

ISSUE:

1. Does the student require a residential education program?

SUMMARY:

The mother of the student was the moving party in this matter. When the hearing convened on March 11, 1999, the student at issue was ten years old and had been confined to Hall-Brooke, a psychiatric hospital, since January 22, 1999. Prior to this confinement, the student was enrolled in the Andrew Avenue Elementary School in the Naugatuck school district.

A prehearing conference occurred on February 26, 1999. The parent filed a motion for an interim order on February 25, 1999, and requested that the hearing officer order that the student remain in a residential placement, at board expense, during the duration of the hearing. Naugatuck filed an objection to this interim order on March 9, 1999. By agreement of the parties a hearing on the motion was held over the course of two days between March 11, 1999 and March 17, 1999. The hearing officer denied the parent's motion and issued an interim order on March 30, 1999. See Interim Order dated March 30, 1999, attached as Exhibit A. In total, the dates of hearing were: March 11, March 17, March 19, March 24, April 27, May 10, May 17 and May 28, 1999. A briefing schedule was set requiring post-hearing briefs and optional reply briefs. Both sides submitted briefs and reply briefs and both sent their briefs and reply briefs to the wrong (old) address of the hearing officer. The last brief was received by the hearing officer on August 2, 1999 at which time the record was closed.

This final decision and order sets forth the Hearing Office's findings of fact and conclusions of law. To the extent that 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 District*, 835 F. Supp. 340 (S.D. Tex. 1993)

FINDINGS OF FACT:

1. The parent filed a motion for an interim order on February 25, 1999, and requested that the hearing officer order that the student remain in a residential placement, at board expense, during the duration of the hearing. Naugatuck filed an objection to this interim order on March 9, 1999. By agreement of the parties a hearing on the motion was held prior to the commencement of the hearing. The hearing officer did not limit the parties in any manner as to the evidence they were allowed to present. Specifically, the parties were not limited as to the number of witnesses or the duration of the witnesses' testimony. The parent (mother) elected not to testify at this hearing on the motion. The hearing on the motion was conducted over the course of two days between March 11, 1999 and March 17, 1999. Testimony of all witnesses on March 11, 1999 and March 17, 1999.

2. The student is a ten year old boy who was born December 8, 1988 and who was identified as a student with a disability in the fall of 1993 when he was in kindergarten.
3. The student began in a public school program in Cheshire beginning in March of 1994 when he was four and one half years old. Testing done by the Waterbury Board between June and October 1993 had found that the student was “ functioning within the average to high average range of intelligence with a full scale IQ on the Wechsler Pre-school and Primary Scale of Intelligence of 106 . . . there is no significant difference between verbal and non-verbal functioning.” P-1 at 4. He continued in a public primary non-graded program in Cheshire for the 1994 to 1995 school year. Testing done in the Cheshire public school in February and March of 1995 found that:

“Overall, the results of the testing and classroom observations show [the student] to be an intelligent boy with many skills. Most of [the student’s] test results indicate that he is performing at grade/age level in most areas, including mathematics, letter recognition and reading recognition. In other areas he is performing one year below age and grade level. This is mostly due to [the student] not being exposed to many of the first grade activities.

Most of [the student’s] difficulties do not stem from the lack of knowledge or ability. [The student] has significant social-emotional problems which have affected his learning and behavior. He has been unable to develop many trusting relationships with adults and therefore still fears failure. On an individual basis [the student] can be a very caring child with many needs displayed by younger children. He wants adult companionship but fears abandonment and being let down.” (Exhibit P-3 at 9-10)

4. In March of 1995 the mother had the student admitted to Newington Children’s Hospital and this began a three and one half year period of hospital and residential placements of one sort or another for this child who had a fear of abandonment before he began this period of living in institutions as the age of six. Exhibit P-3 at 9-10, P-36, Testimony of Mother)
5. Further, this child has undergone a very large number of medication plans and medication changes, with one psychiatrist and/or psychiatric institution often changing the plan of the one before it. The efforts to intervene pharmaceutically to control this child’s behavior have often caused the student serious and far ranging adverse side effects including but by no means limited to severe grogginess (falling asleep in class) insomnia and serious weight gain (increasing from a size 14 pants to a size 36 in approximately six months), all of which have adversely affected this child’s ability to learn, get along with peers and his self-esteem. (Exhibit P-36, Testimony of Mother)

6. At the point that the child had been two and one half years in residential placements, the academic progress of this student of average to above average intelligence who had been functioning at age and grade level during his kindergarden and the first grade year in public school with special education supports and related services was described at a PPT on September 24, 1997 as follows:

“The Devereux staff noted the student’s academic progress as follows:

Academically, [the student] is programmed in a lower school, self-contained classroom. There are 8 children in the classroom between the ages of 5-9 years old. There is one teacher and a teacher’s aid. [The student] has recently experienced a change in teachers and has been making the adjustment fairly well. [The student] is currently functioning on a 1.6 grade level in Reading and Language Arts and a 3.4 grade level in math. He is instructed on a first grade level in other subjects. [emphasis added] These grade levels are obtained by using curriculum based assessments. Math is a strength for the student, although he is currently experiencing difficulty with the concepts regrouping and place value. [His] written expression is an area of weakness, but he usually puts forth good effort and is motivated to improve these skills. In social science [he] is working on developing his group discussion skills, and he typically offers relevant information to the discussion and will raise his hand to participate. In Physical Education [he] has age appropriate skills and no concerns have been noted with his fine and/or gross motor skills. (Exhibit P-16 at 2)

7. His placements from kindergarten to the present have been: Darcy School Early Intervention Center (a public education regular kindergarten), March 1994; Newington Children’s Hospital, March-June 1995; Elmcrest, June-October 1995; Yale Children’s Hospital, October- November 1995; Devereux Glenholme, December 1995-1998 (10 day student), July 1996-August 1998 (residential); Hall Brooke, October 1998 (10 days); Hall Brooke, January –April 1999. (Exhibit P-36)
8. He is presently identified as socially emotionally maladjusted and has been diagnosed with pervasive developmental disorder, not otherwise specified. (Exhibit P-29 at 4, P-7 at 1, P-11, P-34 at 1, P-37 at 1)
9. The student’s mother is herself disabled and her disability impacts on her memory and general health at times. (Exhibit P-1, at 2-3, Testimony of Mother)
10. The student moved into the Naugatuck school district on or about March 4, 1997. At that time, he was enrolled as a full time residential student at Devereux Glenholme located in Bethlehem, Connecticut. The student’s former school district, Waterbury Public Schools, had paid for the placement during the time that the student’s mother resided in Waterbury. (Exhibit B-85)
11. The Naugatuck Board continued his placement in the residential program from March of 1997 to August of 1998.

