

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Vernon Board of Education

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FINAL DECISION AND ORDER

ISSUES:

1. Did the Board provide T. with a Free and Appropriate Public Education?
2. Was T. removed from regular education before the appropriate supplementary aids and services were put in place?
3. Is the Board responsible for the cost of Eileen Luddy's evaluation?

SUMMARY:

T. is a twelve year old student with Down's syndrome. He has received special education and related services from his local school district since he was three years old. Although he made satisfactory academic and social progress in elementary school, T.'s transition to middle school was disastrous. T. refused to do academic work, ran out of the classroom and through the hallways of the school, was loud and disruptive, and locked himself in the bathroom. These challenging behaviors intensified until the PPT, unsure of how to deal with T., removed him from regular education and shortened his school day to under 90 minutes. A behavioral consultant was brought in but when the school district was still unable to control T.'s behavior, they recommended that T. be placed in either the River St. School or the Gengras Center. The parents disagreed with the recommendation and requested this hearing. The prehearing conference was held on March 16, 2001 and the hearing convened on April 2, 4, 6, and 10, 2001.

FINDINGS OF FACT:

1. T. was born on February 16, 1989. Within a few hours of his birth, it was determined that he had Down's Syndrome. He received services from the Connecticut Birth to Three Program (a program of the Connecticut Department of Mental Retardation) until he turned three years old during which time he progressed in all developmental areas. Since T. became three years of age, the Board has been responsible for providing him with a free appropriate public education ("FAPE"). (Exhibits B-155 through B-170)
2. From 1992 to the fall of 2000, T. attended the Skinner Road Elementary School. Beginning in the Early Childhood Learning Center, T. then attended kindergarten through grade five in the same building. (Exhibits B-46 through B-154)
3. During his elementary school years, T. was placed in regular education classrooms with appropriate supplementary aids and services including a one on one paraprofessional, curriculum modifications, speech and language support, occupational therapy, adaptive physical education, special education services both in the regular and resource classrooms, regularly scheduled team meetings, and summer programming. Overall, T. experienced both academic and social success while in elementary school. (See, for example, Exhibits B-46, 49, 55, 71, 78, 79, 82, Testimony of T.'s mother, Eileen Luddy, Lois Possell, school psychologist at Skinner Road Elementary School)
4. T.'s behavior was occasionally an issue during elementary school. As early as second grade, behavior management steps were put in place and included verbal instructions as well as "time-outs." T.'s difficult behaviors included work refusals, aggressiveness, talking back, and walking in the hallways inappropriately. In third grade, T.'s behavior management plan included the use of reinforcers, timers for both academic and reinforcement periods, and tokens. At a PPT convened on March 24, 1998, it was noted that T. required a structured, consistent approach to behavior management. Improved social skills were made a part of T.'s IEP goals (Exhibit B-71). By the end of fourth grade, it was noted that T.'s behavior was an area of concern but had "shown nice improvement." (Exhibits B-55, 73, 74, 75, B-79, page 7 of 24)
5. Lois Possell testified that T.'s biggest problems in elementary school were task avoidance and transitions. To deal with these issues, she put a behavior plan in place that broke T.'s work into twenty minute sessions, used timers and schedule boards, and provided external motivators as well as preplanned consequences. In addition, T.'s schedule provided that T.'s preferred activities would follow his less preferred activities. Ms. Possell also scripted the language all T.'s teachers were expected to use with him when certain behaviors occurred so that all his teachers dealt with him in a consistent manner. Ms. Possell also testified that she knew T. would have some difficulty in middle school with changing classes, traveling the halls, and dealing with many different teachers. (Testimony of Lois Possell, Skinner Road School Psychologist)

