

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Regional School District No. 9

Appearing for the Student: Howard Klebanoff, Esq.
 Klebanoff & Alfano, P.C.
 433 South Main Street, Suite 102
 West Hartford, CT 06110

Appearing for the Board: Michael McKeon, Esq.
 Sullivan, Schoen, Campana & Connon, LLC
 646 Prospect Avenue
 Hartford CT 06105

Appearing Before: Hearing Officer Scott P. Myers, M.A. (Clinical
 Psychology), J.D.

FINAL DECISION AND ORDER

ISSUES SET FOR HEARING

1. Whether and to what extent the Parents are entitled to reimbursement for the Student's placement at Devereux Glenholme ("Devereux") in the 2004/2005 school year.
2. Whether and to what extent the Parents are entitled to reimbursement for the Student's placement at Devereux in the 2005/2006 school year.

PROCEDURAL MATTERS

A. Procedural History

The Parents commenced this proceeding by letter to Regional School District No. 9 (the "District") dated December 2, 2005 and received by the Department of Education ("DOE") on December 7, 2005. No sufficiency challenge was asserted and the parties did not timely convene a resolution meeting. A pre-hearing conference convened on January 12, 2006, at which a February 15, 2006 initial hearing date and February 21, 2006 date for issuance of the final decision and order was established. The parties agreed to participate in a DOE-sponsored mediation and both the initial hearing date and date for issuance of the final decision and order were continued to accommodate a March 16, 2006 mediation session which ultimately proved unsuccessful. By agreement of the parties, the date for issuance of a final decision and order was extended to June 30, 2006 and hearing convened on May 1st, 4th and 23rd and June 5th and 6th. The evidentiary record was closed on June 6, 2006 and post-hearing briefs were submitted on June 30, 2006. Given the timing of that filing, the Hearing Officer extended the date for issuance of the final decision and order until July 10, 2006.

B. Parent Exhibits and Witnesses

Documents submitted by the Parents and marked as exhibits P1-P18 were admitted into the evidentiary record.¹

The following witnesses were called by the Parents: Father (May 1 & 4); Mother (May 4); Christina Ciocca, Psy.D., who performed an independent neuropsychological evaluation of the Student (May 4); Patricia Thereault, the Student's teaching team leader at Devereux (May 23).

C. Board Exhibits and Witnesses

Documents submitted by the Board and marked as exhibits B1-B24 inclusive, B28-B30 inclusive and B32-B45 inclusive were admitted into the evidentiary record. The Parents objected to the admission of documents labeled as exhibits B25, B26, B27 and B31. By agreement, the Board "withdrew" those documents from its exhibits.²

The following witnesses were called by the District: Karen Sullivan (a speech and language pathologist employed at Joel Barlow High School ("JBHS") (May 23); Rebecca Fredericks (a school psychologist employed at JBHS) (June 5); Patricia Roszko (Chair of the District's Special Education Department) (June 5 & 6); the Father (June 5).

D. Hearing Officer Exhibits

The Parents' request for a due process hearing dated December 2, 2005 was marked as exhibit Hearing Officer ("HO") 1.

E. Administrative Notice

At hearing on May 1, 2006, the Hearing Officer advised the parties that he would take administrative notice of provisions of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Text Revision 4 ("DSM-IV-TR") pertinent to the various diagnoses given to the Student reflected in the record. Neither party objected.

F. Issues Regarding the Scope of the Hearing

There was an extensive discussion on the record (May 1, 2006 hearing primarily) regarding the scope of the hearing and the relevance to the matters at issue in this proceeding (which concerns the 2004/2005 and 2005/2006 school years) of events concerning the Student's initial placement at Devereux in the 2003/2004 school year, when he was attending

¹ The parties were advised on May 1, 2006 that all documents admitted into the record would be treated for evidentiary purposes as a business record of the entity which created the document.

² At hearing on May 1, 2006, the Hearing Officer advised the parties: (1) that because the documents were submitted to the Hearing Officer in advance of the hearing, they remain part of the DOE's file in this matter; but (2) the Hearing Officer would not consider them or the events they described in rendering a decision. Because they were "withdrawn," these documents were not marked for identification.

the public schools in another school district (“Town A”). The Hearing Officer advised the parties that although this hearing would not decide issues concerning the Student’s placement at Devereux for the 2003/2004 school year, information related to those events and to the Student’s performance in Town A’s public schools was potentially relevant to issues regarding the Parents’ request for reimbursement for the Student’s placement at Devereux for the 2004/2005 and 2005/2006 school years and would be considered by the Hearing Officer. The documentary record submitted by each party included materials pertinent to school years before the 2004/2005 school year and both parties examined witnesses regarding those matters.

SUMMARY

The Student has Asperger’s Disorder (“Asperger’s”) or Pervasive Developmental Disorder-Not Otherwise Specified (“PDD-NOS”) and a nonverbal learning disability (“NVLD”). The Student desires social interaction but lacks the social pragmatics skills to successfully engage in social interactions and his “hypersensitive” to the reactions of his peers. He misperceives social cues at times and becomes distressed when his attempts to interact are rebuffed or are not successful. The Student is aware of his disabilities and the impact that they have on his ability to interact with peers, and experiences distress when he is treated differently from peers. These issues, among others described herein, interfere with his ability to either participate fully in or fully benefit from his educational program.

Through the end of the 7th grade, the Student received special education and related services under the IDEA in placements in public elementary and middle schools. His programs provided for participation in mainstream classes with 1:1 paraprofessional support and “pullouts” to the resource room where he received certain services. The Parents claim that in the Student’s 7th grade year they decided to remove him from public school and place him unilaterally at Devereux because his social sensitivities and peer relationship issues, among other things, had become significant and were interfering with his progress at school. Since September 2003, the Student has been attending Devereux on a full-time residential basis.

When he entered 9th grade in the 2004/2005 school year, the District assumed responsibility for the Student’s educational programming. The District proposed a placement in public school – specifically Joel Barlow High School (“JBHS”) – for the 2004/2005 and 2005/2006 school years. The Parents prefer the Student to remain at Devereux, where they contend he has made great progress which he will lose if he returns to a public school.³

The proposed placement at JBHS for the 2004/2005 and 2005/2006 school years was reasonably calculated to provide the Student with a meaningful educational benefit. The

³ Notwithstanding the Father’s testimony, the Parents’ demeanor and actions indicate they have decided that the Student will complete high school at Devereux rather than JBHS. Regrettably each party at hearing challenged the intentions and motivation of the other. The Parents are free to place the Student wherever they like. The District is not necessarily obligated, however, to fund their chosen placement and may propose a different placement. In this case, each party reasonably believes that it is acting to advance the Student’s interests. That the parties disagree with each other should not raise questions about good faith.

District's proposed program for the Student, as defined in the proposed IEPs for those years, was largely appropriate under the *Rowley* standard. However, several components of the proposed IEPs related to transitioning the Student from Devereux to JBHS were not fully thought through or developed or adequately documented. As a result, the District failed to offer the Student a FAPE in the LRE for the 2004/2005 and 2005/2006 school years.

That the District's proposed IEPs were deficient does not, however, automatically entitle the Parents to reimbursement for the full costs of the Student's placement at Devereux. A placement at Devereux on a day-student basis was "appropriate" for the 2004/2005 and 2005/2006 school years and the Parents are entitled to reimbursement for the Student's placement at Devereux in those years as if he were a day-placement student. A residential placement at Devereux was not "appropriate," and the Parents are not entitled to reimbursement for the costs of the residential components of the Devereux program.

FACTUAL BACKGROUND

The events at issue cover several years and involve disagreements regarding the Student's educational needs and programming between the Parents, the respondent District, and Town A (the local educational agency ("LEA") responsible for the Student's education prior to the 2004/2005 school year). These disagreements have not previously been the subject of a final decision and order of a DOE hearing officer or a court. Attachments 1, 2 and 3 summarize documentary and/or testimonial evidence presented at hearing that is the factual background for this dispute. A citation to certain testimony and/or a documentary evidence as a Finding of Fact to support a Conclusion of Law is not meant to suggest that the referenced evidence is the only evidence supporting that Conclusion.⁴ Rather, citations to specific evidence are for illustrative purposes and not meant to exclude other admissible evidence supporting that Conclusion of Law.⁵ To the extent that any portion of this Final Decision and Order 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 Decision in which that statement is found. *See, e.g., Bonnie Ann F. v. Callahan Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

CONCLUSIONS OF LAW

A. OVERVIEW

1. There is no dispute that, at all pertinent times, the Student was 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"), as amended effective July 1, 2005 by the Individuals with Disabilities Education

⁴ A citation in the form "FF#" refers to the referenced numbered paragraph in the Attachments; in the form "B#" or "P#" refers to a document in the record; and in the form "Name" refers to testimony of a witness.

⁵ Findings of Fact are based in part on an assessment of witness credibility, including the expert witnesses. Where a Conclusion of Law or Finding of Fact expressly or implicitly credits a version of events offered by one witness as opposed to the version offered by another, the citation reflects a conclusion as to credibility on that point.

Improvement Act of 2004 (the “IDEIA”), and its implementing regulations, 34 C.F.R. §§ 300.1 – 300.754 (the “IDEA Regulations”), and pursuant to Connecticut’s special education laws, Conn. Gen. Stat. §§ 10-76, *et seq.* and their related regulations, Reg. Conn. State Agencies §§ 10-76-1 *et seq.*⁶ The Student is a “child with a disability” within the meaning of the IDEA due to “autism . . . or specific learning disabilities” and “by reason thereof, needs special education and related services.” IDEA, 20 U.S.C. § 1401(3); IDEA Regulations § 300.7(a)(1)-(2).

- a. Over his entire educational career, the Student has been identified as having Asperger’s or PDD-NOS, both of which are autism spectrum disorders.⁷
 - b. Although not formally diagnosed until after the Parents had rejected the District’s proposed 2004/2005 and 2005/2006 school year IEPs, the Student at all pertinent times also had an NVLD.⁸
2. The District is required by the IDEA to provide the Student, as an eligible child, with a “free appropriate public education” (“FAPE”) in the least restrictive environment (“LRE”).⁹ The District satisfies its obligations under the IDEA if the program defined in its proposed IEPs and the placement stated therein: (1) were developed in compliance with the IDEA’s procedural requirements; and (2) are “reasonably calculated to enable the [Student] 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); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993) (reasonableness determined based on the information available to the IEP team at the time of the formulation of the IEP).¹⁰

⁶ This proceeding was commenced after the IDEIA’s effective date and pertains to events that occurred both before and after the IDEIA’s effective date. Neither party has claimed that the substantive determinations on the merits that need to be made in this hearing are any different under the IDEIA than under the IDEA or under Connecticut law than under the IDEA. Accordingly, unless otherwise specifically stated herein, citations are to pre-IDEIA statutes and regulations and references to the IDEA include references to the IDEIA and Connecticut law as applicable.

⁷ The characteristics of these disorders are described in FF2.

⁸ For purposes of this decision, the District does not dispute the Student’s eligibility for special education and related services on the basis of Asperger’s and an NVLD. Ms. Sullivan testified that the results of the triennial review performed by Town A in the 2002/2003 school year show that the Student had an NVLD. (FF85d) Dr. Ciocca testified that the educational presentation of Asperger’s and an NVLD have many elements in common. (FF72)

⁹ FAPE is “special education” and “related services” 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). “Special education” is defined in pertinent part at 20 U.S.C. § 1401(25) to mean: “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability.” “Related services” are defined in 20 U.S.C. § 1401(22) to include, 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.”

¹⁰ *See, e.g., Concerned Parents & Citizens for the Continuing Education at Malcolm X, et al. v. The New York City Board of Education, et al.*, 629 F.2d 751 (2d Cir. 1980) (differentiating “educational placement” from educational program).

3. The Parents claim that both the District's proposal to place the Student at JBHS and the District's proposed program for the Student (reflected in the proposed IEPs) violated the procedural and substantive requirements of the *Rowley* standard. The Parents' claim in essence is that, given the Student's disabilities, the Student needs to remain at Devereux because: (1) he has made academic, social and behavioral progress there; and (2) if the Student is placed at JBHS, he will not be successful given his sensitivity to social issues with peers and his prior educational experience in Town A's middle school and he will lose the gains he has made at Devereux. They claim that the District denied the Student FAPE in the LRE by refusing to place him at Devereux given the information provided at the June 2004 and June 2005 PPTs.
4. The Parents seek an order compelling the District to reimburse them for the full costs of the Student's attendance on a residential basis at Devereux for the 2004/2005 and 2005/2006 school years. Pursuant to Conn. Agencies Regs. Sec. 10-76h-14, the District has the burden of proving the appropriateness of its proposed program and placement by a preponderance of the evidence.¹¹ The Parents are entitled to reimbursement for the costs of the Student's placement at Devereux for a school year to the extent: (a) it is determined that the District's proposed program and placement in that year failed to satisfy the procedural and substantive requirements of the IDEA; and (b) the Parents can establish that the placement at Devereux was "appropriate" within the meaning of the applicable legal standard.

B. COMPLIANCE WITH *ROWLEY'S* PROCEDURAL STANDARD

5. The IDEA's procedural requirements and safeguards are designed to assure that the parents of a child with a disability have a full and meaningful opportunity to participate along with LEA personnel in developing, reviewing and revising their child's IEP. Assuring meaningful parental participation is so central to the goals of the IDEA that a violation of the IDEA's procedural requirements applicable to the development of an IEP may be a ground, in and of itself, for a finding that an eligible child has been denied FAPE. However, not every procedural violation warrants a finding that the LEA has failed to provide FAPE or that an IEP is invalid. Rather, the procedural violation must be gross and result in a demonstrable harm – specifically the loss of a meaningful opportunity to participate in the process by the child's representatives that results in a deprivation of FAPE for the child.¹²

¹¹ See *Schaffer ex rel Schaffer v. Weast*, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005) (where state has allocated burden of proof in due process proceedings, that allocation will govern; otherwise, burden of persuasion/burden of proof falls upon the party seeking the relief).

¹² See, e.g., *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629 (4th Cir. 1985) (repeated failure to notify the parents of their procedural rights to challenge the proposed IEP over a several year period deprived them of a meaningful opportunity to test whether the proposed IEP complied with the IDEA); *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479 (9th Cir. 1992) (child denied FAPE where school developed IEP independently, without participation of child's parents or teachers); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990), *cert. denied*, 499 U.S. 912 (1991) (to invalidate IEP based on procedural violations "there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation educational benefits"); *Urban v. Jefferson County School Dist., R-1*, 89 F.3d 720, 726 (10th Cir. 1996) (deficient IEP did not in that case amount to a denial of an appropriate education); *O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School District No. 233*, 144 F.3d

6. The Parents' procedural rights and safeguards under the IDEA were not violated with respect to the June 2004, June 2005 or November 2005 PPTs. Among other things:
- a. Each of these PPTs was duly noticed for dates that were ultimately agreed upon by the parties. (FF42, 43, 52, 74; B11-16, 19, 28, 30, 32, 33, 39 40)
 - b. The Parents were invited to participate and participated actively in each PPT. Devereux staff were invited to participate and participate actively in the June 2004 and June 2005 PPTs at which the Student's educational programming for the next school year was discussed. (FF43, 44, 46, 47, 52, 53, 57, 58) The Parents claim that the merits of their request for a placement at Devereux was not adequately considered or discussed at the PPTs, but make no claim that their ability to participate in the PPTs was curtailed or limited in any manner.
 - c. The minutes of the PPTs, IEPs and other PPT-related paperwork were provided to the Parents on a timely basis. Corrections to minutes requested by the Parents were included in the file materials for the PPT. (FF49, 60; B19 at 1; B34 at 1; B35; B21; B22; B42) The documentation indicates that a written statement of the procedural safeguards was provided to the Parents at each PPT. (B34 at 5; B19 at 8; B40) The Parents make no claim that they were not provided with the procedural safeguards.¹³
 - d. The November 5, 2005 PPT was convened by the District to review the results of an independent neuropsychological evaluation of the Student by Dr. Ciocca. Devereux staff were not invited to this PPT and did not participate. (FF74) There is no indication that participation by Devereux staff was necessary at this PPT or would have been useful or beneficial, no evidence that the Parents requested that Devereux staff participate and no basis to conclude that the District would have refused to allow Devereux staff to participate if such a request had been made. Dr. Ciocca was not invited to participate at this PPT. District staff did not believe it was necessary for her to participate and the Parents made no such request. There is no basis to conclude that the District would have refused to invite Dr. Ciocca to participate had a request to invite her been made.
 - e. The Student was invited to attend the June 2004 and June 2005 PPTs, but the Parents decided he would not participate. (B34; B18)

7. The Parents assert as claims of procedural violations that the District's proposed IEPs were not

692, 702 (10th Cir. 1998) ("technical deviations" from the IDEA's requirements do not necessarily "render an IEP entirely invalid"); *Briere v. Fair Haven Grade School Dist.*, 948 F. Supp. 1242 (D.Vt. 1996) (procedural violations resulted in denial of FAPE, where LEA inhibited meaningful parental participation, refused to discuss an alternative placement, failed to conduct supplemental evaluations, failed to advise the parent as to why a placement request was refused, delayed IEP team meetings and finalization of the IEP, and where student's teachers did not attend IEP team meetings); *Logue By and Through Logue v. Shawnee Mission Public Sch. Unif. Sch. Dist. No. 512*, 959 F.Supp. 1338, 1348 (D.Kan. 1997) (absent prejudice caused by procedural violation, IEP need not be invalidated). *See also W.A. v. Pascarella*, 35 IDELR 91 (D. Conn. 2001) (discussing the applicable principles).

¹³ Since at least the 2003/2004 school year, the Parents have been represented by counsel competent and knowledgeable regarding Federal and state special education law. *See, e.g.* FF30c, 32, 50.

developed in consideration of the Student's unique needs and abilities because: (1) no one from the District has even met the Student, much less observed, assessed or otherwise evaluated him; (2) the District failed to obtain baseline data on the Student and failed to conduct a functional behavioral assessment ("FBA"); (3) the District's proposed IEPs were otherwise not individualized to address the Student's needs and circumstances but rather were generic to students with Asperger's; and, (4) the District team at the June 2004 and June 2005 PPTs did not fully or appropriately consider a continued placement at Devereux.¹⁴ These claims are more properly defined as alleged violations of the substantive prong of the *Rowley* standard, and are addressed elsewhere herein.¹⁵

8. The Parents also claim as a procedural violation that the IEPs proposed by the District at the June 2004 and June 2005 PPTs were prepared in advance of the PPTs.¹⁶ District personnel met among themselves prior to the June 2004, June 2005 and November 2005 PPTs to discuss the Student and his educational program. Prior to the June 2004 and June 2005 PPTs, they prepared proposed IEPs for consideration at the PPT after reviewing records regarding the Student's progress and program at Devereux provided by the Parents in anticipation of the PPT and at the District's request. (Sullivan; Fredericks) The pre-PPT meetings of the District staff were both prudent and reasonable to assure that any IEP proposed for consideration at the PPT meeting was considered and comprehensive rather than constructed "on the fly." There is no evidence that the District staff members, in preparing drafts of these IEPs and conferring amongst themselves prior to the PPTs, acted in anything other than good faith. Even assuming it is a procedural violation to do so, the fact that District staff met before the PPT and/or prepared documentation for consideration at the PPT in and of itself is not sufficient to support a finding of a procedural violation so gross as to constitute a violation of FAPE.¹⁷ That the District PPT members ultimately concluded that their proposed placement and program provided the Student with a FAPE in the LRE and the Parents disagreed does not mean that the District staff had made a final decision regarding placement before the PPT or otherwise convert the act of conferring among themselves prior to the PPT into a procedural violation of the IDEA.

C. COMPLIANCE WITH *ROWLEY'S* SUBSTANTIVE STANDARD

(1) The Applicable Standard

9. The Parents claim that the District's 2004/2005 and 2005/2006 school year proposed program

¹⁴ See generally, 6/6 transcript (closing arguments of Parents' counsel) and Parents' post-hearing brief.

¹⁵ Even assuming, however, that any of those claims are properly asserted as procedural violations, those claims lack merit. None of these claims involve allegations that the Parents were denied a meaningful opportunity to participate at the PPTs. The Parents had a full opportunity to participate in the PPTs and did so. To the extent a procedural claim raised by the Parents is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

¹⁶ See generally, 6/6 transcript (closing arguments of Parents' counsel) and Parents' post-hearing brief.

¹⁷ See, e.g., *Michael J. and Deirdre J. ex rel. Patrick J. v. Derry Township Sch. Dist.*, 45 IDELR 36 (M.D. Pa. 2006) (issue concerned placement for an 11 year old child with "severe autism;" no evidence that preparation of a notice of recommended educational placement prior to the PPT reflected a final and unchangeable decision of the LEA as to the Student's placement prior to the PPT at which placement was discussed at length).

and placement failed to comply with the substantive requirements of the IDEA because they failed to provide for a full-year, residential placement at Devereux. The District's obligations under the substantive prong of the *Rowley* standard are as follows:

a. Neither the IDEA nor Connecticut law require that the District provide an educational program which maximizes the Student's educational potential.¹⁸ Instead, the IDEA requires that the District provide an IEP that is "reasonably calculated to enable the [Student] 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). 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). The benefit must be meaningful.¹⁹ There is no one standard for determining what constitutes a "meaningful" educational benefit. The Student'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 to the child. *See, e.g. Hall*, 774 F.2d at 635. Objective factors such as passing marks and advancement from grade to grade can be indicators of meaningful educational benefits but are not in and of themselves dispositive. *See, e.g., Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1120 (2nd Cir. 1997).

b. In designing an educational program for the Student, the District is required by the IDEA at 20 U.S.C. § 1412(a)(5)(A) to:

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

¹⁸ 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 also 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 (2^d 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.]"); *T.F. v. Special Sch. Dist. of St. Louis Cty, et al.*, 106 LRP 33568 (8th Cir. 2006) (that proposed IEP does not satisfy the child's parents is not dispositive; test is whether the LEA's proposal provides an "individualized" FAPE in the LRE within the meaning of the IDEA).

¹⁹ *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*, 774 F.2d at 630 (same); *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988 (in enacting IDEA, Congress "must have envisioned 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").

²⁰ *See, e.g., Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1219 (2nd Cir. 1993) (IDEA's mainstreaming preference 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 child's disability is such that education in regular classes with the use of supplementary aids and services cannot be "satisfactorily achieved").

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 . . .

This provision of the IDEA – which defines the District’s obligations to provide FAPE in the LRE – establishes a rebuttable presumption that the appropriate placement for an eligible child is the mainstream or regular education environment.²⁰ Accordingly, even if it is determined that the Student cannot be satisfactorily educated in a mainstream classroom, the IDEA requires the District to define a program that includes the Student in the mainstream environment to the maximum extent appropriate. For this reason, the District must evaluate whether the Student can be educated in a mainstream placement if provided with supplementary aids and services, and consider a full range of such services before exploring placement in a segregated mainstream setting (*i.e.*, a resource room) or a non-mainstream setting.

- c. An LEA must balance the IDEA’s mainstreaming requirements against the specific child’s individual needs. For some children, FAPE in the LRE may be a segregated setting which does not include any mainstream components or interaction with non-disabled children. “If placement in a public or private residential program is *necessary* to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.” IDEA Regulations 34 CFR § 300.302 (emphasis added). The need for placement in a segregated setting may be due to educational factors, to non-educational factors (such as physical, social, emotional or behavioral problems) or to some combination of the two. If “the [child’s] medical, social or emotional problems that . . . create or are intertwined with the educational problem” cannot “effectively” be treated outside of the segregated setting and “prevent the child from making meaningful educational progress” outside of the segregated setting, a segregated placement would be FAPE in the LRE without regard to the seriousness of the child’s educational problems. *Mrs. B.*, 103 F.3d at 1122 (rejecting hearing officer’s finding that the LEA was not obligated to fund the full cost of residential placement because “predominantly and significantly the [student’s] problems gr[e]w out of the home situation rather than the school environment”).²¹

²¹ In *Mrs. B.*, 103 F.3d at 1121, a residential placement at Devereux was deemed “necessary for [the child] to make meaningful progress” where the child’s history in the public school system over the prior several years was “marked [not only] by limited academic progress” but also “serious regression in the year prior to the placement.” She failed to “meet nearly all of the objectives set in her IEP and nearly all of her grades were unsatisfactory,” she did not “advance more than one grade level in any subject” and the LEA offered no plan to deal with her worsening behavior in spite of a clinical evaluation concluding that her “debilitating emotional problems could only be addressed in a highly structured residential setting.” See also *Naugatuck Bd. of Educ. v. Mrs. D.*, 10 F.Supp.2d 170, 181 (D. Conn. 1998) (even though the student’s “academic problems were not serious, his social and emotional needs were severe and qualified as educational needs which warranted residential placement”); *McKenzie v. Smith*, 771 F.2d 1527 (D.C.Cir. 1985) (LEA was responsible for funding the residential treatment of a child with severe emotional disabilities because the child required a highly structured environment in order to learn); *King v. Pine Plains Central School Dist.*, 918 F. Supp. 772 (S.D.N.Y. 1996) (when the residential placement is a response to medical, social or emotional problems that are segregable from the learning process, the LEA must cover the cost of special education and related services but need not fund medical treatment or other non-educational expenses).