12. The Naugatuck PPT team met on several occasions to discuss the student's progress and plan his transition to the less restrictive setting in the community. The members of the Naugatuck PPT team has changed over time somewhat but has included: the mother, Eileen Luddy, educational consultant, Mary McCulloch, educational tutor, Dr. David Suscovich, clinical psychologist, Nancy Snopkowski, principal, Andrew Avenue School, Robert Cronin, Assistant Superintendent, Bruce Mason, Assistant Director of Special Services, Joanne Carter, principal, Elizabeth Sheriden-Regan, Suzanne Jacovino, school psychologist, Margo Jasiulevicius (Mrs. J.), teacher, Lisa Vailionis, school social worker, Michelle Pope, teacher, Rob Blum, social worker, Steve Rosenblatt, school psychologist, Sally Grave, occupational therapist, and Jackie McDonnell, occupational therapist. (Exhibit B-45)
13. The PPT team met on September 24, 1997, to discuss the student's progress and future planning. Based on input from the Devereux staff the team recommended further evaluation to help determine need in the areas of reading, math, communication and behavior. (Exhibit B-59)
14. On January 29, 1998, the PPT team met to discuss the recent evaluations and to adjust IEP goals. The team reported that the student's performance on tests for reading, math and written language were low, although the team felt that some of his ability might be higher than the testing would indicate. Regarding behavior it was reported that he was doing better now than he was in a classroom with his own peers and that his teacher noted he "does align with students who keep the rules." (Exhibit B-51 at 1)
15. On March 24, 1998, the mother agreed to release the student's records in preparation for implementing an educational transition plan upon the student's release from Devereux. (Exhibit B-47)
16. On April 24, 1998, a referral PPT meeting was held to discuss the student's progress. The student went to the Salem School for a visit the week earlier and "did a wonderful job." (Exhibit B-46) At this time, the Devereux staff believed that the student would continue to benefit from residential treatment. The staff also felt that foster care should be considered in order for the mother to have the necessary supports in place so that she would be better prepared for the transition. Id.
17. Another team meeting was held on April 28, 1998, to discuss the transition to the Salem School in Naugatuck. The summary discussed a report from the mother that the student lost control on a Sunday evening during a visit while he was in her care. Due to this incident at home, the team recommended a crisis intervention plan as well as some mentoring time on weekends as part of the transition plan. Devereux staff asked that Naugatuck also consider the possibility of foster care as an interim step and/or supports for the home. Naugatuck proposed the following:

- ...home weekend supports in place no later than the weekend of 23 May (crisis support and mentor support). The Friday school placement will continue with school hours being from 9-12:30. Crisis support includes phone availability by Devereux supervisory staff, a crisis person available through Naugatuck schools, and a mentor to spend home time with the student, particularly on Sundays; as well as a transportation escort when returning to Devereux. (Exhibit B-45)
18. On June 17, 1998, the team held another transition meeting that also served as the student's annual review for Naugatuck. The observations of this meeting describe some disagreement as to what the student needs and how quickly plans should progress. It was noted that a mentor had been hired to work with the student and his mother. The student's school hours at Salem School were increased to two mornings, Fridays and Mondays, where he participated in a self-contained class. He also has a one-to-one aide that gives him assistance in the classroom as needed. (Exhibit B-30)
19. The notes of the mid-year meeting on August 7, 1998 indicate that the meeting was held to discuss the student's transition. As of this date, the student had attended the Salem School for 25 days. The staff indicated the student was making good progress. Only one major incident occurred during this time and the student was able to calm down and redirect within 10 minutes. He was then able to verbalize some of his feelings. Additionally, concerns regarding the student's sensory integration and spacing were raised. The team agreed that an occupational evaluation should be completed. (Exhibit B-26) The team also agreed to continue with the student's current transition plan and that the discharge date from Devereux would be August 26, 1998.
20. The student completed an occupational evaluation on August 12, 1998 with Jacqueline McDonnell. Her report states that:
- “the student presents a low muscle tone and weakness which interfere with his posture. He has difficulties in visual scanning which makes reading difficult. The student's visual-motor skills appear to be within functional limits for the student's educational needs. It appears that the student's limitation in this area is that he is not able to access these skills unless he's focused and concentrating on the given task. This is very difficult for the student and may be due to sensory dysfunction. The student continuously seeks out proprioceptive input, becomes very disorganized when given a challenging task and shows tactile sensitive characteristics. All of these can make performing in class very difficult.
21. It is recommended that the student receive 1 hour of occupational therapy per week which should ...continue for six months [at which time] it should be determined if a sensory integrative approach is effective for [the student].” (Exhibit B-23)
22. As time passed the student was making friends in his neighborhood and he wanted to go to his neighborhood school, Western School. He did not want to be different and go to Salem School or Andrew Street School. The team decided he would go to

Salem School because the staff was better prepared and more willing to accept him. His teacher at Salem had taught at Devereux. Once the school year began the placement did not go well. (Testimony of Mary McCulloch, Testimony of mother)

23. On October 2, 1998, the police and an ambulance were called by school staff because the student threatened to hurt himself. (Exhibits B-20, B-21) The student apparently did not want to go to school and as a result, his behavior deteriorated throughout the morning to the point where he wrapped a cord around his neck and started pulling it. Id. After staff took away the cord, the student continued to threaten to hurt himself and put the hood of his sweatshirt on the doorknob and jumped to the floor. (Exhibit B-20) The mother was called and when she arrived, she gave a statement to the emergency workers. (Exhibit B-21) An ambulance took the student to St. Mary's Hospital. The student was later admitted to Hall Brooke Hospital. Id.
24. The PPT team met on October 8, 1999 to review the student's status based upon the incidents that occurred on October 2, 1999 and the following was noted under the heading "Observations":

[The student] will be released [from the hospital] on Friday. The difficulty with finding a psychiatrist was discussed. The need for medication needs to be worked [out].

