

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. New Haven Board of Education

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

Appearing for the Board: Attorney Marsha Moses
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460

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

FINAL DECISION AND ORDER

The Parent objects to the District’s recommendation made at the March 24, 2009 IEP team meeting that the Student be placed out-of-district at ACES Mill Road for the 2009/20210 school year. For the reasons set forth below, that recommendation is reasonably calculated to provide the Student with a free appropriate education (“FAPE”) in the least restrictive environment (“LRE”). Over the course of the 2007/2008 and 2008/2009 school years, the Student manifested episodes of aggressive behavior toward staff, other students and/or the physical environment of the mainstream schools he was attending. These episodes of aggressive behavior are associated with features of his disability (autism), which include social skill and problem solving deficits and have become increasingly unpredictable. Interventions put into place – including a behavioral intervention plan and a dedicated, 1:1 adult paraprofessional to support him throughout his entire school day – have not been successful at addressing the Student’s behavioral issues, which interfere with his ability to access fully his educational program and present a threat to the safety of staff, peers and the Student. The ACES Mill Road program is fully equipped to address both the academic, social and behavioral challenges the Student is experiencing.

ISSUE SET FOR HEARING

Whether the District’s recommendation that the Student be placed at ACES Mill Road for the 2009/2010 school year was reasonably calculated to provide him with a FAPE in the (“LRE”).

PROCEDURAL BACKGROUND

A. Summary/Overview

This matter was commenced by request for due process (the “Request”) filed by the Student’s mother (the “Parent” or “Mother”) received by the State of Connecticut Department of Education (“CTDOE”) on April 28, 2009. The Request challenges the District’s recommendation at the March 24, 2009 IEP team meeting that the Student be placed out-of-district at ACES Mill Road. The Request states that the District is making that recommendation “due to some behaviors [the Student] had in class

after being hit by other students or held down by two or more staff members daily.” The Parent stated the following as her proposed resolution: the Student will “finish” the 2008/2009 school year at Celentano School “with a more mature para[professional] with his program and special education hours left the way it is” and the Student will be “moved to another school district or home schooled” for the 2009/2010 school year.

The undersigned was appointed as Hearing Officer on April 30, 2009. The Board did not file a sufficiency challenge. At the Hearing Officer’s direction, the Board filed an answer to the Request. The Board in its answer denied the allegations in the Request.¹

A telephonic pre-hearing conference (“PHC”) was convened on June 2, 2009, at which the parties reported that a resolution meeting had been convened but was not successful. The parties also reported the following, among other things: In the 2008/2009 school year, the Student was attending Celentano School, a District public elementary school, as a 4th grader. The Student has been identified as IDEIA-eligible on the basis of a classification of autism, and was receiving special education and related services under an IEP at all points during the 2008/2009 school year. There is no dispute regarding eligibility and classification. The Parent reported that she agrees with all aspects of the March 24, 2009 IEP other than the recommendation for an out-of-district placement. The Parent reported her view that not all of the District staff concur in the recommendation for placement at ACES Mill Road and that behavioral incidents involving the Student reported by District staff reflect his response to being bullied or victimized by peers and the District’s failure to appropriately address those issues.

The Parent reported further that for the 2009/2010 school year the Student had been accepted under the Open Choice program into the Cook Hill School, a public school operated by the Wallingford, Connecticut board of education. Under Open Choice, the Student can attend school in another district but the Board remains the “nexus” local educational agency (“LEA”) responsible for implementing the Student’s IEP. The Parent wants the Student to attend Cook Hill School in Wallingford under Open Choice, and believed that he could do so notwithstanding the IEP recommendation for placement at ACES Mill Road. The Board disagreed, noting its understanding that the Student would not be accepted under Open Choice for a placement at Cook Hill School given the IEP recommendation for placement at ACES Mill Road.

Given the uncertainty as to that issue at the time of the PHC, the Hearing Officer directed the parties to confirm the Student’s status with respect to Open Choice and a placement at Cook Hill School. A second PHC was convened on June 10, 2009 for the purpose of clarifying that issue. At that PHC, the Board reported that it had confirmed with Wallingford school district representatives that the Student would not be enrolled at Cook Hill School under Open Choice given the IEP recommendation for a placement at ACES Mill Road. Accordingly, the issue presented for hearing was defined as the propriety under the IDEIA of the District’s recommendation that the Student be placed at ACES Mill Road for the 2009/2010 school year.²

¹ As used herein, the term “District” refers to those employees and consultants of the Board who directly or indirectly deliver special education and related services to the Student and the term “Board” refers to those organizational units of the New Haven Board of Education, including the District, that constitute the respondent in this matter.

² Given the framing of the issue by the Parent in her Request, the parties were advised in the June 17 Order that the issue set for hearing framed above would encompass matters such as the nature and magnitude of the Student’s behavioral

Both parties at the June 10, 2009 PHC acknowledged that given the timing of the events at issue and the hearing process, as well as the operation of stay put, as a practical matter the Student's placement for the remainder of the 2008/2009 school year would not be changed or effected by this proceeding. Accordingly, the Student completed the 2008/2009 year at Celentano School. At the July 17, 2009 hearing counsel for the Board advised that Celentano School would be the Student's stay-put placement. At the September 14, 2009 hearing, the Parent reported that the Student's enrollment at Cook Hill School was on hold pending the outcome of this proceeding, and that she had elected to "home school" the Student until the hearing was resolved. (Parent statement 9/14/09 hearing at 271-273.)

B. Parents' Witnesses

The Parent submitted a witness list identifying 24 witnesses she intended to call, including among others the Student's older brother and various family friends. The Board objected to various witnesses the Parent identified on the basis, among other things, that the testimony the Parent intended to elicit from them was not relevant to any issue in dispute. By order dated June 17, 2009 (the "June 17 Order"), the Hearing Officer denied the Board's objection as to certain witnesses, granted it as to the Student's older brother, and granted it conditionally as to other witnesses.³

The Parent presented her case-in-chief on July 15 and July 17, 2009. The following witnesses were called to testify by the Parent on July 15, 2009:

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| Lillian Edwards Saunders | Ms. Saunders is the Supervisor of a Connecticut Department of Developmental Services respite center which provides services to the Student's family. |
| James Copley | Mr. Copley served as a Court-appointed <i>guardian ad litem</i> for the Student in certain proceedings before the Connecticut Juvenile Court, Child Protection Session. |
| Siretha Bromell | Ms. Bromell is a family friend. |

On July 17, 2009, the Parent testified along with the following witnesses:

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| Carmella Ricciardelli | Ms. Ricciardelli operates various arts and crafts programs that the Student has attended regularly over the past few years. |
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difficulties in the 2008/2009 school year at the Celentano School, the steps taken by the District to identify the cause of those behavioral issues, the interventions implemented to mitigate them, and the Student's response to them.

³ The June 17 Order provided that after the Parent had presented her case-in-chief through witnesses the Hearing Officer had determined she could call to testify, she could renew her request to present testimony from any or all of the remaining witnesses in the conditionally excluded category at which time the Hearing Officer would reconsider his ruling. The Parent made no such request.

Sincilina Beckett

Ms. Beckett is a representative of AAFCAMP, a family advocacy group with respect to educational matters. The Parent is a client of Ms. Beckett.

The Parent reported that certain witnesses she intended to call were not available to testify. She elected not to call Marilyn Chalmers, the Board’s Director of Student Services and Special Education, even though the Parent had identified Ms. Chalmers on her witness list and Ms. Chalmers was available to testify.

C. Presence of the Student at Hearing

Both the Student and his older brother were present in the hearing room on July 15, 2009.⁴ The Board objected to allowing the Student to be in the hearing room on the basis that doing so would be prejudicial to the extent that the Hearing Officer may draw conclusions from observing the Student that would not be in the record. That objection was sustained and the Parent made arrangements for the Student and his older brother to return home.

The Parent also brought the Student to the hearing on September 24, 2009. She apparently had made no child care arrangements on that day for the Student, who was being “home schooled” at the time. The Parent had made no arrangements for someone to accompany the Student who could supervise him and apparently intended to have him stay in the hearing room notwithstanding that an objection to such an arrangement had been sustained. The Board again objected to having the Student present in the hearing room, at which point the Parent indicated the Student could sit and wait in the hallway outside of the Hearing Room without supervision. The Board objected to that proposal on a stated concern for the Student’s safety. Commencement of the hearing was delayed while arrangements were made to have the Student wait in a location outside of the hearing room where he could be observed by other Board staff as they went about their work.⁵

Because of the Parent’s decision to bring the Student to the hearing room on these days, the Hearing Officer had an opportunity to observe the Student and the interaction between the Student and the Parent and the Student and staff members. Those observations form no part of this Final Order and Decision.

D. The Board’s Witnesses

The following witnesses testified on behalf of the Board on September 14, 2009:

Marilyn Chalmers

Ms. Chalmers is the Board’s Director of Student Services and Special Education.

Kristi Villani

Ms. Villani is a speech and language therapist (“SLP”) assigned to work with the Student at Celentano School

⁴ The Parent apparently intended to have the Student and his older brother attend the hearing.

⁵ See September 24, 2009 hearing transcript at 1-6.

in the 2008/2009 school year.

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|-------------------|--|
| Jane Lewin | Ms. Lewin is a special education teacher assigned to work with the Student at Celentano School in the 2008/2009 school year. |
| Trina Roque Dizon | Ms. Roque is a Board Certified Behavior Analyst (“BCBA”) ⁶ employed by the Institute for Professional Practice (“IPP”) who was responsible for developing and implementing aspects of the Student’s educational programming concerned with behavior management in the 2007/2008 and 2008/2009 school year. ⁷ |
| Loretta King | Ms. King is the Board’s Supervisor of Special Education with administrative responsibilities in the 2008/2009 school year for those special education students attending Celentano School and those students placed out-of-the-district. |

Erica Forte, the principal of ACES Mill Road, testified on behalf of the Board on September 24, 2009.⁸

E. The Parent’s Documentary Evidence

The Parent did not submit any documentary evidence until the September 14, 2009 hearing, which was after the conclusion of her case-in-chief. At that hearing the Parent submitted documents which were marked for identification as Exhibits P1-P6. The Board objected to these proposed exhibits on various grounds, including that they were not submitted five days prior to a hearing as required by CTDOE due process hearing procedural regulations.⁹ The Board’s “5 day rule” objection was sustained for the September 14, 2009 hearing but was mooted by the start of the September 24, 2009 hearing. The parties were advised that the documents would remain marked for identification pending resolution of the Board’s remaining exhibits as the exhibits were used on a document-by-document basis.¹⁰ The Parent did not actually use any of these exhibits at hearing and they remain for identification only.

