

STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

November 16, 2012

13.008H—Family v. York School Department

REPRESENTING THE FAMILY: Richard O’Meara, Esq.

REPRESENTING THE DISTRICT: Eric Herlan, Esq.

HEARING OFFICER: Shari Broder, Esq.

This hearing was held and this decision issued pursuant to Title 20-A, MRSA §7202 et. seq., and 20 U.S.C. §1415 et. seq., and accompanying regulations. The hearing took place on September 24 and 28, 2012, and October 11, 2012 at the offices of the York School Department in York, Maine. Those present for the entire proceeding were the Mother, Attorney O’Meara, Susan Macri, Director of Special Education, Attorney Herlan, and the undersigned hearing officer. Testifying at the hearing were:

The Mother	
Marilyn Engelman	Psychological Evaluator
Michael Riendeau	Assistant Head for Academics Eagle Hill School
Tyler Blais	Academic Advisor, Eagle Hill School
The Student’s cousin	
Susan Macri	Director of Special Education
Michael Martin	Special Education Teacher, York High School
Carmen Lauritsen-Keegan	Special Education Teacher, York High School
Heidi Dufresne	Special Education Teacher, York High School
Sarah Straz	xx grade English Teacher, York High School

All testimony was taken under oath.

I. PROCEDURAL BACKGROUND:

On August 13, 2012, the Mother filed this hearing request on behalf of her son (“Student”). On September 14, 2012, a prehearing conference was held at the offices of

Drummond Woodsum in Portland, Maine. Participating in the conference were: the Mother; Richard O'Meara, Esq., counsel to the Mother and Student; Eric Herlan, Esq., counsel to the York School Department ("District" or "York"); Susan Macri, Special Education Director; and Shari Broder, Hearing Officer. Documents and witness lists were exchanged in a timely manner. The Mother submitted approximately 645 pages of exhibits (herein referenced as P-#), and the District submitted approximately 326 pages of exhibits (herein referenced as S-#).

As noted above, the hearing took place over the course of three days. Both parties requested to keep the hearing record open until November 1, 2012 to allow the parties to prepare and submit posthearing memoranda. The District submitted a 29-page memorandum and the Mother submitted a 47-page final argument. The record closed upon receipt of these documents on November 1. The parties further agreed that the hearing officer's decision would be due on November 16, 2010.

II. ISSUES:

1. Was York's IEP developed and implemented for the 2010-2011 school year reasonably calculated to provide a free, appropriate public education to the Student?
2. Was York's IEP developed for the 2011-2012 school year reasonably calculated to provide a free, appropriate public education to the Student?
3. If not, what remedies are appropriate under the Individuals with Disabilities Education Act to compensate the Student?
4. Was York's IEP developed for the 2012-2013 school year reasonably calculated to provide a free, appropriate public education to the Student?
5. If not, is the Student entitled to continue his placement at the Eagle Hill School for the 2012-2013 school year at the District's expense, or is he entitled to any other form of compensatory education?

These issues are addressed below.

III FINDINGS OF FACT

1. The Student is XX years old (DOB: XX/XX/XXXX), and lives with his mother (“Mother”) and older sister in York, Maine. He is eligible for special education and related services under the category of Specific Learning Disability.
2. During the Student’s XX screening, there were concerns about the Student’s attention and information processing, which led to his evaluation for disabilities. The Student’s academic skills tested in the low average/average range. [S-195] The Mother decided to hold him back another year before entering XX, but he began receiving occupational therapy services for fine motor skills. [Testimony of Mother] In XX grade, the Student was found eligible for special education and related services under the category of Speech-Language Impairment. He loved school and made good friends there. [Testimony of Mother]
3. As part of the Student’s triennial evaluation in XX grade, the Student participated in psychoeducational testing with Daniel Scuccimarra. [S-195] The evaluation noted that the Student was cooperative, hard working, polite and showed perseverance. The Student’s cognitive testing fell in the low average range for verbal comprehension (81), working memory (86) and processing speed (83), but was solidly in the average range for perceptual reasoning (100). [S-197]
4. As the Student advanced to higher grades, his schoolwork became harder and he began to struggle more. The Mother worked with him nightly on homework, and the Student’s dependence upon her grew. [Testimony of Mother]
5. By XX grade, the Mother was spending approximately 1 ½ hours every night working with the Student on homework. [Testimony of Mother] The IEP team, at its November 16, 2007 meeting, discussed the Student’s difficulties in school that year, noting, “He is struggling

with maintaining a plan book, bringing home assignments, work completion, and tests.” [P-43] In the Mother’s opinion, the Student’s reading comprehension was “awful” and his math skills were “horrendous.” [Testimony of Mother] He did not have the skills to complete his math assignments. Kerry Hoag, Psy.D, performed a psychoeducational evaluation of the Student in January of 2008. The Student’s cognitive scores on verbal comprehension (95), working memory (99) and perceptual reasoning (98) were all solidly in the average range, but his processing speed dropped from a low average score of 83 in xx grade to a borderline score of 73. [S-179] The Student’s slow processing speed and comprehension problems were affecting everything he did. [Testimony of Mother]

6. At the Student’s January 2008 IEP team meeting, the team changed his eligibility category from Speech-Language Impairment to Specific Learning Disability. [P-57] The Mother expressed her “significant concern” about the Student’s lack of progress in school. He was also becoming negative and his confidence was waning. [Testimony of Mother]
7. At a May 16, 2008 IEP team meeting, the team discussed the Student’s Northwest Evaluation Association (NWEA) test scores. NWEA tests are one way to measure a Student’s growth in school, but Susan Macri, York Director of Special Education, explained that York does not use the NWEAs to chart growth. [Testimony of S. Macri] The meeting minutes reported that the Student did not show growth in all areas, but his scores showed that the Student actually declined in each area tested. [P-62, S-24] Additionally, the Mother had the Student assessed by the Sylvan Learning Center, and this testing showed that the Student’s receptive vocabulary skills were significantly below grade level and that his reading comprehension was poor. [P-59] The Mother shared with the team her concerns about the Student’s reading comprehension. [P-70] She explained that she had to provide an enormous amount of

support to the Student for his biographical project and presentation on General Patton, but that the Student had done a good job on it. [Testimony of Mother] As a result of the IEP team meeting, the team decided that the Student's foreign language class would be replaced with 80 minutes of reading instruction every other day and that an IEP goal would be written to address reading comprehension. [P-69]

