

This due process hearing was originally assigned to another hearing officer who recused himself after the prehearing conference, but prior to the convening of the hearing.

Mediation was requested on March 26, 1998 and deemed unsuccessful on October 8, 1999.

During the course of the hearing the parents opened the hearing to the public. The Board initially objected, but withdrew its objection on April 13, 1999. Members of the public attended several sessions of this hearing.

ISSUES:

1. Was the program offered by the Board for the 1998-99 school year appropriate to meet the student's special education needs?
2. If not, must an appropriate program for the student include:
 - A. Additional support services at home
 - B. An extended day program
 - C. An extended year program, other than the one offered by the Board for the summer of 1998?
3. Was the program offered at the Foundation School for the 1998-99 school year appropriate to meet the student's needs?
4. Are the parents entitled to reimbursement for tuition and transportation costs associated with the student's unilateral placement at Foundation School for the summer program and for the 1998-99 school year?
5. Were the parents denied due process rights in the promulgation of the 1998-1999 IEP in that:
 - A. It was not developed by the parents
 - B. It was not developed with them as equal partners
 - C. It was written off site by the Board
 - D. It was never voted upon
 - E. It was not developed at a PPT before the first day of school
 - F. It only offered what the Board could provide if the parents agreed

INTERIM RULINGS:

1. The parents had originally submitted as an issue whether or not the Board violated the student's rights by discussing him with Foundation School Staff. The Board's motion to strike that issue due to lack of jurisdiction was granted. Ruling 98-144, September 14, 1998.

2. The parents moved on October 9, 1998 to add an issue concerning reimbursement for an evaluation. The Board objected. Decision was reserved on October 9, 1998. It is here and now denied.
3. The parents' request for an Interim Order re: transportation was denied on November 24, 1998.
4. Subsequent to the time the first issues were submitted and the convening of this due process hearing, the parents submitted Issue 5. The Board objected. The parent was granted permission to add Issue 5 and the Board was given additional time to prepare, if it felt it necessary on the record.
5. The parents' "Motion to Declare 'Stay-Put' Status & For Partial Final Order" was opposed by the Board. Briefs and replies were submitted and oral argument presented. The motion was denied, Interim Ruling 98-144 December 28, 1999.
6. On March 22, 1999, the parents moved to have this proceeding stayed, pending resolution of a claim in Federal Court. The Board objected. The motion was denied on the record on that date.
7. The parents moved for production of a document. The Board objected on the grounds of attorney work product. The motion was denied on the record.
8. The parents moved to have the mother declared incompetent to continue her cross-examination. The Board objected. The motion was denied, Interim Ruling 98-144 August 23, 1999.
9. The Board moved for various relief if the mother did not appear for cross-examination, i.e. (1.) dismissal for abuse of process, and (2.) striking the mother's testimony, attorney's fees and costs, and an adverse inference against the parents. The hearing officer ordered the striking of the mother's testimony and denied the other relief, on the record on September 7, 1999.
10. Subsequently the Board then moved for a rehearing on the issue, i.e. to grant all the relief requested by the Board, or in the alternative to have the mother's testimony stand. The parents objected to both requests. The Board's motion was denied on the record.
11. The parents requested that the hearing officer disqualify herself, by letter on September 1, 1999. The reason for the request for recusal was the mother had informed the father that she "wanted to hit" the hearing officer. The hearing officer declined to recuse herself on the record on September 7, 1999.

12. The Board moved, on May 22, 2000 to strike the parents' Reply brief. The parents opposed the motion. The motion was denied, Ruling on Motion 98-144, May 25, 2000.
13. Any other motions not specifically granted in writing or on the record are here and now denied.

SUMMARY:

The student was almost eleven years old when this due process hearing commenced. While his official classification is Other Health Impaired (OHI), the student has had differing diagnoses: mentally retarded - atypical, Pervasive Developmental Disorder - not otherwise specified and ADHD.

The parents believed that the student's program should be an inclusive one and he was in an inclusive program through third grade, with some pullout services. In the second half of the fourth grade, after an evaluation by an independent evaluator, selected by the parents and paid for by the Board, the student spent half of the school day in the inclusion program and the other half of the school day in a self contained program, the Adjusted Curriculum (AC) class at another board of education's school. The PPT recommended the AC class for the fifth grade, the 1998-99 school year, and a summer program for the 1998 summer.

The parents objected and enrolled the student for the summer program at Foundation School and subsequently enrolled him at the Foundation School for the 1998-99 school year.

The parents contend that the program offered for the 1998-1999 school year and the summer of 1998, by the Board, was not appropriate. The AC class was not appropriate for the student in that the other students were not appropriate classmates, the teacher spoke too quickly and some of the activities were not appropriate; the student can receive no educational benefit from any mainstreaming and would regress in such a setting, and the home school program offered by the Board was inadequate.

The Board contends that its program for the 1998-99 school year, including the 1998 summer program was appropriate, the AC class was an appropriate placement, the home-school program was appropriate and the Foundation School was not an appropriate placement.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S&H Computer Systems, Inc.* 605 F. Supp. 816, (March 6, 1985) and *Bonnie Ann F. v. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993)

FINDINGS OF FACT:

1. The student is a child with disabilities and eligible for services under the IDEA. His official classification is Other Health Impaired (OHI) based on the facts that the student is on medication, and has occupational therapy and physical therapy needs. It also is a classification to which the parents agree. (Exhibit B-74, Testimony, Director Pupil Services)
2. The student has been diagnosed by PEDAL on May 27, 1998 "...as a student with Mental Retardation encompassing the following: Atypical features, Attention-Deficit/Hyperactive Disorder, Severe Expressive and Receptive Language Disorder, Sensory Motor Impairment, Pica, Encopresis." At a follow up session, the doctor, who is an assistant professor of pediatrics and neurology, found the student's behaviors to be consistent with the diagnosis of Pervasive Developmental Disorder. There also is an obsessive-compulsive component. (Exhibit B-147)
3. The student's treating psychiatrist, Dr.T. considers the diagnosis of Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS) to be primary, with some features of mental retardation. Both a PPD and a PDD-NOS diagnosis are vague, the latter vaguer than the former. The diagnosis does mean that a child is very difficult, struggles a lot and that it is hard for parents and educators to deal with him.

He did not consider that the student fit the definition of a classically mentally retarded child. It should be noted that part of his opinion concerning the mental retardation aspect was based on an error in Dr. C.'s (an independent evaluator chosen by the parents and funded by the Board), report where she used the raw scores in the WISC administered by PEDAL instead of correctly using the standard scores. This led to the treating psychiatrist's belief that the student had scored a high average in the vocabulary subtest (13) when in fact the true standard score was 2, in the deficient range.

Dr. T. agreed with that part of the PEDAL diagnosis that included ADHD, severe expressive and receptive language disorder, sensory/motor impairment, pica and encopresis. (Testimony Dr. T, Dr. C. Exhibits P-44, B-147A)

4. The neuropsychologist, Dr. N., who was still evaluating the student when he testified on June 22, 1999, rejected a global diagnosis of mental retardation, but did consider him to be significantly cognitively impaired. The neuropsychologist would diagnose the student as having PDD, autistic type, learning impairments and ADD. On a spectrum of disability, with one being the least and ten the most, Dr. N. rated the student as an eight or nine. He is according to Dr. N. at the extreme end of the spectrum in terms of behavior and in the bottom quarter percentile of children at private schools. (Testimony Dr. N. Exhibit B-74)

5. The student was born on July 2, 1987. He was referred to the Board by the mother and DMR for developmental delays and hyperactivity when he was two years and seven months. He entered the Board public schools at the beginning of the 1990-1991 school year and was found to be eligible for special education services at a PPT on May 7, 1990, having delays in his cognitive, speech and language, gross motor and fine motor development. His primary exceptionality was "undesigned". (Exhibits B-8, B-14, B-15, B-16)
6. There had been an occupational therapy evaluation on March 1, 1990, by Allied Health Registry, a report on educational functioning on April 20, 1990 by DMR and a speech/language report by a Patricia Joy on April 30, 1990. (Exhibit B-15)
7. At that time, the student attended the JCC toddler program two hours twice a week, the Child's Garden in Fairfield two mornings a week with a special education teacher provided by DMR. The PPT recommended placement in a Board program five mornings a week with speech/language services. The parents wanted occupational and physical therapy (OT and PT). The PPT agreed to evaluations in those areas. (Exhibit B-14)
8. There was a CPPT on June 13, 1990 to address the parents' request concerning OT and PT. The PPT recommended OT services to start at the beginning of school and for the PT evaluation to be completed two weeks into the school year. (Exhibit B-15)
9. There was a PPT meeting on September 24, 1990. PT was added as a related service. An IEP was promulgated as determined at the CPPT of June 1990. During that school year, 1990-91, the student also attended the toddler program at JCC as well as a pre-school program at Middlebrook, a Board school. (Exhibit B-17)
10. There was a PPT on February 14, 1991 to review the parents' request concerning a feeding program. The PPT acceded to the request. An IEP was developed addressing those goals. (Exhibit B-18)
11. There was a PPT on May 30, 1991. While the IEP goals and objectives were agreed upon there was disagreement concerning the summer program. The parents wanted speech and OT services to be delivered at the site of the student's summer program, the Laurel School. (Exhibit B-19)
12. There was a CPPT meeting on June 13, 1991 at which it was determined that speech and language and OT services would be delivered at the Laurel School. The student would attend the Board program at Middlebrook for half a day and the Laurel School for the other half of the day for the 1991-92 school year. (Exhibit B-20)

13. The parents enrolled the student at the Laurel School for the 1991-92 school year. The Board provided speech, OT and PT services.
14. There was a PPT meeting on November 6, 1991 and the decision was made to revise the IEP goals based on the student's then determined needs. (Exhibit B-23)
15. A CPPT met on November 13, 1991. Based upon the mother's suggestion, consultative services would be offered to Laurel School staff. Social work consultation to the parents re: a behavior management plan at home was also offered. (Exhibit B-24)
16. The CPPT met on June 1, 1992. It was recommended that the student attend the kindergarten program at Jane Ryan, a Board elementary school, as well as an extended day program at Head Start, and an extended school year (ESY) for the summer 1992. (Exhibit B-26)
17. There was a PPT on September 25, 1992. A new goal was added to the IEP. (Exhibit B-29)
18. There was an annual review on November 6, 1992. (Exhibit B-30)
19. The student started kindergarten in the 1992-1993 school year. During the first half of the 1992-93 school year, the student attended half a day at the Board kindergarten program at Jane Ryan and half a day at the Head Start program. During the second half the parents chose to have him attend half a day at Jane Ryan and the other half at the Laurel School, so that he might stay with his kindergarten class. (Exhibit B-31)
20. At a PPT on January 13, 1993 and a CPPT on January 20, 1993 there was a determination as to where related services were to be delivered. (Exhibits B-31, B-32)
21. The student repeated kindergarten at Jane Ryan during the 1993-1994 school year, and continued to receive his special education and related services in the mainstream. By the end of the 1993-1994 school year, the student had made significant progress in his social skills, participating in a class, adhering to classroom routines, sitting and being part of the class. These were skills he did not previously have when he came to Jane Ryan. (Testimony special education teacher)
22. The student attended first grade at Jane Ryan School during the 1994-1995 school year. The parents continued to seek full inclusion for him and to have concern about any "pull out" services for him. The student received two and a half hours of special education services, one and a half hours of speech and language services, three quarters of an hour of occupational services within the regular education classroom and half an hour of school psychology services within the

- regular education classroom. In addition, at the outset of the year, he received twenty minutes of occupational therapy and twenty minutes of physical therapy outside of the regular education classroom. As of this time, the student's exceptionality was designated as "Neurologically Impaired". The student had a paraprofessional assigned to him during the school day who was trained and supervised by the special education teacher. The parents were very pleased with the student's progress and felt that the techniques used by the Jane Ryan team were very successful. (Exhibits B-37, B-38, B-39, Testimony special education teacher)
23. In January of 1995, the Board had an occupational therapy evaluation of the student performed by Tara Glennon for the purpose of determining if sensory processing issues were interfering with the student's educational performance. That evaluation was reviewed at a PPT on February 21, 1995, at which time it was recommended that the student receive certain sensory motor activities outside of the classroom. The mother stated she wanted the activities done within the classroom and the team acceded to that request. Occupational therapy services were modified so that the student received two hours per week of occupational therapy within the regular education class. (Exhibits B-41, B-42)
24. During the student's first grade year, the staff members of the PPT reported that he was making progress. At his annual review in March of 1995, the team reported that the student had made progress in his interpersonal relations, in his reading readiness skills, in attention and focus, and in his speech and language skills. He was reported to be comfortable with adults in the classroom, to come to school happy most days, and to work best when outside stimuli was limited or eliminated and structure provided. (Exhibits B-43, B-44, Testimony special education teacher, S/L therapist)
25. During the 1995-1996 school year, second grade, the student was due for a triennial evaluation. The school staff recommended certain assessments. The parents were in favor of only minimal testing. They again refused certain assessments when the issue of a triennial evaluation was discussed at the PPT of March 22, 1996. The parents were concerned that cognitive testing, because of the nature of the tasks involved, would not give an accurate determination of the student's intellectual potential therefore reflecting a low IQ score and the school would then set low goals for the student. The staff did not have concerns that they would set goals for the student that were too low for him. Goals and objectives were formulated using curriculum-based assessments. (Exhibits B-43, B-44, B-55, B-56, Testimony, Director Pupil Personnel Services (Director), special education teacher)
26. The parents did, however, request a sensory integration evaluation to be done over the summer of 1995. The Board agreed to this evaluation, which was performed in August of 1995 by Tara Glennon. The report concluded, "no change in educationally based occupational therapy services is recommended". This

