

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Putnam Board of Education

Appearing on behalf of the Parents:

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Appearing on behalf of the Board:

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& Beck LLC  
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Appearing before:

Attorney Mary Elizabeth Oppenheim  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Whether the Student's program should include a counseling component provided by a qualified mental health worker.
2. Whether the Student is entitled to compensatory education for the period of time during which she was deprived of a free appropriate public education.
3. Whether the Student's disciplinary records should be corrected to eliminate references to discipline imposed for conduct which was a manifestation of her disability.
4. Whether the Student is entitled to an award of monetary damages.

**PROCEDURAL HISTORY:**

The Parents requested this hearing on October 16, 2002. The mailing date of the decision was extended at the requests of both parties, based on assertions that additional hearing dates were required for the presentation of their case. An additional seven day extension was granted so that the counsel could submit briefs.

The hearing was held on November 6, November 19, December 3, December 5, December 12, December 17, December 19, January 28, February 3 and February 5. The Parents' counsel and Board's counsel submitted briefs by February 28, 2003.

The Parents' witnesses were the Mother; Ann Majure, an independent educational consultant; the Father's girlfriend<sup>1</sup>; the Father; Louis Cinque, a Putnam police officer; Maureen Bolduc, a Board special education teacher; Noreen Chapman, the private family counselor and Tammy Tuminelli, a former Board paraprofessional.

The Board's witnesses were school psychologist Philippa Paquette and Kris Allard, a special education teacher in the Board's autistic program who serves on the Board's emergency response team.

To the extent that the procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. Bonnie Ann F. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993)

### **SUMMARY:**

The 11-year-old female student was identified by the Board as eligible for special education and related services as severely emotionally disturbed in May 2002, after years of behavioral incidents in school. The Student had been diagnosed as ODD, depressed and as having ADHD in prior years. This diagnosis was changed to bipolar disorder, childhood onset in May 2002.

Prior to her designation as eligible for special education and related services, the Board excluded the Student from school in early May 2002, when the principal told the Mother that the Student could not return until the Mother provided a note from a physician or psychiatrist that the Student was safe to return to school.

At the end of May 2002, a PPT was held to develop an IEP for the Student, although the Parents were not properly notified of this PPT, and no current evaluations were reviewed in developing the IEP. The Board had implemented a behavior plan, which included a provision that the police would be summoned when the Student was physically aggressive. The Board failed to implement the IEP as developed, placing the Student in an office with a one-to-one aide. When the Student refused to complete the work with the one-to-one aide, she was escorted to a time-out room. As she was being placed in the time-out room, the Student allegedly attempted to kick a school staff member, although no injury whatsoever was ever established. At that time, the Board staff contacted the police, and had the Student arrested.

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<sup>1</sup> The Parents are divorced, and are both involved in the Student's day to day life.

**FINDINGS OF FACT:**

1. The student is eleven years old, and is currently in the sixth grade at the Board middle school. [Exhibit B-16]
2. The student was born on October 7, 1991, and her Parents separated when the Student was about a year old. The Parents now have a good relationship, and have had no disagreements about the Student's education program. The Parents both live in Putnam, and the Student spends time at the homes of both Parents.<sup>2</sup>
3. The Student first exhibited behavior difficulties in a school setting when she was in preschool. After repeated telephone calls from the school that the Student was aggressive towards others and failed to follow directions, the Father and the teacher mutually agreed that the Student should be removed from the preschool program.
4. The Student enrolled in the Board schools in September 1996 and has been enrolled there since, except for a 10 day period in 1997 when the Father removed her to a school in Massachusetts without the Mother's permission or knowledge.<sup>3</sup>
5. When the Student started kindergarten in the Board schools, the teacher reported behavior problems as early as the first open house night. During kindergarten the Student exhibited behavior problems, including being non-compliant and assaultive towards the teacher. [Testimony Mother]
6. During first grade the Student was referred to the elementary school Collaborative Intervention Process [CIP] at the beginning of the school year. [Exhibit P-4] The CIP team makes recommendations for regular education interventions, and referrals of Students to Planning and Placement Team [PPT] meetings. [Testimony Ms. Bolduc] At that time, the Student's behavior was noted as unpredictable and sometimes physical. [Exhibit P-4] The CIP team recommended the use of a sticker chart to modify the Student's behavior during the first grade.[Exhibit P-3, P-5, P-6]
7. The Student was suspended from school for two days in June of her first grade year for assaulting the principal. [Testimony Mother, Exhibit P-10] The Student was sent to the principal's office due to a behavior problem in the regular classroom, and when

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<sup>2</sup> During the hearing, the Parents presented themselves in a commendable manner, which demonstrated that despite their divorce they are working together for the best interests of the child. They have faced much difficulty in dealing with the problems facing the Student due to her disabling condition, but have shown, thus far, that they are able to deal with these issues in a mature and caring manner.

<sup>3</sup> The Father was contrite about this removal. In explaining the situation he noted that after he heard all of the complaints about the Student's behavior at school, he made a determination that the Student might be better off with him. At that time, he spoke with the Mother and discovered for himself that the Student's behavior problems were much more deep rooted, not related to her home environment. He returned the Student to the Mother and to the Board Schools, "and made a commitment at that time with [the Mother], which is ongoing and permanent, that [they were] both going to . . . totally be dedicated to getting [the Student] the help she needs and seeing her get the treatment she needs." The Father had blamed the Mother for the Student's problems, but learned that the Parents had to be committed to each other in dealing with the situation.[Testimony Father]

confronted by the principal, the Student attacked the principal by kicking her, stepping on her toes and throwing things in the office. [Testimony Mother] At that time of the incident, in June 1998, the Mother signed consent to the “Procedures for the Implementation of Behavior Management Plans for Regular Education Students.” She was asked to sign the consent form to permit the school personnel to use a safe hold if the Student was dangerous to herself or others or trying to run away from school. [Testimony Mother, Exhibit P-11]

8. According to the Student’s school progress report, the Student made excellent academic progress. Of note, however, is that the word “academic” is underlined in the progress report, which indicates that the Student’s other progress, including her behavior was not excellent in the first grade. The progress report also noted that the Student had seven external suspensions in the fourth quarter of her first grade. [Exhibit P-9]
9. In September 1998, when the Student entered second grade, the CIP team noted that the Student’s violent outbursts were unpredictable and unprovoked, both in school and at home. [Exhibit P-16] At that time, a classroom teacher responded to a CIP team request regarding strengths and weaknesses, as well as behavior and noted: “oppositional and defiant behavior observed during class time. Her behavior is not predictable. . . Her behavior escalates quickly and can be violent at times. . . mood changes quickly.” [Exhibit P-13]
10. In the Student’s second grade year, the CIP team referred the Student to a PPT meeting, which was held on October 14, 1998. As a result of this PPT meeting, the Board proposed and the Mother consented to psychological and educational evaluations of the Student. [Exhibits P-19, P-20]
11. In these evaluations in the second grade, the Student scored in the high average to well above average for reading, math, language and spelling, with significant discrepancies between the subtest scores, as well as a 35 point discrepancy between her language composite score and her mathematics composite score in the Weschler Individual Achievement Test [WIAT]. [Exhibit P-22] On the Weschler Intelligence Scale for Children III [WISC-III], the Student achieved a Verbal IQ of 129, a Performance Scale IQ of 115, and a Full Scale IQ of 125, with her overall performance classified within the superior range. On the Achenbach Teacher Report form, the teacher’s ratings yielded a clinically significant score for delinquent behavior, and significant issues with aggressive behavior, both problems more problematic for the Student than for other children her age as measured by that instrument. The Semistructured Clinical Interview for Children and Adolescents found that the Student’s self-report suggested limited social coping strategies, and further found that the Student tested in the borderline range for the “Strange Syndrome,” which includes such behavior as overconfidence, bragging, exaggeration and talking too much. [Exhibit P-25]

