

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Board of Education v. Student

Appearing on behalf of the Board:

Craig S. Meuser, Esq.  
Chinni & Meuser LLC  
30 Avon Meadow Lane  
Avon, CT 06001

Appearing on behalf of the Parent:

Parent, *Pro se*

Appearing before:

Mary H.B. Gelfman, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is a psychiatric evaluation of Student needed at this time?
2. If so, shall the Hearing Officer override Parents' withdrawal of consent for such an evaluation?
3. Is placement at a nearby diagnostic facility appropriate to Student's special education needs in the least restrictive environment?

**PROCEDURAL HISTORY:**

This hearing was requested by the Board of Education on February 21, 2008. The Hearing Officer was appointed on February 27, 2008, after another Hearing Officer had recused himself.

A pre-hearing conference was scheduled for March 12; at that time, neither party responded to the Hearing Officer's call. The pre-hearing conference was re-scheduled to March 14, 2008, and at that time the Board appeared but the Parent did not. The hearing was scheduled for April 9 with an additional date of April 23 if needed, and the date for mailing the decision was set for May 6, 2008.

The hearing convened on April 9, 2008, with Parent, the Board's Attorney, the Board's Director of Special Education, and a law student intern present. The Board called School Psychologist, School Social Worker, and one of Student's Teachers as witnesses. Parent called no witnesses, but did cross-examine Board witnesses and state the Parents' position. The matter was concluded on April 9, 2008.

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

### **SUMMARY:**

The Board has been increasingly concerned by Student's withdrawal from class participation and unwillingness to engage with staff members who have attempted to assess and/or counsel him. Parents consented to an independent psychiatric evaluation, and then withdrew their consent.

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

### **FINDINGS OF FACT:**

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

1. Student is now seventeen years of age.  
(Exhibit B-1)
2. The Board's Planning and Placement Team (PPT) met on November 2, 2005, during Student's freshman year at the Board's high school. Present at this meeting were Parent, Regular and Special Education Teachers, School Psychologist, School Social Worker, Guidance Counselor, and School Administrator. The PPT recommended:
  - Due to on-going anxiety, social concerns, difficulties with transitions, and disorganization, the team agreed to proceed with evaluations to determine if [Student] qualifies for special education. Evaluations will include behavioral checklist, personality, processing assessments and a developmental history. The team will reconvene when evals (sic) are completed to review assessments and criteria for identification.
  - [Guidance Counselor] will send a confidential note to classroom teachers regarding the need for weekly meetings to support [Student] in the area of organization.

- [Guidance Counselor] will speak with [Student] in regards to trying out for the swim team during the winter months. The PPT recommends that grades not impact [Student's] eligibility since the social connection is critical for [Student's] success at [Board's high school].

The consent signed that day by Parent listed Individual Assessments of Personality, Processing, and Behavior as well as a Developmental Family History. (Exhibit B-1)

3. Guidance Counselor notified School Psychologist on January 18, 2006, that Parent "... did not want to fill out the BASC for [Student] ... (Exhibit B-2)
4. The PPT met again on February 14, 2006. Present at this meeting were Parent, School Administrator, Regular and Special Education Teachers, School Psychologist, School Social Worker, and Guidance Counselor. The PPT recommended:
  - [Social Worker] will provide names of therapists/psychiatrists to [Parent].
  - [Social Worker] will observe [Student] in music.
  - [Student] will be scheduled in math tutorial 1xweek and stay after school with his math teacher for additional math help as needed.
  - Team recommends that a behavior assessment (BASC) be completed before making a determination if [Student] qualifies for special services.
  - The team will reconvene after assessments are completed.Parent signed consent for an Individual Assessment – Behavior Rating by a psychologist. [Student] did not comply with testing, [Parent] did not complete the BASC per the 11/02/2005 I.E.P. (Exhibit B-3)
5. The School Social Worker prepared a Social/Developmental History of Student in March, 2006. Relatively normal birth and achievement of developmental milestones were reported. Student has two older brothers who were away at college and a younger brother. Student was identified as having a specific learning disorder in first grade in 1997, and received special education support until 2000, when the IEP Team reported that he "no longer met the criteria" for special education. Social difficulties were reported starting midway through second grade, and when he left special education continuing social work services were recommended to address peer relationships. He did poorly in academics in 7<sup>th</sup> and 8<sup>th</sup> grades, and his standardized test scores were reportedly inconsistent.

**Relationships with peers:** He doesn't have any friends. Had one in middle school, although their friendship stops suddenly in 8<sup>th</sup> grade, with no explanation from either boy.

**Reaction when confronted by activity or situation that is difficult:** [Student] will shut down and back away. He "gives up". Gets motivated occasionally. [Parent] feels that he has given up with respect to friends. New situations are very anxiety provoking to him. He'd want to play basketball, but then wouldn't want to go and need[s] individual encouragement to play. He is very concerned about issues regarding fairness and justice, both within the family and in current events.

**Ability to follow directions:** Will either outright refuse or will start and then get distracted.

**Parents' major concern with this child:** Math performance, which [Parent] feels has given him low self-esteem. Social concerns – absence of social connectivity. [Parent] feels that he has given up on social interaction and doesn't know how to do it anymore. [Parent] thinks that he has a very high potential for simply giving up, and would rather have some intensive services for him right now. [Student] has the intellectual ability to do fine in school, but he doesn't feel like he fits in. No positive self-image. [Parent] is also concerned about his inability or unwillingness to advocate for himself, which [Parent] believes is hindering him in high school. (Exhibit B-4)

6. The PPT met again on March 13, 2006. Present at this meeting were both Parents, School Administrator, Regular and Special Education Teachers, School Psychologist, School Social Worker, and Guidance Counselor. At this meeting, the PPT noted significant concerns regarding anxiety and Student was identified as having a significant emotional disability. He was therefore found eligible for special education. The PPT recommended:
  - Programming will include 20 minutes of social work counseling and 20 minutes of academic support per week prior to the school day.
  - Teachers will be asked to e-mail [Parent] with academic updates regarding homework completion. If [Student] misses 3 assignments teacher should give [Student] an after-school detention.
  - [Parents] will provide scheduled study time for [Student], at home.
  - To lessen anxiety, teachers are asked to be as predictable as possible in their classes with [Student]. (Exhibit B-5, pp. 1-4)
  
7. The PPT record for March 13, 2006, includes:

**Evaluation procedures, assessments, records, or reports used as a basis for the actions proposed:** Developmental History, Report Cards, Review of Records, Teacher Reports, and Interview with School Psychologist.

