

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Waterbury Board of Education v. Student

Appearing for the Board: Maurice B. Mosley, Esq.
Office of Corporation Counsel
City of Waterbury
236 Grand Street
Waterbury, CT 06702

Appearing for the Parents: *Pro Se*

Before: Scott Myers, J.D., M.A. (Clinical Psychology)

FINAL DECISION AND ORDER

STATEMENT OF ISSUES

The following statement of the issues to be resolved at hearing reflects the discussion of the parties at the Pre-Hearing Conference (“PHC”) and further refinement by the Hearing Officer based on subsequent submissions of the parties.

- Issue # 1 Does the Student’s 2004/2005 school year placement at the Generali School provide the Student with a free and appropriate education in the least restrictive environment within the meaning of the IDEA and if not, should the Student be placed in another setting for the balance of the 2004/2005 school year?
- Issue # 2 Regarding toileting issues, are any modifications to the Student’s current IEP required and should the District engage a toileting specialist to provide more intensive supervision of the Student’s toileting program?
- Issue # 3 Should the Student’s IEP be modified to include provision of Berard Auditory Integration Training (“BAIT”) or Therapeutic Listening therapy?
- Issue # 4 In the period starting with the Student’s summer 2004 programming and continuing to date, has the District provided the Student with the Extended School Day (“ESD”) or after school programming required by his IEP and, if not, what relief should be afforded to the Student?
- Issue # 5 Starting with the Student’s ESY 2004 programming and continuing to date, has the District properly implemented Dr. Powers’ recommendations regarding programming to avoid gaps in service provision and, if not, what relief should be afforded to the

Student?

Issue # 6 Should the Student's current ABA provider/consultant be replaced?

Issue # 7 Will the proposed placement of the Student at the West Side Middle School for the 2005/2006 school year provide the Student with a FAPE in the LRE under the IDEA standard?

SUMMARY OF DECISION

The Student is 12 years old and has been diagnosed with Autism, Mild/Moderate Mental Retardation, Severe Expressive and Receptive Language Disorders, Stereotyped Movement Disorder, Pragmatic Disorder, Enuresis and Encopresis. His current in-district placement is no longer the least restrictive environment ("LRE"). To the extent that the proposed in-district placement for the 2005/2006 school year is essentially the same type of programming that the Student currently receives, that placement will also not be the LRE for the Student. In an effort to break what has become a problematic and unproductive status quo relationship between the parties regarding the Student's programming, the Hearing Officer directs that the parties undertake specific steps to identify an appropriate out-of-district placement for the Student to attend for the 2005/2006 school year and, if possible, starting prior to the 2005/2006 school year.

PROCEDURAL SUMMARY

This proceeding was commenced by the District by request for hearing dated November 29, 2004. (Exhibit HO1) The District sought a determination regarding its proposed plan to begin in the 2004/2005 school year the process for transitioning the Student from his current in-district placement at the Generali School to the proposed in-district placement at the West Side Middle School for the 2005/2006 school year. The District stated in its request that at a PPT convened on November 5, 2004, the Parents requested that the Student be transferred immediately from Generali School to an in-district placement at the Bunker Hill School for the balance of the 2004/2005 school year. All of these schools are Board public schools. The District stated in its hearing request that it disagreed with that request. The District reported further that there was a disagreement between the parties regarding implementation of certain recommendations made by Michael Powers, Psy.D., a consultant engaged on behalf of the Parents, and regarding the Parents' request that the Institute for Professional Practice ("IPP"), the District's current Applied Behavioral Analysis ("ABA") consultant, be replaced with another service provider. The District did not, however, appear to be requesting a hearing on those issues and instead reported that it anticipated that the Parents would commence due process to address those issues if they desired to do so.

Notwithstanding the commencement of this proceeding by the District, the parties had already scheduled a PPT for December 8, 2004 at which it was anticipated some if not all of the disputed issues could be resolved. That PPT was cancelled. When it became apparent that the PPT could not be rescheduled until late January 2005, a

telephonic Pre-Hearing Conference (“PHC”) was convened on December 22, 2004 to establish hearing procedures.

At the PHC, the Parents confirmed that they had issues regarding the Student’s educational programming and were considering commencing (but had not yet commenced) due process. In the interest of efficiency, the parties agreed that all of the issues that each party currently had regarding the Student’s educational programming could be resolved in this due process proceeding. In the course of attempting to schedule hearing dates, the Parents reported that due to their work schedules hearings would have to be scheduled to commence in the mid-afternoon. The Hearing Officer offered to conduct mid-afternoon to evening hearings. The District advised that its personnel could not be available for hearings that would commence in the mid-afternoon and continue much beyond the end of the school day. Given this apparent impasse and to enable a Final Decision and Order to be rendered in as timely a fashion as possible, both parties agreed to proceed with a hearing on the papers. Procedures for implementing the hearing were stated in the December 23, 2004 scheduling order.

The date for the issuance of the Final Decision and Order was extended from January 14, 2005 to and including February 21, 2005 by agreement, and then again to February 28, 2005 to accommodate the agreed-upon hearing schedule.

The District submitted documents that ultimately were marked as Exhibits B1-B43¹ and the Parents submitted documents marked as Exhibits P1-P54. At the PHC, the Hearing Officer advised the parties that he would treat all exhibits submitted as business records for evidentiary purposes. The Hearing Officer also advised the parties that he was taking administrative notice of: (1) the Final Decisions in two prior State of Connecticut Department of Education (“CTDOE”) special education due process cases involving the Student, DOE 01-280, *Student v. Waterbury District of Education* (October 12, 2001; Myers) and DOE 03-190, *Student v. Waterbury District of Education* (November 5, 2003; Kearns); and (2) provisions of the *Diagnostic and Statistical Manual of Mental Disorders – Edition 4 Text Revision* (“DSM-IV-TR”) published by the American Psychiatric Association, pertinent to the Student’s identified diagnoses.

On February 8, 2005, after reviewing the submissions of the parties to that date, the Hearing Officer sent each party a series of written questions and requested that each party supplement its presentation of the case with written answers. On February 17,

¹ In response to the Hearing Officer’s February 8, 2005 interrogatories to the parties, the Board submitted documents marked as follows: B29A (a second copy of the October 14, 2004 letter from Mr. Purdy to the Parents in CTDOE Case C05-007); B34 (Dr. Powers’ 1998 evaluation report); B35 (Dr. Powers’ 2001 evaluation report); B36 (November 2004 letter to Parents explaining performance ratings on IEPs); B37 (October 27, 2004 letter from Hlavacek to Dr. Powers); B38 (September 7, 2004 letter from Ms. Cullinan, Assistant Superintendent of Schools, to Mr. Purdy, regarding CTDOE Case C05-007); B39 (October 21, 2004 letter from Ms. Cullinan to Mr. Purdy, regarding CTDOE C05-007); B40 (documentation regarding progress on 2001/2002 IEP goals and objectives); B41 (IEP dated June 4, 2003 with progress on IEP goals and objectives through June 2004); B42 (IEP dated June 8, 2004 showing progress on goals and objectives through February 2005); B43 (February 3, 2005 letter from Mr. Purdy to the District regarding CTDOE Case C05-002).

2005, the Hearing Officer requested that the Board submit additional information regarding the Student's progress on his 2002/2003 and 2003/2004 school year IEP goals and objectives. Upon receipt of that material, the evidentiary record was closed on February 24, 2005.

The "testimonial" evidentiary record consisted of the assertions of fact set forth in the following submissions of the parties (collectively, the "Statements"):

- Parents' January 9, 2005 Statement of the Case
- Board's January 27, 2005 Statement of the Case
- Board's January 27, 2005 Statement of the Issues
- Board's January 27, 2005 Response to Parent Exhibits and Statements
- Parents' January 31, 2004 Response to the Board's Statement of the Issues
- Board's February 4, 2005 Response
- Parents' February 9, 2005 Supplemental Statement
- Board's February 15, 2005 Supplemental Statement

In submitting these Statements, the parties made the following attestation: "As to the statements of fact stated in this document, I have personal knowledge of the facts and make these statements of fact under the pains and penalties of perjury."

FINDINGS OF FACT

Factual assertions of the parties in their Statements are treated as testimony of the party for evidentiary purposes. Various Findings of Fact and Conclusions of Law reached in the Final Decisions in DOE 01-280 and DOE 03-190 are incorporated as Findings of Fact in this Final Decision and Order. In 2004, the Parents filed a series of complaints with the CTDOE. Review of the CTDOE decisions regarding these complaints (*see* B27 – B32) reveals that many of the issues raised by the Parents in this proceeding were also the subject of complaints to the CTDOE and that essentially all of the documentation reviewed by the CTDOE in responding to those complaints has also been submitted in this proceeding by one or both of the parties. The Hearing Officer has incorporated herein as Findings of Fact various of the determinations made by the CTDOE as to those complaints.

A citation to a specific piece of evidence in support of a Finding of Fact or Conclusion of Law is not meant to suggest that that "testimony" or document is the only evidence supporting that Finding of Fact or Conclusion of Law. Rather, citations to specific evidence are for illustrative purposes and not meant to exclude any other admissible record evidence which also supports that Finding of Fact or Conclusion of Law. To the extent that any portion of this Final Decision states a Finding of Fact or a Conclusion of Law, the statement should be so considered without regard to the given label of the section of this Final Decision in which that statement is found. *See, e.g., SAS Institute, Inc. v. S. & H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985); *Bonnie Ann F. v. Callahan Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993).

A. Findings of Fact – General

1. The Student, currently 12 years old, has attended the District’s public schools throughout his entire academic career and is presently a 5th grader at the District’s Generali School. At all times over his academic career, the Student has been identified as eligible to receive and has been receiving special education and related services pursuant to the Individuals with Disabilities Education Act (the “IDEA”), 20 U.S.C. § 1401, *et seq.* and Conn. Gen. Stat. § 10-76, and the related CTDOE Regulations, under a classification of Other Health Impaired (“OHI”) based on a diagnosis of autism.² There is no dispute between the parties as to the Student’s diagnosis, or IDEA eligibility or classification. In addition to autism, the Student currently has been diagnosed with:
 - a. Severe Expressive Language Disability³
 - b. Severe Receptive Language Disability⁴
 - c. Pragmatic Disorder⁵

² The Court in *County School Bd. of Henrico County v. Z.P.*, 105 LRP 6113 (4th Cir. February 11, 2005), described autism as follows: Autism is a developmental disorder that affects a child’s ability to communicate, use imagination and establish relationships with others. Children with autism generally have significant deficits in language development, behavior and social interaction. One of the primary ways that children learn is through imitation of the actions and sounds that they see and hear. Autistic children generally have a greatly reduced ability to imitate and also lack normal joint attention skills (the ability to follow another’s gaze and share the experience of looking at an object or activity). Because these deficits affect the way autistic children learn and develop, to assist children with autism develop independence and personal responsibility, education must cover a wide range of skills or knowledge, including but not limited to academic learning, socialization, adaptive skills, language and communication and reduction of problem behaviors. In addition, when given the opportunity, many children with autism will engage in self-stimulatory behavior (referred to in the field as “stimming”). Stimming consists of repetitive patterns of behavior such as flapping of the hands, rocking back and forth, or repeating a word or a sound. Stimming is usually an “all-consuming” behavior that directly interferes with the child’s ability to appropriately engage in the environment and learn. Stimming behavior is self-reinforcing, which means that the more the autistic child engages in the behavior the more he or she wants to engage in the behavior. The Court’s description is consistent with information regarding autism as provided in the DSM-IV-TR (at 70-76).

³ The DSM-IV-TR (at 60-61) provides that an Expressive Language Disorder is not diagnosed if Autism is also diagnosed but may be diagnosed if Mental Retardation is present and the language difficulties that are evident are in excess of those usually associated with Mental Retardation. An Expressive Language Disorder is diagnosed when scores on standardized individually administered measures of expressive language development are substantially below those obtained from standardized measures of both nonverbal intellectual capacity and receptive language development. The disturbance may manifest with symptoms that include having a markedly limited vocabulary, making errors in tense, having difficulty recalling words or producing sentences with developmentally appropriate length or complexity, which symptoms interfere with academic or occupational achievement or social communication.

⁴ The DSM-IV-TR does not have a separate classification for Receptive Language Disability but at 63-64 describes a Mixed Expressive and Receptive Language Disorder. The diagnostic criteria are similar to that of an Expressive Language Disorder, with the additional features of the Receptive Language Disorder that the individual has difficulty understanding words, or sentences or specific types of words such as spatial terms.

- d. Stereotyped Movement Disorder⁶
 - e. Mild/Moderate Mental Retardation⁷
 - f. Enuresis⁸
 - g. Encopresis⁹
2. Michael Powers, Psy.D., of the Center for Children with Special Needs has been engaged as a consultant to the District IEP team for the Student. He has been following the Student since 1997 and performed evaluations of the Student in 1995, 1997, 1998, 2001 and 2004. He also visited the Student's placement at Carrington School in May 2003 and visited the Generali School program in June 2003 as part of planning for the 2003/2004 school year.

⁵ The DSM-IV-TR does not have a specific category identified as "Pragmatic Disorder" and the Hearing Officer is not familiar with this term. A search of the LRP database revealed no cases in which there was a diagnosis of "Pragmatic Disorder." As used by Ms. Mule in her March 5, 2004 report (B8 at 21-22), a Pragmatic Disorder appears to be a reference to an impairment in the ability to communicate socially and interact with others (e.g., impairment in turn-taking, make requests, comment, *etc.*).

⁶ The DSM-IV-TR (at 124) defines a Stereotypic Movement Disorder as repetitive, seemingly driven and nonfunctional motor behavior (*e.g.*, hand shaking or waving, body rocking, head banging, mouthing of objects, or self-injurious behavior) which markedly interferes with normal activities or results or would result in self-inflicted bodily injury requiring medical treatment, that is not better accounted for by a compulsion, a stereotypy that is part of a pervasive developmental disorder (such as autism), that is not due to the effects of a substance or a general medical condition and that has persisted for 4 weeks or longer. If Mental Retardation is present, the stereotypic behavior must be of sufficient severity to constitute a focus of treatment in and of itself.

⁷ The DSM-IV-TR (at 41-49) defines Mental Retardation as significantly subaverage general intellectual functioning accompanied by significant limitations in adaptive function in at least two defined skill areas (*e.g.*, communication, self-care, home living, interpersonal/social skills, use of community resources, self-direction, functional academic skills) that manifests prior to age 18 years. A person with Mild Mental Retardation has a measured IQ level of 50-55 to @ 70, typically develops social and communication skills during the preschool years and as teenagers can acquire academic skills up to approximately the 6th grade level. As adults, they typically achieve social and vocational skills adequate for minimum self-support. A person with Moderate Mental Retardation has a measured IQ level of 35-40 to 50-55. Individuals with Moderate Mental Retardation acquire communication skills during early childhood years and can benefit from training in social and occupational skills but are unlikely to progress beyond 2nd grade level in academic subjects. They can benefit from vocational training and with moderate supervision can attend to personal care. Most are able to perform unskilled or semiskilled work under supervision in sheltered workshops or in the general workforce.

⁸ The DSM-IV-TR (at 121) defines enuresis as the repeated voiding of urine into bed or clothes (whether involuntary or intentional) at a frequency of twice a week for at least three months (or in the presence of clinically significant distress or impairment in important areas of function), in an individual who is at least 5 years old (or the equivalent developmental level), which is not due to another medical condition or the ingestion of a substance such as a diuretic.

⁹ The DSM-IV-TR (at 118) defines encopresis as the repeated passage of feces into inappropriate places whether involuntary or intentional, on at least a once monthly basis for at least three months in an individual who is at least four years old (or of the equivalent developmental level), which is not due to another medical condition or the ingestion of a substance such as a laxative.

(B22; DOE 01-190, FF # 7-8)¹⁰ Ms. Mule, a Speech and Language Pathologist who is a colleague of Dr. Powers, has performed evaluations of and/or observed the Student in his program in March 2001, November 2003 and March 2004. Dr. Molteni, another colleague of Dr. Powers, consulted in September 2004 with the District regarding the Student’s toileting issues, and pursuant to the January 27, 2005 PPT will continue to consult regarding the Student’s toileting issues.

3. In his October 1995 report, Dr. Powers noted among other things: (a) The Student manifests significant weaknesses in socialization, social communication skills and social imagination. (b) Although the Student was then essentially non-verbal and could not follow simple one-step commands, he was “very stimulable for language” and is attentive when others try to get him to engage vocally. (c) The Student manifests multiple behavioral stereotypies, including toe-walking, excessive object mouthing and arm flapping. (DOE 01-280 FF # 3)

4. In his October 1995 report, Dr. Powers concluded that the Student’s then-current cognitive abilities were below average with “moderate” deficits of adaptive behavior. (DOE 01-280 FF # 4) The results of specific assessments administered are as follows:
 - (a) The Student (then 35 months old) achieved a mental age equivalent of 22 months on the Bayley Scales of Infant Development, a standardized assessment of cognitive and developmental functioning. Dr. Powers opined that that result may underestimate the Student’s abilities because foundation skills for learning (*e.g.*, imitation, direction following, matching-to-sample, etc.) were absent from his repertoire at the time.

 - (b) The Student achieved a score of 37.5 on the Childhood Autism Rating Scale (“CARS”), a measure of overt autistic symptomatology, placing him in the range of children who are “more significantly affected” by autistic symptoms.

 - (c) The Student attained the following results on the Vineland Adaptive Behavior Scales, an assessment of skill level in various domains.

Domain	Age Equivalent 1995 (Student is 35 months old)
Communication	9 months
Daily Living	16 months
Socialization	12 months
Motor Skills	23 months
Adaptive Behavior Composite	15 months

5. In this 1995 evaluation (DOE 01-280 FF # 5), among other things:

¹⁰ A citation in this format refers to a Finding of Fact in a CTDOE decision, in this case Findings of Fact 7 and 8 in DOE 01-190.

- (a) Dr. Powers recommended that the Student be provided an intensive applied behavioral analysis (“ABA”)¹¹ discrete trial instruction (“DTI”) program focused on establishing (i) imitation skills, (ii) a functional communication system using a Picture Exchange Communication System (“PECS”) to develop a broader vocabulary and specific strategies to access materials and activities that he wants from other people, and (iii) basic concepts such as matching and receptive identification of pictures. The program should provide a minimum of 4-5 hours per day of 1-to-1 instruction in school supplemented by 10 hours/week of programming at home. A full day, 6-8 week summer program would also be required to prevent regression of skills.
- (b) Dr. Powers stated that “close collaboration and regular contact between parents and school to assure consistency across environments” is critical to the “ultimate success of teaching efforts” with the Student.
6. In the 1995/1996, 1996/1997 and 1997/1998 school years, the Student attended the Board’s special education preschool program at “WS.” The Student’s services during a portion of the 1997/1998 school year were delivered by the CREC River Street School Autism Program, which was engaged by the District to provide technical assistance and program consultation to the District’s staff involved in providing direct services to children with autism. (DOE 01-280 FF # 6)
7. The Student was re-evaluated by Dr. Powers in February 1998 at age 63 months (5 years, 3 months). (DOE 01-280 FF # 7) Dr. Powers noted in that report (B34), among other things, that:
- (a) The Student continues to have difficulty in socialization, social communication and social imagination, with some gains noted since 1995.
- (b) The Student’s social recognition skills remain the greatest area of concern within the socialization triad. Dr. Power stated that the Student is more aware of other children now and less aloof and indifferent, but is likely to approach them for instrumental purposes and has difficulty initiating contact appropriately.
- (c) The Student uses approximately 300 words by parent estimate, but is difficult to understand at times due to articulation errors. He also manifests immediate and delayed echolalia.
- (d) Behavioral stereotypies remain, but are somewhat reduced from the prior evaluation.
- (e) The Student had made some important gains in learning style since 1995: “[The Student] literally has ‘learned how to learn.’ Imitation, matching, direction-following, etc.

¹¹ ABA is an iteration of the Lovaas Method which involves breaking down activities into discrete tasks and rewarding the child’s accomplishments. ABA commonly involves intensive one-on-one training for 30-40 hours/week, with instruction delivered through discrete trial methodology and an in-home component. *See, e.g., County School Bd. of Henrico County v. Z.P.*, 105 LRP 6113 (4th Cir. February 11, 2005).

skills are well established at this time . . . [The Student] becomes very stimulus bound and learns new information in the context within which it was taught and does not readily or easily transfer this learning to situations beyond the instructional setting.”

8. Comparing his 1995 and 1998 evaluation results, Dr. Powers concluded that the Student had made significant gains and that difficulties with language processing which negatively impacted performance in 1998 were likely due to inefficiencies in generalization and stimulus control. (DOE 01-280 FF # 8) More specifically:

(a) On the Leiter International Performance Scale (a measure of non-verbal reasoning and cognitive problem solving), the Student performed at age level, indicating average-for-age non-verbal reasoning and cognitive skills.

(b) Whereas the Student on the 1995 administration of the Stanford Binet Intelligence Scale (4th Ed.), did not obtain scorable results, or attained scores that were not meaningful indicators of performance, the Student on the 1998 administration attained a composite score of 78. Although the Student’s language processing and motor planning and processing difficulties interfered with “otherwise more capable performance,” Dr. Powers opined that over time, and with more active intervention to address these issues, the Student’s performance on measures such as the Stanford Binet would be expected to *improve*. The Stanford Binet assesses cognitive functioning across verbal reasoning, abstract visual reasoning, quantitative reasoning and short-term memory domains.

(c) On the CARS, the Student achieved a total score of 34, placing him in the range of children who are more mildly affected by symptoms of their autism. This is a “slight reduction” in overt autistic symptomatology over the 1995 result.

(d) On the Vineland Adaptive Behavior Scale, the Student showed significant gains in the Communication and Daily Living Skills domains, and the Adaptive Behavior Composite, and modest gains in the Socialization Skills domain, as follows:

Domain	Age Equivalent 1995 (Student is 35 months old)	Age Equivalent 1998 (Student is 63 months old)
Communication	9 months	35 months
Daily Living	16 months	33 months
Socialization	12 months	21 months
Motor Skills	23 months	41 months
Adaptive Behavior Composite	15 months	34 months

9. In his 1998 report, Dr. Powers recommended, among other things (DOE 01-280 FF # 9):

(a) That the Student’s special education program provide a minimum of six hours/day of service following an ABA model with integration with typically developing children as appropriate; a 1-to-1 instructional assistant throughout the day specifically trained in ABA teaching strategies; and continued participation by CREC.

- (b) That the Student's program incorporate specific strategies to address the Student's "compelling need" with respect to socialization and play skills.
 - (c) A comprehensive speech and language evaluation be performed.
 - (d) Implementation of strategies to intensively support emerging word identification and decoding skills.
 - (e) Reevaluation in two years to obtain updated information for treatment planning purposes.
 - (f) Regular meetings between the Student's service providers, Dr. Powers noted the importance to "effective instruction" for children such as the Student of close coordination of efforts between family, school and other service providers to support generalization training and ensure consistency across settings.
10. The Student attended a District public school ("RES") in the 1998/1999 and 1999/2000 school years. He was placed in a kindergarten class in both years. Notwithstanding Dr. Powers' 1998 recommendation, CREC was not involved in the Student's program in the 1998/1999 school year and in most of the 1999/2000 school year. CREC began providing services again to the Student in July 2000. (DOE 01-280 FF # 10-11)
 11. A June 1, 1999 occupational therapy report notes that the Student had made steady progress throughout the year; that his attention to task is improved by sensory input such as deep pressure; that he is now writing his name and words and starting to copy simple sentences from the board; that he is more aware of his environment; and that his short attention, constant energy, talking and need for daily sensory input affect his ability to initiate or complete classroom tasks independently and to remain focused on tasks. (DOE 01-280 FF # 12)
 12. A speech and language report prepared for a June 1, 1999 PPT indicates that the Student did *not* meet many of the goals established in his October 1998 IEP for improving receptive and expressive communication skills. The evaluator did note that the Student's ability to sit and wait, follow directions, focus and control his behavior improved significantly, such that the 1-to-1 aid during speech therapy was discontinued. (DOE 01-280 FF # 13) More detail regarding speech and language IEP goals and objectives for this school year, and the Student's progress in attaining them is stated as FF12A in Appendix A hereto.
 13. The Student's special education teacher prepared a progress report dated June 1, 1999. The report describes the Student's current functioning, but does not clearly state the extent to which the Student attained his goals and objectives set forth in the October 1998 IEP. (DOE 01-280 FF # 14) More detail regarding these IEP goals and objectives for this school year, and the Student's progress in attaining them is stated as FF13A in Appendix A hereto.

