

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of the Board:

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Appearing before:

Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Are the Individualized Education Program (IEP) and placement in the Board's program for the school year 2006-2007 appropriate to Student's special education needs in the least restrictive environment?
2. If not, is continued residential placement at Perkins School for the Blind appropriate?
3. Is the Board responsible for funding placement at Perkins School for 2006-2007?
4. Shall the Parents' Expert be permitted to interview the Board's staff members who will be working with Student, and inspect the classroom to be used if the Board's placement is deemed appropriate? (The Board has offered a Planning and Placement Team (PPT) meeting as an opportunity to meet these staff members.) (Issue addressed in an Interim Order dated July 10, 2006)
5. Should the hearing officer override Parents' lack of consent and order a psychiatric evaluation of Student? (Issue withdrawn by the Board)

PROCEDURAL HISTORY:

This hearing was requested on June 15, 2006, and the hearing officer was appointed on June 20, 2006. A pre-hearing conference was held on June 26, 2006. The hearing was scheduled for July 14, 20, 26, 27 and 28, and August 8, 9, 10, and 11, 2006. The deadline for mailing the final decision and order was August 29, 2006.

The parties agreed to brief issue #4, and the hearing officer responded on July 10, 2006, with an order allowing the Parents' Expert to meet with the Board's PPT, including Staff members who were part of Student's proposed program. Parents' request that their Expert visit the program was physically impossible, because of on-going construction and the fact that the program for Student was completely individualized and would not exist until she enrolled.

Parents' expert was not available until August 10, so hearing sessions scheduled for August 8 and 9 were postponed and additional hearing sessions were scheduled for August 14 and 18 and September 18 and 25, 2006. The deadline for mailing the final decision and order was extended from August 29 to September 28 and thence to October 28, 2006, to accommodate additional hearing dates. The hearing officer issued an order concerning Student's "stay put" placement on August 19, 2006, continuing the placement at Perkins pending the outcome of the hearing.

All motions and objections not previously ruled upon, if any, are hereby overruled.

Witnesses called by the Parents: Mother; Education Consultant, Connecticut Board of Education and Services for the Blind (BESB); Independent Consultant on Deaf-Blindness and Communication (Parents' Expert); Education Supervisor, BESB; and staff members from Perkins School for the Blind (Perkins) Lower School Program Supervisor, Teacher, Substitute Teacher, Orientation and Mobility (O&M) Teacher, Music Therapist (MT), Head House Parent, Physical Therapist (PT), Developmental/Behavioral Specialist and Counselor, and Social Worker.

Witnesses called by the Board: Board staff members Supervisor of Special Education, Speech Language Therapist (S/L), Occupational Therapist (OT), Special Education Teacher, and School Psychologist, and Consulting Psychiatrist.

Witness called by both parties: Board's Teacher of the Visually Impaired (TVI).

SUMMARY:

Student is classified as Deaf-blind: she has no vision in one eye and limited vision in the other, can hear with hearing aids on both ears, and has been diagnosed with CHARGE Association. Since January, 2003, she has been a residential student at Perkins School for the Blind. The Board has proposed a day program in their high school for 2006-2007, and Parents prefer that Student remain at Perkins.

This Final Decision and Order sets forth the hearing officer's summary, findings of fact and conclusions of law. The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence on the record. To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S. & H. Computer Systems, Inc.*, 605 F.Supp.816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993)

FINDINGS OF FACT:

From a review of all documents entered on the record of the hearing and testimony offered on behalf of the parties, I make the following Findings of Fact.

1. Student was diagnosed with CHARGE Association quite soon after her birth. She is visually impaired and hearing impaired, meeting the definition of Deaf-blindness for special education services. She is legally blind and also mildly mentally retarded. Medical problems that must be considered in planning her special education services include, but are not limited to, esophageal stricture, feedings by mouth of selected pureed foods and by G-tube, heart problems that limit her physical strength and endurance, and scoliosis. She can be extremely anxious and has exhibited obsessive-compulsive behaviors, although these problems have been managed with behavioral intervention and, recently, with medication. (Ex. P-14; Testimony, Parent)
2. Student began her education at American School for the Deaf (ASD) in West Hartford at age 3, in August, 1994. The primary purpose of this placement was to develop communication skills. She worked on both speech and sign language: sign language was difficult because of her limited vision, and she preferred to use speech. By January, 2001, she was classified as attending fourth grade, reading and doing - basic arithmetic. Her interest and skills in other academic areas varied. She was described as polite with her peers, but better at communicating and socializing with adults. She had a one to one paraprofessional to assist her in school, and she also received Speech/Language (S/L) Therapy, Occupational Therapy (OT) and Physical Therapy (PT). (Ex. B-219, 220, 221, 222)
3. Parents' Expert was first asked to observe Student by a BESB Education Consultant. This Expert has provided contractual services for many school districts and has published books, articles and fact sheets on the subject of deaf-blindness. She has worked for Perkins in the past as a classroom teacher, sign language teacher, and language specialist. Her observation of Student at ASD on March 2, 2000, yielded a report that included recommendations:
 - Help [Student] increase her intrinsic motivation for learning
 - Help [Student] develop increased and genuine social interest
 - Increase [Student's] awareness of the social functions of literacy and mathematics

- Continue to address [Student's] need for appropriate support in the area of sensory integration. (Ex. P-2)
4. While Student was at ASD, she also attended some "regular education classes" in the Board's district. In second grade (2000-2001), she attended a music class after lunch on Fridays. In third grade, (2001-2002), she attended several classes with a paraprofessional to support her. The third grade year was less successful because of scheduling conflicts. (Testimony, Mother)
 5. A psychological evaluation was performed at Dartmouth-Hitchcock Medical Center in October, 2001. This evaluator reported:

When administered a variety of instruments of cognition, it is quite apparent that [Student's] overall level of functioning is significantly and considerably impaired when compared to others of her age with full vision, limited vision, and others with a hearing impairment. ... Strengths are noted in the areas of visual discrimination, visual memory, and visual problem solving. She does well when assembling parts to a whole as seen during visual-motor activities and when connecting disconnected printed words. Her language memory of information requiring concentration and manipulation is at least within the average range. She has good verbal inferential reasoning provided expressive language requirements are minimal.

[In additional to her cognitive impairment,] other areas of concern are in the categories of auditory discrimination, auditory memory for both meaningful and non-meaningful information, language comprehension and auditory processing, fine motor manipulative skills, perseverative thoughts, and a difficulty with self monitoring and regulation. This latter difficulty is not considered to be deliberate, consciously performed, or purposeful on nature. (Ex. B-189, p.8)
 6. The Dartmouth-Hitchcock psychological evaluator made eight recommendations concerning Student's education. Endorsing the then-current program at ASD which included functional academics, he noted that Student is a strong visual learner, within the limits of her disabilities. His suggestions, included ways of presenting material to be learned, and giving directions. He recommended continued use of social stories and social skills streaming activities, and continuing to address her perseverative behaviors with a behavior plan. (Ex. B-189, pp. 9-10)
 7. In an April 12, 2002, letter to a Board School Psychologist, Parents questioned some of the Dartmouth-Hitchcock evaluation recommendations. They noted the absence of a classroom observation of Student, described their search for a more appropriate placement, and requested a formal referral to Perkins. (Ex. B-172)
 8. BESB Education Consultants summarized Student's experience at ASD in reports dated April 12 and June, 2002. Student was in the Deaf Special Needs program at ASD, although she was mainstreamed [with hearing impaired children] within the regular program. She received S/L, OT, PT, and Music Therapy "pull out fashion". She had a 1:1 classroom assistant. Many accommodations addressed her visual

needs. Her speech had become clear, and she used it more often. Her cognitive limitations began to have an impact in the classroom. An Education Consultant concluded that a placement at Perkins would be appropriate to address Student's complex and rare special education needs. (Ex. B-174, P-3)

9. The Board's Planning and Placement Team (PPT) met on April 24, 2002, for the annual review of Student's special education program and placement. Present were Board staff members, Parents, and Representatives of BESB, the Department of Mental Retardation (DMR), and ASD. The PPT record shows:

- **Strengths**

Academic/Cognitive: communication area, visual discrimination, visual memory, visual problem solving, loves reading, math-time, temp, date, schedules, doing well with the early stages of Braille instruction.

Social/Behavioral: friendly, helpful, respectful, kind, concerned with classmates/friends.

Communication: uses speech/sign skills, speech is intelligible, can clarify if not understood, likes to answer ?'s, musically talented.

Motor skills: penmanship has improved, learning to skip/jump, independent at school, computer skills (keyboard).

Self-help: balance skills, independent at lunch time.