8. For the summer after XX grade, the Mother hired a reading specialist from York 's Village Elementary School to tutor the Student for two or more hours each week. [Testimony of Mother] The Mother did not notice any improvement.
9. The Student began XX grade in the fall of 2008. Classes became more difficult for the Student, especially math. [Testimony of Mother] The Mother provided approximately three hours of support at home each night for the Student with his homework. She shared with the IEP team her frustrations about the Student's ongoing struggles to know and understand the expectations of his teachers and his assignments. [P-80] The Mother asked that there be an accommodation for this "through written instructions provided for him as well as communication home for longer projects and assignments, so that she can help hold him accountable." [P-80] In spite of these considerable difficulties, the Student had only one very general organizational goal in his IEP which stated that the Student "will use adaptive strategies, organization and self-advocacy skills to maintain a plan book, complete assignments, ask for help and participate in class with average success," and it was graded as "progress adequate to attain annual goal." [S-166]
10. The Student came home from school on more than one occasion during XX grade asking his mother why his brain did not work, and he sometimes cried. The Mother hired a math tutor who worked with the Student at school two days a week. [Testimony of Mother]

Nonetheless, the Student's Maine Educational Assessment (MEA) score in math was "does not meet" the standards. [P-85]

- 11.** At the Student's IEP team meeting on June 3, 2009, the Mother expressed her concern that the Student was continuing to struggle despite interventions in school and private tutoring. [Testimony of Mother, S-164] The IEP noted that the Student was struggling to earn average grades in all subjects due to processing difficulties, and that he struggled particularly with reading comprehension and math. [S-166] The Student failed math that year, received a D in social studies and Cs in the remainder of his classes. [S-163]
- 12.** XX grade started off better, as the Student had a good attitude, and teachers wrote down his assignments. [Testimony of Mother] The Mother continued to work with the Student at least three hours a night three nights per week, and the Student was determined to succeed. She worked with him on reading comprehension and math. Nonetheless, the Student's NECAP test results in the fall of 2009 showed that he was substantially below proficient in both math and reading. [S-161] The Mother was very upset about these test results, although she was not surprised because it confirmed her observations. Despite these poor scores, the Student received a B in math during the first trimester and an A during the second. [S-128] The Mother questioned the validity of his grades, and was very concerned about the Student's transition to high school. [Testimony of Mother]
- 13.** York issued a December 21, 2009 written notice following the annual review of the Student's program. [S-155-156] The Student began receiving reading services using the Lindamood Bell visualizing and verbalizing (V&V) program for reading comprehension. Michelle Smith was his teacher. Although the written notice said that the Mother was very pleased with the Student's progress that year, the Mother disagreed with that statement. [Testimony of

Mother, S-156] She explained that she was very pleased with the Student's team, particularly Ms. Smith, and the fact that the year had a more positive start than the previous one, which had been horrible, but she did not feel the Student was making real academic progress, and she still had very serious concerns about his education. [Testimony of Mother] Her views were based upon working with him at home, particularly in light of the fact that he could not work independently. He could produce good results when she worked with him, but he still did not know what his assignments were. She remained perplexed about the fact that someone who could not work independently could achieve Bs and Cs on his report card.

[Testimony of Mother, S-128]

14. In the Student's IEP, he had the same organizational goal as in XX grade (see Fact #9), and his graded IEP showed that he was making "adequate progress" to attain this goal in March 2010. One month later, on April 12, 2010, Maxene Feintuch, the Student's speech/language therapist, observed the Student in his social studies class. [P-92-93] She observed that the Student was less organized and prepared than his classmates, it took him longer to get ready to take notes, and he did not write down the assignment. Ms. Feintuch noted the Student's "difficulties with organization and attention impact his ability to listen, process information, and complete tasks with success. He sometimes misinterprets questions." She recommended that the Student receive instruction and compensatory strategies to learn executive function skills and possibly direct support for pre-teaching, checking his work and assistance completing assignments. Two months later, in June 2010, the Student's IEP goal for organization was graded as being "secure in meeting annual goal," despite his considerable difficulties in this area. [S-138]

15. The Student's grades in XX grade were considerably better than in XX grade. He received an A- in math, and Bs and Cs in his other classes. [S-128]
16. The IEP team met on April 28, 2010 to consider the Student's IEP for XX grade at York High School (YHS). [S-139-140] The team determined that the Student would need resource room study hall for 80 minutes each day, and speech and language services for 30 minutes each week. He would also receive language arts and math in the special education setting for 80 minutes on three out of six days. [S-134] The Student's mainstream education time was increased from 52% in XX grade to 76% in XX grade. The Student's IEP had nine annual goals, three of which addressed reading comprehension, five of which addressed math, and the same organization and study skills goal as he had for XX and XX grades (see Facts #9 & 14). [S-132] The Student planned to attend a four-year college after high school, and was placed in college preparatory (CP) physical science and Western Civilization, but was in general Pre-Algebra and English. [S-140] General level classes were for students with learning issues, but not necessarily limited to students identified as eligible for special education.¹ The Mother agreed with the proposed IEP. Due to scheduling issues, however, the Student was placed in general science, rather than CP physical science.
17. Because the Student was in some general level classes in XX grade, he was isolated from his friends who were in CP classes, and they began teasing him that he was in the special education room a lot. [Testimony of Mother] In an email, the Mother asked the Student's case manager, Mr. Martin, and the guidance counselor, Gina Brodsky, whether the Student could move into physical science, instead of general science, as he was complaining about not being in class with his friends and she was afraid he was "going to say the heck with it."

¹ York also offers honors and advanced placement classes for higher achieving students.

