

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

Appearing of behalf of the Parents: Attorney Howard Klebanoff  
Klebanoff and Phelan, P.C.  
Corporate Center West  
433 South Main Street – Suite 102  
West Hartford, Connecticut 06110

Appearing on behalf of the Board: Attorney Ann Bird  
Office of Corporation Counsel  
City of Hartford  
550 Main Street  
Hartford, Connecticut 06103

Appearing before: Attorney Mary H.B. Gelfman, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Are the program and placement offered by the Board appropriate to Student's special education needs in the least restrictive environment?
2. If not, does Student require the summer 2001 program at Ben Bronz in order to benefit from special education?
3. If the program and placement offered by the Board are not appropriate to Student's needs, is placement at Ben Bronz for the 2001-2002 school year appropriate to Student's needs?
4. Is the Board responsible for funding Student's placement at Ben Bronz for the summer 2001 program?
5. Is the Board responsible for funding Student's placement at Ben Bronz for the 2001-2002 school year?

**SUMMARY OF THE CASE:**

After several years of receiving support services under Section 504, Student was identified as in need of special education as other health impaired toward the end of his fifth grade year, 2000-2001. Parents rejected the Board's proposed program and placement and requested placement in a private school for special education. When the Board rejected that option, Parents requested a hearing.

**PROCEDURAL HISTORY:**

The request for hearing was dated May 3, 2001, and received at the State Department of Education on May 7, 2001. The pre-hearing conference was held on May 21, 2001, and at that time the hearing was scheduled for June 12 and July 9, 2001. The parties requested the additional date of July 9, and requested that the date for mailing the final decision and order be extended by 30 days to accommodate this additional date. The hearing officer extended the mailing date from June 22, 2001, to July 22, 2001.

The hearing convened as scheduled on June 12, and after testimony started the parties requested additional dates and a further extension of the mailing date. The hearing officer scheduled July 18, 20, and 26, 2001, and extended the mailing date from July 22, 2001, to August 21, 2001. When the hearing convened on July 9, 2001, the Parents' attorney asked that the session scheduled for July 18 be cancelled because of a conflict with another special education hearing. The hearing officer scheduled August 16, 2001, as an additional date, and extended the deadline for mailing from August 21, 2001, to September 20, 2001. The hearing reconvened on July 20 and 26, and August 16, 2001, as scheduled. The record was closed on August 16, 2001.

The parties asked the Hearing Officer to bifurcate this hearing pursuant to Section 10-76h-14(b), Regulations of Connecticut State Agencies (RCSA), and to address the issue of the appropriateness of the Board's program and placement first. The Hearing Officer granted that request. This decision addresses Issue 1 only. The parties will notify the Hearing Officer if they wish to resume to hearing to address the remainder of the issues.

**FINDINGS OF FACT:**

1. Student, a ten-year-old boy, was born on September 28, 1990, and completed the fifth grade in the Board's school in June, 2001. (Exhibits B-2, B-14)
2. On the advice of his pediatrician, Student was evaluated at the Child Development Center of the Connecticut Children's Medical Center (CCMC) in May, 1997, at the end of his first grade year. The report of this evaluation included a diagnosis of attention deficit hyperactivity disorder (ADHD) and some recommendations for classroom modifications and behavior management strategies. A CCMC evaluator observed Student in class in March, 1998, and provided a detailed list of recommended classroom modifications. She also recommended participation in an "activity based social skills group". (Exhibits B-23, B-24)

3. A Section 504 Accommodation Plan dated December 8, 1998, described Student's problems:

Student continues to have difficulty w/organization skills, sequencing and numerically ordered tasks, following directions, near and far point copying and consistent attention to task. His writing skills also need improvement.

The plan provided for a part-time paraprofessional, preferential seating, computer based instruction, and an adjusted curriculum. This plan was signed by Student's Parents and by the school principal. This record indicates that meetings were held on March 3, April 9, May 15, and December 8, 1998, but it does not indicate whether Section services had been provided prior to this plan. (Exhibit P-5)

4. Student's report card at the end of third grade, 1998-99, showed success in several areas. In writing he was reported as working at the early phase, meeting success in two areas, showing progress in four areas, and showing progress/experiencing difficulty in "plan, revise and publish his writing". In math, he was described:

Student can do math functions accurately when he focuses. One-on-one he shows growth and understanding. He also participates actively in lessons. However, he seems to "disconnect" on formal evaluations, sometimes demonstrating mastery of higher level concepts (graphs, fractions) while missing basic addition Facts".

In specific math concepts, he was reported as performing consistently in two areas; meeting success in five areas; showing progress in seven areas; experiencing difficulty in one area; in two areas, he was "meeting success/experiencing difficulty" and in two areas he was "showing progress/experiencing difficulty". He received "performing consistently" for personal effort. In personal character development and health education, he received "meeting success" in nine areas and "showing progress" in two areas. In organization skills, he received "meeting success" in two areas and "showing progress" in three areas. A teacher comment for 3/99:

Student is beginning to assume more responsibility for his own learning. He has been very conscientious about homework. While he still needs help and reminders to focus during lessons, he is less distracted. He is a more appropriately active participant in class. His writing has the potential to be good, but is still inconsistent. This is my goal for the rest of the year!

Teacher comment at the end of the year:

I've very much enjoyed watching Student's growth this year. While it's sometimes been a bumpy road, we seem to be traveling in the right direction. I'm looking forward to receiving email this summer so I know what he's doing in the summer school program. (Exhibit P-7)