12. After the completion of these evaluations, the PPT reconvened in December 1998, and found that the Student was not eligible for special education, and was referred to regular education to discuss a possible 504 plan. According to the minutes, the PPT only reviewed for eligibility under the criteria for a specific learning disability, and did not assess the Student for eligibility under the designation of severe emotional disturbance. [Exhibit P-28]<sup>4</sup>
13. In the second half of the Student's second grade year, the Board provided services to the Student under a plan devised pursuant to Section 504 of the Rehabilitation Act [504 plan]. A 504 meeting was held on March 9, 1999, at which time the then-current behavior plan was continued. [Exhibit P-38] The Board did not produce a copy of this plan, and the special education teacher noted that, at the end of each school year, she destroyed all plans, records and data from the preceding year. [Testimony Ms. Bolduc]
14. In the fall of the Student's third grade, the Parents admitted her to the Joshua Center Partial Hospitalization Program from September to November 1999. At that time, her admission was due to assaultive and violent behavior, and the Student's refusal to go to school. [Testimony Mother, Exhibit P-61] During this first admission at the Joshua Center, the Student was diagnosed with oppositional defiant disorder. [Testimony Mother] Prior to that, in February 1999, the Student's pediatrician had diagnosed her with ADHD – hyperactive/impulsive type and profound giftedness. [Exhibit P-30]
15. In third grade, the Student continued on a behavior plan, with educational instruction in the regular classroom in the third grade general curriculum. The Student's academic grades ranged from satisfactory to excellent. [Testimony Mother, Exhibit P-49]
16. The Student was continued under the 504 plan in the fourth grade [2000-2001 school year], and received instruction in the regular classroom in the fourth grade general curriculum. [Testimony Mother]
17. While the 504 plans were in place, the Student had numerous behavioral problems during her second, third and fourth grade years. By three weeks into her second grade school year, the Student had already been restrained three times and had pushed another child down the stairs. [Exhibit P-16] In third grade, the Student was disciplined in April 2000 for running out of the bus line, constantly touching or pulling on someone, being loud and refusing to follow directions. [Exhibit P-47] In fourth grade, in October 2000, the Student was given a time out for jumping on the back of the student in front of her. [Exhibit P-51] In November of that year, the Student was given a one-day in-school suspension for kicking up a teacher's dress, pulling away and tripping the teacher. [Exhibit P-52] In April 2001, the Student was

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<sup>4</sup> Of note, although this occurred more than four years ago, it is concerning that the only persons present at the PPT on 12/18/98 were the special education teacher, the Mother, the regular education teacher and the school psychologist. The only additional member of the PPT on 10/14/98 was a psychology intern. [Exhibits P-19, P-28]

given a one-day out-of-school suspension for an incident which involved escalation from verbal to physical aggression with other students. [Exhibits P-55, P-56] In May 2001, the Student was suspended for a day for kicking, arguing, clawing and jumping on a teacher. [Exhibit P-63] In June 2001, the Student was suspended for three days for stomping on people's feet, calling names and leaving the playground without permission. [Exhibits P-65, P-66] During the Student's fourth grade school year, the Student's disciplinary records indicated that she had eleven disciplinary incidents. [Exhibit P-67] In addition, during this period, there were instances when the Student clawed the special education teacher, which are not included in the formal listing of the behavioral incidents. [Testimony Ms. Bolduc] During this period, the student was sent to time-out on numerous occasions, and the documentation of those disciplinary actions has been destroyed by the special education teacher. [Testimony Ms. Bolduc]

18. In certain cases during the Student's fourth and fifth grade school years, the Board conducted a "manifestation determination."<sup>5</sup> Using its own form, board staff would answer three questions: [1] whether in relationship to the behavior subject to discipline, the IEP [504 Plan] and placement were appropriate and all services, including accommodations and behavior intervention strategies were fully provided; [2] whether the student was able to understand the impact and consequences of this act; [3] whether the student's ability to control the misbehavior was not impaired. [Exhibits P-52, P-55, P-64, P-66, P-79, P-82] At some of these meeting, the Parents were not present. When the Mother was present, the Mother never agreed that the Student could understand the impact and consequences of her actions, and the Student's inability to control her behavior was not considered. [Testimony Mother]
19. From April to August 2001, the Student attended the Joshua Center Partial Hospitalization Program, and was given the additional diagnosis of depression. In June 2001, the psychiatrist at the Joshua Center told the Mother that he believed the Student had bipolar disorder. The Student was placed on Topamax, an anticonvulsant which is also used as a mood stabilizer, and Zyprexa, an antipsychotic medication. [Testimony Mother]
20. The school psychologist first noted the bipolar diagnosis in a telephone call with the Student's private psychiatrist in May 2002, although the school psychologist was aware of the Topamax prescription as early as September 6, 2001, when she had a conversation with staff at the Joshua Center. [Exhibit B-26]<sup>6</sup> The school psychologist has completed all her coursework for a Ph.D. in both clinical and school psychology and has been a practicing clinical psychologist. [Testimony Ms. Paquette] Therefore, it is reasonable to conclude that the Board was on notice of the Student's emotional disturbance since her telephone conversation in September 2001. The bipolar disorder diagnosis was subsequently confirmed by the adolescent behavioral crisis service at St. Francis Hospital on May 21, 2002. [Exhibit P-88] Bipolar disorder,

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<sup>5</sup> This was not a manifestation determination in accordance with the IDEA, as the Student was not designated as eligible for special education at that time.