**Concerns/Needs:** Organization, Work Completion.

**Impact of Student's Disability on involvement and progress in the General Education curriculum:** Anxiety & poor organization impact [Student's] ability to complete all work as required in a high school classroom. (Exhibit B-5, pp. 5, 6)
  
8. The March 13, 2006, Goals and Objectives for Student were:
  1. [Student] will identify emotional issues that interfere with academic performance.

By participating in counseling sessions, [Student] will discuss his anxiety [and] its effect on his academic performance.

With social work assistance, [Student] will discuss his anxiety and its effect on his peer relations.

[Student] will identify three organizational strategies.
  2. [Student] will demonstrate improved organization skills through successful completion of the following objectives:

[Student] will meet with his case manager two mornings each week to review his daily planner and to check that assignments, tests, and projects are written into the planner.

[Student] will complete assignments given in each of his classes.  
 [Student] will work with his case manager to organize his notebook, using a system that is comfortable and successful for [Student]. (Exhibit B-5, pp.7, 8)

9. Accommodations and Modifications to be provided for Student from April 3, 2006 to June 20, 2006, were:

**Tests/Quizzes/Assessments:** Time extensions as requested on tests. Support with chunking projects with clearly stated interim dates and expectations.

**Organization:** Required use of planner.

**Behavioral Interventions and Support:** Provide a “predictable” environment for [Student].

**Other:** Mandatory after-school detention when 3 assignments are missing in any class. Maintain contact with Parents on weekly basis. On-going consultation between teachers, social worker, and case manager. (Exhibit B-5, p.9)

10. The record of the March 13, 2006 PPT meeting includes a form used to determine eligibility for special education due to serious emotional disturbance. Alternative strategies tried were listed:

Tutorials; Attempts at discussions with [Student] by Guidance Counselor;

Outside counseling; Attempts at lunch groups by social worker.

The characteristics of inability to build or maintain satisfactory interpersonal relationships with peers and teachers and inappropriate types of behavior or feelings under normal circumstances were both checked for:

Long time; Marked degree; and Adverse effect on educational performance.

(Exhibit B-5, pp. 16, 17)

11. Student’s 2005-2006 report card showed the following grades and teacher comments:

Subject	Final Grade	Absences and Comments
Latin I	I	
World History I HB		needs to focus on completing work thoroughly and on time
Integrated Math I F		Absences: 18 Very little effort. Failing test, quiz grades.
[Music]	C-	
Health/P.E. 9	C+	Absences: 8 Was excused from his final exam.
Physics	D-	
French I	NG	Absences: 15 This has been a particularly challenging quarter for [Student]

English 100 C  
 (F Below 60; E exempt; I Incomplete; NG No grade.) (Exhibit B-31 p.1)

12. The PPT met for an annual review of Student’s special education program on September 13, 2006. Present at the meeting were Parent and Student, Director of Special Education, Regular and Special Education Teachers, School Psychologist, School Social Worker, Department Chairman and Guidance Counselor. The Present Levels of Academic Achievement and Functional Performance were given as:

- **Academic/Cognitive: Language Arts:** Concerns: [Student] demonstrates writing difficulty in both expression and mechanics. Weaknesses in the area of writing impact on the quantity or quality of [Student's] work.
- **Academic/Cognitive: Math:** [Student] is currently completing Math I. He will begin Int. Math II in January. Strength: Calculation Application of Skills. Concerns: Significant absences in the final quarter of the 05-06 school year, due to emotional concerns, impacted [Student's] ability to complete the class in June.
- **Other Academic/Nonacademic Areas:** Age Appropriate.
- **Behavioral/Social/Emotional:** Concerns: Lack of relationships with peers and adults. Significant Anxiety, Withdrawal and Avoidance. [Student's] significant anxiety impacts his ability to succeed in both academic and social situations.
- **Communication:** Concerns; Working collaboratively with others. Advocating for assistance. Participating verbally in class. [Student's] difficulty in communicating increases [his] level of anxiety and impacts his ability to work with and socialize with peers and adults in the learning community.
- **Vocational/Transition:** Strength: cognitive ability. Concern: Emotional concerns which also impact academic success. Disability impacts [Student's] ability to complete many academic tasks. He avoids working with others.
- **Health and Development – including vision and hearing:** Age Appropriate.
- **Fine and Gross Motor:** Difficult for teachers to read [Student's] writing.
- **Activities of Daily Living:** Age Appropriate. (Exhibit B-6, pp. 5, 6)

13. PPT recommendations at the September 13, 2006 meeting:

- [Student] continues to qualify for Special Education. His programming for the 2006-2007 school year will include .5 periods of academic support and .5 periods of social work counseling each week.
- One-on-one tutorial supports will be provided to 5 periods a week. [Student] refused this support at this meeting, stating he wants to work independently. The team agreed to give [Student] five school days to prove he is capable of meeting all academic demands independently. If [Student] is unable to do so a tutor will be provided during the 9<sup>th</sup> period and if necessary, until 3 p.m. each school day at a location outside of the Learning Center.
- [Student] will be enrolled in the Integrated Math 1A class. He will be dropped from Latin 1.
- The team will reconvene if [Student] refuses services provided under IDEA. (Exhibit B-6, p.5)

14. The September 13, 2006, IEP included goals and objectives:

1. Student will demonstrate organization and study skills in order to participate successfully in academic classes.
  - Show preparation for class by reporting to class on time with necessary materials for class.
  - Complete assigned tasks by following oral and written directions.
  - Demonstrate improved organizational skills by keeping class work and notebooks orderly.