[The mother] is currently receiving therapy services for [the student]. Home supports were described by the mother as being very helpful on some levels but inconsistencies were noted. John shared that changes that will be happening with the home program. A crisis plan was discussed in case an emergency occurs again.
25. Mr. Cronin questioned the appropriateness of [the student's] return to his program at Salem. Eileen Luddy questioned the Salem School special class being most appropriate for [the student]. Mr. Blum presented that we may not all agree but we all have [the student's] needs as a focus. Mrs. J. reviewed his class and school functioning. His emotional state has been inconsistent and this seems to effect his control and academic functioning. The need for more aide support in the class was considered....The crisis plan will be drafted and this will be solidified after Dr. Suskovich is contacted. (Exhibit B-19)
26. A follow-up meeting took place on October 16, 1999, where the PPT team discussed the occupational therapy testing. (Exhibit B-19). The team drafted goals and objectives so that the student will receive one hour of occupational therapy service per week and it was agreed that within 6 months the team should evaluate whether the approach was working or not. (Id.)
27. An incident on October 19, 1999 prompted the team to meet on October 20, 1999. The team summarized the incident as follows:

[The student] came into school nicely on October 19 but became agitated when he needed to leave the classroom. He went for a walk with the classroom aide in an attempt to collect himself. Once outside the student ran from the aide and returned to the school and went to the office. Upon returning to class the student refused to work unless someone worked directly with him. Mrs. J. reported the student asked to go for a walk whenever faced with a request to do classwork. During free time he became agitated and started pushing desks and became threatening. He then did 10 minutes [time out] appropriately and returned to the classroom. When other children returned to class after free time to begin afternoon work, the student asked to go for a walk. He left with the aide but then ran to main office. He made gun noises and threatened to come back and shoot Mrs. J. Mrs. Kruge, the principal, took the student into her office and he said to her "I'm going to hurt you. I'm going to hurt you bad." He then attacked Mrs. Kruge hitting her, and.... As she attempted to telephone for help, the student grabbed the phone and began assaulting her with it until help arrived from across the hall. Mother was called to come and get the student. Mrs. J. also reported that earlier while in [time out] the student complained he needed to use the lavatory. When allowed to go, he ran away. Id. The team indicated that the current placement was not appropriate and discussed day placement options and further psychiatric evaluation. (Id.) The team recommended the following: "Pursue day placement (such as Institute for Living or Connecticut Children's Hospital) [The student] will be tutored outside of school with additional support and activities pending assignment of day placement. PPT will continue to meet to discuss inclusionary plan for the student's future." (Id; See also Exhibits B-16 and B-15)

28. Naugatuck immediately implemented a homebound education program for the student pending the day placement decision as a means to stabilize the student and to allow him to be with his mother. During this period the student and his mother visited The Institute of Living with Mary McCulloch. The student did not like this school because he felt that it was like Devereux. (Testimony of Mary McCulloch, March 17, 1999). The mother felt that it was a repeat of Devereux and was not comfortable traveling to Hartford from Naugatuck. Id. A visit to State Street in Waterbury also took place but this program did not seem compatible with the needs of personality of the child. This was a decision to which the mother clearly agreed. Id.

29. Dr. Paul Andrulonis of the Connecticut Children's Medical Center evaluated the student on November 20, 1998. He diagnosed the student under the broad category of attention deficit hyperactivity disorder with extreme impulsivity and intermittent explosive disorder. He recommended the following medication:

"Risperidal is a reasonable medication, and I suggested an increase to 3 mg. a day. If this does help stabilize him but he continues to have attention problems, then one could add to his very low dosages of Adderall, such as 5 mg. twice a day, which is also a stimulant. Alternatives to this would be lithium carbonate or Depakote. Before those medications are given, however, I would want to see him again. I am hoping

that the pediatrician will follow his medications.” Exhibit B-11) The report further recommended that the student continue in highly structured special education with the home services and therapy as currently provided. (Id.)

30. During the months of November and December, 1998, the home instruction program included daily mentoring, including alternating weekends and some evenings, approximately 2 nights per week. The team identified the student’s intense fear of failure as a function of his behavior and designed an errorless learning program to increase the student’s confidence. (Testimony of Mary McCulloch, March 17, 1999; see also Exhibit B-97, pp. 1-8) The tutor targeted this weakness and provided verbal reassurance to augment the student’s motivation for learning. The team implemented a reward system with pennies for positive behavior. A special education teacher was also assigned to oversee the educational component of the program. Id.
31. Another aspect of the program included weekly therapy for the mother and the student by Dr. David Suskovich who was referred by the Board. Dr. Suskovich dealt with issues at home as well as community stress with the mother. He counseled her using creative problem solving and with managing issues at home. (Testimony of Dr. David Suskovich, March 11, 1999.) The student received individual psychotherapy and play therapy. Dr. Suskovich also acted as an advocate for a psychologist to prescribe and monitor the medication for the student. For additional supports in the home, the team implemented an intervention plan for the mother in the event that she needed assistance when no staff was present. The plan called for the mother to call or beep Mary McCulloch or John Parisella and they would determine whether the mother or the student required immediate attention and/or strategy to deal with such incident. The mother frequently called Ms. McCulloch to talk about the student. She also called Mr. Parisella on occasion. Id.
32. During this period the team also began the transition to a school site. Andrew Avenue School was chosen for its computer resources, an area of interest of the student. (Testimony of Mary McCulloch, March 17, 1999.) The team scheduled a PPT meeting two weeks from the student’s starting date at Andrew Avenue to discuss extending the time that he spent in school.
33. On January 12, 1999, the student began attending the Andrews Avenue school. The tutor met the student when he got off the school van at the school and they would begin instruction in the reading room off of the school library for approximately two hours. (Testimony of Mary McCulloch, March 17, 1999.) The tutor and the student would then go into the community until approximately 2:30. (Id.) There was no interaction with other students; the team had planned to introduce a Circle of Friends at a later date through the social worker but this did not occur until the hearing officer ordered it. (Id.; Exhibit B-6)

34. The student had wanted to attend his neighborhood school and he had wanted to be with regular education children. Not surprisingly, after all those years in a residential setting, he wanted to be like other children when he got out. When the hearing officer inquired why he was not placed in his neighborhood school, why he was not mainstreamed quicker, why he was not participating in a circle of friends quicker and why he was not in physical education quicker, she was told that there was resistance from schools' staffs for quicker mainstreaming. The staff was concerned about a child with such a serious longstanding psychiatric history and wanted to move more slowly. (Testimony of Mary McCulloch)

35. The student transitioned better than Mary McCulloch had expected. (Testimony of Mary McCulloch, March 17, 1999.) In particular, she testified that the student was more on task than she had ever seen him. He gave up breaks. There was little acting out behavior. He expressed that he wanted to be in school and liked Mrs. Carter [the principal]. She would greet him in the morning and stop in and see him occasionally. Id. School was going well for this child during the period in January.

36. The child was having severe insomnia during the month of January. He would wake up in the middle of the night and walk outside on some nights. At this time, the student was taking Risperidol and Neurontin.

37. The student's medical management during the relatively short period of October, 1998 to January, 1999 demonstrates the pharmacological roulette this child has had to tolerate and that his mother has persistently tried to address. In October, Hall Brooke (a psychiatric facility) started him on Respirodol. Later that same month Dr. Andrulonis recommended an increase in the amount because he believed the student was not receiving an amount high enough to be therapeutic. On January 8, 1999 Dr. Menneson decreased the respiradol to help reduce the insomnia and the weight gain. At this time Dr. Menneson added Neurontin. Later that same month Hall Brooke stopped the Neurontin for reason that it causes insomnia. (Testimony of Mother, Testimony of Toula Vagelatos, Hall Brooke counselor.