(2) The Proposed Placement at JBHS in the 2004/2005 and 2005/2006 School Years was Reasonably Calculated to Provide the Student with a Meaningful Educational Benefit in the LRE

10. The District's proposed placement of the Student at JBHS for the 2004/2005 and 2005/2006 school years was reasonably calculated to provide the Student a meaningful educational benefit in the LRE. As a general matter:
- a. The fact that the Student has Asperger's and an NVLD does not mean that the Student cannot make meaningful educational progress in a mainstream placement with special education and related services support, or cannot benefit from the nonacademic aspects of such a placement or that an IEP proposing such a placement is not reasonably calculated to provide him with meaningful educational benefits.
 - b. The Student's social sensitivities, anxiety, and social pragmatics impairments, all of which are part of and manifestations of his Asperger's, are substantial, interfere with his ability to participate in his educational programming to varying degrees and are intimately intertwined with the educational issues with which he is dealing. (FF69) The Student will likely be challenged at JBHS in ways that he is not currently challenged at Devereux: the student population at JBHS is several orders of magnitude larger than at Devereux and the placement at JBHS will expose the Student to a population of peers who are not disabled. (FF15-17, 41(c)) It is likely that he will experience stresses at JBHS that he *may* not currently experience at Devereux,²² and given his experience in transitioning from a public middle school to Devereux and his adjustment to Devereux, it is likely that his transition from Devereux to JBHS will be difficult. (FF69; 73a; 73e; 83-84) However, even assuming those facts to be true and even assuming his rate of progress at JBHS would be less than it is or would be at Devereux, under the applicable standard these facts are not determinative of the reasonableness of a proposed placement at JBHS.
 - c. The fact that Devereux *may*, as the Parents believe, be an optimal learning environment for the Student and the fact that the Student has made progress, even substantial progress, at Devereux, are not determinative of the reasonableness of the District's proposed JBHS placement. However, what remains to be determined is whether the Student's social pragmatics, anxiety and social sensitivity issues, among other non-educational factors, could be addressed effectively at JBHS and whether the presence of those issues would prevent the Student from making meaningful progress in a placement at JBHS.
 - d. The fact that when he first became the District's responsibility in the 2004/2005 school year, the Student was placed on a full-time residential basis outside of the District is also

²² At Devereux, the Student continues to have difficulties with peer relations and continues to manifest the same social pragmatics issues that prompted the Parents to remove him from public school. Among other things, these difficulties are reflected in the Student's TES target behaviors (FF92). Significantly, the Student's tendency to isolate himself, which the Parents identified as a significant problem prior to the time the Student started at Devereux, was identified for the first time in May 2005 as an issue of significance to work on as part of the Student's TES. (FF92) Dr. Ciocca testified that misperceiving the behaviors of others is a characteristic of Asperger's. (FF69)

not dispositive. The IDEA requires re-evaluation of the Student's placement at least once annually to determine its continued appropriateness. The District is not bound to any agreement reached between the Parents and Town A regarding the Student's placement at Devereux and the Student was not placed at Devereux as the result of a decision of a PPT, a DOE hearing officer or a Court.

- e. Pertinent to the Student's social sensitivities and the Parents' claims, there are significant differences between the manner in which special education and related services were delivered at AMS (the Student's last public school placement before he began attending Devereux) and the manner in which they are delivered at JBHS.
 - i. At AMS, a student would be pulled out of a mainstream class to receive components of his/her special education and related services (*i.e.*, go to the resource room) and was therefore relatively easily identifiable as a "special education" student. At JBHS, there are no pull outs. Instead, to the extent the Student requires special education or related services outside of a mainstream classroom, he would be scheduled to receive those services during a scheduled class period in one of several resource rooms scattered throughout the building. These resource rooms look like any other classroom. Accordingly, the resource room simply becomes one of the Student's scheduled classes. Since students do not move from class to class as a block, the fact that the Student was not going to the same class as one or more of his peers from the prior class would not be readily apparent. Similarly, to the extent the Student is placed in a "modified" course for a subject (*e.g.*, as was proposed for English to address his graphomotor issues), the Student would be in a classroom with other students with similar issues. (FF41b)
 - ii. Paraprofessional support at AMS was provided on a 1:1 basis so that a student with a paraprofessional was readily identifiable as different from his/her peers. At JBHS, paraprofessionals are assigned to a classroom and not a student *per se* and indirectly support students in that class who require the support. Accordingly, the Student at JBHS could receive paraprofessional support where needed without being identified as being provided that paraprofessional support and as one of potentially several students in the class being provided with that support. (F41d)
- f. The Student has available to him at JBHS essentially all of the opportunities available to him at Devereux (*i.e.*, chorus, sports, drama), plus one opportunity he does not have at Devereux: the opportunity to interact with, learn from and learn how to develop relationships with non-disabled peers. The LRE requirements of the IDEA reflect a determination by Congress, upheld by the Courts over the years, that both the disabled child and his/her non-disabled peers benefit from being educated together as a general matter.
- g. JBHS special education staff working with the Student and designing his program are highly experienced and appropriately certified special education professionals. (FF45a; 45b; 55)

11. Based on the information available as of the June 2004 PPTs as reflected in the record of this case, including written reports from Town A and from Devereux, a residential placement at Devereux was not necessary to provide the Student with a FAPE in the LRE for the 2004/2005 school year.
- a. Prior to the 8th grade, the Student had attended the public schools in Town A with IEPs that provided for placement in mainstream and resource room classes with 1:1 paraprofessional support, various classroom accommodations, assistive technology (an Alphasmart), speech and language therapy, social skills training, and extended school day (“ESD”) and extended school year (“ESY”) programming. Evidence in the record indicates that the Student was taking on-grade level courses that were not modified, progressed from grade to grade with his peers, was not held back, attained more than simply passing grades and received an educational benefit. (FF3-12)
 - b. Town A completed a triennial assessment of the Student when he was in the 7th grade. The reports from that assessment do not indicate that the Student was presenting disciplinary or attendance problems at school. Those reports indicate, among other things, that he was able to participate in mainstream classroom activities appropriately even though he manifested behavioral problems consistent with his diagnosis (such as problems with turn taking); that he could appropriately utilize the supports provided to him (such as his paraprofessional, his Alphasmart, and social work services); that he could participate in activities such as lunch without adult supervision and support and navigate the school environment on his own if he needed to do so; that he was responsive to direction and guidance from his teachers as to appropriate classroom behavior; and that he was aware of classroom protocols and could comply with them. These reports also illustrate the quality and nature of the Student’s interactions with adults, including his ability to appropriately verbalize his preferences. (FF12)²³
 - c. The Town A triennial assessment also revealed that the Student’s Verbal IQ score was in the superior range with a relatively weaker Performance IQ score which, nonetheless, was within the average range. (FF12) The Student’s performance on objective assessments of academic achievement was also generally at his age and grade levels, indicating that the Student was obtaining a meaningful benefit from his educational program. (FF4, 5, 9, 11, 12, 13)
 - d. The Student has never been hospitalized due to his Asperger’s. (FF71g)
 - e. The Parents retained an educational consultant to help them determine an appropriate placement for the Student for the 8th grade. (FF13) Notwithstanding their claims now that the Student required a residential placement because of his disabilities, they investigated a placement at Devereux on a *non-residential basis*. They ultimately placed him on a full-year round residential basis after Devereux advised them during the admission process that due to the severity of his disabilities Devereux would only accept him in their program as a full-year round residential

²³ This is not to discount the reports of the Parents, echoed to some extent by Town A staff in their reports, that in the 7th grade the Student was also experiencing increasing difficulty with peer relations and increasing anxiety associated with his awareness of the impact of his disability on his ability to be like and to be treated like his peers.

student.²⁴ They placed the Student at Devereux because of non-educational factors (*i.e.*, social sensitivities and anxiety) that were interfering with his ability to participate in the mainstream educational setting. (FF7, 14, 31d, 33a, 39a) Those factors did not, however, prevent him from making meaningful progress in the public school placement.

- f. In his intake evaluation of the Student, which was conducted several weeks after the Student had been attending Devereux, Devereux's consulting psychiatrist, Dr. Ninivaggi, determined that the Student was not psychotic, not suicidal or otherwise a threat to himself, and not a threat to others. Dr. Ninivaggi concluded further that the Student should be weaned from the medication he had been taking for attentional, anxiety and sleep problems. Dr. Ninivaggi opined that the Student could benefit from a placement on a residential basis at Devereux and that such a placement would "facilitate" progress in the academic, social and behavioral domains because of the consistency across settings. He did not opine, however, that such a placement was necessary to enable the Student to obtain a benefit from his educational programming. (FF33)
- g. Although not required to do so, Devereux developed an IEP for the Student for the 2004/2005 school year. The goals and objectives of that IEP were similar to the goals and objectives in the Student's 7th grade school year IEP (the last year he attended Town A) and did not require services or programming that could only be delivered in or was unique to a residential placement. (FF2, 34, 90; compare B7 at 10-23 with P1)
- h. A central component of the Devereux educational program is the token economy system ("TES"). Devereux educational and residential staff identify a group of target behaviors to work on with a student from a menu of 52 potential target behaviors, and use the TES to reduce the frequency of occurrence of those target behaviors until they are no longer deemed problematic under pre-established criteria.²⁵ The target behaviors identified for the Student in September 2003 were as follows: talking back, interrupting, arguing, name calling, responding to teasing, being stubborn, pouting when things do not go his own way, having poor interactions with peers, being non-assertive, accusing others of picking on him. (FF35)²⁶ There is nothing particularly unique about any of these behaviors such that any of them could not be effectively addressed in a placement at JBHS, or could only be addressed in a residential placement.
- i. While the TES behaviors are addressed in both the educational and residential components of the Devereux program, a separate "treatment plan" is devised to address issues outside of the educational component. The Student's treatment plan included components to address interpersonal relations, improving social skills, self-advocacy skills, home behavior, and

²⁴ No testimony or evidence was offered as to what assessment, if any, Devereux did to make this determination. Although Devereux offers both residential and non-residential placements, virtually all of the students enrolled at Devereux are enrolled on a full year round residential basis. (FF17)

²⁵ See generally FF19-25 for a description of the TES. In essence, students earn tokens in both the educational and residential components and advance through the TES level system by not engaging in the problematic behavior. It appears that they learn proactive coping skills through individual and group counseling that occurs outside of the context of the TES. (FF37, 39d)

²⁶ These target behaviors apparently have remained the same. See Attachment 3, FF92.

improving coping skills. (FF37) In some cases, the target behaviors are also addressed through the TES.²⁷ Other behaviors are apparently addressed through counseling or social work services. (FF39) There is nothing particularly unique about any of these behaviors or issues such that any of them could not be effectively addressed in a placement at JBHS.

- j. Devereux determined that the Student's ability to perform activities of daily living ("ADLs") was "age appropriate," and that the problems he showed with ADLs were motivational rather than skill based.²⁸ The ADLs identified by Devereux for the Student to work on in the residential component were as follows in the Student's 2003/2004 school year "Treatment Plan-Residential:" Taking care of his own clothing by putting clean clothes in drawers and hanging them up; Taking care of his room and personal possessions; Making his bed independently to certain defined standards; Maintaining good personal hygiene by brushing teeth correctly and caring for finger and toe nails. (FF36) A residential placement is not required to address these target behaviors. The Devereux documentation and reports submitted by the Parents at the June 2004 PPTs do not include reports on the Student's progress in his "Treatment Plan-Residential" or include that proposed treatment plan for the 2004/2005 school year. It is not clear whether the Student no longer required such a plan, whether the existing plan was simply carried forward or a new plan was developed.
 - k. The Student was completing an on-grade level curriculum in the "mainstream" environment at Devereux (as compared to a more restrictive resource room setting at Devereux in which some students receive their educational programming). *See, e.g.*, FF52 (describing 10th grade courses at Devereux); FF67 (stating achievement test results as of August 2005); FF81; FF26.
11. Based on the information available as of the June 2005 PPT as reflected in the record, including written reports from Devereux, a residential placement at Devereux was not required to provide the Student with a FAPE in the LRE for the 2005/2006 school year.
- a. There were no significant changes in the Student's clinical presentation (*i.e.*, diagnosis, manifestation of symptomatology, anxiety, social sensitivity issues, behavioral issues) between the June 2004 and the June 2005 PPTs that would warrant a conclusion that for non-educational reasons the Student required a residential placement for the 2005/2006 school year. Rather, the Student's clinical presentation remained essentially stable.
 - b. There were no significant changes in the Student's educational presentation (*i.e.*, his ability to participate in and benefit from an educational program) between the June 2004 and the June 2005 PPTs that would warrant a conclusion that the Student, for educational reasons, required a residential placement for the 2005/2006 school year. *Compare, e.g.*, Devereux teacher reports at P11, B19 and B34. Rather, the Student's educational presentation remained essentially stable (if not improved).

²⁷ Compare description of treatment plan in FF37 with description of behaviors addressed through TES in FF35 and FF92.

²⁸ This is consistent with Town A's assessment, as indicated in his 2003/2004 school year IEP (B7 at 10). The results of the triennial evaluation by Town A do not suggest the Student was experiencing any significant difficulties with ADLs.

- c. Although not required to do so, Devereux developed an IEP for the Student for the 2005/2006 school year. The goals and objectives of that IEP were similar to the goals and objectives in the Student's 7th grade school year IEP (the last year he attended Town A) and in the 2004/2005 school year, and did not require services or programming that could only be delivered in a residential placement. *Compare* B7 and B8 (Town A IEPs) with Attachment 2.1 (Devereux IEPs).
- d. The Devereux documentation and reports submitted by the Parents at the June 2005 PPT do not include reports on the Student's progress in his "Treatment Plan-Residential" or include that proposed treatment plan for the 2005/2006 school year. It is not clear whether the Student no longer required such a plan, whether the existing treatment plan was simply carried forward or a new plan was developed.
- e. As of May 2005, the TES plan for the Student shows that the Student was still working on the same target behaviors that had been identified in September 2003, plus four new behaviors identified as of May 2005: Poor volume control/tone of voice; Makes irrelevant comments; Mumbles, Isolates self. These behaviors were not new to the Student's clinical presentation, however, and were not such that they could not be addressed at JBHS or could only be addressed in a residential placement.²⁹

(3) The District's Proposed 2004/2005 and 2005/2006 School Year IEPs As A General Matter Defined a Program That was Reasonably Calculated to Provide the Student with a Meaningful Educational Benefit

- 12. Except as stated in Section 5 below, the goals and objectives stated and program outlined in the District's proposed 2004/2005 and 2005/2006 school year IEPs appropriately addressed the constellation of issues that are part of the Student's disability and were reasonably calculated to provide the Student with a meaningful educational benefit. Review of Attachment 2.2 shows that the District's goals and objectives were essentially the same as Devereux's goals and objectives, which is not surprising given that the District used the Devereux reports as the primary source of information about the Student's educational status and progress.³⁰
 - a. The Student has historically had and continues to have graphomotor weaknesses that have been addressed through the use of assistive technology. The District proposed to utilize assistive technology and also placed the Student in a modified class for English and Western Civilizations, both of which have substantial writing requirements. The modified classes cover the same

²⁹ Ms. Thereault, the Student's educational team leader at Devereux was unable to explain why the Student's TES was expanded to include these behaviors at that time, other than to state generally that these behaviors may have been added as the original behaviors had been sufficiently resolved. (Thereault) Particularly noteworthy is that one of the added behavior was "isolates self" a problem that the Parents report was one of the primary drivers of their dissatisfaction with the public school placement in Town A and a primary concern for them going forward.

³⁰ The Parents do not appear to claim that the goals and objectives defined by the District do not address the Student's needs – they are objecting to the placement at JBHS rather than Devereux.

curriculum as their unmodified counterparts, but have less stringent requirements for written work product. All students in these classes have access to assistive technology (AlphaSmarts or laptops), which is provided in the class and remains in the classroom. In his mainstream classes, the Student would receive indirect assistance with graphomotor issues through the paraprofessional assigned to the class, who would take notes to supplement the Student's notes. (FF44c)

- b. The proposed program included training in social pragmatics, skills and communications through the more structured format of the SFS, the less structured format of an ESD program which allowed for interaction with non-disabled peers, and a community based social group that meets monthly on the weekends and does activities in the community. Further support would be provided through individual counseling and an ESY program which included both classroom instruction and social skills training opportunities.³¹ Peer mentoring would be available where needed to further support the Student's functioning at JBHS. (FF85a, 87a-b & d-f, 44c, 46, 54, 58e-k)
- c. The Student's proposed IEPs included components specific to reducing undesirable behaviors by improving the Student's social pragmatics skills, separate components to increase the Student's problem-solving and proactive coping skills and additional components focused on decreasing the Student's anxiety to the extent the anxiety was not related to socialization issues. (FFF58c) A positive behavioral support system would be implemented to provide the Student with positive reinforcement for exhibiting desired target behavior. (FF58j)
- d. The District would retain an outside consultant to support the Student's program. (FF57a)
- e. Post-secondary educational goals and objectives were included. *See* Attachment 2.2
- f. It is likely that the Student will need paraprofessional support while at JBHS and the issue of use of paraprofessional support is a fundamental one for the Student. Given the Student's sensitivities with respect to paraprofessional support, District staff reasonably concluded that the Student should not be assigned a 1:1 paraprofessional but rather should be given indirect paraprofessional support. At JBHS paraprofessionals are assigned to a class based on class roster and support at least one student in the class indirectly by taking notes which are then deposited in a folder in the resource room for the student to retrieve. The Student was responsive to programming at AMS providing for 1:1 paraprofessional support which was then gradually faded over time. Accordingly, it was reasonable for the District to start with the assumption that the Student would

³¹ "Extended school year" or "ESY" services means special education and related services provided to a child with a disability beyond the LEA's normal school year in accordance with the child's IEP at no cost to the parents. ESY must be provided only if a child's IEP team determines, on an individual basis, in accordance with 34 C.F.R. §§ 300.340-300.350, that ESY services are necessary to provide that child with FAPE. 34 C.F.R. § 300.309. There is no requirement that ESY be made a part of every eligible child's IEP even if doing so would provide the child with some educational benefit. *See, e.g., Johnson v. Independent Sch. Dist. No. 4*, 921 F.2d 1022 (10th Cir., 1990), *cert. denied*, 500 U.S. 905 (1991) (ESY services must be provided to a child if that is the appropriate educational experience for that child's situation). The party requesting ESY must "demonstrate[,] in a particularized manner relating to the individual child, that an extended school year program is necessary..." to provide FAPE. *See, e.g., Codrey v. Euckert*, 917 F.2d 1460, 1473 (6th Cir. 1990).

not need direct 1:1 paraprofessional support. Such 1:1 support could be discussed with the Student and provided should it be necessary and should other supports, such as peer mentors, be unsuccessful.³²

(4) Dr. Ciocca's Evaluation, Conclusions and Recommendations

13. After reviewing Dr. Ciocca's evaluation report and considering the information that they had available to them regarding the Student, District personnel at the November 4, 2005 PPT reasonably concluded that no changes were warranted in either: (i) the goals and objectives proposed by the District for the 2005/2006 school year at the June 2005 PPT; or (ii) the proposal to place the Student at JBHS.³³ Dr. Ciocca's evaluation results do not support a conclusion that a residential placement was necessary for the Student to obtain a meaningful educational benefit.
- a. In large part, Dr. Ciocca's evaluation report validated the results of the triennial performed by Town A in the 2003/2004 school year, was consistent with the observations of Town A staff and Devereux staff, and did not otherwise provide any new information of significance regarding the Student's educational or clinical presentation. Rather, Dr. Ciocca's evaluation demonstrates that the Student's clinical and educational presentation has remained essentially stable over time.
 - b. Dr. Ciocca's anecdotal observations of the Student demonstrate that he is capable of interacting appropriately with unfamiliar adults in an unfamiliar setting, is aware of his surroundings and able to navigate them appropriately, and can express his needs and preferences. His behavior was, overall, appropriate to the task. She reported that the Student became "enraged" after expressing a desire to take a break from the testing and learning that the arrival of his lunch was delayed. Although describing the Student as "enraged," Dr. Ciocca's report did not state that the Student's behavior was out of control, threatening or destructive and did not state that he was unresponsive to redirects. She also noted that he calmed right down when his lunch arrived and was able to resume the testing thereafter. (FF68-69, 71d)
 - c. Dr. Ciocca testified that she did not in her report recommend any particular placement for the Student, including Devereux. She ultimately testified that the placement at Devereux was appropriate to meet the Student's needs. Dr. Ciocca did not state in her report or in her testimony that the Student requires a placement at Devereux because his Asperger's and/or NVLD will prevent him from receiving a meaningful educational benefit in a mainstream setting. To the extent that Dr. Ciocca concluded that a residential placement was required in order for the Student to receive a meaningful educational benefit, that conclusion cannot reasonably be based on

³² The District's 2004/2005 school year IEP did not provide for assignment of paraprofessional support, direct or indirect, specifically to the Student. Ms. Roszko claims that at a mediation regarding the 2004/2005 school year, the Parents claimed that the lack of paraprofessional support to the Student was a deficiency in the proposed IEP. Accordingly, Ms. Roszko built indirect paraprofessional support in the mainstream setting back into the 2005/2006 school year IEP. (Rozsko)

³³ Given the similarities between the Devereux and District IEPs in terms of goals and objectives, it is significant to note that Devereux staff also did not change their IEP as a result of a December 12, 2005 meeting with Dr. Ciocca to review her evaluation results and recommendations. Devereux did, however, change the expectations for the Student in some areas. (FF80) It is unclear, however, what expectations were changed and how the Student has responded and whether he was able to meet the new expectations.

educational needs given the Student's performance on the intellectual, cognitive and educational assessments Dr. Ciocca performed. Nor can that conclusion reasonably be based on social or emotional factors, given the limited attention these areas received in Dr. Ciocca's assessment and the results of the psychological assessment that she did administer. The Student's responses to the Millon Adolescent Clinical Inventory were not clinically remarkable and she administered no other psychological assessments, including but not limited to projectives or measures such as the BASC. (B38 at 30) Rather, the thrust of Dr. Ciocca's assessment and testimony is that Devereux is an optimal learning environment for the Student and a placement at Devereux will enhance his ability to benefit from his education. FF73b (Dr. Ciocca's recommendations are intended to make him the "most appropriate learner in all facets").

- d. Given his social sensitivities, Dr. Ciocca recommended that the Student's educational progress would be enhanced if he were placed in an environment with "similar" peers. (F72e) Dr. Ciocca did not opine or testify that if the Student were to be placed in an environment with non-disabled peers that he would be unable to make meaningful educational progress. To the extent that she has opined that a residential placement is required to enable the Student to receive a meaningful educational benefit or that he cannot receive such a benefit in a mainstream setting, that conclusion is simply not in accord with her conclusion that the Student is a high functioning Asperger's child and with the Student's intellectual and cognitive abilities as revealed in her assessment, and is not consistent with his demonstrated history of successful educational progress in a mainstream setting, which Dr. Ciocca acknowledged. (FF4)
- e. Dr. Ciocca did not opine that the goals and objectives in the District's proposed 2004/2005 and 2005/2006 school year IEPs were inappropriate or inadequate.

(5) The District's Proposed IEPs Had Some Deficiencies

14. As a general matter, the District's proposal to place the Student at JBHS and the goals and objectives identified in its proposed 2004/2005 and 2005/2006 school year IEPs were reasonably calculated to provide the Student with a meaningful educational benefit.³⁴ However, in the specific areas noted below, the District's proposed program fell short.

- a. **The District's planning for transitioning the Student from Devereux to JBHS was inadequate and/or inadequately documented.** When it performed educational planning for the Student for the 2004/2005 and 2005/2006 school years, the District knew or reasonably should have known from the information presented to it that a significant factor in the Student's success at JBHS would be a smooth, seamless transition from Devereux to JBHS. Such a transition requires careful coordination between and a clear understanding among the Parents, Devereux staff, the Student and District staff, and should begin before the Student leaves Devereux.³⁵ In terms of planning for transitioning the Student to JBHS, the District proposed:

³⁴ See generally Attachment 2.2 comparing the Devereux and District IEP goals and objectives.

³⁵ Among other things, the District knew or reasonably should have known: (1) that the Student's last year in public school had been stressful for him, in part due to his social sensitivities and awareness and his inability to integrate with his non-disabled peers; (2) that the Student had a difficult transition to Devereux and required considerable time and support to become adjusted to that program; (3) that the Student may not be "happy" about coming back to a public school; (4) that the Student was no longer on medications that may have

(1) that the Student attend the JBHS summer program (which is provided to Students with IEPs and is not summer school); (2) that the Student meet with Ms. Fredericks and/or Ms. Sullivan prior to each school year to review his course schedule, practice moving through the building, and jointly develop a system for cuing or redirecting the Student during class, a positive behavioral support plan for him and a system for rewarding the Student. (FF73f, 46, 58, 85c) Without regard to whether these plans satisfy the *Rowley* requirements – and they may very well satisfy those standards – the plans needed to be fully developed and documented so that the Parents at the PPT (and a hearing officer in the future) could determine their adequacy. The failure to do so is a basis for finding that the District failed to adequately plan for the Student's transition from Devereux to JBHS.³⁶

- b. **The District's proposals failed to adequately provide for training of the Student's teachers.** Both the 2004/2005 and 2005/2006 IEPs reference a two day teacher training/staff development activity just prior to the beginning of the school year designed to assure that staff working with the Student were aware of the types of issues he would present. At hearing, however, District staff testified that this was a generic program which would not focus on any particular student and attendance was not mandatory. (FF44c) For all of the reasons set forth above, it would be critical for the Student's entire teaching team to have as much information as was available regarding and a good common understanding of the Student, his experience at AMS and at Devereux, his capabilities and sensitivities and techniques that work or do not work with him. This type of proactive training and collaboration would be critical to assure that all of the Student's teachers were consistent in their understanding of the Student's needs and their approach to him. Once again, it is quite possible that all of this could have been done as part of the orientation and assessment meetings Ms. Sullivan and/or Ms. Fredericks would have with the Student prior to the start of the school year. However, if this was the intent and plan, it should have been fully documented. The proposal to utilize a voluntary generic training session as a mechanism for preparing staff for dealing with this Student in his circumstances is inadequate.
- c. **The District failed to provide a family training/family communication component.** The Devereux program has a substantial family training and communication component, which supports the Student's functioning in the home environment by providing for consistency between home and school. (FF14c, 20, 37c) As the Student moves from a residential placement to a non-residential placement, it will be necessary to provide at a minimum for a communication protocol between home and school to support the Student's functioning in

helped him to function while in his last public school placement; (5) that the Student was reliant on a highly structured TES at Devereux, itself a small and highly structured environment; and (6) that JBHS was likely to be a stimulus for the Student's anxiety. The District knew or reasonably should have known that such a major transition from a residential to a non-residential placement and from a school at which the Student was reportedly comfortable to one which was unfamiliar, with the attendant disruption of social relationships he may have developed, would be particularly difficult for the Student given his Asperger's.

