

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

X Board of Education v. Student

Appearing for the Board: William Connon, Esq.
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646 Prospect Avenue
Hartford, CT 06105

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

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

FINAL DECISION AND ORDER

ISSUE SET FOR HEARING

Whether the Board may proceed to evaluate the Student over the Mother's objection.

SUMMARY/OVERVIEW

The Board commenced this hearing to obtain an order authorizing it to conduct a comprehensive evaluation of the Student to determine the causes of his behavioral issues and his eligibility for special education and related services. For the reasons set forth more fully herein, the Board may proceed with an evaluation of the Student as directed herein and regardless of whether the Mother consents or does not consent to the evaluation. The Hearing Officer is hopeful that the Mother will recognize the potential for the evaluation to benefit the Student and ease his stress and anxiety in school, and will cooperate with the Board in completing the evaluation.

The Student is an 11 year old 6th grader attending X Middle School ("XMS"), a public school operated by the Board. Despite a confirmed history of ability to perform grade level work, the Student has had since kindergarten a consistent history of behavioral difficulties at school that have adversely impacted and continue to adversely impact his education and academic performance, and now increasingly on his peer relationships. These difficulties have not been resolved through the implementation of the regular classroom interventions that the Student's mother (the "Mother" or "Parent") has agreed may be implemented. The Student continues to manifest increasingly severe and pervasive behavioral difficulties with the result, among other things, that he may very well fail the 6th grade despite having the apparent ability to complete the work. He is becoming increasingly socially isolated from his peers and is incurring disciplinary referrals for behaviors that are likely a manifestation of a disability, including behaviors that put him at risk for danger.

Unless and until the Student is properly evaluated, the cause(s) of his behavioral difficulties will not be known and his educational needs will not be met. The Mother is clearly concerned about her son and his education, wants to do the right thing for her son and is a forceful advocate for him. She has acknowledged that the Student is experiencing “stress” or “anxiety” at school. She has, however, consistently refused to allow the Student to participate in school-based individual counseling or psychotherapy, or has agreed to allow the Student to do so only to revoke her consent almost immediately thereafter, or has conditioned her consent in a manner that effectively negates the value of the service to the Student (*i.e.*, that she participate in all counseling sessions with the Student or that the sessions be tape recorded for her so that she can listen to them later). The Mother is convinced that the Student’s behavioral issues are a manifestation of “stress” caused initially by bullying and jealousy by his peers in kindergarten and first grade, that the attitude and actions of XMS school staff are causing the Student to experience continued stress, and that the Student’s stress would be resolved if XMS staff showed respect for the Student by not telling lies about him or singling him out for discipline, by disciplining other students who are bullying him, by providing him support in writing and by implementing other suggestions by the Mother (including a suggestion made as recently as 2005 that she be allowed to sit in the classroom with the Student to provide him support she believes he needs). The Mother’s beliefs are rigid and firmly entrenched and do not accord with the objective reality being reported over an extended period of time by school personnel and a prior outside evaluator, Michael Kaplan, M.D. When the Mother’s belief system is challenged (*e.g.*, when someone will not agree with her view of the event), she becomes oppositional, argumentative and agitated.

The Mother at hearing appears to have withdrawn her objection to the requested evaluation. However, she simultaneously continued behaving in ways that will frustrate and prevent an appropriate evaluation of the Student. Accordingly, the Hearing Officer authorizes the Board to proceed with an evaluation as set forth more fully herein and without regard to whether the Mother consents to the evaluation.

PROCEDURAL BACKGROUND

A. Events Preceding the May 11, 2007 Hearing

The Board commenced this proceeding by request to the Connecticut Department of Education (“CTDOE”) dated March 29, 2007. That request (labeled as exhibit HO1) identifies the February 2, 2007 PPT as the triggering PPT for purposes of the hearing.

Over the weekend of March 31-April 1, 2007, the Hearing Officer received a voice mail message from the Mother. In that message, the Mother asked for an explanation of the Notice of Appointment of Hearing Officer and related forms she had received from the CTDOE regarding this due process hearing and described the commencement of this hearing as “bullcrap.” She also stated in the voice mail that District staff were telling lies about her son and that she had complained to Ms. A (the

Superintendent of Schools) and the Board itself with no results. The Hearing Officer attempted to contact the Mother several times on Monday April 2, 2007 to respond to her voice mail inquiry and set up a time for a telephonic pre-hearing conference (“PHC”). The only telephone number provided for the Mother was a cell phone. When the Hearing Officer called the cell phone number, an automated message stated that the cell phone’s mail box was full. There was no option to leave a message for the Mother.

The Hearing Officer was able to contact the Mother on April 3, 2007. The Mother was agitated about the commencement of this hearing process. She asked questions about the process, but was not receptive to explanations. Her responses indicated that, in addition to being frustrated with the Board, she was not at the time interested in cooperating or willing to cooperate in this hearing process. She was advised that because this matter had been commenced by the Board, unless the Board withdrew its request the hearing would proceed with or without her participation. In response, she stated that she would terminate the proceeding by either going to court to have this matter “dismissed” or by withdrawing her son from school. The Hearing Officer advised that while the hearing remains pending, he will schedule dates for hearing and pre-hearing activities consistent with the requirements of the applicable statutes and regulations. At that point, the Mother stated that she was very busy over the next few weeks, that she had no time to attend to matters related to the hearing and that she would contact the Hearing Officer when she was available. The Hearing Officer explained that he would make an effort to schedule events in this matter to accommodate the schedules of both parties but that he needed to schedule at least a date and time for the PHC. The Mother refused to cooperate in that effort. The Hearing Officer advised of the difficulties he had had in reaching the Mother and of the need for an efficient way to contact the Mother about matters in this proceeding. The Hearing Officer requested a supplemental telephone number and an e-mail address. The Mother declined to provide either. At this point, the telephone call was terminated.

The Hearing Officer spoke with Mr. Connon (the Board’s counsel) on April 3, 2007 to arrange for a PHC. On April 4, 2007, an Initial Order was issued defining a procedural schedule and establishing a PHC for April 10, 2007 at 11:30 a.m.

The Board’s counsel attended the April 10, 2007 PHC as provided in the order. The Mother was contacted on her cell phone. She advised that she was in court at the time, could not talk and would contact the Hearing Officer when she had time. When asked to identify another time on either April 10 or April 11 to convene the PHC, she advised that she had a number of personal matters to attend to and would not initially identify a time. She also repeatedly stated during this telephone call that she had not “agreed to the hearing.” She ultimately agreed that the PHC could convene at 3:00 p.m. on April 10, 2007. The Board’s counsel agreed to participate in a PHC at that time.

At 3:00 p.m. on April 10, 2007, the Hearing Officer attempted to contact the Mother on her cell phone with the Board’s counsel on the telephone. The Mother did not answer her cell phone and the Hearing Officer was unable to leave a message because the cell phone’s mail box was “full” and not accepting further messages. The PHC continued

in the Mother's absence. Based on discussion with the Board's counsel, the issue set for hearing was identified as stated above and the procedural schedule stated in the Initial Order was modified in an order issued on April 11, 2007. That Order directed the Board to submit its witness list and record on May 4, 2007, the Mother to submit her witness list and record on May 9, 2007, set an initial hearing date for May 11, 2007 at 9:30 a.m. at the Board's offices and set June 12, 2007 as the date for issuance of the Final Decision and Order based on the March 29, 2007 date of the Board's request for a hearing. The Mother was further directed that should she retain counsel, that her counsel was to contact the Hearing Officer as soon as possible.

The Hearing Officer was concerned that the Mother may not have understood the due process hearing procedures for a local educational agency ("LEA")-initiated hearing. To minimize prejudice to her rights by any such lack of understanding, on or about April 11, 2007 the Hearing Officer contacted Mr. Badway of the CTDOE's Due Process Unit to ask that he speak with the Mother regarding due process hearing requirements and procedures. Mr. Badway subsequently advised the Hearing Officer that he had spoken with the Mother.

On April 27, 2007, the Hearing Officer received a telephone call from the Mother. The Mother had received the April 11, 2007 orders and was agitated because the Hearing Officer had not advised her that he was a lawyer. The Mother stated that she did not want to have anything to do with the hearing because the Hearing Officer was a lawyer. The Mother was not receptive to attempts by the Hearing Officer to explain the nature of the hearing process, the role of the Hearing Officer and the distinction between being a hearing officer presiding over a case and being an attorney representing a party to a case. She became hostile and rude over the course of the conversation. The Hearing Officer terminated the telephone call in light of the Mother's refusal or inability to conduct an appropriate conversation. The Hearing Officer became concerned, however and in light of this call, that the Mother may have been confused about the role of the Hearing Officer, and may have decided not to participate further because of a mistaken belief that the Hearing Officer was representing a party to this proceeding adverse to the Mother. To assure that any decision by the Mother to not participate further in this proceeding was not based on a mistaken assumption about the role of the Hearing Officer, on April 27, 2007, the Hearing Officer again contacted Mr. Badway to ask him to speak with the Mother to explain the hearing process and procedures to her. Mr. Badway subsequently advised the Hearing Officer that he had spoken to the Mother.

On May 5, 2007, the Hearing Officer issued another order confirming the date, place and time for the May 11, 2007 hearing and stating again the issue to be addressed at hearing. On May 7, 2007, the Hearing Officer received a telephone call from the Mother. The Mother during this conversation advised the Hearing Officer that he had been rude to her during the prior telephone call and needed to stop being rude.¹ The Mother had received the May 5, 2007 order and asked why the statement of issue for hearing

¹ The Hearing Officer completely disagrees with the Mother's assessment of the prior telephone call. However, the Hearing Officer notes that in this telephone conversation the Mother expressed her view and otherwise conducted herself appropriately.

indicated that she was objecting to the evaluation requested by the Board. The Hearing Officer explained that that was the issue being presented by the Board. In response she stated that she did not object to the evaluation and that the Board was wrong. She was advised that if that was her position, she needed to come to the hearing to state that on the record. She stated then that she was tired of the Board ruining her health and life, and her son's education. She was told that the hearing would be her opportunity to tell her side of the story. She stated that she wanted to mediate the dispute and was advised to contact Mr. Connon to discuss that with him. She stated that this was "not a good time" for the hearing, which the Hearing Officer understands to mean in context that because she did not see the need for a hearing she did not want to participate and did not want it to proceed. The Hearing Officer explained again that the Board had commenced this case and that unless and until the Board withdrew the case, it would proceed as scheduled. She stated that she would go to court to get this matter dismissed and would advise the Hearing Officer of the outcome of that action.

B. The May 11, 2007 Hearing

Hearing commenced on May 11, 2007 at 9:30 a.m. at the Board's offices at X High School ("XHS"). The Mother appeared for the hearing at approximately 10:10 a.m. Upon her arrival, she announced her intention to tape record the hearing for her "record" and proceeded to set up a tape recorder. The Hearing Officer stated that the Mother would not be allowed to tape record the proceeding, but rather that the Hearing Officer would order that a transcript prepared by the Court reporter be sent to the Mother. The Mother ignored the Hearing Officer, completed the set-up of the tape recorder, turned it on and refused to turn it off. She stated that she had spoken to Mr. Badway who had told her that she could tape record the proceedings if she desired to do so. The Hearing Officer asked her to confirm her statement, and she did. The hearing then went off the record and the Hearing Officer called Mr. Badway to confirm whether he had in fact told the Mother that she could tape record the hearing. Mr. Badway advised the Hearing Officer that he had spoken with the Mother and had told her that she could have a copy of the hearing transcript but had not told her that she could tape record the proceeding. This matter went back on the record and the Hearing Officer advised the parties of his communication with Mr. Badway and again requested that the Mother turn off and put away her tape recorder. She refused and the Hearing Officer requested that a security officer be summoned. The Resident State Trooper arrived and the Mother was advised that if she did not turn off and put away the recorder, she would be escorted from the hearing room and the hearing would continue in her absence. She ultimately put away the tape recorder and the hearing resumed.

After this incident was resolved, the Hearing Officer relayed to the Board his conversation with the Mother of May 7, 2007 and asked the Mother if she was objecting to having her son evaluated as proposed by the Board. She stated that she would not answer that question. In light of that response, the Hearing Officer stated he would assume that she was objecting and examination of witnesses, which had been interrupted by the Mother's arrival, resumed.

Other than making occasional comments under her breath regarding the testimony being provided by these witnesses, the Mother participated appropriately during the examination of Ms. B and Ms. C (the Board's first two witnesses). She had received and brought with her the set of Board exhibits, took notes and asked questions of the witnesses based on her notes and the exhibits. The Mother's participation remained appropriate until Mr. D (the Board's third witness) took the stand. Throughout the direct examination of Mr. D, the Mother made comments under her breath disparaging Mr. D's credibility and character. The Hearing Officer elected to ignore this behavior in the interest of avoiding further confrontation with the Mother and disruption of the flow of the testimony.² When it became time for the Mother to cross-examine Mr. D, her participation in the hearing became increasingly inappropriate. She would essentially state her point of view regarding an event, ask Mr. D if he agreed with her point of view and if dissatisfied with his answer, challenge him on why he did not accept her point of view by asking basically the same question over and over again. Her tone of questioning became increasingly hostile and her agitation level began increasing as well. She was advised at several points that she needed to move on to another subject. That approach was not effective as the Mother's agitation continued to escalate, at which point the Hearing Officer advised that her questioning was not relevant to the issue at hand and that she would be given approximately 20 minutes to conduct her cross-examination of Mr. D.

At this point, in response to comments of Mr. D and the Mother, the Hearing Officer again asked the Mother if she was taking the position that her son should not be evaluated. She ultimately stated that she had no objection to having a psychological evaluation of the Student done by a clinical psychologist as proposed by the Board. At this point, the examination and cross-examination of witnesses was terminated by the Hearing Officer. The Board had previously offered to have the evaluation done at its expense by an evaluator of the Mother's choice, provided that the evaluator was qualified to perform a psychological evaluation. The Board had renewed that offer at the hearing. When asked if she had identified an independent evaluator that she wanted to use, the Mother stated that the reason why she had been late to the hearing was that she had been meeting with an evaluator. When asked, however, she refused to disclose the identity of her proposed evaluator. At this point, the Hearing Officer concluded that even though she had withdrawn her objection to having the evaluation done, the Mother would be unwilling or unable to work cooperatively with the Board to complete an evaluation of the Student. The Hearing Officer advised the parties on the record that he would enter as his Final Decision and Order in this matter, and without regard to whether the Mother consented to the evaluation subsequently, an order authorizing the Board to proceed with an evaluation of the Student.

C. Board Exhibits and Witnesses

² The Board's counsel is commended for his restraint in not objecting to the Mother's behavior, which was inappropriate and objectionable conduct for a hearing.

The Board's proposed record includes documents labeled B1-B83 inclusive. At hearing on May 11, 2007, all of these documents were admitted into the record.³ During the examination of Ms. C, the Mother questioned what B83 at 13 was. Board witnesses testified it was a drawing that the Student had done. The Mother claimed that she had never seen it before and wanted to know how it came to be in his records and who had provided it. To the extent that this is an objection to B83 at 13, it is overruled.

The Board identified the following as witnesses who would testify on its behalf: Ms. A Superintendent of Schools; Ms. B Special Education Teacher at XS; Mr. D XMS Principal; Ms. C 5th and 6th grade teacher; Ms. E XMS School Psychologist; Ms. F Special Education Teacher at XMS; and Ms. G Special Education Coordinator at XMS. Ms. A, Mr. D and Ms. G were present throughout the hearing. Testimony was provided by Ms. A, Mr. D, Ms. C and Ms. B. As indicated above, the Hearing Officer terminated the proceeding during the Mother's cross-examination of Mr. D and prior to the completion of the Board's case. The Board did not object.

D. Mother Exhibits and Witnesses

The Mother did not submit any documents or identify any witnesses. At hearing, she appeared to want to offer two letters that she had written into evidence. When offered the opportunity to do so, however, she ultimately declined to do so.

E. Hearing Officer Exhibits

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

HO1 Request for Due Process dated March 29, 2007.

F. Post-Hearing Submission

At hearing the Board asked the Hearing Officer to enter an order authorizing the Board to transport the Student to and from the evaluation site if necessary to effectuate the evaluation. In response to the Hearing Officer's request, the Board on May 16, 2007 submitted a statement of its argument in support of the proposition that the Hearing Officer has the authority to enter an order allowing the Board to transport the Student as requested.

FACTUAL BACKGROUND

Attachment A to this Final Decision and Order summarizes the documentary and testimonial evidence in this matter, and provides the factual background. A citation to certain testimony and/or documentary evidence as a fact ("F") to support a Conclusion of Law is not meant to suggest that the referenced evidence is the only evidence supporting

³ All documents admitted into the record are being treated for evidentiary purposes as a business record of the entity which created the document.

that Conclusion. Rather, citations to specific evidence are for illustrative purposes and not meant to exclude other admissible evidence supporting that Conclusion.⁴ To the extent that any portion of this Final Decision and Order states a Finding of Fact or a Conclusion of Law, the statement should be so considered without regard to the given label of the section of this Decision in which that statement is found. *See, e.g., Bonnie Ann F. v. Callahan Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).⁵

LEGAL FRAMEWORK AND STANDARDS

1. This proceeding is 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”).

2. Pursuant to Conn. Regulations § 10-76h-14, the Board has the burden of proving by a preponderance of the evidence that an order should enter authorizing it to conduct an evaluation of the Student over the Mother’s objection.⁶

3. The Board is obligated by the IDEIA and Connecticut law to provide “special education” and “related services” to a child subject to its jurisdiction who has a “disability” and as a result thereof, requires special education and related services. *See* IDEIA, 20 U.S.C. § 1412(a); IDEIA Regulations, 34 C.F.R. §§ 300.1-300.2, 300.8; Conn. Gen. Stat. § 10-76d(a)(1). The Board has an obligation to identify and evaluate all children residing within its jurisdiction who either have or are suspected of having disabilities and are or may be in need of special education and related services as a result of those disabilities. *See, e.g.,* IDEIA, 20 U.S.C. § 1412(a)(3); IDEIA Regulation, 34 C.F.R. § 300.111. Before providing special education and related services to such a student, however, the Board is required to conduct a pre-placement or initial evaluation of the student to determine whether the student has a disability and what educational and related services may be required.⁷

⁴ Findings of fact stated herein are based in part on an assessment of witness credibility. Where a Conclusion of Law or finding of fact expressly or implicitly credits a version of events offered by one witness as opposed to the version offered by another, the citation reflects a conclusion as to credibility on that point.