⁶ The word “Board” as used in the title “Board Certified Behavioral Analyst” refers to the professional accrediting organization for that certification, not the New Haven Board of Education.

⁷ Ms. Roque did not use her married name (Dizon) in documents included in the record and for consistency will be referred to herein by her maiden name (Roque).

⁸ The Parent’s objection to having Ms. Forte testify on the basis that Ms. Forte has never met, observed, evaluated or otherwise been involved with the Student was overruled. (9/14/09 hearing transcript at 270-271.)

⁹ Reg. Conn. State Agencies (“CSEL Regulations”) § 10-76h-11(3).

¹⁰ See 9/14/09 hearing transcript at 8-12. See also 9/24/09 hearing transcript at 7.

Although the Hearing Officer had advised the parties at the outset of testimonial evidence that he was not requesting closing arguments or post-hearing briefing, the Parent at the September 24, 2009 hearing requested an opportunity to present closing argument through a written document she had prepared. After reviewing the document, the Board advised it would not object to having the document admitted into the record. That document was marked as Exhibit P7 for administrative purposes and the parties were advised that the Hearing Officer would treat it as closing argument rather than factual evidence. (9/24/09 hearing transcript at 98-101.)

F. The Board's Documentary Evidence

The Parent did not object to Board exhibits B1-B110, which were admitted into the record on July 15, 2009.¹¹ The Parent objected at the July 15, 2009 hearing to proposed Exhibits B111 and B112 (disciplinary reports dated from the summer of 2008) on the basis that they contained "false information" and she did not recognize the names of the individuals involved in the events described in the documents. These documents were marked for identification only pending authentication by a witness. B111 and B112 remain marked for identification.

Over the course of the remainder of the hearing, the Board submitted proposed Exhibits B113-B118. Exhibits B113, B115, B116, B117 and B118 were admitted into the record absent objection or by agreement at the September 14, 2009 hearing. The Parent objected to Exhibit B114 on the basis of "hearsay." The Hearing Officer overruled the objection on that basis, but directed that the document be marked for identification only pending authentication by an appropriate witness. (September 14, 2009 hearing trans. at 3-7.) B114 was not authenticated and remains marked for identification only.

G. Hearing Officer Exhibit

The Request was marked as Hearing Officer exhibit 1 ("HO-1").

H. Other Procedural Matters

The evidentiary record was closed at the conclusion of the Board's case-in-chief on September 24, 2009.

Absent modification by the Hearing Officer, the date for the mailing of the Final Decision and Order would have been July 13, 2009. By agreement of the parties at the June 2 and June 10, 2009 PHCs, four hearing dates were established (July 15, July 17, July 27 and July 28, 2009). Reflecting that schedule, the date for mailing of the Final Decision and Order was extended in the June 17 Order to August 3, 2009. On July 17, 2009, the Parent advised that she was unable to attend the July 27, 2009 hearing as she had to be in court on another matter. The July 27, 2009 hearing was cancelled and the

¹¹ The parties were advised in the June 17 Order and again at hearing on July 15 that all documents admitted into the record would be treated for evidentiary purposes as a business record. The original copies of exhibits B76, B77, B84, B90 and B101 submitted by the Board contained the names of one or more other students. At the July 17, 2009 hearing the Board submitted revised copies of those exhibits which redacted that information. Absent objection from the Parent, the revised exhibits have been marked by the Hearing Officer with the word "Revised" and were substituted for the original documents submitted by the Board. The original documents have been retained and returned to the CTDOE as part of the case file in this matter.

next hearing date that could be agreed upon was September 14, 2009. On July 22, 2009, counsel for the Board advised that she was unable to attend the July 28, 2009 hearing due to a health-related issue. That hearing was cancelled and September 24, 2009 was the next available hearing date that could be agreed upon. Accordingly, hearing convened on July 15 and 17, and September 14 and 24, 2009. Reflecting that schedule, the date for the mailing of the Final Decision and Order was extended to and including October 30, 2009.

FINDINGS OF FACT

Attachment A summarizes the factual history underlying this dispute, as presented in statements of the parties at the PHC and/or in pre-hearing submissions, and through testimonial or documentary evidence at hearing. The Findings of Fact (“FF”) below include citations to evidence summarized in Attachment A.¹² Citations to specific evidence from Attachment A are for illustrative purposes and are not meant to exclude other admissible record evidence supporting that particular Finding of Fact, whether summarized in Attachment A or not.¹³ To the extent that any portion of this Final Decision and Order, including sections describing the procedural background, states a Finding of Fact or a Conclusion of Law, the statement should be so considered without regard to the given label of the section of this Decision in which that statement is found. *See, e.g., Bonnie Ann F. v. Callahan Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

1. There is no disagreement between the parties that at all times pertinent to this dispute that:
 - a. the Student was a minor child residing or deemed to be residing within the Board’s jurisdiction;
 - b. the Student was eligible for special education and related services under the IDEIA on the basis of a classification of autism;
 - c. the Board was the local educational agency (“LEA”) obligated under the IDEIA to provide the Student with special education and related services;
 - d. the Board was providing the Student special education and related services as defined in an IEP developed by the District or under its supervision and direction.¹⁴

¹² The citation form “A#” refers to the numbered paragraph in Attachment A where the record evidence may be found. Attachment A is not intended to be an exhaustive recitation of the presentation of all of the evidence. Findings of Fact are based in part on an assessment of witness credibility. A Conclusion of Law or Finding of Fact that expressly or implicitly credits a version of events offered by one witness as opposed to the version offered by another reflects a conclusion as to credibility on that point.

¹³ A citation in Attachment A in the form “B#” or “B# at #” or in the form “P” or “P# at #” refers to that number Board or Parent exhibit respectively, at that page of the exhibit. A citation in the form “Name Test. Date hearing” or “Name Test. Date hearing at ##” refers to the testimony of that witness on that hearing date. The Hearing Officer did not request transcripts of the July 15 or July 17, 2009 hearings and therefore cites to witness testimony on those dates generally.

¹⁴ *See, e.g.,* Representations of the parties at the telephonic PHCs, the Request (Exhibit HO1), the Board’s Answer, A1-A10, A16, A17, A23, A39, A42, A46, A47, A56, A92, A93, A112, and A113.

2. The Parent is not challenging any aspect of the IEP developed at the March 24, 2009 IEP team meeting, either on substantive or procedural grounds, other than the recommendation that the Student be placed out-of-district at ACES Mill Road. The Parent (a) agrees with the Goals and Objectives identified in the March 24, 2009 IEP, (b) makes no claim that Student was not making progress under his IEP in the 2008/2009 school year, and (c) for the 2009/2010 school year wants the Student to attend the Cook Hill School and have his IEP implemented there. Representations of parties at the PHCs; Request (Exhibit HO1).
3. The Cook Hill School is a public school operated by the Wallingford, Connecticut board of education. The Student is eligible to attend Cook Hill School in Wallingford in the 2009/2010 school year under the Open Choice program. Cook Hill School declined to enroll the Student for the 2009/2010 school year, however, given the recommendation of the March 24, 2009 IEP for a placement at ACES Mill Road. (A116)
4. During the 2008/2009 school year, the Student was attending Celentano School, which is an elementary school operated by the District and is the Student's home school. The Student's program at Celentano School was a partial inclusion program, with most of his day spent in the mainstream environment and a portion of his day spent in a resource room where he received specialized instruction and related services in a 1:1 or small group setting. At all times in his program during this school year, the Student was supported throughout his school day by a 1:1 Paraprofessional (Mr. Bonilla) assigned specifically to him. (A44-A47) Based on Ms. Lewin's testimony describing the work the Student was doing with her, including her testimony regarding and his own review of, work samples in the record (Lewin Test. 9/14/09 hearing at 159-170, referencing B78), the Hearing Officer concludes that the Student was receiving parallel instruction in his mainstream classes, although the extent to which the mainstream curriculum was being modified for him was not established as there was no issue raised regarding that aspect of the IEP.
5. The Student's program within the District's schools had become increasingly inclusive as he progressed from grade to grade. At various times prior to the 2007/2008 school year, the Student was supported within the District's schools by a 1:1 Paraprofessional. The reason why he needed 1:1 Paraprofessional support was not established in this record. (A4, A7-A10)
6. Shortly before the start of the 2007/2008 school year, the CTDCF assumed custody of the Student. The CTDCF is the Connecticut state agency responsible for, among other things, investigating claims that parents are neglecting their children and for protecting the interests of children who are being neglected. CTDCF placed the Student in foster care in Waterbury, Connecticut in the summer of 2007 and the Student began the 2007/2008 school year attending the Generali School, a public school operated by the Waterbury board of education. Under Connecticut law, the Board remained responsible for the provision of special education and related services to the Student. The Board directed the provision of special education and related services to the Student while he was attending school in Waterbury. (A11-A13)
7. While at Generali School, the Student began manifesting episodes of aggressive behavior

toward staff, other students and the environment such that he presented a safety risk. The Student also presented non-compliant and other disruptive behaviors. Generali School staff responded by recommending that the Student be supported on a 1:1 basis throughout his day by a trained behavior therapist, who could deliver services to him under an Applied Behavioral Analysis (“ABA”) methodology, rather than by a paraprofessional who was not a trained behavior therapist.¹⁵ The Board agreed to implement that recommendation, and the Student was assigned a Board Certified Behavior Analyst (“BCBA”) affiliated with the Institute for Professional Practice (“IPP”) on a 1:1 basis starting in November, 2007.¹⁶ (A16, A17)