- evaluation was reviewed at a PPT held on October 20, 1995. Tara Glennon attended this PPT and reviewed her evaluation. (Exhibits B-44, B-47, B-48)
27. The student was in the second grade during the 1995-1996 school year. His program consisted of receiving all of his IEP services in the regular second grade classroom, including services from the special education teacher, speech and language services and occupational therapy services. He also continued to have an aide dedicated to him and multiple modifications were made for him in the regular education setting. (Exhibit B-48, Testimony special education teacher, S/L therapist)
 28. The school psychologist at Jane Ryan (school psychologist, J.R.) had become involved with the student when he was in second grade. The immediate concern was behavioral issues at home. She met with the mother for parental counseling. This lasted for eight weeks, once a week, as per a PPT decision on October 20, 1995. The issues were the student's tantrums, bedtime routine, eating habits and non-compliance with requests. In addition the student's behavior in the car posed safety issues. At that time at school the student followed rules and did not have to be disciplined. (Testimony school psychologist, J.R., Exhibit B-48)
 29. The school psychologist, J.R. made recommendations concerning car safety, homework issues and thought the sessions partially successful. It was to continue on an as-needed basis. There were four additional counseling sessions. The parents reported that the program introduced by the school psychologist was helpful. (Testimony school psychologist, J.R., Exhibit B-55)
 30. The student's annual review was held on March 22, 1996. Staff continued to report progress on his IEP goals and objectives. Attention and on task behaviors improved; he had learned appropriate lunchroom behavior, and he had demonstrated growth in his expressive language skills, producing sounds with greater precision, interacting more appropriately with peers and adults, and demonstrating growth in semantic and syntactic skills. He had been using a Merrill Linguistic reading series and was learning to spell words based on reading. It was agreed that the student's program would continue, with three hours of special education services, one and a half hours of occupational therapy and one and a half hours of speech and language services, all of which would be provided in the mainstream. It was recommended that the student have adaptive physical education and the parents requested that he receive this at a time when he was not removed from academics. The student continued to receive the services of a dedicated aide and spent thirty-one and seven tenths hours per week with non-disabled peers. (Exhibits B-53, B-54, B-55, B-56)
 31. At the beginning of the student's third grade year, Board personnel performed an assistive technology evaluation for the student. The parents were advised as to the components of that evaluation by a speech and language pathologist and augmentative/alternative specialist (not the S/L therapist who testified and who

- gave direct services to the student). The evaluation was set forth in a report dated November 21, 1996 and reviewed at a PPT on November 22, 1996. The technology recommended in this evaluation was provided for the student and the staff was in-serviced by the evaluator for the new equipment. The school psychologist, J.R. reported on her program for the student's class, dealing with individual differences. (Exhibits B-67, B-60, B-63, B-67, Testimony S/L therapist)
32. During his third grade year, the third grade teacher and the special education teacher became concerned about the student's reading program. The special education teacher was delivering the student's reading instruction in the regular education classroom at a table in the back of the room. Even though it was modified to make it more functional, the reading program was increasingly difficult for the student and he was showing frustration. By January of 1997, reading was a major concern. The third grade teacher recommended to the mother that the student receive his reading instruction outside of the regular classroom, in a reading group with other disabled children. The parents agreed to this recommendation and in January 1997, the student began to attend a reading group with three other children. The reading program was a high interest remedial program with language sight words. It was very successful for the student. (Exhibit B-73, Testimony special education teacher)
33. On March 21, 1997 the PPT met for an Annual Review and to update the IEP. The IEP that was promulgated was to run from March 21, 1997 through March 21, 1998, encompassing the last part of third grade to the same time in fourth grade.
- The PPT confirmed, and agreed to continue, the student receiving his reading instruction in a small group outside of the regular education classroom for three hours and forty-five minutes per week. IEP goals and objectives were presented and agreed to by all members of the PPT, including the parents. The PPT also agreed that the school psychologist, J.R. would continue to be available to meet with the mother as needed to discuss behavioral strategies at home. In addition, the student was to receive two hours a week of special education services and one and a half hours per week of speech and language services per week in the regular education classroom. One hour per week of occupational therapy was to be provided both within and outside of the regular education classroom. An aide was provided to the student. (Exhibit B-74)
34. For the remainder of the third grade the student continued his inclusion program, except for reading, which was done in a small group in the resource room. The student was part of the group, he understood what was expected and was becoming a little more independent. He made some academic progress during the year. There were homework issues in that the student resisted doing work at home. School staff was willing to lessen or forego homework but the mother felt it was important for the student to do some homework. There were instances of

- “picking” and toileting accidents during that year. “Picking” behavior was described as the student would pick at his clothes, finding a thread and eventually unravel the garment. (Testimony special education teacher)
35. The student made progress in his program in all areas at Jane Ryan School during his third grade year. His academic skills, as well as his social skills and general behavior, had improved. (Exhibits B-74, B-75, B-79, B-173, Testimony special education teacher, S/L therapist, OT, school psychologist, J.R.)
36. The CPPT met on June 18, 1997 to plan the ESY, i.e. the 1997 summer school program, for the student. At all times that he attended Board schools, the Board provided the student with an ESY.
- A. Attending the CPPT was an educational consultant, Dr. E.P. a Facilitator of Community Connections, retained by the parents, who had expertise in including students with disabilities in the regular education environment.
- B. The parents wanted summer school programming in August because they considered that the student had regressed in his academic skills over the summer of 1996, when the extended year only included July.
- C. The CPPT of June 18, 1997 agreed to a summer program for the student consisting of a school based program five days per week from 8:30 A.M. to 12:30 P.M. from July 7, 1997 through August 1, 1997. In this program, he was to receive his special education reading, language arts and math, drama or seashore, speech and language services, and occupational therapy services. For August, the Board offered nine hours of reading and math tutorial services.
- D. The parents' consultant was impressed at the way the PPT was conducted, especially the Director's role in the facilitation of the summer program. He considered the increase in the summer program to be “reasonable and accommodating” and felt that cognitive testing would be appropriate. The school social worker again raised the issue of cognitive testing to "know what to expect". The mother did not consent as she felt the student's expressive language deficits and fine motor difficulties would limit his IQ score, and thus give a lower score, which would result in lower expectations.
- E. At the CPPT, staff members of the team stated that in order to determine the type of extended year programming and programming for the following year the student needed, it was important to obtain a complete evaluation. The Board offered to undertake the evaluation by its own staff, but the parents refused. The Board members then offered to fund an outside psychoeducational evaluation of the student. The parents agreed provided that they would agree with the choice of the evaluator. The staff members of the

PPT agreed to this. (Exhibits B-20, B-26, B-30, B-57, B-74, B-77, B-78, B-80, Testimony, Director, school psychologist, J.R.)

37. After the June PPT, the Director and the mother discussed who should perform the agreed upon evaluation. The Director made two suggestions that were rejected by the parents. The parents then requested that Dr. C. be selected and the Director agreed. The report was completed on December 3, 1997. (Exhibit B- 96, Testimony, Director)
38. In August 1997, the student started fourth grade. The change from third to fourth grade was great: increased curriculum demands and the widening academic gap between the student and his classmates and the downstairs location of the classroom was a problem. The student had difficulties in the beginning, manifested by toileting accidents, picking and vomiting, behaviors that had been for the most part under control in previous years. He also was extremely anxious. There was improvement by the time of the September 17, 1997 progress report. (Testimony special education teacher, school psychologist, J. R., Exhibit B-87)
39. The school psychologist, J.R. contacted the mother and offered to initiate individual play therapy to help relieve the student's anxiety. The mother refused. The psychologist then offered to hold a social skills group. The mother agreed, provided it did not take class time. Such a group was scheduled during lunchtime. The participants were second graders as the student's social level was more in keeping with the second graders than with older children. The social worker typically sat in on the sessions. By the end of the sessions the student's actions were much more appropriate, he was able to prolong a conversation appropriately, he improved in his ability to transition, and to find appropriate ways to seek help, all of which alleviated his anxiety. (Testimony school psychologist, J.R., Exhibit B-148)
40. A CPPT was convened on September 19, 1997 for the purpose of discussing questions to be addressed by Dr. C. in the evaluation agreed upon at the prior PPT. The school staff prepared questions to be submitted to Dr. C. but the parents rejected these questions; therefore the principal of Jane Ryan told the parents they could write their own questions, which they did. (Testimony school psychologist, J.R.)

At this CPPT, Dr. E.P. presented a chart labeled "The Relationship Among Expectations, Goals, and Objectives", which was based on thoughts of the parents. The parents asked the team to revise the IEP goals and objectives to reflect this document. It was agreed that the team would review it and reconvene the PPT. Finally, at this CPPT, the S/L therapist recommended that one half hour of the student's speech services be provided to him in the resource room because the pace of the fourth grade class was too fast for him. The parents agreed to the change. (Exhibit B-87, Testimony, special education teacher, S/L therapist)

41. The school psychologist, J.R. spoke with Dr. C. in October of 1997 to discuss what evaluations she would be doing with the student. Dr. C. informed her that she would not be doing a psychological evaluation. (Testimony school psychologist, J.R.)
42. A PPT meeting was rescheduled for October 17, 1997, but was cancelled by the parents. It was rescheduled for and convened on November 7, 1997. (Exhibits B-89, B-167)
43. On November 5, 1997, Dr. E.P. had observed the student in his program at Jane Ryan. He was complimentary of the staff's work with the student. He made certain suggestions, which were discussed at the November 17, 1997 PPT. The team added a new social goal and language goal to the IEP. The time for speech and language services in the resource room was increased to forty-five minutes per week. The S/L therapist reported that she found working with the student in the resource room to be more successful and he did better with smaller amounts of time in the regular classroom. (Testimony S/L therapist, Exhibits B-90, B-92, B-167)
44. The speech/language therapist had worked with the student since his second year in kindergarten the 1993-1994 school year. In her instruction she made use of the suggestions in Dr. E.P.'s report as far as encouraging the student to be a decision maker. (Testimony S/L therapist)
45. ABC charts were implemented in the fourth grade at Jane Ryan, before the scheduled November 7, 1997 PPT. The purpose was to record wetting and vomiting incidents and the immediate past event and what happened after the incident. (Testimony S/L therapist, Exhibit B-91)
46. A staffing was held on December 17, 1997 to discuss the mother's request that there be a focus on phonological awareness. It was decided to use the Earobics program, a software program for phonological skills. The S/L therapist ordered that program and began using it with the student in January, 1998. She maintained data on a regular basis. (Exhibits B-97, B-134, Testimony S/L therapist)
47. The school received Dr. C.'s evaluation in December of 1997. The school psychologist, J.R. offered to attend a feedback session with Dr. C. and the mother. The mother declined the offer. Instead it was agreed that there would be a conference call between the three to discuss the evaluation. That conference call occurred on January 29, 1998 at which time Dr. C. reviewed her results. (Testimony school psychologist, J.R.)
48. Dr. C.'s evaluation found the student to be well below average on "strict tests of phonological processing (incomplete words) and phonemic awareness". He demonstrated some facility when there was a pattern to detect and when he did

- not need to work below the level of the syllable; it was likely that he had retained the reading instruction he had received through the Merrill and SRA in grade 2. She did not believe that he would do well with manipulative materials in math since he would become absorbed in sorting or handling them. He had learned and retained some basic knowledge which would contribute to his learning to read; however, he was poorly self-regulated and showed signs of compulsive or over-focused behavior. She made various recommendations, including a calm environment, a systematic approach to reading such as "Let's Read", and psychiatric consultation and management. There was no recommendation for an out of district placement. (Exhibit B-96)
49. Sometime in January of 1998 prior to the telephone conference, the mother contacted the school psychologist, J.R. about the student's behaviors at home. DMR and DCF were two possible service providers for home services. The school psychologist, J.R. contacted those organizations. In order for the student to receive services from DMR a cognitive and adaptive skills evaluation was necessary. In order to receive services from DCF a DSM IV diagnosis was necessary. This information was shared with the mother who indicated that she did not want the student to be evaluated. The school psychologist, J.R. told the mother that in her opinion it would be helpful to obtain these evaluations. The mother still refused. (Testimony school psychologist, J.R.)
50. The school psychologist, J.R. first suggested the AC class at the Middlebrook School to the mother on January 27, 1998, after receipt of Dr. C.'s report. The mother was concerned about the student's behavior at home and the recommendations in the report for a less inclusive program. The mother agreed to visit the program, even though she wanted an inclusion program for the student. (Testimony school psychologist, J.R.)
51. The PPT met on January 30, 1998 with the parents presenting an agenda.
- A. The mother presented an overview of Dr. C.'s evaluation. One recommendation was for ten-minute sessions on particular reading skills. There was disagreement between the mother and special education teacher and the school psychologist, J.R. concerning what was meant. The mother reported that Dr. C. had stated that the student needed a one-on-one special education teacher dedicated to him who would provide special education services in ten-minute intervals throughout the day. The mother thought it meant one-on-one teaching instruction. The school psychologist J.R. based on the joint telephone conversation with the mother and Dr. C. did not believe that this was Dr. C.'s recommendation.
- B. The team discussed the parents' request that Jane Ryan provide the student with a special education teacher who could provide him with direct services for ten minutes, have him return to the regular education class, and then be pulled out again for ten minutes of services on an ongoing basis during the day. The staff

- members of the team stated they believed that this would be disruptive for the student and refused this request.
- C. The S/L therapist reported on the Earobics program.
 - D. A “diagnostic” placement at the Middlebrook AC program was decided upon. The morning portion of the school day was to be at Middlebrook, the afternoon at Jane Ryan. Dr. E.P supported this proposal. While the parents agreed to this program, the mother would have preferred to have the student receive more one-on-one at Jane Ryan rather than the split program. The OT who was working with the student at Jane Ryan and who also worked in the AC program supported the AC program for the student.
 - E. The mother reported that she had observed the AC program. The minutes reflect that she stated, "she was very impressed with the teacher", a certified special education teacher (AC teacher).
 - F. It was agreed that a transition meeting with staff from Middlebrook would be scheduled.
 - G. The parents reported that the student’s medication had been changed.
 - H. The school psychologist, J.R. discussed her contact with DCF and DMR and these agencies' requirements for further evaluations as a condition for the provision of services.
 - I. The team agreed to a PEDAL evaluation for the student, as requested by the parents.
 - J. The mother requested "wrap around services" for the student, with those services to be provided by Janette Johnson of Benhaven Learning Network. (Exhibit B-102, Testimony school psychologist, J.R., S/L therapist)
52. Generally speaking the school staff saw the split program as a transition for full-time programming into the AC class for the 1998-1999 school year. However at the time of the split program, the school psychologist, J.R. thought that the student was benefiting from his time at Jane Ryan and was happy in that setting. Also it was difficult for the parents to make the decision for a fulltime self-contained class. (Exhibit B-102, Testimony school psychologist, J.R.)
53. Prior to February 6, 1998, a staffing was held between the Middlebrook and Jane Ryan staff, with the parents also in attendance. This meeting lasted approximately two and a half hours and was for the purpose of having the Jane Ryan staff and the parents share information about the student with the Middlebrook staff. (Testimony special education teacher)