⁵ A citation herein in the form “F#” refers to the referenced numbered paragraph in Attachment A. A citation in Attachment A or herein in the form “B#” or “P#” refers to a document in the record, and in the form “([Name] Date Trans.” refers to testimony of a witness on that date.

⁶ *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).

⁷ *See, e.g.,* IDEIA, 20 U.S.C. § 1414(a)(1)(A); IDEIA Regulation, 34 C.F.R. § 300.301(b); Conn. Regulations at §§ 10-76d-6; 10-76d-7; 10-76d-10(a)-(b).

4. A pre-placement or initial evaluation is defined as an individualized assessment of a child performed to obtain data to enable an IEP Team to determine whether the child is eligible for special education and related services and the special education and related services that the child (if determined to be eligible) requires to be provided with a free appropriate public education (“FAPE”) in the least restrictive environment (“LRE”).⁸ The initial or pre-placement evaluation is conducted consistent with the procedures and requirements stated in IDEIA Regulations, 34 C.F.R. §§ 300.301 through 300.311.⁹ Connecticut’s special education laws impose essentially the same requirements for initial or pre-placement evaluations. *See* Conn. Gen. Stat. § 10-76ff; Conn. Regulations § 10-76d-9.

5. Once a child has been identified as eligible to receive special education and related services, the LEA is required to conduct periodic evaluations of the child to determine, among other things, whether the child remains eligible to receive special education and related services and, if so, what special education and related services are required to provide the child with a FAPE in the LRE.¹⁰ These periodic post-placement evaluations are referred to as “reevaluations.”

6. The procedural safeguards applicable to an initial or pre-placement evaluation are also applicable to reevaluations. The Board is required under both Federal and state law to obtain the consent of the Mother (who is the Student’s legal guardian) to conduct a pre-placement or initial evaluation or a reevaluation of the Student.¹¹ To be

⁸ *See, e.g.*, IDEIA, 20 U.S.C. §§ 1412(a)(1); 1412(a)(5).

⁹ A pre-placement or initial evaluation is not the same as a “screening” of the student by a teacher or a specialist to determine appropriate instructional strategies for implementation in a classroom. *See* IDEIA Regulation, 34 C.F.R. § 300.302 (screening “shall not be considered to be an evaluation for eligibility for special education and related services”). Although a screening of a student is not an evaluation itself, the fact of the screening, the findings of a screening and the effect of any interventions implemented as part of a screening form data that can be considered in the initial evaluation when determining the student’s eligibility for special education and related services and if eligible designing the IEP.

¹⁰ *See* IDEIA Regulation, 34 C.F.R. § 300.305(a)(2)(i)(B) (LEA must periodically examine whether the child “continues to have such a disability, and the educational needs of the child: (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (iii)(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.”).

¹¹ *See generally*, IDEIA, 20 U.S.C. §§ 1414(a)(1)(D); 1414(a)(2)(B)(ii); 1415(d)(1)(A)(i); IDEIA Regulations, 34 C.F.R. §§ 300.504(a)(1); 300.9; 300.303(a) (requiring that LEA conduct reevaluation in accordance with the provisions of the IDEIA applicable to evaluations stated in IDEIA Regulations, 34 C.F.R. §§ 300.304 through 300.311), 300.303(b) (defining circumstances under which a reevaluation must be performed). *See also* Conn. Regulations § 10-76d-8 (procedures for conducting evaluations and reevaluations).

valid, the Mother's consent must be fully informed which for purposes of the IDEIA means that:

- (a) She "has been fully informed of all information relevant to the activity for which [her] consent is sought, in [her] native language, or other mode of communication; [and]
- (b) [She] understands and agrees in writing to the carrying out of the activity for which [her] consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (c) (1) [She] understands that the granting of [her] consent is voluntary . . . and may be revoked at anytime.

IDEIA Regulation, 34 C.F.R. § 300.9.¹² As part of the process of securing parental consent to an initial or pre-placement evaluation or a reevaluation, the LEA must provide the parent with a statement of the procedural safeguards available to the parent.¹³

7. Under Federal and state law, the Board may but is not required to pursue an initial evaluation or reevaluation of the Student if the Mother refuses to consent or fails to respond to a request for consent for the evaluation. If the Board chooses to pursue the initial evaluation or reevaluation in that circumstance, it may ask a due process hearing officer to override the Mother's objection to the evaluation and order that the evaluation may proceed.¹⁴

8. The IDEIA also provides the Mother with the right to obtain at the Board's expense an independent educational evaluation ("IEE") or "private evaluation." Because a student's educational program and placement are premised upon the results of an initial evaluation or subsequent reevaluations, the IEE serves as a mechanism to challenge the results of the LEA's evaluation where the parents disagree with the results of the evaluation. An IEE is an evaluation conducted by a qualified examiner who is not

¹² Parental consent is not required before either reviewing existing data as part of an evaluation, or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. *See, e.g.*, IDEIA Regulation, 34 C.F.R. § 300.300(d).

¹³ An agreement between a parent and the LEA regarding an evaluation is not the same as parental consent for purposes of IDEIA Regulation, 34 C.F.R. § 300.9. *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46641 (August 14, 2006) (an agreement refers to an understanding between a parent and the public agency and does not need to meet the requirements for parental consent).

¹⁴ *See* IDEIA Regulation, 34 C.F.R. § 300.300(a) and (c); IDEIA, 20 U.S.C. § 1414(a)(1)(D)(ii); Conn. Regulations § 10-76h(d)(1) ("In the case where a parent or guardian . . . has refused consent for initial evaluation or reevaluation, the hearing officer may order an initial evaluation or reevaluation without the consent of such parent or guardian.").

employed by the LEA responsible for the child's education. The Mother has the right to obtain an IEE at any time and to ask the Board to consider the results of an IEE in determining what is FAPE in the LRE for the Student.¹⁵ However, the Board's obligation to pay for the IEE is limited. For each evaluation conducted by the Board, the Mother has the right to one IEE at public expense if the Mother disagrees with the Board's evaluation. The Board is not required to pay for an IEE requested by the Mother, if the Board (a) promptly commences a due process hearing and in that hearing obtains a determination that its evaluation was appropriate; or (b) obtains a determination in a hearing that the evaluation obtained by the Mother for which reimbursement is sought did not meet agency criteria.¹⁶

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Board is the local educational agency ("LEA") responsible under Connecticut law for providing the Student with a public education, and under the IDEIA and Connecticut law for providing the Student with special education and related services if he is eligible to receive special education and related services.¹⁷
2. The Student is a resident of the Town of X. (F1)
3. The Mother is the Student's legal guardian.
4. The Student is an 11 year old 6th grader attending mainstream classes at the Board's public middle school. The Student has not previously been identified as eligible to receive special education and related services, and is not currently identified as eligible.
5. In his academic career to date, the Student has attended 4 public schools in 3 different school districts. Starting in kindergarten and continuing consistently throughout his academic career to date, the Student has manifested behavioral difficulties which have adversely impacted and continue to adversely impact his academic performance. (See F6, 19c-e, 24, 26b, 30f, 39d-e, 46) Since the Student began attending the Board's schools in the 3rd grade:

¹⁵ The LEA's obligation to consider the IEE in determining FAPE in the LRE does not, however, translate into an obligation to accept the IEE or its recommendations.

¹⁶ See generally IDEIA, 20 U.S.C. §§ 1415(b)(1) and (d)(2)(A); IDEIA Regulation, 34 C.F.R. §§ 300.103, 300.502(a)(3)(i)-(ii), 300.502(b)(2)-(5); and 300.502(c). Pursuant to IDEIA Regulation, 34 C.F.R. § 300.502(e): (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the Mother's right to an independent educational evaluation. (2) Except for the criteria described in 34 C.F.R. 300.502(e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an IEE at public expense.

¹⁷ As used generally in this Final Decision and Order, the term "Board" refers to both the board of education and the school district, and the term "District" refers generally to administrative and other staff employed by the Board who are directly involved in providing an education to the child.

- a. The Student's behavioral issues at school have included and currently include, among other things: off task behavior in class, disruptive, disrespectful and oppositional or argumentative behavior, immature, regressive behavior, lack of attention, impulsivity, fidgety behaviors, distractibility, tantrums, lying, and emotional outbursts, and task refusal/resistance. (*See, e.g.*, F2b,3e, 17)
 - b. The Student has been incurring disciplinary referrals and consequences for these behaviors, with consequences that have now begun to include suspensions.¹⁸ (*See* F29, 31, 39d, 50, 53, 54, 55, 57, 59, 67, 69, 70, 71-73, 86, 87, 89, 90, 97, 103-105, 148, 150, 152, 154, 156)
 - c. The Student is having increasing difficulty in maintaining positive peer relationships at school and is becoming more socially isolated. Some of the behaviors that are resulting in disciplinary referrals appear to reflect efforts to engage with peers. (*See, e.g.*, F3e, 44, 50, 59)
 - d. The Student has manifested chronic problems with tardiness. In every grade since the 3rd grade, the Student has been tardy to school at least 25% of the days he actually attended school. His chronic tardiness has become more severe in the 6th grade and has significantly adversely impacted his academic performance in both the 5th and 6th grades. To date, the Board has been unable to obtain from the Mother an explanation for the chronic tardiness. (*See* F3d, 5b, 7, 8, 11, 19A, 46A, 58, 65, 82, 140, 160, 162)
 - e. The Student's grades are inconsistent. In some classes he will attain good grades in one marking period, only to attain failing or close to failing grades in the same class in the next marking period. The failing or near failing grades are associated with the behavioral issues identified above and to some extent tardiness which has caused him to miss instructional time. (*See, e.g.*, F81, 137, 140, 160)
 - f. The Student's behavior can vary significantly from day to day. (*See, e.g.*, 19b, 134)
 - g. In the 5th grade, the Student was withdrawn from several classes due either to behavioral issues themselves, or due to behavioral issues interfering with his academic performance such that he had essentially failed the course. (*See, e.g.* F81)
 - h. The Student has evidenced distress about his inability to control his behavior and the resultant consequences. (*See* F3e, 39g)
6. A variety of regular education classroom interventions and supports have been provided to the Student over an extended period of time. Those supports and interventions have included: 1:1 writing support; a behavior management system in which the Student was

¹⁸ This outcome would not be unexpected in the circumstances – if the Student's disciplinary referrals are associated with a disabling condition which remains unidentified and therefore untreated, the Student would continue to incur disciplinary referrals and as less severe consequences failed to deter his problematic behaviors, he would incur more severe disciplinary consequences over time.

removed from class and placed in a resource room setting when behavioral issues interfered with his performance; multiple Mother-teacher conferences; access (albeit substantially limited by the Mother) to guidance and psychological individual and group counseling services within the school; preferential seating; assistance with organization of materials; and positive reinforcement behavior management systems. Some of these interventions appeared effective at addressing the targeted behavioral or performance issue but only for short periods. (See F16, 20, 31, 41, 47, 60, 62, 74, 75, 151)

7. In the 5th and 6th grade, the Student's teachers began observing that the Student's behavioral issues increased as the demands or expectations for independent functioning for students in the class or grade as a general matter increased. Given the choice of sending the Student out of class (where he would have no exposure to the curriculum) or keeping him in class (where he would at least be exposed to the curriculum), his teachers concluded that it was more important to try to keep the Student in the class as much as possible. They found that the Student could be maintained in the class more easily if expectations or demands placed on him were lowered. The Student's 5th and 6th grade teachers implemented this approach with the Student. The Student, however, continues to exhibit difficulties and behavioral issues even with lowered expectations.¹⁹ (See F61, 64)
8. On February 1, 2006 (Student's 5th grade year) and on November 1, 2006 (Student's 6th grade year), XMS staff referred the Mother twice to the Connecticut Department of Children and Families ("DCF") for educational neglect and other inappropriate behaviors with the Student observed by XMS staff. DCF remains involved with the family. (See F66, 116, 124)
9. On two prior occasions (once in the 4th grade, September 30, 2004; and once in the 6th grade; April 5, 2006), the District referred the Student for evaluation to determine his eligibility for special education and related services. Those prior evaluations determined that the Student's behavioral issues are not manifestations of certain disabilities, but in part because of limitations placed on the evaluations by the Mother, were not sufficient to determine the cause or causes of the Student's chronic behavior issues. (See F26; 75)
 - a. The first evaluation assessed processing-based learning disabilities, intellectual functioning and achievement levels. This assessment found that the Student did not at the time have a processing based learning disability. The Student's non-compliant behaviors during the assessment resulted in an inability to obtain a valid assessment of intellectual functioning, but demonstrated higher than anticipated achievement levels. (F27, 30, 33d)
 - b. The second evaluation (performed by Dr. K) was broader and sought to answer the question of what was causing the behavioral difficulties that the Student was manifesting at school in light of the results of the first evaluation. Dr. K diagnosed the Student as having Oppositional Defiant Disorder ("ODD") based on the information available to him. Dr. K's report states that further evaluation is warranted

¹⁹ While this may have been an appropriate strategy in the circumstances, the Hearing Officer notes that this strategy may in fact be masking the extent and severity of the Student's disabilities.

to clarify the Student's diagnosis and that his evaluation was not definitive in part because of limitations placed by the Mother on the information made available to Dr. K. (F39)

10. The Student appears to have the intellectual capability to do grade level work and when his behaviors do not interfere he produces quality grade level work. (F2d, 3c, 19b, 30i-j, 33b, 46, 59, 60, 145, 160) The Student can produce orally more easily than he can produce in writing. Issues with written production have been evident since late elementary school and continue to date. (F3f; 30i; 62)
11. The Mother and the Board agree that the Student is having behavioral problems in school and that those behavioral problems are having a substantial adverse affect on his education. The Mother and the Board disagree, however, as to the cause or causes of the behavioral problems.
 - a. The Board is seeking an evaluation to establish whether the Student's behavioral issues reflect one or more disabilities which would entitle the Student to receive special education and related services.
 - b. The Mother consistently blames the Student's behavioral problems at school on inappropriate or retaliatory attitudes or reactions of school staff toward her son, failure of school personnel to recognize and respond to alleged bullying of her son by other students, failure to address his writing issues, telling lies about her son and about the Mother and failure to implement her suggestions (which have included, among other things, that the Mother be permitted to participate in the classroom to assist her son). The Mother has in the past school year insisted that staff members apologize to her son for their treatment of him. She claims that the school's treatment of her son is causing him to have a "mental disorder." However, the Mother also reports and expresses concern that the Student is experiencing high levels of stress and anxiety in school, has acknowledged that some of his behaviors warranted discipline and has reported that the student's peers are picking on him. (See 4A, 14, 26c, 33c, 39b-c, 43, 52, 56, 77-79, 84, 85, 91, 94, 96, 98-102, 106, 107, 109, 110, 113, 121-122, 125-128, 130-134, 136, 138, 141-142)
12. On March 13, 2007, the Student's physical education teacher, Mr. H, provided the following report about the Student's participation in the most recent sequence of three physical education classes. (F153) This report illustrates the type of behavioral issues the Student has manifested and continues to manifest at school. As explained below, the highlighted text suggests that aspects of the Student's behavioral issues may reflect a sensory integration dysfunction or fluctuations in arousal level.
 - a. Class 1 (Wednesday March 7): Approximately ten minutes into the class, the Student was asked to leave and go to the office. "***At the end of a round of a game he decided to sit on the floor and start a [sic] screaming. Two students stated he was upset with the outcome of the game which instigated the situation.*** [Mr. H] observed him and at no time towards the end of that round did he get hit with a ball. [The other students]

also stated he was not hit with a ball in the head at all in the game. ***He has occasionally acted out in this manner and usually can reenter the game or activity after calming down*** and having a talk with [Mr. H] on the side. [Mr. H attempted to talk to the Student but the Student] was ***non-responsive to multiple lines of questioning***. [Mr. H then asked the Student to sit in the bleachers, resumed the class and then went over to the Student to ascertain what the issue was. In response, the Student] got up and went three feet where ***he decided to lay on the ground and start crying and pitching a fit again***. [Mr. H attempted to approach the Student again and the Student responded by] immediately ***jump[ing] up and shout[ing] at the top of his lungs for me to ‘shut up and leave him alone.’*** [Mr. H] asked once more for him to stop and then the [Student] repeated [his statement] again with an ***additional comment that ‘[Mr. H did] not care or love him.’*** Mr. H then asked the Student to go to the office. The Student “refused twice then finally left after milling in the hall for a minute or two.” Approximately twenty minutes later the Student returned to the gym with the nurse. The Student had apparently gone to the office and advised that he had sustained an injury in the class. After conferring with Mr. H, Mr. H reported that the nurse concurred that there was no basis for a claim of an injury. Mr. H notes that the Student has on several occasions manifested a behavior problem and then “transfer[red] it to a non existing medical issue.” (B73 at 2-3)

- b. Class 2 (Friday March 9): The Student has been “***starting to lash out physically towards other students and himself. [In this class], he was caught twice throwing himself towards the wall and on the floor . . . At the end of the class he was doing well until he threw himself into the wall backwards for no reason.*** I conferred with four separate students who clearly stated that no one was within ten feet of him and he hurt himself. I approached him right when I heard him go down concerned for his health and safety. There I was greeted with a thunderous response ‘I am not a behavior problem.’ [Mr. H advised the Student that he was coming to check to see if the Student was all right because Mr. H was concerned about the Student hurting himself.] [The Student] ***then lost total control of his emotions. During which he started to fiddle with his hands aggressively. This then led to him biting his own hand hard for about a minute. I stayed with him working on his breathing and after five minutes or so he calmed down. He also at this point switched his demeanor 180 degrees back to the normal happy [Student].***” The note from this class also references some “racquet incidents” but does not clearly describe what that refers to. (B73 at 2)
- c. Class 3 (Wednesday March 13): ***This class was a “perfect class” for the Student. “He was by far the most polite and well behaved I have ever seen him this year.”*** (B73 at 2)
13. The highlighted text suggests that the Student’s behavior difficulties may to some extent reflect a sensory integration dysfunction or managing arousal level, with the result that the Student sometimes reacts to stimuli inappropriately (he becomes emotionally agitated over an event or circumstance which would not provoke such a reaction in most students) and that his presentation is inconsistent (sometimes he reacts appropriately, sometimes inappropriately to the same stimuli). The references to the Student “fiddling aggressively” with his hands, “biting” his hand, working on his breathing and his “180 degree” changes in

behavior could all be manifestations of sensory integration issues.²⁰ The reference to the Student returning to the next class and having a “perfect class” may reflect a difference in arousal level state in that class as opposed to prior classes, and is consistent with reports that the Student’s behavior and compliance can vary from class to class over the course of a day or from day to day. The Student’s reaction to Mr. H’s attempt to assess whether he was physically hurt may reflect the type of learned behavior predicted by Dr. K – the Student has observed the Mother’s reaction to school personnel and is learning to incorporate that into his own behavioral repertoire. (F39h5)

14. Not unexpectedly, the Student incurred a disciplinary referral for the incident in Class 1 (after school detention for disrespectful behavior and insubordination, and disturbing the class; F154). The Mother’s reaction to this event illustrates the operation of her own belief system about the Student and the school. (F155) She believes that Mr. H failed to consider that the Student was elbowed by his peers and hit with a ball during this class, and attributes those events to the cause of his behavioral problems. It is understandable that with that view of the event, the Mother would not view it as appropriate to discipline the Student. It is quite possible that the Student was elbowed by peers during this class in the course of the activity – during physical education students will jostle each other. However, even assuming that the Mother is correct about the jostling, her approach still causes her to miss the bigger question – which is why the Student sometimes has such a severe reaction to being jostled.
15. A comprehensive evaluation of the Student, including a psychoeducational evaluation, would clarify whether the Student’s behavioral issues are a manifestation of a disability, the nature of the disability, the Student’s eligibility for special education and related services, and further interventions that would be helpful to the Student to enable him to succeed in school.
16. Given the Student’s academic history and his present circumstances, the District has appropriately concluded that the Student should be referred again for an initial or pre-placement evaluation to determine his eligibility to receive special education and related services. Regardless of whether he is found eligible, that evaluation could explain the cause(s) of his behavioral problems. Unless and until a full psychoeducational evaluation (at a minimum) of the Student is completed, the cause(s) of the Student’s behavioral issues will remain undetermined and therefore unresolved, and the Student’s educational, psychological, emotional, social and physical well-being will be jeopardized.
17. The scope of the evaluation proposed by the District at the February 2, 2007 PPT, which includes an assessment of intellectual/cognitive functioning, achievement, current academic performance levels, and psychological, behavioral, social and emotional issues, is appropriate. (F146c)
18. The Board has satisfied its obligations under the IDEIA and Connecticut law to notify the

²⁰ Other indicators of this type of problem may be reflected in Ms. C’s report that the Student destroyed his science project for no apparent reason or crashes into lockers when he is upset. (F3e) What the Mother perceives as anxiety or stress may in fact reflect the manifestation of a sensory integration issue.

