

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Student: Parents appearing pro se

Appearing on behalf of the Board of Education: Attorney Lee Tiernan
Corporation Counsel
City of Waterbury
Waterbury, CT 06103

Appearing before: Attorney Deborah R. Kearns
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Whether the child's 2007-2008 Individualized Education Program (IEP) provides the child with a free and appropriate public education?

PROCEDURE:

The hearing convened on fifteen days; the dates of hearing were selected to accommodate the scheduling needs of both parties. The parties agreed to extend the date for final decision and adjourned to allow time to conduct a psychological re-evaluation. After consulting with the evaluator, the parents withdrew their consent to use physical restraints, as a behavior intervention, for the child. The local education agency filed a request for stay-put to reinstate the use of physical restraints; the request was denied. The out-of-district placement determined they could no longer provide a program to the child. The child's IEP was modified to reflect the change in placement. The local education agency and parents agreed to search for a placement for the child. The local education agency again made a request for stay-put and an Interim Order to reflect the child's change in placement. The parties agreed to file final briefs in the form of final statements and arguments. The record closed on June 12, 2008.

SUMMARY:

The parents claim the individualized education program (IEP) is inappropriate because the child must attend programs in three separate locations; and be transported two hours/day. The IEP also does not provide for consistency in managing the child's behavior in all environments.

The parents claim the child is unable to make meaningful progress. The IEP does not meet the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA 2004) definition of a free and appropriate public education. The special education and related services are not designed to meet the child's unique needs for consistency and prepare him for further education, employment, and independent living. The IEP involves too many providers who are unable to manage the child's aggressive and self-injurious behaviors. The child's behavior has deteriorated since January 2006.

The local education agency (LEA) claims the child is placed in a school which provides expertise in educating children with autism. The LEA states the parents did not express dissatisfaction with the School. The child's out-of-district placement, the extended day program and the community based programs combine to provide the child with a placement in the least restrictive environment.

The behavior goals and objectives in the child's IEP rely primarily on restraints and isolation to eliminate the child's aggressive and inappropriate behavior. The physical restraint strategy is not used in the other programs the child attends. The transportation personnel are not trained to support the child's behavior plan. The parents believe transportation problems and inconsistent, behavior intervention triggered a cycle of increased aggression and self-injurious behavior. The parents, the local education agency, and the out-of-district placement agreed the child should remain in the out-of-district placement when the hearing commenced. As the child's behavior became worse the parties adjourned to conduct an evaluation. The parent withdrew consent to continue the behavior plan with physical restraints. While the child was hospitalized, the parties agreed the out-of-district placement could no longer provide a program. The IEP was modified to reflect the child's change in placement. The evaluation identified the child's needs and made recommendations to modify the IEP for the child.

FINDINGS OF FACT:

1. The child is a 15 year-old with autism. The parties do not dispute the child's identification pursuant to IDEA, or the child's need for specialized education and related services to allow him to progress in the general curriculum.
2. In 2005, the local education agency (LEA) placed the child in an out-of-district facility, hereinafter "the School", which provides education to autistic children. The 2007-2008 IEP provides for the child to remain at the School. (Exhibit P-41)
3. The child's behavior has deteriorated since January 2006. The IEP for the 2007-2008 school year is similar to the 2006-2007 IEP. The parents claim the IEP is not reasonably calculated to enable the child to receive an educational benefit. The child's program consists of an out-of-district school and the extended day program (EDP). The balance of the hours recommended in the child's IEP is provided by a community program, Family Options. Additional services are provided by a Department of Mental Retardation program (DMR) called ICAPS. The home-based, habilitation therapy and intervention program is provided by

ICAPS. The behavior strategies and interventions are not carefully coordinated by a board certified behavior analyst.

4. The parents claim the IEP relies on the child being transported to school for two hours each day. The transportation company is not capable of dealing with the child's aggressive and self-injurious behaviors. The behaviors occur in all settings affecting the child's ability to learn, progress, and go out into the community. It is more appropriate for the child to reside closer to the School and be transported by School personnel, who are trained to give the child consistent behavior intervention. (Testimony, Parent; Exhibit HO-1)
5. The transportation company, Family Options and ICAPS do not use the behavior plan implemented at the School. The child's behavior has not improved; it has become worse. The parents believe it is more appropriate for the child to reside closer to the School. The child could be transported by School personnel, who are trained to give the child consistent behavior intervention. (Testimony, Parent, Exhibit HO-1).
6. The child's 2006-2007 and 2007-2008 IEP relies on the 2004 Psychological Evaluation performed by Dr. Powers of The Center for Children with Special Needs, hereinafter "the 2004 Evaluation". Areas of significant concern identified in the 2004 Evaluation are toileting accidents, disruptive behaviors, and vocal stereotypies (described as laughing, screeching, singing and grabbing the hands of others).
7. Dr. Powers is concerned that stereotypic behavior is interfering with the child's ability to focus and participate in a wide variety of activities. On the autism rating scale, the child's score places him in the range of children, who are substantially affected by autism. (Exhibit P-1)
8. When the Stanford Binet, Fourth Edition was administered in 2004, the child's test composite score was fifty-five. Test results show variability across subtests with greater compromise on the Verbal Reasoning and Motor Planning subtests. Performance dramatically improves when motor planning and language demands are reduced or eliminated. The child is unable to identify words in the absence of picture cues. The child relies heavily on visual context for language processing demands, such as, visual cues and prompts. Circumstances where more familiar experiences can result in a rote response may not require the visual cues. Information mastered in direct instruction is not generalized beyond the question asking format. The child's comprehension of social situations is compromised. (Exhibit P-1)
9. On the 2004 Evaluation, the child performs better on the Abstract/Visual Reasoning domain, which is a more accurate measure of the child's, non-language, reasoning skills. The child is slightly below average in his ability to

discriminate salient information in a matrix to find a missing element. (Exhibit P-1)

10. On the 2004 Evaluation, Quantitative Reasoning is compromised. The Short Term Memory subtest is three standard deviation points below the mean. It should be understood the child's auditory and visual short term memory are equivalent. (Exhibit P-1)
11. In 2004, Dr. Powers observed the child engaged in verbal stereotypies during testing. The behaviors were excessive and difficult to interrupt. Dr. Powers is concerned reinforcing-stimulus, through the use of stereotypies, will artificially suppress the child's attention, focus, participation, and performance. (Exhibit P-1)
12. Dr. Powers 2004 Evaluation concludes the child's learning style is consistent with that described in prior evaluations in 1997, 1998 and 2001. Dr. Powers makes specific program recommendations to meet the child's needs. The child requires contextual cues, remarkable structure and consistency. To teach the child to master new information requires straight-forward, reinforcement-based systems; and errorless, discrimination, teaching strategies. Dr. Powers recommends verbal rehearsal strategies when describing tasks and possible responses. The child's ability to generalize across settings is dependent on inductive teaching strategies. The use of deductive strategies, applying mastered material to new situations, is highly problematic and should be avoided. (Exhibit P-1)
13. The 2004 Evaluation prescribes a full-year, specialized program for children with autism. The program should use applied behavior analysis, teaching principles, procedures, and strategies. The evaluation provides details for documenting IEP objectives, data collection, and graphing. The documentation should be collected daily and reviewed with the team weekly. The objective is to correct errors and to expand content and/or context. Dr. Powers stresses, the program elements are necessary to address consistency and integrity. The child should have no more than three consecutive days without direct programming to avoid significant regression and behavioral disruption. The child needs community based, habilitation training on days when school is not in session. Due to the child's age, the absence of comprehensive, wrap-around services places him at risk for restrictive, educational experiences in an out-placement. The child requires a board certified behavior analyst to review his programming daily. The behavior analyst should lead the team in creating a more comprehensive set of responses that generalize across settings. (Exhibit P-1)
14. Dr. Powers recommends the Department of Mental Retardation (DMR) could provide the community based and habilitation services. He stresses, however, the instruction is essential to educational planning, in the broadest sense of the term, and necessary to prevent the need for a more restrictive placement. Dr.

