

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Wilton Board of Education

Appearing on behalf of the Parents: Attorney Annemette Schmid  
Harris & Harris  
11 Belden Ave  
Norwalk, CT 06850

Appearing on behalf of the Board: Attorney Lawrence J. Campana  
Sullivan, Schoen, Campana  
& Connon, LLC  
646 Prospect Avenue  
Hartford, CT 06105

Appearing before: Attorney Christine B. Spak, Hearing Officer

**FINAL DECISION AND ORDER:**

**ISSUES:**

1. Did the Wilton Board of Education (hereinafter the Board) provide the Student with a free and appropriate public education (hereinafter FAPE) for the 2001-2002 school year; and
2. If not, is a residential placement appropriate for the Student to receive FAPE?

**SUMMARY:**

The Student, eleven years old during most of the 2001-2002 school year during which this hearing took place, is a boy identified as having autism. Until he was seven he lived overseas in Italy where he received no educational program. He is severely delayed in many areas. His parents requested due process after their request for a residential placement for their son was refused by the Board which believes the Student is receiving a significant educational benefit in their program.

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

### **PROCEDURAL HISTORY:**

The parents requested a Due Process Hearing in a letter dated October 30, 2001 and received by the State Department of Education by fax on November 14, 2001 to contest the appropriateness of the Board's program and request residential placement for their son. A prehearing conference was convened on November 19, 2001. By request of the parent the hearing was open to the public and was attended by various members of the public and the press. The hearing was conducted on the following dates: December 19, 2001, January 4, 2002, January 17, 2002, January 24, 2002, February 12, 2002, February 13, 2002, April 29, 2002, May 9, 2002, May 17, 2002 and May 29, 2002, for a total of ten days of hearing. The Board submitted a total of seventy-eight exhibits and the Parents submitted fifty-five exhibits and the hearing officer had thirty, many dealing with the various procedural aspects of this case. At the close of evidence in this matter the parties discussed a briefing schedule. This was done on the record. See Transcript, May 29, 2002, pp. 54-61. It was agreed that the briefs would be due, postmarked July 1, 2002 by overnight mail with the reply briefs due, postmarked July 22, 2002 by overnight mail. The hearing officer stressed that the parties must adhere to this schedule because even this schedule would give her only one week in which to complete the final decision. The hearing officer further informed the parties that due to this tight schedule, if there were any delay in receiving the briefs or reply briefs, the parties would not get a final decision until September. By letter dated June 26, 2002 but received by fax on June 25, 2002, the Parents requested a delay until July 3, 2002 to "launch" the briefs. On June 26, 2002 the hearing officer responded that the delay was acceptable

"with the understanding, as explained to the parties on the record when the briefing schedule was discussed, that any extension may mean that the Final Decision will not issue until September 2002. This will depend in part on the quality and completeness of the briefs. Although it probably goes without saying, please be sure your briefs discuss least restrictive environment and burden of proof." See Notice, June 26, 2002.

On July 11, 2002 the hearing officer sent the parties notice that read:

"Delivery of the Board's brief was made on July 5, 2002 and the Parents' on July 8, 2002. The Parents' brief did not come with the computer disk copy or the second hard copy as was set out on the record on the last day of hearing. Please forward these as soon

as possible so that work may begin on the decision. The new mailing date for the final decision is September 27, 2002, although I will make every attempt to get the decision out sooner.” See Notice, July 11, 2002.

On August 2, 2002 the Hearing Officer sent the following notice:

“Delivery of the Board’s reply brief was made on July 22, 2002 as agreed upon on the last date of hearing, but to date I have not received the Parents’ reply brief nor has Attorney Schmidt communicated her intention not to submit one or, alternatively, for a continuance to submit one. Therefore, at this point I do not know whether it has been lost in the mail, I do not have the complete set of briefs as I had hoped prior to my departure, and I cannot close the record. Please advise as to the status of the Parents’ reply brief.” See Notice dated August 2, 2002.

Attorney Schmid responded by letter postmarked August 6, 2002:

“Please be advised that the parents’ attorneys do not at this time wish to submit a reply brief in response to the Board’s reply brief in the above referenced matter.” She goes on to say: “Counsel for the parents are content in their belief that their original brief was a comprehensive representation of their position as well as the facts on the above referenced matter.”

The mailing date of the final decision is September 27, 2002.

**FINDINGS OF FACT:**

1. The Student was born on May 17, 1991 and was eleven years old for most of the 2000-2001 school year. He has an autism related disorder that places him on the severe end of the autism spectrum and it was agreed that he is entitled to special education services from the Board. (Testimony of Dr. Dobos, Exhibit B-1)
2. The Student was born in the United States but moved shortly after birth to Italy and was diagnosed in that country as having “infantile psychosis.” No special educational programs were provided to him for the first seven years of his life while residing in Italy. In June, 1998, when the Student was seven years of age, the family moved back to the United States and took up residence in Wilton. (Exhibit B-1; Testimony-mother)
3. An initial PPT was held on August 31, 1998. The Student was placed diagnostically in a second grade class pending evaluations to be performed by school district personnel. This

- was the Student's first placement in a formal education program. (Exhibit B-5, Testimony-mother)
4. The evaluation was conducted in September of 1998. The evaluation found that the Student was severely delayed. He communicated with gestures, his attention was significantly reduced, he had a high level of distractibility, he was predominantly object oriented, and most of his communication revolved around getting desired objects. He had weak frustration tolerance, difficulty transitioning and employed a non-verbal communication system. A PPT held on October 20, 1998 reviewed the evaluation findings and identified the Student as a special education student based on an autism disorder and placed him full time in a special education support center (the "support center") with speech and language and occupational therapy services. (Exhibits B-6, B-7, B-12, B-14)
  5. A progress report for the 1998-1999 school year noted that the Student exhibited extreme behaviors including biting, hitting, kicking, pinching, flopping to the floor, and loud vocalizations. Three different behavioral programs were implemented this year with an "ignore and redirect" program used most often. (Exhibit B-16) The progress report also noted that with regard to communication, the Student continued to rely heavily on non-symbolic modes of communication, used a picture exchange communication system (PECS) and would say "no" and "more." A PECS system utilizes pictures placed on a board or within a book for purposes of developing communication. The staff was also using some sign language with the Student. (Exhibit B-16, pp. 3-4, Testimony-mother p.51)
  6. The Student's program for the 1999-2000 school year was essentially the same as that provided during the previous school year. The teacher of the special education support center for the 1999-2000 school year was Susan Howard. Ms. Howard was trained in the applied behavioral analysis methodology. (Exhibit B-21; Testimony-mother and L. Powell)
  7. Both the mother and the team agreed that the 1999-2000 school year was a good year for the student, especially with regard to his behaviors and communication skills. His ability to attend with redirection was up to 20 minutes; he was making eye contact in response to his name, and was beginning to match and imitate. He was also participating in circle time with teacher support. His aberrant behaviors had decreased; he was transitioning using the school hallways and participating in specials with an aide. (Exhibits B-22, B-23, B-24)
  8. For the 2000-2001 school year, the Student's program moved to the Cider Mill School. The school building was new for the Student and it was new in the sense that it had been extensively renovated. The building housed grades 3, 4 and 5 for the school district and was an age appropriate grouping for the children in the support center. The Student's classroom

was on the first floor within the general student population area. It was centrally located in the building and adjoined the nurse's room. (Testimony-C. Chambers)

9. The current Special Education Director, Christine Chambers, was responsible for overall administration of this program during the 2000-2001 school year. She has been the Director for three years and in that time approximately five to ten students have been approved for residential placement. She arranged staff development for the staff associated with the support center. She developed a team approach for this program that included parent meetings. She also determined that a home-school component needed to be a part of this program. She established a committee to develop this component. This committee began its work on or about January 1, 2001, and interviewed interested agencies and eventually recommended that the school district contract with Futures, Inc., for the provision of this home-school program. (Testimony-C. Chambers)
10. During the 2000-2001 school year there were five students, including the Student in the support center. There was a full-time special education teacher assigned to the class and up to four paraprofessionals. The Student was full time in the support center with the related services of speech and occupational therapy. He also received adaptive physical education and went to general education music, art and library with his class. (Exhibit B-23) His teacher continued to be Susan Howard who utilized the ABA approach. The ABA approach requires daily charting for each skill activity. There are a number of trials associated with each skill activity. This approach must be used by everyone associated with the program, including the paraprofessionals and the related service providers. This approach is utilized all day, every day. (Testimony-K. Valiente and L. Powell)
11. At a PPT held on October 30, 2000, the PPT decided to arrange for an assistive technology evaluation. The purpose of the evaluation was to consider whether a voice output device would benefit the Student's communication skills. It was also decided at this meeting that the toileting program would commence in the spring of this school year after a communication device had been identified through the evaluation. (Exhibit B-28)
12. The assistive technology evaluation took place in February, 2001. The evaluator determined that, at the time of this evaluation, the Student communicated by using sounds and single words but the words were only intelligible to familiar listeners. He also used limited gestures and sign language. Two communication devices were tried with the Student. The evaluator recommended the Tech Speak communication device. This device holds pictures. The user of the device communicates by pressing the picture and a voice output mechanism verbalizes what the picture represents. The picture may represent a single item such as an item of food or a communication message such as "I want more." The evaluator recommended that the Team begin using this device with pictures of food items since these items were motivating