8. The Student received 1:1 support from an IPP-BCBA for the remainder of the time he attended Generali School in the 2007/2008 school year. Notwithstanding that level of support, the Student continued to manifest aggressive behaviors toward staff, peers and the environment, as well as non-compliant and other disruptive behaviors. (A18, A21)
9. Starting on April 1, 2008, plans were developed to transition the Student back to the District. At an April 1, 2008 IEP team meeting, the District determined to continue to implement the Student’s then-current IEP, including the full-time support of a 1:1 IPP-BCBA in all aspects of his program within the Board’s schools, upon his return to the District. Generali School staff provided District staff with recommendations for addressing the Student’s maladaptive behaviors in the school environment that they had developed in working with him. IPP reviewed that data and used it as part of a more comprehensive functional behavioral analysis (“FBA”) to develop a behavioral intervention plan (“BIP”) for use with the Student going forward. (A20, A22-A24, A26-A29)
10. On April 28, 2008, the Student returned to the District and began attending the Jepson Magnet School. He was supported by a 1:1 IPP-BCBA. Notwithstanding that level of support, the Student continued to manifest the aggressive behaviors toward staff, peers and the environment he had manifested at the Generali School, as well as non-compliant and otherwise disruptive behaviors that interfered with his academics. The Student completed the 2007/2008 school year at Jepson. (A25, A30, A31)
11. By early September 2008, IPP had completed both its FBA and a related BIP. The purpose of the FBA was to “review potential environmental/situational reasons for the behaviors of concern and to assess other factors that may affect [the Student’s] behavioral performance in school.” (A36, A38) The FBA indicated the following, among other things:

¹⁵ The term “1:1 Paraprofessional” as used herein refers to an adult paraprofessional who was not a trained behavior therapist.

¹⁶ As used herein, the term “1:1 IPP-BCBA” refers to a behavior therapist assigned to provide the Student with 1:1 support in his school program. The word “Board” as used in the title “Board Certified Behavior Analyst” does not refer to the respondent Board in this case, but rather refers to the applicable accrediting body for this particular certification.

| Behavior | Approximate Daily Frequency | How disruptive or manageable? |
|--|--|---|
| Non-compliance: Any instance of not complying with directions (whole group or individual) within 3 seconds of giving them. | 5-10/day up to 20-40/day | Prevents participation in learning new skills. If not able to redirect appropriately may result in a tantrum. |
| Aggression: Any instance of or attempt to hit, slap, kick, bite, push or otherwise cause harm to another person or object. | 0-3/day but may exceed 10/day during a tantrum | Depends on intensity; usually manageable when Student remains in smaller and quiet place. |
| Verbal Disruptions: Any instance of whining, crying, verbal statements indicate that he does not want to participate, raising voice above normal conversation level, requesting to go home, swearing or making verbal threats. | 20-25/day | Sometimes manageable unless the Student is swearing, which may lead to Environmental Destruction and Swearing. |
| Flopping: Any instance of or attempt to slide off his chair. Any instance of dropping to the floor at any time during the day unless told to do so. | 0-3/day | Usually manageable, depending on corresponding behaviors such as Aggression. |
| Bolting: Any attempt to move away from group/class/teacher/paraprofessional during work or class activities/hallway. | 0-3/day | Usually manageable. |
| Environmental Destruction: Any instance or attempt to clear off (table, desks, etc.) dump out, throw, rip, bang, crush, or break materials or objects. | 0-5/day | Usually manageable depending on intensity. |
| Tantrum: Any instance of vocal disruption in combination with aggression and non-compliant behaviors occurring simultaneously. [Student] may also be engaging in flopping, bolting, and environmental destruction. | 0-3/day | Usually manageable depending on intensity. Most last about 1-5 minutes and are redirectable. Instances in which tantrum may last for 20-30 minutes and have high rates of aggression. |

12. IPP determined through the FBA that these problem behaviors (1) arise when task demands or limitations are placed on the Student and (2) are positively reinforced by the attention the Student receives from others in the form of a reaction to the event. The report indicates further that the Student may lack the coping skills needed to appropriately ask for a break and/or calm himself once he is frustrated. (A37)
13. IPP identified the following undesired target behaviors that the Student had been manifesting and that his program sought to reduce (A27):
- a. Non-compliance: Any instance of not complying with directions (whole group or individual) within 3 seconds of giving them.
 - b. Aggression: Any instance of or attempt to hit, slap, kick, bite, push or otherwise cause harm to another person or object.
 - c. Verbal Disruptions: Any instance of whining, crying, verbal statements indicate that he does not want to participate, raising voice above normal conversation level, requesting to go home, swearing or making verbal threats.
 - d. Flopping: Any instance of or attempt to slide off his chair. Any instance of dropping to the floor at any time during the day unless told to do so.
 - e. Bolting: Any attempt to move away from group/class/teacher/paraprofessional during work or class activities/hallway.
 - f. Environmental Destruction: Any instance or attempt to clear off (table, desks, etc.) dump out, throw, rip, bang, crush, or break materials or objects.
 - g. Tantrum: Any instance of vocal disruption in combination with aggression and non-compliant behaviors occurring simultaneously. [Student] may also be engaging in flopping, bolting, and environmental destruction.
14. IPP in the BIP it developed for the Student identified a number of specific and general proactive strategies to be used to address these behaviors, primarily: structuring the environment, ignoring undesired behaviors if possible, using positive reinforcers to encourage desired behaviors, cuing appropriate behaviors, and redirection rather than reprimanding or scolding the Student. The BIP also defined the following as an “emergency procedure:”

If [the Student] is provided with a quieter environment and he is not able to regroup and engages in behaviors that may not be safe for him (elopement out of the building, environmental destruction in which furniture may fall on him) or for others (aggression), utilize physical safety procedures to escort [the Student] to a safer area (hallway, book room, empty classroom, depending on where the behavior occurs, escort to nearest safe area) where he cannot bolt or access

dangerous materials.

The term “physical safety procedures” used in the BIP refers to a physical management of behavior protocol, sometimes known as “PMT.” (A28, A30)

15. The Student started the 2008/2009 school year at Jepson School, once again with the support of a 1:1 IPP-BCBA in all aspects of his program. Within the first week of school, following an episode of agitated, escalating behavior, the Student’s 1:1 IPP-BCBA removed the Student from the class to a quiet area and applied behavior management techniques recommended by Generali School staff to calm the Student. The Student continued to escalate however, and during the course of this incident slid to the ground and attempted to bite the 1:1 IPP-BCBA on her foot or leg. The Student chipped his tooth on the floor when the 1:1 IPP-BCBA moved her foot out of the way. (A34, A35)
16. Following the tooth chipping incident, an IEP team meeting was convened at the Parent’s request. The Parent wanted the Student to resume working with the same 1:1 Paraprofessional (Ms. Kim Boyd) he had been working with at Celentano School prior to being transferred to Generali School. The District denied the request that Ms. Boyd be assigned to the Student but agreed as a “trust building” measure to terminate the 1:1 IPP-BCBA support and provide the Student with a 1:1 Paraprofessional who would be trained by IPP in ABA techniques and supervised by IPP. Mr. Bonilla was hired to become the Student’s 1:1 Paraprofessional. The IPP FBA and BIP was reviewed, the BIP as proposed by IPP was put into effect and there was a discussion of scheduling training of Jepson School staff in the administration of the BIP by IPP. (A39-A42)
17. On or about October 2, 2008, the Parent unilaterally enrolled the Student at Celentano School and he began attending Celentano School. An IEP was convened immediately by Ms. Chalmers to address the Parent’s action. It was agreed that the Student would continue to remain at Celentano School, that he would continue to be supported by Mr. Bonilla on a 1:1 basis, and that IPP would train Celentano School staff, including administrative staff, in the implementation of the BIP. (A44, A46, A47)
18. IPP trained and supervised Mr. Bonilla in his service delivery. (A46b, A106)
19. Prior to the March 24, 2009 IEP team meeting, the Student in the 2008/2009 school year was reported to be making satisfactory progress in achieving virtually all of the Goals and Objectives under his IEP at Celentano School. (A113)
20. Between October 6, 2009 and March 24, 2009, the Student continued to manifest aggressive behaviors toward Celentano School staff, his peers and the physical environment, as well as non-compliant and otherwise disruptive behavior in class. During this period:
 - a. The Student was reported to have physically attacked Mr. Bonilla on no less than 10 occasions, both in response to efforts by Mr. Bonilla to redirect the Student and

at other times for no apparent reason. Among other things, the Student stabbed Mr. Bonilla with a pencil and scratched him several times, on some occasions with sufficient force to draw blood. (A45, A52, A60, A61, A63, A65, A79, A82, A101, A112)

- b. The Student had an ongoing conflict with a male peer (E*) and would sometimes physically attack E* or otherwise disrupt E*'s participation in class (by *e.g.*, spilling out the contents of E*'s backpack) with no apparent provocation observed by staff. *See, e.g.*, A62.
 - c. The Student on several other occasions was reported to have attacked peers other than E*, or to have threatened them with physical harm, without any apparent provocation observed by staff. (A64, A65, A67, A74, A79, A83, A88, A90, A101, A111)
 - d. The Student damaged equipment and other objects in his environment. (A102)
 - e. The Student physically attacked other Celentano School staff members working with him in a similar fashion as his attacks on Mr. Bonilla. (A51, A54, A60, A64, A69, A71, A72, A76, A88, A90, A102, A110)
 - f. When efforts to re-direct the Student by Mr. Bonilla or staff working with him were unsuccessful, the behavior management protocol provided that the Student would be removed from his classroom to another location to give him an opportunity to compose himself so that he could return to class. If his behavior continued to escalate, he would be brought to the Principal's office. On a number of occasions after he was removed from class and both when he was being brought to the Principal's office and while he was in the Principal's office his behavior would escalate again and he would physically attack staff or damage property. These aggressive episodes could last for a considerable period of time. On most occasions, the Student would be able to return to class after the episode had subsided and he had regained his composure. (A51, A102, A111)
 - g. In addition to these physically aggressive behaviors and episodes of escalation, the Student also frequently manifested non-compliant and disrespectful behavior in his classes and other places within the Celentano School building. He would retreat to his assigned "cubby" during class, rather than sit at his desk. He would wander around the room in his class. He could be verbally abusive or inappropriate and was otherwise disruptive of efforts of his teachers to conduct their class. (A55, A58, A59, A67, A68)
 - h. From time to time, the Student's conduct earned him disciplinary consequences in the form of in-school or out-of-school suspensions. A72 (3 day lunch detention); A82 (3 day suspension); A109 (2 day suspension); A111 (3 day suspension).
21. Over the course of the 2008/2009 school year, the Student's episodes of physically

aggressive behavior were becoming more intense and unpredictable although not necessarily more frequent. These behaviors were interfering with his academic progress by rendering him unavailable to participate in the academic components of his program.