Powers makes it clear that the services are intended to provide special education instruction and services designed to meet the child's identified needs.

15. There is no IEP provision for the behavior analyst to coordinate the behavior plan to be implemented consistently in all settings. The parents' testimony of their efforts to engage DMR services and ICAPS programs is credible. DMR told the parents the child's behavior does not make it appropriate for the child to receive DMR services in the home. There is no evidence in the record the services are provided elsewhere. (Exhibit P-1, Testimony, Mother, Testimony, Father)
16. The 2004 Evaluation states social interaction skills training is highly context dependent for the child. Training should be provided following a comprehensive curriculum. The training should be augmented by daily, social and communication activities with clear expectations for responses. An ecological assessment of all activities, in school and at home, should determine the specific requirements for each particular setting. Specific programs are recommended to provide direct instruction of social skills. (Exhibit P-1, p.6-7)
17. Programs are recommended to provide important elements for direct instruction in reading mastery. For overall curriculum, the team is encouraged to use *The Assessment of Basic Learning and Language Skills*, by Drs. Mark Sunderland and Richard Parrington. (Exhibit P-1, p.6-7)
18. In the 2004 Evaluation, Dr. Powers' recommendation is to immediately implement a toileting program. There is no evidence the toileting procedure was followed. The 2007-2008 IEP does not contain a toileting procedure. Toileting and associated behaviors remains a significant challenge for the child.
19. An appropriate IEP contains programs, procedures, and methodologies recommended or approved by Dr. Powers and Dr. Molteni and the behavior analyst as proposed in the 2007 Evaluation. The child is now an adolescent and behaviors with toileting have become very problematic. The IEP team must address the need for a toileting program. An IEP which lacks this important component is inappropriate
20. Dr. Powers recommends a functional analysis of the child's behaviors and a behavior intervention plan to address the behaviors in all settings. Comprehensive treatment includes medication management and behavioral intervention. (Exhibits P-1, p.6-7, P-74)
21. The 2004 Evaluation states the child continues to require a specialized program to support functional skills development. The child does not have access to learning opportunities because of motor and vocal stereotypies. Challenging behaviors are intense. The behaviors require greater support and reduce the child's opportunities for instruction. The child does not have a consistent

communication system to indicate his wants and needs. Communication is the greatest obstacle to access functional alternatives to challenging behavior. (Ex. P-1)

22. The most recent administration of the Vineland II Adaptive Behavior to Scales administered in 2004 indicates some progress since 2004. The child's adaptive behaviors are estimated to be in the low range for his age. His score is three deviations below the mean score of 100 in communication, and daily living skills. In socialization, the child scores at a six-month old level; interpersonal play, a four month old level; play and leisure skills, a two-year old level; and for coping skills, a two-year old level. (Exhibits P-1, P-74)
23. Dr. Powers' recommendation in the 2004 Evaluation is for a school day with extended school day and an extended school year. A board certified behavior analyst is necessary for daily program review to lead the team, and to create a comprehensive set of responses that generalize across all settings. The child's needs with respect to generalization training are extensive and at a critical point in his development. The behavior analyst testified she does not know how the child is progressing in Family Options. (Testimony, Condon, Exhibits B-16, B-25, P-1, P-2, P-41)
24. In the 2007 Evaluation, on the Stanford Binet: Fifth Edition, the child's Verbal Reasoning score is 43 placing him in the first percentile. The child has limited working memory. He can repeat sentences up to five words but makes multiple mistakes as sentence length increases. (Exhibit P-74)
25. The 2007 Evaluation makes recommendations for specific programs to develop the scope and sequence of learning objectives for functional academics, daily living, social, and communication needs. For adaptive living, The Adaptive Living Skills Curriculum; for functional math and reading skills, Touch Math/ Touch Money and EdMark Functional Word Series. The evaluator stresses the importance of developing functional outcomes for all skills taught. The skills need to be practiced and utilized with sufficient frequency to become part of a daily routine and increase independent living skills. (Exhibit P-74, p.7-8)
26. The 2007 Evaluation recommends curriculum adaptations and modifications to support the child's participation across learning environments. Use visual supports to structure the child's day and provide him with clear expectations for beginning and ending activities. The visual adaptations and modifications are outlined in *Visual Strategies for Improving Communication*, by Linda Hodgen; and *Activity Schedules for Children with Autism*, by Drs. Patricia Krantz and Lynn McClannahan. (Exhibit P-74)
27. Social Skills must be taught in a context-based approach following specific procedures and include an assessment of all the environments in which the child participates, to identify academic, communication, social, and behavioral

responses to his stereotypic behavior. Develop a repertoire of leisure activities beginning with movement, then, music, muscle relaxation, and cardiovascular activities sufficient to compete with pacing and other motor stereotypies. (Exhibits P-74, p.7-8)

28. Instruction in receptive and expressive language domains requires immediate attention. The child's significant deficits result in vocalizations limited to one word responses to others' social bids. A visually based functional communication system will allow the child to produce efficient clear communication intentions. An Assistive and Augmentative Communication evaluation by either Carol Ann Cormier at CREC or the Boston Children's Hospital, Autism Language Program will identify a means to support the child's efficient communication. (Exhibit P-74, p.8)
29. The behavior support plan requires a functional behavior assessment to determine the function of the child's behavior. Data collection must be based on direct observation in all settings. The data shall drive all decisions related to behavior supports and interventions necessary to meet the child's needs in a given situation. Data collection is required daily to monitor whether challenging behaviors and desired alternative behaviors are moving in the appropriate direction. The behavior plan should define a functional behavioral definition of the target behavior; antecedent strategies to prevent occurrence of the behavior; and reinforcement procedures for desired behavior. Alternative responses are to be developed as replacement behavior; and consequent strategies for challenging behavior. The current behavioral plan should provide more than a single word response to permit the child to access an appropriate and functional alternative. The development of assessment procedures, the behavior plan and frequent review of data should be supervised by a board certified behavior analyst such as Michael Soderlund. (Exhibit P-74, p.9)
30. Focused intervention is necessary to develop independent toileting skills. Strategies for reinforcement for dryness, production and communication must be developed to allow the child to initiate toileting. The book *Self-Help Skills for People with Autism*, by Dr. Stephen Anderson, is a reference for developing a program for adaptive living skills. (Exhibit P-74, p.10)
31. The evaluator recommends an assistive technology assessment by Onion Mountain Technology to help the child access his environment. A medication review by Dr. Robert William or Dr. Larry Scahill is recommended. (Exhibit P-74, p.10)
32. The child has developed behaviors that interfere with learning. After an initial period of some improvement, aggressive episodes increased and interfered with success and learning. The child spent much of the day out of the classroom or at a desk away from the group. His behavior interferes with learning new skills. Testing was difficult. He has retained previously mastered skills but progress is

generally not indicated. The Annual Review notes indicate several areas of academic instruction were not addressed. (Testimony, Saunders; Testimony, Mother; Testimony, Father; Testimony, Condon, Exhibits P-16, P-25, P-39, P-41, P-46, P-48)