- to the Student. The district purchased this device. This device can be used in the school, home and/or community and is appropriate for use throughout the entirety of a student's school years and into adulthood. The Student began to use the Tech Speak device and he showed a more consistent response to demands and was using the device to make requests. This occurred notwithstanding interfering behaviors. (Exhibit B-33; Testimony-L. Powell; Exhibit P-37)
13. The school contracted with the Eden Institute out of the state of New York for the development of a toileting program for the Student. The toileting program developed was a trip timed one, and was used by the school district to the present time. (Testimony-C. Chambers)
  14. The Student's behaviors worsened in the middle of this year and resulted in an extended period of hospitalization. There was a significant increase in aggressive behavior beginning in November. Before that point, the mother was able to take the Student to the movies, to the playground, shopping and to the beach along with his younger siblings. A behavioral program was implemented in school in which each instance of aggression was followed by an open door time out until he was calm. The Student spent a great deal of time in this room. (Exhibit B-32; Testimony-mother and L. Powell)
  15. In February of 2001, the Student's behavior became acutely worse and unpredictable. On February 17, 2001, after becoming aggressive toward his mother in the home setting, his mother called 911 and the Student was taken to Norwalk Hospital where he was admitted for a psychiatric evaluation. The Student was at Norwalk Hospital for approximately 9 days. At the hospital he had a 1:1 sitter due to his behavioral outbursts. (Testimony-mother; Exhibits P-3, p.2; P-18)
  16. The Student's pediatrician throughout this time and to the present was Dr. Arthur Dobos. He has been the family's doctor since 1998 when the family first moved to Wilton. He has treated 50-100 individuals with autism but none as severe as the Student. He has seen the Student 15-20 times for 5-10 minutes at a time and has fielded at least 12 phone calls regarding the Student. In his opinion the Student is on the more severe end of the autism spectrum. At the request of the mother he observed the Student in his classroom in October 2001. He was informed that the Student was hitting and biting others and consequently spending much time in the time out room. He observed for one hour but nothing noteworthy was observed. In fact he never observed the unprovoked aggressive behavior that the mother had described. In his office the only times he witnessed aggressive behavior was when the Student was acting out in anticipation of getting an injection and had to be restrained by his parents and staff. His testimony regarding the Student's behavioral progress and needs was based on what the mother had told him. Dr. Dobos has prescribed various medication

- combinations for the Student in an attempt to assist with his behaviors. Among the medications prescribed were Ritalin which was not effective; Adderol which had no effect; Clonidine, which worsened his behavior according to his mother (Transcript, January 24, 2002 p. 138) but had no effect according to his doctor (Transcript, January 17, 2002 p. 38) and Ativan, which worsened his behaviors. This medication caused the Student to engage in aggressive and violent behaviors and was administered just prior to his first hospitalization in February 2001. These aggressive behaviors were directed primarily at his teacher, his mother and grandmother. (Testimony-Dr. Dobos and mother; Exhibit P-18, p. 1)
17. Various medications were tried without good effect. At the time of his discharge from Norwalk Hospital his medications were Paxil, Valproic Acid, and Seroquel. The Student was discharged from Norwalk Hospital on February 26, 2001, to the New York Presbyterian Hospital in Westchester, New York. The plan for this hospitalization was to diminish or eliminate his violent outbursts and to allow him to return to home and school. (Exhibit P-3)
  18. The Student was admitted to the New York Hospital on February 26, 2001 and was discharged on March 29, 2001. Initially, the Student's behaviors at this hospital were such that he could not participate in groups and would not respond to staff directions. There were numerous instances of out of control behavior. By the time of his discharge from the New York Hospital, however, the Student was doing well, was in good control and was considered safe to return to his home and his school. It was recommended that he return to the Cider Mill School; however, if the community supports identified by the hospital were not sufficient to keep him safe in the community, then it was noted that residential placement would have to be considered. (Exhibits P-19, p. 1-3; B-36)
  19. At the time of the Student's discharge from the New York Hospital his medications were Seroquel and Depakote (also referred to in the record as Valproic Acid). Additionally, Thorazine and Benedryl were prescribed to be administered on an as needed at home and in school. Psychiatric care for purposes of medication monitoring was to be provided by Dr. Jeffrey Koffler. There was no evidence of Thorazine being administered to the Student while at school. (Hearing record). Benadryl was used. The evidence indicated that one of his combination of medications was making the Student sluggish. In April of 2002, the Student's doctor substituted a different medication and the sluggish behavior has stopped. (Testimony-mother and K. Valiente)
  20. Dr. Jeffrey M. Koffler is a board certified child and adolescent psychiatrist who began treating the Student in April of 2001. He has treated only about a dozen children on the PDD/autism spectrum and the Student is the only such child who is nonverbal. He never observed the Student in the school setting and never spoke with any of the educators. He was very unfamiliar with the Student's educational program. He is not personally familiar with

- residential programs for children with autism. He had seen the Student only about six times in nine months, for the purpose of monitoring his medications. For these reasons his testimony was not very helpful in regard to the Student's educational program and needs. (Testimony of Dr. Koffler)
21. The cause of the Student's behavior difficulties, and especially the increase in his aggressive, out-of-control behaviors, has not been identified. There has been speculation that the behavioral change could be due to his complex and changing regimen of medications, especially the Ativan, a growth spurt or a thyroid condition. Particularly striking is the wide combination of changing medications coinciding with the growth spurt. His mother testified that he rapidly went from a size 8 to a size 10, and it is noted that he is in an age range when hormonal changes are taking place, as evidenced by this growth spurt. His doctor, Dr. Dobos testified that the Ativan caused the Student to engage in aggressive and violent behaviors and had been administered just prior to his first hospitalization in February 2001. (Testimony-mother and Dr. Dobos, pp. 20, 44-45; Exhibit B-62, p.3)
  22. Upon discharge and return to school there was a dramatic improvement in the Student's behavior and improvement in his progress on IEP goals and objectives obviating the need for residential placement. No incidents of aggressive behavior were reported. His use of the Tech Speak was improving. His anger was under control and he was much improved in occupational therapy; by report, he was using more equipment. Time outs had been reduced significantly. His aberrant behaviors had decreased, he had an increased ability to transition in the hallways, he had improved participation in his specials, and the ability to take morning snack in the cafeteria. He was making "very good progress with the toileting" at this point. (Testimony-mother, p. 52 and K. Valiente, Exhibits B-35, B-41)
  23. At the annual review PPT on May 8, 2001, the Student was recommended for a summer program which had a two-week in district component followed by a six week program at Giant Steps, a private special education facility. The program at Giant Steps was primarily for toileting purposes. (Exhibit B-39)
  24. In May, 2001, the school district and Futures agreed to enter into a contract for the provision of the home school program and in June, 2001, the school district and Futures, Inc., entered into a written consulting agreement for the home school program. The agreement provided spring, summer and fall components and involved record reviews, observation of students in school including summer programs, staff training regarding assaultive behavior, functional behavioral analysis and applied behavioral analysis, and direct instruction to families and students in the Students' homes. The direct instruction in the homes was to be for two hours each week. Consultation was to be provided by Dr. Orv Karan, a clinical psychologist. Dr.



