

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

Appearing on behalf of the Parents: Atty. Jennifer D. Laviano, Jennifer D. Laviano, P.C., 77 Danbury Road, Suite C-6, Ridgefield, CT 06877

Appearing on behalf of the Board of Education: Atty. Marsha Belman Moses, Berchem, Moses & Devlin, P.C., 75 Broad Street, Milford, CT 06460

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

ISSUES

1. Did the Board fail to provide an appropriate program and placement for the student to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE) for the 2001-02 school year?

2. If the Board did not provide FAPE for the 2001-02 school year, was the Parents' unilateral home-based placement appropriate and, if so, are they entitled to reimbursement?

3. Did the Board fail to provide an appropriate program and placement for the student to receive a FAPE in the LRE for the extended school year (ESY) of 2002?

4. If the Board did not provide FAPE for the student in the LRE for the ESY of 2002, was the Parents' unilateral home-based placement appropriate and, if so, are they entitled to reimbursement?

5. Did the Board fail to provide an appropriate program and placement for the student to receive a FAPE in the LRE for the 2002-03 school year?

6. If the Board did not provide FAPE for the 2002-03 school year, was the Parents' unilateral home-based placement appropriate and, if so, are they entitled to reimbursement?

7. Are the Parents entitled to reimbursement for the privately obtained related services for the 2001-2002 and 2002-03 school years?

PROCEDURAL HISTORY

The Parents' attorney filed the hearing request on August 29, 2002. Hearing Officer (hereinafter HO) Exhibit 1. Prehearing conferences were held on September 9 and 11, at which time six hearing dates were selected at the mutual convenience of the parties. The hearing dates were October 24, November 7, 12, 14, 19 and 20, 2002. The October 24 hearing was cancelled at the request of the Parents' attorney with consent of the Board's attorney. The hearing commenced on November 7. The Parents objected to the Board having two representatives present and requested that Board witnesses be sequestered. The Board presented good cause as to why the presence of Ms. Cynthia Gilcrest, Director of Pupil Personnel Services and Ms. Robin Marino, Coordinator of Special Education and Administrator of Stepping Stones Preschool, were necessary to aid the Board attorney in defending the case. The Hearing Officer granted the sequestration order for both parties, except as to Ms. Gilcrest and Ms. Marino. They were not both in attendance at all times during the hearing. Ms. Gilcrest did not testify. The Parents' attorney made an opening statement, and the Board's attorney reserved her opening until the start of the Board's case. The Parents filed exhibits labeled P1 through P7, and the Board filed B1 through B91. All were accepted as full exhibits. The Parents presented the testimony of the Student's (hereinafter referred to as C. or the Student) mother for the remainder of the day. On November 12, the Parents offered Exhibits P8, a five-page series of graphs, and P9, the curricula vitae of Sebastien Bosch, Ph.D., B.C.B.A. The Board objected to P8, which was marked for identification only. P9 was entered as a full exhibit. The Mother testified on cross-examination for the remainder of the day.

The Hearing Officer denied the Parents' request to present redirect testimony from the Mother on November 12. The Mother had testified for two full days and the Hearing Officer ruled that the hearing should move forward with other witnesses. The Parents' attorney complained that the Parents' were being denied due process. The Hearing Officer relied on Conn. State Regs., Section 10-76h-15. On November 14, the Parents presented testimony from Dr. Bosch, who is employed as the Research and Development Director at the Center for Autism and Related Disorders (hereinafter referred to as "CARD") in Woodland Hills, California. His testimony took the entire day. On November 19, Ms. Nicole Nemchek, a CARD employee who works as a junior therapist with C., testified on direct examination regarding Exhibit P8 and her work with C. On November 19, Mr. Keith Amerson, Director of CARD programs in the area of New York and Connecticut, testified on direct examination. Both returned on November 20 for completion of their testimony. P10, a 24-page document containing data collected by CARD on C. was admitted over the Board's objection. Additional dates were scheduled for December 17, January 3, 7, 9 and 15, 2003. On December 17, the Parents presented Ms. Lisa Norcross, a CARD employee and one of the Student's therapists testified regarding Exhibit P8. The Parents then rested their case. At that time Exhibit P8, pages 1, 2 and 5, was admitted into evidence. Pages 4 and 5 were excluded and marked for identification only. The Board waived an opening statement and began presenting its case on December 17 with testimony of Ms. Marino. The Board offered additional Exhibits B92 through 106. The Parents objected to B95-B98 and B100. Those were marked for identification only and the remainder were entered as full exhibits.

B100, 44-page program book developed by Ms. Marino and others for C., was later admitted over the Parents' objection.

The January 3 hearing was cancelled because of a snowstorm. January 7 was cancelled because of a federal court appearance by the Board attorney. The hearing continued on January 9 and 15 with the remainder of Ms. Marino's testimony. Exhibit B95, an observation report by Ms. Marino, was admitted into evidence over Parents' objection. Additional dates were scheduled for January 28, February 12, 13 and 26. Ms. Mary Imperioli, employed by the Board as a special education in the Stepping Stones Preschool self-contained classroom, began testimony on January 15 and finished on January 28. Exhibit B96, a report on a home visit by Ms. Imperioli, was admitted over Parents' objection. On January 28, the Board presented testimony of Ms. Sharon Gilliland, speech and language pathologist employed by the Board. On February 10, the Board filed Exhibits 107 and 108. These were admitted without objection at a later hearing date. On February 12, the Board presented Ms. Barbara Burns, a special education teacher at Coleytown Elementary School (CES) in the Primary Development Learning Center. Exhibit B97, a report on a home observation by Ms. Burns and Ms. Gladys Millman, a speech and language pathologist employed by the Board at CES, was admitted into evidence over Parents' objection. Ms. Millman began her testimony on February 12 and completed her testimony on February 13. The Board then rested its case. B98, a home observation report by Mr. Robert Vercellone, an occupational therapist employed by the Board, who did not testify, was admitted as a business record over the Parents' objection.

The Parents were allowed to recall two witnesses and to call two new witnesses in rebuttal of the Board's case. The Student's Father and Mother testified on February 13. On February 26, the Hearing Officer permitted the Parents to recall Mr. Amerson for a limited time of one hour, with each party to have one-half hour for questions. The Parents wanted Mr. Amerson to testify that Ms. Imperioli and Ms. Burns were not qualified in applied behavior analysis (ABA) instruction. The Hearing Officer refused to permit the Parents to challenge their qualifications as special education teachers since they both have State Department of Education certifications in that area. The Parents presented Nancy Schwartz, Ph.D. in Speech, who is the private speech therapist treating the Student. The Parents also sought to introduce Exhibits P11 through P14. P11, the curricula vitae of Dr. Schwartz was admitted as a full exhibit. The other documents were marked for identification and excluded from evidence. Dr. Schwartz did not complete her testimony on February 26, so an additional hearing date was scheduled for March 26. The Parents were denied the request to recall the Mother to testify following Dr. Schwartz in an attempt to get Exhibits P12 through P14 into evidence. Because Dr. Schwartz should have been called as a witness in the Parents' case-in-chief, the Hearing Officer permitted the Board to recall Ms. Millman as a surrebuttal witness on March 26. Ms. Marino was to have testified on surrebuttal, but she was unable to attend the hearing on that date and the Board rested its case.

At the conclusion of the hearing, the Parties requested until May 9, 2003 to mail simultaneous briefs, so that they could obtain transcripts to assist them. The Hearing Officer granted the request and set the decision deadline for June 6. On May 6, the Parents' attorney requested additional time, which was not objected to by the Board, until May 27 to mail the briefs. The requests were granted and the decision deadline was extended to June 23. The

parties have filed legal briefs, which contain proposed findings of fact and conclusions of law, as well as case citations in support of their legal claims.

SUMMARY

C. is a six-year old boy who was diagnosed with Pervasive Developmental Delay (PDD) at age three and one-half by his pediatrician. His Parents notified Westport and C. was classified as eligible for special education and related services at a Planning and Placement Team (PPT) meeting in April 2000. He received services in the Stepping Stones Preschool from April until the end of school in June 2000. After only several weeks in the Board's program, the Parents disagreed with the approach used in the classroom, which they claimed used "signing." They also felt C. needed a full time 40 hour per week program of ABA as recommended by Dr. Michael Powers, a psychologist they had consulted with. C. was educated at home with services from CARD during the summer of 2000. In September 2000 C. was enrolled at the Connecticut Center for Child Development (CCCD), which was recommended by Dr. Powers. The parties reached a settlement agreement, which fully and finally settled the claims regarding the 2000-01 school year through August 2001. At the end of June 2001, the Parents removed C. from CCCD and rehired the services of CARD to conduct a home-based program of ABA discrete trial therapy. This program continued through the hearing. The Parents are seeking reimbursement for the costs of CARD, as well as the privately provided related services of speech and language therapy with Dr. Nancy Schwartz, occupational therapy with Marie Ossi, and the play therapy with Aileen Speight. The Board claims that the program and placements offered for the school year of 2001-02, the ESY of 2002 and the school year of 2002-03 were appropriate and provided C. with FAPE in the LRE. The Board further claims that the Parents are not entitled to reimbursement even if the Board's programs did not offer FAPE because the issues were not raised at a PPT, the Parents did not provide the requisite 10-day notice of a unilateral placement, the unilateral placement is not appropriate and, even if it was appropriate, the Parents have acted unreasonably, therefore they are not entitled to reimbursement.

The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record.

FINDINGS OF FACT

1. The Student is currently 6 years old (DOB 11/11/96) and has been a resident of Westport, Connecticut since October of 1999. Testimony of Mother.
2. C. was diagnosed at the age of three and one-half by Dr. Paule Couture as having PDD. Exhibit B3.
3. In February of 2000, the Mother contacted the Westport Public Schools and a PPT for C. was convened on February 23, 2000. At that PPT, the team recommended various evaluations, which were agreed to by the Parents. Testimony of Mother; Exhibits B4 and B6.
4. Pursuant to the recommendations of the PPT, the Board performed a play-based assessment conducted by Sharon Gilliland (speech and language pathologist), Edith Gould (special

education teacher), Alison Hitchcock (school psychology intern) and Dr. Ann Reeves (school psychologist). Exhibit B10. In addition Dr. Reeves performed a developmental interview. Exhibit B2.

5. The Board's play-based assessment consisted of observation of C. in his home by Ms. Gilliland on March 24, 2000, as well as school staff working with C. at Stepping Stones on April 5, 2000. C. was assessed in the areas of cognitive development, communication, social emotional and sensory motor. Exhibit B10.

6. The PPT was reconvened on April 19, 2000 at which time the evaluations were reviewed and an IEP was developed for C. within the Westport Public Schools. C. was identified as eligible for special education and related services. It was agreed that C. would commence attending the Board's preschool program, known as Stepping Stones Preschool, with a transition into the program, which included his mother's attendance. Exhibit B11. C. was to attend every afternoon from 12:30 to 3:30, with a one to one aide. He was to receive 10.5 hours per week of special education instruction and two hours per week of speech and language services. Id. IEP goals and objectives were agreed upon, but were to be reviewed over the next six weeks, to be "fine tuned" at a PPT in June 2000. Occupational and physical therapy evaluations were to be performed. The Parents agreed with the recommendations of this PPT. Id.; and Testimony of Mother and Ms. Gilliland.

7. C. began attending the Board's Stepping Stones Preschool program on April 25, 2000 in the self-contained classroom with Edith Gould. Id. He attended for approximately six weeks, through the end of the 1999-2000 school year in June of 2000. Exhibit B17; Testimony of Ms. Gilliland and Mother. He has not attended the Westport Public Schools for any time other than that six-week period. Testimony of Mother and Ms. Gilliland.

8. During the six weeks that C. attended the Stepping Stones program, team meetings were held on May 25 and June 8, 2000. At the June 8 team meeting, the Mother stated that she would like to use the Big Mac, the assistive technology device being used for C. in the Stepping Stones program, at home. It was also noted that C. appeared to enjoy his inclusive experiences with peers. Exhibit B28.

9. A home school communication log was maintained and shared between home and school from May 3, 2000 through June 9, 2000. Exhibit B29. In that log, the Parents on occasion noted the progress C. was making in his communication (Id. at 4, 12, 16, 22) and indicated their excitement regarding the use of the Big Mac. Id. at 9-10.

10. In accordance with the recommendation of the April 19, 2000 PPT, the PPT was reconvened on June 15, 2000. The PPT reviewed the occupational therapy report that had been completed and the physical therapy evaluation done by the Board. Exhibits B13 and B16. Based on those evaluations, it was recommended that C. receive both occupational therapy and physical therapy. The team also reviewed the progress that C. had made in school since April 25. Ms. Gould reported that C. had transitioned smoothly into the program and had made strong attachments to familiar adults. He acquired new skills through repetition. He was making consistent progress, although at a slow pace. He was noted to observe other children for brief periods of time when in the inclusion classroom. Exhibits B18 and B19.