14. The Student's IEP for the 1999/2000 school year provided that the Student would remain at RES, again as a kindergartner and receive 10.75 hours/week of services in a self-contained classroom setting and 16.75 hours/week of services in regular classroom settings (afternoon kindergarten, physical education, recess and lunch). Other services included a full-time 1-to-1 instructional aide; team meetings; 2.5 hours/week of speech services; 0.75 hours/week of occupational therapy services; ESY services; 20 minutes/month consultation with an autism consultant; and 20 minutes/month of social worker services. (DOE 01-280 FF # 15)
15. During the 1999/2000 school year, the relationship between the Parents and the RES staff administering the Student's program deteriorated associated with Parental concerns regarding the implementation of the Student's program and the Student's progress. At a December 6, 1999 PPT, the RES staff proposed placement in another of the District's elementary schools as a potential solution. The Parents rejected the District's proposal at a PPT convened on January 3, 2000. The minutes note that a sensory integration assessment requested by the Parents was underway and that the District may commence due process to address its concerns. The District ultimately elected not to commence due process, however. Instead, a PPT was convened on April 10, 2000 to "clarify the direction to be taken for [the Student's] program." By this time, the parties had reached an agreement to develop a school- and home-based program to be provided by CREC to resolve the issues which had prompted the December 1999 and January 2000 PPTs. The sensory integration evaluation had not yet been completed. No changes were made to the Student's program. (DOE 01-280 FF # 17)
16. The sensory integration assessment was performed in March 2000 but the report was not issued until after the April 10, 2000 PPT. At the time of the evaluation, the Student was receiving 1.5 hours/week of occupational therapy and 2.5 hours/week of speech therapy as related services through the Board, as well as private occupational therapy. Among other things, the report noted: (a) That although the Student appears to be able to cope fairly well at home, he has difficulty coping in school due to the number of students in the classroom and the pace of instruction; and (b) that although the Student had the answers to many questions asked in the classroom, the present school situation is "over stimulating," the pace is "too fast for him" and the class size was "not appropriate for his needs;" and (c) that sensory integration and direct and indirect occupational therapy interventions should be incorporated into his program. (DOE 01-280 FF # 18)
17. Progress reports completed in May of 2000 indicate that once again the Student did not attain many of the goals and objectives set forth in the 1999/2000 school year IEP. (DOE 01-280 FF # 16) More detail regarding IEP goals and objectives for this school year, and the Student's progress in attaining them is stated as FF17A in Appendix A hereto.
18. A PPT was convened on May 1, 2000 to perform an annual review and develop goals and objectives for the 2000/2001 school year. The minutes report that the Parents had expressed concerns that "there has been little growth for [the Student over the past] year." The minutes also note that further direction was needed from CREC in developing the

- home-school program for the following school year. (DOE 01-280 FF # 19)
19. The goals and objectives developed for the Student for the 2000/2001 school year at the May 1, 2000 PPT were in many respects fairly modest. Notwithstanding the modest nature of those goals and objectives, the Student did not attain many of them. (DOE 01-280 FF # 20) More detail regarding these IEP goals and objectives for this school year, and the Student's progress in attaining them is stated as FF19A in Appendix A hereto.
 20. A PPT was convened on August 18, 2000 to review the Student's program for the 2000/2001 school year. (DOE 01-280 FF # 21) Among other things, the minutes note that:
 - (a) The Student was to receive a home/school program which included 4 hours/day at home with services provided by CREC and 2 hours/day at the District's Bunker Hill elementary school. The school component was expected to be in place in 2 to 4 weeks following an ecological evaluation by CREC.
 - (b) The PPT was to reconvene in early December 2000 to review progress. The District was to contact Dr. Powers to perform a re-evaluation of the Student by February 2001.¹²
 21. The Student started the 2000/2001 school year as a first grader attending the Board's Bunker Hill Elementary School. Due to a delay in the start of the Student's program, he did not receive occupational therapy services until October 25, 2000. He was provided an additional ½ hour/week of occupational therapy through December 2000 to make up for the lost time. That delay was due to CREC-related staffing issues. The PPT scheduled for December 14, 2000 was rescheduled. (DOE 01-280 FF # 22-24)
 22. A PPT was convened on January 4, 2001 to review the Student's IEP and progress to date at Bunker Hill Elementary School. No changes were made to the Student's program. (DOE 01-280 FF # 25) The minutes note the following, among other things:
 - (a) Based in part on CREC input, District staff recommended that the Student spend part of his day in the first grade classroom for academics and part of the day in kindergarten for socialization. The Parents rejected that recommendation. The Student had already spent 2 years in kindergarten and that the Parents wanted him to be socializing with children that were closer to his age.
 - (b) The Parents raised the issue of Dr. Powers' re-evaluation as agreed-upon in the August 2000 PPT, but were advised by the District that the only question that would be submitted to Dr. Powers was whether the Student should spend more time with kindergartners for socialization purposes.¹³
 23. Over the next several weeks, the parties attempted unsuccessfully to resolve the

¹² The District had failed to implement Dr. Powers' recommendation for a re-evaluation in 2000.

¹³ The scope of the evaluation was not so limited and in fact was to have been a re-evaluation of the efficacy of his programming.

disagreements that arose at the January 4, 2001 PPT. (DOE 01-280 FF # 26) The Parents ultimately commenced due process, which was resolved by a settlement agreement that provided, among other things, that the District would implement Dr. Powers' 1998 recommendations:

(a) Dr. Powers would perform a "full reevaluation" including psychological and achievement, as well as a consultation as to how to meet the Student's socialization needs. The settlement agreement expressly notes that there would be a delay in obtaining the reevaluation because of the waiting list for such evaluations at Dr. Powers' office.

(b) A language assessment was to be performed by Ms. Mule.

24. In March 2001, Ms. Mule administered a speech and language evaluation and concluded that the Student has a "Severe Receptive and Expressive Disorder" and "Pragmatic Disorder." (DOE 01-280 FF # 27) She noted the following in her report, among other things:

(a) Although the Student's IEP called for 1.5 hours/week of direct speech and language intervention, the Student had missed about six weeks due to the absence of a speech therapist and is now receiving 2.0 hours/week.

(b) The Student, who was 8 years old at the time, performed at an age equivalent of 3 years and 7 months on the Preschool Language Scale 3 – Auditory Comprehension section. His scores in 2001 showed an approximately 10 month improvement over his 2 year 9 month level score in a 1998 evaluation.

(c) The Student's performance on the Preschool Language Scale 3 – Expressive Language was an age equivalent of 2 years 5 months, an approximately 9 month improvement over his age equivalent score of 1 year 8 months in a 1998 evaluation.

(d) Although the Student communicates most frequently to regulate the behavior of others to meet his needs, he is also showing clear behaviors to access the attention of others and share attention jointly.

(e) The Student's articulation of words is showing very significant improvement since the last assessment and is now "near age appropriate."

25. Due to the District's failure to timely request the re-evaluation, Dr. Powers did not complete his re-evaluation until May 29, 2001, which was too late to make any changes for the 2000/2001 school year. (DOE 01-280 FF # 29) Dr. Powers reported the following, among other things:

(a) "[The Student's]" performance on the cognitive assessment portion of [this] evaluation identify abilities that are well below age expectations, and consistent with Mental Retardation in the mild range. Adaptive skills are significantly compromised as well."

- (b) Due to behavioral difficulties, the Student was referred to a child psychiatrist and was currently treated with Respiradol, which has been successful in reducing his anxious and repetitive behaviors.
 - (c) Social interaction and communication skills remain markedly delayed. Social recognition skills remain impaired.
 - (d) The Student is a vocal speaker using brief sentences to communicate his intentions. He makes requests, asks questions, affirms and negates generally in abbreviated forms. Both immediate and delayed echolalia remain. Pronoun reversals have diminished.
 - (e) He continues to manifest a variety of stereotypies and atypical reactions to sensory events.
26. Among other things, Dr. Powers' reported the following results of his 2001 re-evaluation of the Student (DOE 01-280 FF # 30; B35):
- (a) The Student attained a 64 composite score on the Stanford Binet. He continued to show scatter across subtests, but with "more compromise than was evident" in the 1998 evaluation. His verbal reasoning abilities were significantly compromised, and all subtests were significantly below age expectations. His ability as measured on the Stanford Binet, including abstract reasoning skills, is significantly lower than the 1998 evaluation, showing minimal gains since that time and "raising questions about the effectiveness of educational programs provided to him in the past three years."
 - (b) The Student achieved a nonverbal ratio IQ score of 64 on the Leiter International Performance Scale, corresponding to a mental age equivalent of 5 years 5 months. His chronological age at the time was 8 years 6 months. "This [score] identifies significantly sub-average functioning in this area, and highlights the broad-based learning challenges faced by this youngster."
 - (c) The Student earned a total score of 42 on the CARS, which places him within the range of children who are more significantly affected by symptoms of an Autism Spectrum Disorder. Comparison to the 1998 administration of this scale shows an increase in autistic symptomatology.
 - (d) The Student's scores on the Vineland Adaptive Behavior Scales administered in 2001 identify adaptive behaviors that are low in all domains. The results from this evaluation are set forth below, along with the results of the prior two administrations by Dr. Powers are as follows:

Domain	Age Equivalent 1995 (Student is 35 months old)	Age Equivalent 1998 (Student is 63 months old)	Age Equivalent 2001 (Student is 102 months old)
Communication	9 months	35 months	40 months
Daily Living	16 months	33 months	50 months
Socialization	12 months	21 months	30 months
Motor Skills	23 months	41 months	Not reported
Adaptive Behavior Composite	15 months	34 months	40 months

27. Dr. Powers made the following recommendations in his 2001 report, among other things (DOE 01-280 FF # 31-32):
- (a) The Student should participate in a full-day special education program providing a minimum of 35 hours per week of DTI following an ABA model, with emphasis on communication, cognitive, *pre-academic* and social interaction skill development. Dr. Powers stated his “concern[] that the combined public school-based and home-based program currently in place for him provides unnecessary transitions and inefficient use of instructional time across the day.” To address those concerns, Dr. Powers recommended a full-day center-based program that is highly structured. He specifically recommended an out-of-district placement at either the Locust Street program or Connecticut Center for Child Development (“CCCD”). Should the Student remain in the Board’s public schools, continued consultation with CREC is necessary.
- (b) Specific strategies to improve his social interaction skills, which are “significantly compromised.”
- (c) “Close collaboration” between the Parents, the District’s team and all related service providers, including a monthly team meeting to review progress and implement new strategies as needed.
28. On June 5, 2001, CREC staff reported to the Parents that an in-district placement at the Carrington School, a District elementary school, for the 2001/2002 school year was desirable for the Student because the Carrington program had fewer children and a greater emphasis on inclusion. CREC also reported that it did not have staff currently available to provide services to the Student for his summer ESY program. (DOE 01-280 FF # 33)
29. A PPT was held on June 14, 2001 to determine the Student’s programming for the 2001/2002 school year. (DOE 01-280 FF# 34) The IEP goals and objectives for this school year are stated as FF29A in Appendix A hereto. The results of Dr. Powers’ 2001 evaluation were not yet available.
30. A PPT was held on July 27, 2001 to review Dr. Powers’ 2001 evaluation. (DOE 01-280 FF # 35) The following was decided at the PPT:

- (a) The IEP for the 2001/2002 school year prepared on June 14, 2001 would continue in place, but the Student would attend Carrington rather than Bunker Hill. CREC will perform an ecological evaluation and a meeting between Carrington staff, CREC and the special education supervisor will occur prior to commencement of school for planning purposes.
- (b) The district staff rejected Dr. Powers' recommendation for an out-of-district placement. No details as to the basis for that decision was indicated in the PPT minutes.
- (c) The possibility of utilizing the services of the Institute of Professional Practice ("IPP"), another consultant engaged by the District to provide services to children with autism, rather than CREC, was discussed.
31. In light of CREC's potential staffing problems that were interfering or would interfere with the Student's program, and other issues, a PPT was convened at Parental request on August 10, 2001 to review the Student's placement for the 2001/2002 school year. (DOE 01-280 FF # 36) At that PPT:
- (a) The District staff determined that placement will be at "TS," another District elementary school, rather than Carrington School. The IEP provided for 14.0 hours/week of services in regular and self-contained classrooms and 10 hours/week of services at home, as well as 1.5 hours/week of occupational therapy, 2.0 hours/week of speech and language services and a 1-to-1 aid. The Student would spend 3.75 hours/week with typically developing peers.
- (b) The Parents requested placement at CCCD. That request was rejected.
- (c) The issue of how to handle teacher/aide absences was discussed, but the resolution was not reported.
32. In the 1999/2000 and 2000/2001 school years, the Parents raised various concerns with the District as to the Student's program (DOE 01-280 FF # 37) as follows:
- (a) The District failed at times to adequately supervise or monitor the Student while he is on school property, resulting in occasional physical injuries to the Student.
- (b) The District failed to adequately train, supervise and/or monitor the 1-to-1 aide assigned to the Student, with the result that the Student's ability to benefit from his educational program has been impaired.
- (c) High turn-over of staff assigned to work with the Student, including but not limited to the staff provided by CREC, resulted in impairment in the Student's ability to benefit from his educational program.
- (d) The District failed to assure that adequate staff is available to deliver the Student's special education program, with the result that the Student's ability to benefit from his

educational program has been impaired. Failure to assure that staff providing services to the Student arrive on time and remain with the Student throughout his day.

(e) The District failed to assure that CREC would be able to commence delivering special education services to the Student at the beginning of the 2000/2001 and 2001/2002 school years, with the result that the Student's progress in his special education program has been impaired.

(f) The District inappropriately delayed or cancelled PPTs based on the availability of the Board's counsel to participate, resulting in further delay of resolution of issues concerning the Student's special education program.

(g) The District, at times, made inappropriate or excessive use of food as a reinforcer, to the extent that the Student became physically ill on occasions.

(h) The District, at times, made inappropriate use of videos as a means of occupying the Student's time.

33. Although the District made efforts to address these concerns, those efforts had not been successful and continued to adversely impact the Student's educational program leading the Parents to commence DOE 01-280. As a general matter, the issues before this Hearing Officer in DOE 01-280 were whether the in-district placement proposed by the District for the Student for the 2001/2002 school year was appropriate and, if not, whether an out-of-district placement at CCCD was an appropriate placement. In DOE 01-280:

- a. At the outset of the hearing the District stipulated: (1) That the in-district program it had offered for the 2001/2002 school year was not appropriate to meet the Student's educational needs; and (2) That an out-of-district placement for the Student for the 2001/2002 school year at CCCD was an appropriate placement for the Student.
- b. This Hearing Officer concluded that, even absent the District's stipulation, the record evidence supported a finding that the program offered by the District to the Student for the 2001/2002 school year would not provide the Student with FAPE in the LRE. (DOE 01-280 COL 2)
- c. This Hearing Officer concluded that the record evidence supported a finding that placement outside of the district in a therapeutic day program specializing in the treatment of children with autism was the LRE for the Student at that time, due primarily to the Student's lack of progress in the 2000/2001 school year and the results of Dr. Powers' and Ms. Mule's 2001 evaluations. (DOE 01-280 COL 3)
- d. This Hearing Officer found that the District failed to timely obtain an agreed-upon reevaluation of the Student by Dr. Powers, with the result that the Student's special education program for approximately half of the 2000/2001 school year could not be adjusted to reflect the findings of the reevaluation, which showed significant decreases in performance and skill level over prior evaluations. (DOE 01-280 FF #

38)

- e. This Hearing Officer found that over the five year period preceding October 2001, due in substantial part to instability of CREC's staffing, the primary staff member responsible for the Student's program has changed 9 times and the Student had attended 3 different District schools. (DOE 01-280 FF # 39)
 - f. This Hearing Officer found, the Student made little progress in his special education program in the 2000/2001 school year, a program with relatively modest goals and objectives. (DOE 01-280 FF # 40)
 - g. This Hearing Officer found that the Student was then currently too young to attend the Locust Street program recommended by Dr. Powers and could not attend CCCD because of limitations expressed by CCCD. (DOE 01-280 FF # 41-43)
 - h. This Hearing Officer found further that: "There is a breakdown in communication between the district teaching and administrative staff and the Parents, such that neither party appears to fully understand at times what the other party is seeking or agreeing to. These communication issues have adversely impacted the Student's educational progress, particularly in the past school year, and are becoming more severe. The District overall has made a substantial effort to work with the Parents to address their concerns as those concerns have arisen, but full resolution of those concerns has been hampered by these communication problems." (DOE 01-280 FF # 44)
 - i. This Hearing Officer concluded further that during the 2000/2001 and 2001/2002 school years, the District had contracted with CREC to provide special education services to the Student pursuant to the IEP but "failed to adequately discharge its obligation to monitor the services being offered by CREC to assure that those services comply with the requirements of the IEP, and to timely take steps to correct deficiencies on a consistent and longer term basis." (DOE 01-280 COL 4)
34. Both the District and the Parents were aware that CCCD had no openings for the Student. Accordingly, the District acknowledged that its stipulation would leave the Student in the proposed in-district placement rejected by the Parents and leave the issues raised by the Parents unresolved. The Final Decision and Order in DOE 01-280 reflected in part an agreement of the parties as to how to proceed in light of the District's stipulation. Given these circumstances, the Final Decision and Order in DOE 01-280 provided, among other things, that:
- a. (DOE 01-280 Order 1) To the extent the Parents still desire to have the Student placed out-of-district for the 2001/2002 school year (defined to include the summer of 2002), the Parents and the District were directed to continue their efforts to identify a suitable out-of-district placement for the Student.
 - b. (DOE 01-280 Order 2) Pending placement of the Student out-of-district, the:

- (1) The Student is to attend Bunker Hill School as a second grader. If the Parents request placement at Carrington School, the parties will in December 2001 reassess the suitability of Carrington School as a placement such that the Student can begin attending Carrington School at the commencement of the third quarter of the school year if such placement is appropriate.
 - (2) CREC will continue to provide consultative services to the District and services to the Student as set forth in the IEP.
 - (3) A 1-to-1 instructional aide who is not a District employee will be provided at District expense for the Student at all times in which the Student is participating in the special and regular education programs.
- c. (DOE 01-280 Order 3) By no later than October 12, 2001, the District and the Parents were to jointly request that Dr. Powers provide a written report to the parties as to: (a) the adequacy of the IEP goals for the Student for the 2001/2002 school year as set forth in the July 27, 2001 IEP (and any subsequent modifications to those goals made prior to October 12, 2001, if any); and, (b) specific educational, behavioral and other goals to be set and strategies to be implemented with the Student in his in-district placement, in light of the findings made by Dr. Powers in the February 2001 reevaluation.
 - d. (DOE 01-280 Order 4) For the period through the end of the 2001/2002 school year the parties were to meet regularly and frequently to review the Student's progress in meeting IEP goals and assure that the Student is receiving appropriate services while in an in-district placement.
 - e. (DOE 01-280 Order 5) For the 2001/2002 school year the District would make available to the Parents at District expense a qualified individual to act: (a) as an ombudsman and advocate for the Parents with respect to the Student's special education program; and (b) as a liaison between the district staff providing services to the Student and the Parents.
 - f. (DOE 01-280 Order 6) During the 2001/2002 school year, and to the extent that the Student is in an in-district placement, the District is to implement steps necessary to assure that CREC is adequately staffed to provide the Student's special education program, and that CREC is timely and consistently delivering its services under the IEP. The Order also provided that if CREC is unable or unavailable to provide the required services, the District is to act expeditiously to engage another consultant to do so. If the Parents agree, that consultant could be IPP.
35. The IEP developed for the Student at a January 8, 2002 PPT for the balance of the 2001/2002 school year (B2) provided, among other things, that the Student would be placed at the Carrington School with special instruction in a learning center placement, with Occupational Therapy and Speech and Language/communication services, and mainstream

participation for homeroom, lunch, recess, art, music, physical education, library, social studies and science. The goals and objectives are stated in FF29A in Appendix A.

36. The quarterly reports of progress on IEP goals and objectives for the 2001/2002 school year were not available and are therefore not included in the record. Documentation regarding the Student's progress in this school year was provided in the form of year-end teacher narrative progress reports, which provide as follows:
- a. In a May 2002 Occupational Therapy progress report (B3 at 34), Ms. Riesbeck reported that the Student's attention had improved but remains inconsistent. He can attend to a visual motor task for 8-10 minutes in a 1:1 environment, but while in a group setting his attention span varies and he is often distracted by visual and auditory stimuli. He continues to mouth non-edible objects. "It is difficult to judge [the Student's] optimal level of arousal and he can be easily over-stimulated." She noted that he transitioned smoothly into the Carrington School environment in mid-year. He has made progress in writing and will independently erase mistakes in his letter formation.
 - b. In Reading, the Student was "continuing to complete reading assignments in the Edmark Program to master the reading of vocabulary words presented. He answers basic 'who' questions and 'what' . . . questions with one word answers." He needs to be prompted to complete reading assignments and has been able to master in isolation various consonant and long vowel sounds using picture prompts. (B40)
 - c. In Math, the Student was reportedly able to add and subtract single digit numbers and double digits without renaming, has begun to use a calculator with "good accuracy" and can identify and add pennies, nickels and dimes up to \$0.25 and add sums of like coins up to \$1.00. (B40)
 - d. The Student was mainstreamed in a regular second grade class for science and social studies. His teacher reported that he participated to the "extent he was able to" in hands-on activities, had difficulty following assignments and oral discussions of written text. (B40)
 - e. His "perceptual progress" report stated that he needs simple auditory directions that must be repeated and he must be prompted to complete a task. He responds to some visual cues but may need to be prompted to focus on the cue. (B40)
 - f. In Language Arts, the Student was reportedly able to copy from the board and write simple sentences with prompting and some assistance to formulate the sentence. (B40) In Spelling, the Student was making "nice progress" taking spelling tests of five sight words every other week, and his long term memory for spelling these words was "beginning to develop." (B40)
 - g. The Student reportedly uses mostly one word answers and phrases to express himself and has been initiating conversation more often with his peers and teachers.

(B40)

- h. Recent medication adjustments were noted to have made it more difficult for the Student to concentrate and focus. (B40)
 - i. With the assistance of an aide to keep him on task or give him a break, the Student was able to participate in mainstream 2nd grade art, music and physical education. (B40)
37. The Student's IEP for the 2002/2003 school year was developed at PPTs convened on June 5 and June 12, 2002. (B3) The goals and objectives for this school year are stated as FF37A in Appendix A. There is no data in the record to indicate the Student's success on achieving these goals and objectives other than with respect to his Occupational Therapy components (all goals mastered) and the findings of Hearing Officer Kearns in CTDOE 03-191, set forth below.
38. In making his determination regarding a series of complaints filed by the Parents with the CTDOE in 2004 (discussed subsequently herein), Mr. Purdy found that the Parents had participated in every PPT convened for the Student between December 6, 2001 and June 8, 2004 and did not reject any of his IEPs based on concerns regarding the Student's educational placement. (B27 at 3-6) Based on his own review of the documentation submitted in this case, the Hearing Officer concurs with the following conclusions reached by Mr. Purdy:
- a. The Student started the 2001/2002 school year at his home school (Bunker Hill).
 - b. A PPT was convened on December 6, 2001 PPT to implement the Hearing Officer's decision in DOE 01-280. The minutes indicate that the District was properly and timely implementing the terms of the Final Decision and Order in DOE 01-280, as agreed. The parties discussed alternative placements at the Carrington School and at the Generali School, and arrangements were made for the Parents and the Student's then current ABA consultant ("CREC") to visit those programs. The District also agreed to continue efforts to identify an out-of-district placement and present potential options to the Parents. (B27 at 3-6; B1)
 - c. A PPT convened on January 8, 2002 determined to remove the Student from Bunker Hill and place him at Carrington School starting on January 15, 2002. (B27 at 3-6, B2)
 - d. The Student remained at Carrington School through the 2001/2002 and 2002/2003 school years. (B27 at 3-6) The 2002/2003 school year placement was the subject of PPTs convened on June 5, 2002 and June 12, 2002. (B3) The transition from CREC to IPP as the service provider was discussed at these PPTs, as was Parental concern that the Student did not receive all of his scheduled services. The District staff also discussed the "Generali model" with respect to programming for the Student at Carrington.

- e. A PPT convened on June 19, 2003 determined that the Student should be placed at Generali School for the 2003/2004 school year. The decision to place the Student at Generali School coincided with Dr. Powers' conclusion that a placement at Generali School would best meet the Student's then-current educational needs. (B27 at 3-6)
39. As part of the process for determining the Student's placement for the 2003/2004 school year, Dr. Powers observed the Student's program at Carrington School in May 2003 and observed the District's autism program at the Generali School in June 2003. (B7 at 38)
40. The minutes of a June 19, 2003 PPT (B4) note that the team would reconvene after August 27, 2003 to discuss and consider Dr. Powers' report as to his observation of the Carrington program. The minutes note further that the Student would attend the Generali School in the 2003/2004 school year, that IPP would continue to provide services to the Student, and that as outlined in the Final Decision in DOE 01-280, monthly team meetings would continue. The minutes also defined the Student's 2003 ESY programming hours and providers.
41. IPP currently serves as a consultant to the District and oversees the District's special education programming for children classified as autistic. IPP provides a behavior therapist who works with the child on a 1:1 basis for all aspects of the child's program.¹⁴ IPP provides a clinical supervisor who oversees the work of the behavior therapist. The therapist, clinical supervisor, school staff and parents meet and consult weekly and monthly to assess, review and implement the Student's program in the school setting. The behavior therapist uses ABA/DTI methodologies. (DOE 03-190, FF# 2)
42. IPP first began providing services to the Student in the 2002/2003 school year while he was in a third grade classroom at Carrington School. During the 2002/2003 school year, the Student's IPP clinical supervisor was Marcia Nunez. In her June 4, 2003 progress report (P2), Ms. Nunez indicated the following, among other things:
- a. IPP provides full time services to the Student with a 1:1 aide.
- b. The Student is in a third grade classroom for homeroom, lunch, recess and specials. He is able to follow the classroom routine when prompted.
- c. He receives ABA services "in the back of a learning center classroom" and "[w]henever appropriate . . . is also included in the learning center activities, such as calendar, spelling, snack . . ."
- d. The Student has made "great progress in the reading, math and communication areas this year." The Student "will benefit from discrete trial instruction for next year." "Academically, he has demonstrated to be a fast learner and he has also shown generalization skills."
- e. The Student still exhibits "high rates of inappropriate behavior." Verbal redirection is

¹⁴ In the 2004/2005 school year, the District hired Behavior Therapists who began providing this service.

being used when the Student engages in target behaviors, but the data do not show “significant decrease in those behaviors” and a new intervention strategy will be utilized.

43. Hearing Officer Kearns, in DOE 01-190, found as follows, among other things:
- a. As of the end of the 2002/2003 school year, the Student had made progress in his program. The Student was able to stay on task, follow instructions of his behavior therapist, use language to communicate, speak in six and seven word sentences, ask “WH” questions, use language spontaneously, learning to discriminate auditory questions and distinguish social questions, able to far point copy independently, had increased his sight word vocabulary by 50 words, and could add one column of numbers independently. (DOE 03-190, FF # 4)
 - b. As of August 2003 (the close of the evidentiary record in DOE 01-190): (1) The Parents were reporting that the Student was continuing to urinate in his pants at school, to throw-up, and to put his knees and elbows in the toilet. (2) IPP and the District staff were having some success in addressing the toileting accidents. (3) At the time it was thought that the Student’s throwing up may be related to an allergy. (DOE 03-190, FF # 5, 18)
 - c. The Generali School program was “selected with Dr. Powers’ approval because it services children who are older and more advanced than the Carrington preschool program.” Dr. Powers had recommended that the Student attend the “larger more comprehensive program IPP provides at the [District’s] Generali School” and concluded that “IPP provides a well organized, comprehensive, delivery model with well trained staff, utilizing behavior analytic teaching strategies and evaluation methods which are consistent with exceptional practice.” The Parents and the District were in agreement with the placement at the Generali School for the 2003/2004 school year. (DOE 03-190, FF# 13, 15, COL 8)
 - d. The Parents were reporting toileting accidents occurring in the home. Dr. Powers recommended an in-home service component for the Student. The Parents rejected offers of in-home service provision by IPP apparently based on a past negative experience with another provider. (DOE 03-190, COL 13, 20)¹⁵
44. The Student’s 2003/2004 school year (4th grade) program was provided at the Generali School through IPP under the direction of Ms. Mazaleski. The program provided for integration activities for homeroom, specials and lunch. A 4th grade learning center was available for support. Monthly meetings with IPP staff were conducted. Speech and language services two hours per week and occupational therapy services for 1.5 hours per week were provided. ESY services were provided at in-district programs supervised by IPP staff and followed school-year instructional practices and protocols. (B22) The Student’s IEP goals and objectives for this school year, and his progress in attaining

¹⁵ It does not appear from the Decision in DOE 01-190, that Dr. Powers testified in that case.

them is stated as FF44A in Appendix A.