³⁶ The Parents claim that there really was not much of a discussion and that they were told that the District would more fully develop these transition plans after the Parents decided that the Student would come to JBHS. The District appears to concede that its plans would be more fully developed once it was clear that the Student would be coming to JBHS, but contends that these issues were discussed in some detail at the PPTs. *See, e.g.*, FF48c.

school. The Student's success at JBHS will also depend in part on support at home. Accordingly, part of the Student's programming should have included ongoing involvement of the Parents in the Student's educational programming at JBHS so that they can carry over the techniques used at JBHS to home and included helping the Parents as appropriate or necessary to link with community resources to provide further support the Student's functioning. Performing an FBA in the Student's home environment early in the school year and periodic following up and monitoring of the application of behavioral supports in the home should also have been considered to support the Student's functioning at school.³⁷

- d. **The District failed to include a component of formal, frequent follow-up team meetings to assess the Student's transition to JBHS.** The District claims that in both the 2004/2005 and 2005/2006 school years, the Student's adjustment and programming would be reviewed in a November PPT. This was documented for one school year but not for the other. (B19, B34) Under this proposal, approximately 8 weeks would pass before there was a scheduled formal review of the Student's adjustment to JBHS. While it may have been adequate to wait 8 weeks for a formal review, for all of the reasons set forth above the District should have built into its proposed program regular, more frequent meetings with staff and/or staff and parents during this period to review the Student's adjustment to JBHS, assess the efficacy of interventions and supports that were in place and make adjustment as necessary. The Hearing Officer recognizes that this type of monitoring may very well be done on an *ad hoc* basis as a general matter. However, given the Student's circumstances, more structure is required particularly during the early phases of the Student's enrollment at JBHS.
 - e. **The District failed to define a clear plan for assessing the Student's assistive technology needs.** The Student's IEPs provide for assistive technology support and acknowledge that the Student may have difficulty adjusting to using assistive technology in the JBHS environment. (B19; B34) The District's proposed IEP and programming do not state a clear plan for assessing the Student's assistive technology needs, including the timing of the assessment, and addressing those needs as part of the transition to JBHS.
 - f. **The District failed to define an appropriate plan for addressing transportation issues.** Ms. Roszko identified the bus ride to and from school to be an unstructured social situation which may prove stressful to the Student. The District had proposed a "mini" school bus for transportation in the 2004/2005 and 2005/2006 school years. (FF57c) It is unclear whether the Student has ever ridden a bus back and forth to school, whether that would be the desire of the Parents (or the Student) upon his entry to JBHS and, if so, whether a "regular" or "smaller" bus would be appropriate. While this issue was discussed at the June 2005 PPTs, no plan was put into place to assess this issue and what would work best for the Student. Given his social sensitivities, anxiety and awareness of his disability, his history in public school, and the fact that he was in a residential placement, more attention should have been paid to this component of his program.
15. Ms. Roszko, Ms. Sullivan and Ms. Fredericks all testified that the District would be monitoring the Student's adjustment and would be prepared to adjust and adapt his programming based on the

³⁷ Ms. Fredericks testified that this was something that was done in her experience with adults and children with similar disabilities in other settings in which she has worked. (Fredericks)

Student's actual performance at JBHS. There is no evidence to suggest otherwise, and it may very well be that the informality of the District's program on the points identified herein would not be an issue. However, given the Student's history, the complexities of his disabilities and the concerns expressed by the Parents regarding a public school placement, the District's failure to more formally assess and develop these components of its programming renders its programming deficient in these areas and warrants a finding that the District failed to provide the Student with a FAPE in the LRE.

(6) Remaining Parent Claims of Substantive Violations Lack Merit

16. The Parents have asserted other claimed substantive deficiencies in the District's proposed 2004/2005 and 2005/2006 IEPs.³⁸ Certain of those claims are discussed below. To the extent a claim was raised but not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit because it was unsupported by substantial evidence in the record or did not constitute a violation of the substantive prong of the *Rowley* standard.
17. The Parents appear to claim generally that the IEPs were deficient because they lacked some of the information required to be provided in an IEP. An IEP is a written program of instruction for an eligible child which: (1) defines the services to be provided to the Student based on the Student's particular and unique needs; (2) is the document upon which placement decisions are to be based; and (3) is to be reviewed at least once annually and more often as the child's circumstances may warrant. A properly formulated IEP should state: (1) the child's present level of educational performance; (2) the annual goals for the child, including short-term instructional objectives and benchmarks for performance; (3) the specific educational services and supplementary aids to be provided to the child, and the extent to which the child will be able to participate in regular educational programs; (4) the transition services needed for a child as he or she begins to leave a school setting;³⁹ (5) the projected initiation date and duration for proposed services; and (6) objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. *M.S. v. Yonkers*, 231 F. 3d 96 (2nd Cir. 2000); IDEA, 20 U.S.C. § 1414(d); IDEA Regulation §§ 300.347; 300.552(b). The District's proposed IEPs were properly formulated as a general matter and contain the required information.
18. The Parents correctly note that the District has never observed or evaluated and assessed the Student and that District staff have no first hand knowledge of the Student. (FF58a, 85b, 86f) Based on this fact, the Parents claim that the District's proposed IEP and placement for the 2004/2005 and 2005/2006 school years could not satisfy the requirement that they reflect the Student's individual needs and circumstances.
 - a. The fact that District personnel have no first hand knowledge of the Student and did not observe, evaluate or assess him does not in and of itself invalidate either the IEP or the placement developed by the District for the Student.⁴⁰ The District's proposed IEPs and

³⁸ See generally 6/6 transcript (closing arguments of Parents' counsel) and post-hearing brief.

³⁹ These "transition services" are not the same as the plan to transition the Student from Devereux to JBHS discussed above.

⁴⁰ See, e.g., *Michael J. and Deirdre J. ex rel. Patrick J. v. Derry Township Sch. Dist.*, 45 IDELR 36 (M.D. Pa. 2006) (IEP developed by LEA for 11 year old child with "severe autism" was not procedurally or

placement considered the most recent triennial evaluation of the Student (performed by Town A) and information (both documentary and verbal) provided by Devereux and the Parents. The goals and objectives and overall program defined in the IEPs were reasonably calculated to provide the Student with a meaningful educational benefit, other than the deficiencies noted above.

- b. There is no claim that, and the evidence does not establish that, the Student's diagnosis or circumstances changed in any significant way from the 2003/2004 to the 2004/2005 or the 2004/2005 to the 2005/2006 school years such that there was any need for the District to do an observation or an assessment. Given the information provided by the Parents and Devereux to the District, it is unclear what purpose an observation of the Student at Devereux would serve or how the failure to observe the Student denied him a FAPE. The Parents did not ask for an observation or assessment by the District, and prior to hearing did not raise the District's failure to do so as an issue.
19. In developing its proposed program for the 2004/2005 and 2005/2006 school years, the District did not perform a functional behavioral assessment ("FBA") of the Student. The Parents at the June 2004 and June 2005 PPTs did not ask the District to do an FBA, or raised the failure of the District to do an FBA, as a ground for rejecting the District's proposed IEPs. The Parents claim at hearing that the District needed to perform an FBA to obtain baseline data regarding the Student for use in formulating his educational programs, and the proposed IEPs were therefore deficient.
- a. The IDEA does not define the term "functional behavioral assessment," specify the manner in which an FBA is to be done, and, except in certain defined circumstances concerning disciplinary actions which are not applicable in this case, leaves to the PPT the decision about whether to conduct an FBA as part of an evaluation or re-evaluation of a student or for purposes of developing an IEP.⁴¹ The general purpose of an FBA is to provide the IEP team with additional information to develop a mechanism for addressing undesirable behavior that is interfering with the student's ability to participate in his/her education. The process, which can take a variety of forms, involves identifying the core or "target" behavior, observing the student and collecting data on the target behavior and its antecedents and consequences, formulating a hypothesis about the cause(s) of the behavior, developing an intervention(s) to test the hypothesis, and collecting data on the effectiveness of the intervention in changing the behavior. *See, e.g., Independent School District No. 2310*, 29 IDELR 330 (SEA MN 1998).
 - b. The purpose of performing an FBA would be to determine how the Student's issues are manifesting *at JBHS*, how the occurrence of these issues are influenced by antecedent events and consequences *at JBHS*, how and to what extent these issues impact the Student *at JBHS*,

substantively defective based on claim that because the LEA did not undertake "numerous observations in structured and unstructured settings and across environments in educational and community settings" to "assess what strategies work and what do not," the LEA's IEP could reflect "updated and meaningful Present Educational Levels" as baseline data).

⁴¹ *See generally* IDEA, 20 U.S.C. § 1414 (processes and methods for determining eligibility and developing IEPs); IDEA, 20 U.S.C. § 1415(k)(1)(B) (requirement to conduct a "functional behavior of assessment" in connection with disciplinary actions).

and what interventions implemented *at JBHS* are required to address them. Accordingly, to the extent the District was required to do or should have done an FBA for the Student, that FBA could not have been done before the Student began attending JBHS. The District had available to it at the PPTs information regarding the etiology of the social, emotional, cognitive and behavioral issues that impact the Student's participation in educational programs, events which trigger or are likely to trigger undesirable responses from the Student and interventions which are likely to work to address those behaviors. That information was sufficient to enable the District to determine the placement and define an initial IEP for the Student with appropriate accommodations and supports in place to address these issues. The adequacy of those accommodations and plan could have been assessed during the ESY program proposed by the District as a means of transitioning the Student to JBHS.⁴²

20. The Parents claim that the District's proposed programs for the 2004/2005 and 2005/2006 school years failed to satisfy the substantive requirements of *Rowley* because the District failed to design a behavioral intervention plan ("BIP") or state the BIP in the IEP. The mere fact that a BIP was not reduced to writing does not constitute a procedural or substantive violation within the meaning of *Rowley*. A BIP need not be defined in a PPT or be included as part of the IEP. *See* IDEA, 20 U.S.C. § 1414 (d)(1)(A) (defining components of the IEP). Ms. Fredericks testified that she would develop a positive behavioral support plan for the Student as part of his "orientation" to JHBS prior to the start of the school year. She testified further that the behavioral support plan could be modified depending upon how the Student was performing after his arrival at JBHS.⁴³

D. THE APPROPRIATENESS OF THE DEVEREUX PLACEMENT

21. The Parents are not required to place the Student in the program proposed by the District, and are free to place the Student in a program of their own choice. However, since an LEA is not automatically required to fund a parent-initiated placement, parents who place their child in a private program without the consent of or referral by the LEA do so at their own financial risk. In order to be reimbursed by an LEA for a unilateral parent-initiated placement, the LEA's proposed program must first be determined to be inappropriate under the *Rowley* standard and the Parents must then demonstrate that the program they selected is "appropriate" to the Student's needs. *See, e.g., Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985) (stating the standard); *M.S. v. Bd. of Educ. of the City Sch. Dist. of the City of Yonkers*, 231 F.3d 96, 105 (2d Cir), *citing Walczak*, 142 F.3d at 129 (stating the standard); *Warren G. v. Cumberland County School District*,

⁴² The Parents suggested at hearing that the District should have proposed a diagnostic placement at JBHS. The Parents did not request such an opportunity prior to the hearing and it is unlikely that they would have accepted such a proposal even if it had been made at a PPT. In any event, the proposed summer programming offered by the District could have served as a diagnostic placement for the Student.

⁴³ *School Bd. of Indep. Sch. Dist. No. 11 v. Renollett by Renollett*, 45 IDELR 117 (8th Cir. 2006) (IEP agreed to in settlement and developed to address student's needs for transition from middle to high school called for a written behavior plan; failure to produce a written behavior plan not a violation of the IDEA, given evidence that the LEA was responding appropriately to the student's behavioral issues and absent state law requiring that the behavior plan be in writing). Reg. Conn. State Agencies §§ 10-76d-11 (definition of contents of IEP does not require a written behavior plan).

190 F.3d 80, 84 (3d Cir. 1999) (the test for the parents' private placement is that it is appropriate).⁴⁴ Reimbursement would not be available for a program that is not appropriate under this standard, and may not be available for those components of the placement that are substantial and not necessary to remedy the defect claimed or found to exist in the LEA's proposed program that was rejected.⁴⁵

22. In determining whether the Parents' private placement is "appropriate," the Hearing Officer may consider whether the private placement is "reasonably calculated to enable the child to receive educational benefits." *Carter*, 510 U.S. at 11. Although Parents are not held to the same mainstreaming obligations as an LEA in selecting their placement, "the IDEA's requirement that an appropriate education be in the mainstream to the extent possible . . . remains a consideration that bears upon a parent's choice of an alternative placement and may be considered by the hearing officer in determining whether the placement was appropriate." *M.S.*, 231 F.3d at 105.⁴⁶ A hearing officer may also consider the extent to which the goal of the private placement program is to facilitate a return of the student to the mainstream setting as soon as possible.⁴⁷ Similarly, the reasonableness of the District's proposed IEPs does not hinge on the fact that the Student is making progress or achieving at the unilateral placement, and the fact that the Student is making progress is not sufficient in and of itself to require the LEA to pay for the placement.⁴⁸

⁴⁴ See also *Florence County School District v. Shannon Carter*, 501 U.S. 7, 11, 114 S.Ct. 361 (1993); 34 C.F.R. § 300.403(c); *Board of Education of Somers Cent. Sch. Dist.*, 31 IDELR 253 (NY 1999) (parents were not entitled to reimbursement for a unilateral placement where placement could not provide the related services identified in the IEP); *Fort Zumwalt Sch. Dist. v. Clynes*, 119 F.3d 607 (8th Cir. 1997), *cert denied*, 523 U.S. 1137 (1998) (parents assume financial risk of unilateral placement and are not entitled to reimbursement for their unilateral placement if it is determined that the LEA proposed program satisfied the requirements of the IDEA).

⁴⁵ See, e.g., DOE 05-257, *Student v. West Hartford Board of Education* (February 3, 2006) (finding that a parent-initiated residential placement was not "appropriate" absent evidence establishing that student in that case required the residential portion of the placement to benefit from his education; holding that the placement was appropriate on a non-residential basis).

⁴⁶ Among other things, the hearing officer in that case concluded that the parents' out-of-district placement was not appropriate because the student's "management needs were not so severe as to require the highly restrictive placement in a private school" and because there was evidence that the student was benefiting from the program offered in the public school setting. *M.S.*, 231 F.3d at 101. See also *Ridgewood Bd. Of Ed. V. N.E.*, 172 F.3d 238, 249 (3d Cir. 1999) (LRE is not a controlling consideration in a reimbursement case; student is not required to demonstrate that he cannot be educated in a public setting).

⁴⁷ See, e.g., *Cabouli v. Chappaqua Central Sch. Dist.*, 44 IDELR 252 (S.D.N.Y. 2005) (noting that the programming of the placement at issue was designed, albeit over a potentially multi-year period, to return students to a less restrictive environment); *W.C. v. Cobb County Sch. Dist.*, 44 IDELR 273 (N.D. Ga. 2005) (denying reimbursement on basis that private placement was not appropriate where unilateral placement provided student with no opportunity to interact with nondisabled peers and there was no indication that the placement would prepare the student for transition into a less restrictive placement).

⁴⁸ See, e.g., *W.C. v. Cobb County Sch. Dist.*, 44 IDELR 273 (N.D. Ga. 2005), *citing Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 522 n. 6 (6th Cir. 2003) (reimbursement under the IDEA does not depend on the "mere happenstance" of whether the child "does well" in the private placement).

23. Devereux is, on the whole, an appropriate placement for the Student. Devereux offers a program specifically designed to address the educational, emotional, social, social skills and behavioral needs of students with Asperger's and an NVLD.
- a. Among other things, although both Devereux and JBHS could offer the same types of social experiences to the Student – *e.g.*, clubs, chorus, sports – the Student's ability to access and successfully participate in those activities was probably greater at Devereux than at JBHS and he has benefited from participating in those activities. The Student is also likely to be benefiting from the smaller class size at Devereux. The Student's interactions with his Parents at home and their ability to manage his behaviors at home appears to have improved as a result of Devereux's parent/home support component. The Student reportedly has a more positive perception of himself as a student. The residential component is preparing him for living in a setting other than his home.⁴⁹
 - b. However, there is some merit to the District's claims that academically the Student is not progressing at a rate that is any faster than his rate of progress in public school had been and that the Student is not making much progress in his IEP goals and objectives. There is also some merit to the District's claims that Devereux has not been overly successful in addressing the behavioral and social issues that prompted the Parents to place the Student at Devereux. There is also some merit to the District's claims that the Student has been exposed at Devereux to some of the same kinds of peer interaction difficulties the Parents claimed he experienced at AMS and would experience at JBHS, and which was a factor in their decision to reject the District's proposed programming. In addition, the placement at Devereux has deprived the Student of significant opportunities to learn to cope with his social sensitivities by interacting and developing relationships with non-disabled peers. To the extent his Devereux peers are not local to the Student's home, he will likely have difficulty maintaining relationships with them outside of Devereux. Finally, the placement at Devereux may have created a new hurdle for the Student to overcome – the Student's success at Devereux is highly dependent on the TES and the Student may have difficulty succeeding in a less structured environment that he will eventually have to transition to – whether by graduation from Devereux or return to a public school. In this regard, Ms. Thereault expressed some doubt that the Student would be able to succeed in the SD level. Finally, return of the Student to a public school setting as quickly as possible is not a stated goal, and does not appear to be the goal of the Student's Devereux program.
24. Devereux offers both a day placement and a residential placement option. A day placement option at Devereux was appropriate to meet the Student's educational needs for the 2004/2005 and 2005/2006 school years. A residential placement was not appropriate. Even assuming the residential component at Devereux enhances the Student's progress with respect to academic, emotional, behavioral and social issues, the record evidence does not support a finding that the Student *required* a residential

⁴⁹ The Parents note that while he was in public school the Student required medications to help support his functioning, and that since he has begun at Devereux he has been able to accomplish everything he has accomplished without the use of medication. Should the Student require medication to support his functioning at JBHS, that change in circumstance may be cause to reconsider his placement but would not necessarily require a change in placement. Dr. Ciocca suggested that the medication he had been prescribed was not really benefiting him in any event. (FF71f)

placement in either the 2004/2005 or 2005/2006 school years to receive a FAPE – the Student in those years could have receive a meaningful, nontrivial educational benefit in a public school placement. A unilateral parent placement is “appropriate” for purposes of a reimbursement claim if it is driven by the child’s educational needs. *See, e.g., School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985). The IDEA requires an LEA to fund a private residential placement whenever such placement is “*necessary* to provide special education and related services to a child with a disability.” IDEA Regulations 34 CFR § 300.302 (emphasis added). The fact that Devereux required that the Student be placed on a residential basis as a condition of his admission is not dispositive of the issue of whether a residential placement was necessary to enable him to receive a meaningful educational benefit. The Parents are free to select a placement which optimizes the Student’s progress, but that decision does not obligate the District to pay for their chosen placement.

FINAL DECISION AND ORDER

1. Due to deficiencies in certain components of the District’s proposed IEPs for the 2004/2005 and 2005/2006 school years, the District’s proposed IEPs did not provide the Student with a FAPE in those school years. Except for the residential components of the Devereux program and placement, the program and placement at Devereux was appropriate to meet the Student’s educational needs in the 2004/2005 and 2005/2006 school years.
2. The Parents are entitled to reimbursement from the District for the costs of the Student’s placement at Devereux in the 2004/2005 and 2005/2006 school years, other than the costs associated with the residential aspects of that placement. More specifically, the District is responsible for paying, in each of those school years, the costs of the Student’s attendance that would have been incurred had the Student been placed at Devereux on a non-residential basis - tuition, the cost of the non-residential after school component, the non-residential costs of the summer component, any activity and other fees associated with the day school and those components, 2/3rds of the costs of his meals (breakfast and lunch), and the costs of the family/home support component.

FACTUAL BACKGROUND

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A. Overview - the Autism Spectrum

1. As of the end of the 2005/2006 school year, the Student was a 15 year old 10th grader diagnosed with Asperger’s Disorder or Syndrome (“Asperger’s”), which is an autism spectrum disorder, and a Nonverbal Learning Disability (“NVLD”) and identified as eligible for special education and related services under the IDEA and Connecticut law. The Student turned 16 at the end of the 2005/2006 school year.
2. Under the diagnostic classification system in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Text Revision IV (“DSM-IV-TR”), Asperger’s is classified as a form of Pervasive Developmental Disorders (“PDDs”), along with Autistic Disorders (“AD”) and Pervasive Development Disorder Not Otherwise Specified (“PDD-NOS”). The PDDs are characterized by impairments of varying degrees of severity and pervasiveness in the area of reciprocal social interaction and communication skills (*i.e.* social pragmatics skills). (DSM-IV-TR at 69-70.)
 - a. Asperger’s is characterized by clinically significant impairment in social interaction and the development of restricted, repetitive patterns of behavior, interests and activities. In contrast to AD, there are no clinically significant delays or deviance in language acquisition. Rather more subtle aspects of social communication may be affected. There are also no clinically significant delays in cognitive development or in acquisition of age appropriate learning skills and adaptive behaviors other than social interaction. There may be a failure to develop peer relationships. Older individuals may have an interest in friendship but lack understanding of the conventions

of social interaction. The lack of social reciprocity in Asperger's is more typically manifest by an eccentric and one-sided social approach to others (*e.g.*, pursuing a conversational topic regardless of others' reactions) rather than social and emotional indifference as is characteristic of AD. Difficulties in communication may result from the failure to appreciate and utilize conventional rules of conversation, failure to appreciate nonverbal cues and limited capacities for self-monitoring. Motor clumsiness and awkwardness may be present. Symptoms of overactivity and inattention are frequently present, and many individuals with Asperger's may be initially diagnosed as having an Attention-Deficit/Hyperactivity Disorder ("ADHD"). Individuals with Asperger's may experience victimization by others, and that along with feelings of social isolation and an increasing capacity for self-awareness may contribute to the development of anxiety in adolescence. Asperger's is a continuous and lifelong disorder, with a prognosis that is significantly better than in AD. Many individuals with Asperger's are capable of gainful employment and personal self-sufficiency. (DSM-IV-TR at 80-84)

- b. AD is characterized by the presence of "markedly abnormal or impaired development in [reciprocal] social interaction and a markedly restricted repertoire of activity and interests." Awareness of others is "typically markedly impaired" and may be a delay in or total lack of the development of spoken language. Individuals with AD who do speak may show marked impairment in the ability to initiate or sustain a conversation with others or stereotyped, repetitive or idiosyncratic language. Language comprehension is often very delayed and the individual may be unable to understand simple questions or directions, and have difficulty with the pragmatic (social use) of language evidenced by an inability to integrate words with gestures or understand humor or other nonliteral aspects of speech such as irony or implied meaning. (DSM-IV-TR at 72-80)
- c. PDD-NOS is a diagnostic label given to an individual who manifests impairment in reciprocal social interaction and either verbal or nonverbal communication skills, but who does not otherwise meet the criteria for AD or Asperger's. (DSM-IV-TR at 84)¹

B. Background Through 7th Grade (2002/2003 School Year)

3. Through the end of the 7th grade (2002/2003 school year), the Student attended Town A's schools. Town A is a separate school district from the respondent District. (Father 5/1 at 98; Roszko 6/5 at 194; Representations of Counsel)
4. Pursuant to his Individual Educational Plans ("IEPs") and the accommodations defined therein, the Student received a meaningful educational benefit while attending Town A's schools. Over the course of his education in Town A's schools, the Student's placements provided for instruction in both mainstream and "pull out" settings, and for 1:1 paraprofessional support. The Student advanced from grade to grade with his peers, completed grade-appropriate curricula and curricula requirements in unmodified classes and attained more than simply passing grades.² The results of

¹ PDD-NOS is a "catch-all" diagnosis and sometimes referred to colloquially as "atypical autism." (Ciocca 5/4 at 130-131; Fredericks 6/5 at 53.)

² See, *e.g.*, Father 5/1 at 110-114 (acknowledging that the 6th grade year was a "good year" for the Student); B2 at 1-2 (Town A staff report that from the beginning of the 4th grade, the Student has

standardized tests of intellectual and academic functioning performed as part of his triennial review in the 2002/2003 school, described more fully below, further shows that the Student received a meaningful educational benefit while attending Town A's schools.

5. The Student commenced 7th grade in the 2002/2003 school year attending Town A's middle school ("AMS"). His program included 6 hours 50 minutes/week of special education services provided in mainstream and resource room settings and 3 hours and 15 minutes/week of related services (Speech/Language, Psychological and Assistive Technology consult). The Student was assigned a "program facilitator" (*i.e.*, a paraprofessional) to support functioning in the mainstream environment. His IEP goals focused on utilizing independent learning strategies to gain mastery of the 7th grade curriculum, increasing Pragmatic Language and Receptive Language skills for "optimal function in the 7th grade level," and facilitating the transition to the 8th grade and ultimately high school. (B2 at 1) Town A also consulted with Michael Powers, Psy.D., regarding the Student and his programming. Dr. Powers is known on a state-wide basis for his expertise in working with Students on the autism spectrum. (Ciocca 5/4 at 133)
6. At various times since 1995, including while he was in the 7th grade, the Student was treated with medication for attention issues thought to be related to ADHD, and for anxiety and sleep disturbances. (Father)
7. The Parents testified that starting in the 7th grade the Student experienced social and behavioral issues at school which were increasingly interfering with his education. (Father; Mother)
 - a. The Student strongly desired to interact with and fit in with his peers, and during the 7th grade developed an awareness that his disability was adversely impacting both his ability to do that and his social acceptance by peers.
 - b. As the result of his disability, the Student had difficulty with turn-taking, social pragmatics, perseveration, understanding social nuances, and maintaining appropriate personal space/spatial boundaries. The Student was impulsive, would self-talk, could become argumentative, defensive and angry, and was sensitive to what he perceived as threats and "invasions" of personal space. All of these factors combined to make social interactions with peers at school problematic for the Student, who was reportedly increasingly marginalized by peers and the object of taunting and teasing. It was also becoming increasingly difficult for the Student to participate meaningfully in extracurricular activities.
 - c. The Student's social difficulties left him increasingly frustrated, despondent and anxious. He became increasingly avoidant of social contact and school activities. His IEP provided that he would remove himself from stressful situations as a coping mechanism and his use of the bathroom for this purpose was increasing.
 - d. The use of a 1:1 paraprofessional to support the Student in the mainstream was also becoming problematic. The presence of the paraprofessional created a social barrier for the Student. The

"progressed nicely" in all academic areas; 5th grade grades ranged from C+ in writing to an A- in science/health; 6th grade grades ranged from B+ in ILA to an A in Social Studies); Ciocca 5/4 at 103-104, 112-114 (agreeing that there was documented progress in all areas and that the Student had done well).