<sup>6</sup> The Parents had signed a full release for the school to obtain the records from the Joshua Center. [Testimony Mother]

childhood onset was described by the school psychologist as very rapid cyclings, rapid mood swings which affect both the energy and the ability to focus. The school psychologist further described it as a youngster who has both a chemical and neurological imbalance, which can become exacerbated by situational variables, as well as internal variables. The symptoms that are expressed are not always predictable by the external triggers, because what's happening inside her varies very much. [Testimony Ms. Paquette]

21. In fifth grade [school year 2001-2002], the Parents thought the Student was having a good year. [Testimony Mother, Father] The Father thought it was the "best year of her life in that school as far as disciplinary actions." [Testimony Father]
22. Under the 504 plan in effect during the fifth grade year, either the school psychologist or the school social worker was supposed to call the parents when there was a major behavioral incident or a pattern of behavioral decline. [Exhibit P-73] If the Student was placed in time out for an inappropriate behavior, the reason for the time-out was to be specified in a note home to the Parents. [Exhibit P-56]
23. Despite the requirements for parental contact for behavioral incidents, the Parents were unaware of serious behavioral incidents on October 5, November 12 and December 5, 2001 until the school social worker called the parents in on February 25, 2002. [Testimony Mother, Exhibit P-75] During this time, the Mother had been reporting to the Student's psychiatrist that the prescribed medication was working fine, as the school never communicated these behavioral problems to her. [Testimony Mother]
24. After February 25, 2002, the Student's behavioral problems escalated. She had three behavioral incidents in March, and then was suspended for a half a day in April for fighting. [Exhibit P-75] On April 24, 2002, the Student had a serious behavioral incident which led to a two-day suspension. [Exhibit P-77] At that time, the Student jammed a water bottle into a Board staff member's stomach and stepped on her toes. [Testimony Mother, Exhibit P-78] At the 504 plan manifestation determination meeting, the team determined that the substitute teacher was not aware of the Student's behavior plan. [Exhibit P-79] The Student was supposed to be able to leave class for a time-away under her 504 plan, but the substitute teacher would not allow her to do so. [Testimony Mother] The Board staff attending the manifestation determination meeting did not answer the first question regarding whether the behavior intervention strategies were fully provided in the affirmative, but the Student nonetheless served the suspension. [Exhibit P-79]
25. On May 10, 2002, another behavioral incident occurred when the Student slapped another student across her face because the Student mistakenly thought the other student had said something. She then swore at and hit a male student who told her of her mistake. The Student also swore at a teacher. [Exhibit P-83]

26. A manifestation determination meeting was held regarding this May 10 incident. The Mother attended the meeting, and noted that the physician felt the Student was in an exacerbation period. [Exhibit P-82] At that meeting, the team proposed a four-day suspension, but the Mother indicated that that was unacceptable because the behavior was a result of the Student's disability. [Testimony Mother] As a result the team came up with a series of actions, including that the Mother would pick up the Student for the next three school days, that the Student would eat with the school social worker, and that there would be an escort for transitions. [Exhibit P-82] The mother requested that the Student be returned to her former program and asked for a referral to special education. [Testimony Mother]
27. The Student returned to school on Monday, May 13 under the plan developed at the manifestation determination meeting of Friday, May 10. On Tuesday, May 14, the Student left her classroom, with the permission of the teacher, to meet the school psychologist for lunch. The Student encountered the school social worker in the hallway who reprimanded her for being in the hallway without an escort. The Student reacted assaultively. [Testimony Mother] The school called the mother to pick up the Student. The principal told the mother when she arrived that the Student could not come back to school. [Testimony Mother] "She said that the Student couldn't come back to school. When I started to speak, she said, no, we're not suspending her, we know we can't suspend her, she's just going to be absent. And she will be absent until you can get a physician or psychiatrist clearance that she is safe to come back and won't exhibit any more dangerous behavior." [Testimony Mother]
28. On May 15, the school staff met, without inviting or informing the parents of the meeting. [Testimony Mother] At the meeting, the school psychologist provided inaccurate information, including that March 4 was the Student's last visit with her private counselor, Noreen Chapman<sup>7</sup>, that the mother had signed no release for the psychiatrist<sup>8</sup>, that parents refused inpatient treatment<sup>9</sup>, and that there was a recent increase in home stressors<sup>10</sup>. [Exhibit P-85] The school staff, basing its decision on this erroneous information, decided to recommend homebound instruction after the

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<sup>7</sup> Ms. Chapman testified that the gap in March was due to a snow storm and a missed session due to a bad episode. [Testimony Ms. Chapman]

<sup>8</sup> The record is devoid of any indication that the parents ever refused to sign consent for the release of records with any private provider. The Mother had provided a complete release for Joshua Center records. [Testimony Mother]

<sup>9</sup> The mother testified that they were agreeable to an inpatient placement, but no beds were available. [Testimony Mother] See, Exhibit P-69 wherein the Joshua Center social worker reported that she "searched the tri-state area of available beds for psychiatric inpatient. No slots available."

<sup>10</sup> The school psychologist could provide no information to the hearing as to the nature of home stressors or as to her source of that information. [Testimony Ms. Paquette] The mother testified that the spring of 2002 was a period of few stresses at home. [Testimony Mother]



Student was out of school for ten days and that the Student be placed in the partial hospitalization program at the Joshua Center. [Exhibit P-85]

29. The Parents attended a 504 meeting on May 17 to which they were invited. [Exhibit P-84, P-86] The mother rejected homebound instruction but said that she would investigate programs at the Joshua Center. The parents requested a PPT. The principal, Ms. Farrah, said at the 504 meeting that the school had no obligation to provide home tutoring until the Student was at home for ten days. [Testimony Mother] The mother said she wanted the Student returned to the type of program from the prior year, which had her educated in the mainstream with the option to leave for a time away when she needed it. [Testimony Mother] “I was told again that the program didn’t exist anymore. I said that they’re required to provide her with an education whether they have an existing program or not. And they again said, not unless she’s special ed.” [Testimony Mother]<sup>11</sup>
30. Because the Student was not permitted to return to Putnam Elementary School, the parents decided that the Student’s time could be most effectively used by placing her in a hospital to permit quick adjustment of her medical regime and to get some sort of medical clearance. [Testimony Mother] The Student was inpatient from May 17 to May 24, 2002. [Testimony Mother] On May 22, Eileen Hargreaves at the Adolescent Behavioral Crisis unit at St. Francis Hospital faxed a note to the school psychologist stating that the Student’s current diagnosis was Bipolar Disorder, childhood onset. [Exhibit P-89] The note stated, “[t]he clinician thinks the psychiatrist will d/c the diagnosis of behavior dyscontrol & ODD since those behaviors are within the realm of the bipolar disorder.” [Exhibit P-89] On May 23, St. Francis faxed to the school a typed note recommending a small structured education environment. [Exhibit P-88]

The Board scheduled a PPT meeting for May 29. At the PPT meeting, the team determined that the Student was eligible for special education services as severely emotionally disturbed. [Exhibit P-94] Using the SED worksheet promulgated by the State Department of Education, the team determined, “[h]er behavior met the 3 necessary criteria of duration, intensity and adverse effect on educational performance for 2 characteristics: b) inability to build or maintain satisfactory interpersonal relationships with peers and teachers and c) inappropriate types of behavior or feelings under normal circumstances.” [Exhibit P-94] The team found that the interference with her education was “due to the cumulative effect of time that she had missed from mainstream.” [Testimony Mother] This determination was made based on information and evaluations long in the possession in the Board, including the 1998 evaluations. On the PPT meeting summary, the last evaluation date was not noted, and the next reevaluation date was not noted. The Board in

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<sup>11</sup> This statement is inconsistent with the regulations governing section 504 placements. See, 34 C.F.R. §§104.34.

making the eligibility determination on May 29, 2002 considered no new evaluation<sup>12</sup>.