[Testimony of Mother, P-107] This change was not made. The Student's general science class had seven students, all of whom had IEPs. [P-194] He was in pre-algebra with Mr. Martin, who worked with him for 40 minutes each day. [Testimony of M. Martin] The Student's pre-algebra class had five students, all of whom had IEPs, although it was not a special education class *per se*. [*Id.*, P-193] Although Mr. Martin described the Student as outgoing and an active participant in this class, "probably the top in the class," the Student earned a D during the second quarter, but ended the year with a B- average. [Testimony of M. Martin, S-28] Mr. Martin met with the Student's science teacher twice weekly to coordinate the delivery of their classes. [Testimony of M. Martin] To improve his reading comprehension, the Student was working on V&V techniques with Lindamood-Bell trained special education teacher Heidi Dufresne, and these strategies were employed in some of the Student's other classes. [Testimony of S. Macri, H. Dufresne] Ms. Dufresne spent 80 minutes every other day working with the Student. At the beginning of the school year, the Student did not have educational technician support in Western Civ and his grade was a D in both of the first quarters. During the second semester, the Student was assigned someone one to help him with note taking. [Testimony of M. Martin] The Mother, however, never saw an adult's notes come home with the Student. [Testimony of Mother] Additionally, part-way through the school year, Ms. Dufresne began spending 40 minutes on V&V and the other 40 minutes working on Western Civ reading, which she began doing to address the Student's challenges in this class. [Testimony of H. Dufresne] With that help and his mother's efforts at home, the Student's grade improved to a C in that class. [Testimony of M. Martin, Mother, S-28] In English class, there was a total of sixteen students comprised of both xx and xx graders. [P-194] Regular education teachers Sarah Straz and Jordana Cowan taught the class along with

Carmen Lauritsen-Keegan, a special education teacher, and two special education technicians, including Alli Zurlow. [Testimony of S. Macri] The Student was one of the stronger students in this class, and was a hard worker. [Testimony of S. Straz] Ms. Straz observed that the Student seemed to connect better with adults than with students.

18. Shortly after the school year began, the Mother began emailing the Student's teachers about his struggles in school. On October 4, 2010, she emailed the Student's Western Civilization teacher because she was concerned that the Student had failed two quizzes and was not writing down his assignments. [P-104, testimony of Mother] The Mother then corresponded by email with Heidi Dufresne, the Student's special education teacher, and asked whether she could get the Student's assignments ahead of time to cross check with his plan book. [P-106] Although the Student worked very hard with his mother on the materials for Western Civ, he still had difficulty with the class. Because the Student was doing poorly, Ms. Feintuch observed him in this class on October 19, 2010. [S-94] She noted that the Student was not productive for the first 20 minutes of class, and did not request help. Ms. Feintuch recommended instruction in reading comprehension strategies, support in study halls to prepare for classes, pre-teaching and frequent check-ins by teacher to clarify and reteach. [S-94] She also recommended opportunities for success to boost the Student's self-esteem and reduce his anxiety.

19. The Mother remained concerned about the Student's inability to work independently, and decided to look for a reading program for the Student that would allow him to do so. [Testimony of Mother] She hired an educational advocate, Lisa Sampson, who recommended having the Student tested again. Consequently, Marilyn Engelman, Ph.D., conducted a psychoeducational evaluation of the Student. [S-104-127] The Mother and Lisa

Sampson sent a copy of this report to Ms. Macri on November 17, 2010 and asked for a meeting to discuss the Student's educational needs. [S-97-98]

20. Dr. Engelman's testing showed that on the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), the Student scored somewhat lower than previously, which she attributed to the fact that the Student was having difficulty with more abstract concepts. [S-108] The Student scored in the average range on perceptual reasoning (94), low average on verbal comprehension (89) and working memory (86), and his processing speed had dropped again, this time to a 65, which was in the first percentile and in the borderline range. It was Dr. Engelman's opinion that as the Student got older, he was expected to do things more quickly, but was unable to do so. [Testimony of M. Engelman] She felt the Student would do best with visual instruction, and noted that his executive functioning was very weak. Dr. Engelman diagnosed the Student with language-based learning disabilities, and found him to be several years below actual grade level in reading, math and written language, based upon test scores. [S-120] The Student was very anxious and did not feel good about himself, noting that certain things were hard for him and he was afraid of making mistakes. [Testimony of M. Engelman] Dr. Engelman made a number of recommendations, notably that the Student be taught in small classes with peers of similar cognitive abilities and a student-teacher ratio of no more than 10:1, and that he be taught by teachers certified and trained in working with students with significant language-based learning disabilities using a consistent and integrated approach between all subject areas. [S-120, 122] This was necessary due to the Student's anxiety about his academic abilities, organizational difficulties, and problems understanding abstract concepts. She felt he required a greater intensity of services than York was providing, and was concerned that he was receiving no

support in his elective courses. [Testimony of M. Engelman] In those classes, the Student earned a B in Art, a C+ in Home Economics, a C in Industrial Technology, and Ds and a B- in Physical Education. [S-128]

- 21.** In preparation for the December 9, 2010 IEP team meeting, the Mother prepared a list of 14 concerns about the Student's education. [S-90] She was very concerned that the Student could not work independently in any of the subject matter he was learning, and she continued to have to spend many hours each night and on weekends working with him. [Testimony of Mother] Although the Student remained motivated, the Mother concluded that the gap between the Student and his peers academically was widening, and that he was not on track for attending a four-year college or even for independent living and employment. It would not be possible for him to attend college if he could not work independently. The Mother's list of concerns also noted that he was not being pre-taught lessons, not reviewing what was previously learned, not developing skills or strategies to learn and remember information, and that there was too much disruption in his English class, which was affecting the Student's ability to learn. [S-83, 90]
- 22.** At the December 9, 2010 IEP team meeting, the team reviewed the Student's progress in school, as well as Ms. Feintuch's observation and Dr. Engelman's evaluation. Dr. Engelman did not think the Student's program was adequate for him to succeed, and felt that he needed a small language-based learning environment. She was concerned that the Student was not making appropriate progress and was not getting an education he could access. [Testimony of M. Engelman] The team rejected this recommendation because the Student "is making progress in the public school setting." [S-83]

- 23.** Dr. Engelman recommended to the Mother two schools that might meet the Student's learning needs, one of which was the Eagle Hill School in Hartwick, Massachusetts. This was a small language-based school where Dr. Engelman thought the Student could be taught with consistent strategies, learn with peers, and where language instruction permeated the entire day. The Student would get a lot of support there. [Testimony of M. Engelman]
- 24.** Throughout the rest of the XX grade school year, the Mother was proactive in getting help for the Student, and worked very hard with him at home. [Testimony of Mother, P-134-149] Even with modifications, including getting test questions ahead of time, the Student continued to struggle and got poor grades on work he was doing in Western Civ and Pre-algebra. [P-152, 154, 168]
- 25.** On January 14, 2011, the Mother and Lisa Sampson wrote a letter to Ms. Macri stating that although the Mother was accepting all of the services offered to the Student, she felt the IEP was inappropriate to address the Student's needs, as the Student was not spending enough time in special education. His special education program was lacking the kind of intensity he needed. [S-68] The letter also requested the addition of a number of Dr. Engelman's recommendations² in the IEP.
- 26.** In March 2011, at the request of the Mother and with York's approval, Dr. Engelman observed the Student in class and spoke with some of his teachers. Although Dr. Engelman did not prepare a report of the observation at that time, she prepared her undated report one year later at the Mother's request.³ [Testimony of S. Macri] She observed the Student in several classes. In Western Civilization class, where he was now receiving support, the report noted that the teacher told her the Student needed steps shown to him many times,

² Some of these are set forth in #20 above.