11. At the PPT, Ms. Gilliland, C.'s speech and language pathologist in the Stepping Stones program, reported on the progress that C. had made with her. Rapport had been established with C. within the classroom setting. A picture schedule had been implemented for C. to assist him in understanding the people and locations within the school environments. In addition, augmentative communication in the form of voice output devices using icons had been introduced to C. C. had learned to spontaneously push the appropriate button to fulfill his needs and was successfully using augmentative communication in the classroom. The voice output systems gave him an additional method of communication. The multi modal approach, using a variety of communication systems including verbal, worked for C. Exhibit B17; Testimony of Ms. Gilliland; and Exhibit B19.

12. It was agreed at this PPT that C. qualified for extended school year services and a program was developed and offered to him for the summer of 2000 consisting of four hours per day, five days per week from July 5, 2000 through August 15, 2000. During this time, he would receive 15.5 hours per week of special education services (to include two hours per day of ABA services); 2.5 hours per week of speech and language services; one hour per week of each of occupational therapy and physical therapy; and adult 1:1 support throughout the day. It was also recommended that C. use assistive technology in the form of voice output devices and picture systems. Exhibit B19.

13. At the June 15, 2000 PPT, the team also discussed the amount of ABA services to be provided to C. The Parents indicated that they were seeking at least 40 hours per week of direct teaching following an ABA model based upon the recommendation of Dr. Powers. The Board recommended that Eden Institute, a facility with specialization in applied behavioral analysis and discrete trial instruction, perform an assessment of C. for the purpose of assessing the number of hours of ABA and discrete trial. The Parents agreed. The Board team members were prepared to discuss and plan a program for C. for the 2000-2001 school year; however, the Parents requested that the PPT not address this issue at this PPT. Id.

14. The Parents refused the extended school year offered by the Board. They did not believe he was making progress and required an intensive year-round forty-hour-per week program. During the summer of 2000, they obtained private services for C. through CARD, which delivered discrete trial instruction to C. in his home. The Parents became aware of CARD through an index in the back of a book written by a parent of an autistic child and contacted CARD. In July 2000, CARD began to provide a home program for C. The program consisted of therapists coming to the Parents' home and working on a one to one basis, approximately 40 hours per week, with C., using discrete trial instruction. C. remained in the summer program with CARD for approximately two months. Testimony of Mother. No data or records were submitted at the hearing reflecting the work done by CARD with C. during that time, nor the progress, if any, that he made. Id. and Testimony of Dr. Schwartz.

15. In the summer of 2000, C. began speech and language therapy with Dr. Schwartz. Although the Mother testified that Dr. Schwartz conducted an assessment of C., no such assessment or evaluation was in fact conducted and Dr. Schwartz wrote no report at that time about C. Testimony of Mother and Dr. Schwartz.

16. Eden Institute, at Board expense, performed an assessment of C. on July 19, 2000. Exhibit B23. A copy of that evaluation was forwarded to the Parents on August 2, 2000. Exhibit B27. In July 2000, Robin Marino commenced her responsibilities as Coordinator of Special Education for the Board. In that position, she assumed responsibility as the Administrator of the Stepping Stones Preschool program and was the Supervisor of ABA programs in Westport. Ms. Marino, a certified special education teacher with a Master's degree in special education and a sixth year certificate in Educational Leadership, had extensive training and background in the area of applied behavioral analysis and discrete trial instruction. Exhibit B105; and Testimony of Ms. Marino.

17. As of August 2000, the Stepping Stones program in Westport consisted of an integrated preschool program located at CES, one of the Board's public schools. The student population, which totals between 35–37 children, is approximately 2/3 “typical” children and 1/3 children with special needs. In addition, the program contained a primary unit referred to as the Primary Developmental Learning Center for children in the age range of kindergarten through second grade, and an intermediate level, serving students in the range of third to fifth grades. Testimony of Ms. Marino. The preschool program includes a morning and/or afternoon component, with both integrated and self-contained classrooms. While there have been some internal reconfigurations of the Stepping Stones program since Ms. Marino became its administrator, the basic structure of the program has remained the same. Id.

18. When Ms. Marino began at Stepping Stones in July 2000, she became involved with C.'s program. She met with Ruth Eren, a consultant from Eden Institute who had attended C.'s June 15, 2000 PPT. She reviewed the Eden evaluation. She worked with Ruth Eren to develop C.'s discrete trial instruction program book, using the skills assessment data from the Eden evaluation and C.'s IEP goals and objectives. The program book consisted of a list of the set items to be worked on with C. in his discrete trial instruction program, as well as the data sheets to be maintained on a daily basis. It included a table of contents setting forth the drills C. would be using to work on various skills, a sheet for each drill to record data, and a graph to be completed for each drill to reflect progress. A program book such as this is developed for each child receiving a discrete trial instruction program in Westport. C.'s program book was developed in the summer of 2000 because it was anticipated at that time that C. would attend the Westport program for the 2000-2001 school year. A letter was sent to the Mother advising that the program book had been completed and was available for her to review it. Testimony of Ms. Marino; and Exhibits B27 and B100. At the hearing, the Mother stated that no one had ever made her aware that the program book had been prepared and/or was available to her. Testimony of Mother.

19. A PPT was convened on August 14, 2000 for the purpose of planning a program for C. for the 2000-2001 school year. The PPT had been rescheduled twice at the request of Parents' attorney. Exhibits B22, B24-B26. The Parents did not attend this PPT. The team reviewed the Eden evaluation, as well as a report by Dr. Michael Powers dated June 2000, which had been obtained by the Parents and provided to the Board. Exhibit P1. The PPT developed an IEP for C. for the 2000-2001 school year and recommended a 35 hour per week program, with a full time paraprofessional, with 27.25 hours per week of special education instruction; 3.5 hours per week of direct and one hour per week indirect speech and language services; occupational therapy of 1.5 hours per week direct; physical therapy of 1 hour direct and 0.5 direct; team

meetings two times per month; and three hours per day of discrete trial instruction and consultation from Eden Institute and Ruth Eren. In addition, the PPT recommended a speech and language evaluation “to include an augmentative and assistive technology evaluation.” Exhibit B30.

20. On September 5, 2000, the Parents unilaterally placed C. at CCCD, a private special education school providing discrete trial instruction and applied behavior analysis for children with autism. C. did not do well in that program and the Parents believed that in fact he regressed during the 2000-2001 school year. They consulted with Dr. Powers in January 2001 because of their concerns. Dr. Powers recommended that they “stick with [CCCD] for a little longer.” However, in the Parents’ opinion, CCCD was not appropriately addressing C.’s stereotypic hand flapping, tensing and high-pitched noises. They did not believe that the strategies being used for C. at CCCD were successful. C. attended CCCD for the entire 2000-2001 school year. In June or July of 2001, they made the decision to remove C. from CCCD. Testimony of Mother.

21. The Parents commenced due process against the Board regarding the 2000-2001 school year. The parties entered into a settlement agreement, which addressed the 2000-2001 school year and the summer of 2001. Pursuant to that agreement, the Board did not have any obligation to provide an IEP or any educational or related services for C. through August 30, 2001. Id. C. did not receive speech and language services, occupational therapy or physical therapy services at CCCD during the 2000-2001 school year. The Parents provided C. with private speech and language services from Dr. Schwartz, occupational therapy services from Marie Ossi and play therapy from Aileen Speight during the 2001-2002 school year. Id.

22. The Parents reintroduced the services of CARD during the summer of 2001 as they did not believe C. could go without services in the interim of his removal from CCCD and September 2001. Id.

23. In order to begin to plan for C.’s 2001-2002 school year, Ms. Marino and Ms. Gilliland observed C. at CCCD on April 30 and May 4, 2001. Exhibit B-32, pp. 26–31. The purpose of these observations was to obtain information as to C.’s then current levels of performance in order to develop an IEP. Both Ms. Marino and Ms. Gilliland were of the opinion that C. demonstrated severe speech and language deficits and had pervasive deficits in all areas. He demonstrated limited communicative functions, reciprocity, rate of communication and social signaling. He used vocalizations and brief eye contact to communicate. He was able to maintain attention and eye contact during work time drills. He required an integrated team approach by a transdisciplinary team to meet his educational needs. Id.; and Testimony Ms. Gilliland and Ms. Marino. The Mother believed that the observation report of Ms. Gilliland was substantially accurate in reporting C.’s performance in his program at CCCD. She had no recollection as to whether she believed at the time it was written that the observation report of Ms. Marino was accurate. Testimony of Mother.

24. The Parents were invited to and the Mother did visit and observe the Stepping Stones Preschool program on May 18, 2001. Exhibit B92; Testimony of Ms. Marino. Ms. Marino also met with the Mother that day to explain to her Ms. Marino’s background and experience in ABA and to discuss how the program books were developed and used for the students in Westport

receiving DTI programming. The Mother explained to Ms. Marino the Parents' concerns about C.'s self-stimulatory behaviors and they discussed the different views of experts in the field as to how to deal with such behaviors. Testimony of Ms. Marino.

25. A PPT was convened on June 5, 2001 for the purpose of planning an IEP for C.'s 2001-2002 school year. Exhibit B31. The PPT was attended by Robin Marino, the Parents, Jan McElroy (the regular education teacher at Stepping Stones Preschool), Gwen Goldman (social worker), Sharon Gilliland (speech and language pathologist), Pamela Sawyer (OT), Sheri McCarthy (PT) and counsel for the parties. Ms. Marino and Ms. Gilliland discussed their observation of C. Progress reports from CCCD had been requested but not provided to the Board. At the PPT, Parents' counsel stated that the Parents did not feel that C. had done well at CCCD and were "considering their options for the [2001-2002] school year." The Parents did not provide any records or witnesses from CCCD in this hearing. Based upon the observations at CCCD, the June 2000 report by Dr. Powers, a record review and the Eden skill-based assessment by Eden, the Westport team drafted proposed goals and objectives for discussion at this PPT. It was proposed that these goals, if accepted, would be reviewed and revised as necessary at a PPT to be convened within six weeks of C. beginning the 2001-2002 school year. Exhibit B32; Testimony of Ms. Marino.

26. The Parents' response at this PPT to the proposed goals and objectives was that they were not sufficiently aggressive for C. The school team members explained to the Parents the importance of demonstrating skills across all settings and that just because C. had mastered a skill in his 1:1 program did not mean he would be able to demonstrate that skill in a new setting. The Parents also were in disagreement with the "total communication approach" which was being recommended by the school team as part of C.'s program. Because C. was essentially a non-verbal child, the Westport team believed that the environment should be engineered to permit C. access to multiple means of communications, including visuals and voice output devices, in order to maximize the possible avenues for C. to communicate. Id.; and Testimony of Mother and Ms. Gilliland.

27. Although the Westport team members were prepared to offer a program for C. for the 2001-2002 school year based upon the information they had at the time, given the Parents' claim that the goals and objectives did not accurately reflect C.'s levels of functioning, the Westport team recommended an assessment to obtain more information about his present levels of functioning. The Westport team recommended that the speech and language pathologist do further observations and checklists and obtain information from Dr. Schwartz, and that there be a pre-academic, fine motor and gross motor assessment. Although it was the Parents who were concerned that Westport did not have accurate information about C., the Parents did not give consent to these recommended evaluations at this PPT. Id.

28. Subsequent to the PPT, by letter dated June 8, 2001, Board counsel forwarded to Parents' counsel a letter confirming that the Board was requesting the Parents' consent for observations and evaluations, and to obtain information from Dr. Schwartz; the consent forms to be signed by the Parents were attached. In addition, a PPT notice for a rescheduled PPT to be held on June 19 was attached. Exhibit B33. These forms were also sent by Ms. Marino to the Parents under cover of letter dated June 13, 2001. Exhibit B34.

29. Ms. Marino attempted to contact the Mother to coordinate a time when C. could come to Westport for the proposed assessments. The Mother was not responsive to Ms. Marino. In addition, the information that the Board had requested be provided from CCCD had not been provided. Testimony of Ms. Marino. Therefore, Board counsel sent a follow up letter to Parents' counsel, again requesting the consents for the observations and assessments recommended at the June 5 PPT. Exhibits B35 and B36. The Mother testified that the reason that she did not provide the consents at the time that they were requested was because her father was ill. She subsequently testified that in fact the time that her father was ill was in 2002 and therefore her father's health was not the reason for the lack of response. Testimony of Mother. The signed consents were provided to Westport on or about June 15, 2001. Exhibit B93. Because the Parents had not provided the consent for the assessments until June 15, it was agreed that the June 16 PPT would be cancelled. Exhibits B36 and B37.