38. On the morning of January 22, 1999, the student had an incident on the school van. (Exhibit B-9) Testimony adduced at the hearing indicated that the student had wet the sofa in the morning and he was not suppose to be sleeping on the sofa. The mother was upset (understandably) but then the mother did not follow the protocol and call the consultants (or have the student call the consultants) as she had on other occasions when a difficulty would arise in the morning routine. The student was upset prior to boarding the school van because he knew he had upset his mother and he has a longstanding and strong fear of displeasing and losing his mother. Testimony of Dr. David Suskovich, March 11, 1999; Testimony of Mary McCulloch, March 17, 1999; Testimony of the mother, May 17, 1999. As the van pulled away the

student wanted the van driver to stop so he could go to his mother. When the van driver did not stop the student hit the van driver. In attempting to assess the true nature of this behavior, that is, whether it was a serious assault or a child-like tantrum, the hearing officer inquired as to the nature of the injury, if any, suffered by the driver and was told that the driver did not require medical attention of any kind. (Testimony of Mary McCulloch, Exhibit B-9) As a result of the incident, the driver made a call to the dispatcher, the police arrived and took the student to the Naugatuck police department. (Exhibit B-9) The mother arrived at the police station and specifically requested that Luddy & Associates not be called. (Testimony of Mary McCulloch, March 17, 1999) No phone calls were made to Mary McCulloch or John Parisella, as required by the behavior intervention plan. (Id., Testimony of Dr. David Suskovich, March 12, 1999) The mother requested that the student be taken to the hospital and this was done. From the community hospital the student was transferred to Hall-Brooke Hospital, a psychiatric facility, where he remained for the next three months. Id.

39. In comparison to the student's October 1998, admission, Dr. Vagelatos, counselor at Hall-Brooke, testified that the student's behavior was more in control. (Testimony of Toula Vagelatos)

40. In February, 1999, the mother requested a PPT team meeting to discuss the student's placement at a residential facility upon his discharge from Hall-Brooke. (Exhibit B-7) On February 9, 1999, the PPT team met and Mr. Cronin expressed his concern that residential placement was not necessary for the student's educational progress. (Id.) The recommendation of the team was to continue the student in his program at Andrew Avenue School and for the parent and board attorney to confer about the request for residential placement. (Id.) Mr. Cronin sent a letter to the parent's attorney on February 17, 1999, after conferring with the Board's attorney, that stated the Board believed that the student does not need residential placement for educational reasons. (Exhibit P-33) On February 17, 1999, the parent's attorney requested due process requesting further that the undersigned hearing officer be assigned to the matter given that she had presided over the matter in hearing involving the student and the Waterbury Board of Education in 1996 and 1997. (Exhibit B-1) and February 13, 1999 letter from parent's counsel to the State Department of Education requesting due process.

41. On February 25, 1999, prior to the due process hearing, the parent's attorney filed a motion for an immediate interim placement. The motion requested that the Board provide the student with a residential educational placement at no cost to the parent during the pendency of this administrative hearing. The parent bases this motion on the fact that the transition from the residential placement at Devereux to the home and community placement had not progressed in a significant way. Additionally, the parent argued that the team process had broken down and there is potential for serious

risk of harm to the student and others. The Board filed an objection to this motion and requested a hearing on the motion. On March 12, 1999, the hearing officer determined that an evidentiary hearing would take place prior to her ruling on the parent's motion for an immediate interim order. As Hall-Brooke refused to discharge the student to the home and community placement, the student remained at Hall-Brooke until the hearing officer ruled on this motion. (Testimony of Dr. Toula Vagelatos, March 12, 1999)

42. The parent's first witness was Dr. Toula Vagelatos, Treatment Coordinator, who wrote the student's treatment plan while he was at Hall-Brooke. She is not certified or licensed but holds a doctorate degree in psychology which she received in 1997. She has been at Hall-Brooke since July of 1998. Her case load varies from only three to six and at the time she testified her case load was three, of which the student was one. She is suppose to coordinate his care. Her knowledge of the student and opinions about an appropriate plan for him are given little weight in this decision because they are based on limited knowledge, knowledge skewed by the bias sources of information regarding the recent condition and behavior of the child and bias sources regarding the factors precipitating his inappropriate behaviors. She drafted the plan based on past reports written on the student and on conversations that she had with the mother's attorney and the mother. She did not consult with Luddy and Associates even when she was able to do so. She testified that initially the mother told her not to contact Luddy and Associates and so she did not, but eventually the mother changed her mind and signed releases to permit such contact. However, she testified that despite having releases, no staff from Hall-Brooke contacted Luddy & Associates. When asked why not, she responded "I don't know." No new evaluations were done in preparation for the treatment plan. (Testimony of Toula Vagelatos, March 12, 1999, see Exhibit P-34)

43. Further, Dr. Vagelatos' opinions are not supported by the evidence to which she herself testified. In comparison to the student's October 1998, admission, Dr. Vagelatos testified that the student's behavior was more in control. (Id.) When questioned about any problems the student may have had in the three month period between his two Hall-Brooke admissions she knew of none but the van incident. She testified that the student's prior therapist, with whom she shares an office, noted that the student was doing better upon admission during the January to February period than he had been doing in October. And yet, when questioned why residential placement was the only option considered by the Hall-Brooke staff for this child, she responded that this was based on his history, with seemingly no awareness or concern that she did not have an accurate or complete history. She testified that while hospitalized the child went through a period of regression. When questioned on cross as to whether she knew of any reason that precipitated his regression she answered that it occurred when the staff told him they didn't know if he would be going home upon discharge. Any positive behavior (improvement over October for instance) was attributed to familiarity with the residential program rather than growth he may have

made from his community and home experiences. Apparently, once this student entered Hall-Brooke, not only were any misbehaviors viewed as evidence that the student needed residential placement (e.g. he can't control himself), *but any positive behaviors were also viewed as evidence that he required residential placement* (e.g. it is the institutionalized structure alone and not any learned self-control on his part that allows him to behave appropriately). Dr. Vagelatos admitted that when recommending residential placement for the student there was no plan to use community resources because the team had no intention of sending the student home to his mother because she did not think it would be safe for the student or mother [based on the biased information she was relying upon]. She then testified that she would still recommend residential placement even if her safety concerns could be adequately addressed giving the reasons that "It would be better for [the student]" and trained therapists would be available in a residential environment. When pressed as to what would be missing from a community placement she acknowledged that she couldn't speak to the school issues but in the home there would be no trained clinician such as a psychologist or social worker. She further testified that she was "not at all concerned" that residential placement for this child is a very restrictive environment for him. (Testimony of Toula Vagelatos)