54. The student was ten and a half years old when he entered the AC class on February 6, 1998. There were four students aged ten and eleven and four between seven and eight. Three additional students entered in May; one was ten years old and the other two were nine years old. An additional teacher was assigned at that time. Of the twelve, four were classified as educable mentally retarded (EMR) and the others, including the student as OHI. The AC class is not a class for the trainable mentally retarded (TMR). (Testimony Director, AC teacher, Exhibit B-146)
55. The AC program was staffed by the AC teacher, a certified special education teacher, two full time paraprofessionals, one part-time paraprofessional and a fulltime aide assigned to one child. The student also had a fulltime aide (Testimony AC teacher)
56. The AC program included a transdisciplinary team consisting of the teacher, a speech and language pathologist who conducted weekly group lessons in the classroom, the OT who worked with the student at Jane Ryan, the social worker who conducted social work groups in the classroom and the school psychologist at Middlebrook (school psychologist, M.). This team, along with the principal of Middlebrook, met weekly for one hour to discuss the students. (Testimony AC teacher, OT)
57. The AC teacher knew the placement was a diagnostic placement and that she was to evaluate how to instruct the student. (Testimony AC teacher)
58. The AC classroom was set up with desks in the front of the room, workstations with partitions, with motivational posters, sight words and the schedule for the day was posted in the room. The program provided to the students within the AC classroom was individualized, based on the students' needs and their IEPs. (Testimony AC teacher)
59. The student transitioned well into the AC program. He came with his aide from Jane Ryan. The other students in the class were excited about having him join the class. The first day the student was quiet, but became more talkative. His original schedule was 8:30 am to noon at Middlebrook, after which he would be taken by bus to Jane Ryan, which he attended for the remainder of the school day. The student asked the AC teacher if he could stay at Middlebrook for recess, which was from noon to 12:30 pm. The teacher, who believed that the student should stay for the longer period at Middlebrook, spoke to the mother about this. The mother initially did not want the student to spend the extra half hour. A compromise was reached and the student stayed an extra fifteen minutes. (Exhibit B-117, testimony AC teacher)
60. When the student began in the AC program, the teacher evaluated his reading through diagnostic teaching. The student appeared not to be able to read much although it was difficult to assess what he knew and did not know because he was

entering into a new situation. It was difficult to tell if the student was unable to do the reading tasks, or that it was caused by a change in environment or if he was playing a game. The witness, after a week, started using a less demanding reading text. For two or three weeks he was instructed by her in a one-one setting, then moved to a small group, where he performed better and was less inclined to attempt to manipulate the teacher. He was not comfortable with decoding, but his comprehension was better and he was good at answering content questions. Using a number line and manipulatives, he could do addition of numbers less than ten. He appeared physically and emotionally young, bringing toys to school that were appropriate for younger students. While he was compliant, he did attempt to distract teachers to get his own way. (Testimony AC teacher)

61. The AC teacher and occupational therapist had observed the student at home on February 9, 1999. The visit was from 5:30 p.m. until 9:00 p.m. for her and a half hour less for the occupational therapist who arrived late. (Testimony AC teacher)

When the student arrived at his home he threw his jacket and backpack on the floor. The mother and witness could not finish a conversation as the student was running around and interrupting. While the mother and the AC teacher were discussing the report of Dr. C. the OT went with the student into his room to check out what he liked to do.

He did not eat dinner, but rather ran around the house, and came over to the teachers and played a tape. The teacher and therapist demonstrated the technique of telling the student they would play with him after he ate a few bites. They did feel that the student should be given fewer choices.

However, the purpose of the visit was more data gathering than giving recommendations. They felt that two areas of concern were that the student should learn to interrupt politely and to sit on a chair at the table. (Testimony AC teacher, OT)

62. Additionally, the OT wanted to obtain information as to whether the student's behaviors at home were a function of his physical inability ("could not") or behavioral refusal ("would not") to do the activities of daily living required for him at home. As far as the daily living skills the OT knew that the student could toilet himself in school, but at home he would run to bathroom, lock himself in and do things he should not do. At school he could put on his jacket, zip and unzip his backpack, put his shoes on and take them off, though the therapist never saw him tying his shoes. (Testimony OT)
63. A PPT was scheduled for February 11, 1998 to review the student's program and the parents' request for home services. Prior to that meeting, the parents sent a letter to the Director, suggesting staff that should attend and proposing an agenda for that meeting. (Exhibits B-104, B-107)

64. The PPT convened on February 11, 1998. The parents brought with them Dr. E.P., Dr. T. the student's treating psychiatrist and Janette Johnson.
- A. One of the items on the agenda was the need for extended services for the student at home. Janette Johnson from Benhaven's Learning Network had prepared at the parents' request, a report dated February 6, 1998 entitled "Impressions and Recommendations for Successfully Supporting [the student] At Home". She presented her report.

In her overview, Janette Johnson wrote, "However observations of his interactions with adults at home revealed a struggle between [the student] seeking attention, approval and play-mate, and making a 'deal', and the adults seeking to direct, correct, redirect, and make a 'deal'. This social battle appeared frustrating and confusing for all involved." She also noted "It is clear that a comprehensive positive behaviors support plan is needed for [the student] to be successful. It is also clear that the support plan must provide support and teaching for [the student's] parents." The evaluator also wrote, "In my opinion, the student and his parents are overwhelmed." The evaluator concluded, "Only after the parents can implement the plan (with ongoing limited support as needed to modify the plan) can the plan be effective."

The goals of the proposed home-based program were to develop a program that supported the student at home, to alter the interactions between the student and his parents and allow for more positive and consistent interaction, to improve the student's skills in dressing, grooming, eating, toileting and choice making, to increase the student skills in self-monitoring, coping, and relaxing, to improve his responses to directions and to decrease negative behaviors.

The recommendations included a support person, who in addition to other responsibilities would implement the plan at the beginning and teach the parents and nanny to implement the plan over time. It concentrated on the morning hours prior to school. It would be necessary for the p.m. hours to also be addressed.

The report did not deal with school behaviors. However the evaluator noted that she had been told that the student was well behaved at school and achieving his goals and objectives. There had been no contact with school staff or observation of the student at school.

- B. The mother requested "professional help" in the home. The staff members of the team agreed to review the report and to reconvene to develop a home/school/life skills program. The Board agreed to pay for Ms. Johnson's report and her attendance at that PPT.
- C. At that meeting, the parents did not agree to implementation by the Board staff. They wanted Janette Johnson to be the implementer.

- D. Also discussed were the home visits by the occupational therapist and the AC teacher.
 - E. Dr. T. agreed to observe the student's programs, Jane Ryan and AC class, and the Board agreed to pay him for his time involved in such observation.
 - F. The mother requested a different reading program for the student and that Dr. C.'s recommendations regarding reading be implemented immediately. It was agreed that for a two-week interim period, the student would receive a one-on-one reading program of one hour per day provided by the AC teacher and one and a half hours per week provided by the S/L therapist who would work on phonological awareness. The AC teacher agreed to consult with the school district's reading consultant.
 - G. The staff members of the team recommended that the student attend the AC program on a full day basis. The parents refused. The parents requested that he receive his special education program at Jane Ryan on a one-on-one basis. They felt the student needed to be included with his non-disabled peers, particularly because he was an only child. The Director suggested that the student attend the AC program full time, but participate in an after school program (TLC) with typical peers. The mother rejected this because she wanted him to do his homework after school.
 - H. The PPT agreed to fund the PEDAL evaluation at Newington, including sensory integration assessments.
 - I. The staff members of the team reported that the student had made a good transition to the AC program, appeared happy and able to handle the change. (Exhibits B-106, B-108, Testimony school psychologist)
65. On February 19, 1998, the OT, school psychologist, M. and the AC teacher met to review the Janette Johnson report and develop a draft home school behavior plan to be presented to the PPT. The Johnson report was used as the basis for the Middlebrook team's plan (Middlebrook Plan).

As stated under the "Overview section: "The AC Staff recommends that the easiest areas in which to initiate behavioral change will be in the areas related to school; namely the morning school-to-home preparation routine, and the afterschool school-to-home routine. We had identified skills that we had observed [the student] perform in school, i.e. Putting things in locker, hanging up jacket, eating, putting on clothes), then postulated that they could most easily be translated to the home environment."

The plan targeted the student's morning routine, after school routine, dinner, and preparation for bed. Strategies included rewards, reinforcement between the school and home, consistency, models and cues and a checklist. The staff

assistance was to have the OT come to the house for four sessions to “train [the student] and other individuals at home.” The afternoon paraprofessional at Jane Ryan was to go to Middlebrook and be trained in specific areas for implementation at Jane Ryan, and someone from the home was to observe the student in the AC class for carry-over in the home.

While the AC team felt that the student might know the steps involved in each task, the tasks should be broken down and presented with pictures and verbal and physical clues. The plan focused on school to home, and home to school routines. (Exhibits B-113, B-117)

66. On February 20, 1998 the team met again to discuss two further issues: toileting and evening dinner routine. The team wrote in its report that Dr. T. had been consulted “extensively” concerning the toileting issue. The team determined not to address that issue. There had been no toileting incidents at Middlebrook. The team did make suggestions concerning the dinner and bedtime routines. The recommended staff assistance was: that the OT “(1-1/2 hour, hours weekly) for 4 weeks to train [the student] and other individuals at home, that the afternoon paraprofessional at Jane Ryan to visit the AC program and be trained in certain instructional and behavioral practices to use with the student at Jane Ryan”, and “In the home assistant from the [family household]” to observe and participate in AC routines for carryover in the home. The program was to be re-evaluated in four weeks. Exhibits B-113, P-66, Testimony OT, AC teacher)
67. The PPT met on February 26, 1998.
- A. At the PPT meeting the Middlebrook plan was offered by the school psychologist, M., the OT and AC teacher and accepted by the parents.

That plan involved the OT going into the home for one and half hours per week for the purpose of helping to coordinate the home school plan over a four-week period.

Under the plan, Board staff would develop a picture schedule for the student’s morning, afternoon and evening home routines and provide suggestions to the parents to address his behaviors at home. The Middlebrook team developed a behavior checklist. That chart was to be completed by the parents daily, and telecopied to the school psychologist, M., who would have it when the student arrived at school in the morning. She would then meet with the student first thing in the morning to review the chart and reinforce the system. The Middlebrook plan also provided for review with the student at the end of the day to prepare him for his schedule when he arrived home, as well as to provide him with strategies and techniques for managing his behavior.

- B. While the staff suggested this as a four-week program, the father requested it to be for three weeks, to complement the six-week diagnostic placement at Middlebrook. The team agreed.
 - C. The AC teacher presented the results of an evaluation, which she had undertaken of the student's reading and reported that he had approximately forty-six Dolch sight words. The mother disagreed with the sight word approach, wanting the staff to work on phonics. The AC teacher recommended a multi-modality reading program called "Super Kids" and the parents agreed.
 - D. The S/L therapist had been working on phonics through the Earobics program since January 1998.
 - E. The staff members of the team recommended that the student remain in the AC program for his math program. This would involve him remaining at Middlebrook, until 1:30 p.m. The parents wanted the student to take math at Jane Ryan. The team acceded to the parents' request.
 - F. The fourth grade teacher at Jane Ryan commented that the student had become lethargic and more distractible recently and the AC teacher reported recent increased picking. In response the father informed the PPT that the student's medication had been changed on February 24, 1998.
 - G. A new speech and language goal was added, a sight word approach to reading was rejected as Dr. C. recommended a phonic approach to reading and was approved.
 - H. The PPT was to meet again in three weeks. (Exhibits B-117, B-118, Testimony, AC teacher, OT, Director)
68. The S/L therapist, in conformity with the report of Dr. C., started increasing time in phonic awareness. While the student did have more skills than shown in Dr. C.'s report he still had difficulties. The S/L therapist agreed with some of Dr. C.'s findings and disagreed with others. (Exhibit B-117, Testimony S/L therapist)
69. Commencing on March 2, the OT began to implement the Middlebrook plan, visiting the family home from 6:45 a.m. to 8:20 a.m. One of the questions to be answered was whether or not the student could perform daily living skills. She concluded that the student could perform those skills, but that he would not. (Testimony OT)
70. She and the mother determined what should be the morning regimen. During that time, the OT observed the student's morning routine, took pictures, and made suggestions. For example, since the student ate breakfast sitting on the table so that he could see the television set, she recommended that his chair be positioned

- so that he could see the television set and then he could sit in a chair for breakfast. She also recommended that rather than giving the student a choice from three toothbrushes and three tubes of toothpaste, which apparently was time consuming and confusing for the student, that he have one toothbrush and one tube of toothpaste. The OT recommended that only verbal cuing be used for dressing as the student has the skills to dress himself. She discussed with the mother backward chaining, a practice recommended in the Johnson report as well, to help talk the student through getting dressed. After the student left for school the OT stayed and brainstormed with the mother compiling a list of issues the mother wanted to address. The OT took about fifteen photographs of the student doing his morning activities. The student performed all of those activities for the OT with verbal cues. The OT concluded that from the perspective of an occupational therapist, the student had the physical ability to do these tasks. (Testimony OT)
71. The OT next visited the family home on March 9, 1998 from 3:15 to 5:00 p.m. The purpose of this visit was to obtain information and photographs of the student's afternoon routine. Again the mother and OT determined what was to be addressed. The mother expressed concern that after school the student would not toilet himself, but rather play, resulting in toileting issues. The OT said that she would speak to the student's paraprofessional and ask her to take the student to the bathroom before he left school in the afternoon; this was done. At this visit, the OT recommended that the computer monitor be lowered to a position so that the student could observe it from a sitting position in his chair. This would avoid his climbing up on to the computer, which was seen as a problem. The OT also recommended removing the excessive number of toys and blocks that were available to the student. The mother thought that he would be upset if she did this and the OT suggested that it be done slowly. The OT took pictures of the student's afternoon activities, including hanging up his coat and backpack, taking his communication book out of his backpack, and leaving it in the car. (Testimony OT)
72. On March 24, 1998, the OT and the school psychologist, M. met. The OT provided the photos to the school psychologist, M. as well as information about her observations. The school psychologist began to put together the picture schedules into a photo album. She also developed a book of rewards, using computers, puzzles, trampolines and "Big Bertha", a video game at the Mall; she had made a trip to the mall to take a picture of Big Bertha, which she knew was a favorite of the student. The school psychologist, M. communicated with the parents as well. (Testimony OT)
73. On March 26, the OT made another visit to the family home, this time from 4:40 to 6:20 p.m. The purpose of this visit was to observe and take photos of the evening routine. The mother and OT determined what tasks were to be addressed. The OT took approximately fifteen to twenty photos of the student, including bathing, drying off, and putting his towel in the hamper. These photos were included in his photo schedule. The Middlebrook team made three sets of the