33. Family Options, a community based program, provides a portion of the program requirements recommended in the 2004 Evaluation and the child's IEP. Family Options provides services on forty-three days while the School is not in session; and on Saturdays. Family Options is not invited to IEP meetings. There is no coordination of program or strategies to address the child's behavior, communication, stereotypic behavior, and daily living skills. (Testimony, Abell, Exhibits P-12, P-25, P-41)
34. The child's behavior analyst and other school personnel are not aware of the weekend and school vacation portions of the child's IEP provided by Family Options. Service providers and a program participant have been injured by the child's aggressive behavior. The child's behavior limits his ability to benefit from his education program and access the community. (Exhibits P-17, P-18, P-32, P-51, P-52, P-54, P-55, Testimony, Mother; Testimony, Sandler; Testimony, Saunders; Testimony, Condon; Testimony, Luftglas; Testimony, Moura)
35. During the 2005-2006 school year the child did not require a restraint or harness for transportation to and from school. The restraint is first used in October, 2006. The parent believes the transportation problems commenced when the LEA hired a new transportation company to transport the child. The parents report the following problems: The aides are not trained to handle the child's severe behavior. The commute exceeds two hours/day. When the van arrives late, it upsets the child. When he is upset he throws objects, vomits, and chokes on food items. He engages in self-injurious behaviors. He rides without shoes, which he will throw; arrives soiled and wet; and sometimes with his pants down. The parent testified when the van arrives the child is so upset the van is rocking from his thrashing; and the commotion can be heard inside the house. A transportation company employee was hired as an aide to monitor the child's behavior. The aide was required to sit in the back with the child. The aide is reported to be in the back seat when they leave the child's residence and in the front when the vehicle arrives at school, the aide was hired because the parents were concerned about the child's safety during travel. (Testimony, Mother; Testimony, Father; Testimony, Abell; Exhibits P-3, P-56)
36. On at least one occasion the parent testified the van was driven by an aide who was not licensed to drive the vehicle. The driver was not present in the vehicle. The aides are not able to operate the restraint or remove it quickly. The aide relies on the parent or school personnel to operate the restraints. The parents believe there are safety issues. If the van is in an accident, the aide is not trained to remove the child. The aide cannot manage his behavior if he is free from the restraint. The transportation aide is unable to meet the child's disability related

needs to stabilize his behavior. The testimony of both parents is credible. (Testimony, Mother; Testimony, Father; Testimony, Condon; Exhibits B-20, P-3, P-22)

37. The LEA representative testified she responded to the parents' concerns. In November, the LEA made inquiries, met with the School staff and the transportation company. When the child's behavior was an issue, the LEA attended a meeting to address transportation issues. The LEA took steps to address child's need for program modification. (Testimony, Abell)
38. The child's behavior escalated and the School provided a vehicle restraint for travel. Without notice to the parents, the child arrived at home in a restraint. The restraint was not properly fitted to the child. Neither the parent nor the transportation aide received instruction on the use of the restraints. The parent was told to place the child in the restraint which contained a warning label limiting the use to children weighing less than 65 lbs. The child's weight exceeds the limit. The transportation aide is unable to control the child. The School staff told the mother they did not see the point in training the transportation staff due to rapid turnover. The transportation aide is not trained to effectively address the child's behavior. Behavior management is a primary objective of the child's education at this time. The aide is instructed to call the police and ambulance if the child is out of control. On at least one occasion, the police took the child to the hospital. (Testimony, Father; Testimony, Mother; Testimony, Abell; Testimony, Condon; Testimony, Moura; Exhibits B-20, P-22, P-31, P-80, B-20)
39. The LEA was aware of the child's problems with transportation. The difficulties were not simply transportation issues. The child engaged in behaviors the IEP was intended to address. The child's needs are too complex and multifaceted. It is not appropriate for the child to travel to his IEP program at this time. If it becomes necessary to include transportation in the child's program, it is appropriate for the behavior analyst, preferably the one recommended by Drs. Powers and Dr. Molteni in the 2007 Evaluation, to supervise the travel behavior plan. (Exhibit P-74)
40. An IEP dated February 17, 2007 amends the 2006-2007 IEP. The modification replaces time-out with physical restraint, as a behavior intervention strategy. The team reports the modification was to accommodate increased aggression. The behavior plan provides for distraction for behaviors defined as inappropriate touch such as hugging, touching, patting, rubbing others or failure to respect the personal space of others. If the child engages in aggressive behaviors defined as hitting, kicking, pinching, scratching, grabbing or head butting, the restraint employed is the, nonviolent crisis intervention, standing team control position. If the child drops to the floor, the team will employ the nonviolent crisis intervention Interim Floor Hold until the child demonstrates lying calmly for one minute. (Exhibits B-16, P-12)

41. An appropriate program for the child should plan to generalize preferred behaviors to other environments in which the child participates. This is particularly necessary when the IEP targets specific learning or behavior objectives, such as inappropriate touch. The child's generalization needs, recommended in the 2004 Evaluation, have not been adequately addressed in the child's 2007-2008 IEP. (Testimony, Condon, Exhibits B-16, B-25, P-1, P-2, P-41)
42. The behavior analyst testified the child was placed on a restraint program because he spent a large part of his day in time-out and was missing extensive instruction time. The behavior analyst came to work for the school in January 2007; she implemented the new procedure soon thereafter. The behavior analyst's resume states she was not certified in November, 2006, two months before she began working with the child. (Testimony, Condon; Testimony, Saunders; Exhibit B-19)
43. The program director testified the child would be brought to the floor for a face down physical restraint if he drops to his knees. From the record, Exhibit B-72 and the parent's testimony, there is sufficient information to conclude the child is frequently in a face down restraint. The parents signed a consent form which states they have the right to withdraw consent to use restraints at any time. The behavior analyst will be called to observe each use of a restraint. The EDP teacher testified a behavior analyst is not called at the time of a restraint. The behavior analyst testified she is not called in for each use of restraints. (Testimony, Rice 11/1/07; Saunders, 8/9/07; Testimony, Condon; Exhibits B-24, B-72, P-57, P-68)
44. During the 2005-2006 school year, the child was able to go out into the community, travel with his mother in the car and visit with extended family. The mother is no longer able to transport the child in the car. During the 2007-2008 school year, the child is excluded from community activity because of his behavior; he is the only child in his class when the other students go out into the community. (Testimony, Saunders, Mother, Father).
45. The child mastered two of his 2006-2007 goals and objectives. The child mastered his gross motor movement objective. Mastery of the behavior objective to avoid inappropriate touch is disputed. The progress report and graphs show the behavior objective to reduce inappropriate touch was mastered. Inappropriate touch, subsequently, emerged as a problem. The testimony is credible. Inappropriate touch continued to be a problem at the School's extended day program (EDP). The child's progress was unsatisfactory to meet this objective. The Center for Children with Special Needs' evaluation provides that the behavior plan requires an operational definition of the target behavior. School staff, who worked with the child, are unable to identify the definition of "inappropriate touch". Witnesses testified the child spent much of his school day isolated from other students sitting in a separate cubby or his desk is moved

away from other students. Large portions of the child's day were in time-out. The child did not participate in community activities. The 2007 Evaluation reports multiple learning objectives were not introduced or show insufficient progress. The child's behavior limits his ability to go out and function in the community. (Testimony, Father; Testimony, Condon; Exhibits P-1, P-41, P-74)