30. On June 18, 2001, Ms. Gilliland observed C. at the Stepping Stones Preschool, and on June 21 she observed him in a one-on-one speech session with Dr. Schwartz, with the Mother present. Receptively C. demonstrated inconsistent understanding of vocabulary items, but reportedly could follow simple directions across environments. He demonstrated an understanding of "no" and inconsistently responded to his name being called. Expressively, he used vocalizations and word approximations to make certain requests. He was observed to produce eight phonemes, and to use language to request objects or actions, protest and indicate pleasure. Exhibit B38; and Testimony of Ms. Gilliland. The Mother believed that the report by Ms. Gilliland (B38) was accurate. Until a few days before Dr. Schwartz's testimony in this hearing on February 26, 2003, the Mother had not provided Ms. Gilliland's report to Dr. Schwartz. Testimony of Dr. Schwartz and Mother.

31. The Parents' counsel sent to the Board's counsel a letter dated July 10, 2001 stating that "the [Parents] will be removing C. from CCCD" and that they had arranged for him to receive services from CARD. Exhibit B40. The letter stated it was to serve as "ten day's notice of that placement." According to the Mother, however, this letter was not notice of placement with CARD for the 2001-2002 school year. The notice in Exhibit B40 was for the purpose of giving notice of the placement for the summer of 2001, and not for the 2001-2002 school year. Testimony of Mother.

32. On July 20, 2001, Ms. Marino performed a skill assessment of C. The purpose of the assessment was to look at those certain skills that the Parents had reported that C. had mastered, specifically matching, prewriting, and following directions. She found that he imitated single gross motor movement, followed simple one step directions inconsistently, maintained eye contact, matched identical objects and pictures but only to the direction "Give me the same" (i.e., he could not match in response to the direction "Match" or "Put with same"), could not imitate pre-writing strokes, and demonstrated difficulties with generalizations. The only upper and lower case letters that he could match were those that looked the same as both upper and lower case letters, i.e., "x", "o", "w", "s" and "z". Ms. Marino concluded that C. had not generalized the skills that were reported to have been mastered in the discrete trial instruction one-on-one environment. He had learned to respond but not to generalize. Exhibit B41, p. 36-37; and Testimony of Ms. Marino.

33. The Board's occupational therapist assessed C.'s current levels of functioning at Stepping Stones Preschool on June 18, 2001. She found that C. could not demonstrate the skills that Parents reported had been mastered. She concluded that "C.'s ability to learn a skill and perform it consistently across environments through generalization is an area of concern." She also expressed concern regarding sensory processing, modulation, motor planning, sitting posture, graphomotor skills and scissor skills. Exhibit B41, pp. 40-41.

34. On July 26, 2001, Ms. Marino and Ms. Gilliland met with the Mother for two hours. The purpose of the meeting was to discuss with the Mother the IEP goals and objectives, which the Parents had rejected at the June 5, 2001 PPT, and to discuss with her possible revisions to those goals and objectives. During this meeting, the Mother expressed her concern that the use of a multi-modal approach would inhibit and interfere with C.'s verbalization. Ms. Marino and Ms. Gilliland explained to the Mother that students using augmentative communication did not lose verbal skills and Ms. Gilliland explained to the Mother that the research in this area confirmed this conclusion. Ms. Gilliland gave the Mother an article published by the American Hearing and Speech Association explaining the importance of a total communication approach. Testimony of Ms. Marino and Ms. Gilliland.

35. At this meeting, Ms. Marino and Ms. Gilliland reviewed the goals and objectives that had been proposed at the June 5, 2001 PPT. They had those goals and objectives physically present and reviewed each of the goals and objectives, other than the OT and PT goals. Although Ms. Marino and Ms. Gilliland believed that it was important to maintain the total communication approach for C., they were willing to revise the goals and objectives in accordance with the requests of the Parents in order to obtain their consent to the program and get C. into school. They hoped that once C. began attending school, they could build trust with the Parents and eventually introduce the multi-modal approach for C. Id.

36. At this July 26, 2001 meeting, the following changes to the goals and objectives were made and agreed to by Ms. Marino, Ms. Gilliland and the Mother:

- Goal 1, objective 1 of the June 5, 2001 PPT (B32, p. 7) – renumbered as Goal 7, objective 1 of the July 27, 2001 IEP (B41, p. 18) - was revised by the addition of the parenthetical language "(such as 'come here', 'wait', 'sit down')"
- Goal 1, objective 2 of the June 5, 2001 PPT (B32, p. 7) – renumbered as Goal 7, objective 2 of the July 27, 2001 IEP (B41, p. 18) – was revised by the addition of the parenthetical language "(such as 'in', 'out', 'off' or 'under')"
- Goal 2 of the June 5, 2001 PPT (B32, p. 8) – renumbered as Goal 10 of the July 27, 2001 PPT (B41, p. 21) – was revised by the deletion of the words

“with the support of multi modal communication systems (auditory, gestural, pictures, line drawings and output devices)” at the request of the Mother.

- Objectives 1, 2, 3 and 4 of Goal 2 of the June 5, 2001 PPT (B32, pp. 8-9) – renumbered as objectives 1, 2, 3 and 4 of Goal 10 of the July 27, 2001 PPT (B41, p. 21-22) – were revised by the deletion of the words “multi-modal communication” and “by using a variety of modalities (gestural, verbal, pictures)” at the request of the Mother.
- A new objective was added to the IEP as objective 5 of Goal 10 of the July 27 IEP (B41, p. 22) based on information obtained from the assessment.
- Goal 3, objective 1 of the June 5, 2001 IEP (B32, p. 10) – renumbered as Goal 8, objective 1 of the July 27, 2001 IEP (B41, p. 19) – was revised by the addition of specific categories in order to accommodate the Parents’ request for more specificity. This addition did not change the meaning of the objective, as it was in effect a combination of objectives 1 and 2 of Goal 3 of the June 5, 2001 IEP.
- Goal 8, objective 3 was added to the July 27, 2001 IEP (B41, p. 19) based on the results of the Westport assessment.
- Goal 4 of the June 5, 2001 IEP (B32, p. 11) – renumbered as Goal 9 of the July 27, 2001 IEP (B41, p. 20) - was revised by the deletion of the words “with the support of multi-modal communicative systems (gestural, pictures, line drawings, voice output devices)” and the words “within the natural environment” were added. The revision was made at the request of the Mother.
- Objectives 1 and 3 of Goal 4 of the June 5, 2001 IEP (B32, p. 11) were combined into Objective 1 of Goal 9 of the July 27, 2001 IEP (B41, p. 20). This revision did not change the meaning of the objective.
- Objective 2 of Goal 4 of the June 5, 2001 IEP (B32, p. 11) – renumbered as Objective 2 of Goal 9 of the July 27, 2001 IEP (B41, p. 20) – was revised by the addition of the words “with a fill in” and the change of the words “without prompts” to “spontaneously” at the request of the Mother. This revision did not change the meaning of the objective.
- Goal 5 and Objectives 1 through 6 of the June 5, 2001 IEP (B32, pp. 12-13) remained essentially the same and were renumbered as Goal 11, Objectives 1 through 5 of the July 27, 2001 IEP. (B41, pp. 24–25).
- Goals 6 (and objectives 1 through 3) and Goal 7 (and Objectives 1 through 3) of the June 5, 2001 IEP (B32, pp. 14-15) remained the same and were

renumbered Goals 1 (Objectives 1 through 3) and Goal 2 (Objectives 1 through 3) of the July 27, 2001 IEP. (B41, pp. 11 and 12).

- Based on the results of the skills assessment, Goal 8 of the June 5, 2001 IEP was eliminated. (B32, p. 16).
- Goal 9, Objective 1 of the June 5, 2001 IEP (B32, p. 17) – renumbered as Goal 3, Objective 1 of the July 27, 2001 IEP (B41, p. 13) - was revised by the addition of the words “2-step directions” based on the results of the skills assessment.
- Goal 9, Objective 2 of the June 5, 2001 IEP (B32, p. 17) – renumbered as Goal 3, Objective 2 of the July 27, 2001 IEP (B41, p. 13) - was revised by the addition of the words “in familiar songs.” This addition did not change the meaning of the objective.
- Goal 9, Objective 3 of the June 5, 2001 IEP (B32, p. 17) - renumbered as Goal 3, Objective 3 of the July 27, 2001 IEP (B41, p. 13) - was revised by the addition of the words “1 step symbolic play schemes.” This addition did not change the meaning of the objective.
- Goal 10, Objective 3 of the June 5, 2001 IEP (B32, p. 18-19) was eliminated and the goal and all other objectives remained the same and were renumbered as Goal 4, Objectives 1 through 3 of the July 27, 2001 IEP. (B41, p. 14).
- New Goals 5 and 6 were added to the July 27, 2001 IEP based on the results of the skill based assessment. (B41, pp. 15–17).
- All other goals and objectives remained the same

Id.; and Exhibits B32 and B41. Ms. Gilliland physically wrote the changes to communication goals and objectives during the July 26 meeting. Testimony of Ms. Gilliland.

37. By the end of the July 26, 2001 meeting, Ms. Gilliland and Ms. Marino believed that the changes in the IEP goals and objectives were acceptable to the Mother, that she agreed with the revisions, and that C. would be attending the Westport program in the 2001-2002 school year. At no time did the Mother indicate during this meeting that she thought that C. was not ready for school. At no time did she indicate any concerns or objections to the goals and objectives as revised. Id.; and testimony of Ms. Marino.

38. At the hearing, the Mother testified that she did not recall the meeting with Ms. Marino and Ms. Gilliland on July 26, 2001, despite the statement in the minutes of the July 27, 2001 PPT reflecting that the three had met “yesterday (July 26th) for two hours to go over the revised draft goals and objectives that will be presented today,” and that “[s]everal changes were made to speech and language goals and objectives from the June 5th IEP after meeting with the Mother yesterday (July 26, 2001).” Her testimony at the hearing was that she met separately with each

of Ms. Marino and Ms. Gilliland when she brought C. in for the assessments. She had no recollection of the goals and objectives being reviewed and revised at these meetings. Testimony of the Mother; and Exhibit B41, pp. 5, 6.

39. The PPT convened on July 27, 2001. In attendance were the Parents, Ms. Marino, Jan McElroy (the Stepping Stones regular education teacher), Gwen Goldman (social worker), Ms. Gilliland, Pamela Sawyer (occupational therapist), Sheri McCarthy (physical therapist), and counsel for both the Parents and the Board. Ms. Gilliland, Ms. Sawyer, Ms. Marino, and Ms. McCarthy each reviewed her assessment/observation reports, and the goals and objectives that had been revised the prior day in the meeting with the Mother were discussed. Exhibit B41; and Testimony of Ms. Marino.

40. Although the Mother had agreed with the revised goals and objectives the day before, at the July 27, 2001 PPT and before the Westport team had the opportunity to propose and discuss a program for C., the Parents' counsel requested that words such as "across school environment" be removed from the goals and objectives because the Parents were not agreeing to a school placement. Ms. Marino and Ms. Gilliland were surprised at Parents' counsel's statement that the Parents disagreed with any of the language of the goals and objectives and were further shocked that the Parents were taking the position that C. could not and would not come to school, particularly since this position was stated at the PPT even prior to the Board's recommendation of a program for C. for the 2001-2002 school year. *Id.*; and Testimony of Ms. Gilliland.

41. At the hearing, the Mother testified that she stated at the PPT that she disagreed with many of the proposed goals and objectives. The minutes do not reflect any disagreement and at no time did the Parents or their counsel send a letter stating that the minutes were inaccurate in any way. The only reason that the Mother could identify to support her opinion that the minutes of July 27, 2001 were inaccurate was her opinion that in her prior experience, the minutes were not always accurate. According to the Mother, she was unaware that at the PPT she could request that any IEP goal or objective be removed from the IEP. She also testified that she believed that only her counsel could request changes at the PPT to the goals and objectives. Testimony of the Mother.

42. At the July 27, 2001 PPT, in addition to the IEP goals and objectives, the following program was recommended by the Westport team members for C. for the 2001-2002 school year ("the Board's 2001-2002 Program"):

- Full day program at Stepping Stones Preschool, five days a week, from 8:30 AM to 3:30 PM, for a total of 35 hours per week.
- Of the 35 hours per week, C. would receive the following services:

27.5 hours per week of special education, to include three hours per day of discrete trial instruction and 1.5 hours per day of inclusion with typical peers;

3.5 hours per week of direct speech and language services with one hour per week of indirect services;

2 hours per week of direct occupational therapy services with one hour per month of indirect services;

1 hour per week of direct physical therapy services.

- A dedicated paraprofessional throughout the school day.
- Team meetings with parents twice a month.
- Daily communication book between home and school.
- To assist with consistency between home and school, (i) home visits once a month by staff and (ii) Parents were invited to observe C. in school at any time so long as they provided prior notice.
- Consultation by Eden Institute 4–6 times per year and consultation by Ruth Eren (who would consult more in the area of generalization and inclusion) of approximately once per month.
- PPT to reconvene six to eight weeks after school began to review the program.