- photo schedule: one for home, one for Middlebrook and one for Jane Ryan. The school psychologist, M. reviewed the book with the student in the morning when he came to school and his paraprofessional reviewed the photo book with him in the afternoon at Jane Ryan before he got on the bus. (Testimony OT)
74. From April 2 through April 15, 1998 the behavior plan was revised at least twice, based on consultations between the school psychologist, M. and the mother.
- A chart had been developed originally for the weekdays, but at the request of the parents Saturday and Sunday were added. There was a list of the activities the student was to do. When he preformed appropriately the boxes were checked. The chart was modified with the participation of the mother. The charts were to be faxed every day to the school psychologist who would go over them with the student. (Exhibit B-161, Testimony OT)
75. On April 14, 1998, the OT, the school psychologist, M. and the mother met and reviewed the final plan. The school psychologist, M. met with the student on April 15 to review the plan with him. Implementation of the plan began on April 16, 1998. The OT thought, from the faxes she had seen, that the system seemed to be working. (Exhibit B-161, Testimony OT)
76. The routines as set out in the charts were as follows:
- The morning routine included using the toilet on awakening, putting dirty clothes in the washer and the diaper in the garbage can. Then came washing in tub, drying, brushing teeth, getting dressed, turning off lights, eating at table, clearing his plate, using the toilet, washing hands, packing backpack, getting his coat from the closet and putting it on.
- The afternoon routine included entering the house, hanging up his coat, putting his backpack and lunch box on the counter, toileting, washing hands, taking a pill and doing homework.
- The evening routine consisted of undressing, putting clothes in hamper and shoes in closet, bathing in tub, putting on pajamas, eating dinner, laying clothes out, toileting, brushing teeth, reading with the mother and then going to sleep. (Exhibit B-159)
77. In school at Middlebrook, toileting was not a problem. The student was generally compliant to directions, was able to follow necessary classroom routines and there was no report that his behavior on field trips with his class at Jane Ryan was a problem. (Testimony AC teacher)
78. The charts started on April 13, 1998, the first facsimile was on April 16, 1998 and the last one entered as an exhibit was on June 9, 1998. The student did not attend the AC class between May 21 and June 2, 1998. (Exhibit B-161)

79. The AC teacher did not expect overnight progress when the home school program was implemented. She considered any progress to be a good sign. (Testimony AC teacher)
80. On March 11, 1998, as part of the PEDAL Evaluation, the student was observed at the AC class at Middlebrook and in the inclusion program at Jane Ryan.
- A. During the AC class, the observer, an educational specialist, found him in the small group instruction (four to eight students) to be largely on task with refocusing and prompting, and generally actively engaged in learning. The student during snack time followed directions and enjoyed the story being read. During one-on-one reading instruction, the student exhibited task avoidant behavior and had to be firmly redirected. The student was actively involved and enjoyed a small group reading instruction.
 - B. As the morning progressed the student's ability to focus diminished and he required consistent cuing. During lunch the student was withdrawn but actively observing the activity of the other students. The observer characterized lunchtime as "somewhat problematic".
 - C. The observer found that the student interacted appropriately within the class and with the other students, who reinforced each other.
 - D. No picking was observed, and the observer noted that the teacher "intermittently" reminded the student to push up his sleeves. She concluded by stating that in the AC class, "he was largely on task, particularly within small group settings. He participated in the lessons and was generally available for learning. He was relaxed and comfortable, and interacted appropriately and positively with his classmates. Academically, he has encountered success."
 - E. During the afternoon at Jane Ryan the observer found the student to be a "non-active participant" in the class, very little peer interaction and he had a separate curriculum. In the one-on-one math computer program with the aide he was distracted and required "considerable prompting". During both activities he needed to be reminded constantly not to pick at his clothes.
 - F. The recommendations, were, inter alia: for a small structured classroom with careful and selected mainstream activities, an effective positively based behavior management system, a social skills group, further development of reading and math skills, increase of awareness of safety issues and orientation in the home and community. It was further recommended that there should be "careful and selected" mainstream activities to improve the student's social skills.
(Exhibit B- 147)

81. The mother had told an assistant professor in pediatrics and neurology who had participated in the PEDAL evaluation that the student rarely wet at school. (Exhibit B-147)
82. On April 21, 1998 Dr. T., the student's treating psychiatrist, wrote the Director, including his report on observations he had made of the student at Jane Ryan and Middlebrook. The observation was probably within a week of the time he sent the school his report. Dr. T. found that the student was "very liked" at both schools, every teacher and paraprofessional treated him with warmth and devotion, the student benefited emotionally from both situations and responded to the affection given to him. His peers behaved appropriately to him and several were role models. At Middlebrook the student's behavior at lunch and recess was appropriate. (Exhibit B-169, Testimony, treating psychiatrist)
83. A PPT was scheduled March 25, 1998. It was cancelled by the parents and rescheduled for March 31, 1998. That PPT was also cancelled. Thereafter, parents' counsel became involved and there was a series of correspondence in an attempt to reschedule the PPT. The PPT that was scheduled for April 15, 1998 was postponed by the parents and was finally rescheduled for May 8, 1998. (Exhibits B-119, B-120, B-124, B-127, B-129, B-135, B-141, B-168, B-170, and B-141)
84. A CPPT was held on May 8, 1998, notice was dated April 22, 1998. Prior to the meeting the parents had expressed the following concerns about the Middlebrook program for the 1998-1999 school year: the ages of the other children and since some would be leaving the class, what the effect would be and there was some discussion about the reading program. (Testimony school psychologist, J.R., Exhibits B-127, B-141, and B-170)
 - A. The first eight pages of the IEP of May 8, 1998 were completed at the meeting. The pages encompassing the goals and objectives had been prepared as drafts by various staff members. The AC teacher prepared and worked with another teacher in preparing many of the goals and objectives set forth in the 1998-1999 IEP, which was to be in effect from May 8, 1998 until May 8, 1999. The S/L therapist prepared her goals and objectives and presented them for discussion at the meeting.
 - B. At the CPPT each of the service providers reported on the student's progress on his goals and objectives. They all felt he was making progress. In the AC program, he had been making friends, feeling comfortable and the program was positive for him emotionally and socially. He was continuing to eat in the AC program. The Middlebrook behavior plan that was in effect was reviewed. The school psychologist, M. reported that she monitored the checklist and picture book with the student every morning and his paraprofessional at Jane Ryan reviewed it with him before he went home. The parents had been cooperative in sharing information on the student's home behavior and performance.

- C. The AC teacher reported that the major focus in the morning was reading. She also reviewed the projected student population for the AC class for the 1998-1999 school year, where the age range would be five to ten years and explained multi-age activities and how the range of abilities and ages would be addressed.
 - D. Draft IEP goals and objectives for the annual period commencing May 8, 1998 were presented and reviewed. They were discussed by the members of the PPT, including the parents. The speech and language services were to be increased by thirty minutes a week. All members of the PPT, including the parents accepted the proposed IEP goals and objectives.
 - E. The parents requested that the split program continue for the remainder of the school year. The PPT agreed to the request.
 - F. The services between the school psychologist and the student and checklists for the home behavior program were to continue.
 - G. The parents requested that the PPT place the student at Foundation School for the summer of 1998 and for the 1998-1999 school year. The staff, in response to the request for placement at Foundation School, discussed the self-contained programming which was available for the student at the Board school, including self-contained services for math, reading, social studies, science, cooking, swimming, adaptive physical education, occupational therapy, one-on-one instruction, small group instruction, and integration into regular education classes.
 - H. The Board members of the team offered an ESY program to the student for the summer of 1998 which consisted of the following: twenty days of summer school in the Board's summer program, consisting of reading, math, speech and language, occupational therapy and tutorial program in July; and tutorial in August at home for reading and math.
 - I. The Parents rejected the Board's program.
 - J. It was agreed that the PPT would reconvene on June 8, 1998. (Exhibits B-138, B-140, B-141, B-152, and B-153, Testimony, AC teacher, special education teacher, S/L therapist, school psychologist, J.R., OT, Director)
85. The PEDAL evaluation was a multi-disciplinary evaluation consisting of a speech and language evaluation, a psychiatric consultation, a diagnostic perceptual/cognitive evaluation, an on-site observation, a medical report by an assistant professor of pediatrics and neurology, and an occupational therapy evaluation. As part of the diagnostic perceptual/cognitive portion of the evaluation, an educational specialist, observed the student in his program at Jane Ryan and at Middlebrook schools. (Exhibits B-133, and B-147)

86. The PEDAL team also made specific recommendations for the student's educational program, including a special education program with a lower pupil/student ratio for core academics, a functional emphasis, a behavioral management system and integration of ancillary therapies. (Exhibit B-147)
87. Between May 27, 1998 and June 8, 1998 the PEDAL reports had been shared with the school staff with the exception of the psychological report, which the parents had returned to PEDAL because of what they thought were factual and historical errors that might affect the conclusions. The first time that document was presented to the Board was in the course of the hearing, on September 24, 1998, in response to the request of Board's counsel. (Exhibit B-153)
88. The CPPT met on June 8, 1998. The parents were present as was a representative from their attorney's office.
- A. The schedule for the AC class, additional occupational therapy goals that included a sensory diet, and the final page, that summarized all the services, etc. were given to the parents at that time.
- B. The following ESY was offered for the summer of 1998. The program was keyed into six of the goals of the 1998-1999 IEP and its purpose was to prevent regression.

During the month of July, the student would participate in the Board's summer school program of four hours per day, five days per week, for four weeks. He would receive direct services for reading and math, and speech and language and occupational therapy services would be provided during this time period; and each afternoon during this summer school program, he would receive one hour per day of tutorial services at home for a total of an additional twenty hours; and during the month of August, the student would receive nine hours of tutorial services.

- C. The parents wanted the five-week summer program at Foundation School, tutorial help from the Board, extended homecare as per the Janette Johnson report, with the most important part being 7:00 a.m. until the school pick-up.
- D. The following program was offered to the student for the 1998-1999 school year. The school day was six hours and forty minutes, the school week thirty-two hours. .

He would attend the AC program at Middlebrook School. He would begin and end his day every day meeting with the school psychologist who would continue the home-school program that had been in effect, meeting with him first thing every morning and with the student and his special education teacher in the afternoon before he left for home. The student would receive twelve hours per week of services in the special education classroom from the special education

teacher, two and a half hours per week of speech and language services in a self-contained setting, two and a half hours per week of school psychology services, two hours per week of occupational therapy services (with one and a half hours direct and a half hour indirect) and one hour per week of adjusted physical education. He would receive his reading program through a one and a half hour per day reading group with two other students, as well as one-half hour per day of individualized reading support with a certified special education teacher. His math would be delivered in the AC classroom with one other AC student for forty-five minutes daily, and in addition, the student would receive thirty minutes per day of one-on-one math drill with a certified special education teacher.

The mainstream activities were to be specials with the third grade class and two other AC classmates, social studies or science in the third grade social studies or science with one other AC student depending on the nature of the activity and participation in lunch and recess with the third grade class and two other AC students.

The Board's program included the continuation of the home/school behavior program that had been implemented by the Middlebrook team beginning in April 1998. The above program was recommended by all of the staff members of the PPT, as well as by Dr. P. a consultant employed by the Board. It was also consistent with the recommendations made by PEDAL.

- E. The AC teacher reported progress on self-help skills in school, i.e. eating, dressing and bathroom needs. These skills were done in an appropriate manner with directions. Dressing still needed to be addressed but the mother did not want it done at school, as there was "not enough time in the day". She wanted the skills to be addressed at home. The OT was addressing jacket zipping. The school would continue to "teach and reinforce self-help skills as related to home needs."
- F. The parents had agreed to the goals and objectives originally presented at the May 8, 1998 PPT and the new occupational therapy goal. While they agreed to the goals and objectives and had no specific objections, they did not want the program and rejected the Board's proposal. (Testimony school psychologist, J.R., Exhibits B-138, B-140, B-141, B-152, and B-153, Testimony, AC teacher, special education teacher, S/L therapist, school psychologist, J.R., OT, Director)
- G. The parents wanted the Board to implement the "Home-Based Support and Learning for [student] and His Parents" plan generated by Janette Johnson, dated June 6, 1998, an expansion of the Janette Johnson plan dated February 6, 1998. This report recommended a "supporter" working in the family home, five days a week from 7:00 A.M. until the student left for school and from 4:00 P.M. until 9:00 or 9:30 P.M. for a period of seven to ten weeks. During this time, the supporter would be delivering direct services to the student. After the student had adjusted to the "new expectations", the parents would be coached on how to support the student. After the seven to ten week period, the parents over a period

- of an additional four to six weeks, would gradually begin to take over the direct services to the student. Thereafter, the supporter would begin and continue a "slow fade". In addition, Ms. Johnson recommended numerous meetings between the supporter, the supporter's supervisor and the parents. The parents were particularly concerned with the hours 7:00 a.m. until the time the student left for school.
- H. The staff members of the PPT rejected the responsibility for the implementation of this program, on the grounds that nothing in this plan reflected that the program was necessary for educational reasons, and it did not suggest or recommend any coordination with or involvement of school personnel. The PPT offered instead to continue the home/school behavior program in effect: behavior management, picture booklet, checklist and consult with parents, with no staff assigned to the home.
- I. The parents again requested that the Board place the student at the Foundation School for the summer of 1998 and the 1998-1999 school year. The staff members of the team stated that they believed that the Board had an appropriate program for the student. The Board consultant who had observed the student in the Board program and who had visited Foundation School had several misgivings concerning the Foundation School program among them being that it did not provide him with an opportunity to receive any of his education with non-disabled children. The consultant had found that the student fit in well with the non-disabled students in Middlebrook School. (Exhibits B-141 B-151, B-152 and B-153, Testimony Director, AC teacher, S/L therapist, OT)
89. The parents unilaterally enrolled the student in the summer program at Foundation School. (Exhibit B-164)
90. The 1998-1999 IEP was implemented and the first quarter evaluation was done in June of 1998 and sent home to the parents on the last day of school. The student's progress was either rated as "objective in progress" or "limited progress" not unexpected considering the IEP had only been implemented five weeks. (Exhibits B-141 and B-176, Testimony AC teacher)
91. During the time that he attended the AC program, the student had no toileting problems at Middlebrook School, nor were there any incidents of his vomiting. When he "picked" at his sleeves in the AC program, he was redirected and it did not interfere with his learning or his education. He was happy in the AC program and staff who saw him in both the AC program and at Jane Ryan reported that he was more relaxed and happier at Middlebrook; however, the Jane Ryan staff reported that once the student started attending Middlebrook, they also saw him happier at Jane Ryan. There was a change in his demeanor and he would come off the bus in the afternoon when he arrived at Jane Ryan "bouncy and smiley". He reported that he liked Middlebrook and liked his teacher. By the end of the fourth grade year, he was saying that he wanted to stay at Middlebrook.