Mother of its proposal to conduct an evaluation of the Student and to secure her informed consent to the evaluation.

- a. The District provided the Mother with a copy of the procedural safeguards and otherwise advised her of her due process rights. (F144)
 - b. The proposed evaluation was discussed with the Mother at the February 2, 2007 PPT, which was duly noticed, which she attended and at which she participated actively. (F144, 146, 147)
 - c. The Mother was presented with a notice and consent to evaluate form which defined the substance of the evaluation and informed her of her due process rights. (F146c)
 - d. The Mother appears to be capable of understanding the nature of the evaluation and what it means to give consent to the evaluation.
19. The District asked the Mother at the February 2, 2007 PPT to execute a form that authorizes a reevaluation, rather than an initial or preplacement evaluation. As a technical matter, however, the evaluation at issue is an initial or preplacement evaluation rather than a reevaluation, as those terms are used in the IDEIA. The use of the wrong consent form could constitute a violation of the procedural requirements of the IDEIA. If this was a procedural violation, on the facts any harm that flowed from the violation was *de minimis* and this procedural “violation” did not impair or interfere in any way with the Mother’s participation in the decision-making process.²¹ The notice and consent provisions

²¹ The IDEIA defines numerous procedural safeguards which operate to assure that the parents have a meaningful and full opportunity to participate in their child’s educational programming and decisionmaking. 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. *See* IDEIA Regulation, § 34 CFR 300.513(2). *See, e.g. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629 (4th Cir. 1985) (repeated failure to notify the parents of their procedural rights to challenge the proposed IEP over a several year period deprived them of a meaningful opportunity to test whether the proposed IEP complied with the IDEA); *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479 (9th Cir. 1992) (child denied FAPE where school developed IEP independently, without participation of child’s parents or teachers); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990), *cert. denied*, 499 U.S. 912 (1991) (to invalidate IEP based on procedural violations “there must be some rational basis to believe that procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation educational benefits”); *Urban v. Jefferson County School Dist., R-1*, 89 F.3d 720, 726 (10th Cir. 1996) (deficient IEP did not in that case amount to a denial of an appropriate education); *O’Toole By and Through O’Toole v. Olathe Dist. Schools Unified School District No. 233*, 144 F.3d 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*

applicable to obtaining consent for an initial or preplacement evaluation apply generally to reevaluations. Similarly, the “consent override” provisions available for initial or preplacement evaluations are also applicable to reevaluations.²² The consent to reevaluate form presented to and discussed with the Mother at the February 2, 2007 PPT defined her legal right to revoke consent, advised her of the nature of and reason for conducting the proposed assessment, and advised her of her right to utilize due process procedures. The Mother was provided a copy of the procedural safeguards.

20. Completion of an evaluation of this type on a voluntary basis would require full cooperation and support of the Mother. Notwithstanding that she has apparently withdrawn her objection to the evaluation, the Mother is, and likely will remain, either unable or unwilling to provide the cooperation and support required to complete this evaluation.
 - a. The Mother requested an “independent evaluation” of the Student in a letter to Mr. D dated January 25, 2007. As used in her January 25, 2007 letter, the term “independent evaluation” means a request that the Board pay for a psychological evaluation of the Student by an evaluator of the Mother’s choice who was not employed by the Board. At the February 2, 2007 PPT, the District agreed to use an evaluator identified by the Mother for this purpose provided that the Mother’s proposed evaluator was qualified to conduct the evaluation. The District also agreed to pay for the evaluation. (F143, 144, 146)
 - b. The Mother claimed at hearing that she was forced to sign that document by Ms. A. Ms. A testified that she prepared the letter after discussing the issue with the Mother and did not force the Mother to sign it. There is no merit to the Mother’s claims. Among other things, the Mother voluntarily attended the February 2, 2007 PPT at which her request was to be discussed, participated in the discussion, reported that she was identifying or had identified an evaluator to perform the evaluation, and discussed executing a consent to evaluate form. (F146, 147, 158)
 - c. The Mother has not objected to those aspects of the evaluation involving administration of a WISC and a WIAT or completion of behavior rating scales. However, she has also not given her consent for these aspects of the evaluation to proceed notwithstanding that she could have done so and preserved her objection to the psychological evaluation. (F147)
 - d. Shortly prior to the May 11, 2007 hearing, the Mother advised the Hearing Officer that the Board’s claim that she objected to an evaluation was false and that she did not object to an evaluation. If that was the Mother’s position, then she could have terminated this proceeding at any time in advance of the May 11, 2007 hearing date by advising the

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).

²² *See generally*, IDEIA, 20 U.S.C. § 1414(c)(3); IDEIA Regulation, 34 C.F.R. § 300.300(c)(1)(ii); 34 C.F.R. § 300.300(a)(3).

Hearing Officer or the Board that there was no issue in dispute, thereby allowing the evaluation to proceed. The Mother chose instead (i) to impede this proceeding by not cooperating with the Hearing Officer with respect to pre-hearing proceedings; and (ii) to try to terminate this proceeding. At hearing, the Mother refused initially to state whether she was or was not objecting to the request for an evaluation. She later stated that she did not object to a psychological evaluation of the Student by a clinical psychologist who was qualified to perform such an evaluation.

- e. At the February 2, 2007 PPT, the Mother reportedly stated that she had identified an evaluator. She refused, however, to identify the evaluator and made clear that she did not want the District to have any communication with the evaluator or to provide any information or records to the evaluator. Although she had just agreed at hearing to having an evaluation performed and the Board had agreed that her evaluator could do the evaluation provided the proposed evaluator was qualified, the Mother still refused to identify the evaluator.
- f. The Mother has very strongly held and firmly entrenched beliefs regarding the causes of the Student's behavioral issues. The Mother views the issue in terms of being good or being bad, disrespectful and rude. In most cases, the Mother believes that the behavioral issues identified by District staff are the result of bad attitudes, or rude and disrespectful behavior of District staff to the Student. When the Mother's views of the cause or causes of the Student's problems are challenged or questioned in any way, she becomes oppositional and resistant. She can quickly become agitated, argumentative and oppositional.
- g. Given her apparent view of the issue, the Mother has consistently frustrated the efforts of school staff to implement therapeutic interventions to address the Student's behavioral issues. The Mother has over a multi-year period rejected efforts to involve the Student in individual counseling or psychotherapy at the school, or has agreed to allow him to participate in those services but only with the Mother's presence. The Mother agreed to an evaluation by Dr. K, but refused to provide information requested by Dr. K to enable him to make a diagnosis, with the result that Dr. K's evaluation was inconclusive, and time that could have been spent providing help the Student needs was lost. (*See* 40, 45, 49, 51, 56, 63, 78, 92, 119)
- h. The Mother's interaction with the Hearing Officer, her demeanor as observed by the Hearing Officer, the Mother's interactions at hearing with school personnel who would be responsible for conducting and coordinating the evaluation, the history of the Mother's relationship with Board and school personnel as presented in the testimonial and documentary evidence, the Mother's interactions with Dr. K as reported by Dr. K, the Mother's efforts to sanitize the Student's educational records by having removed from those records any documents or materials that are not consistent with her view of the causes of the Student's difficulties, the history of the Mother's interactions with personnel at other school districts as presented in the record, all indicate to the Hearing Officer that the Mother has a limited awareness or understanding of the potential nature of her son's issues and has over an extended period of time not been receptive to

explanations that are inconsistent with her view of the issue. The Hearing Officer believes that the Mother is trying to do what she thinks is right by her son. However, her assessment of her son's circumstances does not correspond well with the objective reality and her own issues appear to be interfering with her ability to make appropriate decisions about meeting her son's needs.²³

21. The Mother appears to have withdrawn her objection to the proposed evaluation but has not consented to having the evaluation done. An order authorizing the Board to proceed with a full psychological and educational evaluation of the Student as it has requested is appropriate and required in the circumstances to protect the educational interests of the Student.
22. The District has asked that the Hearing Officer issue an order authorizing it to transport the Student to the evaluation if the evaluation is conducted off-site. The Board concedes, however, that it could find no statutory or case law support which would authorize the Hearing Officer to enter such an order. The Hearing Officer is unaware of any statute or case that would authorize him to provide such relief.

FINAL DECISION AND ORDERS

1. The Board may proceed to perform a comprehensive initial evaluation in accordance with the requirements of the IDEIA and Connecticut law to determine the Student's eligibility for special education and related services, and in any event to identify the cause(s) of the Student's behavioral issues at school.
2. Until such time as the evaluation has been completed and the results have been presented to and considered by a PPT, all communications between the District and the Mother regarding the evaluations should be handled by one designated representative of the District. Within three (3) school days of the date of this Final Decision and Order, the District shall identify to the Mother in writing its designated representative for this purpose, and provide the Mother with telephone, e-mail and US mail address contact information for this representative. District staff are to be advised that any questions or communications directed to them by the Mother regarding the evaluation(s) are to be referred to this designated representative. The designated representative should be involved in the arrangements for the evaluation(s) or at least be knowledgeable about them.
3. The Board may:
 - a. Evaluate the Student's intellectual functioning and cognitive abilities by administration of one or more standardized assessment instruments including but not limited to the

²³ The record indicates that the Mother has some awareness that the Student's behavioral issues may reflect a disability, and that she has some ambivalence about that (reflected in, for example, agreeing to have an evaluation performed and then subsequently conditioning her consent in ways which undermine the efficacy of the evaluation and defeat its purpose; agreeing that the Student could participate in school-based counseling, only to subsequently revoke her consent or impose terms on his participation which would have negated the value of providing the service to him). (See F18, 33-37, 39f, 93, 111)

- current version of the Wechsler Intelligence Scale for Children (“WISC”).
- b. Evaluate the Student’s achievement levels by administration of one or more standardized assessment instruments including but not limited to the current version of the Wechsler Individualized Achievement Test (“WIAT”).
 - c. Assess the Student’s current level of academic performance by completing a Curriculum Based Assessment and/or such other assessments as it deems appropriate.
 - d. Assess the Student’s social development, level of adaptive functioning and behavior by various behavior rating scales and checklists, such as the Connors, the Vineland and the Achenbach as appropriate.
 - e. Reassess whether the Student has a learning disability or processing deficit.
4. Regardless of who performs the evaluations identified above, these evaluations shall be at Board expense. The results of any aspects of these evaluations that are performed directly by District personnel are to be shared with any independent evaluator identified to perform the psychological evaluation described below.
 5. The Board shall proceed to have a comprehensive psychological evaluation of the Student performed by one or more licensed clinical psychologists and/or psychiatrists, who are qualified to administer tests, interpret and report on the results, and develop recommendations based on the results, as follows.
 - a. The purpose of the evaluation is to determine whether the Student meets the diagnostic criteria for a psychological or psychiatric disorder, to assist in the determination of whether any such disorder is a disability within the meaning of the IDEIA, and to make recommendations for further evaluations and therapeutic or educational interventions to address the Student’s needs. The psychological evaluation should be sufficient in scope to rule in or rule out the following disorders as an explanation for the Student’s behavioral issues at school: Post Traumatic Stress Disorder (“PTSD”), Aspergers Syndrome, Obsessive-Compulsive Disorder, ODD, Attention Deficit Hyperactivity Disorder, Attention Deficit Disorder, an affective disorder, Social Anxiety Disorder, Generalized Anxiety Disorder, Pervasive Developmental Disorder – Not Otherwise Specified and thought disorder.²⁴
 - b. The individual(s) performing this evaluation shall not be Board employees. The evaluation shall be at Board expense.
 - c. The Board shall by no later than ten (10) calendar days after issuance of this Final Decision and Order identify in writing for the Mother its proposed evaluator(s), and

²⁴ The Hearing Officer has specifically included PTSD, Social Anxiety Disorder and Generalized Anxiety Disorder in light of the Mother’s reports that the Student is experiencing high levels of anxiety and stress. The Hearing Officer notes that manifestations of anxiety and/or stress may also be symptoms of other disorders identified in this list.

provide her the names, addresses and mail and telephone contact information for them.

6. If the Mother wants to propose an evaluator to perform the psychological evaluation, the following procedures will apply.
 - a. The Mother must by or before 4:00 p.m. on May 30, 2007 provide the Board in writing with the name, mailing address and telephone contact information for her proposed evaluator. The Mother must have contacted the evaluator and determined that the evaluator has agreed to perform the evaluation directed by this Final Decision and Order prior to identifying the evaluator to the District.
 - b. The Mother must by or before 4:00 p.m. on May 30, 2007 sign and provide the Board an authorization to disclose in a form prepared by the Board. That authorization to disclose shall provide for the fullest and most complete exchange of information between the evaluator and the Board regarding the Student, including but not limited to: (1) an authorization for the Board to provide all records in its possession regarding the Student to the evaluator; (2) an authorization for the Board to provide (whether orally or in writing) any other information in its possession regarding the Student requested by the evaluator to complete the evaluation; and (3) an authorization to the evaluator to provide a written report of the evaluation to the Board, to discuss the evaluation and the evaluation results with the Board, and to communicate with appropriate Board personnel regarding the evaluation and the evaluator's recommendations, conclusions, test results and diagnoses, whether at a PPT or otherwise.
 - c. The Mother must by or before 4:00 p.m. on May 30, 2007 sign and provide to the Board an authorization to disclose in a form prepared by the Board which provides for the fullest and most complete exchange of information between the evaluator and the Student's pediatrician regarding the Student, including but not limited to: (1) an authorization for the pediatrician to provide all records in his/her possession regarding the Student to the evaluator; (2) an authorization for the pediatrician to provide (whether in writing or orally) any other information in his/her possession regarding the Student requested by the evaluator to complete the evaluation; (3) an authorization to the evaluator to provide information regarding the Student to the pediatrician; and (4) authorization to the evaluator to communicate to the Board the information provided by the Student's pediatrician in the evaluator's report and as part of the discussion of the evaluator's recommendations, conclusions, test results and diagnoses, whether at a PPT or otherwise.
 - d. The Mother must by or before 4:00 p.m. on May 30, 2007 sign and provide to the Board an authorization to disclose in a form prepared by the Board that provides for the fullest and most complete exchange of information between the evaluator and any provider of mental health services that has or is working with the Student or the Student's family regarding the Student, including but not limited to: (1) an authorization for the provider to provide all records in its possession regarding the Student to the evaluator; (2) an authorization for the provider to provide (whether in

writing or orally) any other information in his/her possession regarding the Student requested by the evaluator to complete the evaluation; (3) an authorization to the evaluator to provide information regarding the Student to the provider; and (4) an authorization to the evaluator to communicate to the Board the information provided by the provider both in the evaluation report and as part of the discussion of the evaluator's recommendations, conclusions, test results and diagnoses, whether at a PPT or otherwise.

- e. The Mother must by or before 4:00 p.m. on May 30, 2007 provide the Board in writing on a form acceptable to the Board, authorization for the Board to transport the Student to and from the site for the evaluation to be performed by the Mother's proposed evaluator.
 - f. The Board will determine whether the Mother's proposed evaluator is qualified to perform the required evaluation(s) in accordance with the IEE provisions of the IDEIA. If the Board is in agreement that this individual may perform the evaluation(s), and the required authorizations to disclose are executed and delivered to the Board, and the evaluator can complete the evaluation and produce a report in a reasonably timely basis, the Board shall proceed to have the Student evaluated using this evaluator. Otherwise, the Board shall advise the Mother in writing why it is declining to use her proposed evaluator, and may proceed with the evaluator(s) of its choice consistent with this order.
7. The Board is authorized to provide the evaluator(s) with a copy of this Final Decision and Order, a copy of all of the documents contained in the Board's record in this case (including all prior evaluation results), and any other documents in the Board's possession that the Board believes is appropriate to enable the evaluator(s) to complete the evaluation, or that is requested by the evaluator(s). The Board shall provide a copy to the Mother of any documents provided by the Board to the evaluator(s).
 8. The Board shall provide the Mother with a copy of any written communication that it has with the evaluator(s), including pre-engagement written communications.
 9. District personnel are authorized to speak with the evaluator(s) to provide the evaluator(s) with information they believe is pertinent to the evaluation or that is requested by the evaluator(s). The District shall advise the Mother of any such oral communications and ask that the evaluator(s) identify any such oral conversations in his/her report as a source of information used to evaluate the Student. The evaluator(s) shall be authorized to observe the Student at school, and shall identify the dates of any such observations in their report(s).
 10. Even if the Mother advises that she agrees or consents to the evaluation(s) authorized by this Final Decision and Order, the evaluation(s) are being authorized and are to be conducted pursuant to this Order which reflects a determination that the Mother's consent to the evaluation(s) is not required and that any objection that she has to the evaluation is being overridden, provided that the evaluation is conducted in accordance with the terms of this Order.