44. Patricia David, a teacher at Hall-Brooke, also testified on behalf of the parent. She has her master's degree in special education, is certified in special education and has nineteen years experience working as a teacher at Hall-Brooke. She testified in a forthright and honest manner. She appeared concerned about the student and knowledgeable about working with children with psychiatric disabilities. She was the student's teacher during both his October 1998 admission and his January to April 1999 admission. He was functioning better academically in January than he had been in October. She stated that the student received an educational evaluation in October 1998 using the WRAT. While he tested at a first grade level in reading, spelling and math and she believes he functions "a bit higher", he functions at one point five level independently and at a second grade level with assistance in reading. (Testimony of Patricia David)

45. Ms. David testified that the student requires one-to-one assistance to get him refocused and to reassure him. He has very low self-esteem and often says "I hate myself" and "I'm so stupid". He often starts out saying he can't do academic tasks that he then can complete with encouragement and one-to-one assistance. (Id.)

46. Ms. David testified that he was doing well in class, and lasting the whole session (from 8:00 to 12:30) for January and February. He had not lasted the full session in October. Beginning about March 1st he had trouble lasting the full session and had to drop back to 10:30. Ms. David did not know the reason for this. Id. However, Dr. Vagelatos had testified that approximately March 1st was the time the student's medication was changed yet again, adding Depakote, a mood stabilizer. Whether

this medication adversely affected his ability to attend to schoolwork was not addressed at hearing, and in fact it did not appear from the testimony that any of the Hall-Brooke witnesses even considered this possibility or noted this possible causal relationship, much less considered its impact on his ability to learn. Once again, this student's maladaptive behavior (inability to stay in class) was attributed by institution staff to the student's disability rather than to the institution's own psychiatric intervention, as the weight gain, insomnia, incontinence, restlessness and countless other adverse side effects had been the result of other psychiatric interventions. (Id. and testimony of Toula Vagelatos)

47. It was noteworthy that the techniques an experienced special education teacher like Ms. David found worked best with the student when dealing with inappropriate behavior were similar to techniques used with regular education children: to first ignore the behavior, and if it persists to then distract and re-engage him in an appropriate task. It is further noteworthy that she testified that the technique recommended by Dr. Vagelatos, which is more typical of the techniques used in highly structured institutions, 'never worked even one time'. Specifically, Dr. Vagelatos recommended she tell the student he must stay and remind him of the incentives he would receive. (Testimony of Patricia David)
48. In Ms. David's opinion, the student needs a program that consists of: one-to-one academic support with small classes and 'someone to give him confidence', for his social-emotional difficulties he needs a liaison with different types of supports including therapists and school counselors, continued peer interaction to learn appropriate behavior with other children and guidance so that his needs are met appropriately. She would not testify as to the student's needs for residential placement. (Testimony of Patricia David, March 12, 1999; Exhibit B-5)
49. Mary McCulloch, an educational consultant, was called by the parent's attorney to testify about the nature of the student's program at Naugatuck prior to his admission to Hall-Brooke. Ms. McCulloch testified that she knew the student very well and had been working with him while he was still a student at Devereux. Initially, the team developed the home bound program to stabilize the student and allow him to be with his mom. The student was having separation issues with her and he needed to feel safe and to be close with his mom. Also, when Mary McCulloch initially went to visit the school with the mother, the mother told her that she felt uncomfortable with the student going to a regular education class right from the classroom he had at Devereux. The mother felt that the regular classroom lacked the supports to which he was accustomed and felt that he wouldn't be able to tolerate that type of setting. The team thus implemented the educational component as a homebound program. This consisted of an educational component from 9:00 to 11:00 a.m. and thereafter, a community component was developed with the student and the mentors until 2:00 p.m. The program was developed in this manner, in part, to establish a relationship

with the mentors and build the student's confidence and motivation for learning. Once the student progressed appropriately, he moved into the Andrew Avenue school. The home-based supports were still in place while the student attended Andrew Avenue. For example, the mother had 24 hour beeper access to Mary McCulloch and John Parisella and the mentors continued to visit the student on the weekends and in the evenings. A crisis intervention plan was in place though it was not in writing. Additionally, the team was researching Priority Care, an agency that provides psychiatric service in the home to keep children out of the hospital. Ms. McCulloch has also suggested using services provided by the Department of Children and Families (DCF); however, the mother was not receptive to DCF's involvement and was not sharing information in this regard. Ms. McCulloch also researched the possibility of retaining a psychiatrist for the student so that his medication could regularly be monitored. (Testimony of Mary McCulloch, March 17, 1999)

50. Regarding the incident of January 22, 1999, Ms. McCulloch testified that she was surprised that the mother did not call her prior to requesting that the student be hospitalized. She was also surprised that she was told not to visit the student at the hospital. The relationship between the team and the mother had broken down. The mother was ambivalent about having the student at home with her. Ms. McCulloch testified that the mother's ambivalence sent a message to the student and greatly influenced him in a detrimental way. The learned experience of the student was that if he did something wrong, he would be sent away. This prompted the student's immense fear of failure and abandonment. The team worked on the mother's ambivalence. However, it was Ms. McCulloch's view that the mother also needed to help. She stated that if the mother understood that it was her responsibility as a parent to open up the resources that are available to her, then that would assist the team a great deal with the education program. (Testimony of Mary McCulloch)

51. In comparison to the educational program that the student received at Devereux, Ms. McCulloch testified that, from her observations and studies of the records, the student progressed when he was moved to a higher class. Devereux had placed the student at a lower level than his actual achievement level. After a few observations, Ms. McCulloch realized this discrepancy and made the recommendation that the student be placed at a level higher. The student progressed at this because he was with age appropriate children where he would naturally progress. Behaviorally, the student knew the rules, levels and structure of the program. He was responsive to the point where he was motivated to be with his mother. The most progress he made was when he had a discharge date for transition to his home. In her opinion, should the student return to an environment such as the one he experienced at Devereux, he will not learn how to behave in an appropriate way to avoid the consequences of his behavior. For example, when the student was home with his mother on visits, Devereux's punishment system remained in place and therefore he responded to this artificial system. According to Ms. McCulloch that's not learning; that's avoiding punishment. She stated that the Board's program differs from the methodology of most residential