- The student benefited from being with typical peers. He had made progress on all of his goals and objectives during his fourth grade year, although he had made better progress in the AC program than in the Jane Ryan program. "Picking" increased at Middlebrook at the end of the school year. (Testimony AC teacher, special education teacher, S/L therapist, OT, Exhibit B-158)
92. There were still negative behaviors at Jane Ryan School, including toileting accidents and picking. (Exhibit P-30)
93. The S/L therapist had observed the student at Middlebrook and found him actively engaged, and looking and sounding successful. He was self-motivated and he felt good. She felt the AC program provided what the student needed: a structured environment, excellent special education teacher, individual instruction when appropriate and small group instruction using multi-sensory and hands-on strategies. (Testimony S/L pathologist)
94. Throughout the 1997-1998 school year there had been a communication log between the parents and school staff. Once the student started in the AC program the log was used between the parents and Middlebrook school staff. A sampling of the entries is noted below. The student's home behaviors were reported in the log, as were his school behaviors. There were days when there was a mix of appropriate and inappropriate behaviors at home and at school. The log also showed frank communication and cooperation between the parents and AC teacher. A representative sampling is noted below.
- A. The mother wrote on February 7, February 24 and February 18, 1998 that the school should address the parents needs at home. The mother felt that what happened at school was not the most important issue for the parents, they needed help to control his toileting and picking at home and to stop him from biting and pushing the mother and nanny. The mother felt that of the two needs for the student, "reading/math etc" and help in the home, the latter must be started immediately. After the February 18, 1998 communication the AC teacher responded that that would happen at the next PPT.
- B. On February 27, 1998 the AC teacher wrote that there had been a "dramatic" change in the student's behavior during the past few days. He had been very lethargic, very hungry and "unavailable for learning". It should be noted that the father had reported at the February 26, 1998 PPT a change in the student's medication. The student had that day "bathed" and dressed himself at home.
- C. On February 28, 1998 the father wrote that the parents were "at the end of our rope" while acknowledging the AC teacher's efforts in the classroom.
- D. On March 1, the father had taken the student to the Discovery Museum. It had been a very good afternoon "no problems at all." However after dinner the

student had dismantled the toilet, and later he urinated on the coverlet of his bed, prior to his bath.

- E. On March 2, 1998, Monday, the student had great difficulty leaving his mother when she brought him to school. He then had difficulty in the hall, threw his desk and hit at the AC teacher. He also would not pick his head off of his desk for almost forty-five minutes. When approached by the teacher he cried or hit. However by 9:30 he was actively and appropriately participating in the class. On that day he also dressed for swimming with cueing.

The AC teacher felt that a cause of the student's morning behavior was a result of the student's difficulty in disengaging from the mother when she brought him to school. The AC teacher suggested either he take the bus, or school staff meet him at the curb "to avoid the morning agitation and [the student's] unhappiness."

Subsequently the student used bus transportation. The behavior was not repeated.

- F. While the teacher reported that the student had good days at the AC program on March 4th, 5th and 6th, his mother described the morning of the 6th as "just like it used to be---please help."
- G. On March 13, 1998 the mother reported that they were still "feeding, chasing & dressing" the student.
- H. Late in the day on May 5, 1998 the student was uncontrollable after school. The next day in the morning he was fairly cooperative at home.
- I. On May 11, 1998 the father reported that the student had a "very good weekend". He also stated the student would be in his tap and modern jazz recital. The father noted that the student learned so much in those classes.
- J. The first behavioral difficulty at Middlebrook occurred on February 23, 1999, reported the next day, when the student ran away from his aide and to the bus. He also gave her a difficult time coming in from the playground.
- K. On April 7, 1998 the student started a new reading program that he enjoyed.
- L. The student had a "Great day" on April 14, 2000.
- M. A substitute teacher on April 15, 1998 found the student to be fidgety, pulling at his socks and shirt and off task. He was given many verbal clues for reengagement.
- N. The student was alert and involved on April 16, 1998.
- O. On April 17, 1998 the student seemed a little tired but was very co-operative.

- P. The student had a very good day on April 21, 1998.
- Q. The teacher reported a lot of picking on April 24, 1998, which was redirected to a towel temporarily. The student was also preoccupied with Big Bertha, with every sentence using that name. He also was listless.
- R. On May 7, 1998 the student was focused and attentive during a presentation on butterflies.
- S. On May 19, 1998 he did good work in reading.
- T. One June 9, 1998 the student talked about the grandfather, who had died a year ago to his AC class. The presentation was well received.
- U. On April 20, 1998 the AC teacher reported that there was a lot of picking, but he did a good job self-dressing. That night the father wrote to the AC teacher, school psychologist, M and the team that the student was “excellent” that night, with no medication. He bathed himself, dressed himself for bed and put himself to sleep. He had announced he would do all these things. The father then wrote “for me this is a major accomplishment for my son. Thank you all for [the student]. [School psychologist] I suspect that the morning conversations you are having with [the student] about what tasks he performed the previous night & that morning before school are having quite a lot to do with this changed behavior.”

The cause of the picking at school on April 20, 1998 was in the father’s opinion due to that fact that the student had a long time release Ritalin pill. He was convinced that Ritalin=picking.

- V. On March 9, 1998 after a weekend where the student was completely out of control at the “petting zoo” and in the car coming home, posing a serious danger while the car was in motion, the mother wrote in the communication log that there should be IEP goals concerning crowd behavior, car behavior and proper use of the bathroom. On March 11, 1998 the AC teacher wrote the parent that the AC class addresses behavior in crowd, in cars and in restaurants throughout the school year.
- W. On March 30, 1998 in response to specific requests by the parents, the AC teacher made suggestions about homework and the student’s habit of interrupting.

The AC teacher also noted, on that date, that the student appeared to be “over stimulated”, could not attend to that morning’s work and was very distracted during calendar time. He chewed a wad of paper, would not get out of the water during swimming and would not finish getting dressed. The mother, in her response note to the AC teacher, stated that the parents had not given the student his medication that morning.

Also on March 30, 1999 there was a problem with the student's dressing after swimming. The AC teacher decided to have him dress in the girl's locker room so that she could supervise. A girl from the AC class would be the only other student in that room. The mother suggested that they use a space other than the girl's locker room. This was done.

- X. The AC teacher reported on April 13, 1998 that the student was very quiet in the morning, acted like he was going to vomit but "came out of it." He tried to "pick" all morning and needed constant reminders to stop.

The father in his note to the AC teacher felt that the cause was the Children's Tylenol the student had taken that morning. (Exhibits B-159 and B-159A)

95. There also were communications between the school psychologist, M. and the parents as set forth in the Middlebrook plan. These included daily charts and sometimes more extensive written comments.
- A. As indicated by the charts, during April the student preformed many of the tasks that were required of him. However there was also resistance: on April 20, 1998 he would not put diaper in waste basket, would not use the toilet or get in or out of the tub, refused to wear a diaper at night. On April 21, 1998 the father noticed "small bits of BM on the bathroom & bedroom floor." But otherwise the student was cooperative. Toileting was again an issue on April 23, 1998. The father wrote that the school psychologist might address this with the student as she "was having a good input on [the student's behavior] on other areas." The school psychologist did speak to the student and initiated a stamping program as a reminder. The student reported on this to his father who considered it positive. The mother wrote on April 24, 1998 that the suggestion to insist on the student's going to the toilet before bedtime was a good one. However nighttime bed-wetting still continued to be a problem as was the use of diapers and discarding of them. There was an excellent day on April 28, 1998. On May 7, 1998 the father asked that the school psychologist, M. attempt to get the student to tell her why he felt he could "drop feces throughout the house." The father stated that the student did react to his conversations with the school psychologist, M. He further wrote: "I can tell what you two discussed by [the student's] comments when he comes home from school in the pm." There were days in April and May that the student refused to do any of the tasks required. The last chart that was entered as an exhibit was on May 19, 1998.
- B. On May 29, 1998, the school psychologist, M. faxed the parents that she had not heard from the parents "for a while now" and inquiring whether or not the parents wanted to continue. On June 2, 1998 the father wrote that he wanted the school psychologist's conferences with the student to continue, as they made a difference.

The mother, however, wrote on June 3, 1998, that she was surprised at the school psychologist's facsimile, that the student had not attended the AC program from May 22 until June 2, 1998, and that "we have had no substantive information or contact from the school since the beginning of April". The mother mentioned that on May 19, 1998 the mother could not get the student to comply with requests to get ready for school. She finally called the AC teacher, who talked to the student who then became more compliant.

- C. The mother also reported, on June 3, 1998, that on the night of June 2, 1998 the student would not pick up his puzzle pieces, when the mother started picking them up he "shrieked, struck me repeatedly, grabbed both my arms and pinched me very hard while yelling 'you idiot' and other nasty things as well as just loud noise."
 - D. On June 9, 1998 the mother reported an incident wherein in the student ran in front of her car, just as she was preparing to move. The school psychologist replied on June 16, 1998 with suggestions concerning the driveway behavior, and noted that she had not heard that there were problems getting the student to school after the May 19th incident. (Exhibits B-161 and B-171)
- 96. Of the eighty-three school days, the student was absent seventeen or eighteen days, due to sickness, evaluations and field trips with the Jane Ryan class. (Testimony AC teacher)
 - 97. The S/L therapist felt that the split program, observations and several evaluations were difficult year for the student. (Testimony S/L pathologist)
 - 98. The AC teacher implemented all but two of the recommendations set forth in Dr. C.'s evaluation. The AC teacher felt that it was not appropriate to wait to introduce functional words and sight words to the student and she incorporated functional reading into his program. She also did not agree with the recommendation for the "Let's Read" program, nor did she believe that he should be provided with a reading program in ten-minute doses. The AC teacher knew that the mother wanted Dr. C.'s report implemented in its entirety, but she exercised her professional judgment. (Testimony AC teacher)
 - 99. The student participated in the swimming program that was part of the AC program. Students went swimming once a week. It provided an opportunity to work on bus behaviors, socialization, dressing and undressing, physical therapy, occupational therapy and daily living skills. One day the student had difficulties with the dressing aspects on the program and the AC teacher worked with him in the girl's locker room. The parents objected to the use of the girl's locker room and suggested an alternate site, which the teacher then used. (Testimony AC teacher, Exhibit B-159)

100. The AC teacher implemented the Super Kids reading program for the student and he did well with the program, particularly since it used music, which was of special interest to the student. The program was delivered in the small group setting. The student actively participated in the program and enjoyed it. The fact that he participated in it so eagerly was a strong indication of the success of the program since the student had previously been reluctant to read. (Testimony AC teacher)
101. The AC teacher also used the Cast a Spell program in her classroom. This program, which she modified to meet the needs of the students had a strong phonic piece, as well as using sight words. She considered it to be very appropriate for the student based on the fact that during the diagnostic reading evaluation he participated in it successfully. The Cast A Spell program was regularly delivered in the afternoon, (she had rescheduled it in the a.m. in her diagnostic reading evaluation) when the student was at Jane Ryan. The AC teacher asked the mother to have the student stay at Middlebrook for the afternoon to allow him to participate in Cast a Spell. The parents refused. (Testimony AC teacher, Dr. T-C)
102. The student functioned in the middle of the class. He was small and gave the appearance of a seven or eight year old. His father wrote on April 28, 1998 that the student had "fallen off the height/weight chart-getting smaller more quickly & bigger %difference from other boys his age. (Testimony AC teacher, Exhibit B-161)
103. During that school year, 1997-1998, there were times the student was lethargic. There were instances of picking and ripping at his clothes in the AC classroom, but these were addressed and there were no toileting problems reported at the Middlebrook School. There were medication changes during the year. Sometimes the parents reported them, other times the witness inferred the changes had been made from an increase in appetite, as Ritalin has been known to suppress the appetite. (Testimony AC teacher)
104. At the end of the school year, when all parents were invited to the class for a student program, the student refused to participate and distanced himself from the proceedings. This behavior was atypical of the student and the AC teacher felt it had to do with the parents' presence in the class. (Testimony AC teacher)
105. The student was well received in the class. However he was a loner at recess even though his day was extended at his request so he could participate. He particularly liked one little girl but had no close relationships. (Testimony AC teacher)
106. Mainstream specials while the student was in the AC class were with younger children, as that was the environment that was best for him. He was never