Health & development: hearing/vision stable

- **Areas of Concern/Needs**

Academic/cognitive: cognitive functioning, auditory memory/processing, self monitoring, regulation, needs tasks broken into steps, decoding.

Social/behavioral: gravitates toward adults.

Communication: perseverative thoughts, can't sign and speak simultaneously, needs reminders to sign.

Motor skills: fine motor, endurance, muscular strength, low tone.

Self-help: back pack management.

Health & Development: lung capacity, no useful vision in left eye, hearing impaired, possible future vision deterioration. (Ex. B-168, pp. 1-2)

10. The April 24, 2002, PPT made the following recommendations:

PPT accepts goals and objectives as appropriate.

[Board] to investigate other in-state programs before referral to Perkins School for the Blind.

Same services recommended for next year. Placement to be determined.

[Board] to send letter to ASD requesting consideration of additional training in order to allow [Student's] continued placement. (Ex. B-168, p. 1)

11. An Annual Education Report dated April 24, 2002, and written by a BESB Education Consultant, summarized the status of Student's limited vision and the supports for best visual functioning for her. She described Student:

[Student] is primarily a verbal child. Her speech continues to improve and this is her preferred mode of communication. She will use sign language when reminded that others are deaf, or when a communication partner needs

clarification. Receptively, she understands both spoken and sign language (simultaneous and separately) and is reading on a first to second grade level. [Student] can write full compound and complex sentences on her computer. This BESB Education Consultant also reported that she had visited Perkins' Deaf-blind program, seeking strategies for Student's program. (Ex. B-170, pp. 1-3)

12. The BESB Education Consultant listed Student's current and future needs:

- A program to support her visual needs ... [including continued instruction in Braille].
- Orientation and Mobility ... for safety and independence.
- Braille ... Although she is still a large print reader and hopefully will always have this option, we must continue to prepare her for the future.
- Functional [educational] program ... [including] academic studies taught for functional purposes; opportunities for and instruction in developing social skills with peers of similar disabilities; instruction in activities of daily living; pre-vocational/vocational training.
- Speech/Language
- Peers ... who communicate in a similar mode as herself. ... She needs to be in an environment where she can develop her social skills in tandem with speech and language skills and with peers with whom she can readily communicate.
- Music Therapy/Instruction [Student is gifted in music and has perfect pitch.] ... has benefited tremendously from the music therapy she has received. It is both highly motivating to her and an invaluable way for her to work concepts and skills while developing her own self-image.
- Integrated programming ... in which all of her needs and the above recommendations can be met throughout the day and in all environments.
- Continued consultation with BESB. (Ex. B-170, pp. 3-5)

13. Also on April 24, 2002, Student's Parents listed their concerns and requested a referral to Perkins. After recognizing Student's progress at ASD, they asked for a functional program for Student as a low vision child:

- She needed more visual support in a functional classroom [than was provided at ASD].
- Her preferred mode of communication is speech.
- She needs a more restrictive environment. [Residential program could promote her independence in daily living skills, self-help skills, and enhance her social interaction and recreation opportunities.]
- [Student] is unable to gain meaningful educational benefit from her social skills training if she does not share the same language preference as her classmates.
- [Student's] need for multiple specialized support services fragments her program which isolates her further from her classroom peers.
- [Student] is placed in an inclusive setting at [Board's elementary school, ½ day per week] without appropriate supports and services.
- [Student] is currently a day student at ASD which is a residential school. A less restrictive environment is inappropriate due to the severity of her needs.

Student's Parents concluded their request with a list of advantages in residential placement of Student at Perkins. (Ex. B-171)

14. The progress report from ASD dated April 2002 concluded with:
Methods and Strategies Used: [Student] has had 12 different professional staff on her team this year. She has been pulled out of the classroom for [PT] and [OT], music therapy, Braille instruction, functional mathematics, cooking and public school mainstreaming. Her days have been very fragmented. Each professional who has worked with [Student] has used different methods. With all, one to one instruction and repetition has benefited [Student] the most. Unfortunately, it is impossible to carry out these therapies in the classroom daily for the practice that [Student] needs to succeed. (Ex. B-178)
15. The PPT re-convened on May 24, 2002. The Board's Director of Special Education and Parent had visited an Oak Hill School for the Blind program. A proposal that Student attend that program was rejected by Parents, and the PPT decided that Student would continue at ASD. (Ex. B-161)
16. Parents initiated a due process hearing concerning Student's placement for the 2002-2003 school year. An agreement between the Board and Parents dated August 15, 2002, provided for the Board to fund placement of Student at Perkins for the 2002-2003 school year, or for whatever part of the year she was admitted from a waiting list. She was to remain at ASD until she enrolled at Perkins. The Board retained its position that an appropriate day program could be provided. The agreement also provided:
In the event the Parents initiate due process with regard to [Student's] educational placement for the 2003-2004 school year, [Student's] stay put or current educational placement will be ASD. (Ex. B-141)
17. By letter dated August 21, 2002, the Director of Oak Hill reported that Student would not be considered for admission because:
Our school population is comprised of students who are basically non-verbal, have minimal sign language skills and have severe social skills deficits. Our team feels that our current classroom environments would limit [Student's] ability to make gains socially and academically. (Ex. B-139)
18. By letter dated January 7, 2003, Student was admitted to the residential program at Perkins, effective January 20, 2003, and she enrolled on that date. (Ex. B-135, Testimony, Parent)
19. The Board's PPT convened on January 15, 2003. The PPT recommendations were:
 - New placement will be Perkins School for the Blind beginning 1/20/03.
 - Goals and Objectives and current services from the 4/24/02 IEP will be continued at Perkins.
 - PPT will be held in approximately 6 weeks to review Goals/Objectives and revise if necessary. (Ex. B-134)

20. Rules for Student's diet, dated January 20, 2003, listed appropriate foods, dairy foods allergy, and suggest menus. A Mealtime Skills Inventory addressed both diet and behavior. (Ex. P-4, P-5)
21. The contract between Perkins and the Board, dated February 6 and 13, 2003, provided that Perkins would comply with Massachusetts law regarding IEP progress reports to the Board, monitoring by the Board, site visits and access to relevant documents. (Ex. B-132)
22. The PPT convened on March 26, 2003, at Perkins with Board's designated administrator, Parents, ten Perkins staff members, and a representative from BESB present. **Strengths** identified by the PPT:
- Good memory for mathematical facts and vocabulary, Creative writing skills, Communication with adults, Use of residual hearing, Comprehension and internalization of schedules and routines, Inquisitiveness, friendly, engaging, Musical abilities, Sense of humor, Enthusiasm for select tasks, Imagination for story telling and play.
- Concerns/Needs:**
- Functional Math, Reading/Writing, Braille Reading/Writing, Self-care Skills, Mobility Skills, Motor Skills, Fine Motor Coordination, Expressive Language Skills, Reading Comprehension, Communication/socialization with peers, Independence, Impulse Control, Comprehension of limits, Behavior, Participation/tolerance of group schedule/activities, Verbal expression of feelings when anxious or overwhelmed, Respect of others personal space/property, Appropriate usage of work materials, Attending Skills, Following directions, Redirection of self-stimulatory behavior, Usage of age appropriate play materials.
- This PPT recommended:
- Develop new goals and objectives.
 - Revise service hours on p. 5.
 - Next proposed PPT (4/28/03) will be held for the purpose of conducting an annual review. [Student's] summer placement for next year will be discussed.
- (Ex. B-125)
23. The Health and Development summary included with the record of the March 26, 2003, PPT meeting describes the details of Student's disabilities:
- [Student] is an 11 year, 11 month old girl with a diagnosis of CHARGE syndrome. Other disabilities include bilateral coloboma, od-congenital cataract and os-detached retina. She has bilateral microphthalmia (underdeveloped eye) with no usable vision in her left eye and vision in her right eye is listed in her 2002 annual education report as 20/200 with correction. [Student] presently wears corrective lenses throughout the day and requires preferential seating away from a direct light source (window) to avoid glare for optimal visual functioning. [Student] has a bilateral moderate-severe hearing loss requiring bilateral hearing aids and the use of an FM unit for individual work in the classroom and in specified noisy environments (dining room). A CT scan of both ears in October

of 2001 revealed the absence of semi-circular canals, which reportedly impacts her ability to a large extent in terms of maneuvering in the dark or in low light. [Student] is diagnosed with mental retardation with significant global delays in adaptive skills and is categorized as deaf-blind. Cardiovascular etiology includes atrial septal defect/VSD/bicuspid, aortic valve/ without pulmonary valve. Gastrointestinal history includes T-E fistula repair. Nutritional needs include highly pureed foods due to swallowing difficulties, severe allergies to dairy foods and g-tube support for supplemental feedings and medications. Orthopedic status reveals mild scoliosis, absence of left thumb and slight leg length discrepancy. The nursing summary for the PPT listed six medical specialists and a dentist as involved in Student's care. (Ex. B-125, pp.3, 24, B-126)