- Karan was also to provide crisis debriefing to staff and families as necessary. (Testimony of C. Chambers, Testimony of Dr. Karan, Exhibit B-65)
25. At the May 8, 2001, PPT, it was reported that Futures would begin to provide home services during the summer of 2001 and throughout the 2001-2002 school year. (Exhibit B-39) For the 2001-2002 school year, the PPT recommended that the Student continue in the support center program and that he receive two hours a week of speech and language services, one hour a week of occupational therapy, and one hour a week of adaptive physical education. the Student's IEP set out goals and objectives in the areas of attending skills, imitation skills, social skills, matching skills, increased ability to use sensory information, functional learning skills, use of a voice output device and self help skills. (Exhibit B-39, pp. 5-13)
  26. The Student attended a two-week in-district summer program. This was held at the Cider Mill School. The program focused on maintaining daily living skills. Transitions are difficult for the Student in general, and the Student did have difficulty transitioning to the new routine of a summer program. He was most comfortable when in the support center. (Testimony of mother, Exhibits B-43, B-44)
  27. Following the two-week summer program at Cider Mill, the Student participated in a six week summer program at Giant Steps. The focus of this program was toilet training. The toileting program provided for the Student at Giant Steps was the same program as provided for him at Cider Mill. However, the Student participated, with mixed results, in a full range of services including academics, activities of daily living, occupational therapy, speech and language, play and social communication services, music therapy and an assistive technology session. (Exhibits B-42, B-50)
  28. A PPT was held on August 20, 2001, to review the Student's educational program. Futures role in the Student's program was reviewed. Futures staff had met the Student and his family and had observed him at the Giant Steps summer program. The PPT recommended that the Student be evaluated at LADDERS, an evaluation and rehabilitation services agency affiliated with Massachusetts General Hospital for Children. A representative from the Department of Mental Retardation was present and informed the Team that DMR would advocate on behalf of the family in attempting to obtain additional respite hours. The mother testified that the Student was attending a respite program provided at Easter Seals. It was reported that he enjoyed this program but it was only one day a month. There was also discussion at this PPT regarding possible residential placements for the Student. This was a change of position for the mother who testified that because of her heritage she had resisted the idea of residential placement for her son until this point. She felt that the summer program had not been successful and her son was regressing again. Ms. Chambers testified that the discussion concerning alternative placements occurred because of reports that over

- the summer the Student's behaviors began to regress and there was concern that once school began he might engage in behaviors that were similar to those which resulted in his hospitalization in February, 2001. There was no decision at this time to change the Student's educational program. The PPT was developing contingency plans should the Student's Behaviors Become Aggressive and uncontrollable during the upcoming school year. (Exhibit B-54; Testimony-C. Chambers, Testimony-mother)
29. In spite of a discharge report that had recommended return to his community school with supports, and a period after his hospitalization during which everyone agrees the Student was making good progress, in August the parents obtained a short letter from two staff members at the New York Hospital who recommended residential placement. This letter was dated August 15, 2001, some five months post-discharge. The letter was very brief, consisting of one eight-line substantive paragraph. Neither of the staff members who authored the letter testified at hearing. There had been no recommendation for residential placement in any of the documentation from the New York Hospital. For these reasons the letter of August 15, 2001 written by Sarah Woodward, C.S.W. and Victoria Gladwell, M.D. is given little weight in this decision. (Exhibits B-36, B-52, P-19)
30. Pursuant to the August 20, 2001 PPT recommendation, the Student was evaluated at LADDERS on September 29, 2001. One of the impressions discussed in the evaluation was that the out-of-control/aggressive behaviors that had worsened since last fall were apparently influenced by a growth spurt/further physical development. The evaluation noted that his behavior had improved recently in the context of some changes in his medication and a return to his regular education program. The evaluation recommended that the Student needed to be in a structured therapeutic setting that incorporated intensive occupational therapy, speech therapy, and behavioral therapy; that the structure continue beyond his regular school day and involve an after school program with at-home services. In terms of behavioral therapy, the evaluation recommended that there be third-party involvement and consultation at home. The evaluation also stated that if the educational recommendations could not be implemented or the Student's behavior deteriorated, he would need a residential setting. (Exhibit B-61)
31. The Student started the 2001-2002 school year in the support center with a new teacher, Ms. Valiente. Ms. Valiente has an extensive and impressive background in working with autistic children. She came to Wilton with over 8 years experience teaching in a program for autistic children in New York State. She had been trained in the TEACCH methodology. She had also been trained in applied behavioral analysis and discrete trial training and was employed for approximately two years as an ABA/DTT trainer. Having experience with both methodologies she was uniquely well prepared to determine which approach would best help the Student make educational progress. She testified in a credible manner and her testimony,

- because of the extent of her experience teaching autistic children, her experience with different methodologies, her daily experience with the Student and her professional education and training, was given significant weight in this decision. (Testimony-K. Valiente)
32. Ms. Valiente made some immediate changes to the support center program. It was her opinion that the TEACCH method would be a more effective methodology for the children in this program. According to Ms. Valiente, TEACCH was more of a proactive approach whereas, the program he had been receiving was reactive. It was her understanding that the previous year's program used the time out room extensively and that each time there was an inappropriate behavior, the Student was removed to the time out room. Ms. Valiente did not want to utilize the time out room as it has been used in the prior year. She changed the name of the time out room to the "take a break room" and put within the room such things as beanbag chairs, blankets, weighted pillows and vibrating pillows. It was also her opinion that the prior year's program did not have the level of sensory integration that she believed was necessary. Additionally, the prior program did not have the level of visual supports that she also believed was required for this program. The prior year's program was more auditory. (Testimony-K. Valiente)
33. Sensory integration became integrated throughout the school day. The level of sensory integration had increased this school year and it occurred every 30 minutes. The Student thrived on sensory integration activities, especially deep pressure. Sensory integration calmed the Student and made him available for learning. (Testimony-K. Valiente and A. DeFrancesco)
34. The level of visual supports within the program was increased. Every activity within the day was supported visually with a picture. For example, directions are provided verbally and are paired with visual pictures. This also applied to activities of daily living such as handwriting, tooth brushing and toileting. The Student's daily schedule was set up visually. When he initiated an activity, he went to his schedule board, took the picture representing the activity and went to the particular work area. When the activity was completed, he took the picture to the "all done" pocket. The Student's day was much more structured this year. He had many more activities during the day. He transitioned to a different activity every 30 minutes. (Testimony-K. Valiente)
35. The support center itself was composed of three rooms; a large classroom where the bulk of the activities took place, a smaller playroom, and the take a break room. The playroom had a variety of visual and sensory items. The bathroom was located directly across the hall; there was also a private bathroom within the nurse's office that was immediately adjacent to the classroom. This was the bathroom which was used for the Student's toileting program. Each student had a work area that could be closed off with mats. There were two group tables, a

- one-to-one teaching table, a sink and counter area. There were also four computers within the classroom. (Testimony-K. Valiente)
36. At the beginning of the year, the Student was very agitated. He would jump around, scream, grab at his own shirt. Additionally, at times he would grab at the clothing of others and at times the hair of others. There was also biting primarily of his own clothes but, at times, of others. It was Ms. Valiente's opinion that these behaviors were caused by his frustration and his inability to predict the sequence of activities within his day. Initially he was not able to participate in circle time longer than 5 minutes. He was unable to use free time. His behaviors were such that he required a break every 15 to 20 minutes. (Testimony-K. Valiente)
37. In September, 2001, a functional behavior assessment was completed on the Student. This assessment was done by Ms. Valiente, and Dr. Orv Karan. Based on this assessment, a behavioral intervention plan was developed. The assessment concluded that the Student displayed the behaviors referenced in the above paragraph and that the behavior that occurred most frequently was grabbing. The plan provided that the Student needed to be presented with an individualized daily picture schedule each day and that he be engaged in an activity for 25 to 30 minutes and then transitioned to the next activity. It was believed that the picture schedule would give the Student the opportunity to visually understand his day, to be able to predict what is to happen and what is expected of him. The plan also recommended that the sensory diet continue to be incorporated into the Student's daily schedule and that the physical environment be arranged to provide a clear understanding of designated areas and boundaries. There was also a procedure for occasions when the Student made unwanted contact with a staff member. A behavior data sheet was developed in which data was collected on the following behaviors: grab, scream, hit, bite self, bite others, bite objects. (Exhibits B-66, B-67)
38. The environmental and programmatic changes had an immediate effect upon the Student. There was significant improvement in his behaviors. The behavior data sheets for the five identified behaviors were no longer required because the Student no longer engaged in the behaviors to the extent that such data could be collected. As the school year progressed, there continued to be significant improvement in his behaviors. He functioned successfully throughout the day with minimal disruption. He could follow his schedule during free time; he made appropriate choices. His transitions were smooth. His picture schedule was set up so that at a glance he could see one-half of his day and all the activities that were planned during that time. He was able to anticipate when there would be a change in an activity. He was comfortable with the environment and staff and was less resistant to change. He made appropriate progress on all his IEP goals and objectives. (Testimony-K. Valiente; Exhibits B-73a; P-55)

39. However, he was still experiencing unpredictable behavioral outbursts at home according to his mother, and, at eleven years of age he had not developed a sense of danger needed for self-preservation and he was not toilet trained. (Testimony-K. Valiente; Testimony-Mother)
40. The mother requested that the Board forward educational records to specific residential settings that she had identified. The Board complied and sent the following cover letter, signed by Principal Appleton, with each packet of records:

“Enclosed please find the records of [Student]. They are being sent to you at the request of his parents; [Parents]. At this time the Planning and Placement Team (PPT) has not made a recommendation to seek residential placement.” (Exhibit B-64 at 4)
41. The parent contends that the district violated the Student’s procedural rights when it sent this cover letter which the parent believes prejudiced such facilities against her son. (Exhibit B-64)
42. The parent contended in their brief that the Student’s procedural rights were violated because a regular education teacher did not attend the August 2001 PPT. This issue had never been raised by the parent prior to the post hearing brief. A review of the PPT minutes indicates that K. Birke, an aide, had attended and signed in as a regular education teacher. Although she clearly is not a regular education teacher, because this issue was not raised in a timely manner, no testimony was presented on this issue and the issue of who attended and in what role cannot be clarified at this point. (Exhibit B-49)
43. The parent further claims that the IEPs were “low tone” not tailored to the Student’s unique and individual needs and therefore did not satisfy procedural requirements and that much of the Board’s interventions were in response to the due process request. (Testimony of Mother, Parent’s brief)
44. The Board witnesses testified, on the other hand, that the IEP was appropriate and the Student was receiving significant educational benefit, given the limitations of the Student due to the severity of his disability, his cognitive limitations separate from his primary disability and his lack of an educational program when the family lived in Italy during his critical early years of development. (Testimony-K. Valiente, Dr. Karan)
45. Further, the staff identified various areas of progress. At the beginning of the year, the Student could tolerate circle time for only 5 to 10 minutes. It was now tolerated for the full 30 minutes. The Student went with his class to the gym (adaptive physical education class), music class, art class and library. The Student participated in the adaptive physical

education class, with adult support, for the full 20 minute period. This means that an adult has to help him with activities such as standing behind him to help him throw a ball. Visual supports were utilized in the program and the adaptive physical education teacher had been trained to use these visuals. The Student did all the activities within the class such as the obstacle course, use of weighed balls, and playing on the scooter boards. His art teacher was the same teacher he had during the 2000-2001 school year. The art teacher reported that his ability to focus in art had increased significantly. At this time he was able to remain in the art class for the full hour. He also participated for the full 40 minutes in the music class. He was sensitive to some instruments and would be removed from the music area when that occurred. He enjoyed the singing. (Testimony-K. Valiente)

46. He also went out to the playground and participated in school assemblies. There was a 20-minute playground activity in the morning and another 20 minutes in the afternoon. In the beginning of the year, the Student would simply walk around the play area and not engage in any of the playground equipment. Now, with adult assistance, he would engage in the slide and swing equipment. Adults would also initiate interaction with other peers for the Student. While he does not have a dedicated paraprofessional (aide), there was always one adult for each student. (Testimony-K. Valiente)
47. He had also participated in all school-wide assemblies, including the choral music assembly with the school band. The noise of the band bothered him so that he waited outside the door. However, when the singing began, he indicated his desire to return to the assembly. He went to the library when other classes were present in the library. Earlier in the year he could not tolerate the library at all. He now spent the full 20 minute period in the library. He would sit and look at books. With paraprofessional assistance, he will also sign out books; the books were kept in his work area. (Testimony-K. Valiente; Exhibit P-55)
48. The Student's toilet program was a timed trip schedule. In September, there was zero level of success. On February 12, 2002, the Student had his first dry day. Since that time there had been an increasing number of days in which the Student was dry and the frequency of his voiding in the toilet has increased substantially. As of April 29, 2002, he was averaging approximately one accident per day and voids each time he was taken to the toilet. At the start of the year, he was taken to the bathroom every 30 minutes. He was now taken to the bathroom every 2 hours, except if he was dry when he would be taken to the bathroom in 30 minutes. Ms. Valiente stated that it was her opinion that the Student was beginning to understand the toileting program. Additionally, a Futures employee was in the home with the Student and was working on the same toileting program. His educational program also included dressing skills, hand washing, tooth brushing and feeding. He had made significant progress in all areas. (Testimony-K. Valiente)

49. The Student was now able to do some work independently but needs frequent redirection. He would go to his work-station and sit down and take out the necessary items for the particular activity although he often would need to be guided or redirected by staff. (Testimony-K. Valiente, video)
50. The staff was able to predict when the Student required sensory integration beyond that planned throughout the day. There would be an increase in the Student's verbalizations or he would stop an activity; he might drop to the floor or he might moan in a crying fashion. This occurred once or twice a week and lasted no more than 1 or 2 minutes. At this time a member of the staff would utilize one of the following: back and shoulder massage, massage of the palm of his hands, and most recently head pressure massage. These sensory activities had an immediate impact upon him and made him available for learning. (Testimony-K. Valiente and A. DeFrancesco)
51. The Student had made satisfactory progress on all of his goals and objectives set forth in his IEP and, in the opinion of his primary teacher who had extensive experience with the Student and with other children with autism, the Student had received a significant benefit from his educational program this year. (Testimony-K. Valiente)
52. Once the Student developed an understanding of his day, he was taken on a small number of community field trips with his class. There was a pathway behind the school which goes into town. The Students would go to a deli, ice cream store or food market. The Student did well on these trips. His behaviors improved with each trip. The plan was to increase the number of such trips and to go to different locations. (Testimony-K. Valiente)
53. At a PPT held at the end of April, 2002, the Team proposed an extended school year program for the summer of 2002. That program would run from July 1 through August 9, from 9:00 to 12:00 noon at the Cider Mill School. There would be an afternoon component running from 12:00 to 3:00 p.m. which would be a home and community based program; the school district contracted with Futures, Inc., to provide that program. There was also an additional two-week program that would operate 3 hours a day, 5 days a week to focus on the IEP goals and objectives of the current year. His current classroom teacher Ms. Valiente was to be the teacher in the summer program. (Testimony-K. Valiente)
54. In the early part of the winter of 2001, the school team videotaped the Student in his various activities and situations during his school day. This was made with the mother's knowledge and written permission. The videotape attempted to show his full morning's activities. The purpose of the videotape was to enable the family to see the strategies and techniques utilized in school so that the family could implement the same strategies and techniques at home. The plan was for the Student's mother to come in and view the videotape with the

Team and to discuss with the Team the various strategies and techniques. The mother was to take the video home for purposes of repeat viewing and was then to come into the classroom to observe the Student and the staff utilizing the strategies and techniques with him. The Student's mother did come into school to view the videotape; however, she has not followed up in any other regard. (Exhibit B-59, Testimony-K. Valiente, Testimony-Mother)

55. During cross-examination of Ms. Valiente a portion of the videotape made by the school district was played. Ms. Valiente stated that the portion played showed that the Student could work independently, and could stay within boundaries when boundaries were set. The particular activity that the Student was engaged in was putting a puzzle together. The value of that particular activity was that it showed the parent the kind of leisure activity that the Student could engage in. There are different levels of puzzles so that a particular puzzle may be already mastered and may be done for practice and maintenance of learned skills, or it may present new challenges. Although puzzles may be simply play at some point for some children, "For children with autism, work is play and play is work." (Testimony-K. Valiente; video, Exhibit B-65)
56. The Student did not understand danger. Safety was not a goal or an objective of his 2001-2002 school year, although it was addressed within the context of the classroom and school building. There was no evidence that any member of the PPT including the parent requested that safety be addressed within the current year's IEP. Ms. Valiente stated that safety matters were added to the IEP for next school year. She stated that safety issues were very abstract and therefore would be very difficult for the Student. Safety issues will in all likelihood always be a part of the Student's IEP and educational program. Such issues will continue into adulthood. (Testimony-K. Valiente)
57. April DeFrancesco who is a certified occupational therapist whose expertise is in the area of pediatric OT and who had been working with the Student for the 2000-2001 and 2001-2002 school years. Prior to being certified as an occupational therapist, she was employed as an applied behavioral analysis (ABA) therapist for 4 years. During college she also worked with autistic children during vision therapy sessions. (Testimony-A. DeFrancesco)
58. The purpose of the occupational therapy program was to calm and otherwise modulate the Student. He could not be available to learning if he was not calm. The ultimate goal was for the Student to learn to calm himself. At this time he could not self modulate. She had created a sensory diet for the Student which is likely to change over time, as is the nature of a sensory diet. The Student responded best to deep pressure on the head, the hands or the shoulders. There was also a brushing program where his arms, legs and back were brushed to provide deep touch to his body. He was brushed every 2 hours in the classroom. The