³ In this report, at the Mother's request, she contrasted the education the Student was receiving at Eagle Hill School with the program at York.

needed his work reviewed and repetition, as he had difficulty understanding the concepts. [P-193] In the Learning Center, the student received support focused on helping him review concepts taught in class as well as to improve his study skills and techniques for independent learning. [P-195]

- 27.** The Student had a starring role in one of the YHS plays, and was “an amazing actor” who “brought the house down” with his performance. [Testimony of S. Macri, M. Martin] He also participated in cross-country running.
- 28.** Based upon Dr. Engelman’s recommendations, the Mother and Student visited some private schools to see whether the Student could be better educated elsewhere. At the end of January 2011, they visited Eagle Hill School. [Testimony of Mother] Eagle Hill is a special purpose school for students with learning disabilities where each student receives individualized education programming in classes with a very a low student-teacher ratio. It is highly structured and provides students with a full range of academic support, including proctored evening study halls. [Testimony of M. Riendeau]
- 29.** On May 5, 2011, the Mother sent Ms. Macri an email expressing her continued concern about the Student’s lack of progress and his struggles in his classes. [S-212, testimony of Mother] She explained that the Student became frustrated at home when he could not translate what was taught in class, and that he required a lot of guidance from the Mother with his projects. She added that the Student was reading below grade level, had inadequate study skills, and asserted that Dr. Engelman’s recommendation for language-based instruction across all subjects was not being provided. [Testimony of Mother, S-212] Ms. Straz thought that the Student made a big leap in his reading that year, and that his NWEA

test scores supported this. [Testimony of S. Straz] Ms. Lauritsen-Keegan⁴ felt the Student's reading had improved, but that it was with his writing that he made even bigger gains.

[Testimony of C. Lauritsen-Keegan]

- 30.** By the middle of June 2011, the Mother decided to send the Student to Eagle Hill School, as she felt his future would be in jeopardy if he remained at YHS. [Testimony of Mother] She notified Mr. Martin that the Student would not be returning, and thanked him for all that he did to help the Student. [S-209] On June 14, 2011, Ms. Macri received a letter from the Mother stating that she had decided to reject as inappropriate the Student's IEP and placement for the 2011-2012 school year. [S-64, Testimony of Mother] She added that York's program was not sufficient to meet the Student's needs, and that he had encountered significant difficulties at YHS. The Mother explained that she did not feel the Student had received an appropriate education during the past five years, and that he required compensatory services. She also notified York that she intended to seek reimbursement for the cost of the student's education at Eagle Hill. Ms. Macri responded that the Student's IEP would continue to be in place, should the Student decide to return to YHS. [S-60]
- 31.** In an email sent to Ms. Macri on July 19, 2011, the Mother explained that the Student was not able to independently implement any of the strategies that his IEP progress report said he had attained. [S-207] She doubted whether the Student's year-end grades, which were mostly B's with a C in Western Civilization, were really an indication of how he was doing academically. [Testimony of Mother, S-28] Ms. Macri thought the Student's grades demonstrated that he had received meaningful benefit during XX grade. [Testimony of S. Macri] Social studies classes at YHS were difficult, and the Student's Pre-algebra grade was

⁴ The Mother and Ms. Lauritsen-Keegan never met one another while the Student was attending YHS.

based upon Maine standards. Ms. Dufresne was pleased with the Student's progress and felt the V&V program was appropriate for his learning needs. [Testimony of S. Macri] Although it took around a half-year before Ms. Dufresne saw improvement in the Student's reading comprehension, she did see him make progress using the V&V program. [Testimony of H. Dufresne]

32. In the York Schools, the Student took the NWEA tests two times each year. In mathematics, the Student began XX grade in the 22nd percentile, but dipped into the 2nd percentile in the fall of XX grade, and ended the year in the 18th percentile. [S-24] In reading, he started XX grade in the 10th percentile, and ended XX grade scoring in the 48th percentile. For language usage, the Student's score in the fall of XX grade was in the 21st percentile, and he ended XX grade in the 26th percentile. [S-24]

33. The Student began attending XX grade at Eagle Hill in September 2011. The high school has approximately 200 students, and classes there have between five and sixteen students who are grouped both socially and academically. [Testimony of M. Riendeau] Almost all of the students board there, an important component of the program because the pragmatic language program is mostly administered by resident life. The academic year is divided into nine terms. Students may be enrolled in a class, such as Algebra or Biology, for eight of those terms. The Student took courses such as Masterpieces of Horror, Writer's Workshop, Algebra I, Biology, and Arts and Entertainment Journalism. Each student is assigned an academic advisor who follows the student throughout his tenure there. The Student's advisor, Tyler Blais, helped develop the Student's learning profile and oversaw his schoolwork and homework. Mr. Blais meets with the Student every other week, and stays in touch with the Student's teachers. [Testimony of T. Blais]

- 34.** The Student arrived at school a little less comfortably than other students do and was very homesick at first, but he adjusted after a few weeks. [Testimony of Mother, M. Riendeau] He soon loved his classes and teachers, and did very well there. He especially liked Eric Stone, who worked hard with the Student to improve his reading. [Testimony of M. Riendeau] When the Student came home to visit, he was happy, very confident and spoke with a purpose. He was a very different child than he had been the previous school year. [Testimony of Mother, Student's Cousin] He talked enthusiastically about his classes and extracurricular activities, which included golf and dogsledding. The Student's cousin noticed a marked change in him, particularly in his self-confidence, her ability to have a conversation with him and his ability to articulate his thoughts. [Testimony of Student's Cousin]
- 35.** Eagle Hill has proctored study halls after school hours to assist students with their studies. Although initially the Student relied heavily upon this, he achieved "self study" status about three months after arriving at Eagle Hill. [Testimony of Mother, M. Riendeau] He had a lot of homework, but was able to complete it independently. Self-study is the first level of responsibility, and a student achieves it when he is responsible for his own homework completion, and not directly supervised by a residential counselor. [Testimony of M. Riendeau] As the students progress, they reach higher levels, giving them increased privileges and freedoms. The Student's report card, like that of all Eagle Hill students, reflected how the Student met the expectations set for him. [Testimony of M. Riendeau, S-29]
- 36.** In March of 2012, Dr. Engelman observed the Student at Eagle Hill and reevaluated him in April 2012. [S-45-59] When the Student arrived for testing, he commented that he was happy at Eagle Hill, was learning how to study, and was retaining the information he was

