

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

Appearing for the Student: Mother, appearing *pro se*

Appearing for the Board: Ann C. Bird, Esq.
Senior Assistant Corporation Counsel
City of Hartford
550 Main Street, Room 303
Hartford, CT 06103

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

FINAL DECISION AND ORDER
(Phase I – FAPE/Placement Determination)

SUMMARY/OVERVIEW

In the 2006/2007 school year, the Student was a 16 year old identified as an 11th grader attending Hartford Public High School (“HPHS”), a Board operated mainstream public high school. He is eligible for special education and related services under the IDEIA on the basis of Attention Deficit Hyperactivity Disorder (“ADHD”), and has also been identified as having Oppositional Defiant Disorder (“ODD”) and Depressive Disorder – Not Otherwise Specified.

The Hearing Officer finds: (1) that the Board denied the Student a free appropriate public education (“FAPE”) by failing to definitively articulate at the May 31, 2006 PPT its recommended placement for the 2006/2007 school year and by failing to convene a PPT at the start of the 2006/2007 school year to address the still unresolved placement issue; (2) that as of the May 31, 2006 PPT and each subsequent PPT convened since then to date for the Student, an out-of-district therapeutic day program (as that term is defined herein) was the placement required to provide the Student with a FAPE in the least restrictive environment (“LRE”) for the 2006/2007 school year; (3) that the Board has not denied the Student a FAPE since the October 16, 2006 assault; and (4) that the Mother’s refusal after October 16, 2006 and in light of her rejection of a placement at the Hartford Transitional Learning Academy (“HTLA”) or Weaver High School (“WHS”), to consider a placement at an out-of-district therapeutic day program (even on an interim basis pending resolution of the placement issue) contributed to the loss of FAPE experienced by the Student after October 16, 2006.¹

¹ HTLA is a Board-operated school for students in grades K-12 with behavioral and other issues, and is the most restrictive in-district setting offered by the Board. WHS is a Board-operated mainstream public high school which was the Student’s home school during the second half of the 2006/2007 school year.

The Student is entitled to relief which is provided in the form of orders intended to afford him four more years to complete high school. More specifically, the Hearing Officer directs that the Board: (1) define the Student's "exit criterion" for IDEIA-eligibility to be able to succeed in the mainstream without special education and related services support; and (2) offer the Student special education and related services as determined by a PPT at Board expense through the end of the 2010/2011 school year, provided he remains eligible under the IDEIA and is residing in the Board's jurisdiction, and without regard to whether prior to the end of the 2010/2011 school year he satisfies the requirements for graduation with a regular high school diploma or is awarded such a diploma.

The Mother and the Board disagree over what constitutes the LRE placement for the Student.² The Mother wants the Student to attend a Board-operated mainstream public high school, specifically Bulkeley High School ("Bulkeley"), which is not the Student's home school. She contends that the Student's 2006/2007 school year plan developed at the May 31, 2006 PPT provided for a placement of the Student in a mainstream setting at Bulkeley with a set of supports similar to the STEP program he attended at HPHS in June 2006.

The Board at hearing contends that the Student needs to be placed either in an out-of-district educational program with a behavior management/therapy component (a "therapeutic day program placement"), or at the HTLA. The Board contends that the plan for the 2006/2007 school year developed at the May 31, 2006 PPT was for a placement in either one of these settings.

Because this placement issue remained unresolved and HPHS was the Student's home school at the start of the 2006/2007 school year, the Student returned to HPHS. The STEP program was not available at the start of the 2006/2007 school year at HPHS, and the Student began attending the Leadership Academy, which is a restrictive environment within HPHS that provides a different level and type of support than the STEP program. The Board conceded at hearing that the Leadership Academy was not an appropriate placement for the Student. The Student manifested substantial behavioral problems which interfered with his ability to participate in his program starting essentially from the first day of school and continuing until October 16, 2006.

On October 16, 2006, while at HPHS the Student was "jumped" (*i.e.*, assaulted) by three HPHS students (the "assaulting students"). The assaulting students restrained the Student in a choke hold and took his cell phone before letting him go. On October 17, 2006, the Student and his family met with the HPHS staff to discuss the incident. As they were leaving that meeting and while in a hallway at HPHS, one of the assaulting students and one or more of the other students who had observed but had not participated in the assault approached the family and threatened the Student in the family's presence. All three of the assaulting students were subsequently suspended and referred to the police, who arrested them. One of the assaulting students was transferred back to WHS. The second left HPHS to attend an adult education program. The third left the District in late January or early February 2007.

² As used herein, the term "Board" refers either to the Board of Education itself or to District staff. When used herein, the term "District" is not defined to include the Board of Education itself.

Citing concern for the Student's safety, the Parents have refused to let the Student return to HPHS since October 17, 2006 and have also refused offers to place the Student at WHS or HTLA. The Parents desire to have the Student attend Bulkeley, but have been denied permission for him to attend Bulkeley under the Board's school attendance policies. The Mother has also rejected proposals to place the Student out of the district in a therapeutic day program in part on the basis that the Student has "earned the right" to attend a mainstream high school following several years of placement at HTLA and at CREC Polaris, an out-of-district therapeutic day program. Since October 17, 2006, the Student has not attended school but has been receiving homebound tutoring services.

ISSUES SET FOR HEARING

By order dated May 9, 2007 (the "Seventh Order"), the Hearing Officer bifurcated this proceeding. This Final Decision and Order concerns Phase I and addresses these issues:

1. Whether the Student's IEP for the 2006/2007 school year was reasonably calculated to provide the Student with a FAPE in the LRE and, if not, to what relief are the Parents entitled.
2. Whether in the period since the date that the Student was assaulted at school on October 16, 2006 the District has denied the Student a FAPE and, if so, to what relief are the Parents entitled.
3. Whether placement in an out-of-district therapeutic day program is required to provide the Student with a FAPE in the LRE at this time.

Issues (1) and (2) were identified in the March 1, 2007 order and framed based on the Mother's allegations to that date. Issue (3) was identified by the Hearing Officer as an issue at the March 14, 2007 hearing. Neither party objected to addressing that issue in this case.³

Phase II is intended to determine the Student's present grade and earned credit status, and attendance record since the 2004/2005 school year, when he entered 9th grade.

PROCEDURAL BACKGROUND

A. Initial Pre-Hearing Activities

This matter was commenced by a written request dated January 31, 2007 submitted by the Mother on behalf of her son (the "Student"). That request (labeled as exhibit HO1) identifies the January 18, 2007 PPT as the triggering PPT for purposes of the hearing and states as follows:

³ See 3/14 Trans. at 73-76.

I never receive copies of the PPT or IEP. I was told [the Student] would be tutored at the Winsor library until the Board found a school in which they would pay for in district, out-of-district or private.

Nothing ever happens after the PPT. They sent a tutor Michelle Butler who came to my home with no work and took pictures of items in my house then had my son program her cell phone. I reported this and now she doesn't want to tutor him anymore.

I was told by Dr. Dolliman⁴ I couldn't ask for file a mediation complaint because they don't do it in Middletown. I would have to sit at the Board with the people I've been sitting with being lied to since 2005. Ester Walters from civil rights gave me this information and she has the copy of the mediation papers in which I filed in November⁵ and will be sending it back to me so I may present it at this mediation. Thomas⁶ I've sat with you years ago and I'm still going through this the teachers even told me to let my son drop out of school. Who is responsible when teachers lie and don't do there job? [sic]

No sufficiency challenge was filed.

A telephonic pre-hearing conference ("PHC") was convened on February 16, 2007. Counsel for the Board (Ms. Bird) and the Mother, who is not represented by counsel participated. The Mother reported the following at the PHC:

The Student was attending his program at HPHS. During October of 2006 he was "jumped" by other HPHS students at HPHS. After that incident, the District advised the Mother that for the Student's own safety he should no longer attend HPHS and that the District would provide his programming in another placement. Since then the Student has not been attending school and for most of the period since then has not been receiving any services. The Student was receiving tutoring provided by the District in his home or some other community setting for a period of time after October but since approximately December has not been receiving any tutoring, services or programming. The Mother has been unsuccessful in getting the District to address the Student's situation. At some point after October, she asked District staff about mediation or due process and was told that mediation and due process were not available. She subsequently conferred with a community-based special education advocacy group, was told that due process was available to her and thereafter commenced this proceeding. The Student remains out of school and is not receiving any services called for under his IEP.

⁴ Dr. Romain Dallemand is the Board's Assistant Superintendent for Special Education.

⁵ The Mother was directed in the Sixth Order to produce these documents, but did not do so. They are not part of the record in Phase I.

⁶ Referring to Mr. Badway of the CTDOE's Due Process Unit.

The Board's counsel was unfamiliar at the PHC with the Student's precise circumstances and could not verify one way or the other whether the Student was or was not receiving services and if he was not receiving services, for how long he had not been receiving services. The Hearing Officer advised the parties that he was cognizant of the fact that this was the Mother's version of events, and that she would need to establish her factual claims through appropriate evidence at hearing, but that he considered the Mother's allegations to be very serious and was very concerned that the Student may not have been receiving any services for an extended period of time and may not currently be receiving services. Counsel for the Board agreed that if the Student's circumstances were as the Mother described that that situation must be addressed quickly pending the outcome of this hearing. She agreed to confer with her client and arrange for a PPT to be convened as quickly as possible to address the provision of services and reimplementation of programming for the Student pending the outcome of this hearing process.

By order dated February 16, 2007 (the "Initial Orders"), the Hearing Officer directed the Board to convene a PPT as soon as possible to review the Student's status, the provision of services to the Student and the Student's placement pending the outcome of this hearing. That PPT was also to be convened as a resolution meeting. A second telephonic PHC was scheduled for March 1, 2007 so that the parties could report to the Hearing Officer on the efforts to address the Student's educational needs pending the outcome of this hearing and any other matter pertinent to this hearing. That order also implemented a schedule for the submission of witness lists and records, and established two hearing dates: March 14 and 19, 2007. Identification of the issues set for hearing was deferred to the March 1, 2007 PHC.

The Board reported on February 28, 2007 that a resolution meeting took place on February 27, 2007 and was not successful. At that time, the Board also filed its answer to the request for due process and its report regarding the resolution meeting in accordance with the Hearing Officer's directive at the PHC and in a February 28, 2007 e-mail (time stamp 10:33 a.m., included in HO12), as follows:

-----Original Message-----

From: Bird, Ann F. [mailto:birda001@hartford.gov]

Sent: Wednesday, February 28, 2007 1:49 PM

To: Myers, Scott P.

Cc: [MOTHER]

Subject: RE: DOE 07-020

Good afternoon

This is to report briefly on yesterday's resolution meeting and the student's current status. In light of the parent's report to you on the substance of the positions taken at the meeting,⁷ this report does the same. I am confident that the testimony and documentary record will echo these same conflicts when they come before you more formally as the Hearing Officer.

I did not attend the resolution meeting because [the Mother]s is not represented by counsel. I

⁷ The Mother's report of this resolution meeting is set forth below.

believe the meeting was convened as a meeting and not a formal PPT. It was attended by Dr. Romain Dallemand, Assistant Superintendent for Special Education and Arleen Glass-McFadden, Coordinator as well as [the Mother], the student and two non-lawyer parent advocates associated with a local parent support organization.

The meeting did not result in a resolution of the complaint. **Hartford again advised the parent that the student is welcomed to and should attend either his current district school, [WHS], or his most recent school, [HPSH] (where he also attended last school year). Both schools are well equipped to provide the program identified in the student's IEP - the student's program does not dictate that he be educated in one school or the other.** Further, Hartford does not believe that the student's safety is at risk at either of these schools and has never so advised the parent. Although the student apparently was involved in an altercation with one or more individuals – we understand after school and off school grounds⁸ - Hartford does not believe that the student is at risk from these individuals while attending school. Notably, although one of the individuals involved in the altercation apparently attends [WHS], we do not believe that anyone who even arguably might present a danger to the student currently attends [HPSH].

As she has previously done, the parent again refused to consider [HPSH] or [WHS], insisting (we believe irrationally) that these schools would not be safe for her son. **In light of the parent's concern, as unfounded as we believe it is, Hartford also offered to place the student in one of several identified out-of-district school programs that can provide an appropriate program. Again, however, the parent refused to consider these suggestions.**

Throughout the meeting, the parent conducted herself in an extremely hostile and abusive manner. Ultimately, the meeting had to be ended as a result of her extremely inappropriate and offensive behavior. In the end, Hartford was left with no alternative but to agree to attempt to provide tutoring services for the student. Unfortunately, four different tutors have been assigned to provide these services for the student over the past months. Each tutor has quit the assignment, citing abusive and uncooperative behavior of the parent. At this point, Hartford has not been able to identify a qualified tutor who is willing to work with the student, although it will continue to seek out such an individual.

As suggested from the above narrative, due to the parent's unreasonable demands and abusive behavior, the student currently is neither attending school nor receiving tutoring services. Hartford will continue to seek a tutor who is willing to work with the student and remains ready to educate the student at [HPSH] or [WHS] or, alternatively, to enroll him in an out-of-district school at Hartford's expense.

HO12 (emphasis added). Upon receipt of this statement, the Hearing Officer advised both parties as follows:

-----Original Message-----

⁸ By e-mails dated March 6, 2007, Ms. Bird corrected this statement based on her review of the records and acknowledged that the October 16, 2006 assault did occur at HPSH and the youths involved were HPSH students. (HO11)

From: Myers, Scott P.
Sent: Wednesday, February 28, 2007 2:03 PM
To: 'Bird, Ann F.'
Cc: [MOTHER]; Myers, Scott P.
Subject: RE: DOE 07-020

Ok thanks. As is the case with the statements in the Parent's communications, what Ms. Bird has set out below is the Board's view of the situation and reflects the position it is taking and the facts it will be seeking to establish at hearing. I will talk with both of you tomorrow [at the PHC].

On February 28, 2007 the Mother also advised the Hearing Officer by an e-mail that the resolution meeting had not been successful as follows.

-----Original Message-----

From: [MOTHER]
Sent: Wednesday, February 28, 2007 2:44 AM
To: Myers, Scott P.
Subject: [STUDENT'S] ppt yesterday⁹

Good Morning: Scott today was the ppt meeting at the board of education it didn't go well. Dr. Dollimond had nothing to offer me but the alternative schools and [HPS] and [WHS]. ***These schools are were the students that assulted my son attends and I know this isn't good for his safety. I do not wish to talk to Dr. Dollimond anymore I am tired of being lied to this stress is not good for me. I told you I was going to have several lumps removed from my head and my doctor says stress is playing a big part of what I am going through.*** I did ask to speak to Steven Adamowski but he did not want to speak to me. Kathy his secretary said he would call me and that was last month I haven't heard from him yet. I even asked to speak to him after the ppt he was standing right in front of me he went in his office and the guard sent martha Benthum instead. Steven took an oath to help the children in Hartford but who's really helping them? I can't keep going through this stress but when it's all said and done I will be calling the news station after the next ppt meeting. This is not only taking a toll on my son it has done alot to me also and I am going to see if I could get some legal help for being put through this stress. ***The bully law is a joke. The no child left behind law is a joke. The ppt's are a joke because they fill them out after the meeting and put what they want to put in them for your kids. My son is in the 11th grade and has never been taught division. What a joke.*** Some one will hear my story I know it's just a matter of time. I mean someone that will make a difference. Because I know I am not the only parent these people are doing this to and I hope this one voice make a difference for the next family. ***At the next meeting I do not want to talk to Dr. Dollimond at all he put me out of his office because I told the truth about the lies he has been telling me for months.*** But you know who is really sick of this? ME. They claim my son would have a tutor by friday. Like I said you can't ask Dr. Dollimond because he put me out his office and the meeting was held in the waiting room with Martha Benthum and the people that was there for my son. ***I've have dealt with Ann Bird before and from what I know parents opinion doesn't matter the board of education lie and stick together so I hope the next meeting will not have my blood preasure***

⁹ The meeting was a resolution meeting, not a PPT.

up or the headaches that I get from these people lies cause me to have to go back to the doctor. Because all this is really not called for but I plan to get a note from my doctor stating this is not good for me. And stress is a big part of what I am going through and I plan to do something about as soon as my son get situation as far as him getting in a school not having a tutor. ***This tutor is the boards way and it is not exceptable to me. He was assaulted and the bord did nothing and now is trying to put him back in harms way. I don't think so.***

HO12 (emphasis added).

The Hearing Officer interpreted this communication to state claims that appeared to be outside of his jurisdiction, and he issued an order on February 28, 2007 (the "Second Order"), which states as follows, among other things:

The Hearing Officer assumes that the District has in place policies and procedures to protect students in its schools from bullying and other student-on-student harassment and to comply with the No Child Left Behind Act. The Hearing Officer does not, however, as a general matter have the authority to determine whether those policies and procedures are in compliance with applicable law or to compel the District to modify these policies or procedures or to enforce them. To the extent that the Parent has complaints about these matters, she must address those claims through other processes and mechanisms.

The Second Order identified April 16, 2007 as the date for issuance of the Final Decision and Order, and directed the Board to include the following documents in its record:

- a. The Student's IEPs (and related PPT minutes) for the 2003-2004, 2004-2005, 2005-2006 and 2006-2007 school years, showing the Student's progress in attaining his goals and objectives in each of those school years.
- b. The Student's disciplinary records (if any).
- c. The results of any triennial or other evaluations of the Student.
- d. The Student's attendance records and report cards for the 2003-2004, 2004-2005, 2005-2006 and 2006-2007 school years.
- e. Documents evidencing the dates on which tutoring services have been provided to the Student since the October 2006 assault.
- f. Any "incident" or similar report regarding the October 2006 assault.
- g. Any final decision and order issued in any prior due process proceeding involving the Student. Any written settlement agreement resolving any due process hearing or complaint to the CTDOE regarding the Student asserted by the Mother. The results of any CTDOE investigation regarding a complaint made by the Mother, to the extent the materials are in the Board's possession.

By e-mail on February 28, 2007 (time stamp 11:55 a.m., included in HO12), the Mother advised that she had a doctor's appointment on March 1, 2007 shortly after the scheduled start of the PHC. She stated "I hope this can be resolved in less then that time. I don't fill [sic] that good. From all this stress." The Hearing Officer responded, advising that the PHC should be concluded before her appointment but could be continued to a later date and time if it had not concluded by the time she needed to leave for her appointment. (HO12, February 28, 2007 e-mail time stamp 12:02 p.m.)

A second telephonic PHC convened on March 1, 2007. The topics discussed at this PHC included, among other things, the issues to be set for hearing, the scope of the Hearing Officer's jurisdiction in relation to some of the claims being stated by the Mother, identification of witnesses and the submission of exhibits.¹⁰

B. Parent Exhibits and Witnesses

At hearing on March 14, 2007, the Parent offered four (4) documents for the record, marked as exhibits P1, P2, P3 and P4 inclusive. P1-P3 were described as having been prepared by Mr. Horvath, one of the Student's tutors. At the hearing, in response to a request by the Mother, the Board provided some documents regarding the "special permission" application to attend Bulkeley. These documents were marked as exhibit P4. All of these exhibits were admitted into the record by agreement.¹¹

On April 12, 2007, the Mother sent three documents to the Hearing Officer without explanation. The Hearing Officer presumed that these were potential exhibits that the Mother desired to have entered into the record at the April 23, 2007 hearing, and marked the documents as Exhibits P5, P6, P7 and P8. These exhibits were admitted into the record at the April 23, 2007 hearing by agreement. (4/23 Trans. at 11-12.)

As of March 1, 2007, the Mother identified the following as witnesses she intended to call as part of her affirmative case:

Father;
AFCAMP representatives working with the family;¹²
Ms. Ramos (HPS Vice Principal);
Ms. Allan (HPS Support Staff);
Ms. Davis (HPS Vice Principal);
Mr. Johnson (Hartford Public Schools ("HPS") Senior Director, Social Work Services);
Ms. Tyson (HPS Coordinator, Special Education);

¹⁰ The Mother did not at this PHC state any objections to the directive that the Board include prior due process hearing decisions and disciplinary records in its record.

¹¹ The parties were advised that all documents admitted into the record would be treated for evidentiary purposes as a business record of the entity which created the document. (3/14 Trans. at 33)

¹² AFCAMP is a special education advocacy group.

Ms. McFadden (HPS Senior Coordinator, Special Education)
Ms. Gould (HPS Coordinator, Special Education);
Ms. Bentham (HPS Parent Advocate)

On March 14, 2007, the Parent called the following witnesses to testify: the Father; Ms. Gentles (from AFCAMP), Mr. Johnson, Ms. McFadden and Ms. Gould. The Student also testified.

The responsibility of the Mother and the Board for making witnesses identified by the Mother available for hearing was discussed at the March 1, 2007 PHC. The Mother was advised that she was responsible for arranging to have any non-Board employee she intended to call as a witness appear for the hearing.¹³ The Board agreed to make Board employees identified by the Mother available to testify without the need for a subpoena.

The Mother on several occasions at this hearing date, on other hearing days and in various e-mail communications stated or suggested that the Board was not making witnesses available and that she was not going to “wait around” while the Board’s witnesses were summoned.¹⁴ She appeared to suggest that the Board’s counsel was somehow obstructing the proceeding or interfering with her right to examine witnesses by not having the witnesses physically present throughout the hearing. There is no merit to those claims. The Parent was offered full access to the Board’s witnesses that she had asked be available to testify, pursuant to the pre-hearing scheduling order.

C. Board Exhibits and Witnesses

The Board submitted as its initial record documents marked as exhibits B1 – B34. All of these documents were admitted into the record. The Mother at hearing objected to the admission into the record of exhibits B1 (the final decision and order issued in a prior due process hearing between the Mother and the Board) and B34 (records of the Student’s disciplinary history in prior years). She contended that these materials were not relevant to

¹³ On March 12, 2007 the Hearing Officer was contacted by one of the Mother’s witnesses, a representative from AFCAMP, who expressed some confusion as to when and where the hearing on March 14, 2007 was to take place, and advised of time constraints that she had on her appearance. (HO12, e-mails at 11:54 a.m. and 12:08 p.m.)

¹⁴ On March 9, 2007, the Board advised that Ms. Bentham was not available on March 14, 2007 but would be available on March 19, 2007. On March 12, 2007, the Board requested leave to have some of the Board-employee witnesses requested by the Mother on call for the March 14, 2007 hearing rather than present throughout the entire day. The Board’s counsel represented that a number of these individuals worked within the same building at which the hearing would occur, were on notice regarding the hearing and would appear when needed on short notice. The Hearing Officer concluded that that arrangement was reasonable, the Board at hearing acted in compliance with its representations and the flow of the hearing was not disturbed or burdened as a result. At hearing on March 14, 2007, Board’s counsel was accompanied by two of the Board witnesses identified by the Mother (Ms. Tyson and Ms. Glass-McFadden) both of whom remained throughout the hearing. In fact, both Ms. Glass-McFadden and Ms. Tyson were present at every hearing date for the entire hearing date. *See, e.g.*, Mother Statement 3/14 Trans. at 161-170; HO12 (March 9, 2007 e-mail date stamped 9:06 a.m. and two e-mails at 12:32 p.m.; March 12, 2007 e-mails date stamped at 9:23 a.m., 11:28 a.m. and 11:54 a.m.)

her claim in this hearing and reflected an attempt by Board's counsel to relitigate prior events that had been resolved. The Mother maintained her objection notwithstanding the fact that the Hearing Officer had directed that the Board include these materials in its record to provide additional background regarding the Student's present circumstances.¹⁵ The Mother's relevance objection was ultimately overruled. (3/14 Trans. at 241-246)¹⁶

At hearing on May 21, 2007, a version of B19 referred utilized by Ms. Gemmell in her testimony (which consists of pages B19 at 1, 2, 3, 4, 5, 6, 12, 13, 14 and 15) was marked as B35 and admitted into the record. (5/21 Trans. at 62).¹⁷ Several of the witnesses testifying on that day stated that Ms. Bird has communicated with them by e-mail regarding the hearing. At the Mother's request, and absent objection from Ms. Bird, those e-mail communications were marked as B36 and admitted into the record. (5/21 Trans. at 93-94)¹⁸

On March 19, 2007, the Board called the following witnesses to testify:

Mr. Johnson (HPS Senior Director of Social Work Services);
 Ms. McFadden (HPS Senior Coordinator, Special Education);
 Ms. Bentham (HPS Parent Advocate);
 Mr. Wehrly (HPS Special Education Teacher and HTLA Transition Coordinator);
 Mr. Dabrowski (HPS School Social Worker);
 Mr. Horvath (the Student's 10th grade history teacher and tutor)

D. Hearing Officer Exhibits and Witnesses

The following documents were marked as Hearing Officer ("HO") exhibits.

HO1 Mother's January 31, 2007 request for a due process hearing.

HO2- Provisions of the American Psychiatric Association's Diagnostic and
 HO3 Statistical Manual of Mental Disorders, Text Revision 4 ("DSM-IV-TR")
 pertinent to ADHD and ODD, two of the diagnoses given to the Student.
 In the March 1, 2007 Order, the Hearing Officer advised the parties that he
 would take administrative notice of these materials. Neither party
 objected. A copy of these materials was sent to each party with the March
 1, 2007 order.

¹⁵ The Mother also raised these claims in various e-mails. (*See, e.g.*, HO12 at 5-6, March 6, 2007 e-mails stamped at 12:52 and 1:38 p.m.)

¹⁶ During this interchange, the Mother became very agitated and argumentative and had to be reminded by the Father to have patience with the process.

¹⁷ The transcript incorrectly identifies this as an e-mail to Ms. Gemmell.

¹⁸ With the consent of the Hearing Officer, Ms. Bird assembled this exhibit following the hearing and submitted it to the Hearing Officer and the Mother on May 25, 2007.

- HO4 Copy of a letter sent by the Hearing Officer to the Father's employer stating that the Father attended the March 14, 2007 hearing. At the hearing, the Father asked that the Hearing Officer send such a letter and the Mother consented to that request.
- HO5 E-mail communications between and among the Parent, the Board's counsel and the Hearing Officer regarding the March 19, 2007 hearing.
- HO6 E-mail communications between the March 19 and April 23, 2007 hearing between the Mother and the Hearing Officer regarding further proceedings in this case.
- HO7 USPS certified mail delivery receipt executed by the Student acknowledging delivery of the transcripts of the March 14 and March 19, 2007 hearings.
- HO8 Copy of a letter sent by the Hearing Officer to the Father's employer stating that the Father attended the April 23, 2007 hearing. At the hearing, the Father asked that the Hearing Officer send such a letter and the Mother consented to that request.
- HO9 The Board's May 3, 2007 submission in compliance with the Sixth Order.
- HO10 May 10, 2007 e-mail from the Mother to the Hearing Officer
- HO11 Certain e-mails dated March 12, 2007
- HO12 Certain e-mails

The following Board witnesses testified at the May 21, 2007 hearing at the request of the Hearing Officer:

Romaine Dallemand (HPS Assistant Superintendent for Special Education);
Charlotte Gemmell (HPS Special Education Coordinator);
Aida Fernandez-Ramos (HPS Vice Principal);
Paul Stringer (WHS Principal)

E. Implementation of Special Procedures for Testimonial Evidence

As described more fully herein, the Hearing Officer exercised his discretion under the Connecticut Regulations to establish special procedures for the taking of witness testimony.¹⁹

¹⁹ The parties to a due process hearing have, among other rights, the right to examine and cross examine witnesses, compel the attendance of witnesses, present documentary evidence and be represented by counsel. *See generally* IDEIA, 20 U.S.C. § 1415(h); Conn. Regulations Section 10-76h-11. Conn. Regulations Section 10-76h-11(a)(2) provides, in pertinent part, that each party has the right to: "A reasonable opportunity, as determined by the hearing officer, to present evidence and confront [and] cross-examine . . . witnesses."

Neither party objected to these procedures which were established to minimize aggravating the Mother's reported health issues and to minimize exposure of testifying Board employees to the Mother's abusive comments and agitated, angry behaviors which were interfering with the orderly progress of hearing. The Hearing Officer concluded that absent implementing these special procedures, the Student's interests would have been prejudiced by the Mother's inability to maintain an appropriate demeanor at hearing.

The Mother is very, very frustrated with and angry at the Board, whom she states has "screwed" her and the Student "enough,"²⁰ and very, very angry at the various Board witnesses who testified. She had a great deal of difficulty listening to the testimony of the Board's witnesses without expressing her anger. When angry, the Mother yells and screams, becomes verbally aggressive and abusive and becomes physically agitated. The combination of behaviors makes her very intimidating. At times when she reached this state she could be redirected and hearing could resume. At other times she could not be redirected. On many occasions during the hearing she directed abusive and hostile remarks toward Board witnesses and Ms. Bird, and had to be asked to direct her comments to the Hearing Officer rather than at the Board employees present in the hearing room.²¹ The Mother's behavior during these episodes would have justified removal from the hearing room, which would have effectively precluded her from advocating on the Student's behalf.²² In addition, the Mother frequently interrupted the proceedings in dramatic ways.²³

Section 10-76h-13(a) of the Conn. Regulations provides, in pertinent part, that the Hearing Officer "shall take reasonable measures . . . to ensure that . . . the hearing is conducted in a fair and orderly manner." Section 10-76h-7(b) of the Conn. Regulations provides, in pertinent part, that the Hearing Officer "may establish dates for the completion of each party's evidence" and Section 10-76h-7(d) that the Hearing Officer "shall have the sole discretion to determine the length of the hearing, taking into consideration the issues presented."

²⁰ HO12 at 19 (e-mail time stamped 11:28 a.m.)

²¹ The Mother became very agitated at the April 23 hearing, and had to be asked by the Hearing Officer to direct her responses to the Hearing Officer rather than to Ms. Glass-McFadden. (4/23 Trans. at 58) The Mother stated it was "hard for her" to participate at the hearing because she wanted to address the issues she had with Ms. Glass-McFadden "right here now in her face." (Mother Statement 4/23 Trans. at 58) At one point, she called Ms. Glass-McFadden "ugly." (4/23 Trans. at 108-109, 111-112) Ms. Gould was also a target of the Mother's anger and hostility regarding the Board and she had to be reminded not to yell at Ms. Gould. (Trans. 3/14 at 160-161) At the May 21 hearing, during testimony by Dr. Dallemand, the Mother became agitated and kept interjecting. (5/21 Trans. at 22-40; some time was spent explaining what she needs to do to create a record for appellate review). The Mother became agitated during Ms. Gemmell's testimony (5/21 Trans. at 82-83) and Ms. Ramos' testimony (5/21 Trans. at 114-115) On several occasions on the various hearing dates, the expressed hostility to Ms. Bird (*see, e.g.*, 5/21 Trans. at 140-141-claiming that Ms. Bird has "had it out for [the Student] since the 5th grade").

²² It is also noted, however, that the Mother's mood and demeanor varied tremendously over the course of each hearing day. In between her angry emotional outbursts, she manifested periods of relatively appropriate participation.

²³ For example, the Mother complained of feeling or being ill, and stated that the hearing had to stop or couldn't proceed because she needed to take medication that she did not have with her. She declined to take a break however and the hearing continued. (4/23 Trans. at 69-70) The same thing happened later in the hearing. (4/23 Trans. at 108-109, 111-112) This type of behavior was also noted by Hearing Officer Gelfman in a prior

The Mother is a fierce advocate on behalf of her son. However, she has very strongly held beliefs, can be impulsive and impatient, is quick to become angry, is inflexible, perseverates on details to the exclusion of the “bigger” picture, has little tolerance for the point of view of others, and focuses all of her attention on whatever is her current concern. All of these factors combine to impair the effectiveness of her advocacy.²⁴

F. Communications through March 12, 1007

Through March 12, 2007, the Hearing Officer exchanged the following e-mails with the Mother. (HO12)

#1 -----Original Message-----

From: [MOTHER]

Sent: Tuesday, March 06, 2007 12:52 PM

To: Myers, Scott P.

Subject: RE: DOE 07-020

Ann. the mediation that you had with me and my son about six years ago is what I see you are trying to bring up with Mary Ann Sullivan. Should I send the two books to scott of the whole hearing? I do still have it. And another thing. As the meeting take place can I also have my tape recorder in the meeting? For my own personal use? I will not be sending you anything about this case we will go with what you have. Everything that I never received from hartford High that was in the folder I will be keeping for my records. I look forward to seeing you and Mary Ann at the hearing. And please don't forget to bring the books from the hearing six years ago. Mediation should have there cpoie already. The exact date would be Oct. 31st 2002 and the meeting was with Mary Gelfman the hearing officer. I see this is what you are building you case with and this nor do Mary Ann have anything to do with what is going on now. I should be able to bring this to the hearing. The hearing office should have a copy already. I know you do that is why Mary Ann name is on your list. But I am not a lawyer but I don't beleive you can do this. I plan on getting the imformation that I need after this hearing. Don't forget to let me know about the tape recorder. I was told as long as I let everybody know that I would be bringing one the hearing officer is suppose to allow this.

due process proceeding. (F12) A citation in the format “F#” refers to the corresponding numbered paragraph in Attachment A hereto.

²⁴ The Student attended the entire hearing on March 14, 2007. Although apparently suffering from a cold, he sat quietly throughout, was paying attention and following the testimony, and interacted appropriately with District staff, the Hearing Officer and his Parents. He testified briefly, and was soft spoken and articulate. The Student attended the entire hearing on April 23, 2007, was attentive to and followed the testimony throughout, participated appropriately and interacted appropriately with District staff, the Hearing Officer and his Parents. The Student attended the May 21, 2007 hearing. At a number of points during that hearing, he assisted the Mother in her attempt to cross-examine witnesses. As the Mother’s agitation level increased, the Student’s tolerance for the process decreased. However, at all points during the hearing his behavior remained appropriate.

#2 -----Original Message-----

From: Myers, Scott P.

Sent: Tuesday, March 06, 2007 1:32 PM

To: '[MOTHER]'; 'Bird, Ann F.'

Cc: Myers, Scott P.

Subject: RE: DOE 07-020

I am responding to the [March 6, 2007 12:52 p.m. e-mail from the Mother], which I am copying to Ms. Bird.

At my request, the Board included in its record in this hearing a decision by Hearing Officer Gelfman in Case 02-250. Accordingly, the presence of Hearing Officer Gelfman's decision in the Board's documents should not be understood to be an attempt by the Board to revisit the issues that were decided by Hearing Officer Gelfman. It is my standard practice to review prior due process hearing decisions involving the parties as part of any case that I am assigned. Hearing Officer Gelfman's decision is a final decision that has not been appealed, and the issues that she decided will not be re-reviewed or re-decided in the hearing before me.

Accordingly for purposes of my decision, there is no need to provide me with the entire record of the proceeding before Hearing Officer Gelfman. That being said, if there are some specific documents that were part of the record before Hearing Officer Gelfman that you believe are relevant to the issues before me and that are not included in the Board's record, you may provide them as part of your record. (Ms. Bird, I interpret the request from [the Mother] that the Board have available a copy of that record. If the Board still has these materials, please make them available at the hearing.)

I also asked the Board to provide me with IEPs, attendance records, disciplinary records and reports for the Student for the past several years. Some of those records may also have been before Hearing Officer Gelfman. Once again, my purpose in requesting these documents from the Board was not to revisit the issues decided by Hearing Officer Gelfman. Rather my intent was to have sufficient historical information available to me about the Student's past educational experiences and IEPs to evaluate the claims of the parties regarding the 2006/2007 school year.

As to the issue of the tape recorder, there is a difference between tape recording a PPT and tape recording a hearing. The hearing before me will be recorded by a Court reporter who can produce a written transcript of the proceeding. This might serve your purposes better than a tape recording of the hearing. In any event, I will let Ms. Bird state the Board's position on tape recording the hearing itself. To the extent that this is an issue between the parties, I will decide it.

#3 -----Original Message-----

From: [MOTHER]

Sent: Tuesday, March 06, 2007 1:53 PM

To: Myers, Scott P.

Subject: RE: DOE 07-020

Scott: One more thing. The board never did any iep. They took the one from the H.T.L.A's records and sign it. Nor was he evaluated at H.P.H.S. Everything they have comes from his previous schools and this is to make us look stupid and this isn't right also.

#4 -----Original Message-----

From: [MOTHER]

Sent: Tuesday, March 06, 2007 2:39 PM

To: Myers, Scott P.

Subject:

Scott: The board granted [the Student] Speacial permission to go to [BHS] I guest Ann has forgot to send this with the packet. The principal then denied him. If possible can I get this in writing also? [The Student's] attendance past and current I have not recieved nor his correct grade or his grades to date the computer at H.P.H.S has been marking him absent and he has had a tutor. Homebound they call it and Leigh Ann Tyson and Mrs. McFadden has been giving me this **information since 2005 up until this day I haven't received anything yet. Forgive the misspelling in the word information the computer sometimes will not let you use the letter n. Can I get this information before the hearing? For my records** [Emphasis in original.]

#5 -----Original Message-----

From: Myers, Scott P.

Sent: Tuesday, March 06, 2007 2:51 PM

To: [MOTHER]

Cc: 'birda001@hartford.gov'; Myers, Scott P.

Subject: RE: DOE 07-020

We will address all of these issues at the Hearing.

#6 -----Original Message-----

From: [MOTHER]

Sent: Tuesday, March 06, 2007 3:07 PM

To: Myers, Scott P.

Subject: RE: DOE 07-020

Scott: you told me Ann was suppose to send me the information from the school. So now why is it that we will address the information at the hearing? This is not what you told me. ***All information regaurding [the Student] from the board was to be sent to me. Those were your words so whats the problem now? Can we do this fair? or is to late for me to get another hearing officer? Iam not understanding it seems to me you have already took the board side. You did say all evidence from both parties was to be sent to each other so what's really going on?*** And as I said I have been sending the messages to Ann. Why she claim she isn't getting them I can't tell you but I can show that I saved and sent them to her e-mail. See you at the hearing. [Emphasis added.]

#7 -----Original Message-----

From: Myers, Scott P.

Sent: Tuesday, March 06, 2007 3:30 PM

To: [MOTHER]; 'birda001@hartford.gov'

Cc: Myers, Scott P.
Subject: DOE 07-020

[This e-mail responds to the Mother's 1:53 p.m. and 3:07 p.m. e-mails:]

1. In your original e-mail to me above (time stamp 1:53 pm) you are making argument to me and presenting evidence. My response to you ("We will address all of these issues at the hearing") reflects the fact that evidence needs to be presented at hearing, under oath. My response to you is simply that I will take testimony from you on that claim and will take testimony from the Board on that claim.

2. When I open your e-mails, all I can see is my address. Accordingly, it is not clear to me that you are sending the e-mails to Ms. Bird. If you are sending them to Ms. Bird that is fine.

3. Ms. Bird has not made any claim that she is not getting your e-mails. On several occasions today when I have tried to send her an e-mail in response to an e-mail that you have sent to me, my e-mail to Ms. Bird has been rejected as undeliverable. You are apparently having the same problem that I am in getting to Ms. Bird by e-mail today. I believe there is something in one of the e-mail strands that has been circulating that is causing her server to reject the e-mail. Hopefully that will be corrected if we use a new strand.

4. One of your e-mails to me today asked for documents to be provided to you. I do not have the documents and in my response I was suggesting that you contact Ms. Bird to obtain the documents. My orders regarding the submission of the record provide that the Board will submit the documents it wants to present to me and the Parent can use any documents submitted by the Board as part of the Parent's record as well. If the Parent wants to add other documents that were not included in the Board's record, the Parent is free to do that as part of his/her record. If there are additional documents that you want to have included in the record, I would suggest that you contact Ms. Bird to see if she would be willing to help you get them. That would be the quickest way to get the documents for the hearing.

5. Please be advised that I have not taken and am not taking anybody's side in this in this matter and have not made any decision on anything that is in dispute. If you would like to have another hearing officer assigned to this case, you may make a motion that I recuse myself. The motion must state the legal grounds on which you contend I cannot be impartial and must be sent to Ms. Bird at the same time you send it to me. Ms. Bird will have an opportunity to respond and then I will decide the motion. That is how the process works.

(HO12)

On March 12, 2007, the Mother sent the following e-mail to the Hearing Officer and the Board's counsel:

#8 -----Original Message-----

From: [MOTHER]

Sent: Monday, March 12, 2007 9:23 AM

To: Bird, Ann F.

Subject: The tutor that they send to my house with no clue.

Good Morning:Ann I have a tutor in my house that is trying to teach [the Student] what he is suppose to be taught but she can't get the materials or anything else from the board or Hartford High.Gail has been calling the school and all you get is a answering machine.No one ever calls you back.This is what I have been going through for almost

two years. No one tells these tutors anything they just send them to my house with no materials so that the board can say they sent a tutor. ***Friday I was told by my doctor that I have high blood pressure and put on medication. The doctor is monitoring it because it is still very high. Tomorrow at this meeting²⁵ I know I will become upset from the lies that the board always tell to make there self look good. My health is what I am concerned about and if anything happens to me while I'm there you and the rest of the people that has put me through this foolishness will be held accountable for it. I am not to get upset but how can I not when everyday the board staff are lying on me and my son instead of giving him the help that he needs.*** And to just put him in a alternative school for no reason to say he is in school is not the solution. He's sitting here now with the tutor and is barely getting his multiplications done and they should have taught him this in elementary school. But all the people that I chose for a witness can't be reached or will be making a phone call. ***My health is at stake here and I pray to god that I don't get any sicker then I am feeling right now because you and everybody else there will have to answer to it from my doctors point of veiw.*** And one more thing it's real strange your e-mail wasn't working until the day before the hearing.

HO11 (emphasis added).

G. The March 14, 2007 Hearing

The Mother, Father and Student attended this hearing. While asking questions of the Board's witnesses, the Mother tended to testify and both the Mother and Father tended to interject comments on the testimony being offered. To address this issue, both the Mother and Father were sworn and advised that statements that they made while asking questions or commenting on responses being given by the witnesses they were examining, or in response to comments from the Hearing Officer or Board's counsel, would be treated as testimony subject to examination. (3/14 Trans. at 43)

The Mother asked Ms. Gentles (from AFCAMP), Ms. Glass-McFadden, Mr. Johnson, Ms. Gould and the Father to testify at this hearing date. After Ms. Gould testified, the Mother stated that she did not have anybody else that she wanted to question, stated that she was not feeling well and proposed to "adjourn this meeting." When asked if she wanted to have the Father testify, she stated that she did and hearing continued. (3/14 Trans. at 164-165)

When she finished her direct examination of the Father, the Mother stated that she did not want to offer any more testimony for her direct case. (Parent Statement 3/14 Transcript at 193) Since it was only approximately noon and the entire day had been reserved for hearing, the Hearing Officer asked Board's counsel if the Board was ready to proceed. At that point, the Mother stated that:

I got a daughter that I have to be home for when she get off her school bus. So like I keep saying, I'm not sitting here all day. I have other things that I have to do. Ms. Bird, I mean, her people should have been here already.

²⁵ She is referencing the March 14, 2007 hearing date.

(Mother Statement 3/14 Trans. at 236-237) When reminded that the March 14th hearing had been scheduled for 9:30 to 4:30 and had been reserved for her case, and that the March 19th hearing had been scheduled for 9:30 to 4:30 for the Board's case, the Mother indicated that she was ready to leave and further stated that "My health and my daughter at the bus stop now is more important than this." (Mother Statement 3/14 Trans. at 237)

At one point the Mother had to be asked not to badger the witnesses, particularly Ms. Gould. The Mother reported that the Board's witnesses were telling a "bunch of lies" and that has "got her blood pressure up." She stated that the Board was "screwing [her] son" and that Board's counsel "tried to screw me [at the prior due process hearing] just like she trying to do me now." She then stated that after the Father's testimony was taken, she was going to go home and "You all can do what you all want to do." (Mother Statement 3/14 Trans. at 160-170) In response to a question asked of the Father by the Board's counsel regarding the cell phone being carried by the Student on October 16, 2006, the Mother became very agitated and the hearing went off the record to allow her to calm down. (3/14 Trans. at 195-197)

H. The March 19, 2007 Hearing

The Mother at several points during the March 14, 2007 hearing became visibly upset and agitated, and stated that the hearing process was aggravating her blood pressure or otherwise was not good for her health. Although she had known about the March 19, 2007 hearing date for several weeks, at the approximate conclusion of her case at the March 14, 2007 hearing, the Mother reported that she had a doctor's appointment on March 19, 2007 at approximately noontime. Arrangements were made to start hearing that day 1 hour earlier than scheduled and to conclude hearing at 11:30, with the potential for another date to be scheduled if needed. (3/14 Trans. at 108, 237-239) On March 16, 2007, the Parent reported by e-mail that she was not going to attend the March 19, 2007 hearing because she had a second doctor's appointment (this one at 9:00 a.m.).²⁶ As a result of the series of e-mail exchanges on March 16, 2007 that are reflected in HO5, hearing on March 19, 2007 proceeded with the Board's case and witnesses in the absence of the Parent. Neither the Mother nor the Board objected to a procedure implemented by the Hearing Officer pursuant to which the transcript of the March 19, 2007 hearing would be sent to the Mother, who would be allowed a period of time to review the transcript to determine whether she wanted to present any further testimonial evidence regarding the Board's evidence presented at the March 19, 2007 hearing.

I. The Mother's Review of the Transcript

The Hearing Officer forwarded to the Mother and the Board's counsel on April 3, 2007 a copy of the transcripts of the March 14 and March 19 hearings. The Mother advised by e-mail on April 4, 2007 that she had received the transcripts and was requesting an

²⁶ This is similar to what occurred in the prior due process hearing convened by the Mother in DOE Case 02-250. See Attachment A, F12a, 12b, 12e.

opportunity to present further testimony.²⁷ A hearing date on April 23, 2007 was established for this purpose. Exhibit HO7 is a set of e-mails between the Mother and the Hearing Officer indicating her desire to call a large number of witnesses to rebut myriad statements of the Board witnesses testifying on March 19, 2007, as follows:

1 ----- Original Message -----

From: [MOTHER] >

To: Myers, Scott P.

Sent: Wed Apr 04 18:23:06 2007

Subject: Re: DOE 07 020

Good:Morning Scott ***I have just received the book of lies from the hearing²⁸ that I didn't attend because of the surgery that I had.*** I don't appreciate the lies about I threatens someone with a hammer and I would like for this liar to tell me this face to face. If I was that stupid then I'd think I would have been in jail. I never threatened anyone I tell these liars when they are lying to there face and they don't like me for this. ***If i don't stand up for my son and all the others families that are being done this way who will? I didn't avoid the hearing I am having some health issues right now and these people are a big part of them.*** When will the next hearing be? Can you have all the people there that was there March 19th so myself and [Student's] dad and charmaine can address these lies face to face not behind my back? I don't appreciate this one bit. ***These people lies on my son they lie on me they lie on his father and like I have always said.*** How can [the Student] have any respect for any of them we he knows that they are liars. I haven't been checking the e-mail so I don't know what is going on. But the people that was at the last meeting I would like to address these lies they have told on myself and my son face to face .

2 ----- Original Message -----

From: [MOTHER]

To: Myers, Scott P.

Sent: Wed Apr 04 19:31:43 2007

Subject: DOE 07 020

Hi: again. Scott can you have Mrs. Blair at the next meeting or hearing from H.T.L.A there she can tell you everything I said at the hearing was the truth. ***[The Student] couldn't go back to H.T.L.A. because the long lane school had closed down and the kids that were there was sent to H.T.L.A. and Mrs. Blair told me those children were to tough for [the Student] to go back to that school.*** She said that it wasn't the place for him. This conversation took place in Jan. when she started sending the bus tickets so that [the Student] could get to school because Mr. Werhly and noone else would do anything to get him transportation. She is a witness to this because it was her who helped us.

3 ----- Original Message -----

²⁷ Exhibit HO6 contains United States Postal Service forms evidencing receipt by the Mother of the two transcripts.

²⁸ The Mother refers to the transcripts as the "book of lies."

From: [MOTHER]
To: Myers, Scott P.
Sent: Wed Apr 04 22:24:11 2007

Once again: Scott is it alright if I send copies of this hearing to the Civil Rights People? I was told that if Mrs. McFadden said she did not tell me to keep [the Student] out of school they could take my case. And if I kept [the Student] out of school as they lie and say I did why didn't they send a truency officer to my house? Every time I kept [the Student] out of school I gave the school a doctors note. Mrs. Ramos his last year principal can verify this so can his doctors and I have every doctors note. And as far as D.C.F. I would love for them to send them to my house so that I can take this to the news stations someone will sure hear me then.I have grandkids I have a daughter that attends school in Simbury I have nothing to hide I'm up every morning at 5:30 putting her on the bus.My oldest child graduated from Manchester High and attended the collage until she graduated.So why wouldn't I want the best for my son? Ann Bird and her fellow advocates can do what ever they think they need to do because in the end somebody will hear the real story.The next hearing we will be there sick or well to be accused of threating someone is serious and not only was I lied on but [the Student's] father was to.The schools have cops,sercurity guards, and under cover cops waling all around the schools inside and outside why wasn't I arrested? I get upset and speak my mine when these people are lying on myself or my son but I have never made any threats to no one.So what ever these people want to do let them do it.But I would like to address all these lies that were told on me face to face.

4----- Original Message -----
From: [MOTHER]
To: Myers, Scott P.
Sent: Fri Apr 06 10:12:35 2007

Good Morning: Scott I'm asking Ann to have Gail Rowe come to the hearing.She was [the Student's] last tutor so she can tell you how her experience with [the Student] went and If Mrs.Ramos can be there which was [the Student's] last year principal I would appreciate it.She can tell you about the contact me and her had as far as the days he missed and the bus situation and how much I was at the school.***And she should be able to tell you about the step program and how they told me they would put [the Student] in a regular school with the same settings as the step program,He did fine in the step program*** and I think his teacher Pat should be there. She retired as well as Mrs.Hilburn these two people can tell you what really was said at the ppt meetings in May but they have retired so the people that has lied at the last hearing may get away with all the lies that have been told on myself and my Son and his father I also have a witness that is a evangalist that has sat with me many of times when I talked to Mrs.McFadden and ***knows how long she has been lying to me and some of the conversations that I had with several people that lied at the last hearing.***

5----- Original Message -----
From: [MOTHER]
To: Ann F. Bird <birda001@hartford.gov>; Myers, Scott P.
Sent: Fri Apr 06 10:50:17 2007

Once again: Scott I will be going to the library were [the Student] and Mr.Horvac was to get Information about the days that [the Student] was there and the days that Mr.Horvac never showed up .I also have a cousin that is a sercurity guard there that can tell you that myself and [the Student's] dad picked [the Student] up from the library.Now if Ann wants to investigate this she can ask for [NAME] he's there on the first floor as soon as you walk in the library.*I'm tired of all the lies.It should be her job to correct the people at the board that does stuff like this.Mrs. McFadden has been telling me for two years lies that had [the Student] out of school.*Mr.Horvac got money from the board for tutoring [the Student] and went and gave [the Student] the work and left to go take care of his mother when ever he did show up at the library.He only came to my house once.And why would he go to Bulkeley looking for [the Student] when [the Student] never went to Bulkeley? The lies and these are suppose to be roll models people of authority.Please It don't make since to me. But let me know if I can get this imformation for the hearing on the 25th.

HO7 (emphasis added).

The issues raised by these e-mails were addressed in an order dated April 9, 2007 (the "Fifth Order") which established the procedures for the April 23, 2007 hearing. That order provided that the Mother would testify herself and through the Father if she desired, on the issues raised by the above e-mails, as well as facts she has alleged previously in this proceeding. The Hearing Officer would then determine whether to schedule another hearing date to take additional testimony from witnesses to be called by the Mother in accordance with the preceding e-mails. The date for issuance of the Final Decision and Order was enlarged from April 17, 2007 to May 4, 2007 to accommodate the April 23, 2007 hearing. See April 9, 2007 order.

J. April 23, 2007 Hearing

The Mother, Father and Student appeared at the April 23, 2007 hearing and were examined by the Hearing Officer as provided in the April 9, 2007 order. All three testified. The Mother was offered an opportunity to provide any additional testimony beyond that given in response to the Hearing Officer's questions that she desired to provide. (4/32 Trans. at 2; 108) The Board attended this hearing through Ms. Glass-McFadden and Ms. Tyson, represented by Ms. Bird. The Board advised it did not desire to examine the Mother, Father or Student. The Mother reported at several points during the hearing that she was not feeling well. She reported that she had stitches in her head from a surgery and her hand was noted by the Hearing Officer to be discolored. She was offered an opportunity to continue the hearing to another day, but elected to proceed, participated fully and appeared to be able to participate fully. The Father requested at the hearing that the Hearing Officer advise his employer again of his attendance at the hearing and the Mother authorized the disclosure as well. (HO8)

K. April 27, 2007 Order (Sixth Order)

Reflecting certain discussions on the record at the April 23, 2007 hearing and in light of developments at that hearing, a Sixth Order was issued on April 27, 2007. That order provided, among other things, as follows:

1. Based on the testimony of the Mother, the Father and the Student at the April 23, 2007 hearing, the Hearing Officer directed that the following Board employees be made available for examination at a final hearing date in this matter: Romain Dallemond (HPS Assistant Superintendent for Special Education Services); Ms. Ramos (HPS Vice Principal), Ms. Gemmell (an HPS Special Education Teacher); and Mr. Stringer (WHS Vice Principal). The Board was also asked to provide testimony to explain the mechanism or process by which the Student has been allowed to attend either WHS or HPS and why that process cannot be applied to enable the Student to attend Bulkeley. (4/23 Trans. at 144-149)²⁹ In light of concerns raised by the Mother, orders were entered with the effect of sequestering these witnesses from other witnesses who had already testified.³⁰

2. To the extent that the Mother in HO6 had identified other witnesses that she desired to call or re-call, that request was denied for the reasons stated more fully on the record at hearing.