24. A behavior support plan dated March, 2003, was designed for both classroom and residence. Use of a schedule system in classroom and residence was aimed at increasing organization and decreasing anxiety "that may be caused by frequent transitions". Behavior rules across all settings:
- No hurting
 - Follow directions
 - No throwing
 - Use materials the correct way
- Other elements of the plan were: a feelings/strategy book; daily journal activity; positive rewards and earned privileges; and management of inappropriate behaviors. Additional strategies stressed positive attention, choices, preparation for transitions, giving directions, role-playing difficult situations, and sensory strategies. (Ex. B-129)
25. A March, 2003, progress report from Perkins included comprehensive comments from many teachers and therapists. Among the comments were: distractibility, significant fatigue, lack of initiative in daily living skills, impulsive in music therapy at first. (Ex. B-128)
26. By letter dated March 27, 2003, Board's Interim Director of Special Education referred Student for consideration for a day placement at ACES Village School, a regional day program in Connecticut. (Ex. B-124)
27. The PPT convened on April 28, 2003, for an annual review. Board's Administrator, Parents, five Perkins staff members, and a representative from BESB attended. PPT recommendations were:
- Revise goals and objectives.
 - Revise service hours from the 3/26/03 PPT.
 - Extended year services.
 - Referral to the ACES Village School for extended year services.
 - Referral to the ACES Village School for the 2003-2004 school year.
 - ACES intake evaluation to be completed by the end of the 2002-2003 school year.

Parents refused to take Student to ACES Village School for an intake evaluation during the Perkins school year. They preferred that Student remain at Perkins for the 2003-2004 school year. (Ex. B-118, pp. 1-2)

28. Parents requested that their statement concerning Student's placement for 2003-2004 be attached to the record of the April 28, 2003, PPT meeting. Among their concerns:
- ... Residential placement [provides a program that is] integrated throughout the day. [Student] has shown improvement in her social skills, which she has begun to generalize during her weekends at home.
 - Small class size, which has been shown necessary for [Student] to learn. [Student] has never been in a class of more than 4 other students.
 - [Student] has shown more independence ... at Perkins. ... does not utilize a 1:1 [paraprofessional].
 - Psychological services and the sensory supports [available at Perkins] necessary to carry out a behavior plan for a child with CHARGE association, including her propensity for anxiety, OCD, and perseverative behaviors ...
 - Orientation and mobility training integrated into both her school day and residential program ...
 - [Increased] self confidence because she is able to develop her musical skills ... (Ex. B-118 p.28)
29. Both Parents and the Board requested a due process hearing in May, 2003, regarding their differences over Student's placement for the school year 2003-2004. (Ex. B-115, B-116)
30. On May 8, 2003, Parents' Expert observed Student at Perkins, at the request of Parents. In her report, Expert noted use of a schedule, behavior chart, positive rewards for good behavior, a classroom job that involved going to an office to copy classroom materials, and participation in circle time. She summarized the visit: [Student] was happy and well-behaved the entire time that I observed her at Perkins. The anxiety and OCD that have been observed in her (attendant on CHARGE syndrome) were minimal. When I asked her teacher about [Student's] adjustment period, she said that it had taken about three months for [Student] to become accustomed to the routines and expectations, and to exhibit consistently appropriate behavior.
- Though I did not have the opportunity to observe all of [Student's] program at Perkins (I did not, for example, see her music class, her social skills group, or any of her other specialized classes), I was able to see a significant portion of one of her school days. The Perkins Lower School program that I observed had many strengths that directly address [Student's] needs. These include the following:
- Clarity of expectations
 - Appropriate behavior program
 - Educational program that addresses [Student's] need for functional academics
 - Appropriate materials, adjusted and designed to maximize her useful vision and hearing
 - Use of appropriate schedules and instructions

- Total-communication use of speech and sign
- Organization of the environment to make it appropriate for [Student's] visual impairment
- Inclusion with speaking peers with whom she can communicate
- Residential component to encourage her development of self-care skills
- Integration of staff members across school/residential environments that insures consistency of programming

This educational program provides [Student] with an environment where she is able to increase social, academic, pre-vocational and self-care skills, and where she can establish a solid foundation of self-esteem and behavioral self-control.

All of this educational experience should serve her well in the future. (Ex. B-111, P-56)

31. A progress report dated June, 2003, from Perkins for Student's school year 2002-2003 (Student actually attended Perkins from January, 2003, on) showed progress on the goals adopted in April, 2003. Behavioral incidences of non-compliance significantly decreased. Her vision had deteriorated because the cataract in her right eye became denser. (Ex. B-108)
32. Parents agreed to an evaluation at ACES Village School after the Perkins school year ended, and Student was accepted by ACES Village School on June 19, 2003, for enrollment on July 1, 2003. (Ex. B-101)
33. A BESB Education Consultant's report, dated June 24, 2003, noted the need for additional strategies to address Student's deteriorating vision. Student was described as supervised at all times, although she did not have a one to one paraprofessional assigned to her. The Perkins program focused on building independence. (Ex. B-99)
34. Student attended the Perkins summer program in 2003. A July 2003 progress reported noted an initial period of transition had been difficult, but progress on goals and objectives continued. Behavioral episodes decreased slightly, as Student participated in individual counseling and social skills group. (Ex. B-97)
35. The due process hearing was resolved by an agreement between Parents and Board dated July 17, 2003. The agreement extended Student's placement at Perkins through the 2003-2004 school year, although the Board contended that the ACES Village School placement was appropriate. Relevant sections of the agreement include:
 - The Parents agree to work with the Board in good faith to assess the transition of [Student] to a public or private school in Connecticut for the 2004-2005 school year, including but not limited to:

The Parents shall, without delay, provide the Board with copies of [Student's] educational records from Perkins including, but not limited to progress reports and evaluations conducted by the school.

Board staff and any contracted professionals hired by the Board shall be permitted to observe [Student] in the educational program at Perkins during the 2003-2004 school year.

The Parents shall make [Student] available for any referral process to public and/or private schools in Connecticut that is recommended by the Board.

The Parents shall participate in the PPT process for proceeding with the transition of [Student] for the 2004-2005 school year, including but not limited to participation at a PPT meeting during the month of January 2004 to discuss transition of [Student] to a Connecticut public or private school, and an annual review meeting during the month of April 2004.

- If either party initiates due process with regard to [Student's] educational placement for the 2004-2005 school year, stay put does not apply, and both parties agree to expedite the hearing so that there is a hearing officer order regarding the issues in dispute prior to the commencement of the 2004-2005 school year. (Ex. B-92)

36. The Perkins Enrollment Agreement with the Board, signed and dated October 30 and November 3, 2003, includes the following provisions:

Compliance with Regulations. Perkins shall provide its services to the Student in compliance with all regulations, policy statements and directives lawfully promulgated by the Massachusetts Department of Education ...

Progress Reports. Perkins shall provide, in writing, to the Administrator of Special Education of the LEA [Local Education Agency] detailed documentation of Perkins' compliance with the Student's IEP through completion of required student progress reports.

Monitoring by LEA. Perkins shall allow the LEA to monitor and evaluate the education of the Student and shall make available, upon request, any records pertaining to the Student to authorized school personnel from the LEA and the Massachusetts Department of Education in accordance with the Massachusetts Student Records Regulations.

Site Visits and Access to Documents. Perkins shall allow the LEA and the Massachusetts Department of Education to conduct announced and unannounced site visits and to review all documents relating to the provision of special education services to the Student. Access to documents for the LEA shall include general documents available to the public, documents specifically related to the Student and other documents only to the extent they are necessary to verify and evaluate educational services provided at public expense. (Ex. B-90)

37. The report of an evaluation at the Perkins Vision Rehabilitation Clinic on October 14, 2003, included recommendations:

- Use of a bifocal for reading, with covering the distance part of the lens.
- Teachers to monitor print size, aiming for the least magnification possible.
- Use sunglasses outdoors to protect eyes.
- Do not recommend CCTV.
- Re-evaluation in 6 months.