facilities in that it relies on teaching the student the consequences of his behavior. For example, instead of punishment, he does not receive money to buy something at the store. The Board uses errorless learning to build the student's self-esteem and confidence. The student also has break times at his leisure when he is feeling frustrated or off task. The Board weaves occupational therapy into his program. Additionally, the student will eventually be immersed in a classroom setting with students who are good peer models. Ms. McCulloch thus opined that the student should be at home with his mother going to a regular school. His educational program should combine both special and regular education along with a one-to-one aide that has a good relationship with the student. A one-to-one aide should accompany the student during van rides to school and/or field trips. The student should also be provided with resources so he can escape when he feels frustrated. A written, crisis intervention plan should also be drafted to coordinate the home and school behavior plans, including therapy with Dr. Suskovich. An IEP should be drafted to pull all the goals together so that everyone is aware of the program components. Ms. McCulloch admitted that the team was doing so much for the student but not everything was documented. When questioned about mainstreaming, Ms. McCulloch agreed that the student would benefit from a regular education setting and thought that he could be ready for a regular gym class within two weeks. She also felt that the Joanne Carter, the social worker, could be contacted to begin a circle of friends immediately upon the student's return to the school. (Testimony of Mary McCulloch)

52. The functional behavioral assessment that was drafted by Mary McCulloch on January 20, 1999 examines the relationships between the student's behavior and his environments in an attempt to develop strategies to teach the student effective alternative behaviors. (Exhibit B-88) The analysis was completed primarily through direct observation of the student at Devereux Glenholme, at home with his mother, in a self-contained classroom at Salem Elementary school in Naugatuck, during homebound tutoring, and during community outings. The Behavior Support Plan was developed from this assessment. (Exhibits B-90 and B-91) The following are relevant excerpts from the assessment:

The student spends much of his time playing with action figures. He enjoys dressing in character costumes and becomes obsessive about wearing the costumes at inappropriate times and places. He especially likes anything related to Star Wars. The student also seeks out and prefers to play with toy weapons. [The student] does engage in age-appropriate conversation. He rarely reflects about his behavior and will begin acting out if any serious subjects are pursued with him. He is liked by adults and demonstrates a good sense of humor. He especially likes to act, which gives him the opportunity to be someone other than himself.

[The behaviors targeted in this assessment include:] aggression, verbal threats, running away and tantrums. Aggression includes hitting, choking, kicking and

spitting. [The student's] aggression can be demonstrated as a low intensity, i.e., swat or hit that are not particularly harmful or intense; however, when an adult attempts to control him physically, the intensity of the aggression increases. Choking has been the most dangerous behavior exhibited. The behavior occurred 2 times while [the student] was at Salem school. [The student] shows remorse when he has harmed someone and almost always targets adults when he is angry. (Id.)

53. David Suskovich, therapist for the student and his mother testified at hearing. He has been licensed as a Family and Marriage Therapist since legislation passed in 1987 and he has his PhD in clinical and neuropsychology but is not yet licensed. The Naugatuck Board referred the student to Dr. Suskovich. He saw the student weekly since August 1998 and found him very pleasant, very loving and connects easily with kids and adults. He experienced an incident in his office where the student started to act out because he did not want to do his homework. The incident took twenty minutes to resolve and it required the therapist to sit facing the student and restricting his movements by putting his (the therapist's) hands on the arms of the student's chair, thereby foiling the student's desire to walk out. The result was the student calmed down, apologized appropriately and went on with his day. Dr. Suskovich testified that he had concerns that the student's behavioral problems may have an organic rather than psychiatric basis and that this needed further evaluation. He further did not agree that the student was correctly diagnosed. (Testimony of Dr. David Suskovich)
54. On March 19, 1999, Robert Cronin, the Assistant Superintendent and Director of Special Services, testified about the Board's confidence in the program that Luddy & Associates had developed. He felt the Board had implemented an appropriate educational program for the student. He mentioned that he recommended the day treatment program back in October, not because he felt that the student would get as much out of the program, but because he felt that the additional staff would assist the student. He stated that the Andrew Avenue could have a program ready for the student by the following week if the aide was available. He also testified that a Circle of Friends could be implemented within a week. The student could also attend a gym class within one week with an identification of specific dates to increase the number of the student's mainstream classes such as art and music. (Testimony of Robert Cronin, March 19, 1999)
55. At the end of the evidentiary hearing on March 19, 1999, the hearing officer denied the parent's motion for an immediate interim order. She ordered that the student be discharged from Hall-Brooke and requested that he return to Andrew Avenue within a week. See Exhibit A.
56. Prior to the next hearing date, the student was discharged from Hall-Brooke on April 28, 1999. (Exhibit B-94) Dr. Suskovich met with the student on that same day. On April 29, 1999, the student met with his new psychiatrist, Dr. Keyes. Dr. Keyes has agreed to take the student on as a new patient and plans to monitor his medication so that the student remains stabilized. (Testimony of Mary McCulloch)

57. In accordance with the interim order, the team hires a new mentor, Fred Hahn, as the one-to-one instructor for the implementation of the student's program. (Testimony of Mary McCulloch)
58. A Priority Care Behavior Technician, Carol Belco, has been retained to assist in the mornings from 7:00 to 9:00 a.m. as the student prepares for his day. A Priority Care nurse was retained to go to the home on three occasions to monitor the student's medication. The transition plan also summarizes the following services as being provided to the student at present:
59. The student has participated in the daily academic lesson presented. The team has discussed a daily point system; however, [the student] is doing well without the use of daily rewards. The team needs to continue to evaluate [the student's] needs through monitoring his daily and weekly progress. Currently community based activities are included in [the student's] educational program. [The student] has had opportunities to swim at the YMCA and research areas of interest at the local public library.
60. The student has received one-half hour of individual therapy with Mrs. Graves, the Occupational Therapist. Mrs. Carter, the school social worker reintroduced herself to [the student] and began preparing him to begin to participate in a "Circle of Friends." [The student] will continue to see Dr. Suskovich 3 days a week from 2:00 – 3:00 p.m. [The mother] has contacted the office of Protection and Advocacy for the purpose of identifying an advocate for [the student]. Attorney Schierberl has submitted the name of a parent advocate for the PPT's consideration. (Exhibit B-94)
61. On May 3, 1999, the student began school at Andrew Avenue. The student had an incident the first day as follows:
- [The student] has a behavioral incident during the first hour of the first day of the transition to Andrew Avenue school. As a result, he had to be physically managed for 20 minutes by two adults. When [the student] was calm, he was redirected back to his prior reading task. He was able to complete his assignment and finish the day successfully, and without further incident. There have been no further incidents requiring physical management. It was the team's opinion that this incident was [the student's] attempt to test limits. (Testimony of Robert Cronin, May 17, 1999)
62. On May 13, 1999, the parent's attorney filed an objection and motion for reconsideration with respect to the interim order. In particular, the parent objected to that part of the interim order that directs the planning and placement team to name a coordinator 'who will take all necessary legal steps to advocate for this child and to coordinate his program.' (Exhibit A, page 3). The parent argued that the hearing officer exceeded her authority when she issued such an order and that the order amounts to an impermissible interference with the parent-child relationship without due process of law. The Board objected to the motion for reconsideration on May 24, 1999, and requested that the hearing officer sustain the interim order as entered on

March 30, 1999. The Board argued that the hearing officer had the authority to order a parent advocate because it was implemented as a modification of an educational program under the IDEA. Additionally, the Board argued that the motion for reconsideration was filed more than forty days after the order had been entered, and the parent should thus be barred from raising an objection at this late date under Connecticut General Statutes Section 4-181a.