45. On November 14, 2003, Ms. Mule observed the Student at his program at Generali. She reported (B7 at 38-43) the following, among other things:
- a. The Student presented as a child who worked most effectively and efficiently within the structure provided in DTI teaching. He is showing “good growth in verbal expression and grammar skills, and this is evident in his writing skills, yet he had difficulty using his skills to initiate a mand, often resorting to simply attempting to continue in the environment or to making a noise such as squealing instead of initiating. With verbal prompting, he immediately used sentence-length utterances to make his request known and calmed down. [The Student] also seemed to have difficulty with sequences involved in everyday tasks and maintaining the sequence and following tasks to completion.”
 - b. The Student responds “extremely well to cueing and prompting and could work in a group setting with one other student with a one-to-one ratio with minimal cueing to maintain focus. He [made] several spontaneous comments during the day.”
 - c. The Student’s “program was very attuned to [his] needs with the pace of instruction and nicely appropriate objectives. All the instructors were very aware of [the Student’s] strengths and needs and problem-solved in an ongoing manner throughout the day quickly and effectively to help him benefit maximally from the learning environment.”
 - d. Food and the “social reinforcement of people” are effective reinforcers for the Student.
 - e. To reduce or eliminate stereotypic behaviors, a protocol had been implemented in which the Student was required to move checkers on a checkerboard. However that program was reported by staff to interfere with the Student’s work at times. Ms. Mule noted that although the program was not effective in all settings, the protocol appeared to effectively help the Student regain his focus in the speech therapy.
 - f. The occurrence of stereotypical behaviors and ability to function independently were the two greatest concerns identified by the staff.
 - g. The Student reportedly has difficulty going to his cubby, getting a pencil and returning without losing focus. The staff have implemented protocols involving interrupting or sabotaging the Student’s access to needed materials to encourage him to request them independently.
 - h. Ms. Mule described a task in which the Student was asked to sequence three pictures. He was able to describe the pictures with “good sentences” but apparently not able to sequence them. Ms. Mule recommended using written sequence words

(first, next, last) to give the Student the idea that there was a sequence from picture to picture.

- i. She described as an “excellent strategy” the use of a journal to assist with verbal language development and recommended gradually decreasing the prompting the Student needed to write.
46. B6 at 8 is a prescription dated January 5, 2004 from the Student’s pediatrician indicating that the Student’s urine accident problems were behaviorally rather than medically-based. (B6 at 8)¹⁶
 47. By letter dated April 8, 2004, the Student’s pediatrician requested that the District consider a placement other than at Generali because the Student was experiencing behavioral issues and anxiety that the Parents believed was related to the placement at Generali. (B6 at 7)
 48. By letter dated April 13, 2004, Ms. Mazaleski and Ms. O’Brien reported that the Parents had rejected the following offered services: (1) home visit by Ms. O’Brien and Ms. Brenner [apparently speech and language related]; (2) Parent training for speech at school by Ms. Brenner; (3) Observation by the Parent at school of the Student’s program with Ms. O’Brien and Ms. Brenner; (4) Parent training by Ms. O’Brien at home or at school; and (5) notebook review at a time other than the team meetings. Ms. Mazaleski and Ms. O’Brien advised that if the Parents changed their mind and opted to take advantage of these services in the future, they were free to do so. (B6 at 6)
 49. A PPT was convened at the request of the Parents on April 15, 2004. The minutes (B6) note the following, among other things:
 - a. The Parents requested that the Student be permitted to return to Carrington School. The District staff stated that this was “not an option” and proposed another in-district placement which the Parents refused. The parties agreed to investigate a placement at Bunker Hill School.
 - b. The concern leading the Parents to request a change of placement was identified as toileting-related. The Student was arriving at home having had a toileting accident either while at the ESD program or on the bus ride home. The possibility of changing the Student’s transportation to shorten his ride was discussed.
 - c. The Parents requested a residential out-of-district placement. The District rejected that request, stating its view that the placement at Generali with IPP satisfied FAPE in the LRE requirements for the Student based on Dr. Powers’ report.
 50. On May 3, 2004, Marie Mancini of Therapy Unlimited performed an occupational therapy evaluation of the Student who was referred due to concerns with “sensory integration and

¹⁶ It is not clear when this was presented to the District, but it was included in the materials for the April 15, 2004 PPT.

social skills.” In her report (P11), she stated as follows, among other things:

- a. The Student is having difficulty “modulating auditory information in his environment” and “disregarding irrelevant auditory information.” “He will cover his ears to protect them from sound and he is distracted and has trouble functioning if there is a lot of noise around.”
- b. The Student should continue to receive occupational therapy in school on a weekly basis as well as once weekly outpatient occupational therapy. A “sensory diet” should be introduced, as well as deep pressure and proprioceptive technique (brushing followed by joint compression).
- c. An auditory evaluation should be performed to determine “*if* any binaural discrepancies exist. *If significant discrepancies* are noted thereafter, consideration of a listening program to facilitate language and decrease sensory defensiveness. *Options can include* Therapeutic listening or auditory integration training (AIT).” (Emphasis added.)

51. On May 7, 2004, the Parents filed a complaint with the CTDOE, identified as C04-096 and assigned to Mr. Purdy. Mr. Purdy reported as follows on June 25, 2004 (B27):

- a. The Parents alleged that Generali School is not the Student’s “neighborhood school,” is on the other side of town from the Student’s home, that the District is refusing to allow the Student to attend his neighborhood school, that the District wants the Student to attend Generali School because it houses an ABA program for autistic children, and that the Parents “reluctantly agreed to the placement at Generali School for the 2003/2004 school year.” As to these claims, Mr. Purdy concluded that no corrective action was required. Mr. Purdy found that the Parents had participated in every PPT convened for the Student between December 6, 2001 and June 8, 2004 and did not reject any of his IEPs based on concerns regarding the Student’s educational placement, including his 2003/2004 placement at Generali. (B27 at 3-6, 9)
- b. The Parents alleged that during the 2003/2004 school year, the Student was routinely spending more than one hour on the bus being transported to and from school and that the aides on the bus were not sufficiently trained. Mr. Purdy noted that the Parents began raising these issues in April 2004 at monthly team meetings. An April 15, 2004 PPT recommended placing the Student on a special bus resulting in a shorter drive time to school and that change was made. Mr. Purdy noted that the District reported that the Student was spending 40 minutes on the bus but that the bus company reported that the Student was spending anywhere from 45 to 55 minutes on the bus. Mr. Purdy concluded that there was insufficient evidence to establish that the Student was routinely spending more than one hour on the bus during that school year. The issue of training of the bus aides was addressed at a June 8, 2004 PPT meeting. No corrective actions on these allegations were required. (B27 at 6-10)
- c. The Parents alleged that the Student was not receiving all of the services, including

hours of service, during the 2003/2004 school year as provided by the applicable IEP. Mr. Purdy concluded that that claim was not substantiated. No corrective actions were required. (B27 at 14-15)

- d. The Parents alleged that the District had not responded properly to the Student's problems with toileting in the 2003/2004 school year. Mr. Purdy found that these concerns were discussed at monthly team meetings over the course of the 2003/2004 school year and were first presented at a PPT convened on April 15, 2004. The April 15, 2004 PPT was the first PPT convened following the June 19, 2003 PPT. The District reported that the Student had had "on average one accident per day (with numerous zero days interspersed) up until March 2004" and that following the Student's return from the April 2004 break, the Student began having on average two accidents per day. Modifications to his toileting program resulted in a reduction of the number of accidents, with data from the period May 2, 2004 through June 2, 2004 showing 8 consecutive program days with zero accidents. No corrective actions were required on this issue. (B27 at 16-19)
52. By letter dated June 2, 2004, Dr. Powers transmitted to the District his report of a March 25, 2004 evaluation of the Student completed as part of the Student's triennial review. (B22; B7 at 44-52) The report states the following, among other things:
- a. The Student needed frequent redirection and refocusing for the structured portion of the evaluation and his performance was interrupted by humming and other verbal stereotypies. "This particular issue has been of concern in school and at home historically, and interferes substantially with participation in a wide range of activities." (B22 at 2)
 - b. Social interaction and communication skills remain areas of considerable need for the Student. Social communication skills are improving in some areas, but continue to be significantly compromised. Eye contact is better than in the past and he will engage briefly visually when his name is called. His interest in communicating is instrumental. Once the need which prompted the communication has been satisfied, the interaction will generally end. "His reciprocal conversation skills are brief, highly functional and instrumental and generally poor." (B22 at 30)
 - c. Social recognition skills are the area of "most dramatic need" for the Student. He is aloof and indifferent with other children. (B22 at 3)
 - d. Immediate and delayed echolalia have been prominent concerns historically for the Student and are interfering with his performance and interactions. (B22 at 3)
 - e. The Student continues to engage in a range of motor and verbal stereotypies and repetitive patterns/habits that interfere with his participation in a wide variety of situations. Hand flapping continues, as does pacing, self-observation in the mirror and mouthing items. In low structure situations, verbal stereotypies are excessive. He will hum (sometimes recognizable tunes), laugh and screech without provocation.

“It is very hard to disengage him from these behaviors once they have begun, although distraction is the most typical strategy that has been successful. Differential reinforcement of more appropriate responding (quiet mouth, appropriate talking, etc.) is part of the treatment plan in school but has not been broadly successful in reducing this behavior substantially to very low rates.” He continues to be “excessive” in his needs for sensory feedback, particularly deep pressure and frequent proprioceptive feedback. A variety of behavioral challenges have been addressed over the past year including vocal stereotypies, grabbing hands of others and scratching and disruptive behavior (such as clearing table of items). (B22 at 3-4)

- f. Toileting has become a more recent issue, and urine accidents are frequent. They are occurring both at home and at school (with somewhat less frequency in school). BM accidents do not occur as often, but are still occurring. The toileting procedure incorporated into his school program includes schedule training but without benefit of positive practice overcorrection, restitutional overcorrection or the use of a urine signaling device. The Student wears a pull-up to bed and awakens wet most mornings. (B22 at 4)
- g. The Student attained a Test Composite score of 55 on the Stanford Binet Intelligence Scale (4th Edition) with the results indicating cognitive compromise approaching the moderate range of mental retardation. The Student had difficulty answering WH questions posed to him during the evaluation, even those that have been taught to him specifically in DTI. That result indicated to Dr. Powers that what the Student is learning in direct instruction is highly stimulus bound mastered in the context of direct instruction but less thoroughly more comprehensively generalized beyond that setting. (B22 at 45)
- h. The Student attained the following results on the Vineland Adaptive Behavior Scales, with the Parents reporting. (B22 at 6) At the time, the Student was 11 years 3 months old (or 135 months old).

Domain	2004 Administration Age Equivalent
Communication	45 months
Daily Living	49 months
Socialization	24 months
Adaptive Behavior Composite	39 months

All of these scores are low, with particular concern surfacing with respect to Activities of Daily Living which are substantially below age level expectations and are cause for continuing concern for community- and home-based habilitation over the next several years and upon exiting the public school system.

- i. On the CARS, the Student achieved a total score of 42.5 which places him in the range of children who are more substantially affected by the symptom of an autism spectrum disorder. (B22 at 6)

- j. The Student requires visual context cues, “remarkable structure and consistency in the development of instruction,” the use of straightforward reinforcement-based systems for teaching, and errorless discrimination teaching strategies and procedures when mastering new information. “He is highly stimulus bound and context dependent in his learning.” He continues to require that all tasks be broken down into small units, mastered individually and taught sequentially. (B22 at 6)
 - k. Based on his evaluation, Dr. Powers diagnosed the Student as follows: Autistic Disorder, Mental Retardation (Mild/Moderate), Stereotyped Movement Disorder, Enuresis and Encopresis. (B22 at 7)
 - l. Dr. Powers concluded overall as follows: The Student manifests a “very complex neurocognitive profile that is further challenged beyond Autism by significant communication, motor stereotypy and daily living difficulties. His performance on the cognitive assessment portions of [the] evaluation identifies skills that are well below age expectations, in the Mild/Moderate range of Mental Retardation. Adaptive behaviors are compromised even further. [He] will continue to require a highly specialized, comprehensive educational program to address his needs. (B22 at 7)
 - m. Dr. Powers stated further: “At the present time, I believe that the *opportunities available to [the Student] for integration are less prominent and will likely be less successful unless basic learning readiness skills, interfering stereotypies, etc. are addressed. Given his age, all of these issues place him at risk for outplacement if left unaddressed*, and I would strongly encourage the team to make every effort to help [the Student] reverse this process.” (B7 at 52) (Emphasis added.)
53. Dr. Powers made the following recommendations (B22 at 7-8; B7 at 51-52):
- a. The Student should be enrolled [for the 2004/2005 school year] in a full-year specialized program for children with Autism that utilizes ABA teaching principles, strategies and procedures. Many of the desired features are present in the program at the Generali School and it will be “essential that such elements continue in order to address procedural consistency, fidelity and integrity.” The Student’s school program should comprise at least 30-35 hours per week with additional services for ESY (full-day in the summer for 7-8 weeks maintaining all instructional objectives, teaching strategies and staff during the school year). “In addition, given the significant risk for regression and behavioral disruption due to the absence of programming time I would strongly recommend that no more than three consecutive days be without direct programming for [the Student].” The Student’s program should provide habilitation training on days when school is not in session, “but given his advancing age, extensive needs and significant behavioral challenges, I believe that the absence of such a more comprehensive, wrap-around¹⁷ set of services will

¹⁷ It is unclear whether the use of the term “habilitation” and “wrap-around” services refer to two different types or sets of service. The District claims that the habilitation services were offered on numerous occasions by

- place him at risk for a far more restrictive educational experience and outplacement from the [District's] public school system." (B22 at 7)
- b. "The continuing availability of a certified behavior analyst to review his programming daily and to lead the team meeting in its efforts to create a more comprehensive set of responses that generalize across settings will be essential. [Ms.] Mazaleski has fulfilled this role for IPP and her continuing efforts are strongly recommended." (B22 at 7)
 - c. The Student's "needs with respect to generalization training are extensive, and at a critical point in his development. He is highly context-dependent when learning and generalizing skills, and requires specific instruction at home and in the community in order to do this. I would recommend that the team provide at least ten hours per week, but up to 15 hours per week, of habilitation training to [the Student] to be accomplished *at home* and in the community beyond school hours. The purpose of [this] teaching will be to extend activities of daily living into their natural environment, and to teach these skills so that they can be used as a young adult . . . Ultimately . . . I view these activities as essential to educational planning in the broadest terms, and see them as necessary to prevent placement in less restrictive educational environments." (B22 at 7-8)¹⁸
 - d. The team should use the Walker Social Skills Curriculum to address social interaction skill teaching, and perform an ecological assessment across settings (home and school) to identify skill development needs and opportunities. (B22 at 8)
 - e. "Toilet training challenges are prominent, and must be addressed immediately and with somewhat greater intensity." Dr. Powers recommends a "more formal intervention" incorporating the use of positive practice, restitutive overcorrection and the use of a urine signaling device. "The team is strongly encouraged to identify an individual with expertise in toilet training young adolescent with similar needs as [the Student] and to engage this consultant for this purpose if none is available at IPP." (B22 at 8)

Ms. Mazaleski, Ms. O'Brien and Ms. Benner, but all offers were refused by the Parents who reportedly "would not allow the school personnel into their home." (Board 2/15/05 Statement). Accordingly, no District-sponsored habilitation services have been provided.

¹⁸ The District indicates that these are additional services to provide for socialization in the community and that an initial effort was made to provide these services through PrimeCare. Those services were discontinued when PrimeCare would not implement the Student's toileting overcorrection procedure. The District then hired its own Behavior Therapist to accompany the Student to an ESD program at the Mattatuck Museum sponsored by the 21st Century grant with additional services to be provided by Family Options to make up for the services not provided through PrimeCare. By letter dated October 27, 2004 (B37), the District sought clarification from Dr. Powers as to the nature of these services in an effort to clarify who was responsible for funding them. The Board advises further that "community agencies, Parents and the [Board] should collaborate to accomplish and fund these services." (Board 2/15/05 Statement) The Parents contend that they have contacted both the Department of Mental Retardation and Department of Children and Families and were advised that these services were not available to them, or if there were services, the services were inadequate or inappropriate (once weekly basketball). (Parents 2/9/05 Statement)

- f. Ongoing medication management to increase attention and decrease verbal stereotypies is “certainly necessary.” The Student’s verbal stereotypies are “considerable and interfere in nearly all aspects of functioning and performance.” Dr. Powers indicated that a functional analysis to determine setting events associated with stereotypies should be undertaken.
54. Ms. O’Brien and Ms. Mazaleski prepared a progress report on June 7, 2004 (B7 at 31-33) which states the following, among other things:
- a. Based on recommendations in the 2002/2003 IEP, an attempt was made to administer the Peabody Individual Achievement Test – Revised (“PIAT-R”). They note that the “complexity of language used in this test makes this is an especially difficult test for a child with autism.” They note that the Student achieved scores lower than those represented in the PIAT-R scoring booklet.
- b. At that time, the Student was able to “answer independently what and what doing questions.” They reported that his “comprehension skills are a concern” as was his ability to recall what he had read. The report states that he is able to read two sentences of his text and answer questions when asked immediately after reading it, but when asked a minute later cannot recall the story. The Student is reportedly able to sequence functional routines presented to him, such as a morning routine and making a sandwich. He has difficulty sequencing a story that he has read. He continues to have success in his sight word reading program. The report does not provide specific quantitative data regarding his progress.
- c. In math, the Student was reportedly able to solve “simple addition and subtraction problems” and may use tally marks or a calculator for facts that he does not have memorized. He is struggling with the concepts of more and less and has “made little progress in this area for the past school year.” He has been exposed to simple word problems and will continue to work on this in the next school year. He can orally identify coins and their value. He can count by 10s to 100, 2s to 20 and is working on counting 5s to 100.
- d. He does not have delays in auditory and visual processing but does have delays in auditory and visual memory development. The Student has fine motor skill deficits which need to be addressed, particularly handwriting and opening a package. He can button and zip his pants and tie his shoes.
- e. The Student can express his wants and needs using 4-6 word sentences. He can use attributes while requesting something he wants (*e.g.*, big or little) and is able to use “yes” and “no” in an appropriate manner.
- f. The Student manifests the following behaviors of concern: toileting accidents, high-pitched noises, humming, laughing, singing, hand-flapping, nose picking, removing shoes, screaming, hand grabbing, jumping, chair rocking, self-injurious behavior,

hand in pants, darting, mouthing objects, cover/pulling ears and scratching.

- g. A functional behavioral analysis determined that the Student engages in these behaviors for a variety of environmental reasons. A behavior protocol implemented on October 29, 2003 has reduced some but not all of the target behaviors.
55. Ms. Benner prepared a progress report for the 2003/2004 school year (B7 at 37), which states the following:
- a. The Student has made progress in Speech and Language Therapy. He can enter the room, get his folder and sit down with “minimal cues.” He can attend to a given task for 7 to 10 minutes.¹⁹ He will choose his activity from a given selection.
- b. Pictures cues have been used to increase the Student’s independence in performing crafts and he is responding well to this approach.
- c. He uses good syntax and grammar but continues to present with difficulty in mastering pronouns. He can switch tenses in conversation appropriately. He is increasing his ability to answer “WH” questions, and achieves greater success when the prompt is presented as “tell.”²⁰
- d. He is able to follow directions with increasing success and can do 2 simple steps with gestures.²¹
- e. An emerging skill is to match a sentence to a picture. Given the words on index cards, he is able to construct a sentence to match the picture on the card.
- f. He is able to approach a school member and peers and say “hello.” He is able to take 1-2 conversational turns.²²
- g. He presents with difficulty in small groups. His skills are emerging in this area.²³

¹⁹ The Student’s 2001/2002 IEP identified as an objective that the Student will attend to a visual motor task for 8-10 minutes. FF29A at Line 6.

²⁰ All of these activities were the subject of prior IEPs. For example, his 1999/2000 IEP stated as an objective that the Student will answer simple questions using complete sentences of 3-4 words *without prompts*, other than the question itself. The Student reportedly had attained that objective. Another objective reportedly mastered was the ability to demonstrate a response to “simple What” questions. See FF17A at Line 7, Line 8 (emphasis added).

²¹ The Student’s 1999/2000 IEP identified as an objective that the Student will follow a 2-3 step classroom activity with minimal redirection. It is not clear whether that objective was mastered. See FF17A at Line 10.

²² The Student’s 2000/2001 IEP identified as an objective that the Student will reciprocate greetings with an adult and a peer independently, which he mastered. See FF19A at Line 4.

- h. His articulation skills are age appropriate but he often mumbles and speaks almost under his breath. When encouraged to say the statement “right or better” he is able to do so with increased intelligibility.
56. A PPT was convened on June 8, 2004. The goals and objectives developed at this PPT for the 2004/2005 school year and the Student’s progress in attaining them as of February 2005 are stated as FF56A in Appendix A and in B42. The minutes (B7) indicate, among other things:
- a. That the PPT reviewed prior evaluations and re-evaluations, although Ms. Mule’s most recent evaluation was not yet available despite repeated phone calls by the Board.
 - b. That the Parents requested that an audiological examination be performed.
 - c. That the parties discussed various 2004 ESY programming options.
 - d. That the parties discussed training bus company and aides in understanding the needs of special education students.
 - e. That the Parents will identify a sensory integration therapist to provide services outside of school, with the notation that ACES could offer the program in-school.
 - f. That the parties discussed an ESD program at 21st Century for the 2004/2005 school year.
 - g. That the District staff recommended continued placement at Generali but the Parents requested that the Student attend Carrington School or Bunker Hill School for 5th grade.
 - h. That the parties discussed toileting issues, more specifically a request by the Parent that IPP investigate hiring a toileting specialist.
 - i. That the Student’s program provides for 31.25 hours/week of school, including 23.25 hours/week of special education service, including Occupational Therapy and speech and language services. The Student will spend 9 hours per week with typical peers.
57. On June 16, 2004, Ms. Mule sent the District a report of her March 5, 2004 speech and language evaluation of the Student. She states in her report (B8 at 18-25) the following, among other things:
- a. That the Student shows “continued gains, which have been slow but steady in both

²³ In reporting in June 1999 on the Student’s progress on 1998/1999 school year IEP goals and objectives, the Student was reportedly able to participate in group activities for 5 to 8 minutes with intermittent reinforcement and was able to sit in a group with low humming and at times quietly for up to 30 minutes if the activity is enjoyable. See FF 13A at Line 5.

receptive and expressive language, with continued expansion of . . . vocabulary, comprehension and production, and . . . grasp of sentence structure and utterance length since [Ms. Mule's] preceding evaluation on 3/30/01."

- b. The Student shows receptive and expressive mastery of a good variety of noun and verb vocabulary, strengths in understanding number/quantity concepts, and emerging grasp of early spatial concepts [with] difficulty with concepts of size/dimension, and with concepts of equality, as well as with attributes."
- c. "Expressively, [the Student] often begins communicative efforts with single words when he is requesting, but he can speak in three to five word sentences with correct subject verb object sentence structure."
- d. The Student "responded, protested and greeted with prompting. He did not request answers, or comment." "He tends to use single words, but will use phrases and sentence structure when prompted."
- e. "Significant concerns continue to be self-stimulatory vocal, verbal, and physical behaviors with attentional lapses, and initiation and following through with communication and routine tasks without prompting. [His] speech has shown continuous improvement over time . . . and articulatory precision remains a strength . . . Vocal volume and pitch can be unmodulated."
- f. The Student continues to manifest Severe Receptive and Expressive Language Disorders and Pragmatic Disorder.
- g. The Student should continue work that is "already in place on understanding of and response to who, what and where questions verbally and in . . . writing" and that he continue to focus on "sentence comprehension and understanding of two step directions."
- h. During the course of the testing, as items increased in difficulty level the Student showed an increase in vocal/verbal self-stimulatory behavior and physical rocking. With more simple items, there was immediate and accurate responding. He would immediately and correctly respond to direction such as "come and sit." He made occasional spontaneous comments and requests.
- i. The Student's Parents report that he can put up to three to five words together, but will use primarily single words during class. They expressed concerns about his communication which included echoing and humming and mumbling. They were also concerned about his prompt dependency and lack of social communication. They reported that it appeared to them that the Student was initiating less contact with children outside of school and that this has increased in this year with his placement at Generali. Although they reportedly acknowledged the "educational strengths of the ABA programming at Generali," they reported that the Student spends less time with typically developing peers in his program at Generali than he did in the prior school

year.

- j. Ms. Benner reported that her intervention has focused on reading, written expression, reading comprehension, sequencing, vocabulary, pragmatics, phonemic awareness, following directions, WH questions, and developing a functional communication system. Ms. Benner reports “steady progress in all areas,” but noted concerns about pragmatics because the Student “reportedly requires prompting to speak to others and to greet, and does not participate without prompting and redirection in large group activities.”
 - k. The “entire team” expressed to Ms. Mule concerns about the Student’s independence during her visit. Other concerns included echolalia, humming and inappropriate laughing. Ms. Benner reported that the checkerboard procedure remains effective in extinguishing the laughing behavior in her sessions.
58. On June 19, 2004, the Parents requested a PPT to address some concerns that they had about the IEP developed at the June 8, 2004 PPT. (P15) By agreement, that PPT was convened on June 22, 2004.
59. By letter dated June 21, 2004, copied to Dr. Powers, Ms. Hlavacek advised the Parents as follows, among other things (B8 at 7) that:
- a. She had contacted Dr. Powers regarding implementation of the toileting strategy discussed in his report and reported that Dr. Powers had advised that if the IPP program had not meet with “some degree of success” by the end of July, Dr. Powers would identify someone in his office to provide consultative support.
 - b. PrimeCare will provide ESD throughout the school year to assure that the Student is “not out of program for more than three consecutive school days.”
60. The minutes of the June 22, 2004 PPT (P16) indicate that the following topics were discussed:
- a. As to toileting issues, IPP was proposing an overcorrection procedure and Dr. Powers was to be consulted regarding a toileting specialist.
 - b. The Student’s bus aides were to be trained.
 - c. The Student’s ESY and ESD summer program at PrimeCare were defined in terms of schedules and hours.
 - d. There is a reference to “team meetings over the summer” but it is not clear to the Hearing Officer what was discussed.
 - e. “PrimeCare will provide throughout school year services so [the Student] is not out of school more than 3 days.”