taught in class. [S-46] Dr. Engelman also observed the Student's increased confidence and independence, and noted that he was very engaged in his classes. [Testimony of M. Engelman] The testing showed that the Student's processing speed was still in the first percentile, but he improved considerably in passage comprehension and applied mathematical problem solving, as well as in spelling and broad written language.⁵ [S-49] On the Gray Oral Reading Test (GORT), the Student went from a grade 6.2 reading level in 2010 to a grade 9.4 reading level in 2012. [S-51] He did not make gains in the Test of Reading Comprehension. Dr. Engelman concluded that the Student showed significant growth academically, cognitively and socially since her previous testing. [S-54] While the Student's reading was still at the concrete level, his writing showed significant improvement and he was able to retain factual information. The Student continues to need support in his areas of disability, and Dr. Engelman thought that continuing the Student's placement at Eagle Hill was appropriate. [Testimony of M. Engelman, S-55] Although she did not think he necessarily needed a residential program, she was not aware of any programs to which he could commute from York. The Mother agreed with this, as she had looked at schools like Aucocisco in Cape Elizabeth and Learning Skills Academy in Portsmouth, but did not feel their programs would meet the Student's learning needs. [Testimony of Mother]

37. The cost for the Student to attend Eagle Hill for the 2011-2012 school year was \$62,621.04, and it was \$55,391.00 for the 2012-2013 school year. [P-319] The lower cost in the second year was due to the fact that the Student received financial aid of \$10,000 that year, but applied too late to be eligible during XX grade. [Testimony of Mother]

⁵ Dr. Engelman administered the Woodcock-Johnson Psychoeducational Battery-III, and not the WISC-IV this time, so it is difficult to compare his test scores with previous testing, as the WJ-III is a somewhat different measurement.

- 38.** The Student told his mother that he felt like a failure at York, that he did not know how to learn there and he was embarrassed because he felt very stupid and was teased while there. At Eagle Hill, the Student felt that his “brain was plugged in and turned on.” [Testimony of Mother]
- 39.** York did not convene an IEP team meeting during the 2011-2012 school year to review the Student’s educational program or to make changes to it.
- 40.** On August 13, 2012, the Parent filed this due process hearing request. At a resolution session on August 23, 2012, York offered to add one hour of English and language arts (ELA) consultation time every two weeks to work with the team to give any strategies or advice to make the program better. [S-8, 332] The parties discussed the Student’s placement at Eagle Hill, but York rejected it because it felt that the Student could receive an appropriate education at YHS. The Mother disagreed, expressing her belief that the Student’s needs could not be met at YHS, and that he needed a small language-based program to make progress. [S-10, 328] The present levels of performance reported that the Student was an active participant in class discussions, but had some difficulty articulating his thoughts about abstract ideas. [S-330] At Eagle Hill, the Student completed all of his work on time, worked independently, and did well on a research paper and several creative essays, earning mostly A’s and B’s. [Testimony of Mother, S-29]
- 41.** On September 7, 2012, York sent an IEP to the Mother. The new IEP adopted the annual goals from the Student’s previous IEP, but added a pragmatic language/social skills group to assist the Student in picking up on social nuances and inferential thoughts. [S-332] Services included 120 minutes of specialized instruction every two days in the resource room, plus 40 minutes every other day of specialized reading instruction, and 60 minutes per week of

speech and language services. This program placed the Student in the mainstream setting for 76% of the time. The Mother felt that this IEP looked like more of the same thing that York had provided the Student previously, but which had not worked. [Testimony of Mother] On the other hand, the Student had success at Eagle Hill. She was especially pleased that the Student was able to work independently. Not wanting to jeopardize these gains, she rejected the IEP in favor of keeping the Student at Eagle Hill. [Testimony of Mother]

IV. DISCUSSION AND CONCLUSIONS

A. Brief summary of the position of the Mother:

York failed to offer the Student a free appropriate public education for XX and XX grade, and failed to make a timely offer of FAPE for XX grade. The Student's XX grade program was highly fragmented and not geared towards the Student's goal of attending a four-year college. Despite York's contention, there was no consistency between the Student's educators. His academic skills were years behind his age peers at the start of XX grade, and his program was not geared towards helping him learn independently. In fact, there was zero evidence that York ever made any attempt to improve the Student's ability to complete his work independently. The Student was incapable of understanding, much less completing, his assignments without his mother spending three hours each night providing him with homework assistance, re-teaching and academic support. The gap between his achievement and that of his peers was widening, and he was not learning strategies to learn and remember what he was taught. The fact that the Student received passing grades does not point to him making adequate progress, as he had no ability to complete the work with any level of independence. Consequently, he is entitled to compensatory services for XX grade.

Reimbursement of costs paid in connection with the Student's unilateral placement at

Eagle Hill is an appropriate form of compensatory relief, when, as here, the Mother gave proper statutory notice and attempted to compensate her child for past violations of his IDEA rights. The IDEA's language includes remedies for past failures to provide FAPE as well as current failures to offer it, and there are several examples of Maine hearing officers making such an award. The Student's placement at Eagle Hill has had a substantial compensatory component, which makes such a remedy particularly appropriate.

Reimbursement should also be awarded for the Mother's proper rejection of York's inappropriate IEP and placement offer for XX grade. Here, the Mother met the two requirements for such an award: (1) the IEP offered was not reasonably calculated to provide the Student with FAPE, and (2) the private placement chosen for the Student was proper under the IDEA. Despite the Student's struggles, York changed virtually nothing in his IEP when it was reviewed in December 2010. To the contrary, his program was further fragmented by adding another educational technician to the program to assist the Student with note taking, but there was no evidence that she ever took notes in that class. To meet the second requirement, the Parent need only show that the unilateral placement is capable of conferring educational benefit to the Student, which the Parent has done. Such a placement need not be the least restrictive environment.