46. The record supports the parent's claim the child was restrained by staff members for fifty minutes on March 7, 2007. The child was in an open door timeout for 40 minutes on July 19, 2007. On July 24, 2007, the child was placed in an open door time out for 2 hours and 15 minutes. (Exhibit B-24, B-72)
47. The parents witnessed a restraint on October 11, 2007. They testified the child was hitting in the direction of one of the staff members. The parents testified they did not see the child make contact with anyone. The parent thought the restraint was excessive. The investigation commenced five days later. The nurse checked the child for injuries two hours after the incident, but she failed to note the injuries the child sustained. The report has several inconsistencies. The investigator did not interview the father until two weeks after the incident. The mother was not interviewed at all, even though, she witnessed the event. Other people interviewed about the incident provided inconsistent statements. (Exhibits B-23, B-24, B-72, P-57, P-68)
48. The parent's decision to rescind the use of restraints occurred following an evaluation consultation at The Center for Children with Special Needs. Either Dr. Powers and/or Dr. Motleni told the parents the restraint, as described, was not properly implemented. (Testimony, Father 12/6/07)
49. The restraints, described in Exhibit P-57 and Exhibit P-68, are used in the child's behavior plan. Restraint forms are to be filled out and maintained for each use of restraint or seclusion. The parent made three requests for copies of the restraint forms. The parents testified the restraint forms show 1,351 physical restraints from January 2007 to November 2007. The restraint forms show a total of 81 hours of restraint duration from January 2007 to November 2007. The parents revoked their consent to place the child in restraint. Once permission to use restraints was rescinded the School had no other program to offer the child. The parents testified the child was hospitalized in a psychiatric ward, until an opening in an alternative placement could be found. (Testimony, Father; Exhibits B-24, B-72, P-57, P-62, P-65, P-66, P-68)
50. The LEA and parents agreed the School was no longer able to provide a program for the child. They worked together to find a placement consistent with the recommendations in The Center for Children with Special Needs. The parties had difficulty locating a program with an opening for the child. The parties requested an Interim Order to reflect their agreement to seek a placement. (Exhibit HO-2)

51. The Connecticut Mastery Test Skill Checklist Profiles administered in 2007 shows a weaker performance in 2006. Performance on Total Reading score dropped from 7 to 2; Total Communication score dropped from 11 to 1; Total Mathematics score dropped from 16 to 1; and Total Access Skills score dropped from 89 to 69. (Ex. P-58, P-59)
52. The Triennial Review Notes, dated May 15, 2007, do not show progress. Behaviors interfere with group instruction. When the group is larger than 4:1 the child engages in self-stimulatory behavior, rocking, and making noises. He has difficulty following instruction and learning new skills in any group setting. It is difficult for him to work independently and wait his turn during transition. He can stay with the group while crossing the street, but he does not wait at the corner. He does not know how to verbally express his name and address. The child can dress and undress but he will dunk his clothes in the toilet if he is not watched carefully. The child does not make verbal requests for toileting and has accidents. He does not meet independent living objectives. He requires supervision to read and measure recipes; and to refrain from eating the ingredients. The child requires multiple prompts to set the table, load a dishwasher, and fold laundry. The child who is 15 years-old is unable to participate in vocational programs due to uncontrolled behaviors. (Exhibits P-25, P-45)
53. The Annual Review Notes, dated May 15, 2007, and the testimony provided at the hearing do not support a finding the child made progress in leisure goals. The child is not able to play independently or with his peers. Stereotypies and aggressive behaviors interfere in the child ability to meet his leisure goals and objectives in the 2006-2007 IEP. (Exhibits P-25, P-74)
54. The child participates in a Family Options Program to provide him with the hours of comprehensive programming recommended by Dr. Powers. The LEA did not provide Family Options with the modified behavior plan or instruct staff to consistently implement behavior strategies. Family Options used a behavior plan given to them in 2005. There is no coordination between Family Options and the School to provide the child with the consistency recommended in the 2004 Evaluation. The child exhibits challenging behaviors resulting in limited access to the community and socialization opportunities. The child needs instruction in all the environments in which he participates if he is going to make progress toward his IEP goals and objectives. (Exhibits P-1, P-74)
55. The child's 2006-2007 IEP was modified to add restraints to the child's behavior goals and objectives on February 15, 2007. The restraints are, Nonviolent Crisis Intervention, and standing team control. The Occupational Therapy Progress Review Notes, dated May 15, 2007, provide the child exhibits a group of symptoms that are the result of protective reactions to non-harmful stimuli across one or more sensory systems. The systems include the tactile system, oral tactile, auditory system, and the vestibular system. The stimulus causes an over-

reaction to normal protective senses. Individuals with sensory defensiveness have their own response style, which includes avoidance, withdrawal, sensory seeking, fear, anxiety, or aggression. The child's sensory defensiveness and poor sensory processing interfere with his ability to interact with his environment. The Occupational Therapy report in the subsection titled, Tactile Processing/Defensiveness, states it is an over-reaction to touch experiences which results in avoiding touching others, dislike of work groups, or avoidance of certain types of clothing or play materials. The child demonstrates an excessive need to touch toys, surfaces, textures or people. He may be unaware that someone has touched him and enjoys touch when he has some control over the interaction. Vestibular Processing is defined as a response to movement, as well as, the reaction to changes in posture and changes in head position. The child keeps his head upright even when bending over. The child misinterprets a variety of stimuli across many sensory modalities. He has poor sensory regulation, and is easily over-stimulated. He becomes dizzy and disoriented with seemingly small changes in head position and movement. It appears he misinterprets or has poor registration of much of the information he receives from movement. The child misinterprets a variety of sensory stimuli. He has poor sensory regulation and easily becomes over-stimulated. He has difficulty regulating movement activities; his nervous system does not accurately process information. Consequently, he becomes overly active when he receives too much input. The child's sensitivities add to his aggressive behavior and tantrums. He has had significant behavioral responses to a variety of situations that may have a sensory base. The child's sensory defensive behaviors and inadequate sensory processing impacts his ability to function comfortably in his environment. (Exhibit B-25)

56. The Final Narrative 2006/2007 School Year is a summary report of the school year. The report includes data collected after the annual review meeting held May 15, 2007. Academics are monitored by a one to one aide. The behavior analyst reports the child made significant progress in reducing interfering behaviors. The target behaviors are aggressive behaviors and inappropriate touch. The inappropriate touch was reduced and discontinued as a target behavior. Aggressive behavior increased in December 2006, both at school and at home. The child's program changed from time-out to a physical restraint procedure as detailed in the behavior plan, Exhibit P-12. The child is in his own cubby in the classroom. After May 15, 2007, (annual review date) the behavior analyst reports a decrease in the frequency of aggression and a decrease in the frequency and duration of restraints. The child's behavior is the most stable it has been since December 2006. In the classroom, the child is more focused with increased work production. He is more available for learning. The behavior analyst reports improved communication. She concludes there is progress but interfering behaviors still represent some concerns. The School will continue to work towards their decrease, as well as, an increase in appropriate behavior. (Exhibits P-12, P-25, P-41, P-44)