11. The evaluation(s) undertaken pursuant to this Final Decision and Order may proceed without the Mother's presence or involvement if her cooperation cannot be secured or if the evaluator determines that the Mother's presence will be counterproductive. The District may consider any conditions that the Mother desires to have put on the evaluation(s), but is not obligated to conduct the evaluation(s) in accordance with those conditions. The evaluator(s) shall have the discretion to determine the extent to which the Mother may be present during the evaluation(s) and shall note in their reports the extent to which the Mother was present.
12. With respect to a psychological evaluation performed by the Board's evaluator rather than the Mother's proposed evaluator:
 - a. Since anxiety or stress can be caused by physical conditions as well as psychological disorders, the evaluation of the Student should consider any factors in his medical history which may explain the behaviors at issue. To the extent that the District does not already have such an authorization from the Mother, the District shall ask the Mother to execute a written release authorizing a full and complete exchange of information regarding the Student and his behavioral issues at school between the Board and the Student's current pediatrician and between the evaluator(s) and the Student's current pediatrician, so that the information may be considered by the evaluator(s) and the PPT as part of the eligibility determination. This Order is being entered in light of the Mother's reports that the Student is experiencing anxiety at school and to determine whether there is any physical or medical condition at work that would be causing that anxiety.²⁵
 - b. The Student has apparently been involved in outside counseling in the past. To the extent that the District does not already have such an authorization from the Mother, the District shall ask the Mother to execute a written release authorizing an exchange of information regarding the Student between the Board and any provider of mental health services who has been working with the family or the Student and between the evaluator(s) and any such provider so that the information may be considered by the evaluator(s) and the PPT as part of the eligibility determination.²⁶
13. The Board should assess whether any lack of cooperation or other behavior by the Mother which impedes or obstructs, or has the effect of impeding or obstructing the completion of the evaluation(s) authorized by this Order constitutes neglect that the Board should report to DCF in its capacity as a mandated reporter under Connecticut law and for the purpose of enlisting DCF's assistance in securing compliance by the Mother. The Board should consider whether any such report to DCF should include a copy of this Final Decision and Order.

²⁵ If the Mother will not consent to this exchange of information, the evaluation should proceed. The Board should document its efforts to secure the Mother's consent.

²⁶ If the Mother will not consent to this exchange of information, the evaluation should proceed. The Board should document its efforts to secure the Mother's consent.

14. The District and/or the evaluator(s) shall consider whether an evaluation of the Student to determine if he has a sensory integration dysfunction is warranted and, if the District concludes that such an evaluation would be useful to determine programming and planning for the Student, ask the Mother to consent to such an evaluation.

15. The District should, to the extent possible and to the extent that the independent evaluator(s) will agree, conduct the evaluation at XMS, XHS or at the Board's offices. It is the hope of the Hearing Officer that the Mother and the District can work together to complete the evaluations so that the results may be considered at a PPT convened prior to the start of the 2007/2008 school year, which in turn would permit arrangements for special education and related services to which the Student would be entitled to be in place at the start of the 2007/2008 school year.

A. General Information

1. The Student is currently a resident of the Town of X. (Statement of Counsel and Ms. A, 5/11 Hearing Trans.)
2. Ms. B testified as follows, among other things:
 - a. Ms. B has been employed by the Board since 1986 as a teacher. She is a certified special education teacher (pre-K to 6th grade) and has a Masters degree in special education (K-12). (B 5/11 Test.)
 - b. Ms. B first met the Student when he was in the 4th grade at X School. The Student was in an inclusion class and Ms. B was providing services to other students in the class. She observed that the Student was having difficulty complying with classroom norms. He required many prompts to perform the task, was non-compliant and broke pencils for no apparent reason. Ms. B participated in the September 30, 2004 PPT convened to conduct an initial evaluation of the Student to determine eligibility for special education and related services. (B 5/11 Test.)
 - c. Ms. B supports conducting a full psychoeducational assessment of the Student at this time. (B 5/11 Test.)
 - d. Although it is difficult to determine what the Student is capable of doing because of his non-compliant behaviors, the Student's academic placement in the 5th grade was appropriate. (B 5/11 Test., direct and cross)
 - e. Ms. B has never observed Mr. D to "yell or scream" at the Student. (B 5/11 Test.)
3. Ms. C testified as follows, among other things:
 - a. Ms. C is currently a 6th grade teacher at XMS. She has a BA in Elementary Education, an MA in Educational Psychology (Gifted & Talented), and a Connecticut state certification (provisional; pre-K to 8th grade). She has been employed for 3 years with the Board, and prior to that had been teaching for 6 years. (C 5/11 Test.)
 - b. Ms. C was the Student's language arts, math and social studies teacher in the 5th grade (2005/2006 school year) and is his language arts and math teacher in the 6th grade (2006/2007 school year). In the 5th and 6th grade, the Student spent most of his day with Ms. C. (C 5/11 Test.)²⁷
 - c. Ms. C provided B55 and B83 to illustrate what the Student is capable of performing. These documents are similar assignments in Language Arts and Math over the course of time. The Student's performance on them was very different over time. On occasions

²⁷ Mr. D testified that XMS made a deliberate decision to transfer Ms. C to the 6th grade for the 2006/2007 school year in substantial part so that she could continue to teach the Student and provide him some continuity across major portions of his academic day from the 5th to the 6th grade. (D 5/11 Test.)

when the Student's behaviors are not interfering with his ability to participate, the Student is capable of producing grade level quality work. On occasions when the Student's behaviors are interfering with his ability to participate, he does not produce and accordingly fails. (C 5/11 Test.)²⁸

- d. In terms of 6th grade, Ms. C cannot provide any evidence of the Student's progress because of his frequent absences and tardies and his refusal to produce written work. As the expectations for independent functioning have increased for all students from the first semester to the second, the Student's performance and grades have declined. He is failing in the 3rd and 4th marking periods and Ms. C is concerned that he will not pass the 6th grade curriculum. (B69; B76 at 5) The Student has missed an increasing percentage of school over the past few weeks and is not turning in his homework. The Mother calls for the homework and it is left in the office for her, but the Student rarely turns anything in. (C 5/11 Test.)²⁹
 - e. Ms. C has observed the Student having "temper tantrums" in response to frustration. When sent from class, at times he is "resigned" and will simply leave the room. At other times he becomes angry and tearful and Ms. C has observed him crash into the lockers and walls when in the hallway after being asked to leave class. He desires interaction with his peers, but does not currently have positive interactions with peers that Ms. C has observed. The Student is a "loner." At times he is tearful in school. She described an incident in which he had completed a science project for extra credit and brought it into school. Ms. C and he talked about it and then it was put on a shelf until science class. Later that morning, the Student became frustrated, took the project off the shelf, put it into the trash basket and destroyed it by "stomping" on it. Ms. C does not know what precipitated that event, but reported that the Student was quite upset about it. (Ms. C 5/11 Test.)
 - f. He is able to produce orally but has substantial difficulty producing written work. (Ms. C 5/11 Test.)
 - g. Ms. C has never observed Mr. D to "yell" or "scream" at the Student. (Ms. C 5/11 Test.)
- 4A. Through her questions she was presenting pieces of her case and the Hearing Officer elected to swear her in so that her statements could be treated as testimony. Based on the Mother's questioning of Board witnesses, and consistent with statements that she has made in documents in the Board's record, the Mother's position is that the Student is experiencing stress in school that is caused by the Board's failure to address her concerns (for example by not adjusting his 5th grade curriculum; by not responding appropriately to

²⁸ The Mother claims that the drawing at B83 at 13 was not produced by the Student because she does not recognize it. (Mother 5/11 Test.)

²⁹ On cross examination, the Mother suggested that the Student was doing the homework and asked Ms. C if Ms. C had an explanation for why he was not turning it in. Ms. C stated that she had no explanation in response to the Mother's suggestion that the Student is simply not turning in the work.

events in which the Student was being injured in gym class by other students; and by unfairly disciplining her son; and by not providing a “certified writing tutor” for the Student). (Mother 5/11 Statements)

- 4B. Over the course of the hearing, the Mother’s demeanor and behavior varied substantially and seemed at times to be inappropriate for the event. For example, at the end of the hearing, the Mother distributed a white carnation to various witnesses and the Hearing Officer stating that the white carnation symbolized her son and peace. While this was a nice gesture, it did not seem appropriate in the circumstances.
5. Mr. D, XMS Principal, testified as follows, among other things:
- a. Mr. D has a Masters degree in education, and has completed the coursework for a Ph.D. in secondary education. He has been XMS Principal for 22 years. (D 5/11 Test.)
 - b. The Student is eligible to take the school bus and had not been removed from the school bus or lost his bus privileges. The Mother started driving him to X School in the morning and Mr. D has never been able to get a clear answer from her that explains why the Student is tardy so frequently. (D 5/11 Test.)

B. 2000/2001 School Year (Kindergarten)

6. In September 2000, the Student began attending kindergarten at a public elementary school (“School A”) operated by another District (“District A”). Comments from his teacher on a copy of his report card included in the record indicate that the Student was having difficulty staying on task, controlling his behavior, and with his attention span, social skills, work habits and following directions. Staff noted that he was responsive to positive reinforcement and showed some improvement in these areas over the course of the school year. An end of the year summary indicates that the Student is verbal and able to express himself and had made some limited improvement in social skills. “He still is disruptive in class, making noises, falling out of his chair, and disturbing others. He often needs to be pulled back to task, especially during longer activities. He often acts impulsively.” Staff recommended the Student be given a readiness screening to determine whether he should be placed in the “Readiness Class” for the next school year. (B1 at 6-10)³⁰
7. In reviewing the Student’s kindergarten records, Ms. E (a school psychologist at XMS) noted that the Student was absent 23 times and tardy 68 times during this school year, and that the Mother initially refused the readiness screening but then changed her mind after the deadline had passed. (B64 at 1)³¹

³⁰ The copy of the records from this school year included in the record has the words “Bad Reports – Wrong” written on them, as well as an “X” which the Hearing Officer believes was done by the Mother.

³¹ Assuming a 181 day school year, the Student was absent for 12% of the school year and tardy on 43% of the days he attended school in this year.

C. 2001/2002 School Year (First Grade)

8. In September 2001, the Student began attending first grade at a public elementary school ("School B") in another District that was not District A ("District B"). He attended School B for the first marking period and was then withdrawn by the Mother who "home schooled" him for the remainder of that school year. Staff at School B noted that the Student enjoyed reading and science, but was "having extreme difficulty with appropriate social skills," "difficulty staying focused" and "need[ed] constant reminders to stay on task." (B1 at 4-5)
9. In her review of the records from this school year, Ms. E noted that District B recommended that a PPT be convened for the Student but the Mother declined. (B16 at 5)

D. 2002/2003 School Year (Second Grade)

10. In September 2002, the Student began attending second grade at another public elementary school ("School C") operated by District B. His report card for that year indicates on grade level performance in Language Arts and Mathematics, with progress ratings in all areas over the course of the year ranging from "Satisfactory" to "Excellent." Continued difficulties with staying on task, following directions, distracting others and interactions with peers were noted by several teachers over the course of the year. Teachers also noted that his academic performance was inconsistent and that his social/behavioral performance improved with 1:1 teacher assistance (B1 at 11-13)
11. In her review of the Student's records, Ms. E noted that the Student was absent 12 times and tardy 38 times in this school year. (B64 at 1)³²

E. 2003/2004 School Year (Third Grade)

12. The Student first started attending the Board's public schools in the 2003/2004 school year as a 7 year old third grader at the X SCHOOL. At that time, the Mother identified the Student as performing at grade level in reading, above grade level in Math and below grade level in Writing. She executed a release authorizing X SCHOOL to obtain the Student's records from School B. (B1 at 1, 3)
13. On September 12, 2003, the Mother executed a release authorizing X School to communicate with Mr. J of Branford Counseling. (B2 at 1-2)³³
14. On September 29, 2003, the Mother wrote a letter to Ms. L (X School Principal) (B3 at 3) which states as follows:

This letter is to ask that no one from outside X Schools speak [sic] with [the Student]

³² Assuming a 181 day school year, the Student was absent for 7% of the school year and was tardy on 22% of the days he attended school in this year.

³³ There was no testimony on this, but it appears that the Student or the Mother or both were receiving counseling at the time.

about anything without my permission, only school personnel. I would appreciate that you call me if anyone approaches the school about my child because I have to protect him from any bad influences. I am doing this because of the nature of the lies that have been reported about him and I in the past. I wholeheartedly want my child and every other child to have a safe and productive learning environment. Please call me if there is question [sic] about anything.

15. On September 30, 2003, Ms. M (a school psychologist at X School) conducted a 50 minute in-class observation of the Student and reported as follows: The Student had difficulty remaining on task, did not participate in the assignment given to the rest of the class, was pushing his desk, lifting his foot to try to touch the hair of the female student in front of him, giggling, shaking his papers, and laughing out loud. After being moved to a different desk, the Student began “fiddling with the blinds,” continued to refuse to do the task, tapped the table and chair with his pencil, and crawled on the floor from the table to his desk. The Student was noted to fail to respond to direction without a reminder and even with the reminder could be non-compliant. He did participate in a story-listening activity for 15 minutes without a problem after an initial manifestation of non-compliance. (B3)
16. B4 is a packet of materials regarding ADHD and classroom strategies that can be implemented to support children with ADHD that Ms. N, the Student’s third grade teacher utilized with the Student. (B 5/11 Test.)
17. On September 30, 2003, Ms. N completed a behavioral checklist identifying numerous problematic behaviors, including: rushing through assignments with little to no regard to accuracy or quality of work; easily distracted; unsuccessful in activities requiring listening; does not hear all of what is said; needs oral directions frequently repeated; has difficulty concentrating; does not work on assignments during class time; is disorganized; cannot work independently; does not remain on task; does not listen to or follow verbal directions; does not follow school rules; begins assignments before receiving directions or instructions; does not follow instructions or directions; will not wait his turn; grabs things from other students; blurts out answers; interrupts the teacher and other students; talks to others during quiet time; appears restless and fidgety; bothers other students who are trying to work; makes unnecessary comments or noises; makes unnecessary physical contact with other students (hugs, touches); fails to comply/refuses to comply; does the opposite of what he is told to do; ignores the consequences of his behaviors; cannot follow rules of games; changes from activity A to activity B without finishing Activity B; leaves seat without permission; cannot work in a group situation; “spins or twirls” objects; talks at inappropriate times; leaves seat without permission; hops, skips or jumps rather than walk and demonstrates inappropriate behaviors when moving with a group. (B5)
18. On October 2, 2003, the Mother gave her permission (B6 at 1) for the Student’s classroom teacher to complete the Connors Teacher Rating School (“Connors Scale”) and to have the results, along with a summary of observations made by Ms. M (B3) and the informal behavior ratings prepared by school staff (B4-B5) sent to Mr. J, Dr. O (the Student’s pediatrician) and the Mother.

19. The Student's 3rd grade report card (B7) shows the following, among other things:
- a. The Student was absent 11 days and tardy on 48 days in this school year.³⁴
 - b. Comments of the Student's teachers indicate collectively and generally that over the course of the year the Student's academic performance and behavior was inconsistent, that the Student was capable of doing the work, and that behavioral issues (staying on task, "annoying" other students, compliance with directions) were negatively impacting his academic performance.
 - c. The "November Teacher Comments" note that the Student is a "bright, articulate and engaging child" and a "capable learner" whose "success is hampered by behaviors unusual for a third grader. He needs frequent reminders to stay in his seat and to attend to the task at hand. He has difficulty accepting responsibility for his mistakes, and he fabricates stories. Academic and social growth is impacted. He appears to be more successful in a structured but nurturing environment in which expectations and limits are clearly defined, and consequences, both positive and negative, are consistently reinforced." (B7 at 3)
 - d. The "March Teacher Comments" note that the Student has had a "challenging term" but that when he is "engaged in his learning and applies himself to his tasks, he has experienced success." The Student's "behavioral issues continue to significantly impact his academic and social growth." (B7 at 3)
 - e. The "June Teacher Comments" state that the Student's progress since March has been "inconsistent." Reading has remained a strength for him and he continues to improve. "While he appears to grasp new concepts in Math, Science and Social Studies, poor test results reflect his inability to attend during class and to apply his study skills." The Student is a "capable child." He "continues to have difficulty conforming to school and classroom rules" and "requires a great deal of supervision and guidance to perform his assigned tasks." (B7 at 1)
20. The Student was referred to the Child Assistance Team ("CAT"), was provided classroom modifications, participated in Lunch Bunch group counseling and was referred to the Child Study Team ("CST"). (B64 at 2) The CAT is a routine meeting of District staff at which students identified by the regular education teacher as struggling with school are discussed and interventions developed. If those interventions are not successful, the student will be referred to the CST which includes special education teachers and the school psychologist. If the interventions implemented by the CST are not successful, the next step would be a referral for evaluation to determine eligibility for special education and related services. (B 5/11 Test.)

³⁴ Assuming a 181 day school year, this means the Student was absent 6% of the school years and tardy on 28% of the days he attended school.