Lastly, the IEP and placement offered by York for the current school year following the resolution session was not reasonably calculated to provide the Student with FAPE. The evidence was undisputed that York failed to proffer an IEP for the 2012-2013 school year until it convened a resolution session on August 23, 2012 to address the Mother's due process complaint. By that point, with the new school year about to begin, the Mother had already been forced to determine whether to continue the Student's placement and had paid a substantial

deposit. Even if the offer were made in a timely manner, the new offer includes the same level of services previously provided, and does not address how to assist the Student with the higher level of challenge in CP classes. As the offer was both untimely and not reasonably calculated to provide FAPE, the Mother has a right to be compensated for the cost of the Student's education at Eagle Hill school for the current school year.

B. Brief summary of the position of the District:

The Parent has the burden of proving that each of the IEPs she is challenging failed to meet IDEA standards and that the Student suffered educational harm as a result. The hearing officer must view the IEP as a unitary whole and in terms of what was reasonable when the document was promulgated, not in hindsight. Special education is not a guarantee of success, but a reasonable calculation or programming that will result in educational gains in the least restrictive environment. The evidence shows that the Student's IEP met this standard.

There is no dispute about procedural compliance, or whether the programming was implemented according to the IEP. Following the Student's successful XX grade year, the IEP team made some revisions to the plan to reflect the high school delivery model. The team continued the goals developed previously that addressed the Student's need for the visualizing and verbalizing reading program, for speech and language services and other supports. The Student had a strong reading instructor to deliver this program, and to work with the Student on pre-teaching and post-teaching. The Student was provided with a comprehensive program of classes geared towards his needs. He did very well in his electives with fairly low levels of support, and when he struggled with Western Civilization, he was provided with additional support and his performance improved.

The Student's specific learning disability and deficient processing speed will always limit

his learning, and he will continue to need high levels of support in many of his regular education classes. His IEP was specifically structured to meet these needs and delivered accordingly. The program contained a good degree of coordination in delivery, and there was a high degree of overlap among the educational technicians who served him, thereby ensuring that the knowledge they had in one classroom would carry over to others. The Student's 2010-2011 educational program was reasonably calculated to provide him with educational benefits in the least restrictive environments, and was carefully tailored to his needs.

There was also evidence that the Student received real benefits from his educational program and earned good grades. His NWEA scores also indicated significant growth. Even the Mother's expert demonstrated, through her academic testing, that the Student made important gains.

York makes essentially the same case for the appropriateness of the Student's 2011-2012 IEP. School staff all testified not only that the program was appropriate for XX grade, but would have been appropriate for XX grade as well.

The IEP offered for the 2012-2013 year was also appropriate, and certainly meets the requirement for least restrictive programming. The service package was similar to what was offered previously, but with some changes, including an increase in speech and language services from 30 to 60 minutes per week and an hour biweekly of an English language arts consultant. As all of the IEPs offered and those delivered to the Student were reasonably calculated to provide meaningful benefit to the Student, no remedy is appropriate.

If the hearing officer reaches a different conclusion, the IDEA sets standards for how to assess a reimbursement claim for a given year, requiring a finding that the school's IEP is inappropriate and the private placement is proper. If the IEP is appropriate, however, then it is

wrong for the hearing officer to order reimbursement for placement costs incurred as a type of compensatory education for a past, earlier year.

The program at Eagle Hill was not proper, as York's program offered a specialized reading program but Eagle Hill did not. Furthermore, despite Dr. Engelman's opinion that a team-based approach was needed, Eagle Hill did not have such an approach. There was no common approach to the Student's education. Additionally, there was no testimony at all that the Student needed a residential placement, and his mother testified that he did not. There was no disability-based justification for this.

Lastly, although the Mother gave appropriate notice of her reimbursement claim for the 2011-2012 school year, she provided no notice at all in relation to the 2012-2013 school year. Accordingly, she failed to meet the notice requirement for her reimbursement claim for that year.

1. Was York's IEP developed and implemented for the 2010-2011 school year reasonably calculated to provide a free, appropriate public education to the Student?

The IDEA provides that every student who is eligible for special education services is entitled under state and federal law to receive a "free and appropriate public education ... designed to meet their unique needs and prepare them for employment and independent living." 20 USC 1400(d)(1)(A). The hearing officer must examine whether the Student's educational program contained in his IEP was "reasonably calculated to enable the student to receive educational benefit." *Board of Educ. v. Rowley*, 458 U.S. 176, 207 (1982). In *Town of Burlington v. Department of Education*, the First Circuit explained that an appropriate education must be directed toward "the achievement of effective results – demonstrable improvement in the educational and personal skills identified as special needs – as a consequence of implementing the proposed IEP." 736 F.2d 773, 788 (1st Cir. 1984), *aff'd*, 471 U.S. 359 (1985). The educational benefit must be meaningful and real, not trivial or *de minimus* in nature. As the

First Circuit stated in *Lenn v. Portland School Comm.*, the law sets a fairly modest goals of an appropriate, rather than an ideal, education. The benefit conferred does not need to reach the highest attainable level or even the level needed to maximize the child's potential. 998 F.2d 1083, 1086 (1st Cir. 1993). The *Lenn* court also stated that the IEP must be designed to target, "all of a child's special needs, whether they be academic, physical, emotional, or social." 998 F.2d 1083, 1096.

The first question is whether his IEP for XX grade was reasonably calculated to provide the Student with meaningful educational benefit, as opposed to no benefit or *de minimus* benefit. The Student's overall school experience began declining as he approached adolescence and continued through his XX grade year in the York schools. Although he was able to pass his courses, and often with reasonably good grades, his processing speed dropped from a low average of 83 in XX grade to a borderline score of 73 in XX grade, then to an even lower score of 65 in XX grade. As his work got harder, the Student struggled more and more with his schoolwork and his mother continually expressed her concern to school personnel about his lack of progress in school. The amount of time the Mother had to work with the Student to augment the services he was receiving in school continued to grow as school demands increased. The amount of time the Student was spending in the special education setting nonetheless decreased when he entered YHS. The Student's confidence waned as he continued to struggle with schoolwork due to his disability.