- reluctant to go and enjoyed the specials. A paraprofessional accompanies children in the AC class to specials. (Exhibit B-117, Testimony AC teacher)
107. The AC teacher was pleased with the student's progress during the year as there were no toileting problems, he continued to eat, he spoke with the students on the bus, was making friends feeling comfortable, and appeared to be happy. She considered it a positive half-year, socially, academically and emotionally. (Testimony AC teacher)
 108. The Board occupational therapist testified. She had worked with the student since January 1997, when he was in third grade, for one and a half hours a week and for a period of time the OT saw the student before school working with him on deep pressure activities. (Testimony OT)
 109. A main concern was hand strength, which affected his handwriting. He also had needs in the sensory integration area that manifested itself in his "picking". While successful strategies were initiated to limit it and redirect the student, the therapist was never certain as to the cause. Possibilities were anxiety and medications. The student engaged in picking mostly during unstructured times. (Testimony OT)
 110. In the eighteen months that the OT worked with the student she saw improvement in his computer skills going from one handed to two handed, he could focus for a longer period of time, his handwriting improved but remained an area of concern, he could consistently follow two-step direction and three step ones if routinized. (Testimony OT)
 111. The OT found the student to be more social, to eat more at Middlebrook than at Jane Ryan. She felt him to be happy and take more interest in academics in the AC program. At Jane Ryan he was quieter and there was more "picking" activity. There were times at Jane Ryan when it interfered with his learning. He sometimes engaged in picking when she was dealing with him one-on-one, perhaps ten times during the year. The student enjoyed his time at Middlebrook from the beginning. (Testimony OT)
 112. While the student was at Middlebrook, the OT saw him in his classroom when she was working with other children and was in the cooking class with the special education teacher; the direct services to the student were given at Jane Ryan. (Testimony OT)
 113. During the student's fourth grade, the 1997-1998 school year, he had occupational therapy services for one and a half hours, one hour in the classroom, the half hour in the resource room. For the 1998-1999 school year there would have been two hours of therapy a week. The services provided were similar to those during the prior year, with more time on the computer to work on two handed computer skills. (Testimony OT)

114. During the 1997-1998 school year the student had sensory breaks at any time during the day when required. Based on the PEDAL evaluation during the 1998-1999 school year the student would have sensory breaks every two hours. The paraprofessional would be trained in how to implement this. (Testimony OT)
115. Many of the elements of a sensory diet listed in Foundation School material had been implemented by the OT prior to June 1998. Some would be implemented during the 1998-1999 school year. It was unnecessary to implement the entire list, as it was a generic list. (Testimony OT)
116. During the 1997-1998 school year the student attended religious school and a Saturday jazz class. The experiences were positive. (Exhibits B-159 and P-31)
117. The mother had always wanted the student to have homework assigned. School staff did not think it was that important or beneficial to the student. (Testimony special education teacher, AC teacher, Exhibit B-150)
118. The same teacher taught the AC class during the 1998-1999 school year, (when the student was at Foundation School). Team meetings continued on a weekly basis as they had the prior year. The same transdisciplinary approach was used in the 1998-1999 school year. A speech and language therapist worked with the students as a group in the classroom twice a week. The social worker came in more frequently than she had the prior year and worked with the students on dealing with their feelings, turn taking, and kindness. The occupational therapist continued to come into the classroom and work with the students while the AC teacher delivered a cooking lesson. During the 1998-1999 school year, the AC teacher used shopping and cooking as a means of teaching the students functional reading and math, behaviors in the community, as well as for a socialization opportunity. (Testimony AC teacher, OT)
119. During the 1998-1999 school year, there were ten students in the AC program. Of these ten students, five remained in the AC classroom a majority of the day; these were students who had been with the student in the AC program during the 1997-1998 school year. One student was mainstreamed almost entirely. The three youngest students were in the classroom only in the morning. In addition to the AC teacher there was another special education teacher who spent one and a half hours per day in the AC classroom, two full time paraprofessionals and two or three part time paraprofessionals. The second special education teacher had been employed because of the expectation that the student would attend the class. (Testimony AC teacher)
120. Of the ten student in the AC class for the 1998-1999, four were classified as mentally retarded, one unclassified and the other five OHI. Of those two were PDD, a classification not used for identification under the IDEA.

- The age range of the students was from 5 years 8 months to 10 years 2 months as of September 1998, the student's age at that time was eleven years two months. The student's overall level of functioning was in the middle, compared to the other students in the class; some students functioned at a higher level than the student and some students functioned at a lower level. (Exhibit P-41, Testimony AC teacher, OT)
121. The AC program was appropriate for the student for the 1998-1999 school year as it had a small student to pupil ratio, addressed life skills, academics and behavior management in a quiet contained environment. (Testimony school psychologist, J.R.)
 122. The special education teacher (at Jane Ryan) felt the AC program to be appropriate. The AC teacher was excellent, the program offered academic and functional skills, which was what the student needed, the curriculum was excellent, the student's interaction with the mainstream was positive, and he was happy. The student was in a structured, consistent, and calm environment. (Testimony special education teacher)
 123. The special education teacher felt mainstreaming in science and social studies appropriate for the 1998-1999 school year as the student could benefit from the interaction in the classroom and the program was hands-on. (Testimony special education teacher)
 124. The Director of the Foundation Middle School testified on May 26, 1999. She had first met the student in May or June of 1998. He had been accepted in the summer program and started that in July 1998. The summer program of twenty-two days was used as a diagnostic placement in preparation for the fall enrollment.
 - A. When the student started the 1998-1999 school year, sometime around September 1, 1998 the student was very anxious: he picked at his clothes, threatened to vomit, was verbally perseverative, had urinary accidents, and his primary interaction was with the adults not students.
 - B. At the time of her testimony he was less anxious, the picking was reduced significantly, he did not complain of illness or threaten to vomit, was not verbally perseverative, urinary accidents were rare. However, he still preferred to associate with adults. While his negative behaviors continue to exist, they are rare.
 - C. Since medication is not administered at school the witness did not know what medications were being given to the student.
 - D. The school's behavior charts do not go home.

- E. The usual school day is 8:45 a.m. until 2:15 p.m. with twenty-seven and a half hours of school time a week. However, since the student's bus does not arrive until 2:30 p.m. he receives additional services. (Testimony Director, Foundation Middle School)
- F. The director had reviewed both of Dr. C.'s reports; the central auditory evaluation, several PEDAL reports and the Board's draft 1998-1999 IEP. (Testimony Director Foundation Middle School)
- G. The student's IEP at Foundation School, finalized in October 1998, was developed by the teacher working with him suggesting goals and objectives. The teachers used the draft IEP from the Board. The Foundation School IEP was characterized by the witness as "very similar" to that of the Board. The occupational therapy objectives were different, the reading somewhat different as was the math. The witness considered that the draft IEP for the 1998-1999 school year from the Board to be an appropriate IEP for the student. (Testimony Director Foundation Middle School, Exhibit P-35)
125. There is no home-school program at the Foundation School. The parents brought in another agency to address a home program. Foundation School has some input, but it was not part of the planning. The witness did not know what behaviors were being worked on at home, nor what strategies the parents used. (Exhibit P-39, Testimony Director, Foundation Middle School)
126. There are no goals and objectives concerning toileting, "picking" and no behavior management plan. (Testimony Director, Foundation Middle School)
127. The student was progressing at Foundation School. He was in classes with at the most four students and was doing well. (Testimony Director Foundation School)
128. A teacher at Foundation School on October 23, 1998 wrote the mother that the student was holding out in a "bigway," vis-a-vis his reading skills, meaning that he knew more than he had previously shown. On November 9, 1998 a teacher felt that the student's picking was more pronounced during unstructured time. (Exhibit P-38)
129. There were still at home behavioral concerns of the parents after the student's enrollment and attendance at Foundation School.

This was testified to by Dr. T. in August of 1998, noted by the assistant professor of pediatrics and neurology in a follow-up to the PEDAL evaluation, dated October 22, 1998, and Dr. N. during his home visit in June of 1999 wherein he described the student's behavior as "grossly inappropriate" and that he was in need of twenty-four supervision.

- In addition, the parents had started working with the Institute of Professional Practice (IPP) on a home behavioral program, to be implemented on October 29, 1998. The purpose of the IPP program was to “increase participation in following a daily routine while decreasing inappropriate behaviors.” Those behaviors were non-compliance, aggression towards people, aggression towards objects, clothes ripping wet/soil during the day. (Exhibit P-37, P-39, Testimony Dr. T., Testimony Dr. N.)
130. Dr. N., Dr. T. and Dr. C. all testified that Foundation School was an appropriate placement for the student. (Testimony Dr. D, Dr. C. Dr. N.)
131. Dr. C. a holder of a Doctorate in speech, had evaluated the student on December 3, 1997 and again on April 7, 1999 and had issued a report on both evaluations. She observed the AC class on the day she testified, May 26, 1999, near the end of the 1998-1999 school year. The student had been at Foundation School for that entire year. (Testimony Dr. C., Exhibits B-96, P-44)
132. The witness observed the AC class at a shopping trip to Stop and Shop. The entire class was not on the trip and for those on the trip it had real value. She did not think that the student would benefit from the experiences, and that it would be overwhelming for him. She also observed some of the classroom activities. She thought the children that she observed (again, it was not the entire class) were more advanced than the student. She was not sure of their ages. She felt the activity was too fast paced for the student and that the teacher spoke too quickly. She found one child to be an inappropriate classmate, she disagreed with some of the materials being used and felt there were too many changes in the swimming activity.
133. The AC teacher, however, felt that the shopping activity at Stop and Shop that her students participated in during the 1998-1999 school year would have been an appropriate one for the student. It would address behavior in the community and on the bus as well as shopping skills and handling money. It should be noted that it was not listed in the IEP and therefore one cannot conclude that the student would have started out in that activity.
- Furthermore the student had participated in the swimming program during the 1997-1998 school year and was able to enjoy and deal with the activity. No evidence was presented that it was in fact an activity with too many changes for the student. (Testimony AC teacher, Exhibit B-152)
134. Dr. C. had the following reservations concerning the AC class as an appropriate placement for the student:

She thought the Cast A Spell program would be too distracting for the student and that he did not have enough phonological awareness to benefit. The other children in the class did well with the program. However the AC teacher testified that she

had used the program successfully with the student during her diagnostic evaluation.

Dr. C. was concerned that the distractions in the classroom, individualized lessons to the children resulting in background noise would be a challenge to the student.

Most of the interaction she witnessed was between the adults and children, not child to child.

Dr. C. had, before observing the student, thought that the peer group would not be academically advanced enough for him. After the observation, she thought they might be too advanced. (Testimony Dr. C.)

135. Dr. C. had observed the student at the Foundation School. She saw him as being actively engaged, very motivated, thought the student might have been higher functioning than a student in his speech program, and had slightly lower skills than a student in his math class. There appeared to be few social or behavioral issues at Foundation School. (Testimony Dr. C.)
136. When she evaluated the student the first time, on December 3, 1997, he was a full day student in the Jane Ryan School. He was in a mainstream class for social studies, science, art, music and PE. He received support in reading and math in a small group by a special education teacher. She had not been aware that school staff was advocating a self-contained program for the student. His mother described him to the evaluator as a strong-willed child, difficult to manage at home. The evaluator herself had difficulties with the student. (Exhibit B-96)
137. Dr. C. had found a marked change in the student during the second evaluation. His ability to adjust to the demands of the testing had improved. Control battles were much less. At the time of the second evaluation she was under the impression that the AC class was mostly mentally retarded students. The parents had requested the second evaluation to see if the student had progressed, and if not what could be done. (Testimony Dr. C., Exhibit P-44)
138. The evaluator, inter alia, recommended that that the student be in a calm environment and “regulated into a more stable and productive state by reducing the pace of surrounding activity, speaking softly and slowly.” The student required a very controlled structured environment. The real issue as to placement was the makeup of the class and the control of the environment. (Exhibit B-96, Testimony Dr. C.)
139. The evaluator did not believe that the student would benefit from any mainstreaming and felt that the student had only obtained minimal benefit from his mainstream years. The problem was not so much that the other students were non-disabled, but rather that the student could not cope with a mainstream environment. (Testimony Dr. C.)

140. The witness felt that the picking behavior was neurologically based and influenced by medication and the environments. It could be a soothing behavior. She did not think a behavior management plan would benefit the student, what he needed was a calm environment and medication. In this she disagreed with the PEDAL evaluation. (Testimony Dr. C.)
141. The evaluator had not spoken to any school staff as she thought the evaluation was being paid for by the parents. However, even had she known, she still might not have spoken to Board staff. (Testimony Dr. C.)
142. Dr. C. was of the opinion that the reading program at Foundation School was beneficial but not sufficient. (Testimony Dr. C.)
143. The evaluator knew that the student's behavior at home was an important concern of the parents. She believed that as long as the behaviors were challenging and impeded the student's learning there should be a coordinated approach to support appropriate behaviors, otherwise, coordination would not be so important. (Testimony Dr. C.)
144. The witness was not concerned about the student's social skills, as she felt that once he developed a "strong sense of self" such skills would follow. However she did not consider social skill goals in the IEP to be harmful. (Testimony Dr. C.)
145. Dr. C. considered the inclusion of functional academics in an IEP to be appropriate as a fall back position, in case the student was unable to profit from a conceptual one. (Testimony Dr. C.)
146. Dr. T-C. the Board's expert witness and an expert in autism had observed the student at Foundation School sometime around June 7, 1999.