5. Student took the Connecticut Mastery Test (CMT) in September, 1999, at the beginning of his fourth grade year. His scores were reported as below the statewide goals, with the following comments:
  - (math 86, goal 103 of 121) Generally, students who score at this level demonstrate partially developed computational skills and problem solving abilities, but have limited conceptual understanding.
  - (writing, 5, goal 8 of 12) Well below the statewide goal. Generally, students who score at this level produce papers which are undeveloped narratives. These papers have vague or general details, may show disorganized or weak sequencing of events, and may be awkward and confusing. You are encouraged to call your child's school to discuss additional assistance your child may need to improve.
  - (degrees of reading power, 44, goal 50) Generally, students who score at this level can comprehend, with some teacher assistance, textbooks and other materials typically used at grade four or below. (Exhibit P-1, P-8)
6. At a meeting held on September 15, 1999, Parents requested psychological testing. (Exhibit P-9)
7. The record of a PPT meeting held for Student on September 22, 1999, show:
  1. Continue paraprofessional support
  2. Team recommends psychological and educational testing at this time. (Exhibit P-10)
8. Student had an individual psychological evaluation on October 4, 5, 6, 12, and 25, 1999. The evaluator described Student as quite active during the evaluation and also when observed in a classroom situation and in gym class. Student's verbal scores on the WISC III were in the average range; performance scores in the high average range; and full scale score in the high average range. Student's Parents and teachers completed Achenbach Behavior Rating Scales. The teachers reported results within the normal range, with his attention problem scale in the borderline range. The Parents reported results that were clinically significant in anxiety/depression and attention problems. The evaluator noted results in the normal range in further testing for anxiety, with a "frequent need for reassurance/encouragement may be related to previously noted issues of self-esteem". This evaluator's summary and recommendations noted no significant discrepancy between verbal and performance scores, but considerable scatter among subtest scores. (Exhibit B-1)
9. The October, 1999, evaluator noted that Student's Parents "have been asked to reconsider another trial of medication to help Student in the large group instructional settings, as well as outside family counseling to address any issues which may be impacting his ability to focus, as well as his self-esteem". An outside tutor for math was also recommended. (Exhibit B-1, pages 3 and 4)

10. The record of a Planning and Placement Team (PPT) meeting held November 10, 1999, shows Student classified as having ADHD. Plans and services to be provided included:
- School social work for school anxiety and peer relationships;
  - Modifications and paraprofessional support in SFA [reading program];
  - paraprofessional support in math (total paraprofessional services 19.5 hours per week);
  - when SFA classes are re-grouped, Student would be assigned to the same teacher he has had;
  - the team will re-convene in 60 days to review paraprofessional support;
  - all teachers to use strategies recommended in the March, 1998, report from CCMC and to meet “ASAP” to evaluate and discuss adaptations and modifications.
- Student was found not eligible for special education as learning disabled; services to be provided under Section 504. (Exhibit B-2)
11. At about this time, Student’s Parents started taking him for therapy with a psychologist. (Testimony of Mother)
12. Student’s report card for fourth grade, 1999-2000, showed Excellent in homework; Good in communication arts, social studies, mathematics, science, art, physical education, work habits, and personal and social development; and Satisfactory in SFA cooperative learning and music. Teacher comments were all positive. (Exhibit P-13)
13. A Section 504 Accommodation Plan dated June 19, 2000, lists ADHD as Student’s disability and reports “part-time paraprofessional” as the only service being provided. There is no documentation of what the paraprofessional was expected to do, other than repeat directions and help Student get organized. (Exhibit P-2)
14. In Student’s fifth grade year, Board staff members prepared for PPT discussion by completing worksheet forms for identification of a learning disability. The math worksheet, dated December 8, 2000, listed strategies implemented on December 1 and continuing, with a teacher’s comment “too soon”. Math teaching methods and curriculum were described in detail, including “calculator used when lesson objective is problem solving”. Individual interventions listed as “on-going” were reported as:
- after school program Monday and Wednesday;
  - paraprofessional tutoring;
  - teacher one-on-one during independent practices. (Exhibit B-3)
15. The December 12, 2000, reading worksheet listed five individual strategies in use from September, 2000, as satisfactory, and one, “model pre-writing and organization” as limited. Continuous assessment was listed as including vocabulary, story, reading comprehension, and sentence tests, plus sight vocabulary, comprehension strategies,

using words in meaningful contexts, writing about literature, and linking reading and writing. Student's reading group was reported as a group of three, all assessed as reading on a 5.1 grade level. Individual interventions were listed:

- In addition to above, student has received small group or individual instruction based on assessed strengths and needs, for a minimum of four days per week, and under the direction of a person knowledgeable in reading instruction (documentation indicating frequency, duration and type of instruction must be attached).
- Daily fluency practice provided daily [sic] in decodable texts, as well as in rich and interesting texts at student independent reading level.
- Daily opportunities to write, utilizing skills emphasized in lesson.
- [Use of] authentic and interesting texts for instruction.
- Vocabulary building.
- Daily opportunities to write, using higher order thinking skills. (Exhibit B-3)

16. The Board's PPT met on December 13, 2000, and decided to make a diagnostic special education placement for twenty days, 1½ hours per week. Student would also have neuropsychological and psychiatric evaluations and an update of academic achievement and behavior rating scales. Paraprofessional support and after school math tutoring would continue. Student is classified on the PPT record as "504 ADHD": Parents requested eligibility for special education as other health impaired. (Exhibits B-4, B-5, B-6)
17. The Individualized Education Program (IEP) for this diagnostic placement lists use of a calculator for math as needed, but does not show a check mark on "access to a computer". For all classes, Student was to have extra time for tests; pace long term projects; extra time for projects; rephrase test questions/directions if necessary; shortened tasks if necessary; extra time – written work; daily homework list; post routines; assignment pad; preferential seating; support auditory presentations with visuals; and if necessary, review directions, repeat instructions, and have Student re-state information. Under behavior management/support, Student was to be given positive reinforcement, cues for expected behavior, structure transitions, and parent sign homework. His teachers were to check to see if he has appropriate materials to bring home, and the paraprofessional was to oversee organization of materials daily, consult with special education [teacher] who would, in turn, consult with classroom teachers re: accommodations/modifications. The summary page of this IEP showed: assistive technology N/A; related services N/A; behavior interventions N/A; and extended school year services Required. (Exhibits B-5, B-6)
18. Connors' Teacher Rating Scales-Revised were returned in early January, 2001, to the school psychologist. Student's language arts teacher had marked fourteen items on the scale as pretty much true and seven as very much true. In testimony, this teacher said that she might change a few items from just a little true to not true at all, and that as Student had become more comfortable in her class, her perceptions of him had changed somewhat. She described him as "intelligent, but he couldn't do the work",

and said that she was frustrated because she couldn't "unlock" Student's potential. She commented that Student's homework was frequently not completed or left at home, despite arrangements for home-school communication and checking to be sure he had his assignments when he left school. Some of the modifications for securing Student's attention were closely related to the structure SFA program and were used for several students. Reading the report of the neuropsychological evaluation had explained some of Student's problems to her "I see him differently now". (Exhibit P-14, pages 3 and 4; Testimony of Snider)