A BESB Education Consultant's report for the March 29, 2004, PPT meeting also included these recommendations. (Ex. P-6, P-9)

38. A progress report dated November 2003 showed good progress in most areas and some success with a behavior program. (Ex. B-88, B-89)
39. Student was seen by her Developmental Pediatrician on February 19, 2004. Notes from this visit included:
[Concerns about orthopedic status, immune status, absence of semi-circular canals and possible progressive hearing loss, reflux]
Anxiety [does not recommend medication at this time] (Ex. B-870)
40. Parent visited programs recommended by the Board at ACES Village School and Oak Hill in March 2004. (Ex. B-86, B-78)
41. Once again, on March 19, 2004, Oak Hill rejected Student because she functions at a higher level than the Oak Hill school population. (Ex. B-77)
42. The PPT convened at Perkins on March 29, 2004. Present were Board's Administrator, Parents, eleven Perkins staff members, and BESB Education Consultant. This PPT recommended:
- Develop new goals and objectives
 - Extended school year services for the present year at Perkins
 - Referral to the ACES Village School for the 2004-2005 School Year
 - Triennial Review will be completed by Oct. 31st, 2004. Parents will sign consent to conduct evaluations after consulting with Dr. Morse at Dartmouth Hitchcock Medical Center.
- Student's behavior plan was revised in details but remained similar to previous plans. Perkins Social Worker listed Parents' priorities for Student:
Literacy, keyboarding skills, Braille instruction, mobility training as a separate goal, and "particular emphasis on her needs as a child with deafblindness and CHARGE, which includes self-help skills, social skills and future independence as a deafblind adult". (Ex. B-73, pp. 1, 2, 30-34, 35)
43. Parents requested that their statement regarding their preference for continued placement at Perkins and comparing their observations of Oak Hill programs and ACES Village School with Perkins be included in the PPT record for March 29, 2004. In addition to listing specific services, they stated that they believed that Perkins was the least restrictive environment for Student. (Ex. B-73, pp. 38-41)
44. On April 6, 2004, ACES informed Board's Director of Special Education that Village School would not be an appropriate placement for Student. (Ex. B-70)
45. An agreement dated May 6, 2004, between Parents and the Board included these relevant commitments:
- Student had been unilaterally placed at Perkins by her Parents.
 - The Board contended that it could have provided Student with a free appropriate public education in an appropriate day placement in Connecticut.
 - The Board agreed to pay the cost of placement for the 2004-2005 school year.

- The Parents agreed “to work with the Board in good faith to assess the transition of [Student] to a public or private school in Connecticut for the 2005-2006 school year”, providing for observation of Student at Perkins, making Student available, and participation in a PPT meeting in February, 2005.
 - If Parents request a special education hearing, “stay put does not apply, and both parties agree to expedite the hearing so that there is a hearing officer order regarding the issues in dispute prior to the commencement of the 2005-2006 school year.” (Ex. B-65)
46. A progress report dated June 2004 noted improvement in most areas, although behavioral outbursts continued to be an issue. Frequency of outbursts varied. (Ex. B-64)
47. A progress report dated July 2004 showed an increase in aggressive behavior, perhaps related to changes from the regular school year to the summer program. Progress in reading and other academic areas continued. Her performance in MT was inconsistent. (Ex. B-63)
48. A progress report dated November 2004 noted progress in academics including Braille, but increases in behavioral outbursts. (Ex. B-54)
49. The enrollment agreement between Perkins School and the Board for the 2004- 2005 school year, dated September 20, 2004, included the following relevant commitments:
- The educational program will be provided pursuant to an IEP provided by the Board and accepted by Perkins.
 - Services will be provided in compliance with “all regulations, policy statements and directives lawfully promulgated by the Massachusetts Department of Education”.
 - Progress reports for Student will be provided to the Board.
 - Perkins “shall allow the [Board] to monitor and evaluate the education of the Student and shall make available, upon request, any records pertaining to the Student”.
 - Perkins shall allow the [Board] ... to conduct announced and unannounced site visits and to review all documents relating to the provision of special education services to the Student.” (Ex. B-60)
50. Office notes from Student’s February 24, 2005, visit with her Developmental Pediatrician endorsed continued placement at Perkins. He listed as strengths a wonderful temperament and disposition in familiar and comfortable settings, excellent memory, and “an earnest effort almost all the time to try to follow routines that she has been taught for both her general well-being and also her academic success”. He also provided updates on several areas of health concern, including current problems with intermittent anxiety, oppositional behavior, and difficulty making transitions. This physician also suggested consideration of medication to help with anxiety and attention. (Ex. P-14)

51. Student's triennial re-evaluation was performed during the 2004-2005 school year. An Occupational Therapy/Sensory Motor Integration evaluation dated October 7, 2004, listed several areas being addressed and some behavioral issues.

Recommendations:

- [Student] benefits from sensory motor integration classes twice per week. These classes should be monitored by an [OT] or [PT] trained in sensory integration techniques who can recommend activities and/or therapeutic interventions to [Student's] classroom staff when needed.
- Continue with [OT] services twice a week to address self-care and fine motor issues.
- Provide [OT] consultation to family and school staff to assess and modify [Student's] environment and teach techniques for maximum tolerance of sensory stimuli and maximum attention for learning and participating in activities of daily living.
- Continue to encourage [Student's] participation in fine motor and self-care activities to further develop her independence in these areas. Provide a consistent routine of self-care activities to help her with sequencing and promote independence. (Ex. B-59)

52. The Perkins behavior specialist and counselor has earned a Ph.D. in developmental psychology and has worked at Perkins since 1987. She evaluated Student in February, 2005, when Student was thirteen years and ten months old. She found Student's strengths to be reasoning skills and auditory memory. Weaknesses were verbal expression and comprehension. On the WISC-R subtest scores, three were borderline and seven were below average. On the Kaufman, Student's reading/decoding was at the second grade level. On the Conner's Rating Scale, Teacher rated Oppositional, Cognitive Problems/Inattention, Hyperactivity, ADHD Index, Restless/Impulsive, Emotional Lability, and Global Index as "markedly atypical". Parent also marked seven items on the Conner's Scale "markedly atypical" but not exactly the same seven items. The evaluator offered a Behavioral Summary/Interpretation:

Results obtained from rating scales were consistent with observed and reported behavioral concerns across the home and school settings. Perseverative or repetitive behaviors (thoughts, language, activities) interfere with her optimal functioning. A difficulty in "shifting" was identified on the BRIEF, and is consistent with [Student's] challenges around repetitive interests and difficulty with change. ...

At school, [Student] requires a highly structured routine and intensive behavioral supports to function optimally. She demonstrates fairly wide fluctuations in behavioral functioning from "perfect" days (i.e., no target behaviors), to days when episodic loss of behavioral control (expressed in vocal outbursts, throwing, or other disruptions) happens several times. Aggressive attempts have decreased at school, and are reported to not occur at all at home. Antecedents continue to be explored and include certain days of the week (transition to school on Mondays), stressful (highly demanding) activities, overstimulation, and changes in routine or

school personnel (such as staff or student absences). There are occasional sleep disruptions (such as going to sleep very late or waking up very early) and fatigue issues also affect [Student's] behavioral tolerance. Interventions include schedule system, rule check sheet, Mayer-Johnson pictures to represent feelings, positive rewards for periods of appropriate behavior, relaxation periods and timeout/breaks. At home, removal of privileges is reported to be another successful behavior management strategy.

Daily living skills were reported as improving, as was socialization with peers. Most of the evaluator's recommendations were to continue in the same type of educational program, with small group and individual instruction and behavioral supports. She recommended incorporation of additional visual supports, such as Mayer-Johnson pictures, and more calming/relaxation activities throughout the school day and prior to especially challenging or stressful classes. Social skills continue to need work, in group and role-playing. Under Follow-up, this evaluator also recommended a medical assessment of medication for improving Student's behavioral symptoms. This evaluator also recommended a longer day or a residential placement, in order to incorporate activities of daily living. She reported that some documents concerning Student had not been sent to the Board because "this was never a [Board] placement". (P-33, B-46, Testimony, Perkins Behavior Specialist)

53. The report of an educational evaluation dated January 2005 commented on Student's cooperation in testing. On the WRAT, she scored on the second grade level in reading, math and spelling. On the Brigance she scored on the second grade level in reading comprehension and on the third grade level in listening comprehension. In summary:

[Student] is a student who presents with complex medical, physical, behavioral and academic needs. She demonstrates a good base of academic skills that fall well below her chronological age level. Due to the complexity of [Student's] needs in all areas of development, she requires a specialized educational program that provides interdisciplinary therapeutic services. She requires a staff that specializes in servicing students with visual and multiple disabilities and that integrate their services through close collaboration. (Ex. B-47)

54. The summary of a S/L evaluation dated January 2005 included:

...