Student was aware that his need for the paraprofessional made him different from his peers and he was identified by his peers as different because of the presence of the paraprofessional. In the 7th grade, the Student became resistant and hostile to his paraprofessional.³

- e. The Student also began showing more disciplinary problems in school.⁴
 - f. Given the Student's difficulties with organization, notetaking, sequencing, handwriting, distractibility and attention, the Parents also began questioning whether and to what extent the Student's grades represented the Student's work.
8. As part of his IEP, the Student participated in a Town A-sponsored after school social skills program called *Superkids*. The Student had such difficulty participating appropriately in this small structured group setting, that staff removed him from the group mid-way through the year to provide 1:1 social skills training to support his functioning in the group. After demonstrating in that 1:1 counseling that he understood the difference between appropriate and inappropriate behavior, the Student rejoined the group but was unable to participate appropriately. *Superkids* staff noted that "[d]espite the clear structure [of the] program, [the Student] continued to be unable to control himself" in a group setting and "continued individual work is needed for [the Student] to have a successful experience in a group of peers." (B7 at 31-32)⁵
9. Town A staff members working with the Student in the 7th grade (and in some cases prior years as well) reported the following:
- a. Ms. Flockhart (special education teacher), who had worked with the Student in the resource room on a daily basis in the 7th grade, noted that over the course of the year he showed improvement in his ability to work independently, a decrease in his "resistance" to using the AlphaSmart, and growth academically and socially. (B8 at 4)
 - b. Ms. Minor (school psychologist) reported that the Student had had a "stressful" 7th grade year, but had shown improvement in his ability to socialize with peers in a small group, lunch-time activity she supervised. (B8 at 4)
 - c. Mr. Clapp (Student's mainstream ILA and Social Studies teacher), noted that the Student had made a "lot of progress" over the year, with improvements in writing. He also noted that these classes were more discussion based rather than lecture and the Student had some difficulty waiting his turn and would become very frustrated if he had to wait. (B8 at 3)

³ According to the Father, the Student began "damaging" his aides. This type of behavior is not described by Town A staff in their records that are in evidence.

⁴ The Father reported that the Student disrupted an assembly presentation by a local police officer and got into a "confrontation" with the officer. This event is not described in any of the records in evidence. The Student's disciplinary history in Town A was also not in the record.

⁵ In other words, the *Superkids* staff concluded that the Student was capable of participating with his peers with further support.

- d. Ms. Hafkemeyer (6th and 7th grade math teacher) reported that the Student's math ability was "never an issue" and that his grades were "generally good unless he rushed through his work." His abilities had grown over the two year period she had been teaching him. At the beginning of the 7th grade he had an aide in class with him but "did fine" as the aide was "gradually" faded over the course of the year. As the aide was faded, a peer mentor was assigned to the Student in math class and this arrangement reportedly "worked very well." On a few occasions he needed reminders about appropriate questions but his behavior was appropriate. (B8 at 3)
- e. Ms. Modzelewski (speech and language teacher) reported that the Student showed improvement on socialization skills over the course of the year and in his ability to initiate and maintain conversations with other students. (B8 at 4)
10. Notes from a consultation between Town A and Dr. Powers on May 14, 2003 indicates Ms. Minor's report that the Student was "often resistant" to verbalizing any stressors in his day and a report of the Parents that the Student has verbalized that he is "extremely unhappy at school" and had begun demonstrating self-injurious behavior. (B6 at 2)⁶
11. The Student's final grades for the 7th grade (2002/2003 school year) were Math A-, Science A-, Social Studies B+ and ILA B+. (B8 at 3)
12. The Student's level of functioning in the 7th grade is indicated in the triennial review done that year.
- a. Ms. Minor's January 2003 psychological evaluation (B2) and counseling report (B3) indicates, among other things, that:
- 1 "In situations where he was successful and confident, [the Student] became playful in working with the test materials. [The Student] persevered even on the most challenging items in the cognitive and memory testing." "Work approach was characterized by good planning of materials in the visual, perceptual tasks . . . and impulsivity in the Verbal tasks." The Student "demonstrated significant difficulty" in some verbal sequencing and memory tasks" and became "visibly anxious when unstructured projective measures were presented." He ultimately verbalized that he was too uncomfortable to continue with the projective assessments and that portion of the testing was discontinued. (B2 at 2-3)
 - 2 On the Wechsler Intelligence Scale for Children - Third Edition (WISC-III), the Student attained a Verbal IQ of 126 (superior range and above those of approximately 96% of his peers) and a Performance IQ of 91 (average range but only better than those of approximately 27% of his peers). His performance on a subtest assessing mental control was much weaker relative to other verbal reasoning assessments, which suggests impairments in mental control that would be associated with difficulties in processing complex information and would slow the speed of new learning. (B2 at 4)
 - 3 The Student's performance on the Wide Range Assessment of Memory and Learning

⁶ There are no reports in the record from the Student's then-current service providers that the Student was manifesting self-injurious behaviors.

- (“WRAML”), which assesses the ability to actively memorize a variety of information, showed overall memory, verbal memory and visual memory results in the average range, and a Learning Index score in the above average range. (B2 at 4-5) The overall results indicate that he performs better with larger amounts of information, and his memory for non-sequential information is better than his memory for sequential information. His short-term retention of auditory-verbal information is “inferior” to his ability to learn new information, but shows improvement with repetition. (B2 at 5-6)
- 4 The Student’s responses to projective testing indicates that he is aware of his “personal style,” has a “strong desire to connect with his peer group” and has “feelings of victimization and isolation.” (B2 at 7) The Student reported that “no one understands me,” “sometimes I want to hurt myself,” “nobody ever listens to me,” “other kids hate to be with me,” and “I cannot stop myself from doing bad things.” (B2 at 7)
 - 5 On the Behavior Assessment System for Children (“BASC”), the school team identified Atypicality as Clinically Significant, and Hyperactivity, Anxiety and Social Skills as At-Risk. (B2 at 7)
 - 6 The focus of weekly counseling changed as the Student “matured and [became] more independent.” Although the Student “resist[ed]” the sessions from time to time, he utilized what was being discussed in the sessions. (B3 at 3)
 - 7 The Student’s self-awareness is “startling given the nature of his disability” and he “tends to defy the nature of Autistic behavior in many ways.” “He demonstrates keen insights into his own behavior, while at the same time resists the input which would facilitate increased confidence in his interactions with others.” He “manages the transitions of his day, changes in his schedule and unpredicted events with little or no apparent stress.” (B3 at 3)
 - 8 The Student is aware of and struggling with adolescent age appropriate issues such as “Where do I fit among my peers.” Ms. Minor observed an “increase in stress related to how his peers perceive him” and notes that he has “negativity in [his] expectation of changing his behavior which he identifies as ‘bad.’” (B3 at 3)
- b. An educational assessment by Ms. Kara-Lynn Pekar (7th grade special education teacher) (B3) indicates the following, among other things:
- 1 The Student showed age and grade level appropriate cooperation, but appeared to be in a hurry and fidgety and required verbal prompts to address these issues. (B3 at 1)
 - 2 On the Woodcock Johnson III (“WJ-III”), the Student’s performance was in the average range for Total Achievement, Broad Reading, Broad Math, Basic Reading Skills, Reading Comprehension, Math Calculation Skills, Academic Skills, Academic Fluency and Academic Applications. The Student’s performance was in the Low Average range for Broad Written Language and Written Expression. (B3 at 1-2)
- c. A speech and language evaluation performed by Ms. Modzelewski, M.S., CCC-SLP (B5)

indicates the following, among other things:

- 1 The Student was an eager participant and maintained direct eye contact. As he became familiar with the task, his attention began to wander and he required verbal prompting to redirect his attention. He demonstrated a strategy of reauditorization (restating the stimuli back to himself). When asked, he elaborated answers that were vague. (B5 at 1-2)
 - 2 In an observation of the Student in a mainstream science class, Ms. Modzelewski noted that the Student sat at the back of the room with the paraprofessional two seats to his left. The Student completed a quiz administered to the class and waited patiently until the class had finished the quiz. The Student shouted out an answer to a question and had to be reminded by the teacher to wait to be called upon. The Student became agitated when he found that he did not have a portion of a homework assignment that was to be turned in. His paraprofessional intervened to assist him in developing a strategy to address the concern, and the Student left the classroom briefly to call home to ascertain where the missing portion of the project was. When the Student returned to class, he resumed participating in the class activity. However, while paying attention to that activity he also took out materials and started to recreate the missing component of the project. (B5 at 2)
 - 3 In an observation of the Student at lunch in the cafeteria, Ms. Modzelewski noted that the Student sat at a table by himself and was subsequently joined by other male students. Ms. Modzelewski could not overhear what the students were saying to each other, but noted that the Student initiated a conversation with one of them. The Student was, however generally observed to be “disengaged” from the other students at the table and appeared to become increasingly tense and agitated as the lunch period progressed, manifested in facial expression, body language, crossed arms and trips to the garbage can to throw out his lunch and to the bathroom and water fountain. (B5 at 3)⁷
 - 4 The Student “demonstrates many language skills within the average range,” with relative strengths in “the areas of semantics, grammar, processing and comprehending sentences, interpreting figurative language and inference” and relative weaknesses in “the areas of interpreting ambiguous language and pragmatics.” With respect to pragmatics, the Student has developed “many skills that aid in his communications” and demonstrated strengths “on standardized testing in the areas of inquiry, greeting, requesting, commenting/responding, introductions, apology, polite interruption, appropriate behavior with an authority figure, identifying nonverbal cues, and remembering important information.” She noted, however, that observation in the large and small group settings revealed a “lack of generalization of some pragmatic skills at times” with weaknesses noted in the areas of voice tone and stress, turn-taking, initiation of conversation, stating and requesting pertinent information, stating appropriately the refusal to give others information and providing indirect statements.” (B3 at 3)
- d. An assistive technology assessment by Laura Langlois (B4), which included observations of

⁷ Ms. Modzelewski did not investigate what caused the Student’s agitation and did not report that his behaviors drew the attention of anybody, or were age inappropriate or disruptive.

the Student, notes that the Student benefits from assistive technology, and indicates the following, among other things:

- 1 In one session the Student was observed to be “well engaged” in note taking using his DANA with support from his paraprofessional. These activities were being done in a manner which minimized any disruption to the class.
- 2 In another session, the Student was noted to be “noncompliant” with direction from his paraprofessional, and pursuing his own “separate agenda” during the class.⁸
- 3 In a third session, the Student was noted to be well engaged in a pencil and paper note taking activity and otherwise participating.
- 4 The Student started the year using an AlphaSmart, but ultimately became reluctant to use it and expressed a preference to use “pencil and paper” to be “just like everybody else.”

C. The Placement of the Student at Devereux

13. At some point in the Student’s 7th grade year, the Parents hired an educational consultant and evaluated several placements for the Student including the Devereux Glenholme (“Devereux”) program in Washington, Connecticut. The Parents state that they initially sought to place the Student at Devereux on a non-residential basis, but ultimately placed him at Devereux on a full-year residential basis after Devereux advised them that Devereux would only accept him on that basis because of the “severity” of his disabilities. (Father; Mother) The Student started the 2003/2004 school year in the 8th grade at Devereux and since then has attended Devereux on a full-time residential basis. (Father)⁹
14. The Parents at hearing described their reasons for placing the Student at Devereux, as opposed to another program, generally as follows:
 - a. Devereux serves students with disabilities in a program designed such that the support the Student needs with academic, social and behavioral issues could be delivered in a manner which would not identify the Student as different from his peers, as was the case at AMS.
 - b. Devereux utilized an “integrated delivery model” in which all aspects of the Student’s program are “worked” consistently in all aspects of the Devereux environment. The Student is provided a social worker at Devereux with whom he meets weekly and who coordinates programming with the Student’s teachers and other service providers at Devereux.

⁸ The note does not indicate, however, that the Student was disrupting the class.

⁹ Ms. Thereault, who is currently the Student’s Devereux team leader, also testified that the Parents initially sought placement for the Student at Devereux on a non-residential basis but that Devereux recommended that he be placed on a residential basis. (Thereault) Neither the Parents nor Ms. Thereault stated however who at Devereux made the determination regarding the Student’s need for a residential placement, what assessment if any was performed by Devereux in making that determination or what information regarding the Student was available to the Devereux staff making that recommendation.

- c. The use of a token economy system (“TES”) and extensive parent training in the TES to provide for consistency in the home environment.

D. Devereux Glenholme

15. Devereux is a State of Connecticut DOE-approved special education school for students in grades K-12. As of 2 years ago, Devereux was accredited by the State to award a high school diploma. (Thereault)¹⁰
16. All students attending Devereux have “special needs” with respect to their education, but not all of them have been identified as IDEA-eligible or been formally diagnosed. (Thereault)¹¹ Not all students who attend Devereux are on the autism spectrum. (Stipulation of the Parties) Devereux states that it serves students with “Mild” disruptive behavior disorders, ADHD, anxiety, mood disorders, obsessive compulsive disorder, post-traumatic stress disorder, Tourette’s Syndrome, Asperger’s Syndrome and learning disabilities. (P-16 at 1)
17. There are currently approximately 95 students attending Devereux, virtually all of whom are attending on a residential rather than day placement basis. There are currently 125 staff at Devereux providing direct or indirect services to the students. Class size varies from 6 to 12 students. (Thereault)
18. The school day for a residential student at Devereux is divided into three segments: classes until approximately 4:00 p.m., followed by the after school program (art, dance, sports, study hall/homework time), followed by the components delivered in the residential setting. The Devereux school year is 10 months. Devereux offers summer programming during the remaining 2 months of the year, consisting of ½ day of academics and ½ day of camp-like recreational activities. (Thereault)
19. The services delivered in the residential component target socialization, behavioral and emotional issues and consist of planned activities with goals that are suited or tailored to the behavioral, social and emotional needs of the students. The residential component also includes a week-end community service-oriented activity. (Thereault)¹²

¹⁰ Ms. Thereault has been employed at Devereux for 29 years and is certified by the state as a science and special education teacher specifically at Devereux under a grandfathered certification regulation. She has a BS in regular education and no formal training in special education. She is currently the Student’s Devereux team leader and has been involved in the Student’s educational programming at Devereux since he began attending Devereux. (Thereault)

¹¹ Accordingly, the Student spends no time with non-disabled peers at Devereux notwithstanding that certain of the Devereux-prepared IEPs in the record state that the Student’s program provides for interactions with non-disabled peers. (Thereault)

¹² Ms. Thereault seemed knowledgeable generally about the various programs at Devereux, but did not seem particularly knowledgeable about the after school and residential components of the Student’s specific programming.

20. The staff team responsible for a Devereux student meets at least once every six weeks to discuss the student and his/her progress. A written report is furnished to the parents of the progress and the results of the team's meeting. (Thereault)
21. The primary mechanism to shape behavior and address behavioral, social and emotional issues at Devereux is the TES in which target behaviors are identified and shaped through positive reinforcement in the form of tokens recorded on "token slips." All new students start at TES Phase III, and advance to TES Phase II when they have earned a certain percentage of tokens for a defined time period. Advancing from TES Phase II to TES Phase I requires maintaining a token status for a defined period, and a student-initiated petition for placement in Phase I. The determination of whether a student can enter Phase I is based to some degree on staff discretion. With each advance in Phase level, the student attains more privileges and must demonstrate more independent functioning. Movement upward in the Phase system reflects mastery of defined behavioral, social and emotional objectives which become more sophisticated and complex over time. Not all students reach TES Phase I. (Thereault)
22. Tokens are delivered in the school component as follows: During each class, the student can earn one primary token (for exhibiting an identified behavior during class). The student can also earn 1 token in every 15 minute period of a class.¹³ Tokens are delivered by teacher markings on the student's token sheet, which the student takes with him/her from class to class. Depending upon the student's circumstances, a student may be advised at the end of the class of the number of tokens earned or may be advised in real time as to whether he/she earned a token during the 15 minute window. In the residential and after school components, a student can earn "adult" tokens for positive interactions with adults and "peer" tokens for positive interactions with peers. The award of these tokens is discretionary with the staff, and whether and to what extent a student has earned these tokens is based on discussion between staff and student. (Thereault)
23. A student can move from Phase I into the Self-Dependency level ("SD"). To attain SD status, the student must successfully complete his/her TES Phase I requirements and petition the staff for approval to attain SD. SD students are expected to be able to reliably self-monitor and self-assess their performance in meeting behavioral, social and emotional objectives and to self-reward. Tokens are not used at the SD level. There is no gradual phase out of the TES as the student transitions from TES Phase I to SD. Rather the increased self-monitoring and independent functioning required for TES Phase I is the mechanism for preparing a student to function at the SD level. Not all students attain the SD level. (Thereault)
24. The TES is complimented with other mechanisms to promote desired behaviors, such as contracting and verbal and nonverbal cuing to redirect and refocus a student. "Quiet reprimands" may be used in the classroom, along with a time out mechanism in which the student is encouraged to disengage from the activity to "regroup." There is a substantial parent training component, so that parents are trained in the TES and other methods used at Devereux and can apply them at home. (Thereault)

¹³ It is unclear from the record evidence whether these tokens are earned for (a) exhibiting certain defined desired target behaviors or (b) for not exhibiting undesired behaviors identified in the Student's "Behavior Plan." If the tokens are earned for exhibiting certain target behaviors, the Student's desired target behaviors for which he can earn these 4 tokens are not identified in the record.

25. A student is not awarded tokens for attaining certain grades, but rather is awarded tokens for behaviors that facilitate improvement in grades. Grades at Devereux are based in part on academic performance and in part on socialization and attainment of classroom behavioral objectives. Effort is graded separately. (Thereault)
26. At the high school level at Devereux, students move from class to class within the buildings as a general matter, although depending upon need and circumstance a student may receive instruction in a self-contained classroom setting. Through his tenure at Devereux, the Student has not needed a placement in that restrictive environment. (Thereault)
27. Devereux has recently begun offering a "Step-Up" program, which is a simulated boarding school environment offered to students who have completed their Devereux program, as a form of transition to a community setting. Devereux anticipates offering shortly another post-graduation transition opportunity to its students in the form of a program in which the student continues to take classes at Devereux but lives off campus in a dorm-like setting. (Thereault)
28. If the plan for a student is to transfer from Devereux to a public school setting, transition-related planning would include "weaning" the student from reliance on the TES before he/she leaves Devereux. (Thereault)
29. Devereux uses curriculum based assessments to determine grade level and does not rely on standardized achievement or other standardized testing for this purpose. (Thereault)

E. Due Process Against Town A Regarding the 2003/2004 School Year (8th Grade)¹⁴

30. At a PPT on September 18, 2003, Town A rejected the Parents' request that Town A fund the Student's placement at Devereux on a residential basis. The PPT minutes (B8) note the following, among other things:
 - a. The Parents did not identify any goals or objectives they wanted added to the Student's proposed 8th grade IEP. The Mother reiterated a concern she had raised at the June 20, 2003 PPT as to how the Student would be integrated into the mainstream and generalize his skills. (B8 at 4) Town A staff acknowledged the Parents' concerns regarding the use of the paraprofessional and that following the discussion at the June 20, 2003 PPT, a goal focusing on integration into the mainstream was introduced into the Student's IEP. (B8 at 4) Ms. Minor acknowledged that the Spring of each year was a particularly difficult time for the Student and that the Parents have been seeking to have the paraprofessional support eliminated. Ms. Minor expressed her view that it was important to have the paraprofessional at the beginning of the academic year, but that the goal was to gradually phase out the paraprofessional. The level and scope of the paraprofessional's involvement with the Student in the 8th grade was an agenda item for the first 8th grade team meeting regarding the Student. (B8 at 4) The minutes state that

¹⁴ As noted elsewhere in the Final Decision and Order, the 2003/2004 school year is not before the Hearing Officer. Evidence of events transpiring before the 2004/2005 school year were, however, discussed at hearing and are pertinent to resolution of the issues that are before the Hearing Officer.

the Mother “had no problem with that.”

- b. The Parents reported the following as examples of concern motivating their request for an out-of-district placement: “[The Student’s] ability to participate in before and after school programs appropriately. Inclusion in unstructured activities such as lunch and recess, arts and theater. Demonstration that he is part of a peer group through sitting at a variety of lunch conversations, talking to students in the hallway. Students at [AMS] being interested in joining [the Student] for activities out of school.” (B at 4-5)
 - c. The Parents’ attorney, who attended the PPT, advised that the request for a residential placement at Devereux was for “educational reasons” and was based on recommendations of the Student’s treating psychiatrist, Jean Paul Marachi, M.D. Town A staff, who had been consulting with Dr. Marachi periodically regarding the Student, reportedly questioned whether Dr. Marachi had made any such recommendation, since no such recommendation had been communicated to staff in their contacts with Dr. Marachi. (B8 at 4-5)
31. On November 6, 2003, Dr. Marachi, the Student’s treating psychiatrist since May 1995, wrote a letter (P3), stating the following:
- a. Dr. Marachi has been treating the Student for PDD-NOS.
 - b. Since May 1995, the Student has been “struggling mightily at school and has required special education services throughout his school career for his problems with impulsivity, non-verbal learning disability, and poor social skills.” “Seventh grade in particular ... was quite difficult for [the Student] and he as a result was quite stressed and this emotional difficulty impacted on his ability to perform academically.”
 - c. During this period, the Student has required medication to address anxiety, overall mood, attention span and impulsivity.
 - d. “I have recommended to you that [the Student] requires a placement in a small special education setting that would consist of a small school with small class sizes and a school staff that is familiar with working with children with [PDD]. In addition, I believe that [the Student] would *benefit* by being a residential student in such a school in order to work on his social skills that clearly impact on his academic performance.” The Devereux placement would be “an appropriate setting for [the Student] at this time.” (Emphasis added.)¹⁵
32. The Parents commenced a special education due process proceeding against Town A to secure a determination regarding the Student’s placement at Devereux for the 2003/2004 school year. That proceeding was ultimately resolved by settlement agreement rather than a final decision on the merits. (Representations of Counsel; Father 5/1 at 17-20, 24-25)

F. 2003/2004 School Year (8th Grade)

¹⁵ Dr. Marachi did not testify. On its face, Dr. Marachi’s letter establishes only that the Student would benefit from the placement at Devereux, not that such a placement was necessary in order to enable him to obtain a meaningful benefit from his educational programming.

33. On October 21, 2003, Frank Ninivaggi, M.D., a psychiatrist at Devereux, evaluated the Student as part of Devereux's intake procedures. His report (P2) states as follows, among other things:
- a. When admitted into the residential facility [at Devereux a month earlier], the Student was reported to be manifesting "pervasive difficulties in social skills, both in school and in the community for a large portion of his lifetime, general immaturity, anxiety, withdrawal, impulsivity, as well as some oppositional and defiant behaviors [and] difficulty with spatial and interpersonal boundaries."
 - b. On interview, the Student was "cooperative and compliant." He had little insight into his problems and "his interpersonal communication was marked by mild to moderate anxiety, poor eye contact, and a relatively disjointed description of himself and his past experiences."
 - c. Considering his behavior during the interview, and his most recent WISC-III VIQ of 126 and PIQ of 91, the Student "may have the capacity to comprehend and express himself to a greater degree than he demonstrated and continues to demonstrate."
 - d. Since starting at Devereux, the Student has not demonstrated "inordinate impulsivity or aggressivity" and there is "no indication of clear cut psychosis or depression," or "indication of suicidality in terms of ideation, gesture or behavior."
 - e. The Student has "classic [PDD] features that are clear-cut and have a long history from early on. His difficulties in school, and the necessity for special education in the past, most likely have been necessitated by the pervasive impairments in social skills functioning that cut across most sectors (cognitive and emotional) of his personality. The ability to adapt to new settings and to perform in a reasonable way seems impaired secondary to his primary social skills disability . . . [There] is no primary attentional difficulty other than the attentional impairment, which is secondary to impaired social skills and its attendant anxieties." The etiology of the Student's attention and concentration issues remains an "open issue" but the Student does not "appear to have classic [ADHD] or Attention Deficit Disorder."
 - f. Dr. Ninivaggi diagnosed the Student as follows under the DSM criteria:
 - i. Axis I: 299.8 Pervasive Development Disorder, NOS
 - ii. Axis II: V71.09 No Diagnosis¹⁶
 - iii. Axis III: No active medical problems
 - iv. Axis IV: Psychosocial stressors of severely impaired social skills
 - v. Axis V: Global Assessment of Functioning ("GAF") - Current: 38; Highest Past Year 38¹⁷

¹⁶ According to the DSM-IV-TR, PDDs are often associated with Mental Retardation which, if present in the clinical picture, is to be identified on Axis II of the DSM's multi-axial diagnostic format.

¹⁷ Axis V in the DSM diagnostic system is used to report the clinician's judgment of the individual's overall level of functioning. The Axis V rating can be used to plan and measure the impact of treatment. The scale is from 1 to 100. The closer the rating is to a "1" the more severely impaired the level of

g. Dr. Ninivaggi made the following recommendations:

- i. The Student “appears to require a residential setting in order to facilitate both educational and psychosocial advancement” and should continue in the “highly structured, predictable, and behaviorally-oriented setting” at Devereux.¹⁸
- ii. The Student’s medication should be gradually eliminated to determine his ability to function without it.

34. Devereux prepared an IEP for the Student for the 2003/2004 school year (P1) which included the following Goals:

- Goal 1: Improve organization, study skills and learning strategies.
Goal 2: Improve written skills.
Goal 3: Develop the academic skills necessary for effective participation in the classroom.
Goal 4: Increase expressive language skills.
Goal 5: Increase pragmatic language skills.

The Objectives under each Goal are described in Attachment 2.1. The Student would be provided with 30 hours/week of instruction, a calculator, an AlphaSmart and various other accommodations such as preferential seating.