22. By March 2009, various District staff had concluded that the Student's behavioral issues could no longer adequately be addressed within the Celentano School environment and that the Student needed to be placed in a program such as ACES Mill Road. That conclusion was appropriate and is supported by the facts. The Student at times presents a risk of harm to himself, to Celentano School staff and to his peers. The Student's maladaptive behaviors disrupt the academic environment for others and impede his ability to access and benefit from his own IEP and program of specialized instruction and related services. More particularly, Celentano School staff, Ms. Roque, Ms. Chalmers and Ms. King concluded that the Student could benefit from having access to a "time out" mechanism implemented in a facility that was physically designed to provide for such an intervention and was staffed by professionals trained in the administration and use of such a mechanism. A91, A92b, A92d, A94-A97, A105-A106.
23. Celentano School does not have the physical facilities to implement an effective or appropriate "time out" intervention for the Student. Celentano School staff appear to be able to adequately implement a physical management of behavior protocol, but absent the availability of the physical facilities to implement an effective or appropriate "time out" intervention for the Student, the interventions that Celentano School staff can implement are responsive to the immediate episode but do not help the Student to develop the ability to control his behavior or to improve the social, communication and/or problem solving skills he needs to resolve the problem that is causing him to become aggressive by means other than aggression.
24. ACES Mill Road provides a comprehensive behavior management system that improves a child's ability to participate in and benefit from his educational program in a mainstream setting through two components: (1) a system of positive reinforcement implemented across the entire milieu; and (2) a "time out" mechanism consisting of several forms of time out facilities. The physical facilities at ACES Mill Road were designed to include dedicated space for these time out mechanisms. ACES Mill Road has a dedicated staff of sufficient number who are trained specifically in the implementation of physical management of behaviors and assigned to the task of implementing the time out mechanisms. The time out mechanism is seamlessly integrated into the positive reinforcement system. ACES Mill Road is capable of implementing all aspects of the Student's IEP and provides intensive instruction in academic, behavioral and social skill development in a setting with a high staff-to-student ratio. ACES Mill Road has experience addressing the type of behavioral issues the Student presents and in working with populations of students with similar behavioral presentations and challenges. (A117-A130)
25. Even assuming that a more restrictive placement exists within the District's schools (*i.e.*, a segregated classroom), placement in such a setting would not be sufficient because Celentano School still lacks appropriate facilities to implement a mechanism to address

his escalating behaviors in a manner that maintains his dignity, maintains the safety of the Student and others, and is designed to improve the Student's ability to respond more appropriately to the academic and social challenges that he faces in his school environment.

26. The aggressive behaviors manifested by the Student present a threat to the safety of the Student, his peers and staff. The aggressive behaviors manifested by the Student have been noted to be part of his presentation over the years in all school environments which he has attended. (A1, A3, A10b, A133, A134, A138e) The Hearing Officer concludes that the aggressive behavior the Student presents reflects his disability and its associated pragmatic language and social skill deficits.

CONCLUSIONS OF LAW

1. **Governing Law.** This proceeding was commenced pursuant to the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1401, *et seq.* ("IDEIA") and Connecticut's special education law, Conn. Gen. Stat. § 10-76 *et seq.* (the "CSEL") and their respective regulations (the "IDEIA Regulations" and the "CSEL Regulations").¹⁷ The fundamental underlying purpose of the IDEIA is to "open the door of public education to... children [with disabilities] on appropriate terms" and in a meaningful manner to enable them to become productive members of society. *See, e.g., Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 192 (1982) ("Rowley").

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

3. **Satisfaction of Burden of Proof.** Pursuant to CSEL Regulation (Reg. Conn. State Agencies) § 10-76h-14, the Board has the burden of proving by a preponderance of the evidence the appropriateness of its proposed educational program and placement.¹⁸ Without regard to whether the Parent met her evidentiary burden with respect to her claim, as explained below the Board met its burden of demonstrating that the proposed placement of the Student at ACES Mill Road for the 2009/2010 school year was reasonably calculated to provide him with a FAPE in the LRE.

¹⁷ The IDEIA amended the prior statutory scheme, the Individuals with Disabilities Education Act or "IDEA." References to the IDEA and its regulations in case law cited herein should be interpreted to be citations to the corresponding provisions of the IDEIA and its Regulations. Unless otherwise expressly noted, the requirements, operation and/or relief available under the CSEL is the same as under the IDEIA.

¹⁸ *See Schaffer ex rel Shaffer v. Weast*, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005) (where state has allocated burden of proof in due process proceedings, that allocation will govern; otherwise, burden of persuasion/burden of proof falls upon the party seeking the relief).

4. **Board's Obligation to Provide FAPE, "Special Education" and "Related Services" to IDEIA-Eligible Students Generally.** The Board is the LEA required by the IDEIA and CSEL to provide each child residing in its jurisdiction who is identified as IDEIA-eligible with a FAPE.¹⁹ FAPE is "special education" and "related services" provided by or on behalf of the LEA at the LEA's expense that meets Connecticut's educational standards, approximates the grade levels used in Connecticut's regular education, is designed to meet the specific individualized needs of the child and is provided in conformity with the child's Individualized Educational Plan ("IEP").²⁰ "Special education" is "specially designed instruction ... to meet the unique needs of a child with a disability."²¹ "Related services" include, among other things, transportation and psychological, social work or counseling services "as may be required to assist a child with a disability to benefit from special education."²²

5. **The Board's Obligation to Provide the Student with a FAPE.** There is no dispute: (a) that the Student is a minor child residing in the Board's jurisdiction who is identified as being on the autism spectrum; (b) that by reason of his autism the Student has at all points since he entered school when he turned age 3 been identified as IDEIA-eligible and been provided special education and related services by or at the Board's direction; (c) that the Student continues to require special education and related services; and (d) that the Board is the LEA responsible for providing the Student with special education and related services. (FF1)²³

6. **Standard for Determining Whether the Board Provided a FAPE to the Student.** An LEA satisfies its obligations under the IDEIA to provide FAPE to a particular eligible student by defining a specific educational program and placement for that student in an IEP that: (1) is developed in compliance with the IDEIA's procedural requirements; and (2) is "reasonably calculated to enable the [IDEIA-eligible student] to receive educational benefits." *See, e.g., Rowley*, 458 U.S. at 192; *P., by and through his parents/next friends, Mr. and Mrs. P. v. Newington Board of Education*, 546 F.3d 111, 51 IDELR 2 (2d Cir. 2008) ("*Newington*"). With respect to this standard:

¹⁹ *See, e.g.,* IDEIA Regulation, 34 CFR § 300.101(c)(1) ("Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade."); CSEL, Conn. Gen. Stat. § 10-76d(8) ("Each board shall have in effect at the beginning of each school year an educational program for each child who has been identified as eligible for special education."). If the Student is IDEIA-eligible, under Connecticut law he would as a general matter be entitled to a FAPE until the earlier of the point at which he is properly awarded a regular high school diploma or the end of the school year in which he turns 21 years of age. *See generally* IDEA, 20 U.S.C. § 1412(a)(1)(A)-(B); IDEA Regulations 34 C.F.R. §§ 300.121, 300.122(a)(3)(i)-(ii); Conn. Gen. Stat. § 10-76d(b); CSEL Regulation § 10-76d-1(a)(7).

²⁰ *See, e.g.,* IDEIA, 20 U.S.C. § 1401(9).

²¹ *See* IDEIA, 20 U.S.C. § 1401(29), CSEL, Conn. Gen. Stat. § 10-76a(4).

²² *See* IDEIA, 20 U.S.C. § 1401(26); CSEL, Conn. Gen. Stat. § 10-76a (7).

²³ The IDEIA requires the Board to provide the Student with special education and related services if the Student is a "child with a disability." The IDEIA, 20 U.S.C. § 1401(3)(A), defines a "child with a disability" to be a child: (i) who has one or more categories of impairments defined at IDEIA Regulations, 34 CFR § 300.8(c)(1)-(13); and (ii) who "by reason thereof, needs special education and related services." Autism is one of the categories of impairments defined in IDEIA Regulation, 34 CFR § 300.8(c)(1)-(13). Under the CSEL, the Board is required to provide the Student with a FAPE if he is a child "requiring special education," which is defined to mean a child who meets the eligibility criteria under the IDEIA. *See* CSEL, Conn. Gen. Stat. § 10-76a (5)(A).