3. The date for issuance of the Final Decision and Order was extended from May 4, 2007 to and including May 30, 2007 subject to further modification.

4. The Board was directed to supplement its record with the following documents: (a) The reports of the Student's progress on certain goals and objectives from the IEP for the 2005/2006 school year developed at the June 2005 PPT (B18); (b) The reports of the Student's progress on the IEP developed at the October 14, 2004 PPT (B8); and (c) The notices sent to the Parent for the June 2005 PPTs, the May 2, 2006 PPT, the May 31, 2006 PPT, and the October 25, 2006 PPT.

5. In response to a question from the Hearing Officer, the Board at the April 23, 2007 hearing stated that the Student may resume attending school at either WHS or HPS pending the outcome of this hearing if the Parents desire that he return to school. To minimize any misunderstanding or unnecessary delay that might arise if the Parents decided to return the Student to school pending the outcome of this hearing, a procedure was implemented to assure that the Student's return to either school would be smooth. That procedure included, in part, supervision by the Hearing Officer as indicated in the Order. (4/23 Trans. at 134-136)

²⁹ As noted in the Sixth Order, the Hearing Officer had made no determination at that time that Bulkeley, WHS or HPS would be appropriate placements for the Student.

³⁰ The Board consented to these directives of the Hearing Officer, and agreed to waive the attorney-client privilege for discussions between a witness and Ms. Bird as Ms. Bird prepared the witness for hearing. (4/23 Trans. at 120-133)

L. Communications from the Mother Between the April 23 and May 21, 2007 Hearing Dates

Between the April 23 and May 21 hearing dates, the Hearing Officer received the following e-mail communications from the Mother.

#1 -----Original Message-----

From: [MOTHER]

Sent: Wednesday, April 25, 2007 11:43 AM

To: Ann F. Bird; Myers, Scott P.

Subject: I got no respond from mrs mcfadden i sent this 4/23

Mrs.Mcfadden : Today is tuesday April 24 2007. I am writing you and also will be sending this e-mail to Scott Myers also.***Mrs. Rowe the tutor said she will not be giving [the Student] and credits for the time she has been tutoring him. So can you tell me why do the board of ed or you have him going to Winsor when he's not getting any credits for [this](#).Is it to make you look good or something?*** Because to me it's just using up tax payers money like you have been doing from the first tutor up until now.How do these tutors get paid for services that they do nothing for and who is it really hurting? [The Student]. I have no problem with gail but why should [the Student] attend school or tutoring and he's not getting any credits for it? It don't make any sense to me and maybe you can come up with the unknown answer for this.You can write me back and let me know what's going on or you can write Scott Myers and he can send me a e-mail I need to know something.This e-mail will be sent to Scott Myers and Ann Bird for my records.But all this time with these tutors and in the end he get no credits from it is crazy. And I will address to whoever is at the next hearing.[The Student] has one more year to go why is it so hard for the board to help him do it and get it over with because ***like I told [the Student] yesterday it's not [the Student] that you people don't like it's me.***But my job is to be there for my son and always will be.My job also is to be here for my grandchildren and I have spoke to you about them also the problem that my daughter had with [AM] and my grandson has had a stroke and can't use one side of his body and the board has done things to him that should have been [reported](#).So I will always be in the lives of the people of the board of ED. As long as I have children attending the Hartford School [System](#).My purpose is to see that my kids are giving a fair education but you people at the board hasn't giving [the Student] one at all.

[HO12; emphasis added)

#2 ----- Original Message -----

From: [MOTHER]

To: Myers, Scott P.

Sent: Thu May 10 16:09:44 2007

Subject: Re: CT DOE 07-020

Hi: Scott I have received the seventh order that you sent me.***What I don't understand is how come the board just can keep doing what they want and it seems to be alright with you?*** I told you at the last hearing that the tutor said she was not gonna give [the

Student]any credits because it was to far in the year and I asked you what was I suppose to do because Mrs.Mcfadden doesn't return my phone calls or my e-mails I had sent you a e-mail a week after the hearing about this I also sent the same e-mail to Ann Bird and I still haven't heard from anyone yet. How is my son suppose to go to any school and the board of ed. is suppose to be the contact and no one returns any of my phone calls? ***I would like for this to hurry up and be over with so that I can seek additional help fromwhere ever I go next because this is not right.*** You told Mrs.Mcfadden to return my calls and this still isn't happening.***The case is in there favor so why should they the same way she didn't listen to you at the hearing is the same way she sat there and told lies to you at the hearing.***You say [the Student] should be graded from oct.16 where will the credits come from when he still doesn't have a tutor and the one he had said she can't give him any grades so what's really going on and for the record Mrs.Mcfadden knows [the Student]is in the 11th grade she has stated this to the people at aft camp and I have papers with her signature on it stating this. [HO10; emphasis added.)

M. Board's May 3, 2007 Submission

In compliance with the Sixth Order, the Board on May 3, 2007 submitted the following materials, all of which were marked as HO9 at the May 21, 2007 hearing:

- | | | |
|-------------------|---|---|
| HO9 at 1 | - | May 3, 2007 Cover Letter |
| HO9 at 2, 3, 4, 5 | - | June 2005 IEP pages reflecting progress on Goals and Objectives through June 2006 |
| HO9 at 6 | - | June 8, 2005 Notice of PPT meeting for June 14, 2005 |
| HO9 at 7 | - | April 4, 2006 Notice of PPT meeting for May 31, 2006 |

The Board stated in its submission that it was not able to locate documentation regarding the Student's process in achieving the Goals and Objectives identified in the IEP established in October 2004. (HO9 at 1) The Board further stated that it was not able to locate the notices for the May 2, 2006 or October 25, 2006 PPTs. (HO9 at 1)

N. The Seventh Order Bifurcating this Proceeding (May 9, 2007)

Upon further consideration of the evidence to that date, including the testimony provided at the April 30, 2007 hearing and the Board's May 3, 2007 submission, the Hearing Officer concluded that resolution of issues concerning the Student previously identified in this proceeding required a determination of the Student's standing in high school based on grades, credits and attendance.

The Student completed 8th grade (B7), and then entered the 9th grade in the 2004/2005 school year. The 2004/2005 school year PPT minutes all identify the Student as a 9th grader, but other than the minutes of the February 11, 2005 PPT state that the Student had completed "0" high school credits or do not state the credits completed by the Student. The February 11, 2005 PPT minutes state that the Student had completed 3.25 high school credits.³¹

³¹ See Minutes of the October 14, 2004 PPT (B8; silent as to credits), of the February 11, 2005 PPT (B9; 3.25 credits earned), of the April 4, 2005 PPT (B10; does not identify credits completed); of the April 25,

The minutes of each of the 2005/2006 school year PPTs identify the Student as a 10th grader and state that the Student has completed 5 high school credits.³² Based on the fact that he was in the 10th grade in the 2005/2006 school year and there is no indication that he failed to pass to the 11th grade, the Student would have entered the 11th grade in the 2006/2007 school year. However, the minutes of the October 25, 2006 PPT identify the Student as a 10th grader with 6.5 credits completed (B22); the minutes of the January 18, 2007 PPT identify the Student as a “10/11” grader without stating the number of credits completed (B25); and the minutes of the February 8, 2007 PPT identify the Student as a 10th grader without stating the number of credits completed (B28).

On the first day of hearing the Mother claimed that the Board was not accurately recording the Student’s grades, credits and attendance. This was not, however, an issue raised in her due process request (HO1). In response to a question from the Hearing Officer, the Board at that hearing stated it would have no objection to entry of an order directing that it review the Student’s records and make corrections as required to assure that the Student’s high school grades, credits and attendance were accurately reported. (4/23 Trans. at 51-54) Accordingly, the Hearing Officer advised the parties that those issues (which did not appear to be significant at the time in light of the claims that the Mother was making) would be resolved by a directive in the Final Decision and Order that the Board take corrective action by a date certain so that the Parent could then enforce compliance through the CT DOE’s Complaint Resolution Process if necessary.

However, in light of subsequent developments in this case, it appears that this issue is more significant to the FAPE determination than had previously been apparent to the Hearing Officer, and that resolution of this issue may require fact finding of a type which would be more suitable to a due process hearing procedure rather than the Complaint Resolution Process.

Accordingly, the Hearing Officer in the Seventh Order notified the parties of his intention to bifurcate this proceeding into two phases, as follows. Phase I would address the issues previously identified in this matter and will proceed to a conclusion as outlined in the Sixth Order, with a final day of hearing on May 21, 2007 and issuance of a Final Decision and Order regarding Phase I anticipated for May 30, 2007.

The following orders were entered regarding Phase II proceedings:

1. The issue to be addressed in Phase II is the Student’s standing in high school as of the end of the 2006/2007 school year based on his grades, credits earned and attendance for the 2004/2005, 2005/2006, and 2006/2007 school years, with the goal of determining what grade the Student is or should be in for the 2007/2008 school year and what curriculum requirements the Student needs to complete to graduate.

2005 PPT (B11; indicates “0” credits completed), of the May 18, 2005 PPT (B12; “0” credits completed), of the June 2005 PPTs (B14; does not state credits completed).

³² See B17- February 2006; B18-May 2, 2006; B19-May 31, 2006.

2. The Board was directed on or by June 8, 2007 to submit the following information in the form of one or more affidavits under oath.

(a) A statement of the Board's curriculum requirements applicable to a student entering the 9th grade in the 2004/2005 school year who is anticipated to progress from grade to grade in due course to graduate as a 12th grader in the 2007/2008 school year. More specifically, what courses must such a student take and what credits must be earned in each of the 2004/2005, 2005/2006, 2006/2007 and 2007/2008 school years to permit graduation to occur in the 2007/2008 school year in due course with a regular education diploma.

(b) A statement of the courses that the Student took in each of the 2004/2005, 2005/2006 and 2006/2007 school years, and for each course the credits that the Student could have earned had he successfully completed the course, the credits the Student actually earned in that course, the Student's final grade in that course, whether the Student passed the course, whether the course content was modified for the Student (i.e., whether he was doing on grade level or below grade level work in that course) and whether his grading was modified (i.e., whether his grades were based on criteria other than the criteria applicable to a regular education student taking that course).

(c) For each of the 2004/2005, 2005/2006 and 2006/2007 school years, the number of days the Student was absent and the number of days he was tardy. If the Student was absent due to disciplinary reasons, the statement should indicate the number of days of absences in that school year that were related to disciplinary actions.

(d) Based on credits earned and attendance in the 2006/2007 school year, what grade the Student is or should be in as of the end of the 2006/2007 school year (if he successfully completes his 2006/2007 school year courses) in accordance with the Board's generally applicable curriculum requirements and without regard to any determination that may be made by a PPT on that issue.

3. A procedure was outlined in which the Mother, if she desired, could work with the Board to resolve any disagreement that she had regarding the data presented by the Board. The parties were advised that if a party would like the assistance of a CT DOE mediator for this meeting, the party should advise the Hearing Officer as soon as possible. To the extent any disagreements remained, procedures were established for the parties to present that disagreement to the Hearing Officer at a hearing tentatively scheduled for July 11, 2007. The order stated further that "If the Hearing Officer concludes that a hearing is not necessary, he will issue a Final Decision and Order on Phase II based on the papers as submitted." The Hearing Officer established July 18, 2007 as the date for issuance of a Final Decision and Order regarding Phase II issues.

The parties were directed to submit any objections to the bifurcation order and procedure on or before May 17, 2007. Neither party filed any objection.

O. The May 21, 2007 Hearing

Hearing convened at 9:00 a.m. on May 21, 2007 as scheduled. The Mother did not appear at 9:00 a.m., and the Hearing Officer called the telephone number listed for her on the Notice of Appointment of Hearing Officer (HO1) four times. On all four occasions, an adult male answered the telephone but hung up when the Hearing Officer asked for the Mother.³³ The Board's witnesses were present and ready to proceed, and testimony started in the Mother's absence with the examination of Dr. Dallemand. The Mother and the Student arrived at approximately 9:25 a.m. during Dr. Dallemand's examination. (5/21 Trans. at 3-5; 17-18) The Hearing Officer relayed to the Mother what Dr. Dallemand had testified to up to that point, and then examination of Dr. Dallemand resumed. As the hearing progressed, the Mother became more and more agitated. At several points she was literally screaming at the witness and had to be asked to direct her comments to the Hearing Officer rather than to the witness. She directed a number of inappropriate comments to Ms. Bird. At other points, however, she was calm, taking notes of the testimony, examining witnesses and otherwise comporting herself appropriately.

Ms. Ramos concluded her testimony at approximately 11:00 a.m. At that point, Ms. Bird asked if the hearing could recess briefly. It was apparent that the break was needed to enable Ms. Bird and other personnel present an opportunity to use the rest room. The Mother at that point had complained that her "head is starting to hurt" and both the Mother and the Student objected to taking a break. The Hearing Officer granted the request for a break. Both the Mother and the Student then started complaining that the Board "got everything" it wanted in the hearing and the Mother stated that she "need[s] to get this over with so I can go home and do what I gotta do" and that she was "tired of playing with these grown people." Her behaviors continued to escalate and she started yelling and pacing the hearing room. She reported that she had a cancer and was getting treatment for it, needed to take medication and approached the Hearing Officer to show him some sort of documentation regarding her medical condition. The Hearing Officer advised that if the Mother showed the material to the Hearing Officer, she would need to show it to the Board as well, at which point she stated that it was not their business. The Mother left the hearing room and returned a few minutes later at which point the hearing resumed. The Student was also becoming agitated at this point, although he remained appropriate in his behavior and demeanor. (5/21 Trans. at 125-128) As Ms. Bird was examining Mr. Stringer, the Mother and the Student became increasingly agitated and hostile toward Ms. Bird. It appears that while the Mother had left the hearing room previously she had arranged for a ride to pick her up and during Ms. Bird's examination of Mr. Stringer both the Mother and the Student abruptly announced that they were leaving. The Mother stated that everyone in the hearing room at the time other than Mr. Stringer and the Hearing Officer were liars. She was advised that the hearing would proceed even if she left. (5/21 Trans. at 138-141) As she was leaving, she claimed that Ms. Bird has "had it out for my son since the 5th grade," that the Hearing Officer has sided with the Board, and that the Mother "ain't getting nowhere from this meeting." (5/21 Trans. at 140-141) In

³³ Ms. Tyson dialed the phone number in the Hearing Officer's presence for the last telephone call. She was sworn in to testify as to the telephone number that she dialed. (5/21 Trans. at 3-4).

addition to Dr. Dallemand, Ms. Gemmel, Ms. Ramos, Mr. Stringer and Ms. Glass-McFadden testified at this hearing date.³⁴

The evidentiary record for Phase I was closed at the hearing. (5/21 Trans. at 159) (5/21 Trans. at 159)³⁵

P. Communications After May 21, 2007

On the afternoon of May 21, 2007, the Hearing Officer received the following two communications from the Mother.

#1 ----- Original Message -----

From: [MOTHER]

To: Myers, Scott P.

Sent: Mon May 21 12:19:00 2007

Hopefully this will be my last time talking to you. I would like the e-mails from all the people that ann bird sent to every one at the ppt today.³⁶I would like the ppt papers that was read at the ppt today³⁷ so I may send you what I have or is it worth you looking at.***You are not a fair man. You have been giving the board everything they wanted from day one so why keep wasting my time? Like I said you are gonna do what they want you to do anyway not what is fair so do what you do. But in life always remember what goes around comes back around for you and every one else that sat at that table trying to hurt my child instead of helping him.***I have pictures of one of the boys that jumped [the Student] on my space holding a gun I'm trying to get it to the courts and ***like I said if anything happen to my son in school or on the streets I will be holding you and the board of ed. responsible*** so if you could send me exhibit 19 I believe I can send you what the gave me and if ann can get me those e-mails I would be grateful. ***Those people don't listen to nothing you tell them because you are on there side it's not a fair hearing. Any one that could help [the Student] you did not want to call them in so stop playing and do what you think you have to do and let me take this situation to the next level.*** All of you people should be ashamed of you self but like I said [the Student] isn't the first and won't be the last one you do this to. But what goes around comes arounds. And the devil is a liar call me what you want but I have a god

³⁴ Based on the testimony of the witnesses and representations of Ms. Bird, the Hearing Officer is satisfied that these witnesses were "sequestered" and that the Board otherwise complied with directives regarding these witnesses stated in the Seventh Order. *See* 5/21 Trans. at 93-94 (Ms. Bird agreed to mark the e-mails to these witnesses as an exhibit); 5/21 Trans. at 8, 41-42 (Dallemand testimony regarding preparation); 5/21 Trans. at 90-91 (Ramos' testimony regarding preparation); 5/21 Trans. at 129-130, 142 (Stringer testimony regarding preparation); 5/21 Trans. at 56, 61 (Gemmel testimony regarding preparation).

³⁵ The evidentiary record up to that point was thereafter supplemented by HO12, which collects a series of e-mails referenced in this decision and sent to the parties in a notice dated June 12, 2007.

³⁶ The Mother is referring to e-mails which the witnesses testified Ms. Bird had sent them advising them that they needed to appear at the hearing. Ms. Bird agreed to provide these e-mails, which are marked as exhibit B36.

³⁷ The Mother is referring to Exhibit B35.

and he is a good god he may not come when I want but he's always right on time. So send this to your partner so she can send me the e-mails from everyone for my records. ***Thank you for wasting my time and causing me the extra stress that I don't need cause you did nothing for us you took the board side from day one.***

#2 ----- Original Message -----

From: [MOTHER]

To: Myers, Scott P.

Sent: Mon May 21 16:13:57 2007

Subject: Re: Out of Office AutoReply:

I have the information from the ppt meetings. I have the attendance stating that [the Student] missed 127 days as I talked about today at the ppt and Mrs. Ramos claimed she didn't know what I was talking about. I have doctors notes for the days [the Student] was absent but if you look at my copie of the ppt and the boards you might see the have not done anything that they put on the minutes to help him. The papers Mrs. Hilburn had me and [Student's] dad run around and get so he would get extra credits is also in the envelope. The capt test stating that [Student] is in the 11th grade is in there and also a letter to Nessa Odum from the crec program that Martha Benthum sent to her to see if they had any openings for [the Student] who is currently in the 11th grade. So it's not like no one knows what grade [the Student] is in these papers came from the board. I also have given aft camp copies even though Mrs. Mcfadden told Charmaine at the meeting we had in Jan. what grade [the Student] was in ***when everybody get in front of you they tell nothing but lies.*** Please do not give my information to ann bird copies is okay but I don't trust the woman from the past experiences. I have counted each paper that I've sent to you and hope that I get my information the same way I gave it to you. If you need anything else let me know. The doctor said she has no problem telling you or anyone else when my son is out of school I get a doctors note and has been doing this for years.

HO12 (emphasis added).

On May 22, 2007, the Hearing Officer received a package from the Mother. On the back of the package the following was written: "The 2# documents state [the Student] being in the 11th grade. Please make sure I get them back. Ones a CAPT test with his grade and the other one is from Martha Bentham to CREC with his grade on it. Affcamp has copies for there records."

On May 23, 2007, the Hearing Officer received the following e-mail message from the Mother, and responded as indicated below. (HO12)

#3 -----Original Message-----

From: [MOTHER]

Sent: Wednesday, May 23, 2007 1:57 PM

To: Myers, Scott P.

Subject: Please send the information back the way you received it.

Scott: Did you receive the packet that I sent you? I sent it certified mail and I keep all my documents. At the last hearing not this one we just had but the one before this one tell me something *why did you tell us that the only ones that would be there was Mr. Stringer, Dr. Dollimond and Mrs. Ramos and when I got to this meeting there was people that I didn't know? Mrs. Gemmell and the black women that said she was there with Ann Bird.*³⁸ *Like I said from the begining you let the board do what they want to do you was not there to help [the Student] every witness that I wanted to bring you said no but these people was not on anye-mails or on anything that you sent me in the Grey envelope about the hearing. I would like my imformation back the same way that I sent it to you as soon as you are done with it and I hope that you don't take anything out for the board to try to act as if it never existed. I had Aft camp make copies for there records. Th documents that states that [the Student] is in the 11th grade is what I care about. The help and services that he was suppose to get on the ppt that he never received is what I care about. What you should have been asking some of those people about was what they wrote in the ppt as far as helping him.*³⁹ The small setting was the step program Mrs. Ramos admitted this but like I told you. *But I quest your job is just like Ann's to hurt the families and help the board.* I don't care if I have to stand in front of the board when this is all over and tell people about you and everyone else at the board I will and I plan on doing this. So tell Thomas Bagway I believe this is his last name what ever it is I have met him to in the past that I will be calling him and John Purdy to see why you let Ann bring these uninvited guest to the meeting but everybody that could help [the Student] you wanted no part of it. And I also have letters from these people that know about the situation from the tutoring at the library with horvac and the conversations that I had with Mrs. mcfadden. I am not looking for nothing else from you except the imformation that I've sent you .The same way that I sent it to you. And once again the devil is a lair and under oath means nothing to you or the people you rep. And it's sad.

#4 ----- Original Message -----

From: Myers, Scott P.

To: [MOTHER]

Cc: Myers, Scott P.; 'birda001@hartford.gov' <birda001@hartford.gov>

Sent: Thu May 24 14:46:23 2007

Subject: RE: Please send the imformation back the way you received it.

Good afternoon:

I am in receipt of a package of documents from [the Mother] as well as two other communications from her since the May 21, 2007 hearing, which are pasted into this e-mail chain for convenience. It does not appear that [the Mother] has sent these e-mails or documents to Ms. Bird. Once again anything sent to the Hearing Officer must also be sent to the other party.

³⁸ The reference to a "black woman" who was attending the hearing with Ms. Bird is a reference to Ms. Freeman, who is an attorney who works with Ms. Bird. The Hearing Officer notes that Ms. Gemmell was identified in the Sixth Order as a witness who would testify on May 21st.

³⁹ This is a reference to the May 31, 2006 PPT.

The Hearing Officer has not opened the envelope of documents. On the back of the envelope is a note which reads as follows: "The 2# documents state [the Student] being in the 11th grade please make sure I get them back. One is a CAPT test with his grade and the other one is from Martha Bentham to CREC with his grade on it. AFFCamp has copies for their records." As the Hearing Officer understands it, these documents are pertinent to the Phase II issues in this case - which is a determination of the Student's credits, grades and attendance at high school. The e-mails also suggest that these are originals of the documents, that [the Mother] would like to have returned to her.

The proper procedure for submitting documents is to identify each one as an Exhibit with an appropriate exhibit number and send a copy to the Hearing Officer and to the other party, with the sending party keeping the original for herself. The Hearing Officer will not consider these documents until after the Phase I decision has been issued. The options for handling these documents are as follows. [The Mother] should advise as to which option she is selecting:

(1) The Hearing Officer holds onto the documents until after the Phase I decision is issued, and then arranges to have a copy made for the Board and for himself, and returns the original to [the Mother], and considers these documents as evidence in Phase II. (2) The Hearing Officer returns the documents to [the Mother] and she resubmits them in accordance with the proper procedure when it is time.

The disposition of these documents will be discussed further in the Phase II Final Decision and Order when it is issued.

P. Eighth Order

On June 4, 2007, the Hearing Officer issued the Eighth Order, which extended the date for issuance of the Final Decision and Order regarding Phase I to June 18, 2007 to permit the Hearing Officer to review the May 21, 2007 hearing transcript, which was not available until June 6, 2007.

Q. Additional Notice (June 18, 2007)

By notice issued on June 18, 2007, the date for issuance of the Final Decision and Order (Phase I) was extended to and including June 21, 2007.

LEGAL FRAMEWORK AND STANDARDS

1. This dispute was asserted 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 Improvement Act of 2004 (the “IDEIA”), and its implementing regulations, 34 C.F.R. §§ 300.1 *et seq.* (the “IDEIA 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.* (“Conn. Regulations”).⁴⁰

2. The Board is the local educational agency (“LEA”) required by the IDEIA and Connecticut law to provide each child residing in its jurisdiction who has a disability and by reason thereof needs special education and related services with a “free appropriate public education” (“FAPE”) designed to meet his specialized needs and delivered in the least restrictive environment (“LRE”).⁴¹ An LEA provides a FAPE by creating an “individualized education program” (“IEP”) for each eligible child. *See* IDEIA, 20 U.S.C. § 1414(d)(1)(A). The IEP must define the child’s then-current educational status, establish annual goals, and detail the special educational services and other aids that the child will be provided. *See* IDEIA, 20 U.S.C. § 1414(d)(1)(A)(i). The Board satisfies its obligations under the IDEIA if the program and placement defined in its proposed IEP: (1) were developed in compliance with the IDEIA’s procedural requirements; and (2) are “reasonably calculated to enable the [Student] to receive educational benefits.”⁴² The adequacy of an IEP is evaluated based on the IEP actually offered or provided by the LEA as stated in the PPT documentation, not an IEP that the LEA could have provided or intended to provide. *See, e.g., Summit Board of Education*, 106 LRP 60197 (NJ SEA 2006).⁴³

⁴⁰ To the extent that case law cited herein that was decided under the IDEA remains undisturbed by the amendments to the IDEA reflected in the IDEIA, references in those cases to the IDEA and its implementing regulations should be interpreted to be citations to the IDEIA and its regulations.

⁴¹ 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.,* IDEIA, 20 U.S.C. § 1401(9). “Special education” is defined in pertinent part at IDEIA, 20 U.S.C. § 1401(29) 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 the IDEIA at 20 U.S.C. § 1401(26) 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.” IDEIA, 20 U.S.C. § 1401(3); IDEIA Regulations, 34 CFR § 300.8(a)(1)-(2).

⁴² *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).

⁴³ 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

3. The IDEIA's procedural requirements and safeguards are designed to assure that the parents of an eligible child 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 IDEIA that a violation of the IDEIA'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 "impede the child's right to FAPE" or "significantly impede" the parents' opportunity to participate in the process of formulating the IEP or deprive the child of an educational benefit.⁴⁴

4. Neither the IDEIA nor Connecticut law require that the Board provide a program which maximizes the Student's educational potential.⁴⁵ Instead, 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; (5) the projected initiation date, location 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); IDEIA, 20 U.S.C. § 1414(d)(1); IDEIA Regulation, 34 CFR § 300.320.

⁴⁴ See IDEIA Regulation, § 34 CFR 300.513(2). See also, *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 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).

⁴⁵ The purpose of the IDEIA 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).

IDEIA requires that the Board provide a program (defined in a properly formulated 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 an eligible 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.⁴⁶ There is no one standard for determining what constitutes a “meaningful” 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 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 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).

5. An LEA denies FAPE if the IEP at issue lacks an element that is necessary to enable the child to obtain a meaningful benefit from his/her educational program. An LEA also denies FAPE if the IEP at issue has all of the necessary components, but the LEA fails to implement the IEP as written and the failure to implement results in harm to the child’s educational progress that is more than *de minimis*.⁴⁷

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

⁴⁶ *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) (Congress envisioned that significant learning would transpire “so that citizens who would otherwise become burdens on the state would be transformed into productive members of society”).

⁴⁷ *See, e.g., Van Duyn v. Baker School Dist.*, 107 LRP 17877 (9th Cir. 2007) (when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP; a “material failure” occurs when the services provided to a disabled child fall significantly short of those required by the IEP). The dissent in that case argued that allowing an LEA to “disregard already agreed-upon portions of the IEP would essentially give the [LEA] license to unilaterally redefine the content of the student’s [IEP] by default,” in contravention of provisions of the IDEIA requiring parental input into the development of the IEP. The dissent observed that if an element has been placed in the IEP by agreement, then it is an essential element of the student’s educational program and that if the LEA determines afterward that portions of the IEP are not “essential to providing” FAPE to the student, the LEA is free to seek to amend the IEP through the appropriate mechanisms of the IDEIA. *See also Houston Independent School Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (*de minimis* failures to implement an IEP do not amount to violation of IDEA; there must be a failure to implement “substantial” or “significant” IEP provisions); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (IDEA is violated when school fails to implement an “essential” element of the IEP, *i.e.*, an element which is “necessary for the child to receive an educational benefit”); *Guntersville City Bd. of Educ.*, 47 IDELR 84 (SEA AI. 2006) (failure to consistently or fully implement a BIP is denial of FAPE, where student is subsequently expelled for engaging in behaviors that were to be addressed in the BIP).

assure that, to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily . . .

This provision of the IDEIA – which defines the Board’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.⁴⁸ Accordingly, even if it is determined that the Student cannot be satisfactorily educated in a mainstream classroom, the IDEIA requires the Board to define a program that includes the Student in the mainstream environment to the maximum extent appropriate. For this reason, the Board must evaluate whether the Student can be educated in a mainstream placement if provided with supplementary aids and services, and must 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.

7. In designing an IEP, an LEA must balance the IDEIA’s mainstreaming requirements with the individual child’s specific 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.” IDEIA Regulation, 34 CFR § 300.104 (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”).⁴⁹

⁴⁸ 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”).

⁴⁹ 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

8. The IEP must state, among other things, "the projected date for the beginning of the services and modifications ..., and the anticipated frequency, **location**, and duration of those services and modifications." IDEIA, 20 U.S.C. § 1414(d)(1)(A)(i)(VII) (emphasis added); IDEIA Regulations, 34 CFR § 300.320(a)(7). Failure to identify a location in which the program will be delivered can constitute a substantive denial of FAPE to an eligible child. *See, e.g., A.K. v. Alexandria City School Board*, 47 IDELR 245 (4th Cir. Apr. 26, 2007) (child's substantive right to FAPE under IDEIA was violated by an IEP which defined the proposed placement in the next school year as "Level II -- Private Day School placement" without identifying a specific school - *i.e.*, the location in which the program would be delivered). Failure to identify a location in which the program will be delivered has also been found to constitute a procedural violation of the IDEIA.⁵⁰

9. The requirement to identify a location is an important safeguard. The IDEIA requires an LEA to give prior written notice to parents any time it proposes, or refuses, to change the "educational placement" of an eligible student. IDEIA Regulations, 34 CFR § 300.503(a). The term "educational placement" is not defined in either the IDEIA or its implementing Regulations. That term has been defined generally by courts and administrative hearing officers as the totality of the child's educational program, including the specific location in which the program is delivered, and as something more than simply or solely the particular physical location in which the program is delivered. Accordingly, a change in the proposed location in which the eligible student's program will be delivered is not necessarily a change in educational placement for which prior written notice must be given.⁵¹ A change in location can be a change in placement for purposes of triggering the

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).

⁵⁰ *See Glendale Unified Sch. Dist. v. Almasi*, 122 F. Supp.2d 1093 (C.D. Cal. 2000) (offer of multiple potential placements – even when made to accommodate a "demand" parent "dissatisfied" with the LEA's actions to date – constitutes procedural violation of IDEA; LEA must take final step and identify the placement it deems appropriate from among the possibilities discussed); *San Francisco Unified Sch. Dist.*, 35 IDELR 21 (SEA CA 2001) (offer of placement in IEP of "small protective setting" without identifying or recommending a particular school constitutes a procedural violation; unless school is identified, placement offer is incomplete and does not reflect a coherent and distinct proposal designed to meet the student's unique needs and circumstances). The LEA in *San Francisco Unified* utilized a "central" type PPT process, in which the LEA staff attending the PPT recommends services and administrators in the LEA's central office who do not attend the PPT determine the location in which those services will be delivered if they are to be out-of-district.

⁵¹ *See generally, Concerned Parents & Citizens for the Continuing Educ. at Malcolm X (P.S. 79) v. New York City Bd. of Educ.*, 629 F.2d 751 (2d Cir. 1980), *cert. denied*, 449 U.S. 1078 (1980) (transfer of a student from one school to another which has a comparable educational program is generally considered a change in location not placement); *AW by Wilson v. Fairfax County Sch. Bd.*, 372 F.3d 674 (4th Cir. 2004) (term educational placement "fixes the overall instructional setting in which the student receives his education,

IDEIA's procedural safeguards if the change in location substantially or materially alters a student's special education program as stated in the IEP, whether directly or indirectly. The analysis of whether a change in location is also a change in placement includes consideration of whether the IEP is being revised concurrently with the change in location, the impact of the change on the eligible student's level of interaction with non-disabled peers or opportunities to participate in extracurricular and nonacademic services; and whether the new location is the same option on the continuum of alternative placements.

10. To satisfy the IDEIA's prior written notice requirements, the LEA must make a written offer of placement that is sufficiently detailed to enable the parents of the eligible child to determine whether or not the proposed placement is reasonably calculated to provide the child with a FAPE in the LRE. The proposed placement should be described as specifically as possible and should identify the specific location (*e.g.*, the proposed school setting) that the LEA contends the student should attend.

Discussion of a range of possible placements during the IEP meeting is, of course, appropriate. However, [an LEA] cannot abdicate its responsibility to make a specific offer allowing a parent to choose among several programs presented as formal offers. After discussing the advantages and disadvantages of various programs that might serve the needs of a particular child, the [LEA] must take the final step and clearly identify an appropriate placement from the range of possibilities. It was the [LEA's] responsibility to use its expertise to decide which program was best suited for [the student's] unique needs.

Glendale Unified Sch. Dist. v. Almasi, 122 F. Supp. 2d 1093, 1107, 1108 (C.D. Cal. 2000) (failure to identify a particular school places "an undue burden on a parent to eliminate potentially inappropriate placements, and makes it more difficult for a parent to decide whether to accept or challenge the [LEA's] offer").⁵²

rather than the precise location of that setting"); *Letter to Fisher*, 21 IDELR 992 (OSEP 1994) (proposal to change location in which IEP is implemented to a location that is the same option on the continuum as the current setting and without changes to the IEP is not a change in placement requiring prior written notice); *Letter to Green*, 22 IDELR 639 (OSEP 1995) (transfer from one private placement to another is not a change in placement provided there is no material change in the educational program to be delivered); *Letter to Flores*, 211 IDELR 233 (OSEP 1980) (if the proposed change substantially or materially affects the composition of the educational program and services provided the child, then a change in placement occurs triggering the notice requirement; at issue was relocation of a school from one town to another); *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46644 (August 14, 2006) (transfers between self-contained classroom and resource room is likely to be a change of placement requiring prior notice since the educational programs in these respective settings are likely to be "substantially and materially different" and the transfer would "change the level of interaction with nondisabled peers"); *Hill v. School Bd. for Pinellas County*, 954 F. Supp. 251 (M.D. Fla. 1997) (change in school without a change in the IEP is generally not a change in placement; however, in some circumstances a particular educational institution, location, or student-teacher relationship can be so intrinsically related to an IEP that a modification in one of these areas could constitute a change in placement).

⁵² See *e.g.*, *A.K. v. Alexandria City School Board*, 47 IDELR 245 (4th Cir. Apr. 26, 2007), *supra*; *Mill Valley Elementary Sch. Dist. v. Eastin*, 32 IDELR 140 (N.D. Cal. 1999) (district offered a "mere skeletal outline" of a plan rather than a "formal, written offer" of placement as required by the IDEA; LEA stated it was "looking at" three proposed schools and therefore was "only offer[ing] to consider several possible

11. Pursuant to the Conn. Regulations, § 10-76h-14, the Board has the burden of proving the appropriateness of its proposed program and placement by a preponderance of the evidence.⁵³ Connecticut law places that burden on the LEA even if the hearing is commenced by the parent. However, parents commencing a proceeding must nonetheless meet an initial burden of presenting factual evidence which, if not rebutted, would support granting them the legal relief they seek.

12. The Hearing Officer has the authority to resolve “complaints with respect to any matter relating to the identification, evaluation, or educational placement of [a] child, or the provision of a [FAPE] to such child” and may address a denial of FAPE by confirming, modifying or rejecting the identification, evaluation or educational placement of or the provision of a FAPE to the child, determining the appropriateness of a unilateral placement or prescribing alternative special education programs for the child. *See generally* IDEIA, 20 U.S.C. § 1415(b)(6); Conn. Gen. Stat. § 10-76h; Conn. Gen. Stat. § 10-76h(d)(1).

13. A child’s IDEIA-eligibility will terminate in the normal course if it is determined that the child is able to function successfully in the mainstream without special education and related services supports, or the child is awarded a regular high school diploma or the child has turned 21 years of age. The choice of the criterion to determine whether the child remains eligible (sometimes referred to as the “exit criterion”) needs to be made by an IEP team consistent with the requirements of the IDEIA. Assuming that the Student’s eligibility in this case does not terminate because it is determined that he can successfully perform in the mainstream environment without special education and related services support, under the IDEA and Connecticut law the Board is required to provide FAPE to the Student potentially through his 21st birthday or until he graduates with a regular high school diploma, whichever comes first.⁵⁴ Conn. Regulation § 10-76d-1(a)(7) provides further that: “Each [LEA] shall provide [FAPE] for each school age child requiring special education and

placements”); *San Francisco Unified Sch. Dist.*, 35 IDELR 21 (SEA CA 2001), *supra*; *Metropolitan Nashville and Davidson County Sch. Sys.*, 25 IDELR 462 (SEA TN 1996) (parent has a right to know what school their child will attend; LEA’s recommendation for placement in a more restrictive setting in a different school without identifying the school rises to the level of a substantive harm; parent cannot make an informed decision to agree or appeal without knowing where the LEA proposes to send the child for school); *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994) *cert. den.*, 115 S.Ct. 428 (1994) (requiring a formal, written offer creates a clear record which will eliminate or minimize factual disputes in the future and alerts parents to the need to consider seriously whether the particular placement is appropriate under the IDEA; fact that parent may be unwilling to accept the proposed placement does not relieve LEA of obligation to make the recommendation).

⁵³ *See Schaffer ex rel Shaffer 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).

⁵⁴ *See generally* IDEA, 20 U.S.C. § 1412(a)(1)(A)-(B); IDEA Regulations 34 C.F.R. §§ 300.121, 300.122(a)(3)(i); Conn. Gen. Stat. § 10-76d(b). The “regular high school diploma” exception does not apply, however, to an eligible child who graduates with a special education diploma or a certificate of mastery/completion. IDEA Regulation 34 C.F.R. § 300.122(a)(3)(ii).

related services . . . (a) . . . (7) Such education shall be continued until the end of the school year in the event that the child turns twenty-one during that school year.”⁵⁵ Whether the Student has completed the requirements for attaining a regular high school diploma is a question of Connecticut law⁵⁶ and is determined in accordance with Conn. Gen. Stat. § 10-221a(a) (which defines the credit distribution requirements to graduate with a high school diploma) and Conn. Gen. Stat. § 10-221a(d) (which exempts IDEIA-eligible students from those requirements where a PPT has determined that those requirements should not apply to the child at issue). Where a PPT does not modify the curriculum requirements an IDEIA-eligible child must satisfy to graduate with a regular high school diploma, to properly be awarded that diploma that child must (1) complete the credit/curriculum requirements and (2) “make progress on *or* complete IEP goals.” *Student v. Greenwich Board of Education*, 102 LRP 31903 (SEA CT 2002)⁵⁷ An LEA must convene a PPT meeting prior to terminating special education eligibility, including by graduating an eligible student.⁵⁸

14. An eligible child whose rights under the IDEIA have been violated may be entitled to relief in the form of an award of compensatory education, which is a direction that the LEA provide special education and related services prospectively to remedy a past deprivation of FAPE. *See, e.g., Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. Cir. 2005); *Lester v. Gilhool*, 16 IDELR 1354 (3rd Cir. 1990), *cert. denied*, 499 U.S. 923 (1991). A child who is no longer IDEIA-eligible because he has turned 21 years of age or graduated with a regular high school diploma may nonetheless be entitled to compensatory education to remedy a prior deprivation of FAPE.⁵⁹

⁵⁵ Conn. Gen. Stat. § 10-259 defines “school year” as the period July 1, Year 1 to June 30, Year 2. CTDOE Update # 32 (March 26, 2003) interpreted Conn. Regulation § 10-76d-1(a)(7) to mean that an eligible child who turns 21 years of age between July 1 Year 1 and June 30 Year 2 and who has *not* been awarded a regular high school diploma as of June 30 Year 1 remains eligible to receive special education and related services through June 30 Year 2.

⁵⁶ *See, e.g., Carver Public Schools*, 102 LRP 8194 (SEA MA 2000) (“local school and state officials, not courts, hearing officers, or [IEP Teams], set the academic standards for award of a regular high school diploma.”); *Student v. Greenwich Board of Education*, 102 LRP 31903 (SEA CT 2002) (applying Connecticut law to determine whether graduation was appropriate); *Fort Bend Independent School District*, 35 IDELR 175 (SEA TX 2001) (applying Texas law); *Quaker Valley School District*, 30 IDELR 634 (SEA PA 1999) (applying Pennsylvania law). The IDEA incorporates state substantive standards as the governing rule if they are consistent with and at least as exacting as the IDEA provisions.

⁵⁷ This general rule would not apply if the parties reach an agreement that some other arrangement will apply. *See, e.g., Girard School District*, 37 IDELR 298 (PA SEA 2002) (where the LEA and parent/student had agreed in an IEP that the student’s eligibility for graduation would be determined by completion of credits rather than attainment of IEP goals, the student may properly be graduated notwithstanding that he had not mastered his IEP goals and objectives).

⁵⁸ Graduation is a change in placement which triggers the prior written notice safeguards of the IDEIA. IDEIA Regulation, 34 C.F.R. § 300.102(a)(3)(iii).

⁵⁹ *See, e.g., Mrs. C. v. Wheaton*, 916 F.2d 69 (2nd Cir. 1990) (availability of compensatory education to individual over age 21 requires finding of egregious violation of IDEIA rights); *Fetto v. Sergi*, 181 F. Supp.2d 53 (D. Conn. 2001) (compensatory education available to student who had aged out of eligibility); *Puffer v. Reynolds*, 761 F. Supp. 838 (D.Mass. 1988) (award of compensatory education appropriate notwithstanding that

FINDINGS OF FACT

Attachment A to this Final Decision and Order summarizes the Phase I documentary and testimonial evidence and provides the factual background for this dispute. A citation to certain testimony and/or documentary evidence as a Finding of Fact that supports a Conclusion of Law is not meant to suggest that the referenced evidence is the only evidence supporting that Conclusion.⁶⁰ Rather, citations to specific evidence are for illustrative purposes and are not meant to exclude other admissible evidence supporting that Conclusion.⁶¹ To the extent that any portion of this Final Decision and Order, including the Procedural Background, 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. Callahen Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

1. The Student turned 16 years of age in the 2006/2007 school year and prior to the commencement of this hearing. At the start of the 2006/2007 school year, he was identified as an 11th grader.⁶²
2. The Student resides in the Board's jurisdiction. At the start of the 2006/2007 school year, he resided within the HPHS district. During the 2006/2007 school year, shortly before the commencement of this hearing, the Student began residing in the WHS district. Under the Board's policy, after he moved and for the balance of the 2006/2007 school year, the Student could attend either WHS or HPHS. Unless the Student moves outside of the WHS district, WHS will be his home school in the 2007/2008 school year. (F97)
3. The Mother is the Student's legal guardian.

the student was properly graduated); *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489 (9th Cir. 1994) (reaching the merits of a compensatory education claim for a student who graduated from high school); *Black River Falls Sch. Dist.*, 40 IDELR 163 (SEA WI 2004) (compensatory education awarded to student with ADHD and depression to age 21 where student had been graduated but pre-graduation IEPs were defective because the goals and objectives were not "measurable" and the LEA could therefore not have properly assessed her performance on them in determining whether she should graduate); *Quabbin Regional Sch. Dist.*, 44 IDELR 56 (SEA MA 2005) (although the student met state and LEA credit requirements for graduation and had been given a diploma, the student may be entitled to post-graduation compensatory education award if pre-graduation transitional services and planning were defective).

⁶⁰ A citation in the form "F#" refers to the referenced numbered paragraph in Attachment A. A citation in the form "B# at #" or "P# at #" refers to that number Board or Parent exhibit respectively, at that page of the exhibit. A citation in the form "Name Date Test. at #" refers to the testimony of that witness on that page of the transcript from that hearing date.

⁶¹ Findings of Fact are based in part on an assessment of witness credibility. 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 reflects a conclusion as to credibility on that point.

⁶² The Student's grade placement as of the end of the 2006/2007 school year will be determined in Phase II.

4. The Student is a “child with a disability” within the meaning of the IDEIA due to ADHD and “by reason thereof, needs special education and related services.” IDEIA, 20 U.S.C. § 1401(3)(A); IDEIA Regulations, 34 CFR § 300.8(a)(1)-(2).
5. At all pertinent times, the Student was eligible to receive “special education” and “related services” pursuant to the IDEIA and Connecticut law. The Student began residing within the Board’s jurisdiction when he entered the 3rd grade (1998-1999 school year). (F5) He has resided in the Board’s jurisdiction continuously since then. He was first identified as eligible to receive special education and related services under the IDEIA in the 2nd grade on the basis of ADHD. (F4) He has maintained his eligibility continuously since then and at all times since the 3rd grade has received special education and related services through the Board.
 - a. 3rd Grade (1998-1999 school year): By March of 1999, it was recommended that the Student be placed in a more highly structured setting due to aggression, oppositional behavior and poor social skills. The Student was placed in the HTLA, a restrictive in-district placement that is a Board operated public school housed in its own building for students with “significant” social/emotional behavioral issues. That placement was supported by a psychiatric evaluation which also recommended individual therapy and medication management of the Student’s ADHD. (F5, F6) The results of an administration of the WISC-III in January 2000 show a VIQ of 107 and PIQ of 90. (F7)
 - b. The Student remained at the HTLA during the 4th grade (1999-2000 school year) and 5th grade (2000-2001 school year). Reports in the record from this period describe him as having solid academic potential but as manifesting aggressive and oppositional behaviors which interfere with his academic progress and performance. (F8)
 - c. The Student started 6th grade (2001/2002 school year) at HTLA, but was transferred to South Middle School (“SMS”), a Board-operated mainstream middle school, in March of 2002 at the Mother’s request. He began to incur multiple suspensions for behavioral issues. Results of a triennial review in April 2002 showed that the Student attained a WISC-III VIQ of 100 and a PIQ of 75 (which is a substantial decline in performance) and scores on achievement tests that were 2-3 grade levels below his identified grade in all areas. (F9-10) An April 12, 2002 PPT recommended continued placement at SMS, and developed an IEP that included academic goals and objectives for reading, writing skills and mathematics, and behavioral goals and objectives. The Student made little to no progress on these goals and objectives. (F11)
 - d. The Mother commenced due process on September 4, 2002 to challenge the April 12, 2002 PPT’s placement recommendation and identification of the Student’s exceptionality as SED. The hearing reached no conclusion on either issue. On the first day of the hearing the District agreed to place the Student at the TOPS program at another Board-operated mainstream middle school, Quirk Middle School (“QMS”) for the balance of the 6th grade and the Mother essentially ceased pursuing her claims. (F12) Students in the TOPS program attend a self-contained classroom with two teacher and two paraprofessionals for academics while participating in specials with mainstream students. The program provides an “immediate response” to misbehavior and relaxes disciplinary rules by reserving out of school suspensions for “serious infractions” and addressing misbehavior through the use of a time-out area, in-

school suspensions or being sent home if the student is having a “bad day.” (F12c)

- e. The Student entered QMS as a 7th grader in the 2002/2003 school year in the TOPS program. As of March 2003, the Student reportedly was doing well academically with grades in the A and B range. However, he was incurring multiple disciplinary referrals for increasingly problematic behaviors (oppositional, aggressive). The need for a psychiatric or psychological evaluation was discussed at a PPT on March 24, 2003. The PPT recommended placement in a full-time, self-contained behavior management/modification special education program with an “integrated therapeutic component.” In that placement, the Student would have no interaction with non-disabled peers. No changes were made to the April 12, 2002 IEP goals and objectives. The Student’s scores on an achievement test administered at that time showed little improvement from the prior assessment, and indicate that the Student was now performing 3 grade levels below his identified grade in Math and Language Arts. The Mother consented to a psychiatric evaluation. (F13-15) In June 2003, a psychiatric evaluation was performed which determined that the Student had ADHD, ODD and Depressive Disorder-Not Otherwise Specified. Further assessment to rule out Reading and Written Expression Disorders were recommended.⁶³ The evaluator concluded that the Student “has not had much emotional or academic growth in either a regular education program or the highly structured environment at HTLA, and would benefit by being placed in a classroom setting with a small student to teacher ratio with a high level of clinical supports and therapy services within the school.” (F15-16)
- f. The Student entered QMS as an 8th grader in the 2003/2004 school year. (F17)⁶⁴ A PPT convened on October 2, 2003 recommended an out-of-district placement in a therapeutic setting. The minutes state that the Student “requires special education setting with small teacher to student ratio with high level of clinical supports and therapeutic follow up and therapy.” (B5 at1) The minutes state further that the PPT recommended “Out-of-district placement in appropriate therapeutic setting; send packet to appropriate programs to identify the best program” (F18)⁶⁵ The Student resumed medication management of his ADHD in October 2003 and began attending CREC Polaris, an out-of-district therapeutic day program, in November 2003. At CREC Polaris, the Student attended classes with 8 other students under the supervision of a teacher and paraprofessional. An assessment in December 2003 showed that the Student was performing substantially below his identified grade level in writing (2.5 GE) and in Math (4.2 GE), and had shown substantial improvement in Reading (7.7 GE). (F19-20) At a PPT convened on May 6, 2004, the Mother requested that the Student be returned to an in-district placement notwithstanding CREC Polaris’ recommendation that he

⁶³ It is not clear, however, whether those assessments were ever done.

⁶⁴ It is not clear whether he was still in the TOPS program at this point.

⁶⁵ Notwithstanding that an out-of-district placement in a therapeutic day program had been recommended, the PPT documentation was written to reflect an in-district placement in the 2004/2005 school year. For example, PPT minutes page 5 (B5 at 19) indicates that the Student’s special education and related services during the period 10/9/03 to 10/9/04 would be delivered in a resource room setting, and that the Student would participate for 7.5 hours/week with non-disabled peers and page 6 (B5 at 20) indicates that his placement is in-district.

remain at CREC Polaris and needed a “heavily structured” educational environment with small student-staff ratio and behavior management systems. The District agreed to an in-district placement, with the Student remaining at CREC Polaris in the interim with a shortened day. (F21)

- g. The Student started 9th grade in the 2004/2005 school year at CREC Polaris. (F22-23) A PPT convened on February 11, 2005 noted that the Student had been attending CREC Polaris on a part-day basis, that efforts to have him attend on a full day basis were not successful due to deteriorating behaviors, and that after an initial “good adjustment” he has been placed in a restrictive “stabilization and assessment component” of the CREC program. The Mother at this PPT stated that she now wanted the Student to remain at CREC. (F24) The PPT documentation identifies “Graduation” as the criterion for exiting the Student from special education and related services with a June 2008 anticipated graduation date.(F24e)⁶⁶ There is no other indication in the minutes, however, that the criterion for exiting the Student from special education and related services was actually discussed at the PPT. (F24) By April 2005, the Student’s behavior had deteriorated at CREC Polaris, the Mother was no longer supportive of the placement, and CREC Polaris had concluded it could not provide the support the Student needed in the circumstances. The Student was discharged from CREC Polaris “effective immediately” in April 2005. At the time, he was 14.6 years old. An assessment with the WIAT indicated that the Student was performing at a 14.6 Age Equivalent (“AE”) in Basic Reading and 13.5 AE in Reading Comprehension and substantially below his age level in Mathematics (5.6 AE) and Written Expression (5.8 AE), indicating no progress in either of the latter areas. (F25) The Student was out of school from April 4-April 25, 2005 due to an illness, and then resumed attending HTLA. He was initially placed in a nonrestrictive environment at HTLA, but due to behavioral problems was transferred by May 16, 2005 to the most restrictive setting within HTLA (and therefore the most restrictive in-district placement): a self-contained classroom with 6 to 8 students and staffed by a teacher and paraprofessional with school social worker support. In this setting he had no interaction with non-disabled peers. (F26, 27, 28, 29) A triennial evaluation performed on May 2005 shows that the Student attained an FSIQ of 100, a VIQ of 98 and a PIQ of 101 on the WASI, all within the average range.⁶⁷ The Student was also described as manifesting deficits in emotional awareness, social skills, coping skills and to relate in a guarded, defensive and grandiose manner which may reflect anxiety regarding rejection by others. (F30)
- h. A PPT convened in June 2005 to plan the Student’s 2005/2006 educational program. The PPT recommended that the Student attend WHS (his home high school) participating in a mainstream setting with support from the HTLA Transition Program. (F31) Under this program, HTLA students were placed in mainstream classrooms and could access a resource room setting in which they could receive support if they were having difficulties in the mainstream class. The HTLA student would take their work to the transition work room and could work there with the assigned staff, which at HPHS included HTLA staff, until they were

⁶⁶ The Student entered high school in the 2004/2005 school year as a 9th grader. Were he to graduate in June 2008, he would have completed high school in four years.