31. One of the Board witnesses, the special education teacher, said that the Student was eligible for special education in May 2002, but not in December 1998, “[b]ecause the Student was not able to be in the regular classroom and receive her academic program.” [Testimony Ms. Bolduc] When pressed, Mrs. Bolduc said that the Student was designated in May 2002 because, “at this point, the Student had gotten a specific diagnosis.” [Testimony Ms. Bolduc] She did not know whether the Student’s behavior had worsened or whether her academic performance had declined. [Testimony Ms. Bolduc] The school psychologist conceded that the Student “had similar behavioral incidents in prior years.” [Testimony Ms. Paquette] As to adverse educational affect, the school psychologist said the Student’s emotional condition “was affecting her performance, because she was not able to be in the regular education classrooms and she was not being able to complete her work and focus on her work at that time.” [Testimony Ms. Paquette] Yet, “her grades remained good.” [Testimony Ms. Paquette]
32. The school psychologist did not seek to refer the Student to special education earlier, because she said, “[s]he had 504 coverage for her, you know, a 504 plan to provide her with the supports that she needed in school. So it did not become – it did not seem to be necessary at the point to refer her to special education.” [Testimony Ms. Paquette] She said that “[y]ou qualify somebody [for special education] in order to provide them with more protection or more services.”<sup>13</sup> [Testimony Ms. Paquette] The school psychologist referred the Student to special education on May 24, 2002, “in order to facilitate her receiving alternative services in the spectrum of alternative placements that she did at this point need.” [Testimony Ms. Paquette, Exhibit P-92]
33. At the PPT meeting of May 29, the Board presented two possible placements. One was a special, self-contained class within the Putnam Middle School for students with Severe Emotional Disability designations, a class that was entirely made up of seventh and eighth grade boys. [Testimony Ms. Bolduc] The Parents, the school psychologist and the special education teacher considered such a placement inappropriate for a fifth grade girl. [Testimony Mother, Ms. Bolduc, Ms. Paquette] The other option was an outplacement at the Joshua Center Educational Program in Brooklyn, Connecticut. [Exhibit P-94] The Mother did not think it would be an appropriate program either because it was mainly composed of boys with extremely delinquent behaviors. She was concerned that that type of situation would make the Student worse, not better. [Testimony Mother] Nevertheless, the Parents agreed to

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<sup>12</sup> The PPT minutes for May 31 lists the St. Francis recommendation as a factor relevant to the PPT’s decision but do not claim that it should be considered an evaluation within the meaning of 20 U.S.C. §1414. [Exhibit P-100]

<sup>13</sup> The school psychologist was in error in her understanding of the IDEA. The determination of eligibility is made first. The need for services is then determined separately based on the individual needs of the student.

meet with the educational director of the Joshua Center the next day. [Testimony Mother]

34. The PPT meeting of May 29 ended with a discussion of other options and the date of the next meeting. The minutes state, “[The Father] asked about other options and provision of tutoring was discussed. The interim student services director will return June 3 and [the Mother] requested another PPT be scheduled to brainstorm other options. She agreed to attend the intake at Joshua Center and will call the school after the visit. The appropriate IEP will be developed at that PPT **when it is scheduled.**” [Exhibit P-94, emphasis added] The parents left with the clear understanding that the next PPT meeting would have to await the arrival of the interim special education director on June 3, 2002.<sup>14</sup> [Testimony Mother] The Board had prepared a letter for the mother to take to the Joshua Center with the Student’s records the next day. [Exhibit P-97]
35. Upon meeting with the educational director of the Joshua Center, the Parents learned that the Joshua Center had no program for elementary school children; the only program available was one for middle school boys. Ms. Lucenti told the Parents she was surprised to see them because she had told the school psychologist on the phone that she did not believe that this program would be appropriate program for a ten year old girl. The Parents and the educational director agreed that the Joshua Center did not offer an appropriate program for the Student.
36. The Mother then called the assistant principal of Putnam Elementary School, and told her that the Joshua Center program was not appropriate. The assistant principal told her that “we’ll get back to you as soon as we can [come up] with a date for a PPT, but the Student can’t come back to school.” After the Mother concluded that conversation, she was dissatisfied, and, therefore, called the superintendent’s office. A series of phone calls then took place resulting in an offer from Dr. Graner, the Superintendent of Putnam Schools, that the Student would be in the room with the special education teacher and a paraprofessional. The Mother was pleased with that proposal. The assistant principal then called the Mother to say somebody had to drive the Student in the next day to sign some papers for the temporary placement. The Mother arranged for the Father to bring the Student to school and “sign whatever it is and get her back in school.” Neither the mother nor the father had received any notice of a PPT meeting on May 30. [Testimony Mother] The Notice of PPT meeting to be held on May 31 at 9:15 a.m. is dated May 30. [Exhibit P-98] It is not reasonable to conclude that the Parents received the requisite notice of this meeting.
37. Upon arriving at school with the Student on the morning of May 31, 2002, the Father was led by school staff into a conference room and asked to sit down. The Student was taken into the principal’s office to work with the paraprofessional. In the

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<sup>14</sup> The first page of the minutes of the May 29 PPT meeting state that the next meeting will be on May 31, 2002. [Exhibit P-94] The recorder of the minutes, Ms. Paquette, testified that **she was instructed to place that date in the minutes at a time subsequent to May 31.** [Testimony Ms. Paquette]

conference room were the principal, the regular education teacher, the special education teacher, the elementary school psychologist, the transportation coordinator and the assistant principal. [Testimony Father, Exhibit P-100] The father was asked to sign in on page 1 of the Planning and Placement Team Meeting Summary form. The father signed without reading the form. The meeting soon became very formal. According to the Father, the people in the conference room were discussing issues that he wasn't prepared to deal with. The meeting progressed to a discussion of the Student's placement. Soon, the meeting was interrupted because the Student was having behavioral problems with the paraprofessional. The Father left the meeting to see if he could bring the Student under control, returned to the meeting, and was again interrupted. [Testimony Father]

38. At the end of the May 31 meeting, the school staff presented a behavior plan to the Father. According to the minutes, "Mrs. Arnold made it clear that if [the Student] becomes physically aggressive to staff/peers, the police and/or emergency personnel from DKH [Day-Kimball Hospital] will be called." [Exhibit P-100] No written copy of this plan was distributed at the meeting and the IEP attached to the minutes does not include the details of the plan. The Father insists that he objected loudly to the proposal that the police be called, and upon receipt of the minutes of the meeting on June 12, he wrote to the Superintendent of Schools indicating that he vehemently disagreed with the Board's plan to call the police at the May 31 meeting. [Testimony Father, Exhibit P-103]
39. After the meeting the school psychologist Ms. St. Jean telephoned the Mother to secure her consent to the placement. During this conversation, Ms. St. Jean never told the Mother that the Board planned to call the police if the Student was out of control, stating only that emergency services would be called. [Testimony Mother] The Mother asked if that mean EMS, to which Ms. St. Jean responded, "that or Day Kimball Hospital." [Testimony Mother] Ms. St. Jean also failed to mention that an adult would shadow the Student at all times in school. [Testimony Mother]
40. It was unclear who drafted the Board's behavior plan for the Student. The plan was not based on a functional behavior analysis. [Testimony Ms. Bolduc] The plan was unduly ambiguous, and Board witnesses could not make any sense of the provision of the plan which stated, "ANY physical aggression towards peers or adults will result in notification of the Putnam Police Department and/or medical personnel from Day Kimball Hospital (as noted in IEP)." No witness could explain the type of behavior that would result in the calling of the police, nor could any witness explain who would make the determination on whether to call the police or medical personnel and what factors would lead to the determination. [Testimony Ms. Paquette, Ms. Bolduc, Exhibit P-104]
41. After the May 31 meeting, the Father took the Student home because she was acting up during the meeting. The Father determined that, in light of such behavior, it would be better to wait to the next day to send the Student to school. [Testimony Father]