- Accept the consequences of being unprepared for class by discussing such consequences and planning how to avoid such problems in the future.
2. Demonstrate an improvement in self-awareness and self-concept.  
Demonstrate the ability to verbalize how a person's self-concept affects his behavior.  
Demonstrate the ability to identify and discuss anxiety related to academic competitive situations.  
Demonstrate the ability to identify and discuss anxiety related to social interaction and situations. (Exhibit B-6, pp. 8-10)
15. Accommodations and Modifications in the September 13, 2006 IEP, all to be provided in all classes for duration of the 2006-2007 school year:  
**Materials/Books/Equipment:** Access to Computer.  
**Tests/Quizzes/Assessments:** Alternative tests, extra time- tests/projects/written work, pace long term projects, prior notice of tests, shortened tasks.  
**Grading:** Modified grades based on IEP.  
**Organization:** Daily assignment list, folders to hold work, post assignments.  
**Behavior interventions and support:** Break between tasks, cue expected behavior, daily feedback to student, positive reinforcement.  
**Instructional Strategies:** Cueing/Prompts, immediate feedback, provide notes/outline to student.  
**Other:** When possible the quantity of work assigned to [Student] should be reduced. Options to lengthy written assignments are recommended.  
**Frequency and duration of supports required for school personnel to implement this IEP include:** On-going consultation between Classroom Teacher, Social Worker, and Case Manager. (Exhibit B-6, p. 11)
16. A behavior intervention plan was also devised at the September 13, 2006 PPT meeting. The target behavior for the plan was work completion.  
**Support and Structure:** If [Student] completes all homework between 9/13/06 and 9/20/06, he will continue attending his 9<sup>th</sup> period study hall. If he does not, he will begin meeting with [Tutor] during period 9 to organize and do homework.  
**Communication Plan:** [Special Education Teacher] will send progress reports to teachers on next Wednesday 9/20/06. [Guidance Counselor] will send a note to all teachers making them aware of this. (Exhibit B-7)
17. The PPT met on October 11, 2006. Present at this meeting were Parent, School Administrator, Regular and Special Education Teachers, School Psychologist, School Social Worker, Guidance Counselor, School Nurse, Director of Special Education and Assistant Principal. Most of the Present Levels were the same as those reported in September (see Findings of Fact #12), except:  
**Other Academic/Nonacademic Areas:** Singing ability a strength.  
**Health and Development including vision and hearing:** Concern: [Student] is extremely withdrawn and refuses supports. [Student] is unable to meet with academic success at this time.

**Fine and Gross Motor:** [Student's] written work is often unreadable resulting in his teachers not being able to assess his work when completed.

**Activities of Daily Living:** [Student] appears very anxious and resistant to any contact with people in the [school] building. (Exhibit B-8, p.6)

18. The October 11, 2006, PPT made recommendations:

- The team agrees that [Student] requires a Therapeutic Day Program (TDP) to appropriately meet [Student's] emotional disability.
- [Special Education Director] will look into availability to local programs. [School District] will assume educational costs.
- [?] will be provided to the selected program.
- The team recommended that Parent look into maintaining custodial rights when [Student] turns 18 years of age.
- [School Social Worker] will work with [Parent] regarding insurance issues.
- Upon determination of the change of placement the hours will be altered to indicate length of services. (Exhibit B-8, p.3)

19. A third goal with objectives was added to the IEP from September 13, 2006 (see Finding of Fact # 14):

3. Demonstrate an improvement in social skills.

Respond in a socially acceptable manner when approached by others.

Demonstrate the ability to initiate and maintain social interaction with peers.

Demonstrate the ability to initiate and maintain social interaction with adults.

Discuss a plan for fostering relationships with peers. (Exhibit B-8, P.11, 12)

20. A school affiliated with a nearby psychiatric hospital notified the Board that Student had been admitted to the hospital on November 14, 2006, and requested his school records to facilitate educational programming. Subsequently, the Board was notified that Student had been discharged from the hospital on December 19, 2006. (Exhibit 9)

21. Upon discharge from the hospital, Student received eleven hours a week of homebound tutoring from the Board pending planned placement in a TDP recommended by the PPT. (Exhibit B-12, p.4)

22. Although there is no hospital discharge summary in the record for this hearing, Parent stated on the record of the hearing that there had been a diagnosis of an acute serious depression at the time. (Testimony, Parent)

23. The PPT met on February 1, 2007. Present at this meeting were Parent, the Director of Special Education, Special Education Teacher, School Psychologist, and Guidance Counselor. The Regular Education Teacher had been excused at Parent's request, since no regular education personnel were currently providing services to Student. School Social Worker was ill and could not attend. The subject of this meeting was the Board's recommendation of a TDP for Student. Six alternatives were mentioned. The TDP he attended while hospitalized considered him appropriate for placement,



but issues involving “emergency contacts, release forms, etc” led to his being rejected. Parent agreed to consider the alternatives and to consider signing consent for release of Student’s records to assist in the Board’s applications for placement. Director of Special Education and Parent had visited one of the schools on the list together, but Parent felt it was too small, although the Director noted that the program had the opportunity for students to be involved in higher level academics. Parent stated a preference for a small boarding school setting rather than a TDP, and suggested a nearby boarding school. The Director agreed to investigate as soon as a release for Student’s records was signed, although none of the PPT members or any of the people working with Student had recommended boarding school. (Exhibit B-12, p. 4)

24. The PPT recommendations on February 1, 2007, repeated those of the October 11, 2006, PPT (see Findings of Fact #18) and added a description of the interim program of homebound tutoring:

Until [Student] is placed in a [TDP], he will be provided up to two hours of tutoring daily, determined by the amount he will tolerate, and one hour a week social work services, assuming he will meet with School Social Worker. (Exhibit B-12, pp. 4, 17)