- brushing was successful in keeping him calm. Ms. DeFrancesco had provided training to the Student's teacher, service providers and his paraprofessionals and these individuals could implement the sensory techniques that were set out in the Student's sensory diet. The theory behind these activities is that the activities released a chemical in the body which had a calming effect upon the individual. The Student also received vestibular input through the occupational therapy program. This organized and refocused him. An example of this activity was the use of a trampoline or swing. Ms. DeFrancesco also worked on fine motor activities with the Student. The objective of the fine motor activities was to enable the Student to use a pincer grasp. This grasp was necessary in order for the Student to do fine motor skills such as zipping and buttoning his clothes. It was also important for writing and coloring and signing. She had also provided training in sensory integration techniques to the parent. She had gone over the brushing technique and provided a copy of the sensory diet. She had also trained the individual coordinating the Futures home program, Mike Luppinacci. The Student was receiving an intense occupational therapy program. He received sensory input at least every 30 minutes. Ms. DeFrancesco did not believe that additional therapy time with her was necessary. Therapy time may be required, however, to deal with the fine motor activities associated with sign language. The Student could use a modified sign language program in which the signs learned would involve large whole hand movements. (Testimony-A. DeFrancesco; Exhibit B-70)
59. The Student's biting behavior was not an act of aggression. He bit for the deep pressure associated with the biting activity which relaxed his whole body. Thus he would bite his clothes, himself, or others. Various things had been tried to redirect the biting activity. For example, last year gum chewing was tried, however, he swallowed the gum. Recently, a piece of rubber tubing had been placed on a necklace around his neck. When he needs the sensory input of biting he was directed to bite the rubber tubing. He will always need an object to bite. This was a behavior that was not likely to be extinguished. (Testimony-A. DeFrancesco)
60. The Student has made significant progress with regard to his sensory integration issues and was meeting his goal in the fine motor area. The Student is beginning to self modulate in that he would ask for deep pressure. He would go up to one of the staff members and put their hands on his head or put their arms around him. Last year he would not ask for this. The next step in terms of self-modulation would be to get the Student to seek out an activity such as the beanbag chair, the mat or the scooter board or swing. Ms. DeFrancesco had also initiated the idea of a weighed vest. One of the aides made this vest utilizing a sweatshirt. The idea was that the vest when worn provided continuous deep pressure. He would wear the vest for 30 minutes to one hour. The vest was being tried in an attempt to find a way for him to provide the deep pressure that he required without involving another individual. (Testimony-A. DeFrancesco)

61. Dr. Orv Karan is a clinical psychologist who is employed by Futures as a behavioral consultant. He provided consultation services to the children in the support center program at the Cider Mill School including the Student. He is a licensed psychologist in Connecticut and Wisconsin and is a professor in the school psychology department at the University of Connecticut. He also had a private practice and had a tremendous amount of experience spanning over 30 years in working with children who have an autism disorder. He has treated or consulted on 30 to 50 cases involving children in the Student's age range and with a similar degree of disability. His role is a consultative one so that he spent very little time working directly with the Student, but 20 to 25 hours consulting. He testified in a highly credible manner and due to this and the fact that he had more extensive experience with children with autism than any other witness who testified his opinions have been relied upon in this decision. (Testimony-Dr. Karan; Exhibit B-76)
62. Dr. Karan's consulting services to the Student's program included an initial observation of the Student in school and in his home. He participated in the functional behavioral assessment which was conducted in September, 2001. In his role as consultant he had made suggestions and recommendations regarding the behavioral program. He had provided training to the program staff and had continued to periodically observe the Student at home and in school. (Testimony-Dr. Karan; Exhibit B-66)
63. Dr. Karan's initial report regarding the Student was dated December 3, 2001. Dr. Karan discussed basic compliance issues. Most striking was that there was a conflict in how the school and home were addressing compliance issues. In school compliance issues were addressed through what is known as the "grandma's rule" or the "if/then" principle. The principle behind this rule was that staff would get the Student to do something they wanted him to do and he would then get a reward. Based upon his observations of the Student at home, there was a non-grandma's rule in effect. At home, the Student engaged in a negative behavior and was given a reward if he stopped the behavior. The effect of the behavioral procedures at school was to reward desired or positive behaviors. The effect of the procedures at home was to reinforce the negative behavior. It was Dr. Karan's opinion that the behavioral approach at home must be changed. That was one of the purposes of the Futures in-home program. (Exhibit B-63; Testimony-Dr. Karan)
64. Dr. Karan made the following recommendations:
- (1) The Student's educational program must involve community experiences. (These experiences were occurring through his educational program in school as well as the Futures program in his home.)

- (2) The Student should be involved with peer mentors who are non-disabled. (This had recently been added to his educational program through the reverse mainstreaming component.)
- (3) There needed to be inter-agency meetings where the responsibilities of the various agencies working with the Student were discussed and coordinated. (The school district had taken the lead in this regard and scheduled monthly inter-agency meetings.)
- (4) He required therapeutic mentoring after school. This involved an individual spending time with the Student encouraging and developing good social behaviors. (This was occurring through the Futures program. Additionally, DCF was providing such mentoring through a contract it had with Futures in which staff worked with the Student in the home on weekends and during vacation periods.)

(Testimony-Dr. Karan; Exhibit B-63)

65. Dr. Karan had also established a data base collection system for the home. Behavior such as grabbing was targeted. The data was then given to Dr. Karan to chart. Board Exhibit 72 was such a chart. It covered the period February 18 through May 6, 2002. It included Saturdays. It was Dr. Karan's opinion that the chart showed a downward trend with regard to the targeted behaviors. This downward trend indicated that the identified behaviors were decreasing. The "grandma's rule" or "if/then" strategies worked with the Student and must continue to be reinforced in the home and in the school. (Testimony-Dr. Karan)
66. Dr. Karan recently did an observation of the Student in his home. The Student had established rapport with the Futures' staff who were working with him and this rapport resulted in improved behaviors. It was his opinion that the behavioral interventions implemented in school were now beginning to be carried over in the home. The Student was responsive to requests that were being made of him at home and he was now amendable to being redirected. It was Dr. Karan's opinion that the behaviors that he had observed could be considered learned behaviors. This was significant in terms of a behavioral program because so long as these were learned behaviors there was an opportunity to make improvements in such behaviors. (Testimony-Dr. Karan)
67. It was Dr. Karan's opinion that the educational program provided to the Student by the Board was a good program. The Student was learning how to respond to demands in school; the staff were able to work with the Student; it was a data based program and it was in his neighborhood school. It was his opinion that the Student should remain in his home based school and that he had benefited from the program provided to him by the Board. (Testimony-Dr. Karan)

68. It was his opinion that the Student should not be placed in a residential setting. Due to the nature of his disorder, he could not learn appropriate behaviors in a residential environment and then transfer those behaviors to his community. Difficulty generalizing a set of behaviors to new environments is an inherent problem for persons with autism. Dr. Karan has recommended residential placement for a student with autism one time in the past. (Testimony-Dr. Karan)
69. It was also his opinion that additional services needed to be added on Sundays and evenings. He described this as a wrap-around model and stated that this required the involvement of other agencies and was not the responsibility of the Board. The recommendation for the provision of services on evenings and Sundays was more for his family than for the Student. These were respite services that benefit the family. (Testimony-Dr. Karan)
70. Dr. Karan concluded by stating that, in his opinion, the Board is meeting the Student's educational needs. He stated that the school program does not reinforce attention seeking or avoidance behaviors. The Student is under instructional control within the school environment. The major thing he had learned at this time was how to follow structure and to fit into that structure. This was a basic building block to learning. It increased the likelihood that he was learning to live in his community and could continue to do so into adulthood as is now commonly the case in this state, even with severely disabled adults. (Dr. Karan, p. 98). Further, when questioned as to whether a residential setting would have even more structure and be more positive for the Student, Dr. Karan responded:
- “I guess that what I would do is to ask how much you really know about residential structures and how much you really know about what they offer? It's been my experience when people talk about a residential program as a better option than program A, B, C or whatever, that there is a tendency to make the residential program sound like the greatest thing that's ever happened and all these other programs to sound like they have inadequacies. I have experience in being in a variety of residential programs and there are people in those residential programs that are just like everybody else. They make mistakes, they do horrible things. They're not always so perfect. They're not always following the rules. They're not always providing the structure that some child needs.” (Testimony-Dr. Karan, p. 120)
71. The Futures in-home program was coordinated by Mike Luppinacci. Mr. Luppinacci had worked with the Student since the summer of 2001. Mr. Luppinacci had established a rapport with the Student and they were comfortable with each other. Mr. Luppinacci and the other staff worked on a behavioral program at home, the objective of which was to establish

- the “grandma’s rule” system. The staff also worked on toileting and communications needs. The Tech Speak went home and was utilized by the Futures staff in the home. A picture schedule was also used. There was an initial period where the Student reacted negatively to the efforts of the Futures staff; however, recent testimony indicated that the Student had responded positively to the Futures program. In the spring of 2002, the school team increased the weekly hours from 2 hours to 10 hours. The Futures program was provided 4 days a week (Tuesday-Friday) for a total of 10 hours per week. (Testimony-Dr. Karan and C. Chambers)
72. Speech and language services were provided to the Student by Lynn Powell. Ms. Powell had providing these services since the 2000-2001 school year. She had been employed as a speech and language therapist for the Board for 31 years. She had been an adjunct professor at Southern Connecticut State University. She had taken workshops with Dr. Barry Prizant, an expert in communication in autism, and Dr. Stanley Greenspan, a clinical psychologist with expertise in autism disorders. She had also taken courses from the Special Education Resource Center in assistive technology including augmentative communication devices. She had taken workshops and course work in sign language and, while not conversant, she knew signs and was able to provide basic instruction in sign language. Ms. Powell described the Tech Speak, the augmentative communication device used by the Student. The Tech Speak held pictures, with each picture representing a word or phrase. There were 8 different levels with each level being able to hold 32 different words or phrases. It was battery operated and therefore portable and could go with the Student. He used his finger to activate a picture and the machine spoke a phrase. In using the tech speak the program started with a few pictures and more were added. The Student started out with the phrases “I want,” “more,” and food items. The Tech Speak was incorporated in the Student’s program as a result of the assistive technology evaluation performed by CES. The evaluator had returned to the school this year to observe the Student’s use of the Tech Speak and to consult with Ms. Powell. Ms. Powell provided individual therapy sessions with the Student in the classroom. She saw the Student for approximately 2 hours a week in four weekly therapy sessions. In the therapy sessions, she worked with him utilizing the Tech Speak; directed play activity was also provided as part of her therapy program. (Testimony-L. Powell)
73. Ms. Powell provided testimony concerning the difference in the methodologies utilized in last year’s program and in the current program. It was her opinion that the current methodology, the TEACCH methodology, was more appropriate and that the Student had benefited significantly from it. The TEACCH program was highly visual, functional and provided an immediate reinforcement of naturally occurring activities. In her opinion the TEACCH program fostered functionality and immediate reinforcement. Her communication program had benefited from this method. It fostered functionality and she could get more “conversation” with a child. This year with the utilization of the TEACCH method,

the Student had more eye contact, was more communicative, and initiated communication more frequently. Also the Student's behaviors were much improved. He was calmer, more interactive, better able to follow routines, was completing his work and was relating better all around. (Testimony-L. Powell)