Speech and language testing revealed significant expressive, receptive, and pragmatic language delays. [Student] showed decreased vocabulary knowledge and decreased conceptual development. ... Relative strengths were in areas of stating object functions, making associations, and stating similarities between two things. More difficult tasks of abstract language that involved main idea, inferences, identifying details, and reasoning yielded age equivalents ranging from 5.6 years up to 6.4 years. [Student's] performance on expressive language testing ranged from <5.1 years up to 8.0 years. Making associations and explaining why a word did not belong in a group of words was a relative strength. Generating synonyms, antonyms, and definitions were difficult tasks for [Student] due to decreased knowledge of vocabulary and concepts. [Student's] speech

intelligibility was adequate. She presented with several sound omissions secondary to her hearing impairment.

...

The S/L made ten specific recommendations for continuing therapy. Total communication, using signs for emphasis, structure, routine and strategies to decrease anxiety were recommended. (Ex. B-47, B-49)

55. The report of a PT evaluation dated February 2, 2005, noted that she occasionally became overstimulated in PT sessions, but managed to “bring herself back” and complete the session. The PT’s summary:
Since [Student’s last [PT] evaluation she has increased her strength, improved her posture, ROM [range of motion] and Balance. [Student] continues to have impaired coordination, decreased balance, strength ROM, and posture. [Student] will benefit from continued [PT] to address the above impairments. [Student] continues to have difficulty with modulating her sensory environment and will benefit from continued SMI to address her sensory needs.
The PT recommended continued PT consultation with staff and family on seating, equipment, exercises, stretches, and gait. She needed continuing monitoring of her equipment/bracing needs, regular postural screens, and continued PT and SMI. (Ex. B-45)
56. A progress report dated March 2005 showed continuing behavior problems, although number of episodes decreased and she seemed to be benefiting from participation in a social skills group. Her academic work was good. (Ex. B-40)
57. The BESB Education Consultant’s annual report was provided for an April 4, 2005 PPT meeting. (Ex. B-38)
58. A Perkins Low Vision Clinic evaluation dated March 8, 2005, included a summary and recommendations:
- ... [Student’s] eyes appear stable; however, there is a concern about her close working distance with her current print size. Due to the limitation of the photocopier output, the current letter/paper size is at a maximum. Thus, the CCTV is a practical option to increase letter size and to improve working distance.
 - [Student] may initially have some impulse issues with the CCTV. [suggestions] The CCTV should be used for both academic and non-academic purposes.
 - The primary concern that there has been a visual change within the last year that limits [Student’s] ability to travel in a car at night was addressed as early as April 2004 and is being monitored ... (Ex. B-39)
59. The PPT convened on April 4, 2005, with Board’s Supervisor, Parents, twelve Perkins staff members, and BESB Education Consultant present. The PPT recommended:
- Develop new goals and objectives.
 - Attendance at Perkins for the 2005 5-week ESY program.

- Implementation of new goals and objectives from now until the end of the ESY program at [Perkins].
- Placement at [Board's high school] in the Multi-handicapped Program as of 9/1/05 with the following components (goals & objectives will remain the same):
 - 1:1 Special Education Teacher; Paraprofessional support as needed;
 - 1:1 Counseling; Music Therapy; OT services; PT services;
 - [S/L] services; O&M services through BESB; Braille instruction through BESB; Deaf-blind consultant through BESB; Additional consultation with [Parents' Expert] or [Other Expert].

Confirmation of BESB services will be obtained by April 30th [2005]. (Ex. B-37)

60. Parents requested that Student remain at Perkins through the 2005-2006 school year, and participate in Perkins ESY programs in 2005 and 2006. (Ex. B-37, p. 29)
61. A July, 2005, Mealtime Skills Inventory included "Behavior supports" for meals. (Ex. P-42)
62. A progress report dated June 2005 noted that behavior had improved, with the exception of a new behavior, "unwarranted, negative comments towards peers". In Braille, she could identify all of the alphabet contractions. She was having a trial of prescribed medication to help with behavior. She was swimming six to ten laps in the pool, with help. (Ex. B-34)
63. A progress report dated July 2005 noted that although Student was anxious about her upcoming move from Bradlee to Anagnos residences, her classroom behavior improved. Medication appeared to help, and the dosage was increased. (Ex. B-33)
64. An agreement between Parents and the Board dated July 22, 2005, included the following relevant commitments:
- Student was unilaterally placed at Perkins for the 2005-2006 school year.
 - Parents contend that such placement was for educational reasons, while the Board contends that it can provide a free appropriate public education for Student at its high school and that Student does not require a residential placement.
 - The Parents had initiated a special education hearing, and this agreement was intended to resolve the issues in dispute.
 - The Board will fund the 2005-2006 placement at Perkins.
 - The Parents agree to "work with the Board in good faith to transition [Student] to [the Board's high school] for the 2006-2007 school year."
 - There will be observation of Student in the educational program at Perkins, Parents will participate in the PPT process, and Parents will make Student available for a visit to the high school prior to January, 2006, transition PPT meeting.
 - If Parents initiate a special education hearing, stay put does not apply, and both parties agree to expedite the hearing. (Ex. B-32)

65. The enrollment agreement between the Board and Perkins dated August 28 and September 6, 2005, for the 2005-2006 school year included the same provisions as in prior years concerning communication between Board and Perkins, monitoring by the Board, and site visits. (Ex. B-31A)
66. A progress report dated November 2005 remarked that the transition to a different residence and some new staff had been challenging, resulting in “an increase in frequency and intensity of behavioral episodes” across all settings. Toward the end of the reporting period, behavior was beginning to improve. (Ex. B-31)
67. Notes dated September 30, October 14, November 4 and 22, and December 1 and 2, 2005, by BESB Education Consultant include concerns about Student’s behavior problems at school and at home. (Ex. P-20)
68. Student’s December 13, 2005, behavior guidelines listed target behaviors: hitting, slapping, throwing, clearing things off table, grabbing, pulling off glasses, stripping, yelling. General procedures included a schedule system, sensory routines throughout the day and evening, large print rules list, strategies for dealing with excited feelings, frequent praise, opportunities to rest, journal writing, data sheet for behavior, and encourage her to “use your words”. When she is aggressive, she is sent to timeout. If she presents a non-aggressive/non-destructive target behavior, remind her, then offer a break. (Ex. P-39)
69. The PPT convened on February 3, 2006, with Board’s Supervisor, Parents, five Perkins staff members and BESB Education Consultant present. The PPT recommended:
- Continue goals and objectives and services from the 4/4/2005 IEP.
 - As part of a plan for a possible transition to a Special Education program in [Board’s district]:
 - Mother will meet with [Board] staff to go over the proposed program for next year (including services) and to visit the proposed classroom.
 - [Board’s] TVI will observe [Student] within her program at Perkins on 2 days to start. More time will be requested as needed.
 - Annual Review set for 4/4 [2006] (Ex. B-300)
70. A progress report dated March 2006 noted that episodes of screaming, throwing and aggression had been decreasing since January. She was progressing in reading and math. Independence in daily living skills had decreased since the change in residence. OT and PT were working on calming techniques with some success. (Ex. B-24)
71. The Board hired a certified teacher of the visually impaired (TVI) on a part-time basis to prepare for Student’s transition to the local high school. She was to observe Student at Perkins, consult with Perkins staff, plan Student’s program with the PPT, and consult with and train other Board staff who would be working with Student. When Student enrolls, the TVI will become a full-time Board staff member. This

TVI is also a social worker, with clinical experience. She recorded her 60 hours of observations of Student at Perkins between February 3 and July 14, 2006, and her notes were offered as evidence¹. Prior to observing Student, she reviewed the Board's records. During her visits to Perkins, she had minimal communication with Perkins staff. At one point, the Perkins Lower School Supervisor informed Board's Supervisor that visits could not continue because Student's regular teacher was going on leave and there would be a substitute teacher. Eventually, TVI resumed visits. She observed behavioral problems, use of timeout and also rewards. (Ex. B-29, B-226, Testimony, Board's TVI)

72. The PPT convened on April 4, 2006, with Board's Supervisor, Parents, twelve Perkins staff members, BESB Education Consultant, and Board's TVI present. PPT recommendations mainly addressed changing Student's residential placement at Perkins to a day placement at the Board's high school:

- Develop new goals and objectives for 2006-2007; continue goals and objectives and services from the 4/4/05 IEP until the end of this school year.
- Change [Student's] educational placement to [Board's high school] for the 2006-2007 school year.
- Provide 25.6 hours of special education instruction supervised by a full-time [TVI] on a 1:1 or small group basis.
- Provide a separate instructional room for [Student] and 1 or 2 classmates near the ALP special education classroom to accommodate [Student's] learning and sensory needs.
- Provide a full time classroom paraprofessional to work with [Student] and her [TVI].
- Provide the following related services: 1 hour per week of counseling; 1 hour per week of [S/L] therapy; 2 hours per week of [OT]; 2 hours per week of [PT]; and 1 hour per week of Music Therapy.
- Provide Special Transportation.
- Consult and recommendations from a BESB [O&M] consultant.
- Braille instruction to be provided by [TVI].
- Provide FM system and audiological services through CREC.
- Additional workshop/consultation support for Special Education Teacher and Paraprofessional.
- The plan for transitioning [Student] to [Board's high school] will include:
 - Psychiatric evaluation with [Board's] Consulting Psychiatrist for the purpose of assessing [Student's] current soci/emotional, behavioral and transition needs.
 - Parent and School participation in a "Future's Planning" meeting to be conducted by CREC.
 - Completion of an [Functional Behavior Analysis] for the purpose of developing a Behavior Plan relevant to the new setting.
 - Weekly participation by the [Board's TVI] in the program at Perkins during the remainder of the school year for the purpose of transitioning [Student] to [Board's high school].