Exhibit B41.

43. The Board's 2001-2002 Program addressed C.'s needs in the areas of communication, academics, self-help/ADL, play skills, motor skills, sensory integration needs and behavioral needs. In addition, it addressed C.'s needs in the area of generalization. Id.; and Testimony of Ms. Marino and Ms. Gilliland.

44. As was done at the August 14, 2000 PPT, at the July 27, 2001 PPT, the Westport members of the team again recommended a comprehensive language evaluation by Ann Holmes or Marianne Kennedy for the purposes of assessing C.'s needs for augmentative communication. There was also a recommendation that Michelle Brooks of Eden perform a comprehensive curriculum based assessment similar to the one that she performed in July of 2000. Id.

45. The PPT discussed the manner in which C.'s discrete trial instruction program would be implemented in Westport. It was explained that the actual programs would be written by Ms. Marino, along with the classroom teacher. Paraprofessionals are trained by Ms. Marino, Ruth Eren and Eden. The role of Eden and Ms. Eren in providing consultation was discussed and explained to the Parents. Exhibit B41, p. 7; and Testimony of Ms. Marino.

46. The Parents stated at the July 27, 2001 PPT that they wanted C. in a home-based program and they wanted Westport to provide occupational therapy services at Stepping Stones preschool

for C. Ms. Marino explained that the services being offered for C. in Westport were comprehensive and integrated and needed to be delivered in their entirety. The program was not a “Chinese menu” where the Parents could pick and choose pieces that they wanted. She explained that occupational therapy by definition is a “related service” and is related to and supports an overall special education program. In fact, the occupational therapy that was recommended for C. was to be delivered in the regular classroom, the self-contained classroom and the occupational therapy room. Exhibit B41, p. 32. Ms. Marino explained that the provision of two hours per week of occupational therapy to C., without being a part of the overall program, was educationally unsound. The school based team members discussed the importance of providing a functional program for C. and addressing the issue of generalization. The team expressed concern that C. needed to generalize the skills that he was learning in his home program and that that generalization needed to occur in a natural environment, i.e. school. The Mother stated that the CARD program addressed the issue of generalization. Westport denied the Parents’ request for a home-based program and for OT services, stating that the program they offered C. was appropriate. Testimony of Ms. Marino, Ms. Gilliland and the Mother; and Exhibit B41.

47. The Parents did not request reimbursement by Westport for speech and language services for the 2001-2002 school year. At no time did the Parents request any changes, additions or deletions to or of the Board’s 2001-2002 Program. They only wanted payment for their own home program provided by CARD and to bring C. to Stepping Stones for direct occupational therapy services. At the hearing, for the first time the Mother stated that the Parents did not request funding for a home program for the entire 2001-2002 school year, but only “until he was able to go to school.” There was no specification of the length of such time period. Testimony of Mother.

48. The Parents did not believe the program offered for 2001-02 was appropriate because they did not think C. was ready for a school-based program. Testimony of Mother. The Parents offered no credible expert evidence that C. could not receive an educational benefit in a school-based program in the 2001-02 school year.

49. Had C. attended the Board’s 2001-2002 Program, his Stepping Stones team would have consisted of Mary Imperioli as his special education teacher, Sharon Gilliland as his speech and language therapist, Sherry McCarthy Constantino as his physical therapist, Rob Vercellone and Keara Lynch as his occupational therapists, Jan McElroy who was the regular education teacher in the integrated preschool classroom, and Liz Rutkin and Ellen DeMagistris, as his paraprofessionals. Discrete trial instruction would have been delivered to C. on a one on one basis within a self-contained cubby in Ms. Imperioli’s classroom. C. would have received his special education services in Ms. Imperioli’s self-contained classroom. Two paraprofessionals would have been assigned to C.; using two paraprofessionals provided a back up system and also helped to prevent “burn out.” Testimony of Ms. Imperioli and Ms. Marino.

50. The paraprofessionals, Ms. Rutkin and Ms. DeMagistris, had extensive backgrounds, experience and training. Exhibits B102 and B103. They were trained and supervised by both Ms. Marino and Ms. Imperioli. They had worked with other students on the PDD spectrum and had implemented discrete trial instruction programs for other children. Their responsibilities would have been to carry out the IEP goals and objectives and strategies throughout the day.

They would have attended C.'s occupational therapy, physical therapy and speech and language sessions in order to see the different strategies used by the therapists. They had both demonstrated excellent skills in working with other children; they followed directions, were consistent, asked questions when appropriate, had achieved success in working with children, and were liked by parents. Id.

51. Mary Imperioli would have been C.'s special education teacher for the 2001-2002 school year, and would have had responsibility for C.'s discrete trial instruction program. She has extensive background and training in the areas of ABA and discrete trial instruction. She has worked with many children with autism and delivered discrete trial instruction programs in homes and in schools. She has had experience writing discrete trial instruction programs. She has been retained by school districts to transition children from discrete trial instruction home programs into public school programs and to train school staff who lacked the experience and knowledge regarding ABA and discrete trial instruction. She is a certified special education teacher. She began working at Stepping Stones as a special education teacher in August 2001. Testimony of Ms. Imperioli; Exhibit B107.

52. There were three children in Ms. Imperioli's Stepping Stones classroom as of the beginning of the 2001-2002 school year; an additional child joined the program in February of 2002. The children ranged in age from three to five years old. The children were labeled as children with autism and as multiply handicapped. All received discrete trial instruction. Each child had a program book such as Exhibit B100 for their discrete trial instruction. Data was collected daily for each child. Testimony of Ms. Imperioli.

53. Had C. attended the Board's 2001-2002 Program, Ms. Imperioli would have developed a program book for his discrete trial program similar to Exhibit B100. To develop that program book, she would have started with any information provided from his then current program book and she would then have probed to determine generalization and would have run a skills assessment. In addition, had the Parents consented, Eden would have conducted a skills based assessment, which would have provided additional information for use in determining his discrete trial instruction programs. With C., Ms. Imperioli would have delivered his discrete trial instruction program initially directly in the presence of the paraprofessionals. At such time as she was comfortable, Ms. Imperioli would have had the paraprofessionals begin to work with C. under her review and supervision. However, Ms. Imperioli would have worked with C. in his discrete trial instruction program every day. She would also have determined when during the course of the day it was appropriate for C. to participate in the inclusion classroom, with the goal of maximizing his opportunities for generalization. In Ms. Imperioli's opinion, the IEP developed for C. for the 2001-2002 school year was appropriate and could have been implemented by her at Stepping Stones preschool. Id.

54. During the 2001-2002 school year, the Stepping Stones preschool staff functioned as an interdisciplinary team. They spoke daily, developed behavior plans as necessary, and discussed the language used with each child to make sure that there was consistency across all settings. Communication with parents occurred through communication books, phone and face-to-face

conversations with parents, as well as through team meetings. All of this would have been in place and part of C.'s program had he attended the Board's 2001-2002 Program. Id.

55. During the 2001-2002 school year, C.'s Parents provided him a home program delivered by CARD. That program was a discrete trial instruction program, consisting of approximately 37 hours per week, delivered to C. in a room that was off of C.'s bedroom. Approximately seven different individuals delivered C.'s discrete trial instruction program during the 2001-2002 school year. The discrete trial instruction was delivered to C. on a one to one basis. No other children were present. Sometimes two adults would be present with C. during these sessions. Most of the individuals providing therapy to C. are not certified teachers, but are college graduates, like Ms. Nemchek. Testimony, of Mother, Mr. Amerson and Ms. Nemchek.

56. During the 2001-2002 school year, C. received speech and language services from Dr. Schwartz at her office approximately two to three times per week, for 45 minutes per session. No other children were present. C. also received occupational therapy with Marie Ossi once a week, also on a one on one basis. On Saturday mornings he received play therapy with Aileen Speight. Almost all of these play therapy services were delivered to C. on a one on one basis. No reports were generated by Ms. Speight. Testimony of Dr. Schwartz and Mother.

57. Clinics at the Parents' home were held during the 2001-2002 school year approximately twice a month for the purpose of sharing information regarding C.'s program and making revisions to that program as necessary. At no time during the 2001-2002 school year were all of the members of the team providing services to C. in attendance at any clinics. Testimony of Dr. Schwartz.

58. CARD generated reports approximately four times per year describing C.'s program, his behaviors and the specific skills on which he was working. Testimony of Mother and Mr. Amerson. Although six reports were generated from the beginning of the 2001-2002 school year through the close of the hearing, only three of those reports were provided by the Parents and submitted into evidence. Exhibits B42, B43 and B48. In October 2001, the Quarterly Report generated by CARD reflected sixteen components of C.'s ABA program. None of the skills were established in any of these sixteen programs. Exhibit B42. The Quarterly Report of January 1, 2002 reflected a minor reduction in C.'s bolting and laughing behaviors, but an increase in his gazing behaviors. Some of C.'s programs had been dropped; others were "put on hold". Exhibit B43. The April 1, 2002 Quarterly Report reflects that the frequency of C.'s "tensing behavior" had not decreased (continuing at four times per week) and that his "bolting" behavior had in fact increased from seven times per session in October to nine times per session in April. Based on the way that the reports are written, it is impossible to determine the amount of progress C. made and the Parents offered no testimony to explain these reports despite Mr. Amerson, Ms. Nemchek, Dr. Bosch and Ms. Norcross being presented as Parents' witnesses. The CARD report dated April 2002 shows inconsistency in C.'s performance and progress. For example, although the testimony of the Parents' witnesses was that C. had made great progress in his "reading," the April 2002 report states that in his "Sight Reading" program, "the team has been working on getting C. back to his previous level of performance." Exhibit B48, p. 6. Nevertheless, the Parents' witnesses all testified that C. made appropriate progress in the CARD program.

59. In approximately January 2002, the CARD program was revised because it was determined that C. was a more visual learner. At that point, Keith Amerson was the supervisor of C.'s ABA program. He had never read Dr. Powers report of January 2000, which states "I would encourage the team to particularly focus on the use of visual context cues to guide play through a sequence, using play books, immediately." Testimony of Mr. Amerson; Exhibit P1, p. 5. He had not read the records of the Board, which included a similar conclusion regarding C.'s visual strengths reached by the Board in its play based assessment conducted in March and April 2000, nor was he aware of how C. had done with the Picture Exchange System during the six weeks that he attended the Westport Public Schools. Exhibit B10, p. 2 (second paragraph); and Testimony of Mr. Amerson. Despite this available information, CARD continued to teach C. through verbal "SD's" and did not begin to explore the use of visual supports for C. until January 2002. Testimony of Mr. Amerson.

60. CARD did not perform any evaluations or assessments of C. Id.

61. The Board began attempting to plan for C.'s 2002 summer program and the 2002-2003 school year program in March 2002 when Ms. Marino wrote to the Parents, enclosing a copy of a notice of PPT for April 24, 2002 and requesting that the Parents provide any reports and testing done on C., as well as permission for observation. Exhibit B44; and Testimony of Ms. Marino. When no response was received to this March 12 letter, Ms. Marino wrote again to the Parents by letter dated April 1, 2002. Exhibit B47; and Testimony of Ms. Marino. The first response to these letters was on April 2, 2002, when Parents' counsel responded with a letter. Exhibit B49.

62. The Mother contacted Ms. Marino's office on April 3, 2002 and spoke with Ms. Marino's secretary, confirmed the April 24 date for the PPT, said she would provide the consents for the observations and indicated that she had already provided all of the requested reports to her attorney. Testimony of Ms. Marino. On April 4, 2002, the Parents provided consent for the observation and to speak with Dr. Schwartz and Marie Ossi. Exhibits B49 and B50. Upon receipt of the consents, Ms. Marino coordinated with the Mother to set up the observations of the home program, as well as an observation by the Mother of Westport programs for C. The Mother's observation in Westport was set for April 12, 2002. During her conversation with Ms. Marino, the Mother requested the opportunity to observe a kindergarten program at Long Lots School, C.'s home school. By letter from Board counsel to Parents' counsel, the Mother was advised that she was welcome to observe the Long Lots program; however, the Parents should be aware that Long Lots did not provide the "full array of special education and related and specialized skills of staff that are available at [CES]." Exhibit B51. The Mother testified that when she read this letter, she believed that she was prohibited from observing Long Lots School. On cross examination, she agreed that there was no such prohibition contained in the letter and in fact she was "welcome" to make that observation. Testimony of Mother; and Exhibit B51.