A. As to the IEP Requirement. There is no dispute that at all relevant times, the Student had in place an IEP that was developed by the District or under its direction. (FF1)²⁴

B. As to Compliance with Procedural Requirements. The IDEIA and CSEL require that an IEP be developed initially and then reviewed and refined periodically thereafter in a collaborative process (an “IEP team meeting”) involving minimally the LEA staff and the child’s parents or legal representatives (collectively, an “IEP team”).²⁵ Both the IDEIA and CSEL define procedural requirements and safeguards that operate to assure that the parents and other designated legal representatives of an eligible child have a full and meaningful opportunity to participate along with LEA personnel in developing, reviewing and revising their child’s IEP.²⁶

²⁴ More specifically, the IEP is a written program of instruction for an eligible child which: (1) defines the services to be provided to the Student based on the Student’s particular and unique needs; (2) is the document upon which placement decisions are to be based; and (3) is to be reviewed at least once annually and more often as the child’s circumstances may warrant. A properly formulated IEP should state: (1) the child’s present level of educational performance; (2) the annual goals for the child, including short-term instructional objectives and benchmarks for performance; (3) the specific educational services and supplementary aids to be provided to the child, and the extent to which the child will participate in the mainstream; (4) the transition services needed for a child as he or she begins to leave a school setting; (5) the projected initiation date, location and duration for proposed services; and (6) objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. *M.S. v. Bd. of Educ. of the City School Dist. of the City of Yonkers*, 231 F.3d 96, 103 (2nd Cir. 2000); IDEIA, 20 U.S.C. § 1414(d)(1); IDEIA Regulation, 34 CFR § 300.320.

²⁵ See, e.g., *Lillbask v. Connecticut Dep’t of Educ.*, 397 F.3d 77 (2d Cir. 2005) (IEP is intended to be “the result of collaborations between parents, educators, and the representatives of the school district”). Prior to the IDEIA, the IEP team meeting process was referred to generally as the “Planning and Placement Team” or “PPT.” The terms are interchangeable.

²⁶ Assuring meaningful parental participation is so central to the goals of the IDEIA that a violation of the IDEIA’s procedural safeguards may be a ground, in and of itself, for a finding that an eligible child has been denied FAPE. However, not every procedural violation warrants a finding that the LEA has failed to provide FAPE or that an IEP is invalid. Rather, the procedural violation must “impede the child’s right to FAPE” or “significantly impede” the parents’ opportunity to participate in the process of formulating the IEP or deprive the child of an educational benefit. See, e.g. IDEIA Regulation, § 34 CFR 300.513(2). See also *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629 (4th Cir. 1985) (repeated failure to notify the parents of their procedural rights to challenge the proposed IEP over a several year period deprived them of a meaningful opportunity to test whether the proposed IEP complied with the IDEA); *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479 (9th Cir. 1992) (child denied FAPE where school developed IEP independently, without participation of child’s parents or teachers); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990), cert. denied, 499 U.S. 912 (1991) (to invalidate IEP based on procedural violations “there must be some rational basis to believe that procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation educational benefits”); *Urban v. Jefferson County School Dist., R-1*, 89 F.3d 720, 726 (10th Cir. 1996) (deficient IEP did not in that case amount to a denial of an appropriate education); *O’Toole By and Through O’Toole v. Olathe Dist. Schools Unified School District No. 233*, 144 F.3d 692, 702 (10th Cir. 1998) (“technical deviations” from the IDEA’s requirements do not necessarily “render an IEP entirely invalid”); *Briere v. Fair Haven Grade School Dist.*, 948 F. Supp. 1242 (D.Vt. 1996) (procedural violations resulted in denial of FAPE, where LEA inhibited meaningful parental participation, refused to discuss an alternative placement, failed to conduct supplemental evaluations, failed to advise the parent as to why a placement request was refused, delayed IEP team meetings and finalization of the IEP, and where student’s teachers did not attend IEP team meetings); *Logue By and Through Logue v. Shawnee Mission Public Sch. Unif. Sch. Dist. No. 512*, 959 F.Supp. 1338, 1348 (D.Kan. 1997) (absent prejudice caused by procedural violation, IEP need not be invalidated). See also *W.A. v. Pascarella*, 153 F. Supp. 2d 144 (D. Conn. 2001) (discussing the applicable principles).

There is no dispute that during the relevant time periods, IEP team meetings were convened at least annually to review the Student's progress or address issues that were arising which impacted his educational performance. (FF1)²⁷ The Parent has not raised any claim of procedural violations with respect to the development of any of the relevant IEPs. (FF2) The Hearing Officer herein reaches no conclusions of law regarding compliance with the IDEIA's procedural requirements with respect to the development of any of the Student's IEPs, other than to note: (1) that some IEP team meetings convened regarding the Student were at the Parent's request; (2) that other than the IEP team meetings convened when the Student was in the custody of CTDCF the Parent attended every IEP team meeting convened for the Student; (3) that at some of these meetings the Parent was supported by an advocate of her choice; (4) that the Parent was an active participant in IEP team meetings; and (5) that the District at several meetings modified aspects of the Student's IEP to accommodate requests of the Parent.

C. Reasonably Calculated to Provide Educational Benefits. The IDEIA requires that the LEA provide a program defined in a properly formulated IEP that is "reasonably calculated to enable the [eligible child] to receive educational benefits[.]" *Rowley*, 458 U.S. at 206-07. An IEP is reasonably calculated to enable an eligible child to receive educational benefits within the meaning of *Rowley* if it is "likely" to produce progress rather than regression²⁸ and if the benefit to be provided is "meaningful."²⁹

In determining whether an IEP is reasonably calculated to provide a meaningful educational benefit, a hearing officer considers (1) that neither the IDEIA nor the CSEL require that the Board provide a program that maximizes the child's educational potential;³⁰ and (2) the

²⁷ The IEP team meetings that were convened include: May 8, 2007 to plan for the 2007/2008 school year) (A10c); November 1, 2007 (first IEP team meeting at Generali School) (A16); January 31, 2008 (second IEP team meeting at Generali School) (A17); April 1, 2008 (to plan for the Student's return to the District) (A23); September 9, 2008 (to address the "tooth chipping" incident) (A39-A42); October 6, 2008 (to address the unilateral transfer to Celentano School) (A46); October 28, 2008 (annual review) (A56); and March 24, 2009 (evaluate placement based on developments since the last IEP team meeting). (A92).

²⁸ See, e.g., *M.S. v. Yonkers*, 231 F.3d at 103.

²⁹ See, e.g., *Walczak v. Florida Union Free Sch. Dis.*, 142 F.3d 119, 130 (2d Cir. 1998); (the "door of public education" must be opened for child with a disability in a "meaningful way"); *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1120, 1121 (2d Cir. 1997) (requirements of FAPE under the IDEA are not satisfied if an IEP affords the opportunity for only "trivial advancement"); *Hall*, 774 F.2d at 630; *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988) (Congress envisioned that significant learning would transpire "so that citizens who would otherwise become burdens on the state would be transformed into productive members of society").

³⁰ The purpose of the IDEIA is to "open the door of public education to [disabled] children on appropriate terms [rather than] guarantee any particular level of the education once inside." *Rowley*, 458 U.S. at 192. See also *Lunceford v. District of Columbia Board of Educ.*, 745 F.2d 1577, 1583 (D.C. Cir. 1984) (IDEA "does not [require the LEA to provide] the best education money can buy"); *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2d Cir. 1989) (IDEA does not require the LEA to provide an education "that might be thought desirable by 'loving parents'"); *Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C. Cir. 1988) ("proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the [IDEA]."); *T.F. v. Special Sch. Dist. of St. Louis Cty, et al.*, 106 LRP 33568 (8th Cir. 2006) (that proposed IEP does not satisfy the child's parents is not dispositive; test is whether the LEA's proposal provides an "individualized" FAPE in the LRE within the meaning of the IDEA).

child's capabilities and progress under the special instruction and related services provided to date, with the caution that objective factors such as passing marks and advancement from grade to grade can be indicators of meaningful benefits but are not in and of themselves dispositive of that issue. *See, e.g. Hall*, 774 F.2d at 635.³¹ In making this determination, a hearing officer also considers the IEP at issue in light of the information available to the IEP team at the time it formulated the IEP,³² and what was actually offered as reflected in IEP team meeting documentation rather than what the LEA could have provided or intended to provide.³³ An IEP can fail to provide a meaningful educational benefit if it is not "individualized" to reflect the student's specific needs and performance, it lacks an element necessary to enable the student to obtain a meaningful benefit from his educational program and/or if it is not implemented fully or properly and the failure to implement causes educational harm that was not *de minimis*.³⁴

As explained more fully below, the recommendation for a placement at ACES Mill Road was reasonably calculated to provide the Student with a meaningful education benefit in the least restrictive environment in which he can be successful at this time.

7. Conclusions Regarding the Parents' Claims. The Parent is challenging only the March 24, 2009 IEP and only that aspect of the March 24, 2009 IEP that provides for a placement out-of-district for the 2009/2010 school year, specifically at ACES Mill Road. (FF2) The Hearing Officer makes no determination regarding the adequacy of any aspect of the March 24, 2009 IEP other than that recommendation, including but not limited to any determination of the adequacy of the Goals and Objectives and of any related services or accommodations defined therein.³⁵

³¹ *See, e.g., Mrs. B.*, 103 F.3d at 1120; IDEIA Regulation, 34 CFR § 300.101(c)(1) ("Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.").

³² *See, e.g., Walczak v. Florida Union Free Sch. Dis.*, 142 F.3d 119, 122 (2d Cir. 1998); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993).

³³ *See, e.g., Summit Board of Education*, 106 LRP 60197 (NJ SEA 2006).

³⁴ *See, e.g., Van Duyn v. Baker School Dist.*, 107 LRP 17877 (9th Cir. 2007) (when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP; a "material failure" occurs when the services provided to a disabled child fall significantly short of those required by the IEP). The dissent in that case argued that allowing an LEA to "disregard already agreed-upon portions of the IEP would essentially give the [LEA] license to unilaterally redefine the content of the student's [IEP] by default," in contravention of provisions of the IDEIA requiring parental input into the development of the IEP. The dissent observed that if an element has been placed in the IEP by agreement, then it is an essential element of the student's educational program and that if the LEA determines afterward that portions of the IEP are not "essential to providing" FAPE to the student, the LEA is free to seek to amend the IEP through the appropriate mechanisms of the IDEIA. *See also Houston Independent School Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (*de minimis* failures to implement an IEP do not amount to violation of IDEA; there must be a failure to implement "substantial" or "significant" IEP provisions); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (IDEA is violated when school fails to implement an "essential" element of the IEP, *i.e.*, an element which is "necessary for the child to receive an educational benefit"); *Guntersville City Bd. of Educ.*, 47 IDELR 84 (SEA Al. 2006) (failure to consistently or fully implement a BIP is denial of FAPE, where student is subsequently expelled for engaging in behaviors that were to be addressed in the BIP).