25. Parent signed consent to release Student’s records to the five TDPs recommended by the PPT. These consents were signed on January 17, January 19, January 29, February 1 and March 7, 2007. The information to be released was specified in three cases as: psychological reports, medical reports, educational reports, psychiatric reports, and a telephone conversation for educational planning. The released material noted on copies of the cover sheet sent to each school was listed as three 2006 IEPs, a social/development history, two reports from 2000 and three from 1997. The last five items were not included in exhibits entered for this hearing. In two cases, additional items released were an additional 1997 document and an IEP from 2000. By letter dated March 13, 2007, Director of Special Education was informed of Student’s acceptance at one of the five TDPs. (Exhibits B-13, B-14)

26. The PPT met on March 15, 2007, to prepare an IEP for Student’s TDP placement. Present at this meeting were Parent, Director of Special Education, Special Education Teacher, School Social Worker, and a representative from the TDP. Student had already enrolled, and Parent reported that he liked his van driver. The PPT record reported on his start in the new program:

Initially, he did not enter the program, sitting outside. However, he was able to be directed to the classroom and he has initiated a limited number of interactions. The team knows that progress will be slow and in small steps. [Parent] stressed the importance of maintaining confidentiality and of the fact that [Student] is a very private person. (Exhibit B-15, p.4)

27. The March 15, 2007, PPT recommended:

- [Student] will attend [TDP].
- [Student] will receive 26.5 hr/week special education services.

- [Student] will receive 1 hr/week counseling services, with 0.5 hr. individual and 0.5 hr/wk social skills group.
- SLP [Speech Language Pathologist] will consult with the classroom teacher regarding scripting/pragmatic language issues for [Student]. In addition, the SLP will see [Student] diagnostically for the next 30 days for 0.5 hr/wk to determine whether he should receive these services (social skills/pragmatic language training) through ongoing work with her.
- Team will reconvene in approximately 5-6 weeks.
- [Board's high school] will work with [TDP] regarding current placements in his subjects.
- [Student] will continue with chemistry and history working with his tutor and classroom teachers.
- PPT will reconvene on Friday, April 13 at 1:00 PM. The IEP continued the previous goals and objectives, noting the additional support of the tutor. (Exhibit B-15, pp.4, 9, 16)

28. The PPT met on April 13, 2007. Present at this meeting were Parent, Director of Special Education, Special Education Teacher, School Social Worker, and a representative from the TDP. Student's progress was summarized:

Slowly warming up. [Student] is realizing that the school is willing to listen and be flexible. [Student] is not necessarily aware of why he is attending [TDP]. He is beginning to open up and say how he's feeling. [Student] refuses to participate in a weekly social communication group, turning his back and going to the computer. He stated that participating would signal his agreement to buy into the program. If he continues to cultivate a relationship with an adult/s that can be extended to another student an effort will be made to engage him with other students. (Exhibit B-16, p.3)

29. The April 13, 2007, IEP Team recommended:

- [Student] should continue at [TDP].
- [Student] will continue to receive tutoring in [high school] subjects and will complete assigned work to earn credit. Director will follow up with [Board Administrator and Guidance Counselor] regarding grading and earning credit.
- [Student] will take a vocational interest inventory.
- [Specified TDP staff member] will discuss transfer of IDEA rights with [Student].
- [Student] will participate in the [TDP] summer program from July 2-August 10, M-F, 9:00 a.m. to 1:00 p.m. (Exhibit B-16, p.3)

30. Goals and objectives developed at the April 13, 2007, Annual Review PPT meeting:

1. [Student] will complete all work that he missed at [Board's high school].

When given a list of assignments, [Student] will complete 4-5 assignments per week in French, Literature, English, and Mathematics (each subject).

When given assignments from his tutor, [Student] will complete them at [TDP] on a daily basis.

[Student] will come prepared to do his work at [TDP] by bringing all books and materials back and forth from home and tutoring sessions to [TDP].

2. Demonstrate an improvement in self-awareness and self-concept.  
Identify when he needs help and ask for it, and identify anxiety related to academic situations with staff members at least daily.  
To identify and discuss aspects related to social interaction and situations that makes him uncomfortable at least one time per day.  
[Student] will identify and articulate strategies to cope with situations that make him uncomfortable one time per week.
  3. Demonstrate an improvement in social skills.  
Respond in a socially acceptable manner when approached by staff & others, and engage in one conversation at least one time per day.  
Respond in a socially acceptable manner when approached [by] students, and engage in one conversation at least one time per day.  
[Student] will initiate and maintain a social interaction with adults at least one time per day.  
Given a structure or framework, [Student] will identify his likes/areas of interest and will identify areas in common with at least one other person who has done the same task.
  4. By working with his teachers and counselors, [Student] will acquire the skills to successfully transition to a two-year or four-year college/university or job.  
Enroll in core academic classes that will prepare him for postsecondary education.  
Given skills training in positive self-advocacy, [Student] will demonstrate that he knows whom to ask and when to ask for assistance. Develop and demonstrate strategies for seeking assistance at least 4 days out of 5.  
Demonstrate the skills to organize work with efficiency, as determined by daily teacher observation and interaction. [Student] will develop/use a system for recording assignments and placing completed work in a folder or notebook to be submitted when asked 9/10 times. (Exhibit B-16, pp. 8-12)
31. A May 11, 2007, Mid-Term Report of Student's progress at TDP showed satisfactory effort in subjects, in preparation for class, completion of required work, attentiveness in class, study habits, test results, punctuality, self-discipline, cooperation, courtesy, respect for the rights of others, respect for school property, attitude, organization, classroom behavior, and progress toward IEP goals. Grades were Passing in five subjects and incomplete in all subjects. Additional comments:  
[Student] has been working fairly hard to complete his make-up work in all areas. Once his work is completed he will be given final grades and credit. [Student] has not participated in P.E. [Physical Education] yet. He will be given the opportunity to complete Health this term. (Exhibit B-18, p. 2)
32. The PPT met on June 11, 2007, and continued the meeting on June 20. Present at this meeting were Parent and Student, Director of Special Education, Regular and Special Education Teachers, School Social Worker, Guidance Counselor, TDP Teacher (by telephone), and a representative of TDP. The meeting had been called to address Student's requests:
- To take the Integrated Math II end of year assessment to see if he could pass without having completed the course in class, rather than have tutoring;

- For the District to tutor him in French II because he has finished French I and [TDP] didn't offer French;
- To return to [Board's high school].