63. On April 12, 2002, the Mother observed the integrated preschool program and the Primary Developmental Learning Center at CES. She also asked Ms. Marino to observe a regular kindergarten classroom at CES. Ms. Marino attempted to coordinate such an observation; however, the kindergarten class was at "specials" and not in the classroom at the time of the Mother's visit. Ms. Marino advised the Mother that she could contact the principal of CES and schedule an observation. The Mother never followed up on scheduling that observation. Ms.

Marino also discussed with the Mother an observation at Long Lots School. Ms. Marino explained to the Mother that if she was interested in observing a class at Long Lots, she could contact the assistant principal at Long Lots and schedule an observation. Ms. Marino contacted Long Lots to let them know to expect a call from the Mother to schedule a visit to the school. The Mother never contacted anyone at Long Lots School to schedule an observation or visit. Testimony of Ms. Marino and Mother.

64. Despite the Board's March 12, 2002 request for reports and records, the first time that any such reports were provided to the Board was under cover of letter from the Parents' counsel dated Friday, April 12, 2002, one month after the information was requested. The reports forwarded at that time were two Quarterly Reports generated by CARD in October 2001 and January 2002. Exhibits B42 and B43. Board counsel immediately forwarded that information to the Board; however, the Board was on vacation the week of April 15 and therefore, the first opportunity that the Board representatives had to review those reports was on April 22, 2002, two school days prior to the April 24 PPT. Furthermore, in Ms. Marino's opinion, the documents provided were not helpful since they did not provide specific information on C.'s progress on specific skills; the reports did not provide information that was of value in developing a program for C. Exhibit B52; and Testimony of Ms. Marino. On April 22, 2002, four of the Board's staff (Mary Imperioli, Bobbi Burns, Gladys Millman and Sharon Gilliland) observed C. in his home program. Ms. Marino wanted representatives of both the preschool program (Ms. Imperioli, Ms. Gilliland) and the Primary Developmental Learning Center (Ms. Millman and Ms. Burns) to observe C. because it was unclear to her at that time as to what an appropriate placement for C. would be. Ms. Imperioli and Ms. Burns, both certified special education teachers with extensive experience in teaching and in ABA, generated a report summarizing their observation. Exhibit B53. They observed C.'s therapist working with him, presenting in a limited field of two with all presentation to C.'s right side. When the presentation was to the left, C. erred. C. required a lot of prompting. He demonstrated whining, fussing and hand flapping behaviors and required much redirection. He was compliant with the therapist. Both Ms. Imperioli and Ms. Burns concluded based on this observation that C. was very prompt dependent, that he loved music, and that matching was a strength, but they were both very concerned whether he could generalize any of his skills outside of the discrete trial setting. Id.; and Testimony of Ms. Burns and Ms. Imperioli.

65. On April 22, 2002, C. was also observed in his home program by Sharon Gilliland and Gladys Millman, both speech and language pathologists. They also observed C. working in a field of two. He communicated through eye gaze, pointing and vocalizations to indicate preferences and protests. He also used random vocalizations of unknown intent. He verbally produced four targeted words, although those words were very labored and deliberate. Ms. Millman and Ms. Gilliland also observed C. on April 23, 2002 in a speech and language session with Dr. Schwartz. The Mother was also present during this session. C. was compliant and consistently followed the therapist's lead. Five labels were targeted: "popcorn", "hammer", "brush", "car" and "shoe". He consistently responded appropriately to all presentations of the target items. His expressive speech was an area of significant concern and he appeared to present with severe apraxia. All of C.'s verbal approximations were labored and drawn out. Ms. Millman and Ms. Gilliland concluded that C. demonstrated severe language and social communication deficits accompanied by severe apraxia; that he presented as imitative on

request; that he has been facilitated to appropriately manipulate a variety of toy objects; and that all of the noted behaviors present “viable avenues for further language and social communication development.” Based upon the observations, they concluded that C. was very prompt and adult dependent. Exhibit B55; and Testimony of Ms. Millman. The Parents did not provide to Dr. Schwartz the report generated by Ms. Gilliland and Ms. Millman regarding C. (B55) until a few weeks prior to Dr. Schwartz’s testimony in March 2003. Testimony of Dr. Schwartz.

66. On April 23, 2002, Keara Lynch, the Board’s occupational therapist, observed C. for approximately 70 minutes in his home, in the presence of his mother and the CARD therapist. She observed that C. required much assistance from the therapist in performing various activities (stringing beads, opening plastic bag, lining up and pushing Legos together). He demonstrated difficulty crossing the midline. Most materials were presented to his right; when he needed materials on his right side, he moved the object to the middle with his left hand and then switched the object to his right hand. Toe walking was observed. Exhibit B54. The Parents never shared this report with Marie Ossi. Testimony of Mother.

67. The PPT convened on April 24, 2002. In attendance were the Parents, Ms. Marino, Jan McElroy (regular education preschool teacher), Ms. Burns and Ms. Imperoli (both special education teachers), Dr. Ann Reeves (school psychologist), Gwen Goldman (social worker), Ms. Millman and Ms. Gilliland (speech and language pathologists), Ms. Constantino (physical therapist), Cynthia Gilchrest (the Board’s Director of Pupil Personnel services), Keith Amerson, and counsel for both Parents and the Board. As of this PPT, the Parents had not provided to the Board any written information regarding the Student and his present levels of performance other than the two CARD reports, Exhibits B42 and B43. Exhibit B56; and Testimony of Ms. Marino.

68. At the beginning of the PPT, Mr. Amerson described the CARD program that C. was receiving. He confirmed that because it had been determined that C.’s auditory skills were weaker than his visual skills, the program had changed in January to a visually based program. He described the skills that C. had mastered. When Ms. Marino asked him about generalization, Mr. Amerson responded that generalization was used across all settings and modalities; however, all of C.’s program was delivered in the home on a one-on-one basis. Ms. Marino asked for a list of labels and a list of set items, which Mr. Amerson agreed to provide. Although at the hearing, Mr. Amerson testified that he did not know what was meant by “set items,” at no time prior to his testimony did he indicate that he did not understand that term. In addition, the Mother explained the speech and language, occupational therapy and play therapy that was being provided to C. Id.; and Testimony of Mother and Mr. Amerson.

69. Following the report by Mr. Amerson and the Mother, the Board’s staff reviewed their observations of C. They all concurred that they were concerned that although C. was learning skills, those skills were not being generalized because C. was receiving all of his services on a one-on-one basis either at home or in the therapists’ offices. The school members of the team recommended a play based assessment at CES in order to determine how C. functioned in an environment other than his 1:1 discrete trial setting. The Mother responded by asking why the team was setting up C. for failure rather than success. Ms. Burns explained that the intent of the recommended assessment was not to cause C. to experience failure, but to allow the team to

observe how he responded in a new environment. Testimony of Ms. Marino, Ms. Burns testimony, and Mother; Exhibit B56, pp. 5–6.

70. The Westport team members recommended an assessment of C. in the following areas: pre-academic skills, concepts, generalization, play skills, expressive and receptive language, fine motor, gross motor, sensory, self-help, adaptive behavior and cognitive. These areas were proposed to be assessed in a small group setting, through clinical observations, a play based assessment, review of records, review of data from CARD, parent interviews, checklists, and observations and standardized assessments as appropriate. Exhibits B56 and B58, p.5; Testimony of Ms. Marino. In addition, the school team recommended a speech and language evaluation to be completed by Ann Holmes of Eden Institute, an augmentative communication evaluation to be completed by Ann Holmes, and a skills assessment to be conducted by Eden Institute. Id. The purpose of these evaluations was to obtain accurate information about C.'s present levels of functioning for the purpose of developing an IEP. The reason for the recommendation of a speech and language evaluation by Ann Holmes was to examine more specifically the issue of C.'s apraxia and oral motor needs. Exhibit B56, pp. 7-8. The augmentative communication evaluation was recommended because C. continued to present as a non-verbal child, and therefore, it was important to determine what means of communication were appropriate for C. and to look at various augmentative communication devices based on his present level of communication. If the Parents provided the signed consent for these assessments in a timely manner, it was anticipated that the evaluations could be completed and the PPT could reconvene prior to the end of the school year and plan the extended school year and an IEP for the 2002-2003 school year. Although Mr. Amerson testified that he believed that the purpose of the evaluation was only to see whether C. could generalize those skills that were reported as mastered, and in his opinion that was the only appropriate type of evaluation, at no time did anyone at the PPT indicate that the evaluation was limited to the issue of testing of reported mastered skills. Id.; and Testimony of Ms. Marino, Ms. Burns and Ms. Millman.

71. At the PPT, Parent's counsel stated that she was surprised that the Board did not present draft goals and objectives for C. at this PPT. Exhibit B56, p. 8; and Testimony of Ms. Marino and Mother. It was explained to the Parents and their counsel that the Board required better information to begin drafting goals and objectives. In her testimony at the hearing, the Mother stated that her counsel felt more strongly than she did that the Board should have developed an IEP for C. at this PPT, and that she felt it was appropriate to do some of the assessments in order to develop an IEP. However, in her testimony on November 12, 2002, the Mother stated that she was not aware that a PPT was necessary in order to plan an assessment.

72. Parents' counsel stated that the Parents wanted to discuss what program the Parents thought was appropriate based on the Mother's observation at CES in April. Ms. Gilchrest responded by stating that while the Parents could provide input regarding their observations, the team was not at a point to discuss a program for C. Furthermore, she stated it was premature to discuss specific classrooms at this point in the PPT process. Nonetheless, the Mother discussed her observations of the classrooms at CES on April 12, 2002. She stated that the students in the self-contained kindergarten classroom (i.e., Bobbi Burns' classroom) were not appropriate for C. Ms. Gilchrest attempted to explain to the Mother that each child's program was individualized and that classroom composition changes from year to year and again suggested that the discussion of

classroom placement be deferred. The Mother, however, proceeded to give her opinion that Ms. Burns' class would be too distracting for C. and that he would not excel in that classroom to the extent that he had excelled at home. She also stated that "the class has some physically disabled children in the room and she feels that these children would be intimidated by C., and that C. would not get anything from them." In her testimony on November 7, 2002 and again on cross-examination on November 12, 2002, the Mother testified about her concerns that C. be placed in a room with these physically disabled children. Mrs. Gilcrest again responded at the PPT by stating that she believed that the Mother's comments regarding other children were neither appropriate nor relevant and that the educators disagreed with the Mother's conclusions regarding the reaction the other children would have to C. However, Mrs. Gilcrest offered to have the Mother meet with Ms. Marino to share her observations; the Mother stated that she would not do so without counsel present. Exhibit B56, p. 9-10; and Testimony of Mother and Ms. Marino.

73. At the April 24, 2002 PPT, the Parents indicated that they did not want C. to begin in Westport full time in September. They wanted a slow transition into school. They wanted to maintain the home program and provide C. with opportunities to learn with typical peers. The PPT had not proposed a program for C. as of this PPT. The Parents made no request of Westport at this PPT. Id.

74. The Parents refused to give consent for the recommended evaluations at the PPT of April 24, 2002. Exhibit B56; and Testimony of Ms. Marino. Copies of the consent forms were forwarded to the Parents' counsel by letter from Board's counsel dated April 26, 2002 (Exhibit B58) and directly to them by Robin Marino on May 9, 2002. Exhibit B60. When no response was received from the Parents to the request that they sign consent, Board's counsel wrote to Parents' counsel on May 13, 2002, again requesting permission for the assessments. Exhibit B61. By letter May 14, 2002, Parents' counsel responded, indicating that a reply had been forwarded on May 3 by telecopy, although no confirmation of that telecopy was available. In any event, the Parents did not provide consents to the evaluations. Rather they sought to impose certain conditions on the play-based assessments, including a requirement that a representative of CARD be present during the play-based assessment. The Board agreed to CARD's observation of the assessment. In addition, the Parents requested that the Board representative only review C.'s ABA book with a CARD representative present. Again, the Board agreed to that condition, and provided dates when Ms. Marino was available to meet with the CARD representative for this purpose. Exhibits B62 and B63.

75. When no response was received from the Parents or their counsel regarding dates for the evaluations, Board's counsel sent another letter, setting forth the concern that dates were being held by the Board's representatives, as well as by Eden Institute. Exhibit B64. The first response from the Parents was from their counsel by letter dated May 22, 2002, indicating that the Parents would sign permission for the Board to speak with Dr. Schwartz and Ms. Ossi, would not agree to the evaluation by Eden unless it was delivered in Westport, and would provide consent for the play-based assessment so long as Mr. Amerson could be in attendance at the assessment, as opposed to observing the assessment through a one-way mirror. Exhibit B68. Board counsel responded by letter dated May 29, 2002, stating that Mr. Amerson was welcome to observe the play-based assessment through a one-way mirror, and since Ms. Marino would be

present with him, he could provide any information he thought was relevant directly to her; as of May 29, more than one month after the PPT, the Parents still had not provided consent for the evaluations. As to the Eden evaluations, the Board offered to have Ms. Marino accompany the Parents to Eden. The distance between Eden and Westport was a car ride of approximately one hour and 20 minutes. This was approximately the same distance as the ride from Westport to Dr. Powers' office when the Parents had him evaluated by Dr. Powers. Exhibit B70; and Testimony of Ms. Marino and Mother. The Mother testified on November 12, 2002 that she did not want the Eden evaluation because she did not want C. missing time from his home program and "there was a discrepancy between what Eden had told [the Mother] was their consult commitment to Westport and what Westport said their commitment was." However, the Mother had never spoken to Eden directly and the "discrepancy" which the Mother perceived was based on conversations she had with the parents of other children regarding consultation provided by Eden. The Mother was of the opinion that Eden had the necessary expertise to do a skill based assessment for C. and she had no concerns regarding their level of competence. Testimony of Mother.