6. In September, 1998, the Board contracted with Eileen Luddy to provide educational consultation and a functional behavior analysis for T. Ms. Luddy provided a report dated October 13, 1998 after observing T. on that day. She praised T.'s integration with his peers but recommended individual instruction to meet his academic levels. She also stated that the behavior support plan was motivating but was too time consuming and disruptive to instruction. In addition to other recommendations, she stated that a facilitated planning session would be useful in improving T.'s program before he reaches middle school. (Exhibits B-61, 63)
7. Also in the fall of 1998, the Board contracted with Judith Sweeney to provide an assistive technology evaluation for T. She recommended that T. have consistent access to a computer, an Intellikeys keyboard, and appropriate software to assist him in developing his reading, writing, and math skills. She emphasized that the most important part of her recommendations was appropriate and ongoing training for T., his teachers, therapists, and parents, and for one person who would be fully trained and available to T. at all times. (Exhibits P-11, B-60, B-62)
8. The Board retained Dr. Judy S. Itzkowitz, an educational consultant, to facilitate a futures planning process known as the McGill Action Planning System (also known as Making Action Plans) or "Maps". The process was conducted in a meeting held on May 3, 2000 and was attended by T.'s parents and sister, adult friends and relatives, and teachers and staff from both his elementary school and the middle school he would be attending in the fall. Among the Maps activities were the delineation of issues that T. would face in moving to the middle school, and specific activities that would help to smooth the transition. It was recognized that T. might be overwhelmed by the cafeteria, gym, hallways, and size of the student team. T.'s need to acquire skills in social interactions was acknowledged as was a concern about how best to support T. when he shuts down. Dr. Itzkowitz recommended that the environment, curriculum and instruction be modified and appropriate supplementary aids and services be provided to assure that T. would receive benefit from his placement in general education. Included among her other recommendations were the development of a circle of friends, making the special education teacher the case manager, specific training for T.'s paraprofessional, the use of assistive technology, training the middle school staff in the areas of inclusion, curricular modifications, assessment, fostering friendships, and Down syndrome, and the use of ongoing consultation to support the team in implementing T.'s program at the middle school. (Exhibits P-10, B-41 through 45)
9. On June 12, 2000, a PPT was convened to plan for T.'s transition to the middle school. It was noted that T. could identify coins, tell time to the half hour, had a basic sight word vocabulary and good calculator skills. T. sometimes had trouble with his peer interactions and exhibited immature behavior. His expressive language skills needed work as he tended to speak in one or two word sentences. The PPT agreed that T. would be placed in a sixth grade regular education program and would receive 42 minutes per week of direct speech and language therapy, 3.5 hours per week of special education services for reading/decoding, and would participate in a social skills group as needed. T. would also participate in the Connecticut Mastery Tests

through out of level testing at the second grade level. Goals and objectives included increasing reading ability to a second grade level, improving handwriting skills, using the Intellikeys program to write sentences, increasing the number of positive interactions with peers and staff on a daily basis, and moving within the school independently including moving from class to class using a picture schedule. Goals and objectives were also provided for T.'s summer programming which would be provided at the middle school. While the team understood that T. would experience some problems adjusting to middle school, there was no real transition planning or discussion of transition issues at this PPT. (Exhibits P-1, B-40, Testimony of Lois Possell)