F. 2004/2005 School Year (4th Grade)

21. In September 2004, the Student entered X SCHOOL as a 4th grader.
22. At that time, the Student executed a contract in which he agreed to follow the teacher's directions at the time she asks so as not to disrupt the classroom activities and to look directly at the teacher when she is talking so that the teacher knows that he is listening. (B8) Ms. B believes that the Student's 4th grade teacher (Ms. P) required all of her students to sign this contract, and that it was not generated specifically for the Student. (B 5/11 Test.)
23. On a September 15, 2004 administration of the Connecticut Mastery Test ("CMT"), the Student mastered 11 of 18 strands in Mathematics, 0 of 3 strands in Reading Comprehension, and 0 of 2 strands in Editing and Revising written product. All of these results are outside of the goal range. (B9 at 1)
24. On September 22, 2004, the District notified the Mother that the Student was being referred to determine his eligibility for special education and related services by his classroom teacher. The referral was prompted by both academic and behavioral issues. The Student was described as having "extreme difficulty following simple directions," difficulty in all subject areas and in consistently completing homework. "He is defiant and prefers to do as he chooses." Preferential seating and a behavior contract using stickers for positive behaviors were implemented without success. "Many" conferences with the Mother have been had since the start of school. (B10)
25. The Mother waived the 5 day notice requirement and a PPT was scheduled for September 27, 2004. The form notes that the procedural safeguards were provided with the notice. (B11 at 1) A second notice dated September 22, 2004 states that the PPT date was changed to September 30, 2004 at the Mother's request and that the procedural safeguards were provided to the Mother with the notice. (B11 at 2)
26. The minutes of a PPT convened on September 30, 2004 (B11 at 4-6) indicate the following, among other things:
 - a. The Mother attended and was provided a copy of the procedural safeguards with the minutes of the PPT. (B11 at 6)
 - b. Staff reported that the Student was having difficulties following directions and was showing resistant and defiant behaviors in all settings, that homework and task completion was inconsistent, and that his social and behavioral development was delayed. Given his behaviors, his Art teacher expressed concerns about the Student's use of tools in the art class (such as an Exacto knife) without implementing safety protocols. Various strategies to address these behavioral issues (preferential seating, organizational strategies, repetition of directions) had proven ineffective. The Student was reported to have some awareness of the problematic nature of his behaviors and some frustration with being unable to control them. Staff recommended an evaluation to determine, in part, whether the observed behaviors reflect a "language/learning

and/or a processing problem.” (B11 at 5)

- c. The Mother reported that the Student had experienced a “high degree of school related stress in his previous schools” and that she had “home schooled [him] in grade one.” The Mother also reportedly “recognizes his delayed academic and social development.” (B11 at 5)
27. On September 30, 2004, the Mother executed a consent to conduct an initial evaluation to determine eligibility for special education and related services, and which would assess cognitive, academic, social/developmental, and behavioral functioning. (B11 at 3) The form states that the Student is being referred for an evaluation to determine his eligibility for special education and related services, that the Mother’s consent is required by law for the evaluation, that the procedural safeguards were being provided to the Mother, that the Mother has the right to revoke her consent at any time, that the Mother has the right to review the evaluation results, that the Mother has the right to an independent educational evaluation, and that the Mother has the right to utilize due process procedures. The form identifies a specific District employee the Mother can contact to obtain an explanation for the procedures described in the procedural safeguards. Immediately above the block for the Mother’s signature if she gives consent is a statement that: “I give my consent for the X Public Schools to utilize the evaluations described above. I understand that this consent may be revoked at any time.”
28. On October 4, 2004, the Mother asked school staff for feedback regarding the assessment results at the end of each day of assessment, expressed concern about the amount of time the Student was being removed from the class for the assessment, wanted to be notified about each removal, and asked that arrangements be put into place for staff to check on a daily basis that all of the Student’s assignments have been correctly written down. (B14)
29. In October 2004, the Student’s teacher reported that due to inappropriate behaviors displayed in various settings, the Student has been sent “to the office sixteen times” since the start of the school year and was not allowed to attend a field trip. He is now being brought back and forth to school by car and has improved recently in getting to school on time. A behavior plan (“BP”) was developed for implementation pending the results of the evaluation. The BP provided for daily feedback and positive and negative consequences for behavior, among other interventions. (B15)
30. On October 4, 5 and 6, 2004, Ms. M (a school psychologist employed by the Board), Ms. B and Mr. Q (a speech and language pathologist employed by the Board), conducted an evaluation of the Student to determine whether and to what extent a “learning/language/processing” disability was contributing to the Student’s problematic behaviors at school. Their report (B12) indicates the following, among other things:
 - a. The Student participated appropriately in the evaluation sessions, with some impulsivity noted at times. (B12 at 2-3)
 - b. The Mother was asked to complete a Social/Developmental Questionnaire but declined

to do so reportedly because she did not want the information to be part of the Student's public record. (B12 at 1)

- c. The Student was observed while taking the CMTs. He completed "very little" of the CMT and instead spent his time laying across his desk, playing with the divider and rolling or tapping pencils. (B12 at 3)
- d. On the Wechsler Intelligence Scale for Children – Fourth Edition ("WISC-IV"), the Student manifested such a significant discrepancy between his nonverbal reasoning abilities (which were stronger) and his verbal reasoning abilities (which were relatively less developed), that the evaluator concluded that a Full Scale IQ score based on his VIQ and PIQ would not be valid. His Verbal Comprehension Index was a 95 (normal range) and his verbal reasoning scores were diminished by failure to elaborate his answers even when prompted to do so. His Perceptual Reasoning Index, by contrast, was a 121 (which is in the superior range). His Working Memory Index score was a 107 (within average range) and his Processing Speed Index score was an 88 (low average range). (B12 at 3-4)
- e. The Student's teacher completed the Teacher Report Form of the Achenbach Child Behavior Scale, and rated the Student as in the Clinical Range in the following areas: Adaptive Functioning (ability to participate appropriately in school), Withdrawn/Depressed, Social Problems, Thought Problems, Attention Problems, Rule Breaking Problems, and Aggressive Behavior Syndrome. He attained a Borderline/Clinical Range score on Anxious/Depressed Syndrome. On the Attention Problems scale, his scores for Inattention and Hyperactivity-Impulsivity were "high enough to warrant concern." On the DSM-IV scales, the Student's scores in Affective, Oppositional Defiant/Conduct Problems and Hyperactivity-Impulsivity indicated that further investigation is required to determine whether the Student meets the diagnostic criteria for these Disorders. (B12 at 4-5)
- f. The Student's teacher reported that what concerned her the most about the Student was his "highly inappropriate behavior and his difficulty following simple directions." (B12 at 5)
- g. The Parent Report Form of the Achenbach could not be scored because the Mother read some of the questions to the Student and recorded his answers instead of completing it herself. (B12 at 5)
- h. The Student's scores on the Wechsler Individual Achievement Test – Second Edition ("WIAT-II") were "higher than expected" except for Oral Expression. His score of 88 on Oral Expression reflects his refusal to give more elaborated answers when prompted. His scores overall other than Oral Expression fall within the Average to High Average Range, with Math Reasoning at 129 (Superior). He completed the Math Reasoning subtest by performing the calculations in his head and not using scrap paper provided to him. (B12 at 5)

- i. A Curriculum Based Assessment indicates that the Student can read grade level text. The Student chooses not to write or to write minimally and it is therefore difficult to obtain an accurate score in the classroom. The Student has a good vocabulary based on oral discussion and is articulate and has an imagination. His scores in the Third Grade Math Assessment were in the 90 to 98 percent range, but he does not demonstrate this level of proficiency in the class and participates minimally. "It is difficult to get an accurate score in all curriculum areas due to [the Student's] inconsistency in effort and non-compliance when asked and expected to complete tasks." (B12 at 5)
 - j. The Student's hearing was found to be within normal limits. The Student did not manifest any expressive or receptive language difficulties and his scores indicate that he probably does not need further language screening. He manifested a number of self-distracting behaviors during the speech and language testing, including some task resistance and fidgety behavior. "[A]t times, [the Student] has been observed to choose not to respond to questions or elaborate when asked to do so. When he is willing to perform and when he chooses to expand his utterances, [the Student] is quite capable of producing age-appropriate conversation and oral expression." (B12 at 5)
 - k. The evaluators concluded that the Student's difficulties were associated with non-compliance rather than a Learning Disability or Processing Deficit. The evaluators recommended further assessment of Affective, Oppositional Defiant/Conduct and Hyperactivity-Impulsivity issues reflected in the test results. "It appears from all past and present school reports that [the Student's] academics are on target for his age and grade and that his area of difficulty stems from his behaviors and his non-compliance which are preventing him from producing school work on a daily basis in order to be successful. His behaviors are also impacting his social development and relationships." (B12 at 7)
31. The Student was incurring disciplinary referrals for disruptive and other inappropriate behavior in the classroom in September and October of 2004. A behavior management system utilizing stickers as positive reinforcers for appropriate behavior was implemented. The plan involved a level system: Level 1 was the classroom and the Student could remain there to do his work as long as he was compliant. If the Student failed to comply, he would complete his work in the resource room (Level II) and once done could return to class. If he could not complete his work in the resource room, he would be sent to complete his work in the main office (Level III). This type of classroom intervention could be applied to both regular and special education students. It worked for a time with the Student. (B 5/11 Test.)
 32. On November 8, 2004, a PPT to discuss the evaluation results was scheduled for November 22, 2004. The notice indicates that a copy of the procedural safeguards was provided to the Mother with the notice. (B16 at 1-2) Ms. B conducted portions of the initial evaluation, as reflected in the report (B12). Prior to the November 22, 2004 PPT, she met with the Mother individually to review the results of the report with her. Based on the evaluation, District staff concluded that the Student did not have a specific learning disability (processing deficit). (B 5/11 Test.)

33. The minutes of the November 22, 2004 PPT (B16 at 4-7) indicate the following, among other things:
- a. The Mother attended. The PPT forms do not indicate whether she was provided a copy of the procedural safeguards at the meeting or with the minutes.
 - b. District staff who had completed various aspects of the evaluation were present and reported their results. The Student's academics were generally seen as "grade appropriate" but impacted by social and behavioral issues, oppositional behaviors and problems with attention span. These behaviors also impact test performance. "The testing reveals that there is no significant learning disability, yet Curriculum Based Assessments indicated that [the Student] is not producing grade level work."
 - c. The Mother reported a history of difficulties in prior schools and high levels of anxiety. "The team agreed that if [the Student] is anxious or is unable to focus these issues need to be addressed in order for [the Student] to reach his potential. [He] appears to possess [sic] the ability but is unable to do what he needs to do when he needs to do it."
 - d. The Student "does not appear, at this time, to meet the criteria for eligibility as a Special Education student due to a Specific Learning disability. If his issues are related to anxiety and/or a history of bullying, the team recommends that [the Student] be seen by someone who can make such a determination" for further assessment to address behavioral, academic and social performance issues.
 - e. The Mother executed authorization for further psychological/behavioral assessments. Ms. M was to identify an appropriate evaluator.
 - f. The Mother requested a meeting with District staff and the Student to review expectations and "clear up any questions regarding behavior."
34. On November 22, 2004, the Mother executed a consent for a psychological and behavioral evaluation to assess issues regarding anxiety and behavior and to be performed by an evaluator to be determined. (B16 at 3) The form states that the Student is being referred for an evaluation to determine his eligibility for special education and related services, that the Mother's consent is required by law for the evaluation, that the Mother has the right to revoke her consent at any time, that the Mother has the right to review the evaluation results, that the Mother has the right to an independent educational evaluation, and that the Mother has the right to utilize due process procedures. The form does not identify a specific District employee the Mother can contact to obtain an explanation for the procedures described in the procedural safeguards and does not indicate that the procedural safeguards were provided with the form. Immediately above the block for the Mother's signature if she gives consent is a statement that: "I give my consent for the X Public Schools to utilize the evaluations described above. I understand that this consent may be revoked at any time."
35. On November 29, 2004, the Mother executed a release authorizing X School to disclose information regarding the Student to Dr. K, M.D., a psychiatrist engaged to perform the

evaluation. (B17 at 1)

36. Ms. B was involved in the process of securing the Mother's consent to conduct an evaluation on September 30, 2004 (B11 at 3) and on November 22, 2004 (B16 at 3). On both occasions, the Mother was not resistant to the evaluation proposal and cooperated in providing consent. (B 5/11 Test.)
37. On December 14, 2004, the Mother advised Ms. L that she wanted to "go over all and any cumulative files from [District B] so I can end [sic] and take out all the false information." (B17 at 2) Ms. B believes this request was associated with the evaluation by Dr. K. (B 5/11 Test.)
38. On December 17, 2004, the Mother advised Ms. L that she had asked Ms. L to explain to the Mother before she went to the appointment with Dr. K a statement made by the Student's teacher and that the Mother would consider Ms. L's failure to reply by 2:00 pm on that day as a refusal to answer. (B17 at 3)
39. The Student was evaluated by Dr. K in December of 2004. Dr. K's report (B18 at 4-7) states the following, among other things:
 - a. Dr. K noted that throughout the Student's school career (which involved attending X School in three different Districts at four different schools to that date), teachers have reported behavior problems. The Mother "reported problems in each school" and reported her belief that staff at these schools "blamed [the Student] for problems in the classroom." Dr. K noted that the Mother reported that she "did not trust any of [the Student's] teachers to protect him." (B18 at 4)
 - b. The Mother "made clear throughout this evaluation that she did not want [Dr. K or X School] to have any access to [the Student's] prior records." Accordingly, Dr. K notes that the background information in his report is based solely on the Mother's report. (B18 at 4). According to the Mother:
 - i. In kindergarten at [School A in District A], the Student started out well, but stopped wanting to go to school because children "started bothering him." The Mother attributes that to the fact that other students were jealous of how quickly the Student learned to read and write and because he had been involved in modeling. The severity of the "bullying" in the school led the school to assign a 1:1 aide to protect the Student. (B18 at 4)
 - ii. The Student's principal and teacher [School A] "stuck up for each other" so the Mother decided to place the Student at [School B in District B]. After several months of "kids doing bad things" to the Student, the Mother withdrew the Student from the first grade to home school him. (B18 at 4)
 - iii. The Student began attending [School C in District B] in the 2nd grade. The Student was in "frequent trouble," which the Mother attributed to his teacher "making [his]

life miserable.” (B18 at 5)

- c. While in the third grade at X School in the 2003/2004 school year, the Student has had “significant behavioral problems” resulting in being sent to the office 78 times during the course of the school year. On ten days he was sent to the office more than once in that day.³⁵ He was permanently removed from Library class in April 2004 because of behavioral issues. He was removed from the bus because of negative behaviors and his Mother drove him back and forth from school. During that period, he was tardy 48 times. His teacher reported that he was bright and a good learner, but that his behavioral issues were interfering with his academic progress. (B18 at 5)
- d. The Student’s behavior in the 4th grade at X SCHOOL did not improve. He was more oppositional and defiant, disorganized and impulsive, and rude when confronted regarding his behavior. A BIP has been implemented, he has been placed in a Social Skills Group and participated in Lunch Bunch with the school psychologist. (B18 at 5)
- e. Dr. K observed the Student in a class room setting. The Student had a hard time sitting still and paying attention. When asked to answer a question he refused and when redirected to complete an assignment, he “basically refused to comply by working extremely slowly.” He was silly and engaged in regressive behavior with peers, and snapped a pencil without a clear precipitant. (B18 at 5)
- f. The Mother was described as “very resistant to [Dr. K] meeting with [the Student] alone.” Dr. K reported that he had not previously encountered a parent who objected to the procedure of meeting alone with the child being evaluated. Dr. K was able to meet alone with the Student for 1 session, which made the Mother “very uncomfortable.” Dr. K reported that the Mother “stated that she wanted to ‘know everything that is being said to [her] son’ that she does not ‘trust anyone, they put all kinds of ideas into his head.’” She was reportedly “very open about her anger at [the Student’s] teacher and school (‘I don’t like what they are saying about my son’) and when [Dr. K] asked [the Mother] what the school’s concerns were, she [reportedly] replied, ‘I don’t know why we are here.’” (B18 at 6)
- g. The Student was described as “calm, engaged, polite, cooperative and articulate.” Dr. K did not observe any hyperactivity, dysphoria, or psychotic thought process, and reported that the Student “focused intently on [Dr. K’s] questions and on his drawings” and “appeared to enjoy the opportunity to talk about his interests and concerns with an adult.” The Student reported that he enjoys school, likes his teacher and likes math. “He expressed a wish to be more productive in school – he admitted that it is hard for him and that he gets into trouble.” (B18 at 6)
- h. Dr. K concluded as follows:
 1. The Student’s “multiple X School issues most likely emanate from several sources, which are difficult to elucidate given the truncated nature of my evaluation.” (B18

³⁵ The Student was “sent to the office” for Disciplinary reasons. (B 5/11 Test.)

at 6)

2. The Student “clearly is oppositional and defiant” and meets the criteria for an Oppositional Defiant Disorder (“ODD”). (B18 at 6)
 3. The Student is also impulsive, distractible and hyperactive in school but “[i]t is unclear whether this is a true Attention Deficit Hyperactivity Disorder, a reaction to his unwillingness to comply, or the result of anxiety produced from environmental stressors.” Dr. K recommended that this issue be investigated further. (B18 at 6)
 4. “It is unlikely that [the] behaviors [manifested by the Student] are the result of past school-related ‘traumas.’” (B18 at 6)
 5. “It appears ... that [the Student] is the initiator of these behaviors and it has been difficult to establish a working relationship with his family. It is the breakdown of this relationship that appears to fuel the ongoing conflict with the schools. [The Student] is aware of the mother’s anger and lack of trust in the school. This negative tone affects his ability to view X School in a positive light and compromises his motivation to work for his own sense of mastery and a desire to please the adults who are responsible for his education.” (B18 at 6)
- i. Dr. K made the following recommendations (B18 at 7):
1. The Student “requires significant structure and supervision to meet his academic and social goals in the school setting. His team is experienced and committed to him. The main goal is to provide him with the structure to boost his organizational skills and prevent him from falling behind. There is no indication of removing him from the mainstream.”
 2. “Outpatient psychotherapy is crucial for [the Student] to improve his behavior. Without the opportunity to work on his problems and express the feelings behind his behaviors, [the Student] will continue in a deteriorating spiral of negative behaviors. [The Mother] would also benefit from ongoing developmental parent guidance.”
 3. “A school-based social skills group that met on at least a weekly basis would help provide tools to manage interpersonal situations and promote prosocial behaviors.”
 4. “Consultation with a behaviorist is recommended to help provide guidance regarding his behavior management plan.”

40. On January 21, 2005, the Mother wrote the following note to Ms. L:

I’m writing to state that no one is to counsel my son [Student’s name] without my presence or permission. I would like to be notified as soon as possible if he needs

this. Thank you. Also no one is to speak with [the Student] from outside of the school without my presence of [sic] permission.