[Board's TVI] to meet twice at Perkins during the summer session to continue with transition preparation.

[TVI] to meet weekly at [Board's high school] to put all program components into place for the 2006-2007 school year.

- Return to a low vision clinic for further evaluation of video and optical devices for [Student].
 - Adapted PE will be provided 2 times in an 8 day rotation.
 - Sensory motor integration will be provided 1 hour per week by [TVI] under the supervision of [OT] and [PT].
 - Attendance at the 5 week [ESY] program at Perkins for summer 2006.
- (Ex. B-19, p. 1-2)

73. Parents expressed their disagreement with the PPT decision to change Student's placement, and submitted a statement to be included with the PPT record. They preferred the program proposed at Perkins. (Ex. B-19, p.29)
74. Parents' Expert again observed Student at Perkins on June 8, 2006, and provided a report on that observation dated June 29, 2006. Based on Student's history, her own prior observations, and Student's current status, she recommended continuing placement at Perkins. (Ex. P-25)
75. Parents' Expert included in her June 29, 2006, report suggestions on helping Student deal with transitions:
- Providing [Student] with clear schedules and calendars that give her a way to envision and prepare herself for changes.
 - Letting her know ahead of time what will happen, and giving her the opportunity to discuss her anxieties or thoughts with trusted adults.
 - Providing her with consistent, trusted adult support across transition spaces and times. (Ex. P-25, p. 8)
76. A progress report dated June 2006 included a note from the S/L reporting that Student sometimes came to S/L group upset by something, and that she used sensory techniques to calm her for therapy. The Music Therapist reported that Student had great difficulty with preparing new music for the spring concert, and in the end chose not to perform. Substitute Teacher reported some difficulties with the change in staff. (Ex. P-24)
77. A progress report dated July 2006, for the ESY program at Perkins, again reported some behavioral difficulties with the change in program from regular school year to summer program. (Ex. P-54)
78. Student's Mother has been a nurse, a research assistant at the University of Connecticut, and a special education teacher. She is now a Connecticut Deafblind Family Specialist for the New England Center Deafblind Project. She is currently working toward certification as a TVI. She generally prepares Student for her many medical appointments by explaining who they are going to see and why. She

described some of Student's worrisome behavior, such as approaching strangers and asking personal questions. Part of the problem is because she needs to be very close to see someone's face. Since she started taking medication recently, Student's anxiety has decreased. She also reported that the attempt to have Student attend a regular elementary school classroom for part of one day a week during her last two years at ASD failed for many reasons, not the least of which was scheduling issues. She also felt strongly that the school nurse should be part of "Student's Team", because of Student's many medical issues, some of which could result in medical emergencies in school. (Ex. P-14, P-44, Testimony, Mother)

79. In addition to her BESB reports, BESB Education Consultant offered testimony concerning Student's disability. She cited various medical opinions, over the years, that Student's very limited vision was too fragile to consider surgery for her cataracts. She also explained that sometimes, when Student is experiencing too much stimulation, she removes her glasses and hearing aids as a way of taking a timeout. She had observed that Student's attachment to individual teachers and her usual routine made it very difficult for her to experience changes in staffing and routine. She reported that Student is currently reading on a third grade level, varying with her interest. She also mentioned that Student has recently demonstrated an increased ability to "bring herself back" from non-compliant behavior. The usual procedure for BESB to provide O & M services to students in public schools is an assessment of the individual student's needs followed by consultation with Board staff (TVI, OT, etc) and periodic visits to model instruction. She also confirmed that BESB could and would provide equipment and materials needed for Student. This Education Consultant is a certified TVI who has worked as a classroom teacher with students who are blind and with blind students who have other and severe disabilities. (Ex. P-27, Testimony, BESB Education Consultant)
80. The Board's TVI has experience teaching Braille and can use some simple signs. When she drafted IEP goals and objectives and a daily schedule for Student, she used the Perkins IEP and schedule as models. She testified that she would expect to discuss changes at a PPT meeting after she had worked with Student for a few weeks. She planned for a Functional Behavior Analysis prior to modifying the behavior plan in use at Perkins, although she had some ideas for changes based on her observations. She hoped to engage Parents in Futures Planning, although they had cancelled one appointment for that already. She consulted on the design and equipping of a classroom for Student, near the Adjusted Learning Program (ALP) classroom. Student would have individualized instruction with her and a 1:1 paraprofessional, and would also participate in some classes with ALP students. The ALP teacher would be prepared to act as a substitute for the TVI, if necessary. The school nurse's office is nearby. This TVI has previously worked with BESB on O&M goals. (Testimony, Board's TVI, Board's Special Education Teacher)
81. The Board's TVI drafted individual schedules for Student, for discussion. These schedules were compared with copies of Student's 2005-2006 class schedule at Perkins for content and comment by many witnesses at the hearing. The TVI stressed

that the schedule was subject to revision before Student enrolled. (Ex. B-227, B-229, P-38, Testimony, Board's TVI)

82. The Program Supervisor for the Lower School at Perkins, who has 32 years of experience with blind children, mentioned the strong connection Student has with her family, returning home every weekend. He reported that Perkins had several students with CHARGE syndrome, and also a special program for deaf-blind children. Because she has some vision and her hearing is good with hearing aids, Student is placed in the regular Lower School program at Perkins. He described Student's behavior problems at the beginning of the 2005-2006 school year, relating them in part to her move from one residence to another. She is doing better now, perhaps in part because of medication. Her current class includes four students, one teacher, and two paraprofessionals. Student does not have a 1:1 paraprofessional, but she is supervised at all times. Although each student is considered individually, it is likely that Student would transition to the Upper School within the next year if she remains at Perkins. The Program Supervisor stressed the need for transition planning for children leaving Perkins, but insisted that that could not begin until there was an "agreement" about the move. For that reason, he had discouraged consultation and collaboration between Perkins and Board staff in the spring of 2006. He did acknowledge that there had been no complaints about the Board's TVI's observations. (Ex. P-28, Testimony, Perkins Program Supervisor)
83. The substitute teacher was also a member of the Perkins residential staff. She worked with Student during her regular teacher's leave of absence in the spring and summer of 2006 and described Student as a happy kid, who was becoming more social with her peers and less nervous about noise and light. When Student had changed her residence at Perkins (from Bradley to Anagnos) in the fall of 2005, there had been preparation, with visits. However, after the change was made, her behavior deteriorated significantly. Various strategies, including sensory techniques and breaks, were used without much success. This teacher, who had experience as a house parent and was completing her work for certification as a TVI, described Student as the most complex student she had seen, with many needs. She reported that Student could usually complete her academic assignments, unless she was upset. This teacher and Student had charted Student's behavior for positive rewards. Rewards that seemed effective included listening to CDs and "talking time" with teacher. Student was often fatigued and over-heats in hot weather. Sometimes Student removed her hearing aids, glasses and shoes to relax. A timeout area just outside the classroom door was used 15 times in April, May, and June, 2006. Sometimes Substitute Teacher used walking as a calming technique. This teacher believed that Student could not control her behavior without help, and that an "internal source" was involved. Substitute Teacher also described the activities with non-disabled peers arranged by Perkins: visits with students in a school in Burlington, and trips to a farm. Substitute Teacher had observed Student socializing with other girls in her residence, dancing and singing. She recommended breaks in Student's schedule every 20 minutes, with longer breaks when Student was having a "bad day",

and 15 minute breaks “whenever Student needed”. (Ex. P-30, P-39, P-40, P-41, Testimony, Substitute Teacher)