74. She testified that one of the Student's communication disorders was oral-motor apraxia. This was the inability of the brain to tell the muscles in the mouth how to say a word. Therefore, it was very hard to get the child to imitate. This was a brain dysfunction, not necessarily related to his autism disorder. This disorder was hard to remediate and in most cases required an alternative form of communication. In addition to the oral-motor apraxia, the Student had cognitive limitations which made it harder for him to learn. It impacted receptive language in that the child had difficulty understanding the words that were presented to him. The TEACCH method of programming worked well in this regard because it paired the word with a visual support. (Testimony-L. Powell)
75. A further difficulty with regard to the Student's communication was his autism disorder. There was difficulty in making and sustaining relationships and therefore difficulty understanding the function of language. In her opinion, the approach in remediating this area of difficulty was an interactive approach where there was an immediate response to sound, sign and gesture so the individual saw the connection between the sound, the sign and the communicative purpose. An example of an interactive approach was what was known as "floor time," which was an approach learned in a workshop with Dr. Greenspan. It involved getting down on the floor with the child to get "into the child's world." (Testimony-L. Powell)
76. It was Ms. Powell's opinion that the primary means of communication for the Student would be utilization of a voice output device. She stated that current research and theory supported the output device because the individual could communicate with a wider range of people, therefore leading to better integration with typically developing peers. In this way, the Student would not be limited to communicating with people who knew sign language. The voice output device also encouraged speech. (Testimony-L. Powell)
77. Sign language could be a supplement to the voice output device. Recently, formal signing had been added to his program, although Ms. Powell had used sign with the Student for the past two years. In her opinion, signing should not be the primary mode of communication because it would limit his communication to people who knew sign. Another reason why signing should not be the primary means of communication was that he did not have good imitation skills. Recently, she has made a book of signs that she was working on with the Student and has sent the books home as well as provided the books to staff who work with

- the Student. The purpose of the book was to highlight the signs to be used within the daily routine. It included the signs for basic foods and fruits. Ms. Powell had provided consultative services to the Student's teacher, aides, occupational therapist and the Futures staff in how to use the Tech Speak. She had also provided consultative services to the same individuals with regard to the basic signs that she would be using with the Student. (Testimony-L. Powell)
78. The Student had improved this year in his use of this device. In September there was one icon on the Tech Speak. In May of 2002, there were 8 icons which he used. He had begun to use the voice output device in occupational therapy sessions to request an activity. His accuracy with the Tech Speak was about 70%. There are days when his accuracy was 80%. There had been a big increase with regard to the Student's attentiveness and motivation to use the communication device in the last few months. He was beginning to understand how to use the device in different situations. He has benefited from the Tech Speak device and the communication therapy this year. (Testimony-L. Powell)
79. Ms. Powell testified that in the last one and one-half months, the Student had been much more consistent, more alert and more engaged. In the third quarter, she noted his progress as S-, which means that he was not making the amount of progress that she would have expected for the third quarter even though he was still progressing satisfactorily. It did not indicate that he was regressing or not learning because a different grade would have been given if that had been the case. In the fourth quarter, he was progressing satisfactorily. At home the Tech Speak was not being used as much as in the school. It was Ms. Powell's understanding that the parent and Futures staff preferred to use the picture schedule. The picture schedule at home is the same as the one used at school. At this time, the Student has a total communication program in that the program incorporated verbalizations, signing, visualizations and gestures. The Student's preferred method of communication was visual; therefore, there must be carryover of visual with the Tech Speak. A total visual communication program was the best program for the Student. This could include signing as a supplemental means of communication. (Testimony-L. Powell)
80. At the parent's request, Ms. Diane Safrin conducted an observation of the Student in the Board program. Ms. Safrin was a marriage and family therapist and considered herself to be an advocate for the Student's family as she had been seeing the Student's siblings in therapy, not the Student. For this reason, Ms. Safrin was not considered an expert witness at this hearing. She arrived late for her observation and she testified that she observed the Student in his art class and upon conclusion of that class, went with the Student's class back to the support center during which time she met with Ms. Valiente to discuss the Student's program. During her conversation with Ms. Valiente, Ms. Safrin claimed to observe the Student the entire time in the time-out room, doing nothing. Ms. Safrin testified that Ms.

- Valiente spent no time in the support center interacting with the Student. Ms. Safrin could not remember signing out of the building but acknowledged it was good protocol to do so. Around the time of the observation Ms. Safrin had been under great and understandable stress due to the illness and death of her mother. (Testimony-D. Safrin, testimony-K. Valiente)
81. Ms. Valiente testified that Ms. Safrin arrived in the support center at a time when the children were in the art class. She directed Ms. Safrin to the art class. In stunning contrast to Ms. Safrin's testimony, Ms. Valiente testified that approximately 20 minutes later, Ms. Safrin returned while the children were still in the art class. There was a brief conversation in which nothing of substance concerning the Student's program was discussed. The Student was not in the room at all, including the time out area. Ms. Safrin left. Ms. Valiente testified that the children's schedule is such that when the art class was completed, the children went out to recess. If the weather was inclement, the children engaged in activities where they were linked together and spent the time in the hallway getting some exercise. The children would not return to the classroom from art for any purpose other than putting their coats on. Due to the nature of the testimony, Ms. Valiente was more credible and therefore discredited the testimony of Ms. Safrin. (Testimony-K. Valiente, Testimony- D. Safrin)
82. Drs. Dobos and Koppfler testified and each offered the opinion that the Student required a residential placement. Neither of these doctors observed the Student in his current educational program; nor did either doctor speak with the Student's current teacher, his aides or related service providers. Neither doctor had direct information concerning his behaviors in school. Dr. Koppfler testified that it was his understanding that the Student had to be restrained while in school and spent most of his time in the time out room. This clearly was not so. Dr. Dobos was not aware of the home program being provided through the Futures contract. He admitted that he had no awareness of the Student's current educational program. Both doctors acknowledged that the Student's medication had helped him to control his behaviors and reduce the frequency of his aggressive outbursts. (Testimony-Dr. Dobos and Dr. Koppfler)
83. During the rebuttal portion of the hearing, the parent sought to introduce testimony of K. Birke, one of the paraprofessionals (aides) in the Student's class with regard to the Student's performance and behaviors in school. The Board's attorney objected to this testimony on the basis that it was testimony that should have and could have been presented during the parent's case in chief. The objection was sustained.
84. In terms of the Student's overall development, it is highly significant that from birth through age 7 when the family moved back to the United States, the Student had no formal education program. It is not disputed that this delayed the Student's development. Early intervention



programs are considered essential in meeting the educational needs of children with autism. (Testimony of C. Chambers, p. 164; Report of the Connecticut Task Force on Issues for the Education of Children With Autism, Conn. State Dept. of Education, Spring 1998.)