57. The Speech/Language subsection of the Final Narrative summarizes the year differently. The therapist states the child has shown improvement in the length of utterance. There is little carryover from session to session and to unstructured settings. The child's behavior significantly interferes with progress this year. The Occupational Therapy subsection states the child has had a difficult year. Behaviors interferes with growth and continue to be a problem. There is some decrease in negative behaviors within the past few weeks. The Extended Day Program reports behavior, from the earlier portion of the day, continues in the EDP. The child participates in all routines and small group activities with the assistance of a 1:1 aide and 2:1 restraint team when he becomes aggressive. He does not participate in community activities due to frequent and intense aggressive behavior. The transportation staff report behavior problems during the ride home. (Exhibit P-44)
58. Consistent with the 2004 Evaluation, 2007-2008 IEP provides for the child to receive services with no more than three consecutive days without programming. The 2007 Evaluation requires extensive interventions be used in a full-year program, including school breaks and vacations. The child's IEP provides for social, behavior, daily living skills, independent living skills, community skills and leisure skills. The IEP relies on the services provided by the School, the extended school day program (EDP), the Family Options Program and ICAPS, a community based psychiatric program. The School's program and EDP program are intended to follow the same behavior support plan. The behavior analyst does not communicate with the Family Options program or the transportation aide. There is a minimal amount of coordination and communication between the various service providers.
59. The teacher, speech therapist, occupational therapist, behavior analyst, the director, and the assistant director all testified they do not coordinate with Family Options. Most of the School staff had no knowledge of the program or the role Family Options plays in providing services to the child. The parents claim the child experiences more aggressive behavior following school breaks, after the child has spent longer periods of time at Family Options. The inconsistencies result in the child having a high number of physical restraints at school after spending three weeks in the Family Options program. (Testimony, Parent 9/12/07, 12/11/07; Testimony, Abell, 7/24/07, Exhibits P-1, P-44)
60. Family Options is a setting where the child is expected to communicate with peers, eat, use the toilet, follow hygiene protocol, dress, socialize, and go out into the community. These activities are behaviors and education objectives in the child's IEP. The child must learn to generalize skills across all settings. Dr. Powers states in the 2007 Evaluation, the use of deductive procedures, where he is expected to apply mastered material in a novel setting without preparation, is highly problematic. The child's need for generalization training is extensive and at a critical point to his development. He should have up to ten hours per week of habilitation training at home and in the community. Dr. Powers states these

activities are essential to educational planning in the broadest terms, and are necessary to prevent placement in a less restrictive educational environment. (Exhibits P-1, P-74)

61. The transportation aide needs to implement the child's behavior interventions or be proficient in the use of the child's restraint. Overall, the parents continue to challenge a placement that requires the child to spend in excess of two hours/day traveling to the School. Neither the transportation aides nor the parents were trained in the use of restraints. (Testimony, Abell; Testimony, Condon, Exhibit P-43)
62. The behavior analyst testified she was responsible for writing the child's behavior program and presenting it to the classroom staff. She has worked at the School since January 2007. She states she was paged about one time per day, and observed the extended day program (EDP), but the hours go beyond her work day. The child has different staff and teachers during the EDP portion of the day, from 2:30 p.m. to 6:30 p.m. (Testimony, Condon)
63. The Behavior Analyst testifies the child experiences increased aggression after breaks in the School schedule for holidays and summer breaks. (Testimony, Condon, Exhibit P-43)
64. After the parents withdrew consent to use restraints on or about November 7, 2007, the School requested a PPT meeting to address the appropriateness of the child's program. The IEP dated November 30, 2007 outlines the child's behavior without restraints. Several people have been injured while providing a program to the child. The program is best described as, maintenance not education. The School believes they cannot provide a program for the child. (Exhibit B-26)
65. The LEA requests the parents reinstate permission to use restraints in the form of a Request for Stay-put. The parents testified after consulting with the evaluator at the Center for Children Special Needs. It was their understanding, the restraint, they witnessed, was improperly implemented. The request to order the parent to reinstate the use of restraints as implemented in the out-of-district placement was denied. At the hearing, both parties testified Dr. Powers, whose evaluation was not yet written, verbally confirmed the child required residential placement. If a program was unable to immediately take the child, he must have specific program requirements to meet his child's complex needs. Both parties agreed to adjourn the hearing to find the child a placement. (Exhibit H0-2)
66. The 2007 Evaluation concludes the strategies, interventions and pharmacology are having a minimal impact on the child's behaviors. The child requires an intensive program to address multiple needs and stabilize behaviors. The goal is to allow the child to access learning opportunities that target his functional skills. The child requires a full-year program for summer breaks and school vacation. Prescribed instruction should have methodologies derived from Applied

Behavioral Analysis, including discrete trials instruction. All instruction must be broken into components to ensure mastery. All mastered skills need to be generalized into other settings. Lesson plans are to be broken down into explicit operationally defined objectives, teaching methodologies, prompting, hierarchies, data collection systems, generalization procedures and criteria for mastery to ensure procedural integrity between all staff. All programming and staffing are to be overseen by a board certified behavior analyst with experience in developing programs for adolescents with significant behavioral challenges and the learning profile the child presents. (Exhibit P-1, P-74, p.7-8)

67. The child requires continuous programming at home, in school, and in the community to provide him with instructional opportunities sufficient to acquire skills. Integration of instructional goals and practices is critical. Service providers should be chosen for their capacity to use prescribed teaching strategies in a consistent and comprehensive manner. A residential setting such as the, The May Center, Melmark New England, The New England Center for Children, and The Groden Center in Rhode Island are proposed placements. (Exhibit P-74, p.7-8)

CONCLUSIONS OF LAW:

1. The student is identified as a student with disabilities pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA of 2004) and its predecessor the Individuals with Disabilities Education Act 20 U.S.C. § 1400 *et seq* as amended (IDEA). There is no dispute between the parties as to the child's eligibility to receive a free and appropriate public education (FAPE). The hearing record establishes that the child was eligible to receive a FAPE for all times relevant to the hearing.
2. There is no dispute the child's primary identification is autism. In 2004, the child attended the LEA's school. The program services were coordinated by a board certified behavior analyst. In 2004, Dr. Powers of The Center for Children with Special Needs, hereinafter the "2004 Evaluation", conducted a psychological evaluation. The 2004 Evaluation concluded the program the child attended within the local education agency (LEA) schools could provide an appropriate program. In 2005, the LEA placed the child in an out-of-district placement, hereinafter "the School". The School provides programs for students with autism and mental retardation.
3. 34 CFR §§ 300.145 through 300.147 applies when children with disabilities are placed in private schools or facilities by the public agency as a means of providing special education and related services. The state education agency (SEA) must ensure a child who is referred to a private school is provided special education and related services in conformity with the individualized education program as required under 34 CFR §§ 300.320 through 300.325 at no cost to the parents; and the child is provided an education that meets the standards that apply

- to education provided by the SEA and LEA including the requirements of this part; the child has all the rights of a child with a disability who is served by a public agency.
4. 34 CFR §§ 300.325 provides the LEA must initiate a meeting and develop the IEP in accordance with 34 CFR §§ 300.320 through 300.325 before it places the child in the private school or facility. The IEP is individualized to meet the child's unique needs and should be developed, reviewed and revised in meetings according to this section. An IEP is a written statement for each child with a disability that is developed, reviewed and revised in a meeting in accordance with 34 CFR §§ 300.320 through 300.325.
 5. 34 CFR § 300.320 (a) requires a statement of measurable annual goals, the child's progress toward meeting the annual goals, including academic and functional goals designed to meet the child's needs that result from his disability. 34 CFR § 300.320 (a)(2)(ii) requires for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or other short term objectives.... Subsection (a)(4) requires a statement of the special education, related services and the supplementary aids and services, based on peer-reviewed research to the extent practicable or on behalf of the child, and a statement of the program modification or support for the school personnel that will be provided to enable the child to (i) advance toward attaining the annual goal; (ii) to be involved in and make progress in the general education curriculum. The LEA must ensure a representative from the private school attends the meeting. In the present case the child's initial placement at the School is not in dispute.
 6. The child's 2005-2006 IEP provides for a day program at the School and an extended day program (EDP) at the School. The child travels more than two hours per day to attend the programs at the School. His program includes Family Options for school breaks and vacations; and in-home services by ICAPS. The parents, the LEA, and the School report the child initially made discernable progress during the 2005-2006 school year. The 2004 Evaluation identifies the child's need for a program supervised by a board certified behavior analyst. There is no record of the extent to which the recommendations in the 2004 Evaluation are incorporated in the 2005-2006 IEP.
 7. The child's behavior deteriorated at the start of the 2006-2007 school year. The parents contend the problems arose when the LEA contracted with a new company to transport the child to his program. The LEA responded to the parents' written concerns and held meetings to discuss solutions. By October of 2006, the child required restraints for travel. The parents report late arrivals and departures upset the child. The LEA added a transportation aide to monitor the child's behavior while traveling to the School. The evidence shows, by December 2006, the child's behavior impacts his school day; the child started to have numerous time-outs imposed for engaging in aggressive behavior. In January