- f. The Parents expressed concerns about what would happen if PrimeCare did not prove to be “satisfactory.” The notation says “other programs could be investigated.”
61. Dr. Powers’ report of his March 2004 evaluation of the Student is included in the PPT materials for the June 8, 2004 PPT (B7 at 44) indicating that Dr. Powers’ report was considered at this PPT. The IEP developed for the Student at the June 8, 2004 was the IEP in effect as of the date the Parents commenced due process.
62. On July 7, 2004, the Parents filed a complaint with the CTDOE, identified as C05-002 and assigned to Mr. Purdy. In this complaint, the Parents alleged that the District failed to implement the IEP developed at the June 8, 2004 PPT. Mr. Purdy reported as follows on September 2, 2004 (B28):
- a. As to the Parents’ claim that the District failed to place the Student at Camp Matachua as required by the June 8, 2004 IEP, Mr. Purdy concluded that attendance at Camp Matachua was not required by the June 8, 2004 IEP, but rather that Camp Matachua was one of several potential placements that would be investigated. Camp Matachua was ultimately not selected in lieu of another service provider. No corrective action on this point was required. In addressing a related claim as to whether various decisions, including decisions regarding a placement at Camp Matachua and choice of service providers for ESD services, that should have been made in a PPT were being made outside of a PPT, Mr. Purdy directed that the District issue a memorandum to its personnel reminding them that decisions regarding placement and programming should be made at a PPT. (B28 at 10-11)
 - b. As to the Parents’ claim that the District failed to provide the Student with the mandated 2 hours per week of speech services, Mr. Purdy concluded that the Student was provided with more speech service during the summer of 2004 than was required under the IEP. No corrective action was required. (B28 at 6-7)
 - c. The Parents alleged that the District failed to provide the Student with the required ESD services on June 24 and June 25, 2004. As to this claim, Mr. Purdy concluded that no corrective action was required. He concluded overall that the District had provided the Student with the required ESD services in the summer of 2004 and did not make any specific findings regarding June 24 and June 25, 2004. (B28 at 2-6)
 - d. The Parents claimed that the District failed to implement Dr. Powers’ recommendation regarding gaps in programming by allowing the Student to go for more than three consecutive calendar days without service in the period July 1 through July 5, 2004. As to this claim, Mr. Purdy found that the Student was not provided with services on four consecutive calendar days, but noted that there was a disagreement between the parties as to how to interpret Dr. Powers’ statement in his report of the March 2004 evaluation that “no more than three consecutive days be without direct programming for [the Student].” The Parents interpreted this statement to refer to consecutive calendar days. The District interpreted it to mean

consecutive school days. Mr. Purdy directed that a PPT be convened on or before September 22, 2004 to review Dr. Powers' clarification of this statement provided in a letter dated August 27, 2004 and determine programming implications in light of that clarification. Mr. Purdy noted that if the Parents disagreed with the PPT's determination, they should proceed to due process to resolve the issue. (B28 at 7)

- e. The Parents claim that IPP was unable to provide a toileting specialist to address the Student's toileting issues and that the District has failed to identify an appropriate specialist as required by his IEP and the PPT. Mr. Purdy found that the District was attempting to address the Student's toileting issues by working with IPP and Dr. Powers. Mr. Purdy did not require any corrective action, but that: "If [the Student's] toileting issues continue to persist, the school district should convene another PPT meeting to address this specific issue and consider hiring an outside specialist, in a timely manner, to help the school district resolve the issue." (B28 at 7-8)
 - f. The Parents claimed that the District failed to provide the Student a FAPE by requiring the Parents to pay expenses incurred with respect to the PrimeCare program. Mr. Purdy found that the District was paying these charges and no corrective action was required.²⁴
63. On July 19, 2004, the District noticed a PPT for August 3, 2004 at Parent request. (B28)
64. On July 28, 2004, Ms. Benner (a District speech and language pathologist) reported that the Student's summer ESY experience (July 6-July 29, 2004) had been positive. The Student "seems to enjoy group time and has had incidents of spontaneous language when involved in our weekly picnics . . . The focus on social and functional skills has been very positive and growth is evident." (P21)
65. On July 29, 2004, the Parents advised that the Student arrived home having urinated and having had a BM in his pants. They requested that the District be prepared to discuss out-of-district "possibilities" at the PPT so that "time will not be wasted at the PPT." (P22)
66. On August 2, 2004, Ms. Hlavacek faxed to Dr. Powers data regarding the Student's toileting accidents. (B8)
67. The minutes of the August 3, 2004 PPT (B8) indicate the following, among other things:
- a. The Student's "brushing" program for sensory motor input will be discontinued at school and continued at home. The Student will do a sensory activity at school before a group activity.
 - b. The District invited the Parents and a consultant (Ms. Wescott) to observe the Student in his program and give recommendations.

²⁴ Appended to the Board's 2/4/05 Statement was a letter dated February 3, 2005 from Mr. Purdy to the District (B43) advising that complaint CO5-002 had been resolved.

- c. The Parents requested an out-of-district placement which was rejected by the District. The Parents will consider filing due process.
 - d. The Student's toileting issues and his progress on his IEP goals and objectives were reviewed.
 - e. Dr. Powers' recommendation regarding gaps in programming was reviewed and there was a disagreement between the parties as to what was required. The District's position was that the Student's program would be delivered such that there would be no gap longer than three consecutive school days and that weekends are not included in the calculation because those are not school days.
68. On August 13, 2004, the Parents filed a complaint with the CTDOE, identified as C05-007 and assigned to Mr. Purdy. In this complaint, the Parents alleged that the District denied the Student FAPE by routinely failing to pick him up early enough in the morning for him to attend his ESY program on time. Mr. Purdy reported on October 14, 2004 (B29; B29A) that, among other things, although the Parents claimed that they had raised this issue at a PPT on August 3, 2004, that issue is not reflected in the minutes as having been presented to or discussed by the PPT. (B29 at 3) No corrective action was required.
69. The Student began receiving services at the Child Guidance Clinic of Greater Waterbury, Inc. in August 2004. (P38) These services include once monthly counseling and support from Elizabeth Myers²⁵ and medication management services with Dr. Wohl. (Parents' February 9, 2005 Statement)
70. In a letter dated August 27, 2004, Dr. Powers clarified the statement in his March 25, 2004 report that: "I would strongly recommend that no more than three consecutive days be without direct programming for [the Student]." Dr. Powers stated in his clarification that: "I would like this to be interpreted as anything over this amount of time without programming, including weekend days without service, will place [the Student] at greater risk given his significant behavioral difficulties. As such, with the exception of long (3 days or less) weekend programming (for which I shall assume there will not be direct instruction provided by the school system), days beyond this will include programming and support services . . . consistent with instructional activities provided during the remainder of school programming time." (P23)
71. The following individuals have responsibility for providing the Student's programming in the 2004/2005 school year (B15; Board 1/27/05 Statement of Case; Board 2/15/05 Statement):
- a. Cara O'Brien (Special Education Teacher; District employee) – Ms. O'Brien is the Student's classroom teacher and provides 22.25 hours/week of direct services to the Student in his self-contained classroom. Ms. O'Brien provides daily feedback to the Student's 1:1 Behavior Therapist regarding programs, skill acquisition, generalization and independent programs.

²⁵ The Hearing Officer is not related to and does not know Ms. Myers.

- b. Elaine Hlavacek (Special Education Supervisor; District employee) – Ms. Hlavacek provides no direct services to the Student but provides support to the autism program.
 - c. Jodi Mazaleski (Autism Consultant; IPP employee) -- Ms. Mazaleski provides 2.0 hours of direct and indirect services per week to the Student and his program regarding behavior plans, toileting issues and skill acquisition.
 - d. Lori Ann Bechard (5th Grade Regular Education Teacher; District employee) -- Ms. Bechard provides 9.0 hours per week of direct service to the Student, including music, art, library, gym, lunch, recess and homeroom (0.5 hours/day).
 - e. Danielle Benner (Speech and Language Pathologist; District employee) – Ms. Benner provides 2.0 hours/week of direct and indirect speech and language services to the Student.
 - f. Kristy Chieppo (Occupational Therapist; ACES employee) – Ms. Chieppo is contracted to provide 1.5 hours/week of direct service and indirect service to the Student.
 - g. 1:1 Behavior Therapist (currently Jennifer Blanchette, a District employee) – The Student’s 1:1 Behavior Therapist is with him throughout the day and in his ESD program. The District describes these individuals as having 4 year college degrees and experience working with students with autism, and that many of them have been employed previously by IPP.²⁶
 - h. Mary Lou Arnson (Art Teacher); Cathy Dwyer (Music Teacher); Mark Gonillo (Gym Teacher); and Jennifer Quirk (Library Teacher)
72. To address ongoing toileting issues, Dr. Molteni observed the Student’s program on September 8, 2004, and interviewed both the Parents and District staff. In his report (B10) he stated as follows, among other things:
- a. The Student’s toileting is reported to be inconsistent between home and school. The Parents report no toileting accidents at home. In the period July 2003 through July 2004, there have been variable levels of toileting accidents at school ranging from many weeks with near zero levels of accidents to days with several accidents. Following instances of increased accidents, either the behavior reduces to low levels or a program change is implemented if the behavior persists. Nine toileting program modifications were made during this period. One change – involving use of a “pants alarm” was discontinued because implementation resulted in a “dramatic increase” in toileting accidents. Since returning to school from his ESY program, his level of accidents increased to 4 accidents on one day and has been on a decreasing trend

²⁶ This is a change from the 2003/2004 school year, during which the behavior therapists were IPP employees.

- since then.
- b. District personnel indicated that medical causes for incontinence had been ruled out and that the Student has a normal level of liquid intake during his day.
 - c. A functional behavioral assessment completed between November 2003 and April 2004 revealed that accidents occurred most frequently in demand or play conditions.
 - d. By agreement of the Parents, the Student's present toileting protocol includes an overcorrection procedure which is a punishment. The Parents did not agree, however, to implement a positive practice component in addition to the overcorrection procedure.
 - e. Dr. Molteni did not observe the overcorrection procedure during his visit because the circumstances requiring implementation of that procedure were not triggered on that day.
 - f. Dr. Molteni concluded that "[t]he procedural integrity of the prevention and reinforcement components of the program as it is written was high for [the] therapist." He stated further that: "The [Student's] toileting program . . . utilizes empirically derived procedures, is based on an assessment of the function of the behavior and its maintaining consequences, and is modified based on ongoing data collection. It is supervised and monitored by a Certified Behavior Analyst and a Certified Special Education teacher with trained therapists running the program on a daily basis . . . [The Student's] toileting issues at school appear to be complex and [...] additional analyses [as proposed by Ms. Mazaleski] are encouraged."
 - g. Dr. Molteni further stated that he was "impressed with [the Student's] responses to his current program and the care demonstrated by both the teaching staff and his parents. Both are very invested in seeing [the Student] be successful in not only the academic setting but in social settings as well."
73. On September 13, 2004, the Parents filed a complaint with the CTDOE, identified as C05-013 and assigned to Mr. Purdy. Mr. Purdy reported as follows on November 10, 2004 (B29):
- a. The Student did not receive the full ESD services required by his IEP in the period July 2004 through November 10, 2004. Mr. Purdy directed that the District convene a PPT on or before November 29, 2004 to "address the provision of compensatory education services to [the Student] for the time missed when he did not attend his after school program" for the period August 31, 2004 through November 10, 2004. Based on Mr. Purdy's findings of fact, the Student was not provided these services in substantial part due to the inability of the District to identify an ESD provider who could perform the "overcorrection" procedures which had been implemented to address the Student's toileting issues. His findings indicate further that the District did not dispute that the Student did not receive the services and stood ready to provide

them. Based on the findings, the Student did not receive 36 hours of ESD programming in the period September 1 through September 24, 2004. Mr. Purdy had no evidence before him to substantiate whether the Student received the required ESD services in the period September 25 through November 10, 2004. (B30 at 3-6)

- b. The Parents alleged again that starting on August 31, 2004, the Student was spending more than one hour per day on the bus getting home from his program and on August 31, 2004 was transported to the PrimeCare ESD program even though District personnel were aware that PrimeCare had terminated its program for the Student on August 27, 2004. Reviewing the evidence, Mr. Purdy noted that the District has had “issues pertaining to transporting students to and from school [and] has taken action to resolve these issues.” No corrective action was required. (B30 at 7-8)
 - c. The Parents alleged that the District had failed to address the Student’s toileting issues. Mr. Purdy noted that the District had implemented an overcorrection procedure to address the Student’s toileting issues, that the Student’s toileting program was being implemented under the direction of Dr. Powers and IPP (specifically Ms. Mazaleski), that the “intensity of the toileting strategy has been increased this school year due to a lack of success,” that the District has requested additional consultation with Dr. Molteni, that Dr. Molteni had on September 8, 2004 evaluated the Student’s toileting program, and that Dr. Molteni had stated in his report that he was “impressed with [the Student’s] responses to his current program and the care demonstrated by both his teaching staff and his parents.” Mr. Purdy concluded that no corrective actions were required. (B30 at 8-9)
74. On September 13, 2004, Ms. Dreher (an audiologist employed by the Board), performed an audiological evaluation of the Student (B9). She reported as follows:
- a. “Results indicate essentially normal hearing sensitivity bilaterally across frequencies. A very slight hearing loss was noted in the right ear at 8000 Hz. Word recognition ability was good in the right ear [88%] and fair in the left ear [76%], when assessed at a normal conversational speech level of 45 dBHL bilaterally.” She noted, however, that the “administration of the word recognition testing required many modifications, such as extra time for a response, prompting for a response, and constant requests for repetition.”
 - b. Ms. Dreher notes further that administration of the central auditory processing disorder (“CAPD”) evaluation was attempted but that the Student was “unable to perform the desired tasks” due to “continuous vocalizations” which made it “difficult for him to listen and respond as requested.” Ms. Dreher stated her opinion that central auditory processing testing of a student with a communicative/social disorder such as autism is “inappropriate, as validity of results, if obtainable at all, would be questionable and may more accurately reflect the primary communicative/social disorder of autism.”
 - c. Ms. Dreher recommended annual audiological evaluations to monitor the

progression or stability of the slight hearing loss in the right ear of 8000 Hz.

75. On September 20, 2004, Ms. Mazaleski and Ms. O'Brien completed a "Disruptive Behavior Disorders" form for the Student. They rated the Student as showing throughout the day frequent problems with attention and "hyperactivity" (in the form of restlessness, "high rates of stereotypy" and difficulty remaining seated), and some components of "impulsivity" (difficulty waiting for his turn and engages in dangerous behaviors due to lack of awareness of the danger). They rated the Student in a manner that indicates he is not manifesting any oppositional behaviors other than losing his temper when denied access to preferred items. (P25)²⁷
76. On October 15, 2004, the Parents filed a complaint with the CTDOE, identified as C05-018 and assigned to Mr. Purdy. The Parents alleged that the District was communicating with Dr. Powers without their consent or knowledge. Mr. Purdy reported on December 22, 2004 (B31) that the District had not violated any Federal or state confidentiality laws and no corrective action was required.
77. By notice dated October 26, 2004, a PPT was scheduled for November 5, 2004. (B12 at 8) It is not clear from the record what prompted this notice of a PPT. The Parents advised the District as follows regarding that PPT (P32):
- a. The Parents would like to "hold off on a PPT at this time" to permit them to continue to "look into" out-of-district programs and "get legal advice." The Parents also noted that they were both working which made attending PPTs difficult and that the District had scheduled and continued a PPT in September. The Parents indicate that their request for a delay would only be for a "couple of weeks since we would like to resolve this matter as soon as possible."
 - b. The Parents objected to the District communicating with Dr. Powers unless the District had the Parents' permission to do so.²⁸
 - c. The Parents requested that the District schedule PPTs with appropriate notice as required by law, noting that they were not advised of a proposed October 6, 2004 PPT until the day before.
 - d. The Parents request that the District specify the reason for the PPT, noting that the District had first advised the Mother that the District wanted to discuss an out-of-district placement and then changed that to be a discussion of ESD programs. When the Mother asked for clarification on the out-of-district placement discussion in advance of the meeting, the District refused to discuss the issue with her.

²⁷ According to the Parents, Ms. O'Brien and Ms. Mazaleski completed this form at the request of the Child Guidance Clinic. (Parents 2/9/05 Statement).

²⁸ This was also the subject of the CTDOE complaint C05-018. Mr. Purdy's December 22, 2004 findings regarding that Complaint had not yet been issued.

- e. The Parents had received Dr. Molteni's report and give the District permission to implement the program recommended by Dr. Molteni.
78. On November 1, 2004, the Parents filed a complaint with the CTDOE, identified as C05-023 and assigned to Mr. Purdy. Mr. Purdy reported as follows on January 5, 2005 (B32 at 4-10):
- a. The Parents alleged that the District had failed to provide the Student with the ESD programming required by the Student's June 8, 2004 IEP during the 2004/2005 school year to date. The findings of fact recorded by Mr. Purdy indicate that the reason for the failure to provide these services was due in part to an alleged later than expected start-up of the 21st Century program and in part to the refusal of two other potential service providers contacted by the District to implement the overcorrection procedure required in the Student's then-effective toileting program. Mr. Purdy concluded that as of January 5, 2005, the Student had not received 45 hours of ESD programming required by his IEP and directed that on or before January 28, 2005, the District convene a PPT for the purpose of developing a plan to compensate the Student for the 45 hours of service time that he had missed. The District did not deny that the Student was not provided with the services and Mr. Purdy's findings indicate that the District stood ready to provide the compensatory services. (B32 at 4-6)
- b. The Parents alleged that the District had failed to convene a PPT meeting regarding the problems with the ESD programming and made decisions regarding that program outside of the PPT. Mr. Purdy concluded as follows (B32 at 8-9):

"Realizing that [the Student] was being denied ESD services because neither PrimeCare nor Family Options could provide the IEP mandated 2 hours per day of after school services prior to Mattatuck Museum program being opened, the school district looked at various program options that would be able to provide [the Student] with his mandated ESD services. The school district offered [the Parents] the option of placing [the Student] into 21st Century's West Middle School program which was already operational. The [Parents] rejected the placement. As a consequence, [the Student] missed out on 45 hours of service which the [District] has reported that it would make up."

"The [District] should have convened a PPT meeting . . . when it discontinued using PrimeCare as [the Student's] after school service provider because PrimeCare would not implement [the Student's] toileting strategies per his IEP which effectively deprived [the Student] of his IEP mandated services of participating in an after school program and having his toileting needs met."

"The discussing of program alternatives between school district personnel and/or the student's parents outside the PPT process is not, in itself, a violation of federal or state special education law as long as no changes are made to the Student's IEP without first convening a PPT meeting."

On this claim, Mr. Purdy directed that the District issue a memorandum to its staff to clarify that a PPT must be convened to review or revise an IEP when the provider of the Student's mandated IEP services can no longer provide the mandated services.

79. In November 2004, the Student's progress on his IEP objectives was as follows: For 16 objectives, progress was rated as S-. Four objectives were not yet introduced. For 13 objectives, progress was rated as S for "Satisfactory." For the remaining 13 objectives, the Student's progress was identified as "Other" with no explanation. (B12; FF56A in Appendix A) According to the District, a written explanation of these designations is sent to the Parents with the Student's quarterly progress report/report card. (B36) A designation of "O" means that the skill is "emerging (the skill may be met)." A designation of "S-" means that "satisfactory progress is being made but needs more work." A designation of "S" means that "satisfactory progress is being made." Mastery is reflected in an "S+" designation ("almost mastered") or an "M" designation ("mastered"). "NI" means "not introduced." A "U" means "unsatisfactory progress is being made or the objective may not be met." (Board 2/15/05 Statement)
80. A PPT was convened on November 5, 2004 to review the Student's program and Dr. Molteni's report regarding toileting issues. The minutes (B12) indicate as follows:
 - a. The Student apparently was in attendance at this meeting.
 - b. The Student's toileting accidents occur for stimulation, sensory function and avoidance reasons. The Parents reported no accidents at home and asked for an analysis of the timing of the accidents. The Parents requested that Dr. Molteni attend a PPT to discuss the Student's toileting issues. Various options for a new toileting protocol were discussed. The Parents agreed to the following toileting protocol: Student will be given a Depends undergarment upon arrival to school; all bathroom requests will be honored; the Student will be provided a large magnitude of reinforcement for urinating in the toilet; after lunch and prior to departure from school, the Student will be given a new Depends if needed; and requests by the Student for a new Depends will not be honored. The overcorrection procedure will be discontinued. This protocol is intended to eliminate social stimulation for urine accidents, prevent sensory feedback that accompanies urinating and prevent the Student from escaping ongoing activities. A notation on the form indicates that 4-5 Depends will be needed per day.
 - c. The Parents' requested due process regarding the interpretation of Dr. Powers' March 25, 2004 report concerning gaps in programming.
 - d. The District staff "encourage[d]" the Parents to investigate wrap-around services as recommended by Dr. Powers.
 - e. The Parents requested an out-of-district placement and the District agreed to an out-of-district placement with ESD. The District did not agree that the Student required a residential placement.

- f. The Parents were advised that the District had contacted various out-of-district placements during the month of September and determined that none could accommodate the Student given the criteria that the out-of-district placement had to be able to provide ESD services. According to the District: (1) Ben Haven, Gengras, ACES Village, Wheeler, High Roads and C.E.S. did not have ESD or after school programs; (2) CCCD and CREC Riverstreet had no openings; (3) Klingberg was not an “appropriate” placement; and (4) Children’s Home of Cromwell did not service children with autism.
 - g. The Parents do not want the Student to return to Generali which they believe is the cause of the Student’s problems. They also do not want IPP involved in the Student’s programming. They want the Student to go to Bunker Hill Elementary School with IPP until another autism consultant can be engaged. The District took the position that the placement at Bunker Hill would not be appropriate. There is also no transition plan in place and the Bunker Hill School is not prepared for the Student.
81. On November 5, 2004, the District noticed a PPT for December 8, 2004 to “review evaluations” regarding the Student. (B32 at 2) The invitees included Ms. Zollo (school psychologist), Family Options (ESD provider), Ms. Dreher (a District audiologist), Dr. Molteni (toileting specialist with Dr. Powers’ office), Ms. Benner (speech and language pathologist), Ms. Chieppo (an occupational therapist), Ms. Mazaleski (ABA consultant with IPP) and the Board’s counsel, among others.
82. By letter to the Parents dated November 17, 2004 (B14), Ms. Hlavacek acknowledged that the parties were in disagreement as to the Student’s program and that before the District filed for due process, the Parents were invited to visit the Bunker Hill School to observe the classroom that the Student would attend if he were placed there as requested by the Parents. Ms. Hlavacek advises that a placement at Bunker Hill would “not be as beneficial for [the Student] as Generali is at this time” because of the specialized program for autism housed at Generali.
83. As of the date of this Decision, the Parents had not visited the Bunker Hill School classroom as suggested by Ms. Hlavacek.
84. By letter dated November 22, 2004 (B24), Dr. Powers clarified two aspects of his March 25, 2004 report.
- a. In his March 25, 2004 report, Dr. Powers stated: “In addition, given the significant risk for regression and behavioral disruption due to the absence of programming time I would strongly recommend that no more than three consecutive days be without direct programming for [the Student].” In his November 22, 2004 clarification he states that “this point refers to week-day programming, but does not include weekends. As such, three-day holiday weekends (e.g., Friday or Monday school holidays) would not automatically trigger additional service time. This is meant to address the more extended summer vacation, school vacation, etc. times when [the Student] would be

without programming for consecutive days during the period of Monday through Friday.” The Hearing Officer interprets Dr. Powers’ August and November 2004 clarifications to mean that Dr. Powers was recommending that the Student’s services be provided to assure that the Student received programming on a daily basis during his school year (which was year-round) other than on Saturdays, Sundays and the Friday or Monday of a holiday weekend.

- b. Dr. Powers also advised that his recommendation regarding wrap-around services was “intended to highlight the critical nature of school-home-community collaboration and treatment [because the Student] requires consistency of service planning throughout his entire day, week and year.”
85. The District commenced this due process hearing by letter dated November 29, 2004 (HO1).
 86. On December 1, 2004, the family’s clinician at Child Guidance Clinic, Ms. Myers, advised the District as follows (P38):
 - a. The Student has missed a “significant amount of after school time” and any compensatory services or time provided to him should be services or time involving interaction and socialization with peers rather than in-home services.
 - b. As to toileting issues, Ms. Myers understands from the Parents that the trip to and from Bunker Hill school is shorter than from Generali, and that implementing the Student’s program at Bunker Hill may reduce the number of toileting accidents on the bus.
 - c. It is “imperative” that an appropriate behavior modification program be put into place to address the Student’s toileting issues.
 87. The PPT noticed on November 5, 2004 for December 8, 2004 was cancelled when the Student was sent home ill from school. The Parents claim that this was a delaying tactic by the District and that the Student was not ill. *See, e.g.*, P42 (note to District dated December 12, 2004, expressing expectation that the rescheduled PPT will not be cancelled due to a “fake illness”); Parent 1/31/05 Statement at 3 (Student was not sick but was sent home ill on the day of the PPT).
 88. On January 5, 2005, the District issued a notice rescheduling the cancelled December 8, 2004 PPT for January 27, 2005. The District reports that this was the earliest date on which a PPT could be scheduled at which Dr. Molteni could attend. The invitees include the Parents, Ms. Zollo, Family Options, Ms. Dreher, Dr. Molteni, Ms. Benner, Ms. Chieppo and Ms. Mazaleski. (B26)
 89. The minutes of the January 27, 2005 PPT (B33) indicate as follows, among other things:
 - a. Dr. Molteni attended and reviewed his report and was updated as to the Student’s current toileting issues. The overcorrection procedure was discontinued, in part

because it took away from classroom time. Since November 8, 2004, the Student is getting more academics done. The Parents report that the Student is not having any toileting problems at home. Dr. Molteni will continue to consult with the District regarding toileting issues and arrangements were made for a future meeting. The Parents were reportedly in agreement with this plan.

- b. Ms. Dreher reviewed the results of her report noting that there is no “intraaural” difference and that Autism, rather than CAPD is the Student’s disability. Ms. Dreher reported further that the Student does not meet the criteria for BAIT, that there is no scientific evidence that BAIT is effective, and that audiologists recommending BAIT could be in violation of their professional obligations.²⁹
- c. The Parents did not visit the Bunker Hill School.
- d. The Student is owed 58 hours of ESD which will be made up at FamilyOptions on Friday afternoons and Saturdays over the balance of the 2004/2005 school year.

B. Findings of Fact by Issues

Issue # 1 Does the Student’s 2004/2005 school year placement at the Generali School provide the Student with a free and appropriate education in the least restrictive environment within the meaning of the IDEA and if not, should the Student be placed in another setting for the balance of the 2004/2005 school year?

Issue # 6 Should the Student’s current ABA provider/consultant be replaced?