(B18 at 1)

41. Ms. P completed a CAT information form which states the following interventions were being utilized with the Student: A behavior program to improve compliance, weekly meetings with the Mother, daily checklist to monitor behavior and task completion and daily visit with Ms. M. (B18 at 8)
42. On January 24, 2005, a Notice of PPT was sent to the Mother for a PPT to be scheduled on February 1, 2005 to review Dr. K's evaluation results and determine eligibility for special education. The Notice indicates that a copy of the procedural safeguards was sent to the Mother with the Notice. (B21a; B18)
43. The minutes of the February 1, 2005 PPT (B21) indicate the following, among other things:
 - a. The Mother attended, as did Dr. K, Ms. M, Ms. B and Ms. L. The PPT minutes do not indicate whether the Mother was provided a copy of the procedural safeguards at the PPT or with the minutes.
 - b. "[The Student] meets the DSM-IV diagnosis as Oppositional Defiant Disorder. He requires significant structure to meet with academic and social success. While [the Student's] behaviors place him at great risk of not living up to his academic potential, there is no indication for removing him from the mainstream and no need for specialized instruction. Outpatient psychotherapy and school based social skills group are recommended as is consultation from a behaviorist and participation by [the Mother] in ongoing developmental parent guidance." (B21 at 1)
 - c. Dr. K reviewed the results of his evaluations and his recommendations and conclusions. The Mother responded by stating that the Student was "fine until he experienced difficulties with being bullied" starting in kindergarten. Dr. K disagreed that this was the cause of the Student's difficulties but that if past traumatic experiences are a cause of the Student's presentation, the Student would benefit from psychotherapy to address those issues. (B21 at 2; 3)
 - d. Dr. K restated that the Student meets the diagnostic criteria for ODD and that further evaluation is warranted to determine whether his problems with attention, hyperactivity and impulsivity reflect ADHD as well. (B21 at 2)
 - e. "Dr. K indicated that while [Mother] has been a wonderful advocate for [the Student], her lack of trust in the school has been recognized by [the Student] and he has picked up on it. Dr. K suggested that [the Mother] needs to demonstrate a good working relationship with the X School in order that [the Student] does not get mixed messages and can more easily comply with academic expectations." (B21 at 2)

- f. The Mother “shared her feeling that if she had been allowed to sit in the classroom at the beginning of the year [with the Student] to help him, he would not be having these issues. Dr. K disagreed and noted that [Mother’s] presence in class would not have helped the situation. Rather he indicated that [the Mother] needs to really work with the school through a counselor as a mediator if necessary and [the Student] needs a counselor to help him work through some of his issues.” (B21 at 2) The Student needs to address his issues apart from the Mother. (B21 at 3)
 - g. The Mother reportedly indicated that she would agree to take the Student to a counselor but would not allow him to be seen without her being present because of her concern over earlier trauma. (B21 at 3)³⁶
 - h. The Mother stated that she would like to be allowed to sit in the classroom with the Student and would like the school to create a daily written plan for the Student so that he has a visual reminder of expectations. She also wants for her son “not to be frightened” at school. She would like the Student to continue to meet daily with Ms. M so he can voice his feelings, which she wants recorded so she can listen to the discussion. (B21 at 3)
 - i. The minutes state that “the team agreed to pursue a behaviorist to consult and aid X School in responding appropriately to [the Student’s] behavior. However, [the Mother] will only allow [the Student] to attend therapy in her presence while the school will only support a counselor who could meet weekly with [the Student], providing him with the time and space, and opportunity to work through any trauma in his past.” (B21 at 3)
 - j. The Mother indicated that she would be pursuing an “investigative” therapist on her own in lieu of a psychotherapist, refused to allow a behaviorist to be involved at this time, and requested the opportunity to remain at school to assist her son when necessary. (B21 at 5)
44. At the February 1, 2005 PPT, the District staff discussed, among other things, how the Student’s behaviors were adversely impacting his academics and his social interactions with peers, with staff noting that the Student was becoming more isolated from his peers because of his behaviors. Following this PPT, a modified Behavior Plan was put into place and followed the Student from 5th to 6th grade. (B 5/11 Test.; B31)
45. On June 15, 2005, the Mother wrote Ms. L a note stating the following:

I would like the report that Dr. K wrote to be taken out of [the Student’s] record permanently. Not only are these records false but they are a gross misunderstanding of whom [sic] [the Student] and I are. The record report must be taken out today!

³⁶ There is no indication in the record that the Mother arranged for counseling with the Student and it is unclear whether Mr. J was still involved with the family or whether he was the counselor the Mother was referring to.

A handwritten note at the bottom of the Parent's note indicates that the request was received on June 15, 2005 and the report was "pulled." (B18 at 9)

46. The Student's 2004/2005 report card (B19 1-3) indicates the following, among other things:
- a. The Student was absent 8 days and tardy on 49 other days (again approximately 25% of this school year).³⁷
 - b. The Student was rated as "producing good work" generally across the school year in most areas, with initial difficulties noted in some areas that improved over the course of the school year.
 - c. November Teacher Comments indicate difficulties with following directions and working independently.
 - d. The March Teacher Comments indicate that with the implementation of a BP and assistance from support staff, the Student has made "some progress toward appropriate fourth grade behavior" in this term.
 - e. The June Teacher Comments indicate that the Student had a "successful year" and "demonstrated improvement in his work habits and behavioral skills" with progress academically as well.
 - f. Other teacher comments indicate as follows: The Student's "behavior often disrupts the class and gets in the way of others' learning. This also makes it difficult for him to follow directions. When he decides to [the Student] can do excellent work."
47. The Student was referred to the CAT. Support provided to the Student this year included: classroom modifications, Lunch Bunch group counseling and individual counseling support with the school psychologist. A Functional Behavior Analysis ("FBA") and BIP were completed to address non-compliant behavior. (B64 at 3)

G. 2005/2006 School Year (5th Grade)

48. In September 2005, the Student entered XMS, a District operated public middle school, as a 5th grader. Ms. C became the Student's primary teacher in the 5th grade.
49. The Mother denied permission for the XMS school psychologist (Ms. R) to meet with the Student, notwithstanding the transition plan outlined for the Student by X School. The Student's behavior management plan developed at X SCHOOL was implemented when he started XMS. (B23)
50. On September 19, 2005, the Student incurred a Disciplinary Referral (warning; detained in Main Office) for damaging school property. The Student was sent out of Family and

³⁷ Assuming a 181 day school year, this data indicates that the Student was absent on 4% of the school days, and tardy on approximately 28% of the days he attended school.

Consumer Science class for intentionally defacing a desk with a pencil. He was directed to complete a written assignment and refused to do so. He was observed to throw food at classmates during lunch. (B24 at 1) Regarding the disciplinary referrals related to flicking or throwing food in the cafeteria, Mr. D believes that these behaviors were efforts by the Student to get attention or a reaction from his peers. Mr. D has observed the Student in the cafeteria over the 2005/2006 and 2006/2007 school year, and believes that the Student has no set peer group with whom he interacts but rather will try to “attach” himself to a group of peers. Mr. D also observed that the Student was becoming increasingly unwelcome by his peers because of his behaviors. (D 5/11 Test.)

51. On September 21, 2005, the Mother sent a note to XMS stating as follows: “No one is to advise, guide (guidance) none have any conversation with my son [the Student] about behavior or do any discipline without my permission or presence.” (B24 at 2)
52. Another handwritten note, apparently written by the Mother, also dated September 21, quotes the Student as saying the following to the Mother “Mr. D needs to calm his butt down about this crap” and “He’s [referring to Mr. D] getting on my nerves.” The Mother claims that the Student’s teachers are “annoying” him about what has occurred at school, the Student does not want to do his work and the Student is being disrespectful for the Mother. “I want it solved today not next week in a meeting. If he doesn’t get Music, Art, Computer I will take him out of Guidance & DARE myself.” (B24 at 3)³⁸
53. On September 28, 2005, the Student incurred a Disciplinary Referral (warning; loss of recess) for throwing food at classmates in the cafeteria despite three verbal warnings. (B24 at 4)
54. On October 3, 2005, the Student incurred a Disciplinary Referral (warning; loss of recess) for “dangerous behavior.” He “intentionally” entered a construction area in the cafeteria that was roped off. (B24 at 5)
55. On October 4, 2005, the Student incurred a Disciplinary Referral (warning; loss of unstated school privilege) for damage to school property and disturbing class. The Student was sent out of math class during a homework review because he persisted in not doing regular homework. When Mr. D asked him to do some work under Mr. D’s supervision, he “intentionally damaged” the arm of a chair. (B24 at 6) The disciplinary referral involving damage to the chair reflects anger with the Student about being referred for discipline. (D 5/11 Test.)
56. On October 19, 2005, the Mother wrote the following note to Mr. D:

You really need to let my son be a good student here at XMS. You are causing him much stress by making and forcing him to do these non-sense behavior sheets. My son [NAME] is a good boy and I don’t think you should hide things from me. You

³⁸ This apparently relates to the Mother’s desire that the Student take these specials (which are offered later in the school year) rather than the specials offered earlier in the school year. (Mother 5/11 Statements)

did not tell me you were putting him on a behavior plan. I'm the guardian and person in charge of his life. He is not to do any more behavior plans! He does not need them and if you make him do them or take him out of his classes, cause he does behave, I'm going to consult with my lawyer. You can call me if there is a problem. You need to call me right away so we can solve anything going on. That is the law. PS When I was in grade school, if we had difficulty with something, our parents were able to come in school and help to solve problems right away before they become worse. So wouldn't that be a sensible thing to do!?!)

(B27)

57. On November 15, 2005, the Student incurred a Disciplinary Referral (warning; loss of unspecified school privilege) for inappropriate use of a school computer. The Student's schedule includes a daily period in the library so that the Student can do pleasure reading, complete homework and use available technology for assignments. During this library period he accessed an inappropriate internet website. (B28)
58. In the period September 6, 2005 through November 17, 2005, the Student was absent 6 times and tardy 21 times. (B29)³⁹
59. Notes of a November 7, 2005 meeting with the Mother indicate the following, among other things: The Student is an accurate reader but is performing below grade level in all areas of reading and responding to literature. The beginning of the school year was an "extremely difficult transition" for [the Student]. He was unorganized and off task almost all of his time and transition time." Slight improvement was noted with the implementation on October 17, 2005 of a BP but he still requires "frequent redirection and often does not hold his attention to the lesson for more than a few minutes before becoming distracted . . . He will not complete an assignment without being reminded of consequences . . . does not independently write down homework assignments or pack materials. Without 2 or more reminders, these actions would not occur. He is often unable to participate in group work because he quickly gets off task and his classmates get frustrated with him. [The Student] has difficulty functioning as an independent 5th grade student in relationship to his peers . . . when he is on task he is able to appropriately participate in class discussions." The Student's locker privileges were terminated, and his materials for class are now in the class. This has helped him to be more organized, allows for ready teacher assistance with organization and reduces hallway misbehavior. (B30 at 2-3)
60. On December 7, 2005, the Student's 5th grade teacher (Ms. C) asked for assistance from other teachers and XMS staff with respect to the Student. Among other things, she reported that the Student's performance is not improving, he is falling behind, Ms. C was "no longer sure whether he can do fifth grade work or not," various interventions are not effective, the

³⁹ B29 and B33 are samples of a letter that is sent out to parents of students who are having attendance problems. In the 6th grade the frequency of the Student's tardiness was increasing. The reference on these forms to "Dismissed" means a day on which the Student was taken early by the Parent for doctor's appointments and similar events. These are not dismissals for disciplinary reasons. (D 5/11 Test.)

Student does not ask questions, and does just enough work to stay in class but not enough to actually finish anything. “As you know, communication with the mother is futile. She asks for work to come home, but it does not get done there either. [The Student] has 5 study halls a week and as far as I can tell, he’s not working there either.” (B30 at 1) Ms. C’s e-mail details her concerns about the Student’s progress and list the educational and behavioral strategies that she had implemented without success with the Student. She was aware from her colleagues that the Student may be experiencing difficulties across his classes. She reported that during this period the Student was not disruptive in her classes, but rather was passively defiant and non-compliant – failing to do assignments in class and failing to do homework. Ms. C had had “numerous” conferences with the Mother, who agreed that the Student needed to do the work and that the Student needed to be respectful to his teachers. Ms. C’s comment in the e-mail that communication with the Mother is “futile” was intended to convey that notwithstanding the Mother’s agreement and willingness to support the Student, homework was still not getting done and nothing was changing, with the result that the Student was falling behind. (C 5/11 Test.)

61. Reports dated January 12, 2006 (B30 at 4), January 6, 2006 (B31), and January 17, 2006 (B30 at 5-7) report continued academic, social and behavioral difficulties. The Student “has not completed tasks and is currently failing. The team feels he is not learning and are concerned about his continued difficulty socially and emotionally. All documented areas of concern since kindergarten continue at this time. His issues are chronic and pervasive. The anger and disrespect has escalated this term.” (B31 at 1-2) Ms. B’s summary (B31) details his history in the Board’s schools. Her statement in this report that “The anger and disrespect has escalated this term” reflects observations and reports that the Student was becoming more resistant to complying with expectations set for his performance by District staff. As those expectations have increased as he advances through the 6th grade, his anger and disrespect toward staff has increased. (B 5/11 Test.)
62. A PPT for January 17, 2006 was noticed on January 10, 2006. The purpose of the PPT was to discuss academic program and behavior. A copy of the procedural safeguards was provided to the Mother with the notice. (P32 at 1) It was agreed that a 1:1 tutor would be made available to the Student in his classes to assist with written production. The Mother supported that recommendation, but would not agree to allow a Behavior Therapist, the School Psychologist or the School Guidance Counselor work with the Student. (B32 at 2-3) No further evaluations were planned or actions taken in light of the Mother’s agreement that the Student could receive assistance with written work product. District staff wanted to determine what impact that providing such a support would have on the Student’s ability to participate and perform in the classroom. (B 5/11 Test.)
63. Ms. C recalls the discussion from the January 17, 2006 PPT about providing services to the Student through a behavior therapist, guidance counselor support and school psychologist support, and remembers that the Mother was adamant that no one was to speak to her son, and refused to consent to involve these professionals. (C 5/11 Test.)
64. After this PPT, nothing changed. The Student continued to get frustrated and the staff did not have the tools needed to address the issues. Eventually, Ms. C and her colleagues

determined that the Student could not comply with increasing demands and expectations for performance and independent functioning made on all students in due course as the school year progressed. They made a decision that it was more important for the Student to be able to remain in class as long as he was not disruptive. By not holding the Student to the same standards or expectations as his peers they were able to reduce his frustration and maintain him in the classroom where they believed he was at least listening or being exposed to the curriculum. This started in the 5th grade and has continued into the 6th grade. In the 6th grade, the Student continues to have difficulties but the teachers are making an effort to minimize removals from class since removing him from class has also not worked as a strategy. During tests and quizzes, the Student will not work but is generally not disruptive. (C 5/11 Test.)

65. In the period September 6, 2005 through January 30, 2006, the Student was absent 11 times and tardy 35 times. (B33)
66. On February 1, 2006, XMS staff filed a report of suspected abuse/neglect of the Student by the Mother with the State Department of Children and Families (“DCF”). The report states as follows:

Despite the regular attempts by faculty, support personnel and administrators to educate [the Student], Parent continues to thwart her child’s formal education in Grade 5 at XMS. Parent has presented similar problems at X SCHOOL and previously in [District B] schools. [The Reporter has] witnessed daily attempts to formally educate [the Student] and the Parent’s repeated attempts to undermine daily instruction and care. Her disruptions at school have increased. Regular meetings with Parent have occurred, including a formal PPT. Parent refuses to consent for school to provide counseling and behavioral interventions. [Reporter had] the police remove parent from school today due to confrontational behavior.

(B34)

67. On February 24, 2006, the Student incurred a Disciplinary Referral (warning; loss of unspecified school privilege) for disrespectful and insubordinate behavior and disturbing the science class. The Student was sent out of science class due to inappropriate comments. On the school bus, he started swearing at a female student who found a cell phone and returned it to the driver rather than giving it to the Student. (B35)
68. On a March 1, 2006 administration of the CMT, the Student scored at Goal Level for Mathematics (with 21 of 23 strands mastered) and Below Basic Level on Reading (with 1 of 4 strands mastered). The Student did not attain a scoreable result in Editing and Revising written work product. (B36; B9 at 1)
69. On March 21, 2006, the Student incurred a Disciplinary Referral (warning) for disruptive behavior in the classroom and cafeteria. The Student “intentionally” stomped on a yogurt container in the class room, causing a “huge mess.” He also removed his shoes and caused a commotion in the cafeteria. (B37 at 1)

70. On March 28-29, 2006, the Student incurred two disciplinary referrals for conduct on the bus. The March 28 incident involved “licking the seats and peoples [sic] personal property.” The March 29 incident involved eating and drinking on the bus and making a mess. (B37 at 2)
71. On March 31, 2006, the Student incurred a Disciplinary Referral (warning; in school suspension⁴⁰) for disturbing his math class and inappropriate behavior with food and drink in the cafeteria. The Student emptied a tic-tac container, filled it with his spit and poured the contents on his desk. At the cafeteria, he intentionally poured milk and juice onto his tray. (B37 at 3)
72. On April 3, 2006, the Student incurred a Disciplinary Referral (warning) for disturbing his Spanish, Writing and Math classes. He was removed from all three classes due to disruptive behavior. “He continues to produce little academic work prior to classes and now refuses to work in class.” (B37 at 4)
73. On April 5, 2006, the Student incurred a Disciplinary Referral (warning; in-school suspension) for dangerous behavior with an Exacto knife – he put it in his mouth and used it to chop a pencil into pieces. (B37 at 5) The Exacto knife was a nonretractable blade mounted on a metal butt. The Student reportedly placed the blade end into his mouth. Mr. D does not believe that the Student was intending to harm himself, but rather was just showing poor judgment about the risk of injury that could result from this behavior. (D 5/11 Test.)
74. Between January 2006 and the April 5, 2006 PPT, Ms. B was the case manager with respect to the 1:1 support that was being provided for written work by Ms. S, an inclusion support tutor employed by the Board.⁴¹ Over time the Student became increasingly resistant to this support. He was placed in a resource room setting more often with some success at first, but then diminishing success over time. The Student was showing off-task behavior, doodling and drawing rather than disruptive behavior initially. Over time, his behavior was becoming more disruptive, rude and non-compliant. (B 5/11 Test.)
75. On April 5, 2006, the Student was referred to special education services. The Student’s difficulties were described as refusal to complete tasks, off task behavior which interferes with other students’ learning as well as his own, rudeness and disrespect to adults and peers, escalating anger and defiance and increased incidents of removal from class. Some improvement in completing assignments was noted with 1:1 tutoring but after about 4 weeks, the Student began losing materials, refusing to do work, and lying about doing his work. Between March 8 and April 5, there has been a “steady decline” in work production, attention in class, homework completion and cooperation and an increase in inappropriate

⁴⁰ This appears to be the first suspension of the Student’s academic career.