63. At the hearing on May 17, 1999, the mother testified. She described the student as stabilized at present. The change in medication has caused him to sleep consistently since his discharge from Hall-Brooke. The student has made some friends in his apartment complex; however, the mother is concerned about his social relationships and believes that making friends is a difficult task for the student. She stated that he can be loud at times and the noise disturbs the neighbors. In particular, she recalled one afternoon where a man came banging on the door to complain about the student. The student had run inside just prior to the knocking. He handled himself well and sat himself down in the rocking chair to cool off when the man came to the door. (Testimony of the mother, May 17, 1999)
64. The mother stated that since the student's discharge from Devereux, there have been about 7-8 major incidents, plus numerous incidents that have occurred at home with respect to the student's verbalization and defiance. These incidents do not occur on a daily basis. For example, a week will go by where nothing happens though she stated his defiance is ongoing. She describe a variety of techniques that she uses to manage the student such as: warm baths with toys and bubble, water play outside with cups and spouts, music, lego plan, trampoline. For the most part, the mother stated that prevention and structure were the key to managing the student. The home health aide contributes in the mornings to keep the student on task. She helps the student pack for the day and get dressed. Mr. Hahn also touches base with the aide each day before the student leaves for school so he can get a sense of the student's demeanor prior to the start of the school day. If there is a problem, Mr. Hahn speaks with the student personally to help with strategy. The nurse comes to the house to assist with the student's medication. The mother expressed concern over the scheduling for filling prescriptions because the student has run out of his medication on occasion. The mother also described the student's weight problem. He went from size 14 to 36 pants since his discharge. She attributed some of the weight gain to his medication. The mother also discussed the problems that she encountered when seeking a psychiatrist for the student. The insurance restrictions were part of the problem but most psychiatrists she contacted were not taking new patients. Dr. Brian Keyes recently agreed to take the student on as his new patient. The mother and the student have already seen him once and are satisfied based on the limited interaction they have had to date. (Testimony of the mother, May 17, 1999)
65. The mother discussed her disability and explained that she was exposed to chemical poisoning. She suffered brain damage on her left side and the long term result was that she now has memory difficulties, along with some balance and speech problems. She is not currently in therapy but she takes medication. The student is very aware of

her medical issues and he is concerned for his mother's well-being. The mother has had an uneven relationship with Luddy and Associates. She is fearful that some of the consultants do not feel she is making decisions with her son's best interest at heart. She referred to Ms. McCulloch's statement that the mother should contact DCF. The topic of DCF was clearly difficult for the mother to discuss. (Testimony of the mother, May 17, 1999)

66. She felt if DCF were contacted, that she and the student would be separated and he would move among foster families and would likely end up in the penal system. The mother views psychiatric institutionalization as a way to protect him from the penal system. She also stated that she felt she would have no say in his education if DCF became involved. The mother recently contacted Tom Kachura of DCF and voluntarily filled out the paperwork for some services. It is her understanding that a file is now open.
67. The mother described her concerns with having the student home and attending Andrew Avenue. The mother's concerns revolve around the student's social development and academic progression. She stated that the student is not a grade level in many of his subjects and she is concerned with his inability to focus for a full day. She compared the student's progress at Devereux and stated that he was a top student there. When questioned about his achievement at Devereux, the mother was surprised to learn that the student was only at a first grade reading level there. She was also concerned with the fact that the student was taught in isolation at Andrew Avenue. She admitted, however, that the student's disability and resistance to change naturally required a period where he would be transitioned into mainstream classes. In this regard, the mother was also worried about the student's safety and thought that he might hurt other students during an outburst. The mother nevertheless felt that his outbursts were correlated to the demands that were placed upon him. Additionally, she felt that a one-to-one aide was crucial and liked the Circle of Friends that was being implemented. (Testimony of the mother, May 17, 1999)
68. The mother's long term concerns related to the student's ability to be independent and live by himself. Yet, when questioned about her request for the student to live in a residential facility and how that would affect his independence, she hesitated for a while before finally answering that she thought that in "some ways" residential placement is what the student needs. Later in her testimony, on May 28, 1999, the mother admitted that if the appropriate supports were in place – respite care, psychiatric care, mentoring, evening support (5:00 – 7:00 p.m.) summer programming, in addition to the present services – she felt that he could be safe in the community. (Testimony of the mother, May 28, 1999)

69. On May 28, 1999, Robert Cronin testified for the Board. He described the student's status at school and his progress. The daily logs filled out by Mr. Hahn detailed the student's day at Andrew Avenue. (Exhibit B-99) Mr. Cronin stated that the point system was not currently being used but a team meeting is planned for May 24, 1999, and the team plans to discuss starting the point system. The "concerns of the day" is information generated from the student. The student also dictates a note to the Principal regarding his day. (Id., pp. 7, 9, 12, 14, and 19). Since the last hearing, Mr. Cronin described the increase in activity for the student. He is attending a fourth grade science class, lunch with the fourth and fifth graders where he sits with some of the children. He also goes to recess, and mainstream reading room equipped with computers that he is able to use. In addition, the Circle of Friends has been started. Mr. Cronin stated that on the student's first day back at school, he had an outburst where he was physically aggressive with Mr. Hahn. That incident was resolved. Since the first day, Mr. Cronin was unaware of any other incident where the student had to be physically restrained or was aggressive. The school is working with Priority Care with respect to the morning, 7:00 – 9:00 a.m., aspect of the program. He also stated that the staff feels that things are going well. The mainstreaming component is working better than they expected. The team is presently looking into an all day summer program for the student. Mr. Cronin also addressed the student's ability to participate in a sports program or any other similar extra curricular activity where he could participate with other children. He stated that the district has a unified sports program where disabled children are paired with non-disabled children. Mr. Cronin also testified that DCF had been contacted by Bruce Mason, the Assistant Director of Special Services. It was his understanding that a meeting had been set up and was to occur with HAP. Additionally, he stated that respite care was planned to be developed in June. It was the Board's opinion, however, that the Priority Care services for the evening, from 5:00 – 7:00 p.m., were not part of the educational program. Mr. Cronin stated that he felt the program was developed so that the student and other students were safe. He believes this is a very appropriate educational program for the student. (Testimony of Robert Cronin)