90. Regarding these issues, the Parents contend as follows:

- a. The Student’s current ABA consultant (Ms. Mazaleski) is not “working.” The Student has regressed under the program as she has delivered it over the past 2 school years. (Parents 1/9/05 Statement at Issue 6)
- b. On a September 20, 2004 evaluation of the Student on the Disruptive Behavior Disorders Scale (P25), Ms. O’Brien and Ms. Mazaleski indicated that the Student is manifesting severe behavioral disorders and problems which are interfering with his ability to participate in the program. (Parents 1/9/05 Statement at Issue 1)
- c. The Student’s score on the Stanford-Binet Intelligence Scale administered in 2004 (B7 at 47-48) was 55, which is a 9 point drop from a 2001 administration on which he attained a score of 64 (P-1 at 3). (Parents 1/9/05 Statement at Issue 6)

²⁹ Appended to the minutes were several articles supporting Ms. Dreher’s statements. The Parents note that given the District’s position that its staff could not recommend BAIT under any conditions, there would have been no purpose to obtaining the audiological evaluation other than to delay resolution of the issue. (Parents 2/9/05 Statement at 3.)

- d. The Student was evaluated with the Vineland Scale in 2001 and 2004. (Parents 1/9/05 Statement at Issue 6) The results are as follows:

Domain	Score in 2001 (P1 at 4)	Score in 2004 (B7 at 49)	Difference
Communication	46	37	-9
Daily Living	52	41	-9
Adaptive Behavior	45	30	-15

- e. Dr. Powers' 2001 evaluation results are more positive than his 2004 evaluation results (P-1 at 5-6 and B7 at 50-52). In his 2004 report, Dr. Powers notes that the Student is at an increased risk of need for an out-of-district residential placement and his educational team must make "every effort to reverse this process." (Parents 1/9/05 Statement at Issue 6)
- f. A June 4, 2003 report notes that the Student is making great progress while attending his program at the Carrington School in the areas of math, reading and communication – he was a fast learner able to generalize his skills. (P2) (Parents 1/9/05 Statement at Issue 1)
- g. There are no significant differences between his goals and objectives as set forth in his June 5, 2002 IEP (B3 at 9-17) and his goals and objectives as set forth in his June 8, 2004 IEP (B7 at 7-25) (Parents 1/9/05 Statement at Issues 1, 6)
- h. As of November 8, 2004, the Student's progress on his IEP goals was as follows: "S-" on 16 goals, 4 goals were not introduced, "S" on 13 goals and an unexplained rating of "Other" on 13 goals. (Parents 1/9/05 Statement at Issues 2, 6)
- i. His current Occupational Therapy (P11; the Mancini evaluation), Speech (B8 at 19-25, the Mule 2004 evaluation) and Psychological evaluations (B7 at 45-52; Powers 2004 evaluation) show that he is not making progress. (Parents 1/9/05 Statement at Issue 1)
- j. His program is no longer being fully delivered by IPP staff, but rather by "city aides" who do not have the requisite training and skill. (Parents 1/9/05 Statement at Issues 1, 6)
- k. The Student is also at risk of injury because his shoes are frequently untied. (Parents 1/9/05 Statement at Issue 1)
- l. The Student has had 10 ABA consultants over the years. The Parents did not agree to the engagement of IPP. (Parents 1/31/05 Response)
- m. The Student needs a specialized program but the program at Generali is not working. He should be allowed to attend a school closer to his home for the remainder of the

2004/2005 school year and until an out-of-district placement can be found. He should be allowed to attend Carrington or Bunker Hill Schools (Parents 1/9/05 at Issue 6). Fifth grade students with autism presently attending Bunker Hill and Carrington would also be transitioning to West Side Middle School in the next school year, and that having the Student begin attending a program at either of these schools now would facilitate a potential transition to West Side Middle School for the 2005/2006 school year. (Parents 1/31/05 Response at 1)

- n. The Parents have submitted several exhibits showing the Student's performance on various academic tasks assigned as homework in December 2004 or January 2005. They contend that the Student was able to complete the tasks on these sheets while he was at the Carrington School (2002/2003 school year) but is now unable to do so because he has regressed over his time at Generali School. They report that the District "always says [the Student] is doing better than he is" and "never give[s] an accurate response on how he is doing with his goals and objectives" and that they have "complained many times about the regression in math." (Parents 2/9/05 Statement).
1. A form dated December 13, 2004 asked the Student to complete 8 simple addition problems ($4+1=$; $5+1=$). The Student had two errors, for a success rate of 75%. (P43) According to the Parents, this document was homework sent home with the Student on that date. They note that while he was at Carrington School (2002/2003 school year) he was able to complete two column math problems at home and at school. (Parents 2/9/05 Statement)³⁰
 2. A form dated January 8, 2005 (P52) asked the Student to complete 6 simple subtraction problems ($5-3=$; $8-4=$). The Student had 4 errors, for a success rate of 33%.³¹ The Parents describe this as a worksheet that the Student completed at home on that date. They note that while he was at Carrington School (2002/2003 school year) he was able to complete simple subtraction

³⁰ Performing simple addition problems like the ones on this sheet was an IEP objective in the 1998/1999 school year (FF13A at Line 1 – Student able to add sums to 10 with a visual aid; Student is working on memorizing 0 to 10 addition facts); 1999/2000 school year (FF17A at Line 1 – Student is able to add sums using numbers 0, 1, 2 together with 0-8 independently); 2000/2001 school year (FF19A at Line 2 – Student mastered adding 0-10 using manipulatives or a number line); 2001/2002 school year (FF29A at Line 3 – Student can add single digit numbers without renaming); 2002/2003 school year (FF37A at Line 3 – Goal was to add one column of numbers and use tally marks to demonstrate accuracy for three problems without prompting); and 2003/2004 school year (FF43a – Hearing Officer Kearns notes that the Student can add one column of numbers independently).

³¹ It appeared that the Student was simply guessing on three of the problems (he answered each one with the number "3"), but was able to use a strategy to successfully complete the first problem. Ability to perform subtraction tasks such as the ones on this sheet was an IEP objective in the 1999/2000 school year (FF17A at Line 1 – Student can subtract the numbers 0-10 with the use of manipulatives and verbal prompting); 2000/2001 school year (FF19A at Line 2 – objective was to subtract numbers 0-10 with the use of manipulatives and verbal prompting, same as in prior year); 2001/2002 school year (FF29A at Line 3 – Student reportedly able to subtract single digit numbers without renaming). The 2004/2005 school year IEP provides (FF56A at Line 13) that the Student will solve simple subtraction problems 0-5 at an 80% success rate.

problems such as the ones on this sheet. (Parents 2/9/05 Statement)

3. A form dated January 8, 2005 (P53) in which the Student was shown pictures of coins in various denominations and asked to state the total amount of money. The Student was not able to state the correct answer to any of these problems.³² The Parents describe this as a worksheet that the Student completed at home on that date. They note that while he was at Carrington School (2002/2003 school year) he was able to complete this type of math problem solving. (Parents 2/9/05 Statement)
 4. A form dated January 8, 2005 (P54) in which the Student was shown a three picture sequence and asked to put the sequence in the correct order to tell the "story" by writing the word "first," "next" or "last" as appropriate under the picture. The Student attempted the first one but did not correctly sequence the pictures. He wrote "first" under each of the pictures in the second example. The third example is not completed.³³ The Parents describe this as a worksheet that the Student completed at home on that date. They note that while he was at Carrington School (2002/2003 school year) he was able to complete a sequencing task such as this. (Parents 2/9/05 Statement)³⁴
- o. The Parents contend that at the June 8, 2004 PPT, the ESD programming with PrimeCare, WARC or Family Options and the 21st Century program would constitute the Student's wrap-around services. When the District failed to provide these services and the Parents complained or sought redress, the Parents were told to seek the make-up time services from the Department of Children and Families ("DCF") or Department of Mental Retardation ("DMR"). When the Parents attempted to secure services from DCF, they were advised that DCF does not have the funding to provide services of the type the Student was to receive as ESD programming. When they attempted to secure the services from DMR, they were told that DMR does once yearly respite programming and offers a basketball program once weekly during a portion of the summer. That program did not provide

³² Understanding and applying concepts of value associated with coins have been part of the Student's IEP objectives over several school years.: 2001/2002 school year (FF27A at Line 3; identify and add pennies, nickels and dimes up to \$0.25; add sums of like coins up to \$1.00); 2002/2003 school year (FF37A at Line 3; count change of varying values no more than \$1.00; put in order from least to move value coins of various denominations; buy items from a mock store using single value money up to \$20); 2003/2004 school year (FF44A at Line 19-20; buy items from a mock store using single value money up to \$20; count change using coins of varying values no more than \$1.00); and 2004/2005 school year (FF56A at Line 17; exchange money for an item he wants to purchase).

³³ It is unclear whether it is blank because the problem was not presented to him or the Student could not determine how to answer.

³⁴ Sequencing tasks such as this have been a part of prior school year IEPs. At the end of the 1998/1999 school year, the Student was reportedly able to place 6 picture cards in a proper sequence even though he had difficulty describing the events in the picture (FF13A at Line 2). In the 2003/2004 school year, the Student's IEP provided that he would tell a story by sequencing 6 pictures using words such as first, next and last. The Student's performance on that objective was reported to have been "satisfactory" as of the end of the school year. (FF44A at Line 22).

transportation or an aide and apparently was for adults not children. (Parents 2/9/05 Statement)

- p. The Parents understood Dr. Powers to be recommending 10 to 15 hours of ESD services through agencies such as PrimeCare to help the Student with his socialization and generalization issues. The Parents report that currently the Student does not socialize in the community and does not have any friends. They report that he has some “minor” behavior problems at home, but much more severe behavior problems at school and in the community. He touches peoples’ clothes, hair, face and food, does not pay attention when people talk to him, likes to yell in public places, mumbles constantly, kicks his feet while sitting, is “constantly jumping and covering his ears.” They also report that he cannot go to a store and pay for something.³⁵ (Parents 1/9/05 Statement at Description)

91. Regarding these issues, the District states as follows:

- a. The District has engaged three different ABA consultants at the request of the Parents, including the current provider IPP which was recommended by Dr. Powers. “Another ABA consultant would not provide a better program for this student.” (Board 1/27/05 Statement of Issues at 6)
- b. The drop in the Student’s Communication and Socialization domain scores on the Vineland Adaptive Behavior Scales from the 2001 to the 2004 evaluations is within the standard error of measurement for an 11 year old. (Board 1/27/05 Response at 3-4) The Parents were the informants for these Vineland ratings, and the District notes that the Parents are not the best informants for the Student’s communication skills because they have not observed his language when elicited by “trained professionals, although they have been invited numerous times to do observations at the school.” The District also notes that the Parents are not the best informants of the Student’s social skills given their reports that the Student does not socialize with anyone other than the Parents at home.
- c. When the Student began attending the Generali School autism program in the summer of 2003, he was not able to answer “what time of day is it?” or other “simple questions” and was not able to sit quietly in group, attend to the teacher or interact with his peers. During the 2003/2004 school year, the Student “slowly began attending more in groups,” that over the course of the year he developed the ability to answer teacher directed questions and respond to peer greetings. (Board 1/27/05 Response at 4)
- d. Over the course of the 2004/2005 school year, the Student “continues to gain skills in a group setting,” a setting which allows him to “generalize his skills and try to gain independence.” The Generali School autism program “encourages students to

³⁵ Being able to purchase items from a mock store was an IEP objective in the 2002/2003 school year (FF37A at Line 3) and the 2003/2004 school year (FF44A at Line 19).

become independent in their environment” and “stress[es] the importance of functional skills such as walking quietly in the hallway, getting their own materials, making a snack and completing independent work activities.” The Student’s 2004/2005 IEP has goals and objectives that are functional for the Student. (Board’s 1/27/05 Response at 4-5) The Student has been making “slow” progress and is benefiting from his placement at Generali. His IEP “continues to exhibit growth and progress.” (Board 1/27/05 Statement of Issue)

- e. The Generali program offers the Student the “opportunity to benefit from the specialized expertise of the autism consultant” in an environment in which administration, general education teachers, specialist teachers and auxiliary staff have all participated in staff development and ongoing training with a focus on autism, DTI and positive reinforcement. In his 2004/2005 placement, the Student has inclusionary opportunities by participating in homeroom, lunch, recess, art, music, gym and library with his same age peers. His teaching is in a 1:1 self-contained classroom with other children with autism. He also spends time in class with typical peers. (Board 1/27/05 Statement of Issues at 1-2) The Generali program cannot be provided at Carrington School. (Board 2/4/05 Response)
- f. The Student’s progress is evaluated “constantly” and his program, which involves DTI, natural teaching, using the TEACCH model and group instruction, adapts as his needs change.³⁶ (Board 1/27/05 Response at 5-8) Among other things:
 - (1) A motivational system (earning tokens for appropriate behavior; losing tokens for inappropriate behavior) was implemented to reinforce appropriate behavior and decrease inappropriate behavior. This program proved ineffective and a functional behavioral analysis was performed which revealed that the inappropriate behaviors served an escape or self-stimulation function. The motivational system was then modified to incorporate a compliance component that must be completed if he engages in the inappropriate behavior (e.g., overcorrection). “Initially, the combination of these protocols decreased target behaviors somewhat, but over time, not to acceptable levels.”
 - (2) “Motor Break Training” was implemented. This protocol is designed to teach the Student to ask for a physical activity when he senses he needs it. This plan was implemented because the majority of his inappropriate behaviors involved physical activity. The Student “compliantly completed the Motor Break Training, but there was no concomitant decrease in target behaviors.”
 - (3) The Student currently follows a daily activity schedule that depicts his activities for the day along with showing when he has “break” time. He usually completes one work activity and then has a break to do an activity of his

³⁶ The Treatment and Education of Autistic and Communication Handicapped Children or TEACCH method has been widely adopted and differs from the ABA method in several respects. The TEACCH method places greater emphasis on visual skills, encourages independent work on individual skills and makes extensive use of group instruction. See, e.g., *Henrico County*, 105 LRP at 6113..

choosing.

- (4) The Student completes “Quiet Training” between 5 and 6 times/day. During Quiet Training, the Student “has to be quiet and still for a specified number of seconds, and then he earns possible access to a very small food item. Currently he has to score 50% or above during each training session, in order to have access to the food items. Initially, this training helped [the Student] to be somewhat quieter throughout the day, but has not reduced the motor and vocal stereotypy to acceptable levels; thus a new protocol will be developed.”
- g. According to the District:
- (1) The Student is a “slow learner” and has “difficulty generalizing his skills into a more natural environment.” The Student has “significant difficulties ... regarding the acquisition and use of new information.” “Due to [his] disabilities, academic progress has been slow.” (Board 1/27/05 Response at 4-5)
 - (2) The Student “is often able to make one independent response, but is unable to chain a series of responses together.” (Board 1/27/05 Response at 7)
 - (3) The Student “tends to become overwhelmed when too much information is presented at one time.” This tendency is taken into account when delivering services to the Student. (Board 1/27/05 Response at 8)
 - (4) The Student has “severe behavioral, communication and sensory problems.” (Board 1/27/05 Response at 9)
- h. “Due to the severity of the Student’s disability and documented difficulty with transition, it would be detrimental to [the Student’s] progress to experience this radical change two times in a short period of time,” referring to the request of the Parents that the Student be transferred to Bunker Hill School or Carrington School for the balance of the 2004/2005 school year. (Board 1/27/05 Statement of Issues at 2)
- i. The District reports that there are no 5th grade Students with autism currently attending either Bunker Hill or Carrington Schools. The District contends that the Student’s ABA/DTI program could not be “adequately delivered” at either Bunker Hill or Carrington School for the balance of the 2004/2005 school year because the “ongoing supervision of [the Student’s program] by IPP and support available to him at Generali could not be duplicated.” The District acknowledges, however, that a “modified” program could be delivered at Bunker Hill or Carrington School, but that Generali is the appropriate placement for the Student. (Board 2/15/05 Statement)
- j. Regarding the three assignment sheets submitted by the Parents (FF90n above), the District states that these documents “were completed by the [S]tudent for homework

assignments and for reviews. At Generali, we emphasize skills and generalization of these skills. [The Student's] program have been [sic] concentrating that [the Student] be more independent in his school environment, such as setting up snack, walking quietly in the hallway and working more in a group. Calculating double digit addition problem is an important skill but for [the Student] generalizing his functional skills to his environment will make [the Student] more independent in life." (Board 2/15/05 Statement)

92. As to Issues 1 and 6, the Hearing Officer finds that:

- a. Over a several year period, the Parents have sought an out-of-district placement because of dissatisfaction with the Student's programming and progress. *See, e.g.*, FF15, 18, 22, 23, 31, 32, 49, 56(g), 65, 67(c), 77.
- b. Over that same several year period, the District has previously agreed that an out-of-district day placement would be appropriate for the Student. (FF33, 2001/2002 school year). The District in fact agreed that such a placement was appropriate for the 2004/2005 school year but the Student has remained at Generali School because there were no openings at the two day-programs the District had determined were appropriate. The District rejected several potential out-of-district day placements because they did not offer ESD services recommended by Dr. Powers and reflected in the Student's IEP. (FF80(e)-(f))
- c. The relationship between the parties regarding the Student's programming has become increasingly strained, such that the level of cooperation between them that Dr. Powers has consistently concluded was critical to the success of the Student's programming is now lacking. (FF 5(b), 9(f), 27(c), 33(h)) The Parents appear to be refusing to implement recommended components of the Student's program to the detriment of the Student's educational interests, and are resorting more frequently to due process and/or the CTDOE complaint resolution process to address deficiencies in the Student's program. Without regard to whether the Parents' use of the due hearing process and/or CTDOE complaint resolution process has been appropriate, those mechanisms are not efficient tools for assuring the adequacy of the Student's program on a current basis and the status quo that has evolved between the Parents and the District is harming the Student's educational interests.
- d. Hearing Officer Kearns found in DOE 03-190 that the Student had made progress on his 2002/2003 school year goals and objectives and received an educational benefit from that years' IEP and program. However, the issues before her involved ESY programming and it is unclear whether Hearing Officer Kearns considered the Student's 2002/2003 program in the context of his overall academic career overall. (DOE 03-190, Decision Statement of Issues) In DOE 01-280, the Board acknowledged and this Hearing Officer found that the Student was not benefiting from his in-district placement in the 2000/2001 and 2001/2002 school years. (FF33(b)-(c), (f))

- e. The Student has clearly received educational benefits from his programming over his academic career and the District appears to have made, overall, a good faith effort to meet his needs. There is merit, however, to the Parents' claims that the Student has made little progress in his educational program overall over the course of at least the 2002/2003, 2003/2004 and 2004/2005 school years. To the extent it can be determined from this record, the Student has continued to make gains in some areas, but in many other areas appears to have made no to very little progress.
- (1) A number of the Student's objectives over the past three years, although worded differently, have remained essentially the same. *See, e.g.*, FF90(n)(1)-(4) and discussion in related footnotes; FF37A line 5 and 44A line 8 (reading goal regarding Edmark program); FF12A line 2, 13A line 2, 17A lines 7-8, 37A line 1 and 44A line 1 (regarding answering "WH" questions); FF12A line 1, 17A line 10, 37A line 2, 56A line 2 (following directions).
 - (2) To the extent that success in his academic instruction would be reflected in improvements in his scores on the Stanford Binet, his scores show a decline from 1998 (composite score 78) to 2001 (composite score 64) to 2004 (composite score 55). Dr. Powers concluded in his 2001 report that the 2001 results when compared to the 1998 results reflected minimal progress in his educational program over the prior three years and raised questions regarding the effectiveness of that program. (FF8(b), 26(a), 52(g))
 - (3) To the extent that the Student's success in the functional skills aspects of his IEPs would be reflected in improved scores on the CARS (*i.e.*, decreased manifestation of autism-behaviors), that outcome is not reflected in his CARS scores which showed some improvement from 1995 (37.5) to 1998 (34), followed by a substantial decrease in 2001 (42). His 2001 CARS score has remained essentially the same, reflected in a 2004 score of 42.5. (FF4(a), 8(c), 26(c), 52(i)).
 - (4) To the extent that the Student's success in the functional skills aspects of his IEPs would be reflected in improved scores on the Vineland Adaptive Behavior Scales, his scores over the years on the Vineland indicate that he is no longer progressing. Comparison of the Student's scores on the Vineland administered in 1995, 1998, 2001 and 2004 show that at all points in time, consistent with his disabilities, the Student's adaptive behavior in all domains was significantly impaired. The Student made substantial gains in the period 1995 to 1998 and more modest gains from 1998 to 2001. Despite relatively intensive speech and language therapy and IEP goals and objectives aimed at improving communication skills and abilities, over the 3 year period between his 2001 and 2004 evaluations, the Student progressed only 5 months in the Communications Domain. Over that same period, the Student's levels on the other Domains has either remained the same or deteriorated. In all Domains, the Student is performing well below age levels. (FF4(c), 8(d), 26(d), 51(h)).

Domain	Age Equivalent 1995 (Student is 35 months old)	Age Equivalent 1998 (Student is 63 months old)	Age Equivalent 2001 (Student is 102 months old)	Age Equivalent 2004 (Student is 135 months old)
Communication	9 months	35 months	40 months	45 months
Daily Living	16 months	33 months	50 months	49 months
Socialization	12 months	21 months	30 months	24 months
Motor Skills	23 months	41 months	Not reported	Not reported
Adaptive Behavior Composite	15 months	34 months	40 months	39 months

- (5) At the outset of the 2004/2005 school year, the Student's IPP consultant and his special education teacher completed the Disruptive Behaviors Rating Scale. Their evaluation shows that the Student is manifesting multiple autism-related behaviors which are severe either in terms of their frequency or intensity, and which interfere with his ability to participate in his program. (FF75) The District acknowledges that over time, it has not been successful in eliminating or minimizing stereotypic behaviors, which have been reported and observed to interfere with his ability to benefit from his program. (FF3, 25, 42(e), 45(f), 52(a), 52(e), 54(f)-(g), 56(f), 57(k), 91(f))
- f. Dr. Powers in his March 2004 report noted that the Student was not successfully generalizing what he was learning at school to other environments. (FF52(g), 52(j)) The Student's inability to complete several homework assignment sheets in December 2004 and January 2005 appear to illustrate this observation with respect to academics. In reviewing these sheets, the Hearing Officer assumes that the Student would not have been assigned these problems as homework if he had not successfully completed them at school. On one he was asked to add one column of numbers (*e.g.*, $4+1=$). On the second, he was asked to subtract one column of numbers (*e.g.*, $4-1=$). On the third he was shown coins in various combinations and asked to state the value of the combination of coins (an addition problem). On the fourth, he was asked to put in order to tell a story a sequence of three pictures by writing "first," "next" and "last" under the appropriate picture. None of these skills are or should have been emergent given that they appear to have been addressed in IEPs dating in some cases back to the 1998/1999 school year. (FF90(n)) Even assuming that the Student can perform these tasks in a highly structured 1:1 ABA/DTI setting at school, the Student is apparently not able to generalize performance on these tasks to other environments.³⁷
- g. The record shows other factors that have persisted over the years and have harmed the Student's educational interests. There is no reasonable basis to conclude that these problems, given their persistence, will not be present in an in-district placement in the 2005/2006 school year.

³⁷ The Hearing Officer acknowledges that the Student's performance on these particular assignments may reflect factors other than his abilities – it is unknown, for example, whether his Parents provided the appropriate structure to him to enable him to complete them.

- (1) The District has been unable to provide “seamless” programming for the Student, with the result that there have been frequent changes in ESD providers leading to gaps or disruptions in the Student’s ESD programming. The District has not at times adequately supervised ESD providers and monitored the quality of services that are being provided. The District has been unable to react quickly enough to changes in the Student’s circumstances – at times, PPTs are not scheduled quickly enough and PPTs are sometimes unproductive because evaluators whose evaluation results are to be discussed at the PPT do not attend the PPT.³⁸
- (2) Dr. Powers’ staff is not able to react quickly enough to requests for service provision and there appears to be significant delays between the date of an evaluation by Dr. Powers or his staff and the date that the report of the evaluation is made available to the District and the Parents.
- (3) Although they aggressively seek to have deficiencies in the Student’s programming remedied, the Parents appear largely to have ceded control to the District of any responsibility for addressing their primary concern – the placement of the Student. The Parents know how to utilize the due process procedure but since the 2001/2002 school year have not sought due process to obtain the relief they have been seeking – an out-of-district placement.

Issue # 2 Regarding toileting issues, are any modifications to the Student’s current IEP required and should the District engage a toileting specialist to provide more intensive supervision of the Student’s toileting program?

93. Regarding this issue, the Parents contend (Parents 1/9/05 Statement at Issue 2) as follows:
- a. “[F]our years ago [the Student] was potty trained” but started having occasional accidents at school. Starting three years ago, when IPP began implementing his program, the Student’s toileting accidents at school started to increase. “The last two years at Generali the accidents have increased to a shocking rate” and include BM as well as urine accidents. The Student also started having toileting accidents on the bus to and from school. He has been averaging 4 accidents/week as of November 4, 2004. (B7 at 19) In a 3 day period (11/2/04 to 11/4/04), the Student had 20 toileting accidents. He now wears a pull-up to his program. On various occasions in the 2004/2005 school year he has come home with a “soaking wet” pull-up.
 - b. The Student is not making progress on the toileting goals of his IEP and his

³⁸ In accordance with the IDEA, the Board shall ensure that the PPT team for each child with a disability includes: the parents; the regular education teacher; the special education teacher; a board representative; and an individual who can interpret the instructional implications of evaluation results. IDEA Regulations, 34 C.F.R. § 300.344 (1999).

toileting accidents at school are interfering with his ability to participate in the other components of his educational programming. Approximately 14 interventions have been attempted to address the problem, none of which have proven successful.