⁴¹ The Mother appears to contend that Ms. S was not a writing tutor and that the Board failed to honor its commitment to provide a “certified” writing tutor to help the Student with his written production. (Mother 5/11 Statement)

behaviors, lack of compliance with teacher directions and aggressive behavior toward other students. DCF was noted to be “actively involved” and the Mother was noted to refuse to allow the Student to receive support or services from the special education personnel, psychologists or guidance. (B38)

76. On April 5, 2006, a PPT was noticed for April 11, 2006 to discuss the Student’s academic program and behavior. The Mother subsequently reported that she could not attend a PPT on April 10, 11 or 12. The PPT was rescheduled for April 13, 2006. The form indicates that a copy of the procedural safeguards was sent to the Mother with the notice. (B40 at 1)
77. On April 7, 2006, the Mother sent a note advising Mr. D that the Student was not to be sent out of classes unless the Mother was called and that no one from outside the school was to speak with the Student. (B39 at 1) In two other notes also dated April 7, 2006 and to Mr. D, the Mother claimed that staff was lying about behavioral issues that occurred that day. The Mother demanded to speak to Mr. D about these incidents and wanted staff to apologize to the Student. (B39 at 2-3)
78. On April 13, 2006, a PPT was convened. The minutes (B40 at 2-3) indicate the following, among other things. Staff reported that the Student was capable of doing the work but has difficulty staying on task and completing work in class, shows little effort, and has been a distraction to his peers. The Mother reports “that [the Student] ‘is stressed’ and has ‘lots of anxiety.’” Staff recommended that the Student meet with the school psychologist or counselor and participate in the Lunch Bunch group addressing social skills and peer interactions. The Mother agreed to have the Guidance Counselor meet with the Student, provided that she could participate in the first meetings with the Student. (B40 at 2-3) Mr. D testified that shortly after this PPT, these interventions were terminated at the Mother’s request. (D 5/11 Test.) At this PPT, a recommendation was again made that the Student be allowed to work with the guidance counselor (Ms. T) and the school psychologist as part of regular education support services. Notwithstanding the indication in B40 at 3 that the Mother conditionally agreed to this, Ms. B does not believe any such meetings took place. (B 5/11 Test.)
79. On May 9, 2006, the Mother wrote a letter to the Board of Education stating that she “would like a meeting to discuss my child’s curriculum with the Board of Ed, the Superintendent and Mr. D, yesterday. My child is being harassed and missing out on his specials.” (B41 at 1)
80. On May 18, 2006, the Mother wrote a note to Mr. D asking for a written explanation as to why the Student was removed from a class that day. (B41 at 2)
81. The Student’s 2005/2006 school year final report card (B42) shows the following:⁴²

⁴² 1st and 2nd refer to the first and second marking periods of the first semester (S1). 3rd and 4th refer to the third and fourth marking periods of the second semester (S2). “MEX” refers to midterm exams and “FEX” refers to final exams. A “P” indicates that the Student passed a course; an “F” indicates that the Student failed a course; a “W” indicates that the Student was

	Subject	1st	2nd	3rd	4th	Final	Comments
	Reading	60	F	F	P		C – fluent reader
	Writing	60		70	P		B – shows improvement
	Language Arts	65	70	86	86		C – shows good aptitude
	Social Studies	60	F	83	P		U – Absenteeism affects progress, shows little effort
	Math	F	F	75	80		V – shows good aptitude; often distracts others
	Science	F	F	69	--	W	W – inconsistent effort, wastes valuable time
	Science				P		Ms. S – Demonstrates interest; a pleasure to work with.
	Computer			60	--	W	X – inconsistent effort; wastes valuable time
	DARE		65				X – absenteeism affects progress; inconsistent effort
	Family & Consumer Science		F				Z – Homework often not completed; wastes valuable time
	Art			85		W	ZZ – Absenteeism affects progress; distracts others often
	General Music			68		W	XX – Absenteeism affects progress; inconsistent effort
	Phys Ed.	85	70	75	P	W	Had three different classes – Was withdrawn from one and earned these grades overall. Effort ratings were varied by teacher; social behavior was noted to affect work.
	Resource				P		B- Absenteeism affects progress; not working to full potential
	Guidance	F					Ms. T – Distracts others often; does not participate in class

82. Ms. E noted that the Student was absent 35 times and tardy 53 times during this school year. (B64 at 3)⁴³

83. Math is a relative strength for the Student and he started the 5th grade in the highest math placement. However, he was unable to sustain his participation in that placement due to

withdrawn from the course. A number grade of 59 and below is a failing grade. A number grade of 60 and above is a passing grade. (C 5/11 Test.)

⁴³ Assuming a 181 day school year, this data means that the Student was absent approximately one in every five school days, and on the days he attended was late more than once in every three days.

behavioral issues. (C 5/11 Test.)

H. 2006/2007 School Year (6th Grade)

84. On August 21, 2006, Ms. A (Superintendent of School) met with the Mother and the Student and reported that the Mother discussed concerns with unfair treatment by Mr. D and teachers at XMS. (B63 at 1)
85. The Student resumed attending XMS on September 5, 2006, as a 6th grader.
86. Ms. F (a special education teacher at XMS) reported that on September 7, 2006, the Student was observed to be walking into other students with his books straight out in front of him and that other students were yelling at him to stop because he was hurting them. The Student was told to stop and did. (B82 at 1)
87. Ms. F reported that on September 11, 2006, the Student drew staff attention over the course of several periods for disruptive acts involving an orange. (B82 at 1)
88. Ms. F reported that on September 12, 2006, she spoke with the Mother and reported that the Student was doing well on his geography project. In response to a question from the Mother about who Ms. F was, Ms. F identified herself as a special education teacher at which point the Mother began to yell at Ms. F that no one from special education was to be speaking with the Student. Ms. F reported that she walked away from the Mother after ten minutes, and that during that period the Student was attempting to calm the Mother. On September 13, 2006, Ms. F reported that the Mother contacted her and told Ms. F that she was rude, needed to work on her "PR" skills, and that Ms. F needed to apologize for being disrespectful to the Mother in front of the Student. Ms. F attempted to discuss the issue with the Mother, ultimately apologized and terminated the conversation. (B82 at 1)
89. On September 14, 2006, the Student was warned that he if continued to make negative comments about his peers in Drama Club he would not be permitted to attend Drama Club. (B82 at 1)
90. Ms. F reported the Student was manifesting escalating inappropriate and disruptive behaviors in several classes over the period September 15 through September 20, 2006. (B82 at 1)
91. Ms. E had a telephone call with the Mother on September 18, 2006 and reported that the Mother reviewed occurrences last year, stated that the Student was coming home happy, reported that allergy medication he was taking caused memory loss, claimed that the Student was being intentionally failed by his teachers last year, that teachers were lying and making "nasty" comments about the Student, that the Student has writing problems but does not need special education, that staff at XMS were giving her son a "mental disorder" and that students who had bullied the Student at XMS last year were not being disciplined. (B64 at 3)

92. On September 19, 2006, the Mother sent Mr. D a note stating that “no one is to speak or question [the Student] without [her] permission or presence” and if the school fails to do this she will hold the school “accountable for damages done to him.” She expressly stated that DCF may not speak to the Student without the Mother being present. (B43) The Mother also advised Ms. A of this request by telephone as well. (B63 at 1)
93. On September 19, 2006, Ms. E had a conversation with the Mother in which the Mother asked that the Student be provided assistance with “time management.” (B64 at 3)
94. On September 20, 2006, Ms. E had a conversation with the Mother in which Ms. E confirmed that she understood that she was not to “question” the Student unless the Mother was present, and in which the Mother stated that she was “‘playing detective’ this year to find out who is harassing her son.” (B64 at 3)
95. On September 26, 2006, Ms. A reported a conversation with the Mother in which the Mother expressed dissatisfaction with Mr. D. (B63 at 1)
96. On September 27, 2006, Ms. E had a conversation with the Mother in which the Mother advised that XMS does not “take care of kids,” that Mr. D “doesn’t give a shit,” that various other teachers had bad attitudes or were bad, that the Student “has never been given proper writing instruction” and requested assistance for writing. (B64 at 4)
97. On September 27, 2006, the Student incurred a Disciplinary Referral (warning) for disrespect and insubordination and disturbing a class. The Student was spitting through a straw at other students and complaining about the teacher. (B44 at 1)
98. On September 27, 2006, Ms. A reported a conversation with the Mother in which the Mother requested apologies from XMS staff for issues that had arisen in the prior year. (B63 at 1)
99. On September 28, 2006, Ms. A reported a conversation with the Mother in which the Mother “demand[ed] meetings with XMS for an apology and described the XMS teachers as “bullies.” (B63 at 1)
100. On September 30, 2006, Ms. A reported a conversation with the Mother. The Mother was upset with people making “false reports” including the psychologist and with staff attempting to “label” the Student, who she described as a child who “does what he is told and is obedient.” The Mother stated that she would not “put up with bullying from the teachers,” was ready for an apology, and had “zero tolerance” for false reports about her son. (B63 at 1)
101. On October 2, 2006, Ms. A reported a conversation with the Mother in which the Mother “demand[ed a] meeting with teachers for apology” to the Student as a result of the spitting incident disciplinary referral. The Mother reportedly stated that “[n]o one will have words with my son” and that she would “remove him from class.” (B63 at 1)

102. On October 3, 2006, Ms. E had a conversation with the Mother in which the Mother claimed that teachers were “picking” on the Student and he was being “kicked out of class,” that various XMS staff members had bad attitudes, that Mr. D has a “screw you” attitude and talks to the Mother “like she is an idiot.” The Mother wanted an apology from two XHS staff members for events that occurred in the prior school year. She described the Student as someone who “simply talks a little too much and likes to socialize” and of whom people are jealous. According to Ms. E, the Mother stated that “He acts out because of how he was treated last year. He has psychological problems because of this.” (B64 at 4)
103. On October 4, 2006, the Student incurred a Disciplinary Referral (warning) for throwing food at peers during lunch. (B44 at 3)
104. On October 10, 2006, Ms. F reported an incident in which the Student was removed from the Geography game being played on the track because he had taken a cheese string stick, smeared it on the track and chased other students with it. (B82 at 1)
105. On October 11 and 12, 2006, the Student incurred a Disciplinary Referral (warning; loss of opportunity to participate in Drama Club until further notice). He had found a pair of glasses and wore them all day before turning them, rather than turning them in when he found them. (B44 at 4) With respect to the incident in Drama Club, Ms. F reported that the Student crawled across the stage and ran behind the curtains, and was otherwise disruptive. Ms. F reported that the Mother had acknowledged that discipline was appropriate for this behavior. (B82 at 1)
106. On October 13, 2006, the Ms. F reported an incident that occurred after X School in which the Mother had come to school to speak about the Drama Club incident. During this meeting, the Student threw a water bottle at the Mother’s feet. The Mother advised Ms. F that the Student acts that way because of Mr. D and the Student reacted by stating “No mom! It’s because you won’t listen to me.” The Mother responded by stating that “No [Student name] it isn’t me.” (B82 at 2)
107. On October 16, 2006, Ms. E had a conversation with the Mother in which she indicated that she will pull the Student from his technology class and is refusing to sign the social contract. She stated that she wants the student whose glasses her son had found to write a thank you note to the Student. The Mother claims that the Student has a “gifted and talented personality” and that she has no confidence in the school due to the badgering. She stated that Mr. D requires a mental health professional, is sick and distorted and creates problems for the Student. She stated that the Student “withdraws into his own world because of all that has happened in school.” (B64 at 4)
108. Between September 29 and October 20, 2006, the Student’s academic performance continued to deteriorate. (B44 at 2)
109. On October 23, 2006, Ms. A reported a conversation with the Mother in which the Mother

stated that Mr. D was “ruining” the Student’s education. (B63 at 1)

110. On November 1, 2006, Ms. A reported a telephone conversation with the Mother in which the Mother complained that XMS staff had improperly disciplined the Student and needed to be more respectful. (B63 at 1)
111. On November 2, 2006, the Mother contacted Ms. E to ask for assistance with written expression for the Student and to ask about turning in some missing reading assignments. (B64 at 4)
112. Between November 3, 2006 and November 9, 2006, Ms. E had several conversations with the Mother about the Student’s difficulties in completing a written reading test. He was offered the opportunity to take the tests orally but declined. (B64 at 4-5)
113. On November 14, 2006, Ms. E had a conversation with the Mother in which the Mother stated that the Student had been prescribed Zyrtec for ADD in the past. She also reported that the Student does not like to write because of DCF involvement and the untrue statements made by Mr. D. (B64 at 5)
114. In the period November 28, 2006 and February 13, 2007, Ms. F recorded a number of incidents of inappropriate behavior occurring in the Family and Consumer Science Class involving sexually oriented comments, disruptive behaviors in other classes and lack of effort and productivity. She also recorded some instances of compliance and productive work effort by the Student. (B82 at 2)
115. As of the end of the first marking period, the Student was failing mathematics and was missing 4 out of 8 assignments. (B45)
116. On November 1, 2006, a referral for neglect was filed with the DCF. The referral states as follows: “The emotional neglect continues for [the Student]. Today’s episode included his Mother verbally berating him in the school’s main office in front of two secretaries and other adults over homework issues and failing grades. [The Student] was in tears. Educational neglect was documented regularly during the 2005-06 school year.” The reporter states that “I have witnessed the educational and emotional neglect of a period of one school year and the opening 10 weeks of this school year as [the Student’s] principal. A formal PPT was held in the 2005-06 school year to recommend special education services; mother has refused to sign consent for special education support services despite our best professional recommendations.” (B48)
117. On November 2, 2006, Ms. A reported a telephone conversation with the Mother in which the Mother discussed “false reports” made by Mr. D. (B63 at 1)
118. As of November 14, 2006, the Student had been absent 5 times and tardy 23 times. (B49)
119. On November 21, 2006, the Mother sent a note to Mr. D which states as follows: “No one at the school (XMS) here is to speak with my son or view any records of him without my

permission or presence. You need to stop reporting false and negative information about me to anyone and everyone because I am the best parent in the school. You need to stop interfering with me about my son getting a good education.” (B50)

120. On November 21, 2006, Ms. A reported a telephone conversation with the Mother in which the Mother discussed issues regarding “false reporting,” advised Ms. A that no one is to speak to the Student, and that the X School is interfering with the Student’s education. (B63 at 2)
121. On November 21, 2006, Ms. E had a conversation with the Mother who stated that “negativity and stress” are impacting the Student’s performance, that Mr. D “needles” the Student, “makes him out to be a bad guy” and is “sabotaging [the Student’s] education and interfering with his school work,” and that the Mother is “going to kick butt and ask questions later.” (B64 at 5)
122. On November 22, 2006, Ms. A made the following notes of a telephone call with the Mother. “Sometime happened to my son after I complained to the school.” Mr. D “makes up stuff and retaliates against me.” “Because I complained to DCF first – he neglected my son’s writing needs.” Mr. D “better change his attitude.” (B51; B63 at 2)
124. On November 29, 2006, XMS staff met with DCF staff to discuss issues with the Student. Mr. D participated in that meeting (B64 at 5). XMS staff had hoped that DCF would be able to support their efforts to secure services for the Student, but DCF did not provide the desired support. XMS staff is in periodic contact with DCF staff and as of May 11, 2007, Mr. D believes that DCF is still monitoring the Student but is not certain about the status of DCF’s involvement with the family. (D 5/11 Test.)
125. Ms. E had a conversation with the Mother and the Student on November 30, 2006. She noted the following about that conversation:

[The Student] was sent out of geography class for ‘breathing’ according to [the Student] who was intercepted by [Ms. E] in the XMS office. [Ms. E] spoke with the classroom teacher who said that [the Student] was interrupting students who were presenting to the class. [Ms. E] discussed the issue with [the Mother and the Student] after school was dismissed. When [Ms. E] told [the Student] that [she] knew that he was aware that interrupting his classmates was rude behavior, [the Mother] introjected “My SON is NOT RUDE, MRS.E!” [Ms. E] ignored her statement and continued to talk with [the Student]. The rest of the meeting proceeded smoothly.

(B64 at 5) Ms. E also discussed special education for the Student during this conversation.

126. On December 1, 2006, Ms. E had a conversation with the Mother and reported as follows:

[The Mother] called to say that she doesn’t want [Ms. E] telling anyone that [the Mother] thinks Mr. D is crazy. [The Mother] asked [Ms. E] who [the Student]

could talk to in the school. [Ms. E] told her that [her] door will always be open for him, but that [the Mother] made it clear from the first month of school that [Ms. E] was NOT to speak with [the Student] without [the Mother] being present. [Ms. E] asked the Mother] (again) to please put into writing that [the Mother] gives [Ms. E] consent to see [the Student]. [The Mother] said she would. [Ms. E] also asked [the Mother] to reinforce to [the Student] that it is okay for [the Student] to speak with [Ms. E]. [Ms. E] explained that on several occasions when [the Mother] has asked her to speak with [the Student, the Student] has been reluctant because [the Mother] had told him never to speak with me. [The Mother] blamed Mr. D for this. It was very difficult to have a discussion [with the Mother] because she would not allow [Ms. E] to get a word in.