76. The Parents refused to provide consent for the Eden evaluations and to take C. to Eden for the evaluations. They finally provided the consents for the play-based assessments on May 31, 2002, five weeks after evaluations were recommended and consent requested. Id.; and Exhibits B61, B71, B72, B74 and B75; and Testimony of Ms. Marino.

77. On June 5, 2002, the play-based assessment was conducted at CES. Mr. Amerson and the Mother were both present during the entire assessment. Mr. Amerson observed through a one-way mirror. The Mother was present in the room during the assessment until, at the suggestion of Mr. Amerson, she was asked to leave the room because C. was turning towards her during the assessment. Ms. Marino was also present during the assessment. The assessment team consisted of Mary Imperioli, Sharon Gilliland, Gladys Millman, Bobbi Burns, Sheri Constantino, Dr. Ann Reeves and Keara Lynch. Testimony of Mr. Amerson, Ms. Marino, Mother, Ms. Burns and Ms. Millman.

78. C. entered the building at CES with no apparent difficulties. He first went into Ms. Burns' classroom for participation in a music class. This lesson was specifically chosen for C. because Ms. Burns had noted in her prior observation of C. that he demonstrated an interest in music. He had no difficulty going into the classroom. There were four children in the class and approximately five adults. He sat as directed. He joined the class and began to play the instruments with the other children. He complied with directives and was responsive to the praise of others, although glancing at his mother for approval. He protested by whining, jumping or bouncing up and down; however, he was easily redirected. He required a lot of facilitation. He readily accepted physical direction and tolerated intrusion by an adult. He participated in this lesson for approximately 20–25 minutes. Testimony of Ms. Burns; and Exhibit B76, p. 2.

79. After the music class, C. went into the hallway where he worked with the physical therapist who engaged him with a ball. He then went into the preschool special education room. No other children were present. The occupational therapist had set up activities for C. and presented him with four choices. He also worked in the special education classroom with Sharon Gilliland, who assessed his communication skills, and with Mary Imperioli, who, along with Ms. Burns,

Ms. Lynch, Dr. Reeves and Ms. Constantino, assessed C.'s play skills, behavior, social skills, cognitive/pre-academic skills, motor skills, visual and fine motor skills and sensory motor skills. The entire assessment lasted approximately two hours. After the assessment, the team all met together and shared their notes and data. Each section of the report was drafted by the specific individuals involved and then all team members had input into any changes or revisions to the report. The final report was broken into two separate sections, the Evaluation Summary and the Behavioral Summary. Exhibit B76, pp. 1-8.

80. The Evaluation Summary concluded the following:

- In the area of behavior and approach to the play-based assessment, the team found that C. demonstrated some engagement and pleasure in engaging with people and activities, with an increase in engagement in sensory tasks or familiar activities. His eye contact was fleeting but indicated a desire to engage. He was extremely prompt dependent, responding to only specific cues that he had learned. He inconsistently followed simple routine directions.
- In the area of play, in the absence of specific prompting, he demonstrated little or no interest or facility for symbolic play. He had learned some routines around feeding a baby doll, but seemed to prefer mechanical toys.
- In the area of language, C. inconsistently followed simple directions. Prompting was necessary. His field of presentation ranged from two to five objects or icons accompanied by written words. He responded to requests to attempt imitation of verbalization or motor movements. Communicative intent increased with improved eye contact. He used gestures, vocal approximations and eye gaze to communicate.
- In the social area, he participated in the music class and complied with directions, including a direction to greet, which he responded to by brief eye contact and his approximation for "hi."
- In the cognitive/pre-academic area, C.'s strengths were his matching and puzzle skills. He excelled in the area of fine motor manipulation, but gross motor was difficult and required prompting. The team did not see generalization of the skills that he had learned in his home DTI program into the school setting. "C. needed familiar terms (SD's) and was unable to transfer his previous learned skills with new material."
- In the motor area, on the Hawaii Early Learning Profile, C. demonstrated skills in the 24–30 month old level, with emerging skills to the 36-month-old level.

- In the visual/fine-motor area, all skills were below age expectation. Hand over hand assistance was needed to cross sticks at midline. He was unable to manipulate typical scissors. He snipped twice with loop scissors.
- In the sensory motor area, C. demonstrated difficulty integrating proprioceptive and vestibular input. There was an increase in eye contact with increased proprioceptive and vestibular input.

Id.; and Testimony of Ms. Imperioli and Ms. Burns.

81. The Behavioral Summary concluded as follows:

- In Ms. Burns' classroom, C. appeared interested in participating and imitating. He easily reached for Ms. Burns' hand and established eye contact with her. He clapped with facilitation during the music class.
- When it was time to transition into the classroom, C. demonstrated some anxiety about going without his mother. With reassurance, he walked down the hallway without further difficulty.
- When working at the table in the self-contained classroom, C. was asked to make a choice between four pictures of activities. C. did not respond to the prompts "take" or "get". The Mother stated that C. needed the specific prompt "pick". He could then respond, after the field was narrowed to two.
- When C. tried to open a jar and was not successful, he was prompted to say "help". The Mother suggested that the prompt "open" or "turn" be used instead.
- Ms Imperioli asked C. to "get apple and banana" when playing with C. in the house corner of the classroom. He did not comply. He did verbally approximate the word "banana". He easily matched certain pictures, but could not choose two pictures that were "the same". He became more engaged when his mother sang a song with animated gestures.
- While jumping on the trampoline in the OT/PT room, C. became very engaged with the physical therapist, showing increased eye contact, anticipation and engagement. He showed his positive mood through smiling and giggling.

Id.

82. At the hearing, the Parents for the first time made a claim that the assessment results may not have been accurate because of the number of adults working with C. and/or present at any time during the assessment. At no time during the evaluation was any concern of any kind raised

by either Mr. Amerson or the Mother, other than Mr. Amerson's suggestion that the Mother be asked to leave the assessment room because C. continued to look at her. The Parents did not raise any such concerns when the assessment was reviewed and discussed at the June 19, 2002 PPT. Testimony of Ms. Marino and Mother; Exhibit B87. It was the opinion of the school team that they obtained accurate information about C.'s levels of performance from their assessment. Testimony of Ms. Burns and Ms. Marino.

83. As part of the assessments performed by the Board, Dr. Ann Reeves prepared an Adaptive Skills Report, setting forth the responses provided by the Parents on the Vineland Adaptive Behavior Scales. The information for this report was provided by the Mother, and this assessment addressed the domains of Communication, Daily Living Skills, Socialization and Motor Skills. Exhibit B85. Dr. Powers had administered the Vineland in June 2000 (Exhibit P1) and again in June 2002. Exhibit P2. The following is a comparison of the scores of the three Vineland tests:

	June, 2000 Dr. Powers	June, 2002 Dr. Reeves	June, 2002 Dr. Powers
<u>Communication</u>			
Standard Score	55	47	49
Age Equivalent	1 yr. 2 mos.	1 yr. 5 mos.	1 yr. 7 mos.
<u>Daily Living</u>			
Standard Score	62	55	54
Age Equivalent	1 yr. 9 mos.	2 yrs. 7 mos.	2 yrs. 6 mos.
<u>Socialization</u>			
Standard Score	63	57	56
Age Equivalent	1 yr. 5 mos.	1 yr. 9 mos.	1 yr. 9 mos.
<u>Motor Skills</u>			
Standard Score	60	70	55
Age Equivalent	2 yrs. 2 mos.	3 yrs. 10 mos.	3 yrs. 1 mo.
<u>Composite</u>			
Standard Score	55	60	49
Age Equivalent	1yr. 8 mos.	2 yrs. 5 mos.	2 yrs. 3 mos.

Exhibits P1, P2 and B85. The Mother believed that both Dr. Reeves' and Dr. Powers' June 2002 reports accurately reflected C.'s abilities as of June 2002. Testimony of Mother.

84. After the completion of their assessment reports, the school team then met in order to draft proposed goals and objectives for C. They reviewed the information that they obtained as a result of their assessments, as well as the data provided by CARD. They all agreed that C. required a comprehensive and integrated intensive program in a school-based environment. They also believed that C. learned initial skills in a discrete trial setting. Further, they shared a predominant and over-riding concern that C. was not generalizing the skills that he learned in that discrete trial setting. They were all concerned that C. had become prompt dependent, responding to only certain words and to only objects that were presented in certain ways, as had been taught to him in his discrete trial programs. Therefore, in the opinion of the Westport team, it was important for C. to be in a "natural" school setting where he would have the opportunity to

work on his learned skills for purposes of generalization in a variety of school settings, including the special education and regular education classrooms. Each team member drafted certain goals and objectives and then the team reconvened to review and discuss all of the goals and objectives. Testimony of Ms. Burns.

85. The PPT was reconvened on June 19, 2002. Immediately prior to the commencement of the PPT, the Mother delivered to Ms. Marino a “progress report” from Dr. Schwartz dated April 2002. Exhibit B46. She also delivered an occupational therapy progress note from Ms. Ossi dated June 2, 2002. Exhibit B73. In attendance at this PPT were the Parents, Ms. Marino, Ms. McElroy, Ms. Imperiola, Ms. Burns, Dr. Reeves, Ms. Goldman, Ms. Millman, Ms. Gilliland, Ms. Lynch, Ms. Constantino and counsel for both the Board and the Parents. Dr. Reeves reviewed the adaptive skills assessment. Ms. Imperiola reviewed the play-based assessment results of June 5, 2002. She reported that C. was very cooperative and transitioned easily during the assessment; that he had good matching skills; that using the written word was helpful for him; and that it was helpful to use SD’s with which he was familiar when faced with unfamiliar tasks. Ms. Gilliland reviewed the communication aspects of the assessment, noting that C. demonstrated two spontaneous utterances during the assessment, with most responses elicited by a prompt. She reported that eye contact was noted, but was fleeting. Ms. Lynch reported that C. had a preference for the right hand, that he did not demonstrate imitation with blocks, although the Mother indicated that he was good at modeling blocks at home and in his program. Ms. Constantino reported that C. required a wide stance and leaning in order to maintain postural control and demonstrated emerging throwing skills. The Parents’ attorney stated that the Parents would like to take time to review the evaluations before commenting on them and if there were any concerns, they would contact Ms. Marino. Neither they nor their counsel contacted the Board with respect to any concerns about the evaluations. Exhibit B87; and Testimony of Ms. Marino.

86. The school based team then presented the IEP goals and objectives proposed for C. Ms. Millman, who was the primary author of the communication goals and objectives, explained to the Parents that she wanted to take C.’s current level of functioning demonstrated in his one-on-one setting and generalize it to a school program. She reviewed each of the proposed communication goals and objectives, and explained her rationale for each one. At no time did the Parents at the PPT object or disagree with the draft goals and objectives or the recommended hours of service. Testimony of Ms. Marino and Ms. Millman. At the hearing, the Mother testified that at the PPT she objected to many of the goals and objectives because C. had already mastered them. She acknowledged that the school team explained to her that just because they were mastered at home did not mean that C. could demonstrate the same skills in school, and it was important that the skills be worked on in school; however, the Mother disagreed with this approach. Testimony of Mother.

87. Ms. Burns reviewed the academic/cognitive and social/behavioral goals and objectives. She explained that she wanted to encourage more initiation and functional behaviors for C. She reviewed each goal and objective proposed. The Parents did not state any objection or disagreement at the PPT with these draft goals and objectives. Exhibit B87; and Testimony of Ms. Burns. OT and PT goals and objectives were discussed by Ms. Lynch and Ms. Constantino respectively. The Parents raised no objections or disagreements with those goals and objectives.

Exhibit B87; and Testimony of Ms. Marino. In fact, the Parents stated that they were in agreement with the IEP goals and objectives, subject to review. Exhibit B87, p. 1. At no time after the PPT did the Parents or their counsel ever communicate to the Board any questions or objections to the IEP goals and objectives. Testimony of Ms. Marino.