84. The Orientation and Mobility Teacher (O&M) from Perkins described the program she was using with Student, pointing out that her hearing impairment and physical disabilities required special arrangements. She also discussed the merits of O&M taught by a trained O&M specialist opposed to providing O&M by consultation (from BESB). Although the record shows that Student had started O&M at ASD, the Perkins O&M Specialist felt that Student had had no prior experience using a white cane. She did describe Student as “very smart,” and having more difficulty in the evening (darkness). (Ex. P-32, B-37, p. 14, Testimony, O&M Specialist)
85. The Perkins Music Therapist (MT) has ten years of experience and prior experience as a performer. She saw Student in a small group, in chorus, and in “Big Music”, a large group. Music is an area where Student can succeed by performing and writing songs. She has perfect pitch and can improvise on the piano. She has been anxious about performing, and decided not to perform in the spring 2006 concert, after having difficulties in rehearsals. (Ex. P-31, Testimony, MT)
86. The Head House Parent in Anagnos, Student’s current residence at Perkins, has 15 years of experience at Perkins as an assistant house parent, classroom aide, residential aide, and life skills teacher. He handles behavioral issues and medication in the residence. He described Student’s move from Bradley to Anagnos as changing to an older group, with more independence, even though she is still supervised at all times. He described Student’s period of adjustment to the new residence as the longest and most difficult he’d experienced. He thought one of the triggers for her outbursts was staff or student absences, and changes in her routine. When Student is tired, she frequently rests for up to an hour during the day. She has been using a treadmill in the gym to calm herself. She is working on socialization and activities of daily living goals in the residence. She does well with activities of daily living with reminders. The house staff take students out into the community once a week, to shop, eat in a restaurant, or visit a mall. Behavior data is collected in the residence, and rewards are given for good behavior. (Ex. P-47, Testimony, Head House Parent)
87. Student’s classroom teacher has been her teacher since the fall of 2003, except for her leave of absence from April to August, 2006. This is her ninth year as a classroom teacher. She had seen good progress in academics by Student, but very little progress this year. She described Student’s behavior at the time of the change in residence: yelling, throwing things, pulling things off the wall, grabbing people’s glasses, banging doors and walls, calling names, and dismantling a room. Some of this behavior had been exhibited before and after the difficult period, but never as bad. Afterwards, she is remorseful. Sometimes it was better to ignore an outburst, and sometimes when staff tried to discuss it with her she got worse. She has recently been socializing more, with girl friends in the residence. Teacher reported that Student often started the school day on the treadmill, which seemed to calm and organize her for the day. She had worked with Student in 30 minute units, shorter

when Student was having a bad day. She and Student had filled out behavior charts together, with Student selecting the colors to be used. Rewards usually chosen by Student were TV (PBS), music CDs, time with a staff member, and walking. She had used the timeout room outside the classroom door for Student. She reported that Student had had a “pen pal” from the school in Burlington. She described the Board’s TVI visits as “unobtrusive”. She believed that Student’s outbursts were the result of both internal and external stimuli. She mentioned that one of Student’s problems with Braille was her tactile sensitivity. She felt that Student did best with predictable routines and a familiar environment. (Ex. P-40, P-46, P-48, Testimony, Perkins Teacher)

88. The Perkins PT assigned to Student has a doctorate degree in physical therapy, and has worked at Perkins since January 2003. She collaborates with an OT on Sensory Motor Integration (SMI) as well as providing PT services pursuant to a physician’s prescription. She described Student as “complicated, orthopedically involved” and also easily fatigued. Since she removes her hearing aids and glasses for PT, communication is by sign. This PT has also given Student some yoga instruction. (Ex. P-35, Testimony, PT)
89. The Perkins School Social Worker has worked with Student for a year. She reported that Student is involved in a pre-vocational program in the Lower School that involves picking up and delivering books, and that when she moves to the Upper school within the next year or two, she will have more vocational experience. She anticipates that Student will eventually be in supported living and supported work. She reported that Student’s Mother is very supportive, frequently visiting during the week in addition to taking Student home every weekend. (Ex. P-34, Testimony, Social Worker)
90. The Board’s Supervisor of Special Education has been Student’s case manager for the last three years. She has twelve years of experience in a residential program for students with disabilities, nine years of experience teaching and supervising public school special education programs, and four years of administrative experience. She has organized PPT meetings and observed Student at Perkins in addition to attending meetings there. She had witnessed some of Student’s difficult behavior at Perkins, and had also witnessed her “moving on” after an episode. When questioned about experience with children with CHARGE syndrome and deaf-blind children, she acknowledged no prior experience with CHARGE, but reported one case of deaf-blindness in recent years. She stated that the Board was starting from the point of duplicating the Perkins program as closely as possible (as Perkins had initially duplicated the ASD program) and expecting to make modifications/changes after they had some experience with Student. She also reported that the TVI and paraprofessional would have physical management training. She showed a schedule of activities for young people with disabilities in the community, some of which may be appropriate for Student. (Ex. B-233, B-234, Testimony, Board Supervisor)

91. The BESB Education Supervisor clarified her role in maintaining a list of TVIs who were looking for jobs. She does not recommend candidates. Both TVIs and O&M specialists are in short supply, which is a problem for both BESB and for local school districts. BESB provides services, materials and equipment for legally blind children in Connecticut. Most of the equipment is loaned to individual children and must be returned to BESB. Individual school districts and their PPTs decide how they want to serve these children. BESB provides both direct services and consultation. (Ex. P-52, Testimony, BESB Education Supervisor)
92. The Board's School Psychologist has more than fifteen years of experience. She works with special education students and their families. She discussed the behavior plan in place at Perkins and stated that she would like to develop a Functional Behavior Analysis before making significant changes. She has worked with students with similar disabilities. (Ex. B-239, Testimony, Board's School Psychologist)
93. The Board has contracted for additional services from Consulting Psychologist, who has special experience with difficult behavior. (Ex. B-238)
94. The Board's OT has experience with students with disabilities and has been working for the Board for eight years. She provides direct OT and sensory motor integration services and also consultation so that classroom staff can implement services both when needed and on a schedule. She would help Student recognize overstimulation and respond with calming techniques. She would expect to collaborate with the BESB O&M consultant. (Ex. B-236, Testimony, Board's OT)
95. The Board's S/L Pathologist has a Master of Science degree in Communication Disorders and six years of experience in schools. She has experience with a variety of disabilities, including students with visual and/or hearing impairments. She can use sign language, and has experience with FM systems. She consults with other teachers and makes home visits to observe language used at home. After reviewing Student's records, she determined that a high priority was pragmatic language, and that a small group with children who could be language models would probably be effective for Student. She is a member of the Board's Assistive Technology Team. (Ex. B-235, Testimony, Board's S/L)
96. The Board's teacher for the Adjusted Learning Program (ALP) has fifteen years of teaching experience. The ALP is a highly individualized program for high school students with cognitive impairments. Some of her students also have other disabilities. Of the five students she had for the 2005-2006 school year, three were also attending some regular education classes and two were in her class all day, except for related services. She has a vocational program with jobs within the school building, and she also works with outside agencies to secure job placements for her students. She expects to do some co-teaching with the TVI. She mentioned Best Buddies, a service club at the high school that has disabled and non-disabled members, as an opportunity for Student to socialize. (Ex. B-237, Testimony, ALP Teacher)

97. Parents' Expert mentioned the importance of Student's opportunities to form "natural friendships" at Perkins. She also stressed the importance of including Student in Futures Planning. She recommended a functional behavior analysis in the Board's school prior to changes in the current behavior plan. (Testimony, Parent's Expert)
98. Futures Planning had been recommended by the Board in the April 2006 PPT meeting. (Ex. B-19, p. 2)
99. A psychiatric evaluation was performed on July 19, 2006. The Board's Consulting Psychiatrist had a psychiatric residency at the Institute of Living and University of Connecticut with special training in child and adolescent psychiatry and is Board Certified in general psychiatry and in forensic medicine. She reviewed Student's educational and medical history prior to an interview with Student and Mother. She did not see behavior records. She noted that the added stress of adolescence may contribute to CHARGE-related behavior problems. This psychiatrist reported her impressions of Student:
- [Student] presents with emotional instability and poor impulse control. It appears that her states of agitation could be either triggered by extraneous events or internal stimuli, which is difficult to identify specifically, due to her limited ability to identify and describe the provoking factors. She seems to have a tendency to behave obsessive[ly] and [to] perseverate. [Student] is prone to anxiety which by itself may trigger her outbursts and behavior dysregulation.
- ...
- Diagnosis:
- | | |
|----------|--|
| Axis I | Impulse control disorder NOS; Anxiety disorder NOS, r/o PTSD |
| Axis II | Mild Mental retardation |
| Axis III | CHARGE syndrome |
| Axis IV | medical, social, emotional, academic |
| Axis V | 35 |
- Mother challenged some of the history included in the report. Much of what was troubling to her was irrelevant to the issues of this hearing. (Ex. B-231, B-232, Testimony, Board's Consulting Psychiatrist, Testimony, Mother)

CONCLUSIONS OF LAW AND DISCUSSION:

1. Section 10-76h(d), Connecticut General Statutes (C.G.S.), authorizes an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 4-176e through 4-180a, inclusive, and Section 4-181a. Section 615(f)(1)(A) and 615(f)(3)(E), Individuals with Disabilities Education Improvement Act of 2004 (IDEA) also authorizes special education hearings.
2. There is no dispute that Student qualifies for special education as Deaf-blind as provided at 34 C.F.R. 300.7(c)(2).