(B64 at 5-6)

127. On December 5, 2006, Ms. A reported on a telephone conversation with the Mother in which the Mother reported that Mr. D has a poor attitude, stated that she was coming to the Board of Education meeting and discussed concerns with an incident involving the Student singing "dirty" Christmas carols. (B63 at 2) Ms. C personally observed the Student singing the Christmas song with "bad words" and rejects the Mother's claims that the Student did not do any such thing. (C 5/11 Test.)
128. On December 6, 2006, Ms. A reported a telephone conversation with the Mother in which the Mother reported that XMS staff had lied and was wrong about the Christmas carol incident and that she was going to call the police and DCF. Ms. A reported that the Mother was "yelling" and was not listening, and that Ms. A terminated the call. (B63 at 2)
129. On December 7, 2006, the Mother and Ms. QQ had an e-mail exchange in which Ms. QQ advised that she had been directed by Mr. D not to get the Student's homework assignments for the day and the Mother responded by stating that "Mr. D is a tyrant . . . He is depriving my son and he needs to be dealt with." (B53) A handwritten note at the bottom of the document states that "Parent kept student at home due to angry about school treatment."
130. On December 7, 2006, the Mother reportedly left the following message for Ms. A: "If she doesn't hear from his teachers by tomorrow, she will have to do something. Hopefully they will come to their senses and meet with her and her son." (B54)
131. On December 8, 2006, Ms. A reported a telephone call with the Mother in which the Mother was "demanding" a meeting with XMS and Ms. C to "discuss her lies" about the Student with respect to the Christmas carol incident. The Student apparently told the police that he had been lip synching, but admitted to Mr. D that he had been engaged in inappropriate behavior. The Mother stated that she would be keeping the Student out of school until XMS staff apologizes. In a subsequent conversation that day, the Mother stated Mr. D and Ms. A are telling the Mother "garbage," at which point Ms. A terminated the telephone call. (B63 at 2)

132. On December 8, 2006, Ms. E had a conversation with the Mother (who called Ms. E) regarding the Christmas carol incident. The Mother claimed that the Student would not have sung those songs because he did not know those words, that XMS staff are stressing out the Student and bothering him and that his teacher had made a “grave mistake.” (B64 at 6)
133. On December 11, 2006, the Mother called Ms. E to say that the Mother just wants the Student to be happy in school so that she does not have to find ways to encourage him to enjoy school, and that the Student did not know why he was disciplined about the Christmas carol incident because the teacher would not meet with him. (B64 at 6)
134. On December 12, 2006, Ms. C and the Mother exchanged emails to address missing assignments issues. The Student was reportedly working well with a positive attitude on December 12, following a day on December 11 in which he was not working and was argumentative. (B55)
135. On December 12, 2006, the Mother attempted to present comments regarding the Student’s situation to the Board of Education during the public comment session of a regularly schedule meeting. By letter dated December 15, 2006, Ms. X (Vice Chair) notified the Mother that pursuant to published Board procedural rules, “expression of personal complaints or defamatory comments about Board of Education personnel and students” was not permitted during public comment sessions and should instead be directed toward the appropriate administrative staff members, including Superintendent A. (B56)
136. On December 13, 2006, the Mother left a voice mail message with Ms. E, which Ms. E described as follows: “[The Mother] wants the teachers to stop giving [the Student] a hard time. She counsels him and does a very good job. She wants the teacher to ‘get the show on the road or she is taking him out of school.’” Ms. E returned the phone call and the Mother reported that she was “aggravated,” that the Board will not do “jack shit” about Mr. D, that Mr. D is yelling at her son and making false accusations and that the Mother was not going to “put up with that crap.” She called Mr. D “Mr. Louse D” and stated that “Fucking D is harassing my kid and wrecking my holiday, stupid asshole.” She also stated that she was moving frequently to avoid DCF investigators and stated that DCF had “screwed up [her] kid.” The Mother also reported that both Ms. C and Mr. D have to apologize for what they have done. According to Ms. E, the Mother was yelling and screaming so loudly that Ms. E could not understand what the Mother was saying. The Mother hung up the call but then called shortly thereafter and asked to speak with the Student. Since the Student was in class, Mr. D referred the call to Ms. E. Ms. E had just seen the Student a few minutes earlier by chance. The Student asked Ms. E if she wanted a hug, which Ms. E accepted and then the Student returned to class. During the telephone call with the Mother, Ms. E reported this to the Mother whose behavior on the telephone “escalated.” The Mother stated that Ms. E was “sick” and that the Mother was coming in to pick the Student up from school. Due to the Mother’s agitation, Ms. E became concerned about the Student’s safety and asked that the Resident State Trooper be called. (B6 at 6-7)

137. Progress reports dated December 20, 2006 indicate that the Student's grade in Language Arts is a 60, with performance impacted by failing to follow directions and frequent tardiness and absences. The teacher noted that when the Student puts in the effort he is able to complete assignments. (B58 at 1) The Student's grade in writing is a 44, with the Student noted to be failing to write in complete sentences even though he has shown that he understands how to do so and failure to use class time in a productive manner. (B58 at 2)⁴⁴ The Student's grade in Math was a 37, with the Student noted to have simply chosen not to complete the math test for which he earned a zero, and draw instead. (B58 at 30)
138. On December 20, 2006, the Mother advised Ms. A that she was going to keep the Student out of school. "As of Wednesday December 20, 2006, [the Student] is taking a 'Leave of Absence' [sic] from XMS because, first of all the Dec. 18, 2006 deadline I gave for Mr. D to apologize to my son for falsely accusing, yelling at him, making mean faces at him, yelling at his mom, making false reports and interfering with his education at XMS. I did not remove him from school, Mr. D caused stress." The e-mail was signed "Respectfully [Mother's Name], Parent, Advocate, Tutor for [the Student]." (B61)
139. On December 21-22, 2006, the Mother and Ms. A engaged in discussions in which the Mother reported that she was going to keep the Student out of school and home school him. Ms. A sent the paperwork and instructions to permit home schooling. (B60)⁴⁵
140. A December 29, 2006 progress report for Earth Science indicates that the Student had a grade of 47 for term 2, and notes that the Student has missed too much school and is falling behind. (B62 at 1). A January 3, 2007 progress report a guidance class indicates that the Student had an 83.8 average for term 2. (B62 at 2)
141. On December 30, 2006, the Mother sent the following e-mail message to Ms. A:

I would really like you to respond to my email and have Mr. D apologize to my son for causing problems and yelling at me when he did not need to. Mr. D has a temper and I need to start by correcting the problem. If you choose to ignore this, I will deal with it by law. [The Student] has been enrolled in school and has been trying to be a good student. But there has been interference from Mr. D and it needs to stop. I have been a residence [sic] for 3 years and a good one. You need to cooperate with me first, just apologize and I will give you our new address.

(B65)⁴⁶

142. On January 5, 2007, the Mother sent a letter to the Board asking for a "meeting or forum"

⁴⁴ This page refers to a writing class. (D 5/11 Test.).

⁴⁵ It is the Hearing Officer's understanding that the Student is not being home schooled but rather is supposed to be attending XMS.

⁴⁶ This is an apparent reference to a question raised in various documents as to whether the Mother is a resident of Town X or Town Y. *See, e.g.*, B67 – Mother has executed a residency affidavit but not provided documentation evidencing her residence as required.

to discuss her concerns regarding Mr. D's conduct toward the Student. The Mother stated that "Mr. D needs to apologize to my son for lying about him and making false reports." She states that Mr. D has been "abusive" toward the Student and the Mother, has been "retaliatory in the past," has made false reports to the DCF "in a retaliatory nature," and has lied to the Mother about putting into place arrangements to help the Student. She stated that she had met with Mr. D and Ms. A at the beginning of the school year and told them that she would have "zero tolerance" for "bad behavior" toward her son, that both agreed that they would support the Student and that both have failed to do so. She states that the Student "has been abused and taunted by other students because of Mr. D's talking behind the back effects." She is requesting a "Leave of Absence" for the Student to protect him from Mr. D's behaviors. She signed the letter "A very good Parent, Advocate and Tutor" for the Student. (B66)

143. On January 25, 2007, the Mother asked Mr. D to arrange a PPT to discuss an independent evaluation of the Student. (B68 at 1) Her letter stated as follows:

Dear Mr. D: I would like to call a PPT to discuss the possibility of arranging an independent evaluation for my son [NAME]. Please contact me with a date and time. Sincerely, [MOTHER'S SIGNATURE AND NAME]

Both Ms. A and the Mother testified that on January 25, 2007, the Mother met with Ms. A to secure services to help the Student with writing and Ms. A suggested that the Mother pursue an evaluation of the Student to determine what the issue with his written production was. Ms. A stated that she drafted the request for the Mother, which the Mother then signed. The Mother claims that she was forced or coerced into signing the letter. Ms. A flatly denies that she forced the Mother to do any such thing. (Charles 5/11 Test.; Mother 5/11/ Test.)

144. On January 26, 2007, a notice of PPT was issued for a PPT to convene on February 2, 2007 to discuss the Mother's request for an independent evaluation. The form states that a copy of the procedural safeguards were provided to the Mother with the notice. (B68 at 2)
145. The Student's report card through February 2, 2007 (B69) shows that the Student has been absent 10 times show far this school year, and tardy 41 times. His grades are:

Subject	1st	2nd	3rd	4th	Final	Comments
Language Arts	79	66				C – Not working to full potential; missing work not made up
Reading	F					VV – Social behavior is affecting work; poor test and quiz scores
Writing		65				C – writing skills are improving; missing work not made up
Geography	73	F				UU – Not working to full potential, does not follow directions
Math	79	F				C – Not working to full potential; poor test and quiz scores

	Subject	1st	2nd	3rd	4th	Final	Comments
	Earth Science		76	65			TT -
	Intro Tech	88					SS: Social behavior affects work; does not follow instructions
	Family & Consumer		87				RR – demonstrates interest; active participant
	Gen Music	80	83				XX – demonstrates interest; should apply consistent strategies
	Phys Ed.	87	80				Social behavior affects work; good aptitude in subject

146. A PPT was convened on February 2, 2007 to address the Mother’s request for an independent evaluation. The minutes (B68 at 4) indicate the following, among other things:
- a. The Mother attended and reportedly stated at the outset of the meeting that she wanted the evaluation to be performed by someone who was not “biased” and that she did not want anyone in the District to complete the evaluation. She stated that she had the name of an evaluator she would prefer but refused to share the name at the PPT. The Mother also does not want the evaluator to speak to school personnel. The procedures for arranging for evaluations were explained to the Mother, including the procedure by which the District identifies potential evaluators for the parent to select, that the District provides information to the evaluator and that the evaluation results are shared with the District.
 - b. The Mother reportedly stated that she would be interviewing “many psychologists” and was asked to call the XMS school psychologist on Monday or Tuesday of the following week with the name of the evaluator.”
 - c. The consent to evaluation was reviewed with the Mother on a section-by-section basis and she refused to sign it. The consent form (B68 at 3) was a form used for re-evaluations rather than initial evaluations. The form states that the purpose of the evaluation is to assess the Student’s “current level of functioning.” The form indicates that the procedural safeguards were being provided with the form and identifies a specific District employee with whom the Mother can speak if she has questions regarding the procedural safeguards. The form states that the Mother has the right to revoke her consent at any time, has the right to obtain an independent evaluation as part of the evaluation process and has the right to utilize due process procedures. The form states that the District was requesting assessment of intellectual abilities with the Wechsler Intelligence Scale for Children (“WISC”), assessment of reading, writing, math and language with the Wechsler Individual Achievement Test (“WIAT”), assessment of a variety of behavioral concerns by behavior rating scales to be completed by teachers, the Mother and the Student), and “Other Tests as deemed necessary by the evaluator.” The last entry is crossed off on the form and there is a note that states that the Mother “refused for additional testing.”

147. Mr. D attended the February 2, 2007 PPT and participated in the discussions with the Mother regarding the evaluation and executing the informed consent to evaluate form (B68 at 3). Mr. D testified that the Mother did not object to assessment with the WISC, the WIAT or the Behavioral Scales. Over the course of the PPT, the parties had discussed obtaining a psychological evaluation by a clinical psychologist. The Mother had reported that she had an evaluator but would not identify who that was. The Board had agreed to pay for a psychological assessment by her evaluator provided that the evaluator was qualified to do the assessment. The reference “other tests as deemed necessary by the evaluator” on the consent form was intended to capture that the Mother’s chosen evaluator (assuming he was qualified to do the evaluation) would determine what assessment tools would be used. The Mother refused to consent to an arrangement in which the evaluator of her choice would determine the assessment devices that would be used. (D 5/11 Test.)
148. The Student served an in-school suspension on February 8, 2007. (B70)
149. On February 12-13, 2007, the Mother exchanged e-mails with the resource room teacher (Ms. F) who indicates that the Student is doing well generally in the resource room setting. The Mother’s demeanor in this e-mail is pleasant, cooperative and supportive. (B71 at 2)
150. Ms. F reported that on February 15, 2007, the Student had to be given three warnings to stop singing the Oscar Meyer Wiener song in his Geography class before he stopped. He was not responsive to student complaints that he was disturbing them. (B82 at 2)
151. A revised behavior management plan/behavior tracking system was implemented starting on February 26, 2007. (B72)
152. On February 27, 2007, Ms. F reported that during the resource room class the Student was continually shouting out “dirty” remarks and required 5 warnings before he would stop. (B82 at 3)
153. On March 13, 2007, the Student’s physical education teacher, Mr. H, relayed the following report about the Student’s participation in the most recent sequence of three physical education classes:
 - a. Class 1 (Wednesday March 7): Approximately ten minutes into the class, the Student was asked to leave and go to the office. “At the end of a round of a game he decided to sit on the floor and start a [sic] screaming. Two students stated he was upset with the outcome of the game which instigated the situation. [Mr. H] observed him and at no time towards the end of that round did he get hit with a ball. [The other students] also stated he was not hit with a ball in the head at all in the game. He has occasionally acted out in this manner and usually can reenter the game or activity after calming down and having a talk with [Mr. H] on the side. [Mr. H attempted to talk to the Student but the Student] was non-responsive to multiple lines of questioning. [Mr. H then asked the Student to sit in the bleachers, resumed the class and then went over to the Student to ascertain what the issue was. In response, the Student] got up and went

three feet where he decided to lay on the ground and start crying and pitching a fit again. [Mr. H attempted to approach the Student again and the Student responded by] immediately jump[ing] up and shout[ing] at the top of his lungs for me to ‘shut up and leave him alone.’ [Mr. H] asked once more for him to stop and then the [Student] repeated [his statement] again with an additional comment that ‘[Mr. H did] not care or love him.’ Mr. H then asked the Student to go to the office. The Student “refused twice then finally left after milling in the hall for a minute or two.” Approximately twenty minutes later the Student returned to the gym with the nurse. The Student had apparently gone to the office and advised that he had sustained an injury in the class. After conferring with Mr. H, Mr. H reported that the nurse concurred that there was no basis for a claim of an injury. Mr. H notes that the Student has on several occasions manifested a behavior problem and then “transfer[red] it to a non existing medical issue.” (B73 at 2-3)

- b. Class 2 (Friday March 9): The Student has been “starting to lash out physically towards other students and himself. [In this class], he was caught twice throwing himself towards the wall and on the floor . . . At the end of the class he was doing well until he threw himself into the wall backwards for no reason. I conferred with four separate students who clearly stated that no one was within ten feet of him and he hurt himself. I approached him right when I heard him go down concerned for his health and safety. There I was greeted with a thunderous response ‘I am not a behavior problem.’ [Mr. H advised the Student that he was coming to check to see if the Student was all right because Mr. H was concerned about the Student hurting himself.] [The Student] then lost total control of his emotions. During which he started to fiddle with his hands aggressively. This then led to him biting his own hand hard for about a minute. I stayed with him working on his breathing and after five minutes or so he called down. He also at this point switched his demeanor 180 degrees back to the normal happy [Student].” The note from this class also references some “racquet incidents” but does not clearly describe what that refers to. (B73 at 2)
 - c. Class 3 (Wednesday March 13): This class was a “perfect class” for the Student. “He was by far the most polite and well behaved I have ever seen him this year.” (B73 at 2)
154. On March 7, 2007, the Student incurred a Disciplinary Referral (warning, after school detention) for the incident in Class 1 described above - disrespectful behavior and insubordination in physical education class and disturbing the class. (B73)
 155. The Mother’s cross-examination of Mr. D about this event indicates her view that the Student’s behavioral problems in Class 1 and 2 above were caused by elbowing and harassment by other students that was not observed by Mr. H. She also maintains that the Student’s behavior in Class 2 was the result of being hit in the head or face with a ball during the game. (Mother 5/11 Statements)
 156. On March 9, 2007, the Student incurred a Disciplinary Referral (warning, after school detention) for disrespectful behavior, insubordination and disturbing a class. The Student

interrupted language arts class with ongoing comments and did not stop despite multiple warnings. He denied these behaviors. (B74 at 1) The Mother complained about the incident to Ms. A who received a more detailed report from Ms. F who was substitute teaching the class. (B74 at 2-3) At Ms. A' direction, Ms. F advised the Mother directly of the basis for the detention. (B74 at 4)

157. On March 12, 2007, Ms. F reported that the Student refused to take the CMTs in the office because the Mother stated that he did not have to do so but rather was supposed to take them in his classroom. He disrupted other students but ultimately settled down. (B82 at 4)
158. On March 9-13, 2007, the Mother and Ms. E exchanged e-mails in which the Mother expressed concerns about other students instigating the Student and expressed an interest in hearing from Ms. E "about anything going on in the X School should know about for my son." She also requested a copy of the consent for evaluation form, which Ms. E advised would be available for her in the office. (B75)
159. On March 15, 2007, Ms. F reported that the Student made up lyrics in Geography for songs "Because of you I never committed suicide" and "come sleep in my bed." (B82 at 4)
160. A set of progress reports dated March 2007 indicate the following:
 - a. The Student has a 54 average (an F) for Term 3 in science. His teacher notes that the Student "does well on what he hands in. He needs to hand his work in on time. He is getting into some very bad work habits, handing work in when he feels like it and doing the work when he feels like it." (B76 at 1)
 - b. The Student has a 65 average (a D) for Term 3 in geography. (B76 at 2)
 - c. The Student has a 55.6 average (an F) for Term 3 in language arts. The teacher notes that as of March 15, 2007, the Student has missed all of part of language arts class 19 times this term. Absences are impacting his academic performance. (B76 at 5)
 - d. The Student has an 85 average (a B) for Term 3 in Computer Education Class. His teacher notes that he has worked hard at cooperating and participating in class, but needs to put more effort into class assignments. (B76 at 7)
 - e. The Student has a 69.3 average (a C) for Term 3 in Math. His teacher notes that he has missed all or part of math 11 times since March 19, 2007. The Student has "strong math reasoning and is not working to his potential." Absences are impacting his performance. (B76 at 8)
- 161 On March 29, 2007, the Board commenced this due process proceeding. (B78)

162. Between September 5, 2006 and April 25, 2007, the Student was absent 30 days and tardy 67 times. (B80)⁴⁷

⁴⁷ Assuming the Student has no more absences or tardies for the rest of the school year, and assuming a 181 day school year, this data indicates that the Student was absent 17% of the time this year and was tardy on 44% of the days he actually attended school.