88. The following program was proposed and recommended for C. for the 2002-2003 school year ("the Board's 2002-2003 Program"):

- A full day special education, transdisciplinary special education program at Coleytown Elementary School, 8:30 AM– 3:15 PM, five days per week. C. would be a member of the Primary Developmental Learning Center (i.e., Ms. Burns' classroom) which is a self-contained classroom
- The following related services would be provided to him:
 - a. 2.5 hours per week of direct speech and language services, with 1.5 hours per week of indirect services (including consulting with team members and attending team meetings).
 - b. Two hours per week of direct occupational therapy services, of which ½ hour per week would be co-treatment (i.e., two therapists working simultaneously with C.) and one hour per month of indirect services.
 - c. One hour per week of direct physical therapy, of which one-half hour per week would be co-treatment with another therapist. In addition, C. would receive one hour per week of adaptive physical education.
- Two hours per day, five days per week, of discrete trial instruction.
- Special education instruction (in addition to the discrete trial instruction) of 15.25 hours per week.
- Inclusion in the integrated preschool classroom 1.5 to 2 hours per day.
- A 1:1 paraprofessional for the entire school day.
- Team meetings with parents once a month.
- A parent training program to be developed with the Parents in the fall to address their needs at home and promote consistency between home and school.
- A total communication approach.

Id.; and testimony of Ms. Marino, Ms. Imperioli and Ms. Burns.

89. In addition, the Westport team continued to recommend a speech and language evaluation by Ann Holmes to assess augmentative communication for C. Further, it was recommended that the PPT reconvene in six to eight weeks after the beginning of the 2002-2003 school year. Exhibit B87; and Testimony of Ms. Marino.

90. The Parents' response to this proposal was that they rejected the placement in the Primary Learning Center because they did not feel it was appropriate for C. They wanted C. to participate in the typical preschool program, with CARD consulting to the school team. They wanted C. to continue to receive his discrete trial instruction at home, but they would bring him to CES to have Westport provide him with his therapies. They did not want C. to participate in the Westport program on a full day basis. Id.; and Testimony of Mother and Ms. Burns.

91. The PPT also discussed and proposed a program for C. for the summer of 2002. Ms. Marino explained that C. was eligible for extended school year services because of the severity of his disability. Ms. Marino proposed that the summer of 2002 be used for the school team to further assess C.'s skills, gather base line data and provide a transition for C. to prepare him for the upcoming school year. In that regard, Westport was prepared to fund a CARD therapist to deliver C.'s discrete trial instruction for two hours per day, five days a week, for five weeks, to be delivered in the Stepping Stones Preschool program from July 1 through August 2, 2002. This would be a total of 50 hours of direct services from CARD, paid for by Westport during the summer of 2002 and would provide an appropriate transition from the home program to school. In addition to the CARD services, the Board proposed the following summer program for C.:

- C. would attend the self contained classroom at Stepping Stones preschool from July 1 through August 2, 2002, five days a week, from 8:45 AM through 12:45 PM.
- During these hours, in addition to special education services, he would receive 2.5 hours per week of direct speech and language services; 1 hour per week of direct occupational therapy with 0.5 hour per week of indirect occupational therapy services; and 0.5 hour per week of direct and 0.5 hour per week of indirect physical therapy.
- C. would participate in the inclusion preschool, A Child's Garden of Summer, approximately 2.5 to 3.5 hours per week.
- The related services at the levels set forth above would continue for an additional week after the Stepping Stones summer program ended, i.e., through August 9, 2003.

Exhibit B88; and Testimony of Ms. Marino.

92. After the Board presented this proposal, the Parents and their counsel spoke privately. When they returned to the PPT, Parents' counsel reported to the PPT that the Parents had already

contracted with CARD and other service providers for the summer and therefore rejected the Board's proposal for the summer of 2002. They preferred to use the "five weeks of CARD therapist" during the transition in the fall. They specifically told the PPT that they would be taking care of the summer themselves. Id.; and Testimony of Mother and Ms. Imperioli.

93. At no time during the PPT of June 19, 2002, either in the discussion of the extended school year program or the program for the 2002-2003 school year, did the Parents ask the PPT to support a home program for C., private speech and language services or private occupational therapy for C. for either the summer of 2002 or the 2002-2003 school year. Exhibits B87 and B88; Testimony of Ms. Marino and Mother. At no time, did the Parents provide the Board with formal written notice that they were unilaterally placing C. in their home program for the 2002-2003 school year. Testimony Ms. Marino.

94. Subsequent to the PPT, various correspondence was sent between the Board's and Parents' counsel to attempt to seek a compromise for a program for C. for the 2002-2003 school year. None of the proposals from the Board were PPT decisions and at no time did the Board change its recommendation for programming for C. as set forth at the June 19, 2002 PPT. The negotiations between the parties broke down because the Parents' were requiring that as a condition precedent to returning C. to Westport that Westport use a CARD therapist as C.'s one on one aide during the entire school day, either at the Board's cost or the Parents' cost. The Board refused this condition and, without requesting a further PPT, the Parents' commenced due process. Exhibits P3 through P7; HO-1; and Testimony of Ms. Marino.

95. In June 2002, the Parents had C. re-evaluated by Dr. Powers, who generated a Psychological Evaluation dated June 21, 2002. Exhibit P2. It is not clear when the report was received by the Parents, however, it was not provided to the Board until the submission of the Parents' exhibits in this hearing on November 3, 2002. Dr. Powers did not testify in the due process hearing and no evidence was submitted regarding his unavailability to testify. Testimony of Mother and Ms. Marino. It was never discussed at a PPT meeting. Dr. Powers report states that: "[T]raining for fluency and generalization remains one of the highest priorities for the coming year to be addressed." Exhibit P2, p. 5. Although he recommends continuation of the CARD home program, it appears that many of his recommendations for C. are consistent with the school-based program recommended by the June 19 PPT. It is not clear if Dr. Powers reviewed the proposed IEP from Westport.

96. In the fall of the 2002-2003 school year, the Mother did some research on the Internet in an attempt to determine an augmentative communication device for C. Dr. Schwartz recommended a Dynamite because two other of her patients had used this device. No augmentative communication evaluation was performed in order to determine the appropriate device to use for C. Dr. Schwartz had no training in augmentative communication or with the Dynamite. C. began using the Dynamite in November 2002. Testimony of Mother and Dr. Schwartz.

97. In November 2002, Robin Marino, Bobbi Burns, Gladys Millman and Rob Vercellone observed C. in his home program. They each wrote reports of their observations. Ms. Marino observed for one and a half hours. She observed C. following one step commands, using an activity schedule, and imitating gross motor movement through songs. He could not follow one-

step commands in the kitchen, where he needed verbal and physical prompts. Ms. Marino did not see data being taken. Exhibit B95; and Testimony of Ms. Marino.

98. Ms. Imperioli observed the home program on November 4, 2002. She observed C. demonstrating difficulty in attending to tasks and remaining seated for more than a few minutes. She did not see any decrease in his self-stimulatory behaviors from her observation in the spring of 2002, although the behaviors had changed in nature. He did not self-initiate the use of the Dynamite, but could use it to communicate his needs and desires. Exhibit B96; and Testimony of Ms. Imperioli.

99. Ms. Burns and Ms. Millman also observed C. in his home program on November 4, 2002. C. continued to present with severe speech, language and communication deficits and continued to demonstrate severe apraxia. There was a marked absence of self-initiated verbal and non-verbal/social behaviors. He did demonstrate some receptive knowledge, expressive social and communication skills and an ability to engage in active imitation. In their opinion, the Dynamite was not being used appropriately for communication for C. He was not initiating its use. Exhibit B97; and Testimony of Ms. Burns and Ms. Millman.

100. Rob Vercellone, the Board's occupational therapist, observed C. in his home program in November 2002 for a period of one hour. Mr. Vercellone had previously provided private occupational therapy services to C. in the 2000-2001 school year. Testimony of Mother. In the area of sensory processing, C. had difficulty modulating his arousal level. He sought proprioceptive input. C.'s work chair did not appear to fit him properly. He was observed to frequently support his head on his hand to keep himself upright. He could perform certain fine and visual motor skills, as well as certain activities of daily living. He demonstrated difficulties in the areas of sensory processing, postural control, fine and visual motor skills. Exhibit B98.

101. It was clear to all of the Board staff that as of November 2002, C. continued to require generalization and socialization, which he was not receiving or learning in his home program. They continued to believe that he needed to be receiving his education in a school setting. The Board had been recommending an augmentative communication evaluation for C. since the summer of 2000 in order to determine the appropriate type of assistive technology, including voice output systems, for C. The Board would have no objection to using the Dynamite in its program if it turned out to be the appropriate device to facilitate C.'s communication; however, the proper way to determine the appropriate device is through an assistive technology evaluation. Nothing that was observed in November 2002 would have caused the Board to revise the IEP offered to C. for the 2002-2003 school year. Rather, the observation confirmed the Board's opinion that C. needed a highly structured and intensive transdisciplinary school based program. Testimony of Ms. Marino, Ms. Imperioli, Ms. Millman and Ms. Burns.

102. Had the Parents accepted the PPT's June 19, 2002 recommendation for C.'s program, C. would have started attending the summer program at Stepping Stones preschool. Ms. Imperioli would have been his special education teacher and in charge of his program, including his discrete trial instruction program. In addition, C.'s aide would have been Liz Rutkin, who would have continued as his aide during the 2002-2003 school year. Ms. Imperioli's classroom during the summer of 2002 was the same classroom that would have been used for C. for his discrete

trial instruction in the 2002-2003 school year. During the summer, there were five children in Ms. Imperiola's classroom with four aides and Ms. Imperiola. Of these children, four were receiving a discrete trial instruction program. Had C. attended the 2002 summer program, the CARD therapists would have been delivering C.'s discrete trial instruction program in the Stepping Stones Preschool and Ms. Imperiola would have observed the CARD therapist delivering those services, worked with CARD and eventually have begun to deliver those services to C. directly. Both Ms. Imperiola and Ms. Rutkin would have transitioned in to delivering C. his discrete trial instruction program in conjunction with the CARD therapist. Ms. Imperiola would have served as the day-to-day supervisor of the discrete trial instruction program. Ms. Marino would supervise Ms. Imperiola and Ms. Rutkin. Ms. Imperiola would have begun to develop a program book for C. using the CARD program book, probing C.'s skills and determining the appropriate programs for him. She would have worked on his IEP goals and objectives, taken data and determined the appropriate times for C. to be participating with typical peers in the integrated preschool classroom. She believed the IEP was appropriate for him and, in view of her experience in working with students like C. and with those more severely disabled than C., she believed that the team could appropriately and successfully deliver the IEP to C. for the summer of 2002. Testimony of Ms. Imperiola and Ms. Marino.

103. If C. had attended the recommended Board's 2002-2003 Program, Ms. Burns would have been his case manager. Ms. Imperiola would have continued to be in charge of C.'s discrete trial instruction program. C.'s discrete trial instruction program would have been delivered in a cubby in Ms. Imperiola's classroom, a quiet area away from distractions. This was the same location where C. would have received the 50 hours of discrete trial instruction recommended for the summer of 2002. The programs would have been delivered by Ms. Imperiola and C.'s aide, Ms. Rutkin, with the goal of eventually moving the discrete trial instruction in the course of the year into Ms. Burns' class. Id.; and Testimony of Ms. Burns.

104. Ms. Burns' classroom for the 2002-2003 school year is composed of six children, whose ages ranged as of the beginning of the school year from five to seven years old. Of those children, two carry a label of autism and four carry a label of multiple disabilities. One of those children receives a discrete trial instruction program. There are five full time paraprofessionals and one part time paraprofessional in the classroom. Ms. Burns' approach to teaching is eclectic, with a strong reliance on direct teaching. She has a strong behavioral background. The Primary Developmental Learning Center is a team approach, with constant communication amongst all team members through formal team meetings, staffing and daily communications. She pairs with the paraprofessionals throughout the day, modeling instructional strategies for them and then observing the paraprofessionals implementing those strategies. Testimony of Ms. Marino and Ms. Burns.

105. Had C. attended the Board's 2002-2003 Program, he would have started the day in Ms. Burns' classroom. Ms. Burns would have used direct teaching for C. at all times. For C., new skills would have been taught to him in his discrete trial instruction program with Ms. Imperiola. He would then have had the opportunity to generalize those skills both in the self-contained classroom and in the integrated preschool classroom. Ms. Burns would have used direct teaching in the classroom to provide him with multiple opportunities where he could learn to initiate. In her opinion, it was imperative that C.'s learning become functional; it was important that

learning have some meaning for him. She would have addressed reading with C. through functional print and in a naturalistic way. In the past, she has used the Edmark series and would use it with C., since it is designed to build in visual strengths and provides repetition through sight vocabulary. It puts the vocabulary into context and links it to meaningful activities. Testimony of Ms. Burns. This approach is consistent with Dr. Powers' recommendation regarding reading. Exhibit P2, p. 6.