19. Student's math and SFA teacher also returned a Connors' scale in early January. He marked three items as pretty much true and eleven as very much true. In testimony, this teacher described his efforts to help Student with one-on-one instruction in math two days a week after school and modified homework assignments. He liked Student, but he observed that he was having "serious difficulties" and wondered if there was a learning disability. He did not know about the PPT's determinations that Student was not learning disabled. (Exhibit P-14, pages 5 and 6, Testimony of Sullivan)
20. Student's Parents completed Connors' scales in December, 2000. They marked fourteen items as pretty much true and twenty-seven as very much true. (Exhibit P-15)
21. A school psychologist summarized the results of these Connors' Rating Scales Revised as follows:
  - Teacher scales: parallel results w/ the exception of DSM inattentive scale which reached significance w/ a T score of 74 by the male, SFA (reading) teacher. All other scales were w/in average/borderline levels.
  - Parent scale (completed by both parents) rated in the clinically significant level in the following areas: T scores

Cognitive prob/inattention 77  
Hyperactivity 76  
ADHD Index 75  
Restless-impulsive 73  
Global index 70  
Inattentive 77  
Hyper/impulsive 78  
DSM IV Total 80

This school psychologist also commented:

The PPT may wish to consider environmental factors which may be contributing to Student's inattentive behaviors. (Exhibit B-8)

22. Student took the Woodcock-Johnson Psycho-Educational Battery at school on January 5, 9, 11, and 12, 2001. The evaluator noted that he was performing on grade

level in reading and below grade level in math and written language. Test results were summarized in the evaluation report:

- Student's overall processing abilities fall within the average range.
- Significant strengths are noted in both long-term retrieval which measures the ability to store and retrieve information fluently[,] and fluid reasoning which measures the ability to reason in novel situations and the capacity for abstractions.
- There are no significant weaknesses noted in the cognitive domain.
- Achievement scores indicate Broad Reading and Broad Math within the average range.
- Student's ability to express his ideas on the Broad written Language cluster fall into the low average range.

This evaluator recommended:

- Accommodations and modifications for a student with ADHD should be employed with Student's help in the design.
- Self-monitoring techniques should be taught to Student.
- Integrate these findings with those of school psychologist to determine the presence of a learning disability. (Exhibit B-9)

23. The January 16, 2001, Multidisciplinary Evaluation Report for Students Suspected of Having a Learning Disability showed three alternative strategies: daily log, encourage verbally, and notebook between parent and school (daily). Parental input was given as:

Parents have many concerns about Student's academics and have requested testing.

The diagnosis of ADHD was also noted. An observation of Student in his written language class was reported:

Student was able to contribute good ideas to the discussion yet appeared to be off-task – he exhibited great difficulty in starting the actual writing and needed encouragement and support to continue, often questioning his accomplishment.

This report concluded with a checklist for learning disabilities, in which all blanks were checked either NO or N/A, and the signatures of four school staff members. (Exhibit B-10)

24. The Board's PPT met on January 17, 2001, to discuss Student's status. The results of the Connors' Rating Scales and the school's psycho-educational evaluation were discussed. Teachers reported that the various strategies being used were effective, but that Student was missing a few assignments. Only slight progress with written language was reported, and all academics showed inconsistent performance. Special education testing showed Student's processing difficulties as within the average range, although some subtest results were lower, and one was higher. Achievement



scores showed reading and math average level, and written language low average. Observations in SFA and math showed Student with a short attention span, poor organization, distractibility and no follow through: the observer commented that paraprofessional support “may not be effective/appropriate”. The PPT modified the IEP for Student’s diagnostic placement:

- Special education services were increased from 1½ hours per week to 2 hours per week;
- homework and classwork were to continue being modified;
- paraprofessional support would continue;
- the paraprofessional “will re-establish and maintain parent communication journal under direction of classroom teachers”;
- parents “waived 20 day diagnostic placement and 45 day re-meet”.

The PPT would reconvene as soon as the reports of the psychiatric and neuropsychological evaluations were available. (Exhibit B-11)

25. The report of a psychiatric evaluation dated January 24, 2001, listed Student’s school problems as:

- difficulty with multiple tasks;
- staying focused;
- organization;
- “and that parents had initiated the referral process due to their concern about Student’s academic process [progress?] and potential negative impact on his self-esteem”.

This psychiatrist described Student as:

“an intelligent, perceptive and sensitive child with an intact and supportive family. Despite his and parents’ recognition of his many strengths, he has experienced increasing frustration in school with resulting decline in self-esteem and self-confidence.”

Attention Deficit Hyperactivity Disorder and Depressive Disorder not otherwise specified were diagnosed, with a rule out of specific learning disability. (Exhibit B-7)

26. The evaluating psychiatrist recommended:

1. Student warrants classification as Other Health Impaired secondary to his Attention Deficit Disorder. Given his persistent problems with disorganization, forgetfulness, and the need for frequent repetition, it is recommended that he have access to resource room services on a daily basis to review his homework assignment, and help him organize and prioritize his tasks. He described particular difficulties with math, and he may require great 1:1 assistance in that subject.