Responses by the Board staff:

- [Student] is currently scheduled to participate in [TDP] program this summer from July 2-August 10.
- [Student] has completed requirements for Integrated Math I. He would not participate in a [TDP] math program because he wanted to stay with the [high school] Integrated Math II curriculum. However, this was very difficult for the TDP faculty, though [TDP Teacher] has studied math through calculus. Although [Tutor] attempted to tutor him, [Student] struggled through the first quarter and did not pass the end of unit test. He should take geometry next year, assuming he is attending a school other than [Board's high school].
- [Student] was adamant about not attending [TDP] this summer or next year. He is unwilling to consider options other than [Board's high school] for the fall and was not willing to attend summer school, either at [TDP] or in a general education summer school program. The team indicated to him that the most critical thing for him to learn at this point is how to interact with others and to learn to compromise when things do not go exactly as he would like.

The meeting was suspended because of time constraints and will be reconvened as soon as possible.

(06/20/2007) Today's meeting was a continuation of the meeting begun on 06/11/2007. The team reviewed the items to be addressed as requested by [Parent]. [Student] will earn credit for history, English, and chemistry this year. Although they tried, it was not possible for either [TDP] personnel or [Student's] tutor to teach him French II. [Student] remains adamant that he wants to take the course. The PPT offered to pay for a summer French II course or a math course offered in (nearby school district's summer program). There was further discussion around [Student's] needs with the school based team members feeling strongly that relying on [Tutor] to tutor [Student] or for [Tutor] to be the assigned tutor for [Student] is not in [Student's] best interest academically or socially. The team discussed alternative placement recommendations for 2007-2008, given the previously developed IEP goals/objectives from [TDP]. [Parent] disagreed with the team's recommendations and [Director of Special Education] indicated that due process procedures were available for the purpose of disagreeing with the proposed IEP. Procedural safeguards were offered. [Student] did not participate in today's meeting, though he did participate by phone from [TDP] during the first part of the meeting held on June 11<sup>th</sup>. (Exhibit B-19, pp. 3-5)

33. PPT recommendations made at the June 11 and 20, 2007, meetings:

- [Student] should be awarded credit for completing Integrated Math I. In addition, assuming he has met teacher requirements, he will also receive credit for English, history, and chemistry.
- PPT meeting is suspended and will reconvene to make final recommendation for summer and fall placement given [Student's] adamant about not wanting to

- attend [TDP] because of the level of some of the other students. Team is willing to make a change in placement.
- [The School District] will pay for [Student] to take French II, or either Basic Geometry or Basic Algebra at [a nearby school district's summer program]. The goal to complete other high school course work will be deleted because he has earned credit and a French II class has been offered.
  - PPT recommends that [Student] start the school year at [diagnostic facility] in September. As [Student] becomes better able to interact with others and to do the course work and homework required he may begin to transition back to the [Board's high school], probably starting with history, his strongest subject, and carefully adding one course at a time as he is ready. He will need to demonstrate willingness to complete class work [and] homework, given appropriate accommodations.
  - According to [Parent], [Physician] has stated that [Student's] behaviors are the result of Asperger's Syndrome. The team stated that his behaviors are extreme relative to other students with Asperger's and that he also displays significant, overriding emotional disability.
  - [Student] will have individual and/or group counseling to address issues of interacting socially with his peers. [Student] will have support to help him develop his organizational skills.
  - [Director of Special Education] will contact [TDP] to determine the number of hours [Student] participated in Health/PE related work.
  - If [Parent] and/or [Student] would like to visit [diagnostic facility], Director of Special Education will facilitate. A permission to release information form will be sent home with this IEP in order to start the change of placement process. Team will reconvene with [diagnostic facility] personnel once/if [Parents] make a decision that [Student] will attend the [diagnostic facility] program.
- (Exhibit B-19, p. 4)

34. Goals and objectives developed by the PPT for Student's 2007-2008 school year:

1. Demonstrate an improvement in organization, study skills and learning strategies necessary to progress toward achieving the learning standards in content area subjects, as measured by attainment of at least  $\frac{3}{4}$  objectives, including work completion at level specified.

Come to class prepared and bring the materials (e.g., books, paper, pencils) required for school work.

Select and organize independently the necessary items to take home in order to complete homework assignments at least  $\frac{4}{5}$  days a week.

Organize and formulate a plan independently to utilize time effectively in order to complete daily and long-term assignments (e.g., daily, weekly, monthly planners and calendars)  $\frac{6}{10}$  days in a two week period.

Complete school and homework assignments.

2. Demonstrate an improvement in self-awareness and self-concept.

Identify when he needs help and ask for it, and identify anxiety related to academic situations with staff members at least daily.

To identify and discuss aspects related to social interaction and situations that make him uncomfortable at least one time per week.

[Student] will identify and articulate strategies to cope with situations that make him uncomfortable one time per week.

3. Demonstrate an improvement in social skills.

[Student] will complete at least one interest and/or aptitude inventory designed to help him identify his interest and related careers.

Respond in a socially acceptable manner when approached by staff & others, and engage in one conversation at least one time per day.

Given instruction, [Student] will respond in a socially acceptable manner when approached by students, and engage in one conversation at least one time per day.

[Student] will initiate and maintain social interaction with adults at least one time per day.

Given a structure or framework, [Student] will identify his likes/areas of interest and will identify areas in common with at least one other person who has done the same task.

4. By working with his teachers and counselors, [Student] will acquire the skills to successfully transition to a two-year or four-year college/university or job.

Given self-advocacy instruction, [Student] will develop and demonstrate strategies for seeking assistance when he needs it at least 4 days out of 5.

Enroll in core academic classes that will prepare him for postsecondary education.