70. Linda Rammler of Rammler & Wood, an educational consultant, completed an updated educational evaluation on May 22, 1997, ordered by the undersigned hearing officer in the previous hearing involving this child. (Exhibit P-15). Relevant portions of Ms. Rammler's report concerning the student's recommended program are as follows:

Concerning placement, it is clear that, in the absence of supports to [the mother], the student was not able to continue living in the community. During these important formative years, isolating the student on a rural campus away from his mother will have adverse affects on his psychological development (e.g. he is not learning how to interact with typical students) as well as on his acquisition of skills (e.g., self-management, community mobility) that will enable him to live in the community as an independent adult. However, [the mother's] concerns about his return home are well-founded. As such, careful plans must be made to develop an assure the provision of related services that include ongoing parent

training, extended day support in the mornings and after school into the evenings, on weekends, and throughout the school year. Access to crisis intervention services are essential.

The students return to home also must be transitioned gradually to allow both student and his mother to adjust as a family in the new apartment....

(Exhibit P-15, p.4)

The three evaluators involved in this evaluation update concur with the following conclusions that also appeared in the original June 3, 1996, evaluation: "a program can be designed to enable [the student] to be safely and adequately educated while living at home with his mother...[the student] needs to be with his mommy and that he (is suffering) irreparable harm from (this) long-term separation..." (Exhibits P-15, p.9, P-5)

DISCUSSION AND CONCLUSIONS:

1. There is no dispute that the student is entitled to special education and related services pursuant to 20 U.S.C. Section 1400 et. seq., the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. Section 300.7(a) and Section 10-76a-1(d) of the Regulations of Connecticut State Agencies (RCSA)
2. The Act defines FAPE as special education and related services which:
 - “(A) have been provided at public expense, under public supervision and direction, and without charge;
 - meet the standards of the State educational agency;
 - include an appropriate preschool, elementary, or secondary school education in the State involved; and
 - are provided in conformity with the individualized education program required under Section 614(d).” 20 U.S.C. Section 1401(8).
3. “Special Education means”
“specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including –
instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.” 20 U.S.C. Section 1401(25)
4. “Related services” are defined as “transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes

only) as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children.” 20 U.S.C. Section 1401(22)

5. The standard for determining whether a Board has provided a free appropriate public education starts with a two prong test established in Board of Education of the Hendrick Hudson Central School District et al. Rowley, 458 U.S. 176 (1982), 102 S.Ct. 3034. The first prong is determining if the Board complied with the procedural requirements of the Act and the second prong requires determining if the individualized educational program developed pursuant to the Act was reasonably calculated to enable the child to receive educational benefit.
6. Connecticut Agencies Regs. Section 10-76h-2(f)(4) and Connecticut General Statutes Section 10-76h(a)(8) also places the burden of proof on the party requesting the hearing. Since the mother requested the due process hearing, she bears the burden of proof as to all facts. *See Alamo Heights Ind. Sch. Dist. v. State Bd. of Ed.*, 790 F.2d 1153, 1158 (5th Cir. 1986); Fairfax County Pub. Sch., 20 IDELR 585 (VA, 8/12/93).
7. The parent in their brief argues at length about procedural violations that derive from services having been provided without being documented in the student’s IEP, and that as a result she was not able to effectively participate in the PPT team process and that there was no way for her to measure the student’s progress. The parent therefore asserts that the Board committed IDEA violations with respect to the IEP and as such, denied the student a free appropriate public education.
8. Even if one were to accept the parent’s assertions as true, she is still not entitled to the relief she seeks – a residential placement, at Board expense. A procedural violation of the IDEA does not, in and of itself, warrant a change in the child’s educational placement, particularly in a case such as this when the parent is demanding that the Hearing Officer place the student in a far more restrictive setting than the one recommended by his PPT. And particularly in the absence of credible expert testimony that such a restrictive setting is necessary for the child. In order to equate procedural flaws with a denial of a free appropriate public education, there must be a showing that the procedural errors resulted in a loss of educational opportunity. 20 U.S.C.A. State Statute 601 *et. seq.*, *as amended*, 20 U.S.C.A. State Statute 1400 *et seq.*
9. For example, in Board of Education of the City School District of the City of New York, the review officer found that “the annual goals and short-term instructional objectives were not specific enough, vague, and partially unrealistic.” 29 IDELR 823 (SEA NY 1998). He further found that the IEP failed to address the student’s poor math, spelling and visual perceptual skills. *Id.* The review officer, however, refused to order a private placement for the student solely because the IEP was deficient. Instead, the review officer merely ordered that a revised IEP be drafted in accordance with his decision within 30 days. *See also Burke County Bd. of Educ. v. Denton*, 895

F.2d 973, 982 (4th Cir. 1990)(refusing to award compensatory education when “the procedural faults committed by the Board ...did not cause [the child] to lose any educational opportunity); Evans v. District No. 17 of Douglas County Nebraska, 841F.2d824, 830 (8th Cir. 1988)(court ruled that the school district’s failure to conduct a requisite triennial evaluation did not entitle the parents to the relief where the failure to conduct such evaluations did not deprive the child of an appropriate educational program); Doe v. Alabama State Department of Education, 915 F.2d 651, 662 (school’s violation of IDEA’s parental notification provision did not require relief under the Act where any deficiency had no impact on parental participation, the educational decisions made, or services provided); Myles S. v. Montgomery County Board of Education, 824 F. Supp. 1549 (M.D. Ala. 1993)(school district’s technical violations of the IDEA in failing to provide parents of handicapped student’s with notices of refusal of make requested changes in educational programs did not result in any harm or denial of educational benefits to students).

10. In contrast, the only case cited by the parents to support their claim that the student was not provided an appropriate educational program because his IEP was deficient is factually distinguishable from the case before this hearing officer. Briere v. Fair Haven Grade School District, 948 F. Supp. 1242 (D.Vt. 1996). In Briere, the Board “...omitted several annual goals and short-term objective that had been included in previous IEPs, including support in the areas of math, written expression, social development, and pre-vocational skills.” *Id.*, at 1256. The child’s most profound disability, language remediation, was also not mentioned in the IEP. Moreover, the Board placed the child, for the most part, in mainstream classes without specialized instruction where she could not function successfully. At the hearing, expert testimony revealed that recent testing had indicated that the child would not be successful in the mainstream;