3. The standard for determining whether a Board has provided (or is offering) a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. The second *Rowley* test is whether the IEP was reasonably calculated to enable the child to receive some educational benefit. Since *Rowley*, courts have clarified the requirements of FAPE to hold that IEPs must provide more than a trivial educational benefit. (See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988), Cert. Denied 488 U.S. 1030 (1989) and *Oberti v. Board of Education of the Borough of Clementon*, 995 F.2d 1204 (3rd Cir. 1993).

4. There is no evidence of procedural errors on the record of this case. The Board's proposed program, by effectively duplicating as much of the Perkins program as possible, is clearly designed to enable Student to enjoy educational benefits. This hearing raises a fundamental philosophical question: what is the "least restrictive environment" for a deaf-blind child who is medically fragile, and has been in a residential setting where she is supervised at all times. It also raises a practical question: how much preparation must a school district do prior to a special education student's actual enrollment?

5. The test for least restrictive environment, *Daniel R.R. v. State Board of Education*, 874 F. 2d 1036 (5th Cir. 1989) as applied in *Oberti v. Board of Education of the Borough of Clementon School District*, 995 F.2d 1204 (3rd Cir. 1993) is:

- 1) can the child be educated in a regular class with supplementary aids and services, considering the whole range appropriate to the child's disabilities;
- 2) educational benefits to the child in regular class compared with benefits in segregated class;
- 3) consider possible negative effect of child's presence in the regular class for the other students.

The regulatory requirement of least restrictive environment is articulated at 34 C.F.R. 300.550(b): students with disabilities are to be educated to the maximum extent appropriate [to the student] with students who are not disabled. Removal from the regular education classroom: "... only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (20 U.S.C. §1412(a)(5)(A)) Student's disabilities are severe and challenging, and she has been receiving her education individually and in small groups of similarly severely disabled children. The Board proposes a program of individual instruction and small groups of students in the ALP program. The most important factor here is that the ALP students also have cognitive impairments. The primary reason that Student was found ineligible for Oak Hill is that the Oak Hill population was significantly lower functioning than she is. It is important that Student have an opportunity to work with students who are near to her cognitive level at least part of the day, and ALP appears to provide that kind of peers. Whether and how Student can participate in the regular education program is an issue for a future PPT.

6. Section 10-76h-14(a), R.C.S.A., provides that the Board has the burden of proving the appropriateness of the child's program or placement, or of the program or placement

proposed by said Board. This burden shall be met by a preponderance of the evidence. The Board has met that burden.

7. Section 10-76h(d)(1), C.G.S., provides special education hearing officers the authority to “confirm, modify or reject” the educational placement of a student eligible for special education. While the Board’s proposed program is a reasonable start, it needs more time each school day to be appropriate to Student’s complex and serious needs. The Board has tried to replicate the educational program offered by Perkins within a school day of six hours and twenty minutes. They have minimized some of the educational aspects of the residential program at Perkins, including daily living skills, informal socialization with peers and staff members, and activities such as swimming. Some activities, such as swimming, require more than a thirty minute time block. To accommodate Student’s full program, an extended day is necessary to provide two to three more hours of school time. Student also requires time to rest, and because of her unpredictable behavior, timeout is sometimes necessary.

8. For the most part, the Board has tried to duplicate the services being provided at Perkins within a dedicated classroom and a public high school. The stated advantages to this plan are formal and informal contact with other students, both those with disabilities in the ALP program nearby and those without. What is difficult to duplicate is the flexibility demonstrated at Perkins in dealing with Student’s variable energy and behavior. Through the use of a time-out area separate from the classroom for “calming down” and allowing Student to be escorted to her dormitory room to rest when she needs to, Perkins addressed behavioral and fatigue problems. The Board’s dedicated classroom will have a corner to serve the same purpose. Only after Student enrolls and participates in the program for a few weeks will it be possible to discuss the effectiveness of this arrangement.

9. Given Student’s history, it is important to plan and execute a careful transition. The details of that transition shall be planned by Parents, the Board and Perkins, and specific details are to be addressed at PPT meetings. The transition shall be planned for two to three months, and shall include counseling Student, visits by staff before and after, and consultation as needed. It may be that Student’s actual enrollment at the Board’s high school could be planned for right after the winter vacation, early in January, 2007, but the setting of the final date is left to the PPT.

10. The Board provided a schedule of activities provided by other agencies in town. To the extent that any of these activities may be offered within the time of Student’s extended day, the PPT may consider utilizing non-school resources, with paraprofessional and/or TVI assistance if necessary.

11. Behavior has been an issue of varying importance for several years. It is likely that outbursts will continue to happen, and that they are caused by both internal and external triggers. It is reasonable to use the most recent Perkins behavior plan initially. Prior to any significant modifications, a functional behavior analysis in the Board setting should be performed. With that data in hand, development of a new plan with the PPT should

follow. In consultation with Parents, a home component should be included, recognizing both that behavior at home may be different and priorities at home may be different.

12. Testimony concerning BESB provision of materials and equipment was mostly anecdotal. If the necessary materials and equipment have not been ordered, orders should be sent in immediately through Board's TVI and BESB Education Consultant. The transition period provides for some time for orders to be filled.

13. Independence is a theme of the Perkins program. However, Student is "supervised at all times", and though she does not have her own 1:1 paraprofessional, her class usually has had four students with a teacher and two paraprofessionals. The Board's proposed staffing – a TVI and a paraprofessional – is reasonable. In both placements, Student also receives a significant amount of related services.

14. Futures planning for Student has been discussed at PPT meetings. It is time to complete that process with Parental and Student participation. This can start prior to Student's move from Perkins or afterwards, and should be arranged by the PPT.

15. Parents' case has stressed the importance of an integrated program, addressing Student needs across all settings. The Board has demonstrated both the intent and the capability to provide an integrated program. With an extended day, activities of daily living can be included in various appropriate settings, including Student's home, with Parent permission.

16. Student's enthusiasm for swimming and talent for music should be encouraged, and these activities should be included in her program as frequently as possible.

17. In ordinary circumstances, a determination that the Board's program and placement are appropriate ends the inquiry. However, in this case it is important to go further. Perkins is also an appropriate placement for Student, and the dedication of Perkins staff has contributed to Student's progress. Whether incomplete or even incorrect communications between Board's TVI and Perkins staff were the result of lack of cooperation from Perkins or failure to direct more specific questions to the appropriate Perkins staff members by Board's TVI is not an issue in this hearing. Each party has alleged that certification and/or prior experience of various skilled school staff members should be a determining factor. Both Perkins and Board staff members who testified in this hearing were dedicated professionals, well-prepared and experienced in difficult specialties. In addition, most of them expressed enthusiasm for their work. There is no reason to question their competence.

18. One comment by a Perkins staff member concerning access to Perkins documents related to Student, that "it was not an LEA placement", is clearly incorrect. Considering the contracts between the Board and Perkins cited above, there is no reason why documents were withheld. On the other hand, contract language mentions that progress reports are provided, but other documents will be provided "upon request".

19. Parents, especially Mother, are to be commended for their work with Student. Both in well-organized, thoughtful testimony, and in managing a challenging child, she demonstrated a loving commitment to her daughter's future.

FINAL DECISION AND ORDER:

The IEP and placement in the Board's program for the school year 2006-2007 is appropriate to Student's special education needs in the least restrictive environment, if the school day is extended by two to three hours every day.

The PPT shall plan a transition for Student incorporating, but not limited to, elements mentioned above.

The PPT and Parents shall collaborate in scheduling Futures Planning for Student as soon as practical.

COMMENTS ABOUT THE CONDUCT OF THE HEARING, PURSUANT TO SECTION 10-76h(d)(1), C.G.S.

Both attorneys and both parties are to be complimented on efficient use of time, focus of questioning of many witnesses, and graciousness in a difficult case.