### **CONCLUSIONS OF LAW:**

1. Connecticut Regulations provide that “the public agency has the burden of proving the appropriateness of the child’s program or placement or of the program or placement proposed by the public agency.” Conn. Reg. 10-76h-14. While these regulations became effective July 1, 2000, they were enacted to bring Connecticut law into compliance with well-established federal law, “[c]omplaints are resolved through an “impartial due process hearing,” 20 U.S.C. § 1415(b)(2), at which school authorities have the burden of supporting the proposed IEP, see *Matter of the Application of a Handicapped Child*, 22 Educ. Dep’t Rep. 487, 489 (1983)(“It is well established that a board of education has the burden of establishing the appropriateness of the placement recommended by [the school board].”). *Walczak v Florida Union Free School District*, 142 F. 3d 119 (2d Cir. 1998)
2. There is no dispute that the Student is entitled to special education and related services as a student identified with an autistic disorder and thereby entitled to receive a free and appropriate public education (“FAPE”) pursuant to 20 U.S.C. §1400 et. seq., the Individuals with Disabilities Education Act (“IDEA”, also “the Act”), 34 C.F.R Section 300.7(a) and Section 10-76a-1(d) of the Regulations of Connecticut State Agencies (RCSA).
3. “Special Education” means: “specially designed instruction at no cost to parents to meet the unique needs of a child with a disability, including – (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction and physical education.” 20 U.S.C. Section 1401(25). The regulations implementing the IDEA provide that if “placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board must be at no cost to the parents of the child.” 34 C.F.R. §300.302. Residential programs are appropriate if they are necessary to allow a disabled child to benefit from special education and related services. *Mrs. B. v. Milford Board of Education*, 103 F.3d at 1121.
4. “Related Services” are defined as: “transportation, and such developmental, corrective, and other supportive services (including speech/language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling,

- orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children.” 20 U.S.C. Section 1401(22).
5. The Act defines FAPE as special education and related services which:
    - “(A) have been provided at public expense, under public supervision and direction, and without charge;
    - (B) meet the standards of the State educational agency;
    - (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
    - (D) are provided in conformity with the individualized education program required under Sec. 614(d).” 20 U.S.C. Section 1401(8).
  6. The standard for determining whether a Board has provided a free appropriate public education starts with a two prong test established in *Board of Education of the Hendrick Hudson Central School District et al. v. Rowley*, 458 U.S. 176 (1982), 102 S.Ct.3034. The first prong requires determining if the Board complied with the procedural requirements of the Act and the second prong requires determining if the individualized educational program developed pursuant to the Act was reasonably calculated to enable the child to receive educational benefit.
  7. In this case, the allegations of procedural violations were either not substantiated by the evidence or they were minor in nature. The parent contended that the district violated the Student’s rights when it included a cover letter informing the residential facilities that the PPT had not at this time made a recommendation to seek residential placement. This was simply an accurate, factual statement of the circumstances between the parties and the Board was within its right to notify the residential facilities that this was not a placement being sought by the public school system and therefore to be at public expense. There were also assertions by the parent that various actions taken by the Board which essentially “fine tuned” the Student’s program were done only because the parent had filed for due process. The record reflects that many changes were made to the Student’s program at various times prior to the filing of due process. The continued fine tuning of a child’s educational program after the filing of due process was simply good practice and required by the Act. Therefore, there can be no conclusion that this represented a violation of the Act; rather, it represented good educational practice, particularly so when an adolescent child is severely disabled and presenting with a complex and changing set of needs.

8. Even if one were to accept the parent's assertions regarding procedural violations as true, she is still not entitled to a residential placement at Board expense. A procedural violation of the IDEA does not, in and of itself, warrant a change in the child's educational placement. In order to conclude that procedural violations resulted in a denial of a free appropriate public education, the parent must show that the procedural errors resulted in a loss of educational opportunity. *See, Burke County Bd. of Educ. V Denton*, 895 F.2d 973, 982 (4<sup>th</sup> Cir. 1999); *Evans v. District No. 17 of Douglas County Nebraska*, 841 F.2d 824, 830 (8<sup>th</sup> Cir. 1988).
9. As to the second prong of the Rowley two-part test, it must be determined whether the IEP was reasonably calculated to confer meaningful education benefit upon the Student. *Rowley* 458 U.S. at 192, 102 S.Ct. at 3043-44. While the law does *not* require that a school district provide an educational program to *maximize* a student's educational potential (*Rowley* at 3046), the school district must provide more than "mere trivial advancement." *Mrs. B. v. Milford Board of Education* 103 F.2d 1114 (2d Cir. 1997).
10. IDEA requires that the relevant public education authority prepare and review at least annually an "individualized education program" (IEP) for each child with a disability. 20 U.S. 1414 (d)(4); 34 C.F.R. 300.343. The IEP is the primary vehicle for ensuring that a disabled child's educational program is individually tailored based on the child's unique abilities and needs. *See* U.S.C. 1414(d); 34 C.F.R. 300.345-300.350. A child's IEP describes, among other elements, the child's present levels of educational performance, measurable annual goals for addressing the child's educational needs that result from the child's disability, and the individualized instruction and services that will be provided to help the child. 20 U.S.C. 1414(d)(1)(A); 34 C.F.R. 300.347.
11. An IEP must provide an opportunity for more than "trivial advancement" and a free appropriate public education (FAPE) under the IDEA is one that is "likely to produce progress, not regression." *Mrs. B. v. Milford Board of Education*, 103 F.3d 1114, 1121 (2d Cir. 1997); *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245, 248 (5<sup>th</sup> Cir. 1997); cert. denied. 118 S.Ct. 690 (1998). The Supreme Court has rejected the contention that the appropriate education mandated by the IDEA requires states to "maximize the potential of handicapped children." *Walczak v. Florida Free School District*, 142 F.3d 119, 130 (2d Cir. 1998), quoting *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 197 N.21, 189, 102. S.Ct. 30-34 (1982). "The purpose of the Act was 'more to open the door of public education to handicapped children on appropriate terms than to guaranty any particular level of education once inside.'" *Id.* Therefore, what the IDEA guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). Similarly, the IDEA does not require a board of education to provide "the best education money can buy." *Lunceford v. District of Columbia Board of*

- Education*, 745 F.2d 1577, 1583 (2d Cir. 1989). Since FAPE does not mean the best or potentially best maximizing education for the individual child, the focus must be on the Board's proposed placement, "not on the alternative that the family preferred." *Tucker v. Calaway*, 136 F.3d 495 (6<sup>th</sup> Cir. 1998), quoting *Gregory K. v. Longview School District*, 811 F.2d 1307 (9<sup>th</sup> Cir. 1987).
12. In the instant case, witnesses that had frequent contact with the Student in the school setting and/or a high level of experience in working with children with autism, testified in a credible manner that this child was progressing in his educational program and was receiving significantly more than trivial benefit from his educational program in the Board's support center. In fact, he was meeting his IEP goals. Contrast this with the Parent's witnesses who either had no familiarity with the Student's current educational program, relatively little experience with children with autism and/or little experience with the child himself. The only exception is the mother, who without a doubt is managing a heavy load on the home front caring for this child and her other responsibilities. She has great familiarity with the child and is no doubt motivated by concern for him and the rest of her family. But even her testimony, which at times was very poignant, does not alter the fact that in school the child is learning and making progress within the confines of his disability.
  13. It is well established that an educational program provided to a special education child under IDEA must be in the least restrictive environment possible. 20 U.S.C. 1412(a)(5)(A), 34 C.F.R. §300.550 to §300.556; R.S.C.A. §10-76D-16. . The *Rowley* Court noted in the course of its opinion that the IDEA contains a separate specific legal mandate which "requires participating states to educate handicapped children with nonhandicapped children whenever possible." The least restrictive environment is one which, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled. *See*, 20 U.S.C. §1412(5)(A), requiring that, to the maximum extent appropriate, children with disabilities be educated with children who are not disabled. *See, Carlisle Area Schools v. Scott P.*, 62 F.3d 520, 532 (3d Cir. 1995). The Act's preference for mainstreaming "rises to the level of a rebuttal presumption." *Board of Education v. Holland*, 586 F.Supp. 874, 878 (E.D. Cal 1992) aff'd. 14 F.3d 1398 (9<sup>th</sup> Cir.) cert. denied. 512 U.S. 1207, 114 S.Ct. 2679 (1994). "Courts have looked to a number of factors to indicate whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA, including, *iter alia*... (2) whether the program administered is in the least restrictive environment." *M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Educ.*, 122 F. Supp. 2d 289, 292 n.6 (D. Conn. 2000).
  14. Residential placement by its very nature is the most restrictive type of placement for a child because it completely removes the child from his family, his home, his community and his school. Both parties cite *Mrs. B. v. Milford Board of Education*, 103 F.3d 1014 as authority

in their briefs. *Mrs. B.* does not support the Parent's position in the instant case. In *Mrs. B.* the student had met only four of thirty-two objectives listed in her IEP. Further, the Hearing Officer, who was reversed on appeal, had found that the Board should not be responsible for paying for the residential placement even though he found that the student should not be transitioned back into the school system before another year in the residential setting. The Student's experience in the Board schools this school year is markedly different from the Student in *Mrs. B.* The Student's performance and behavior improved. The Student is making significant progress in all areas of his IEP and meeting his IEP goals, goals that were developed at PPTs that the mother had notice of and participated in. There is no basis on which to conclude that the Student needs to be placed in a residential placement for educational reasons and therefore, there is no finding, as in *Mrs. B.*, that the student should not be in the Board's educational placement.