⁶⁷ The PIQ showed a substantial improvement over the prior assessment.

able to return to the mainstream class. (F49a) As a result of this change, the Student went from attending school in the most restrictive setting in the District (a small classroom within a school attended specifically by children with “significant” behavioral problems) in which he had no interaction with non-disabled peers to a placement in a mainstream high school setting with essentially what amounted to a resource room support when needed and in which he would now spend most of his time with non-disabled peers in a mainstream-sized class.⁶⁸ The Student’s proposed IEP included only social and behavioral goals and no academic goals notwithstanding that he was performing several grade levels below his identified grade level in writing and math. (F31-32) The criteria for exiting the Student from special education and related services eligibility was identified in this IEP as “ability to succeed in regular education without special education support” rather than graduation. However, the form still states a June 2008 anticipated graduation date. There is no indication that this change in exit criteria from the February 11, 2005 PPT was actually discussed at the June 2005 PPT. (F31)

- i. The Student entered 10th grade in the 2005/2006 school year attending WHS as part of the HTLA Transition Program. The family moved out of the WHS district in November of 2005, and the Student began attending HPHS in the HTLA Transition Program that had been established there. The Student’s initial attendance at HPHS was interrupted due to difficulties in securing public transportation bus tickets and he missed approximately three weeks of school due to this problem. A PPT convened on January 10, 2006 provided public bus tickets to the Student as a related service. A PPT convened on February 7, 2006 resolved issues with the Student’ grades, credits and attendance associated with the transfer from WHS to HPHS and transportation-related absences. (F35-39) It is unclear how much work the Student did not complete during this period. By May 2, 2006, the Student’s behavioral issues prompted an adjustment to his schedule such that his school day was shortened and he was allowed to leave after his last academic class was over, similar to the shortened day he had when attending CREC Polaris. He also began participating for basic academic classes in the HPHS STEP Program, which is unique to HPHS. Students in the STEP program attend a smaller classroom setting for classes in which they are struggling in the mainstream. The STEP classroom provides a “refuge” where the student can receive support for academic and behavioral issues, with the goal of transitioning the student back to the mainstream class. The STEP program provides a higher level of support for students in the mainstream than the HTLA Transition Program. At the May 31, 2006 PPT, the Student was placed in STEP for the remainder of the school year on a full-time basis. The Student continued to attend HPHS on a shortened school day basis. (F40, 41, 43, 67g)
- j. Throughout his academic career the Student had in place IEPs with goals and objectives

⁶⁸ The Student’s transfer from HTLA was associated with a District-wide “inclusion push” designed to return students attending HTLA to their home schools. (F48a) Issues regarding the 2005/2006 school year are not the subject of this due process hearing. Based on the documentary record the Hearing Officer questions but makes no determination as to whether the recommendation to return the Student to his home school and the recommendation to place the Student in a mainstream setting at WHS for the 2005/2006 school year in the HTLA Transition Program without more intensive supports were based on an individualized assessment of the Student’s needs and circumstances given, among other things, the Student’s lack of success over an extended period of time in addressing long-standing behavioral issues in placements in the most restrictive in-district setting at HTLA and in an out-of-district therapeutic day program (CREC Polaris) in prior recent school years.

addressing behavioral issues and/or behavior intervention plans (“BIPs”). Notwithstanding these supports, the Student continued to manifest behavioral issues which adversely impact his educational progress and have resulted and continue to result in various disciplinary actions. (F11, 14, 14k, 18b, 21d, 31f, 40d)

- k. In the 2005/2006 school year, the Student incurred nine reported disciplinary referrals for oppositional and disruptive behaviors involving verbal confrontations with staff, and in March and April of 2006 incurred eleven days of outside suspensions for behavioral issues. (F45, 48b, 49b, 49d)
- l. The Student’s performance on achievement tests over his school career is summarized below.

Assessment Date	Identified Grade	Subject Area	Performance
April 2002 (F10) ⁶⁹	6 th	Oral Expression	5.8 GE
		Comprehension	3.6 GE
		Writing Skills	4.0 GE
		Reading	4.0 GE
		Math	4.0 GE
March 2003 (F14) ⁷⁰	7 th	Math	4.4 GE
		Language Arts	4.3 GE
October 2003 (F18) ⁷¹	8 th	Math	4.4 GE
		Language	4.3 GE
		Writing	3.9 GE
December 2003 (F20) ⁷²	8 th	Reading	7.7 GE
		Writing	2.5 GE
		Math	4.2 GE
April 2005 (F25) ⁷³	Age 14; 9 th grader	Basic Reading	14.6 AE
		Mathematics	5.6 AE

⁶⁹ These scores are 2-3 grade levels below his identified grade.

⁷⁰ These scores are now three grade levels below his identified grade level.

⁷¹ These scores indicate that the Student is now performing at 3 to 5 grade levels below his identified grade and that he was not making any progress.

⁷² The Student is now performing substantially below his identified grade in all areas but reading, which showed a substantial improvement. There was no improvement in math and this was the first report of an assessment of his writing.

⁷³ These scores suggest that the Student was able to maintain the gains he had been making in reading and language arts, and had made no progress in math and written expression.

Assessment Date	Identified Grade	Subject Area	Performance
		Spelling	11.3 AE
		Reading Comprehension	13.5 AE
		Written Expression	5.8 AE
May 30, 2006 (F64) ⁷⁴	10 th	Reading	7.8 GE
		Spelling	5.0 GE
		Math Reasoning	5.1 GE
		Composite	5.9 GE

- m. The Student's performance on assessments of intellectual functioning over his school career is summarized below.

Assessment Date	Verbal	Performance	Overall
January 2000 – WISC-III (F7)	107	90	Not reported
April 2002 – WISC-III (F10) ⁷⁵	100	75	Not reported
May 2005 – WASI (F30) ⁷⁶	98	101	100

6. The Student has spent almost half of his academic career since entering the Board's school system in the 3rd grade (1998-1999 school year) in a non-mainstream setting, either the HTLA (which is the most restrictive in-district placement offered by the Board) or in an out-of-district therapeutic day program (CREC Polaris). In every academic year since the 3rd grade, the Student's IEPs have included goals and objectives to address behavioral and social issues that interfere with his ability to participate in and benefit from his education. The Student has made little to no progress overall in addressing those behavioral issues, which continue to interfere with his ability to participate in and benefit from his education. He continues to incur disciplinary referrals and consequences for his behaviors, which continue to disrupt his participation in his education. Some (but not all) of his IEPs also included academic goals and objectives for language arts, math and writing. The available evidence indicates that the Student possesses the cognitive abilities to do the work. That evidence establishes that the disruptions to his participation caused by his unresolved behavioral issues has resulted in gaps in knowledge which, over time, have left him increasingly unable to perform grade level work in some areas. His achievement test scores over the years establish that the Student has made little to no progress in and is performing substantially below grade level in mathematics, spelling and writing. He is performing closer to grade level in terms of reading and reading comprehension, and showed substantial improvement in these areas associated with his placement at

⁷⁴ The Student's scores in reading and math reasoning improved, but all of his scores remain 2 or more grade levels below his identified grade level.

⁷⁵ Although the Student's VIQ declined from the prior evaluation, both scores are within the average range. The decline in his PIQ is substantial. The documentation does not indicate the cause of the decline.

⁷⁶ To the extent that the full WISC-III results and the results of this screener are comparable, the data shows that the Student's PIQ improved substantially from the prior evaluation, and that his VIQ remained unchanged.

CREC Polaris. Notwithstanding the widening gap between his identified grade level and his grade level performance in some areas as determined by the achievement tests, the Student passed his courses apparently performing grade level work and also passed from grade to grade and has not been held back.

7. Review of the Mother's statements at the PHC, in e-mails and at hearing, the Hearing Officer concludes that the Mother is asserting or attempting to assert claims that the Board has denied the Student a FAPE by:
 - a. Failing to place the Student at Bulkeley for the 2006/2007 school year as she had requested and continuing to recommend out-of-district therapeutic day programs.
 - b. Advising the Mother in November 2006 that she could not file for due process or mediation. (HO1)
 - c. Telling the Mother to keep the Student home after the October 16, 2006 assault and providing him tutoring, and then failing to provide adequate tutoring and failing to provide bus tickets so that the Student could attend his tutoring.
 - d. Failing to comply with the requirements of Connecticut's anti-bullying law and the Federal No Child Left Behind Act. (HO12, February 28, 2007 e-mail time stamped 2:44 a.m.)
 - e. Failing to provide the Student with a copy of the minutes of the January 18, 2007 PPT.
 - f. Failing to correctly record the Student's credits, grades or attendance in the 2005/2006 and 2006/2007 school years and failing to respond to the Mother's request that the records be corrected. (HO12; 3/6/07 e-mail time stamped 2:39 p.m.)
 - g. Failing to take minutes at the January 18, 2007 PPT and failing to provide any minutes of the January 18, 2007 PPT to the Mother prior to this hearing. (HO1)⁷⁷
 - h. Failing to implement the Student's program as defined in his IEP's in retaliation for the Mother's advocacy on his behalf (*i.e.*, the Board has done or not done various things because they do not like the Mother's criticism).
8. Over the course of the 2005/2006 school year in which he attended a mainstream high school, the Student moved into progressively more restrictive settings at HPHS such that on May 31, 2006 he was placed full time into the STEP program which was then the most restrictive setting at HPHS. As to the May 31, 2006 PPT:
 - a. This PPT was properly noticed, the Mother was provided the written procedural safeguards, and the Mother attended and participated actively at this PPT. (F64)
 - b. The parties agree that the IEP team concluded at this PPT that the Student should not return to HPHS for the 2006/2007 school year. (F66)⁷⁸ The parties disagree, however, as to the

⁷⁷ A copy of the minutes was included as Exhibit B25.

placement recommendation developed at this PPT for the 2006/2007 school year.

- d. The Mother contends that the recommendation of this PPT was placement at a mainstream high school (specifically Bulkeley) in a program like the STEP program at HPHS (which the Student was to begin attending by agreement at this PPT). The Mother claims that: (1) she made clear her desire that the Student attend Bulkeley in the 2006/2007 school year in a program similar to the STEP program; and (2) Ms. Glass-McFadden would commence the special permission process needed for the Student to attend Bulkeley. (F71, 73, 76) However, there is nothing in the minutes of the PPT or the IEP (B19) to suggest or indicate that a placement at Bulkeley was discussed at the PPT. There is no reference to Bulkeley or the special permission process in the documentation.
- e. Ms. Glass-McFadden and Ms. Gemmell testified that the PPT recommends services not a location and it is up to the Board's central office staff to determine the location in which those services will be delivered if the services cannot be delivered at the home school. Accordingly, Ms. Gemmell testified that the location in which the Student's services would be delivered (*i.e.*, the school or facility) in the 2006/2007 school year is not stated in the PPT documentation because it is the responsibility of the PPT to determine the services required, not the location. Board witnesses testified that both in-district and out-of-district placements were discussed at this PPT, and that the Mother stated that she wanted a placement where the Student will be most successful. Options discussed included remaining at HPHS or returning to HTLA, both of which were rejected by the Mother. None of these Board witnesses recall a discussion of attending Bulkeley. Ms. Ramos believes that the Mother discussed a transfer to Bulkeley with her prior to the May 31, 2006 PPT but does not recall Bulkeley being discussed at the PPT itself. Ms. Glass-McFadden recalls discussing a transfer to Bulkeley with the Mother in conversation she had with the Mother after the May 31, 2006 as part of the process of identifying a placement for the Student. Various Board witnesses testified that the recommendation for a small structured setting with therapeutic supports stated in the PPT documentation would be consistent with an in-district placement at HTLA or an out-of-district placement in a therapeutic day program of the type offered by the District at the October 25, 2006, January 18, 2007 and February 8, 2007 PPTs. (F65, 66, F67a, 67d, 68, 77, 180)
- f. The evidence overall does not permit a definitive resolution of the conflicting characterizations of the parties regarding the May 31, 2006 PPT. The reported actions of each party are consistent in some respects with that party's characterization of what happened at the May 31, 2006 PPT, and inconsistent in other respects.⁷⁹ However, regardless of the

⁷⁸ Prior to the start of the 2006/2007 school year, the Mother had advised that she did not want the Student to return to HPHS because HPHS had not addressed his difficulties with math. (F158)

⁷⁹ Considered together, the documentary and testimonial suggests that what actually happened was this: The Mother stated at the May 31, 2006 PPT that she wanted the Student to attend Bulkeley and was advised that attendance at Bulkeley had to be arranged through the special permission process. Between the May 31, 2006 PPT and the start of the 2006/2007 school year, Ms. Glass-McFadden and the Mother discussed in-district placements at WHS and Bulkeley, as well as placements out of the district. Ms. Glass-McFadden directed Ms. Gould to identify out-of-district placements and either Ms. Gould or Ms. Glass-McFadden, or both, provided information to the Mother regarding out-of-district therapeutic day programs. The Mother was aware that Ms. Glass-McFadden and Ms. Gould were identifying these placements and starting the referral process but

discussion that took place at this PPT, the documentation of the May 31, 2006 PPT reflects a recommendation for an in-district placement in the 2006/2007 school year.

- g. Turning age 21 was identified as the criteria in the May 31, 2006 PPT documents for “exiting” the Student from IDEIA eligibility. (B19 at 14)⁸⁰ The Student was anticipated to graduate from high school in 6 years from the date he entered high school, rather than 4 years. (B19 at 16)⁸¹ At the May 31, 2006 PPT, the Student’s IEP again included academic goals and objectives, along with behavioral goals and objectives. (F64)
9. During the summer of 2006, Ms. Glass-McFadden discussed out-of-district placements in therapeutic day programs with the Mother, and directed Ms. Gould to make referrals to such programs. By the start of the 2006/2007 school year, Ms. Glass-McFadden knew or should have known that the Mother had rejected the HTLA and all out-of-district placements identified by Ms. Gould. The Student had to attend school somewhere, and the STEP Program (his last agreed upon placement at the May 31, 2006 PPT) was no longer available at HPHS in September 2006. The Board should have convened a PPT in September 2006 to address the unresolved placement issue. No PPT was convened at that time, however. (F67g, 77, 78, 79) The Student began attending the Leadership Academy which was a restrictive setting within HPHS that offers a different type or level of support than the HTLA transition program or the STEP program. The Leadership Academy is a “learning community” of approximately 100 special education and regular education students that attend classes of 20 to 25 students in a separate wing of HPHS. Students in the Leadership Academy receive more support than mainstream students but less support than was available in the STEP program. (F80, 84, 89)
10. The Mother claims that at the start of the school year, she was told by Ms. Glass-McFadden to take the Student to Bulkeley, did so and learned that his paperwork had not been transferred so he could not begin attending Bulkeley. In the period between the start of the 2006/2007 school year and the October 16, 2006 assault, other than attempt to enroll the Student at Bulkeley, the Mother took no action about the failure of the Board to implement her request that the Student be placed at Bulkeley. (F82)
11. Prior to the October 16, 2006 assault, the Student’s behavioral issues were escalating and over the course of the first few weeks of school he incurred twenty-five disciplinary referrals for oppositional and disruptive behaviors at school. (F85) This is not surprising, given that the Leadership Academy was not the appropriate placement for the Student. There are no reports of progress on his IEP goals and objectives during this period. Mr. Horvath’s report of the Student’s grades in this period indicate that the Student was failing English and Science, and had grades of 70

did not direct them to stop. Meanwhile, no one was pursuing the special permission process to enable the Student to attend Bulkeley.

⁸⁰ There is no indication in the minutes that the exit criterion was actually discussed at the meeting, and this is a change from the exit criterion identified in prior PPTs. If turning age 21 is the exit criterion, the Student would turn age 21 years during the 2011/2012 school year and, under Connecticut law, be entitled to receive special education and related services through the end of that school year.

⁸¹ If the Student were to attend high school for six years, he would graduate in the 2010/2011 school year, at age 20 based on his birthdate.

in Math and 75 in History. (F85A; 121d)

12. On October 16, 2006 while he was at HPHS, the Student was assaulted by three HPHS students who also attended the Learning Academy. Five other HPHS students observed what happened. The Student was attending his physical education class at the time, which is the last period of his school day. He reported that on several prior days this group of students would go back behind the fence during gym to “smoke and stuff.” The Student was participating in the class activity when he was called over to join this group. These were students with whom the Student attended classes and he assumed that they wanted to talk about something about school so he left the track and walked over to where this group was standing. When he got to the fence, one of the students grabbed him and pushed him up against the fence and a second restrained him further with a choke hold. His cell phone and some change were taken from his pockets. The bell rang at that point, and the students let him go and left. They refused to return his cell phone. (F86)
13. The October 16, 2006 assault was a traumatic event for the Student and the Parents. The District promptly investigated the assault, treated the assault seriously, timely disciplined the assaulting students and attempted to assuage the concerns of the Student and the Parents with respect to his safety at school. All of the assaulting students were subjected to criminal proceedings. One of the assaulting students had been attending HPHS under the special permission process and was returned to his home school, which was WHS. A second assaulting student was removed from HPHS and placed in an adult education program. The third assaulting student ultimately left the District in January or February 2007. (F95; *but see also* F99)
14. On October 17, 2006, the Student and his family attended a meeting with HPHS staff who were investigating the assault. The Parents voiced no complaint regarding the way in which HPHS staff was conducting its investigation. As they were leaving that meeting and while in a hallway at HPHS, the family was approached by at least one of the assaulting students and at least one other student who had observed the assault, and the Student was threatened by one or more of these students in the presence of his family. The Father reported this incident immediately to Ms. Ramos who he claims advised that there was nothing that she could do. (F90, 90A, 91)
15. The Mother claims that she has kept the Student out of school since October 16, 2006 because Ms. Glass-McFadden and other unidentified staff told her to do so because it was not safe for the Student at school. Ms. Glass-McFadden denies that she made any such statements to the Mother and the Mother did not identify the other District or Board staff members who purportedly made these statements to her. (F94, 95, 104, 106) The Hearing Officer concludes, based on the evidence and the testimony of the witnesses, that after the events of October 16-17, 2006, the Parents decided to keep the Student out of HPHS because of concern for his safety and were not told to keep the Student out of school by District staff.
16. After the assault, the Board offered to place the Student at WHS, HPHS, HTLA, or out-of-district therapeutic day programs at its expense. Board staff advised the Mother that the Board would fund a placement of her choice provided a PPT determined the placement was appropriate for the Student. Board staff assisted the Mother in completing magnet school applications and offered to assist her with the special permission application process to attend Bulkeley. (F108, 110-112, 114)

- a. As to the offer to attend either WHS or HPHS, the Student started the 2006/2007 school year residing in the HPHS district. During the middle of the 2006/2007 school year, the Student moved and began living in the WHS district. Under Board policy, the Student would have the option of completing the 2006/2007 school year at HPHS if he desired or switching to WHS. (F97)
 - b. The Parents rejected placement of the Student at WHS for safety reasons – one of the assaulting students had been attending HPHS on a special permission basis and was returned to WHS. The concern of the Parents about the threat that this assaulting student presented to their son is supported by testimony of Mr. Stringer, the WHS Principal. In February 2007, Ms. Bentham asked Mr. Stringer if it would be safe for the Student to attend WHS given the particular assaulting student that had been transferred back to WHS. Based solely on his assessment of the assaulting student and without knowing the Student, Mr. Stringer advised her that this particular assaulting student presented a risk of harm to others, including the Student, such that it would not be safe for the Student to attend WHS because of the presence of that assaulting student. Mr. Stringer advised, however, that it would be safe for the Student to attend WHS in the 2007/2008 school year (after that assaulting student had graduated). (F133a, 147, 148)
 - c. The Parents rejected an offer to place the Student at HPHS after October 16, 2006 for safety reasons. One of the assaulting students still attended HPHS and HPHS was where both the assault and the subsequent threat had occurred. (F91a-f, 133a, 116)
 - d. The Mother rejected HTLA as a placement based on statements she claims were made by Ms. Blair (HTLA Principal) in January 2006 that because of an influx of students from the Long Lane School, the student population at HTLA would be too “tough” for the Student. (F79c)
 - e. The Mother has rejected all of the out-of-district therapeutic day program placements offered by the District, in part on the basis of their belief that the Student has “earned the right” to be in a mainstream placement and does not need to attend “crazy schools” and has earned the right to attend a mainstream or “normal” high school. (F103, 104A, 127, 134b, 157, 159)⁸²
17. When it became apparent to HPHS staff after the October 16, 2006 assault that the Parents were keeping the Student out of school, Mr. Dabrowski and Mr. Wehrly went to the Student’s home to discuss the issue and see what could be done to have the Student return to school. (F100) The Mother and Student claim that during that conversation and at other times, Mr. Dabrowski, Mr. Wehrly and other staff members encouraged the Mother to withdraw the Student from school and pursue a GED or some other academic credential. Mr. Dabrowski and Mr. Wehrly could very well have discussed withdrawal of the Student from school or transfer to a GED program as potential options for the Student. To the extent necessary to resolve an issue in this case, the Hearing Officer concludes that neither Mr. Dabrowski nor Mr. Wehrly told the Parents to keep the Student out of HPHS because HPHS was not safe for him or told the Parents that they should withdraw the

⁸² The Mother did state, however, that had CREC Polaris had an opening during the summer of 2006, she would have sent the Student there. (F79d)

Student from school from that reason.

18. On October 25, 2006, one week after the October 17, 2006 hallway incident, a PPT was convened.
- a. The Board has not been able to locate a copy of the notice for this PPT. (HO9 at 1) The minutes note that the procedural safeguards were provided to the Mother with a copy of the minutes. The Mother attended this PPT with the Student. (F102)
 - b. The minutes of the PPT (B22) state that the Student is a 16 year old identified as a 10th grader attending HPHS with 6.5 credits completed toward graduation and that the District offered to place the Student at either Wheeler Clinic or Gengras Center, each of which is an out-of-district therapeutic day program.⁸³ The PPT was terminated, however, before it could consider these placement proposals. (F102)
 - c. Ms. Glass-McFadden, Mr. Wehrly and Mr. Dabrowski all testified that the PPT was terminated when the Mother threatened to bash Mr. Wehrly in the head with a hammer. The Mother flatly denies that she made any such statement. The Mother claims that this PPT was convened to discuss issues regarding the Student's credits and grades, and errors in the Board's attendance records regarding the Student. She claims that when she arrived at the PPT, the District staff started discussing placement for the Student and other issues that both the Mother and the Student felt were not important. Accordingly, the Mother left the PPT.⁸⁴ (F103, 104, 104A, 105)
19. Both Mr. Wehrly, who had had an opportunity to work with the Student while he was at HTLA and at HPHS, and Mr. Horvath, who worked with the Student in the 2006/2007 school year, opined that the Student does far better on a one-to-one basis or when he is in a small classroom setting. They noted that his behavior and participation deteriorates when he attends a mainstream class with a large number of students. (F2, 124a, 174) Those observations are generally consistent with Dr. Cohen's conclusion in the 2003 psychiatric evaluation of the Student (F16), with the conclusions of various PPTs and CREC Polaris that the Student requires a small, structured setting with therapeutic supports (F21), and with Mr. Horvath's report of the tutoring he did with the Student in October, November and December 2006. According to Mr. Horvath, in this one-to-one setting, the Student attended regularly, participated appropriately and did his work without difficulty. (F3, 120c)

⁸³ The minutes do not state why these two specific programs were recommended. The Hearing Officer understands that both of these programs are out-of-district therapeutic day programs serving students who have the same types of disabilities and issues as the Student has.

⁸⁴ To the extent that making a determination on the issue of the Mother's participation in the October 25, 2006 PPT is relevant to any issue in this case, the Hearing Officer concludes that based on the Mother's demeanor and conduct observed by the Hearing Officer throughout the hearing, it is likely that at the October 25, 2006 PPT, she made aggressive and loud comments to or about Mr. Wehrly that could reasonably have been perceived as threatening and were most likely abusive. Further, given the Mother's claims that she has been vigorously seeking the return of her son to school, it seems non-credible that the Mother would not want to address at this PPT the fact that the Student had been out of school for a week and when and where he would be returning to school. It also seems non-credible that the Mother would assume that the PPT would not be discussing these issues.

20. Ms. Gould and Ms. Glass-McFadden testified that the out-of-district therapeutic day programs that they identified for the Mother would have been able to provide the special education and related services that the Student requires to receive a FAPE. Both of these witnesses have the qualifications and experience to make those determinations in terms of program selection. (F69A, 78) The Mother has rejected all of these placements on the grounds that the Student has “earned the right” to attend a mainstream high school and that these schools are “crazy schools” which the Hearing Officer understands to mean are for children with disabilities and issues that she does not perceive the Student as having. The Mother has not, however, challenged these proposed placements as inadequate because they do not offer the special education and related services needed to provide the Student a FAPE.
21. The tutoring has been a difficult process and a source of constant friction between the parties. The Mother has throughout this proceeding advised the Hearing Officer about shortcomings in the tutoring process and has made numerous complaints about tutoring issues, primarily lack of preparation of the tutors and inconvenience of the tutoring schedule.
 - a. The Mother requested that Mr. Horvath tutor the Student. The tutoring with Mr. Horvath went well for November and December and then abruptly fell apart in January 2007 shortly after the family moved and apparently as the result of a miscommunication between Mr. Horvath and the Mother, to which the Mother had a strong negative reaction and which led her to ask that Mr. Horvath be removed as the Student’s tutor. After Mr. Horvath was terminated as the Student’s tutor, there was a several week period in January and February during which three other tutors were offered by the Board and all were ultimately terminated or rejected by the Mother. Ms. Butler ceased tutoring the Student associated with the Mother’s behavior toward her. Mr. Wade declined to accept the tutoring assignment in light of the Mother’s rudeness to him when he contacted her to make arrangements for the tutoring. The Mother rejected a third tutor because she could not understand him when he spoke. At some point in late February or March, Ms. Rowe started tutoring the Student. The Mother has voiced a number of complaints about Ms. Rowe’s tutoring, but she continues to tutor him. (F119-125, 136-139, 141, 149, 150, 153, 155, 156)
 - b. The Student did well with Mr. Horvath during his tutoring. Other than the comments offered by Mr. Horvath regarding the Student’s progress with him in the tutoring he provided, there is no evidence in the Phase I record as to how the Student performed in the tutoring, or regarding his grades, or his progress on his IEP goals and objectives. The frequent changes in tutors since Mr. Horvath’s tutoring was terminated by the Mother, and the gaps in tutoring associated with those changes, have likely interfered with the Student’s progress and ability to keep pace with his classes.
22. The next PPT convened after the October 25, 2006 PPT was convened on January 18, 2007 to resolve the placement issues. The Mother attended and participated. The Mother was not provided a copy of the procedural safeguards because she had previously been provided them. The Board again proposed an out-of-district placement in a therapeutic day program, identified some specific placements that it concluded were appropriate for the Student and advised the Mother that if she identified a placement and it was determined to be appropriate by the PPT, the District would fund the placement. The Mother ultimately rejected all of the out-of-district therapeutic day program

- placements offered. (F130, 131)⁸⁵ Her complaint about this PPT was that she did not see anybody recording the minutes at this PPT and did not prior to this hearing receive a copy of the PPT minutes. (F129) A copy of the PPT minutes were included in the Board's record, as exhibit B25. Ms. Glass-McFadden testified that she provided the Mother with a copy of the PPT minutes. (F126, 135)
23. The Mother refused to participate in another PPT convened on February 8, 2007 which was convened to discuss proposed out-of-district therapeutic day program placements. (F143-144)
 24. The Mother did participate in a resolution meeting on February 27, 2007, but that meeting was not successful. (F148-148; HO12 February 28, 2007 e-mails time stamped 2:44 a.m. and 1:49 p.m.)
 25. The Parents desire that the Student attend Bulkeley (the only Board-operated mainstream high school he has not yet attended). The Parents believe the Student will do better at Bulkeley due to past experiences they have had with another child who attended Bulkeley. (F169) There are four potential mechanisms by which the Student can attend Bulkeley - placement through (a) the special permission process; (b) a PPT determination that placement at Bulkeley is required to provide the Student with a FAPE under the IDEIA; (c) the NCLB "Safe Schools" provision; and (d) a move by the Parents into the Bulkeley district.
 26. As to the special permission process:
 - a. The Board's special permission process is available to all students, whether IDEIA-eligible or not. Under this process, a student attending Board school X may petition the principal of Board school Y to be allowed to attend Board school Y. The decision to grant special permission resides with the principal of school Y (in this case, Bulkeley). Under Board policy, that decision cannot be overridden administratively. (F109, 113b)
 - b. In November 2006, Ms. Glass-McFadden and others involved with the Student's special education issues assisted or attempted to assist the Mother in completing the special permission process for the Student to attend Bulkeley. Dr. Dallemand (Assistant Superintendent for Special Education) became involved at Ms. Glass-McFadden's request because the Student was IDEIA-eligible and because of his circumstances at the time. He supported granting special permission and recommended to the Bulkeley principal that special permission be granted. The Bulkeley principal ultimately denied the Student special permission to attend Bulkeley. (F111, 112, 113a)
 27. The Mother has also expressed a desire that the Student attend one of the Board's magnet schools and an application was completed by Ms. Glass-McFadden on the Student's behalf. (F127)

CONCLUSIONS OF LAW

1. The Student was denied a FAPE in the 2006/2007 school year as a result of (a) the District's failure to articulate a definitive placement proposal for the 2006/2007 school year at the May 31, 2006 PPT

⁸⁵ Notwithstanding her objections, the Mother nonetheless signed a consent for placement out of the district.

and (b) the District's failure to convene a PPT at the start of the 2006/2007 school year to address the unresolved placement issue. These failures in this case constitute substantive violations of the IDEIA.

2. As of and at all points since May 31, 2006, a placement in an out-of-district therapeutic day program was the placement required to provide the Student with a FAPE in the LRE for the 2006/2007 school year. Accordingly, the Board was obligated to place the Student, at its expense, in an out-of-district therapeutic day program. That the Board could not compel the Student to attend such a program did not relieve the Board of its obligation to propose such a placement if that is what it believed was required, and to document both its offer and the Parent's refusal (if applicable).
3. The various out-of-district therapeutic day programs offered by the Board to the Parents in the summer of 2006 and at the October 25, 2006, January 18, 2007 and February 8, 2007 PPTs, as well as the February 27, 2007 resolution meeting, were reasonably calculated to provide the Student with a FAPE in the LRE.
4. For the 2006/2007 school year, placement in a mainstream high school with supports (such as STEP) or at HTLA would not have been the LRE placement for the Student.
5. The tutoring provided by the Board in the period after October 16, 2006 was reasonably calculated to provide the Student with an educational benefit pending the resolution of the disagreement regarding placement, given the Parents' refusal to allow the Student to attend school due to their concerns regarding his safety and their refusal to consider any out-of-district therapeutic day program placements.
6. The loss of educational benefits experienced by the Student after October 16, 2006 was exacerbated by the decision of the Parents to keep the Student out of school, their refusal to accept any of the placements offered by the District (even on an interim basis pending resolution of the placement issue) and the Mother's inability to cooperate with District staff trying to provide services to the Student in the circumstances.
7. **As to the May 31, 2006 PPT** - The Board had an obligation to make a specific placement recommendation at this PPT and to properly document its placement recommendation so that the Mother could decide whether to accept or reject the recommendation. To the extent that staff at the May 31, 2006 PPT were recommending an out-of-district placement in a therapeutic day program for the 2006/2007 school year, staff should have at this PPT identified the specific proposed placement being recommended (*e.g.*, Grace Webb or CREC Polaris). At a minimum, staff should have stated that their recommendation was for an out-of-district placement in a therapeutic day program. To the extent that staff at this PPT was recommending a placement at HTLA for the 2006/2007 school year, that recommendation should have been stated as such in the PPT documentation. Had the PPT documentation clearly articulated that the staff's recommendation was for an out-of-district placement in a therapeutic day program or for placement at the HTLA, any disagreement between the Mother and the Board regarding the recommended placement for the 2006/2007 school year would have been identified prior to the 2006/2007 school year, and the Mother could have pursued due process at that time to secure the placement that she desired for the 2006/2007 school year (Bulkeley with a program similar to the HPHS STEP program). The failure

of staff to articulate its placement recommendation at the May 31, 2006 constitutes a substantive denial of FAPE.

8. The substantive violation of the IDEIA arising from staff's failure to clearly articulate its placement recommendation was compounded by the failure to convene a PPT at or before the start of the 2006/2007 school year to resolve the placement issue arising from the May 31, 2006 PPT.⁸⁶ With the placement issue unresolved, the Student returned to HPHS. The STEP program was not available at the time, so the Student began attending the Leadership Academy, a restrictive program which provides a different level of support than the STEP program.
 - a. Given the differences between the two programs, a transfer from the STEP Program to the Leadership Academy for this Student could properly be deemed a change of placement for which prior written notice is required and which should have been determined by a PPT. The Student did not attend the Leadership Academy as a result of a PPT determination, however. Both parties agree after the fact that the Leadership Academy was not the right placement for the Student.
 - b. The Mother bears some responsibility for any loss of FAPE associated with the Student's attendance at the Leadership Academy. Notwithstanding any ambiguity in the documentation of the May 31, 2006 PPT regarding placement for the 2006/2007 school year, it was or should have been clear to the Mother by at least the start of the 2006/2007 school year that the Student was not going to be attending the placement she had requested - Bulkeley. The Mother had been made aware of her due process rights at the May 31, 2006 PPT, had previously commenced a due process hearing and therefore understood that due process was available to her to address the issue of the failure of the District to implement what she understood to be the PPT's recommendation. However, she chose not to commence due process at that time over the issue of the Student's attendance at HPHS as opposed to Bulkeley.
9. The Hearing Officer concludes that after the events of October 16-17, 2006, the Parents decided to keep the Student out of HPHS because they concluded it was not safe for him to attend HPHS. The decision to keep the Student home because of concern for his safety is understandable and the Hearing Officer is not unsympathetic to the desire of the Parents to keep the Student safe at school and to have confidence that District personnel will keep the Student safe. The Hearing Officer makes no judgment as to whether the decision to keep the Student out of HPHS was or was not reasonable in the circumstances, or as to whether the Board is fulfilling its obligations to keep students attending its schools safe. The Parents, however, have an obligation to assure that the Student is available for his education. After the assault, the District offered the Parents every alternative that is available to them with respect to school placements, both through the regular education and the special education processes. Having exhausted the regular education options (*i.e.*, placement at Bulkeley through the special permission process; attendance at a magnet school through the lottery process), the decision of the Parents to keep the Student out of school for safety reasons coupled with their refusal to agree to or accept *any* of the therapeutic day programs offered by the District (even on a temporary basis pending resolution of the placement issue) is

⁸⁶ Instead of convening that PPT, the District continued without success to identify an out-of-district therapeutic day program the Student could attend that would be acceptable to the Mother.

unreasonable and is a primary reason why the Student was deprived of a FAPE after October 17, 2006.

10. To the extent that the Mother seeks an order placing the Student at Bulkeley because a placement at Bulkeley is required under the IDEIA to provide the Student with a FAPE in the LRE, that claim is denied. An out-of-district therapeutic day program was the LRE placement for the Student in the 2006/2007 school year. The thrust of the Mother's case for a placement at Bulkeley revolves around safety issues (the Parents perceive Bulkeley to be safer) and a positive past experience with another child at Bulkeley. That desire and past experience does not, however, constitute a basis for determining that placement at Bulkeley with supports (such as STEP) is the LRE placement for the Student. Moreover, no evidence was presented, as to the availability at Bulkeley of the programming the Student would need to function in a mainstream environment. For example, among other things, the Mother has not provided any evidence that Bulkeley has a STEP program or anything like a STEP program (even assuming that a placement at a STEP program at Bulkeley would be the LRE setting for the Student).⁸⁷ There is no basis to conclude that the Student would have been any more successful academically and behaviorally at Bulkeley than he was or would have been at WHS or HPHS.
11. The Student could also attend Bulkeley if placed there by a PPT provided that the IEP team determined that placement at Bulkeley was required to provide the Student with a FAPE in the LRE.⁸⁸ To the extent that the Mother raised the issue of the Student's attendance at Bulkeley at the May 31, 2006 PPT, the PPT should have considered whether specific placement at Bulkeley was required to provide the Student with a FAPE and documented the discussion and conclusion. Regardless of whether the Mother raised that option at the May 31, 2006 PPT, Board staff knew or should have known before or by the start of the 2006/2007 school year that the Mother desired a placement at Bulkeley. The failure of the IEP team to consider the requested placement at Bulkeley at PPTs convened after May 31, 2006 and document its reasons for not agreeing to that placement was a violation of the Student's substantive rights under the IDEIA. Given the lack of progress in resolving the placement issue over the summer of 2006, had the District convened a PPT in September 2006 to address the unresolved placement issue, there would have been an opportunity to consider the appropriateness of a placement at Bulkeley in light of the unavailability of the STEP program at HPHS at the time. The fact that the District did not agree to Bulkeley and would not have been likely to persuade the Mother to abandon her request for placement at Bulkeley does not excuse the District from its obligation to discuss at the PPT why the District staff believes a placement at Bulkeley would not have been appropriate. A consideration of alternatives is a vital

⁸⁷ The Mother claims the Student "did well" at the STEP program. However, he was only in that program at HPHS on a full-time basis for one month (June, 2006) and she has produced no evidence whatsoever to substantiate her assessment of the Student's performance at STEP in that period.

⁸⁸ Dr. Dallemand's testimony regarding this issues (F113c) is not the same as Ms. Glass-McFadden's, Ms. Gemmell's and Ms. Gould's. (F67a, 78, 180) Those witnesses testified that a PPT placement was not an available vehicle to place the Student at Bulkeley because the PPT determines the type of program that the Student needs, not a specific location in which the program will be delivered. Accordingly, even assuming the Mother had made the request to the PPT, given the view of the District staff who participated at the PPTs, the IEP team would not have considered the issue because it was a request for a specific placement at a specific school within the District, a decision that involved location which they claim must be made at the central office level.

part of the PPT process.

12. The tutoring constitutes a change in placement because, among other things, the Student was no longer having any interaction with non-disabled peers. The Mother objects to the tutoring but does not claim a procedural violation occurred with respect to implementation of the tutoring. As to whether the implementation of the tutoring constitutes a substantive violation of the IDEIA, there is no question that it would have been preferable for the Student to be attending school rather than participating in school through tutoring. However, as of the October 25, 2006 PPT, District staff faced a Hobson's Choice. The Parents were not going to allow the Student to attend HPHS, WHS or HTLA, a placement at Bulkeley through the special permission process remained an unresolved issue and the Mother would not consider placement out-of-district in a therapeutic day program. The Board could have insisted that the Student return to HPHS and then pursued remedies through the attendance court/truancy process if the Mother continued to keep him out of school. However, that process would have taken time during which the Student would have been completely out of school. Moreover, that process would not necessarily have resulted in the Student attending an out-of-district therapeutic day program. The Board could have commenced due process to obtain a determination as to the LRE placement for the Student. However, obtaining such a determination would also not necessarily have resulted in the Student attending an out-of-district therapeutic day program. The District chose to continue working with the Mother through the PPT process to reach an agreement on placement. The District made a good faith effort after October 16, 2006 to provide special education and related services to the Student given the circumstances. The Mother's own frustration has left her unable to cooperate constructively with the District around implementing the tutoring and impeded the efficacy of the tutoring.
13. **Placement at Bulkeley under the Special Permission Process** - The Hearing Officer has no authority to override the Bulkeley principal's decision to decline to accept the Student at Bulkeley under the special permission process.⁸⁹
14. After the special permission process for attending Bulkeley stalled, the Mother met with Dr. Dallemand. Dr. Dallemand testified that at this meeting when the Mother indicated her intention to pursue due process or mediation, he encouraged her to do so as a way to move this matter forward to a resolution. After she commented that she was going to go down to Mr. Badway's office in Middletown (where the CT DOE due process unit had been located at one point) to commence the due process hearing and request mediation, Dr. Dallemand testified that he told her that Mr. Badway's office was no longer in Middletown but rather was in Hartford.⁹⁰ The Mother claims in her request for due process that Dr. Dallemand told her that mediations were no longer done in

⁸⁹ The Hearing Officer notes that there is something of a discrepancy between Ms. Bentham's testimony about why special permission was denied (F112b; Bulkeley was full and had no openings), Ms. Glass-McFadden's testimony (F114; Bulkeley principal decided that she did not want the Student to attend because of his history of behavioral issues), and Dr. Dallemand's testimony (F113b; principal concluded Bulkeley was not equipped to handle the Student). The Student may have been denied special permission for some or all of these reasons. Regardless of the reason for the denial, the Hearing Officer has no jurisdiction to override that decision under the special permission process.

⁹⁰ Dr. Dallemand did not give the Mother the address or for that matter offer to give her the due process forms to complete.

Middletown. (HO1) Her description of this incident at the PHC and at hearing, however, suggest that Dr. Dallemand told her that due process and mediation were no longer available to her. To the extent that the Mother is claiming that Dr. Dallemand's actions were in retaliation for her attempt to advocate for the Student, the Hearing Officer concludes that this event does not reflect a denial of FAPE or a retaliatory action by the Board but rather reflects a misunderstanding by the Mother based on selective hearing.

15. **As to the January 18, 2007 PPT** - At no point has the Mother stated that the minutes of this PPT in B25 were not an accurate statement of the discussion at or the outcome of this PPT. The Mother identified this PPT as the PPT triggering her due process complaint. The Mother's complaint (HO1) filed on January 31, 2007 demonstrates that even if the Mother was not provided with a copy of the PPT minutes on a timely basis, she was not harmed by this purported procedural violation.

16. **Placement at Bulkeley under the IDEIA - the "FAPE Safety Theory"** - The Mother wants the Student placed at Bulkeley because she believes it is not safe for him to attend HPHS, WHS or HTLA. The Student has been and will be victimized at these schools by peers and that the District cannot assure his safety. If an IDEIA-eligible child is the subject of verbal or physical bullying or harassment at school that is so pervasive and persistent that his ability to obtain a meaningful benefit at that placement is impaired, and the LEA ignores or fails to act to correct that circumstance, that eligible child would be denied a FAPE and may be entitled to a change of placement under the IDEIA.⁹¹ For convenience, this theory of relief will be referred to herein as the "FAPE Safety Theory." To prevail on this theory, the evidence would need to establish that the victimization was pervasive and persistent with the result that the Student was unable to fully participate in his placement, that the victimization issue will not arise also at the requested placement and that the requested placement will otherwise provide the child with a FAPE in the LRE. Even assuming Bulkeley is an appropriate placement for the Student, the Mother's claim for relief under the IDEIA Safety Theory is denied because the record does not demonstrate that the criteria for relief under this Theory have been satisfied.
 - a. Examples of cases in which the eligible student was entitled to change in placement relief on the basis of the IDEIA Safety Theory include *Gagliardo v. Arlington Cent. Sch. Dist.*, 45 IDELR 119 (S.D.N.Y. 2006). The student in that case generally performed well academically in his mainstream placements which the LEA had determined constituted the LRE placement for him. The student had "endured years of being teased and bullied at the [LEA's public schools], to the point where he was afraid to go to school. Starting in the 5th grade he received treatment for depression and social anxiety, which included trials of antidepressant medications. He attended the LEA's public high school in the 9th grade and was doing well academically until he was "threatened by another student" early in the school year. Following that incident his grades declined and he became increasingly anxious about going to school. In his 10th grade he was hospitalized due to anxiety and refusal to go to

⁹¹ See, e.g., USDOE, July 25, 2000 Memorandum On Harassment Based on Disability (disability-based harassment that is not appropriately addressed by an LEA can constitute a denial of FAPE, where the harassment decreases an eligible child's ability to benefit from the special education and related services that have been provided); *Pittsburgh School District*, 46 IDELR 233 (PA SEA 2006) (although an IDEIA-eligible student had sustained physical injuries caused by an IDEIA-eligible peer in his placement in a series of incidents, the student was not denied a FAPE absent evidence that the incidents "substantially undermined" his educational progress).

school. The parents ultimately placed the student in an out-of-district program that “protected [the student] from teasing or bullying or ostracism because it refused to tolerate such behavior” and “inculcated [in all students] with Quaker values of tolerance and respect.” As a result the student was not afraid to attend classes. The LEA was found responsible for the costs of the placement because in failing to address the student’s social issues (*i.e.*, he was a victim of bullying and teasing over a long period of time) it was found to have denied the student a FAPE. Another example is *Shore Regional High School Board of Education v. P.S.*, 41 IDELR 234 (3rd Cir. 2004). The student in that case had perceptual disabilities and had been subject to persistent disability-related physical and verbal harassment and social isolation by classmates over a several year period, with the result that the student became depressed and attempted suicide. The LEA was found to have denied him a FAPE when its proposed to place him in a public school environment where he would continue to be subject to the harassment that the LEA had ignored or been unable to successfully address.

- b. These cases illustrate the factual scenarios which would support relief under the FAPE Safety Theory. The factual circumstances in this case do not satisfy the criteria for relief under the FAPE Safety Theory. The evidence indicates that prior to the October 16, 2006 assault, the Student has periodically over the years experienced peer conflicts in which he was victimized. The earliest reference to what appears to be such an incident occurred in the 2004/2005 school year when the Student was attending QMS in the 8th grade. (F18f) It appears that concern for the Student’s safety was one reason why the Student was not taking the regular school bus in the 9th and 10th grades and had a shortened day. Sometime in April or May 2006, the Parents claim that the Student was chased home by other HPHS students who were brandishing a gun. That incident occurred off-school grounds. The Mother reported it to HPHS staff but did not ask them to do anything about it. (F58-62) There is no evidence that the Student sustained physical, psychological or emotional disturbances or symptoms as a result of these events which interfered with his ability to participate in and benefit from the placement.
- c. The October 16, 2006 assault was traumatic. That assault, coupled with the October 17, 2006 threatening incident in the HPHS hallway, the HPHS response to that threatening incident and the fact that one of the assaulting student continued to attend HPHS for some period left the Student anxious about attending HPHS. He was also anxious about attending WHS given that one of the assaulting students was transferred to WHS.⁹² The evidence does not establish that any anxiety he is experiencing has risen to a clinically significant level and

⁹² Ms. Glass-McFadden testified that at the October 25, 2006 PPT, she asked the Student where he wanted to attend school and he replied that he wanted to attend HPHS. (F104) The Student testified that he did not recall that discussion. (F107) The Student’s anxiety about attending HPHS and WHS relates to his conclusion that the assaulting students remain at those schools. His anxiety about attending WHS given the attendance of an assault student appears to be justified on the basis of Mr. Stringer’s testimony. (F148) Given the discussion at the October 25, 2006 PPT, the Hearing Officer believes that the Student’s response to Ms. Glass-McFadden’s question was properly understood to be given a choice between HTLA, HPHS and WHS, the Student would prefer to attend HPHS. The Mother does not want the Student attending HTLA because of the presence of former Long Lane residents at HTLA since January 2006. (F79c) The Student was not asked by Ms. Glass-McFadden whether he would attend HTLA.

become disabling with respect to school attendance. The fact that the Student is anxious does not, in and of itself, satisfy the FAPE Safety Theory criteria. In addition, there is no evidence that the October 16, 2006 assault was part of an ongoing, pervasive and persistent pattern of peer-on-peer harassment or bullying. Finally, the record establishes that the District responded immediately and appropriately to the October 16, 2006 assault once it determined that the Student had been victimized – all three assaulting students were subjected to school disciplinary procedures and were referred to the police for further action within the criminal justice system. One of the assaulting students was attending HPHS on a special permission basis and was transferred back to WHS when his suspension from HPHS ended. Another assaulting student was removed from HPHS to attend adult education and the third was suspended and ultimately left the District in January or February of 2007.

17. **Placement at Bulkeley Under the IDEA** – An eligible child’s disability could be such as to make the child vulnerable to peer-on-peer harassment or bullying. Such a child may require placement in a more restrictive setting or a setting other than his home school to enable him to develop the social judgment, impulse control and social and adaptive skills necessary to participate safely with peers (whether disabled or non-disabled) and avoid victimization. The Mother does not appear to be claiming that placement at Bulkeley is required under this basis. However, if she is making that claim, it is denied.
- a. The Mother presented no expert testimony as to whether and what extent the Student’s disabilities make him vulnerable to victimization by his peers, and whether those disabilities contributed to his victimization on October 16, 2006.⁹³
 - b. Both Mr. Wehrly and Mr. Dabrowski opined that the Student wants to be liked by his peers, and that his desire to fulfill that need coupled with his issues with impulse control, social judgment and social skills make him vulnerable to being taken advantage of by his peers. (F172-173, 175)
 - c. The Hearing Officer agrees with Mr. Wehrly and Mr. Dabrowski that the Student’s disabilities may have left him vulnerable to victimization by his peers. Those issues did not, however, play significantly into the October 16, 2006 assault. There is no evidence that prior to the assault the Student had been victimized by the assaulting students or had had any type of conflicts with them, or had any reason to suspect that they would assault him on October 16, 2006. He testified that they were classmates in the Leadership Academy and that when they called him over to join them he thought they wanted to talk about something school-related. He appears simply (and regrettably) to have been in the wrong place at the wrong time, and to have been the victim of a pre-meditated but unprovoked assault.⁹⁴

⁹³ In fact, the Mother presented no evidence or testimony whatsoever about the Student’s disabilities and the impact of those disabilities on him, other than to state repeatedly that his handwriting is poor and he has not been taught division or multiplication.

⁹⁴ He was aware that this group of students had not participated in physical education for several days but rather went behind the fence to “smoke and stuff.” The only poor judgment that the Student manifested was placing himself in a circumstance in which he might be subjected to disciplinary referral for participating in an activity that was undoubtedly not allowed at school.

- d. Finally, even assuming that the evidence supports a finding that a transfer from HPHS is required to provide the Student with a FAPE in the LRE because his disabilities leave him vulnerable to peer-to-peer harassment or bullying, the evidence does not establish that a placement at Bulkeley would be the FAPE LRE placement needed to address that problem.
18. **Remedies Under Connecticut's Anti-Bullying Law** - The Mother appears to be claiming that the Board violated the Student's rights by failing to comply with Connecticut's "anti-bullying" law, Conn. Gen. Stat. §10-222d, captioned "Policy on bullying behavior." (HO1)
- a. The statute directs each LEA to "develop a policy . . . to address the existence of bullying in its schools."⁹⁵ The policies an LEA is required to implement under this statute would apply to all LEA students, both regular and special education. It is not clear whether this statute creates a private right of action against an LEA. However, even assuming that the statute does create a private right of action in the parent, the Hearing Officer does not have jurisdiction to enforce the statute. Enforcement of this statute would require determining whether the Board has developed a policy in compliance with this statute, whether the policy is in compliance with the requirements of the statute, the adequacy of the policy as a general matter and the adequacy of the Board's implementation of its policy. These matters are outside of the Hearing Officer's jurisdiction.⁹⁶
- b. Even assuming the Hearing Officer has jurisdiction to enforce this statute and it creates a private right of action, there is no evidence that the October 16, 2006 assault was an act of "bullying" or that the Student has been subjected to "bullying" within the meaning of the

⁹⁵ More specifically, the statute states that: "Such policy shall: (1) Enable students to anonymously report acts of bullying to teachers and school administrators and require students to be notified annually of the process by which they may make such reports, (2) enable the parents or guardians of students to file written reports of suspected bullying, (3) require teachers and other school staff who witness acts of bullying or receive student reports of bullying to notify school administrators, (4) require school administrators to investigate any written reports filed pursuant to subdivision (2) of this section and to review any anonymous reports, (5) include an intervention strategy for school staff to deal with bullying, (6) provide for the inclusion of language in student codes of conduct concerning bullying, (7) require the parents or guardians of students who commit any verified acts of bullying and the parents or guardians of students against whom such acts were directed to be notified, (8) require each school to maintain a list of the number of verified acts of bullying in such school and make such list available for public inspection, and (9) direct the development of case-by-case interventions for addressing repeated incidents of bullying against a single individual or recurrently perpetrated bullying incidents by the same individual that may include both counseling and discipline. The notification required pursuant to subdivision (7) of this section shall include a description of the response of school staff to such acts and any consequences that may result from the commission of further acts of bullying . . . Such policies may include provisions addressing bullying outside of the school setting if it has a direct and negative impact on a student's academic performance or safety in school."