Given skills training in positive self-advocacy, [Student] will demonstrate that he knows whom to ask and when to ask for assistance in given situations.

Demonstrate the skills to organize work with efficiency, as determined by daily teacher observations and interaction. [Student] will develop/use a system for recording assignments and placing completed work in a folder or notebook to be submitted when asked 9/10 times. (Exhibit B-19, pp. 11-17)

35. Student's report card for the 2006-2007 school year showed the following grades, as earned in the Board's high school, the first TDP, tutoring, and the second TDP.

There were no recorded teacher comments.

Course	Final Grade	Absences
English 200	A-	40
French II	[NG]	43
Integrated Math 1B	P	36
[Music]	[NG]	0
P.E./Health 10	[NG]	2
Chemistry	C+	45
World History II H	C-	34

(NG No grade given; P Pass) (Exhibit B-31, p. 2)

36. Student attended the summer school program offered by a nearby school district and received grades of D- and D in Basic Geometry. The teacher commented "Needs to focus more". (Exhibit B-20)

37. By letter dated August 8, 2007, to the Director of Special Education, Student asked to attend the Board's high school full time and listed the courses he wanted to take. (Exhibit B-21)
38. Director of Special Education responded to Student's request, noting that Student had refused to attend the recommended diagnostic program. The Director and Parents negotiated conditions for Student's return to the Board's high school, although the IEP Team recommended diagnostic placement was still preferred by the PPT including the Director. By letter dated September 13, 2007, the Director outlined a program for Student at the Board's high school:
- [Student] will participate in an academic program at [Board's high school] for the first marking period that includes the following courses:
    - Adult supported Integrated Math II, adult supported biology, English, French II, A.P. U.S. History, 1 period of study hall (Semester 1/ Civics semester 2), PE/Health, and Resource period for tutoring, location to be determined by mutual agreement.
  - [Student] will receive the following services during the first and subsequent marking periods if criteria for remaining at [Board's high school] are met:
    - Tutoring support daily during a special education resource period – location to be determined by mutual agreement (in the morning if possible);
    - Tutoring support through special education or content area tutorial center during additional available study period(s) opposite lab/PE/Health;
    - Tutoring support for one hour/day immediately after school, after a 20 minute break;
    - Counseling (individual, with a goal to move to a small group to address social skills needs).
  - The PPT will meet at the end of each marking period to review [Student's] academic, behavioral and social progress at [Board's high school], unless a meeting is indicated prior to that time. The PPT will determine whether, given the supports in place, [Student] has made appropriate progress based on the criteria set forth in this agreement for remaining at [Board's high school] for each subsequent marking period.
  - The PPT will assess, each marking period, whether [Student] has made appropriate progress in each of the five following areas. If [Student] does not make appropriate progress in each area, his modified special education program at [Board's high school] will terminate, and the PPT will take steps to place [Student] in an appropriate small, structured and therapeutic program.
    - Adherence to the [Board's high school] attendance policy in all subjects with no more than 20 absences in any full-year, five-day-a-week class; 10 absences in any half-year, five-day-a-week class; and 6 absences in any half-year, two day-a-week class.
    - Engagement in class lessons determined by [Student] and his teachers and, as evidenced by teacher observations, completion of required in-class assignments.

Passing quarterly grades in each core academic subject. This includes agreed-upon required, and possibly modified, homework, in each core academic subject.

Satisfactory progress on all IEP goals/objectives.

Attendance and participation in social skills group or counseling.

(Exhibit B-22, pp. 12-13)

39. Student missed assigned detentions on October 15, November 27 and 29, and December 6, 2007. (Exhibit B-27)
40. The PPT met on November 13, 2007. Present at this meeting were Parent and Student, Director of Special Education, Regular and Special Education Teachers, School Psychologist, School Social Worker, Guidance Counselor, and a school psychology intern. The report of this meeting summarized Student's progress:
- Although he is performing better and doing more work than he has in the past year, he continues to struggle in some areas that significantly affect his grades: work completion, class participation, and social interactions, in particular. He is doing extremely well in Government and Law, a course of real interest to him. He would be doing equally well in AP U.S. History but has two major papers missing. He is failing two courses and is near failing in two others. [Student] refuses to participate in tutoring, resource, and counseling. Because of concerns that [Student] is falling behind in his work, the team will meet again by mid-December. [Parent] said that he only wants to attend [Board's high school] and that [Parents] will encourage him [to] get caught up on missing assignments. (Exhibit B-24, p.3)
41. PPT recommendations on November 13, 2007, were:
- Tutor will find out what assignments are missing and will give that information daily to [Special Education Teacher] to report to [Parent].
  - [Parents] are encouraged to set a schedule for [Student] and his brother to do homework/share computer. [Student] may e-mail completed assignments to teachers to avoid losing them – this is encouraged.
  - [Student] could hand in work, even if it is partially completed so that he can earn partial credit rather than zeros.
  - At [Parent's] request, School Social Worker will send a memo to teachers telling them to take away [Student's] reading book if he is reading during their classes and will not put it away.
  - Tutor will have a calculator available for [Student's] use during class if he does not have his [calculator with him.]
  - Work completion deadlines will be discussed at next meeting. (Exhibit B-24, p.3)
42. The PPT met on December 19, 2007. Present at this meeting were Parent, Director of Special Education, Regular and Special Education Teachers, School Psychologist, School Social Worker, Guidance Counselor, and School Administrator. The report of the meeting summarized discussion:



[Student] is missing work in nearly all classes and the missing work is affecting his grades. He is struggling to pass courses and is not willing to accept [special education] services. Currently, he is failing four courses: French, American Literature, Biology and Math. He is passing his Government and Law class and physical education with both grades in the C range. [Student] refuses to participate in tutoring, resource, and counseling. The team agreed to meet again the week prior to mid-term exams to determine next steps. [Parent] said that [Student] only wants to attend [Board’s high school] and that [Parents] will encourage him to get caught up on missing assignments. [Parent] asked that the following requests be documented in the meeting summary. [Parent] feels that daily communication with teachers is necessary. [Parent] would like the teachers to photocopy or e-mail their grade books/grade sheets on a daily basis. [Parent] would like unlimited time extensions on all work. [Parent] also requested a tutor for after school at their home. Also, [Student] has not been checking into the library and [Parent] would like the librarians to check the passes of all students during first period. (Exhibit B-26, p. 3)