10. Staff at the middle school participated in some transition planning activities. The middle school teachers and secondary school special education supervisor attended some team meetings at the elementary school during the spring of 2000, T.'s middle school special education teacher and paraprofessional observed T. at the Skinner Road School, middle school staff received some training in T.'s computer software, and T.'s 2000 summer school program was located in the middle school. (Testimony of T.'s mother, Board Director of Pupil Personnel Services, Ms. LaPointe, T.'s middle school special education teacher)
11. T. exhibited behavior difficulties from the first day of the 2000-2001 school year at the middle school. Within the first week of school, T. had refused to do academic work for more than about fifteen minutes, shouted "no" to requests, was loud and disruptive, lay on the floor, locked himself in the bathroom, removed his shirt, and ran out of the classroom, through the halls of the school and out of the school building. This running behavior continued throughout the fall. His behaviors were potentially dangerous to himself and disruptive for the other students in the middle school. T. absorbed much of the time and attention of his general and special education teachers, paraprofessional, and school administrators. For the first time, he told his parents that he did not want to go to school. He actually entered the regular education classrooms only a few times. His parents requested a PPT to discuss T.'s transition difficulties; it was convened on September 15, 2000. The team suggested that T. was overwhelmed by the size of the middle school, the frequent transitions due to changing classes, the number of teachers with whom he had to work, and the large number of students. The PPT discussed various behavioral interventions such as a room where T. could take breaks (which was implemented but was only successful for a short time) and possible changes to T.'s program including shortening his day and a change in placement. His parents stated that they did not want T. in a segregated setting. Forms entitled "Functional Assessment of Behavior" and "Behavioral Intervention Plan" were filled out with behavior reinforcers listed as Picture Board, Picture Schedule, and Rewards; consequences for inappropriate behavior included loss of rewards and time-out. T.'s teachers, however, were given no specific strategies for dealing with T.'s behavior. The middle school staff was completely baffled by T.'s behavior and was unsure how to proceed. (Exhibits P-2, B-33, Testimony of T.'s mother, middle school Vice-Principal, Ms. LaPointe, and the Director of Pupil Personnel Services)

12. T.'s mother was called to the school so frequently to deal with T.'s behavior, that she began volunteering in the middle school library to be more available to T. and the school staff. At times, she was able to reengage T., but more often than not, she was unsuccessful and brought T. home early. Eventually, she was bringing T. home early every day. During this time, there was no plan for the school staff to follow when T. demonstrated his difficult behaviors other than to have T.'s mother take him home. The Vice-Principal also became involved with T. as his running through the school became a building problem. The Vice-Principal testified that T. ran almost every day. Nothing the staff tried could curb T.'s behavior. (Testimony of T.'s mother, middle school Vice-Principal)
13. Seeing little improvement in T.'s behavior, his parents requested the assistance of a consultant. The Director of Pupil Personnel Services recommended Dr. Michael Gareau to whom the parents eventually agreed. Dr. Gareau came to the school district on October 5, 2000. He reviewed T.'s records and met with T.'s parents and the middle school staff. As Dr. Gareau was not available again until October 26, T.'s parents went to his office in Massachusetts on October 13, 2000. Dr. Gareau made three recommendations. First, he suggested that T.'s program be provided in a more contained "homebase" classroom with consistent support staff who could immediately respond to T.'s running and disruptive behaviors: this would reduce T.'s opportunities to run; second, he recommended that a time out room be made available, and third, T.'s teachers and paraprofessional should receive restraint training (this never occurred). T.'s parents raised the issue of a functional behavioral analysis and plan; Dr. Gareau stated that they would eventually get to that but first they had to stop T.'s cycle of running and disruptive behaviors. He also informed them that he would only be available on Thursday mornings. (Testimony of T.'s Mother and Dr. Gareau)
14. On October 17, 2000, a PPT was convened to review Dr. Gareau's suggestions. Dr. Gareau did not attend the PPT. Despite Dr. Gareau's recommendations, and although other intervention strategies were discussed, the team finally decided that T.'s school day would end each day at 9:20 a.m. From 8:00 a.m. until his mother picked him up, T. would be in Ms. LaPointe's special education "emerging readers" classroom receiving instruction in reading and language arts only. This schedule began the next day and continued through the duration of this hearing. During this period, T. did not receive any instruction in the area of behavior or social skills. (Exhibits P-3, B-31, Testimony of T.'s Mother, Eileen Luddy)
15. The next PPT was convened on October 23, 2000. T.'s parents expressed their frustration with Dr. Gareau's limited schedule and T.'s continued short school day. On October 26 and November 2, Dr. Gareau visited the school district and briefly observed T. On the latter visit, he informed the middle school staff and T.'s parents that he would not return the following week as the three components he deemed essential were not yet in place; therefore, he did not think he could be of any assistance. (Exhibits P-4, B-30, Testimony of T.'s Mother)
16. The Board provided home tutoring for one hour per day, three days per week to supplement T.'s shortened school day. The tutor did not have a special education

background and was not sure how to work with T. T.'s teacher gave the tutor some worksheets but T. was not interested and the tutor was unable to reengage him. After four sessions, T.'s mother ended the tutoring after determining that T. was not receiving any benefit. (Exhibits B-21, 25 and 26, Testimony of T.'s Mother)