⁹⁶ Evidence of a failure to comply with the statute might be pertinent to the issue of whether the LEA has failed to address peer-on-peer bullying and harassment of an eligible child under the FAPE Safety Theory. However, the Mother did not present any evidence on the Board's compliance with the requirement of this statute. Her claim seems to be that the relief available under Connecticut's "anti-bullying" law is transfer to another school, that that relief is available when there is an incident of bullying, and that a single assault constitutes "bullying."

statute. The statute defines “bullying” to mean “any overt acts by a student or a group of students directed against another student with the intent to ridicule, harass, humiliate or intimidate the other student while on school grounds, at a school-sponsored activity or on a school bus, which acts are *repeated against the same student over time.*” (Emphasis added.) The Mother has made no claim and there is no evidence in the record to support any such claim that the Student has been repeatedly victimized by the same students over time, as required by the statute.⁹⁷

19. **Placement at Bulkeley under the No Child Left Behind Act (“NCLB”)** - The Mother appears to be claiming that the Board violated the Student’s rights by failing to comply with the federal NCLB. (HO1)

- a. In compliance with the *No Child Left Behind (NCLB) Act of 2001 - Unsafe School Choice Option*, the Board must offer a school attendance choice to (a) an individual student who is the victim of a violent criminal offense on school grounds and (b) students from schools that are identified by the Connecticut State Board of Education as persistently dangerous within the meaning of the NCLB starting with the 2003/2004 school year. CT DOE Circular Letter C-34 (Series 2002-03) (June 23, 2003) provides in pertinent part that:

Students who are victims of a violent criminal offense on school grounds must be offered, in a timely manner, the opportunity to transfer to a safe public school within their District. The student may elect to remain at his/her original school. If no opportunity exists within the District, the District may but is not required to seek alternatives for the student in a neighboring district, charter school or magnet school. An alternative must be provided that takes into account the needs and preferences of the affected students and parents.

- b. Further, even assuming the Hearing Officer has jurisdiction to redress a violation of the NCLB Unsafe School Choice Option provision, and that the October 16, 2006 assault constituted a “violent criminal offense” within the meaning of the statute,⁹⁸ after the assault the Board offered to place the Student at WHS and at HTLA both of which are Board-operated public schools. The Mother has not established that either one of these schools is not a “safe public school” for purposes of the NCLB. The fact that the Student may or may not be “safe” at a school is not dispositive of the issue of whether the school itself is or is not a “safe public school” within the meaning of the NCLB.

20. **Retaliation Claims** - The Mother contends that various actions have been taken against the Student

⁹⁷ Prior to the October 16, 2006 assault, the Student has been the victim of peer-to-peer conflict from time-to-time, once in school and once off school grounds. There is no indication that the youths involved in either of those incidents were the students involved in the October 16, 2006 assault, or that the assaulting students had been victimizing the Student prior to the October 16, 2006 assault.

⁹⁸ Connecticut’s definition of violent criminal offense has three components: First, the victim student suffers bodily injury as a result of intentional, knowing, or reckless acts committed by another person. Second, the police have been notified and a report taken. Third, the factual underpinnings in the police report are sufficient to constitute a crime described in the penal code, Title 53a of the Connecticut General Statutes.

in retaliation for the Mother's criticism of the Board or District personnel, and in retaliation for her advocacy on behalf of the Student with respect to his IDEIA rights.⁹⁹ If it is determined that an LEA has denied an eligible child a FAPE under the IDEIA in retaliation for efforts by the child's parents to enforce their rights and the student's rights under the IDEIA, then the parents would have a remedy under the IDEIA and, among other Federal statutes, under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) ("Section 504"), and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 ("ADA").¹⁰⁰ Section 504 and the ADA are Federal civil rights statutes that prohibit LEAs from discriminating against students with disabilities in their schools and programs and provide remedies for denials of a FAPE in retaliation for efforts of the parents to protect their child's rights under the IDEIA.¹⁰¹ The relief for a retaliatory denial of FAPE available under the IDEIA is narrower than the relief potentially available for retaliation under Section 504 or the ADA. An IDEIA due process hearing officer has no jurisdiction, however, to enforce either Section 504 or the ADA. To the extent that a Section 504 or ADA claim involves allegations of a denial of FAPE, and the parents are seeking to compel the LEA to provide the child with a FAPE, the parent must proceed under the IDEIA to secure the relief available to them under the IDEIA (*i.e.*, the provision of FAPE), before proceeding to a court to assert their Section 504 and ADA claims.¹⁰² The motivation or intent of LEA personnel in denying FAPE is relevant to a Section 504 or an ADA claim but is not pertinent to resolution of issues under the IDEIA as a general matter. For purposes of the IDEIA, the remedy for a denial of FAPE due to honest mistake is the same as the remedy for a denial of FAPE based on retaliation or other improper motive. For this reason, the Hearing Officer acknowledges herein the Mother's claims of retaliation but makes no determination as to the merits or validity of those claims or the sufficiency of the evidence on those claims, other than the claim with respect to Dr. Dallemand's statements to her about her right to due process and mediation. Based on his assessment of witness credibility and the documentary evidence, the Hearing Officer concludes that the claim that Dr. Dallemand retaliated against the Student as described by the Mother lacks merit.

21. Issues Regarding Bus Tickets - The Mother claims that the Student has been denied a FAPE in the

⁹⁹ The alleged retaliatory actions include: (a) lying about and to her; (b) failing to honor commitments she claims were made to her (*e.g.*, failing to provide bus tickets; failing to address issues regarding grades, credits and attendance); (c) failing to implement the Student's IEPs; (d) denying the Student special permission to attend Bulkeley; and (e) telling her she cannot commence due process or a mediation.

¹⁰⁰ *See, e.g., Rose v. Yeaw, et al.*, 214 F.3d 206 (1st Cir. 2000) (claim that LEA retaliated against the parents in response to their efforts to enforce the student's educational rights and generally failed to implement his IEP "related unmistakably to the evaluation and educational placement of [the student] and to the provision of [a FAPE];" affirming entry of summary judgment on Section 504 and ADA claims arising from the denial of FAPE for failure of parents to exhaust remedies for denial of FAPE under the IDEIA).

¹⁰¹ Section 504 applies to all schools that receive federal funds and the ADA applies to all state and local entities, including LEAs, whether or not the entity receives federal funds.

¹⁰² The IDEIA at 20 U.S.C. § 1415(*J*) provides that *before* filing a "civil action" under Section 504 or the ADA that seeks relief that is also available under the IDEIA, the parent must complete the due process procedures available under the IDEIA to address denials of FAPE. If it is determined that the child has been denied a FAPE under the IDEIA (*i.e.*, if it is determined that the LEA violated the IDEIA), the parents may then proceed to present their evidence of violations of Section 504 and/or the ADA to a court for resolution and entry of the broader relief that may be available to them under those statutes.

2005/2006 and 2006/2007 school years because the District has failed to provide him with public transportation bus tickets so that he may (in the 2005/2006 school year) attend school and (in the 2006/2007 school year) attend his tutoring. The Board does not dispute that there have been issues with transportation of the Student in both school years.

- a. As to the 2005/2006 school year (which is not at issue in this case): In November 2005, the family moved out of the WHS district and into the HPHS district. The Student's IEP at the time did not provide for transportation as a related service. It is unclear why the Student was not taking the public school bus. There is no disagreement among the parties that between mid-November 2005 and early January 2006, the Student missed a number of days of school because he purportedly had no way to get to school. The Mother claims during this period that she sought assistance with this from HPHS staff who did not respond but that she was ultimately able to get assistance from the HTLA principal until HPHS could resolve the issue. A PPT was convened on January 10, 2006 at which the Student's IEP was amended to provide for public bus transportation tickets as a related service. Once that was done, the issue of transportation appears to have been resolved for the balance of the 2005/2006 school year. At a PPT in February 2006, it was determined that the Student would not be penalized under the Board's attendance policies for transportation related absences. (F38-39) That adjustment to his attendance records says nothing, however, as to whether he was denied a FAPE associated with the disruptions to his attendance in this period. The Mother has not claimed that prior to the transfer from WHS to HPHS she had notified the District of a potential transportation issue and requested transportation. There is no basis in the evidence to suggest that either WHS or HPHS staff knew or should have known this was an issue before the Student moved such that a PPT needed to be convened to address transportation as a related service. The District could, however, have acted more quickly to convene a PPT to resolve the transportation issue after the issue arose in November 2005.
- b. As to the 2006/2007 school year: The Mother claims that at various points in time since the tutoring began in the 2006/2007 school year, the Student has been unable to attend the tutoring because he did not have public transportation bus tickets. Mr. Horvath testified that the Student attended most of the tutoring, that he occasionally missed a day of tutoring prior to the family's move in late 2006, and that in January 2007 he missed four to five days of tutoring due to bus ticket issues. The Hearing Officer will assume that the disruptions to the tutoring associated with transportation issues caused a loss of FAPE incremental to the loss of FAPE associated with other violations of the Student's substantive rights under the IDEIA in this case. The award of compensatory education provided herein should address any incremental denial of FAPE associated with tutoring sessions missed due to transportation issues.

22. **Issues Regarding Transition Planning** - The Hearing Officer has determined that there is a potential for a denial of FAPE for the Student regarding transition planning and that it is appropriate to enter certain orders to address that potential even though not raised by the Mother.

- a. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include a statement of the Student's transition plan and transition service needs. IDEIA at 20

USC § 1414(d)(1)(A)(i)(VIII) and the IDEIA Regulations at 34 CFR § 300.320(b).¹⁰³ Transition services help students with disabilities bridge the gap from school to post-secondary activities and life, preparing them for adult life and providing them with skills that they will need to obtain gainful employment, if appropriate. Transition services emphasize the acquisition of functional skills and hands-on knowledge, enabling students who can enter the workforce or continue education or training to do so and students who can do neither to live as autonomously as possible, given the extent of their disabilities. Transition services can address areas such as academic/life-long learning, workplace readiness, occupationally specific skills, self-determination, daily living skills, health and physical care, leisure, mobility, money management and social skills. See, e.g., *Mason Community Sch. Dist*, 21 IDELR 241 (SEA IA 1994).

- b. The Student turned 16 years of age in the 2006/2007 school year. Accordingly, the IEP developed at the May 31, 2006 PPT for the 2006/2007 school year was the first IEP in which transition planning for the Student was required to be undertaken. The Student did not attend that PPT, there is no indication that transition service needs and transition planning was actually discussed at the PPT, the information regarding transition planning in the IEP is not detailed and no transition planning-related goals and objectives were developed. (F64h) Further work needs to be done expeditiously to identify the Student's transition plan and transition service needs. The Mother has not raised any issue regarding the adequacy of the transition planning for the Student to date and the Hearing Officer makes no judgment as to the adequacy of the transition planning to date. Transition planning will be particularly important for this Student given his age, the lack of resolution of his behavioral issues over his entire academic career, and the impact that his behavioral issues are having on his academics. Despite her zealous advocacy for the Student, the Mother is not likely to recognize the significance of transition planning for the Student or his entitlement to transition planning and services. The Student is also not likely to advocate for himself on these issues either.
23. **Issues Regarding Determination of Eligibility Termination Criterion** - The Hearing Officer has also determined that there is a potential for a denial of FAPE for the Student associated with the determination of the criteria for exiting the Student from special education and related services and for terminating the Student's eligibility through graduation and the award of his high school diploma. This was also not an issue identified by the Mother. The Hearing Officer has, however, determined that it is appropriate to enter certain orders to address that potential in the

¹⁰³ These statements must include the following information: (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals. IDEIA Regulation, 34 CFR 300.43(a), defines transition services as a coordinated set of activities for a child with a disability that: (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes: (i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

circumstances.

- a. A child's eligibility for special education and related services under the IDEIA terminates when: (1) it is determined that the child no longer needs special education and related services because he/she has attained all of his/her goals and objectives and is able to function in the mainstream without special education and related services support; or (2) when the child graduates from high school with a regular high school diploma; or (3) when the child turns 21 years of age (and without regard to whether the child has been awarded a high school diploma). The selection of "exit criteria" is to be made by an IEP team at a PPT and reflected in the IEP documents.
- b. The February 11, 2005 IEP identified the Student's exit criteria as graduation with an anticipated graduation date of June 2008, which would have been four school years after he entered the 9th grade in September 2004. (F24e) The IEP in place for the Student for the 2005/2006 school year (identified as his 10th grade year) identified ability to succeed in regular education without special education and related services supports as the exit criterion and identified a June 2008 graduation date. (F31c) The May 31, 2006 IEP developed for the 2006/2007 school year (identified as his 11th grade year) identified the exit criterion as age 21 and stated that the Student was expected to complete high school in six years (which would be the 2010/2011 school year based on entering 9th grade in the 2004/2005 school year).
- c. The Mother has not raised any issue regarding the exit criteria selected for the Student. Notwithstanding her zealous advocacy for the Student, the Mother is not likely to recognize the significance of graduation with a regular high school diploma for the Student's rights under the IDEIA. She may not be aware that the Student may be eligible to receive special education and related services through the Board until the end of the school year in which he turns 21 years of age. Moreover, because of her beliefs regarding whether the Student is disabled and her dissatisfaction with the Board, she is not likely to object to a plan to graduate the Student in June 2008 as would be expected if he progressed through high school from grade to grade on schedule. The Student is also not likely to be able to knowingly advocate for himself on these issues. While the Mother and the Student (when he attains the age of majority) are free to decline services that might be available to the Student, it is critically important for this Student given his age, the lack of resolution of his behavioral issues over his entire academic career, and the impact that his behavioral issues are having on his academics, that any decision to decline services available to the Student be made knowingly. Otherwise, the Student's rights under the IDEIA could be severely prejudiced. The Hearing Officer is entering certain orders to address this potential harm to the Student's educational interests.

FINAL DECISION AND ORDER

1. As of the end of the 2006/2007 school year, the Student has been enrolled in high school for three school years. However, his grade level at the end of the 2006/2007 school year based on credits earned and attendance remains to be determined, and will be addressed in Phase II. To remedy the denial of FAPE the Student has experienced arising from the May 31, 2006 PPT and subsequent

events, the Hearing Officer directs that the Board offer to provide the Student with special education and related services at Board expense for no less than four more school years (or through the end of the 2010/2011 school year) provided that he maintains his eligibility under the IDEIA and continues to reside in the Board's jurisdiction. The Board is to document its offer and the Mother's response to its offer, in the PPT minutes or an attachment to the minutes. The Hearing Officer further directs that from this point forward, the Student's "exit" criteria shall be identified as ability to succeed in the mainstream environment without special education and related services supports. The Board is to continue to offer and provide at its expense special education and related services through the end of the 2010/2011 school year, regardless of whether the Student attains sufficient credits to graduate prior to the end of the 2010/2011 school year and regardless of whether the Student is awarded a regular high school diploma prior to the end of that school year. The Board may award a regular high school diploma to the Student provided the Student satisfies the requirements for receiving a diploma, including any requirements stated in his IEP.

2. The District shall not change the criterion for exiting the Student from eligibility for special education and related services established in this order unless it obtains a determination from a due process hearing officer that the change in exit criterion satisfies the procedural and substantive requirements of the IDEIA, and that the Mother and/or the Student (as applicable) have been fully informed of the significance to the Student's rights under the IDEIA of the change in exit criterion. The District is to commence that due process hearing. A hearing is to be commenced regardless of whether the Mother and/or the Student (as applicable) consent to the change in exit criterion.
3. Within 45 calendar days of the date of this Final Decision and Order, or 30 calendar days of the date of the issuance of the Final Decision and Order in Phase II – whichever is earlier – a PPT is to be convened to determine the Student's transition service needs, his plan for post-secondary education and define IEP goals and objectives related to transition planning for the next school year.¹⁰⁴ The discussion of these issues is to be recorded in the minutes of the PPT or an attachment to those minutes. More specifically, the PPT documentation is to state the Board's proposed transition services and planning and, to the extent that the Mother and/or Student as applicable reject the Board's proposal, the reasons for the rejection and the planning and services desired by the Mother and/or Student as applicable, and the ultimate agreed-upon outcome if there is one. At each PPT convened for the Student subsequent to this initial PPT, the issue of the Student's transition service needs and transition planning is to be discussed and that discussion and its outcome documented in the minutes of the PPT meeting or an attachment to the minutes.
4. Within 45 calendar days of the date of this Final Decision and Order or 30 calendar days of the date of the issuance of the Final Decision and Order in Phase II – whichever is earlier - a PPT is to convene to determine the Student's placement and program for the 2007/2008 school year. The District is to identify at this PPT the location in which the program it is proposing will be delivered (*i.e.*, if an out-of-district therapeutic day program, the name of the program).¹⁰⁵ The

¹⁰⁴ The parties should work together before this PPT to develop a transition plan, identify transition services needs and develop transition-related IEP goals and objectives.

¹⁰⁵ The parties should work together before this PPT to discuss acceptable placement options.

discussion of that issue is to be documented in the minutes of the PPT or an attachment to the minutes. The District may present alternative proposed placements to the Mother from which to choose, but is to document in the PPT minutes or an attachment to those minutes its preferred or recommended placement among the choices offered, and the reasons for that recommendation. To the extent that the Phase II Final Decision and Order has not yet been issued, the District should at this PPT offer a proposed placement for the Student assuming he is in the 10th grade for the 2007/2008 school year and a proposed placement assuming he is in the 11th grade in the 2007/2008 school year. If the Mother declines the District's preferred proposed placement, the reasons she is declining and the related discussion shall be included in the minutes of the PPT or an attachment to the minutes. The discussion of these matters in the PPT documentation is not to be limited to the ultimate agreed-upon outcome (if there is one) and is to specifically define any disagreement.

5. Starting with the PPT convened pursuant to this order, and for each remaining PPT at which placement is an issue being considered, the District shall ask the Mother to state her proposed placement and explain why she is requesting that placement. The discussion of that issue shall be recorded in the minutes of the PPT or an attachment to the minutes.

Observations Regarding the Student

1. Omitted
2. Mr. Wehrly is a Special Education Teacher and Transition Coordinator currently assigned to HPHS. He has been at HPHS for 3 years and worked with the Student both at the Hartford Transitional Learning Academy (“HTLA”) and at HPHS. According to Mr. Wehrly, the Student is a “very workable student” and someone with whom he had a “decent working relationship.” “[Y]ou could teach him, he’s very capable academically. He seemed to be missing huge chunks of his learning . . . And I’m sure that was due to his behavioral difficulties in school, and he honestly would miss whole chunks of his education due to his behavior difficulties.” The Student was a “good student one on one” but in a larger group, he would need to “put on a show for the kids” and would be belligerent to teachers and students. “One on one you could actually sit down and have a nice conversation with him and he was very personable at times when you did that.” (Wehrly 3/19 Test. at 46-47; 51-52; 54)
3. Mr. Horvath was the Student’s history teacher during the 2006/2007 school year and tutored him between October 26, 2006 and January 10, 2007. Mr. Horvath states that the Student “worked hard and completed all assignments, homework and tests until he moved. He was a very independent worker . . . [He] was easy to work with. He communicated well and showed a good attitude.” During this marking period (10/26/06-1/10/07) he earned the following grades: Math 75, English 80, Science 80, US History 85 and Leadership 80. He was absent 6 times and attended 38 times. The Student “did a great – he did a very good job with me.” Until the time the Student moved in December 2006, he was doing “mostly B work” in the tutoring. He was struggling with the math but was “giving the effort.” Exhibit B23 at 7 are the grades Mr. Horvath gave the Student. (Horvath 3/19 Test. at 99-102; 108-109)

B. Background Through 6th Grade (2001/2002 School Year)

4. Prior to the 3rd grade, the Student did not reside in the District. While in the 2nd grade (1997-1998 school year), he manifested behavioral problems (defiance and fighting) and was identified as eligible for special education and related services based on an exceptionality of ADHD. (B4; B13)
5. The Student entered the District’s schools as a 3rd grader in the 1998-1999 school year. A PPT convened in March 1999 recommended placement in a more highly structured setting due to behavioral issues (aggression, opposition) and poor relationship skills which were interfering with his academic progress. The Student entered the HTLA before the end of 3rd grade. (B13) HTLA is Board-operated public school housed in its own building for students with “significant social/emotional behavioral issues that require a smaller setting.” (Dabrowski 3/19 Test. at 21)
6. A May 1999 psychiatric evaluation recommended continued placement at HTLA, individual therapy and a trial of stimulant medication. (B4)
7. The Student attained a VIQ of 107 and a PIQ of 90 on a January 2000 administration of the

WISC-III. (B13)

8. The Student remained at the HTLA until the middle of 6th grade (2001-2002 school year). PPTs while the Student was at the HTLA describe him as possessing solid academic potential but also manifesting oppositional and aggressive behaviors which impeded his academic performance and progress. (B13)
9. In January 2002 (the Student's 6th grade year), the Mother requested placement in a less restrictive setting. The Student was transferred from HTLA to the District's South Middle School ("SMS") in March 2002.¹⁰⁶ He incurred multiple suspensions shortly after starting at SMS for oppositional behavior. (B1; B4; B13)
10. A triennial review in April 2002 indicates the following, among other things (B13; B4):
 - a. The Student attained a VIQ of 100 and PIQ of 75 on an administration of the WISC-III.
 - b. A trial of Ritalin had been discontinued due to side effects.
 - c. The Student was described as an "articulate young man" who needed prompting and reassurance during the testing and was having great difficulties modulating his feelings without intervention.
 - d. The Student was reported to have a 5.8 grade level in oral expression; 3.6 grade level in comprehension; writing skills at the 4th grade level; 3.9 grade level in written expression; and reading and math scores at the 4th grade level "overall."
11. A PPT was convened on April 12, 2002 to develop an IEP for the Student for the 2002/2003 school year. The PPT minutes were not included in the record. It appears that the PPT recommended a continued placement at SMS. The goals and objectives pages of that IEP, with the Student's progress noted on them, were in the record (B5 at 8-13). These documents indicate that the Student's goals and objectives addressed both academic and social, emotional and behavioral issues, and that he had made limited to no progress in each goal and objective identified in this IEP and did not master any of them. Those goals and objectives were:

Goal # 1: The Student will demonstrate measurable improvement in reading skills. Obj A: Given an appropriate passage, the Student will read silently and orally summarize the passage using 3-5 major events. Obj B: Given a list of appropriate unknown vocabulary words, the Student will learn meaning and identify correct meaning with 80% accuracy. Obj C: Given a list of appropriate unknown words, the Student will orally decode them by applying linguistic rules and identifying prefix, suffix, root word, etc.

Goal # 2: The Student will demonstrate measurable progress in writing skills. Obj A: Given a writing assignment, the Student will self edit for mechanics of writing (capitals,

¹⁰⁶ It is unclear from the documentation whether he was placed in a mainstream or restrictive setting within SMS.

ending punctuation, commas without teacher prompts). Obj B: Given a writing assignment, the Student will utilize all four strategies of process writing (pre-writing, writing, editing/revising, publication) without teacher prompt. Obj C: Given a writing prompt the Student will write a three paragraph essay which contains paragraphs that directly relate to the main idea of the piece.

Goal # 3: The Student will demonstrate measurable progress in mathematics skills. Obj A: Given 10 problems, the Student will multiply 2 digits by 2 digits with 80% accuracy. Obj B: Given numerals up to 9 digits, the Student will read, write and order them correctly with 80% accuracy. Obj C: Given level appropriate word problems, the Student will identify the correct operation and solve the problem.

Goal # 4: The Student will demonstrate measurable progress in compliant behavior. Obj A: When given a direction, the Student will follow it after the first time it is given 80% of the time. Obj B: When given a task by an adult, the Student will respond and will complete task willingly 50% of the time. Obj C: When moving from one classroom to another, or shifting from one activity to another without teacher intervention 80% of the time. Obj D: Given a direction by an adult, the Student will respond in a socially appropriate manner without the use of sarcasm or disrespect. Obj E: Given a task, the Student will stay on task for 30 minutes without teacher prompt. Obj F: Given an assigned room or place to be, the Student will not leave assigned room without adult permission.

Goal # 5: The Student will demonstrate measurable improvement in appropriate school behavior. Obj A: Given a transitional time between classes, the Student will pass from one class to the other directly and without teacher intervention. Obj B: Given a beginning of a class, the Student will get his materials and demonstrate that he is ready to start class within 3 minutes of class beginning. Obj C: Given 10 days of homework, the Student will complete and return homework 9 out of 10 days for 3 cycles.

C. CTDOE 02-250 – Challenge to April 12, 2002 IEP

12. On September 4, 2002, approximately 5 months after the April 12, 2002 PPT, the Mother commenced due process (CTDOE 02-250) to challenge that PPT's placement recommendation and identification of the Student's exceptionality. That matter was heard by Hearing Officer Gelfman, whose November 12, 2002 Final Decision and Order (B1) states the following, among other things:
 - a. The issue of whether the IEP and program offered to the Student was reasonably calculated to provide him with a FAPE in the LRE was not reached. On the first day of hearing (October 17, 2002), the Board offered to place the Student at the TOPS program at another Board middle school, Quirk Middle School ("QMS"), as requested by the Mother.
 - b. At that point, the hearing was stopped because the Mother reported that "she had a medical appointment and could not stay for the hearing." Another hearing date was

scheduled for October 31, 2002 to address any issues that remained in dispute.

- c. “The TOPS program is a self-contained program, with two teachers and two paraprofessionals. Specials (i.e., physical education, art, etc.) are provided with mainstream students. The program provides academic subjects in a self-contained class, with immediate response to misbehavior. Students who misbehave may be sent to a time-out area or in-school suspension. With parental cooperation, students who are having a ‘bad day’ may go home. Only serious infractions are punished with out-of-school suspension.”
- d. The Student commenced attending the TOPS program on October 24, 2002. On October 25, 2002 he was suspended for two days following an altercation with a teacher.
- e. At the October 31, 2002 hearing:

[Mother] became upset during the hearing and challenged several statements made by a school staff member. [Mother] also challenged Student’s classification as seriously emotionally disturbed. At approximately 12 noon, [Mother] announced that she had an appointment and refused to remain at the hearing for testimony to be provided by Teacher from Student’s TOPS program.

The hearing concluded after the teacher’s testimony was taken.

- f. The Student attended both days of the hearing, and Hearing Officer Gelfman noted that the “Student was extremely well-behaved and cheerful at the beginning of each day [and] testified candidly about his difficulties in school, although he did not acknowledge his misbehavior.”
- g. Hearing Officer Gelfman directed that a PPT convene to plan further evaluations of the Student to determine whether the District’s proposed classification of SED based on the April 2002 triennial evaluation results was appropriate.

D. 7th Grade (2002/2003 School Year)

13. The Student attended QMS for the 7th grade.

1. March 24, 2003 PPT

14. The minutes of a March 24, 2003 PPT describe the Student as a “bright youngster whose performance was impeded by poor emotional control (emotions building to aggressive outbursts).” (B13) The minutes state the following, among other things:
 - a. This PPT was convened, in part, as a manifestation determination PPT, to address “many disciplinary referrals.” The Student’s teacher reported that the Student is “not able to control his emotions many times when the pressure builds up which leads to violent behavior.” The Mother reported that “similar incidents” were occurring in the

neighborhood, that the Student was going to obtain counseling at the Village for Families and Children and that a psychiatric evaluation was pending. The PPT determined that the disciplinary referrals were a manifestation of the Student's disability.

- b. The minutes describe the Mother as "always supportive and demonstrating much concern for [the Student's] welfare." The minutes note, however, that the Mother would not provide consent for an evaluation by the District, but rather would ask the Student's physician to refer the Student to a psychiatrist for an independent evaluation. The Mother had also requested assistance in identifying a psychotherapist for the Student.
- c. The Student was doing well academically, with grades ranging from As to Bs.
- d. The PPT recommended placement in a full time, self-contained behavior management/modification special education program with time out and physical intervention if necessary to meet the Student's "SED" needs. The program also needed to have an "integrated therapeutic component."
- e. The Student's exceptionality was identified as "Emotional Disturbance" rather than "OHI -ADD/ADHD"
- f. The goals and objectives of the April 12, 2002 IEP would remain in place.
- g. On the WIAT, the Student's current level of academic performance was identified as 4.4 GE in Math and 4.3 GE in Language Arts.
- h. The Student's placement would be placed in a self-contained classroom for the entire school day, so that he would receive 25 hours/week of special education instruction and 1 hour/week of social work services, and spend no time with non-disabled peers. Accommodations to be provided included: daily feedback, positive reinforcement, cuing of expected behavior, proximity/touch control, structured transitions, behavior contracts and posting of class rules.
- i. The criteria for exiting the Student from special education and related services was identified as "ability to succeed in regular education without special education support."
- j. A Behavior Intervention Plan ("BIP") states that the Student's behavioral issues are pervasive rather than situation specific and that he requires a highly structured behavior modification program with an integrated therapeutic component. It was noted that the Student "can be respectful" and that this behavior was to be positively reinforced whenever it occurred. He was also noted to be doing well academically. His problem behaviors were identified as goal oriented for attention seeking or recognition. A Functional Behavioral Assessment ("FBA") was also completed.
- k. A school social work report indicates that the Student is diagnosed with ADHD but is not currently on medication or receiving therapy. The Student has a long history of

oppositional behaviors including defiance toward teachers, sarcasm, instigation of peers and use of profanity. The Student reportedly “feels that people are against him and blames others for his problems.” The Student is not responsive to classroom rewards and consequences in the TOPs program placement.

2. May 2, 2003 PPT

15. A PPT was convened on May 2, 2003 to secure the Mother’s consent to a psychiatric evaluation to facilitate development of the Student’s 2003/2004 school year IEP. (B3) That referral reflected continued behavioral problems at the TOPS placement. The Student has been disrespectful and oppositional, with questions raised about depression. (B4; B13)¹⁰⁷

3. June 2003 Psychiatric Evaluation

16. In June 2003, a psychiatric evaluation was performed by Eric Cohen, M.D. His evaluation report (B4) indicates the following, among other things:
- a. Dr. Cohen diagnosed the Student as having ADHD, ODD, and Depressive Disorder Not Otherwise Specified. He recommended further assessment to rule out Reading and Written Expression Disorders. (B4)
 - b. The Parent did not attend Dr. Cohen’s interview with the Student but was interviewed by telephone. She advised that the Student was being sent home nearly daily for non-compliant behavior; that he had been getting into fights at school, and that she did not believe he made progress at HTLA or that a return to HTLA would not be appropriate for him. (B4)
 - c. The Student reported that he wants the opportunity to “get along more with kids and that special education makes him feel ‘dumb, bad.’” He described the Mother as overprotective and reported that the medication (Dexedrine and Ritalin) made him feel drowsy and like a “zombie.” (B4)
 - d. Dr. Cohen concluded that the Student “has not had much emotional or academic growth in either a regular education program or the highly structured environment at HTLA. He would benefit by being placed in a classroom setting with a small student to teacher ratio with a high level of clinical supports and therapy services available within the school.” Dr. Cohen recommended continued outpatient individual and family therapy, and that further consideration be given to medication management. (B4)

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

17. The Student, age 12, entered the 8th grade at QMS.

¹⁰⁷ The document suggests that the Mother apparently was not successful in obtaining a psychiatric evaluation for the Student on her own.

1. October 2, 2003 PPT

18. The minutes of the October 2, 2003 PPT (B5) indicate the following, among other things:

- a. The Mother attended and was given a copy of the procedural safeguards.
- b. The purpose of the PPT was to review the results of Dr. Cohen's evaluation. The Student was reported to have started the year well, but that his behavior and academic performance have deteriorated over time and he has been involved in behavioral incidents in which school security had to be called. The Student denies inappropriate behavior when confronted by staff who have witnessed the behavior. The Student reportedly "is unable to control his anger and impulsivity and his defiance toward figures of authority prohibits him from adjusting to the mainstream environment."
- c. The PPT recommended an out-of-district placement in a therapeutic setting, with a small teacher-student ratio and clinical supports. The minutes state that the Student "requires special education setting with small teacher to student ratio with high level of clinical supports and therapeutic followup and therapy" (B5 at 1) and PPT recommends "Out-of-district placement in appropriate therapeutic setting; send packet to appropriate programs to identify the best program" (B5 at 2).
- d. The PPT also served as a manifestation determination PPT, which concluded that recent behavioral incidents resulting in a disciplinary referral were a manifestation of the Student's disability and would be addressed through the PPT and a BIP.
- e. The Student's levels of academic functioning, as measured by the WIAT, were described as a 4.4 GE in Math, 4.3 GE in Language and 3.9 GE in Writing.
- f. Both Parents reported concerns about the Student being "jumped" by other students, and believe that the Student is not always instigating these incidents. The Mother stated her belief that the Board is "not doing its job."
- g. The Student's IEP identified the following goals and objectives:

Goal # 1: The Student will improve reading skills by one year.¹⁰⁸ Obj A: The Student will decode words orally by reading a list of words. Obj B: The Student will orally read passages from a story within a decoding error limit of 4 out of 5 attempts. Obj C: The Student will answer comprehension questions about a story.

Goal # 2: The Student will increase his math skills by one grade level.¹⁰⁹ Obj A: The Student will be able to multiple by 1, 2, and 3 digit multiplier with 80% accuracy. Obj

¹⁰⁸ This replaced Goal # 1 from the April 12, 2002 IEP. The record did not include information regarding the Student's progress on meeting this goal and objective.

¹⁰⁹ This replaced Goal # 2 from the April 12, 2002 IEP. The record did not include information regarding the Student's progress on meeting this goal and objective.

B: The Student will be able to divide using 2 digits with 80% accuracy. The Student will be able to solve word problems involving addition, subtraction, multiplication and division.

Goal # 3: The Student will develop impulse control in structured/unstructured settings by achieving the following objectives.¹¹⁰ Obj A: The Student will act according to social rules in work or play situations. Obj B: The Student will accept praise, criticism or success without inappropriate behavior or loss of control. The Student will disapprove of offensive peer behavior by ignoring or actively discouraging it.

2. Transfer to CREC Polaris

19. The Student was transferred from QMS to the CREC Polaris program on November 19, 2003. CREC Polaris is an out of district educational program with a daily therapeutic treatment component and behavior management systems. The Student would attend a class with 8 other students and one teacher and one paraprofessional. (B13)

3. December 22, 2003 PPT

20. The minutes of a PPT convened on December 22, 2003 (B6) indicate the following, among other things: The Student has been taking Adderall since October. CREC Polaris reported that the Student was beginning to instigate peers, "ranking other students" and being argumentative, but that he was also responding to the behavior management system. On a 12/22/03 administration of the Woodcock-Johnson "minibattery" the Student attained performance on Reading at a 7.7 GE, Writing at a 2.5 GE and Math at a 4.2 GE.

4. May 6, 2004 PPT

21. The Student's progress at CREC Polaris initially was good, but behavioral issues soon began to manifest. The minutes of a PPT convened on May 6, 2004 (B7) state the following, among other things:
- a. The Student requires a "heavily structured" educational environment with small student-staff ratio and behavior management system.
 - b. The Mother objected to a continued placement at CREC Polaris because she reportedly "doesn't like rules and regulations at CREC." The Mother wanted the Student to attend an in-district program. The District agreed to refer the Student to an in-district program. Pending identification of the program, the Student would continue at CREC with the goals and objectives identified in the December 22, 2003 IEP in place. That IEP would be modified to provide a shortened day (8-12) and 1:1 paraprofessional support at CREC.

¹¹⁰ This replaced Goal # 3 from the April 12, 2002 IEP. The record did not include information regarding the Student's progress on meeting this goal and objective.

- c. The Student would be provided with the following supports and accommodations: Grades based on IEP; daily feedback; positive reinforcement; cuing of expected behavior; structured transitions; behavior contracts; and posting of class rules.
- d. A BIP was developed to reinforce following adult directions by the third request through positive verbal praise and awarding of points which can be traded for rewards when the Student follows adult direction and walks away from problematic situations.
- e. The Mother will contact her own physician regarding medication management of the Student's ADHD.

F. 9th Grade (2004/2005 School Year)

22. The Student started the 9th grade attending CREC Polaris.

1. October 14, 2004 PPT

23. A PPT was convened on October 14, 2004 for the Student, then 13 years old.¹¹¹ The minutes (B8) state the following, among other things:
- a. The Parent attended and was given the procedural safeguards.
 - b. The Student reportedly had a difficult time adjusting initially to the 1:1 paraprofessional support at CREC Polaris. His behavior and effort were inconsistent. CREC Polaris staff reported that the Student has made a "marginal improvement in areas of behavior" but has "demonstrated a significant improvement" in his academics. The Student reported, however, that he felt he's doing much better and felt more challenged. CREC Polaris staff reported that he was doing better in counseling, responding to positive feedback, beginning to take responsibility for his behavior and responding to structure and consistency at the program. His teacher reported that he was making "good progress" in a small group with 4 students.
 - c. CREC recommended continued placement in a highly structured, therapeutic educational program, with counseling, and 1:1 support staff, a shortened day. CREC recommended reconvening a PPT in January 2005 to determine whether the Student was ready to attend CREC on a full day basis. These recommendations were endorsed by the PPT.
 - d. The goals and objectives identified at this PPT are stated below. The District has been unable to locate reports of the Student's progress on these goals and objectives, and no information regarding progress is included in the record. (HO9 at 1)

Goal # 1 The Student will demonstrate improved language arts skills in the area of

¹¹¹ The minutes indicate that between the May 6, 2004 PPT and this one, the Student moved.

reading. Obj A: The Student will decode words orally by reading a list of words with 80% accuracy. Obj B: The Student will identify cause and effect relationships in a reading passage. Obj C: The Student will answer comprehension questions about a story with 80% accuracy.

Goal # 2: The Student will write 5-6 sentence paragraphs using appropriate sentence structure. Obj A: The Student will write complete sentences using a subject, predicate, and appropriate grammar and punctuation. Obj B: The Student will write an appropriate topic sentence, identifying it as different from the other supporting sentences. Obj C: The Student will write paragraphs containing supporting detail relating to the topic sentence.

Goal # 3: The Student will increase his math skills by one grade level. Obj A: The Student will demonstrate mastery of multiplication and division facts using one, two and three digit factors. Obj B: The Student will demonstrate mastery of the four basic operations of fractions. Obj C: The Student will solve word problems involving addition, subtraction, multiplication and division.

Goal # 4: The Student will maintain age-appropriate social interaction and judgment by meeting the following objectives. Obj A: The Student will act according to social rules in unstructured situations. Obj B: The Student will gain understanding of how his feelings influence his behavior choices and in turn how his behavior influences how others respond toward him. Obj C: The Student will disapprove of offensive peer behavior by ignoring or actively discouraging it.

Goal # 5: The Student will acquire knowledge of various occupations. Obj A: The Student will answer a career interest inventory. Obj B: The Student will learn how to complete job applications. Obj C: The Student will exhibit appropriate work habits and behavior.

Goal # 6: The Student will develop the skills necessary for daily and independent living. Obj A: The Student will assist in preparing a meal. Obj B: The Student will begin to demonstrate the ability to manage his personal finances. Obj C: The Student will care for his personal needs.

Goal # 7: The Student will participate in leisure and recreational activities. Obj A: The Student will be able to utilize recreational activities. Obj B: The Student will participate in athletic programs at school. Obj C: The Student will utilize a newspaper and television to become familiar with community activities.

2. February 11, 2005 PPT

24. A PPT was convened on February 11, 2005. The PPT had initially been scheduled for December 22, 2004, but had been rescheduled at the Mother's request. The Student was then

a 14 year old 9th grader with 3.25 high school credits completed.¹¹² The minutes (B9) state the following, among other things:

- a. The Mother attended and was given the procedural safeguards.
- b. Although he made a good initial adjustment to CREC Polaris, his behavior has been deteriorating. He was placed in the stabilization and assessment component of the CREC Polaris program where his behavior is monitored more closely and he has more interactions with clinical staff. Notwithstanding the behavioral issues, his attendance was noted to be “excellent” and he was reported to be passing all of his classes.
- c. The Mother advised that she wanted the Student to continue at CREC Polaris and refused referrals to in-district programs.
- d. The Student’s school day remains at 4 hours/day, with 18.5 hours/week of special education services, 0.5 hours/week of social work services and 1.0 hours/week of vocational training. The Student spends no time with non-disabled peers.
- e. “Graduation” was identified as the criterion for exiting the Student from special education and related services. A June 2008 anticipated graduation date is identified.
- f. Various accommodations were to be provided to the Student, including shortened tasks, no penalties for spelling or handwriting, provision of study outlines, daily assignment lists, preferential seating, multi-sensory teaching approaches and immediate feedback.
- g. A report from CREC Polaris included in the minutes indicates that both the Student’s behavior and academics have been deteriorating. CREC staff reports that the Student has “great difficulty responding well to redirection and becomes argumentative when confronted” and that his “verbal aggression” toward staff has increased. He was reportedly involved in destruction of school property. He has an understanding of his behavior and what he needs to work on but “great difficulty in following through with goals set for him.” CREC Polaris recommended continuation of his current program.

3. April 4, 2005 PPT

25. A PPT was convened on April 4, 2005. The Student was then 14 years old. The minutes (B10) indicate the following, among other things:

- a. The Mother attended and was given the procedural safeguards.
- b. Notwithstanding that he was in the stabilization and assessment component of the program, the Student received two suspensions since the last PPT. CREC Polaris

¹¹² The minutes indicate that the Student moved between this PPT and the last most recent prior PPT. Based on the address stated on the PPT minutes, the Student’s home school was HPHS at the time. (Ramos 5/21 Test. at 96)

advised that it can no longer meet the Student's educational needs. The minutes also state that "[T]he Mother is tired of CREC and the problems – no longer wants him at CREC."

- c. The Student was to be discharged from CREC Polaris "effective immediately" and was to be referred to an in-district therapeutic/behavioral program. He was to be provided with 10 hours/week of tutoring in the interim until that transfer was implemented.
- d. The goals and objectives of the February 11, 2005 IEP remained in place.
- e. The Student's strengths were identified as "good attendance, bright, good sense of humor, not aggressive/violent." His weakness were identified as "Need to comply with adult direction, need to spend a full day in school, respect others, stick to his own issues and not get into others."
- f. The results of a WIAT administered in April 2005 indicate the following:

Content Area	Age Equivalent Score
Basic Reading	14.6
Mathematics	5.6
Spelling	11.3
Reading Comprehension	13.5
Written Expression	5.8

- g. The Student's first and second quarter grades ranged from Cs to As with one D. Teachers rated the Student's behavior as "inconsistent" and his effort as "satisfactory."

4. Transfer to HTLA; April 25, 2005 PPT

- 26. Between April 4 and April 25, 2005, the Student was out of school due to treatment for rabies after he was bitten by a dog. He received homebound tutoring.¹¹³ (B11 at 2)
- 27. A PPT was convened on April 25, 2005 as an intake for the HTLA. The minutes (B11) indicate the following, among other things:
 - A The Mother attended and was provided a copy of the procedural safeguards with a copy of the PPT minutes.
 - B Three weeks earlier, the Student was removed from CREC Polaris to homebound tutoring. The Student was to be provided with door-to-door transportation to and from school, but can "take city bus if detention assigned."¹¹⁴

¹¹³ The Mother made a number of complaints that Ms. Glass-McFadden or the Board had failed to provide tutoring during this period.

- C The Student will receive 26.25 hours/week of special education and related services, including 0.75 hours/week of school social work services. His school day will be 5.25 hours/day and his school week will be 26.25 hours/week. The Student will not receive extended school year services. The Student will not spend any time with non-disabled peers. The minutes note that the placement is required because the Student's "behavior requires separate, highly structured, small therapeutic setting (no non-disabled students)."

5. May 18, 2005 PPT

28. The Student began attending the HTLA on April 25, 2005 on a five classroom, rotating high school team. However, by May 16, 2005 due to disruptive behavior incidents (opposition, defiance, disrespectful language, refusal to follow directions, physical aggression, inability to remain in expected boundaries), he was placed in a self-contained classroom within the HTLA. (B13) The self-contained classroom at HTLA is the most restrictive setting at HTLA and within the Board's public school system. There are 6 to 8 students in the self-contained classroom with a teacher and a paraprofessional, with school social worker support. (Dabrowski 3/19 Test. at 22-23)¹¹⁵
29. The minutes of a PPT convened on May 18, 2005 (B12) indicate the following, among other things:
- a. The Mother attended and was provided a copy of the procedural safeguards.
 - b. The Student will remain at the HTLA attending the most restrictive setting at HTLA with the opportunity to move to a less restrictive setting at HTLA on a period by period basis when the team determines he is ready.
 - c. The Student's school day remained at 5.25 hours/day with a five day school week. He would receive 26.25 hours/week of special education and related services, including 0.75 hours/week of school social work services. The Student would have no interaction with non-disabled peers.
 - d. The Student would be provided public transportation bus tickets to get to and from school.¹¹⁶

6. May 2005 Triennial Evaluation

30. The results of a triennial re-evaluation performed on May 11 and May 16, 2005 (B13)

¹¹⁴ The reason why he was being provided with door-to-door transportation is not stated in the minutes.

¹¹⁵ Mr. Dabrowski is a School Social Worker currently assigned to HPHS and Bulkeley. He has been employed with the Board as a social worker for 8 years. Mr. Dabrowski became involved with the Student during the 2004/2005 school year when the Student was attending the HTLA. (Dabrowski 3/19 Test. at 19-21)

¹¹⁶ The minutes do not state why the Student was not utilizing a school bus.

indicates the following, among other things:

- a. The Student was assessed with the Wechsler Abbreviated Scale of Intelligence (“WASI”), with the following results: FSIQ of 100, VIQ of 98 and PIQ of 101, all within the average range. The Student displayed “solid verbal comprehension and language development.”
- b. The Student tends to “interact in a very guarded and at times defensive manner with tendency to avoid acknowledging and processing both emotions and behaviors,” and has “significant degrees of anxiety” and “varying degrees” of sadness and anxiety which may be exacerbated by perceived negative interactions with others.
- c. The Student tends to “interact with his environment with a very grandiose image of self and distorted view of the world which further results in difficulties identifying connections with his feelings and outcomes . . . “ When the Student becomes “overwhelmed by academic and/or social situations, he may impulsively react to perceived negative events with oppositional and defiant behaviors due to overall deficits in emotional awareness, cognitive processing skills, and deficits in general and social skills.”
- d. “His tendency to interact in an oppositional and defensive manner may be directly related to anxiety of rejection and/or unacceptance from others with limited abilities to process emotions, monitor behaviors, and employ adaptive coping strategies.”
- e. “Current placement in a self-contained classroom should assist [the Student] with consistency, structure, decrease in stimulation and ability to form stable relationships with others.”

7. June 2005 PPT

31. A PPT was convened on June 6 and June 14, 2005 to determine the Student’s program and placement for the 2005/2006 school year. The notice of this PPT, dated June 8, 2005, states that the PPT was being convened to do a “program review.” (HO9 at 6) The minutes (B14) indicate the following, among other things:
 - a. The Mother attended the PPT and was given the procedural safeguards.
 - b. It was recommended that the Student attend an HTLA transition program at his home high school, Weaver High School (“WHS”), for the 2005/2006 school year. The Student would have a standard school day, week and year. He will participate in all general education classes and receive 3.5 hours/week (45 minutes/day) of special education support in a resource room setting. He will spend 28.5 hours/week with non-disabled peers and receive 0.5 hours/week of counseling.
 - c. The criteria for exiting the Student from special education and related services eligibility was identified as “ability to succeed in regular education without special education support.” The form states that his anticipated graduation will be in 2008.

- d. Accommodations provided to the Student included a calculator, preferential seating and daily feedback.
- e. An FBA attached to the IEP states that the Student's behavioral problems include verbal aggression and disrespect toward staff. These behaviors were identified as a reaction to a situation which has intensified and can occur anywhere, and that the Student's behavior escalates if he perceives others are not respecting him at which time the Student believes that the situation regarding correcting immediately.
- f. A BIP was also developed to help the Student learn to be more reflective before reacting to the situation and present his side in a factual manner. The Student would have access to someone he respects and trusts when issues occur.
- g. The following goals and objectives were developed for 2005/2006 school year. The Student did not achieve any of these goals and objectives, and was rated as having made "unsatisfactory" progress on all of them over the entire course of the 2005/2006 school year.¹¹⁷

Goal # 1: The Student will demonstrate appropriate school behavior. Obj A: The Student will listen to all directions before reacting to them. Obj B: The Student will accept consequences for inappropriate actions without getting stubborn or defiant.

Obj C: The Student will follow all directions/consequences without verbal aggression or physical aggression toward peers or adults.

Goal # 2: The Student will utilize appropriate modes of verbal and physical expression. Obj A: Given the expectation the Student will behave appropriately during structured time periods. Obj B: The Student will understand his personal strengths, weaknesses, the focus of the difficulties and work to resolve these problems. Obj C: The Student will initiate appropriate interactions with peers and adults.

Goal # 3: The Student will improve work completion and independence level of doing work from baseline 70% to 85%. Obj A: Given an independent class assignment, the Student will complete assignment with some verbal prompts. Obj B: During whole class lessons or activities, the Student will attend to the lesson with verbal prompts only. Obj C: The Student will start and complete tasks with minimal adult attention.

Goal # 4: The Student will develop impulse control. Obj A: The Student will control physical response when angered or upset. Obj B: The Student will accept consequences of his own actions and recognize own lack of self-control. Obj C: The Student will demonstrate positive ways to behave.

32. The Student's IEP for the 2005/2006 school year had only social and behavioral goals for the

¹¹⁷ Materials regarding the May 2, 2006 PPT (B18 at 4-5) contained only the progress reports for Goals 1 and 2. Progress reports for Goals 3 and 4 were provided by the Board in its May 3, 2007 submission. (HO9 at 4-5)

Student because there was a need to get his behaviors under control to make him more available for learning. When he was in classes he was able to do work at or about at his grade level with support from Mr. Wehrly or the teachers. "He's got the ability to do the work as long as he has somebody sitting right there next to him for the whole time." Academic supports were built into the HTLA transition program. (Wehrly 3/19 Test. at 86-91)

8. Additional Testimony Regarding 2004/2005 School Year

33. While at HTLA in the 2004/2005 school year, the Student was "frequently challenging and argumentative . . . Did not like limit setting, liked to do what he liked to do." He started off in a five classroom rotating cluster but was eventually moved to the HTLA self-contained classroom (the most restrictive in-district placement) to minimize transitions and try to provide a less stimulating environment for him. (Dabrowski 3/19 Test. at 22-23)
34. Mr. Wehrly first met the Student when he was serving as acting assistant principal at HTLA in the 2004/2005 school year. The Student came to Mr. Wehrly's attention because the Student was "difficult" and tended to "buck" the system. (Wehrly 3/19 Test. at 48-49)

G. 10th Grade (2005/2006 School Year)

35. The Student started the 2005/2006 school year as a 10th grader at WHS. On November 14, 2005, the Student transferred from WHS to HPHS associated with a change in residence.

1. January 10, 2006 PPT

36. While at WHS in the 2005/2006 school year (Fall of 2005), the Student was using the public bus to get back and forth to school. The Mother does not know why, but knows that the school was providing him with city bus tickets. The Mother states that "it wasn't at [her] request and [she] didn't have no problem with it as long as he was getting his education." (Mother 4/23 Test. at 28) The bus transportation issue did not arise until January 2006, after the Student began attending HPHS. The family moved in October 2005 from the WHS to the HPHS district, but because WHS allegedly failed to complete the paperwork necessary for the transfer, it took a few weeks for the Mother to register the Student at HPHS. She would send the Student to HPHS and they would send him back home and at one point reportedly told the Mother that if she sent the Student before he was registered he would be arrested. (Mother 4/23 Test. at 26-29) As a result of the bus ticket issue, the Student did not attend school from the end of Thanksgiving vacation until early January 2006. (Student 4/23 Test. at 33) During this period, Ms. Glass-McFadden "promised" to get the Student a tutor, but failed to deliver on that promise. The Student was doing no work during this period because he had no work to do. (Mother 4/23 Test. at 33-35) Starting in January of 2006, the Student was not allowed to ride the school bus by the bus driver because he had not previously been on the bus. It was not the Mother's choice that the Student take other transportation and he had been authorized to ride the school bus. For a period until she was able to get bus tickets through Ms. Blaire at HTLA, the Mother was providing the Student with money to ride the city bus to get to and from school. Ms. Ramos (HPHS Vice Principal) advised that Mr. Wehrly was responsible for making transportation arrangements for the Student. Mr. Wehrly said that he could not do

anything and that the request would have to be made through Ms. Glass-McFadden. Ms. Glass-McFadden reported that she had to make these arrangements “through Hartford.” “So we played this game for a month and a half before [the Student could] get transportation in order to get to school.” At some point while this was getting worked out, the Mother received assistance from Ms. Blaire at HTLA who provided tickets for the Student. (Mother 4/23 Test. at 25-32; Mother 5/21 Test. 108-110)

37. A PPT was convened on January 10, 2006 to provide the Student with public bus tickets as a related service. No changes were made to his IEP. He spent 30.25 hours/week in the regular education environment and received 2.25 hours/week of special education services for math in the mainstream setting. Per his WHS IEP, the Student would receive social work and counseling “as needed.” (B16)

2. February 7, 2006 PPT

38. A PPT was convened on February 7, 2006 to address issues regarding course credits due to missed school days and issues aligning his WHS and HPHS courses. No changes were made to his IEP. (B17) The PPT was also convened to implement school social work services for the Student on an as needed basis. (Ramos 5/21 Test. at 97-99)
39. At the February 7, 2006 PPT, the Mother asked that Mr. Wehrly be removed as the Student’s case manager. The Mother was “very angry” with Mr. Wehrly who described himself as a “conduit” for everything that happened to the Student at HPHS that year. One issue that arose is that his courses at HPHS did not quite match his courses at WHS. The Student was not attending school regularly during this period. Mr. Wehrly recalls that the Student was bitten by a dog and missed some school. The February 7, 2006 PPT made adjustments to his credits to address the attendance issue. (Wehrly 3/19 Test. at 54-60)

3. May 2, 2006 PPT; Transfer to the HPHS STEP Program

40. A PPT convened on May 2, 2006. The Board has been unable to locate a copy of the notice of that PPT. (HO9 at 1) The minutes of the May 2, 2006 PPT (B18) indicate the following, among other things:
- a. Due to behavioral concerns and absences, the Student’s course schedule was changed. The Student would take gym, art, keyboarding and lunch in the mainstream program, and would take Biology, Math and English in the STEP program.
 - b. The Student will be provided with school social work services “as needed,” with the Student to initiate the contact. The Student would be given a pass identifying places he can go and staff he can contact during times of stress. Those places were the STEP class, HTLA support room and two designated staff members.
 - c. The Student’s day was shortened to allow him to leave after lunch. His school day was therefore 5 hours 39 minutes, for a total school week of 28.15 hours. He would receive 11.15 hours/week of special education and related services and would spend 28.15

hours/week with non-disabled peers.