2. It is difficult to assess how much of Student's processing problems are due to auditory processing difficulties, inattentiveness, memory problems, or anxiety. To better assess Student's difficulties with attention, processing, and particular learning difficulties, a neuropsychological evaluation, which has already been recommended, should be completed as soon as possible. This should provide additional information and suggestions about educational modifications and resources that could be helpful for Student.
  3. A recommendation was made in the past for utilization of high interest formats, hands on learning opportunities, and provision of visual references to accompany verbal instructions. It is uncertain as to whether or not this is being done, and should be implemented if it is [has?] not been done before. In addition, as has been previously recommended, staff should request verbal feedback from Student regarding task requirements to assure that he has understood the nature of the expectations.
  4. Student should continue in individual psychotherapy with Dr. Megan.
  5. Student should continue to participate in after school sports activities, as this is a source of self-esteem for him
  6. School staff should address issues with his classmates about name-calling and issues of race and acceptance of differences.
  7. Student's ADHD has not been adequately treated psychopharmacologically. He has not had trials of other medications besides a brief trial of Ritalin which led to some side effects. Student could benefit from a trial on longer acting psychostimulants, such as Adderrall or Concerta.
  8. Student has particular strengths in art, and he could work with younger students on art projects as well as do decorating in his classroom or elsewhere in the school.
  9. Should Student's mood continue to decline despite the above interventions, consideration may be given to antidepressant medication. (Exhibit B-7)
27. Student had a neuropsychological evaluation on February 20, 2001. The report of this evaluation is undated, and nothing in the record of this hearing indicates when the report was received by the Board. (Exhibits B-12, P-16)
28. The neuropsychological evaluator noted symptoms reported by Student's mother:
- Difficulty figuring out how to do new academic work
  - Difficulty planning ahead
  - Difficulty solving problems a younger child can do
  - Is disorganized
  - Difficulty understanding explanations
  - Difficulty with sequencing
  - Difficulty completing an activity in a reasonable period of time
  - Difficulty changing a plan or activity when necessary
  - Is slow to learn new things (not athletically)
  - Has difficulty switching from one activity to another
  - Easily frustrated

- Initially learns concepts (e.g., math) but then forgets them
- Has had difficulty with spelling and math
- Is easily distracted by sights and sounds
- Has difficulty concentrating on what others say
- His attention starts out okay but he cannot keep it up
- Is forgetful of where he leaves things, what he is supposed to be doing, school assignments and instruction
- Has recently appeared anxious
- Makes noise or sings while playing
- Seems like he is always talking
- Is frequently losing things needed for school
- Has a fear of something bad happening and checks to see if his things are safe
- Fails to finish things that he starts
- Loses his train of thought
- Has significant difficulty following a long series of directions

Student's Mother also told this evaluator that Student has had special help in school since third grade and has had a paraprofessional working with him. She reported that Student is very coordinated and an above average soccer player, enjoyed baseball, skiing, biking, and taught himself to ride a unicycle. (Exhibits B-12, P-16)

29. Student's Verbal IQ, Performance IQ and Full Scale IQ were all within the average range. Tests showed:

- Significant attention deficits for short bits of auditory and visual information;
- Sequencing problems;
- Impaired processing of narrative information;
- Slow graphomotor speed;
- General fund of information below expectancy;
- Word finding difficulties;
- Reading comprehension problems;
- Losing track of his answers during complex problem solving tasks;
- Reduced cognitive flexibility.

The neuropsychologist commented: It is clear that Student benefits from verbal repetition as a single administration of a word list revealed significant impairment. (Exhibits B-12, P-16)

30. Student's overall findings are consistent with an Attention Deficit Hyperactivity Disorder as well as anxiety. An underlying Central Auditory Processing Disorder may also co-exist. Recommendations by the neuropsychologist were:

- Student should be medicated for his Attention Deficit Hyperactivity Disorder and anxiety.
- Student will continue to benefit from psychotherapy with Dr. Megan.
- Student should have an evaluation for a Central Auditory Processing Disorder. This should not be a screening evaluation by a speech and language therapist, but rather a full Central Auditory Processing Evaluation by an audiologist. The audiologist's recommendations can be included in his IEP.
- Given Student's significant difficulties with sequencing, he is having difficulty
- prioritizing the information he has to learn. In addition to a need for repetition in
- order to process the information, "all trees in the forest" look equally important to him, and he will need help in identifying key concepts.
- While Student clearly has the ability to memorize verbal information, repetition and/or backup is critical to his ability to process the information.
- After Student has been placed on medication, an evaluation for reading comprehension should be completed. This should be done in the context of assessing his reading accuracy and reading rate so that appropriate interventions can be recommended if reading comprehension difficulties are still evident. Student will benefit from preferential seating in the classroom.
- Student is extremely sensitive to disapproval and responds well to encouragement and positive reinforcement. The use of positive reinforcement should be maximized in school and home environments.
- Student's impulsivity at the present time has contributed to his difficulties.
- Medication should be helpful; in reducing his impulsivity.
- Student clearly had difficulty following directions and depending upon the results of the audiological evaluation, may need a language-based classroom. The school environment must be constructed to meet Student's needs and the use of a paraprofessional should only be considered as a stopgap measure.
- Student will have difficulty taking notes in a classroom given both his auditory processing deficits and his slow graphomotor speed. Thus, as he moves to higher grades, access to class notes will be imperative.
- Student's homework assignments should be provided in daily or weekly handouts.
- His slowed motor speed does not allow him to copy homework assignments consistently enough from the blackboard and he may miss verbal instructions or changes in instructions.
- Given that math is primarily taught in the classroom and there is little visual backup for the information presented (the textbooks relate mostly to problems), the use of academic computer software will be helpful to visually present the information in math.
- Given his difficulties with prioritization, Student will benefit from the use of student study guides or workbooks that accompany textbooks, Cliff

Notes and a study buddy. His difficulties in prioritizing will also effect his ability to write insofar as he will have difficulty selecting key points. The teacher's support in helping him to identify key concepts is strongly recommended.