- c. The Student has reportedly been found “playing with himself” at school when he is on the toilet and is not being properly supervised.
- d. The Student has not received the full services provided for in his IEP because ESD providers are unable or unwilling to perform the required overcorrection procedure implemented to address the Student’s toileting issues.
- e. IPP has been unable to address the toileting problem. In his March 25, 2004 report, Dr. Powers recommended engaging an appropriate consultant if IPP did not have the expertise on staff. The Parents were advised at the June 22, 2004 IEP that IPP did not have a toileting specialist on staff and that the District was proposing to implement an overcorrection procedure that had been initially proposed in February 2004. The Parents requested that the District contact Dr. Powers to obtain a recommendation for a toileting specialist, but the District failed to do so and instead Dr. Molteni observed the Student in his program on September 8, 2004 to support IPP.
- f. The Parent request that the District hire a toileting specialist who can visit/check the Student’s toileting program once per week or once every two weeks and consult with the District regarding that program.
- g. The Parents have included various exhibits demonstrating that the Student has been having toileting accidents through the period July 2004 through January 2005, both on the bus and at school. *See, e.g.*, P39, P40, P44, P45, P47, P49.
- h. When the Student arrives home, he changes his clothes. If his undergarments are soiled, the Parents “clean him up” and give him a fresh pair of undergarments. The Parents do not discipline the Student if he arrives home with soiled undergarments because they do not know the reason why. Among other things, they do not know if the staff forgot to take him to the bathroom, if the Student asked to go to the bathroom but was not taken, if the Student was on the bus too long, if the staff forgot to check his undergarments at the end of the day. The Parents will tell the Student that it is “wrong” to have wet underpants and that he needs to use the toilet. If the Student comes home dry, the Parents will tell him “that it is good he is dry.” The Student does not go to the bathroom in his pants during the first hour that he is at home. (Parents 2/9/05 Statement)
- i. The Parents report that his toileting at home has been “very good lately” and that “in the past” if the Student had a toileting accident at home, the Parents would not permit him to watch his television shows or “go out.” They report that over the past six months the Student has not been having toileting accidents at night

because the Parents have been keeping him up later at night. (Parents 2/9/05 Statement)

94. Regarding this issue, the District contends as follows:

- a. Toileting issues for children diagnosed with autism “can be very complex” and “unfortunately,” there is no “one size fits all” procedure that will eliminate toileting difficulties for a particular child.” (Board 1/27/05 Statement of Issues at 3)
- b. The PPT team is aware of the Student’s ongoing toileting needs and issues and have responded by making program changes reflecting best practices. Recommendations by Dr. Powers and his colleague Dr. Molteni have been presented to the PPT and the family. “Numerous programmatic recommendations have been made” to attempt to address the Student’s toileting issues. (Board 1/27/05 Statement of Issues at 3)
- c. In the period starting July 16, 2003 and continuing to date, 15 different toileting protocols have been implemented to address the Student’s toileting problems at school. (B23 at 2-5) In March of 2004, the Student was reportedly having between 1 and 5 urine accidents per week which have continued despite attempts to eliminate this behavior. (B23 at 6)³⁹ In some instances, the protocols applied had the unintended consequence of increasing rather than decreasing the toileting accidents. (For example, when a urine signal alarm was utilized in March and April 2004, the number of accidents increased dramatically; B23 at 8)
- d. The hypothesized functions of this behavior include automatic reinforcement (the Student has accidents while engaging in preferred play activities), tangible reinforcement (the Student will try to determine what clothes are in his backpack or splash water on his clothes to be able to change into a different set of clothes) and negative reinforcement (at times, the Student has accidents to avoid work or other non-preferred activities). (B23 at 6) A functional behavioral assessment completed in April 2004 indicated that the toileting accidents serve primarily an escape and an automatic function. (B23 at 10) The Student can and does spontaneously ask to use the bathroom. (B23 at 11) The Student’s urine accidents happen throughout the school day, across activities and while he is traveling on the bus to and from school. Given that there was some indication that the Student’s urine accidents occur because the Student wants to change his clothes, a proposal was made to the Parents to implement a clothes-changing protocol in which the Student would be allowed to change his clothes during the school day upon request provided he had not had a toileting accident. The Parents rejected the clothes changing protocol because they were unable to keep up with the amount of laundry generated by the Student’s toileting accidents and because they believed that the toileting issues at school were the “school’s fault.” The staff had noted that the Student had been frequently coming to school wearing the same clothes and that the Parents did not consistently provide a full set of clean clothes for him to change into should he have a toileting

³⁹ The Student’s current IEP provides as a goal that there will be no more than 4 urine accidents per week.

accident. (B23 at 16)

- e. After the June 8, 2004 PPT, IPP advised that Ms. Mazaleski had the requisite experience to develop an appropriate toileting strategy for the Student. Dr. Powers was contacted on June 21, 2004 to request his advice as to a toileting specialist and he concurred that IPP would have the necessary expertise. The plan was to determine whether the IPP toileting program was successful at the end of July and if not then Dr. Powers would identify a representative of his staff to provide consultative support. At the June 22, 2004 PPT it was determined that the IPP procedures were not successful, and Dr. Molteni was asked to consult.⁴⁰
 - f. On August 10, 2004, the District proposed to implement a 15th protocol developed based on discussions with Dr. Powers. The Parents did not consent. Accordingly, the then-currently-in-effect toileting protocol (which had not been successful) remained in place through approximately November 5, 2004. At the November 5, 2004 PPT, four potential protocols were reviewed with the Parents and they selected the following protocol: Student will be provided with a Depends undergarment on arrival to school, all requests to use the bathroom will be honored, a large magnitude of positive reinforcement will be provided for urinating in the toilet, after lunch and prior to departure from school the Student will be given a new Depends undergarment, requests for a change of Depends by the Student will not be honored. The intention of this protocol is to reward the targeted behavior and diminish the social stimulation the Student was receiving for urine accidents, eliminate the escape from ongoing activities and eliminate sensory feedback that accompanies urinating in his pants. This plan also reflects the staff's conclusion that delivery of reinforcement for remaining accident-free has been ineffective in the past. (B23 at 1, 19)
 - g. Pursuant to the January 27, 2005 PPT, Dr. Molteni will observe the Student on February 10, 2005. (Board 2/5/05 Statement) The District reports that Dr. Molteni was engaged to "create new strategies to be implemented to help [the Student] control his toileting accidents." The February 10, 2005 observation was completed and Dr. Molteni will submit a report in two weeks which will define Dr. Molteni's view as to "how often he needs to be involved with [the Student's] program. (Board 2/15/05 Statement)
 - h. The District reports that it takes 15 minutes to transport the Student from home to Generali School in the morning, 12 minutes to transport him from Generali School to the ESD provider facility and 10 minutes to transport him from the ESD provider home in the afternoon. A Behavior Therapist goes with the Student to the ESD program, changes him if he is "wet" and will take him to the bathroom upon request. (Board 2/15/05 Statement)
95. As to Issue 2, the Hearing Officer finds:
- a. There is no dispute: (1) that prior to the Student's placement at Generali School in the

⁴⁰ However, it then took approximately 2.5 months to arrange for Dr. Molteni to provide that consultation.

2003/2004 school year the Student was toilet trained; (2) that beginning in the 2003/2004 school year and since then the Student has manifested urine and BM toileting accidents at school to varying degrees of frequency; (3) that the District has expended substantial effort to identify the variables that are contributing to these behaviors and implemented multiple protocols to address toileting accidents, none of which have been successful to date at returning the Student to his pre-2003/2004 school year toileting status; (4) that the Student currently wears a Depends undergarment to school; and (5) that the Student continues to have toileting accidents and to arrive home on occasion with “urine soaked” clothes or having had a BM accident.

- b. Prior to the 2004/2005 school year, the Student’s IEP did not include specific goals or objectives related to toileting. As of the end of the 2003/2004 school year, the Student was reportedly having 1-5 toileting accidents per week while at Generali School. The toileting-related goal in the Student’s 2004/2005 school year IEP simply provides that the Student shall have no more 4 toileting accidents per week at school. It is unclear how that particular level of toileting accidents was determined. However, given that target, the goal of the IEP is to prevent the Student from deteriorating in this skill area rather than the return him to his pre-2003/2004 school year status.
- c. Some of the protocols have had the unintended effect of increasing toileting accidents. Others have had the unintended effect of depriving the Student of instructional time which does not appear to have been made up. Others have resulted in disruption to his ESD programming because the ESD provider was unable or unwilling to implement the required procedures.
- d. At least part of the responsibility for the failure of the toileting programs that have been implemented may lie with the refusal of the Parents to agree to certain protocols.
- e. Re-engaging Dr. Molteni in January 2005 was a *long* overdue step.
- f. To the Hearing Officer’s knowledge, no assessments have been performed of the environmental factors at the ESD program which might contribute to afternoon toileting accidents. In part due to Parent refusal to allow such an evaluation, to the Hearing Officer’s knowledge, no evaluation has taken place of factors in the home that might also contribute to afternoon toileting accidents.

Issue # 3 Should the Student’s IEP be modified to include provision of Berard Auditory Integration Training (“BAIT”) or Therapeutic Listening therapy?

96. Regarding this issue, the Parents contend as follows:

- a. “The District should pay for [the Student] to have a[n] audiological evaluation from [a BAIT provider] and [pay] for the AIT or Therapeutic listening if [the BAIT provider]

- finds it necessary.” (Parents 1/9/05 Statement at Issue 3)
- b. Distortions in hearing or auditory processing can contribute to behavioral or learning disorders. BAIT has been successfully used to help individuals with autism. Individuals who have completed a course of BAIT have shown improved language discrimination or comprehension, greater interest in verbalization and communication, more appropriate vocal intensity, improvement in social skills, improved academic performance and exhibition of age appropriate behavior. (Parents 1/9/05 Statement at Issue 3)
 - c. In a May 3, 2004 occupational therapy evaluation (P11), Ms. Mancini of Therapy Unlimited concluded, among other things, that the Student had difficulty modulating sensory input and auditory sensitivity. She recommended that the District perform an audiological evaluation to determine if the Student manifested any binaural discrepancies and that if “significant” discrepancies were noted that the District consider implementing a “listening program to facilitate language and decrease sensory defensiveness.” Ms. Mancini specifically recommended either “Therapeutic listening or [B]AIT.” (Parents 1/9/05 Statement at Issue 3)
 - d. The Student “is having definite difficulties disregarding irrelevant auditory information. He will cover his ears to protect them from sound and he is distracted and has trouble functioning if there is a lot of noise around.” The Parents contend that BAIT will address these behaviors which indicate the need for BAIT. (Parents 1/9/05 Statement at Issue 3)
 - e. At the June 8, 2004 PPT, the Parents requested an audiological evaluation and the District agreed to provide one, conducted by Elizabeth Dreher who is a District employee. Ms. Dreher performed her evaluation on September 13, 2004 and during the evaluation advised the Mother that she did not know how reliable her test results would be because of the Student’s disability and that she has only tested two autistic children prior to the Student. In her report (B9) Ms. Dreher reported that the central auditory processing test results were “unobtainable” because the Student was unable to perform the tasks; that his word recognition was 88% in the right ear and 76% in the left ear; that he had a slight hearing loss in his right ear at 8000 Hz. She recommended an annual audiological evaluation to monitor the hearing loss. (Parents 1/9/05 Statement at Issue 3)
 - f. At the November 5, 2004 PPT, the Parents requested another audiological evaluation to be performed by an evaluator experienced in AIT. That request was denied. Ms. Mazaleski expressed her opinion that Therapy Unlimited recommended AIT in every evaluation it performed. Ms. Dreher was not present at this PPT and the District offered to make her available at a subsequent PPT to discuss her evaluation and findings. As of the date the Parents’ commenced this proceeding, that subsequent PPT had not been convened. (Parents 1/9/05 Statement at Issue 3)
 - g. The Parents submitted literature produced by BAIT practitioners (P13) which

indicates that: (1) BAIT is used to rehabilitate disorders of the auditory system such as hearing loss or hearing distortion, and has been successfully used to help individuals with ADHD, autism, learning disabilities, language impairments, pervasive developmental disorders, and central auditory processing disorder; (2) that distortions in hearing or auditory processing can contribute to behavioral or learning disorders; (3) that individuals with these disorders can “often have hearing which is disorganized, erratic, asymmetrical, hypersensitive, or otherwise abnormal;” (4) that individuals who are “*hypersensitive*” to frequencies at various Hertz levels (such as 1000 or 8000 Hz) “might become overstimulated, disoriented or agitated” in the presence of sounds at those frequencies; (5) an individual’s hearing may also be asymmetrical, manifested as problems with sound discrimination because the “right and left ears perceive sound in extremely different ways;” and (6) that it can take up to one year for behavioral changes and benefits of AIT to become evident. (Emphasis added.)

- h. In their February 9, 2005 Statement, responding to the anti-BAIT literature produced by the District at the January 27, 2005 PPT, the Parents contend that there are hundreds of websites on the internet which support the efficacy of BAIT. The Parents are not contending that BAIT will “cure autism” but rather only that BAIT can help reduce the problems associated with Autism. The Parents note that when the Student entered the District’s school system, the District was resistant to utilizing ABA but agreed to do so as a result of a due process hearing and that the real issue is “money.” The Parents ask why if the District was so “dead set against” BAIT the District even agreed to undertake an audiological evaluation and contend that the District should have advised them of its position at the time that the request was made for the evaluation. (Parents 2/9/05 Statement)⁴¹

97. Regarding this issue, the District contends as follows:

- a. Ms. Dreher determined that the Student’s hearing was within normal limits. The discrepancy between the 8000 Hz hearing in the right ear and the 10000 Hz in the left ear is not “significant.”⁴² A “significant” binaural problem should be indicated before BAIT is provided. The Student does not meet this criteria. (Board 1/27/05 Statement of Issues at 3-4)
- b. The Central Auditory Processing Disorder (“CAPD”) assessment could not be completed secondary to the Student’s vocal stereotypies and his inability to comply with the directions. (Board 1/27/05 Statement of Issues at 4)
- c. At the November 5, 2004 PPT, the District did not deny the Parents’ request for another audiological evaluation but rather proposed to have Ms. Dreher be available at a PPT to discuss her report and respond to the Parents’ concerns. The PPT was

⁴¹ The Parents identify this as another example of the District’s alleged foot dragging and delaying tactics.

⁴² The source of the 10,000 Herz figure is not clear from the documentation.

scheduled for December 8, 2004 but was cancelled because the Student was sick.⁴³ The PPT was rescheduled for January 27, 2005, in part based on Dr. Molteni's availability. (Board 1/27/05 Response at 1)

Issue # 4 In the period starting with the Student's summer 2004 programming and continuing to date, has the District provided the Student with the Extended School Day ("ESD") or after school programming required by his IEP and, if not, what relief should be afforded to the Student?

98. Regarding this issue, the Parents contend as follows:

- a. At various points in time starting in June of 2004 and continuing through December 2004, the District has failed to deliver the Student the after school programming called for in his IEPs. When the Parents' efforts to secure compliance with this aspect of the IEP proved unsuccessful, they filed a complaint with the CTDOE. The CTDOE concluded that the Student had not been provided the identified services and directed the District to make-up the time. The District refused to comply with this directive at the November 5, 2004 PPT. (Parents 1/9/05 Statement at Issue 4)
- b. The Student is owed at least 88 hours of programming time that he has missed, exclusive of programming missed in the December 2004 vacation and without regard to the Parents' position as to Dr. Powers' recommendations regarding gaps in programming. (Parents 1/31/05 Response at 3)
- c. The District implemented "portions of the [Student's] IEP providing for an after school component for socialization. [The District is] supposed to implement the whole IEP not a portion." (Parents 1/31/05 Response at 2)⁴⁴
- d. The Parents contend that the Student did not receive 2 hours of ESD services on June 24-25, 2005 (promised in the June 22, 2004 PPT but not provided); missed 2.5 hours at PrimeCare prior to August 3, 2004 due to toileting issues; missed 3.5 hours at PrimeCare between August 3 and August 27, 2004 due to toileting issues; for the first 39 days of the 2004/2005 school year, the Student was supposed to have 2 hours per day at PrimeCare pending opening of the 21st Century program, for an additional 78 hours (39 days x 2 hours). The Parents contend that the District in each instance agreed to provide or make-up this time, but has not done so, and that in addition to these 88 hours, the Student is entitled to further hours for services that were not provided over the Christmas 2004 vacation.⁴⁵ The Parents' contend that this 88 hours does not

⁴³ The Parents raise Ms. Dreher's absence from a PPT at which an evaluation report she prepared was going to be discussed as another example of the District's delaying tactics.

⁴⁴ This is a mischaracterization of a District statement concerning its implementation of the ESD portions of the Student's IEP.

⁴⁵ They do not describe however what happened that the Student did not receive these services. They suggest in another portion of their February 9, 2005 Statement that the Student should receive between 10-15 hours

consider their view on Dr. Powers' recommendation regarding programming gaps. The Parents contend that Dr. Powers has recommended 30-35 hours per week of school day programming plus an additional 10 to 15 hours of ESD programming per week. (Parents 2/9/05 Statement)

99. Regarding this issue, the District contends as follows:

- a. The Student is owed 58 hours of ESD services which the District proposes to provide through Family Options on Fridays until the time is made-up. The District intended to make that proposal at a PPT scheduled for December 8, 2004 which was cancelled due to the Student being sick that day. The issue will be addressed at the January 27, 2005 PPT. (Board 1/27/05 Response at 2)
- b. According to the District, the 58 hours was calculated as follows: Dr. Powers recommended 30 to 35 hours per week of programming for the Student and he is receiving in the 2004/2005 school year a 39.25 hour per week program (8:10 a.m. until 5:00 p.m. 4 days per week, which reflects 31.25 hours of school day plus 8 hours of ESD). This exceeds the programming time recommended by Dr. Powers of 30-35 hour per week. (Board 1/27/05 Statement of Issues at 5) The District "owes" 2 hours/day for 4 days/week over a 36 day period in September and October 2004, which totals 60 hours of service. "Missed time from winter and April vacations were also considered." Since the District is providing more time than Dr. Powers recommends, the District believes that 58 hours is "fair and equitable." (Board 2/15/05 Statement at 2)
- b. Some or all of the missed ESD hours were associated with the inability to timely identify an ESD provider that would also perform the "overcorrection" procedure required by the Student's then-in-effect toileting program. (Board 1/27/05 Statement of Issues at 5)

Issue # 5 Starting with the Student's ESY 2004 programming and continuing to date, has the District properly implemented Dr. Powers' recommendations regarding programming to avoid gaps in service provision and, if not, what relief should be afforded to the Student?

100. Regarding this issue, the Parents contend (Parents 1/9/05 Statement at Issue 5) as follows:

- a. That Dr. Powers in his March 25, 2004 report recommended, given the Student's significant risk of regression and behavioral disruption due to absence of programming time, that the Student's programming be scheduled so that the Student did not go for more than three consecutive calendar days without direct programming.
- b. At a June 22, 2004 PPT (P-16 at 3), the District proposed that Prime Care would provide the services such that there would not be a gap in services of more than three consecutive calendar days. However, the schedule that they proposed did not comply

of services during the Christmas vacation from PrimeCare. This would bring the total to between 98 and 103 hours of compensatory time.

with Dr. Powers' recommendation.

- c. At the August 3, 2004 PPT (B8 at 3), the District advised that it did not understand Dr. Powers' recommendation to include weekends in the count of consecutive days.
 - d. By letter dated August 27, 2004, Dr. Powers explained his recommendations. A PPT scheduled for September 2004 to discuss implementation of Dr. Powers' recommendation as clarified was cancelled and the issue was not addressed until a November 5, 2004 PPT.
 - e. The Student has been harmed by the Board's failure to provide a program in which there is no gap in direct service provision that is greater than three consecutive calendar days in length. The Parents request that the District be compelled to provide compensatory education services (i.e., what they refer to as "makeup the time which [the Student] lost out on"). It is acceptable to them that Family Options provide the makeup time services.
101. Regarding this issue, the District contends that it has "consistently cooperated and enforced Dr. Powers' recommendations" in the March 25, 2004 report. It was "unclear to the PPT and the Parents, exactly what Dr. Powers meant by no more than 3 consecutive days without direct programming." Dr. Powers' subsequently clarified his statement by letters dated August 27 and November 22, 2004. His clarification was that the recommendation should be read to mean that the Student's services would be delivered on consecutive days other than Saturdays, Sundays and Monday or Friday school holidays. (Board 1/27/05 Statement of Issues at 6)

Issue # 7 Will the proposed placement of the Student at the West Side Middle School for the 2005/2006 school year provide the Student with a FAPE in the LRE under the IDEA standard?

102. Regarding this issue, the Parents contend as follows:
- a. There currently are no specialized ABA programs at any of the Board's middle schools, including the West Side Middle School. West Side Middle School has "failed" two years in a row under the No Child Left Behind Act and any program at West Side Middle School next year with the Student will be no better than the Student's current program at Generali. (Parents 1/9/05 Statement at Issue 7)
 - b. The Parents are seeking an out-of-district day placement for the Student, but if the Student cannot tolerate the bus ride to and from such a placement, then he will need a residential placement. During the Fall of 2004, they attempted to contact Ben Haven, ACES, Riverstreet and CCCD but that none of these placements would return their calls. They indicate that it was their understanding that the District was also looking for an out-of-district placement during this period, but suggest that the District was motivated to do so only to avoid finding an after school program for the Student. (Parents 2/9/05 Statement)

103. Regarding this issue, the District contends as follows:

- a. There is no specialized ABA program at any of the Board's middle schools, including West Side Middle School. (Board 1/27/05 Response at 8-9) West Side Middle School is the Student's home school. The District has been working to develop a program to transition students with autism from its elementary schools to its middle schools, and in December 2004 has finalized its plan. The transition plan includes a video of a day in the life of a student at West Side Middle School and visits by the Student to West Side Middle School to acclimate him to the environment, as well as training for teachers and staff at West Side Middle School to prepare them to provide educational services to the Student. (Board 1/27/05 Statement of Issues at 6-7)
- b. There are currently two children on the autism spectrum attending West Side Middle School. They are placed in a self-contained environment with 1:1 aides and mainstreamed for Unified Arts. Their programs reflect their individualized needs. "The [D]istrict does not operate a specialized program at any Middle School as it does at the preschool and Generali [School], because by the age of middle school the needs of these students have changed and the intense DTI is not necessary or beneficial. More of a focus is placed upon socialization and functional skills, of course depending on their particular educational needs as dictated by their IEP." (Board 2/15/05 Statement)

CONCLUSIONS OF LAW

1. There is no dispute that the Student is eligible to receive “special education” and “related services” pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (the “IDEA”) and its implementing regulations, 34 C.F.R. §§ 300.1 – 300.754 (the “IDEA Regulations”), and to Connecticut’s special education law, Conn. Gen. Stat. §§ 10-76, *et seq.*, and related regulations, Reg. Conn. State Agencies §§ 10-76-1 *et seq.* Accordingly the Board is required to provide the Student with a “free appropriate public education” (“FAPE”) in the least restrictive environment (“LRE”). *See* IDEA, 20 U.S.C. § 1401(3); IDEA Regulations § 300.7(a)(1)-(2).
2. FAPE is “special education”⁴⁶ and “related services”⁴⁷ provided at public expense, under public supervision and direction, and without charge to the parents of an eligible child which meet the standards of the State educational agency and are provided in conformity with the student’s individual education plan or “IEP.” *See, e.g.*, IDEA, 20 U.S.C. § 1401(8).
4. As to LRE, the IDEA, 20 U.S.C. § 1412(a)(5)(A), requires that LEAs:

assure that, to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily . . .
5. The IDEA’s mainstreaming or LRE provisions reflect a rebuttable presumption that the appropriate setting for an eligible child is the mainstream or regular education environment⁴⁸ and, more specifically, the mainstream or regular education environment in the child’s “home school.”⁴⁹ To meet its LRE obligations, the LEA must “...ensure that a continuum of alternative placements is available to meet the needs of children with

⁴⁶ “Special education” is “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability.” *See, e.g.*, IDEA, 20 U.S.C. § 1401(25).

⁴⁷ “Related services” includes, among other things, transportation and psychological, social work or counseling services “as may be required to assist a child with a disability to benefit from special education.” *See, e.g.*, IDEA, 20 U.S.C. § 1401(22).

⁴⁸ *See, e.g. Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1219 (2nd Cir. 1993) (IDEA’s preference for mainstreaming rises to level of rebuttable presumption); *Mavis v. Sobol*, 839 F.Supp. 968 (N.D.N.Y. 1993) (IDEA favors mainstream placement unless the nature or severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be “satisfactorily achieved”).

⁴⁹ *See, e.g.*, IDEA Regulations, 34 C.F.R. § 300.552(a)(3)(c); *Kevin G. v. Cranston Sch. Committee*, 965 F.Supp. 261, 265 (D. R.I. 1997), *aff’d*, 130 F.3d 481 (1st Cir. 1997), *cert. denied*, 524 U.S. 956 (1998).

disabilities for special education and related services.” IDEA Regulation, 34 C.F.R. § 300.551(a). That continuum starts with provision of instruction in regular classes with appropriate supplementary aids and services, followed by progressively more restrictive placements in special classes, special schools, at home or in a hospital or other institutional setting as appropriate. IDEA Regulation, 34 C.F.R. § 300.551(b)(1). There is no requirement that a student be unsuccessful in one placement before moving to a more restrictive placement, and no requirement that the Student move through the continuum step-by-step.

6. Since the LRE determination is individualized, for some children, FAPE in the LRE can be a segregated setting which does not include any mainstream components or interaction with non-disabled children. The need for such a placement can be due to educational factors or to non-educational factors (such as physical, social, emotional or behavioral problems) or to some combination of the two.
7. In determining an eligible child’s placement and program, the LEA must make an individualized determination which considers the educational benefits, both academic and nonacademic, available to the child in a mainstream placement since a child’s academic performance may be positively affected by beneficial nonacademic aspects of that mainstream environment.⁵⁰ Even if the child cannot be satisfactorily educated in a mainstream classroom, that child must still be included in the mainstream environment to the maximum extent appropriate.
8. The LRE determination is also made within the context of the standard for determining whether an LEA has satisfied its obligations under the IDEA. An LEA satisfies its obligations under the IDEA if: (1) the child’s educational program at issue, as reflected in the proposed IEP, was developed in compliance with the IDEA’s procedural

⁵⁰ Courts have fashioned several similar but not identical tests for balancing educational benefits with mainstreaming. The Court in *Oberti*, 995 F.2d at 1204, adopted a two-prong test for determining whether an LEA is in compliance with the mainstreaming requirements of the IDEA. The fact finder must first determine whether education in the regular classroom with the use of supplementary aids and services can be “achieved satisfactorily.” In making that determination, the fact finder “should consider several factors including (1) whether the school district has made reasonable efforts to accommodate the child in a regular classroom; (2) the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) the possible negative effects of the inclusion of the child on the education of other students in the class.” *Oberti*, 995 F.2d at 1217-18. If after considering those factors, the fact finder determines that the school district was justified in removing the child from the regular classroom, the fact finder must then consider the second prong – whether the school has included the child in school programs with nondisabled children to the maximum extent appropriate. See also *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044-45 (5th Cir. 1989) (because an individualized, fact-specific inquiry is required, a variety of factors are relevant to the determination with no specific factor dispositive in all cases); *Roncker v. Walter*, 700 F.2d 1058 (6th Cir. 1983) (determine first what makes the segregated placement superior and then whether those services can “feasibly” be provided in a non-segregated setting); and *Sacramento City Sch. Unified Sch. Dist. V. Holland*, 20 IDELR 812 (9th Cir. 1994) (balance the educational and non-academic benefits of full-time placement in mainstream setting, the “effect” the student has on the teacher and the class, and the cost of mainstreaming).

requirements;⁵¹ and (2) that program, as reflected in the IEP, is “reasonably calculated to enable the child to receive educational benefits.” *See, e.g., Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 206-207 (1982); *Walczak v. Florida Union Free Sch. Dis.*, 142 F.3d 119, 122 (2d Cir. 1998). The required determination focuses on the program as offered as defined in the student’s IEP. *See, e.g., Knable ex rel Knable v. Bexley Cty. Sch. Dist.*, 238 F.3d 755, 768 (6th Cir. 2001) (decision as to whether a program satisfies the IDEA standard is not properly based on what could have been provided, but rather what was offered or provided).