43. The December 19, 2007, PPT recommended the following:

- Teachers will e-mail [Parents] on a weekly basis to report what has been completed and work that is owed.
- [Student] should hand in work, even if it is partially completed so that he can earn partial credit rather than zeros.
- Grades will not be lowered for work turned in late.
- [Student] is expected to complete all overdue assignments by the end of the first semester, if there are extenuating circumstances regarding missing or overdue work, a PPT will be convened with the regular education teacher for whom the work is owed in attendance. (Exhibit B-26, p.3)

44. Student’s grades, attendance and teachers’ comments for the first semester of the 2007-2008 school year were:

Course	Grade	Absences	Comments
AP US History	C-	4	Work comes in fits and starts. Some progress here, and [Student] passed the midterm! Keep working [Student]
French II	D-	0	Unfortunately [Student] is not working to potential in French. He is often unfocused in class and does not prepare for assessments. He needs a greater commitment to succeed.
Government & Law	C+	0	[Student’s] failure to hand in assigned work, including a major assessment lowered his Q2 grade into the failing range.
American Lit H	C	0	[Student] seldom does homework and has not come for help.
Biology	C+	0	

Game Forms	D	1	Unprepared for learning.
Integrated Math II	F	0	[Student] is in danger of failing this course. Homework completion and organization continue to be a problem.

(Exhibit B-31, p. 4)

45. Student’s January 2008 special education progress report for the first two quarters of the 2007-2008 school year showed very little progress (see Finding of Fact # 34 for full statement of goals and objectives):

1. Academic/Cognitive:

Demonstrate an improvement in organization	Limited Progress
Four objectives	Limited Progress

Marking Period Comments First Quarter: [Student] will not access the Learning Center. Case Manager is unable to meet with [Student]. Second Quarter: [Student] will not access the Learning Center. Case Manager is unable to meet with [Student].

2. Social/Behavioral:

Demonstrate an improvement in self-awareness and self-concept	No Progress
Three objectives	No Progress

Marking Period Comments: Both quarters, [Student] refuses to meet with the Social Worker.

3. Social/Behavioral:

Demonstrate an improvement in social skills	No Progress
Five objectives	No Progress

Marking Period Comments: Refuses to meet with Social Worker; Unable to assess.

4. Employment/Post Secondary Education:

By working with his teachers and counselors, [Student] will acquire the skills

	Limited Progress
One objective	Satisfactory Progress
One objective	Limited Progress
Two Objectives	Unsatisfactory Progress

(Exhibit B-28)

46. The PPT met on January 16, 2008. Present at this meeting were: Parent, School Administrator, Director of Special Education, Regular and Special Education Teachers, School Psychologist, School Social Worker and Guidance Counselor. The PPT noted that Student:

... is missing work in nearly all classes and the missing work is affecting his grades. He is struggling to pass courses and is not willing to accept [special education] services. [Student] refuses to participate in tutoring, resource and counseling. (Exhibit B-29)

47. The January 16, 2008, PPT recommended:

- [Student] will take an on-line math course for the second semester with support provided through the math department from a one to one tutor. If [Student] refuses tutoring, the tutoring will be discontinued after two weeks.
- The team recommended a psychiatric evaluation because of [Student's] increased withdrawal and decline in performance even in areas that are most motivating to him. He has very limited interactions with others, which is very concerning to the team

Parent request is for placement at [Board's high school] with some support for organization. General Education program cannot support needs.

Team's position was noted: Change placement to [diagnostic program], which has more students with similar academic ability. [Student] requires explicit instruction/guidance in social interactions. (Exhibit B-29, pp.3-5)

48. Parent signed consent for a psychiatric evaluation on January 16, 2008, but revoked that consent on January 18. (Exhibit B-30)
49. Parent believes that if the Board had acted more swiftly when Student was in 9<sup>th</sup> grade and Parents provided consent for evaluation, Student would not have deteriorated. Parent also questioned the course content provided at the second TDP. Parent had provided some information about Student to two school staff members with a request that they not place anything in Student's file or discuss it with other staff members. The staff members honored Parent's request. Parent acknowledged that Student had not always cooperated with tutors, but she complimented one tutor for his patience and the time he took with Student. Parent preferred to have tutoring in the home. (Testimony, Parent)
50. The high school staff tried to provide communication with Parents about their daily concerns about Student by sending e-mail messages in addition to the frequent PPT meetings. (Exhibits B-33, B-34)
51. School Psychologist has ten years of experience evaluating and treating youngsters. He had attempted to evaluate Student several times. He reported that Student refused to talk with him and refused to be evaluated. School Psychologist said "I've never had a student refuse to talk with me". When asked by Hearing Officer whether Student was a danger to himself or others, School Psychologist responded that he couldn't answer the questions, because he had been unable to learn enough about Student to make that judgment. (Exhibit B-37; Testimony, School Psychologist)
52. School Social Worker has seven years of experience with the Board, and prior experience working with adolescents. She described her efforts to engage Student in counseling: he never made eye contact, and refused to talk with her. She had gone to Student's home at Parent's request, to try to convince him to come to school. Student refused to meet with her, but did start coming to school after that. During the 2007-2008 year, she spoke with all of Student's teachers at least weekly, to monitor his progress. Student refused to accept counseling, and refused to come to her office. She stated that she had never had a student refuse to come to her office, although

some had come and then refuse to engage in counseling. She summarized the current school year: Student had shown some progress, but was failing at least math. She supported the need for a psychiatric evaluation: "We don't know what to do with him." (Exhibit B-38; Testimony, School Social Worker)