She found one student to be an inappropriate classmate for the student, (in that the other child's needs overshadowed the student who was lost), two classes to be problematic (quality of teacher), one class, while a good subject for the student, was delivered in a non- useful manner, and three classes to be well managed and appropriate for the student. He did well at lunch and at recess.
(Testimony Dr. T-C)
147. Dr. T.C. observed the AC class the same afternoon. She felt the physical structure of the AC classroom for the 1998-1999 school year to be well laid out, neat, inviting and well ordered. It was a highly structured environment and the student would have fit in quite well. The AC teacher continued to deliver the Cast A Spell program and the students responded very well to this program.
(Testimony Dr. T-C)

148. She felt that the teacher had high expectations and the students responded to those expectations. One of the children appeared to have a PDD, was pretty high functioning and seemed to be a good match for the student. She felt that the student would have been well served in the class as it was structured, a small number of students, excellent adult support, and there was good interaction between the students and with the adults. (Testimony Dr. T-C)
149. Based on her review of the student's records, her observation at Foundation School, the curriculum and the teacher's ability, she felt the student would have fit into the class. She did not see the teacher's rate of speech as posing a problem for the student, nor the age range of the students. Autistic children sometimes do better with younger children. (Testimony Dr. T-C)
150. She felt that lunch and recess should be in a structured group for working on social skills. Mainstream classes should also be planned and structured to maximize benefit for the student, and that community activities should not take too much time from academics. (Testimony Dr. T-C)
151. Dr. N. testified on June 22, 1999. He first saw the student on February 23, 1999 when his mother brought him in as she questioned the PEDAL diagnosis of mental retardation. He was still in the process of evaluating the student. He had observed the student at Foundation School the prior week and visited the home sometime around June 21, 1999. (Testimony Dr. N.)
152. The student's behaviors at home, as seen by Dr. N, were "grossly inappropriate." He could not have a conversation with the parents, as the student was seriously intrusive. The parents were at a loss as to how to manage. The student's behavior at Foundation School was markedly different. (Testimony Dr. N.)
153. He found the parents to be burned out as parents. They are trying to do too many roles, which caused the parenting role to be eliminated. In his opinion the student requires a twenty-four hour a day program. (Testimony Dr. N.)
154. Dr. N. felt that the student must get his behavior under control at home; otherwise he was concerned that at some point they would overlap into his school behavior, which would worsen. (Testimony Dr. N.)
155. The home program must include a person who would institute and maintain effective modifications that appear to be working at Foundation School. The student would require someone at home all the time. The monitor would have to deal with social and emotional relationships. The person must be experienced in this field. (Testimony Dr. N.)
156. The student's two main goals educationally should be language development and social and emotional learning. (Testimony Dr. N.)

157. The witness was told by one of the parents that the student, while in the Board school, was in with retarded youngsters. Dr. N. felt that it could be all right for the student to be in a class with some mentally retarded students as long as the student would not be the leader. (Testimony Dr. N.)
158. The witness thought contact with non-disabled peers would in all likelihood be non-beneficial as the student's behaviors were too unusual, compromised and obtrusive to non-disabled students. He felt that the student could not compete at any level even though he might be able to cooperate for a short period of time and that the student would pick up on the negative reactions and feel rejected. (Testimony Dr. N.)
159. Dr. N. was not aware that the student had been in an inclusion program. (Testimony Dr. N.)
160. As to the picking, Dr. N. thought anxiety, attention getting could start the picking and then it would take on a life of its own. (Testimony Dr. N.)
161. The student's private occupational therapist testified. She had started working with the student in 1994. At that time there was not much "picking". She sees "picking" behaviors during her one-on-one tutoring sessions, where it did interfere with his learning. It is her opinion he exhibits this behavior when he has to sit still and has nothing to do, when he tried to focus, is stressed, and when he chooses it as a way of acting out. (Testimony Private OT)
162. The student's picking at home as noted on February 24, 1998, was of much greater magnitude than at Middlebrook. He would dismantle his clothes resulting in bags of clothing that were continuing to increase. (Exhibit B-159)

CONCLUSIONS:

1. The Supreme Court in *Board of Education of Hendrick Hudson Central School District v. Rowley* 458 U.S. 176 (1982) set out the following two-prong test that has been referred to ever since in determining whether a student has received a FAPE. Was there compliance with the procedures set forth in the IDEA and was the IEP developed through those procedures "reasonably calculated to enable the child to receive educational benefits?" The Court also stated that what was reasonable progress for one child, might, due to the broad spectrum of disabilities not be for another.
2. Other courts have elaborated on that that decision.

The IEP must provide the child with opportunity for more than "trivial advancement" and an appropriate public education under IDEA is one that is likely to produce progress rather than regression. *Mrs. B. v. Milford Bd. of Educ.*,

103 F.3d at 1121; *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997), cert. denied 118 S.Ct. 690, 139 L.Ed.2d 636 (1998).

In Connecticut there is no requirement under IDEA or State law that the appropriate education must be one that maximizes the potential of the disabled child.

In *Walczak v. Florida Union Free School District*, 142 F.3 119, U.S. Court of Appeals, 2nd Circuit (April 16, 1998) the Court discussed the appropriate standard. The Court in *Walczak*, supra, wrote the purpose of the IDEA is “to open the door of public education to handicapped children on appropriate terms” rather than “to guarantee any particular level of education once inside. Plainly, however, the door to public education must be opened for a disabled child in a meaningful way.” The statute guarantees an appropriate education, not “one that provides everything that might be thought desirable by loving parents”. Citing *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2d Cir. 1989).

3. It should be noted that *Tucker*, supra was overruled by the Supreme Court in *Florence County School District Four, et al v. Carter* 114 S. CT 361, (1993). While the Court wrote in *Carter*, supra, “This case presents the narrow question whether Shannon’s parents are barred from reimbursement because the private school in which Shannon enrolled did not meet Section 1401(a)(18) definition of a “free appropriate public education” and held that those requirements did not apply to parental placements, thus overruling *Tucker*, supra, for its ruling denying reimbursement to the parents for a unilateral placement. However, that decision did not overrule the standard enunciated in *Tucker*, supra, (which was cited in 1998 by the court in *Walczak*, supra) for determining the appropriateness of a school district’s IEP.
4. The remedy sought by the parents is reimbursement for their unilateral placement of the student for the summer of 1998 and the school year 1998-1999 at Foundation School. In order for the parents to prevail the Board must fail to show that it had an appropriate program for the student and the parents must show that the Foundation School placements were appropriate. *School Committee of the Town of Burlington v. Dept. of Educ.* 471 U.S. 359 (1985)
5. It is undisputed that Foundation School did not offer a home-school program during the 1998-1999 school year, neither the Board nor Foundation School offered an extended day program, the summer program offered by the Board was of longer duration than that offered by Foundation School and neither the Board nor Foundation School offered a home-school program during the summer.
6. It is clear from the issues presented and the parents’ argument that they felt these elements to be critical to an appropriate program for the student.

7. While the parents, if a Board is not providing a FAPE, are not bound in their placement decisions to the requirements of Section 1401 (8) of the IDEA (which reads the same as then Section 1401(a)(18) cited in *Carter*, supra,) they are required to place the child in a school with an appropriate program.
8. The parents cite *Norton School Committee v. Massachusetts Department of Education*, 768 F. Supp. 999 (D. Mass. 1991) for the proposition that the parents do not have to select a “perfect alternative placement” or for that placement to be “the exact and proper placement”. The Court in *Norton*, supra, cited *Alamo Heights Independent School District v. State Board of Education*, 790 F. 2d 1153, U.S. Circuit Court of Appeals, Fifth Circuit, (1986). In that case the parents unilaterally enrolled the child in a structured summer program, after the Board had refused to do so. The District Court had determined that a structured summer program was necessary to meet the child’s needs and to stop regression, however it did not explicitly find that the program in which the student was enrolled “constituted the specific type of programming necessitated by the act”. Nevertheless, the Circuit Court held that it “...was better than no summer program at all.” The Court then went on to say that whether or not the parent was entitled to full or partial reimbursement would depend on whether there were more suitable summer placements, the parent’s efforts in finding those placements and the Board’s cooperation or lack of same.
9. This is in marked difference from the case before us wherein the Board has offered a home-school program, and the Foundation School has none.
10. Given the importance the parents place on a home-school program and if it is found that the student requires a home-school program similar to that set out in the Janette Johnson Report in order for him to be provided with a FAPE, then the lack of this component raises the omission to a much higher level than one where the private placement was just less than the “perfect alternative placement” or that the private placement was not “the exact and proper placement”. The same would be true of an extended day program.
11. The Board cites *Board of Education of Somers Cent. Sch. Dist.* 31 IDELR 253 (NY 1999), a second tier hearing officer decision. In that case the student’s IEP required as related services, S/L therapy, occupational therapy and physical therapy. The parents brought due process challenging the school district’s placement for their child. There was no dispute that the child required the related services set out in his IEP. The private school in which the parents unilaterally enrolled the child did not provide those related services. Therefore the hearing officer held the unilateral placement not to be appropriate and denied reimbursement.
12. The above cited case is more closely related to the present proceeding and while not binding on this hearing officer is persuasive.

13. Therefore, if it is determined that the Board program for the 1998-1999 school year is not appropriate due to the lack of an appropriate home-school program or an extended day program, and/or the Board's summer school program is found to be inappropriate for the same reason, the Foundation School programs must be found to also be inappropriate and the parents are not entitled to reimbursement.
14. The next question to be determined was whether or not the 1998-1999 IEP was appropriate. The standard for the appropriateness of an IEP has been set out in Conclusions 1 and 2, supra.
15. There have been extensive exhibits and testimony concerning the student's educational history, including time at pre-school and at the Board school. One must conclude that throughout the student's time of receiving educational services by the Board the parents were full partners in the PPT process; in the planning for the student and in the developing of the IEPs. They were advocates for him and their opinions often prevailed. When the determination was against them, their opinions were always carefully considered. The parents were always given the opportunity to participate in the development of the IEPs and did participate. This was also true for the 1998- 1999 IEP.
16. There is no legal mandate that prohibits a draft IEP from being prepared by appropriate school staff prior to the PPT meeting, i.e. off site. What is critical is that the draft be fully discussed at the meeting. This is what happened in the promulgation of the 1998-1999 IEP.
17. There is no requirement that a PPT vote on whether or not to accept an IEP.
18. The IEP for the 1998-99 school year was in place at the beginning of that year. As was the practice for the student the IEP was promulgated prior to the end of the 1997-1998 school year, effective when promulgated. It also encompassed summer programming for the summer of 1998.
19. The issue posed by the parent "It only offered what the Board could provide if the parents agreed" was not addressed by any evidence nor clarified in the parents' brief. There was no contradiction offered to the minutes of the PPT meetings and to the testimony of school staff that clearly showed that the student's program was individualized and that his instruction was geared to the IEP and his needs.
20. The parents were not denied their due process rights by the Board.
21. The draft goals and objectives in the 1998-1999 IEP had been prepared by school staff knowledgeable in their fields and familiar with the student, his progress and needs. The parents did not register objections to the goals and objectives set forth in the 1998-1999 IEP as discussed at the PPTs in May and June of 1998. There has been no evidence submitted disputing the goals and objectives. It should be noted that the Director, Foundation Middle School testified that the goals and

objectives were similar to those that the Foundation School implemented and the IEP was appropriate,

22. Since the IEP became effective in May of 1998, there was time to evaluate the student's progress prior to the end of the school year. The student's progress on his goals and objectives was noted in oral reports made by the teachers at the PPT meeting in June of 1998 and on the IEP form sent to the parents. There was no evidence introduced to question those reports or to raise the specter that progress would not continue into the next school year. Further there was no evidence introduced to raise the question that the progress was not meaningful or that the student was regressing.

It must also be noted that there was no evidence introduced to contradict school staff reports that the student made progress vis-a-vis his goals for the 1997-1998 school year, during which he spent time in the AC class.

23. Throughout the time the student was in the AC program there was frequent communications between the AC teacher and the parent, and beginning on April 16, 2000 there were communications between the parents and the school psychologist, M. as per the Middlebrook plan. There were days in school that he picked, was lethargic, and had difficulties with a substitute teacher. Sometimes there were known specific causes, i.e. medication or no medication, other times the specific cause was unknown. Nevertheless these behaviors could be addressed, redirected and managed.
24. There was only one incident of aggression reported at Middlebrook (on March 2, 1998) and that was short lived. It appeared to have a specific cause and with the cooperation of the AC teacher and the mother modifications were made, i.e. the student took the bus to school. There was no reoccurrence.
25. It is clear that during this time the student's behaviors at home were significantly beyond the norm, aggression toward household members, carrying and dropping feces through the house, urinating in places other than the toilet and destructive acts in the bathroom. In addition there were times when his parents could not manage him in the community and he presented safety issues to himself. These behaviors continued throughout the school year.
26. Nevertheless the student still made progress toward his IEP goals and objectives and there was no evidence introduced to show how these home oriented behaviors impacted on his educational performance.
27. The communications of May 29, June 2 and June 3 1998 between the school psychologist M and the parents bear some comment.

It is unclear why the school psychologist did not know the student was absent and why the mother said there had been no substantive contact or information since

- April, given the known communications between the staff and parents. The school psychologist, M. is no longer employed by the Board and was not called as a witness and the mother's testimony was stricken, these questions will have to remain unresolved. What is clear is that the father wanted the contact between the student and school psychologist M. to continue and thought it beneficial.
28. The home school program offered by the Board was an integrated program as the student and the school psychologist, M. would discuss what had transpired at the home and the parents and school psychologist were in constant communication.
 29. Since the mother's testimony was stricken due to her refusal to complete her cross-examination and since the father, though present at all sessions of this hearing did not elect to testify as to the substantive events, the only evidence directly attributable to the parents is in their written documents. However there were certain statements made by the witnesses purporting to offer evidence of concerns the parents had voiced to them.
 30. One was the appropriateness of the peer group in the AC class, particularly the ages of the students and whether they were TMR.
 31. It is true that the student would have been the oldest child in the 1998-1999 class. He was of very small stature and immature. Three of his classmates were within two years of his age and two others slightly younger. He had during the 1997-1998 school year been deliberately and successfully programmed with younger children. This pairing of an autistic child with younger children is not unusual according to Dr. T-C. In addition five of the children had been classmates during the 1998-1997 school year, and there was no evidence presented to indicate they were unsuitable.
 32. While there were some children whose classification was EMR, there were none who were classified as TMR, and there were five whose classification was OHI. It should be noted that while the student has a PDD-NOS diagnosis, his official classification is OHI, as PDD is not an official classification under the IDEA. There was uncontradicted testimony that other students in the class also were PDD.