10. An IEP is reasonably calculated to enable the child to receive educational benefits if it is “likely” to produce progress rather than regression. *See, e.g., M.S. v. Bd. of Educ. of the City School Dist. of the City of Yonkers*, 231 F.3d 96, 103 (2nd Cir. 2000). Neither the IDEA, nor Connecticut law, require that the LEA provide an educational program which maximizes a child’s educational potential.⁵² Instead, the IDEA requires an LEA to provide an IEP that is “reasonably calculated to enable the child to receive educational benefits[.]” *Rowley*, 458 U.S. at 206-07; *K.P. v. Juzwic*, 891 F. Supp 703, 718 (D. Conn. 1995) (applying *Rowley* standard). There is no one standard for determining what constitutes a “meaningful educational benefit.”⁵³ However, the LEA must provide a program reasonably calculated to produce more than a “trivial” educational benefit given the child’s capabilities.⁵⁴

⁵¹ The Hearing Officer has determined that there are no procedural violations at issue in this case.

⁵² The purpose of the IDEA is to “open the door of public education to [disabled] children on appropriate terms [rather than] guarantee any particular level of the education once inside.” *Rowley*, 458 U.S. at 192. *See, e.g., Lunceford v. District of Columbia Board of Educ.*, 745 F.2d 1577, 1583 (D.C. Cir. 1984) (IDEA “does not [require the LEA to provide] the best education money can buy”); *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2d Cir. 1989) (IDEA does not require the LEA to provide an education “that might be thought desirable by ‘loving parents’”); *Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C. Cir. 1988) (“proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the [IDEA]”); *County School Bd. of Henrico County v. Z.P.*, 105 LRP 6113 (4th Cir. Feb. 11, 2005) (once FAPE is offered, the LEA need not offer additional educational services).

⁵³ Objective factors such as the achievement of passing marks and advancement from grade to grade can be indicators of meaningful educational benefits. *See, e.g., Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1120 (2nd Cir. 1997).

⁵⁴ *See, e.g., Walczak*, 142 F.3d at 130 (the “door of public education” must be opened for child with a disability in a “meaningful way”); *Mrs. B.*, 103 F.3d at 1121 (requirements of FAPE under the IDEA are not satisfied if an IEP affords the opportunity for only “trivial advancement”); *Hall v. Vance County Board of Education*, 774 F.2d 629, 630, 635 (4th Cir. 1985) (same; child’s capabilities, intellectual progress and what the LEA has offered must be considered along with grade promotions and test scores in determining whether the program offered is reasonably calculated to confer a nontrivial or meaningful educational benefit on the child); *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988) (Congress “envisioned that significant learning would transpire in the special education classroom—enough so that citizens who would otherwise become burdens on the state would be transformed into productive members of society”).

11. In IDEA proceedings, the opinions of “professional educators are entitled to respect.” However, that deference does not relieve the Hearing Officer of the obligation to determine as a factual matter whether a given IEP is appropriate. “That is, the fact finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *County School Bd.*, 105 LRP at 6113. *See also Tice ex rel Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990) (court may not disturb IEP simply because court disagrees with the content of the IEP; as long as it is determined that the IEP provides the child with the basic floor of opportunity, a professional educator’s choice of methodology is entitled to deference).
12. The Board has the burden of proving the appropriateness of the Student’s program and placement, which burden shall be met by a preponderance of the evidence. Conn. Agencies Regs. (“CTDOE Regulations”) § 10-76h-14. *See also Walczak*, 142 F.3d at 119 (LEA has the burden of proving the adequacy of the IEP in an IDEA due process hearing).
13. There is no dispute between the parties that the LRE placement for the Student is something other than placement in a mainstream setting. The fundamental issue in dispute is whether the Student is still making progress in the type of placement characteristic of the his placements since the 2001/2002 school year -- a self-contained classroom setting in a Board public school for most of the school day to receive ABA/DTI services and related services; opportunities for inclusionary activities; support of a 1:1 aide throughout the day; off-site ESD programming; and ESY programming. Based on the record developed in this proceeding, the Board has not demonstrated by a preponderance of the evidence that this type of placement – currently reflected in his placement at the Generali School in the 2004/2005 school year -- is the LRE placement for this Student. Although the Student has received substantial benefits in some areas of his programming over the years, the Student is not progressing academically or in terms of adaptive skills, and is not generalizing the skills acquired in the highly structured ABA/DTI instructional setting to other settings. In addition, his program has not been successful in addressing autistic behaviors and, more recently, toileting issues, which interfere with his ability to benefit from his program and participate in activities. Accordingly, an out-of-district placement in a program specializing in children with challenges and needs comparable to those of the Student is the LRE required to provide the Student with FAPE.
14. To the extent West Side Middle School will offer more of the same type of programming that has been offered to the Student to date, a placement at West Side Middle School for the 2005/2006 school year will not provide the Student with a FAPE and is not LRE.
 - a. The District commenced this proceeding primarily to obtain a determination that its plan to transition the Student from Generali to West Side Middle School is appropriate. The Parents do not raise an issue with the transition plan *per se* and that plan appears to be appropriate as a general plan for systematically transitioning an elementary school student with autism to a middle school setting. However, this case raises the issue of whether an in-district placement for the 2005/2006 school year is appropriate to begin with.

- b. The District has not yet developed an IEP for its proposed placement at the West Side Middle School for the 2005/2006 school year. According to the District, the West Side Middle School program provides less intensive ABA/DTI instruction than the Student presently receives in his Generali School placement and focuses instead on developing functional skills. Given the severity of the Student's disabilities and the lack of recent progress in addressing the significant behavioral and social challenges that he faces, any mainstreaming benefits of a placement at West Side Middle School in the 2005/2006 school year are highly unlikely to outweigh the risk of harm to the Student's overall educational interests that will occur from placement in an in-district program that continues a structure within which he is no longer making meaningful progress.
15. The Parents' request that the Student be transferred immediately from Generali School to another in-district placement with his program to be provided under IPP's supervision, until another provider can be engaged, and pending placement out-of-district. Although the Student's 2004/2005 school year placement at Generali School is no longer providing him with a FAPE, it is not appropriate to remove the Student from his program at Generali School at this point in time unless the removal is a transfer to the out-of-district placement he will also attend in the 2005/2006 school year. Attempting to replicate in another in-district placement that is not ready to receive the Student on an expedited and interim basis a program that the Parents contend is not benefiting the Student presents serious risks of harm to the Student's educational interests that are not outweighed by any benefits that may obtain from removal from his present placement at Generali School.⁵⁵
16. The Parents seek the removal of IPP as the Student's ABA consultant because Ms. Mazaleski is not responsive to and/or seems to be unaware of changes in the Student's circumstances or the Parents' concerns regarding the Student's programming, particularly his toileting issues. To the extent that the Hearing Officer has any jurisdiction to mandate whether IPP or some other provider is to provide ABA/DTI services to the Student and consulting to the District, the Hearing Officer declines to direct a mid-year change in ABA consultants for the same reasons set forth above – granting that request presents another transition to which the Student must adjust but which will not provide any clear benefits. The Hearing Officer will, however, enter certain orders intended to increase the responsiveness of IPP to Parental concerns.
17. The Parents' claim that the District is not implementing the Student's IEP because his program is being delivered largely by "city aides" who are poorly trained, rather than by IPP staff. The Student's IEP does not specify that only IPP employees will be delivering the Student's program. (B7) Where in prior school years, the Student's 1:1 therapist and

⁵⁵ This is particularly true given the timing of the effectiveness of any such relief. The Hearing Officer notes particularly in this regard that the concerns motivating the Parents to seek this relief were known to them long before the Student's 2004/2005 school year placement was developed (much less commenced) and that they are well aware at that time as to how to access due process to resolve such a concern. Had the Parents sought this relief prior to or earlier in the 2004/2005 school year, the balance may very well have tipped in favor of a change of placement for the remainder of the 2004/2005 school year. They did not, however.

aid may have been IPP employees, these individuals are now Board employees. The District contends that the aides (i.e., the Behavior Therapists) who provide 1:1 services to the Student throughout the day are college educated, have experience in working with children with autism and in some cases are former IPP employees. (Board 2/15/05 Statement)

18. The toileting component of the Student's current IEP is inadequate and needs to be modified to identify specific objectives regarding toileting for the Student while he is at Generali School, while he is traveling to or at his ESD program, and while he is being transported from the ESD program to his home. Protocols to achieve those objectives need to be determined and implemented.
19. The Parents' request for funding for an evaluation to determine whether the Student would benefit from BAIT is denied at this time. The District satisfied its obligations under IDEA Regulation 34 C.F.R. § 300.532(g) by performing an audiological evaluation of the Student. That the audiologist did not have specific extensive experience in evaluating audiological issues in children with autism and could not attain results on a CAPD assessment does not alter the findings regarding the Student's hearing that she did obtain. Those results show no significant binaural discrepancies. Without regard to the debate regarding the efficacy of BAIT as a general matter or whether BAIT would provide any benefit to the Student, the District's evaluation demonstrates that the Student does not meet the criteria established by BAIT practitioners for treatment.
20. The parties agree that the Student did not receive the full ESD services provided for in his 2004 summer ESY program, and provided for in his IEP in the initial portions of the 2004/2005 school year. The parties agreed at the January 27, 2005 PPT as to how these services would be made up but did not agree on the amount of make-up hours that must be provided. The Parents contend that the Student is entitled to 88 hours of make-up time and the District that he is entitled to 58 hours. As a form of compensatory education and based on Mr. Purdy's recommended corrective actions regarding change in service providers that is related to some of the missed hours, the Hearing Officer will direct that the Board provide up to 88 hours of additional ESD programming, rather than 58.
21. In the report of his March 25, 2004 evaluation of the Student, as clarified by his letters dated August 27, 2004 and November 22, 2004, Dr. Powers recommended that the Student's programming be provided such that there was no gap in programming of greater than three consecutive days, by which he meant that the Student should be provided services daily other than on Saturdays, Sundays and the Friday or Monday of a long holiday weekend (provided school was not in session on the holiday), and with the understanding that the Student's program was essentially year-round. To the extent that the Parents are seeking more intensive programming, that request is denied. Dr. Powers made his recommendations in the context of an evaluation of the Student's circumstances in March 2004 for purposes of planning for the 2004/2005 school year. He revisited that recommendation in August 2004 presumably with the knowledge of the results of Ms. Mule's June 2004 evaluation and in November 2004 presumably with the knowledge of the results of Dr. Molteni's September 8, 2004 observation of the Student's program. The

District contends that it has implemented Dr. Powers' recommendation. Accordingly, no relief is warranted on this claim.

FINAL DECISION AND ORDER

1. The Generali School placement is no longer LRE for the Student for the 2004/2005 school year and an in-district placement will not be LRE for the Student for the 2005/2006 school year. Notwithstanding that finding, for the reasons set forth more fully elsewhere herein, the Student shall remain in his current in-district placement at Generali School for the balance of the 2004/2005 school year. If an out-of-district placement for the 2005/2006 school year is identified that the Student can begin attending prior to the start of the 2005/2006 school year, the Student is to be transferred to that program as soon as possible and during the 2004/2005 school year if appropriate given the timing of a potential transfer.
2. It is the District's responsibility to identify an appropriate out-of-district placement for the Student for the 2005/2006 school year. If it is possible for the Student to do so, the Student should begin attending that program prior to the start of the 2005/2006 school year. To avoid a repeat of the status quo that has developed over the years regarding an out-of-district placement, the Hearing Officer further directs the parties as follows:
 - a. The Hearing Officer reaches no determination herein as to whether the appropriate out-of-district placement is a day program or a residential program. Identification of a placement within the meaning of this Order means that the District has concluded that the placement is appropriate, that there is a space available for the Student, whether immediately or for the start of the 2005/2006 school year, and that the District has taken all necessary steps to secure that space for the Student pending completion of a PPT process to formally place the Student there.
 - b. A PPT is to be convened on or before April 15, 2005 to finalize and confirm the proposed out-of-district placement. It is the Hearing Officer's express expectation and direction that the parties collaborate with each other outside of the PPT meeting and prior to the PPT meeting required by this Order to reach agreement as to the Student's out-of-district placement. The purpose of the PPT will be to formalize that agreement in an IEP. The record demonstrates a history of PPTs in which significant issues are left open with inadequate follow-through by the parties. It is the intention of this Order to avoid a repeat of that scenario.
 - c. To the extent that the Parents have a preference for an out-of-district program, the Parents are to so state in writing to the District within 10 calendar days of the date of this Order. The District shall consider the Parents' stated preference, but need not place the Student in the Parents' preferred program if the District determines that it is not necessary to do so to provide the Student with a FAPE.
 - d. The inability of a proposed program to provide ESD services shall not be the determinative factor as to whether the out-of-district program will provide a FAPE.

Once the parties have reached agreement on the placement, the remaining components of the Student's program (including, for example ESD and ESY programming) to be provided, if any, are to be defined at the PPT convened pursuant to this Order in light of the proposed placement.

- e. If an out-of-district placement cannot be identified in time for this PPT, the District is to append to the minutes of the PPT convened pursuant to this Order a detailed statement of the efforts it undertook to identify an appropriate out-of-district placement for the Student, including but not limited to a list of each potential placement it investigated, communications with each of those placements regarding the Student's eligibility to attend, and (as applicable) reasons why the District decided not to pursue a particular placement or the Student could not attend that placement. Notwithstanding the failure to identify an out-of-district placement, the PPT is to go forward to determine an in-district placement for the Student for the 2005/2006 school year. It is the Hearing Officer's expectation that the District will submit to the Parents in advance of that PPT a draft IEP detailing the proposed in-district program and that the parties will collaborate outside of the PPT meeting and prior to the PPT to reach agreement on an in-district program to be implemented should no out-of-district placement be identified.
 - f. If the Parents and the District are unable to reach agreement at this PPT regarding the 2005/2006 school year placement, and the Parents do not commence within 7 calendar days after the PPT either a complaint proceeding with the CTDOE (to secure compliance with this Order), a due process hearing (to secure a determination regarding the Student's program), or both, then the Board shall do so. The purpose of this specific Order is to assure to the maximum extent practicable before the start of the school year, that the Student's program will provide him with benefits given the issues that led to this hearing.
 - g. Even if the District is unable to identify an out-of-district placement in time for this PPT, the District and Parents are to continue efforts to identify an out-of-district placement that the Student may attend and reconvene the PPT once such a placement is identified to finalize the decision to transfer the Student to that placement. The parties are to collaborate on this ongoing effort outside of the PPT context as set forth above. Until the parties agree in writing that the District is no longer required to make such a report, at each PPT convened for the Student the District should prepare and append to the minutes of the PPT meeting a report on its efforts to identify an out-of-district placement for the Student since the prior PPT.
3. Within 20 calendar days of the date of this Final Decision and Order, a PPT is to be convened to address toileting issues. The parties are directed as follows regarding that PPT:
 - a. The sole focus of this PPT is to be toileting issues. Toileting issues are to be identified as a separate annual goal in the Student's IEP, and specific objectives are to be established regarding toileting issues at the Generali School environment, at

- the ESD provider and while the Student is being transported home from the ESD provider. The specific protocol to be implemented for each objective is to be appended to the PPT minutes for information purposes. The same protocol may be applied in more than one environment if the PPT determines that it is appropriate to do so. Each protocol is to define the specific responsibilities of the person(s) who are responsible for implementing that protocol. A data collection system should be included in the protocol to document the effectiveness of the intervention.
- b. Dr. Molteni, the Student's ESD provider, the Student's afternoon transportation provider and the Student's 1:1 behavior therapist(s) are to be invited to participate in this PPT by telephone or in person. The District is to make reasonable efforts to schedule the PPT at a time that maximizes the chances that Dr. Molteni and the ESD provider can participate and that is convenient to the Parents' work schedule. However, if scheduling convenient to the Parents' work schedule precludes attendance by Dr. Molteni and/or the ESD provider, the District is to schedule the PPT to facilitate the participation of Dr. Molteni and the ESD provider to assure that District staff and IPP have direct first hand access to these individuals to discuss any issues that may have arisen.
 - c. The purpose of the PPT is to document in the form of an IEP modification the agreement of the parties regarding the toileting objectives and protocols. It is the Hearing Officer's express expectation and direction that the parties will collaborate with each other outside of the PPT meeting and prior to this PPT to develop the objectives and the protocols. The record demonstrates a history of PPTs in which issues are left open with inadequate follow-through by the parties. It is the intention of this Order to avoid a repeat of that scenario.
 - d. If the Parents and the District are unable to reach agreement at this PPT regarding toileting objectives or the protocols to accomplish those objectives, and the Parents do not commence within 7 calendar days after the PPT a due process hearing to secure a determination regarding the toileting components of the Student's program, then the Board shall do so. The specific purpose of this Order is to compel the parties to implement appropriate toileting objectives and protocols at the earliest possible moment.
4. The Hearing Officer presumes that there is sufficient time remaining in the 2004/2005 school year for the District to provide the 58 hours of ESD make-up time it has offered. Given Dr. Powers' conclusions regarding the importance of ESD type programming for the Student and the gaps in delivery of these services, the District is directed, as a form of compensatory education, to provide additional ESD time under the structure agreed upon at the January 27, 2005 PPT until the earlier of a total of 88 hours of time is provided or the 2004/2005 school year ends, whichever comes first.
 5. The District is to implement a system for enhancing the responsiveness of IPP to Parental concerns and enhancing the District's accountability for IPP's responsiveness. It is the Hearing Officer's understanding that the parties utilize a notebook to communicate with

each other regarding the Student's program on a daily basis. If that is the case, then the following mechanism would satisfy the requirements of this Order: If the Parents identify a concern that they wish to have Ms. Mazaleski or Ms. Hlavacek address, they are to specifically state their request in the Student's daily journal in a note addressed directly to Ms. Mazaleski or Ms. Hlavacek, as applicable. Staff who review this journal on a daily basis are to direct any such communication to Ms. Mazaleski and Ms. Hlavacek if it is addressed to Ms. Mazaleski, or to Ms. Hlavacek if it is directed to Ms. Hlavacek. By no later than Tuesday of a week, Ms. Mazaleski and/or Ms. Hlavacek as appropriate are to respond in writing to the concerns raised by the Parents in the prior week.

6. The request for BAIT assessment and treatment is denied as the Student does not currently meet the criteria established by BAIT practitioners for treatment with BAIT.
7. To the extent that the Hearing Officer has any jurisdiction over the request to replace IPP as the Student's consultant for the balance of the 2004/2005 school year, that request is denied.

FF 12A 1998/1999 School Year

Line	Speech and Language Goal	Status/Progress as of June 1, 1999
1	<i>Objective # 1: Comprehend specific spatial, quantity and temporal concepts:</i>	Except for performance on a highly structured puzzle activity used to teach antonyms, the Student’s progress in comprehending concepts has been “difficult” and he does not answer “Where” questions consistently using in, on or under concepts. Pre-math concepts (e.g., most, none) are “difficult.”
2	<i>Objective # 2: Comprehend directions and answer questions composed of two-word phrases and simple subject-verb sentences:</i>	The Student follows simple directions which may need to be repeated at times depending on his distraction level. The Student answers simple questions of the type “Whose is it?” using a possessive noun. The Student can identify familiar people in response to the question “Who is it?”; with a prompt (usually “I”). The Student can answer with simple four word sentences (“I have a [noun]”); and spontaneously uses 2 word phrases such as “eating cookies” when asked about what is happening in a picture.
3	<i>Objective # 4: Use sentences containing verb + ing:</i>	The Student names 12/15 verbs using this format but does not consistently use this structure in sentences.
4	<i>Objective # 5: Increase use of descriptive vocabulary:</i>	The Student does not use descriptive language spontaneously except when talking about himself and only occasionally at those times.
5	<i>Objective # 8: Identify and label simple emotions:</i>	The report states that the Student mastered this objective with respect to happy, sad, angry, afraid and surprised, but does not indicate whether the goal has been achieved.

FF 13A 1998/1999 School Year

Line	IEP Goals	Status/Progress as of June 1, 1999
1	<i>Goal: To improve cognitive/pre-academic skills in Math:</i>	The Student can identify ordinal numbers (first, second and last); can complete a repeating pattern; has difficulty with more, less, all and none concepts; is able to add sums to 10 with a visual aid; is working on memorizing some math facts (0 to 10 addition) through the use of flash cards; can count by 10s using a visual grid as a prompt and expressively identify

Line	IEP Goals	Status/Progress as of June 1, 1999
		numbers 0 to 41.
2	<i>Goal: To improve receptive language skills:</i>	The Student is able to answer who, what and where questions about a simple topic or story; has difficulty with when questions; and can place 6 picture cards in a proper sequence but has difficulty describing the events of each picture.
3	<i>Goal: To improve perceptual motor skills:</i>	The Student can copy all upper and lower case letters and can write his name independently; can copy numerals 1-10 and write the majority of them independently; has begun to write full sentences from a near point copy.
4	<i>Goal: To improve receptive/expressive language skills, pragmatic and social communication:</i>	The Student can reciprocate social information independently, but still requires prompting to use appropriate tone and eye contact. The Student verbally reciprocates appropriate dialogue during board games with prompting and can act out imaginative play scripts non-verbally with action and animal figures. The Student has difficulty reciprocating dialogue at free play and art but does better at cooking class.
5	<i>Goal: To increase personal/social skills:</i>	The Student will participate in group activities for 5 to 8 minutes with intermittent reinforcement and can extend his time up to 30 minutes at times with verbal reminders to stay engaged in the activity. The Student will respond to adult greetings with occasional prompts but will not initiate greetings to adults and peers. The Student's inappropriate vocalizations have decreased markedly since September. He can sit in a group with low humming and at times sit quietly for periods of up to 30 minutes when engaged in enjoyable visual and interactive activities. The Student has become more aware of his peers and occasionally joins in their play independently for short periods. However, he prefers solitary activities and parallel play.

FF17A 1999/2000 School Year

Line	Goal	Objectives	Progress as of May 2000
1	<i>IEP Goal # 1 - increase math skills by 6 months.</i>	Short term objectives included: (1) adding sums 0-10 independently; (2) identify numbers 0-100; and subtract numbers 0-10. The success criterion for these objectives was a 90% to 100% accuracy rate.	The Student can identify numbers 0-66 receptively and expressively; is able to add sums using numbers 0,1,2 together with 0-8 independently; and can subtract the numbers 0-10 with the use of manipulatives

Line	Goal	Objectives	Progress as of May 2000
			and verbal prompting.
2	<i>IEP Goal # 2</i> - increase language arts skills by 6 months.	Short term objectives included: (1) Write lower case letters independently; criterion for success is 100% accuracy rate; (2) Answer “when” questions independently; criterion for success is 90% accuracy rate; (3) Write a sentence from a near point copy; criterion for success is 80% accuracy rate.	The Student can write 18 lowercase letters independently; write a sentence from a near point copy with assistance with proper sizing and spacing; and can answer 15 questions in his DTI program.
3	<i>IEP Goal # 3</i> - increase reading skills by 6 months.	Short term objectives included: (1) increasing reading sight vocabulary to 100 words; (2) read words with “ed” and “ing” endings; and, (3) make picture/sentence association with acquired sight vocabulary. Success criterion for each objective was 100% accuracy using Edmark post-tests.	The Student mastered 64 sight words from the Edmark program but needs prompting to make picture/sentence associations with those sight words; he is able to read words with “s” endings and needs prompting to read words with “ed” and “ing” endings.
4	<i>IEP Goal # 4</i> - increase his science skills by 6 months.	Short term objectives included: (1) label the daily weather using appropriate symbol; (2) identify the four seasons when shown a visual representation of each; and (3) labels 20 animals of the world and/or sea life. Criterion for success for these objectives was an accuracy rate ranging from 80% to 90%.	The Student appears to have mastered these goals, in that he can label the daily weather using an appropriate symbol for cloudy, rainy, snowy and sunny conditions; can identify the seasons when shown a visual representation; and can identify 19 animals/sealife.
5	<i>IEP Goal # 5</i> - increase social studies/health skills by 6 months.	Short term objectives included: (1) the Student will identify basic emotions when shown a picture; (2) shown pictures of people in various situations, the Student will match the proper emotion to the situation depicted; and (3) the Student will identify 10 different modes	The Student can identify the emotions sad, angry, happy and scared when shown a schematic drawing of each. He is unable to match the appropriate emotion to people in various emotional settings; he can identify 11 different modes of

Line	Goal	Objectives	Progress as of May 2000
		of transportation. Criterion for success on these objectives was a 90% accuracy rate.	transportation.
6	<i>IEP Goal # 6 - increase social/behavioral skills by 6 months.</i>	Short term objectives included: (1) when requested by an adult to deliver a message, the Student will gain the specified person’s attention and delivery the requested message; (2) the Student will walk in line with his class with 2 prompts or less; and (3) the Student will sit at his desk and complete 1 ditto with 2 prompts or less. Criterion for success on these objectives was an accuracy rate ranging from 80% to 90%.	The Student continues to need several prompts to deliver a message to another individual and appropriately gain their attention; he continues to need several gestural and verbal prompts to walk in line with his class; and continues to need more than 2 prompts to sit at his desk and complete a task. The teacher stated that the Student had had a difficult year behaviorally with many of his problems labeled as “sensory based.”
7	<i>IEP Goal # 7 - improve language comprehension.</i>	Short term objectives included: (1) demonstrate comprehension of simple “what” questions; (2) demonstrate comprehension of concepts in, on and under; and (3) demonstrate comprehension of 10 pairs of antonyms through matching. Criterion for success on these objectives was an accuracy rate of 80%.	The Student has demonstrated comprehension of what questions, of 10 pairs of opposites and of the concepts in, on and under. The Student has reportedly “mastered all of the objectives in this area of language comprehension.”
8	<i>IEP Goal # 8 - improve expressive language skills.</i>	Short term objectives included: (1) the Student will answer simple questions using complete sentences of 3-4 words without prompts other than the question itself; (2) the Student will express the concepts on, in and under in response to the question “Where is the _____?”; (3) the Student will use verb plus “ing” in structured sentences and activities; and, (4) the	The Student answers simple questions using complete sentences of 3-4 words; expresses concepts of in, on and under when asked “Where is it?”; is using verb + ing in structured sentences and activities; will raise his hand to request something; usually does not initiate greetings when he comes to speech.