³⁵ The IDEIA also contains detailed provisions concerning discipline of IDEIA-eligible students. The Hearing Officer notes that the Student has been subject to disciplinary procedures arising from his behaviors. The Parent makes no claim that the District failed to comply with the IDEIA's requirements regarding discipline of IDEIA-eligible children, and

The record evidence makes clear that since the Student returned to the District's schools in April 2008 from his placement at Generali School in Waterbury, the Student has manifested a variety of maladaptive behaviors at school that: (a) interfere with his ability to fully access and benefit from his educational program; (b) are disruptive to the mainstream environment and interfere with the ability of other students to access their education; and (c) at times present a substantial threat to the physical safety of staff, other students and the Student. (FF20) The record evidence also makes clear that the District recommended placement as ACES Mill Road because the interventions available at Celentano School to address these maladaptive behaviors – specifically the BIP with its physical restraint protocol and dedicated 1:1 adult support in all aspects of his school day – were insufficient to resolve these behavioral issues. (FF22)

To the extent that the Parent is arguing that the episodes of maladaptive and aggressive behavior reported by District staff did not occur, that argument is flatly contradicted by substantial, credible documentary and testimonial evidence, and is rejected. The Hearing Officer understands the Parent to be claiming that the cause of the Student's aggressive episodes was: (1) the failure of the District to address the victimization of the Student by peers; (2) the use of physical restraint as an intervention to address certain types of behaviors; and/or (3) the failure to provide a properly trained 1:1 Paraprofessional. (A131, Exhibit H01). Those claims lack merit as well and are also rejected.

A. Claims Regarding Bullying. The failure of an LEA to address bullying or victimization of an IDEIA-eligible child by his peers could constitute a denial of FAPE. An IDEIA-eligible child would be denied a FAPE and may be entitled to a change of placement under the IDEIA if that child is the subject of bullying (verbal and/or physical intimidation or harassment, taunting, teasing) at the LEA's school that is so pervasive and persistent that the child's ability to obtain a meaningful benefit at the LEA's school has been substantially impaired *and* the LEA ignores or fails to act to resolve the situation.³⁶ The cases suggest that the bullying must either cause an exacerbation of the symptoms of the child's disability or result in the development of new symptoms or disorders, in either case sufficient to prevent the child from obtaining a meaningful educational benefit from that placement. *See, e.g., Gagliardo v. Arlington Cent. Sch. Dist.*, 45 IDELR 119 (S.D.N.Y. 2006)³⁷ and *Shore Regional High School Board of Education v. P.S.*, 41 IDELR 234 (3rd Cir. 2004).³⁸

the Hearing Officer makes no determination on any such issue herein other than to note the occurrences reported in the record.

³⁶ *See, e.g.,* USDOE, July 25, 2000 Memorandum On Harassment Based on Disability (disability-based harassment that is not appropriately addressed by an LEA can constitute a denial of FAPE, where the harassment decreases an eligible child's ability to benefit from the special education and related services that have been provided); *Pittsburgh School District*, 46 IDELR 233 (PA SEA 2006) (although an IDEIA-eligible student had sustained physical injuries caused by an IDEIA-eligible peer in his placement in a series of incidents, the student was not denied a FAPE absent evidence that the incidents "substantially undermined" his educational progress).

³⁷ The student in that case generally performed well academically in his mainstream placements which the LEA had determined constituted the LRE placement for him. The student, however, had "endured years of being teased and bullied at the [LEA's public schools], to the point where he was afraid to go to school. Starting in the 5th grade he received treatment for depression and social anxiety, which included trials of antidepressant medications. He attended the LEA's public high school in the 9th grade and was doing well academically until he was "threatened by another student" early in the school year. Following that incident his grades declined and he became increasingly anxious about going to school. In his

Some of the Student's maladaptive behaviors at Celentano School arose in the context of conflicts with a particular male peer (E*). The fact that the District did not respond to this peer conflict as the Parent requested does not amount to a denial of FAPE. Even assuming that at times E* provoked the Student, E*'s conduct did not rise to the level of bullying under this standard and there is no evidence that any conduct of E* toward the Student caused an exacerbation of his symptoms or development of new symptoms or disorders. Moreover, the fact remains that at times the Student provoked E* and the Student's response to E*'s provocations were not appropriate. *See, e.g.*, A78, A80, A87, A90, A103b, A107, A108, A111. The interventions that were or could be implemented at Celentano School were insufficient to address the Student's maladaptive behaviors in both provoking conflict with E* and in responding to E*'s provocations.

B. Claims Regarding Use of Physical Restraint. The Parent appears to argue that the cause of the Student's aggressive episodes was the District's use of physical restraint as a means of controlling his behavior. The Parent repeatedly advised the District not to use physical restraint because the Student does not like to be "touched" and use of physical restraint would escalate the Student's behavior. She requested that physical restraint not be used. *See* A80, A84, A86, A87. The Parent's argument fails to recognize, however, that rapidly escalating aggressive episodes are a feature of the Student's current presentation at school and that at times the Student's behavior escalated to the point where physical restraint was needed to prevent the Student from harming staff and other students. The Student's BIP provided that if verbal redirection was not sufficient to enable the Student to participate in the activity, the Student would be taken out of the classroom to allow him to compose himself. On a number of occasions after that intervention had been implemented, the Student's behavior escalated dramatically and he became physically aggressive such that physical restraint was required to prevent him from harming the staff who were supervising him or the environment in which he had been taken to compose himself. The Hearing Officer agrees that the presence of adults in close physical proximity to the Student when his behavior was escalating may have contributed to the escalation in his behaviors because of the attention the Student got from the adults at those times. The Parent's argument fails to recognize, however, that Celentano School could not provide an appropriate "time out" intervention to address these escalated behaviors. There is no place within the Celentano School environment in which the Student could safely

10th grade he was hospitalized due to anxiety and refusal to go to school. The parents ultimately placed the student in an out-of-district program that "protected [the student] from teasing or bullying or ostracism because it refused to tolerate such behavior" and "inculcated [in all students] with Quaker values of tolerance and respect." As a result the student was not afraid to attend classes. The LEA was found responsible for the costs of the placement because in failing to address the student's social issues (*i.e.*, he was a victim of bullying and teasing over a long period of time that caused him to experience significant psychiatric problems that were adversely affecting his educational performance) it was found to have denied the student a FAPE.

³⁸ The student in that case had perceptual disabilities and had been subject to persistent disability-related physical and verbal harassment and social isolation by classmates over a several year period, with the result that the student became depressed and attempted suicide. The LEA was found to have denied him a FAPE when its proposed to place him in a public school environment where he would continue to be subject to the harassment that the LEA had ignored or been unable to successfully address.

compose himself after verbal redirection had failed and his behavior had escalated without having an adult in close physical proximity.

C. Claims Regarding Training of the 1:1 Paraprofessional. The Parent's claim that the Student's aggressive behaviors were caused in part by the failure of the District to provide the Student a properly trained 1:1 adult aide is particularly lacking in merit. Upon his return to the District in April 2008, the District provided the Student a trained behavior therapist (an "IPP-BCBA") to support him on a 1:1 basis throughout his entire school program. The Parent in September 2008, objected to providing 1:1 support with an IPP-BCBA and was insistent that the Student work instead with a particular 1:1 Paraprofessional (Ms. Boyd), who was not a trained behavior therapist. The District acceded to her request that the Student's 1:1 adult support not be an IPP-BCBA, but did not agree to assign Ms. Boyd to the Student and instead assigned Mr. Bonilla to work with him.³⁹ Like Ms. Boyd, Mr. Bonilla was not a trained behavior therapist. At the District's request IPP trained both Mr. Bonilla and other Celentano School staff working with the Student in Applied Behavior Analysis ("ABA") methodology and how to administer the Student's IPP-designed BIP. An IPP-BCBA was made available to consult with Mr. Bonilla and other Celentano School staff as needed. Having objected to having a professional behavior therapist (*i.e.*, a BCBA) assigned to provide the Student 1:1 support throughout his day, the Parent cannot justifiably complain that the Student was denied a FAPE because the 1:1 aide assigned to the Student was not qualified to provide the services the Student required. The Parent's claim that the District failed to train Mr. Bonilla is speculation not supported by credible record evidence. (A39, A40, A131) In any event, even assuming that *some* of the Student's aggressive episodes would not have occurred had the Student been working with a 1:1 IPP-BCBA rather than a 1:1 Paraprofessional, given the inability to implement an adequate time out mechanism at Celentano School, even providing a 1:1 IPP-BCBA would have ultimately proven insufficient in addressing the behavioral issues the Student presented which led to the recommendation for an out-of-district placement.

8. The Least Restrictive Environment. This due process proceeding, in essence, is a challenge to the District's recommendation for a placement at ACES Mill Road for the 2009/2010 school year on the basis that ACES Mill Road is not the least restrictive environment ("LRE") in which the Student's IEP can be implemented such that he can fully access his educational program (*i.e.*, receive a meaningful educational benefit).

A. LRE Requirement Defined. The IDEIA requires that in designing an educational program for an eligible child, the LEA *must*:

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

³⁹ The Hearing Officer does not find credible Ms. Beckett's interpretation (A41) that at the September 2008 IEP team meeting the Parent was objecting only to having an IPP-BCBA work with the Student but was not objecting to having a trained behavior therapist work with the Student.