42. The Student returned to school on Monday, June 3, 2002. She spent that day with the paraprofessional in a small room off the main office. The Student had no contact with any teacher. She was permitted no contact with other students. [Testimony Mother] The paraprofessional sent a note home on that date indicated that the Student had a great day, complied with all directions and was very polite and respectful. [Exhibit P-106]
43. On Tuesday, June 4, the Student was in the special education classroom, was permitted some interaction with other students and her behavior was fine. That program, with the placement in the special education classroom, was essentially what the mother had been told was to be the Student's program. The program on Monday, June 3 and Wednesday, June 5 was not acceptable to the Mother, nor what was represented to the Mother as what the program would be. [Testimony Mother]
44. The Student slept at her Father's house on Tuesday night, June 4. [Testimony Mother] The Father left early for work so his girlfriend drove the Student because the girlfriend was going to school as a volunteer for activities day. [Testimony Father] The girlfriend dropped off the Student at school at 8 a.m. [Testimony Girlfriend]
45. That day, the special education teacher had a meeting so the paraprofessional was directed to work with the Student in a conference room next to the principal's office. [Testimony Ms. Tuminelli] The paraprofessional testified, "Everything was going okay for about maybe 10 minutes, and then another student was brought down into the room, also. And when the other student arrived, and that's when the Student went off task." [Testimony Ms. Tuminelli]
46. According to the paraprofessional, she reminded the Student to stay on task and the Student refused. After waiting thirty seconds, she tried again. "As [the paraprofessional] was approaching the Student with the third reminder, [the assistant principal] heard, and then she came in the room, also, and said that we need the team, because she refused to comply with [the assistant principal] also, within maybe 30 seconds, and [the assistant principal] decided to call the support team." [Testimony Ms. Tuminelli]
47. The paraprofessional's version is at variance with the Restraint Report which states that the paraprofessional referred the Student to the time-out room in compliance with the behavior plan. The Restraint Report is clear, however, that the Student was working on a math test in the conference room. [Exhibit P-108]
48. According to the paraprofessional, two women arrived, and the paraprofessional left the conference room for the main office. The paraprofessional saw these two individuals leave with their arms underneath the Student's arms because she refused to walk. The Student was down the hall while she kept her feet up in the air." [Testimony Ms. Tuminelli]

49. According to Ms. Allard who was one of the escorts, the other escort, school social worker Melissa Rose told her that she was kicked when they got the Student down to the time-out room. [Testimony Ms. Allard] Ms. Allard did not see the kick and did not see any injury to Ms. Rose. [Testimony Ms. Allard] No witnesses ever verified that this alleged kick occurred, and no injury to Ms. Rose was ever confirmed.
50. Assistant Principal Arnold was called to the room, according to the Restraint Report. [Exhibit P-108] The Restraint Report, in a marginal note in different and unidentified handwriting, states, “CA [Carol Arnold] was called. Team discussed who would be called. Decision was made that police would be called due to assaultive behavior. Police & parent were called.” [Exhibit P-108]
51. The Father was called by the school at 8:50 a.m., and was told that the police had already been called. [Testimony Father]
52. The behavior plan in place, identified the team as including Ms. Paquette, Ms. Rose, Ms. St. Jean, and Ms. Allard. [Exhibit P-104] Of that group, Ms. Paquette and Ms. Allard both testified that they had no role in the decision to call the police. [Testimony Mr. Allard, Ms. Paquette]
53. Once in the time-out room, the Student was restrained on three occasions. [Exhibit P-108] According to the Restraint Report, the Student required a 2 person physical restraint at 8:45 – 8:50 due to self injurious behavior. Although the Student was calm during the restraint, she once again required physical restraint at 8:55 for self-injurious behavior. At 8:56 the Student’s shoes were removed after she kicked a staff member. [Exhibit P-108] According to the Restraint Report, the Student began banging her head on the wall at 9 a.m., a 2 person restraint was initiated.” [Exhibit P-108] Yet, the arresting officer, Louis Cinque, noted that when he arrived at the school at 9 a.m., the Student was restrained, but was calm and cooperative. [Testimony Mr. Cinque] The Student was arrested because Ms. Rose wanted charges pressed. [Testimony Mr. Cinque] “I mean it’s my decision, but if I have a complainant and a victim that want action taken and there is the probable cause to make the arrest then the arrest is made.” [Testimony Mr. Cinque]
54. In deciding to call the police, the Board implicitly rejected numerous other options. Pursuant to the behavior plan, the Board could have notified medical personnel from Day Kimball Hospital. [Exhibit P-104] The Board was aware that the Student was recently released from the hospital, having had an increase in medication, [Exhibit P-88]; therefore, calling medical personnel certainly would have been reasonable, and should have been considered in determining who to call. [Testimony Ms. Paquette] Alternatively, the Board could have released the Student to one of her Parents or caregivers. The Father was called shortly after the police were called and was approaching the school when the police arrived. [Testimony Father] The Mother arrived at the school just as the Student left with the police. [Testimony Mother] And, the Father’s girlfriend, was at the school pleading that the Student be sent home

with her. [Exhibit P-112]<sup>15</sup> Prior to June 5, 2002, both of the Parents had provided notice, both oral and written, to school officials that, if there were a behavioral issue requiring immediate removal of the Student from school, the girlfriend had permission to take custody of the Student. [Testimony Mother]

55. The Student was charged with committing a delinquent act of breach of peace, in violation of C.G.S. Sec. 53a-181<sup>16</sup>. [Exhibit P-129] A nolle prosequi was entered as to this charge of delinquency. [Exhibit P-130] Subsequently, over the summer, the Father noted that the Student isolated herself, and said that if she went outside, she might get arrested. The Student refused to call her friends, and declared life not worth living. [Testimony Father] Moreover, private counselor Noreen Chapman confirmed that the Student became agitated when the arrest was brought up by her. [Testimony Ms. Chapman]. Dr. Majure noted the same behavior. [Testimony Dr. Majure]
56. In the summer 2002, the Student's testing evidenced a precipitous drop in her cognitive testing scores. The Student took the WISC-III in July 2002, just as she had in November 1998. [Exhibits P-25, P-131] Her verbal score dropped from 129 to 115. Her performance IQ dropped from 115 to 75. These changes were significant, according to the school psychologist. WISC-III scores are generally fairly consistent