Was York's response to these problems sufficiently adequate to meet the IDEA's standard? Aside from the important addition of the V&V reading program, the Student's educational program was essentially the same in XX and XX grades. There was no dispute that his proposed IEPs for XX and XX grades were not much different either. York was well aware

that the Mother was investing an inordinate amount of time supporting the Student's studies at home, but there was no evidence that anything was being done at school to help the Student become an independent learner capable of attending the four-year college that was the post-secondary goal in his IEP or to address his increasing school anxiety and social issues, none of which were a secret to the IEP team. In addition to all of the Mother's support of the Student's learning, she hired math and reading tutors to give the Student more support than he was receiving in school, but this did not relieve his academic struggles.

What was particularly troubling was the lack of support the Student received with one of his biggest challenges--his organizational and study needs. The Student had the same very general organizational goal through XX, XX and XX grades, and it is unclear exactly what was being done to help him achieve it. Although the evidence confirms that he was not making any progress toward being an independent learner, his graded IEP at the end of XX grade reported that he had securely achieved this goal. [Fact #13] Ms. Feintuch observed the Student and made numerous recommendations about how to support him in his learning, but there was little evidence that her recommendations were implemented. While a parent will typically support a child's education, it is too great a burden for a parent to spend her entire evening each day helping one of her two children with homework so that the Student can be successful. Without this help, the Student would likely have failed. This is an indicator that the Student's educational program at school is not adequate. Additionally, the IEP was lacking in the important areas of need discussed above. For these reasons, I conclude that the 2010-2011 IEP was not reasonably calculated to provide the Student with FAPE.

Although York had some talented staff, and tried to address some of the Student's needs by making some changes to his IEP between XX and XX grade, as well as during the XX grade

year, these changes only addressed the Student's reading comprehension and writing needs, not his math or organizational needs or the other needs noted above.

While the Student made some progress in XX grade, it is difficult to discern how best to gauge the level of that progress based upon the evidence, and to determine how much of it was attributable to the Mother's near-Herculean efforts on the Student's behalf versus the programming YHS provided.

I agree with the Parent that the NWEA is not a very good indicator of academic progress, and Ms. Macri testified that York did not use it to chart growth. [Fact #7] Even if it were considered an indicator, the Student made no growth on his NWEAs in math, which was one of his greatest areas of difficulty. The Student's MEA score showed his lack of progress in math.

It is not unusual for teachers to sometimes paint a prettier picture of how a student is doing in school than is actually the case, nor is it unusual for a private consultant or evaluator to act as a bit of an advocate by painting an uglier picture than reality, and it seems there was a little of both going on in the evidence before me. Credible evidence and test results demonstrated the Student's progress in reading, likely due to his work with Ms. Dufresne. Even then, it took half a year before Ms. Dufresne saw the Student making progress. There was also evidence that the Student made some progress in his writing. Mr. Martin testified that the Student was probably the top in his class in math, yet he earned a D during the second quarter and made no gains on his NWEA math scores. Math was also an area in which the Mother supported the Student heavily.

In any event, the evidence supports my conclusion that the Student's 2010-2011 IEP was not reasonably calculated to provide him with FAPE, and the progress he made under the IEP was not meaningful across all of his areas of need.

2. Was York's IEP developed for the 2011-2012 school year reasonably calculated to provide a free, appropriate public education to the Student?

As both parties acknowledge, few changes were made in the Student's IEP when the IEP team met on December 9, 2010 for the Student's annual review. Despite the Mother's concern about the Student's lack of ability to work independently, and the fact that the Student's current program was not preparing him for post-secondary education, the IEP did not address these issues. Although there was no evidence that anyone disagreed with the Student's goal of attending college, there was also no evidence of an attempt to change the Student's IEP to provide him with strategies to help him develop the independence he needed to do so. For the reasons discussed above, I conclude the IEP developed for the 2011-2012 school year was not reasonably calculated to provide FAPE to the Student.

3. If not, what remedies are appropriate under the Individuals with Disabilities Education Act to compensate the Student?

Before discussing possible remedies under the IDEA, it bears noting that there was no dispute that the Mother properly gave notice to the District of her rejection of the Student's IEP for the 2011-2012 school year, and that her intent to place the Student unilaterally at Eagle Hill and seek reimbursement from York for that placement. [Fact #29]

The Mother is seeking reimbursement of the Student's tuition at Eagle Hill on three grounds: (1) as compensatory education for the failure to provide the Student FAPE in XX grade; (2) as a unilateral private placement capable of providing the Student with the education he would not have received in York under the District's IEP offered for XX grade, which IEP the Mother rejected; and as discussed in number four below, (3) as a unilateral placement for York's failure to make the Student a timely offer of FAPE for XX grade. The IDEA and case law provide all of these as possible remedies for FAPE violations.

Regarding compensatory education, the First Circuit case of *Pihl v. Mass Dep't of Education* was cited by both parties as authority that, “a student who fails to receive appropriate services during any time in which he is entitled to them may be awarded compensation in the form of additional services at a later time.” 9 F.3d 184, 198 (1st Cir. 1993). The First Circuit explained, “[t]he nature and extent of compensatory education services which federal courts have recognized varies according to the facts and circumstances of a given case.” *Pihl*, 9 F.3d at 188, n. 8.

As the Student’s educational program during XX grade did not provide him with FAPE, the usual remedy under the IDEA for a student who has been denied appropriate services in the past is an award of compensatory educational services to place him in the same position he would have occupied, had the District complied with the IDEA. *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 24 (D.C. Cir. 2005). Although an IEP need only provide some benefit, “compensatory awards must do more – they must compensate.” *Id* at 525. An award of compensatory education “should aim to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.” *Id* at 518.

Sometimes, parents purchase necessary compensatory services for the student and then seek reimbursement, and other times, they ask for such services in the future. Courts and hearing officers have awarded reimbursement for unilateral placements as compensatory education remedies in a variety of cases in Maine and elsewhere. *See, e.g., New Paltz Central Sch. Dist. V. St. Pierre*, 307 F. Supp.2d 394, 395-96 (N.D.N.Y. 2007); *Sanford Sch. Dep't.*, 47 IDELR ¶ 176 (MSEA 2006); *School Admin. Dist. No. 22*, 43 IDELR 268 (MSEA 2005).

The IDEA provides parents of students with disabilities with a “self-help” remedy when the school district fails to offer them a free, appropriate public education in a timely manner. 34

C.F.R. § 300.148(c), *Burlington*, 471 U.S. 359 (1985), *Florence County School Dist. Four v. Carter*, 510 U.S. 7 (1993). The federal regulations state that if the parents of a child with a disability, who previously received special education through the public school, unilaterally enroll the child in a private school, a court or a hearing officer may require the school department to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school department had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. 34 C.F.R. §300.148 (c).