17. The next PPT was convened on November 14, 2000. The team reported that Dr. Gareau did not think T. could return to school for a full day until his recommended supports were in place, but the team was working towards implementing his plan and interviews for an additional support person for T. would soon occur. T.'s parents expressed their confusion over what this new staff person would do and what qualifications were required. In addition, they reiterated the need for a written plan and appropriate program for T. and expressed their concern over the lack of progress toward a full school day. (Exhibits P-5, B-23)
18. On November 30, 2000, another PPT was convened and was attended by Dr. Gareau. The following was noted: T.'s behavior was still problematic; Ms. LaPointe's classroom had been changed to a full sized classroom and additional children had been added (for a total of 19 children); a prefabricated time-out room had been ordered (this order was eventually canceled); and additional staff had not yet been hired. Dr. Gareau stated that T.'s cycle of misbehavior had to be ended. In his opinion, time-out had to be used if T. did not comply with a direction within five seconds. He also stated that two or three adults must be available if T. needs to be removed to time out. Finally, he recommended the use of a behavior chart to collect data on T.'s behavior in six major goal areas: on task behavior, verbal behavior, physical behavior, transitions, remaining in assigned area, and following directions. Ms. LaPointe testified that if she had followed Dr. Gareau's five second rule, T. would have spent the entire day in a time-out room. (Exhibits P-6, P-31, B-19, Testimony of Ms. LaPointe)
19. A behavior charting system was created based upon Dr. Gareau's suggestions and is still being used by T.'s teachers. The data collected, however, is not being used in any way. (Exhibits P-31, P-32, Testimony of Dr. Gareau and Mrs. LaPointe)
20. At the PPT convened on December 7, 2000, the school district representative stated that although they had extensively advertised and searched for an additional special education staff person, they had been unsuccessful in their efforts. The Board felt that the program was not working for T. but that his school day could not be expanded due to safety concerns and their lack of resources. Therefore, they recommended that T. be placed either in an educational program at the Gengras Center or the River Street School. Dr. Gareau agreed that if the Board could not provide staff to immediately respond and contain T., then outplacement was advisable. T.'s parents requested time to consider this proposal. At the PPT convened on December 20, 2000, the parents refused the proposed placements. They also asked for an assistive technology evaluation, formal functional behavior assessment and written behavioral support plan; they also reiterated their request for an independent educational evaluation. (Exhibits P-7, P-8, P-9, B-13, B-16, Testimony of Dr. Gareau)