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<sup>15</sup> On the morning of June 5, the girlfriend brought the Student to school at 8 a.m. The girlfriend, who was a volunteer in Putnam Elementary School, then waited in the office for her volunteer assignment for the day. While waiting, she spoke to Principal Farrah and specifically informed Principal Farrah that she would be in school that morning. While working with other students in the library at 8:50 a.m., the girlfriend received a phone call from the Father who had just received a call from school concerning the Student's behavior. The girlfriend then went to the office to pick up the Student and bring her home. At the office, the girlfriend met Ms. Farrah, the school principal. Ms. Farrah acknowledged the parents' authorization for the girlfriend, but said that she could not allow the girlfriend to leave with the Student. Principal Farrah stated that it was now out of her hands and in the hands of the school board. Ms. Farrah then walked out of the office. The girlfriend was not allowed to see or speak to the Student. The girlfriend asked the receptionist to use the phone to call the Father. The receptionist directed her to a separate room to place the call. The girlfriend told the Father that Ms. Farrah refused to release the Student to her. The Father asked to have the call transferred to the receptionist. After transferring the call, the girlfriend returned to the main office area. From there she first saw the police car and officer outside. The girlfriend asked the receptionist to speak to the Father, who was still on the phone, to tell him of the police being there to take the Student to the police station. The receptionist refused to do so. The girlfriend then left for the police station. After waiting for ten minutes, she was led into the room where the Student was being held. The Student was crying out loud with tears coming down her face. The Student asked the girlfriend if she would be photographed, fingerprinted and sent to a jail for kids. The girlfriend held the Student for the ten minutes until the Student's father arrived. [Testimony Girlfriend] The Board presented no testimony explaining why it decided not to release the Student to the girlfriend, or to await the arrival of one of the Parents.

<sup>16</sup> Sec. 53a-181 provides that "(a) A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: (1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or (2) assault or strikes another; or (3) threatens to commit any crime against another person or such other person's property; or (4) publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning another person; or (5) in a public place, uses abusive or obscene language or makes an obscene gesture; or (6) creates a public and hazardous or physically offensive condition by any act which such person is not licensed or privileged to do.

over time. The school psychologist testified that she had never seen a drop that large in the performance score. She attributed this change to increased problems with timed testing, but would rule out the possibility that the decline in the WISC-III scores in July 2002 were the result of the events of June 5, 2002. [Testimony Ms. Paquette]

57. On June 5, after leaving the police station with the Student, the Mother returned to Putnam Elementary School at around 10:30 a.m. [Testimony Mother] At that time, the assistant principal told the Mother that she had decided that the Student would not be safe had she been released to the girlfriend. [Testimony Mother, Exhibit B-2] The Mother left school and went home, but was called back to a meeting at 2 p.m. with the interim student services director, Jerome Spears. [Testimony Mother]
58. The mother, Dr. Spears, Assistant Principal Carol Arnold, special education teacher Maureen Bolduc, and school social worker Melissa Rose attended the 2 p.m. meeting. [Exhibit B-3] At that meeting, the Mother noted that the Father had never approved the calling of the police. [Exhibit P-145] At the meeting, Dr. Spears presented the Mother with a printed copy of a behavior plan, which was the first time the mother had ever seen the plan. [Exhibits P-104, P-145] The mother noted that items #1 and #2 had been part of the Student's previous plan. [Exhibits P-104, P-145] The third item, which mandated "notification of the Putnam Police Department and/or medical personnel from Day Kimball Hospital" in the event of "ANY physical aggression towards peers or adults" [Exhibit P-104] was carefully rewritten at the meeting, to provide for calling the Mother first, then the Father, and then the girlfriend. [Exhibit P-145] Only if none of these people respond would Putnam Emergency Medical Services be called. [Exhibit P-145] The mother agreed that if another student is assaulted and injured, the police must be called, but "the biggest thing here is to come up with a plan that prevents this stuff from happening." [Exhibit P-145] Item #3 was rewritten to provide that "Physical aggressive towards peers & with intent to injure/hurt in judgment of Administrator in consultation w/ adult witness" will result in notification of Putnam Police Department. [Exhibit P-105] If the Student was aggressive towards an adult, the school would first call the Mother, then the Father, then the girlfriend, and then 911 for emergency services. [Exhibit P-105] The original plan [Exhibit P-104] was signed by Ms. Paquette, Ms. Bolduc, and Ms. Rose. The plan, as modified at the meeting of June 5, carried a handwritten note stating "Edited with Parents. J. Spears." [Exhibit P-105] At the meeting, the mother noted that the Student was in a more restricted environment despite behaving well in school. [Exhibit P-145] Her concern was that "the office isn't a classroom and ... she's getting absolutely no education there. She was in an office with not teacher, just a paraprofessional." [Testimony Mother]
59. At the afternoon meeting, the Mother indicated that the May 31 meeting was never noticed as a PPT meeting: "Now, see that's not what I was led to believe that meeting was. I was led to believe it was another emergency meeting to place her until this Thursday when there was supposed to have been a meeting which has not been cancelled and postponed until next week ... But, I was not led to believe that the IEP



was going to be determined at that meeting” [Exhibit P-145] The Mother said that the school knew that she was the primary custodial parent and had sole decision-making authority for the Student’s program. [Testimony Mother] The Mother was not given a copy of the school’s proposed IEP until June 12. [Testimony Mother] The Mother also asked for a complete educational and behavioral evaluation. [Exhibit P-145] The mother stated that, unless the school could come up with a better plan to include the Student in the mainstream, she would not be sending her back to school for the remainder of the year. [Exhibit P-145] Dr. Spears said there was not a problem; it “isn’t an issue.” [Exhibit P-145] The behavior plan was subsequently amended to eliminate the use of restraint and signed by the parents at the PPT meeting of June 12, 2002. [Exhibit P-115]

60. At the June 12, 2002 PPT meeting, the team agreed to provide for an independent educational evaluation at district expense. [Exhibit P-116] The Mother contacted Dr. Ann Majure, and the Board retained Dr. Majure on July 16. [Exhibit P-128] Dr. Majure observed and spent time with the Student on July 3 and 24, and conducted numerous telephone interviews.
61. In her evaluation report, Dr. Majure traced the history of the Student’s school program. [Exhibit P-136] The report then contains a functional analysis of behavior, a motivational analysis, and a mediator analysis. [Exhibit P-136] The report concludes with a series of recommendations for ecological strategies, positive programming strategies, direct behavioral interventions, reactive strategies, and other recommendations including data collection as part of an Antecedent/ Behavior/ Consequence Analysis. [Exhibit P-136] Dr. Majure testified that the Student has a mental illness meaning that her behaviors are “much more of a physiological response than a response that she actually has some control over.” [Testimony Dr. Majure] She pointed out that giving the Student negative consequences for behavior that is really outside her control will not teach the Student anything in the long run. [Testimony Dr. Majure] Dr. Majure discussed an incident when she was alone with the Student where the Student became agitated, and the approach she used to de-escalate the situation. [Testimony Dr. Majure] Dr. Majure pointed out that “the Student doesn’t understand some of the basic social rules of communication,” and recommended social skills training to address this deficit. [Testimony Dr. Majure, Exhibit P-136]
62. Dr. Majure stressed the critical nature of a functional behavioral analysis as a necessary prerequisite to the development of a behavioral intervention plan, and noted that she did not see such an analysis in the Putnam school records for the Student. [Testimony Dr. Majure] While the school psychologist testified that no functional behavioral analysis of the Student had yet been completed, the Majure evaluation contained just such an analysis. [Testimony Ms. Paquette, Exhibit P-136] Dr. Majure stressed the need for tolerance training to build the ability to deal with aversive situations. [Testimony Dr. Majure] Ms. Paquette, the school psychologist, testified that she was reluctant to pursue tolerance training aggressively. [Testimony Ms. Paquette] Dr. Majure pointed out that the substantial change in the Student’s

intelligence test scores called out for a lot more investigation, both to understand what is going on with the change in scores and “more importantly what kinds of accommodations, teaching strategies, interventions might be helpful to the Student to help deal with whatever is going on. [Testimony Dr. Majure]