The evaluator concluded:

At the present time, Student is a youngster with very significant Attention Deficit Hyperactivity Disorder and auditory processing deficits. His learning is severely compromised in a standard classroom and if the above recommendations are not sufficient to improve his performance, an outside placement may have to be considered. Student's self-esteem and potential for severe anxiety and depression are at risk if the coordination of recommendations fails. It is critical that parents, school and treating clinicians have good communication concerning Student's progress. (Exhibits B-12, P16)

31. In testimony, the neuropsychologist who had evaluated Student reiterated her recommendations, including medication, and discussed Student's complex needs and sensitivity to criticism and the possible stigma of needing special help.
32. An audiological and central auditory processing evaluation on April 2, 2001, found:
  1. The results of the audiological evaluation indicate that Student's peripheral hearing is normal. However, tests that measure central auditory function reveal a significant degree of inefficiency and/or immaturity of his central auditory system. This means that while Student's hearing is essentially normal, he has difficulty processing speech quickly and accurately, particularly under adverse listening conditions. Auditory processing disorders are usually the result of neuromaturational (developmental) and/or neuromorphological (relatively fixed) deficits.
  2. Student's performance on the Staggered Spondaic Word Test (SSW) identifies his auditory processing difficulties as falling into the decoding and tolerance-fading memory categories of auditory processing disorder (APD). Phonemic decoding (speech discrimination) difficulties can cause Student to miss pertinent information or misunderstand what has been said. His phonemic decoding difficulties can also cause him to take a longer time to process what he hears. For this reason, Student may need to have spoken information repeated and/or reworded and he may need additional time to process it.
  3. Student's tolerance-fading memory difficulties can cause him to have difficulty understanding speech under adverse listening conditions. (This is supported by results from the Filtered Speech Test and the Speech-in-Noise Test). Factors such as poor acoustics, distance from the speaker, rate, length and complexity of the auditory information, and background noise can all impact his ability comprehend and remember spoken information. For this reason, Student's classroom performance can seem inconsistent. Tolerance-

- fading memory difficulties can also impact expressive (oral and/or written) language and reading comprehension.
4. Nonaudiological memory tests reveal age-appropriate recall of numbers and words. However, Student's memory ability for sentences breaks down significantly with lengthier and more complex bits of information. Therefore, auditory directives should be short and concise and Student should be allowed adequate time in between for processing.
  5. Three tests were administered that stress fundamental auditory skills for reading and spelling. Skills such as phonemic synthesis (sound blending), auditory analysis (syllable and sound segmentation), and auditory conceptualization (perception and manipulation of sounds in words), are essential auditory "building blocks" for reading and spelling. Student's phonemic synthesis skills are age-appropriate. However, his auditory analysis skills and auditory conceptualization skills appear to be weak. Such weaknesses can cause him to struggle in the areas of reading, spelling and written language.
  6. Student's auditory processing profile includes some auditory strengths as well. His binaural separation ability (the Completing Sentences Test) is age-appropriate as is his ability to integrate left hemisphere/auditory-linguistic with right hemisphere/visual-spatial types of information (the Pitch Pattern Sequence Test). Further, Student has a solid grasp of linguistic concepts and, given adequate time to process, the ability to make a good, logical judgment based on what he has heard (the Wiig-Semel Test of Linguistic Concepts).

The impressions of the audiologist-evaluator were:

It is important to recognize that Student must exert a greater effort to listen than his peers. Although his peripheral hearing is normal, he may, at times, function much like a student with a mild hearing impairment. Therefore, it is important that auditory interventions are in place in order to strengthen Student's central auditory system and, at the same time, help him compensate for his auditory weaknesses. (Exhibit P-17)

33. The audiological evaluator made specific recommendations:

#### Classroom management

- Student should be seated close to where the teacher customarily teaches. If class activities change, he should be allowed flexible seating so that he is in the best position to hear and see the teacher. Student should be placed away from such distractions as hallways, windows, and doorways. In addition, he should be placed away from other students who are habitually active and noisy. Student and his teachers may have to experiment with different seating arrangements to find the one most suitable for him.
- Noise can cause Student to miss word endings and brief words. Reverberation and "blur" work fragments making them much harder to

perceive. Often noise from chairs, desks, lab equipment, etc., can be dampened using towels, Styrofoam or other absorptive materials. Some students have also found the use of ear protection devices helpful in eliminating noise during times of independent work.

#### Compensatory strategies

- Teachers should face Student as much as possible while speaking. In this way, he will have a better opportunity to speechread any missed information. Encourage Student to focus his attention on teacher. Many students like Student are hesitant to make eye contact because they are afraid of being called on. Therefore, Student's teacher should make an arrangement with him that he will only be called on when he raises his hand.
- Develop a system to alert Student before giving auditory directives or initiating a conversation.
- During verbal communication, teachers should try to speak slowly, clearly and with adequate volume. Student should be allowed adequate time to process the message before giving his response.
- Supplement auditory information with visual cues as much as possible.
- In most cases, Student may simply need to have the message repeated. In this way he can hear the message again in exactly the same way and can fill in the pieces that he missed. At other times, when it is clear that he doesn't understand, restating the message (thus providing different acoustic cues) may be more beneficial.
- Use student's names when calling on them to answer questions. This will cue Student in as to who is speaking. Repeat brief answers and summarize key points to ensure that Student heard them correctly.
- Generally speaking, oral tests should not be used with students with auditory processing disorders. One way to get around this is to have Student repeat the question or the word (as in spelling or vocabulary tests) before writing his answer.
- Familiarize Student with new vocabulary by introducing and defining new words with meaningful examples. Key words and new vocabulary should be written on the board.
- Directions should be segmented into small, sequential, and meaningful units.
- Student should continue to receive support in the classroom for as long as he needs it.
- Encourage participation in all activities, particularly those involving expressive language. Student may try to "opt out" of such activities because they are difficult for him and he is afraid of risking "failure". Your support and encouragement will not only help to strengthen his listening and expressive skills but will also contribute toward better self-confidence and, in turn, more risk-taking.
- Analyze Student's error: Is there a pattern or component (i.e., rate or loudness) that interferes most often with successful listening?

- Praise effort rather than outcome of the listening experience. Recognize Student's efforts, particularly in those areas that are difficult for him. Positive reinforcement will encourage him to continue striving and will enhance his self-confidence.
- Student should be taught compensatory strategies (chunking, visualization, verbalization and mnemonics) to assist with auditory memory and processing.
- Be alert to indicators of stress in Student. Frustration often occurs from the struggle of day-to-day listening in the classroom and trying to keep up with the rest of the class. If you see signs of undue stress, you may want to enlist the help of his parents and/or the school counselor.
- Look carefully at assignments, tests, reports, and homework to determine whether Student's difficulties are due to misunderstanding of the material, misunderstanding of the directions, and/or reading difficulties.
- Modifications and/or exemptions should be given on any tests that are timed. Student should be allowed extended time and a quiet environment to complete assignments and should be given clarification of directions when needed.
- The beginning of each school year is often stressful for students with auditory processing problems because they have to adapt to a new teacher with a whole new set of rules and expectations. Student's teacher can ease some of the frustration and anxiety by patiently going over class routine until it is understood.
- Student's PPT should determine, each year, the most appropriate class placement(s) for him. Special consideration should be given to class size, style and personality of the teacher, and classroom acoustics.