IDEIA, 20 U.S.C. § 1412(a)(5)(A).⁴⁰ Courts have interpreted this so-called “LRE” requirement as a rebuttable presumption that the appropriate placement for an IDEIA-eligible child is the “mainstream” or “regular education” environment.⁴¹ The “mainstream” encompasses all academic, nonacademic and extracurricular activities in which children without disabilities attending that school participate.⁴²

B. The “Continuum of Alternative Placements” Compliance with LRE requirements is accomplished by ensuring that the LEA makes available to each IDEIA-eligible student a continuum of alternative placements in which special education and related services that the student requires are delivered.⁴³ The least restrictive setting on the continuum is the mainstream. As the amount of contact that the child has with non-disabled peers decreases, the setting becomes more restrictive.⁴⁴ The continuum of alternative placements generally includes placements ranging from:

1. “Full inclusion” or placement in the mainstream for the entire school day and all activities with IDEIA support delivered in the mainstream.⁴⁵
2. “Partial inclusion” or placement in the mainstream for part of the school day with IDEIA support and in a “resource room” in that school for the remainder of the day.⁴⁶
3. Placement in a self-contained classroom within the student’s home school.
4. Placement in a self-contained classroom within another LEA school.

⁴⁰ See also IDEIA Regulation, 34 CFR § 300.114(a)(2), which requires that each LEA “must ensure that: (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

⁴¹ See, e.g., *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1219 (2nd Cir. 1993) (IDEA’s mainstreaming preference rises to level of rebuttable presumption); *Mavis v. Sobol*, 839 F.Supp. 968 (N.D.N.Y. 1993) (IDEA favors mainstream placement unless the nature or severity of the child’s disability is such that education in regular classes with the use of supplementary aids and services cannot be “satisfactorily achieved”). LRE reflects a conclusion of Congress that interaction with non-disabled peers provides significant benefits to children with disabilities.

⁴² “Educating [an IDEIA-eligible] child in a regular education classroom ... is familiarly known as ‘mainstreaming.’” *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1039 (5th Cir. 1989).

⁴³ See, e.g., IDEIA Regulation, 34 CFR § 300.115.

⁴⁴ The term “Restrictive Setting” as used herein refers to any setting that is not in the mainstream. The cases cited herein sometimes use the term “segregated setting” for this purpose.

⁴⁵ In this setting, the special education and related services provided to the student in the mainstream setting are typically referred to as “itinerant services” or “itinerant instruction.”

⁴⁶ A “resource room” is a specially equipped and staffed classroom in the mainstream school in which students with disabilities spend part of their day receiving individualized instruction or skills remediation. Students are “pulled out” of the mainstream to receive services in the resource room.

5. Placement out-of-district in a partial or full day program.
6. Provision of “homebound services” to a student unable to attend school.
7. Placement out-of-district in a residential program.

Simply because a student is deemed in one school year to require a placement in a more restrictive setting on the continuum to receive a FAPE does not mean that the student is permanently excluded from the mainstream or a less restrictive setting on the continuum going forward.⁴⁷ Rather, the IDEIA requires that the child’s placement be reviewed no less than annually. A child moves up and down this continuum as circumstances require.

C. Interplay between LRE and FAPE. There is an inherent tension in the IDEIA between FAPE and LRE. Where the two principles collide, FAPE “overrides” LRE.

[W]hile mainstreaming is an important objective, we are mindful that the presumption in favor of mainstreaming must be weighed against the importance of providing an appropriate education to [IDEIA-eligible] students. Under the [IDEIA], where the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily, mainstreaming is inappropriate.

Briggs v. Bd. of Educ. of Conn., 882 F.2d 688, 692 (2d Cir. 1989) (citations omitted).

While including students in the regular classroom as much as is practicable is undoubtedly a central goal of the [IDEIA], schools must attempt to achieve that goal in light of the equally important objective of providing an education appropriately tailored to each student's particular needs.

Newington, 51 IDELR at 2.⁴⁸ Under this balancing of FAPE and LRE, there is no requirement that a student progress through each increasingly restrictive placement on the continuum of alternative placements. Rather in appropriate circumstances the obligation to provide a FAPE can entail moving an IDEIA-eligible child from a fully inclusive setting directly to a setting that is fully restrictive.⁴⁹

⁴⁷ See, e.g., IDEIA Regulation, 34 CFR § 300.116 (b) (the placement decision must be (1) reviewed and determined at least annually, (2) based on the child’s specific needs as determined through the IEP development process, and (3) as close as possible to the child's home); IDEIA Regulation, 34 CFR § 300.116(c) (“Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled”).

⁴⁸ See also *Hartmann v. Loudoun County Bd. of Educ.*, 26 IDELR 167 (4th Cir. 1997) *cert. denied*, 522 U.S. 1046 (1998) (“The IDEA encourages mainstreaming, but only to the extent that it does not prevent a child from receiving educational benefit.”) See also *Greer v. Rome City Sch. Dist.*, 18 IDELR 412 (11th Cir. 1991) (where the dual interests of FAPE and LRE compete, the FAPE mandate ultimately qualifies and limits the requirements of LRE).

⁴⁹ See generally *OSEP Memorandum 95-9*, 21 IDELR 1152 (OSEP 1994) (IDEIA-eligible child need not fail in the mainstream before the LEA can consider or implement placement in a more restrictive setting); *D.F. v. Western Sch. Corp.*,

The need for placement in a restrictive setting may be due to educational factors, to non-educational factors (such as physical, social, emotional or behavioral problems) or to some combination of the two. If “the [child’s] medical, social or emotional problems that . . . create or are intertwined with the educational problem” (1) cannot “effectively” be treated outside of the restrictive setting and (2) “prevent the child from making meaningful educational progress” outside of a restrictive setting, the restrictive setting would be LRE without regard to the seriousness of the child’s educational problems. *Mrs. B.*, 103 F.3d at 1122.⁵⁰ “If placement in a [restrictive setting] is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.” IDEIA Regulation, 34 CFR § 300.104 (emphasis added).

The need for a restrictive placement arises in this case due to non-educational factors – specifically the social and behavioral issues that the Student presents and which interfere with his ability to fully access and benefit from his educational program in the mainstream environment.

9. Standard for Evaluating Whether Removal from the Mainstream is Required to Provide an IDEIA-Eligible Child with a FAPE

The Court in *Newington* defined the standard for balancing FAPE and LRE in any particular case. *Newington* requires a hearing officer to consider first whether education in the mainstream classroom, with the use of supplemental aids and services, can be achieved satisfactorily for the child; and, if not, then “whether the school has included the child in school programs with nondisabled children to the maximum extent appropriate.” *Newington*, 51 IDELR at 2.

Under this standard, removal from the mainstream would be appropriate where it is determined that: (a) the student will not receive a sufficient educational benefit in a mainstream classroom even with the provision of supplementary aids and services;⁵¹ (b) the student's need for intensive special

23 IDELR 1121 (S.D. Ind. 1996); *Poolaw v. Bishop*, 23 IDELR 406 (9th Cir. 1995); *Student v. Somerset County Bd. of Educ.*, 24 IDELR 743 (D. Md. 1996).

⁵⁰ In *Mrs. B.*, 103 F.3d at 1121, the court rejected the hearing officer’s finding that the LEA was not obligated to fund the full cost of residential placement on the basis that “predominantly and significantly the [student’s] problems gr[e]w out of the home situation rather than the school environment.” See also *Naugatuck Bd. of Educ. v. Mrs. D.*, 10 F.Supp.2d 170, 181 (D. Conn. 1998) (even though the student’s “academic problems were not serious, his social and emotional needs were severe and qualified as educational needs which warranted residential placement”); *McKenzie v. Smith*, 771 F.2d 1527 (D.C.Cir. 1985) (LEA was responsible for funding the residential treatment of a child with severe emotional disabilities because the child required a highly structured environment in order to learn); *King v. Pine Plains Central School Dist.*, 918 F. Supp. 772 (S.D.N.Y. 1996) (when the residential placement is a response to medical, social or emotional problems that are segregable from the learning process, the LEA must cover the cost of special education and related services but need not fund medical treatment or other non-educational expenses).

⁵¹ See, e.g. *Pachl v. Seagren*, 46 IDELR 1 (8th Cir. 2006) *Hartmann v. Loudoun County Bd. of Educ.*, 26 IDELR 167 (4th Cir. 1997), *cert. denied*, 522 U.S. 1046 (1998); *Daniel R.R.*, 874 F.2d at 1036.

education services outweighs his need to interact with typically developing peers;⁵² (c) the student engages in significantly disruptive behavior, even with the use of behavioral interventions, which interferes with the education of classmates;⁵³ (d) the student's presence in regular education constitutes a threat to the safety of other students or poses a danger to the student himself;⁵⁴ (e) the student is so demanding of the teacher's time and attention that the student substantially interferes with the learning of others in the classroom;⁵⁵ and/or (f) the student requires so much modification in the mainstream curriculum that the mainstream program has to be altered beyond recognition for him, resulting in limited education value to the student.⁵⁶ It would not be appropriate however to remove an IDEIA-eligible child from the mainstream solely because of needed modifications in the general education curriculum, administrative convenience, or lack of adequate personnel.⁵⁷

A. Whether Education in the Mainstream Classroom, with the Use of Supplemental Aids and Services, Can be Achieved Satisfactorily for the Student at this Time. In determining whether an IDEIA-eligible child can be educated satisfactorily in the mainstream with supplemental aids and services (the first prong of the two-part *Newington* mainstreaming test), the hearing officer should consider, in addition to any other factor that the hearing officer deems appropriate: (1) whether the LEA has made reasonable efforts to accommodate the child in a regular classroom; (2) the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) the possible negative effects of the inclusion of the child on the education of the other students in the class. *Newington*, 51 IDELR at 2.⁵⁸ Removal of the Student from the mainstream was appropriate when considered against these factors.

⁵² See, e.g., *Charleston County Sch. Dist.*, 50 IDELR 86 (SEA SC 2007) (A parent's preference that her son attend a general education preschool program did not invalidate a district's offer to place the child in a preschool intervention class. A state review officer concluded that the child's need for special education services trumped his need for peer interaction); *New York City Dep't of Educ.*, 49 IDELR 148 (SEA NY 2007) (upholding a district's decision to forego some mainstreaming opportunities in order to address the student's significant language and communication needs).