15. In *D.B. v. Ocean Township Board of Education*, 985 F.Supp 457, 27 IDELR 151, 161 (D.N.J. 1997), the court examined the following factors in considering the issue of residential placement:

- (1) Consider the steps the school district has taken to try to include the child in a special class within a regular or local community-based school setting including curriculum, supplementary services and mainstream opportunities.
- (2) Compare the educational benefit the child will receive in the local placement to the educational benefits the child will receive in the more segregated setting of residential placement.
- (3) Consider the possible effects the child's inclusion may have on the education of the other students in the local placement class and in the school.
- (4) Was the child experiencing physical or emotional conditions which fundamentally interfered with the child's ability to learn in a local placement?
- (5) Was the child's behavior so inadequate or was regression occurring to such a degree as to fundamentally interfere with the child's ability to learn in a local placement?
- (6) Before the dispute arose, did any health or educational professionals actually working with the child conclude that the child needed residential placement for educational purposes?
- (7) Did the child have significant unrealized potential that could only be developed in residential placement?
- (8) Did past experience indicate a need for residential placement?
- (9) Was the demand for residential placement primarily to address education needs

16. In examining the above criteria, it is clear that the Board has taken significant steps to include the Student in his community school setting. The Student is in a learning center centrally located within a regular school building. The center has been specifically designed for children with disabilities similar to his. The school contracted with Futures, Inc., for purposes of developing and providing a home-school component. The related service providers of occupational therapy and speech and language therapy were qualified and experienced providers with unique insights and knowledge with regard to children with disabilities similar to the Student's. The classroom teacher was a highly qualified and experienced individual experienced with various methodologies for teaching children with autism. Her vision as to the components of an appropriate educational program for students like the Student has resulted in significant educational progress and development by the Student. The TEACCH methodology with visual supports, frequent breaks and proactive response has enabled the Student to understand his school environment, predict the activities within his environment, and respond appropriately to such activities. His behavioral growth and development in the Board's program was significant and he has made progress. Sensory integration has become integrated into the program throughout the school day. Sensory integration calms the Student and makes him available for learning. A sensory diet was developed by his occupational therapist and all who work with the Student were trained in the various sensory techniques. The district contracted with Dr. Orv Karan, a clinical psychologist, with extensive experience in working with children with disabilities similar to the Student's disability. Dr. Karan worked with the school district in performing a functional behavioral assessment and had designed data collection sheets. Dr. Karan has thirty years experience working with children with autism and he has a broad based experience with both residential and community based programs for children and adults. Dr. Orv Karan had observed the Student in his home and in his school. He had also worked directly with the Student in the home and in the school. He had observed in-school and in-home staff working directly with the Student. It was Dr. Karan's opinion that the Student should remain in his community school and it would not be in the Student's interest to place him in a residential setting.
17. Drs. Dobos and Koppfler both recommended that the Student be placed in a residential placement. However, neither doctor observed the Student in his current educational program (2001-2002 school year). These individuals did not speak with any individual working directly with the Student with the exception of his mother. These doctors had no knowledge or awareness of the Student's current educational program. The opinions of these doctors that the Student required residential placement were based upon information provided by the family. Because these doctors lacked knowledge with regard to the Student's educational program and his progress in that program, their opinions in regard to residential placement were not substantiated by the evidence and therefore did not address the Student's

educational needs. It was also significant that neither doctor recommended to the family any behavioral interventions to be used with the Student.

18. The Student's mother testified that one of the reasons why she was interested in a residential placement at Ben Haven was because this facility operated group homes for adults and therefore individuals placed at this facility can continue in that facility through adulthood. Such a plan would remove the Student permanently from his home, his school and his community and contradicts the least restrictive environment requirement of the IDEA as well as the successful movement in this state for disabled adults to live in the community in group homes.
19. Section 10-76h-16(b) of the Connecticut General Statutes authorizes the hearing officer to comment in the final decision regarding the conduct of the proceedings. In fifteen years of hearing cases for four different agencies, the hearing officer has had not hundreds, but literally thousands of attorneys appear before her. In the hearing officer's experience it is unprecedented for an attorney to repeatedly and persistently appear for hearing unprepared to present her own case. Parent's counsel was on notice from the date of the prehearing conference that because of ethical concerns on the part of the hearing officer about whether out-of-state co-counsel could appear in this matter, Connecticut counsel would have to present the case until and if a ruling was made otherwise. Initially this was acceptable to the parties because everyone involved, including the Hearing Officer, believed New York counsel, Attorney Gary S. Mayerson, was going to be successful with his Pro Hac Vice application to Superior Court (see Hearing Officer Exhibit 28, appended). Eventually it became apparent that this was not going to occur (See transcripts December 19, 2001, January 4, 2002). Rulings are made all the time with which counsel have a good faith disagreement, and hence the appellate court system. Yet in this case, with the exception of one day (the ninth day of hearing), Attorney Schmid unduly delayed these proceedings by repeatedly appearing at hearing unprepared to present her own case. She acknowledged on the record that she required almost constant input from out-of-state counsel which took the form of co-counsel telling her the questions and her repeating them (see transcript, April 29, 2002, p. 46). This input was provided both on the record by way of whispering that was often distracting to other participants; and off the record which unduly delayed the proceedings. This was pointed out to her on more than one occasion on the record in an attempt to move the matter along (for examples, see transcript, January 4, 2002, pp. 174-195; January 24, 2002, pp. 61-62). Although at times she claimed to have prepared questions, the only explanation Attorney Schmid could give for why this input was not sought in advance of the hearing session, as part of her preparation, was that she came to hearing with questions but one question leads to another (for example, January 24, 2002, pp. 61-62) While this may be true of cross examination it is of note that this need for nearly constant help from Attorney Mayerson occurred even during the direct examination of Attorney Schmid's own

- witnesses. Counsel for the Board objected early in the proceeding that time was being wasted: “We spent two hours – three hours so far today, and I’ve taken probably a half a page of notes of what I consider to be information that directly involves the educational program provided to this child, and what constitutes an appropriate education program.” (Transcript, January 4, 2002, p. 127). Although Attorney Schmidt continued to require the almost constant input from Attorney Mayerson, the hearing officer allowed this practice to continue to provide this child with every opportunity to have his case heard. Other of the parent’s counsel’s conduct, such as asking an inordinate number of unfocused, disparaging, immaterial, and/or redundant questions; Attorney Schmid’s repeatedly giggling in response to comments made to her by Attorney Mayerson during the examination of witnesses by opposing counsel; spending hearing time complaining that the Assistant Superintendent had entered the hearing room during a break to set up electronic equipment for an evening Board meeting because this somehow violated the parents’ rights in this hearing that they themselves opened to the public and for which there had never been an order to lock the hearing room (Transcript, January 24, 2002, pp. 107-120); insisting that the hearing officer “state your position right now on the record” about a matter that the hearing officer had already stated her position, in writing, and had provided such writing to both Attorney Schmidt and Attorney Mayerson prior to the hearing date, and had marked as an exhibit. (Transcript, April 29, 2002, pp. 3-5); and disregarding briefing instructions (see Procedural Summary, above) demonstrated an ignorance of and/or an abject disrespect for the hearing process. All of this interfered with bringing this matter to a more timely conclusion.
20. As discussed above, the Board has the burden of proving the appropriateness of the Student’s program and placement. This burden is met by a preponderance of the evidence. R.C.S.A. §10-76h-14. The Board has met its burden of proof in this matter. In their brief the parents indicate that there has not been sufficient progress in critical areas such as recognition of danger and toileting. They stress that these are important areas of development for a child that is now twelve. This is absolutely true, but the evidence does not support the parents’ underlying argument that the Board is responsible for the Student’s inability to date to master these areas. This student has a very serious disability for which early intervention is critical and because he was living in another country he did not receive any educational programming until he was seven years old. There is no doubt that this has delayed his development of basic skills such as toileting. There has been no expert testimony that the goals and objectives set forth in the Student’s current IEP are not appropriate or are lacking in any way, and the mother had participated in the PPTs where the goals and objectives were developed and she agreed to them. The IEP offered to the Student was reasonably calculated to enable him to receive educational benefits and provided the Student with an opportunity for more than trivial advancement. No persuasive evidence was presented that more educational interventions, or a different setting, would accelerate the Student’s progress in any of his areas of need, given his cognitive limitations, the severity of his disability and the



tragic failure to educate him for nearly seven years of his life. The Student has made significant progress in each goal area of his IEP. The behavioral difficulties that the Student presented in the middle of the 2000-2001 school year are no longer in evidence this school year and he is making progress.

21. The Board is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the Board made FAPE available to the child. 34 C.F.R. §300.403(a). The Board made FAPE available to the Student for the 2001-2002 school year and thus is not required to place the Student in a residential facility. In addition, the overwhelming weight of the evidence leads to the conclusion that such a placement would not be in the short or long term best interests of this child.

**FINAL DECISION AND ORDER:**

1. The Board has offered the Student an appropriate IEP for the 2001-2002 school year.
2. The Board is not required to place the Student in a residential setting.