21. On January 5, 2001, T.'s parents requested that the Board pay for an independent educational evaluation by Eileen Luddy. The Board refused and suggested an evaluation by either Dr. Gareau or Dr. Marshall Gladstone. On January 26, 2001, the parents responded that they still intended to have Eileen Luddy perform an evaluation although they would agree to cognitive testing by Dr. Gareau. On March 13, 2001, the parents revoked consent for Dr. Gareau to perform cognitive testing as testing had not yet occurred, and it did not appear that it would occur in the near future. (Exhibits P-19, P-20, P-25, B-1, B-7, B-9, B-10)
22. The parents requested due process on March 12, 2001. (Exhibit B-2)
22. Initially, the Board refused to allow Eileen Luddy access to T.'s school and educational program. Both parties briefed the issue and an interim order was issued by the hearing officer allowing access. Eileen Luddy observed T. in his educational placement on March 26, 2001. In a report dated March 27, 2001, she made several recommendations including the following: an administrator to lead and support T.'s team; training, support, and time for the special education teacher/case manager to provide specially designed instruction in a variety of settings to T.; direct speech therapy in a variety of settings; occupational therapy especially in the area of sensory integration strategies; a general education teacher to work with T.'s team; training and support for T.'s paraprofessional; an independent educational consultant who could design a positive behavior support plan; regular, frequent team meetings; ongoing training for the school personnel who support T.; a circle of friends; and a phase-in plan that would eventually allow for T.'s re-entry into regular education. During her testimony, Ms. Luddy stressed the need for a functional behavior assessment in order to determine the antecedents to and consequences of T.'s maladaptive behaviors. Once this is determined, a behavior support plan could be designed to change the antecedents and consequences in order to reduce the frequency and/or duration of the undesirable behaviors. (Exhibit P-26, Testimony of Eileen Luddy)
23. During the hearing, it was reported that T.'s behavior has improved. He is no longer running out of the classroom, and he is able to attend to task for a longer period of time. T.'s teacher believes that T. could now appropriately handle more time in school. (Testimony of T.'s Mother, Ms. LaPointe)

CONCLUSIONS OF LAW:

1. Both parties agree that T., who has been identified as a student with a disability, is entitled to receive a free and appropriate public education ("FAPE") with special education and related services as provided for under the provisions of Connecticut General Statutes Sections 10-76 et seq. and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. 1401 et seq.
2. 20 U.S.C. 1402(22) describes related services as "...transportation, and such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education ...". This section includes a list of some of the types of services that may be considered a related

service in a child's education program and includes psychological, social work, and counseling services. Under 34 C.F.R. Section 300.24(b)(2), "Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel." 34 C.F.R. Section 300.24(b)(9)(iii) defines psychological services to include "Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;" 300.24(b)(13)(v) defines social work services as including "Assisting in developing positive behavioral intervention strategies."

3. Under the IDEA, the state must ensure that an individualized education program ("IEP") is developed, reviewed and revised for each child who is entitled to FAPE. Under 20 U.S.C. Section 1414(d)(1)(A), the IEP must include (among other requirements as stated in the statute) a statement of the child's present levels of educational performance, a statement of measurable annual goals and objectives, and
 "(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child -
 - i to advance appropriately toward attaining the annual goals
 - ii to be involved and progress in the general curriculum in accordance with clause (I) and to participate in extracurricular and other nonacademic activities; and
 - iii to be educated and participate with other children with disabilities and non-disabled children in the activities described in this paragraph;
 - iv an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in the activities described in clause (iii);"
4. The IDEA also requires that children with disabilities are educated in the least restrictive environment ("LRE"); that is, with children who are not disabled, and, that children with disabilities are to be removed from the regular education environment "...only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (20 U.S.C. Section 1412 (a)(5). 34 C.F.R. Section 300.552(e) also requires school districts to ensure that "A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modification in the general curriculum."
5. The standard for determining whether FAPE has been provided begins with the test established by the Supreme Court in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). First, the procedural requirements of the IDEA must have been met by the school district. Second, the individualized program must be reasonably calculated to enable the child to receive educational benefit. This test has been subsequently clarified to hold that FAPE requires that the individualized educational program offered to a child must provide a

more than trivial educational benefit. (See Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988), cert denied, 488, U.S. 1030 (1989)).