- d. The BIP developed at this PPT indicates that the Student has “struggled with consistently attending all classes and avoiding peer conflicts” and implements a plan of reducing his school day, placing him in the STEP program for classes and giving him the pass for stressful times.
 - e. In the period September 2005 through June 2006, the Student had made no progress on any of his goals and objectives developed at the June 2005 PPT, and had earned ratings of “U” (Unsatisfactory Progress – unlikely achieve goal) during each rating period on all of his Goals and their Objectives. (B18 at 4-5)¹¹⁸
41. A student in STEP is provided with a smaller classroom setting for classes in which they are struggling in the mainstream. STEP provides more academic assistance and behavioral supports than are available in the mainstream, and the goal is to transition the student back to the mainstream class after working through the issues that led to the placement in STEP. STEP is also a “refuge . . . a place to go if they’re having behavioral issues with their regular classes.” (Dabrowski 3/19 Test. at 23-30)
 42. [Omitted]

4. Parents’ Testimony About the 2005/2006 School Year

43. The May 2, 2006 PPT made a schedule change so that the Student would go home after all of his classes were completed. That type of shortened day program worked well for him at CREC Polaris and was working at HPHS as well. The STEP Program was first discussed at the May 2, 2006 PPT. (Mother 4/23 Test. at 44-45)
44. The issue of clarifying the Student’s attendance, grades and credits was discussed at the May 2, 2006 PPT. (Mother 4/23 Test. at 46-47)
45. With respect to the period after the Student started attending HPHS in January 2006 and the May 31, 2006 PPT, the Mother stated as follows: Starting in January 2006, the Mother was in essentially daily contact with Ms. Ramos, Mr. Wehrly and Mr. Turley. The Student was doing his work in two or three of his classes and was using his “special little pass” to walk in the hallway at other times. (Mother 4/23 Test. at 35)¹¹⁹ The Mother maintained that during this period she was in daily contact with the school staff, sometimes multiple times a day, and was able to “talk [the Student] through the problem to keep [the school] from kicking him out of school or suspending them [sic] as much as they was doing already because he’s not learning anything . . .” (Mother 4/23 Test. at 37) The Student did not miss any days after

¹¹⁸ The copy of these minutes in the Board’s record when it was submitted did not contain information regarding progress on Goals 3 and 4. On May 3, 2007, the Board submitted materials which indicate that the Student also made no progress on Goals 3 and 4. (HO9 at 4-5)

¹¹⁹ The Mother confused January 2006 with the May 31, 2006 PPT. As the Student observed in correcting her, he did not get the pass until the May 31, 2006 PPT and so he could not be walking the halls before the May 31, 2006 PPT because he did not have the pass at that time. (Student 4/23 Test. at 36)

January 2006 except for doctor's appointments and a period associated with having gotten bitten by a dog and needing treatment for rabies, which occurred right before the May 2, 2006 PPT. The Student missed two and a half weeks of school associated with this problem. The school nurse was informed. The school reportedly made no arrangements for him to get his school work during this absence. The Father went to school on a daily basis to collect the work but "the school never had the work done – ready for him half the time. I think they gave him work for one day." (Mother 4/23 Test. at 37-41; Student 4/23 Test. at 38) The Father reported that he would go to the school to pick up the work but sometimes it was not ready and he would have to go from class to class to collect it. The staff got the work together for the Father once he arrived. The Father was able to get the work and the Student was able to do the work despite his illness. The Father would return completed work to school. (Father 4/23 Test. at 41-42)

46. The Father testified as follows about the 2005/2006 school year:
- a. When the Student transferred from WHS to HPHS associated with a move by the family, the Student's records were not timely transferred and the Father spent some time working with school staff to get the records transferred. It took "months" to get the records transferred. (Father 3/14 Test. at 175-176)
 - b. It took a "good month" to get the Student bus tickets so he could use public transportation to get to and from HPHS after he transferred from WHS. The Student was out of school for 2-3 weeks because of this problem. (Father 3/14 Test. at 175-177)
 - c. The Father "heard [the Mother] call [Ms. McFadden] a few times" about the bus tickets and the Mother has told the Father that Ms. McFadden was not returning her calls. The Father called Ms. McFadden at the "end of 2005" to ask Ms. McFadden to respond to the Mother. Ms. McFadden stated to him then that she was aware of the issues with the Student and was working to resolve them. (Father 3/14 Test. at 177-178)

5. Ms. Glass-McFadden's Testimony About the 2005/2006 School Year

47. Arleen Glass-McFadden is the District's Senior Coordinator for Special Education. (McFadden 3/14 Test. at 36) She testified that she was first contacted by the Mother in December of 2005 regarding arrangements for transportation for the Student. The Student was eligible for transportation on the regular school bus. However, after the Mother advised that the Student was not allowed to ride the regular school bus and that she wanted bus tickets, Ms. Glass-McFadden advised that a PPT needed to be convened to authorize that arrangement. (Glass-McFadden 3/14 Test at 37-38)¹²⁰ Ms. McFadden described the Mother's concerns regarding transportation arrangements for the Student as "ongoing." (Glass-McFadden 3/14 Test at 41)

6. Mr. Dabrowski's Testimony About the 2005/2006 School Year

¹²⁰ The Mother interjected at this point in Ms. Glass-McFadden's testimony that after the Mother had requested that bus tickets be provided and told Ms. Glass-McFadden that the Student could not ride the school bus, the District sent a small "yellow bus" to pick him up. (Mother Statement 3/14 Trans. at 39)

48. Mr. Dabrowski testified as follows about the 2005/2006 school year:
- a. As the result of an “inclusion” push, a number of HTLA students were transitioned to their home high schools. Mr. Dabrowski, was assigned to Bulkeley and HPHS to work with transitioning HTLA students. He came into contact with the Student when the Student transferred from WHS to HPHS. Transitioning students were placed in mainstream classrooms with the opportunity to work in designated classrooms with an HTLA transition support teacher if the student was having difficulty functioning in the mainstream classroom. The student could go back and forth between these settings until the student was able to successfully function in the mainstream without that extra support. (Dabrowski 3/19 Test. at 23-26)
 - b. When the Student entered HPHS, Mr. Dabrowski attempted to re-engage him in school social work services but found that his WHS IEP stated that the Student could determine whether and when to seek social work support. The Student declined to re-engage with Mr. Dabrowski on anything other than an “as needed” basis determined by the Student as stated in his IEP. The Student’s defiant and argumentative behaviors continued and Mr. Dabrowski and Mr. Wehrly attempted to find ways to work with him. The Student was eventually transferred to the STEP program which was another structured support program in HPHS which was distinct from the HTLA transition program. The Student was assigned to the STEP program through a PPT. (Dabrowski 3/19 Test. at 23-30)

7. Mr. Wehrly’s Testimony About the 2005/2006 School Year

49. Mr. Wehrly testified generally about the 2005/2006 school year as follows:
- a. After the Student arrived at HPHS, Mr. Wehrly became reinvolved with the Student. The transition structure for the HTLA students was a classroom staffed by Mr. Wehrly and other teachers who could provide support to HTLA students having difficulties in the mainstream. The students would be given a pass and work to take to the HTLA transition room and would work there with the staff until they were able to return to their regular classrooms. (Wehrly 3/19 Test. at 49-51)
 - b. When the Student first transferred to HPHS, Mr. Wehrly contacted the HTLA coordinator at WHS and learned that the Student was sensitive to the “stigma of being the special ed kid in the classroom” so Mr. Wehrly tried not to follow the Student too much at the beginning but rather kept track of him from a distance. Over time, the Student’s behavior deteriorated. (Wehrly 3/19 Test. at 54-58) In the 2005/2006 school year while at HPHS, the Student was suspended a number of times. He would “just get up and walk out of the classroom and just take off and wander the halls.” Mr. Wehrly was frequently called to retrieve the Student. The Student sometimes resisted Mr. Wehrly’s efforts, and was argumentative with staff, even those who were not his teachers. Mr. Wehrly noted, however, that if he was able to get the Student back to the support room and he could “put a math book in front of [the Student] . . . the kid was a star.” The Student would try to work through the problems and persisted at the task

- when he could not solve it initially. (Wehrly 3/19 Test. at 52-53)
- c. At one point, there was an issue with transportation. Mr. Wehrly was told that the Student had been removed from the regular bus but was never able to find out why. Mr. Wehrly tried to get the Student door to door transportation (pick up at the home and drop off at the front door of the school). Door to door transportation is provided by the “short bus” which some students find to be stigmatizing. The Student did not want the stigma of riding the short bus, so staff arranged for public transportation bus tickets which took some time to get through the PPT process. While they were awaiting the tickets through the PPT process, the HTLA principal was providing bus tickets for the Student. (Wehrly 3/19 Test. at 54-58)
 - d. The STEP program is a small class setting with one regular and one special education teacher. The Student attended STEP for 4 periods for academics. At the May 2, 2006 PPT, the Student was given a laminated pass to use to go to the STEP program for support when he was in the mainstream, but the Student quickly started abusing the pass privilege and his use of the pass began to interfere with his academics. (Wehrly 3/19 Test. at 61-63)

8. Ms. Ramos’ Testimony About the 2005/2006 School Year

- 50. Ms. Aida Fernandez-Ramos has been an Assistant Principal of HPHS for the past nine years. During the 2005/2006 school year, the Student was in Ms. Ramos’ “house” at HPHS and she had administrative responsibility for him. In the 2006/2007 school year, he is in Ms. Davis’ “house” for that purpose. The Student transferred from WHS to HPHS on or about November 22, 2005. (Ramos 5/21 Test. at 90; 93-95; 102-103)
- 51. Ms. Ramos first had contact with the Student and his family in November or December 2005 shortly after he transferred from WHS to HPHS. The Student was not attending school and when Ms. Ramos contacted the Mother, the Mother reported difficulties with public bus tickets. The Mother stated that she was attempting to get tickets from HTLA. Ms. Ramos gave her some tickets. Ms. Ramos does not know why the Student was taking public transportation rather than the school bus. The issue was ultimately resolved with Mr. Wehrly providing the bus tickets. (Ramos 5/21 Test. at 95-97) The Student missed school from December 14, 2005 until January 9, 2006 due to issues with the bus tickets. His absences were excused. He was not penalized for missing the work but still had to do the work. After January 2006, Ms. Ramos does not recall any more discussion of bus transportation issues. (Ramos 5/21 Test. at 116-118)
- 52. Ms. Ramos has had various conversations with the Mother about the Student’s grades, credits and attendance records. The Student was absent frequently in the spring of 2006 and was failing courses, so there was a discussion of how he was going to make up the work. (Ramos 5/21 Test. at 100-102)
- 53. The Mother claimed first that the Student was marked absent 400 days in the 2005/2006 school year, and later stated that it was 147 days. (Mother 5/21 Test. at 119-120) Ms. Ramos

remembers having discussions with the Mother about the attendance, grades and credit issues in the 2005/2006 school year, and that the primary problem was that some absences were recorded as unexcused when they should have been recorded as excused. Ms. Ramos believes that all of these problems were corrected when the final report card was issued and that the final report card accurately records the Student's grades, credits and attendance. She does not recall receiving any complaints or further communications from the Mother after the final report card was issued regarding these issues. (Ramos 5/21 Test. at 119-123)¹²¹

54. The Mother was not unconcerned about the Student's educational circumstances. (Ramos 5/21 Test. at 111-113)

9. Mr. Stringer's Testimony About the 2005/2006 School Year

55. Mr. Stringer has been the Principal of WHS since 1999 and before that was an Assistant Principal at Bulkeley. (Stringer 5/21 Test. at 129-130) Other than a brief meeting when the Student began attending WHS in the 2005/2006 school year, Mr. Stringer did not have any contact with the Student or the family while the Student attended WHS. In November 2005, the Student transferred out of the WHS district and Mr. Stringer had no further contact with him. (Stringer 5/21 Test. at 130-131)
56. Students at WHS and at Bulkeley get into conflicts with each other from time to time. (Stringer 5/21 Test. at 142)
57. WHS has a program similar to the HPHS STEP program. The WHS version is a resource teacher who will either work with the students directly in their mainstream class or can pull the student out to another setting to work with him or her. (Stringer 5/21 Test. at 145-146)

10. The Incident in Which the Student was Chased By Other Youths With a Gun

58. In examining Ms. McFadden, the Mother stated that before the end of the 2005/2006 school year, she told Ms. McFadden that the Student had been chased home by other HPHS students who had a gun. The Mother states that she told Ms. Ramos about this incident as well. (Mother Statement 3/14 Trans. at 42). Ms. McFadden recalls that the Mother told her about that incident during one conversation regarding transportation arrangements for the Student. Ms. McFadden was not certain where the incident occurred or whether District students were actually involved. However, at that point the Mother was asking for transportation for the Student through some means other than the school bus. (McFadden 3/14 Test at 39-41)
59. According to the Father, the incident in which the Student was chased home from school by other youths with a gun occurred prior to the May 31, 2006 PPT and is the basis for the reference in the PPT minutes that the Mother had kept the Student home due to safety concerns. (Father 3/14 Test. at 185) The Father did not observe the Student being chased by the other youths, but learned about the incident afterward, was able to identify at least one of

¹²¹ The Student claims that he never got the final report card from the 2005/2006 school year. (Student 5/21 Test. at 122)

the youths involved, and went and spoke with him. Since then those youths have not bothered his son. These youths attended HPHS. (Father 3/14 Test. at 215-217)

60. At the time the Student was transferred to the STEP program in May 2006, his schedule was adjusted to provide for an early dismissal. The Student allegedly had been “jumped” on his way home from school one day, and to minimize the chances of that happening again he was dismissed earlier. (Dabrowski 3/19 Test. at 31-32)
61. After the February 2006 PPT, the Student went “straight downhill” and stopped attending most of his classes. Because the Student was having problems with other students at HPHS, he was allowed to leave early. Mr. Wehrly was never aware of any incident in which the Student was chased by other youths who had a gun. Rather, Mr. Wehrly understood the difficulties with peers at HPHS to arise from the Student’s need to be liked by others and his poor choices of friends and acquaintances. (Wehrly 3/19 Test. at 60-61)
62. Ms. Ramos was aware of the Mother’s report that prior to the May 31, 2006 PPT, the Student had been chased by other youths with a gun. She does not recall the Parents asking her to do anything about that incident, which may have occurred in March, 2006. (Ramos 5/21 Test. at 107)

11. Information Regarding Reported Disciplinary Actions

63. Disciplinary records (B30) show the following for the 2005/2006 school year:

Date	Description and Reported Consequence
9/27/05	Insubordination resulting in 3 day in-school suspension (B30 at 1)
10/6/05	Profanity resulting in 1 day outside suspension (B30 at 2)
11/21/05	Disruptive behavior outside of class in hall; refusal to give name; refusal to follow directions resulting in 2 day placement at the AMP. (B30 at 5) ¹²²
2/7/06	Vulgarity directed to a teacher resulting in 3 days at the AMP (B30 at 6)
2/27/06	“[Student] created an incident in my room. He was defiant & disruptive. He refused to leave, forcing me to find security to escort him out. He stood in the doorway creating more chaos. He has earned an F average. Why is he in my class?” (B30 at 7)
2/28/06	Student hiding in bathroom without a pass. (B30 at 8)

¹²² Ms. Glass-McFadden’s husband is employed at HPHS and runs the AMP program, which is a program for students who have been given in-school suspensions. The students bring their work to complete and are offered training in conflict resolution. AMP is not a special education program. (Glass-McFadden 3/19 Test. at 134)

	Date	Description and Reported Consequence
	3/6/06	Disrupted class. Disrespectful to the teacher. Refused to leave when asked to do so. (B 30 at 9)
	3/10/06	Defiance of authority – disruptive and talking during the CAPT. Resulting in 1 day outside suspension (B30 at 11)
	4/10/06	Injury or risk of injury to another resulting in 10 days outside suspension (B30 at 12-13)

H. The May 31, 2006 PPT

1. Minutes of the PPT

64. A PPT was held on May 31, 2006. The May 4, 2006 notice for this PPT states that the PPT was to convene at 8:45 a.m. and was for the purpose of developing, reviewing or revising the IEP, conducting an annual review and determining transition goals and objectives. The notice indicates that the procedural safeguards were provided to the Mother with the notice. (HO9 at 7) The minutes (B19) identify the Student as a 15 year old 10th grader with 5 credits toward high school graduation, and indicate the following, among other things:

- a. District staff believes that the Student “needs a smaller, structured environment with a small teacher-pupil ratio, with a behavior component that supports [the Student’s] goals to be successful in school on a daily basis, time out, weekly counseling [and with a] focus on basic academics at [the Student’s] level especially in the area of math computation using the calculator and written expression skills using the computer and spell check. Vocational skills should also be addressed based on talents and interests.” (B19 at 2)
- b. “Mother expressed that she wants [the Student] to finish out the year here at HPHS, but wants [the Student] to be in a different program” within the school. [The Student] has “very low” math skills and “is very frustrated and often responds inappropriately to staff.” (B19 at 2) The minutes further state that the “Mother would like a program where [the Student] will be most successful academically and behaviorally.” (B19 at 4)
- c. It was noted that absences on May 25 and May 26 would be “excused.” The Parent had “kept [the Student] home due to safety.” (B19 at 2)
- d. Procedural safeguards were not given at this meeting because they had been made available previously in the school year. (B19 at 3)
- e. The Student’s current level of functioning was reported as follows, based on an administration of the WIAT on 5/30/06:

Reading	GE	7.8
Spelling	GE	5.0
Math Reasoning	GE	5.1

Screener Composite GE 5.9

The evaluator noted that the Student initially refused to do the testing, but then agreed to complete it and “appeared to want to do well.” (B19 at 4, 17)

- f. The Student’s academic strengths were identified as reading decoding and his ability to solve 1 step word problems, understanding place value, and good verbal skills. His academic weaknesses were identified as writing, reading comprehension, basic math skills, fractions and decimals. (B19 at 4-5)
- g. The minutes further state that the “Transition teacher reports that [the Student] has made improvement and is using the time out pass when he was angry. [The Student] is very frustrated and often responds inappropriately to staff.” The Student’s distractibility and “disrespectful” behavior was noted to be interfering with his academics. It was also noted that the Student “responds well to Parent contact” and is “willing to participate in” community service components of his coursework. (B19 at 2, 4-5)
- h. The Student was invited to the PPT but did not attend. Based on personal interviews with the Student, it was noted that the Student was “not yet sure” about post-secondary education. The District identified “vocational education” as the Student’s anticipated post-secondary outcome and participation in “career awareness” programs as his initial transition plan. (B19 at 6)
- i. Turning age 21 was identified as the criteria for “exiting” the Student from IDEIA eligibility. (B19 at 14) The Student was anticipated to graduate from high school in 6 years from the date he entered high school, rather than 4 years. (B19 at 16)
- j. The minutes state that in the 2006/2007 school year (B19 at 15), the Student will participate in regular education classes, specials and school activities, and that special education and related services to address math, writing, reading and behavioral goals and objectives would be provided in both regular education settings and “small group” settings. The Student was to be provided 11.15 hours/week of special education and related services, would have a shortened school day (5 hours 39 minutes/day), with a standard school week and school year. Extended school year services were determined not to be needed. The Student would be provided with bus tickets as needed to participate in his program. (B19 at 15) The section of the form identifying how much time the Student would spend with non-disabled peers is not completed. The documentation also indicates that the Student would be attending an –indistrict placement. (B19 at 16)
- k. The Student would be provided, in all of his classes and throughout the school year, the following supports and accommodations: access to a computer, a calculator for math, shortened tasks “as needed,” a test study guide, extra time on tests, projects and written work “as needed,” a daily assignment and daily homework list (identifying sequential steps to complete the project), instructions about routines and assignments, daily feedback, break between tasks “as needed,” positive reinforcement, cuing of expected

behavior, preferential seating, checks on work in progress, extra drills or practice and the use of manipulatives. He would also be provided daily social work services. (B19 at 12)

- l. A BIP was developed (B19 at 18) and indicates that:
 - (1) The Student has “struggled with consistently attending all classes and avoiding peer conflicts.”
 - (2) The Student’s “schedule [for the rest of the 2005/2006 school year] has been changed to include the three classes in the Step Program (Biology, Math and English) to provide increased support with academics, social/emotional and behavioral issues. [The Student] requested to remain in current physical ed., art and keyboarding classes. PPT agrees. [Student] will have a pass that he will carry with him. He will use this pass to go speak with staff to problem solve stressful/difficult issues.”
- m. A health data form with the minutes indicates that the Student was currently taking Concerta and that a sleep study will be done for chronic fatigue. (B19 at 21)
- n. A “Principal’s Report” attached to the minutes provides information regarding the disciplinary suspensions in this school year, as indicated in F63 above. (B19 at 22)
- o. The following goals and objectives were developed for the 2006/2007 school year:

Goal # 1: The Student will improve his ability to do mathematics.

- Obj 1 Using a written list of sequential steps, the Student will read and solve mathematical word problems.
- Obj 2 Using a calculator as needed, the Student will be able to add, subtract, multiply and divide whole numbers.
- Obj 3 Using a calculator as needed, the Student will be able to add, subtract, multiply and divide fractions and decimals.

Goal # 2: The Student will improve his written expression.

- Obj 1 When using a graphic organizer and a writing rubric, the Student will be able to write an essay including a topic sentence, 3 details and a conclusion 3 out of 4 times.
- Obj 2 When writing, the Student will have access to a computer with a spell checker.

Goal # 3: The Student will “improve his skills in reading comprehension at least 3 out of 4 times.”

Obj 1 The Student will be able to: (1) connect to the text he is reading; (2) predict future events; (3) evaluate what he has read by relating to people in the story; (4) answer questions about what he has read.

Obj 2 The Student will participate in shared reading and stop after every 2 paragraphs to review what he has read/check for understanding of reading material.

Goal # 4: The Student will improve participation in his own educational program.

Obj 1 The Student will write daily academic and behavior goals and reflect on these goals at the end of each day.

Obj 2 The Student will have counseling as needed by a social worker, adjunct specialist or counselor.

Obj 3 The Student will have access to and use appropriately “time out” passes when he is angry.

Goal # 5: The Student will develop an awareness of community services and the importance of community participation.

Obj 1 The Student will “participate in class and school projects.”

Obj 2 The Student will complete the 60 hours of service learning required for graduation.

Obj 3 The Student will participate in at least one extra-curricular activity related to high school of the community.

2. Testimony of Board Witnesses Regarding this PPT

65. Mr. Dabrowski did not attend the May 31, 2006 PPT, but interprets the recommendations stated in the PPT minutes to be for a placement in a program that is more restrictive than the STEP program. Mr. Dabrowski “wholeheartedly” supports that recommendation given the Student’s behavioral issues. Mr. Dabrowski believes that the appropriate program would be similar to HTLA, and that there is no setting at HPHS that could provide the structure and support that the Student required. (Dabrowski 3/19 Test. at 32-33)
66. Mr. Wehrly attended the May 31, 2006 PPT. Staff advised the Mother of the Student’s need for a smaller placement with more structure and behavioral supports. Staff discussed a return to HTLA, which the Mother rejected. The discussion then turned to out of district placements. The Mother seemed to be “very excited” about the idea that the Student could

be placed out of district in a placement where he could be successful. Mr. Wehrly believes there was a general agreement as of the end of the May 31, 2006 PPT that placement at HPHS was not appropriate for the Student and that that outcome was acceptable to the Mother. (Wehrly 3/19 Test. at 64-68)

67. Charlotte Gemmell is a lead special education teacher at HPHS.¹²³ She testified as follows:

- a. Ms. Gemmell first became aware of the Student in January 2006 when he transferred into HPHS from WHS. She set up a file for him at HPHS. She does not work in the classroom, but rather occupies an administrative position. She had no contact with or regarding the Student until the May 31, 2006 PPT when she was asked to participate in a PPT for the Student to “describe an alternative program that the family would like rather than [HPHS].” The May 31, 2006 PPT was the only one that she attended for the Student.¹²⁴ She stayed for the whole PPT and took the minutes (B19 at 2-3). (Gemmell 5/21 Test. at 58-60, 63-64) One purpose of the PPT was to develop a plan for the Student for the 2006/2007 school year. The plan was to develop a “more highly structured program that would be able to deal with [the Student’s] academic difficulties especially in the area of math, continue with counseling support, we talked about vocational should be addressed in this meeting [and] described the type of program we thought [the Student needed].” That description is on B19 at 2: “a smaller, structured environment with a small teacher-pupil ratio, with a behavior component that supports [the Student’s] goals to be successful in school on a daily basis, with time out, weekly counseling support [and a] focus on basic academics.” The team did not “name the program.” Ms. Gemmell does not know where that program was going to be and stated that identifying where the program would be was not her responsibility. (Gemmell 5/21 Test. at 65) There was a discussion of out of district placements but no specific programs were identified “because I’m not allowed to do that.” “I’m only allowed to describe the placement with the team and then it is forwarded to the Board and the Board makes decisions from there.” (Gemmell 5/21 Test. at 65-66; 69-70) She does not recall a discussion at this PPT of placing the Student at Bulkeley or WHS. (Gemmell 5/21 Test. at 70)
- b. Ms. Gemmell thought that the Student attended the May 31, 2006 PPT but corrected the statement after the Student pointed out that he was not there. (Gemmell 5/21 Test. at 65-67, 69)
- c. The IEP developed at the May 31, 2006 PPT (B19 at 4, 5, 6, 12, 13, 14, 15 and 16) was written by a special education teacher, Michelle Karasic. (Gemmell 5/21 Test. at 63)

¹²³ Ms. Gemmell is a state certified special education teacher with an 092 certificate in administration. (Gemmell 5/21 Test. at 55) Ms. Bird provided her a copy of the PPT minutes to enable her to prepare for testifying. (Gemmell 5/21 Test. at 56, 61) The document reviewed by Ms. Gemmell was marked as B35. (5/21 Trans. at 61-62)

¹²⁴ Although Ms. Gemmell attended the May 31, 2006 PPT, the Mother claims that she does not know Ms. Gemmel. (Mother 5/21 Test. at 56-57)

- d. The reference on B19 at 16 to an “in-district” placement means that an in-district placement would be looked at first. The box marked graduation in six years means that it is anticipated that the Student would complete high school in 6 rather than 4 years. She does not recall any discussion at this PPT about graduation dates. (Gemmell 5/21 Test. at 71-73) As to B19 at 15 (which identifies the sites at which components of the IEP would be delivered), Ms. Gemmell testified that Ms. Karasic filled it out to reflect his current program at HPHS, which was the “transition program.”¹²⁵ The only place in the PPT documentation where an out-of-district placement would be referenced would be on B19 at 2. This is because the PPT team does not identify where the placement will be but rather only the type of placement that is needed. If an out of district placement is discussed at the PPT, the minutes are then sent to the Board’s central special education office to be handled by the coordinators, including Ms. Gould, to identify the specific out of district placement the student would attend. “If the team stated that the student needed a “smaller structured environment with small teacher/pupil ratio . . . [w]herever that program was available that would be worked out with the parent and the Board.” (Gemmell 5/21 Test. at 73-81). The description of on B19 at 2 of a small structured placement could refer to an in-district or an out-of-district placement. (Gemmell 5/21 Test. at 79-80)
- e. At the May 31, 2006 PPT, the plan requested by the Mother was for the Student to finish out the year at HPHS. (Gemmell 5/21 Test. at 80)
- f. Ms. Gemmell does not recall the discussion at the May 31, 2006 PPT about the Student being kept home for safety concerns. (Gemmell 5/21 Test. at 80)
- g. The Student was attending three classes in the HPHS STEP program at the time of the May 31, 2006 PPT. The STEP program is a transition program to help students having difficulty in the mainstream classroom by giving them access to an alternative setting within the school. The goal is to move the student eventually back into the mainstream or to a placement outside of HPHS. (Gemmell 5/21 Test. at 83-84) In the 2005/2006 school year, the STEP program was the most restrictive program offered at HPHS. STEP is specific to HPHS. Ms. Gemmell does not know whether there are comparable programs at either WHS or Bulkeley. (Gemmell 5/21 Test. at 83-84) At the start of the 2006/2007 school year, STEP was no longer offered at HPHS. Rather, a new small learning community called the Leadership Academy was created and the STEP program was incorporated into it. Ms. Gemmell does not know if there is a Leadership Academy program at either Bulkeley or WHS. (Gemmell 5/21 Test. at 85) In October 2006, STEP was reinstated at HPHS on a limited basis and once again is the most restrictive setting at HPHS. (Gemmell 5/21 Test. at 85-86) Referrals into the STEP program come from mainstream classes, disciplinary referrals and social work referrals. (Gemmell 5/21 Test. at 85)
- h. The Mother and the Student both claim that Ms. Gemmell is wrong about the existence

¹²⁵ The Hearing Officer notes that this testimony is inconsistent with the dates on the IEP page for the provision of these special education and related service components – June 2006 through May 2007. (B19 at 15)

of the STEP program at HPHS at the start of the 2006/2007 school year. They claim it was in existence and that Ms. Gemmell was lying. (5/21 Trans. at 86-89)

68. Ms. Ramos attended the May 31, 2006 PPT. Ms. Ramos does not recall if the Mother's request to place the Student as Bulkeley was discussed at this PPT, but she had had conversations with the Mother about placing the Student at Bulkeley. (Ramos 5/21 Test. at 103-104) She recalls that the plan was that the Student would not return to HPHS in 2006/2007 but she does not know where he was going to be placed. She recalls that Ms. Glass-McFadden was to develop a plan but does not know whether it was in-district or out-of-district. (Ramos 5/21 Test. at 106-107)
69. Ms. Glass-McFadden testified as follows:
- a. Ms. Glass-McFadden is the Board's Senior Coordinator for Special Education Services and reports to Dr. Dallemand, who is the Assistant Superintendent for Special Education Services. She is responsible for making sure that eligible students are receiving the services defined in their IEP and are being evaluated triennially. She also addresses staff, parent and student concerns regarding eligible students. She has been employed by the Board since 1981. Before assuming her present position she was a middle school special education teacher for 19 years and then assumed the role of trainer for special education staff. (Glass-McFadden 3/19 Test. at 124-125)
 - b. Ms. Glass-McFadden became involved with the Student and his family toward the end of the 2005/2006 school year. Staff had been receiving "numerous" calls from the Parent regarding the Student and had asked that a Board staff member attend a PPT being convened for the Student in May 2006. The May 2, 2006 PPT was scheduled without notification to the Board, so Ms. Glass-McFadden did not attend that PPT. She was aware of the May 31, 2006 PPT and arranged to attend that PPT which was scheduled to start at 8:00 a.m.¹²⁶ The Parent did not arrive until 9:15 a.m. and Ms. Glass-McFadden had another meeting she had to attend at 9:30 a.m. at WHS, so she could not stay for the May 31, 2006 PPT. (Glass-McFadden 3/19 Test. at 124-126)

3. Testimony of the Parents Regarding this PPT

70. The Father attended the May 31, 2006 PPT. Ms. McFadden attended the PPT for about 10 to 15 minutes and then left. The Student's grades were discussed as was the fact that he was missing 1.5 credits. The Parents advised the staff that the Student had been doing volunteer and summer work in the community and after the PPT gathered the documentation and sent it to Ms. Ramos who resolved the issue. (Father 3/14 Test. at 179-182)
71. When the Mother left the May 31, 2006 PPT, it was her understanding that the plan was for the District to find a placement for the Student that was similar to the STEP program that the Student began attending at HPHS as a result of the May 31, 2006 PPT. The Mother reported that the STEP program "worked out fine for [the Student]." (Mother 4/23 Test. at 20-21;

¹²⁶ Ms. Glass-McFadden's recall about the start time is not quite accurate given the notice for this PPT.

- 44-45) The Mother told the District staff at this PPT that she did not want the Student to return to HPHS for the next school year but rather wanted him to attend Bulkeley in the equivalent of the STEP program. She was told that she had to get special permission for the Student to attend Bulkeley. (Mother 4/23 Test. at 22-23; 47-48) It was the Mother's understanding that following the May 31, 2006 PPT, Ms. Glass-McFadden was supposed to start the special permission process for the Student to attend Bulkeley. (Mother 4/23 Test. at 48-49)
72. The incident with the Student being chased by other youths with a gun had occurred prior to the May 2, 2006 PPT and was one reason the Mother did not want the Student to return to HPHS. Another reason had to do with the difficulties in obtaining bus tickets for the Student through the school staff so he could attend school. (Mother 4/23 Test. at 23-25) The Mother denied that she kept the Student out of school for "safety reasons" in this school year and stated that Ms. Ramos worked with her to assure that the Student safely got on the city bus after school each day. (Mother 4/23 Test. at 24-26)
73. The STEP program was offered at the May 31, 2006 PPT because it was similar to the CREC Polaris program, where the Student had done well. (Mother 5/21 Test. at 87)
74. The Mother stated that there was no discussion of out of district placements at the May 31, 2006 PPT. Ms. Gemmell stated that an out-of-district placement was discussed at this PPT. (5/21 Trans. at 65-67) According to the Mother, out-of-district placements were discussed for the first time after the October 2006 assault. (Mother 5/21 Trans. at 87)
75. During Ms. Gemmell's testimony, the Mother seemed to suggest that the Board's version of the May 31, 2006 PPT minutes may not have been the version that was actually produced at the PPT. She was asked to direct her comments to the Hearing Officer. (Trans. 5/21 Test. at 67-68)
76. Ms. Gemmell has "amnesia" about the May 31, 2006 PPT because she talked to Ms. Bird. The PPT discussed placing the Student in the STEP program at HPHS for the rest of the 2005/2006 school year, and then placing him in a similar program in another mainstream high school for the 2006/2007 school year. There was no discussion of an out of district placement at this PPT. (Mother 5/21 Test. at 82-83)

I. Summer 2006; Referrals to Out of District Placements

77. Ms. Glass-McFadden testified as follows:
- a. After May 31, 2006, the Mother began calling on a daily basis to ask where the Student would be attending school in the 2006/2007 school year. The Mother stated that she did not want the Student to return to HPHS and asked Ms. Glass-McFadden for her assistance in resolving that issue. The Mother did not want the Student to attend HPHS because she "felt that the people were not treating her son fairly, the teachers had it in for him, the principal, the assistant principals, everyone had it in for her son was [sic] because they didn't like her." During one of these conversations,

Ms. Glass-McFadden raised the possibility of the Student going to WHS which the Mother rejected. Ms. Glass-McFadden offered WHS because the Mother reported that the Student had been successful at WHS and because WHS had a program for transitioning HTLA students similar to that offered in HPHS. (Glass-McFadden 3/19 Test. at 127-130)

- b. Ms. Glass-McFadden reviewed the recommendations of the May 31, 2006 PPT and in response to the Mother's calls, during the summer of 2006 began identifying out of district placements for the Student to attend. Ms. Glass-McFadden investigated CREC Polaris because the Mother reported that the Student had been successful there. Ms. Glass-McFadden spoke to various staff members at CREC Polaris about re-enrolling the Student. They reported to her some concerns given some "negative dealings" with the Mother when the Student attended previously. With a "lot of coaxing," CREC Polaris was willing to try working with the family again, and Ms. Glass-McFadden believed that CREC Polaris would be an appropriate program for the Student. CREC Polaris staff subsequently advised Ms. Glass-McFadden that when they had contacted the Mother, she was "very abusive" toward them and they then decided they would not accept the Student in the circumstances. Ms. Glass-McFadden then contacted Ms. Gould to develop other out of district referrals. That referral process was not successful for the reasons stated by Ms. Gould during her testimony. (Glass-McFadden 3/19 Test. at 129-133, 167-168)

78. Jo-Robin Gould is a Board Special Education Coordinator and is responsible for arranging for all out-of-district placements for and following District students who are placed out-of-district. (Gould 3/14 Test. at 112; 124) Ms. Gould testified as follows about events occurring in the summer and September of 2006:

- a. Ms. Gould did not attend the May 31, 2006 PPT but understood the recommendation of the May 31, 2006 PPT to be a placement at HTLA (in-district) or at a therapeutic day program (out of district). (Gould 3/14 Test. at 150-153)
- b. In the summer of 2006, Ms. McFadden asked Ms. Gould to pursue a placement for the Student at CREC Polaris. Ms. Gould put together a packet of information and sent it to CREC Polaris. CREC Polaris reported that although there had been some "past difficulties" with the Student's placement at CREC Polaris, the program was willing to "take another look at him." CREC Polaris contacted the Mother who advised that she did not want the Student at CREC Polaris. (Gould 3/14 Test. at 144; 162)
- c. In September 2006, Ms. Gould referred the Mother to Grace Webb School, which expressed an interest in the Student and pursued a contact with the Mother who advised that she was not interested. (Gould 3/14 Test. at 145) She also referred the Student to the Wheeler Clinic, Northwest Village School. This program also expressed an interest in the Student and reported to Ms. Gould that they contacted the Mother who advised that she was not interested (Gould 3/14 Test. at 146-149)¹²⁷

¹²⁷ The Mother stated that she was never contacted by CREC Polaris or Grace Webb but rather was only contacted by High Road and Wheeler School. (Mother Statement 3/14 Trans. at 146)

- d. The programs Ms. Gould identified for the Mother at this time and at and after the January 18, 2007 PPT all have an intake procedure which consists of an initial screening based on the referred student's records. After that there is an interview of the student and the student's parents. Ms. Gould tries to identify as many placements as possible. Once the placement and the referred student's family have identified a match, the PPT will reconvene to place the student at that placement. (Gould 3/14 Test. at 131-132)

79. The Mother testified as follows:

- a. The Mother denies that Ms. Glass-McFadden spoke with her starting in the summer of 2006 regarding an out-of-district placement for the Student. (Mother 4/23 Test. at 51-52) The Mother testified that no one else from the Board spoke to the Mother or the Father during the summer of 2006 regarding out of district placements, and the Mother never got any telephone calls from any out of district placement including from CREC Polaris. (Mother 4/23 Test. at 51-53; Father 4/23 Test. at 51-52) During the summer of 2006, Ms. Glass-McFadden advised the Mother that she was looking into CREC Polaris. The Mother stated that she did not have any problem with anybody from CREC Polaris, contacted CREC Polaris who reported that they had not had any contact from Ms. Glass-McFadden and flatly denied that she "went off" on CREC Polaris staff during a contact with them in the summer of 2006 as claimed by Ms. Glass-McFadden. (Mother 4/23 Test. at 56-58)
- b. She also testified that Ms. Glass-McFadden told her that "in September that she would have somewhere for [the Student] to go by September [2006] and nothing ever happened." (Mother 4/23 Test. at 53) The Mother agreed that in the summer of 2006 during her contacts with Ms. Glass-McFadden, Ms. Glass-McFadden never stated that the Student was going to Bulkeley in September 2006 "because she didn't know if he could go to Bulkeley" and that she was "looking into different schools . . . just in case he wasn't accepted at Bulkeley." "But the bottom line is she promised me that September [of 2006] we would not be going through this. She promised me this, you know what I'm saying? And it was a lie. It's still a lie." (Mother 4/23 Test. at 54-56)
- c. Ms. Glass-McFadden never talked to the Mother in the summer of 2006 about returning the Student to HTLA. The Mother had spoken with Ms. Blaire at HTLA in January 2006 about returning the Student to HTLA because the Mother was "tired" of the problems with bus transportation for HPHS. The Mother claims that Ms. Blaire stated her opinion that HTLA was not the right setting for the Student at the time due to the influx of students returning to the District from Long Lane School. (Mother 4/23 Test. at 57)
- d. If CREC Polaris had had an opening in the summer of 2006, the Mother would have enrolled him in that program. (Mother 4/23 Test. at 59-60)

J. 11th Grade (2006/2007 School Year) Thru October 16, 2006

80. The Student returned to HPHS in the 2006/2007 school year as an 11th grader¹²⁸ and was placed in the Leadership Academy. The Leadership Academy is not a special education program and serves both special and regular education students. Each classroom was taught by a special and a regular education teacher. Class size is approximately 20-25 students. Students are referred to the Leadership Academy to address behavioral and attendance issues. Students there are more closely supervised than in the mainstream setting, have more support staff available to them and are held accountable for their behavior. The Leadership Academy is physically separated from the mainstream environment, although some mainstream art classes are held in the Leadership Academy area and Leadership Academy students take physical education in the mainstream setting. (Dabrowski 3/19 Test. at 34-37)
81. In September 2006, the Student returned to HPHS but there was no more STEP Program and he instead began attending the Leadership Academy. The Mother believes that the STEP Program and the Leadership Academy are “basically” the same type of program and are both programs for “kids with problems.” (Mother 4/23 Test. at 20-21) She also testified, however, that the Leadership Academy was not a proper placement for the Student. Sometime during September 2006, the Mother contacted a staff member at the Leadership Academy and found out that the program was for students that had “set fires, carried guns, and had all these dramatic issues.” These were things that the Student had never done. She reported that the Student only has trouble at school, that he works everyday and has no trouble at his job or “on the street.” (Mother 4/23 Test. at 68-69) The Mother observed that a PPT had not been convened to place the Student at the Leadership Academy. (Mother 4/23 Test. at 70)
- 81A. The Mother claims that Ms. Bent told her in September 2006 during a telephone call regarding the special permission process that the Student would not be allowed to attend Bulkeley because Bulkeley did not want him to attend. (Mother 4/23 Test. at 78-79)
82. On the first day of school in September 2006, the Mother called Ms. Glass-McFadden who allegedly told her that Ms. Tyson had taken the Student’s records to Bulkeley and that the Mother should take the Student to Bulkeley. This discussion occurred for the next two weeks and when the Mother tried to confirm with Ms. Tyson whether the Student’s records had been sent to Bulkeley and who she should speak to, Ms. Tyson would not confirm that the records had been transferred. (Mother 4/23 Test. at 60-61) Ms. Glass-McFadden ultimately told the Mother that she was still working on trying to find a placement for the Student and to send him back to HPHS. “That’s why he winds up back at [HPHS] so he wouldn’t be missing any school. [Ms. Glass-McFadden] did nothing [regarding placements between September] until he got jumped that day [in October 2006] and she told me, well, keep him home. I’m going to get him a tutor and I told her, my exact words, you’ve been getting him a tutor since 2005, a whole year, you ain’t got him a tutor yet.” (Mother 4/23 Test. at 61-62) Ms. Glass-McFadden did nothing after the October 16th assault for the Student until after the Mother advised her that the Mother had

¹²⁸ The Student’s actual grade level remains to be determined.

contacted the “civil rights” people, at which point Ms. Glass-McFadden arranged tutoring for the Student. (Mother 4/23 Test. at 62)

83. While the Student attended HPHS during the 2006/2007 school year in the Leadership Academy, he began incurring disciplinary referrals. The Mother was speaking regularly to Mr. Wehrly, Mr. Dabrowski, Ms. Glass-McFadden and Mr. Turley about placing the Student somewhere other than HPHS. Mr. Turley is a teacher at the Leadership Academy. (Mother 4/23 Test. at 64-66) Mr. Wehrly said that Ms. Glass-McFadden had to address the Bulkeley special permission issue. Mr. Dabrowki reportedly told the Mother that the Student “wasn’t learning anything [at the Leadership Academy] because he said [the Student] walked the halls more than he do any work at [HPHS]. And him and Mr. [Wehrly] came to my house to tell me that I should just let [the Student] drop out of school, you know, put him in Job Corp or let him get a GED because, you know, it wasn’t benefiting him to go to [HPHS].” (Mother 4/23 Test. at 66-67) The Mother claims that these statements were made to her on “numerous” occasions both before and after the October 16, 2006 assault and as early as the May 2, 2006 PPT. (Mother 4/23 Test. at 66-67. *See also* Student 4/23 Test. at 66-67)
84. Mr. Wehrly was “surprised” to see the Student at HPHS in September 2006 given what had happened at the May 31, 2006 PPT. Mr. Wehrly assumed that the Mother had rejected the proposed out of district placements. The Student was enrolled in the Leadership Academy with Mr. Dabrowski, Mr. Horvath and Mr. Wehrly. The Student attended physical education and lunch in the mainstream environment. Approximately 100 students attend the Leadership Academy. Their schedules are arranged so that they travel in cohorts from class to class. Accordingly, the Student would spend more time with the same group of peers and could use that opportunity to build relationships. The Leadership Academy placement was more appropriate than the mainstream for the Student but was not an appropriate placement for the Student who needed a behavior management program. (Wehrly 3/19 Test. at 68-73)
85. Disciplinary records included in the record (B30) show that in the period between the start of school in September 2006 and the October 16, 2006 assault, the Student incurred multiple disciplinary referrals.

	Date	Description
	9/14/06	Not following staff directions, continuing to talk, when requested teacher was told to “get out of his face.” (B 30 at 14)
	9/14/06	Inappropriate language; not following staff directions – destroyed class materials, threw paper in garbage, loud, disruptive. (B30 at 15)
	9/14/06	Inappropriate language; not following staff directions (B30 at 16)
	9/15/06	Inappropriate language, not following directions, late – yelled out “fuck you.” When asked to stop talking and making noise during the test, continued [disobedient and disrespectful]. (B30 at 17)

	Date	Description
	9/18/06	Out of bounds; not following staff directions – ignored teacher direction to return to class (B30 at 18)
	9/18/06	Out of bounds; not following staff directions – Continues to walk out of class w/out permission. When asked to come back continues to keep walking. (B30 at 19)
	9/18/06	Disruptive, argumentative, refusing to come to class, refusing to leave class; had to be escorted out by security. (B30 at 20-21)
	9/18/06	Out of bounds (B30 at 22)
	9/19/06	Out of bounds, inappropriate language, not following staff directions – “interfering with staff during fight. Would not leave area.” (B30 at 23)
	9/21/06	Not following staff directions; disruptive; rolling up, wasting paper and using it for basketball with trash can. “Destroyed learning for whole (large) class.” (B30 at 24)
	9/21/06	Out of bounds, inappropriate language; not following staff directions; instigated another student against Mr. Horvath and stated that Mr. Horvath was “prejudiced against black people.” (B30 at 25)
	9/21/06	Inappropriate language, not following staff directions – disruptive, refusing to work, talking disrespectfully to teachers, loud (B30 at 26)
	9/22/06	Entered room without pass or permission, wandering around, disrupted testing, yelling outside of room; would not leave the area (B30 at 27)
	9/22/06	Teacher asked the Student to do work and he called her a “fucking bitch” and continued to be disrespectful until he was asked to leave. When leaving, he threw a handful of toothpicks at another student. (B30 at 28)
	9/25/06	Student came to class late and was rude, defiant and disruptive. He was asked a number of times to sit in his seat and stop bothering other students. He refused to follow simple directions. He stated to the teacher “Don’t talk to me and I ain’t listening to you.” He was asked to leave. At that point he refused and stated to the teacher “you stupid ass motherfucker . . . fuck you.” When he finally got to the doorway, he refused to move blocking student and staff from entering and leaving. He continued to make abusive comments to the teacher. (B30 at 29-33) Student received a 3 day outside suspension for this episode.
	10/3/06	Inappropriate language, not following staff directions, late – cursing during class (fuck, bitches); redirected 5 times. (B30 at 34)

	Date	Description
	10/4/06	The Student “had to be taken out by security today because he would not do his work and would not listen to me. He was being rude and not following directions. [He refused to put a book away.] Said if I took the book away I would be sorry. At that point, I had security come and take him out.” (B30 at 35)
	10/4/06 – 1 st period	Opened the door to Ms. Rocco’s class and said “I’m looking for the white lady” And then left. (B30 at 37)
	10/4/06 – 3 rd period	Student stood in the doorway to Ms. Rocco’s class and would not move when asked. He stated to Ms. Rocco – “I have no respect for you. I don’t like you” when asked to move. (B30 at 38)
	10/4/06 – after 3 rd period	Assaulting a student. He punched another student (HM) and called him a “mother fucking nigger.” HM ran into Mr. Persky’s room. The Student followed HM into Mr. Persky’s room, dragged HM out and told him to tell Ms. Rocco, a staff member responding the incident, that the Student had not hit HM. The Student was blocking the door to Mr. Persky’s room and creating an unsafe situation. Called Ms. Rocco a racist. (B30 at 36)
	10/6/06	Inappropriate language, not following staff directions, disruptive, would not stop talking (B30 at 39)
	10/10/06	During an entire period the Student was disruptive, used inappropriate language, refused to follow staff directions and refused to leave when asked to leave. (B30 at 40-41)
	10/11/06	Left class without permission, in and out of the room, walked out of the area without permission to cafeteria. (B30 at 42)
	Undated – probably 10/2006	“Refused to stop writing on the back of female student.” Ripped up paper and told teacher to “shove it up your ass.” (B30 at 43)
	10/16/06	Out of bounds, late, inappropriate language, disruptive behavior, not following staff directions (B30 at 44)

85A Mr. Horvath reported that the Student’s grades prior to the start of the tutoring on October 27, 2006 were Math 70, History 75, Leadership 63, Science 55 and English 50. (P2)

K. The October 16, 2006 Assault

86. The Student described what happened on October 16, 2006 as follows. Three HPHS students were involved in the actual physical assault and five others observed what

happened. The Student was attending his physical education class at the time, which is the last period of his school day. He reported that on several prior days this group of students would go back behind the fence during gym to “smoke and stuff.” The Student was participating in the class activity when he was called over to join this group. These were students with whom the Student attended classes all day and he assumed that they wanted to talk about something about school so he left the track and walked over to where this group was standing. When he got to the fence, one of the students grabbed him and pushed him up against the fence and a second restrained him further with a choke hold. His cell phone and some change were taken from his pockets. The bell rang at that point, and the students let him go and left. They refused to return his cell phone. The Student went directly to report the incident to Mr. Wehrly and spoke with the Vice Principal and the school security officer who went looking for the students who assaulted him. A teacher drove the Student home. (Student 3/14 Test. at 208-210)

87. On October 16, 2006 at approximately 2:10 p.m., Mr. Wehrly found the Student waiting outside of Room 245 to speak with him. The Student “appeared very upset” and reported to Mr. Wehrly that “3 boys from school had rolled him.” Mr. Wehrly summoned school safety Officer Bolland and Corrine Davis, who is a Vice Principal at HPHS.¹²⁹ The Student then identified the three students [referred to herein as students A, B and C] who had “rolled him.” Mr. Wehrly recorded the Student’s description of the event as follows: Students A, B and C “were hiding out of sight of the PE teachers smoking marijuana. They asked [the Student] to join them. When [the Student] walked to join them, [one and/or two of the students] jumped [the Student], held him by the neck while [the third student] ran through his pockets, stole his cell phone, then let him go. [The Student] stated he asked for his cell phone and no one returned it. He didn’t want to report it to his PE teachers and came to [Mr. Wehrly] instead.” (B20; Wehrly 3/19 Test. at 74-75)
88. Mr. Dabrowski was meeting with Mr. Wehrly in the afternoon of October 16, 2006 when the Student appeared at the door of the room and reported that he had been “jumped” and put into a headlock by one of his assailants and that his cell phone had been stolen. The Student was “upset.” Mr. Dabrowski and Mr. Wehrly talked to the Student to calm him down, called the school police officer so that the Student could make a report and called the Mother. Ms. Davis (HPHS Vice-Principal) came and spoke with the Student as well. (Dabrowski 3/19 Test. at 37-38)
89. The Parents did not get the Student any medical attention for the October 16, 2006 incident. (Father 3/14 Test. at 194-195)

L. Events of October 17, 2006

90. The Student testified that he and the Parents went to HPHS on October 17, 2006 to meet with Ms. Davis, who assured them that the Student would be safe at HPHS if he stayed the day. After the meeting, as the family was leaving, three of the students who had been involved in the incident approached the Student in the hallway while he was with his

¹²⁹ 4/23 Trans. at 31.

family. One of these students had been involved in the physical assault and the other two had been observers. The one who had been involved in the physical assault told the Student to tell staff that he had not taken the cell phone. Another of the students in this group called the Student a “snitch.” (Student 3/14 Test. at 208-210) Between October 17 and October 25, the Student stayed home. The Student claims that at the meeting at HPHS on October 17, 2006, he told HPHS staff that he did not feel safe and did not want to be at HPHS. (Student 4/23 Test. at 81-82)

90A. When asked if after the October 17, 2006 meeting she was planning on sending the Student back to HPHS, the Mother responded as follows: “[W]hen we left that meeting after we got home I called Ms. [Glass-]McFadden and I told her everything that happened at the meeting and she told me, keep [the Student] home. She was going to get him a tutor.” (Mother 4/23 Test. at 82) She then denied she ever told Ms. Glass-McFadden that she had decided to keep the Student out of HPHS for safety reasons. (Mother 4/23 Test. at 82) *See also* Mother 4/23 Test. at 84

91. The Father testified as follows about the events of October 17, 2006 and his reactions:

- a. The Student and his family went to a meeting at HPHS with Ms. Davis and Ms. Allen (an HPS family advocate assigned to HPHS),¹³⁰ who were investigating the incident. Ms. Davis and Ms. Allen had just completed a series of meetings with the families of the assaulting students and at that point it was a “he said” vs. “he said” situation. (Father 3/14 Test. at 186-190; 198-208) Ms. Davis and Ms. Allen did not discuss at their meeting anything that could be done at the school to help the Student feel safer and rejected a proposal made by the Father that the families of all of the students involved meet to discuss the incident. (Father 3/14 Test. at 203)
- b. After the meeting ended, the Student and his family were leaving the building. At that time, one class ended and students began transitioning to the next class. One of the students who had assaulted the Student and another student approached the family in the hallway. Even knowing that the Student’s family was present, they threatened the Student and called him a “snitch.” The Father immediately reported this to Ms. Ramos, who said she would look into it and also said that there was nothing that she could do about it. (Father 3/14 Test. at 186-190; 198-208)
- c. After the confrontation in the hallway, the Father no longer felt safe himself at HPHS. (Father 3/14 Test. at 186-190; 198-208)
- d. The Father testified further as follows:

And I felt to my own decision I didn’t want him going to [HPHS] anymore not knowing that he’s safe. [Sic] Not knowing behind Mark Twain houses the kids hide their guns and drugs waiting to get out of school to do what they do. On the way going to [HPHS] when I went to that meeting [on October 17, 2006] they were patting kids down, searching the kids so they don’t go

¹³⁰ 4/23 Trans. at 31-32.

into school with whatever objects or gadgets that they have. Another kid runs out of the school, hey, don't bring your guns and drugs in today, they're searching us. I felt really scared for my son and further more I felt for my own safety because if you're hurting him, I'm not going to let you hurt him. I'm going to come up there and try to resolve the situation and in the process I may get hurt or go to jail by doing the wrong thing since the police couldn't do it, the school couldn't do it. When the kids run out of the building, leave your drugs and guns down the street they're searching us today. I want my son in that type of environment? I don't think so.