35. The specific behaviors that were targeted for remediation for the Student in his TES at Devereux and his progress on addressing those behaviors, as well as other information regarding his status in the TES is set forth in Attachment 3. In the 2003/2004 school year, the Student’s TES addressed the following target behaviors: talking back, interrupting, arguing, name calling, responding to teasing, being stubborn, pouting when things do not go his own way, having poor interactions with peers, being non-assertive, accusing others of picking on him.
36. The Student’s “*Treatment Plan-Residential*” for the period October 2003 through October 2004 (P1 at 17) prepared by Devereux identified the following goals.¹⁹ With respect to each behavior, the Student was rated as having a “motivation” rather than “skill” deficit.

Goal: Student will be able to care for his/her clothing by: (1) Putting clean clothes away in

functioning. Each band of 10 within the range 1 to 100 reflects a qualitative change in the level of functioning. A GAF between 91 and 100 is “superior functioning in a wide range of activities;” a GAF of 71 to 80 reflects symptoms which are transient in nature; and a GAF of 51 to 60 represents “moderate” difficulties in various life areas. A rating between 31 and 40 represents “some impairment in reality testing or communication . . . OR major impairment in several areas such as work or school, family relations, judgment, thinking or mood.” The GAF rating for the “current” period is operationalized as the lowest level of function in the week immediately preceding the evaluation. DSM-IV-TR at 32-34.

¹⁸ Dr. Ninivaggi did not testify. On its face, Dr. Ninivaggi’s report establishes only that the Student would benefit from the placement at Devereux, not that such a placement was necessary in order to enable him to obtain a meaningful benefit from his educational programming.

¹⁹ Review of the documents indicates that the TES, the Student’s IEP and the Student’s residential program “Treatment Plan” are separate programs with distinct, but sometimes overlapping goals.

closet or appropriate drawers; and (2) Folding and hanging clothes correctly

Goal: Student will be able to take care of his room and/or personal possessions by: (1) Keeping floor free from debris; and (2) Keeping dresser top free from clutter

Goal: Student will be able to make his bed independently by: (1) Tucking the sheets and blanket tightly under the top mattress; and (2) Creasing the comforter at the pillow

Goal: Student will have good personal hygiene by: (1) Brushing teeth correctly; and (2) Caring for fingernails/toe nails

37. The Student's "Treatment Plan" for the period October 2003 through October 2004 (P1 at 18-22), developed by Ms. Zabek (a licensed social worker) and Patrick Queenan (a psychologist), indicates the following:

a The Student shows an "interest in making friends and meeting adult expectations" with "weakness in coping and social skills" and "difficulty maintaining appropriate adult and peer relations."

b His "tentative discharge criteria" are as follows, among others:

- * The Student will "develop and utilize appropriate coping skills in all settings"
- * The Student will "successfully socialize with peers in all areas."
- * The Student will "continue to demonstrate safe behavior."
- * The Student will "demonstrate appropriate adult relations in all settings."
- * The Student will "demonstrate appropriate social skills in all settings."

c The problems, goals and objectives that were the subject of this Treatment Plan were identified as follows:

Problem: Interpersonal Relations – Student has the "ability to cooperate with adult requests and directions" but "needs to develop positive adult relations skills." The goal is to "improve adult relations" as follows:

Objective: The Student will consistently demonstrate positive adult relations as evidenced by earning 95% of adult relations tokens over a 4 week period.²⁰

Objective: The Student will decrease "arguing" as evidenced by three consecutive ratings of 2.0 or lower on this target behavior.²¹

Objective: The Student will consistently demonstrate positive adult relations at home as

²⁰ The record evidence does not identify precisely what the Student must do in order to obtain an adult relations token, or the criteria for awarding such a token.

²¹ This is a behavior addressed in the TES.

evidenced by earning 95% of percent points over a 4 week period.²²

Problem: The Student can identify what it means to be “empathetic” but needs to “develop and utilize appropriate social skills.” The goal is to improve social skills as follows:

Objective: The Student will improve his “ignoring skills” as evidenced by a 1 point decrease in the target behavior “responding to teasing.”²³

Objective: The Student will improve the quality of his interactions with peers as evidenced by a 1 point decrease in the target behavior “having poor peer relations.”²⁴

Problem: Externalizing Behaviors – The Student has the ability to assert himself in some situations but needs to “consistently advocate for his needs.” The goal is to improve self-advocacy skills as follows:

Objective: The Student will improve his self-advocacy skills as evidenced by three ratings of 2.0 or lower on the target behavior “being non-assertive.”

Problem: Transfer of Treatment – The Student’s in home support system will need to evolve to meet his needs. The goal is to “return home and to a less structured school setting” as follows:²⁵

Objective: Continue to instruct parents on Parent Point Program and Corrective Discipline techniques.

Objective: Continue monthly family sessions to establish clear limits and structure in the home to improve family communication and to address parenting issues

Objective: Continue with appropriate home visitation schedule²⁶

Problem – Internalizing behaviors – The Student needs “support developing appropriate coping skills.” The goal is to “improve coping skills” as follows:

²² The record evidence does not identify the behaviors at issue in this component or how they are measured. This is not part of the Student’s TES as reflected in Attachment 3 but presumably the same behaviors are addressed at home.

²³ This is part of the Student’s TES defined in Attachment 3.

²⁴ This is part of the Student’s TES defined in Attachment 3.

²⁵ Apparently, notwithstanding their conclusions regarding the severity of the Student’s issues at the time, Devereux staff concluded that the Student could eventually return to a less structured school setting.” However, a return to a less restrictive environment is not specifically identified as a goal of his IEP and no timetable or criteria for assessing his progress in this regard is identified in the Devereux documents.

²⁶ There is no documentation in the record describing this aspect of the Student’s treatment program at Devereux and only general testimony from the Parents that the Student’s behavior at home was showing improvements.

Objective: The Student will improve his ability to “deal with frustration as evidenced by an absence of quiet areas in all settings.”²⁷

Objective: The Student will “improve his ability to positively deal with situations that do not go his way as evidenced by three ratings of 2.0 or lower on the behavior objective of ‘pouting when things don’t go his way.’”²⁸

The goals and objectives of the Treatment Plan are to be accomplished by contracting, use of behavioral graphs, home visits and social worker support.

38. As of 2/13/2004, the Student’s “primary” behavior subject to improvement through the TES was identified as “I will be respectful by having positive interactions with my peers.” (P5 at 2)²⁹
39. A treatment summary dated March 23, 2004 prepared by the Student’s Devereux social worker (P6) states as follows, among other things:
 - a. When they enrolled the Student at Devereux in September 2003, the Parents reported that he has social difficulties, impulsivity, distractibility, anxiety, disruptive and non-compliant behaviors.
 - b. The Parents initially sought enrollment in the day treatment program, but the Student was enrolled as a residential student because it was Devereux’s “opinion that [the Student’s] *social needs* would be more effectively met as a residential student.” (Emphasis added.)
 - c. To date, the Student has been “eager to meet his goals and is able to implement strategies in the [Devereux] environment with adult assistance, however his primary motivation for this is his belief that he will be able to become a day student for the next school year.”
 - d. The Student’s current therapy goals include improving social skills, adult relations and self-advocacy skills. He attends therapy one hour/week focusing on developing *problem solving* skills with respect to “peer relations and coping skills.”³⁰

²⁷ This objective eliminates an undesired behavior but does not define what will replace that behavior or how the replacement behavior will be tracked and his progress on mastering it monitored. Simply eliminating a problematic behavior says nothing about development of a replacement, appropriate behavior.

²⁸ This is part of the Student’s TES set forth in Attachment 3 to the Final Decision and Order.

²⁹ The “primary behavior” is the behavior that must be exhibited to earn one of the tokens the Student can earn for a class. There is no evidence in the record that this “primary behavior” has changed since the 2003/2004 school year.

³⁰ The mechanism by which the Student learns proactive problem solving and other adaptive skills appears to be weekly individual counseling rather than through the TES. There was little information in the record regarding the therapy being provided to the Student and no information regarding his progress in the therapy after the 2003/2004 school year.

- e. The Student participates in a weekly “social pragmatics” group with the Speech Pathologist. The focus of that group is learning to communicate verbally and non-verbally and to “read social cues.” Noticeable improvement in these areas, particularly in eye contact and active listening skills, has been reported at school and at home.
- f. Behavioral issues being addressed through the TES are talking back, interrupting, arguing, name calling, responding to teasing, being stubborn, pouting when “things don’t go his way,” having poor interactions with peers, being non-assertive and accusing others of picking on him.” The Student is reportedly highly motivated to succeed in the token economy environment and is expected to be eligible for the “highest level of the behavioral phase system” in four weeks.
- g. The Student has reportedly made “substantial improvement” in social skills, is more outgoing, is able to interact in a more positive manner, participates in a drama group, evening activities and dances, and participates in public speaking activities before peers and staff.
- h. “Due to concerns over the side effects of these medications, [the Student] is now off all psychotropic medications.” (Emphasis added.) “It is noteworthy that [the Student] has been able to make and maintain the behavioral and social gains [described in the report] without the assistance of psychotropic medications, but with the support and predictability of his treatment program.”
- i. The Parents report improvement in the home environment as well. The Student currently goes home three weekends per month and during school vacations. The *Parents* are working to build more “social opportunities” for the Student while he is at home.

G. Joel Barlow High School Generally

- 40. With the Student’s entering 9th grade in the 2004/2005 school year, responsibility for his educational programming shifted from Town A to the District. (Representations of Counsel)
- 41. Ms. Roszko is Chair of the District’s Special Education Department. Ms. Roszko testified as follows, among other things:
 - a. Regional District 9 consists of JHBS. JBHS students are drawn from Town A and Town B, each of which is a separate school district from each other and from the District.
 - b. The JBHS environment is not the same as the Town A middle school and in working with the Parents, Ms. Roszko believed that they did not appreciate the differences. There is no special education wing at JHBS, but rather several resource rooms are scattered throughout the building. The resource room classes are not identified as such and look like any other class. JBHS students scheduled for a resource room during a period simply go to the resource room. There are no “pull outs” from other classes at JBHS for IEP service delivery. Since students do not move from class to class as a group, but rather attend a variety of classes, it would not be noticeable to the Student’s peers that he was going to a resource room or speech and language services.

- c. Approximately 1,000 students in grades 9-12 attended JBHS in the 2004/2005 and 2005/2006 school years. In both school years, the typical mainstream class had 22 students, the typical advanced placement class had 30 students, the typical modified class had 13 to 14 students, and the typical lab had 20 students. All classes are provided in 1 building. There are 80 teachers. Students have 4 minutes passing time between classes. In both the 2004/2005 and 2005/2006 school years, approximately 10-11% of the students attending JBHS were identified as eligible under the IDEA. Three students identified as being on the autism spectrum currently attend JBHS. Some JBHS students also have NVLDs.³¹ JBHS employs “security paraprofessionals” whose job responsibilities include monitoring students in the halls. JBHS has a mechanism by which a teacher can report to the office on a real time basis whether a student in his/her class does not appear for class when expected.
- d. There are 12 paraprofessionals assigned to support students in the general education classes. After the class roster is established, the rosters are reviewed to determine which classes the paraprofessionals will be deployed to. The paraprofessionals are not assigned to support a specific student as a general rule. In the 2004/2005 school year one student who had severe physical and cognitive disabilities was provided a 1:1 paraprofessional. In the 2005/2006, none of the students attending JBHS had a 1:1 paraprofessional.³²
- e. Course curricula are not generally provided at a PPT, but are available to the public on the District’s website.
- f. JBHS operates a summer program for IDEA-eligible students. The summer program is not summer school and is only offered to Student with IEPs.³³

H. 2004/2005 School Year – 9th Grade

42. Ms. Roszko was aware of the Student and his placement through routine discussions she had had with Town A staff toward the end of the 203/2004 school as part of planning generally for the transition of several 8th graders attending AMS into JBHS. (Roszko 6/5 at 197-200) In April 2004, the Parents requested that the District convene a PPT to address planning for the 9th grade (2004/2005 school year). (B9) The District requested an opportunity to observe the Student at Devereux and to review his records and the latest evaluation that had been performed. (B10) The Parents ultimately supplied records regarding the Student’s performance at Devereux and no observation was done by District staff. The proposed PPT ultimately convened in two sessions, one

³¹ See also Sullivan 5/23 at 154-155, 191-193 (discussing a JBHS student who is high functioning autistic referred to as a “Mayor of Barlow” and who conducts the school’s daily announcements and has won the “Spirit of Barlow” award for his contributions to the school community); Fredericks 6/5 at 84.

³² See also Fredericks 6/5 at 37.

³³ The summer program is run by Ms. Fredericks and two other special education teachers, is five weeks in length, meets 4 days per week for 4 hours and on the 5th day meets for 7 hours and goes into the community to practice social skills that the students are working on. Peer mentors participate in the program. (Fredericks 6/5 at 33-35)

on June 10, 2004 and the second on June 23, 2004. (B11-B16)³⁴

43. The Mother and Devereux staff participated in the June 10, 2004 PPT. (Mother; Roszko) The minutes of that PPT, which focused on the Student's present educational functioning, indicate that, among other things, the participants discussed the following (B19 at 4-5):
- a. The Student participates in a "social language group" once/weekly at Devereux. The group role-plays appropriate and inappropriate behavior with the drama teacher. The Student is arguing less at home, questioning effectively, considering consequences before acting and speaking, has mastered 4 of 6 targeted objectives and is "beginning to carry skills over into the classroom." He reportedly can now "make three or four relevant comments in a classroom and is more aware of his behaviors and is beginning to self-monitor them." He reportedly needed to be "more consistent in demonstrating improved skills."
 - b. In terms of "vocational progress," the Student reportedly needs to recognize appropriate times to ask questions. He was noted to rush through work, to miss social cues, to continue to have difficulty with social interactions, to get frustrated, and to need to show better eye contact. He reportedly is "beginning to identify triggers which have caused emotional upset" and to show improved writing and math skills and is now using his AlphaSmart on a consistent basis. He continues to have difficulty with self-advocacy skills and ignoring others. He is motivated by a token economy, needs clear guidelines for social interaction and positive feedback, redirection and help initiating tasks. "He tries hard to fit in. [He] has poor independent work skills and needs help with organization. There has been improved efforts on task completion." He is "motivated by plays and projects which bring out the creative side of him." Improvements were noted in his use of socially appropriate humor.
 - c. The Student meets for one hour/week with a social worker to focus on improving social skills, cooperation and self-advocacy. The Student is involved in a singing group and softball.
 - d. For the first time in seven years, the Student was no longer taking any medication.
44. The PPT reconvened on June 23, 2004 to develop educational programming for the 9th grade year. Devereux staff and both Parents participated. (B19 at 2; Mother; Roszko) The minutes of that reconvened PPT (B19 at 6-8) indicate that the PPT considered the following, among other things:

³⁴ Ms. Roszko made several attempts to schedule a PPT at a time when it was convenient for the Parents and Devereux staff. The inability to secure a time from Devereux staff contributed to the delay in scheduling this PPT. Ms. Roszko was not aware that the Parents intended to participate from Devereux until the PPT itself convened. She believed it was important in working with the family for the first time to have the meeting done face-to-face and determined that the PPT on June 10, 2004 would focus on the Student's present level of functioning and performance at Devereux and then reconvene to complete planning for the 9th grade. (Roszko 6/5 at 199-209; B9, B10, B12, B13, B14 B16; P17)

- a. The Parents “hope” that the Student can attend a post-secondary program and live independently in the community.³⁵
- b. The Parents report that the Student “resists being treated differently from the rest of his peers” and “has difficulty when his typical peers behave differently from what he is learning in his social skills group.”
- c. A program proposed by the District which had the following elements, among others:
 - i. In-district placement at JBHS; program would be 37.5 hours/week, of which 23.4 hours would be spent with non-disabled peers and 9.6 hours would be special education services; extended school day (“ESD”) programming twice per week; extended school year (“ESY”) services 4 hours/day over a 4 week period; accommodations including calculator, extra time for projects and tests, daily assignment and homework list, posting of assignments, provision of lecture notes and outlines; **and a behavioral management plan that includes daily feedback, positive reinforcement, cuing of expected behavior and structured class transitions.** Given the Student’s prior experience with and use of AlphaSmart, another notetaking device would be considered.
 - ii. IEP providing for two periods of resource room (with at least one being for a grade and credit), a social skills class (“Strategies for Success” or “SFS”), a positive behavior support program, modified classes in English and Western Civilizations,³⁶ Earth Science and Algebra I in the regular curriculum, counseling once weekly with either the school psychologist or a social worker; 2 day training program for the Student’s teachers to “help them to better understand the needs of students with atypical issues,”³⁷ consultation with specialists who work with students on the autism spectrum initiated early in the school year to help with planning; modified graduation standards and modified CAPT testing.
 - iii. That a transition plan would be implemented over in the summer of 2004 to increase the Student’s “comfort level” with the JBHS setting.
 - iv. An IEP with the following Goals.

³⁵ This comment reflected Ms. Roszko’s initial attempt to determine the long range vision for the Student, which she views as important information to have for educational planning. (Roszko)

³⁶ The proposal for modified classes for English and Western Civilization reflected recognition of the Student’s difficulties with writing and need for writing support. Modified classes follow the same curriculum as the comparable unmodified classes, but are smaller in size (8-15 students). The pace of the writing requirements is not as rigorous and all students in the class have assistive technology equipment available to them if they want to use it. This was explained to the Parents at the PPT. (Roszko)

³⁷ The two day orientation for staff at the beginning of the school year is done annually for new staff at JBHS and as a refresher for experienced staff who are working with students on the autism spectrum. (Roszko) A variety of topics related to students with Asperger’s Syndrome and NVLD are discussed as a way of enhancing the ability of the staff to identify issues and respond to improve student functioning. Staff working with students with these issues are encouraged but not necessarily required to attend, and the curriculum is general and not specific to any particular student. (Sullivan)

- Goal # 1 To improve social communication skills for optimal functioning in academic and social settings.³⁸
- Goal # 2 To improve organizational and study skills.
- Goal # 3 The Student will meet the social and behavioral expectations of his courses.
- Goal # 4 The Student will improve his written expression skills.
- Goal # 5 The Student will continue to develop problem solving skills in order to manage his day in a pro-active manner.
- Goal # 6 The Student will begin to develop the skills necessary for transition to post-secondary environments.

Detail regarding the Objectives of this IEP can be found in Attachment 2.2.

45. The District's proposed 2004/2005 school year IEP (B19 at 8-28) was developed by Ms. Sullivan and Ms. Roszko, among others.
- a. Ms. Roszko has been Chair of the Special Education Department for 8 years, is responsible for supervising the special education staff at JBHS (including Ms. Sullivan and Ms. Fredericks) and attends approximately 250 PPTs a year. She has been working at JBHS for 18 years. Prior to coming to JBHS she had 10 years of classroom special education teaching experience. She holds Special Education (K-12) Comprehensive Certifications and Intermediate Administrator Certifications from the DOE. She has a Masters in Special Education and a Sixth-Year Certificate in Administration.
 - b. Ms. Sullivan is a speech and language pathologist who has been employed by the District for 5 years. She has a BA in Communications Disorders and a MA in Speech and Language, and has had more than 15 years of professional experience primarily in middle and high school settings. She holds state teaching certifications with a speech and language pathology endorsement and a national certification of clinical competence from the American Speech, Language and Hearing Association. She has attended numerous continuing education training programs in the areas of Asperger's Syndrome, NVLD and positive behavioral support systems for students. Ms. Sullivan works with a number of students attending JBHS who are identified as having Asperger's and/or NVLDs. She participates in PPTs and drafts IEP goals and objectives for these students, provides direct and indirect speech and language services for these students, and teaches a social pragmatics curriculum in the SFS class. (Sullivan)

³⁸ Goal # 1 is the primary goal and focuses on pragmatic skills across all areas. Goal # 3 addresses social and behavioral issues by targeting class participation and student behavior. Goal # 5 addresses stress and anxiety issues by focusing on improving problem solving skills. The rationale of these goals was explained to the Parents at the PPT. (Roszko)

46. With respect to the June 2004 PPT and the District's proposed 2004/2005 school year IEP, Ms. Roszko testified as follows, among other things:
- a. There was an extensive discussion of the Student's needs, strengths and weaknesses.
 - b. The proposed ESD programming would provide an opportunity for the Student to generalize his social skills in a less structured setting supervised by two special education teachers, the school psychologist and Ms. Sullivan.
 - c. The Parents were told that the Student could attend the ESY program at JBHS in the summer of 2004 as a vehicle for transitioning the Student from Devereux to JHBS. The IEP used would have been the Devereux IEP in effect at the time.³⁹
 - d. Devereux staff participated in both of the June 2004 PPTs and, presented their proposed 2004/2005 school year goals and objectives which were discussed. The JBHS staff used that information in considering the appropriateness of the District's proposed IEP.
 - e. The Devereux materials provided for the June 2004 PPTs state that the Student's ADL skills were "age appropriate."
 - f. The reference to "X" period in the District proposed IEP is a reference to a one period block that occurs once every 7 days and is reserved specifically for club activities. Examples of activities in the "X" period include student council, debate club, and the school newspaper, as well as student-initiated clubs and activities approved by the administration.
 - g. The Student would be transported on a mini bus.
 - h. The District advised the Parents at the PPT that the PPT would reconvene in November 2004 to assess the Student's transition.⁴⁰
 - i. Paraprofessional support was not identified as an accommodation to be offered to the Student.
47. The IEP proposed by Devereux for the 2004/2005 school year considered at the June 2004 PPTs (B33 at 3-10), identified the following Goals. Information regarding the specific objectives under each Goal and the Student's progress can be found in Attachment 2.1.

Goal # 1: Improve organization and study skills

Goal # 2: Develop the student skills necessary for effective participation in the classroom.

Goal # 3: To improve written skills. (Assessed through achievement of objectives reflected in passing grades and successful completion of task/activity)

³⁹ This proposal was, however, not fully documented in the PPT minutes.

⁴⁰ That proposal is not reflected in the documentation of that PPT.

Goal # 4: To improve pragmatic language skills

Goal # 5: To improve oral and written skills and reading comprehension (determined by quizzes and tests and achievement of objectives as measured by passing grades and scores or teacher observations)

Goal # 6: Develop the skills necessary for secondary education opportunities⁴¹

48. At the June 23, 2004 PPT, the Parents requested that the District fund a continued placement at Devereux on a residential basis for the 2004/2005 school year. (B19 at 7; Father; Mother) The Parents testified that they rejected the District's proposed program because:
- a. Devereux staff recommended that the Student continue to attend Devereux on a residential basis in the 2004/2005 school year.
 - b. The District's proposed program was similar to the program that the Student had had in the 2002/2003 school year in Town A (his last year in public school prior to Devereux). The Student's gains made at Devereux over the prior 10 months and his continued progress would be jeopardized by such a program and change in placement.
 - c. The Parents believed that the District's proposed program was not based on an in-depth understanding of the Student and his needs, but rather was a compilation of existing programs and options that could be offered, which would be refined once the Student began attending JBHS. District representatives reportedly told the Parents that before developing a more comprehensive or detailed program, the District needed some assurance that the Student would attend JBHS and that a more comprehensive transition plan would be developed once that decision was made.⁴²
49. On July 14, 2004, the Parents asked (B21) that the minutes of the June 23, 2004 PPT be revised to reflect the following comments;
- a. Vocational progress was not discussed at the PPT.
 - b. "The [Devereux] team did state that to withdraw him at this time from the program when he is so dependant on the concrete token economy and the motivational approach would result in significant loss of the skills and behaviors that he has acquired since he enrolled in the program in September 2003."
 - c. The Student's Devereux extracurricular program is not "tough for him." He is "proud" of his

⁴¹ There are no goals and objectives specific to the residential component identified in the Devereux proposed IEP and no update to the "Treatment Plan" or report on that Plan. There is no indication that the Plan changed in any way.

⁴² This statement appears to be generally consistent with Ms. Roszko's, Ms. Sullivan's and Ms. Fredericks' testimony that more detailed implementation plans for various proposed components identified in the IEPs would be developed once it was clear that the Student would be attending JBHS.

participation in drama, singing and sports because he was unsuccessful in his efforts to participate in these activities at the middle school and withdraw from these opportunities.

- d. All of the improvements that the Student has made in the past 10 months – social, academic and emotional – rely heavily on the Devereux motivational method. This approach entails among other things constant cueing and reinforcement provided by the token economy, 100% involvement of every staff member in his program and goals, and the consistency of approach for every student enrolled at the school. The Student’s “residential attendance allows the practice and reinforcement of the social and behavioral goals that have been set for him. To leave this program and spend only 14.1 hours per week in a supported structure would have a severe negative impact on [the Student] socially, emotionally and academically.” For these reasons, the Parents are requesting a placement at Devereux.
50. On July 7, 2004, the Parents commenced a due process proceeding (DOE 05-259) to challenge the District’s refusal to fund the Student’s placement at Devereux for the 2004/2005 school year. (B20) A mediation took place on September 8, 2005 but was not successful. (B23; Representations of Counsel) The Parents did not pursue that case any further and no final decision and order on the merits was issued.
 51. The Student attended Devereux for the 9th grade (2004/2005 school year) on a residential basis. His progress on Devereux IEP goals and objectives is described in Attachment 2.1 hereto. The Student was generally reported to be making progress on IEP Goals and Objectives and qualitative reports of his participation were generally positive with some problematic behaviors continuing to be reported.