6. Rowley has been further modified by cases such as Oberti v. Board of Education of the Borough of Clementon School District, 995 F.2d 1204 (3rd Cir. 1993), which held that the school district has the burden of proving that a child with a disability can not be educated in a regular classroom with supplementary aids and services.
7. Here, both the school district and the parents recognize that the educational program that has been provided to T. during the 2000-2001 school year has not provided T. with more than a trivial educational benefit. The school district now claims that they are not capable of providing T. with an appropriate educational program, and that only an out of district placement is currently appropriate for T. The parents disagree.
8. The Board also claims that T.'s behavior in middle school could not have been foreseen. But an examination of the record reveals that T. exhibited many of the same challenging behaviors in elementary school, although perhaps not with the same intensity (see Findings of Fact Nos. 4, 5, and 8). Despite these behaviors, T. experienced a great deal of success in elementary school. This was due at least in part to his having been in the same familiar school since he was three years old; in addition, the staff knew him quite well (and vice versa). But it was also due to the implementation of carefully designed behavior plans that were based upon an understanding of T.'s behavior and his motivation. In addition, these behavior plans were successful because they were consistently implemented by all school personnel who worked with T. (See Finding of Fact No. 5).
9. The question remains, then, why was T.'s educational program relatively successful in elementary school, but such a failure in middle school? The Board is correct in its claim that T. was overwhelmed by the size, number of students and teachers, and noise in the new school as well as by the number of transitions he had to make everyday. But much of this can be attributed to the transition planning process. In planning for T.'s transition to middle school, there were many meetings and observations (see Finding of Fact No. 10). But nowhere in this flurry of activity was there any specific training of the staff in how to include T. in regular education or how to modify the regular curriculum specifically for him. In addition, while T.'s paraprofessional did observe him, there is no mention of her having received any specific training in how to work successfully with T. or how to deal with his more challenging behaviors (which were never completely extinguished in elementary school). Other transition recommendations that came from Dr. Itzkowitz and the MAPS session, such as a circle of friends and ongoing consultation to the team, were not implemented.
10. The next part of the problem is found in the Board's response to T. Practical strategies for working with T. were never developed. As his maladaptive behaviors continued to escalate, PPT's were convened. But for the most part, no specific usable strategies emerged from these meetings. Outside help was needed although it was the parents who first requested a consultant. While they agreed to the district's recommendation of Dr. Gareau, his expertise was not appropriate to the situation. He

was inaccessible and had limited time. It appears that he only observed T. on one occasion, and that was for a brief period of time. T.'s situation called for a consultant who could *be there* and support T.'s team. Instead, the team received only verbal recommendations for the use of a time-out room within a five second response time, a contained classroom, and extra staff who could restrain and escort T. as needed. (And as Ms. LaPointe testified, a five second response time would have kept T. in time-out all day. See Finding of Fact No. 18) When the school district was unable to provide all three of Dr. Gareau's requirements, he backed away from the situation.

11. The school district also responded by removing T. from regular education and limiting his day to less than 90 minutes. Within this time period, T. received reading and language arts instruction. Despite T.'s serious behaviors, this period did not include any behavior or social skills instruction. In addition, only limited and not truly useful behavior assessments and plans were completed (See, for example, Finding of Fact No. 11). Furthermore, no training or support was offered to the school staff. T.'s teachers needed someone who could tell them what to do tomorrow - not next month. But Dr. Gareau never assisted the staff in any practical way. The IDEA does not allow a school district to put a child's program on hold until certain components become available. Neither does it allow the requirements of the LRE to be ignored; children are to be removed from regular education only when such placement, with the use of supplementary aids and services, is not successful. Here, appropriate supplementary aids and services were not provided. The school district did not do what they could to assist in developing positive behavioral intervention strategies, nor did they obtain, integrate or interpret information about T.'s behavior. The only intervention they actually tried was containment. Both parties agree that a 90 minute contained day does not provide FAPE.
12. Instead of looking beyond Dr. Gareau for assistance with T.'s behavior, the school district determined that they could not provide T. with an appropriate program and placement. While T. is without doubt a challenge, the school district is not allowed to give up on providing the LRE for a child without putting the appropriate supplementary aids and services into place. Part of their argument rests upon their inability to obtain additional staff. But it was never made clear why this additional staff was so necessary or why T.'s special education teacher and paraprofessional could not receive whatever supplementary training was deemed essential.
13. Clearly, T.'s intensely negative response to middle school was a surprise to both parties. Although the IEP planned in June of 2000 seemed calculated to provide educational benefit, by early September, 2000, it was obvious that it was not appropriate. The IEP, however, never really reflected the changes that were being made to T.'s program or on what basis such changes were being made. The IEP's that were written after T.'s removal from regular education and his day was shortened do not contain the elements required by 20 U.S.C. 1414(d). While it is understood that the PPT was then in crisis mode, the statutory requirements still remain.
14. The school district's plan is to place T. out of district until his behavior is under control. However, even if another placement was able to eradicate T.'s negative behaviors, if he returns to the middle school after his outplacement, there is no reason