53. One of Student's Teachers, who has fifteen years of teaching experience, described how he provided the modifications and accommodations in Student's IEP. Although Student started off the 2007-2008 school year fairly organized, it has been an increasing challenge for him to produce his notebook and complete his assignments. He doesn't speak in class. In his French class, there are frequent activities where students are paired: Student refuses to participate and closes his eyes when approached. When classmates try to involve him, he withdraws. No one is disrespectful to him in that class. He did read a report in class. (Testimony, Teacher)
54. Director of Special Education recounted Student's special education history at the Board's high school. She has twelve years of experience as director in this school district, and five years prior experience as a director in another district, plus teaching experience. She described the nearby diagnostic facility that the PPT has been recommending, commenting that this facility offers both short-term and long-term placements. Director accepted responsibility for agreeing to let Student return to the high school this school year, even though the PPT with Director in agreement supported placement at the diagnostic program. The program at the high school included tutoring, counseling, and other supports, most of which Student has refused. She made many compromises in efforts to work with the family and accommodate their priorities. (Exhibit B-40; Testimony, Director of Special Education)
55. The record does not contain any diagnostic information although it is possible that Parents have consulted with appropriate specialists about Student. Parent mentioned grave concerns about family privacy as a reason for their reluctance to consent to a psychiatric evaluation, or to share medical and/or counseling information with the school. Parent cited a prior experience when information that the family considered confidential had been "leaked" within the school system. The concern for privacy is reported to be shared by Student. (Testimony, Parent)

### **CONCLUSIONS OF LAW:**

1. Section 10-76h, Connecticut General Statutes (C.G.S.), authorizes an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 4-176e through 4-180a, inclusive, and Section 4-181a. Federal regulations at 34 C.F.R. § 300.511 also provide for special education hearings. A Special Education Hearing Officer has the authority:

... to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education ... to prescribe alternate special education programs ...

[when consent has been refused or withdrawn] the hearing officer may order an initial evaluation or reevaluation without the consent of the parent ... (Section 10-76h(d)(1), C.G.S.)

**2. Trial Placement for Diagnostic Purposes** is defined at Section 10-76d-14(b), Regulations of Connecticut State Agencies (R.C.S.A.):

Each board of education may use trial placement for diagnostic purposes. This shall mean a structured program, of not more than eight weeks' duration, the purpose of which is to assess the needs of a child for whom an individualized education program may be needed, but for whom the evaluation study is either inconclusive or the data is insufficient to determine the child's individualized education program.

1. The [PPT] shall specify, in writing, diagnostic goals and objectives, as well as the types and amounts of services needed to conduct the program in order to determine more conclusively the child's needs.
2. The [PPT] shall meet at least once every two weeks with personnel working with the child to discuss the child's progress and to revise, when necessary, the services being provided.
3. A child's time may be divided between the diagnostic program and another program, or the child may be placed in the diagnostic program full-time. Decisions regarding such options shall be made by the [PPT].
4. A diagnostic program shall be terminated as soon as the child's needs have been determined, but in any event within eight weeks.
5. Five days before the end of the diagnostic program, the [PPT] shall reconvene to write the child's individualized education program based on findings made during the program as well as other evaluative information regarding the child.

3. Parental consent is required for evaluations as provided at 34 C.F.R. § 300.300(c). When such consent is refused or revoked, the school district has the option of requesting a hearing. The hearing officer's authority to order an evaluation, overriding lack of parental consent, is found at 34 C.F.R. § 300.300(a)(3), and at Section 10-76h(d)(1), C.G.S., as cited above.

4. Student's lack of progress on his IEP goals and objectives as well as his declining grades, increasing social withdrawal and unwillingness to participate in supports provided for him at the Board's high school have confirmed the PPT's concerns and desire for more diagnostic information. The program provided at the high school is not appropriate to Student's special education needs.

### **DISCUSSION:**

Thirteen (13) PPT meetings within twenty-six (26) months is an extraordinary record of concern about Student. The PPT has consistently asked for more information and has recommended a therapeutic day placement since the October 11, 2006, PPT meeting. The Parents have consistently refused alternatives and denied or revoked consent. There is no doubt among the school's professional staff that more information is needed. It is

possible that some aspects of his current IEP, however carefully constructed, are not in fact appropriate to his extreme needs.

For example, the homework completion program for Student focuses on the concept that Student COULD complete his homework if he DECIDED to do so. Lacking more thorough assessments, it is not possible to say that Student could complete his homework if he decided to do so. Ironically, Student's attendance has improved this year; in fact that is the only evidence of real improvement.

Lacking the 1997 evaluations, it is impossible to establish a baseline: has Student had social difficulties all along, or have these problems become extremely serious during his high school years? Lacking current psychoeducational evaluations, it is difficult to determine whether this bright young man is working up to his intellectual potential in the courses where he has engaged, albeit briefly.

Student's level of anxiety has been, at times, extraordinarily high: more specialized assessments might help determine how to reduce both the causes of anxiety and the anxiety itself. A more individually structured setting might provide greater security and predictability for Student. The issue of possible danger to himself and/or others must be addressed. A psychiatric evaluation is a reasonable approach to trying to answer that question.

Both parties, Parents and the Board of Education professional staff, have strong opinions about what is best for Student, but also demonstrated both patience and respect for each other during the hearing. It is suggested, but not ordered, that:

Parents consider having a complete medical workup for Student, if one has not already been done recently.

and

The School Administration consider a petition in the Superior Court for Juvenile Matters for Youth in Crisis services through the Department of Children and Families if Parents and/or Student do not cooperate in the evaluation and diagnostic placement ordered herein.

### **FINAL DECISION AND ORDER:**

1. Student's increasing social withdrawal and declining educational progress confirm the need for a psychiatric evaluation to help determine his educational needs.
2. Because Parents have not provided consent, the Hearing Officer orders that such evaluation be provided by the Board of Education.
3. To assist the Board in providing a free appropriate public education to Student, a diagnostic placement at the facility recommended by the PPT is ordered, pursuant to the State regulation cited above.