63. The Student is currently receiving individual counseling in school from Ms. Paquette for one hour a week [Exhibit B-16], psychotherapy and family therapy from Noreen Chapman for one hour on a weekly basis [Exhibit P-149], and counseling from Dr. Rocco Marino relating to her Bipolar Disorder and to her trauma from the events of June 5, 2002 for one hour every other week. [Testimony Father, Exhibit P-150] The Student attended the Partial Hospitalization Program at the Joshua Center from June 7 to July 3, 2002. [Testimony Mother] The Parents and their health insurance have been responsible for the payment of the session at the Joshua Center and the costs of treatment by Ms. Chapman and Dr. Marino. [Exhibit P-147] The Student needs private counseling weekly regarding school issues. [Testimony Ms. Chapman]
64. Principal Farrah sent the Student home from school on May 14 and told that she could not return without a note from a health care professional that she was safe. [Exhibit P-85] Except for attending school on June 3, 4, and briefly, on June 5, the Student remained out of school through the end of the school year on June 18, 2002, [Exhibit P-119], in part because she was excluded from May 14 to May 31 and in part because Putnam did not offer an appropriate program from June 5 to June 18. The Student was inappropriately excluded from the school for 24.5 days during the 2001-2002 school year.
65. This hearing does not involve any claim that the Student’s educational program for the 2002-2003 school year is inappropriate. [Parents’ Post Hearing Brief] Both the mother and the school psychologist testified that there were some minor behavioral issues, but that the Student had not lost control as in the past. [Testimony Mother, Ms. Paquette]

### **CONCLUSIONS OF LAW:**

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act [IDEA], 20 U.S.C. Sec. 1401, et seq.
2. In the issues brought before this hearing, the Parents are seeking an award of monetary damages. As noted on the first hearing date, when this issue was dismissed, monetary damages are not available under the IDEA. The purpose of the IDEA is to provide educational services, not compensation for personal injury, and a damages remedy – as contrasted with reimbursement of expenses – is fundamentally inconsistent with this goal. *Polera v. Board of Education of Newburgh Enlarged City School District*, 238 F. 3d 478, 36 IDELR 231 (2d Cir. 2002) Therefore, the Student is not entitled to an order of monetary damages in this hearing.

3. The Parents also seek correction of disciplinary records in this hearing. IDEA provides for hearings related to the identification, evaluation or educational placement of children, or the provision of a free appropriate education. 20 USC Sec. 1415(b), (c), C.G.S. Sec. 10-76h. In a separate portion of the statute, 20 USC Sec. 1417(c), the Secretary of Education is required to promulgate regulations for the protection of the rights and privacy of parents and students in accordance with the provisions of the Family Educational Rights and Privacy Act. The IDEA regulations provide that such hearings are to be conducted in accordance with the procedures specified in 34 CFR Sec. 92.22, rather than the hearing procedures set forth in 34 CFR 300.506-508. Thus, if after a hearing, a board of education declines to amend a child's records, the parents have the right to place in the child's records a statement disagreeing with the board's decision. 34 CFR 300.569(b) An aggrieved party may file a complaint with the Family Policy Compliance Office of the U.S. Department of Education pursuant to 34 CFR 99.63. *See, e.g., Board of Education of the Ellenville School District*, 21 IDELR 235 [NY SEA 1994] Correction of the Student's records is not an appropriate issue for this hearing, as the Parents must proceed in accordance with 34 C.F.R. Sec. 99.20 to challenge the accuracy of the records. Therefore, no order requiring the correction of disciplinary records would be entered in this case.
4. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. The second inquiry is a determination of whether the Individualized Educational Program is "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 206-207.

Procedural flaws do not automatically require a finding of a denial of a free appropriate public education [FAPE]. Procedural inadequacies, however, that result in the loss of educational opportunity or seriously infringe the parents' opportunity to participate in formulating the Individualized Education Program [IEP], clearly result in a denial of FAPE. *Shapiro v. Paradise Valley Unified School District No. 69*, 317 F. 3d 1072, 38 IDELR 91 (9<sup>th</sup> Cir. 2003), *citing W.G. v. Board of Trustees of Target Range School District No. 23*, 960 F. 2d 1479, 18 IDELR 1019 (9<sup>th</sup> Cir. 1992), *accord, W.A. v. Pascarella*, 153 F. Supp. 2d 144, 35 IDELR 91 (D.Conn. 2001)

5. The procedural violations in this case have denied the Student FAPE. The actions of the Board have resulted in the loss of educational opportunity and seriously infringed the Parents opportunity to participate in formulating the IEP. The meeting at which the Student's IEP was devised was not a properly noticed PPT meeting. On the May 29 PPT meeting, no date was scheduled for the reconvening of the PPT. The Board special education teacher testified that she was instructed to insert the next date of the PPT as May 31 on the May 29 PPT summary *after the May 31 meeting*. This is a serious admission by the Board that there was an attempt to erroneously claim that the May 31 PPT was scheduled and discussed at the May 29 PPT. In fact, the date of the PPT was not scheduled on May 29, and the written summary of the May 29 PPT

notes that the IEP will be developed at the PPT **when it is scheduled**. It is not credible that the Board properly sent out the notice of the May 31 PPT, in that the notice allegedly was sent out on May 30 for a PPT scheduled for the early morning of May 31. It is not reasonable that this notice could have been received by the Parents in a timely manner for this PPT.

