the petition for review upon such school district, and within 25 days from the date of the decision sought to be reviewed. The petition for review shall be served upon the school district within 35 days from the date of the decision sought to be reviewed. If the decision has been**

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served by mail upon petitioner, the date of mailing and the four days subsequent thereto shall be excluded in computing the 25- or 35-day period.” (8NYCRR279.2[b]) Failure to file the notice of intention to seek review is a waiver of the right to appeal this decision.

Directions and sample forms for filing an appeal are included with this decision. Directions and forms can also be found in the Office of State Review website: [www.sro.nysed.gov/appeals.htm](http://www.sro.nysed.gov/appeals.htm).

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DOCUMENTATION ENTERED INTO RECORD

<u>District's Exhibit</u>	<u>Description</u>	<u>Pages</u>
1.	IEP, 11/1/05,	7pp.
2.	IEP, 7/27/05,	13pp.
3.	IEP, 11/23/05,	7pp.
4.	IEP, 3/22/06,	9pp.
5.	IEP, 6/13/06,	4pp.
6.	IEP, 5/2/07,	15pp.
7.	IEP, 3/4/09,	9pp.
8.	IEP, 5/20/09,	8pp.
9.	IEP, 4/26/10,	9pp.
10.	Devereux Glenholme discharge report,	6/1/10, 8pp.
11.	S. Satalino letter to T. Escanio, Middletown,	4/20/10, 2pp.
12.	Devereux Glenholme report card, 2008-2009,	2pp.
13.	Progress Report for IEP Goals, 2009-2010,	4pp.
14.	Neuropsychological Evaluation,	1/10, 13pp.
15.	Pragmatic and Spoken Language Evaluation,	11/5/07, 3pp.
16.	Psycho-education Evaluation,	6/12/08, 2pp.
17.	Psycho-education Evaluation,	4/30/09, 26pp.
18.	Devereux Glenholme report card, 2009-2010,	3pp.
19.	K. Silva, Chamberlain School, letter to S. Fischer,	6/2/10, 2pp.
20.	L. Neazer, Harmony Heights, letter to H. Hendershot,	7/30/09, 1p.
21.	Notice to Parent of CSE Annual Review,	4/12/10, 2pp.
22.	IEP, 4/26/10,	2pp.
23.	M. Sussman email to J.Drohan,	4/7/10, 1p.

<u>Parent's Exhibit</u>	<u>Description</u>	<u>Pages</u>
A.	S. Fischer emails,	4/27/10, 2pp.
B.	New Directions letter to S. Fischer,	4/14/10, 1p.
C.	Hopevale, Inc. letter to S. Fischer,	4/20/10, 1p.
D.	P. Queenan email to Middletown,	4/9/10, 2pp.
E.	IEP, 4/26/10,	7pp.
F.	Franklin Academy various documents, undated,	63pp.
G.	Devereux Treatment Plan,	6/21/09, 5pp.
H.	Emails S. Satalino and M. W.,	3/11-12/09, 2pp.
I.	M.W. email to S. Satalino,	5/18/09, 2pp.
J.	M.W. email to Glenholme,	6/8/09, 2pp.
K.	M.W. email to Glenholme,	8/4/09, 2pp.
L.	M.W. email to S. Satalino,	11/9/09, 1p.
M.	M.W. email to Glenholme,	11/10/09; 8:22 AM, 2pp.

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- N. M.W. email to Glenholme, 11/10/09; 9:20 PM, 2pp.  
 O. S. Satalino email to M.W., 11/17/09, 1p.  
 P. M.W. email to S. Satalino, 11/22/09, 1p.  
 Q. M.W. email to S. Satalino, 11/29/09, 2pp.  
 R. Emails M.W. and S. Satalino, 12/2;7/09, 2pp.  
 S. M.W. email to Glenholme, 12/8/09, 1p.  
 T. M.W. email to S. Satalino, 12/14/09, 1p.  
 U. S. Satalino email to M.W., 12/14/09, 2pp.  
 V. M.W. email to S. Satalino, 1/2/10, 1p.  
 W. Emails M.W. and S. Satalino, 1/6/10, 1p.  
 X. Emails M.W. and S. Fischer, 1/12/10, 1p.  
 Y. Neuropsychological Evaluation, 1/23; 24; 30/10, 72pp.  
 Z. Emails M.W. and S. Satalino, 3/1/10, 1p.  
 AA. Emails M.W. and S. Satalino, 3/9/10, 2pp.  
 BB. Emails M.W. and Glenholme, 2/27/10; 3/15/10, 1p.  
 CC. Emails M.W. and Glenholme and S. Fischer, 3/17/10, 2pp.  
 DD. Emails M.W. and S. Fischer, 3/17/10, 1p.  
 EE. Emails M.W. and S. Fischer, 3/17/10, 3pp.  
 FF. Emails M.W. and L. Sealund, 3/18/10, 1p.  
 GG. M.W. email to Glenholme, 3/28/10, 1p.  
 HH. Emails M.W. and S. Satalino, 3/29/10, 3pp.  
 II. Email forwarding A.W. letter, 4/25/10, 1p.  
 JJ. Release, 4/26/10, 1p.  
 KK. Emails M.W. and S. Fischer, 4/26/10, 2pp.  
 LL.H. Hendershot letter to M.W., 5/26/10, 1p/  
 MM. Emails M.W. and S. Fischer, 4/6/10, 3pp.  
 NN. Emails M.W. and S. Fischer, 4/6-7/10, 1p.  
 OO. Emails M.W. and S. Fischer, 4/28-29/10, 2pp.

	<u>Impartial Hearing Officer's Exhibit</u>	<u>Description</u>	<u>Pages</u>
i		Due Process Complaint Notice, 5/12/10, 2pp.	
ii		District response to complaint, 5/10/10, 2pp.	
iii		Parent's closing brief,	
iv		District's closing brief,	