I. 2005/2006 School Year – 10th Grade

52. A PPT was convened on June 13, 2005 to determine the Student’s program for the 2005/2006 school year (10th grade). The minutes of that PPT (B34) indicate that the participants, who included the Parents and Devereux representatives, discussed the following, among other things:
 - a. As of the end of the third quarter of Devereux’s 2004/2005 school year, the Student’s grades were as follows: English I ranges from C to B; Writing I ranges from C+ to B; World History I ranges from B- to B; Biology ranges from B to A-; Biology Lab ranges from B- to B; Algebra I ranges from C- to C+; Health I ranges from C+ to B; Physical Education ranges from B to A- and Technology ranges from B+ to A. (B33 at 2)
 - b. The Devereux teachers report that the Student was showing improved reading comprehension and benefits from guiding questions and class discussions; was showing improved self-advocacy and frustration tolerance, although not consistent in all classes; was showing improved writing skills with respect to grammar and syntax and ability to independently correct his work; was showing improved ability to initiate tasks but still requiring redirection; was more engaged in class and happier, but still showing silliness and immature behavior in less structured settings; show improvement in writing skills with organizational strategies and monitoring; and was *“still very reliant on the structure of the program and the use of the token economy for generalization and consistency of improvements.”* (B33 at 11-19;

emphasis added).⁴³

- c. A speech and language report prepared by Ms. Sampieri, MS, CCC/SLP of Devereux stating, among other things (B33 at 19-20) that:
1. The Student is an active participant in a once weekly social communication group which targeted pragmatics and problem solving skills through role playing, social stories, games and cooperative group activities. Target behaviors for the Student in this group were: increased communication, increased detail in communications, improving the clarity of speech and “communicat[ing] in a more positive and serious way.”
 2. The Student made slow and steady progress in his IEP goals, has become more “serious about his learning,” has taken a “more active role in improving communicative skill areas rather than relying on adults around him to cue these behaviors,” shows improved eye contact and posture, improved self-control of volume and rate.
 3. The Student is an active participant in group discussions but still requires cues to keep his comments relevant, to wait his turn and to end his turn appropriately. He has become a peer model. He has become more “adept” at using “peer lingo.” He still shows difficulties with communication flow and pace in less structured activities.
 4. The Student’s ability to understand the rules for persuading, negotiating, suggesting, stating opinions, interpreting mixed messages, identifying facts vs. feelings in problem solving situations and resolving conflict is “good.”
 5. The Student should continue to receive one hour/week of direct speech/language therapy to address pragmatic skill weakness and improve interpersonal relationships. He benefits from immediate feedback regarding his communicative behavior and would benefit from “in vivo” type teaching within social contexts. Therapy should be provided in structured and unstructured settings (i.e., “shadowing” outside of the classroom).
- d. The Student was invited to attend the PPT at JBHS but did not, so his preferences and interests as they relate to the transition services could not be identified with certainty. The District addressed transition service needs in its proposed IEP by proposing that the Student become involved in “X” period activities and begin an initial career research. (B34 at 16)
- e. The Student remains eligible for special education and related services because his “difficulty with written expression, generalization of social and advocacy skills, and coping skills impacts his academic performance and requires continued support.” (B34 at 6)
- f. Potential courses at JBHS were discussed, as was participation in drama and chorus.
- g. The Student currently receives rewards daily and weekly and is at the level at Devereux in which he monitors and rewards his own tokens. The District team members noted that if the

⁴³ There is no report in the documentation provided in the record regarding the Student’s “Treatment Plan – Residential” for this period

Student attends JBHS in the next school year he would need “rewards” after every period.

- h. Considered the Parents’ report that the Student has improved in his interactions at home but has difficulty finding peers to engage with at home.
 - i. Discussed the programming at JBHS, a summer program as a mechanism to transition him to JBHS and pairing the Student with a college bound upperclassperson as a peer mentor.
53. Devereux’s 2005/2006 school year IEP (B33 at 22-30) proposed a continued year-round residential placement in which the Student would receive 1 hour/week of counseling and 1 hour/week of speech and language services, 9 hours/week of instruction in science and math and 19 hours/week of instruction in writing, English and Spanish. The Student reportedly would spend 30 hours/week with non-disabled peers.⁴⁴ Various accommodations would be provided, including use of an AlphaSmart, extended time for tests, test study guides and notes, not penalizing handwriting, grading based on effort and quality, and use of time out for behavior management. The proposed IEP includes the following Goals.
- a. Goal # 1: Improve organization and study skills.
 - b. Goal # 2: Develop the student skills necessary for effective participation in the classroom.
 - c. Goal # 3: To improve written skills.
 - d. Goal # 4: Develop the skills necessary for secondary education opportunities.
 - e. Goal # 5: Improve pragmatic language.

Additional information about the Objectives under these goals is included in Attachment 2.1 hereto.

54. The 2005/2006 school year IEP proposed by the District reflected an in-district placement at JBHS with the following components and elements, among others (B34 at 5-23):
- a. 3.2 hours/week of resource room services; 3.2 hours/week of “Strategies for Success” programming; 1.5 hours/week of speech/language services, 48 minutes/week of counseling and 40 min/week of SAT group & social skills, all to be delivered in a resource room. The Student will participate in mainstream vocational education and physical education, will have transportation on a mini bus, and will have an ESD twice weekly. He will have a 37 hour school week, with 6.4 hours of special education instruction/week. The Student will participate with non-disabled peers 26.6 hours/week. The exit criterion is identified as “Ability to succeed in regular education without special education support.” The Student will be administered the CAPT, with out of level testing (8th grade) for science only. He will be allowed the following accommodations for the CAPT – word processor, extended time and special test setting, will have an ESY program for July 2005. (B34 at 17-19)

⁴⁴ This is not accurate given the nature of the Devereux student population. Ms. Thereault agreed that this statement was not accurate.

- b. Class room accommodations similar to those proposed by Devereux for the Student in its program. (B34 at 20). The Student will be provided a note taking device and writing software for organization. A case manager will arrange a team meeting each semester. ***A paraprofessional will be provided to support the Student in the general education courses.*** (B34 at 20) A peer mentor will be identified. A “point system” for behavior management will be put into place.⁴⁵ The team working with the Student will be trained at the beginning of the year. Assistive technology consultation will be provided. The Student will be provided an orientation to his program prior to the start of the school year. (B34 at 20)
- c. An IEP with the following Goals:
1. Goal # 1 – To improve social communication skills for optimal functioning in academic and social settings.
 2. Goal # 2 – The Student will improve his study and organizational skills.
 3. Goal # 3 – The Student will meet the social and behavioral expectations in the academic environment.
 4. Goal # 4 – The Student will improve his written expression skills.
 5. Goal # 5 – The Student will continue to develop problem solving skills in order to manage his day in a pro-active fashion.
 6. Goal # 6 – The Student will begin to develop the skills necessary for transition to post-secondary environments.

A detailed statement of the objectives associated with each goal is included in Attachment 2.2.

55. The District’s proposed 2005/2006 school year IEP was developed by Ms. Roszko, Ms. Sullivan and Ms. Fredericks, a school psychologist who began working at JBHS at this time. She has a Masters degree in school psychology with a Certificate of Advanced Study in school psychology. She also has a DOE teacher’s certificate. Prior to working at JBHS, she worked for several years as a behavior specialist serving a population of autism spectrum disorder clients in various settings, including another school district in Connecticut.
56. The District’s proposed 2005/2006 school year IEP was essentially identical to the District proposed 2004/2005 school year IEP. In preparing the 2005/2006 school year proposed IEP, Ms. Roszko, Ms. Sullivan and Ms. Fredericks noted that Devereux staff had essentially suggested the same goals and objectives in their proposed 2005/2006 school year IEP and that the Student had not mastered many of his goals and objectives stated on the Devereux 2004/2005 school year IEP. (Roszko)

⁴⁵ This statement is a reference to the operation of the Devereux TES in which the Student carried a point sheet with him that was filled out in each class. The District proposed to implement a similar system with the Student upon his entry to JBHS to provide him with a structure that he was familiar with.

57. With respect to the June 2005 PPT and the District's proposed 2005/2006 school year IEP, Ms. Roszko testified as follows, among other things:
- a. The District proposed to consult with Ben Haven regarding the Student's programming. The District has engaged Ben Haven on a regular basis for provide consultation services. (Roszko 6/5 at 219; B19 at 7)
 - b. Devereux staff participated in both the June 2004 and June 2005 PPTs, and provided information which JBHS staff used to assess the appropriateness of the District's proposed IEPs.
 - c. The proposal that the Student be transported to school on a "small" school bus was intended to address anxiety issues in the most unstructured situation that a student will face during the school day. Ms. Roszko had no reason to believe that the Student would not ultimately be transitioned to a "larger" bus.⁴⁶
 - d. The proposal to provide peer mentor support in the 2005/2006 school year was based on discussions with the Parents and Devereux staff at the PPT.
 - e. The District proposed that a PPT be scheduled in November 2005 to evaluate the Student's transition into JBHS and adjust the IEP as necessary. This was discussed at the PPT and is reflected in the minutes. The Student was also due for a triennial evaluation in the 2005/2006 school year, and that evaluation would be discussed at the November 2005 PPT. Parental consent for the evaluation was discussed at the June 2005 PPT and the Parents advised that they would consider the request. After the Parents advised that they were placing the Student at Devereux, Ms. Roszko did not follow up on the request for consent to test.
 - f. The proposal to provide the Student with credit for resource room was not based simply on attendance. Rather, there are pre-defined, criteria for receiving credit for resource room. Those criteria are not stated in the proposed District IEP.
58. With respect to the June 2005 PPT and the District's proposed 2005/2006 school year IEP, Ms. Fredericks testified as follows, among other things:
- a. Ms. Fredericks has not observed, evaluated, met with or spoken to the Student. Ms. Fredericks did not have any communications with Devereux staff outside of the PPTs in which she participated along with Devereux staff. In preparing the June 2005 IEP, Ms. Fredericks reviewed reports prepared as part of the triennial evaluation performed in 2003 by Town A staff and the information regarding the Student's performance at Devereux provided by the Parents for the June 2005 PPT. After listening to the discussion by Devereux staff at the June 2005 PPT meeting, Ms. Fredericks concluded that the goals and objectives proposed by the District for the 2005/2006 school year in preparation for the meeting remained appropriate. Those goals and objectives were the same as the goals and objectives prepared proposed by the District at the June 2004 PPTs for the 2004/2005 school year. Based on the information available to her, Ms. Fredericks believed

⁴⁶ Because of its geography, the District uses "small" busses for both regular and special education students. Accordingly, it is the District's position that the fact that the Student would be transported to school in a "small" bus would not necessarily identify him as a special education student. (Roszko)

that the 2004/2005 school year goals and objectives remained appropriate for the 2005/2006 school year.

- b. The District's proposed ESD and ESY programs were not fully developed when presented at the June 2005 PPT, but rather were proposals for service that would be developed once it was clear that the Student was going to attend JBHS.
- c. In reviewing the Devereux IEPs goals and objectives (B33 at 3), Ms. Fredericks was surprised to see no goals or objectives related to anxiety management, given the reports of high levels of anxiety interfering with his academic performance. As social pragmatics skills improve, anxiety level should go down. However, not all anxiety is related to social interaction issues and anxiety management skills and tools are distinct from social pragmatics skills and tools such that a focus on the latter will not necessarily result in a reduction of the former. The goals she formulated in the District's IEPs were designed to enhance the Student's ability to proactively and positively address these issues.
- d. In reviewing the Devereux IEP (B33 at 29), Ms. Fredericks noted that various services were to be provided by a social worker but the IEP itself did not identify any goals or objectives that were social work related (*i.e.*, that addressed social and emotional issues).⁴⁷
- e. In the District's proposed IEP for the 2005/2006 school year, the Student would participate in SFS for 3.2 hours/week. There are currently three students placed in the SFS which is taught by 3 staff members. The Student would also participate in the SAT or Student Assistance Team program offered through the guidance department which is a social skill development group for students identified as requiring social skills training whether or not they have IEPs. Various SATs exist, with the students participating in a particular SAT manifesting similar types of social skill deficit issues. The Student would also receive 1 hour/week of counseling. ESD programming would involve interactions with peer mentors who will assist with homework and social skills development (such as getting the students ready for a dance) in a less formal setting than SFS. Student peer mentors in this program are encouraged to continue friendships with IEP students in the mainstream environment. This programming was explained to the Parents at the June 2005 PPT meeting. Also recommended was the PALS program which meets once per month on a weekend day and is a social skills group with both IEP and non-IEP students from JBHS who do activities in the community.
- f. The proposed ESY programming offered to the Student at the June 2005 PPT through JBHS is a social skills program in an individual and small group format in which students work on developing social skills through role playing and community activities (going to plays, aquariums, movies, malls, grocery stores and restaurants). The program is run by Ms. Fredericks, along with two special education teachers and older peer mentors (sometimes JBHS students who have recently graduated). That program would have been available to the Student in the summer of 2005 and would be used as a transition mechanism or vehicle for the Student. This opportunity was explained to the Parents at the June 2005 PPT.

⁴⁷ For example, Devereux IEP goals and objectives 2 and 5 on P13 (the 6/13/2005 Devereux IEP) look like social and emotional goals but are not to be assessed by the social worker.

- g. The paraprofessional support identified in the 2005/2006 proposed District IEP (B34 at 20) would have been delivered as follows: Many of the regular education classes at JBHS have paraprofessionals who are assigned to take notes for students in need of that assistance in that class. Accordingly, the presence of a paraprofessional in a mainstream class is not unusual at JBHS. The paraprofessionals are not assigned to a particular identified student *per se* and do not necessarily interact with the student(s) they are assisting. The students being supported by the paraprofessional are not identified to their peers. The notes taken by the paraprofessionals are deposited in the student's resource room folder after class. The paraprofessional support being offered was not a 1:1 paraprofessional shadowing the Student throughout his day at JBHS. This was explained to the Parents at the PPT.⁴⁸
- h. The proposed 2005/2006 District IEP references delivering to the Student a positive reinforcer at the end of each period. This can be done very discretely in a number of ways – checks on a piece of paper that can be handed to him at the end of the class by a teacher or paraprofessional or delivered to a resource room folder by the paraprofessional. The precise method would be tailored based on the Student's preferences and what would work best for him.
- i. The proposed 2005/2006 District IEP references “structured transitions.” Ms. Fredericks understood this to mean that the expectations for transitions will be made clear to and reviewed with the Student and the Student would practice movement through the school during an orientation visit prior to the start of the school year. Ms. Fredericks did not anticipate or assume that the Student would need assistance transitioning from class to class based on her understanding of his abilities, but assistance in moving from class to class could be provided through a peer mentor among other mechanisms, if needed.
- j. The positive behavior support plan that was to be implemented as part of the 2005/2006 school year IEP was ultimately not developed because it was Ms. Fredericks's understanding that the Parents determined that the Student would not attend JHBS. Typically, a behavioral support plan would be developed just prior to the start of the school year following interviews and discussions with the student and his/her parents at which Ms. Fredericks could ascertain the student's preferences for reinforcers and delivery systems and capabilities. Ms. Fredericks does not recall discussing this at this level of detail at the June 2005 PPT regarding this.⁴⁹
- k. As proposed by the District in the June 2005, the plan to transition the Student from Devereux to JBHS was to be accomplished through an orientation visit or visits by the Student to JBHS at the end of the summer prior to the start of the school year. At this orientation, the Student would be

⁴⁸ The District did not include paraprofessional support in mainstream classes for the 2004/2005 school year based on information in the Student's records from Town A and from Devereux indicating that assigning the Student a 1:1 paraprofessional would not be desirable and would be a source of anxiety and distress for the Student. In a mediation regarding the 2004/2005 school year, the Parents reportedly stated that one of the issues they were dissatisfied with in the 2004/2005 IEP was the lack of paraprofessional support. Accordingly, Ms. Roszko inserted paraprofessional support in the general education classes into the Student's 2005/2006 IEP proposed at the June 2005 PPT. (Roszko 6/6 at 27)

⁴⁹ Ms. Fredericks was not present at the June 2004 PPTs, but her understanding is that no behavioral plan was developed for the same reason – the Parents determined that the Student would remain at Devereux.

acclimated to the physical environment at JBHS and Ms. Fredericks would work with the Student and the Parents to develop the positive behavioral support system that would be implemented with the Student and identify the array of reinforcers that could be used. She would also use this opportunity to assess the Student's level of functioning and refine/develop the proposed behavioral support plan.

59. At the June 13, 2005 PPT, the District asked the Parents to consent to testing for purposes of the triennial evaluation that was required to be done in the 2005/2006 school year. (B34 at 4) The Parents were given but did not return a consent form authorizing the testing. (Roszko)
60. At the June 13, 2005 PPT and by letter dated June 23, 2005 (B35), the Parents requested that the District fund a continued residential placement at Devereux because they "do not believe that the program offered [by the District] will meet [the Student's] social, emotional or academic needs." The Parents state in that letter and testified further at hearing that:
 - a. The Student continues to need the "structure and cueing" provided by Devereux and that the District's proposed program at JBHS offers "none of these structures and supports."
 - b. Devereux staff recommended to the Parents that the Student continue to attend Devereux on a residential basis in the 2005/2006 school year. (Father)
 - c. The program offered by the District for the 2005/2006 school year was similar to the program offered for the 2004/2005 school year that they had rejected. The District's proposal for a token economy system at JBHS was not fully articulated, his classes would be modified, and he would be placed on a special education bus. The Parents did not object to the use of a peer mentor and agreed that having a peer mentor would be beneficial for the Student, provided that the mentor was an appropriate match for the Student. (Father)
 - d. The District's proposed program would not consistently manage all of the Student's "issues" over the course of his entire day and would expose him to situations and circumstances which would be detrimental to his progress. (Mother)
61. By letter dated June 27, 2005 (B36), the Parents asked that the minutes of the June 13, 2005 PPT be amended to reflect the following:
 - a. Dr. Queenan indicated that the Student's progress at Devereux reflected a combination of the TES, the program's structure and the staff-student ratio, further stated that the Student is "not ready" for a public school structure "at this time," and that placing the Student at a public school would be comparable to having the Student "step off of a cliff," with the result that "much of [the Student's] progress would be lost." Dr. Queenan recommended Devereux's "more gradual process" which leads to "self-dependency status."
 - b. The Mother's statement that the use of modified classes in the public school is "more restrictive" than the Student's current program and is not LRE.
62. By letter dated July 12, 2005, the District maintained that its proposed program would address the Student's academic, social and emotional needs in the least restrictive environment. (B37)

63. The Student's Devereux report card through the third quarter of the 2005/2006 school year shows grades in his courses ranging from Cs to As, with As in Chemistry, English II and Writing II, Cs and Bs in Spanish, and a C average in Algebra IB and in Geometry. (P18)

J. Dr. Ciocca's Neuropsychological Evaluation

64. On August 12, 2005 and August 26, 2005, the Student was administered a neuropsychological evaluation by Cristina L. Ciocca, Psy.D. Each session lasted four hours and this was the only time she has met the Student. Exhibit B38 is a copy of her evaluation report. She interviewed the Student both before and after scoring the test protocols. She obtained some information from the Student when he was alone with her during the testing, and other information from the Student during a more formal interview in which the Father participated. She received from the Parents various records from Town A, Devereux and the District and reviewed them after she had completed the testing of the Student. She believes that she had sufficient information from her review of the records, her interviews with the Student and the Father, and her assessment to make recommendations regarding the Student. She did not see a need to speak with any representatives of Devereux, Town A, the District or any other of the Student's past or present service providers and did not observe the Student at Devereux. (Ciocca 5/4 at 7, 9-10, 47-48, 80-81, 92, 94, 120-121, 133-134; B38)⁵⁰
65. On October 21, 2005, the Parents forwarded Dr. Ciocca's evaluation report to the District. (B38)
66. Dr. Ciocca states that the Parents requested an independent neuropsychological evaluation to "clarify [the Student's] exceptionality criteria, enumerate his cognitive strengths and weaknesses, and provide appropriate educational recommendations in order to assist in his continued social, academic and learning progress." (B38 at 2)
67. The Student attained the following test results in Dr Ciocca's evaluation (B38), among others:
- a. Wechsler Intelligence Scale for Children – IV: VIQ of 121 (92nd percentile; superior range); PIQ of 92 (30th percentile; average range); PIQ of 105 (63rd percentile; average range). He showed a Working Memory score of 104 (61st percentile; average range) and a Processing Speed score of 94 (34th percentile; average range)
 - b. Wechsler Individual Achievement Test – 2nd Edition ("WIAT"), the Student attained a Reading Composite score of 107 (68th percentile), a Mathematics Composite score of 95 (37th percentile) and a Written Language Composite score of 94 (58th percentile). His Grade Equivalent ("GE") scores on the Reading Composite subtests ranged from 10.9 to greater than 12.9, with Age Equivalent ("AE") scores ranging from 17.0 years to greater than 19 years 11 months. His GE on the Mathematics Composite subtests ranged from 7.8 to 9.4, with AE scores ranging from 12 year 8 months to 16 years. His GE on the subtests constituting the Written Language Composite ranged from 6.8 (Spelling) to 10.4 (Written Expression), with corresponding AE scores of 12 years and 16 years respectively. On the Listening Comprehension cluster he showed a GE of 11.7.

⁵⁰ The documents provided by the Parents and reviewed by Dr. Ciocca were identified clearly in her report and are all otherwise in the record.

- c. Gray Oral Reading test, he showed an overall score in the Average Range, with GE scores on the Rate, Fluency and Comprehension subtests all above his current grade level and AE scores on those subtests above his current age. His score on the Accuracy subtest was GE 7.7 (below his current level) and AE 12.9.
68. The Student is on the higher performance end of the autism spectrum. The Student's performance on the WISC-IV in this assessment was comparable to his performance on the WISC-III in his most recent prior assessment. The Student showed weaknesses with attention and in performing complex tasks. On a 1:1 basis he did "very well." As he experienced processing difficulties he would slow down. He showed difficulty with planning and organization and in seeing the visual "gestalt." At first, the Student presented as awkward and mechanical but he made eye contact and participated in the activity. As the testing session wore on, the Student showed increasingly silly and age inappropriate behavior, and became more perseverative and hypervocal. He was pedantic in his speech (he would talk "at you" rather than "to you") and his voice volume was high. The Student had some awareness of problems with his voice volume, but seemed unable to resolve the issue during the session. His frustration tolerance was "variable." He stated that he was bored with the testing at one point but persevered.. During one test session in which the Student became fatigued and it was agreed that the lunch break would be taken. However, his lunch was not available at the time that the Student expected it, at which point the Student became distressed and was difficult to redirect. Once the lunch arrived, however, he calmed down immediately. Dr. Ciocca on direct described his behavior as "enraged" and on cross as "agitated" or "frustrated." He verbalized that in the past he was "marginal" and would let others talk for him, that he now had "abundant" resources available to him and that he is "independent" with respect to homework. He stated further, "When I do one half of my work, I'm not shackled like in prison and I have no control." (Ciocca 5/4 at 13-14, 21, 28-31, 40, 95, 97-98)
69. The Student has insight into how he is different from his peers socially. He is "hypersensitive" to the way others perceive him and because of his disability misunderstands and misperceives ambiguous social cues. He will always struggle with these issues because that is "part of his disability." Another "part of his disability" is his perception of himself as "stupid" if he asks for help. The Student's academic, behavioral and social issues are "intertwined" and his social issues impact his academic performance. The Student must be treated "consistently" across these domains to enable him to function at his "best level." She also reported that at Devereux the Student has felt that he was the object of social rejection and humiliation. She did not find that he was depressed. She reported that he verbalized that he did not wish to "return to the school system." She did not specifically ask him, however, about his feelings about leaving Devereux. Being in an environment in which he is "pulled out" of class for special education support or is "getting certain types of services that other children wouldn't be getting" would be difficult for the Student. (Ciocca 5/4 at 25, 31-33, 35-36, 41, 44-45, 51, 79, 122-124, 128)
70. The Student has the potential for "meaningful employment" and post-secondary academic experiences. An appropriate employment scenario for the Student will be one in which he is not required to have intensive or frequent interactions with others, but rather can work on his own. (Ciocca 5/4 at 72-73)
71. Dr. Ciocca's report noted the following general information based on an interview with the Student and his Father (B38 at 19-24):

- a. Student attended elementary school in Town A. He was identified as eligible for special education services under the exceptionality of autism and provided with social and academic accommodations, aides and direct occupational, physical therapy, and speech and language therapy and counseling. He participated in a mainstream classroom. As the years went on there was limited discussion and collaboration and that “several years” were required to fully integrate all of the services into his programming. (B38 at 19)
- b. When he transitioned to Town A’s middle school, his difficulties became more apparent. The Student was provided with fewer accommodations and adjustments to the program and schedule, and was instead required to “fit a mold.” Town A “preferred to assign an aide to target his difficulties. The intervention created social barriers and [the Student] became the object of teasing and taunting by peers. Notes were being taken for him to circumvent his writing difficulties and he received primarily A and B grades without clear indication of the role of the aide in the documented grades. Although he was categorized as ‘smarter than all of the other kids there’ he was prevented from taking a second language due to his special needs. At one point [the Student] stood up in a school assembly and discussed what it was like to be different from others.” (B38 at 20)
- c. Due to these difficulties, the Parents removed the Student from public school and placed him at Devereux, a highly structured academic setting. The Father was pleased with the “exceptional” growth that he has observed in the Student since he was placed at Devereux. He was reportedly off of all medications, doing things he could never do in the public school system such as participating in drama club, playing a musical instrument and being in a singing glee club. His Father reported that the Student has “demonstrated remarkable improvement in his ability to engage others socially and be comfortable in social settings. He transitioned from being **isolative**, oppositional and shy to independently initiating social contact and having difficulty curtailing his communications.” (B38 at 20) Both the Student and the Father attributed these improvements to the year round structured residential program at Devereux. (B38 at 20)
- d. The Student reported an awareness of and knowledge regarding his diagnosis and expressed reluctance to return to the public school “because he would be ‘singled out’ as it would be particularly obvious that he was in a special education program.” He reported that he has been able to make and maintain more friendships than in the past, that he was “graded on ‘my work,’” and was “aware of his homework, oftentimes completed it independently, and was clear on expectations.” (B38 at 20)
- e. The Student reported that his ability to adapt to change had improved, but Dr. Ciocca concluded that his skill in this area was highly dependent on the “particulars of the matter.” (B38 at 21)
- f. Historically, the Student was prescribed Adderall (to address attention and concentration issues) when he was 10 years old; has been prescribed BuSpar (for anxiety), Remeron (for mood disturbance) and Trazodone (for sleep difficulties). (B38 at 23)⁵¹
- g. He has not required any prior psychiatric hospitalizations. (B38 at 24)

⁵¹ Dr. Ciocca did not believe that the medication for ADHD was providing a significant therapeutic benefit. (Ciocca 5/4 at 135)