Line	Goal	Objectives	Progress as of May 2000
		Student will initiate greetings within the school setting. Criterion for success was an accuracy rate of 80%.	
9	<i>IEP Goal # 9 – Student will express himself intelligibly.</i>	The short term objective was to have the Student produce certain specific sounds correctly without a model. Criterion for success was 80% accuracy rate.	The report states simply that the Student has mastered this goal.
10	<i>IEP Goal # 10 – Student will use multisensory information to participate in and complete classroom tasks.</i>	Short term objectives included: (1) the Student will follow a 2-3 step classroom activity with minimal redirection; (2) the Student will copy a sentence from the board using correct letter formation and spacing; and, (3) the Student will utilize strategies/modifications regarding sensory diet to increase attention to task. Criterion for success on some of these objectives was an 80% accuracy rate.	An occupational therapy progress report presented at the May 1, 2000 PPT states that the Student has made “slow and steady progress this year” and was beginning to write sentences and copy them from the board with “some legibility;” that the Student continued to have difficulty initiating and completing tasks, attending to an activity and tolerating sensory input; and that the Student should receive 1 hour/week of direct and up to 0.5 hours/week of indirect occupational therapy services.

FF19A 2000/2001 School Year

Line	Goal	Objectives	Progress as of June 2001
1	<i>Goal # 1: Increase reading and language arts skills.</i>	Short term objectives: (1) increase sight vocabulary to 125 words; (2) make picture sentence association with acquired sight vocabulary; and (3) write his name with proper size and spelling. Criterion for success on these objectives was a 100% accuracy rate.	The Student acquired approximately 50 new words. The remaining objectives are “in process.”

Line	Goal	Objectives	Progress as of June 2001
2	<i>Goal # 2: Increase math skills.</i>	Short term objectives are: (1) add sums 0-10 using manipulatives or a number line; (2) subtract numbers 0-10 using manipulatives or a number line; and (3) identify numbers 0-100. Criterion for success on these objectives was an accuracy rate ranging from 80% to 90%.	The Student reportedly mastered adding some 0-10 using manipulatives or a number line and identifying numbers 0-100. Subtraction objectives were not addressed.
3	<i>Goal # 3: Increase science skills.</i>	Short term objectives are: (1) when shown a visual representation of a flower, correctly label the parts; (2) make a simple graph about a previously taught concept; and (3) recall 3 items from a previously taught science concept. Criterion for success on these objectives was an accuracy rate ranging from 90% to 100%.	The Student mastered the flower labeling objective. The remaining objectives were not addressed.
4	<i>Goal # 4: Increase social and behavioral skills.</i>	Short term objectives are: (1) sit appropriately for a period of 15 minutes during desktop activity with 2 prompts or less; (2) wait appropriately for a period of 2 minutes across various settings; and, (3) reciprocate greetings and closures with adults and peers independently. Criterion for success on these objectives was an accuracy rate of 100% or 90% on 5 opportunities.	The Student reportedly mastered the objective of reciprocating greetings and closures independently. The remaining objectives are reportedly "in process."
5	<i>Goal # 5: the Student will improve his communications skills in various settings.</i>	Short term objectives are: (1) reciprocate information with one other person using a variety of simple sentences, with specific components including the concept of "and"; (2) identify and express the	The Student mastered the objectives of identifying and expressing the names of 8 places, demonstrating comprehension and expressing concepts of next to, in front of and behind;

Line	Goal	Objectives	Progress as of June 2001
		names of eight places; (3) demonstrate comprehension of and express the concepts next to, in front of, and behind; (4) use a complete sentence to describe a picture with the simple prompt "Tell me about it": (5) answer at least 5 questions about himself; and, (6) demonstrate comprehension of the function of 15 objects. Criterion for success on these objectives was an 80% accuracy rate generally.	and demonstrating comprehension of 15 objects. The remaining objectives are described as "in process."
6	<i>Goal # 6: Use multi-sensory techniques to be able to engage in written tasks during teacher directed activity.</i>	Short term objectives are: (1) using multi-sensory input, the Student will print first and last name with letter on line placements; (2) will copy board work with correct letter formation, size and on line placement; and (3) utilize provided strategies and modifications regarding sensory diet to increase attention to task. Criterion for success on some of these objectives was an 80% accuracy rate.	The Student mastered the objective of printing his first and last name on line, The objective as to copying board work was reported as "in process." The objective of increasing attention to task through use of sensory diet was "not addressed."

FF29A 2001/2002 School Year

Line	Goal	Objectives
1	<i>Goal # 1 - improve receptive language skills in various settings.</i>	Short term objectives under this Goal were (1) improve comprehension of third person pronouns, using manipulatives and then pictures; 80% accuracy rate as criterion for success; and, (2) comprehend increased information load using visual supports; 80% accuracy rate as criterion for success.
2	<i>Goal # 2 - increase expressive language skills in</i>	Short term objectives under this goal were (1) regular past and future tense expression; 70% accuracy rate as a criterion for success; (2) sequence picture stories; 75% accuracy rate as criterion for success; and (3) communicating about shared

Line	Goal	Objectives
	various settings.	experiences; 80% accuracy rate as criterion for success.
3	<i>Goal # 3 - improve functional math skills.</i>	Short term objectives under this goal were: (1) add and subtract up to three columns of numbers with regrouping; 90% accuracy rate as criterion for success; (2) demonstrate an understanding of the concepts of more/less and larger/smaller with respect to number values; 90% accuracy rate as criterion for success; (3) count change up to \$1.00; 90% accuracy rate as criterion for success; (4) tell time up to the minutes; and (5) identify the time of day for routine events in his daily schedule; 90% accuracy rate as criterion for success.
4	<i>Goal # 4 - improve reading skills.</i>	Short term objectives under this goal were: (1) the Student will receptively and expressively identify letter sounds; (2) the Student will read simple rebus sentences; (3) the Student will increase his sight word vocabulary by 125 words; and (4) the Student will read and follow one step written directions. The criterion for success in all objectives was a 90% accuracy rate.
5	<i>Goal # 5 - improve communication skills.</i>	Short term objectives under this goal were: (1) the Student will use a complete sentence to describe a picture in response to a prompt to talk about it; (2) the Student will use where, what, when and who questions to obtain information he wants; (3) the Student will respond using past tense to questions about events that have just transpired; (4) the Student will relate three events from his schedule when asked about what he did that day; and (5) the Student will response to prompts like "I see," "I have" or "I like" by making a similar statement on the same topic. The criterion for success for each objective was a 90% accuracy rate.
6	<i>Goal # 6 - use multi-sensory techniques to complete written tasks in the classroom.</i>	The specific objectives were: (1) following deep pressure, the Student will attend to a visual motor task for 8-10 minutes; (2) using visually stimulating materials, the Student will copy 2 sentences with on-line placements; and (3) after given a choice of 3 sensory activities, the Student will choose and complete one of them. The criterion for success on each objective was a 75% accuracy rate.
7	<i>Goal # 7 - improve social skills.</i>	The specific objectives were: (1) the Student will imitate a variety of play actions of peers for up to 5 minutes; and (2) the Student will gain the attention of and request desired items from peers. Success on these objectives was to be measured by probes with mastery criteria listed as "5 consecutive sessions."

Regarding Speech and Language for this school year, the Student’s IEP provided as follows (B40):		
	Goal: Improve receptive language processing and speech precision skills in various settings.	
9	Objective – Follow verbal direction with visual or other non verbal support as needed	Progress: The Student responses to verbal direction with varying support and speed. Performance is dependent on many environmental and inner variables. It appears that [the Student] does have the desire to comply and responds to redirection quite well.
10	Objective – Uses appropriate verbal expression to greet others, respond, request and relate experiences or ideas.	Progress: The Student “continues to struggle with spontaneous expressions of variety and complexity.” His communication efforts are mixed verbal and non-verbal within any given exchange. He benefits from prompting to engage verbally. However, when there is a desired item or experience, the Student can initiate a request or comment with complete clarity. The Student has never been rude or verbally abusive in small group language therapy.
11	Objective – Uses clear and correct speech sounds within words, phrases, sentences and conversation.	Progress: The Student’s articulation is 90% or more intelligible to unfamiliar listeners. His volume is often too low and speech rate can become hurried. He responds to correct speech models.

FF37A 2002/2003 School Year

Line	Goal	Objectives
1	Goal # 1 – Improve communication skills based on the regular education curriculum.	<p># 1 Use a complete first person sentence to describe a picture given a prompt (90% success);</p> <p># 2 – Use “WH” questions to obtain information about known items presented immediately to him (90% success);</p> <p># 3 – Describe how to do a preferred activity when shown a picture or offered the opportunity to do the activity (90% success rate);</p> <p># 4 – Respond to first person statements by others by making similar statements on the same item. (90% success rate);</p>

Line	Goal	Objectives
		<p># 5 – When asked about his day, relate four items from his daily journal (90% success rate);</p> <p># 6 – Ask for “more” of a preferred item (90% success rate)</p>
2	Goal # 2 – Improve written expression skills reflecting general education curriculum.	<p># 1 – Write one simple sentence with appropriate slant and letter formation when given a model and with and without prompt to continue (90% success rate);</p> <p># 2 – Write and apply 15 new words without a model (90% success rate).</p>
3	Goal # 3 – Improve functional math skills based on the regular education curriculum.	<p># 1 – Add one column of numbers and use tally marks to demonstrate accuracy for three problems without prompting (90% success);</p> <p># 2 – Count backwards from \$1.00 using pennies and tell how much he has when stopped. (90% success);</p> <p># 3 – Demonstrate an understanding of the concept or more or less and larger and smaller when using a number line (90% success);</p> <p># 4 – Put in order least to most value by using quarters, dimes, nickels and pennies (90% success rate);</p> <p># 5 – Count change using varying values no more than \$1.00 (90% success rate);</p> <p># 6 – Buy items from a mock store using single value money up to \$20.00 (90% success rate);</p> <p># 7 – use a calculator to develop math calculation skills (80% success rate).</p>
4	Goal # 4 – Improve social skills	Objectives: Participating in an activity with peers independently for up to 3 minutes, gain the attention of peers using their name, complete independent worksheets in home room up to 5 minutes or occupy time appropriately for 10 minutes when presented a visual cue; appropriately follow rules for walking in a hallway when prompted; ask to take a break when prompted; tense and relax body parts when directed during role play sessions. All at a 90% success rate.

Line	Goal	Objectives
5	Goal # 5 – Improve reading skills based on regular education curriculum	Receptively and expressively identifying letter sounds, increasing sight vocabulary by 50 words, read and follow 10 new one step written directions, and continue Edmark Reading as appropriate up to lesson 150. All at a 90% success rate.
6	Goal # 6- Develop self-help skills to become more independent.	The Student will dress himself (coat, hat, gloves) appropriately; will use hand, tissues, etc. to take care of his health needs; and will be responsible for picking up and taking care of his personal belongings. All at an 80% success rate.
7	Goal # 7 – Improve receptive, expressive language processing and speech precision given ongoing diagnostic therapy in a variety of settings.	The Student will follow verbal direction or other non-verbal support as needed; will use appropriate verbal expression to greet others, respond, request, relate experiences or ideas; and will use clear, correct speech sounds within words, phrases, sentences and conversation. All at an 80% success rate.
8	Goal # 8 – The Student will use sensory motor techniques to complete written tasks within the Primary Learning Center.	The Student will set up math examples using regular classroom paper with appropriate number size; will set up headings in his journal using a model; and will far point copy two sentences with appropriate letter size and spacing. All with an 80% success rate.

FF44A 2003/2004 School Year

Line	Goal/Objective	Progress as of June 2004
	(Communication) Goal # 1 – Student will improve communication skills based on the regular education curriculum by mastering the following objectives	
1	1 Student will answer 5 WH questions (what, where, who and when) after reading a short story – up to 10 stories [sic] (90% accuracy level)	Satisfactory ¹
2	2 Student will transmit 3-5 words information to someone –	Satisfactory +

¹ A rating of “Satisfactory” means that the Student is “Likely to achieve goal.” However, as of the end of this school year he had not mastered that objective.

Line	Goal/Objective		Progress as of June 2004
		up to 10 information total (90% accuracy level)	
3	3	Student will follow a visual activity schedule (100% accuracy level)	Mastered
4	4	Following a statement by a therapist about an object, the Student will make a statement about a different object using a noun, verb and an adjective up to 20 statements (90% accuracy level)	Mastered
5	5	When presented with a picture with abnormalities, the Student will indicate the abnormalities – up to 20 pictures (90% accuracy level)	Satisfactory -
6	6	When presented with a field of 8 objects and removing 4 objects at once, the Student will be able to label all of the objects that were removed. (90% accuracy level)	Satisfactory
7	7	Student will improve his speech articulation by processing verbal – imitation of pairs of words selected to exercise areas of the mouth needed for clear speech articulation – up to 20 pairs (90% accuracy level)	Mastered
		(Academic) Goal # 2: Student will improve reading skills as based on the regular education curriculum by mastering the following objectives	
8	1	Student will continue Edmark Reading as appropriate up to lesson 150 (90% accuracy level)	Satisfactory
9	2	Student will read short story books (5-10 pages) (90% accuracy)	Satisfactory
10	3	Student will read 75 new sight words from the Dolch list (90% accuracy level)	Satisfactory
11	4	Student will spell sight words vocally up to 20 words (90% accuracy level)	Satisfactory +
		(Academic) Goal # 3: Student will improve skills of written expression as based on the regular education curriculum by mastering the following objectives	
12	1	Student will spell 30 new sight words (90% accuracy level)	Satisfactory +

Line	Goal/Objective		Progress as of June 2004
13	2	Student will write 3-5 word sentences without a model – up to 15 sentences (90% accuracy level)	Satisfactory
14	3	Student will write 3-5 word sentences pertaining to a picture up to 20 pictures (90% accuracy level)	Satisfactory
15	4	Student will fill in the missing letters of mastered sight words up to 50 words (90% accuracy level)	Satisfactory
	(Academic) Goal # 4: Student will improve functional math skills based on the regular education curriculum by mastering the following objectives		
16	1	Student will tell time to the hour and half hour (90% accuracy level)	Mastered
17	2	Student will add two columns of numbers without regrouping for 20 problems (90% accuracy level)	Not Introduced to Other (identified in this case as an emerging skill)
18	3	Student will count up to 20 objects from open set (90% accuracy level)	Mastered
19	4	Student will buy items from a mock store using single value money up to \$20.00 (90% accuracy level)	Not Introduced to Other (identified in this case as an emerging skill)
20	5	Student will count change using varying values no more than \$1.00 (90% accuracy level)	Not Introduced
21	6	When encountering a problem, the Student will solve the problem using appropriate problem solving strategy (for example, the Student will be given worksheet and will have to ask for a pencil to complete the worksheet) (90% accuracy)	Satisfactory +
22	7	Student will tell a story by sequencing 6 pictures. He will use words such as First, Next and Last up to 5 new sets (no evaluation procedure, performance criteria or % trials stated)	Satisfactory

Line	Goal/Objective		Progress as of June 2004
	(Social) Goal # 5: Student will improve social skills based on the regular education curriculum by mastering the following objectives		
23	1	Student will participate in peer tutoring with a classmate by giving instruction to a peer and follow instruction from a peer up to 10 instructions (90% accuracy level)	Satisfactory
24	2	Student will play memory game with two other peers (90% accuracy level)	Satisfactory
25	3	The Student will take turns when playing a game with two other peers (90% accuracy level)	Satisfactory
26	4	Student will reduce inappropriate behavior (mouthing of objects, nose picking, covering/pulling ears, jumping, hands in pants, chair rocking/bouncing, singing, flapping hands and darting) by 50% from baseline	Satisfactory –
	(Communication) Goal # 6: Improve functional receptive and expressive language skills		
27	1	Student will respond to WH questions (who, what, where) related to pictures (80% accuracy level)	Mastered (with cues)
28	2	Student will follow 2 step directions with changing variables (80% accuracy level)	Satisfactory (better with cues)
29	3	Student will match a sentence to a picture for increased comprehension (80% accuracy level)	Mastered
30	4	Student will speak in complete sentences with accurate morphology (80% accuracy level)	Mastered
31	5	Student will sequence 3 and 4 pictures reflective of basic routines (80% accuracy level)	Satisfactory
32	6	Student will communicate basic needs and desires, request assistance and relate experiences with mild-moderate cuing. (80% accuracy level)	Satisfactory (better with cues)
	(Visual Motor) Goal # 7: Student will utilize strategies/modifications to complete written and functional tasks		

Line	Goal/Objective		Progress as of June 2004
33	1	Given visual/verbal cues, Student will write 3 sequential sentences about his day/therapy session (75% accuracy level)	Satisfactory (as of 11/03; nothing further reported)
34	2	Given an organizational check sheet, the Student will participate in arrival/dismissal routine with modified independence (60% accuracy level)	Other (unspecified; as of 11/03; nothing further reported)
35	3	Given a visual check sheet, the Student will participate in a simple pre-vocational task (75% accuracy)	Satisfactory (as of 11/03; nothing further reported)

FF56A 2004/2005 School Year (B7 at 7-25; B42)

Line	Goal/Objective		Progress as of November 2004	Progress as of February 2005
	(Reading) Goal # 1 – Improve reading and language arts skills related to an age appropriate curriculum.			
1	1	Follow written directions up to 4 steps to an 80% [accuracy] level.	Other ²	Not provided
2	2	Follow oral direction up to 2 steps to an 80% [accuracy] level.	S ³ -	Not provided
3	3	Read orally an 8-10 page story – 3-4 sentences per page – to an 80% [accuracy] level.	S-	Not provided
4	4	Identify the main character, main setting and main events using visuals and worksheets 80% of the time.	S-	S-
5	5	Use the table of contents to identify the story, find the page and turn to the correct page 80% of the time.	S	S
6	6	Using visuals, the Student will sequence a story.	S-	S
7	7	Using pictures, the Student will write a 2-3 sentences about the pictures 80% of the time.	S-	S-
8	8	Answer teacher directed questions and/or answer a worksheet about the story 80% of the time.	S-	S
9	9	Spell 25 new sight words [correctly] 80% of the time.	S	S

² This classification means that the skill is “emergent” or “emerging.”

³ As used in this chart, “S” means “satisfactory.”

Line	Goal/Objective		Progress as of November 2004	Progress as of February 2005
10	10	From mastered spelling words, the Student will create a syntactically correct sentence using 4-6 words.	S-	S
11	11	Correct a sentence by correcting two misspelled words, using a capital letter in the beginning of the sentence and a period or question mark.	Other	S-
		(Math) Goal # 2 – Improve math skills related to an age appropriate curriculum.		
12	1	Add two digit numbers using a calculator at an 80% success rate.	S	S
13	2	Solve simple subtraction problems 0-5 at an 80% success rate.	Other	S
14	3	Orally read numbers 100-200 to an 80% accuracy level.	S-	S
15	4	Solve simple word problems using the phrases all together and how many left at an 80% accuracy rate.	Other	S
16	5	Read a bar graph to determine how many items in a row at an 80% accuracy rate.	Other	S-
17	6	Exchange money for an item he wants to purchase at an 80% accuracy rate.	Other	S-
		(Academic/Cognitive) Goal # 3 – Improve science and social studies skills related to age appropriate curriculum.		
18	1.	Orally identify where he lives (address), state and country at an 80% accuracy rate.	S	S
19	2.	Orally state 5 community helpers with an 80% accuracy rate.	S	S
20	3.	Upon mastery of Objective # 2, Student will act out the role of the helper at an 80% accuracy rate.	NI ⁴	Other
21	4.	Locate on a map where he lives and places he has been with an 80% success rate.	NI	NI
22	5.	State the characteristics of a flower and plant with an 80% success rate.	Other	Other
23	6.	Categorize animals and where they live in the environment at an 80% accuracy rate.	NI	Other

⁴ This means that the objective was not introduced.

Line	Goal/Objective		Progress as of November 2004	Progress as of February 2005
	(Social/Behavioral) Goal # 4 – Improve social skills to an age appropriate level.			
24	1	Report up to 2 events that occurred the previous day 80% of the time at an 80% success rate.	Other	Other
25	2	Initiate at least 2 turn taking activities with a typical peer 80% of the time.	S-	S
26	3	Roll, throw, catch a ball with at least 2 typical peers for at least 5 minutes 80% of the time.	S-	S
27	4	In a group setting, will raise his hand to be called on at an 80% success rate.	Other	S-
28	5	Have a conversation with a typical peer up to 3 turns using a script. At an 80% accuracy level.	Other	S-
29	6	Use a play schedule containing 6 steps in the schedule. Mastery level is 80%.	NI	Other
30	7	Reduce inappropriate behaviors by at least 50% from current levels.	S-	S-
	(Self-Help) Goal # 5 – Improve his self help skills to an age appropriate level.			
31	1	Independently follow a morning schedule up to 4 steps. Mastery is 80% success.	S	S
32	2	Independently follow a dismissal activity schedule of up to 4 steps. Mastery is 80% success.	S	S
33	3	Appropriately use the bathroom and have no more than 4 urine accidents per school week. Mastery is 80% success rate.	S-	Unsatisfactory Progress
34	4	Objective # 4 – Request a singing or vocal activity up to 6 times per day. Mastery is 80% success rate.	Other	Unsatisfactory progress – Discontinued
	(Communication) Goal # 6 – Improve pragmatic skills.			
35	1	Carry on a conversation taking up to 4 turns without prompts. Mastery is 85% success.	Other	Not reported
36	2	Participate in small group instruction. Mastery is 80% success.	S	Not reported
37	3	Assume role of listener and speaker. Mastery is 85% success.	S-	Not reported
	(Communication) Goal # 7 – Improve expressive			

Line	Goal/Objective		Progress as of November 2004	Progress as of February 2005
	language as related to the content area.			
38	1	Ask/answer WH questions. Mastery is 85% accuracy.	S-	Not reported
39	2	Answer a given “cloze” statement. Mastery is 85% success.	S	Not reported
40	3	Objective # 3 – Identify story elements in a selected text. Mastery is 85% success rate.	Other	Not reported
	(Communication) Goal # 8 – Improve receptive language as related to the content area.			
41	1	Sequence functional routines, 3-4 pictures, given the main idea, using first, next and then. Mastery is 85% accuracy.	S	Not reported
42	2	Use a visual sequencing board with mastery at 85% success.	S	Not reported
43	3	Objective # 3 – Responding to questions, Student will use verbal, visual and physical cues. Mastery is 85% success.	S-	Not reported
	(Communication) Goal # 9 – Improve oral motor skills for speech production.			
44	1 & 3	Engage in oral motor routine and Objective # 3 is increase jaw stability. Mastery is 85% for each.	S	Not reported
45	2	Demonstrate intelligibility in a variety of educational settings without prompts. Mastery is 85% accuracy.	S-	Not reported
	(Visual-Motor/Self-Help) Goal # 10 – Utilize strategies and modifications to complete both written and functional tasks within the modified classroom setting.			
46	1	Fill in an answer sheet using triple lined paper and highlighted boundaries, clean up materials after an art activity, demonstrate increased relaxation in preparation for a table top task by imitating a posture for 5 seconds. All mastery criteria is 75%.	All S-	All S

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Waterbury Board of Education v. Student

Appearing for the Board: Maurice B. Mosely, Esq.
Office of Corporation Counsel
City of Waterbury
236 Grand Street
Waterbury, CT 06702

Appearing for the Parents: *Pro Se*

Before: Scott Myers, J.D., M.A. (Clinical Psychology)

FINAL DECISION AND ORDER - CLARIFICATION

On March 5, 2005, the Parents timely requested clarification of the Hearing Officer's March 2, 2005 Final Decision and Order concerning Issue # 4 set for hearing. Issue # 4 concerns the Student's entitlement to "make-up" services/time for Extended School Day ("ESD") programming in the 2004/2005 school year which he did not receive. The Board did not respond to or oppose to the Parents' request.

The Parents seek clarification regarding Conclusions of Law ("COL") 20 and 21, which relates to Findings of Fact ("FF") 98 and 99 and Ordering Paragraph 4 in which the Hearing Officer found that the Student had not received ESD services as provided for in his IEP and directed that the Board provide up to 88 hours of additional ESD services through the end of the 2004/2005 school year to "make-up" for the ESD time that should have been but was not provided. As set forth more fully in the Final Decision and Order, there was no dispute between the parties regarding the Student's entitlement to the make-up ESD services. The parties reported that they had reached agreement at the January 27, 2005 PPT meeting as to how the missed ESD hours would be made up.

The parties did not agree, however, over the amount of hours owed. The Board contends that the Student is entitled to between 58 and 60 ESD make-up hours within the meaning of Issue # 4. The Board stated in its submissions that its calculations "considered" the Christmas 2004 and April 2005 school vacations. The Parents contend that the Student is entitled to 88 hours of make-up time, with an additional 10 to 15 hours for programming that should have been provided over the Christmas 2004 vacation.

FF 98-99, COL 20 and 21, Issue # 4, and Ordering Paragraph 4 all relate to what the Hearing Officer understood to have been after school programming that the Student was to receive in due course over the course of the 2004/2005 school year. Accordingly, the 88 hours referred to in the Final Decision and Order did not consider what the Hearing Officer would describe as the "regular" hours of programming the Student should receive over school vacations in accordance with Dr. Powers' recommendations

regarding delivery of programming to avoid program delivery gaps. In re-reviewing the submissions of the Parents in light of their March 4, 2005 request for clarification, the Hearing Officer now understands that this issue was raised by the Parents and was somewhat distinct from the ESD make-up hours issue as understood by the Hearing Officer.

The Parents seek clarification over what hours of programming the Student is entitled to receive during these school holiday periods to avoid any confusion. The Hearing Officer agrees that providing this clarification would be helpful to the parties and does so through this ruling the March 2, 2005 Final Decision and Order by adding a new Conclusion of Law 22 which provides as follows:

22. (a) With regard to the Christmas 2004 vacation: Consistent with Dr. Powers' programming recommendations, the Student should have been provided programming on December 27, 28, 29, 30 and 31, 2004 consistent with his regular school day schedule (*i.e.*, he should have received on each of those days services that equal the sum of the number of hours of programming he receives at Generali School on a regular school day plus the number of ESD hours he receives on a typical school day). By the Hearing Officer's calculation, he should have received 10 hours of ESD that week. Those 10 ESD hours are encompassed in the 88 hours of make-up ESD time the Board has been directed to provide pursuant to the March 2, 2005 Final Decision and Order. The parties are to agree between themselves as to how the additional missed hours of service time during this period are to be made up. (b) With regard to the April 2005 vacation: The Student should receive programming on four of the five weekdays in the period April 18th through April 22nd inclusive. More specifically, he should receive on each of those four days services that equal the sum of the number of hours of programming he receives at Generali School on a regular school day plus the number of ESD hours he receives on a regular school day).

The March 2, 2005 Final Decision and Order is further clarified by adding a new Ordering Paragraph 8 which provides as follows:

8. (a) With respect to the Christmas 2004 school vacation, the Student is to be provided services in accordance with Conclusion of Law 22(a). (b) With respect to the April 2005 school vacation, the Student is to be provided services in accordance with Conclusion of Law 22(b).

All other Findings of Fact, Conclusions of Law and Ordering Paragraphs of the March 2, 2005 Final Decision and Order remain unchanged and in full force and effect.