A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs. Under the holding of *Florence County*, parents must demonstrate that the public school did not provide a free, appropriate public education, *and* that the private school placement is proper, which means, “education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” *Florence County*, 510 U.S. at 11. The First Circuit Court of Appeals cited the *Florence County* decision as holding that this issue is viewed more favorably to the parents than the question of whether a residential placement was required in order to provide FAPE. *Mrs. B. v. Rome Sch. Comm.*, 247 F.3d 29, 34 n.5 (1st Cir. 2001). It is not necessary that this unilateral placement be in the least restrictive setting. The Third Circuit Court of Appeals noted that imposition of the least restrictive environment requirement on such a placement “would vitiate the parental right of unilateral withdrawal,” and that “the test for the parents’ placement is that it is appropriate, and not that it is perfect.” *Warren G. v. Cumberland County Sch. Dist.*, 190 F. 3d 80, 84 (3d Cir. 1999).

York argues that other cases in which Maine hearing officers have ordered reimbursement as a form of compensatory education ignore First Circuit case law. None of the

cases cited by the District, however, bar tuition reimbursement as a form of compensatory education.⁶

Either way, placement at Eagle Hill serves to compensate the Student for educational losses suffered as a result of his inappropriate IEP and also as a remedy under *Florence County* for the District's failure to offer FAPE for XX grade. I agree with the Parent that placement at Eagle Hill has had a substantial compensatory element for the deficits in the Student's XX grade program. Eagle Hill is a special purpose school for students with learning disabilities where each student receives individualized education programming in a highly structured environment, and it provides students with a full range of academic support. This is the kind of educational program Dr. Engelman recommended for the Student. The Student had the opportunity to pursue various extracurricular interests, and received educational and social benefits from the school's program of earning of privileges and freedoms. He has received a well-rounded education at Eagle Hill, and is doing very well there in many ways. He has regained his confidence and is able to communicate effectively. Eagle Hill helped the Student make gains where the District failed. Most notably, during XX grade, the Student achieved what seemed impossible at York—he became able to do his homework independently in just three months. This is a crucial skill if the Student is to attend college and become gainfully employed. York has not shown that it was capable of doing this.

Eagle Hill is also an appropriate placement for the Student for XX grade. As noted above, the Student has made impressive gains at Eagle Hill, and has benefited educationally and

⁶ York also argues that *Ms. M. v. Portland Sch. Comm.*, 360 F.3d 267 (1st Cir. 2004), prohibits an award of tuition reimbursement as compensatory education. Although the court did not award the remedy of tuition reimbursement in that case, it did not prohibit such an award in cases where appropriate notice had been provided. *Id.*

socially. For the reasons discussed above, this placement satisfies the requirements established by *Florence County* and its progeny.

The Federal regulations provide: "If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child." 34 C.F.R. § 300.302 (1999). Thus, I conclude that the Student is entitled to all costs permitted under IDEA, including reasonable costs necessary to transport him to Eagle Hill.

4. Was York's IEP developed for the 2012-2013 school year reasonably calculated to provide a free, appropriate public education to the Student?

Although York argues that the Mother is not entitled to reimbursement for the 2012-2013 year because her notice only related to the 2011-2012 school year, the converse is actually true. If York had convened an IEP in a timely manner, it would have known of the Mother's intention to keep the Student at Eagle Hill for a second year. York violated the IDEA by failing to convene an IEP team meeting to consider the Student's educational program for the 2012-2013 school year. In *Briere v. Fair Haven Grade School District*, 25 IDELR 55 (D. Vt. 1996), the school district argued that the mother's unilateral placement of her daughter disrupted the IEP process. The District Court rejected that position stating, "Educational agencies are bound to adhere to provisions of the IDEA whether or not the child has been placed in a private or public facility . . . This court refuses to adopt a principle which would in any way shift responsibility for compliance with the IDEA to parents." York has cited no authority for its contention that a parent who gives proper notification that she is seeking reimbursement for a unilateral placement must give that notice annually.

York did not offer the Student an IEP for the 2012-2013 school year until the resolution session following the Mother's filing of this due process complaint. Until that time, the Mother did not have a different educational program to consider, as York's December 2011-2012 IEP was offered to the Student previously and rejected by the Mother as inappropriate. Consequently, she made plans to continue the Student's attendance at Eagle Hill and paid a deposit to that school.

Even considering the offer made at the resolution session on its merits, it was essentially the same program the Mother had rejected previously, with a few changes: the addition of one hour of ELA consultation every other week, a goal of having the Student participate in a social skills/pragmatic language group, and an extra 30 minutes of speech and language services each week. [S-16-17] There was no evidence of how these changes would address the deficits in the Student's previous program at YHS or of how the Student would be supported in more rigorous CP level classes at YHS. Therefore, I cannot conclude that the 2012-2013 IEP was reasonably calculated to provide the Student with FAPE.

5. If not, is the Student entitled to continue his placement at the Eagle Hill School for the 2012-2013 school year at the District's expense, or is he entitled to any other form of compensatory education?

For the reasons set forth in sections 3 & 4 above, the Student is entitled to continue attending Eagle Hill school for the 2012-2013 school year at the District's expense.

The District is ordered to take remedial action set forth in section V below.

V. ORDER

1. York violated state or federal special education laws by failing to provide the student with a free appropriate public education for the 2010-2011 school year.

2. York violated state or federal special education laws by failing to provide the student with a free appropriate public education for the 2011-2012 and 2012-2013 school years.
3. York is ordered to reimburse the Mother \$62,621.04 for the 2011-2012 school year as compensatory educational services for the failure to provide FAPE for the 2010-2011 school year and for failing to offer the Student an IEP that would provide him with FAPE for the 2011-2012 school year.
4. York is responsible for the cost of the Student's attendance at Eagle Hill for the 2012-2013 school year. It is ordered to reimburse the Mother \$55,391.00 for the 2012-2013 school year for tuition and related expenses that the Mother expended for the Student to attend Eagle Hill School because York failed to offer the Student an educational program that would provide him with FAPE. If the Mother has not paid all of the tuition to Eagle Hill, then York shall pay the remainder of that cost directly to Eagle Hill.

SHARI B. BRODER. ESQ.
Hearing Officer