106. After beginning in Ms. Burns' classroom, C. would have participated in the integrated preschool classroom for circle, attendance and singing. Music was a strong motivator for C., as he demonstrated in the play-based assessment. This would have provided C. with the opportunity to work on socialization skills with peers, as well as to address various other goals and objectives. Depending on the particular schedule of the day, C. would then have participated with Ms. Burns' class in either special education computer class, physical education, art or library. It was anticipated that C.'s discrete trial instruction time may have been split so that he received one hour of that instruction in the morning and one hour in the afternoon. He would have had lunch in Ms. Burns' classroom and participated in possibly a choice and/or playground activity with the inclusion classroom. He would have had an aide with him at all times. Related services would have been provided by Ms. Millman (speech and language), Mr. Vercellone (occupational therapy) and Ms. Constantino (physical therapy) across all settings, with co-teaching occurring in appropriate parts of the day. Testimony of Ms. Burns and Ms. Marino.

107. Ms. Burns implements a total communication approach for her students. In her classroom, there are picture exchange boards, schedules, voice output devices, touch screen windows on her computer and switches for communication and toy activation. Signs are used by teachers to reinforce auditory communications. C. would benefit from this total communication approach, since it would enable him to maximize the avenues available for communication. Natural gestures would be used to supplement speech. At all times, C. would be encouraged to use language, while at the same time making available to him alternative ways to express himself. Testimony of Ms. Burns and Ms. Millman.

108. C. can benefit from receiving a portion of his education with non-disabled peers. He has the ability to model and imitate. The Parents also were of the opinion that C. should receive some of his educational program for the 2002-2003 school year with non-disabled peers. They requested initially at the June 19 PPT that C. be permitted to attend CES on a shortened day basis only for the purpose of participating in the inclusion preschool classroom. They had sought to enroll C. in a typical Montessori preschool for the 2002-2003 school year but were unsuccessful in doing so because it was too late in the year when they applied for his admission. The Westport program provided him with the opportunity to interact with both disabled and non-disabled peers, and provided the opportunity to place him with such students at the most optimal times and for the most meaningful activities. Id.; and Testimony of Dr. Schwartz and Mr. Amerson.

109. C. continued to receive the same home program in the summer of 2002 and the 2002-2003 school year as he received in the prior year, except that the services of Aileen Speight were terminated at some point. He continued to receive approximately 37 hours of discrete trial instruction on a one-on-one basis, delivered by various therapists, in his home. He continued to

receive approximately three hours a week of speech and language therapy from Dr. Schwartz in her office. He continued to receive approximately one hour per week of occupational therapy in Ms. Ossi's office, also on a one-on-one basis. He received no therapies or services with other children. The Mother sought to enroll C. in a typical preschool but was unsuccessful in doing so. The Parents submitted no reports, evaluations or assessments reporting on the progress that C. made in his program during the summer of 2002 and the 2002-2003 school year, other than Exhibit P8, which purports to track C.'s progress from July 2000 to November 2002. Testimony of Mother and Dr. Schwartz; and Parents' exhibits.

110. The Parents and their witnesses believe that C. made tremendous growth and progress during the summer of 2002 and the 2002-03 school year. This subjective belief is not borne out by objective data in the record.

CONCLUSIONS OF LAW

1. The Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education ("FAPE") with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. The Parties also agree that C. is a child with PDD. "The term Pervasive Developmental Disorder [PDD] has been used to refer to the overall class of disorder to which autism belongs." Report of the Connecticut Task Force on Issues for the Education of Children with Autism at 16. See also 34 C.F.R. Section 300.7(c)(1), which defines autism.

2. The parties also agree that FAPE for C. requires an ESY program. 34 C.F.R. Section 300.309(2) provides:

Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Sections 300.340-300.350 that the services are necessary for the provision of FAPE to the child.

3. The Board has the burden of proof on the appropriateness of the program for the 2001-02 and 2002-03 school years, as well as the ESY summer 2002 program. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998). Conn. State Regs. Section 10-76h-14. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is "reasonably calculated to enable the child to receive educational benefits." Id. at 206-207. The Board must establish these by a preponderance of the evidence. Walczak v. Florida Union Free School District, supra. The Parents have not raised any procedural violations in this hearing, therefore, only the second prong of Rowley is relevant.

4. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. 34 C.F.R. Section 300.550(b). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. §§300.550-300.556; Conn. State Regs. Sections 10-76a-1

and 10-76d-1. This requirement applies to children with autism. See Report of the Connecticut Task Force on Issues for the Education of Children with Autism at 50-52. School districts must evaluate whether a student can be educated in a regular classroom if provided with supplemental aids and services, and a full range of services must be considered. Oberti v. Board of Education, 995 F.2d 1204, 1216 (3d Cir. 1993). The district must examine the educational benefits, both academic and nonacademic, to the student in a regular classroom. Among the factors to be considered are the advantages from the modeling the behavior and language of non-disabled students, effects of such inclusion on the other students in the class and the costs of necessary supplemental services. Id.

5. The program offered by the Board for C. for the 2001-2002 school year was appropriate to meet his educational needs in the least restrictive environment. It was a comprehensive, transdisciplinary program, which combined discrete trial instruction, small class special education instruction and opportunities for education with typical peers, as well as speech and language, occupational therapy and physical therapy services. It was individualized for C. and reasonably calculated to provide him with educational benefit. It was offered in the least restrictive environment. It provided for parent-home communication and a parent-training program. It was an appropriate program in compliance with the IDEA and the standards of Rowley.

6. The ESY 2002 program began on July 1, 2002. The PPT meeting was held on June 19, 2002. It was delayed until then at the request of the Parents. The ESY program offered was designed to transition C. from the home program to a school program and provided the inclusion with typical peers and related services C. needed in addition to the discrete trial instruction. The Parents indicated that they had made plans for the summer program and were not interested in the Board's program. There is no evidence that the Parents claimed that the Board failed to make ESY services available in a timely manner. They did not raise any procedural violations regarding the Board's obligation to make ESY services available in a timely manner. See 34 C.F.R. Sections 300.309(a) and 300.342. With regard to the 2002-03 school year, the Parents did not request the Board to fund the home program and related services at the PPT. The Parents' claim that the issues were raised by extension of the PPT process through correspondence of counsel stretches the applicable statute too far. Issues are to be raised at a PPT meeting prior to filing due process. Conn. Gen. Stats. Section 10-76h(a)(1) provides:

A parent or guardian of a child requiring special education and related services pursuant to sections 10-76a to 10-76g, inclusive...may request, in writing, a hearing of the local or regional board of education or the unified school district responsible for providing such services whenever such board or district proposes or refuses to initiate or change the identification, evaluation or educational placement of or the provision of a free appropriate public education to such child or pupil, provided no issue may be raised at such hearing unless it was raised at a planning and placement team meeting for such child or pupil, and provided further, nothing in this subsection shall be construed to limit the right of such parent...to initiate a planning and placement team meeting at any time.

In this case the Parents' rejection of the Board's programs for the ESY of 2002 and the 2002-03 school year, as well as their requests for the Board to fund the home program and related services for those periods, could have raised at the June 19 or a subsequent PPT. Parties are free to continue to try to resolve disputes prior to, as well as after, filing a due process request. Such efforts, however, do not satisfy or obviate the necessity of raising issues at a PPT. The Parents further failed to comply with the provisions of 20 U.S.C. Section 1412(a)(10)(C)(iii)(aa) since they failed to inform the PPT team that they were rejecting the proposed placement, failed to state their concerns and their intent to enroll their child in a private school at public expense. Because of the lengthy hearing and extensive nature of the evidence and briefs, the Hearing Officer has ruled on the appropriateness of those programs.

7. The program offered by the Board for C. for the ESY of 2002 and the 2002-2003 school year was appropriate to meet his educational needs in the least restrictive environment. It was a comprehensive, transdisciplinary program, which combined discrete trial instruction, small class special education instruction and opportunities for education with typical peers, as well as speech and language, occupational therapy and physical therapy services. It was offered in the least restrictive environment. It provided for parent-home communication and a parent-training program. It was individualized for C. and reasonably calculated to provide him with educational benefit. It provided a transition into school from his home program with 50 hours of CARD services delivered in the school during the summer of 2002, so that C.'s program would be in place and implemented by Westport staff as of the beginning of the 2002-2003 school year. It was an appropriate program in compliance with the IDEA and the standards of Rowley.

8. Since the Board has proven by a preponderance of evidence that the IEPs for the 2001-02 and 2002-03 school years and the 2002 ESY provided C. with FAPE in the LRE, the Parents are not entitled to reimbursement for the unilateral home-based placement or the related services provided privately by them. The IDEA "does not require [a local educational agency] 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 that agency made FAPE available to the child and the parents elected to place the child in a private school facility.*" 34 C.F.R. Section 300.403(a) (emphasis added). See also School Comm. of Burlington v. Department of Education, 471 U.S. 359, 373-374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985); and M.C. ex rel. Mrs. C. v. Voluntown Bd. of Ed., 226 F.3d 60, 66 (2d Cir. 2000).

COMMENTS ON CONDUCT OF PROCEEDINGS:

Conn. Gen. Stats. Section 10-76(d)(1) permits the Hearing Officer to comment on the conduct of the parties in a due process hearing. The Parents' conduct in this case and as shown in the records of the PPT meetings and correspondence has confused and misled the Board and the Hearing Officer as to the nature of their claims, particularly in regard to the current school year. At various times, the Parents have claimed that C. is not ready for school and cannot learn in a school-based program and at other times they seemed to accept the Board's program, arguing only for the participation of a CARD therapist in the school. On July 26, for example, the Mother met with school officials for two hours and indicated agreement with the revised IEP. The following day at the July 27, 2001 PPT, after leading the Board's representatives to believe

that the Parents would be enrolling C. in Westport's program and that the IEP was acceptable to them, the Parents indicated that C. was not ready to come to school. At the June 19, 2002 PPT, the Parents' only expressed objection was that they did not believe that the Primary Developmental Learning Center classroom was appropriate for C. because there were other children in the classroom with physical disabilities. They did not at any time indicate that they were rejecting the Board's program, nor did they state that it was their intention to place C. in their own home program. The Parents were confusing in their presentation as to whether there was a program in the Westport schools that was acceptable.

The Parents also led the Board to pursue further evaluations and assessments based on their claim that the goals and objectives proposed at the June 5, 2001 PPT were too easy. The PPT process was pushed into the summer and ultimately, at the July 27 PPT, the Parents claimed that C. was not ready to attend school at all.

The Parents consistently refused the Board's recommended augmentative communication evaluation. Such an evaluation could be very helpful to C. The Parents' consistently rejected the Board's recommendation that C. receive a total communication approach to his education, including the use of picture schedules and voice output devices, despite the fact that their own expert, Dr. Powers, recommended them. The Parents refused to allow Ann Holmes of Eden to perform the augmentative communication evaluation of C. in the spring of 2002. Initially, they testified that it was too far to drive; however, it was approximately the same distance as the trip to Dr. Powers' office. The Mother testified that one of the reasons that she chose not to have C. evaluated by Ann Holmes was because of discrepancies between what was reported regarding Eden's consultation to the Board. However, she testified that the source of information upon which she based the conclusion of inconsistency was parents of other students. Then in November 2002, without ever having conducted an augmentative communication evaluation, C. began using an augmentative communication device in his home program. Despite all of the private services that the Parents had obtained for C., until the commencement of the hearing and the preparation for their respective testimony, at no time did the Parents share the reports and IEP's generated by the Board with their service providers or seek their input into the development of the IEP goals and objectives.

Subsequent to the June 19, 2002 PPT, the Parents' position as a precondition for discussing C.'s attendance in Westport's program was that a CARD therapist act as C.'s paraprofessional throughout the day. While the Board was willing to provide this for several weeks in the summer of 2002, it was not willing to continue this during the school year. The Hearing Officer was impressed with the amount of time and effort the Board expended in evaluating and programming for C. It is abundantly clear from the evidence in this case that C. should be in school. The Parents are urged to cooperate with the Board in accomplishing a transition to a school-based program as soon as possible.

FINAL DECISION AND ORDER:

1. The Board provided C. with FAPE in the LRE for the school year 2001-02.
2. The Board provided C. with FAPE for the ESY for summer 2002.
3. The Board provided C. with FAPE in the LRE for the school year 2002-03.
4. The Parents are not entitled to reimbursement for the unilateral home-based placement during the 2001-02 and 2002-03 school years and the ESY for the summer of 2002.
5. Since the Board at all relevant times provided C. with FAPE in the LRE, which included occupational and speech and language therapy, the Parents are not entitled to reimbursement for related services, which they provided at additional expense to supplement the home-based program.