The above strategies are guidelines to help Student compensate for his auditory disabilities. Since he is currently receiving services on a §504 plan, some of the above strategies may already be in place. Student's educational team is in the best position to decide what works best for him. (Exhibit P-17)

34. The audiological evaluator also included technical details for the use of FM amplification in the classroom, and recommended several specific interventions, as well as consultation between Student's teachers and the school speech/language pathologist concerning Student. (Exhibit P-17)
35. A letter dated April 11, 2001, from a psychiatrist consulted by Student's Parents to the neuropsychological evaluator, described Student:

My overall impression is that Student is a young man with Attention Deficit Disorder of the primary distractible variety, possibly Dysthymia, and with obsessive compulsive traits, short of a full Obsessive-Compulsive Disorder. There may also be an underlying learning disability, which hopefully your testing will illuminate. Strictly speaking Student also meets the definition for diagnosis of an Adjustment Disorder with Depressed Mood, the adjustment difficulties being reactive to the specific demands and circumstances of fifth grade. Student's



ultimate prognosis is very good given his intact family, intelligent and responsible parents, good communication at home, and strongly motivated in the past, currently and prospectively to obtain help for Student. His parents are excellent advocates for Student, and, very good historians.

This psychiatrist included recommendations concerning the importance of the neuropsychological evaluation in determining causes of his school difficulties, which in turn may be contributing to his depression. He also generally supported the Parents' quest for an alternative school placement and discussed medication alternatives. In testimony, this psychiatrist reiterated his previous comments, and reported that Student was now being medicated. This witness did not review Student's school records, consult with any of Student's teachers, or observe Student's classroom, although he had visited the school as a consultant. (Exhibits P-18, P-27, Testimony of Dr. Cohen)

36. The Parents received an unsigned Notice of Retention dated April 23, 2001, from Student's school. While the Principal characterized this communication as "an alert, a warning notice", the actual language of the notice strongly suggests that a decision to retain Student in fifth grade had been made. Given the fact that family and school were, at the time, engaged in serious discussions of recent evaluation results and program options responsive to the evaluators' recommendations, this communication is puzzling. No other mention of possible retention appears anywhere in the record. (Exhibit P-3, Testimony of Parents, Testimony of Principal)
37. The Board's PPT convened on April 25, 2001, to discuss the reports of the neuropsychological and central auditory processing evaluations, as well as Student's recent progress. It was reported that Student had advanced from a 5.1 to a 5.2 reading level, and the results of a practice CMT, administered without modifications in the previous fall, were discussed. Student was now on a trial of medications for ADHD and depression. The PPT found him eligible for special education as other health impaired, and again not eligible as learning disabled. (Exhibit B-13)
38. The April 25 PPT meeting was continued to April 30, with the addition of a speech/language pathologist and the Board's coordinator of language, speech, hearing, and occupational and physical therapy services. After discussion of whether the Board could provide all of the modifications recommended in the evaluations, the PPT reiterated its position that such a program could be provided, and the Parents reiterated their request for placement of Student at Ben Bronz. (Exhibit B-14, P-19)
39. The record of the April 30 PPT meeting is replete with internal inconsistencies. The Board's *proposed program* included two goals: to improve written language skills and to improve math skills.  
The List of *PPT Recommendations* includes:

- CAPD evaluation will be reimbursed by the district.
- District will explore opportunities for a summer program for Student, in conjunction with Parents.
- District will complete L(anguage) S(peech) H(earing) evaluation and Key Math evaluation will be done in 2-3 weeks.
- Parents feel time is of the essence for Student.
- At next meeting will discuss CMT recommendations.
- Parents do not want to set up a meeting time.
- When evaluations are done, the results should be faxed to Parents and their advocate.
- School social work consult was offered in addition to outside counseling.
- Parents and school agree to hold meeting without a five day notification.

The **IEP Summary** shows 3¾ hours per week for each goal, with instruction to be provided by special education staff. “Assistive Technology” is checked as N/A, although use of a calculator, computer, and FM amplification were under discussion. Extended school year is now Not Required. Behavior strategies are also marked N/A. No related services are indicated, despite continuing discussion of social work consultation.

The **Placement Summary** states that Student will benefit from small group instruction in math and written language due to auditory processing weaknesses, and from pull out support in written language and math.

**Modifications and adaptations**, some of which are in conflict or were questioned by evaluators, in Regular Education are listed as:

- Assistive technology: FM system (with Parent consent); access to computer; calculator.
- Tests: prior notice, extra time, pace long term projects, preview test procedures, extra time for projects, rephrase test questions/directions, test study guides, shorten tasks if needed, extra response time, hands-on projects, extra time-written work, modified tests if needed.
- Grading: no spelling penalty.
- Organization: provide study outlines, daily assignment list, daily homework list, list sequential steps, post assignments, assignment pad, assign partner, and para(professional) check homework materials/assignments.
- Environment: preferential seating, allow Student to move if he is unable to hear clearly.
- Behavior management/support: encourage participation to build self-confidence, cur prior to asking questions.
- Instructional strategies: monitor assignments, multi-sensory approach, modified content, provide models, highlight key words, pictures/charts, pre-teach content, review directions, assign study partner, repeat instructions, visual reminders, use mnemonics, have student restate information, provide lecture notes/outline to student, computer assisted instruction, support auditory presentations with visuals, display key vocabulary.

The sheet titled “*Modifications and accommodations for Student April 30, 2001*” is yet another document that is not consistent with other pages of the IEP.