- h. The Student “seems to struggle in terms of his position with others. Although desiring interpersonal contact, he often feels confused and the object of social rejection and humiliation. His impulsive responding may negatively influence his social relationships and permanence of those interchanges.” (B38 at 31)
- i. “Ordinary life stresses and responsibilities may be excessively demanding for [the Student]. His self-image is fragile but has evidenced growth with the structured support and encouragement as well as positive academic and social progress made through his extremely structured programming. In events where he feels different or marginal to the group, he may experience recurrent anxieties and periods of dysthymia.” (B38 at 32)
72. Dr. Ciocca identified the Student as having Asperger’s and an NVLD. (B38 at 35) She testified that recent literature indicates that many children with Asperger’s also have an NVLD. (Ciocca 5/4 at 33, 134) She made the following recommendations, among others:
- a. “Given the complex nature and interplay of [the Student’s] neuropsychological assets and deficits, educational programming must remain extremely specialized, comprehensive, structured, and implemented in such a way as to be consistent across both academic and social domains in order to capitalize on his strengths, understand his weaknesses and directly target and provide modifications upon expression of maladaptive behavior in all settings.” (B38 at 35)
- b. “The programming not only requires specialized targeting of academic weaknesses namely applied mathematics, spelling, writing, and reading accuracy/comprehension, but also must entail a consistently applied, across all domains, token economy behavioral program to address social, impulsive, perseverative, and pedantic characteristics of his disability. Addressing the latter only in isolation, without awareness and intervention within all facets of his life would likely curtail progress and generalization.” (B38 at 35)⁵²
- c. “Given the interaction of his processing speed weaknesses, visuomotor integration deficits, weaknesses in concept formation, and nonverbal learning disability, [the Student] requires instruction in small, structured specialized setting in order to specifically intervene, consistently structure, and provide immediate compensatory strategies to foster progress and enhance learning.” (B38 at 35)⁵³
- d. “Staff working with [the Student] must be keenly aware and have educational expertise in the understanding of [NVLD and Asperger’s] to provide the most efficient compensatory strategies, at the appropriate times, and in such a way as to minimize negative impact on self-esteem.” (B38 at 35)

⁵² Dr. Ciocca testified that this recommendation was applicable to both the 2004/2005 and 2005/2006 school years. (Ciocca)

⁵³ Dr. Ciocca testified that this recommendation was applicable to both the 2004/2005 and 2005/2006 school years. (Ciocca)

- e. “Given [the Student’s] sensitivity to being different from peers, it is extremely important that educational, social and community intervention be provided in the context of similar peers with high intellectual functioning and similar learning disabilities. Simply placing [the Student] in a mainstream class with an aide or other noticeable supports given his high intellectual functioning with adjunct resource room services is not recommended.” (B38 at 35) Dr. Ciocca testified that this recommendation was applicable to both the 2004/2005 and 2005/2006 school years. She explained further that by “similar peers” she meant similar in terms of “intellectual ability” and as having “similar cognitive strengths and weaknesses and similar social difficulties.” A placement with individuals with autism spectrum disorders who were low functioning would not be appropriate. (Ciocca 5/4 at 97)⁵⁴
- f. “Continued group and individual social skills training with discussion of nonverbal social cues, pragmatic language, and recognizing others’ response to communication in a consistent manner with practice outside the structured setting to enhance generalization of behaviors.” (B38 at 35)
- g. “[The Student] could benefit from exploring vocational interests and engaging in situational assessments, in order to discern appropriate areas of interest for further study or vocational placement in addition to providing opportunities for community-based social interactions with structured support.” (B38 at 36)⁵⁵

73. Dr. Ciocca testified as follows, among other things:

- a. The Student has “adapted” to the Devereux environment. Devereux is highly structured and the extent to which he is or will be able to generalize his skills from that environment to other environments remains an open question. Transitioning from such a structured environment to a less structured environment will prove difficult and challenging for him. (Ciocca 5/4 at 37, 57-59)
- b. Dr. Ciocca did not in her report “specifically suggest that [the Student] go to Devereux as a recommendation.” (Ciocca 5/4 at 82, 84) She concluded that the Devereux program was “appropriate” for the Student after going to the December 2005 PPT at Devereux, talking to the Devereux staff and observing the program. (Ciocca 5/4 at 85) Dr. Ciocca did not, however, evaluate either Devereux or JBHS. (Representation of Counsel, 5/4 at 86) Dr. Ciocca’s testimony suggests that in her view an appropriate program is one that is “comprehensive to address all the areas to make [the Student] the most appropriate learner in all facets.” (Ciocca 5/4 at 115)
- c. Based on her review of the documents provided to her, her assessment of the Student and her interviews with the Student and the Father, Dr. Ciocca concluded that the placement of the Student at Devereux in the 2004/2005 and the 2005/2006 school years on a full-calendar year residential basis was “appropriate” and that the Student would not have been “ready to leave” Devereux at those times for a less restrictive environment. (Ciocca 5/4 at 70)

⁵⁴ Dr. Ciocca testified that this recommendation was applicable to both the 2004/2005 and 2005/2006 school years.

⁵⁵ It is not clear that Devereux is providing any opportunities for the Student to do this, particularly in the Student’s home community where he will presumably return after leaving Devereux.

- d. The “large majority” of Dr. Ciocca’s recommendations are being implemented at Devereux. (Ciocca 5/4 at 75)
- e. Although Dr. Ciocca has recommended placement at Devereux for other students, she conceded that prior to completing the Student’s assessment she had never visited Devereux. She also conceded that she did not know much about the details of the programming at Devereux. It is her understanding that the population at Devereux includes children with exceptionalities similar to that of the Student and that the children at Devereux are functioning at levels similar to the Student. She did not know the composition of the exceptionalities among the children in the Student’s residential cottage. (Ciocca 5/4 at 53-54, 81-85) She agreed that there were “pros” and “cons” to any placement, and that while Devereux provided the Student with various benefits, one potential detriment was that Devereux was a highly structured environment and the Student would eventually need to develop more ability to function independently and in a less structured environment. It was her understanding that Devereux’s program was ultimately moving the Student in that direction. (Ciocca 5/4 at 57-58, 81)
- f. As a general matter, when children with Asperger’s move from one setting to an “unfamiliar” setting, no matter how good that setting is, they’ll usually have a difficult time adjusting at the onset. But if there is significant structure and a lot of support, then they will show some improvement.” (Ciocca 5/4 at 49)

K. Response of the District to Dr. Ciocca’s Evaluation Results

- 74. A PPT was convened on November 4, 2005 to review the results of Dr. Ciocca’s evaluation report. The Student was invited but did not attend. Two District school psychologists participated, including Ms. Fredericks. Devereux staff and Dr. Ciocca were not invited to participate, and did not attend. (Roszko; Mother; Father; Ciocca 5/4 at 76) The minutes of the PPT meeting (B39) note the following, among other things:
 - a. The Student continues to make steady progress at Devereux with current grades at B level work.
 - b. Changes in level of functioning and achievement as reflected in test scores over time were discussed.
 - c. The improvement in the Student’s attention was “impressive” given that he was no longer taking medication.
 - d. The District recommended additional speech/language testing to assess expressive/receptive language skills and abstract language skills, as these areas were not fully covered by Dr. Ciocca in her assessment in Ms. Sullivan’s view. The Parents were asked to sign a consent form for further testing but did not do so. (B40 at 1)
 - e. Psychological functioning appears to be essentially in the average range, with the Student continuing to focus on social rejection issues.
 - f. The Father reported that the Parents chose to place the Student at Devereux after thoughtful

consideration because the structure at Devereux was “positive,” the Student “would not feel singled out or different,” there was a small staff to student ratio, a token economy system, and a well trained staff.

- g. The Parents desire that the Student pursue a college-bound rather than functional vocational curriculum.
 - h. After considering Dr. Ciocca’s report, the District reported its conclusion that the proposed program offered to the Student at the June 13, 2005 PPT remained appropriate to meet his needs and that a placement at JBHS would provide the Student with FAPE in the LRE. The District specifically noted that the Student’s concerns regarding “looking different” could be addressed in the District’s proposed placement and that this was an issue that the Student needed to work on and resolve prior to transitioning to college.
75. After reviewing Dr. Ciocca’s evaluation report, Ms. Roszko concluded that the Parents’ preference that the Student should pursue a college placement track remained appropriate; that the Student’s level of intellectual functioning was high average with strong verbal comprehension skills; the Student has the ability to develop appropriate compensatory skills; and the District’s proposed IEP was designed to enhance his ability to develop those skills. All of the recommendations made by Dr. Ciocca would, in Ms. Roszko’s judgment be implemented at JBHS and would be implemented in the proposed IEP with the exception of the recommendation that a TES be implemented. In her experience Ms. Roszko had not ever seen a specific recommendation that a TES be implemented and concluded that a positive behavioral support system was more appropriate for the Student. In reviewing Dr. Ciocca’s evaluation, Ms. Roszko was not surprised to find that Dr. Ciocca’s conclusions and results were very consistent with Paula Minor’s – the Student’s presentation, as reported by Devereux had remained consistent over the years between Ms. Minor’s and Dr. Ciocca’s evaluations. (Roszko)
76. In reviewing Dr. Ciocca’s evaluation, Ms. Fredericks questioned several conclusions reached by Dr. Ciocca. She did not find a basis in Dr. Ciocca’s assessment for the conclusion that the Student has “working memory weaknesses.” The more accurate statement is that the Student’s working memory is weaker relative to other memory skills but was in the average range. Ms. Fredericks also noted that given the reported history of the Student’s emotional and anxiety issues, this part of Dr. Ciocca’s assessment was based solely on a self-report inventory (the Mellon Adolescent Clinical Inventory) and did not include assessments of the Student by others in his home and school environment. She viewed this as a weakness in the assessment but did not, however, request that additional testing be done. (Fredericks 6/5 at 66-73)
77. After reviewing Dr. Ciocca’s report, Ms. Fredericks concluded that the goals and objectives in the proposed 2005/2006 school year IEP addressed the issues identified by Dr. Ciocca and remained appropriate and no changes were warranted. She concluded that all of Dr. Ciocca’s recommendations could be implemented at JHBS. She acknowledged that the proposed 2004/2005 and 2005/2006 IEPs did not include a family education or involvement component, which was part of Dr. Ciocca’s recommendations. (Fredericks 6/5 at 78-79)
78. Ms. Fredericks did not have any communication with Dr. Ciocca regarding her evaluation of the Student. (Fredericks)

79. Ms. Sullivan concluded that Dr. Ciocca's SLP assessment was not sufficiently comprehensive and at the November 2005 PPT proposed additional SLP testing targeting the Student's critical thinking ability, ability to identify inferences and ambiguities, among other things. She asked the Parents to sign a consent for the testing, but they would not do so at the PPT and to Ms. Sullivan's knowledge did not ever execute the consent. (Sullivan)

L. Devereux's Response to Dr. Ciocca's Evaluation

80. Dr. Ciocca participated in a meeting with Devereux staff on December 12, 2005 to discuss the results of her assessment and implications for programming. (P15) No changes were made to the Devereux 2005/2006 school year IEP as a result of the meeting with Dr. Ciocca. However, the Devereux team "increased the expectations for [the Student] within the program and [determined] that if [the Student] is successful in meeting these expectations he would be eligible to petition for [SD] status." (P15 at 10)⁵⁶
81. The Student's teachers offered the following observations about current levels of functioning:
- a. Algebra IB: The Student's work pace is slow, and he will "often" be observed to not work and rather stare. His work pace and production improves when the teacher "sit[s] next to him and keep[s] him on task." He does not advocate for himself when he needs assistance and does not accept assistance when it is offered. "He will often verbalize that asking for help is a sign of 'being stupid' and that he shouldn't need help." The quality and frequency of his interactions with classmates has improved. The Student "will sometimes misread situations/comments and will react to them by becoming angry. At this time, the adult has to step in and redirect him. [The Student] is always polite and respectful to adults." (P15 at 11)
 - b. English: The Student is "polite and respectful" and is "usually well-prepared and on-task" but does need "occasional redirection to focus or keep his comments relevant to the task." He has shown considerable improvement since the beginning of the year in his social interactions. "His responses to other student's comments are more frequently positive and he is less likely to react impulsively to a comment he sees as a negative reflection on himself." His participation in cooperative activities is generally appropriate, and he has made progress in accepting the opinions of others. (P15 at 12)
 - c. Writing: The Student's writing is "good" "technically" but is "often sparse in detail." "For the most part, [the Student] comes to class prepared to work, but sometimes problems that he is having outside of class affect his performance." The Student appears to be "well received by his peer[s]" and his interactions with them are "appropriate for the most part," although he "sometimes seems to be bossy or condescending towards them." (P15 at 13)
 - d. Civics: The Student is "polite and conscientious," "eager to participate in class discussion" and "frequently offers insightful information." He uses his sense of humor appropriately on "most" occasions." The Student is "working on accepting the ideas of others and building on the responses of others in a positive manner." He "enjoys learning" and has the "potential to do well."

⁵⁶ Neither the Parents nor Ms. Thereault testified as to what expectations were increased, how those expectations were increased and the Student's reaction. There is no documentary evidence indicating these changes.

He uses his AlphaSmart. "Sometimes he comes to class with outside frustrations that interfere with his productivity." He "generally responds well to positive reinforcement." (P15 at 14)

- e. Chemistry: Overall, the Student is an "excellent student in science," "polite and cooperative," and "motivated." He remains "reliant on the adult in his environment to provide the structure necessary and consistency of the program to meet with success." He is "capable of thoughtful and insightful oral contributions" but "continues to struggle with seeking only his fair share of the adults attention and keeping his topics consistently topic related. He is reliant on environmental structures as well as the token economy to display these improvements with consistency." (P15 at 15)
 - f. Music: The Student "arrives prepared and usually eager to learn new material." "His weakness is in listening to others and interpreting abstract meaning from discussion." At times, he does not require cues to "listen effectively" but does benefit from cuing to listen for specific details. (P15 at 16)
82. No reports regarding the residential component or the Student's functioning in that component were included in the record and there is no indication that the Student's functioning in the residential component was discussed or considered by Devereux staff at the December 2005 meeting.

M. The Student's Adjustment to and Progress at Devereux Generally

83. The Parents testified as follows regarding the Student's adjustment to and progress at Devereux since he was placed there:
- a. Initially, the Student resisted feedback. After a transition period, however, he began to show improvement in his ability to accept feedback and correction. (Father)
 - b. There has been overall steady improvement in the Student's academic, social and behavioral performance. He is now participating in the drama club which has benefited him socially, and has participated in productions of "Oliver Twist" and "Guys and Dolls." He is also participating in a choral group and in softball. He has been able to function without any medication at Devereux for the 2004/2005 and 2005/2006 school years. He has shown decreased anxiety, substantial increases in social skills and engagement with peers, an increased interest in school and school activities, and increased independence in a variety of areas. (Father)
 - c. The Student's classes at Devereux have a very high teacher to student ratio (1:5) and the Student has not had an aide while at Devereux. Notwithstanding his success and progress at Devereux, the Student's progress has not been even or uniform, the Student has resisted interventions, the Student has had setbacks, and the Student has not fully resolved and continues to work on many of the same issues that proved problematic for him in the public school environment. (Father)
 - d. The Student continues to have grooming issues, particularly needing reminders to wash his face and brush his teeth. Devereux has *recently* begun to address this in the residential program. (Mother)

- e. At Devereux he is required to remain in the situation and work through the issues and challenges he faces. While at Town A, the Student was encouraged to remove himself from the situation until he was calm or had resolved the issue. (Mother)
 - f. Prior to attending Devereux, he was “totally” *isolated* from his peers. Over time at Devereux, he has become active in extracurricular activities such as a choral group, a drama group and softball. At Devereux all of these activities are part of a coordinated program that provides opportunities for the Student to utilize social skills learned in other aspects of the program. The drama activity has helped the Student in addressing issues with voice volume and modulation and self-talking. (Mother)
 - g. The Student was not able to collaborate with peers independently prior to entering Devereux and still cannot do so independently. However, he is beginning to do this more appropriately. He has become more independent in organizing himself to do his homework, initiating homework and completing it. (Mother)
 - h. His level of academic performance currently at Devereux is the same as it was while he attended Town A’s schools. However, whereas the Student while attending Town A’s schools achieved this level of performance while on medication and with the assistance of a paraprofessional, the Student is now able to do this without medication and independently within the Devereux structure. (Mother)
84. Ms. Thereault, the Student’s team leader at Devereux, testified as follows, among other things:
- a. When the Student first entered Devereux in the 2003/2004 school year, he was very angry, would not take responsibility for his behavior and resisted participating in the program through acts of passive noncompliance, for example forgetting to utilize or misplacing his AlphaSmart. Over the course of the 2003/2004 school year the Student gradually became more “comfortable” and relaxed in the Devereux environment and began to respond positively and well to the TES system. From the start of his enrollment at Devereux, the Student showed awareness of his social environment and an ability to recognize and appropriately apply various social conventions. He manifested difficulty reading social cues. He did not get involved in after school activities to any meaningful degree during the 2003/2004 school year. During the 2003/2004 school year, he required “extensive” adult structuring to succeed in the classroom. As he became increasingly aware that other students in the environment, including students who were looked up to by their peers, were using Alpha Smarts and receiving other interventions, the Student became less resistant and more receptive to using his AlphaSmart and more receptive to other interventions applied to him.
 - b. The Student is “very bright” but his social skills deficiencies interfere with his academic functioning. He continues to have difficulty with transitions and changes, and requires increased support at these times. The Student has always viewed feedback as an insult or threat, but has gradually demonstrated an increased capacity to receive and utilize feedback and to take responsibility for his behavior. He misreads social cues and tends to assume that people are “picking on him.” His reactions will be inappropriate accordingly. Devereux has been working to extinguish these behaviors. He has an awareness of his social difficulties and knows what he needs to work on. In the beginning of his tenure at Devereux, because of his problematic

behaviors the Student had few friends and not many of his peers wanted to be his friend. Through extensive structuring and other support, over time the Student has become increasingly accepted by his peer group and assumed a leadership position in some areas.

- c. In the 2005/2006 school year, the focus of the Student's IEP shifted to increased independent functioning and self-initiation. By this time, the Student had "accepted" the fact that he was placed at Devereux and become vested in the Devereux program. He had attained Phase I and his classes have no more than 8 students. He still requires structuring from adults but is now working on issues such as self-monitoring task completion within a defined time period. During this year, the staff concluded that they were overcuing the Student and decided to decrease the amount of redirection provided and utilize the TES to achieve the desired behaviors. He is now making appropriate contributions to class discussions.
- d. In the 2004/2005 and 2005/2006 school years, Devereux recommended a continued residential placement at Devereux because the Student needed a consistent, 24/7 environment to function effectively. That type of environment could not be replicated at home.
- e. The Student wants to be treated the same as his peers, and Devereux has used this desire as a positive reinforcer for the Student in the TES. The Student does not have an aide or facilitator supporting him in the class and would not like to have an aide in the class to support him because it would set him apart.
- f. The Student continues to be "reliant" on the TES, but his dependence on it has been decreasing as he has moved up the Phase system. Ms. Thereault believes it will be "tough" for the Student to function in the SD program. Ms. Thereault believes that the Student has the ability to go to college. She suggested that if the Student were to graduate from Devereux, to prepare him to attend a college Devereux might recommend he attend a community college as a transitional environment.
- g. Ms. Thereault identified the Student's disabilities as NVLD and "aspects of Asperger's." She is not familiar with the DSM diagnostic classifications and was not familiar with the term "NOS" as specified by Dr. Ninivaggi in his October 2003 report.
- h. Ms. Thereault seemed knowledgeable generally about the various programs at Devereux, but did not seem particularly knowledgeable about the after school and residential components of the Student's specific programming. (Thereault) For example, Ms. Thereault could not explain why the "ADL" rating "age appropriate" is checked on the Devereux 2003/2004 school year IEP (P1 at 8) and was unable to articulate which ADLs if any the Student was working on in the residential component or in general how ADL issues were addressed in the residential component.

N. The District's Proposed Programs Generally

85. On behalf of the District, Ms. Sullivan testified as follows, among other things:

- a. The SFS program is a social pragmatics curriculum intended to support functioning in the school of students with Asperger's and NVLD by addressing in a group setting emotional, behavioral

and social issues with which these students struggle. The Strategies for Success program has been operational at JBHS for 5 years.⁵⁷ The proposal to include Strategies for Success in the Student's programming was discussed with the Parents, but the formal curriculum (B45) was not requested by or provided to the Parents at any of the PPT. That curriculum is posted on the JBHS website.

- b. Ms. Sullivan has never met, observed or evaluated the Student. She drafted IEP goals and objectives for him for the 2004/2005 and 2005/2006 school years as reflected in the corresponding proposed IEPs. She determined those goals and objectives primarily through a review of the Student's records from Town A and from Devereux, and information she received from Devereux staff at the PPTs. The goals and objectives prepared by Ms. Sullivan for the Student are designed for students with NVLD and Asperger's. The SLP goals and objectives she drafted for the Student would have been provided in the mainstream setting, a resource room setting and Strategies for Success.
- c. Argumentativeness and resistance are characteristics of Asperger's and/or NVLD. To address these issues, Ms. Sullivan would meet with the student and they would mutually determine an acceptable verbal or nonverbal cuing system to use to help the Student address them. Ms. Sullivan agrees that some students with whom she has worked have resisted SLP services because they are singled out to receive the service.
- d. After reviewing the reports from the 2003 triennial review, Ms. Sullivan determined that the test results showed that the Student had a NVLD. The speech and language goals and objectives prepared by Ms. Sullivan for the Student in the proposed 2004/2005 and 2005/2006 IEPs were drafted to address the Student's NVLD and Asperger's issues.
- e. The SLP goals and objectives for 2005/2006 remained unchanged from the 2004/2005 because, based on the information she obtained from Devereux and regarding the Student's progress in the SLP goals and objectives at Devereux, the 2004/2005 goals and objectives remained appropriate because the Student had not made much progress over the 2004/2005 school year in attaining those goals and objectives. Sullivan included more pull out time for SLP during the 2005/2006 school year because she was no longer teaching on a daily basis in Strategies for Success and adjusted the SLP direct service hours accordingly.

86. Ms. Roszko testified as follows, among other things:

- a. It is normal for high school age students to resist being treated differently from their peers.
- b. A token economy has both positives and negatives. A positive behavioral support system emphasizes and enhance generalization skills. Both systems use rewards, which can be in the form of tokens or points.
- c. The behavioral support plan has to be developed with input from the Student and the Parents and must consider the specific environment, including classes, that the Student will attend. (Roszko 6/5 at 232-233) For these reasons, among others, no detailed behavioral support plan

⁵⁷ See generally Sullivan 5/23 165-179, 188-190; Fredericks 6/5 9-15, 31, 170;

was presented at either the June 2004 or June 2005 PPTs.

- d. In drafting IEP goals and objectives, the intent is that the student will master the goals and objectives by the end of the IEP period.
- e. The Parents did not at either the June 2004, June 2005 or November 2005 PPTs state any objections that they had to any of the District's proposed goals and objectives.
- f. Ms. Roszko has never met, observed, talked to or assessed or evaluated the Student. Ms. Roszko never sent a request for records to Devereux or directly asked Devereux for records. The Parents provided Devereux records.

87. Ms. Fredericks testified as follows, among other things:

- a. The SFS class teaches social and problem solving skills appropriate to a high school environment, and focuses on the "hidden curriculum," defined by Ms. Fredericks for this purpose as the social rules and conventions that are not formally taught but that people are supposed to know or understand and perform. The SFS involves role playing and addresses ILA skills and frustration tolerance. The precise focus can be adapted to the needs of the students in the class at the time. The SFS is a small group environment whose participants are students identified as IDEA-eligible with IEPs. It meets daily for one 42 minute period. It currently has 5 students, and is taught by Ms. Sullivan and Ms. Fredericks along with one to two other special education teachers.
- b. The SFS is the environment within the JBHS program proposed for the Student in which Goals 3 and 5 (B19 at 16 and 18) of the 2004/2005 school year IEP would be addressed.
- c. In her experience, it is normal for teenagers whether disabled or not to resist the idea that they need help with something and to want to avoid being different from their peers.
- d. Under the District's proposed IEPs, the Student would participate in SFS with Ms. Fredericks and also attend individual counseling with her once weekly, an arrangement which would enhance the provision of services in both environments.
- e. To address anxiety issues, Ms. Fredericks uses a variety of techniques such as relaxation training, music, art, disengaging from stress situations, and identifying an adult or peer "point person" or resource. Which technique will work for any particular student depends upon that student's individual circumstances and needs.
- f. JBHS does not use a token economy system, but rather uses a positive behavioral support methodology in which the frequency of occurrence of desired target behaviors are increased through the use of positive reinforcers. Ms. Fredericks views the token economy system as artificial and not "realistic" for application outside of the context in which it is presented.
- g. In reviewing the behavior point rating sheets provided by Devereux, Ms. Fredericks concluded that the Devereux system was designed to eliminate negative, undesired behaviors rather than promote positive desired behaviors. Among other things, the Devereux materials do not

identify target behaviors to be increased. By way of example, in a positive behavioral support system rather than having a goal of “reducing pouting,” the goal might be “expresses feelings appropriately” or “shows respect for peers.” (Fredericks 6/5 at 57-59)

- h. In reviewing the Devereux IEP goals and objectives (P13 at 1-7), Ms. Fredericks noted the goals and objectives appeared to teach the Student what to do in a situation but were silent as to teaching the Student how to cope if the situation did not unfold the way he expected. This is the difference between the Devereux IEP goals and objectives and the District’s proposed IEP goals and objectives, which are intended to teach the student coping skills.
- i. The Parents never asked that District staff, including Ms. Fredericks meet with Devereux staff or Dr. Ciocca or view Devereux or observe the Student at Devereux.
- j. Ms. Fredericks agreed that she did not have much specific knowledge of the Student’s Devereux behavioral plan or TES. No consideration was given to trying to replicate the Devereux TES at JBHS for the Student initially or at all, even as a transitional mechanism.