to assume that T.'s behavior would be any different than it was in the fall of 2000. Without staff training, appropriate curriculum modifications, a carefully designed behavior plan, and transition planning, bringing T. back after a placement at the River St. School or the Gengras Center would put him right back where he was. Assuming the ultimate goal of both parties is to educate T. within the school district, and as past history indicates, T. *can* be educated successfully in district if the appropriate supplementary aids and services are in place, then it makes more sense to provide T. with what he needs in the middle school *now* (as well as this approach being the intent of the LRE requirements of the IDEA) rather than ask him to make two more transitions. This is especially appropriate as testimony indicated that T.'s behavior and attention to task has now improved; his special education teacher believes that T. is now ready for a longer school day (See Finding of Fact No. 24).

15. Therefore, placing T. in either the River St. School or the Gengras Center would not provide T. with FAPE in the LRE. The school district is capable of providing T. with an appropriate educational program and placement if T.'s transition back to a full day of school in a regular education setting is carefully planned. To that end, an independent consultant with expertise in behavior plans and inclusion will be necessary to assist the PPT in facilitating this transition by modifying T.'s curriculum, planning for the appropriate supplementary aids and supports, and helping to design and provide staff training.
16. The parents have also requested that the Board pay for the evaluation performed by Eileen Luddy. 34 C.F.R. 300.502(b) states that a parent may have a right to an evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If the parent requests an independent evaluation, the public agency must either initiate due process to show that its evaluation is appropriate, or pay for the parent's evaluation. As noted in Finding of Fact No. 21, T.'s parents agreed to cognitive testing by Dr. Gareau. When the testing had not been performed after over a month and a half, they revoked consent. In addition, Dr. Gareau never completed his consulting work with regard to T.'s behavioral and social issues. When Dr. Gareau determined that he could not be of assistance, the Board did not replace him with any other consultant. Therefore, while both parties agreed that an evaluation was necessary, the Board did not assure that it occurred in a reasonable period of time, and when it did not, did not request a hearing. Accordingly, the Board must pay for Eileen Luddy's evaluation.
17. Other issues raised by the parents were resolved between the parties. These included the need for an assistive technology evaluation and cognitive testing. An interim order resolved the issue of Eileen Luddy's access to T.'s school and program.

FINAL DECISION AND ORDER:

1. The Board did not provide T. with FAPE.
2. T. was improperly removed from regular education before the appropriate supplementary aids and services were put in place.

3. The Board is responsible for the cost of Eileen Luddy's evaluation.
4. The PPT will immediately meet to select an independent educational consultant who is to be paid by the Board and is agreeable to both the parents and the Board. If they are unable to agree on a consultant, then each party will select a consultant; together, the two consultants will then select the independent educational consultant.
5. The independent educational consultant will assist the PPT in planning an appropriate IEP that will allow for T.'s transition back to a full day of school in regular education. The consultant will also assist the PPT in planning and implementing a behavior support plan, modifying the curriculum for T., planning ongoing staff training and team meetings, and planning and implementing all other appropriate supplementary aids and services as deemed necessary. The consultant shall also assist in planning T.'s summer programming. In the event of any disagreements, the consultant's decisions shall be final. The consultant's hours shall be determined by the agreement of the Board and the parents. The educational consultant shall remain in place until both the Board and the parents agree that his or her services are no longer needed by the PPT.