So I didn't want him in that school because I know of the activity that goes on in that school. And I couldn't think of no other situation but bring it to the Board [of Education] to find a solution for this. They can't go over there and turn the school out overnight to get rid of the drugs and guns, that's not going to happen. But place my son or any other kid in a different setting, a more safer environment. And the police can only handle what's in the school because they're on school grounds. There's no one – the tenement kids want to get out of school, they're on their own until they get home. God forbid if one gets shot at the bus stop or gets shot as they walking out of school because they're on their own . . . I don't know, no one wants to take care of anyone's safety. But the minute someone gets hurt God forbid if he [referring to the Student] got shot or stabbed when they jumped him, then what? My son is dead because I allowed him to go to [HPHS] and no one stepped in to solve the situation? . . . ”

In the middle of changing classes he [referring to the Student] could have got stabbed, I could have got stabbed, anybody could have got stabbed. But the

main reason, it's not safe in that school. I don't want my son going to that school. It's not safe. And the minute he gets out of school, he's on his own and at that time he was only 15. He was only 15 at that time that incident happened . . . I don't want him going back there . . . Whether his mother want him to go or anybody want him to go. I feel for his safety.

(Father 3/14 Test. at 187-190)

- e. The Father is aware that there is a uniformed Hartford police officer on duty at HPHS as well as several security staff members. He is also aware that students entering HPHS are not “patted down” every day. Prior to October 17, 2006 the Father had been at HPHS on numerous occasions and had not felt unsafe. (Father 3/14 Test. at 213-215)
- f. At some point after October 16, 2006, the Father spoke to HPHS security staff and asked them to monitor the Student's safety in the school. (Father 3/14 Test. at 183)

92. On October 17, 2006, a paraprofessional reported that on October 17, 2006 she overheard

some students talking about an incident on October 16, 2006 in which they had “jumped” the Student and took what he had in his pockets including his cell phone. These students also stated that the Student “left crying like a girl.” She completed an “unusual incident report” identifying the location of the incident as “field/track” and that it occurred on October 16, 2006 at “Mod 11.” (B21)

93. Until the paraprofessional filed her report, HPHS staff were not in a position to confirm the Student’s report. Ms. Davis had interviewed everyone in the physical education class and was told that the Student had injured himself playing football. Once the paraprofessional filed her report, HPHS staff took action against the assaulting students. (Wehrly 3/19 Test. at 75-76)

M. October 16 to October 25, 2006

94. The Mother called Ms. McFadden about the assault and states that Ms. McFadden told her to keep the Student home and out of HPHS until Ms. McFadden could find him a tutor. (Mother Statement 3/14 Trans. at 66-67; Mother 5/21 Test. at 47) Ms. McFadden denied making any such statement to the Mother and denied ever telling the Mother that she should keep the Student out of HPHS for any reason. (McFadden 3/14 Test at 67-68)
95. All three of the assaulting students were suspended for 10 days, subject to expulsion proceedings and arrested. One of the assaulting students stopped attending HPHS on November 20, 2006. Another of the assaulting students stopped attending HPHS on November 6, 2006 and was returned to WHS. After the end of the third assaulting student’s suspension, his attendance at HPHS was very “sporadic” and he did not return to school until mid-January. He then left HPHS on February 9, 2007 and moved out of state. Ms. Glass-McFadden kept the Mother apprised of the status of these students throughout the period after October 25, 2006 as part of her effort to persuade the Mother that there was no reason why the Student could not return to HPHS. The Mother, however, chose to keep the Student home. “It was not a school decision to keep him home.” (Glass-McFadden 3/19 Test. at 137-138; Wehrly 3/19 Test. at 75-78; Glass-McFadden 3/14 Test. at 60, 71-72; Dabrowski 3/19 Test. at 38)
96. The Father was not aware that the students who assaulted the Student were arrested and also disciplined by HPHS. (Father 3/14 Test. at 201)
97. Although the Student lives in the WHS area, the District had made clear in the 2006/2007 school year to the Mother that the Student can attend either WHS or HPHS. (Glass-McFadden 3/14 Test. at 61) Based on his current address, the Student’s home school during the hearing is WHS. At the start of the 2006/2007 school year, he was living within the HPHS footprint and started attending school at HPHS accordingly. Board policy permits students who move during the middle of a school year to remain at the school they started the year in to maintain consistency. The Student was allowed to remain at HPHS for that reason, and also because when due process was filed HPHS was his stay put placement. (Glass-McFadden 5/21 Test. at 151-152)

98. The Board proposed to address safety concerns by offering to provide door-to-door transportation (Student is picked at his home, dropped off at school and met by a staff member and then picked up and returned home in the same manner at the end of the day). The Student rejected that proposal because he did not want to “stand apart” from other students. (Glass-McFadden 3/14 Test at 61-63)
99. One of the students who assaulted the Student is at WHS, one is in adult education and one is still at HPHS. The Student knows this from talking to other students who attend HPHS and from Mr. Horvath and Ms. Butler. (Student 4/23 Test. at 103-104, 106)¹³¹
100. Between the October 16 incident and the October 25 PPT, the Student was not attending school and the Mother was difficult to contact, so Mr. Dabrowski and Mr. Wehrly went to the Student’s home to “see what we could do to get [the Student] to be in school.” Mr. Wehrly proposed to change the Student’s Leadership Academy cohort so that he would not be with the three assaulting students even though he was aware that at that time the assaulting students were not attending school. The Student’s physical education class could also be switched. The Student would have been closely monitored in the Leadership Academy. In Mr. Wehrly’s opinion, the Student would have “been fine” had he returned to HPHS. (Wehrly 3/19 Test. at 78-81)
101. The Student has not returned to HPHS or any other District school since October 16, 2006.

N. October 25, 2006 PPT

102. A PPT was convened on October 25, 2006. The Board has not been able to locate a copy of the notice for this PPT. (HO9 at 1) The minutes of the PPT (B22) state that the Student is a 16 year old identified as a 10th grader attending HPHS with 6.5 credits completed toward graduation¹³² and indicate the following, among other things:
- a. The PPT recommended that the Student be placed at either Wheeler Clinic or Gengras Center. The Mother rejected both placement recommendations.
 - b. The Student will receive tutoring outside of the school pending a placement determination. At the Mother’s request, the tutoring would be provided by Mr. Horvath, who is the Student’s current history content teacher.
 - c. The procedural safeguards were provided to the Mother with a copy of the PPT minutes.

¹³¹ The Student has been contacted recently by at least one of the students who assaulted him, and has been threatened. The police are reopening their investigation. (Mother 4/23 Test. at 106)

¹³² The Hearing Officer notes that presumably in the 2006/2007 school year, the Student would have been an 11th grader. There is no indication in the records that he failed to pass the 10th grade, which he attended in the 2005/2006 school year.

103. According to Mr. Wehrly, at the October 25, 2006 PPT staff talked about out of district placements. The Mother rejected that proposal, stating that the Student “wasn’t behaviorally challenged, and he didn’t belong in those places. I think she said he wasn’t mentally retarded and he didn’t belong in those places also.” (Wehrly 3/19 Test. at 82) As the meeting progressed, the Mother became more belligerent toward Mr. Wehrly and said she “was going to put a hammer in my head.” Mr. Wehrly left the PPT at that time and has not attended any other PPT for the Student. (Wehrly 3/19 Test. at 82-83)
104. Ms. Glass-McFadden attended the October 25, 2006 PPT. The Mother wanted the Student out of HPHS because she felt it was not safe for him there. Ms. Glass-McFadden believes that HPHS is safe, a “typical high school.” No one at the PPT told the Mother that it was not safe for the Student to attend HPHS. The Mother was “yelling” at staff at this PPT, accusing them all of being “liars” and of failing to teach her son. The Mother never stated where she wanted the Student to go to school, so Ms. Glass-McFadden had a “side conversation” with the Student to ask him where he wanted to go. He advised her that he wanted to attend a regular high school and wanted to remain at HPHS. The Mother asked for a telephone to contact the Father who was her “witness” to events at a prior meeting, and while she was on the phone with the Father, she “turned and stated that she wanted to bash Mr. Wehrly in the head with a hammer.” At that point the meeting was adjourned. Ms. Glass-McFadden took the Mother into the hall, explained that her behavior was inappropriate and that she could be arrested for threatening a staff member. The Mother became “loud” at that point. Ms. Glass-McFadden assisted her in calling a cab and escorted her out of the building to wait for the cab. Ms. Glass-McFadden decided to arrange for tutoring for the Student because the Mother was not going to allow the Student back into school. Ms. Glass-McFadden was concerned that the Student was missing school and the tutoring was an interim arrangement until arrangements could be made to get him back into school. (Glass-McFadden 3/19 Test. at 134-135; 139-140)
- 104A. According to Mr. Dabrowski, at the PPT the Mother was “visibly upset” and believed that the Student was not being treated fairly and that the District was not doing everything it should be doing for the Student. She was “loud” and “accusatory” and making “outlandish statements.” “She mentioned something about using a hammer to Mr. Wehrly because she was upset about an incident from the preceding year.” Mr. Dabrowski did not take this as a threat so much as an “outrageous statement . . . reflective of her emotional upset.” No specific recommendations were developed at this PPT for a placement because of the Mother’s behavior. Tutoring would be implemented on an interim basis and Ms. McFadden would try to work with the family to identify a placement for the Student. Mr. Dabrowski does not recall the Mother stating specifically a placement that would be satisfactory to her, other than that she did not want the Student to return to HPHS. The Mother stated at one point that she had been contacted by Wheeler Clinic and Gengras Center over the summer related to the recommendations of the May 31, 2006 PPT, but that once she found out that these facilities worked with behaviorally or emotionally disturbed children she “did not want anything to do with them.” (Dabrowski 3/19 Test. at 40-44)

105. The Mother did not recall the October 25, 2006 PPT. In reminding her about it, the Student stated “Remember, we just got up and left? They wasn’t saying anything important.” “They talked about me coming back to school and how I would be wandering the halls and it had nothing to do with me being jumped so we got up and left.” “We got frustrated and the meeting adjourned.” (4/23 Trans. at 70; 71) Even with these reminders, the Mother had difficulty remembering this PPT. (Mother 4/23 Test. at 71) The Mother ultimately remembered that it was at this PPT that she was alleged to have threatened Mr. Wehrly with a hammer. (Mother 4/23 Test. at 72) The Mother’s purpose in attending that PPT was to clarify the issue with his grades, credits and attendance and “to see what grade he was currently in.”¹³³ The staff started talking about a placement at the Wheeler Clinic. Mr. Wehrly entered the room, and the Mother stated that she reminded staff that Mr. Wehrly was not supposed to be involved with the Student and so he “excused himself.” (Mother 4/23 Test. at 71-73) The Mother flatly denies that she threatened to hit Mr. Wehrly with a hammer and suggested that Mr. Wehrly, Mr. Dabrowski and Ms. Glass-McFadden have “concocted this story.” (Mother 4/23 Test. at 73-74) Since the PPT had not been noticed to discuss Wheeler Clinic and was not addressing the issue of concern to the Mother (grades, attendance and credits), she got up and left. Ms. Glass-McFadden let her use her cell phone to call a cab. (Mother 4/23 Test. at 74) Ms. Glass-McFadden reiterated at that meeting she would have the Student’s records (his “cum”) reviewed so that she could determine a placement for him. (Mother 4/23 Test. at 75-76)
106. The plan coming out of the October 2006 PPT was to keep the Student home. Ms. Glass-McFadden told the Mother to keep the Student home and that the Board would arrange for a tutor. (Mother 4/23 Test. at 79)
107. The Student does not recall stating to Ms. Glass-McFadden at the October 25, 2006 PPT that he wanted to go back to HPHS. “I don’t recall that. Every time – when people say, okay, what school do you want to go to? I look at them like they – you can’t just ask me that question, like I’m going to this school. You know what I’m saying? At that time I wasn’t ready to go back to [HPHS] because those boys that was there, you know, the next day after I’m with my family and they did that to me. Imagine what was going to happen if I went back by myself? You know, I could see if the boys weren’t there, you know what I’m saying? But I don’t remember saying that to her.” (Student 4/23 Test. at 83) Even knowing that all of the students who assaulted him no longer attend HPHS, the Student would not want to go back there now because he lives all of the way on the other side of town. (Student 4/23 Test. at 85)

O. Special Permission to Attend Bulkeley (November 2006)

108. P4 at 4 is a copy of an application for attendance at the Sports and Medical Sciences Academy magnet and the University High School of Science and Engineering magnet. It

¹³³ The Mother understood that the purpose of the PPT was to clarify issues regarding the Student’s attendance, grades and credits. The Student had been recorded absent by the computer for 147 days and as a result was being identified as in the 10th grade when she claims he should have been in the 11th grade. (Mother 4/23 Test. at 18-19, 115)¹³³

is not dated. (P4 at 4)

109. The Board's publicized Special Circumstances Transfer ("special permission") process states that requests for transfer from a home school to another school within the District will be granted if extenuating circumstances support the request, including but not limited to a documented student safety issue/concern, emergency placements or extreme hardship with regard to childcare arrangements. The Superintendent of School or his designee has "sole discretion" to approve or deny an application, and completion of an application does not "guarantee automatic approval." A request to transfer will be denied if the transfer would cause an overcrowded classroom, program or need for additional resources. (P4 at 3)
110. On November 1, 2006, the Mother completed an application for special permission transfer to Bulkeley, which stated the following as the reason for the request:

My son is in the 11th grade and was never taught to how to do division. His handwriting is as if he's in the second grade. I stated this for years the school system wasn't teaching him anything. I've had IEP & PPT and the teachers say one thing on the paper which should be by law and the next day everything goes back to normal. I almost know everyone at the board of ed and all I get from them also is lies. The board has his cum IEP PPT someone needs to sit down and take the time out to read it. I have everything from every school and I plan to seek help to hold the board of ed and the school system accountable for the [destruction] in my son's life right along with the hell I've been put through. I've made appointments with Eddie Perez which was cancelled because of his wife sickness. I plan on meeting with Mr. Adamowski Steve the new super. The school system hurts the kids more than they help them and lie and cover up stuff to make the schools look good. I've made my copy of [the application form]. Mrs. McFadden told me [the Student] could fill out the Choice Program application. I've sign him up for CREC. He's on the waiting list. My son was jumped at HPHS on I believe October 17, 06. The 3# boys ageing from 15 years old to 20 are still attending HPHS. The kids [took] my cell phone from my son. The bully law must not apply to Htfd schools. I've notified Channel 30 New about this story. My son is home missing his education while the bullies are in school getting theirs. The police was notified also. I've been going through so much bullshit with the Board of Ed. and the Hartford school system I'm tired the No Child Left Behind law is a joke. I am speaking to parents now until the right person hears me about my . . .

(P4 at 2-3)

111. Dr. Dallemand approved the special permission application. Ms. Taylor (the Bulkeley Principal) denied the application on November 3, 2006. (P8 at 2) No reason for the denial is stated on the form. On November 7, 2006, Ms. Bent (HPS Special Circumstance Coordinator) sent the Mother a form letter advising that the special permission application had been denied. The letter states the generic reasons for denial of a special permission application, but does not actually state the reason why the Student's application was denied. (P4 at 1)

112. Ms. Bentham is a Parent Advocate and Trainer for the Board. She has served in that capacity for 7 years. Her responsibilities include assisting parents of students enrolled in the Board's schools to navigate roadblocks "either perceived or real" impacting their child's education. (Bentham 3/19 Test. at 5-7) She testified as follows:
- a. Ms. Bentham became involved with the Student and his family at the request of Dr. Dallemand in connection with the process for obtaining special permission for the Student to attend Bulkeley. The Mother wanted the Student to be placed in Bulkeley through a PPT as part of special education and related services. The special permission process is not, however, a special education process. (Bentham 3/19 Test. at 7-8)
 - b. It is Ms. Bentham's understanding that the Student was denied special permission to attend Bulkeley by the Bulkeley principal because at the time Bulkeley was "full" and there was no space. Ms. Bentham states that she knows that was the reason because she was involved in the process of appealing the principal's initial decision denying the Student's request to attend Bulkeley. The Mother was "disappointed" that the Student could not attend Bulkeley and "felt that it was disrespectful not to accept her child, that it was a personal thing." Ms. Bentham worked with the Mother to identify other potential educational opportunities for the Student but the Mother would "say no immediately" without considering the proposal. "Unless it was Bulkeley, she did not want any other prospects of education." Ms. Bentham also attempted to work with the Mother regarding out of district placements being offered to the family. (Bentham 3/19 Test. at 8-10)
113. Romain Dallemand has been the Board's Assistant Superintendent for Special Education Services for the past two years. In that capacity he is responsible for overseeing the administration of special education and related services within the District. Ms. Glass-McFadden reports to Dr. Dallemand. (Dallemand 5/21 Test. at 6-7) He testified as follows:
- a. Dr. Dallemand first learned about the Student and his situation after the October 16, 2006 assault in connection with the request for the Student to attend Bulkeley through the special permission process. The assault was one of the reasons why Dr. Dallemand granted special permission for the Student to attend Bulkeley. He met with both Ms. Glass-McFadden and the Mother on the day he signed the special permission forms. He does not recall having any knowledge about the Student prior to September 2006. (Dallemand 5/21 Test. at 9; 14)¹³⁴
 - b. The special permission process applies to both regular and special education students.¹³⁵ IDEIA-eligible students are given no particular preference over regular

¹³⁴ The Mother contends that she met Dr. Dallemand prior to this. (5/21 Trans. at 18-19).

¹³⁵ The assaulting students could also have used the special permission process to transfer from HPHS to Bulkeley. (Dallemand 5/21 Test. at 45)

education students because the special permission process is essentially a parental choice option and is not a PPT placement decision. Dr. Dallemand became involved with the Student's special permission application because the Mother had requested to meet with Dr. Dallemand. Dr. Dallemand sometimes becomes involved with IDEIA-eligible students who are seeking special permission to attend a different school. The principal of the receiving school can grant or deny permission for a student to attend. (Dallemand 5/21 Test. at 9-11) Dr. Dallemand authorized the Student to attend Bulkeley on a special permission basis, but the Bulkeley principal (Ms. Taylor) denied special permission and Superintendent Adamowski upheld Ms. Taylor's decision. It is Dr. Dallemand's understanding that Ms. Taylor concluded that Bulkeley was "not equipped" to meet the Student's needs. (Dallemand 5/21 Test. at 13-14)¹³⁶

- c. If a PPT determines that because of his/her particular needs, an eligible student requires a placement at a specific district school to receive a FAPE, the PPT can place the student there. Accordingly, if a PPT determined that the Student needed to attend Bulkeley, the PPT can place him at Bulkeley. (Dallemand 5/21 Test. at 10-11)
114. According to Ms. Glass-McFadden, the Mother wanted the Student to attend Bulkeley and filled out the application for special permission attendance. (P4) Ms. Glass-McFadden tried to work with the Mother to "tone down her anger" in the application and when speaking to Bulkeley staff, but the Mother would not do so and advised Ms. Glass-McFadden that she "would not bite her tongue." Ms. Glass-McFadden believes that this and the Student's history of behavioral problems were the reasons that the special permission was denied by the Bulkeley principal.¹³⁷ Dr. Dallemand overruled the Bulkeley principal's decision not to grant special permission. Dr. Dallemand's decision was then overruled by the Superintendent under Board policy which gives the discretion to the receiving school's principal as to whether to grant special permission to a student to transfer in. Special permission attendance arrangements are not done through the special education process and are not a special education placement. Ms. Glass-McFadden also believes that due to his behavioral issues, the Student would not be any more successful at a placement at Bulkeley than he would have been or was at WHS and HPHS. (Glass-McFadden 3/14 Test at 64-66; 70-71; Glass-McFadden 3/19 Test. at 160-163)
115. When the Mother went in November 2006 to get the special permission papers for the Student to attend Bulkeley, she had to obtain them from the Board's office and was told by Cynthia Bent that the Student would not be given special permission to attend Bulkeley. (Mother 4/23 Test. at 50-51)
116. After special permission to attend Bulkeley was denied, Dr. Dallemand met with the

¹³⁶ The Mother contends that she was never told that this was the reason why special permission was denied. (5/21 Trans. at 21).

¹³⁷ Ms. Glass-McFadden acknowledges that her understanding of the Bulkeley principal's decision differs from Ms. Bentham's.

Mother on several occasions and offered placements at HTLA, WHS and out of district placements in therapeutic day programs such as Wheeler. The Mother declined these offers. The Mother declined placements at HTLA and at therapeutic day programs because of her position that the Student “was not disabled to be in those places.” The Mother did not explain why she was rejecting WHS. She also did not want the Student to return to HPHS because of the presence of the students who had been involved in the assault. (Dallemand 5/21 Test. at 15-17)¹³⁸

117. Dr. Dallemand testified that at one meeting with the Mother, the Mother stated that she was “on her way to Middletown to file for a due process hearing.” Dr. Dallemand advised her not to go to Middletown because office had moved to Hartford. He states that he did not tell her that due process was or mediation were no longer available, and encouraged her to file for due process. She did not ask for the Hartford address of the due process unit and Dr. Dallemand does not recall if he gave her the address or simply told her it was in Hartford. The Mother did not have any due process or mediation papers with her at that meeting and Dr. Dallemand did not give her the forms. (Dallemand 5/21 Test. at 42-44; 50-53)
118. The Mother claims that at a meeting with Dr. Dallemand, she asked if she could file a due process request and was told that “they don’t do that anymore . . . due processing wasn’t in Middletown.” The Father and Ms. Bentham were present when that statement was made. The Mother claims that she never told Dr. Dallemand she was going to Middletown, but rather that she had dealt with Mr. Badway’s office in Middletown in a prior due process case, and that Dr. Dallemand then told her that she “could not file for due processing.” She claims he never told her that the due process was in Hartford. (Mother 5/21 Test. at 49) The Mother claims that she never told Dr. Dallemand she was going to Middletown, but rather that she had dealt with Mr. Badway’s office in Middletown in a prior due process case, and that Dr. Dallemand then told her that she “could not file for due processing.” She claims he never told her that the due process was in Hartford. (Mother 5/21 Test. at 49) The “civil rights people” subsequently provided her with the due process papers in January 2007 and told her about the CT DOE complaint process involving Mr. Purdy’s office. (Mother 4/23 Test. at 87-89, 91)

P. Mr. Horvath’s Tutoring (October 2006 – January 2007)

119. The Student was referred for tutoring on October 25, 2006, and tutoring with Mr. Horvath was scheduled to start on October 27, 2006 at the public library. Tutoring was to continue through January 10, 2007, subject to routine, 20 day reviews. (B23)
120. Records of the tutoring done by Mr. Horvath prepared by Mr. Horvath (B23) indicate the following:

¹³⁸ The Mother states that Dr. Dallemand never mentioned a placement at HTLA in the meetings the Mother had with him after the October 2006 assault. He did mention Wheeler. The Mother told him that she wanted the Student to go to Bulkeley and HPHS. (Mother 5/21 Test. at 48)

- a. The Student attended the tutoring and participated appropriately and responsibly from October 27, 2006 (when the tutoring began) until approximately January 2, 2007. At that time, Mr. Horvath was advised that the Student was moving to a new living situation. Mr. Horvath offered to go to the house to provide the tutoring, but the Mother declined the offer. The Student did not report for tutoring on January 3 or 4, 2007. On January 4, 2007, Mr. Horvath offered to tutor the Student at his home on Mr. Horvath's day off (January 5, 2007), but the Mother declined. The Student did not attend tutoring at the library on either January 8 or 9, 2007. Mr. Horvath was advised that the family was waiting for a bus pass or tickets.
- b. On January 10, 2007, Mr. Horvath reported the following: "[The Student] didn't show at library – mother called me and asked if I'd come to house they moved to. Mother and I agreed to 5:00 p.m. and that I'd call right before I got there because I was not sure of street location. I called at 5:00 p.m. – no answer. A short while later [the Student] called and said he was sick – so we agreed to meet the next day at the library. The mother [name] called and started yelling at me. She told me she did not want me tutoring her son again."
- c. Mr. Horvath ceased tutoring the Student on January 10, 2007. His notes state that the Student "worked hard and completed all assignments, homework and tests until he moved. He was a very independent worker . . . [He] was easy to work with. He communicated well and showed a good attitude." During this marking period (10/26/06-1/10/07) he earned the following grades: Math 75, English 80, Science 80, US History 85 and Leadership 80. He was absent 6 times and attended 38 times.

1. The Mother's Testimony About Mr. Horvath's Tutoring

121. The Mother testified as follows about the tutoring by Mr. Horvath:

- a. The only "real" tutoring the Student has had since October 2006 was provided by Mr. Horvath. The other tutors did not actually work with the Student. (Mother Statement 3/14 Trans. at 102-105)
- b. During the course of the Student's tutoring by Mr. Horvath, Ms. Glass-McFadden instructed Mr. Horvath to give the Student all Fs but Mr. Horvath provided the Mother with a list of the grades he was going to give the Student.¹³⁹ (Mother Statement 3/14 Trans. at 221)
- c. The Mother stated that Mr. Horvath did a "good job" tutoring the Student, but that

¹³⁹ This document dated December 31, 2006 was marked as Exhibit P2 and shows that the Student earned grades ranging from 80 to 90 in his tutoring with Mr. Horvath. This document also shows that his grades prior to the assault while he was attending the Leadership Academy ranged from 50 to 75. Mr. Horvath advised the Mother in this document that the District had initially advised that the Student had "flunked" all of his classes in the first marking period (prior to the assault), but that Mr. Horvath had told the District that that was not correct. The Mother claims that this document reflects that Mr. Horvath is trying to "play both sides against the middle." (Mother Statement 3/14 Trans. at 223)

after the family moved in December 2006, Mr. Horvath no longer wanted to come to where they lived in the North End to provide the tutoring. (Mother Statement 3/14 Trans. at 226)

- d. Mr. Horvath would meet briefly with the Student, give him his work and then leave. This happened every day. The Mother claims that Mr. Horvath had some personal issues that interfered with his tutoring of the Student. (Mother 4/23 Test. at 109-110)¹⁴⁰

2. The Father's Testimony About Mr. Horvath's Tutoring

122. The Father testified as follows about Mr. Horvath's tutoring:

- a. During a conversation the Mother had with Mr. Horvath that the Father overheard approximately in November 2006, Mr. Horvath stated to the Parents that "the school was shafting [the Student]" and was not "giving [the Student] a fair chance." The Father understood that to mean that the school was not giving the Student the work he was supposed to be doing during the tutoring to keep up with his subjects, was not giving him the correct grades and to refer to the fact that the students who had assaulted the Student were still attending HPHS. (Father 3/14 Test. at 224-228; 230-232)¹⁴¹ The Mother at this point stated that Mr. Horvath suggested that the Parents contact Stacey Violante-Cote (a Parent Advocate employed by the Board) to discuss their concerns that the Student was getting "B.S.'d by the Board of Education" and provided her number to them. The Mother contacted Ms. Cote who was reportedly "rude" to her. (Mother Statement 3/14 Trans. at 226)
- b. The Father spoke to Mr. Horvath "numerous times" and observed tutoring sessions at the library without either Mr. Horvath or the Student being aware that the Father was observing. On some days, the Father saw the Student at the library, but not Mr. Horvath. (Father 3/14 Test. at 233-235)
- c. The tutoring provided by Mr. Horvath "worked out pretty good for a while" but stopped working after the family moved. Mr. Horvath did not want to come to their new home in the North End. The Father was not aware that after the family moved in December 2006, Mr. Horvath attempted to tutor the Student at his new home but was told that the Student was sick. He was not aware that the Mother told the District that she did not want Mr. Horvath to tutor the Student any more. (Father 3/14 Test. at 198)

3. Ms. Glass-McFadden's Testimony

¹⁴⁰ The Hearing Officer notes that although not reflected in the printed words of the transcript, these statements reflect a complaint about the adequacy of Mr. Horvath's tutoring.

¹⁴¹ The Mother corrected the Father, stating that Mr. Horvath stated that it was the Board of Education that was "shafting" the Student, not the school. (Mother Statement 3/14 Trans. at 229)

123. Immediately after the October 25, 2006 PPT, Ms. Glass-McFadden began the process of arranging a tutor for the Student. She was not going to assign Mr. Horvath as a tutor initially because he was an HPHS teacher. However, she received a call from the HPHS Assistant Principal advising that the Mother had requested that Mr. Horvath be assigned to tutor the Student. Ms. Glass-McFadden never gave Mr. Horvath any instructions about what grades to give the Student. (Glass-McFadden 3/19 Test. at 145-147)

4. Mr. Horvath's Testimony

124. Mr. Horvath is a regular education teacher working at HPHS. He has been a teacher in the Board's school system since 1993. (Horvath 3/19 Test. at 96-97) He testified as follows about his experiences with the Student:
- a. Mr. Horvath was the Student's history teacher in the 2006/2007 school year. Mr. Horvath was also responsible for monitoring the halls and had contact with the Student in that capacity when the Student would wander the halls. When the Student was in a large classroom setting he would have behavioral problems – acting out, attention seeking behaviors, inappropriate, confrontational, getting up and leaving, being late to class. The Student was “better to work with” in a one on one setting. (Horvath 3/19 Test. at 97-98)
 - b. Mr. Horvath was surprised to be asked to tutor the Student. Because of his duties as hall monitor, Mr. Horvath believed that the Student did not like him much and because he had “written” the Student up a number of times, the Mother had complained that he was “picking on” the Student. Mr. Horvath has been tutoring since the early 1980s and has tutored “hundreds of kids” enrolled in the Board's schools. However, he has never had a “situation quite like” the Student's. (Horvath 3/19 Test. at 98-99)
 - c. Mr. Horvath started tutoring the Student on October 27, 2006. Most of the tutoring sessions were at the public library on Main Street and the Student attended 90 to 95% of the time. If the Student could not attend, he would call Mr. Horvath. Mr. Horvath went to the home “rarely.” On some occasions, the tutoring was like a “wild goose chase.” Mr. Horvath would go to one location, and then another, and then another where the Student was supposedly waiting for him. (Horvath 3/19 Test. at 99-102; 108-109)
 - d. Each tutoring session lasted about 2 hours and Mr. Horvath tutored the Student 5 days/week. The subjects covered in the tutoring were the Student's subjects at the Leadership Academy. Mr. Horvath would meet with the other teachers informally and obtain the materials that the Student needed. The Student was able to use the library to get books and materials to supplement what Mr. Horvath had with him or use the computer at the library to do his work. Mr. Horvath states that the Student “did a great – he did a very good job with me.” Until the time the Student moved, he was doing “mostly B work” in the tutoring. He was struggling with the math but was

“giving the effort.” Exhibit B23 at 7 were the grades Mr. Horvath gave the Student. (Horvath 3/19 Test. at 99-102; 108-109)

- e. The tutoring went well from October 27, 2006 until the time the Student moved to a new home on January 2, 2007. At that time, Mr. Horvath volunteered to continue meeting with the Student at the library or at the new home, whichever was more convenient. Mother stated that she wanted the Student to continue to go to the library and at the time she would not give Mr. Horvath the new address. The Student stopped attending the tutoring sessions then. The tutoring office told Mr. Horvath to continue to go to the library, that the Student was having transportation problems. On January 5, 2007, Ms. Bentham called Mr. Horvath to ask if he would bring work to the Student’s house. Although it was Mr. Horvath’s day off he agreed to do so but the Mother would not give him the address. He arranged to meet the Student at the library but the Student did not show up. The Student missed sessions on January 8, 9 and 10 because he did not have any bus pass and was waiting for them from the Board. The Parent asked Mr. Horvath to come to the home on January 10. He agreed to do so but she would not tell him the address. He arranged to call the home when he got to a particular intersection to get the remaining directions. Mr. Horvath called as agreed but there was no answer. He started to head home, but got a call on the way from the Student who said he was sick, had his work and would meet Mr. Horvath at the library the next day. A few minutes later, the Mother called and asked why Mr. Horvath had not yet arrived. Mr. Horvath advised her that he had just spoken to the Student. “And at that point, she started yelling and just said she doesn’t want me working with her son anymore.” Mr. Horvath then called Ms. Bentham to report the contact. He compiled assignments for the Student and gave the materials to Mr. Glass-McFadden to give to Ms. Glass-McFadden so she could get it to the Student. He submitted the Student’s grades to the Board following procedures he had used for many years. (Horvath 3/19 Test. at 101-110)
- f. Mr. Horvath is familiar with Hartford, has tutored students living in almost all areas of Hartford, never told the Mother or anyone else that he was not willing to tutor a student living in the North End or to go to the North End to tutor the Student, and offered to meet at any place that was convenient for the Student. (Horvath 3/19 Test. at 107-108)
- g. On one occasion when Mr. Horvath was tutoring the Student at the library, he was approached by the Father who wanted to speak with him. Mr. Horvath gave the Student some work and then had a “very unusual conversation” with the Father that was “bizarre” and “went on for a while.” The Father reported that people “on the street and at school” were bothering the Student but that the Father “would take care of it, and if he had to go to jail for it, he would go to jail.” The Father reported an incident in which a member of his family was killed and how the family, rather than getting the police involved, took care of the issue itself by getting the people involved and holding them with the intention of killing them. The Father reported that he persuaded his other family members not to kill them however. At that point, Mr. Horvath attempted to terminate the conversation to get back to working with the

Student and the Father became “agitated” that Mr. Horvath wanted to terminate the conversation to resume tutoring the Student. (Horvath 3/19 Test. at 110-112)

- h. Mr. Horvath denied that he ever advised the Parents that the Board was “shafting” the Student. During the conversation described by the Parents, the Parents advised Mr. Horvath that they believed that the Board was “shafting” the Student and Mr. Horvath told them that if they believed that the Board was “shafting” the Student, they could contact Ms. Cote to assist them. Ms. Cote is an advocate for children within the Hartford public school system. The Parents felt that the Student was being treated unfairly because he was not in school while the students who had assaulted him were at school. (Horvath 3/19 Test. at 112-115)
- i. Ms. Glass-McFadden never told Mr. Horvath to give the Student any particular grades or to give him all “Fs.” Mr. Horvath did advise Ms. Glass-McFadden of the grades he was giving the Student when she contacted him to ask. (Horvath 3/19 Test. at 115-116; 119-122)
- j. Mr. Horvath assisted both Ms. Butler and Ms. Rowe (tutors working with the Student after Mr. Horvath) obtain materials to use in tutoring the Student from the Student’s teachers. (Horvath 3/19 Test. at 116-117)

Q. Tutor Number 2 – Hezekiah Kamuzora

125. After Mr. Horvath was asked to stop tutoring the Student, Ms. Glass-McFadden arranged for a second tutor (Hezekiah Kamuzora) starting January 16, 2007. The Mother called Ms. Glass-McFadden to complain that she did not want Mr. Kamuzora to tutor her son because he was a foreigner and she could not understand him. She reported that she hung up on Mr. Kamuzora when he contacted her to make arrangements for the tutoring. (Glass-McFadden 3/19 Test. at 147-148; B24) Mr. Kamuzora never provided any tutoring to the Student.

R. The January 18, 2007 PPT

1. Minutes of the PPT

126. A PPT was convened on January 18, 2007 to review the Student’s IEP and determine his placement. The minutes (B25) indicate the following, among other things:
- a. The Mother attended, along with Ms. Gentles a representative of a parent support group (AFCAMP).
 - b. The PPT was convened to obtain consent for an out of district placement. The District was recommending an out of district placement in a “more restrictive setting with therapeutic/behavior program and attention to post-secondary preparation.” The homebound instruction (*i.e.*, tutoring) would continue “pending out of district placement” and his IEP dated October 2006 would remain unchanged.

- c. Procedural safeguards were not given to the Mother at this PPT because they had been made available to her previously in the school year.
- d. “[Mother] and Student want Student to attend a ‘regular’ high school. [Mother] does not want him to attend HPHS or Weaver because [S]tudent was assaulted by individuals who attend those schools. [Student] states he wants to be in grade 11. [Mother] stated, ‘due to transportation issues,’ he missed school and did not receive credits. [Mother] noted that school in Bloomfield contacted her, but [the Student] is not going there. [Mother] stated, [Student] is on the CREC waiting list for school.”¹⁴²
- e. “Mother was given a list of CREC magnets (wants her son in a ‘regular’ high school) per her request to know what schools are ‘out there’ for her son. AFCAMP rep. mentioned the name of a school in Glastonbury and [Mother] wanted more information. This was also downloaded and given to her.”
- f. The Mother signed a “Consent for Special Education Placement” form indicating her consent to an out-of-district placement. She also executed a release authorizing disclosure of the Student’s records to the out of district setting.

2. Ms. Glass-McFadden’s Testimony about this PPT

127. The January 18, 2007 PPT was convened to resolve the placement issue. At that point, the District recommended an out of district therapeutic placement and offered to continue the home bound tutoring until that placement could be arranged. The Mother objected to an out of district placement because the Student was “not mentally retarded and did not need an out-of-district placement.” Because the Student now lives in the WHS district, the Mother was advised that he could attend either HPHS or WHS. The Mother rejected both of those proposals. The Mother also rejected a proposal to return the Student to HTLA. There was a discussion of magnet schools and the Mother was advised that she would have to apply for attendance at a magnet school because the Board could not place the Student at a magnet school. Ms. Glass-McFadden advised the Mother that Ms. Glass-McFadden had actually submitted applications for two of the magnet schools. The Mother became agitated because she was not aware that Ms. Glass-McFadden had made those applications. The Mother also complained that the Board had not given the Student bus tickets. After the meeting was over, Ms. Glass-McFadden asked the Mother and Ms. Gentles to wait while Ms. Glass-McFadden copied the PPT minutes, got the bus tickets, copied the magnet school applications and obtained information regarding the magnet schools for the Mother. Ms. Glass-McFadden then handed all of those materials to the Mother in Ms. Gentles’ presence. Notwithstanding the Mother’s rejection of the out of district placements discussed at the PPT, she executed consents which allowed the Board to continue to pursue those placements. (Glass-McFadden 3/19 Test. at 153-159; 166-167)

¹⁴² The reference to the “school in Bloomfield” is apparently to the Grace Webb School, which is located in Bloomfield. The reference to a “waiting list” is apparently to the magnet schools.

128. On January 18, 2007, Ms. Glass-McFadden provided the Mother with information regarding the Connecticut International Baccalaureate Academy (“CIBA”) located in East Hartford. (P8)

3. The Mother’s Testimony about this PPT

129. The Mother did not get the minutes of the January 18, 2007 PPT at the PPT. (Mother Statement 3/14 Trans. at 170; Mother 4/23 Test. at 95-98)
130. The Mother advised Ms. Gould at the PPT that she was not interested in any of the placements proposed by Ms. Gould but that “I was being nice when I asked you, let you know that I would look, and, you know, just observe some of the schools. But I told you I wasn’t interested in nothing you had to offer at the meeting.” (Mother Statement 3/14 Trans. at 135)
131. At the January 18, 2007 PPT, there was a discussion of placement out of the district, including the Wheeler School. The Mother rejected all of the placements identified by Ms. Gould because that was not the type of placement identified in the Student’s IEP. (Mother 4/23 Test. at 91-92) The Board at that PPT advised that the Mother could “pick any school” the Mother wanted and the Board would pay for the placement there. The Mother picked the Sports Academy and the CIBA school in East Hartford identified in P8. The Sports Academy has a long waiting list and the CIBA school declined to accept the Student as an 11th grader. The Mother advised Ms. Glass-McFadden and Ms. Gould of her choices, but Ms. Gould purportedly on Dr. Dallemand’s instructions kept presenting the Mother with “alternative school” placements. (Mother 4/23 Test. at 93-94) The Mother also testified that Ms. Glass-McFadden told the Mother that Dr. Dallemand had stated that he “didn’t care” what the Mother wanted in terms of a placement, that the Student would be remaining at HPHS. (Mother 5/21 Test. at 47)
132. Dr. Dallemand gave the family a choice of the Student attending WHS or HPHS at a meeting in January of 2006. (Student 4/23 Trans. at 85)

4. Ms. Gentles’ Testimony About this PPT

133. Charmaine Gentles attended the January 18, 2007 PPT. Ms. Gentles is a parent support staff member of AFCAMP working with the family. (Gentles 3/14 Test. at 5) She testified as follows:
- a. The PPT discussed schools the Student could attend. The Mother was “adamant” that she did not want the Student to attend an “alternative school,” which Ms. Gentles understands to mean HTLA or placements such as Wheeler Clinic. The Mother stated that both WHS and HPHS were “out of the question” for “safety” reasons because the students who “jumped” the Student in October 2006 were still at HPHS or WHS and that “nothing had been done to them” (*i.e.*, they had not had any disciplinary consequences). Mr. Johnson advised the Mother to pick a school in the greater Hartford area in which she thinks the Student would be “safe” and could get his

“education” and the Board would pay for him to attend. The Mother was given information by Ms. Glass-McFadden about magnet schools. Ms. Gentles herself did not receive a copy of the minutes of the PPT. (Gentles 3/14 Test. at 6-7; 12-18)

- b. Prior to the January 18, 2007 PPT, Ms. Gentles had not worked with the family. When Ms. Gentles first started working with the family in January 2007, the Mother voiced concerns about getting the Student back into school so he could “finish his education.” She also expressed concerns about the tutoring being provided to the Student, getting the Student his homework, and whether the Student would be able to complete the CMTs. (Gentles 3/14 Test. at 7-11)

5. Mr. Johnson’s Testimony About this PPT

134. Winston Johnson attended the January 18, 2007 PPT. He is the Board’s Senior Director of Social Work Services. (Johnson 3/14 Test. at 79) He testified as follows:

- a. Prior to attending the PPT, Mr. Johnson had not been involved with the Student. It was Mr. Johnson’s understanding that the Mother was not satisfied with the placements being proposed by the District up to that point. (Johnson 3/14 Test. at 82, 85)
- b. The issue of identifying a school for the Student to attend was discussed. The Mother stated that she did not want the Student in an “alternative school” but rather wanted him to be at a “normal school.” (Johnson 3/14 Test. at 81)
- c. At the PPT, the Mother rejected placements at WHS and HPHS because of safety issues. She also rejected HTLA. The AFCAMP representative had suggested a school in East Hartford (the name of which Mr. Johnson did not recall). The magnet schools (Pathways to Technology, University of Hartford, Classical Magnet) were discussed. (Johnson 3/14 Test. at 85-88; 93-94)
- d. Mr. Johnson stated to the Mother at the PPT that if she found an out-of-district placement that she was satisfied with and the PPT determined it was an appropriate placement, the District would fund that placement. (Johnson 3/14 Test. at 92-93)

6. Ms. Gould’s Testimony About This PPT

135. Ms. Gould attended a portion of the January 18, 2007 PPT and testified as follows. (Gould 3/14 Test. at 113-120; 122-124; 129-130; 136-140)

- a. The issue of where the Student would attend school was discussed. Out of district placements and placements at magnet schools were discussed.
- b. The Mother advised Ms. Gould that she did not want the Student to attend any “alternative schools” because that was not the placement provided for in his IEP but that Ms. Gould could send her information on the alternative schools. The Mother

executed a release of information form and a consent to placement, asked for the names of alternative schools that the District was recommending and stated that she would investigate them on her own.

- c. A few days after the PPT, Mr. Johnson advised Ms. Gould that the Mother was looking for information on the alternative schools and asked Ms. Gould to send the information to the Mother. Ms. Gould then mailed the Mother information regarding High Road, ACES, Grace Webb, Wheeler Clinic, Woodland School and Manchester Regional Academy, among others. All of these programs are state certified special education programs with a therapeutic component, small student-to-staff ratios, a behavior management system and ability to prepare the Student for post-secondary education.
- d. HTLA is the most restrictive in-district placement. It has a low student to staff ratio, a therapeutic component, some vocational training. Based on the recommendations of the May 31, 2006 PPT, a placement at HTLA would have been appropriate for the Student. Ms. Gould does not know why HTLA was not considered at the January 18, 2007 PPT. (Gould 3/14 Test. at 143-144)¹⁴³
- e. Ms. Tyson was responsible for recording the minutes. Ms. Gould observed her to be writing things down but did not observe specifically what she was writing (and does not know whether she was completing the PPT forms).
- f. Ms. Gould contacted the Mother after the January 18, 2007 PPT to discuss some of the programs in more detail. The Mother expressed an interest in the magnet schools and Ms. Gould sent some information to the Mother about the magnet schools. Ms. Gould then received a report from one or more of the programs to which she had referred the Student that the program(s) had attempted to contact the Mother and were advised that the Mother was not interested. Ms. Gould subsequently received a telephone call from the Mother advising her that the Mother was not interested in the “alternative” placements being identified by Ms. Gould. (Gould 3/14 Test. at 133-134)

S. Tutor Number Three – Michelle Butler

136. Michelle Butler was assigned to tutor the Student starting January 18, 2007 and “resigned” on January 25, 2007 because she “found this assignment was a difficult one to continue.” (B26) According to her report:

- a. “During this short session [the Student’s] behavior was decent . . . He was reluctant to do a writing assignment, stating that he just didn’t like to write. Some work was completed and submitted including exams.”
- b. On January 24th, Ms. Butler advised the Student that she would be late to tutoring on

¹⁴³ She apparently was not present when in-district placements were being discussed.

January 25th due to attendance at a Professional Development Day. She left this message with the Student because the Mother was not “available.” The Mother subsequently “left several voice mails” to confirm when Ms. Butler would be coming on January 25th and to advise that the Student had no work.

- c. On January 25, 2007, Ms. Butler advised the Mother that the Student did have work, which the Student confirmed for the Mother. The Mother voiced several concerns about having a disk for the Student to do his work on computer and her desire that tutoring be provided during the day because she had to cook dinner and do errands in the evening. Ms. Butler reported that the Mother told her that the Mother had been advised by the Board that tutoring could not be provided during the day “because all of the tutors had died.”
 - d. Ms. Butler and the Mother had had several conversations regarding these issues previously and Ms. Butler advised that she could not tutor during the day because she was teaching. She noted that on several occasions she raised with the Mother the Mother’s demeanor toward her and that the Mother had “apologized” for her demeanor.
137. The Father observed Ms. Butler taking photographs of their home with her cell phone camera. He later became aware that the Mother and Ms. Butler were not “seeing eye to eye” and that Ms. Butler ultimately decided to stop tutoring the Student. (Father 3/14 Test. at 192-193)
138. Ms. Glass-McFadden arranged for Ms. Butler to tutor the Student. Ms. Butler acknowledged to Ms. Glass-McFadden that she asked the Student to show her how to use her cell phone and as part of the process of demonstrating the camera function on the cell phone, some pictures were taken of the interior of the home. The Mother then called to report what Ms. Butler had done and Ms. Butler at the same time advised Ms. Glass-McFadden that she was quitting because the Mother had been abusive toward her. Ms. Glass-McFadden considered the event to be a “misunderstanding.” (Glass-McFadden 3/19 Test. at 148-150)
139. On January 25, 2007, the Mother sent an e-mail to Ms. Glass-McFadden in which she acknowledged that she had received materials from Ms. Gould regarding the East Hartford schools as well as “alternative” schools discussed at the January 18, 2007 PPT, including the Webb School. The Mother repeated that she did not want the Student attending any of these schools as that was not what had been provided for in his IEPs. She reported that Ms. Butler would no longer be tutoring the Student as of January 24, 2007 because Ms. Butler “did not like the way [the Mother] talked about [Ms. Butler].” The Mother states that:

I don’t like a whole lot of things that you people has done to myself and my son . . . I shouldn’t have to bite my tongue for you, [Ms.] Butler, Mr. Horvac[h] or anyone else at the board of education. When you people have been lying to me and about me and my son for almost two years now. . . [The Student] doesn’t have a tutor at

all now and that okay I'm tired of butt kissing the board in order for you people to do your jobs . . . what I want to have happen is for all the people that took part in this to pay for it hopefully by losing there jobs your not doing a job at it any way. Now you can call [Ms. Butler] in and talk about me like you do. Real people can say what ever to the persons face and that's why you all do my child the way you do him. He is not the problem you people don't like me because I want the best for [the Student] as you would for your children so what am I doing that's so wrong? . . . And can you tell Ms. Holyer then thou art I said there's no love lost. My son will get his education. And it won't be from anybody name Uncle Tom.