- 2007, a new behavior analyst was hired by the School and assigned to the child. After several weeks of working with the child, the behavior analyst used physical restraints on the child. The parents and the LEA agreed with the behavior analyst's proposal to use physical restraints in an effort to manage behaviors; and reduce the time the child spent in time-out. On February 17, 2007, the IEP team modified the behavior goals and objectives as outlined in the Findings of Facts.
8. The LEA had every reason to rely on the School's expertise in providing programs for children with autism. The School program is presumed to incorporate many of the program requirements outlined in Dr. Powers' 2004 Evaluation. The behavior analyst's resume shows she had applied for board certification two months prior to working with the child. There is no evidence the LEA knew about the behavior analyst's experience. The Director of the School testified the child requires Level IV behavior intervention. Several witnesses testified the child's behavior is very difficult to manage.
 9. The Findings of Fact based on the testimony of nine witnesses and thousands of pages of documentary evidence support the conclusion the child's behavior seriously declined during the 2006-2007 and the 2007-2008 school years. Reports for the period from February 17, 2007 to the annual review on May 15, 2007, show behavior improvement for the child as documented on the graphs attached to Exhibit B-25. The behavior improvements are frequently followed by periods of behavior deterioration. The finding is that the child has not made sustained progress in his behavior goals and objectives. From February 17, 2007 until the date the parents withdrew their consent to use physical restraints on November 7, 2007, the parent summarized the restraint records and determined the child had 1,351 physical restraints.¹ The period of time coincides with the time the physical restraints were added to the child's IEP. In reality the child was no longer able to go out into the community due to unmanageable behavior. The child became increasingly aggressive towards staff and program participants. The program which provides in-home services has rapid staff turn-over and eventually declined to work with the child. Transportation staff can not manage the child. The child travels in restraints, yet arrives home at times without pants and shoes. He arrives covered in urine and excrement. At times the child vomited, engaged in self-injurious behavior and was so upset upon arrival his screams could be heard inside the house and the van would be rocking due to his thrashing. The behavior spills over into his home life. The mother could no longer travel alone in the car with the child or manage hygiene tasks previously accomplished. Physical restraints were used in the School and the extended day program (EDP). There is no IEP provision for the behavior analyst to coordinate and collaborate with other programs regarding the child's behavior goals and objectives. There is no plan to reduce the number of physical restraints. The behavior analyst should have been aware of some of the problems the child experienced in other settings, including

¹ The parents disputed the 2007-2008 IEP for reasons other than the child's program at the School. The 2007-2008 IEP, including the use of physical restraints, was the program implemented during the due process proceedings.

- transportation. The parents wrote in the home school communication log, Exhibit B-1, on a regular basis. The 2004 Evaluation states the child's disability related needs requires programs with consistency, coordination and collaboration.
10. 34 CFR § 300.324 (b) requires the LEA ensure that the IEP team reviews the child's IEP periodically but not less than annually to determine whether the annual goals are being achieved; revises the IEP as appropriate, to address any lack of expected progress towards the annual goals and information the parents present; and gives consideration of any special factors defined at 34 CFR § 300.324(a) (2). In the case where the child's behavior impedes the child's learning or that of others the IEP team must consider the use of positive behavior interventions, supports and other strategies to address the behavior.
 11. 34 CFR § 300.325 (b) provides that reviewing and revising the IEP after the child enters the private facility may be initiated and conducted by the private facility at the discretion of the public agency, however, the public agency must ensure the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. 34 CFR § 300.325 (c) states that even if a private school or facility implements the child's IEP, responsibility for compliance with this part remains with the public agency and the SEA. The issue of notice and decisions addressed at meetings arose on several occasions; they will be addressed below.
 12. The child had a one-to-one classroom aide. The child's annual review IEP convened at the School and the LEA attended by conference call. The IEP team reports the child made progress. The behavior analyst reports the child mastered his IEP objectives to reduce inappropriate touch. Inappropriate touch remains an IEP objective for monitoring purposes. The parents state inappropriate touch remains a problem in other settings the child attends, including the School's extended day program (EDP).
 13. When the School staff was called to testify at the hearing, they stated the child progressed in their program. The School Director testified the School could provide an appropriate program for the child. To support the claim the child made progress on his behavior goals, the School relies on the data which reports the use of physical restraints. The graphs show a decline in aggressive behavior followed by periods of significant increase in aggressive behavior. The behavior analyst testified increased aggression follows attendance at Family Options.
 14. During the spring of 2007, the School's director wrote a letter in support of placing the child in a group home. The child could continue to attend the School program and have a short commute with School personnel present to consistently manage the child's behavior.
 15. The Annual Review documents presented at the Annual IEP meeting on May 15, 2007, indicate the child made minimal progress. Subsequent testimony and

- documentary evidence presented at the hearing make it clear the child did not make any meaningful progress in his annual goals and objectives. The Annual Review Summaries state the child missed large portions of his academic, social, and independent living programs required by the 2006-2007 IEP. It is difficult to comprehend how the behavior analyst was not aware of the child's behavior decline.
16. The parents dispute the School's claims of the child's progress. At the time of the IEP annual review, the child spent large portions of his day restrained or in isolation. The child's desk was in a cubby removed from the rest of the class. The evidence shows aggressive behavior was much worse in any setting where the child was not subject to physical restraint. The restraints occurred as frequently as forty-times per day. Relying on the 2004 Evaluation, the parents believe the inconsistency, in implementing behavior strategies, contributes to the child's behavior problems. The testimony corroborates the parents' testimony that the School does not provide coordination of its behavior goals and objectives in other settings. The behavior analyst does not communicate with the other IEP programs. There is no instruction for managing the child's behavior during transportation. There is no attempt to provide consistency for the child's programs outside of the School, as recommended in the 2004 Evaluation.
 17. Family Options used a behavior plan which had not been updated since 2005. Many of the behavior strategies and instruction programs recommended in the 2004 Evaluation are not part of the child's 2007-2008 IEP. The child continues to require instruction in toileting, communication, assistive technology and a program to reduce stereotypic behaviors. When not restrained or isolated the child's aggressions and behaviors are far worse and his world has become very restricted.
 18. The child misses instruction he badly needs, and he is removed from opportunities to socialize and interact with peers, or go out into the community. The behaviors continue to interfere with the child's ability to benefit from his special education and services.
 19. The Center for Children with Special Needs warned in its 2004 Evaluation that failure to implement interventions and recommendations as specified could result in the child requiring placement in a more restricted environment.
 20. The child's needs must be adequately understood in order to provide him with a program to meet his needs. The School prepared a functional behavior analysis (FBA) but did not include information about the other environments in which the child participates. The Center for Children with Special Needs, 2007 Evaluation, concludes the FBA's used to develop the child's behavior goals and objectives must be based on observations in all settings.