Required *supports for personnel* are listed:

- S(peech) L(anguage) P(athologist) will consult with classroom teachers weekly for 2 month trial; regarding FM system and classroom modifications and strategies.
- Audiologist will provide consultation monthly to classroom teachers to monitor FM system and provide additional assistance w/ modifications as needed.
- Sp(ecial) Ed(ucation) teacher will consult with classroom teachers weekly to facilitate reinforcement of metacognitive strategies for reading and math.
- Sp Ed teacher will consult with Student and classroom teachers regarding organization of his materials weekly for the school year.
- Sp Ed will consult with para(professional) and teacher re: classroom modifications and strategies weekly for the school year.

The *Least Restrictive Environment (LRE) Procedural Checklist* is neatly checked to show compliance with IDEA. However, all references to “the IEP” and “The PPT determined ...” are suspect in the light of conflicting sections of the IEP and PPT documents. (Exhibits B-14, B-15, B-16, B-17, B-18, B-19, B-20, B-21, P-19, Testimony of Principal)

40. In testimony, Student’s Father described the almost nightly struggles over homework. Student was often confused about the assignments and had difficulty remembering the related lessons. School staff told Parents that the homework should not require the two to three hours that Student seemed to need. Even after such prolonged effort, Student often produced assignments that were incomplete. In testimony, the Principal stated that one hour of homework was the usual practice. (Testimony of Father, Burr)
41. Student had a speech and language evaluation on May 14, 2001. This evaluator found Student demonstrating average receptive and expressive communication skills. She reported “a latency in responding to information presented auditorily. Her recommendations:
  - Use of clear, concise instructions, keeping vocabulary simple.
  - Allow for increased wait time between questions/instructions and his responses.
  - Use of repetition as well as restatement of information when introducing or reviewing concepts and/or curriculum.
  - Use of multi-sensory approaches of instruction to include hands-on and visual aids.

- Student should be encouraged to participate in all academic activities to promote self-esteem and continue to praise efforts and give positive reinforcements to promote a positive self-image [sic]. (Exhibit P-21)
42. The Board's PPT reconvened on June 6, 2001, to discuss the Parents' request for a summer program for Student. The Board proposed a program called Fast Forward in one of its schools, with transportation provided. This program focuses on computer skills, and is not a special education program. Student was reported as now reading at the 6.1 grade level. The PPT determined that Student was not eligible for speech services. (Exhibit B-27, Testimony of Bampton)
43. Student's report card for fifth grade, 2000-2001, showed: Excellent in physical education; Good in SFA cooperative learning, communication arts, social studies, science, music, art and personal and social development; satisfactory in work habits and homework; and needs improvement in math. His SFA teacher noted "needs to focus more". Teacher comments: first [marking] period: Student needs to develop a better sense of responsibility; He needs much supervision in order to do his work well; missing three math homework assignments. Second period: Student's work habits are improving; he is gaining more self-confidence in his academic subjects; missing five math homework [assignments]. Third period: I appreciate your cooperation this year; Student seems to be happier and more at ease in school now; Student has a good recall of basic [math] facts, but his mathematical reasoning and problem solving are on a third grade level. Fourth period: Student continues to work hard and strive for progress. (Exhibit P-22)
44. Student's Special Education teacher described the support she had provided in the Resource Room and in Student's classroom. She reported that the paraprofessional helped Student organize his work, but moved away from him whenever he seemed to be able to work on his own. She described how she moved around the classroom, helping several students, and avoiding, as much as possible, making Student's support stand out among his peers. She also described the SFA (success for all) reading program, which is a highly structured program, including student collaboration and regular testing. (Testimony of Kaiser)
45. The Board's Coordinator of language, speech, hearing and occupational and physical therapy services, who is a speech/language pathologist, discussed Student's speech/language evaluation. She was confident that the recommendations made by the audiologist concerning Student's central auditory processing disorder could be implemented by the appropriate staff in the Board's school. (Testimony of Bampton)
46. The Board's Director for Exceptional Children responded to the question of whether the many recommended modifications and supports could be implemented. After a review of the record, she concluded that most of the recommended interventions were sound instructional strategies, and probably many of them were already in place. Because she had seen no evidence of regression, she did not believe that Student was

eligible for a special education summer program. The program that was offered would be a good introduction to the recommended computer based instruction. She also reiterated the PPT's position that Student was not eligible for special education as learning disabled. Concerning issues of self-esteem and possible "stigma" of pull out resource room help, she said that many children come to grips with the need for help, and that usually older children (i.e., eighth grade) were more reluctant to go to the resource room. In response to the question of whether a formal assistive technology assessment should have been done, she referred to the apparent consensus that calculator and computer use would be appropriate and, after the audiological evaluation, that FM amplification could be provided. She saw the April, 2001, IEP as "skeletal, for a kid with marginal needs". (Testimony, Athanson)

47. The Principal of Student's school recalled many telephone conversations and meetings with Parents. This school includes an after school program for reinforcement of core subjects and a summer program, available to all. He had made informal observations of Student in class, around the building, and on the playground. In class, he appeared quiet, perhaps introverted, but responded when called on. He appeared to work well with other students. On the playground, he was athletic. He was a little more exuberant in the lunchroom, and had been seen laughing. He discussed the status of the CMT, a statewide test that is not age-normed. He was confident that an appropriate program for Student could be provided in his school. (Testimony of Burr)
48. The IEP that was first proposed on April 25 and 30 for implementation on May 7, and again discussed on June 6, 2001, was for an initial special education placement and could not be implemented without parental consent. The Parents did not sign consent for implementation. The Parents, in turn, sincerely doubted that the school could provide a program that incorporated all the recommendations of the evaluators. (Exhibit B-17, Testimony of Mother)

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. Student is eligible for special education as other health impaired, pursuant to Section 10-76a-2(i), Regulations of Connecticut State Agencies (RCSA), and 34 Code of Federal Regulations Section 300.7(c)(9), on the basis of his medical diagnosis of ADHD. He has problems with written expression and math, and his recently diagnosed central auditory processing disorder contributes to each of these areas of weakness. His emotional issues, including weak self-esteem, anxiety and depression, also impact on his school performance.
2. Student's school performance may improve with medication, which was recommended by the psychiatric and neuropsychological evaluators, and has recently been started. The neuropsychologist who evaluated him commented that his reading should be tested again after medication was established.