Furthermore, the student would not have been the highest functioning student in the classroom rather his functioning level was in the middle.
 33. A second problem, one set forth by Dr. C. and apparently adopted by the parents was the AC's teacher's rate of speech, which Dr. C. had noted during her visit to the class in June of 1998.
 34. The student had been in this teacher's class during the 1997-98 school year, half a day for approximately half the school year. His treating psychiatrist who observed him in the class made no mention in his notes or in his testimony of the

- teacher's speech patterns. This was also true of the PEDAL observation. There is nothing in the record to show that her rate of speech was an issue during the 1997-1998 school year.
35. The Board S/L therapist, who had worked with the student since his second year in kindergarten, observed him at the Middlebrook School for a morning and found him to be attentive, participatory and engaged with the teacher and having no problem with the way she spoke.
 36. The Board's expert witness who observed the class in June 1999 thought the teacher would be excellent for the student and that her rate of speech was not a problem.
 37. The great preponderance of the evidence present leads to the conclusion that the AC teacher's rate of speech presented no problem to the student in 1997-1998 and there is no reason to conclude that it would have been a problem during the 1998-1999 school year.
 38. The parents at the PPT meetings, while the student was in the AC class made no objection to the teacher or her way of teaching. None of the observers, who observed the student when he was in the class made any note of deficiencies in the method of instruction, the teacher's rate of speech or the appropriateness of the classroom students. The parents themselves requested that the student remain in the AC class for the remainder of the 1997-1998 school year.
 39. Two expert witnesses, Dr. T-C. for the Board, and Dr. C. for the parents, observed the student at Foundation School and the AC class within two weeks of one another in late May and June 1998. Both testified.
 40. The conclusions drawn by the experts concerning the AC program differed.
 41. Dr. C. was concerned about the Cast A Spell program. Dr. T-C. thought it could be modified if needed. It should be noted that the AC teacher who knew the student best, had used it during her diagnostic teaching and felt that the program had been and would be beneficial for the student.
 42. While Dr. C. thought the AC teacher spoke too quickly, Dr. T-C did not see it as a problem. Nor did school staff who had seen the student in the AC class and had a history of working with him.
 43. While Dr. C. thought the classroom structure would be too distracting for the student, Dr. T-C felt the physical structure of the AC classroom for the 1998-1999 school year to be well laid out, neat, inviting and well ordered. It was a highly structured environment and the student would have fit in quite well.

There was no evidence presented to indicate that in fact, during the 1997-1998 school year the student had been distracted by his surroundings.

44. Dr. C. at the time of her observation felt that most of the interaction she witnessed was between the adults and children, not child to child. Dr. T-C, on the other hand, commented positively on the interactions between the students.

It should be noted that the observer for the PEDAL evaluation wrote positively concerning the interrelationships of the students during the 1997-1998 school year.

45. Dr. C. and Dr. T-C had observed the student at the Foundation School and again came to different conclusions.

Dr. C. had seen him as being actively engaged, very motivated, thought the student might have been higher functioning than a student in his speech program, and he had slightly lower skills than a student in his math class. There appeared to be few social or behavioral issues at Foundation School. However, she did feel that the reading program, although beneficial, was not appropriate.

Dr. T-C. found one student to be an inappropriate classmate for the student, (in that the other child's needs overshadowed the student who was lost), two classes to be problematic (quality of teacher), one class, while a good subject for the student, was delivered in a non-useful manner, and three classes to be well managed and appropriate for the student. He did well at lunch and at recess.

46. There has been no evidence adduced that would lead to the conclusion that the student's IEP could not be successfully delivered in the AC classroom, both as to his academic and social goals. It was an appropriate environment for the student during the 1997-1998 school year. The teacher was an appropriate teacher for the student during the 1997-1998 school year. There has been nothing to show that it would not be appropriate during the 1998-1999 school year.
47. Given the disagreement between expert witnesses, the clear testimony of school staff, the Exhibits and the student's past history as to the appropriateness of the AC class for the student, the Board has met its burden of establishing that the IEP for the 1998-1999 school year could be delivered in the AC class.
48. Therefore, what now has to be established is whether or not the 1998-1999 IEP proposed by the Board meets the standards set out in Conclusions 1 and 2, supra.
49. The 1998-1999 IEP provides for mainstreaming opportunities for the student, in specials, social studies/studies, and during lunch and recess. The parents' expert witnesses stated that in their opinion the student could not handle such mainstreaming.

50. The expert witnesses of the parents believed that not only is it not necessary for the student to have mainstream opportunities, but that such opportunities at the very best would not be beneficial but in fact could be detrimental. Further, the expert witness of the parents testified that they doubted that the years in an inclusionary program were productive for the student. (It must be noted that Dr. N. had not been aware that the student had ever been educated in the mainstream.)

Dr. C. felt that the problem with mainstreaming was not necessarily that the student would be with non-disabled peers, but that the mainstream environment would be too much for him.

51. Through the second grade there was agreement to provide an inclusion program for the student and both school staff and the parents recognized that the student benefited from the program. During third grade the school staff advocated some pullout instruction and the parents agreed. During fourth grade it became increasingly apparent to the school staff that the student required a more self-contained environment for his academics, and with the support of evaluations, the parents did agree to try a split program, half inclusionary at the Jane Ryan School and half self-contained at the AC program at Middlebrook. The school staff and parents still felt that there was benefit for the student in interaction with non-disabled peers.
52. It is clear from testimony of the staff and exhibits that both the staff and the parents concluded that there had been distinct benefit for the student in his contact with non-disabled students. The student also attended and benefited from Hebrew school and it appears he did well in a Saturday jazz class.
53. The testimony of the AC teacher at Middlebrook, where mainstream activities were carefully arranged, i.e. having him attend a music class with younger children, was that they were successful. There was no evidence to the contrary presented. While one observer from PEDAL considered lunchtime problematic, from the point of the student's active participation, there was nothing in that report to suggest it was detrimental. The PEDAL report also recommended selected mainstreaming.
54. Given the federal mandate for a student to be educated with non-disabled peers to the maximum extent possible, the conclusion in The Report of the Connecticut Task Force on Issues for the Education of Children with Autism, that a component of programming should include "planned integration with typical peers", the PEDAL recommendation for selected mainstreaming, the awareness of Board staff to the need to monitor such mainstreaming, and of primary importance, the known benefits that the student has received from such contact, the conclusions of the parents' expert witnesses are not persuasive and must be rejected.

- It must also be remembered that the IEP was developed in the spring of the 1997-1998 school year, while the student was scheduled with non-disabled students and such scheduling was seen as beneficial by staff and parents.
55. As to the question of the advisability of AC class activities in the community the following must be noted. Even though the student was very difficult for the parents to deal with on excursions in the community there was no evidence that school staff had the same difficulties. The student did go on field trips with the Jane Ryan mainstream class, and there was nothing negative presented as to those trips. He did attend the swimming program with the AC class and that it was offsite did not present a problem.
 56. An IEP is a document that is amenable to change. If indeed the student had shown difficulties with the mainstreaming component of the IEP or of the community activities these could have been changed.
 57. The parents, in their statement of issues, pose the questions as to whether the student required additional support services at home, an extended day program, and an extended year program (ESY) other than that offered by the Board for the summer of 1998.
 58. There is no doubt that the student is a very difficult child to manage at home. The record is clear that the student's behavior with his parents was much more problematic than when he was at school and that the school staff was aware of the parental difficulties, frustrations and appeals for help.
 59. The support services offered for the 1998-1999 school year were, for all intents and purposes a continuation of the Middlebrook plan as implemented on or about April 13, 1998, i.e., behavior management, picture booklet, daily communication between the school psychologist and the parents, daily communications between parents and school psychologist and the school psychologist conferencing with the student. The twenty-minute conference in the morning was the same, but given the fact that the student would be in the AC class the entire day, under the IEP of 1998-1999 the afternoon conference would be with the student, school psychologist, M. and the AC teacher.
 60. The parents requested that the program set forth in the Janette Johnson reports (February 6, 1998 and June 6, 1998) be implemented. The PPT rejected that request which provided for an additional person in the home from 7:30 a.m. until the student was on the school bus and in the p.m. from when he got home from school until bedtime.
 61. The primary purpose as stated in the report of the Janette Johnson Support plan was to "... supply support and teaching for [the student's] parents." "It is this type of intervention that the parents want."

62. 34 C.F.R 300.16 (the Regulation in effect at the time of the promulgation of the 1998-1999) reads “(a) As used in this part, the term ‘related services’ means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education... The term also includes ... parent counseling and training. (b) The terms used in this definition are defined as follows: ... (6) ‘Parent counseling and training’ means assisting parents in understanding the special needs of their child and providing parents with information about child development.”
63. The present regulation, 34 C.F.R. 300.24 (7) reads (i) Assisting parents in understanding the special needs of their child (ii) Providing parents with information about child development and (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation their child’s IEP or IFSP. (emphasis added)

In Attachment 1- Analysis of Comments and Changes to the Regulations effective March 12, 1999 Federal Register Vol 64, No. 48 Friday March 12, 1999 pg. 12549 it is stated that”... (iii) supra was added to the Regulation because of Comments after the Proposed Rulings were published in the Federal Register on October 22, 1997. It is clear that (iii) was not included in the definition prior to that time.”

64. Therefore it must be concluded that under the Regulations in effect at the time of the promulgation of the 1998-1999 IEP that skill training of parents was not a related service.
65. Even if such skill training was provided for, or could be held to come under some other provision of the Regulations in effect, the parents’ claim must still fail.
66. The student was generally able to conform to the school routines. In fact, Janette Johnson, in her report dated February 6, 1999, wrote that it was reported to her that the student was “well behaved at school and is achieving his objectives.” It is to be noted that that information did not come from school personnel, who were not interviewed. Toileting was not an issue at school.
67. Given the student’s ability to conform to school procedures and routines and progress toward his IEP goals, both in the AC program and at Foundation School, it must be concluded that the services requested by the parent are not required to assist the student to benefit from his special education.
68. It could well be that the suggestions in the Janette Johnson report of February 6 and June 6, 1998 are what the parents require. However, in order to mandate that the Board implement the report or a similar type program it must be shown that such services are required by the IDEA and its Regulations. Parental need, no matter how pressing, is not enough.

69. It must be concluded that under the Regulations in effect at the time of the promulgation of the 1998-1999 IEP, the Board was not required to provide such services for the 1998-1999 school year.
70. This now brings us to the issue of an extended day. There was nothing presented during the hearing to clarify what the parents meant by such a program. It appears that they were not interested in an extended day at school. The only reference in the exhibits was the mother's statement as reported in the PPT minutes that self-help skills should be taught at home, as the school should deal with other aspects of the student's education.

The parents, in their brief, argue that daily living skills are part of the school's responsibility, that the activities listed in the Middlebrook plan are daily living skills, and therefore it is appropriate for them to be in a home school program as an extended school day.

As far as daily living skills were concerned the Board was willing to address those that were necessary during the normal school day. The parents declined. It should be noted that daily living skills were not addressed in the Foundation School IEP.

71. That the great majority of the activities listed in the charts that are a part of the Middlebrook plan are daily living skills is apparent. It is equally apparent from the school home communications and the testimony of the OT that the problem at home was not the student's ability to do these tasks, i.e. hang up his coat, use the toilet, putting clothes in hamper, disposing of his diapers and brushing his teeth, but rather his refusal to conform. The purpose of the plan was not to instruct the student in daily living skills but to routinize these behaviors at home so that they ceased to be a constant area of conflict.
72. The parents have failed to establish the need for an extended school day, in the home or at school to instruct the student in daily living skills.
73. The IEP for the 1998-1999 school year was promulgated in compliance with the procedures of the IDEA and was calculated to provide meaningful educational benefit to the student. There was no evidence presented to lead one to conclude that there would be regression on the part of the student. The IEP for the 1998-1999 school year was appropriate.
74. The parents argue that the summer program was fatally flawed in that there was no home-school component.
75. At the time of the promulgation of the 1998-1999 IEP, which included the ESY for the summer of 1998, there were no federal or state regulations addressing such a program.

76. At the PPT meeting in May 1998 the PPT determined that the student required summer programming in order to prevent regression. The ESY program was developed for that purposed and tied into specific IEP goals and objectives.

77. The ESY offered by the Board was developed with input from individuals knowledgeable about the needs of the student and related to certain of the goals and objectives of the student's IEP, designed to prevent regression.

It should be noted that the summer program at Foundation School was used as a diagnostic placement, not to forestall regression and that it was of shorter duration than the Board program both in number of hours and in duration over the summer months.

78. The ESY offered by the Board for the summer of 1998 was appropriate.

79. The program delivered at the Foundation School is appropriate in the same way that the IEP promulgated by the Board for the 1998-1999 school year is appropriate. There can be different appropriate programs. The issue is not to decide which one is better. Since the Board has offered an appropriate program, both for the summer of 1998 and the 1998-1999 school year, the parents cannot be awarded reimbursement.

80. It is clear from the testimony of the parents' expert witnesses that the home behavior problems continued throughout the 1998-1999 school year, when the student was attending Foundation School. The IPP report targeted inter alia, aggression and wet/soiling (October 29, 1999) and Dr. N. found his behaviors grossly inappropriate in June of 1999. It is well documented that the student requires structure and established routines, which he gets at school, both while he was in the AC class and at Foundation School. This is in no way a criticism of the parents. Homes are not schools; parents are not trained teachers whose contact with the student is in a structured environment for a limited number of hours a day and who then can leave the student until the next day.

81. It should be noted that some of Dr. C's educational recommendations were not agreed with and not implemented by the school staff. There is nothing wrong in this. Consultants have their opinions and all that is required is for the PPT to consider such recommendations. In fact Foundation School did not follow some of them either. In addition Dr. C. found its reading program to be insufficient.

82. There has been no evidence presented by the parent to warrant the conclusion that the Board personnel limited its goals for the student because they considered the student to be mentally retarded.

83. All of the evidence presented, both oral and written as well as the briefs submitted, have been carefully considered, as to relevancy, materiality and probative value, whether or not specifically referenced in this Final Decision and Order.

FINAL DECISION AND ORDER:

1. The Board offered an appropriate program for the 1998-1999 school year.
2. The Board was not required to provide the additional home support services that the parents requested.
3. The Board was not required to provide an extended day program as requested by the parents.
4. The ESY program for the summer of 1998 provided by the Board was appropriate.
5. The parents were not denied their due process rights in the promulgation of the 1998-1999 IEP
6. The parents are not entitled to reimbursement for tuition and transportation costs associated with their unilateral placement of the student at Foundation School during the summer of 1998 or for the 1998-1999 school year.