21. Stereotypic behaviors, which are interfering with the child's non-structured time and communication, are not addressed in the child's IEP. The 2007 Speech Evaluation concludes the child is language impaired, yet he does not have access to augmentative communication, as Dr. Powers recommended, three years prior, in his 2004 Evaluation. In the 2007 Evaluation, Dr. Powers is concerned the child is without language to express and process what is happening to him.
22. The Occupational Therapy Evaluation, Exhibit B-25, provides critical information about the child's unique sensitivities. The sensitivities may need to be considered when using physical restraints on the child. The child has sensitivity to touch and struggles to maintain head posture even when bent over. The child's aversion to touch triggers aggression. The evaluator testified she did not believe the behavior intervention plan was helpful to the child.
23. To what extent should the LEA rely on the School to conduct IEP meetings and propose IEP provisions? 34 CFR § 300.325 (b) provides reviewing and revising the IEP after the child enters the private facility may be initiated and conducted by the private facility at the discretion of the public agency, however, the public agency must ensure the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. 34 CFR § 300.325 (c) states that even if a private school or facility implements the child's IEP, responsibility for compliance with this part remains with the public agency and the SEA. The issue of notice and decisions addressed at meetings arose on several occasions. The program was reviewed and the IEP was amended during the course of the year. The parents testified they wanted to be present at a meeting which included the transportation company. The parents notified the LEA they would not be able to attend on the date selected for the meeting. The meeting proceeded in the parents' absence. The parents challenged the sufficiency of the notice and their opportunity to participate in the meeting. The parents were upset because they deemed transportation to be a problematic part of the child's program. The Findings of Fact set out the details of the problems with travel. From the evidence in the record it does not appear the meeting was intended to be an IEP meeting. The child's IEP did not change as a result of the meeting. It is not likely the child was denied a FAPE by the decisions made at the meeting with the transportation company. 34 CFR § 300.501 (b)(3) provides a meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodologies, lesson plans, or coordination of services.
24. The LEA responded to the parents' concerns about transportation. The coordinator of special education testified the LEA is always concerned that the child is receiving the intended benefit by participating at the School. The LEA responded to the parent's letters, and both parties met with the transportation company. In January, the School changed how they managed the child's behavior. In February, an IEP meeting convened to change the behavior plan to incorporate

a physical restraint system. The School, the parents, and the LEA participated and agreed to modify the child's IEP program.

25. The LEA permitted the School to conduct the IEP annual review meeting convened in May 2007. The LEA attended by conference call. 34 CFR § 300.328 provides the parents of the disabled child and the LEA may agree to use alternative means of meeting participation such as video conferencing and conference calls. There is nothing in the record to support a conclusion the parents agreed the LEA's participation in the May 15, 2007 would be by conference call. The parents testified they were upset the LEA agent concluded their participation in the call prior to the end of the IEP meeting before they had time to raise issues at the meeting. The team decided the 2007-2008 IEP should be similar to the 2006-2007 IEP. The parents filed for due process and stated their opposition to portions of the 2007-2008 IEP. The LEA provided testimony to show the parents did not claim they were unhappy with the school program. It is clear the parent objected to problematic portions of the child's program. No evidence was presented to conclude the LEA representative ended the conference call participation in the May 15, 2007 IEP meeting before all the relevant facts necessary to make decisions were presented. The parties simply disagreed. Neither the parents nor the LEA was likely to change their position without more information. The School does not have a residential component. There are very few programs that can meet the child's needs. The parent's dispute with the IEP is summarized in HO-1, the Request for Due Process.
26. The evidence is clear in May 2007 the parents were not seeking to remove the child from the School. The LEA, the School and the parents all agreed the child should remain in the School for the 2007-2008 school year. The parents expressed a preference for a change in placement if the problems could not be resolved. The parents advocated for the School program to provide consistency as identified in the 2004 Evaluation. The parents argue in their post-hearing brief the child regressed because of the fragmented program. The program did not consistently implement the child's goals and objectives in all the environments in which the child participates. Many facts, regarding the child's program, were not available to the LEA or the parents when the 2007-2008 IEP was proposed. The LEA failed to obtain the required agreement from the parent for the LEA to attend the IEP meeting by conference call. The LEA participated in the meeting. Failure to obtain the agreement as to the LEA form of participation is not sufficient to result in a denial of FAPE for the child.
27. The thrust of the parents' proposed resolution was to place the child in a group home close to the School. In the alternative, they proposed a residential placement to avoid the portions of the child's program which they found to be problematic, transportation and programs which used inconsistent behavior strategies. In May 2007, the LEA disputed the appropriateness of further removal of the child from the community and placing him in a more restrictive environment.

28. The child's initial placement at the School in 2005 was successful. The child's disability is very complex and it is difficult to state, overall, what at the School or the many other settings in which the child participates caused the change in the child's behavior. Several factors were offered during the hearing. The LEA raised concerns about the impact of the child reaching puberty. The school has a perceived lack of cooperation on the part of the parents when working with ICAPS, a community program intended to provide behavioral support to the parents in the home. Many of the 2004 Evaluation recommendations were missing from the child's program. The evaluator predicted in 2004 that failure to adhere to the prescribed program could result in behavior disruptions and placement in a more restrictive placement.
29. A true picture of the child was further complicated by the School's claim the child was making progress. The child was so restrained and removed from other program participants and staff that he had no opportunity to engage in the target behaviors. The target behaviors became worse in other environments in which the child participates. The LEA and the parents had every reason to rely on the progress reports. The School had expertise in working with children, who are very affected by their autism disability.
30. Important facts about the child's program came to light from the testimony and documents presented at the hearing. During the hearing, the LEA had an opportunity to hear in detail the problems the parents encountered. The LEA did not have sufficient information about the resources the parents accessed to provide behavioral support in the home and community. The programs proved to be a source of many of the child's problems. The stereotypic behavior and lack of toileting training interfered with making the child available to benefit from his special education instruction.
31. The graphs the School attached to the Annual Review documents do not give the complete picture of the number and extent of the restraints used on the child. The parent summarized the number and duration of restraints reported in Exhibit B-72.
32. The LEA, the parents and the School each focused on different aspects of the IEP as the source of the child's problems. The LEA believed they adequately addressed the child's problems by adding a transportation aide. The School stated at the annual review the child made progress. School staff testified they believed the School could provide a program for the child. The School staff believed the child's problem was the transportation. The School supported the child residing in a group home closer to the School. The Annual Review Summary stated many of the child's goals and objectives could not be addressed due to the child's behavior interfering with instruction. The School believed that if they could eliminate interfering behaviors they could resume work on the broader scope of the child's annual IEP goals. The data on the number of aggressions contained in Exhibit B-25, which shows some improvement around the time of the IEP annual