The Mother reported that providing the tutoring in the evening in her home was not convenient and renewed her request that the Board provide a tutor for the Student during the school day. She also complained that Ms. Butler was late on January 24, 2007 and reported that she had told the Student that she would be late. The Mother wants the tutors to communicate with her rather than the Student. She reported a similar complaint with respect to Mr. Horvath in this e-mail. The Mother stated further that she wanted the Student to go to the CIBA or the "Learning School for Performing Arts." She asked when she would receive information regarding "private schools" promised at the January 18, 2007 PPT. She indicated that the magnet schools have waiting lists. She also stated that she had not been given the minutes of the January 18, 2007 PPT and renewed a request that Ms. Glass-McFadden correct the Student's grades and credits. (P7)

T. Initiation of Due Process

140. The Mother commenced this due process proceeding on January 31, 2007, identifying the January 18, 2007 PPT as the PPT at which the decision she was challenging was taken. (HO1)

U. Tutor Number Four – David Wade

141. David Wade was assigned to start tutoring the Student on January 31, 2007. (B27) Mr. Wade declined the job though after the Mother was "abusive" to him on the telephone. (Glass-McFadden 3/19 Test. at 148)

V. The Mother's Complaint to the CTDOE

142. On February 5, 2007, the Mother filed a complaint with the CTDOE, alleging that the District has failed to provide the Student with a FAPE – specifically that the Student has not been in school since October 6, 2006 when he was assaulted. The CTDOE advised on February 8, 2007 that the complaint (C07-068) would be held in abeyance pending the issuance of a final decision and order in this due process hearing. (B29)

W. The February 8, 2007 PPT

143. Because the Mother had refused everything that had been offered at the January 18, 2007

PPT, the Board convened a second PPT on February 8, 2007 to proceed with the out of district placement recommendation. The District provided the Mother with a copy of the notice of the PPT meeting by e-mail on January 31, 2007. That e-mail states that a phone message was also left for the Mother on that date and that a bus transportation card would be sent for the Student with the paper copy of the notice that was being sent to her post office box address. (B28 at 5; P5) (Glass-McFadden 3/19 Test. at 156)

144. The District's e-mail was received by the Mother on January 31, 2007. She responded on January 31, 2007 by e-mail as follows (B28 at 5):

I will not be coming to the ppt meeting due to the fact that I just had one on Jan. 18th and a bunch of lies came out of that one I wasn't even given a copy of the minutes. Because all everyone did was talked. Mrs. McFadden never wrote anything down on paper other then to have us sign in. We talked about [the Student] going to in district schools and outer district school right along with any private school that I chose for him to go to and she said this in front of all of you that the board of education would pay for this. Today I check my P.O. Box and the minutes that I never agreed to is there I have been running to the post office all week and there was nothing there. I don't know why Mrs. McFadden is doing this to myself and my family but it has to stop. Everyone knows what happened at the ppt and if Charmaine would tell the truth and put all that crap about her and Mrs. McFadden went to school together aside then there would be nothing that could excuse this women from lying and not doing her job. Write now I'm gonna email channel 30 and channel 3 if they want to hear me they will and if they don't they won't. I can't keep playing this game with the board of education. I shouldn't have to. oh [the Student] doesn't need a tutor. He needs to be in school five months is long enough. [Sic]

145. The PPT was convened on February 8, 2007. The Mother did not attend. The minutes (B28) note the following, among other things:
- a. The District has recommended the following placements: Wheeler Clinic, Grace Webb School, Klingberg Family Center and CREC Polaris. The minutes state that the Mother "is against all of these placement options and will not participate in the interview process."
 - b. The District has provided the Mother with information packets on regional magnet schools and completed and submitted an application for the magnet school lottery prior to the January 18, 2007 PPT.
 - c. As of January 24, 2007, the second tutor assigned to the Student was discontinued at the Mother's request. A third tutor was assigned but rejected by the Mother. A fourth tutor has been assigned to the Student.
 - d. Pending the outcome of the due process hearing commenced by the Mother, the homebound tutoring will continue.

- e. Procedural safeguards have been made available to the Mother previously in this school year and were not provided again with the PPT minutes.

X. The February 27, 2007 Resolution Meeting; Conversation with Mr. Stringer

- 146. Ms. Glass-McFadden attended the resolution meeting which was not successful. The Mother did a lot of “yelling, screaming threats, and storming out of the office” trying to find the Superintendent. (Glass-McFadden 3/19 Test. at 143-144)
- 147. During one meeting with the Mother in mid-February 2007, Mr. Stringer (WHS Principal) was present and in the course of a discussion regarding the Student attending WHS, the assistant principal stated that the Student could attend WHS but that it “may not be safe at [WHS]” for him this year because one of the assaulting students transferred from HPHS to WHS and still attended WHS. (Bentham 3/19 Test. at 13-15; Mother 4/23 Test. at 105)
- 148. In February of 2007, while he was at the Board’s central offices, Martha Bentham asked him to comment on a scenario about whether it would be safe for a student who was attacked at school to return to that school. During the course of this conversation Ms. Bentham did not mention the Student at all. Based on her description, Mr. Stringer concluded that the student who had been the assaulting student in the scenario she was describing was the assaulting student who had transferred back to WHS. Based on his knowledge of this assaulting student, Mr. Stringer felt it would not be safe for the assaulting student’s victim to attend WHS if this assaulting student were still there. One of the conditions that Mr. Stringer had placed on the assaulting student’s return to WHS was that the assaulting student’s father attend classes with him to supervise him. (Stringer 5/21 Test. at 132-138; 146-147) The assaulting student attending WHS presents a real threat of danger to the Student’s safety should the Student attend WHS at this time. (Stringer 5/21 Test. at 148-149)

Y. Tutor Number 5: Ms. Rowe

- 149. The Mother testified that Ms. Rowe came to the home on Friday March 9, 2007 was not prepared with the correct materials and homework for the Student. At that time, the Mother also requested bus tickets so that the Student could get to the library for tutoring and requested that a laptop be made available to him for his work as was provided for in the IEP. (Mother 3/14 Trans. at 54-57) Over the course of the hearing, the Mother voiced numerous complaints about Ms. Rowe not being prepared or preparing the Student to take various standardized grade-level tests.
- 150. Ms. Glass-McFadden arranged for Ms. Gail Rowe to tutor the Student after Mr. Wade declined. On March 15, 2007 the Mother called Ms. Glass-McFadden three times to ask if Ms. Rowe would be preparing the Student for the CAPT exam and was told that Ms. Rowe had the materials and would do so. The Mother called the next day to report that Ms.

Rowe did not appear for the tutoring. Shortly after that, Ms. Rowe called and advised that she had gone to the home for the tutoring but that no one answered the door or the telephone. (Glass-McFadden 3/19 Test. at 150-152)

Z. Other Testimony Regarding the Tutoring

151. Ms. Glass-McFadden is aware that since October 25, 2006 the paperwork regarding the Student's grades and attendance has not been in order. The issue in her view is that paperwork is not getting properly or timely processed and that these issues can and will all be corrected. (Glass-McFadden 3/19 Test. at 146-147)
152. Ms. Glass-McFadden considered commencing legal action regarding the Student with the Department of Children and Families and the Board's "attendance court" for the Mother's refusal to allow him to attend school. However, because she had arranged for the tutoring she has not yet done so. She concluded that by providing the tutor she was indicating it was "OK" for him not to attend school during this period. Ms. Glass-McFadden believed, however, that tutoring was not the appropriate program for educating the Student. (Glass-McFadden 3/19 Test. at 141-143; 168) When asked what the Board would do if the Final Decision and Order in this matter were that an out of district placement as recommended at the January and February 2007 PPTs was FAPE for the LRE for the Student, Ms. Glass-McFadden advised that the Board would cease providing the tutoring and would commence court proceedings if the Mother continued to keep the Student out of school. (Glass-McFadden 3/19 Test. at 169-170)
153. Mr. Johnson has had several conversations with the Mother in which she stated concerns regarding the tutoring, including the time and location at which the tutoring was to occur, and problems with various tutors, including one the Mother claimed stopped tutoring the Student because the tutor did not want to go to the North End of Hartford. (Johnson 3/14 Test. at 97-101)
154. Ms. Gentles testified that the Mother raised a number of concerns regarding the tutoring. (Gentles 3/14 Test. at 8-10)
155. Ms. Bentham worked with the Mother to try to resolve issues with the tutors. In Ms. Bentham's opinion, the issues did not arise from "lack of willingness" on the part of the tutors but rather to the Mother's demands regarding timing of the tutoring, tutoring on her terms and cooperating with the tutoring process. At times, Ms. Bentham was able to help resolve these issues. At other times, she was not and the Mother would be "extremely angry" if Ms. Bentham did not promptly return her phone calls. On occasion, Ms. Bentham was aware that the Mother was pursuing contacts with other more senior members of the Board and in those circumstances, Ms. Bentham had to await direction from those senior staff members before returning the Mother's calls. (Bentham 3/19 Test. at 10-13)
156. What Ms. Bentham termed "misunderstandings" with the Mother arose because the Mother's acts were not always consistent with her words. As an example, she observed

that the Mother agreed to have one of the tutors come to her home but would not disclose the location of the home. As another example, she stated that when District personnel called her to talk about issues, she would put the Student on the phone while at the same time advising staff to talk to her not to the Student and instructing them not to give the Student any instructions. (Bentham 3/19 Test. at 11)

AA. Other Testimony

1. The Mother

157. The Student has “earned his way back into the mainstream, back into a public school.” (Mother Statement 3/14 Trans. at 76) “He didn’t earn his way back into no alternative school. He was the victim.” (Mother Statement 3/14 Trans. at 77)
158. The Mother did not want the Student to attend HPHS after May 2006 because the Student never learned to multiply or divide. (Mother Statement 3/14 Trans. at 42)
159. The types of schools identified by Ms. Gould are “crazy schools.” (Mother Statement 3/14 Trans. at 158)
160. The Student is “suffering” because HPHS staff do not “like” the Mother because she “speaks her mind.” (Mother Statement 3/14 Trans. at 159) The Mother claims that the Board does not “like” the Mother and “take[s] it out on her son.” (Mother 4/23 Test. at 100) When asked for examples of what she means, the Mother identified lies told by Board personnel such as that she threatened to hit Mr. Wehrly with a hammer as the basis for her claim. (Mother 4/23 Test. at 100-103)
161. The “the school never went by half the stuff that they put down here on these PPTs.” (Mother 4/23 Test. at 37) “Nothing ever happened” as a result of the PPTs which were supposed to get the Student the help he needed. (Mother 4/23 Test. at 43)
162. The Student’s hip injury and surgery occurred in 2003. As a result the Student had been given a doctor’s note that he be allowed to use the elevator at HPHS. HPHS allegedly did not implement that request. The Student did not miss any school in 2005/2006 because of the hip surgery itself, but because he was on the football team he would have difficulty with his hip and need to go to the orthopedist and missed school associated with those appointments in the 2005/2006 school year. (Mother 4/23 Test. at 38-40)
163. Ms. Glass-McFadden has consistently failed to deliver on commitments that Ms. Glass-McFadden has made. (Mother 4/23 Test. at 49)
164. The District has recorded the Student as being absent for a 147 day period over the course of the 2005/2006 and 2006/2007 school years, and that the issue has never been resolved “to this day.” (Mother 4/23 Test. at 75-76)
165. The Mother stated that she “don’t have no problem with [the Student] going to [HPHS].”

(Mother 4/23 Test. at 85) During this testimony, it seemed that her complaint about HPHS involved the fact that Mr. Dabrowski and Mr. Wehrly were involved in the Student's program at HPHS because "they know him from HTLA and they ride him for what he did at HTLA . . . and he ain't going to get ahead like that. (Mother 4/23 Test. at 85-86)

166. The Student did fine at WHS. (Mother 4/23 Test. at 86-87)

166A. The Mother has cancer in her head and has had surgery and is taking medication. (Mother Statement 5/21 Trans. at 112, 125-126)

2. Ms. Gentles

167. The Parent did not want the Student to attend "alternative schools" because "there's nothing wrong with [the Student]. She wants him in a regular school with regular kids where he can get his education." (Gentles 3/14 Test. at 14)

3. The Father

168. The Father wants his son to get his education but wants an "equal chance to get the education he deserves." (Father 3/14 Test. at 190-191)

169. HPHS is "unsafe for any student." WHS and Bulkeley are unsafe environments as well. (Father 3/14 Test. at 217-218)¹⁴⁴ The Father was "leaning" toward having the Student go to Bulkeley. His older son had been attending HPHS, had gotten into some trouble, and transferred to Bulkeley with good results. The Father thought that the same approach might work for the Student. (Father 3/14 Test. at 218-219)

4. Ms. Bentham

170. It is Ms. Bentham's understanding that the Student was "humiliated" during the October 16, 2006 assault and that the Mother was looking for a placement for the Student in which he could be "safe" and that would provide him with a "normal education in a normal school . . . A safe place in a regular high school." (Bentham 3/19 Test. at 16-17)

171. The Mother reported to Ms. Bentham that representatives of the District had advised her that it was not safe for the Student to HPHS. The Mother never identified who had told her that, however. Ms. Bentham never overheard anyone tell that to the Mother. (Bentham 3/19 Test. at 17-18)

5. Mr. Dabrowski

172. Mr. Dabrowski believes that the October 16, 2006 incident is somewhat related to the Student's disabilities. The Student is "very, very desparate for social interaction with his peers" but his judgment and social skills are weak and he makes "bad choices" about peers

¹⁴⁴ When the Father was asked about Bulkeley at this point in the hearing, the Mother stated that "you have to be Puerto Rican to go to Bulkeley." (Mother Statement 3/14 Transcript at 218)

and is manipulated and taken advantage of by his peers on occasion. “So is that part of his disability? You know, I don’t know . . . It’s related, certainly related to it. I mean, that he desires as every teenager, every human being does, the social affiliation, but he just – his skills are – end up self defeating to some degree.” The same types of problems with peers may have occurred in the prior year as well. (Dabrowski 3/19 Test. at 38-39)

173. Given the freedom at HPHS and the lack of close supervision and the Student’s deficits, a placement at HPHS is “potentially” unsafe for the Student because he is vulnerable to being taken advantage of. HPHS, however, is not unsafe as a general matter. (Dabrowski 3/19 Test. at 39-40)

6. Mr. Wehrly

174. The Student will benefit from being in a more structured setting with a behavior management component and a small class size – 8 to 10 students. (Wehrly 3/19 Test. at 72)
175. The Student’s “social/emotional difficulties played a factor in [the October 16th incident] just because [the Student] needs so much to be liked by the other kids, and I don’t think he catches a lot of cues from the other kids that maybe they really are either using him or really don’t like him that much or as much as he thinks they do. And I just think it played a big role in that.” (Wehrly 3/19 Test. at 83)

7. Ms. Glass-McFadden

176. Ms. Glass-McFadden received numerous phone calls from the Mother, has memorized the Mother’s telephone number from calling it so often, and has returned calls from her car, from home, and the office. At one point, the Father called and asked Ms. Glass-McFadden to contact the Mother so that the Mother would stop calling the Father to complain about the fact that Ms. Glass-McFadden was not returning the Mother’s calls. Because of the frequency of the calls, Ms. Glass-McFadden sometimes confuses discussions on the telephone with discussions at a meeting. (Glass-McFadden 3/19 Test. at 135-137)
177. The Mother did not want the Student to attend the schools identified by Ms. Gould because the Student “was not mentally retarded and had earned his way back into Hartford Public Schools.” Staff has explained to the Mother what “ADHD” is but the Mother “interprets it as being mentally retarded any time [staff] mentions behavior disorder” and believes that there is “nothing wrong” with the Student and that the troubles he is having in school reflects staff behavior toward him. (Glass-McFadden 3/19 Test. at 144-145)
178. The programs identified by Ms. Gould are appropriate to meet the Student’s educational needs. HTLA would be appropriate to meet the Student’s needs. His social/emotional/behavioral issues are interfering with his academics and must be addressed to make him successful academically. The type of programming the Student needs to address these issues cannot be provided at the mainstream at HPHS or in the STEP or Leadership Academy programs. The Student is at a point at which, because of “bad

experiences” at HPHS he needs to be away from HPHS to address the social and behavioral issues he faces, at which point he can return. (Glass-McFadden 3/19 Test. at 157-158)

179. The Mother has been asking Ms. McFadden to correct inaccuracies with the records of the Student’s attendance and grades since October 2006. (Mother Statement 3/14 Trans. at 49-51) Ms. McFadden testified that she is not responsible for those aspects of the District’s operations but has been contacting the school personnel who are to try to resolve the issue. (McFadden 3/14 Test at 51-52) The Board stated it would not object to entry of an order as part of the Final Decision and Order in this case that the Board would resolve the issue by a date certain. (3/14 Transcript at 52-54)
180. A PPT recommends services not a location, and cannot recommend a specific location. (Glass-McFadden 5/21 Test. at 153)
181. All of the Board’s high schools would have been able to provide the services required by the Student’s IEPs that were in place before the May 31, 2006 PPT. (Glass-McFadden 5/21 Test. at 154-155)

8. Ms. Gould

182. The Woodland School in East Hartford is a particular placement that Ms. Gould thought would be good for the Student because it had both regular and special education students and if the Student attended there he would be an East Hartford school district student and would then likely be able to attend a postsecondary program in East Hartford. Ms. Gould reported that this program was interested in the Student. She does not know if they contacted the Parent, however or what the outcome of any such contact was. (Gould 3/14 Test. at 135-141)

9. Statement of the Board’s Position

183. The Student’s situation is “unfortunate.” Both the nature of his disabilities and the Mother’s behavior present substantial challenges to the Board in trying to fulfill its obligation to provide an appropriate education to the Student. The placement at HPHS in the 2006/2007 school year was not appropriate for the Student, was not in compliance with the May 31, 2006 IEP and did not provide the structure the Student required. Placing the Student at the Leadership Academy was a “middle ground” given the Mother’s refusal to support the recommendation for an out of district placement. Without her cooperation, the Board cannot place the Student in the out of district programs. The Board requests that the Hearing Officer enter an order that the Student be placed in HTLA or an out of district placement at Board expense if the Mother would prefer that placement over HTLA. (Statement of Board Counsel, 3/19 Trans. at 174-176)

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

Appearing for the Student: Mother, appearing *pro se*

Appearing for the Board: Ann C. Bird, Esq.
Senior Assistant Corporation Counsel
City of Hartford
550 Main Street, Room 303
Hartford, CT 0103

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

FINAL DECISION AND ORDER
**(Phase II – High School Standing Based on
Attendance, and Grades and Credits Earned)**

SUMMARY

This Final Decision and Order concerns Phase II of a bifurcated proceeding. In the 2006/2007 school year, the Student was a 16 year old attending Hartford Public High School (“HPHS”), a Board operated mainstream public high school.¹ He is eligible for special education and related services under the IDEIA on the basis of Attention Deficit Hyperactivity Disorder (“ADHD”), and has also been identified as having Oppositional Defiant Disorder (“ODD”) and Depressive Disorder – Not Otherwise Specified.

Phase II was commenced to clarify the Student’s standing in high school as of the end of the 2006/2007 school year based on grades and credits earned and attendance for the 2004/2005, 2005/2006, and 2006/2007 school years, for the purpose of determining what grade the Student is or should be in for the 2007/2008 school year and what curriculum requirements the Student has completed and needs to complete to graduate. As stated more fully herein, there is no disagreement between the Mother and the District that the Student has completed sufficient credits as of the end of the 2006/2007 school year to enter the 2007/2008 school year as an 11th grader and has completed his Service Learning requirement toward graduation.

ISSUE TO BE DETERMINED

¹ As used herein, the term “Board” refers either to the Board of Education itself or to District staff. When used herein, the term “District” is not defined to include the Board of Education itself. Capitalized terms that are used but not defined herein are intended to have the same meaning as that defined term has in the June 21, 2007 Final Decision and Order Phase I (“Phase I Decision”).

As of the end of the 2006/2007 school year, what is the Student's standing in high school based on credits and grades earned and attendance in the 2004/2005, 2005/2006 and 2006/2007 school years?

PROCEDURAL BACKGROUND

The Mother's decision to appear *pro se* rather than through counsel, coupled with the circumstances described more fully at Section E of the Procedural Background of the Phase I Decision, presented various challenges. The course of this entire proceeding, and in particular Phase II, was shaped largely by *ex parte* communications to the Hearing Officer from the Mother, all but one of which was in the form of e-mails sent to the Hearing Officer but not copied to the Board's counsel, Ms. Bird. Although for the reasons set forth herein, those communications did not affect the substantive outcome of Phase II (or Phase I), those communications in the circumstances of this proceeding drove the process implemented to address Phase II and for that reason are described in detail in this section of this Final Decision and Order - Phase II ("Phase II Decision").

A. Phase I

The Mother commenced DOE 07-020 by request for due process dated January 31, 2007.² Although she had not raised this issue in her due process request, on the first day of hearing on April 23, 2007 the Mother claimed that the Board was not accurately recording the Student's grades, credits and attendance. The primary thrust of her claim as the Hearing Officer understood it was that she had made repeated requests that the Board correct these aspects of its records without success. In response to a question from the Hearing Officer, the Board at that hearing stated it would not object to entry of an order directing that it review the Student's records and make corrections as required to assure that his high school attendance and grades and credits earned were accurately reported. (4/23 Trans. at 51-54) Accordingly, the Hearing Officer advised the parties that those issues (which did not appear to be significant at the time in light of the claims that the Mother was making) would be resolved by a directive in the final decision and order that the Board take corrective action by a date certain which the Mother could then enforce through the CT DOE's Complaint Resolution Process if necessary. In light of subsequent developments in this case, however, the potential significance to the FAPE determination of this issue became apparent to the Hearing Officer, and further that resolution of this issue may require fact finding of a type which would be more suitable to a due process hearing rather than the CT DOE Complaint Resolution Process.

As of May 9, 2007, based on his review of the Phase I documentary evidence, it was the Hearing Officer's understanding that as of the end of the 2003/2004 school year, the Student had completed 8th grade (B7)³ and that the Student entered the 9th grade in the 2004/2005 school year. The 2004/2005 school year PPT minutes all identify the Student as a 9th grader, but other than the minutes of the February 11, 2005 PPT state that

² That request was marked in Phase I as exhibit HO1.

³ A citation in this format is to a Board exhibit, in this case Board exhibit 7.

the Student had completed “0” high school credits or do not state the credits completed by the Student. The February 11, 2005 PPT minutes state that the Student had completed 3.25 high school credits.⁴ The minutes of each of the 2005/2006 school year PPTs identify the Student as a 10th grader and state that the Student has completed 5 high school credits.⁵ Based on the fact that he was in the 10th grade in the 2005/2006 school year and that there is no indication that he failed to pass to the 11th grade, the Student would have entered the 11th grade in the 2006/2007 school year. However, the minutes of the October 25, 2006 PPT identify the Student as a 10th grader with 6.5 credits completed (B22); the minutes of the January 18, 2007 PPT identify the Student as a “10/11” grader without stating the number of credits completed (B25); and the minutes of the February 8, 2007 PPT identify the Student as a 10th grader without stating the number of credits completed (B28). The Student’s high school report cards to that point included in the record (B31, B32 and B33) do not clarify his status with respect to credits earned, grade level associated with those credits and attendance.

By order dated May 9, 2007 (the “Seventh Order”), the Hearing Officer notified the parties that this proceeding was being bifurcated into two phases, with Phase I addressing the following issues:

1. Whether the Student’s IEP for the 2006/2007 school year was reasonably calculated to provide the Student with a FAPE in the LRE and, if not, to what relief are the Parents entitled.
2. Whether in the period since the date that the Student was assaulted at school on October 16, 2006 the District has denied the Student a FAPE and, if so, to what relief are the Parents entitled.
3. Whether placement in an out-of-district therapeutic day program is required to provide the Student with a FAPE in the LRE at this time.

In the Phase I Decision the Hearing Officer found:

1. That the Board denied the Student a FAPE by failing to definitively articulate at the May 31, 2006 PPT its recommended placement for the 2006/2007 school year and by failing to convene a PPT at the start of the 2006/2007 school year to address the still unresolved placement issue.
2. That as of the May 31, 2006 PPT and each subsequent PPT convened during the 2006/2007 school year, an out-of-district therapeutic day program was the placement required to provide the Student with a FAPE in the LRE for the

⁴ See Minutes of the October 14, 2004 PPT (B8; silent as to credits), of the February 11, 2005 PPT (B9; 3.25 credits earned), of the April 4, 2005 PPT (B10; does not identify credits completed); of the April 25, 2005 PPT (B11; indicates “0” credits completed), of the May 18, 2005 PPT (B12; “0” credits completed), of the June 2005 PPTs (B14; does not state credits completed).

⁵ See B17- February 2006; B18-May 2, 2006; B19-May 31, 2006.

2006/2007 school year.

3. That the Board during the 2006/2007 school year had not denied the Student a FAPE following the October 16, 2006 assault.
4. That the Mother's refusal after October 16, 2006 and in light of her rejection of a placement at the Hartford Transitional Learning Academy ("HTLA") or Weaver High School ("WHS"), to consider a placement at an out-of-district therapeutic day program (even on an interim basis pending resolution of the placement issue) contributed to the loss of FAPE experienced by the Student after October 16, 2006.⁶

In Phase I, the Student was provided with relief in the form of orders intended to afford him four more years to complete high school.⁷

B. Commencement of Phase II

In the Seventh Order, the Board was directed to submit on or by June 8, 2007 the following information in the form of one or more affidavits under oath.

1. A statement of the Board's curriculum requirements applicable to a student entering the 9th grade in the 2004/2005 school year who is anticipated to progress from grade to grade in due course to graduate as a 12th grader in the 2007/2008 school year. More specifically, what courses must such a student take and what credits must be earned in each of the 2004/2005, 2005/2006, 2006/2007 and 2007/2008 school years to permit graduation to occur in the 2007/2008 school year in due course with a regular education diploma.
2. A statement of the courses that the Student took in each of the 2004/2005, 2005/2006 and 2006/2007 school years, and for each course the credits that the Student could have earned had he successfully completed the course, the credits the Student actually earned in that course, the Student's final grade in that course, whether the Student passed the course, whether the course content was modified for the Student (i.e., whether he was doing on grade level or below grade level work in that course) and whether his grading was modified

⁶ HTLA is a Board-operated school for students in grades K-12 with behavioral and other issues, and is the most restrictive in-district setting offered by the Board. WHS is a Board-operated mainstream public high school which was the Student's home school during the second half of the 2006/2007 school year.

⁷ More specifically, among other things the Hearing Officer directed that the Board: (1) define the Student's "exit criterion" for IDEIA-eligibility to be ability to succeed in the mainstream without special education and related services support; and (2) offer the Student special education and related services as determined by a PPT at Board expense through the end of the 2010/2011 school year, provided he remains eligible under the IDEIA and is residing in the Board's jurisdiction, and without regard to whether prior to the end of the 2010/2011 school year he satisfies the requirements for graduation with a regular high school diploma or is awarded such a diploma.

(i.e., whether his grades were based on criteria other than the criteria applicable to a regular education student taking that course).

3. For each of the 2004/2005, 2005/2006 and 2006/2007 school years, the number of days the Student was absent and the number of days he was tardy. If the Student was absent due to disciplinary reasons, the statement should indicate the number of days of absences in that school year that were related to disciplinary actions.
4. Based on credits earned and attendance in the 2006/2007 school year, what grade the Student is or should be in as of the end of the 2006/2007 school year (if he successfully completes his 2006/2007 school year courses) in accordance with the Board's generally applicable curriculum requirements and without regard to any determination that may be made by a PPT on that issue.

The Hearing Officer directed the Board to create this evidentiary record because the Board, relative to the Mother, was in a better position to do so. The Seventh Order established a process which required that the Board state its position on these issues, that the Mother determine whether she disagreed with the Board's position and that the parties meet and confer outside of the Phase I hearing process to clarify any issue raised by the Mother regarding these Board determinations. To the extent that any disagreement remained after that process was completed, the Seventh Order provided for a hearing date on July 11, 2007 to resolve the issue(s) in dispute.

The Seventh Order established July 18, 2007 as the date for the mailing of the Phase II Decision, subject to modification. The parties were directed to submit any objections to the Seventh Order on or before May 17, 2007. Neither party objected to the Seventh Order.

C. May 21, 2007 through June 8, 2007

The Hearing Officer received the following e-mail from the Mother, which references her concerns regarding the hearings then underway in Phase I.

#1⁸ ----- Original Message -----
From: [MOTHER]
To: Myers, Scott P.
Sent: Mon May 21 12:19:00 2007

Hopefully this will be my last time talking to you. I would like the e-mails from all the people that Ann Bird sent to every one at the ppt today.⁹ I would like the ppt papers that

⁸ For ease of reference in this decision, each of the e-mail communications reproduced in this decision has been assigned a number and will be referred to herein by reference to that number.

was read at the ppt today¹⁰ so I may send you what I have or is it worth you looking at. You are not a fair man. You have been giving the board everything they wanted from day one so why keep wasting my time? Like I said you are gonna do what they want you to do anyway not what is fair so do what you do. But in life always remember what goes around comes back around for you and every one else that sat at that table trying to hurt my child instead of helping him. I have pictures of one of the boys that jumped [the Student] on my space holding a gun I'm trying to get it to the courts and like I said if anything happen to my son in school or on the streets I will be holding you and the board of ed. responsible so if you could send me exhibit 19 I believe I can send you what the gave me and if ann can get me those e-mails I would be grateful. Those people don't listen to nothing you tell them because you are on there side it's not a fair hearing. Any one that could help [the Student] you did not want to call them in so stop playing and do what you think you have to do and let me take this situation to the next level. All of you people should be ashamed of you self but like I said [the Student] isn't the first and won't be the last one you do this to. But what goes around comes around. And the devil is a liar call me what you want but I have a god and he is a good god he may not come when I want but he's always right on time. So send this to your partner so she can send me the e-mails from everyone for my records. Thank you for wasting my time and causing me the extra stress that I don't need cause you did nothing for us you took the board side from day one.

The following e-mail from the Mother references a packet of documents she submitted for Phase II and which was ultimately marked as exhibit P9¹¹ and is discussed more fully herein.

#2 ----- Original Message -----

From: [MOTHER]

To: Myers, Scott P.

Sent: Mon May 21 16:13:57 2007

Subject: Re: Out of Office AutoReply:

I have the information from the ppt meetings. I have the attendance stating that [the Student] missed 127 days as I talked about today at the ppt¹² and Mrs. Ramos claimed she didn't know what I was talking about. I have doctors notes for the days [the Student] was absent but if you look at my copie of the ppt and the boards you might see the have not done anything that they put on the minutes to help him. The papers Mrs. Hilburn had me and [Student's] dad run around and get so he would get extra credits is also in the envelope. The capt test stating that [Student] is in the 11th grade is in there and also a

⁹ The Mother is referring to e-mails which the witnesses testified Ms. Bird had sent them advising them that they needed to appear at the hearing. Ms. Bird agreed to provide these e-mails, which are marked as exhibit B36.

¹⁰ The Mother is referring to exhibit B35.

¹¹ A citation in this format refers to an exhibit submitted by the Parent, in this case exhibit 9.

¹² The reference to a "ppt" in this e-mail is actually a reference to the May 21, 2007 hearing date.

letter to Nessa Odum from the crec program that Martha Benthum sent to her to see if they had any openings for [the Student] who is currently in the 11th grade. So it's not like no one knows what grade [the Student] is in these papers came from the board. I also have given aft camp copies even though Mrs. Mcfadden told Charmaine at the meeting we had in Jan. what grade [the Student] was in ***when everybody get in front of you they tell nothing but lies***. Please do not give my information to Ann Bird. Copies is okay but I don't trust the woman from the past experiences. I have counted each paper that I've sent to you and hope that I get my information the same way I gave it to you. If you need anything else let me know. The doctor said she has no problem telling you or anyone else when my son is out of school I get a doctor's note and has been doing this for years.

On May 22, 2007, the Hearing Officer received a package of documents in a sealed envelope from the Mother (*i.e.*, exhibit P9). On the back of the envelope the following was written:

The 2# documents state [the Student] being in the 11th grade. Please make sure I get them back. One is a CAPT test with his grade and the other one is from Martha Benthum to CREC with his grade on it. Aftcamp has copies for their records.

On May 23, 2007, the Hearing Officer received the following e-mail message from the Mother, which again concerned Phase I and is referring to the May 21, 2007 hearing as well as the P9 documents.

#3 -----Original Message-----

From: [MOTHER]

Sent: Wednesday, May 23, 2007 1:57 PM

To: Myers, Scott P.

Subject: Please send the information back the way you received it.

Scott: Did you receive the packet that I sent you? I sent it certified mail and I keep all my documents. At the last hearing not this one we just had but the one before this one tell me something why did you tell us that the only ones that would be there was Mr. Stringer, Dr. Dollimond and Mrs. Ramos and when I got to this meeting there was people that I didn't know? Mrs. Gemmell and the black woman that said she was there with Ann Bird.¹³ Like I said from the beginning you let the board do what they want to do you was not there to help [the Student] every witness that I wanted to bring you said no but these people was not on any e-mails or on anything that you sent me in the Grey envelope about the hearing. I would like my information back the same way that I sent it to you as soon as you are done with it and I hope that you don't take anything out for the board to try to act as if it never existed. I had Aft camp make copies for their records. The documents that states that [the Student] is in the 11th grade is what I care about. The help and services that he was suppose to get on the ppt that he never received is what I care about. What

¹³ The reference to a "black woman" who was attending the hearing with Ms. Bird is a reference to Ms. Freeman, who is an attorney who works with Ms. Bird. The Hearing Officer notes that Ms. Gemmell was identified in the Sixth Order as a witness who would testify on May 21st.

you should have been asking some of those people about was what they wrote in the ppt as far as helping him.¹⁴The small setting was the step program Mrs.Ramos admitted this but like I told you. But I quest your job is just like Ann's to hurt the families and help the board. I don't care if I have to stand in front of the board when this is all over and tell people about you and everyone else at the board I will and I plan on doing this. So tell Thomas Bagway I believe this is his last name what ever it is I have met him to in the past that I will be calling him and John Purdy to see why you let Ann bring these uninvited guest to the meeting but everybody that could help [the Student] you wanted no part of it.And I also have letters from these people that know about the situation from the tutoring at the library with horvac and the conversations that I had with Mrs. mcfadden.I am not looking for nothing else from you except the imformation that I've sent you .The same way that I sent it to you. And once again the devil is a lair and under oath means nothing to you or the people you rep. And it's sad.

The Hearing Officer responded to the Mother's e-mail as follows:

#4 ----- Original Message -----

From: Myers, Scott P.

To: [MOTHER]

Cc: Myers, Scott P.; 'birda001@hartford.gov' <birda001@hartford.gov>

Sent: Thu May 24 14:46:23 2007

Subject: RE: Please send the imformation back the way you received it.

Good afternoon:

I am in receipt of a package of documents from [the Mother] as well as two other communications from her since the May 21, 2007 hearing, which are pasted into this e-mail chain for convenience. It does not appear that [the Mother] has sent these e-mails or documents to Ms. Bird. Once again anything sent to the Hearing Officer must also be sent to the other party.

The Hearing Officer has not opened the envelope of documents. On the back of the envelope is a note which reads as follows: "The 2# documents state [the Student] being in the 11th grade please make sure I get them back. Ones a CAPT test with his grade and the other one is from Martha Bentham to CREC with his grade on it. AFFCamp has copies for there records." As the Hearing Officer understands it, these documents are pertinent to the Phase II issues in this case - which is a determination of the Student's credits, grades and attendance at high school. The e-mails also suggest that these are originals of the documents, that [the Mother] would like to have returned to her.

The proper procedure for submitting documents is to identify each one as an Exhibit with an appropriate exhibit number and send a copy to the Hearing Officer and to the other party, with the sending party keeping the original for herself. The Hearing Officer will not consider these documents until after the Phase I decision has been issued. The

¹⁴ This is a reference to the May 31, 2006 PPT.

options for handling these documents are as follows. [The Mother] should advise as to which option she is selecting:

(1) The Hearing Officer holds onto the documents until after the Phase I decision is issued, and then arranges to have a copy made for the Board and for himself, and returns the original to [the Mother], and considers these documents as evidence in Phase II. (2) The Hearing Officer returns the documents to [the Mother] and she resubmits them in accordance with the proper procedure when it is time.

In an order issued on June 4, 2007 (the “Eighth Order”), the date for mailing of the Phase I Decision was extended which in turn delayed commencement of Phase II.

On June 7, 2007, the Mother sent the following e-mail to the Hearing Officer.

#5 -----Original Message-----

From: [MOTHER]

Sent: Thursday, June 07, 2007 2:34 PM

To: Myers, Scott P.

Subject: I need my paper work back A.S.A.p

Hi: Scott I sent you the information of the ppt and [the Student's] grades etc. When will you be sending this back to me? The yellow transcripts from the meetings that I had with the board. You have had plenty of time to make copies for yourself and your friends. I need my documents back the way I gave them to you. The e-mails that you sent me I didn't see the one about this information that I sent you. Why is that? I counted the pages that I sent you and I made sure you received it certified. Please send me my documents back a.s.p. you should have a secretary that could have been made copies. And you can have the pleasure of sending you friends what ever they need I just need my documents back as I gave them to you. And one more thing one the eight order you said that I said [the Student] missed 400 days that was a lie. I told you 147 and I sent you the proof so were did the 400 days come from ? Mrs. Ramos didn't seem to know anything about this but she gave me the paper and I sent it to you so you could see the lies that your friends tell that only hurt [the Student] not help him.

It was the Hearing Officer's understanding that the documents included in the P9 packet sent to him were originals and the only copy that the Mother had. The Hearing Officer concluded that if the documents were simply returned to the Mother, there was a reasonably high likelihood that she may not represent them in accordance with the requirements for submission exhibits. To assure that there was as full an opportunity as possible for the Student to have evidence presented on his behalf while assuring a proper chain of custody for the P9 documents, the Hearing Officer on June 8, 2007 asked Mr. Badway of the CT DOE due process unit to open the envelope containing the documents, label and number each page of the documents in the envelope, make one copy of the labeled documents, and complete an affidavit detailing his activities. The envelope containing the P9 documents was marked as HO20 and Mr. Badway's affidavit regarding these matters was designated HO21. Because at that time the evidentiary record for Phase I had been closed but the Phase I Decision had not yet been completed or issued,

the Hearing Officer did not review the P9 documents or the inside of the envelope in which they were transmitted at the time. The Hearing Officer responded to the Mother's e-mail as follows:

#6-----Original Message-----

From: Myers, Scott P.

Sent: Friday, June 08, 2007 10:37 AM

To: '[MOTHER]'

Cc: Myers, Scott P.; 'birda001@hartford.gov'

Subject: RE: I need my paper work back A.S.A.p

Ms. [Mother's Name]:

I will be returning your documents next week. You should have them back by Tuesday or Wednesday. Since the evidentiary record is closed for Phase I, I am not considering these documents in my Phase I decision but will look at them for purposes of Phase II (which concerns attendance, grades and credits). Because you sent me the originals and because they were not numbered and you did not send a copy to the Board's counsel, a number of complicated and time consuming procedures had to be implemented by me to make sure that an appropriate evidentiary chain of custody for these documents was created. In the future, you must submit documents in accordance with the rules of practice and procedure for these hearings. Those rules apply to all parties, whether they are represented by counsel or not. Specifically: (1) Keep the originals for yourself. Send a copy to me and a copy to the Board. (2) Before you make the copy, number each page of the copy before you send it to me or to the Board, with a designation "P# at 1," P# at 2, etc. with the # being the next exhibit number in your sequence. This information must appear on the copy.

The Hearing Officer will not accept any further documents from any party to this case that does not meet these requirements.

Ms. Bird - I am having a copy of the documents made and will send them to you at the same time that the original is returned to the Mother.

The reference to 400 days of absences is in the transcript of the May 21, 2007 hearing, which also then has the number 147 days.

#7-----Original Message-----

From: Myers, Scott P.

Sent: Friday, June 08, 2007 10:38 AM

To: Myers, Scott P.; '[MOTHER]'

Cc: 'birda001@hartford.gov'; Myers, Scott P.

Subject: RE: I need my paper work back A.S.A.p

Ms. [Mother's Name] -

You must also copy Ms. Bird on all emails or other written communications that you

send to the Hearing Officer.

Her e-mail address is above.

D. The Board's June 8, 2007 Submission

On June 8, 2007, in compliance with the directives in the Seventh Order, the Board submitted affidavits executed on June 7, 2007 by Charlene Senteio (Lead Guidance Counselor at HPHS) and by Arleen Glass-McFadden (Senior Coordinator, HPS Special Education Department). Because at that time the evidentiary record for Phase I had been closed but the Phase I Decision had not yet been completed or issued, the Hearing Officer did not open the envelope containing these affidavits or otherwise review them. Ms. Senteio's June 7 affidavit has been marked as exhibit B37 and Ms. Glass-McFadden's June 7 affidavit has been marked as exhibit B38.

E. June 9 – July 1, 2007

During this period, the Mother's originals of the P9 documents were returned to her by US mail, certified, return receipt requested. Prior to receiving those documents, the Mother continued to raise concerns about them as follows. These e-mails concern both Phase I and Phase II.

#8 -----Original Message-----

From: [MOTHER]

Sent: Tuesday, June 12, 2007 4:17 PM

To: Myers, Scott P.

Subject: RE: I need my paper work back A.S.A.p

Scott: you told me at the last hearing to send you the documents that I had from the ppt's now your telling me you are not going to look at them? The board should be tired of doing this to families I saw today on the news Aftcamp and a host of parents talking about the same thing I'm going through. And eyewitness news was at the board for comments but no one would give them any. It might not happen for my son but I'll be at there next rally on T.V looks like I will finally get to tell the public about what the board and you have put my family through. Keep watching and one more thing I really hope you didn't give any my original copies of the ppt. And I hope all my paperwork is the same way I gave it to you when I get it back. I have nothing else to say to you either until further notice. Send it to your friends.

#9 -----Original Message-----

From: Myers, Scott P.

Sent: Tuesday, June 12, 2007 4:25 PM

To: '[MOTHER]'; 'birda001@hartford.gov'

Cc: Myers, Scott P.

Subject: RE: I need my paper work back A.S.A.p

Ms. [Mother's Name] -

You are misunderstanding what I am saying. I am returning your original documents to you. Those documents are evidence for Phase II of the case. I am writing now the decision regarding Phase I of the case (which ended on May 21, 2007). You had ample opportunity to provide me with documents that you wanted me to consider in Phase I of the case. You only chose to submit a couple of exhibits, all of which were marked at the hearing and all of which I am considering in my Phase I decision. I will be glad to consider the documents you sent me in Phase II of this case. I am including in the documents I am returning to you further instructions regarding Phase II of this case. I have given you tremendous leeway in this case because you are not represented by counsel. However, parents who participate in these hearings without counsel are nonetheless expected to comply with the procedural requirements established in the case. Please review my order carefully. It explains what you need to do next. Also, you **MUST** copy Ms. Bird on all communications to me. Her e-mail address is in the return e-mail.

#10 -----Original Message-----

From: Myers, Scott P.

Sent: Tuesday, June 12, 2007 4:27 PM

To: Myers, Scott P.; '[MOTHER]'; 'birda001@hartford.gov'

Subject: RE: I need my paper work back A.S.A.p

Ms. [Mother's Name] -

Do you have a post office box you want me to send these documents to or is the [NAME] Street address where you want them delivered?

In a Notice and Order issued on June 18, 2007, the date for mailing of the Phase I Decision was extended to June 21, 2007 and the parties were directed as follows:

This matter will now proceed to Phase II. In accordance with Paragraph 3 of the Seventh Order, if the Mother disagrees with a claim made by the Board in the Board's June 8, 2007 submission regarding the Student's grades, credits, attendance or standing in high school, the Mother must on or by **June 28, 2007** submit her statement of position to the Hearing Officer (and the Board's counsel) in writing as to each specific item she is contesting and, to the extent she is relying on any documents to support her challenge, she must provide the document to the Hearing Officer and the Board if the document is not already included in P9 (the materials sent by the Mother after the May 21, 2007 hearing). To the extent that the Mother is relying on a document in exhibit P9 to support her claim, she can simply state her position on the specific issue and reference the specific page of exhibit P9 (for example, P9 at 22) she claims supports her position on that point. If the Mother is relying on documents not included in P9, she is to place all of those documents in a new exhibit P10 with each page of the exhibit numbered in sequence (P10 at 1, P10 at 2). In her written statement, she should then state her point and reference the page of P10 she relies on. A copy of

P10 and the Mother's written submission must be provided to the Board as well as the hearing officer. Additional orders regarding further Phase II procedures will be issued in due course.

(Emphasis in original.) This order re-established the Phase II procedures stated previously in the Seventh Order. At the time, the Hearing Officer had not reviewed either P9 or the June 7 Senteio and Glass-McFadden Affidavits, and was not aware that those affidavits did not address the 2006/2007 school year because data regarding grades and credits earned and attendance for that school year were not yet available.

The June 18, 2007 order was transmitted with the following message.

11 -----Original Message-----

From: Myers, Scott P.
Sent: Monday, June 18, 2007 11:25 PM
To: [MOTHER]; 'birda001@hartford.gov'
Cc: Myers, Scott P.
Subject: DOE 07 020
Importance: High

Good evening:

Attached please find a notice extending the date for issuance of the final decision and order for Phase I to June 21, 2007 and summarizing the relief being granted to the student in that order. The notice also provides direction to the Mother regarding her submission for Phase II.

The following e-mail exchanges then occurred.

#12-----Original Message-----

From: Myers, Scott P. [ADDRESS]
Sent: Thursday, June 21, 2007 10:15 AM
To: [MOTHER]; Bird, Ann F.
Cc: Myers, Scott P.
Subject: DOE 07 020

Good morning:

The Phase I decision should be put in the mail today by the CT DOE and you should receive it shortly. During the period June 22 to June 30 if you need to reach me, please do so by e-mail. I will try to respond as soon as I can. Our final hearing date for Phase II is tentatively scheduled for July 11 at 9:00 a.m. I will notify the parties in the week of July 2nd about further proceedings in Phase II.

Ms. Bird - I would appreciate it if you could send me the two affidavits in Word (i.e., the

text of the [affidavits] signed by the two witnesses, not the attachments to them). Thank you.

Ms. [MOTHER] - On June 12 I sent your documents back to you by US mail, certified, return receipt requested to the [NAME] Street address which is the only address I have for you. I have not received the green postal card indicating that the documents were delivered. Please advise if you have not received them so I may start a trace to determine where the package is if you have not received them. Thank you.

#13 -----Original Message-----

From: Bird, Ann F. [mailto:birda001@hartford.gov]

Sent: Thursday, June 21, 2007 10:28 AM

To: Myers, Scott P.

Subject: RE: DOE 07 020

[Here are the electronic versions of the two affidavits.](#)

[Ann Bird](#)

#14 -----Original Message-----

From: Myers, Scott P.

Sent: Thursday, June 21, 2007 10:31 AM

To: 'birda001@hartford.gov'; '[MOTHER]'

Cc: Myers, Scott P.

Subject: FW: DOE 07 020

Thanks.

F. July 2, 2007 through July 31, 2007

As of July 2, 2007, the Hearing Officer had not received any submission from the Mother or further submission from the Board. Between June 29, 2007 and July 2, 2007, the Hearing Officer reviewed both P9 and the June 7 Senteio and Glass-McFadden affidavits. On review of P9, the Hearing Officer noted an additional handwritten message on the inside of the flap sealing the envelope which read as follows:

Ann Bird She did not receive this stuff only if copied. I hope it comes back the same way I sent it.

On July 2, 2007, the Hearing Officer issued further direction to the parties as follows.

#15 -----Original Message-----

From: Myers, Scott P.

Sent: Monday, July 02, 2007 11:48 PM

To: 'birda001@hartford.gov'; [MOTHER]

Cc: Myers, Scott P.
Subject: DOE 07 020

Good evening -

I have now reviewed the two affidavits and related materials sent by Ms. Bird as well as Exhibit P9 (the 200 pages of documents provided by Ms. [MOTHER]). At the present time, there is a hearing date scheduled for July 11 at 9:00. The parties should plan on going forward with that hearing at this point.

Ms. Bird - the affidavits indicate that based on credits earned the Student is a 10th grader, but that if he completed 3 credits in the 2006/2007 school year he would advance to the 11th grade based on credits. The affidavits also indicate that it will not be known until the end of the 2006/2007 school year whether he earned those 3 credits. Has that determination been made yet? If so, could you please provide an updated affidavit indicating whether or not based on credits earned as of the end of the 2006/2007 school year the Student has advanced to the 11th grade (and how the determination was made as to whether the Student earned those credits or not).

With respect to Exhibit P9, it is my intention to admit those documents into the record. However, I did not find those documents to be helpful in addressing the issues to be determined in Phase II. Ms. [MOTHER] - if you disagree with what the Board has stated in the affidavits about [the Student's] attendance and credit standing, please tell me in writing before July 11 what you disagree with, what you think the correct facts are and if there are any documents that support your claim in P9, the documents attached to the Board's affidavits or any other document in the record of Phase I, please point me to the document and explain how it supports what you claim are the actual facts.

I have received the executed green postal delivery card indicating that Ms. [MOTHER] has received the documents that I have returned to her.

The Hearing Officer received an e-mail from the Mother on July 3, 2007 responding to his July 2, 2007 e-mail. Once again, the Mother had not copied the Board's counsel on that e-mail. The Mother's e-mail (designated e-mail #16) is reproduced in Attachment A to this Final Decision and Order. That e-mail, among other things, raises again various concerns of the Mother regarding the Hearing Officer, concerns regarding her health and what appeared to be some confusion regarding the outcome of Phase I.¹⁵

The Hearing Officer responded to the Mother's July 3, 2007 e-mail (e-mail #16) by Notice and Order dated July 6, 2007. Among other things, that notice and order provided a copy of the Mother's July 3, 2007 e-mail to the Board. The transmittal for that issuance stated as follows:

¹⁵ As described more fully in the Phase I Decision, at various points during Phase I the Mother reported issues regarding her health, the impact of her health on her ability to participate in the hearing process and the impact of the hearing process on her health.

#17 -----Original Message-----

From: Myers, Scott P.
Sent: Friday, July 06, 2007 11:14 AM
To: '[MOTHER]'; 'birda001@hartford.gov'
Cc: Myers, Scott P.
Subject: DOE 07 020

Good morning -

Attached is a further order in this matter which, among other things, cancels the July [11] hearing in light of [the Mother's] July 3 e-mail. (A copy of the e-mail is attached to this order). A hard copy is coming by US mail.

In the July 6, 2007 Notice and Order, the July 11, 2007 hearing date was cancelled, the date for mailing of the Phase II Decision was extended to August 18, 2007, the Board was directed to complete and submit its analysis of credits and grades earned and attendance for the 2006/2007 school year, and the parties were directed as follows, among other things:

It is the Hearing Officer's understanding that the Mother has not to date stated any specific disagreement she has with the Board's determination of the Student's attendance and credit records. As stated in the [Hearing Officer's] July 2, 2007 e-mail, exhibit P9 as submitted does not demonstrate any disagreement that she may have.

The affidavits and related documents submitted by the Board for Phase II define the Board's understanding of the Student's attendance, grades and credits. Phase II is the Mother's opportunity to resolve any disagreement she has regarding these issues.

If there is a disagreement regarding attendance and credits that the Mother wishes to have resolved before the start of the 2007/2008 school year, then this due process hearing is the way to resolve those issues. The Hearing Officer will resolve the disagreement by making factual findings and issuing a decision and order accordingly.

If the Mother disagrees with the Board's determinations regarding attendance and credits, but does not wish to have that disagreement resolved before the start of the 2007/2008 school year, the Mother should advise the Hearing Officer and the Board in writing that she is withdrawing her claims as to attendance and credit issues. If the Mother withdraws her claims, then the Hearing Officer will issue an order terminating Phase II without making any factual findings. The Board will proceed in accordance with its determination of the Student's credits and attendance. If the Mother wants to challenge the Board's

determination in the future, she can do so within the statute of limitations time frames stated in the CT DOE's Regulations.

The Hearing Officer did not interpret the July 3, 2007 e-mail (e-mail # 16) as a withdrawal of Phase II claims but did interpret that e-mail as, in part, a request that the Hearing Officer recuse himself. The Hearing Officer responded as follows in the July 6 Notice and Order:

The Mother's July 3, 2007 e-mail once again raises questions regarding the impartiality of the Hearing Officer. As was explained previously, if the Mother desires that another Hearing Officer be assigned to Phase II, the Mother needs to submit a written motion to this Hearing Officer stating the legal and factual reasons why she believes this Hearing Officer should recuse himself from this matter.

The Mother did not pursue that issue further.

On July 20, 2007, the following communications took place.

#18 -----Original Message-----

From: Bird, Ann F. [mailto:birda001@hartford.gov]

Sent: Friday, July 20, 2007 2:01 PM

To: Myers, Scott P.

Cc: [MOTHER]

Subject: Affidavit for DOE 07-020

Dear Hearing Officer Myers:

I am mindful of your order that I provide a supplemental affidavit concerning the student's credits and attendance for the 06/07 School Year. We are working on producing this affidavit. With the end of the school year and vacation schedules, the process has been somewhat delayed. I expect to be able to submit the affidavit within the next two weeks.

Ann Bird

19-----Original Message-----

From: Myers, Scott P.

Sent: Friday, July 20, 2007 2:04 PM

To: 'Bird, Ann F.'

Cc: [MOTHER]; Myers, Scott P.

Subject: RE: Affidavit for DOE 07-020

OK thanks for the update.

F. August 1, 2007 – August 8, 2007

Ms. Tyson (HPHS, Coordinator of Special Education Services) sent the Hearing Officer and the Mother a packet of materials regarding a PPT that was convened on August 2, 2007 pursuant to orders entered in the Phase I Decision to develop the Student's IEP and placement for the 2007/2008 school year. It appears that the packet was sent to the Hearing Officer with the intent of demonstrating compliance with those Phase I orders. By Notice dated August 8, 2007, the Hearing Officer advised the parties as follows:

To avoid any confusion . . . Phase I of this case has been concluded and the Hearing Officer is no longer considering Phase I issues. To the extent that the Mother is dissatisfied with [the] Phase I decision issued by the Hearing Officer, she should immediately consult with a lawyer to determine what her rights to appeal that Phase I decision may be.