O. Other Information Regarding the Student

- 88. The Student is currently 5’10” and weighs 220 lbs. He has an “awkward” gait, in which he sways from side to side as he walks. He will frequently bump into objects and sometimes seems unaware that they are there. He is not coordinated physically. He is easily overwhelmed by visual stimuli and needs a quiet environment in order to remain organized. He does not maintain appropriate personal space and is highly distractible. (Mother)
- 89. The Student has a “great desire” to succeed academically, but is constantly frustrated by not being able to “put it all together.” He benefits from cuing and feedback, but has a particular sense of “social justice” and to accept what is being told to him he needs to see that other children in his environment are being provided with the same type of cuing and feedback. Otherwise, he becomes argumentative and will challenge authority. (Mother)

Attachment 2.1 – Factual Background 90 Comparison of Devereux IEPs With Student’s Progress Noted			
2003/2004 School Year (B19 at 37-42)		2004/2005 School Year (B33 at 3-10)	
2005/2006 School Year (progress through @ 12/05) (B33 at 22-30; P15)			
Goal 1 – Improve organization, study skills and learning strategies – 90% mastery; Student rated an “S” in reaching that goal.		Goal # 1: Improve organization and study skills (90% mastery) – Progress is “S”	
Goal # 1: Improve organization and study skills (95% mastery)			
Objective A – Organize personal belongings and bring AlphaSmart to class and utilize effectively – 90% mastery; Student rated an “S” in reaching that goal.	Objective A – Independently organize personal belongings and academic assignments in a timely manner. (90% mastery) – Progress is “S”	Objective B: Independently identify and utilize learned study strategies to support work access content areas. (95% mastery); Progress to date is rated as “S”	
Objective B – Independently identify, initiate and complete assignments with minimal teacher assistance – 80% mastery; Student rated an “S” in reaching that goal.	Objective B – Initiate and maintain on task behavior until completion of task. (90% mastery) – Progress is “S-“	Objective A: Initiate and maintain on task behavior until the completion of task with no more than two re-directions per class. (95% mastery); Progress to date is rated as “S”	
Objective C – Use and apply problem solving techniques and strategies to daily work – 90% mastery; Student rated an “S” in reaching that goal.	Objective C – Utilize learned strategies to support work across content areas. (90% mastery) – Progress is “S”	Objective C: Maintain folders meeting set criteria in each class. (95% mastery); Progress to date is rated as “S-“	
Objective D – Develop effective self-advocacy skills – 90% mastery; Student rated an “S-“ in reaching that goal.			
Goal 2 – To improve written skills.		Goal # 3: To improve written skills. (Assessed through achievement of objectives reflected in passing grades and successful completion of task/activity) – Progress is “S+”	
		Goal # 3: To improve written skills. (85% mastery)	

Attachment 2.1 – Factual Background 90 Comparison of Devereux IEPs With Student's Progress Noted					
2003/2004 School Year (B19 at 37-42)		2004/2005 School Year (B33 at 3-10)		2005/2006 School Year (progress through @ 12/05) (B33 at 22-30; P15)	
Objective A – Use the 5 steps of the writing process across curriculum with 85% accuracy (prewriting, rough draft, editing, revising and final draft) ; Student rated an “S-“ in reaching that goal.		Objective A – Use the five steps of the writing process across the curriculum with 85% accuracy – Progress is “M”			
Objective B – Use sensory detail when writing with 85% accuracy – Student rated as having Mastered that objective.					
Objective C – Write a 5 paragraph essay according to class expectations with 85% accuracy – Student rated as “S-“ on reaching that objective.		Objective B – Write five paragraph essays according to audience, purpose and voice with 85% accuracy – Progress is “S+”		Objective A: Write a seven paragraph essay according to audience, purpose and voice. (85% mastery); Progress to date is rated as “S”	
		Objective C – Write organized sentences and paragraphs in a logical and sequential order with 85% accuracy – Progress is “M”		Objective B: Write a multi-page factual report from selected information. (85% mastery); Progress to date is rated as “S” Objective C: Utilize the appropriate reference and citations according to [] format. (85% mastery); Progress to date is rated as “S”	
Goal 3 – Develop the academic skills necessary for effective participation in the classroom.		Goal # 2: Develop the student skills necessary for effective participation in the classroom. (95% mastery) – Progress is “S”		Goal # 2: Develop the student skills necessary for effective participation in the classroom. (95% mastery)	
Objective C – Make relevant comments during		Objective A – Relevantly participate in class discussions		Objective A: Relevantly participate in class	

Attachment 2.1 – Factual Background 90 Comparison of Devereux IEPs With Student's Progress Noted			
2003/2004 School Year (B19 at 37-42)		2004/2005 School Year (B33 at 3-10)	
		2005/2006 School Year (progress through @ 12/05) (B33 at 22-30; P15)	
oral discussions – 90% accuracy; Student rated as an “S-“ in achieving that objective.		at least two times per period. (95% mastery) – Progress is “S”	
		Objective B – Utilize effective self-advocacy skills. (95% mastery) – Progress is “S-“	
Objective A – Demonstrate positive and effective peer interactions in the classroom with both peers and adults – 85% accuracy; Student rated as an “S” in achieving that objective. Objective B – Demonstrate the social skills needed for effective group work – 85% accuracy – Student rated as an “S” in achieving that objective.		Objective C – Demonstrate the social skills needed for effective group work (95% mastery) – Progress is “S”	
		Objective D – Utilize humor in a timely and effective manner. (95% mastery) – Progress is “S-“	
		Objective C: Utilize humor in a timely and effective manner. (95% mastery); Progress to date is rated as “O” – Student requires support and redirection at the 80% level.	
Goal 4 – To increase expressive language skills		Goal # 5: To improve oral and written skills and reading comprehension (determined by quizzes and tests and achievement of objectives as measured by passing grades and scores or teacher observations) – Progress is “S”	

Attachment 2.1 – Factual Background 90 Comparison of Devereux IEPs With Student’s Progress Noted			
2003/2004 School Year (B19 at 37-42)		2004/2005 School Year (B33 at 3-10)	2005/2006 School Year (progress through @ 12/05) (B33 at 22-30; P15)
Objective A – The Student will give two definitions for an ambiguous sentence and will identify the homonym within the sentence; 80% accuracy; objective was not introduced.		Objective A – Identify and discuss elements of the novel including exposition, conflict, theme and setting with 85% accuracy – Progress is “S”	
Objective B – Given a specific topic, the Student will request pertinent information by formulating two or more questions about the topic; 80% accuracy; Student rated as having Mastered that objective.		Objective B – Recognize style devices of allusion, repetition and figurative language with 85% accuracy – Progress is “S”	
Objective C – Given a specific topic, the Student will provide pertinent information on that topic and will assess when a comment is irrelevant and why – 80% accuracy; Student reported as having mastered that objective.		Objective C – Answer questions from independently read passages in both oral and written form with 85% accuracy – Progress is “S”	
Goal 5 – To increase pragmatic language skills –		Goal # 4: To improve pragmatic language skills (80% mastery) – Progress is “S”	Goal # 5: Improve pragmatic language (85% mastery)
Objective A – The Student will identify choose and define vocabulary pertinent to the mechanics of conversation (i.e., relevant, specific, topic shift, etc.) – 80% accuracy; Student rated as having mastered that objective.		Objective A – Student will monitor his communications with others by observing and responding to adult non-verbal cues with weekly reminders and discussion (90% mastery) – Progress is “S”	Objective A – During cooperative activities with peers, the Student will demonstrate reciprocal behaviors by acknowledging, responding and adding to his partner’s contributions. (85% mastery as determined by SLP and staff report); Progress to date is rated as “S-”
Objective B – Given a social scene or role play		Objective B – Student will keep his conversation pertinent	Objective B – The Student will wait his turn in a

Attachment 2.1 – Factual Background 90 Comparison of Devereux IEPs With Student’s Progress Noted			
2003/2004 School Year (B19 at 37-42)		2004/2005 School Year (B33 at 3-10)	2005/2006 School Year (progress through @ 12/05) (B33 at 22-30; P15)
situation, the Student will identify appropriate vs. inappropriate social skills, including body language and vocal tone – 80% accuracy; Student rated as having mastered the objective.		and relevant during structured class activities (90% mastery) – Progress is “S+”	discussion and will time unsolicited comments appropriately. (85% mastery as determined by SLP and staff report); Progress to date is rated as “S-”
Objective C – Given problem solving situations and a template, the Student will identify problem, possible solutions and avoidance techniques – 80% accuracy; Student rated an “S+” in achieving that objective.		Objective C – Student will identify potential problems, problems that have occurred, solutions and avoidance techniques (90% mastery) – Progress is “S”	Objective C – The Student will identify a problem witnessed or experienced in real life social situation and provide strategies for solutions and avoidance. (50% mastery as determined by SLP and staff report); Progress to date is rated as “S-”
		Objective D – Student will demonstrate listener responsibilities of posture, eye gaze, commenting, turn abouts and responding (90% mastery) – Progress is “S”	Objective D – Student will provide weekly updates on identified social goals related to home, residence school and extracurricular activities. (100% mastery as determined by SLP and staff report); Progress to date is rated as “S”
		Objective E – Student will explain ambiguous messages within a sentence context (80% mastery) – Progress is “NI”	Objective E – “Volume/nonvisual cues” This was identified in the 12/19/2005 IEP as Student “will adjust his voice volume given social cues and nonverbal cues from others in all contexts.” Progress to date is rated as “O.”
		Goal # 6: Develop the skills necessary for secondary education opportunities (95% mastery) – Progress is “S”	Goal # 4: Develop the skills necessary for secondary education opportunities. (95% mastery)
		Objective A – Investigate and report on career interests and opportunities. (95% mastery) – Progress is “S”	Objective A – Investigate educational requirements for career interests and opportunities. (95% mastery);

Attachment 2.1 – Factual Background 90 Comparison of Devereux IEPs With Student’s Progress Noted			
2003/2004 School Year (B19 at 37-42)		2004/2005 School Year (B33 at 3-10)	2005/2006 School Year (progress through @ 12/05) (B33 at 22-30; P15)
			Progress to date is rated as “S”
		Objective B – Identify strengths and weaknesses and their relationship to secondary education opportunities (90% mastery) – Progress is “S”	Objective B – Identify strengths and weaknesses and their relationship to secondary education opportunities. (95% mastery); Progress to date is rated as “S”

Attachment 2.2 – Factual Background 91 Comparison of Devereux and District IEPs (with reported progress on Devereux IEPs noted)			
2004/2005 School Year Devereux IEP (B33 at 3-10)	2004/2005 School Year District Proposed IEP (B19 at 8-25)	2005/2006 School Year Devereux IEP (progress as of @ 12/05) (B33 at 22-30; P15)	2005/2006 School Year District Proposed IEP (B34)
Goal # 1: Improve organization and study skills (90% mastery) – Progress is “S”	Goal # 2 - To improve organizational and study skills.	Goal # 1: Improve organization and study skills (95% mastery)	Goal # 2 – The Student will improve his study and organizational skills (Demonstrated by mastery)
Objective A – Independently organize personal belongings and academic assignments in a timely manner. (90% mastery) – Progress is “S”	Objective A – The Student will record all homework assignments each night, including due dates and turn in work on time with acceptable quality.	Objective A: Initiate and maintain on task behavior until the completion of task with no more than two re-directions per class. (95% mastery) Progress to date “S”	Objective A – The Student will record all homework assignment each night, including due dates and turn in work on time with acceptable quality. (80% mastery)
Objective B – Initiate and maintain on task behavior until completion of task. (90% mastery) – Progress is “S.”	Objective B – The Student will keep an organized notebook and folder for each course, and will review notes each day with teacher prompts and reminders through January 05 and independently thereafter.	Objective B: Independently identify and utilize learned study strategies to support work access content areas. (95% mastery) Progress to date “S”	Objective B – The Student will keep an organized notebook and folder for each course, and will review notes each day with teacher prompts and reminders through January 2006 and independently thereafter. (Daily mastery)
Objective C – Utilize learned strategies to support work across content areas. (90% mastery) – Progress is “S”	Objective C – The Student will break down long term assignments into manageable chunks and establish mini due dates with teacher support and assistance all the time.	Objective C: Maintain folders meeting set criteria in each class. (95% mastery) Progress to date “S.”	Objective C – The Student will break down long term assignments into manageable chunks and establish mini due dates with teacher support and assistance all the time. (100% mastery)
	Objective D – The Student will begin preparing for exams as soon as		Objective D – The Student will begin preparing for exams as soon as a date is announced, and

Attachment 2.2 – Factual Background 91 Comparison of Devereux and District IEPs (with reported progress on Devereux IEPs noted)			
2004/2005 School Year Devereux IEP (B33 at 3-10)	2004/2005 School Year District Proposed IEP (B19 at 8-25)	2005/2006 School Year Devereux IEP (progress as of @ 12/05) (B33 at 22-30; P15)	2005/2006 School Year District Proposed IEP (B34)
	a date is announced and will develop a study guide to assist in preparing for the exam, with teacher support, all the time.		will develop a study guide to assist in preparing for the exam with teacher support all the time. (100% mastery)
	Objective E – The Student will develop at least two note taking strategies by Nov 04 and two additional strategies by March 2005.		Objective E – The Student will develop at least two note taking strategies by November 2005 and two additional strategies by March 2006.
	Objective F – The Student will use the technology tools appropriate to his academic tasks, all the time, with teacher prompts through December 04 and independently thereafter.		Objective F – The Student will use the technology tools appropriate to his academic tasks all of the time with teacher reminders through December 2005 and independently thereafter.
Goal # 3: To improve written skills. (Assessed through achievement of objectives reflected in passing grades and successful completion of task/activity) – Progress is “S+”	Goal # 4 - The Student will improve his written expression skills.	Goal # 3: To improve written skills. (85% mastery)	Goal # 4 – The Student will improve his written expression skills. (Demonstrated by mastery)
Objective A – Use the five steps of the writing process across the curriculum with 85% accuracy – Progress is “M”	Objective A – The Student will engage in pre-writing activities (webbing, brainstorming, peer and teacher conferencing, outlines and bullets, concept maps, etc.) in order	Objective A: Write a seven paragraph essay according to audience, purpose and voice. (85% mastery) Progress to date “S”	Objective A – The Student will engage in pre-writing activities (webbing, brainstorming, peer and teacher conferencing, outlines and bullets, concept maps, etc.) in order to develop both a thesis statement and sequenced details for

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	to develop both a thesis statement and sequenced details for format essays.		formal essays. (C+ grade as mastery criteria)
Objective B – Write five paragraph essays according to audience, purpose and voice with 85% accuracy – Progress is “S+”	Objective B – The Student will incorporate the use of supports to substantiate his thesis/position such as details from source materials, quotations, and personal experiences for formal essays.	Objective B: Write a multi-page factual report from selected information. (85% mastery) Progress to date “S”	Objective B – The Student will incorporate the use of supports to substantiate his thesis/position such as details from source materials, quotations and personal experience for formal essays. (C+ grade as mastery criteria)
Objective C – Write organized sentences and paragraphs in a logical and sequential order with 85% accuracy – Progress is “M”	Objective C – The Student will edit and review all rough drafts for spelling and grammar and turn in both rough and final draft for formal essay work.	Objective C: Utilize the appropriate reference and citations according to [] format. (85% mastery) Progress to date “S”	Objective C – The Student will edit and review all rough drafts for spelling and grammar and turn in both rough and final draft for formal essay work. (80% mastery)
Goal # 2: Develop the student skills necessary for effective participation in the classroom. (95% mastery) – Progress is “S”	Goal # 3 - The Student will meet the social and behavioral expectations of his courses.	Goal # 2: Develop the student skills necessary for effective participation in the classroom. (95% mastery)	Goal # 3 – The Student will meet the social and behavioral expectations in the academic environment. (Demonstrated by mastery)
Objective A – Relevantly participate in class discussions at least two times per period. (95% mastery) – Progress is “S”	Objective A – The Student will participate in class discussions by making comments relevant to the topic and the subject being discussed.	Objective A: Relevantly participate in class discussions at least two times per period. (95% mastery) Progress to date “S”	Objective A – The Student will participate in class discussions by making comments relevant to the topic and the subject being discussed. (90% mastery)

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Objective B – Utilize effective self-advocacy skills. (95% mastery) – Progress is “S-“		Objective B – The Student will participate as a member of cooperative learning groups taking on a variety of roles throughout the year to ensure his group completes required tasks on time..		Objective B: Utilize effective self-advocacy skills in a consistent manner across all academic settings. (95% mastery) Progress to date “S”		Objective B – The Student will participate as a member of cooperative learning groups taking on a variety of roles throughout the year to ensure his group completes required tasks on time. (90% mastery)	
Objective C – Demonstrate the social skills needed for effective group work (95% mastery) – Progress is “S”		Objective C – The Student will develop self-monitoring strategies to ensure he is focused and on task during class lectures.		Objective C: Utilize humor in a timely and effective manner. (95% mastery) Progress to date “O” – Student requires support and redirection at the 80% level		Objective C – The Student will develop self-monitoring strategies to ensure he is focused and on task during class lectures. (90% mastery)	
Objective D – Utilize humor in a timely and effective manner. (95% mastery) – Progress is “S-“				Objective D: Accept and apply teacher feedback in a positive manner. (95% mastery) Progress to date “S”			
Goal # 5: To improve oral and written skills and reading comprehension (determined by quizzes and tests and achievement of objectives as measured by passing grades and scores or teacher observations) – Progress is “S”							
Objective A – Identify and discuss elements of the novel including exposition, conflict, theme and							

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setting with 85% accuracy – Progress is “S”			
Objective B – Recognize style devices of allusion, repetition and figurative language with 85% accuracy – Progress is “S”			
Objective C – Answer questions from independently read passages in both oral and written form with 85% accuracy – Progress is “S”			
Goal # 4: To improve pragmatic language skills (80% mastery) – Progress is “S”	Goal # 1- To improve social communication skills for optimal functioning in academic and social settings.	Goal # 5: Improve pragmatic language (85% mastery)	Goal # 1 – To improve social communication skills for optimal functioning in academic and social settings. (Determined by mastery)
Objective A – Student will monitor his communications with others by observing and responding to adult non-verbal cues with weekly reminders and discussion (90% mastery) – Progress is “S”	Objective A – The Student will reduce off-topic comments and questions during class discussions and structured conversations given a verbal and nonverbal cueing system.	Objective A – During cooperative activities with peers, the Student will demonstrate reciprocal behaviors by acknowledging, responding and adding to his partner’s contributions. (85% mastery as determined by SLP and staff report) Progress to date “S-”	Objective A – The Student will reduce off-topic comments and questions during class discussions and structured conversations given a verbal and non-verbal cueing system. (80% mastery)
Objective B – Student will keep his conversation pertinent and relevant	Objective B – The Student will interject comments in class	Objective B – The Student will wait his turn in a discussion and will time unsolicited	Objective B – The Student will interject comments in class discussions and in structured

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	during structured class activities (90% mastery) – Progress is “S+”		discussions and in structured conversations with peers/adults at appropriate junctures, given decreasing nonverbal cues.		comments appropriately. (85% mastery as determined by SLP and staff report) Progress to date “S-”		conversations with peers/adults at appropriate junctures, given decreasing nonverbal cues. (80% mastery)
	Objective C – Student will identify potential problems, problems that have occurred, solutions and avoidance techniques (90% mastery) – Progress is “S”		Objective C – The Student will use appropriate vocal intonation and stress when speaking in class discussions and in structured conversations with peers/adults, given decreasing nonverbal cues.		Objective C – The Student will identify a problem witnessed or experienced in real life social situation and provide strategies for solutions and avoidance. (50% mastery as determined by SLP and staff report) Progress to date “S-”		Objective C – The Student will use appropriate vocal intonation and stress when speaking in class discussions and in structured conversations with peers/adults, given decreasing verbal cues. (80% mastery)
	Objective D – Student will demonstrate listener responsibilities of posture, eye gaze, commenting, turn abouts and responding (90% mastery) – Progress is “S”		Objective D – Given verbal or nonverbal cues, the Student will decrease the number of perseverative and/or silly comments made during class discussions and structured conversations with peers/adults.		Objective D – Student will provide weekly updates on identified social goals related to home, residence school and extracurricular activities. (100% mastery as determined by SLP and staff report) Progress to date “S”		Objective D – Given verbal or nonverbal cues, the Student will decrease the number of silly comments made during class discussions and structured conversations with peers/adults. (80% mastery)
	Objective E – Student will explain ambiguous messages within a sentence context (80% mastery) – Progress is “NI”		Objective E – During a structured conversation with a peer, the Student will demonstrate appropriate conversational reciprocity using the ask-tell technique.				Objective E- During a structured conversation with a peer, the Student will demonstrate appropriate conversational reciprocity using the ask-tell technique. (80% mastery)
			Objective F – Given simulated or real social scenarios, the Student will				Objective F – Given simulated or real social scenarios, the Student will use a visual scanning

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	use a visual scanning strategy to detect and correctly interpret the nonverbal communication cues conveyed by body language, intonation, stress, proximity.		strategy to detect and correctly interpret the nonverbal communication cues conveyed by body language, intonation, stress, proximity. (80% mastery)
	Objective G – The Student will use language to self advocate with adults or peers when experiencing upset or frustration to access supports or collaborative problem solving strategies.		Objective G – The Student will use language to self-advocate with adults or peers when experiencing upset or frustration to access supports or collaborative problem solving techniques. (80% mastery)
	Objective H – Given structured debate scenarios, the Student will express and acknowledge differing perspectives of others in a calm and respectful manner.		Objective H – Given structured debate scenarios, the Student will express disagreement and acknowledge differing perspectives of others in a calm and respectful manner. (80% mastery)
	Objective I – The Student will provide correct interpretations of ambiguous language with curriculum materials or in social settings.	Objective E – Volume/nonvisual cues – This was identified in 12/05 IEP as Student “will adjust his voice volume given social cues and nonverbal cues from others in all contexts.” Progress to date is “O”	Objective I – The Student will provide correct interpretations of ambiguous language within curriculum materials or in social settings. (80% mastery)
Goal # 6: Develop the skills necessary for secondary education opportunities	Goal # 6 - The Student will begin to develop the skills necessary for	Goal # 4: Develop the skills necessary for secondary education opportunities. (95%	Goal # 6 – The Student will begin to develop the skills necessary for transition to post-secondary

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(95% mastery) – Progress is “S”	transition to post-secondary environments.	mastery)	environments. (Demonstrated by mastery)
Objective A – Investigate and report on career interests and opportunities. (95% mastery) – Progress is “S”	Objective A – The Student will be familiar with support services and will access these as needed throughout the school year.	Objective A – Investigate educational requirements for career interests and opportunities. (95% mastery) Progress to date “S”	Objective A – The Student will be familiar with support services and will access these as needed throughout the school year.
Objective B – Identify strengths and weaknesses and their relationship to secondary education opportunities (90% mastery) – Progress is “S”	Objective B – The Student will update progress toward IEP goals and objectives each quarter. He will be aware of his class accommodations and will access these in an appropriate manner all the time.	Objective B – Identify strengths and weaknesses and their relationship to secondary education opportunities. (95% mastery) Progress to date “S”	Objective B – The Student will update progress toward IEP goals and objectives each quarter. He will be aware of his class accommodations and will access these in an appropriate manner all the time.
	Objective C – The Student will be familiar with general education supports (math lab, writing center, career center, humanities lab, media center) and will begin to utilize these services on a regular basis.		Objective C – The Student will become involved in at least one X period activity each semester. He will begin to track extra-curricular participation in his transition portfolio. He will complete at least one transition activity through his resource class each semester.
	Goal # 5 - The Student will continue to develop problem solving skills in order to manage his day in a pro-active manner.		Goal # 5 – The Student will continue to develop problem solving skills in order to manage his day in a pro-active fashion. (Demonstrated by mastery)

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	Objective A – When presented with a stressful situation, the Student will develop and implementing coping strategies to help him manage feelings of anxiety, stress or frustration. The Student will reflect on the success of these efforts in order to identify those strategies which are most effective.		Objective A – When presented with a stressful situation, the Student will develop and implement coping strategies to help him manage feelings of anxiety, stress or frustration. The Student will reflect on the success of these efforts in order to identify those strategies which are most effective. (80% mastery)
	Objective B – The Student will identify those situations which may cause him to feel stressed and anxious and will develop pro-active strategies to decrease the occurrence of these situations.		Objective B – The Student will identify those situations which may cause him to feel stressed and anxious and will develop pro-active strategies to decrease the occurrence of these situations. (80% mastery)
	Objective C – The Student will identify personal triggers which may cause him to feel anxious and recognize when these occur.		Objective C – The Student will identify personal triggers which may cause him to feel anxious and recognize when these occur. (80% mastery)

DEVEREUX TOKEN ECONOMY RATINGS

92. “Each problematic behavior will be paired with coping strategies and replacement behaviors, which are addressed throughout the program.”¹ A behavior either increases or decreases when there is a change of 0.5 between two measurements. A behavior is no longer considered problematic when it is rated at a 2.0 or lower over 3 consecutive ratings. A rating of “1” indicates that the behavior is “very infrequent;” “2” that the behavior is “infrequent;” “3” that the behavior is “moderately frequent;” “4” that the behavior occurs “quite often;” “5” that the behavior is “markedly frequent” and “6” that the behavior is “extremely frequent.” (P5)

Target Behaviors to Decrease the Frequency of	Average of Residential and School Ratings in			
	10/03 P5 at 2; P1 at 22	2/04 P5 at 2	5/04 P12 at 1	5/05 P12 at 1
Talking Back	2.9	3.3	3.0	2.9
Interrupting	3.9	3.3	3.1	3.3
Arguing	3.1	2.8	3.1	2.9
Name Calling	3.6	2.3	2.3	1.8
Responding to Teasing	4.1	2.8	3.1	2.0
Being stubborn	3.8	2.9	3.4	2.7
Pouting when things do not go his way	3.9	3.7	3.9	2.9
Having poor interactions with peers	4.4	4.0	3.3	2.2
Being non-assertive	2.9	3.3	3.2	2.1
Accusing others of picking on him	3.3	3.2	2.4	1.8
Target Behaviors Added 5/05				
Poor volume control/tone of voice	n/a	n/a	n/a	3.3
Makes irrelevant comments	n/a	n/a	n/a	2.7
Mumbles	n/a	n/a	n/a	3.0
Isolates self	n/a	n/a	n/a	3.6
Other Reported Data				
Phase Level	III	III	III	I
Percentage of tokens earned – school	96%	n/r	92%	95%
Percentage of tokens earned – cottage	92%	n/r	95%	96%
Quiet Area – school	5	n/r	1	2
Quiet area – cottage	22 (verbal); 3 (physical)	n/r	7	3

¹ These coping strategies and replacement behaviors are not defined in the documentation.