6. The record is clear that the notice send by the Board on May 30, did not arrive at the mother's house until Saturday, June 1. [Testimony Mother] The Father testified that he never received the notice. [Testimony Father] While the Father signed the PPT face sheet without looking at it, [Testimony Father], he never knowingly waived his right to five days notice. The Board violated the statutory rights of the parents to prior written notice of the Board's plan to change the educational placement of the Student on May 31. 20 U.S.C. Sec. 1415(a)(3), 34 C.F.R. Sec. 300.345; Reg. Conn. State Agen. Sec. 10-76d-8 (the Board will notify parents five school days in advance of any meeting to propose an educational program) Here, the Board attempted to ambush a parent into agreeing to an educational placement and program of which he had no notice and with which he was not prepared to deal. [Testimony Father]
7. Congress, in the 1997 reauthorization of the IDEA, heavily stressed the importance of parental participation in the decisional process. See, for example, 20 U.S.C. §1400(c)(5)(B) (research and experience have demonstrated that educating children with disabilities is made more effective by "strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate..."); 20 U.S.C. §1414(d)(1)(B)(i) (parents shall be members of the IEP Team); 20 U.S.C. §1414(f) (Board shall ensure that parents "are members of any group that makes decisions on the educational placement of their child."). It is clear that the Parents' right to participate in the development of an appropriate IEP for the Student was thwarted by the Board.
8. The "IEP" proposed by the Board at the "PPT" meeting of May 31, 2002 was utterly inadequate. Besides the egregious error in not allowing the Parents to participate in the meeting in a meaningful manner due to the failure to properly send out notice of the meeting, there were several other inadequacies.
9. The minutes of the PPT meeting [Exhibit P-100] disclose that the Board failed to consider any of the eight matters required to be discussed pursuant to 20 U.S.C §1414(d)(1)(A) providing for the essential elements of a IEP. These matters include an analysis of the Student's current educational performance, a statement of measurable goals, related services and supplementary aids and services, an explanation for removal from the mainstream, testing modifications, projected starting date and frequency of service, and an evaluation mechanism.
10. The team did not consider whether the proposed placement was in the least restrictive environment. IDEA sets forth a strong congressional preference for integrating children with disabilities in the regular classroom. *Oberti v. Board of Education*, 995 F. 2d 1204 (3d Cir. 1993) School districts must evaluate whether a child with a

disability can be educated in a regular classroom if provided with supplementary aids and services. *Oberti*, 995 F. 2d at 1216, *Mavis v. Sobol*, 839 F. Supp. 968, 985-986. The Act's least restrictive environment requirement is met when the child with a disability is educated in the regular classroom, or when the child who cannot be fully included is mainstreamed to the "maximum extent possible." *Oberti*, 995 F. 2d 1217. No such mainstreaming analysis was conducted by the May 31 PPT.

11. IDEA requires that an IEP be developed based on the evaluations of the child that the Board was obliged to perform under 29 U.S.C. §1414(b)(4). In this case, the Board conducted no evaluation. It did not even review an independent evaluation. The first evaluations performed for the Board were ordered at the PPT of June 12, 2002, and completed in late July and August 2002. [Exhibits P-116, P-131, P-136, P-137] They were first considered at a PPT meeting on August 30, 2002. [Exhibit P-143] Without the benefit of evaluations, the Board could not design a legally appropriate IEP in May 2002.
12. The IEP of May 31, 2002, even if it was appropriate, was never implemented by the Board, based on the Student's experience in school on Monday, June 3 and Wednesday, June 5. The IEP specified that the Student would be in school thirty hours per week in a self-contained classroom with a special education teacher. [Exhibit P-100] "Mrs. Bolduc (Sp. Ed. Teacher) would provide the Student's educational programming with a restricted academic setting with behavioral monitoring." [Exhibit P-100] The testimony was clear that the Student was alone with the paraprofessional in a conference room in the main office for all of Monday and on Wednesday morning. According to the special education teacher, the paraprofessional could not be left alone with the Student in her room, but had to work with her where there was a certified teacher present. [Testimony Ms. Bolduc] So, rather than receiving education, as specified in the May 31 IEP, from a special education teacher, the Student was relegated to time alone in a conference room from an aide who did not even have a college degree. [Testimony Ms. Tuminelli]
13. The Board excluded the Student from school starting on May 14<sup>th</sup> and continuing, at least, until May 31, 2002, a period of at least 13 school days. This amount of time removed from school clearly triggers the manifestation determination review procedures of 20 U.S.C. § 1415(k)(4). "[A] change in placement occurs if ... the child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another." 34 C.F.R. § 300.519(b). No manifestation determination was conducted. The principal told the mother that "we're not suspending her, we know we can't suspend her, she's just going to be absent." [Testimony Mother] A properly conducted manifestation review would have determined that the Student's behavior was a manifestation of her disability and that no proper educational or behavioral program was in place. Moreover, prior to the situation deteriorating to this level, the Board had an obligation to evaluate the child, and consider her eligible for special education and related services. The Board was

on notice that the Student was suffering from a severe mental illness that affected her behavior and ability to be educated without special education and related services since at least February 2002, and as early as September 2001 when the school psychologist was aware of that the Student was prescribed the psychotropic medication. The Student should have been evaluated and designated eligible for special education much earlier in the 2001-2002 school year.

14. During the Student's removal from school in May and June of 2002, she was not provided with educational services. The federal Department of Education has issued guidance that the law requires that "[b]eginning on the eleventh cumulative day in a school year that a child with a disability is removed from his or her current placement, the school district must provide those services that school personnel ... in consultation with the child's special education teacher determine to be necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP." OSEP "*Discipline for Children with Disabilities*", Federal Register, Vol. 64, No. 48 (March 12, 1999), Reg. Conn. State Agen. Sec. 10-76d-15 (homebound instruction shall begin within two weeks of first day of absence). The provisions of the federal law apply to students not yet designated as eligible for special education services where, as here, the Board had knowledge "that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. 20 U.S.C. §1415(k)(8)(A). The Board violated the Student's rights under the IDEA by failing to provide her with any educational services after she was forced from school on May 14, 2002.
15. The behavior plan was not appropriate, including the provision to summon the police, and implementation of the plan was a procedural violation. IDEA does not prohibit a child with disability from being arrested for violations of the law. 20 U.S.C. Sec. 1415(k)(9)(A), 34 CFR Sec. 300.529 (Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities) This savings provision does not, however, allow the Board to inappropriately use the criminal justice system to craft an ill-suited behavior plan. The PPT never considered "strategies, including positive behavioral interventions, strategies and supports to address [the Student's] behavior." 20 U.S.C. §1414(d)(3)(B)(i) The IEP was deficient as behavior was a key issue for the Student, and the PPT did not consider the appropriate strategies necessary to address the Student's behavior.
16. These procedural inadequacies resulted in a loss of educational opportunity and seriously infringed the Parents' opportunity to participate in formulating the Individualized Education Program [IEP]. Due to these procedural violations, the Student was denied FAPE.
17. An award of compensatory education is permitted when a school district commits a gross and egregious IDEA violation. *Garro v. State of Connecticut*, 21 IDELR 126 (2d Cir. 1994) In this case, the Board's procedural violations have risen to the level

of a denial of FAPE.<sup>17</sup> The Parents are entitled to an award of compensatory education, which shall include additional counseling for the Student and other components as identified in the order.

**FINAL DECISION AND ORDER:**

1. The Parents are not entitled to an award of monetary damages.
2. The Student's disciplinary records amendment is not ordered, as there is no jurisdiction to order such a record correction. The Parents may pursue this request in accordance with 34 CFR 300.570.
3. The Board shall provide the Student with compensatory education, which shall include (a) reimbursement of the partial hospitalization program at the Joshua Center in June and July 2002, (b) one hour per day of extended school day programming for 90 days, which shall include one-to-one tutoring on mathematics and one-to-one counseling in tolerance training, social skills and behavior management, and (c) reimbursement for counseling by Noreen Chapman and Rocco Marino from May 10, 2002 to August 30, 2002.

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<sup>17</sup> The testimony presented in this matter also supports the conclusion that the Student has suffered injury due to the Board's action. As noted, *supra*, any monetary damages for any such injury to the Student cannot be pursued in this forum.