To the extent that the Mother believes that the District's actions at the August 2, 2007 PPT are not in compliance with the Phase I decision, the Mother should contact Mr. Purdy's office at the State of Connecticut Department of Education to determine what assistance his office can be or should consult with a lawyer to determine what her rights are with respect to securing compliance, or should do both.

To the extent that the Mother wants to challenge the District's placement proposal as reflected in the August 2, 2007 IEP, the Mother would need to commence a due process hearing with the State of Connecticut Department of Education through Mr. Badway's office. The August 2, 2007 PPT and IEP concern the 2007/2008 school year. Matters concerning the 2007/2008 school year are not before the Hearing Officer in this case. The new case may or may not be assigned to this Hearing Officer. To the extent that the Mother does commence a second due process hearing and does not want this Hearing Officer to preside over that matter, she can make her preference known to Mr. Badway's office when she submits her request for due process. The Hearing Officer strongly encourages the Mother to retain legal counsel to assist her in any future due process claim she may wish to assert.

The Hearing Officer will not consider the Board's submission of the August 2, 2007 PPT materials in Phase II of this matter, as these materials are not pertinent to the Phase II issues. The Hearing Officer directs Ms. Bird to determine and report to the Hearing Officer and the Parent (e-mail copied to both is satisfactory) when the determination regarding grades and credits for the 2006/2007 school will be available so that Phase II can be concluded.

The Hearing Officer has marked the materials he received from Ms. Tyson as B40 solely for identification. The transmittal for the August 8, 2007 Notice stated as follows:

#20 -----Original Message----- From: Myers, Scott P.
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Sent: Wednesday, August 08, 2007 12:39 PM
To: '[MOTHER]'; 'birda001@hartford.gov'
Cc: Myers, Scott P.
Subject: DOE 07 020

Good afternoon:

Attached please find a further notice in this matter.

G. The August 17 Notice and the Board's August 16 Submission

As of the time that e-mail #21 below was sent, the Hearing Officer had not received any further communication from either party. By notice dated August 17, 2007, the Hearing Officer extended the date for mailing of the Phase II Decision from August 18 to September 18, 2007. E-mail #21 below is the transmittal of that notice.

#21-----Original Message-----

From: Myers, Scott P.
Sent: Friday, August 17, 2007 10:44 AM
To: '[MOTHER]'; 'birda001@hartford.gov'
Cc: Myers, Scott P.
Subject: DOE 07-020

[Attaching the August 17, 2007 notice]

Later in the day on August 17, 2007, the Hearing Officer received by mail the Board's submission regarding 2006/2007 grades and credits earned and attendance, in the form of another affidavit by Ms. Senteio dated August 15, 2007, with supporting documentation. Ms. Senteio's August 15 Affidavit has been marked as B39.

H. The August 18, 2007 Notice and Orders

Following receipt of the B39 materials, the Hearing Officer issued a notice and order on August 18, 2007. The text of that notice and order is reproduced below in its entirety. The emphasis and footnotes below are from the original issuance.

The purpose of Phase II of this due process hearing is: (a) to determine the Student's grade level as of the end of the 2006/2007 school year (the school year that just ended) based on credits earned and courses completed; and (b) to resolve any disagreements regarding the Board's records of his high school attendance through that date. The outcome of Phase II is intended to assist the parties in planning the Student's educational program for the 2007/2008 school year (the school year that is about to start).

In compliance with the Hearing Officer's orders, the Board has submitted affidavits stating its understanding of the Student's grade level based on credits

earned and attendance.¹⁶ The Board states its view that as of the end of the 2006/2007 school year, the Student had completed 10.50 high school credits and is therefore eligible to start the 2007/2008 school year as an 11th grader. Unless directed otherwise by the Hearing Officer, the Board will proceed in accordance with the conclusions it has reached regarding grades, courses completed and attendance. The Hearing Officer is now awaiting an indication from the Mother as to whether she agrees or disagrees with the Board's conclusions.

It is the Hearing Officer's intention to proceed as follows.

OPTION A. If the Mother agrees with the Board's conclusions regarding credits earned and attendance and wants to have a Final Decision and Order entered on the merits of these matters in this hearing, she should advise the Hearing Officer and the Board in writing that she agrees on or by **4:00 p.m. on August 30, 2007**. (An e-mail sent to the Hearing Officer and Board's counsel for this purpose would be sufficient.) If the Mother agrees with the Board on these matters and makes this report to the Hearing Officer, the Hearing Officer will enter a Final Decision and Order reflecting that the parties are in agreement on these matters. Entry of that Final Decision and Order will resolve these issues and both parties will be bound to proceed accordingly.

OPTION B. If the Mother disagrees with the Board's conclusions and wants to challenge the Board's conclusions in this Phase II proceeding before this Hearing Officer: she should advise the Hearing Officer and the Board in writing on or by **4:00 p.m. on August 30, 2007** that she disagrees with the Board's conclusions and wants to resolve that disagreement in this proceeding. An e-mail sent to the Hearing Officer and Board's counsel for this purpose would be sufficient. If the Mother selects this option, she is further directed to deliver by US mail or courier to the Hearing Officer and the Board's counsel by no later than **4:00 p.m. on August 31, 2007** a document that states which Board conclusion she is disputing, state why she thinks the Board's conclusion on that point is wrong, state what she thinks is the correct information on that point, and identify any document in the record of Phase I or Phase II that supports her position.¹⁷ If the Mother wants to have a hearing to further explain her position, she should make that request. The Hearing Officer will review the Mother's submission and enter further orders either scheduling a hearing or allowing the Board an opportunity to respond or both. The Hearing Officer will then enter a Final Decision and Order resolving the disagreement and, unless that

¹⁶ The Hearing Officer has received the following affidavits: August 15, 2007 affidavit of Charlene Senteio; June 7, 2007 affidavit of Charlene Senteio; June 7, 2007 affidavit of Arleen Glass-McFadden.

¹⁷ The Mother must identify the document by exhibit number (for example P-9) and page number within the exhibit (for example P-9 at 2) and explain why the information on that page of the document supports her position.

decision is appealed, the parties will be bound to proceed as determined by the Hearing Officer in that decision once it becomes final.

OPTION C. If the Mother disagrees with the Board's conclusions but does not want to challenge the Board's conclusions in this Phase II proceeding before this Hearing Officer: she should advise the Hearing Officer and the Board in writing on or by **4:00 p.m. on August 30, 2007** that she disagrees with the Board's conclusions but does not want to resolve that disagreement at this time. An e-mail sent to the Hearing Officer and Board's counsel for this purpose would be sufficient.¹⁸ If the Mother selects this option, the Hearing Officer will enter a Final Decision and Order that describes the procedural history of Phase II and reports the position of the Board and of the Parent on these issues without making any decision on who is right or wrong if there is any disagreement. The purpose of issuing that decision will be simply to record the Board's conclusions regarding courses completed, grades, credits earned and attendance through the end of the 2006/2007 school year and that there is a disagreement, which the parties may or may not address in the future. The Board will then proceed to develop planning for the Student in accordance with its conclusions on those matters. ***If the Mother selects this option, she is reminded that there is a statutory time limit to asserting a challenge to the Board's conclusions. Once that statutory period ends, she can no longer challenge the Board's conclusions. The Mother should consult a knowledgeable lawyer right away to determine when that period of time to challenge the Board's conclusions will be over so that she can determine how to proceed.***

If the Hearing Officer does not receive any response from the Mother, the Hearing Officer will assume that the Mother wants to proceed in accordance with Option C and will issue a decision accordingly.

The date for issuance of the Phase II Decision has been extended to and including September 18, 2007, subject to modification.

For the convenience of the parties, the Hearing Officer summarizes his understanding of the facts based on the documentary record and the Board's affidavits. The Hearing Officer has made no findings of fact but rather is simply stating what he understands the Board's affidavits to be stating.

1. To pass a course (in other words, earn credit for the course), the student must earn a grade of 60 or higher in the course. If a student has too many absences in a school year, the Student will not earn credits in his courses even if he otherwise gets a

¹⁸ If the Mother selects this option, she may if she wants to identify in that e-mail which conclusion she disagrees with, why she thinks the Board is wrong and what she thinks is the correct information. Doing so will allow the Board to work with her on a voluntary basis and outside of the hearing process to resolve the issue.

passing grade in the course based on the work completed.

2. The Student entered the 9th grade in the 2004/2005 school year. To move to the 10th grade in the 2005/2006 school year, the Student needed to earn 5 credits in the 2004/2005 school year.
3. The Student earned 5 credits in the 2004/2005 school year and based on credits earned, entered the 10th grade in the 2005/2006 school year.
4. The Student’s attendance record (combining both CREC Polaris and HTLA) for the 2004/2005 school year is as follows:

Unexcused	Excused	Tardies	Suspensions
10	0	0	0

5. The number of absences during the 2004/2005 school year did not result in loss of credit under Board policy.
6. To graduate to the 11th grade, the Student needs to have at least 10 credits earned. Since the Student earned 5 credits in the 9th grade (2004/2005 school year), he needed to earn 5 or more credits during the 2005/2006 school year to pass to the 11th grade in the 2006/2007 school year.
7. The Student earned 2 credits in the 2005/2006 school year. That means that at the end of the 2005/2006 school year, the Student had earned a total of 7 credits and was 3 credits short of the number of credits he needed to pass to the 11th grade. Based on credits earned, the Student started the 2006/2007 school year as a 10th grader.
8. The Student’s attendance record for the 2005/2006 school year (Weaver High School and Hartford Public High School) is as follows:

Unexcused	Excused	Tardies	Suspensions
17	25	0	15

9. The number of absences during the 2005/2006 school year did not result in loss of credit under Board policy.
10. The Student started the 2006/2007 school year as a 10th grader based on credits earned as of the end of the 2005/2006 school year. To move to the 11th grade, the Student needed to earn at least 3 more credits.
11. During the 2006/2007 school year, the Student earned 3.5 credits. Accordingly, the Student is eligible to enter the 2007/2008 school year as an 11th grader based on credits earned.

12. While the Student was physically present at HPHS during the 2006/2007 school year, his attendance record was as follows:

13.	Unexcused	Excused	Tardies	Suspensions
	2	0	0	4

14. Due to the Student’s “special circumstances” in the 2006/2007 school year, the Board has decided to waive its attendance policy requirements for receipt of course credit for the balance of the 2006/2007 school year after October 16, 2007 when the Student was receiving tutoring. The Board notes that the Student was not attending or available for tutoring on many days but does not state how many days he actually missed.

15. Due to the Student’s “special circumstances” in the 2006/2007 school year, the Board has also made a number of adjustments to calculating his credits earned. Among other things, the Board has based his grades and credits earned on the results of the 1st, 2nd, and 3rd marking periods, has disregarded the 4th marking period and has disregarded final exams.

16. As of the end of the 2006/2007 school year, the Board has recorded the following courses, grades, and credits for the Student:

Course	Grade Earned	Credit Earned
Health	70	0.5
English I	75	1.0
Civics	80	1.0
Algebra	77	1.0
Physical Education	70	0.5
Science	76	1.0
Physical Education	81	0.5
Physical Education	89	0.5
Vocational English Reading	60	1.0
Art 1	40	None
Read Thru Key Bd	19	None
US History	14	None
Vocational Math 4	28	None
Vocational Science 2	45	None
English (2006/2007)	72	0.75
Human Dynamics	71	0.50
US History (2006/2007)	72	0.75
Algebra I	65	0.75
Physical Education (2006/2007)	66	0.75

The purpose of Phase II is to determine as of the end of the 2006/2007 school year and for the 2004/2005, 2005/2006 and 2006/2007 school years, the number of credits the Student has earned, which courses the Student has taken and passed, and what his attendance record was. Among other questions that Phase II can address are whether the Board has properly recorded the Student's attendance, properly determined his grades in his courses, and properly determined the number of credits earned. Among other things, a denial of FAPE can occur if an eligible Student was graded in his course performance in a manner not consistent with his IEP, or if the Student's course work was modified to allow him to complete off grade level work when the PPT team did not determine whether that was appropriate.

The Hearing Officer notes further that in order to graduate, the Student must earn 21 credits, take certain courses, complete a community service requirement, take the CAPT test and meet the performance standard in Reading, Writing and Mathematics. Phase II will not determine whether the Student has satisfied the criteria to graduate. However, the Board has stated in its affidavits its conclusions regarding whether the Student has completed other requirements to graduate (such as completing the community service requirement, and whether the Student has met the performance standard for Reading, Writing and Mathematics). To the extent that the Mother disagrees with the Board's position on these issues, these matters could also be addressed in Phase II if she wants to address them.

The August 18 Notice and Orders was sent with the following transmittal:

#22 -----Original Message-----

From: Myers, Scott P.
Sent: Saturday, August 18, 2007 8:06 AM
To: 'birda001@hartford.gov'; [MOTHER]
Cc: Myers, Scott P.
Subject: DOE 07 020

[Attaching the August 18, 2007 Notice and Orders]

Attached please find an additional order now that all of the information requested from the Board has been provided. A copy is being sent by us mail. I will not be in my office in the week of August 20th. I will respond to any e-mails as soon as I can.

I. Response to the August 17, 2007 Notice

Upon returning to the state on August 27, 2007, the Hearing Officer reviewed the following e-mail from the Mother which responded to the August 17, 2007 Notice

extending the date for mailing of the Phase II Decision.¹⁹ This e-mail relates primarily to the outcome of the August 2, 2007 IEP meeting and the 2007/2008 school year.

#23 -----Original Message-----

From: [MOTHER]

Sent: Friday, August 24, 2007 9:42 PM

To: Myers, Scott P.

Subject: Re: DOE 07-020

Scott: I disagree with the decision that the board came up with,I sent you all the information that you needed that stated from the board that [the Student] was suppose to be in the 11th grade and I knew it was a waste of my time he did community service several times and didn't get the credit that those people told me he would get but once a liar always a liar.I'm sorry but I have no respect for no one that sat at the table at those meeting wasting my time causing my health to worsen and you knew right along with them you would do what you wanted to do with [the Student] any way.School is next week and I haven't received anything about any school as far as where I want him to go or that he wants to go to.I won't be at anymore of your ridiculous meetings the board had meetings all summer and we weren't notified. But I do hope some one figure out what's going on as far as a school for [the Student] before next week this is what the board does every year so [the Student] can miss days out and they claim I keep him out you had all summer and the board just so-called figured out what grade they wanted to say he was in I can't keep playing this game with all you people that suppose to make a difference but only is there for a pay check it's not fair but it won't just happen to [the Student] mark my words and maybe then I'll be able to tell someone out side the board and about you that might make a difference.[the Student] is number 2 on the Sports Academy list.I don't want him to miss the first day of school so someone need to do there job before next week so I can know what's going on.I do plan on talking to legal aide about this and the civil rights people again but like I said he shouldn't miss school next week the board had all summer to figure out something before now and still haven't told or offered us anything as far as a school is concerned and I want you to show me in which I.E,P that I signed saying [the Student] is suppose to be in a alternative school ,Please send me this for my records and send me your reasons for this with my signature signed on the ppt papers. I dont want my son in an alternative school and my son dosent want to be placed in an alternative school .I hope to hear from you soon,

J. Mother's Response to the August 18, 2007 Notice

Upon returning to the state on August 27, 2007, the Hearing Officer reviewed the following e-mail from the Mother regarding the August 18, 2007 Notice and Orders.²⁰

¹⁹ The Mother apparently did not send this e-mail to the Board. The Hearing Officer provided the Board's counsel with a copy as part of the August 31, 2007 notice, described more fully below.

²⁰ The Mother apparently did not send this e-mail to the Board. The Hearing Officer provided the Board's counsel with a copy as part of the August 31, 2007 notice, described more fully below.

#24-----Original Message-----

From: [MOTHER]

Sent: Friday, August 24, 2007 9:48 PM

To: Myers, Scott P.

Subject: Re: DOE 07 020

I agree scott

"Myers, Scott P."[Address] wrote:

<<07-020August 18 notice.doc>>

Attached please find an additional order now that all of the information requested from the Board has been provided. A copy is being sent by us mail. I will not be in my office in the week of August 20th. I will respond to any e-mails as soon as I can.

K. Communications on August 29, 2007 and August 30, 2007 and the August 31, 2007 Notice

On August 29, 2007, the Hearing Officer received a telephone call from the Mother and the Student. As the Hearing Officer was preparing a notice to be issued to the parties regarding that telephone call on August 30, 2007, the Hearing Officer received further e-mail communications from the Mother and the Student. The August 29, 2007 telephone call is described more fully in the August 31, 2007 Notice issued by the Hearing Officer, as follows.

On August 29, 2007, the Hearing Officer received a telephone call from the Mother and the Student who were seeking clarification on several issues. The first issue was where the Student was to be attending school. (The first day of school for the Hartford public school system's 2007/2008 school year was August 29, 2007.) The Hearing Officer advised that this due process hearing did not address the 2007/2008 school year; that it was his understanding that at an August 2, 2007 PPT the Board had made a placement recommendation for the 2007/2008 school year; that they should contact Ms. Tyson regarding that recommendation and its implementation; and that if they did not agree with the 2007/2008 placement recommendation, they would need to contact Mr. Badway's office to commence a due process hearing regarding that placement recommendation and to resolve issues regarding the 2007/2008 school year. The Hearing Officer suggested that they discuss stay put placement at HPHS with the District staff as part of this process. The Hearing Officer also suggested that they retain an attorney to assist them.

The Mother sought clarification about an issue that is potentially within the scope of Phase II of this proceeding. The Mother asked why the Student's report cards do not reflect that he has received credits for completing his community service requirement. The Mother was advised to speak with the District promptly about that issue and to advise the Hearing Officer in writing (with a copy to Ms. Bird) promptly if she does not receive an answer or disagrees with the answer she receives. The Board may wish to proactively address this

issue by providing a written explanation or response to the Mother with a copy to the Hearing Officer as to how completion of the community service requirement is recorded on the transcript.

The Student asked to speak with the Hearing Officer to obtain clarification on an issue. The Student noted that he had not received full credits for his courses taken during the 2006/2007 school year and was uncertain if that meant he had completed the course requirement and, if not, what he needed to do to complete the requirement for graduation. He pointed to his US History course from the 2006/2007 school year, noting that he had earned 0.75 credit and he was not clear whether he had completed the US History requirement for graduation and, if not, what he needed to do to complete that requirement. The Hearing Officer suggested that he speak to his guidance counselor regarding those matters. The Student indicated he does not know who his guidance counselor is, at which point the Hearing Officer suggested that he contact Ms. Tyson promptly to obtain that answer and that the Student and his Mother should promptly advise the Hearing Officer and Ms. Bird if based on that answer they disagree with the calculation of credits.

The Hearing Officer suggested to both the Mother and the Student that they communicate with the District on these matters in writing and by telephone and that they ask the District staff to provide a written response to their inquiries. The Hearing Officer suggested that the Mother and the Student contact the District through Ms. Tyson because it appears from the Phase I hearing that they may have a workable relationship with Ms. Tyson. Ms. Tyson was also present through most of the Phase I hearing and Ms. Tyson had reported to the Hearing Officer regarding the August 2, 2007 IEP meeting.

The Board may wish to proactively address these issues by contacting the Mother and Student to answer their questions. Some of the questions suggest that the Mother and Student may in fact disagree with the Board's determinations pertinent to Phase II issues.

The Hearing Officer asked both the Student and the Mother to report on the results of their efforts to address these issues with the District by the end of the week of September 3rd and whether or not any disagreement remained to be resolved for purposes of Phase II.

The telephone contact by the Mother and the Student appears to reflect primarily an effort to obtain clarification regarding the Student's status on certain discrete matters with respect to the 2007/2008 school year and may reflect some confusion as to the Hearing Officer's role with respect to the 2007/2008 school year. They also appear to be responding to the most recent order issued by the Hearing Officer. Neither the Mother nor the Student presented factual information or legal argument on any point that remains in contention. Given the strained relationship between the Mother and the District (all as reflected in the

Phase I Decision), and in the interest of trying to assure that the Student remained engaged with his educational process and the Mother would continue to support that engagement, the Hearing Officer elected to speak with the Mother and the Student regarding the matters raised in the telephone call on an *ex parte* basis. The Hearing Officer did advise them, however, that in the future he cannot speak with them by telephone unless Ms. Bird was also participating in the telephone call. If this telephone contact between the Hearing Officer and the Mother and the Student presents any issue of concern to the Board with respect to the Phase II decision that remains to be issued in this matter, the Hearing Officer asks the Board to promptly raise those concerns.

The August 30, 2007 e-mails are reproduced below, and reflect unsolicited follow-up to the August 29, 2007 telephone call of the Mother to the Hearing Officer. E-mail # 25 is from the Student and e-mail # 26 is from the Mother.

#25 -----Original Message-----

From: [STUDENT]

Sent: Thursday, August 30, 2007 12:38 PM

To: Myers, Scott P.

Subject:

Hello Scott: I just wanted you to confirm that if we (my mother and i) wanted me to stay at hartford public that she could do the stay put think you were telling me about .

Just because i guess you never told her that so just so we can all be on the same page and what not hope to hear from you soon.

#26 -----Original Message-----

From: [MOTHER]

Sent: Thursday, August 30, 2007 5:25 PM

To: Myers, Scott P.

Subject:

Hello: Scott we talked yesterday about what school the board had decided to send [the Student] to and you told me to contact Mrs.Tyson I left a voice mail message yesterday but did talk to her today she said Mrs. Gould was absent today and she was gonna see if Arleen knew what the two schools were that they came up with and send me a e-mail. I also told her that I wanted the dew processing papers so I can get [the Student] back in district but I don't want him missing days like Arleen had us do in September of last year and then said she didn't know why [the Student] was out of school and she was the one that told me to keep him home.The board should have sent me names and places of school before now they had all summer this is what they did to his attendance in Sept. last year. It only hurts my son and his attendance anyway Mrs.Tyson said she would send me an e-mail about what they were gonna do but I haven't gotten one as of yet I don't know her e-mail address to send her a copy of this so maybe you can. I just want you to see that it's not me that has [the Student] missing days out of school unless he's sick and I do send a doctors note but the board did this to me [the Student's] first year at Hartford High with the transportation and his registration and it cause him to miss

months out of school and it was the schools fault not ours and I see the same thing happening now since you don't have anything else to do with this hearing. It's not fair and as I said before it only hurts the child not help them. Hopefully I will hear something from something from someone before [the Student] starts missing to many more days All I want to see out of this is [the Student] graduate before my health gets worse then what it is. Thanks for listening.

Since these two e-mails were not copied to the Board, the Hearing Officer included them in the August 31, 2007 notice, and commented as follows:

On August 30, 2007, the Hearing Officer received the following two e-mails. It does not appear that the e-mails were copied to Ms. Bird. The Mother (and Student) are reminded again that they **MUST** copy Ms. Bird on all e-mail communications that they send to the Hearing Officer. Ms. Bird's e-mail address is birda001@hartford.gov. Any material sent to the Hearing Officer by US mail must also be sent to Ms. Bird.

The Hearing Officer advised that the date for mailing of the Phase II Decision remained September 18, 2007.

The transmittal for the August 31, 2007 Notice is reproduced below.

#27 -----Original Message-----

From: Myers, Scott P. [ADDRESS]
Sent: Friday, August 31, 2007 7:13 AM
To: [MOTHER]; Bird, Ann F.
Cc: Myers, Scott P.
Subject: DOE 07 020

Please find an additional notice attached.

[Attaching August 31, 2007 Notice]

L. Post August 31, 2007 Communications

The August 31, 2007 Notice prompted a flurry of communications between the parties. The Hearing Officer was copied on the following communications. In issuing the Phase II Decision the Hearing Officer has not considered any of the factual information presented in these communications.

#28 -----Original Message-----

From: Bird, Ann F.
Sent: Friday, August 31, 2007 1:39 PM
To: [MOTHER]

Cc: 'Myers, Scott P.'

Subject: RE: DOE 07 020

Dear [MOTHER] and [STUDENT]:

I just received and reviewed the Hearing Officer's Notice of today. I did not receive any of the e-mails between you and the Hearing Officer that are incorporated in today's Notice.

The answer to your question about the community service requirement is that completion of the requirement not reflected on the transcript because that requirement does not involve academic credit. Students are required to complete the community service requirement, but no "credit" is awarded for the service. [The Student's] record does reflect that he completed the requirement, even though this is not on his "transcript" as a credit.

Your other question was whether [the Student's] .75 credit courses are sufficient to meet graduation requirements. For instance, is .75 credit for U.S. History sufficient to satisfy the requirement that students complete 1 credit in Social Studies? The answer to this question is no: in order to graduate from one of the three comprehensive high schools in Hartford, [the Student] must complete at least one full credit in social studies. [The Student] should discuss with his counselor at the school that he ultimately attends how he can meet the graduation requirements of that school. Although state law mandates certain minimum requirements, different schools and different school systems have different graduation requirements.

Finally, with respect to [the Student's] school placement, the PPT recommended that [the Student] be placed in an out of district therapeutic day treatment program. The administration of Hartford Schools (Ms. Gould) is currently seeking such a placement. [Mother] and [Student] will be advised as appropriate when and if specific programs express a willingness to accept [the Student]. This process requires the cooperation of out of district programs as well as the student and takes time. If [the Student] is not accepted at an appropriate out of district day treatment program, he is to attend the Gateway Program or receive tutoring. If [Mother] and [Student] are interested in accepting tutoring services while this process is completed, they should let Ms. Tyson or me know.

Thank you

Ann Bird

Sr. Asst Corp Counsel

#29 -----Original Message-----

From: Tyson, LeighAnn [mailto:TYSOL001@hartfordschools.org]

Sent: Friday, August 31, 2007 2:08 PM

To: [MOTHER]

Cc: Myers, Scott P.; Glass-Mcfadden, Arleen ; Bird, Ann F.

Subject: RE: DOE 07 020

Hello Ms. [Mother's Name]-

I am sending this email in response to your phone call/voice mail today.

Based on our phone conversation yesterday, I mailed to you at your request, the forms to complete a due process. You should receive them Saturday or Tuesday. From this phone call, I thought you were going to email me to ask specific questions regarding [the Student's] school placement and other things. I did not think you were waiting on an initial email from me. I apologize for my misunderstanding.

If Ms. Bird did not address your questions regarding [the Student's] placement, etc...please let me know and I will try to address them. The specific programs [the Student] has been referred to are:

- CREC Polaris
- The Grace Webb School
- Northwest Village School at Wheeler Clinic

Be well.

LeighAnn R. Tyson
Coordinator for Special Education Services
[Contact information omitted]

[The e-mails in this chain include e-mails 28 and 27]

#30 -----Original Message-----

From: [MOTHER]

Sent: Sunday, September 02, 2007 12:32 AM

To: Tyson, LeighAnn

Subject: RE: DOE 07 020

Hello Ms Tyson Scott told me that i could do something called a stay put and keep him at hartford public high school do you know anything about that ? If so that its what I would like to do so that he wont be missing school and what not as far as **tutoring** that has not worked out and is not even worth trying again this year so im not even going to waste time thinking about that i would like to envoke the stay put intill the board finds a good enough program thanks alot hope to hear from you soon.

[E-mails in this chain are 29, 28, 27]

#31 -----Original Message-----

From: Tyson, LeighAnn [mailto:TYSOL001@hartfordschools.org]

Sent: Tuesday, September 04, 2007 9:22 AM

To: [MOTHER]

Cc: Myers, Scott P.; Bird, Ann F.; Glass-Mcfadden, Arleen ; Russ, Karen

Subject: RE: DOE 07 020

Hello [Mother's Name]-

We just spoke on the telephone and I am letting you know by email that I will be putting [the Student's] HB tutor request in today. Once a tutor is determined and hours and location are set, I will provide [the Student] with a bus pass for transportation.

The "stay-put" part of the law states that a student is to remain in whatever educational setting they were in when a dispute or issue with placement is in question. [The Student's] last setting was HB tutoring.

Thank you; I will keep you informed of the tutoring process.

LeighAnn R. Tyson

Coordinator for Special Education Services

[Contact information omitted]

#32-----Original Message-----

From: [MOTHER]

Sent: Tuesday, September 04, 2007 8:18 PM

To: Tyson, LeighAnn

Subject: RE: DOE 07 020

Hello ms. Tyson

How long do you think it would take place [the Student] in the CREC Polaris program. We would like to try that the other schools are far and sound funny if you will hope to hear something soon.

[E-mails in this chain are 31, 30, 29, 28, 27]

#33 -----Original Message-----

From: Tyson, LeighAnn [mailto:TYSOL001@hartfordschools.org]

Sent: Wednesday, September 05, 2007 9:59 AM

To: [MOTHER]

Cc: Gould, Jo R.; Glass-Mcfadden, Arleen ; Bird, Ann F.; Myers, Scott P.

Subject: RE: DOE 07 020

Hello [Mother's Name]-

I am not sure what the time period is but am happy to check with Ms. Gould as to the status. When they do call, please take part in the intake process quickly and I know that will shorten the time length. In the meantime, we are working to set [the Student] up with a tutor.

Thank you.

LeighAnn R. Tyson
 Coordinator for Special Education Services
 [Contact information omitted]

PHASE II EVIDENTIARY RECORD

The parties were advised during Phase I that all documents admitted into the record would be treated for evidentiary purposes as a business record of the entity which created the document. (3/14 Trans. at 33) That same treatment will be afforded documentary evidence admitted into the record during Phase II.

A. Parent Exhibits

During Phase I, Parent exhibits P1-P8 were marked and admitted into the record. These exhibits are described more fully in the Phase I Decision. The only exhibit offered by the Parent during Phase II was the P9 packet of documents. Exhibit P9 consists of multiple documents. Each page of the packet was marked and numbered, and the documents collectively were marked as one exhibit, consisting of pages 1 through 200. A copy of exhibit P9 was sent to the Board's counsel by the Hearing Officer and the original documents were returned to the Mother on or about June 12, 2007.

B. Board Evidentiary Record

During Phase I, Board exhibits B1-B36 were marked and admitted into the record. These exhibits are described more fully in the Phase I Decision. The following documents were identified by the Hearing Officer as Board exhibits B37, B38, B39 and B40 submitted for purposes of Phase II. The Hearing Officer marked each page with his initials. Exhibit B40 is marked for identification only.

B#	At Pages	Description
37	1-7	June 7, 2007 Affidavit of Charlene Senteio
	8-12	- Exhibit 1-Excerpt of HPS Program of Studies defining graduation requirements
	13-15	- Exhibit 2 – Student's transcript as of June 7, 2007
	16-18	- Exhibit 3- Attendance record 2004/2005 school year
	19-21	- Exhibit 4-Document showing Student completed Service Learning Requirement for graduation

B#	At Pages	Description
	22-24	- Exhibit 5- Grades for first marking period, 2006/2007 school year
	25-27	- Exhibit 6- Grades submitted by tutor for period 10/27/2006 through 1/20/2007
	28-31	- Exhibit 7 – Report of Gail Rowe
	32-35	- Exhibit 8- Excerpts of 2/7/06 PPT minutes
	36-39	- Exhibit 9-Excerpts of 5/31/06 PPT minutes
	40-42	- Exhibit 10 – Grades for 2005/2006 school year
38	1-5	June 7, 2007 Affidavit of Arleen Glass-McFadden
	6-8	- Exhibit A-CREC Polaris attendance records, 2004/2005 school year
	9-12	- Exhibit B-HTLA attendance records, 2004/2005 school year
	13-15	- Exhibit C-2004/2005 school year HTLA report card, showing attendance information
	16-19	- Exhibit D-2005/2006 school year attendance record for WHS
	20-22	- Exhibit E-2005/2006 school year attendance record for HPHS
	23-26	- Exhibit F-2006/2007 school year attendance report
	27-29	- Exhibit G- 5/30/06 referral for special education and related services, reporting results of WIAT
	30-32	- Exhibit H-Excerpts of 5/31/06 PPT minutes
	33-35	- Exhibit I-Excerpt of 5/31/06 PPT minutes
	36-44	- Exhibit J-HPHS Strategic School Profile, 2004/2005 school year
39	1-4	August 15, 2007 Affidavit of Charlene Senteio
	5	- Attachment - Ms. Butler’s report regarding tutoring
	6	- Attachment – Transcript through end of 2006/2007 school year
40	1-1a	August 8, 2007 letter from Ms. Tyson to the Hearing Officer with envelope
	2-12	- Attachment- 8/2/07 IEP
	13	- Attachment- Original invitation to PPT dated 7/16/07
	14	- Attachment- Addendum to original PPT invitation
	15	- Attachment- Parental contact log
	16-18	- Attachment- Copy of pages 68-70 of Phase I Decision
	19	- Attachment- Copy of certified mail receipt
	20-26	- Attachment- Copy of SDE Procedural Safeguards

C. Hearing Officer Exhibits

During Phase I, Hearing Officer exhibits HO1-HO12 were marked. As stated in the June 12, 2007 notice and orders, the following Hearing Officer exhibits were marked for Phase II..²¹

²¹ The Phase II HO exhibit numbering commences with HO20. There are no exhibits HO13-HO19.

HO#	Description
20	Envelope used by the Mother to send exhibit P9 to the Hearing Officer
21	June 8, 2007 Affidavit Regarding Documents executed by Mr. Badway (one page)

It had been the Hearing Officer's intention to mark these documents on the record and distribute them to the parties at the July 11, 2007 hearing. That hearing did not take place and a copy of these two exhibits is included as Attachment B hereto.

FINDINGS OF FACT

The Findings of Fact specific to Phase II are stated below. To the extent necessary, the evidentiary summary stated in Attachment A to the Phase I Decision and the Findings of Fact stated in that Decision are incorporated herein as evidence supporting the Findings of Fact, Conclusions of Law and Orders stated herein. To the extent that any portion of this Phase II Decision, including the Procedural Background, 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).

1. At the start of the 2007/2008 school year, the Student was 16 years of age. He will turn 17 years of age during the 2007/2008 school year. *See generally* Phase I Decision, Finding of Fact ("FF") 1.
2. The Student resides in the Board's jurisdiction. *See generally* Phase I Decision, FF 2.
3. The Mother is the Student's legal guardian. *See generally* Phase I Decision, FF 3.
4. The Student is a "child with a disability" within the meaning of the IDEIA due to ADHD and "by reason thereof, needs special education and related services." IDEIA, 20 U.S.C. § 1401(3)(A); IDEIA Regulations, 34 CFR § 300.8(a)(1)-(2). *See generally* Phase I Decision, FF 4.
5. At all pertinent times, the Student was eligible to receive "special education" and "related services" pursuant to the IDEIA and Connecticut law. The Student began residing within the Board's jurisdiction when he entered the 3rd grade (1998-1999 school year). He has resided in the Board's jurisdiction continuously since then. He was first identified as eligible to receive special education and related services under the IDEIA in the 2nd grade on the basis of ADHD. He has maintained his eligibility continuously since then and at all times since the 3rd grade has received special education and related services through the Board. *See generally* Phase I Decision, FF 5, 5a-5f.
6. The Student started 9th grade in the 2004/2005 school year at CREC Polaris pursuant to an IEP team placement decision. He attended CREC Polaris until April 4, 2005, at which point he

was discharged from CREC Polaris. He resumed attending school at the HTLA on April 25, 2005 and remained at HTLA for the balance of the 2004/2005 school year. *See generally* Phase I Decision, FF 5g.

7. The Student entered 10th grade in the 2005/2006 school year attending WHS as part of the HTLA Transition Program. The family moved out of the WHS district in November of 2005, and the Student began attending HPHS in the HTLA Transition Program that had been established there. Toward the end of the school year, he was placed in the STEP program. The Student remained at HPHS for the balance of the 2005/2006 school year. *See generally* Phase I Decision, FF 5h, 5i, 8.
8. The Student started the 2006/2007 school year attending HPHS as part of the Learning Academy. On October 16, 2006 he was assaulted by three other HPHS students. Starting on October 17, 2006, the Parents refused to allow the Student to return to HPHS due to safety concerns. The Parents thereafter declined proposals to allow the Student to attend WHS, HTLA or an out-of-district therapeutic day program at Board expense pending resolution of their concerns regarding the Student's safety. The Student received homebound tutoring in the period from mid-October 2006 to mid-April 2007. *See generally* Phase I Decision, FF 12, 15, 16, 18; Senteio June 7 and August 15 Affidavits; Glass-McFadden June 7 Affidavit.
9. For purposes of this Phase II Decision, the Mother is not disputing the following determinations made by the Board, as applied to the Student.²²
 1. To pass a course (in other words, earn credit for the course), ~~the~~ a student attending the Board's schools must earn a grade of 60 or higher in the course. If a student has too many absences in a school year, the ~~Student~~ student will not earn credits in his courses even if he otherwise gets a passing grade in the course based on the work completed. (B37 at ¶¶ 6, 7, 12, 13)
 2. The Student entered the 9th grade in the 2004/2005 school year. To move to the 10th grade in the 2005/2006 school year, the Student needed to earn 5 credits in the 2004/2005 school year under the Board's policies applicable to students attending its schools generally. (B37 at ¶ 9)
 3. The Student earned 5 credits in the 2004/2005 school year and based on credits earned, entered the 10th grade in the 2005/2006 school year. (B37 at ¶¶ 9, 16)
 4. The Student's attendance record (combining both CREC Polaris and HTLA) for the 2004/2005 school year is as follows. (B38 at ¶¶ 4-7)

Unexcused	Excused	Tardies	Suspensions
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²² The following factual findings are drawn from the August 18, 2007 Notice and Order and use the same numbering as was contained in that order. Differences between the version as stated in the August 18, 2007 Notice and Order and as stated herein are indicated. The differences are not intended to be substantive. Citations to the record to support these findings have been added.

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- 5. The number of absences during the 2004/2005 school year did not result in loss of credit under Board policy. (B37 at ¶¶ 15-16)
- 6. To graduate to the 11th grade, the Student needs to have at least 10 credits earned under the Board’s policies applicable to students attending its schools generally. Since the Student earned 5 credits in the 9th grade (2004/2005 school year), he needed to earn 5 or more credits during the 2005/2006 school year to pass to the 11th grade in the 2006/2007 school year. (B37 at ¶ 10)
- 7. The Student earned 2 credits in the 2005/2006 school year. That means that at the end of the 2005/2006 school year, the Student had earned a total of 7 credits and was 3 credits short of the number of credits he needed to pass to the 11th grade under the Board’s policies applicable to students attending its schools generally. Based on credits earned, the Student started the 2006/2007 school year as a 10th grader. (B37 at ¶ 36)
- 8. The Student’s attendance record for the 2005/2006 school year (Weaver High School and Hartford Public High School) is as follows. (B37 at ¶ 18; B38 at ¶¶ 8-9)

Unexcused	Excused	Tardies	Suspensions
17	25	0	15

- 9. The number of absences during the 2005/2006 school year did not result in loss of credit under Board policy. (B37 at ¶¶ 15, 17-18)
- 10. The Student started the 2006/2007 school year as a 10th grader based on credits earned as of the end of the 2005/2006 school year. To move to the 11th grade, the Student needed to earn at least 3 more credits under the Board’s policies applicable to students attending its schools generally. (B37 at ¶¶ 9-10, 17)
- 11. During the 2006/2007 school year, the Student earned 3.5 credits. Accordingly, the Student is eligible to enter the 2007/2008 school year as an 11th grader based on credits earned under the Board’s policies applicable to students attending its schools generally. (B38 at ¶ 25)
- 12. While the Student was physically present at HPHS during the 2006/2007 school year, his attendance record was as follows. (B38 at ¶¶ 11, 14)

Unexcused	Excused	Tardies	Suspensions
2	0	0	4

- 14. Due to the Student’s “special circumstances” in the 2006/2007 school year, the Board has decided to waive its attendance policy requirements for receipt of course credit for the balance of the 2006/2007 school year after October 16, 2007 when the Student was receiving tutoring. The Board notes that the Student was not attending or available for

tutoring on many days but does not state how many days he actually missed. (B37 at ¶¶ 30-34; B38 at ¶¶ 10-14)

15. Due to the Student’s “special circumstances” in the 2006/2007 school year, the Board has also made a number of adjustments to calculating his credits earned. Among other things, the Board has based his grades and credits earned on the results of the 1st, 2nd, and 3rd marking periods, has disregarded the 4th marking period and has disregarded final exams. (B37 at ¶¶ 25-28, 30-34; B39 at ¶¶ 3-6)
16. Considering the June 7 Senteio and Glass-McFadden Affidavits, and the August 15 Senteio Affidavits, and their respective attachments in totality, as of the end of the 2006/2007 school year, the Board has recorded the following courses, grades, and credits for the Student:

Course	Grade Earned	Credit Earned
Health	70	0.5
English I	75	1.0
Civics	80	1.0
Algebra	77	1.0
Physical Education	70	0.5
Science	76	1.0
Physical Education	81	0.5
Physical Education	89	0.5
Vocational English Reading	60	1.0
Art 1	40	None
Read Thru Key Bd	19	None
US History	14	None
Vocational Math 4	28	None
Vocational Science 2	45	None
English (2006/2007)	72	0.75
Human Dynamics	71	0.50
US History (2006/2007)	72	0.75
Algebra I	65	0.75
Physical Education (2006/2007)	66	0.75

10. Based on the Affidavit evidence presented and absent any disagreement voiced by the Mother, the Student will enter the 2007/2008 school year as an 11th grader with 10.5 credits of coursework completed to meeting HPS requirements for graduation.
11. There is no disagreement between the parties that the Student has completed his Service Learning requirement for graduation under the Board’s policies applicable to students attending its school generally. (B37 at ¶ 23; e-mail # 28)
12. Ms. Senteio’s June 7 Affidavit provides information regarding HPS graduation requirements, the credits that need to be completed to move from grade to grade in high school, the Board’s attendance policies as those policies impact the award of grades and

credits, the District's conclusions regarding the Student's attendance in the 2004/2005 and 2005/2006 school year and the impact of his attendance on the grades and credits he earned, the District's determinations regarding the specific courses the Student took in the 2004/2005 and 2005/2006 school years and the grades and credits he earned in those courses, requirements to complete graduation (*e.g.*, completion of a Service Learning requirement, the CAPT test) and her understanding of whether the grades and credits awarded to the Student reflect special grading procedures. The Hearing Officer makes no factual findings regarding the following information in Ms. Senteio's June 7 Affidavit:

- a. Application to the Student of the so-called "20 Absence Rule" to the Student as described at ¶¶ 15-19 of her June 7 Affidavit.
 - b. Conclusions regarding the determination of the Student's grades and credits as stated at ¶¶ 30-36 of her June 7 Affidavit.
13. Ms. Glass-McFadden's June 7 Affidavit provides information regarding the Student's attendance in the 2004/2005 and 2005/2006 school years, her assessment of whether the Student had been assigned and was completing on-grade level work during the 2004/2005, 2005/2006 and 2006/2007 school years, and information regarding the performance of students in the Board's public schools on the CAPT generally. The Hearing Officer makes no factual findings regarding the following information in Ms. Glass-McFadden's June 7 Affidavit:
- a. The Board's actions and determinations regarding the Student's attendance during the 2006/2007 school year in the period after October 17, 2007, as stated at ¶¶ 10-14 of her June 7 Affidavit.
14. Ms. Senteio's August 15 Affidavit provides information regarding grades and credits earned and attendance for the 2006/2007 school year. The Hearing Officer makes no factual findings regarding the following information in Ms. Senteio's June 7 Affidavit:
- a. Calculation of credits and grades earned for the 2006/2007 school year, as described in ¶ 5 of her August 15 Affidavit.
15. The Hearing Officer received the materials attached to Ms. Tyson's August 8, 2007 letter regarding the August 2, 2007 IEP meeting. Those materials (B40) pertain to the 2007/2008 school year which is not the subject of either Phase I or Phase II of this proceeding. The Hearing Officer finds that the Board convened that IEP meeting within the time frame provided in the pertinent orders stated in the Phase I Decision. The Hearing Officer makes no factual findings about whether that IEP meeting or the information reflected in that submission satisfy the substantive and procedural requirements of the *Rowley* standard.
16. Based on the e-mail and telephone communications with the Mother in the period between August 24, 2007 and August 31, 2007, the Hearing Officer concludes that the

Mother is choosing to proceed in accordance with Option B as identified in the August 31, 2007 Notice and Order. She is not at this time contesting the Board's determinations regarding the Student's standing in high school as of the start of the 2007/2008 school year based on grades and credits earned, and attendance in the 2004/2005, 2005/2006 and 2006/2007 school year. The Mother has been provided ample notice of her right to a hearing on those matters and the options available to her to resolve any disagreement she has with the Board regarding those issues.

17. A question regarding the Student's stay-put placement appears to have arisen in connection with the 2007/2008 school year. (*See* e-mail #s 30-31) The Hearing Officer makes no findings of fact regarding the statements concerning stay-put stated in Ms. Tyson's September 4, 2007 e-mail (e-mail # 31).

CONCLUSIONS OF LAW

1. Resolution of the issues to be addressed in Phase II of this matter is governed by 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 Improvement Act of 2004 (the "IDEIA"), and its implementing regulations, 34 C.F.R. §§ 300.1 *et seq.* (the "IDEIA Regulations"), and 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.* ("Conn. Regulations").²³

2. The Board is the local educational agency ("LEA") required by the IDEIA and Connecticut law to provide each child residing in its jurisdiction who has a disability and by reason thereof needs special education and related services with a "free appropriate public education" ("FAPE") designed to meet his specialized needs and delivered in the least restrictive environment ("LRE").²⁴ An LEA provides a FAPE by creating an "individualized education program" ("IEP") for each eligible child. *See* IDEIA, 20 U.S.C. § 1414(d)(1)(A). The IEP must define the child's then-current educational status, establish annual goals, and detail the special educational services and other aids that the child will be provided. *See* IDEIA, 20 U.S.C. § 1414(d)(1)(A)(i). The Board satisfies its obligations under the IDEIA if the program and placement defined in

²³ To the extent that case law cited herein that was decided under the IDEA remains undisturbed by the amendments to the IDEA reflected in the IDEIA, references in those cases to the IDEA and its implementing regulations should be interpreted to be citations to the IDEIA and its regulations.

²⁴ 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.,* IDEIA, 20 U.S.C. § 1401(9). "Special education" is defined in pertinent part at IDEIA, 20 U.S.C. § 1401(29) 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 the IDEIA at 20 U.S.C. § 1401(26) 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." IDEIA, 20 U.S.C. § 1401(3); IDEIA Regulations, 34 CFR § 300.8(a)(1)-(2).

its proposed IEP: (1) were developed in compliance with the IDEIA's procedural requirements; and (2) are "reasonably calculated to enable the [Student] to receive educational benefits."²⁵ The adequacy of an IEP is evaluated based on the IEP actually offered or provided by the LEA as stated in the PPT documentation, not an IEP that the LEA could have provided or intended to provide. *See, e.g., Summit Board of Education*, 106 LRP 60197 (NJ SEA 2006).²⁶

3. The IDEIA's procedural requirements and safeguards are designed to assure that the parents of an eligible child 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 IDEIA that a violation of the IDEIA'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 "impede the child's right to FAPE" or "significantly impede" the parents' opportunity to participate in the process of formulating the IEP or deprive the child of an educational benefit.²⁷

²⁵ *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).

²⁶ 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; (5) the projected initiation date, location 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); IDEIA, 20 U.S.C. § 1414(d)(1); IDEIA Regulation, 34 CFR § 300.320.

²⁷ *See* IDEIA Regulation, § 34 CFR 300.513(2). *See also, 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 692, 702 (10th Cir. 1998) ("technical deviations" from the IDEA's requirements do not necessarily "render an IEP entirely

4. Depending upon the eligible child's unique characteristics and circumstances, implementation of one or more of the following may be required to provide that child with a FAPE or may constitute a violation of the child's substantive right to a FAPE: (a) An arrangement under which the coursework to be completed by the eligible child is different from the coursework to be completed by a non-disabled peer taking the same class. (b) An arrangement under which the criteria applied to grade the work of the eligible child are different from the criteria applied to grade the work of a non-disabled peer taking the same class. (c) To the extent that the LEA's attendance policies affect grades and credits earned, modifying the attendance policy as applied to the eligible child. (d) An arrangement in which the requirements for graduation that apply to non-disabled students attending the LEA's schools do not apply to determine whether the eligible child has satisfied the requirements to graduate.

5. To assure that an eligible child receives a FAPE, in designing the eligible child's IEP and educational program the IEP team must determine, among other things and as a general matter, whether: (a) The coursework to be completed by the eligible child will be different from the coursework to be completed by a non-disabled peer taking the same class and if so how. (b) The criteria applied to grade the work of the eligible child will be different from the criteria applied to grade the work of a non-disabled peer taking the same class, and if so how. (c) The LEA's attendance policies affecting grades and credits earned will be modified for the eligible child and, if so, how. (d) The LEA's graduation requirements applicable to non-disabled students will be modified for the eligible child and, if so, how.

6. To the extent that any of these generally applicable LEA requirements are being modified for an eligible child and as a general matter, any such modifications should be made at a properly noticed IEP meeting at which the parent is present. At the very least the parent needs to have proper prior written notice of the modifications before they are implemented. Failure to implement any such modifications in compliance with the IDEIA's procedural requirements can constitute a denial of FAPE to the eligible child.

7. An eligible student can be denied a FAPE if the LEA fails to properly or fully implement a properly formulated IEP or unilaterally modifies the IEP.

8. Pursuant to the Conn. Regulations, § 10-76h-14, the Board has the burden of proving the appropriateness of its proposed program and placement by a

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).

preponderance of the evidence.²⁸ Connecticut law places that burden on the LEA even if the hearing is commenced by the parent. However, parents commencing a proceeding must nonetheless meet an initial burden of presenting factual evidence which, if not rebutted, would support granting them the legal relief they seek.

9. The Hearing Officer has the authority to resolve “complaints with respect to any matter relating to the identification, evaluation, or educational placement of [a] child, or the provision of a [FAPE] to such child” and may address a denial of FAPE by confirming, modifying or rejecting the identification, evaluation or educational placement of or the provision of a FAPE to the child, determining the appropriateness of a unilateral placement or prescribing alternative special education programs for the child. *See generally* IDEIA, 20 U.S.C. § 1415(b)(6); Conn. Gen. Stat. § 10-76h; Conn. Gen. Stat. § 10-76h(d)(1).

10. For purposes of planning the Student’s 2007/2008 IEP and program and until determined otherwise, the Student’s standing in high school as of the start of the 2007/2008 school year based on grades and credits earned, courses taken and attendance shall be as stated in this Phase II Decision.

11. The Hearing Officer reaches no Conclusions of Law whatsoever regarding whether the Student has been provided or denied a FAPE with respect to the following matters:

- a. Application of the so-called “20 Absence Rule” to the Student. (B37-Senteio June 7 Affidavit at ¶¶ 15-19.)
- b. Board’s determination of the Student’s grades and credits as stated at ¶¶ 30-36 of the June 7 Senteio Affidavit (B37).
- c. The Board’s actions and determinations regarding the Student’s attendance during the 2006/2007 school year in the period after October 17, 2007, as stated at ¶¶ 10-14 of Ms. Glass-McFadden’s June 7 Affidavit (B38).
- d. The Board’s actions and determinations as stated in ¶¶ 15, 16, 20, 22 and 23 of Ms. Glass-McFadden’s June 7, Affidavit (B38).
- e. Calculation of the Student’s credits and grades earned for the 2006/2007 school year, as described in ¶ 5 of Ms. Senteio’s August 15 Affidavit (B39).
- f. Whether any of the IEPs for the Student created and implemented prior to the end of the 2006/2007 school year were in compliance with the procedural and substantive prongs of the *Rowley* standard with respect to those aspects that

²⁸ *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).

concern the applicability to the Student of the Board's generally applicable policies regarding grades and credits earned, including impact of attendance on grades and credits earned.

- g. Whether the Board properly implemented those aspects of any of the Student's IEPs created and implemented prior to the end of the 2006/2007 school year that concern grades and credits earned, the impact of attendance on grades and credits earned, and the applicability to the Student of the Board's generally applicable policies regarding grades and credits earned, including impact of attendance on grades and credits earned.
- h. Whether the August 2, 2007 IEP meeting and the IEP defined at that meeting satisfy the substantive and procedural requirements of the *Rowley* standard.
- i. The Board's conclusions regarding stay-put stated in Ms. Tyson's September 4, 2007 e-mail (e-mail # 31).

FINAL DECISION AND ORDERS – PHASE II

1. For purposes of developing the Student's IEP and program for the 2007/2008 school year, the Board may proceed on the basis that the Student is entering the 2007/2008 school year as an 11th grader with grades, credits earned and attendance for the 2004/2005, 2005/2006 and 2006/2007 school years as stated herein.
2. The Student has completed his Service Learning Requirement toward graduation.
3. Nothing in this Phase II Decision is intended to alter or change any Finding of Fact, Conclusion of Law or Order entered in Phase I of this proceeding, as reflected in the Phase I Decision.