- review meeting. The School's primary strategy, to manage the child's behavior, was the use of restraints. Both parties relied on the advice and expertise of the School in providing an appropriate program for the child. The behavior analyst did not observe the child's behavior in all settings. Behavior disruption resulted from inconsistent application of behavior strategies across all settings.
33. Both parties agreed to have The Center for Children with Special Needs update the child's evaluation. As part of the evaluation process Dr. Powers or Dr. Molteni told the parents the School staff did not properly implement the physical restraints. The parents withdrew their consent to use restraints. The School is not able to provide a program for the child. Both the parents and the LEA agreed to find an appropriate placement for the child.
34. In response to the parent's withdrawal of consent to use restraints, the LEA filed a Request for Stay-put to reinstate the use of restraints as provided in the child's IEP. The LEA argues restraints are the major component of the child's program. For the parents to rescind consent to use the restraints renders the School unable to provide the child with a program. The LEA's requested an order to override the parents' right to withdraw their consent for the School to use physical restraints on the child. The parents refused to reinstate their consent. Several factors were considered in deciding the LEA's Request for Stay-put. Dr. Powers or Dr. Molteni informed the parents the restraint was improper; the consent form the parents signed stated they could withdraw their consent.² It was premature to order IEP goals and objectives prior to receiving the written 2007 Evaluation results. The LEA Request for Stay-put was denied.
35. The child became hospitalized on an emergency basis because he could not be controlled. The School convened another IEP meeting on November 30, 2007, while the child was hospitalized. The team concludes without the parents' consent to use physical restraints the School could no longer provide a program for the child on November 30, 2007.
36. The parents again raised the adequacy of notice. The parents challenge the sufficiency of the notice they received of the November 30, 2007 IEP which meeting convened in the parents' absence.³ The LEA and the parents agreed prior to the IEP meeting that the School could not provide a program for the child. The parents never received the notice of the meeting.
37. The LEA representative testified the parents' notice was sent to the home address rather than the post office box, which is the address designated by the parents for notices regarding the child. The address for notifying the parents was discussed

² The parents testified the form for consent to contained restraints had conditions for the safety of the child which were not satisfied. The 2007 Evaluation from The Center for Children with Special Needs does not suggest the use of physical restraints as a behavior strategy.

³ The December IEP meeting convened while the Due Process Hearing was adjourned for The Center for Children with Special Needs to complete the 2007 Evaluation.

during the course of the hearing; the LEA was aware of the parents' request to use the post office box.⁴ The LEA did not offer the improperly addressed envelope at the hearing. There was no evidence presented of the LEA efforts to have the parents participate by other means. The child's placement was changed in the parents' absence and without their participation. The LEA should have known the parents were not present at the meeting. This was not a case where the LEA was unable to obtain the cooperation of the parents. If the parents were not present, the LEA should have convened the meeting on a day when the parents could attend.

38. 34 CFR § 300.501(c) provides parent involvement in placement decisions. (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes a decision on the educational placement of the parent's child. The LEA is not excused from this provision based on subsection (4) the non-cooperation of the parents. There is no basis to conclude the parents were not cooperative in attending the IEP meeting. There is no testimony the LEA tried to involve the parent by conference call or other means as provided in subsection (3). It was the child's behavior which prevented him from accessing a FAPE; it was already determined the School could not provide a FAPE. The parents did not file a Motion for Stay-put in response the IEP change of placement.
39. The hearings adjourned a second time to complete the evaluation and allow time the parties to identify a school able to provide a program for the child. The parties asked for an Interim Order for the child to be placed in a residential program. The Interim Order is part of the hearing record.
40. Whether or not the 2007-2008 IEP was appropriate at the time it was adopted in May 2007? Based on the information available to the parties at the time the annual IEP meeting, it was reasonable to conclude the trend in behavior improvement, as reported by School staff in the spring of 2007, could have continued. Once the school year ended, the program inconsistencies and behavior disruptions between the School and Family Options contributed to behavior disruption. The 2007-2008 IEP failed to provide consistency in implementing a behavior strategy in all environments in which the child participates. The IEP fails to provide a board certified behavior analyst to oversee the behavior strategies in all environments as recommended in the 2004 Evaluation. Behavior disruptions occurred during transportation. Many of the same behaviors the IEP program aims to eliminate. The 2007-2008 IEP failed to provide a program to address toileting as required by the 2004 Evaluation. The 2007-2008 IEP failed to provide a program to address the stereotypy behaviors which interfered with the child's ability to benefit from his special education program and services. The 2007-2008 IEP did not provide the child with an appropriate program. The parties have already resolved to work together to find an alternative placement for the child. The new placement requires a new IEP. The 2007 Evaluation provides

⁴ The post office box was the address used for due process notices.

detailed program recommendations for problems that existed in 2004. It is appropriate for the IEP to incorporate the 2007 Evaluation recommendation in the IEP.

41. The 2007 Evaluation did not state whether the use of restraints in the child's behavior plan is appropriate. Any use of physical restraints in the new placement requires review by the board certified behavior analyst as recommended in the 2007 Evaluation. The evaluation and recommendations are outlined in detail in the Findings of Fact stated above. The behavior plan used restraints over a protracted period of time without any clear indication restraints reduced target behaviors.
42. The child's disability is complex. The 2007 Evaluation identifies strategies, recommendations, and programs that may be necessary for the child to derive an educational benefit from his special education.
43. Dr. Powers cautions in his 2004 Evaluation that a program which does not meet much of the specific recommendations is likely to result in the need to place the child in a more restrictive environment. At the close of the hearing the child was a resident of an adult psychiatric ward. The overall recommendation in the 2007 Evaluation, to the parent and the LEA, is to place the child in a residential placement where his program requirements can be delivered in a consistent way.
44. The child requires continuous programming across all settings, home, school, and community to safely provide him with the number of instructional opportunities required for him to acquire new skills. Integration of instructional goals and practices is critical and necessitates that service providers are chosen for their capacity to utilize the teaching strategies above in a consistent and comprehensive way. A residential setting such as the, The May Center, Melmark New England, The New England Center for Children, and The Groden Center in Rhode Island.
45. The 2007 Evaluation describes in detail program recommendations to meet the child's extensive needs. 34 CFR § 300.321(a)(6) provides to LEA to ensure that the IEP Team for each child with a disability includes at the discretion of the parent or the agency individuals who have knowledge or special expertise regarding the child. Dr. Powers and The Center for Children with Special Needs have a long standing professional relationship with the child. It is determined that Drs. Powers and Molteni of The Center for Children with Special Needs has the knowledge and expertise required by 34 CFR § 300.321(c). A designated person from The Center for Children with Special Needs shall serve as a consultant to the IEP team. When appropriate the consultant shall make recommendations to the IEP team to establish the priority of program needs; the need to add or delete programs and strategies; and the necessary programs including but not limited to, communication, toileting, stereotypic behavior, behavior management, consistency and coordination.

FINAL DECISION AND ORDER:

1. The 2007-2008 IEP does not provide the child with a free and appropriate public education. The IEP team shall meet to develop an appropriate IEP for the child.
2. The Center for Children with Special Needs shall designate a consultant to the IEP Team as provided in the paragraph forty-five in the Conclusions of Law.
3. The LEA and the parents have agreed to change the child's placement. The placement and individualized education program shall be reviewed by the IEP team to provide a program consistent with the recommendations of The Center for Children with Special Needs, 2007 Evaluation. The 2007 Evaluation shall guide program decisions. The IEP, to the extent it is reasonable, shall incorporate the 2007 Evaluation recommendations. Programs and strategies, in lieu of those recommended in the evaluation, shall be reviewed by the entire IEP team including the consultant.
4. A behavior support plan shall be developed as recommended in the 2007 Evaluation, Summary and Recommendations, paragraph six. Michael Soderland M.S., BCBA shall supervise development of the assessment procedure, the behavior plan, and determine the frequency to review the collected data.
5. A program which requires the child be transported by vehicle is not appropriate, unless approved by the behavior analyst as provided herein.
6. The assessments and evaluations recommended in the 2007 Evaluation shall be conducted by the recommended evaluators, as soon as, reasonably possible. The evaluation results shall be sent to the parties, the consultant, and the board certified behavior analyst, as provided herein.
7. The parents shall provide the LEA with written notice of the address they prefer to use as the mailing address for notice of meetings and school related communications. The LEA shall send notices and school related communications to the designated address.