3. The record of this case shows considerable individualized support provided to Student and many of his classmates within the framework of “regular education” curriculum and teaching strategies developed for a school in which many students are not performing on grade level. Testimony from teachers and the school principal described these regular education interventions during the school day, and in after school and summer programs. Testimony from the Board’s Director for Exceptional Children stressed that many of the recommended classroom modifications for Student were already in place and were considered good teaching strategies in regular education. Unfortunately, the testimony of the Board’s sincere and enthusiastic teachers, without documentation of modifications and strategies previously tried, with follow-up for successful and unsuccessful interventions for Student, is not enough to support or reject the effectiveness of the Board’s efforts.
4. Since 1997, many good suggestions have been made for modifications and support services that might help Student. However, the Board’s failure to identify and track modifications makes it difficult to determine not only whether, indeed, the advice of experts was considered, but even more important, what worked and what did not work. The 2001 neuropsychological and central auditory processing evaluations provide explanations for Student’s particular difficulties. Given the Board’s prior record and the confusion and inconsistencies of the April, 2001, IEP, it is doubtful whether the Board can put together the comprehensive program which Student needs. Continued insistence on “inclusion models” for a Student who needs a quiet classroom and close monitoring suggests that the PPT is under estimating the impact of Student’s central auditory processing disorder.
5. Board staff probably felt frustrated by Student. He seemed to be only mildly disabled, yet he did not respond to intensive help with math, which included both after school help from his teacher and a tutor. His written work also failed to show much improvement.
6. A few of the recommendations from the neuropsychologist and the audiologist suggest that well-meaning Board efforts were, in some cases, inappropriate for Student. For example, SFA involves quite a lot of collaborative work: that implies a somewhat noisy classroom. The audiologist stressed the importance of a quiet environment.
7. Depression and anxiety usually do not lead to disruptive behavior: therefore, perhaps, Board staff members did not think that Student required behavioral interventions. Suggestions for strategies to engage Student with his peers in school, addressing his withdrawal and poor self-esteem, need to be systematic and they need to be reviewed periodically. Social work consultation disappeared without comment from Student’s program, and then reappeared without comment: yet the Board’s own Director for Exceptional Children said that she would have included some direct social work services.

8. The retention notice may have been simply a mistake. But the impact of that mistake, in the midst of evaluations and meetings, is significant.
9. The IEP proposed by the Board on April 25 and 30, 2001, is too confused and internally conflicted to be considered appropriate to Student's special education needs in the least restrictive environment. In April the Board faced a dilemma: most of the school year was expended on evaluating and following up with additional evaluations. Student had not previously been classified as eligible for special education, and therefore parental consent was required for an initial special education placement, even though the placement proposed looked a great deal like the prior Section 504 plan. Perhaps, given more time, a coherent IEP would have emerged. Unfortunately, the Parents' valid concerns forced a hearing.
10. It is doubtful that any placement could be "based upon the IEP" given its skeletal nature and conflicting ingredients. For example, assistive technology is included (calculator, computer software, FM amplification) even though on one form it is shown as "N/A". A formal assistive technology assessment was not required: none of the evaluators suggested it, and the recommendations that were made in this area are well thought out and responsive to Student's individual needs.
11. The IEP/service plan/summary sheet do not clearly spell out whether the 7½ hours per week of special education services will be provided in the classroom or the resource room, or elsewhere. The issue of Student's sensitivity to being "different" was discussed by teachers and in evaluations, with a recommendation that Student participate in some of the plans. Surely the issue of how much pull out and how much supported work in the regular classroom is one that would concern Student, and he should be consulted about his preferences.
12. Pursuant to Section 10-76d-14(b), RCSA:

A trial placement for diagnostic purposes [must be] a structured program, of not more than eight weeks' duration, the purpose of which is to assess the needs of a child for whom an individualized education program may be needed, but for whom the evaluation student is either inconclusive or the data insufficient to determine the child's individualized education program.

1. The PPT shall specify, in writing, diagnostic goals and objectives, as well as the types and amounts of services needed to conduct the program in order to determine more conclusively the child's needs.
2. The PPT shall meet at least every two weeks with personnel working with the child to discuss the child's progress and to revise, where necessary, the services being provided.

3. A child's time may be divided between the diagnostic program and another program, or the child may be placed in the diagnostic placement fulltime. Decisions regarding such options shall be made by the PPT.
4. A diagnostic program shall be terminated as soon as the child's needs have been determined, but in any event within eight weeks.
5. Five days before the end of the diagnostic program, the PPT shall reconvene to write the child's individualized education program based on findings made during the program as well as other evaluative information regarding the child.

While it is clear that the Board's PPT was aware of the general intent of a diagnostic placement, the arrangements for Student's diagnostic placement were minimally compliant with the regulation. The placement commenced after a PPT meeting held on December 13, 2000. Subsequent PPT meetings were held on January 17, April 25 and 30, and June 6, 2001. While an argument could be made that the PPT was ready to terminate the diagnostic placement and start providing the IEP on May 7, 2001, the request for hearing effectively froze the placement.

13. Prior to 2000-2001, the reference point for interventions was a March, 1998, CCMC observation report. There is no documentation of who did what with those suggestions, and some of the same suggestions appear in 2001 in the neuropsychological and central auditory processing evaluations. One of the core principles of the Individuals with Disabilities Education Act (IDEA) is individualized planning and documentation of progress. This decision includes verbatim the recommendations of several evaluators. Many of these suggestions are, indeed, frequently included within the usual repertoire of a good teacher. However, the Board cannot assume that ALL strategies recommended will be automatically adopted by all good teachers in all of Student's classes.
14. The Board moved relatively swiftly during 2000-2001 to complete evaluations and followup evaluations, hold meetings, and plan for program and placement. Unfortunately, earlier lack of response to parental concerns had already undermined the Parents' trust in the system. The lack of a coherent thread from recommendations to modifications to some form of review, followed by the "Notice of Retention", made it difficult for the Parents to believe that the Board could do the job. **FINAL**

### **DECISION AND ORDER:**

The program and placement proposed by the Board for Student for 2001-2002 is not appropriate to Student's special education needs.