⁵³ See e.g., *Renollett by Renollett v. Independent Sch. Dist. No. 11, Anoka-Hennepin*, 41 IDELR 201 (D. Minn. 2005), *aff'd* 45 IDELR 117 (8th Cir. 2006) (removal from mainstream education environment justified based in part on student's aggressive behavior).

⁵⁴ See e.g., *Clyde K. ex rel. Ryan K. v. Puyallup Sch. Dist.*, 21 IDELR 664 (9th Cir. 1994); *Howard County Pub. Schs.*, 6 ECLPR 14 (SEA MD 2008); *Gwinnett County Sch. Dist.*, 49 IDELR 146 (SEA GA 2007).

⁵⁵ See e.g., *Greenwood v. Wissahickon Sch. Dist.*, 50 IDELR 280 (E.D. Pa. 2008) (The student's presence in the general education classroom interfered with the learning of others. The student engaged in frequent, loud vocalizations in the classroom and required substantial individualized attention from the teacher.)

⁵⁶ See e.g., *Lachman ex rel. Lachman v. Illinois State Bd. of Educ.*, 441 IDELR 156 (7th Cir. 1988).

⁵⁷ See IDEIA Regulation, 34 CFR § 300.116(e); *Letter to Johnson*, 213 IDELR 182 (OSERS 1988); *Letter to VanWart*, 20 IDELR 1217 (OSEP 1993). *But see McComish v. Underwood Pub. Schs.*, 49 IDELR 215 (D.N.D. 2008) (because a North Dakota district was unable to provide the services that a teenager with a significant visual impairment required, it did not violate the IDEA by placing the student in a residential school for the blind).

⁵⁸ The Second Circuit in *Newington* endorsed the approach applied by the Third, Fifth, Ninth, Tenth, and Eleventh Circuits, citing *Oberti* 995 F.2d at 1217-18; *Daniel R.R.*, 874 F.2d at 1046; *L.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976

1. Reasonable Efforts to Accommodate the Student in the Mainstream. The District “made reasonable efforts to accommodate” the Student in the mainstream. At all points since the Student returned from his placement at Generali School in Waterbury, the District has made available or offered to make available to the Student dedicated 1:1 adult support throughout all aspects of his program from a professional behavioral specialist trained in the delivery of ABA services. When the Parent refused that particular type of 1:1 support, the District made available a 1:1 Paraprofessional and provided that person (and other staff working with the Student) with training from an IPP-BCBA, who was available to provide consultation on an ongoing basis. (FF9, FF10, FF15-17)

The District timely conducted a functional behavioral assessment (“FBA”) that was comprehensive and done by trained and experienced BCBAs. The FBA defined a class of maladaptive behaviors that were interfering with the Student’s ability to access his educational program, identified what purposes those behaviors served and identified environmental contingencies that were maintaining those behaviors. (FF11-14)⁵⁹ The results of the FBA were shared with staff members working with the Student and the FBA was used by IPP to develop a behavioral intervention plan (“BIP”).

A BIP identifies the interventions that LEA personnel will use to address a student's challenging, disruptive or otherwise unacceptable behaviors. The Student’s BIP outlined desired and undesired behaviors the Student was manifesting, the positive interventions, strategies and supports that would be implemented to increase desired behaviors, the negative consequences for undesired behaviors, and how staff should respond to behavioral events.⁶⁰ The District also developed a physical

(10th Cir. 2004); *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1403-04 (9th Cir. 1994); *Oberti v. Clementon Sch. Dist.*, 995 F.2d 1204, 1215 (3d Cir. 1993); *Greer v. Rome City Sch. Dist.*, 950 F.2d 688, 696 (11th Cir. 1991). The Second Circuit in *Newington* did not adopt the approach defined in *Roncker ex rel. Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983) and *A.W. v. Nw. R-1 Sch. Dist.*, 813 F.2d 158, 163 (8th Cir. 1987) (adopting the approach defined in *Roncker*), under which the hearing officer determines whether the services which make the recommended restrictive, segregated placement “superior” to the mainstream setting “could be feasibly provided in a non-segregated setting.”

⁵⁹ An FBA is a mechanism or process providing the IEP team with additional information, analysis, and strategies for addressing undesirable behavior that is interfering with a child's education. An FBA involves identifying the core or "target" behavior; observing the student and collecting data on the target behavior, and its antecedents and consequences; formulating a hypothesis about the cause(s) of the behavior; developing an intervention(s) to test the hypothesis; and collecting data on the effectiveness of the intervention(s) in changing the behavior. *See, e.g., Independent Sch. Dist. No. 2310*, 29 IDELR 330 (SEA MN 1998); *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46629, 46721 (August 14, 2006) (noting that an FBA is not a required component of an IEP; suggesting that undertaking an FBA in response to behavioral issues at school outside of the context of disciplinary proceedings, would be consistent with the IDEIA’s “proactive” approach to behaviors that interfere with learning and provide the IEP team with information regarding the “use of positive behavioral interventions, and other strategies to address the behavior”).

⁶⁰ *See Alex R. by Beth R. v. Forrestville Valley Community Unit Sch. Dist. #221*, 41 IDELR 146 (7th Cir. 2004) (noting that neither Congress, the Department of Education, nor any statute or regulation “created any specific substantive requirements for the behavioral intervention plan contemplated by [the IDEIA]”). Whether or not a BIP is made a part of a student’s IEP, the failure to develop or implement a BIP can constitute a denial of FAPE. *See, e.g., Neosho R-V Sch. Dist. v. Clark ex rel. Clark*, 38 IDELR 61 (8th Cir. 2003) (any slight academic benefit the student received was lost because of behavior problems that “went unchecked and interfered with his ability to obtain a benefit from his education.” The need for -- and the district's ability to create -- a proper BIP existed long before it made the effort to establish such a plan); *Linn-Mar Community Sch. Dist.*, 41 IDELR 24 (SEA IA 2004) (awarding compensatory education to a high school student with autism where the LEA denied him FAPE, in part, because by not consistently implementing or monitoring his BIP).

management of behavior protocol to address aggressive behaviors. (FF14)

The implementation by the District of an FBA, a BIP and a physical management of behavior protocol all developed by trained behavioral management personnel satisfied the IDEIA's requirement that "[i]n the case of a child whose behavior impedes the child's learning or that of others, [the IEP team] consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." IDEIA Regulations, 34 CFR § 300.324(a)(2)(i). The implementation of the BIP allowed the Student to be successful in attaining his academic IEP goals and objectives, but was not successful in addressing behavioral concerns.

2. Educational Benefit Available to the Student in the Mainstream. In making this determination, it is appropriate to consider both academic and nonacademic benefits to the Student from the mainstream placement.⁶¹ To the extent the Student was receiving any academic and nonacademic educational benefits from attending his program at Celentano School in the 2008/2009 school year, those benefits do not militate against a placement at ACES Mill Road when weighed against the potential benefits of a placement at ACES Mill Road.

As to academic benefits: The Parent has not challenged the adequacy of the Student's academic IEP goals and objectives. The Hearing Officer makes no determination herein on that issue, other than to note that District staff were reporting that the Student was making satisfactory progress on his IEP goals and objectives in the 2008/2009 school year until shortly after the March 24, 2009 IEP team meeting. (FF19) The evidence in the record indicates among other things, however: (a) that the Student was not performing grade level academic work in any meaningful manner without substantial assistance from an adult (whether his 1:1 Paraprofessional or Ms. Lewin); and (b) that the Student's program was not mainstreaming, but rather was an inclusive program in which he was largely receiving "parallel instruction" in the mainstream academic classes he attended. (FF4)⁶² Given these circumstances, any academic benefits that the Student was receiving in the mainstream appear to have been minimal and do not militate against placement in a more restrictive setting.

⁶¹ See, e.g., *Sacramento City Unified Sch. Dist., Board of Educ. v. Holland*, 20 IDELR 812 (9th Cir. 1994), cert. denied, 114 S.Ct. 2679 (1994).

⁶² "Mainstreaming" refers to the placement of an IDEIA-eligible child in a mainstream class with the expectation that, with the provision of supplementary aids and services, he or she will meet the curriculum requirements for the class. The term "inclusion" refers generally to the percentage of the school day that an IDEIA-eligible child spends in a mainstream class with age-appropriate peers working toward achievement of his or her IEP goals and objectives with appropriate special education and related services support delivered in that classroom. Generally, a "fully inclusive" placement means that the student is integrated into the regular education classroom for 100 percent of his or her school day and all components of the special education program are delivered there. In situations where a placement is anything less than fully inclusive, the student is pulled out of the regular education classroom in order to receive certain special education components. See, e.g., *Board of Educ. of the City Sch. Dist. of the City of Rochester*, 26 IDELR 823 (SEA NY 1997) (discussing the distinction between mainstreaming and inclusion). "Parallel instruction" means that the child remains within the mainstream classroom (i.e., the placement is inclusive) but works on tasks that are different than the rest of the class. See, e.g., *Hudson v. Bloomfield Hills Pub. Sch.*, 23 IDELR 613 (E.D. Mich. 1995) (student spent afternoons in the regular sixth-grade science/social studies, gym and art classes, with a paraprofessional aide to assist her while she worked on her own work; for example, when the regular social studies students were studying Latin America, the student would be given first- or second-grade level coloring book-type worksheets of Mexico to work on).

As to nonacademic benefits: Prior assessments indicate that the Student could benefit from interacting with non-disabled peers because his imitation skills were stronger relative to his other social skills. That conclusion militated in favor of placing the Student in a highly inclusive environment. Since the Student returned to the District from the Generali School in Waterbury, however, he has shown a proclivity for imitating the negative behaviors of his peers rather than their positive behaviors. There is no indication on this record that in the 2008/2009 school year the Student had positive relationships with peers at school or was benefiting from interacting with them. In fact, the Parent reported that other students were throwing food at the Student while he was at lunch and he was eating it, making him the object of ridicule. (A78) Given these circumstances, any nonacademic benefits that the Student was receiving from the opportunity to interact with non-disabled peers appears to have been minimal, and do not militate against placement in a more restrictive setting.

3. Negative Effects of Inclusion of the Student on Education of Other Students in the Class. Observations by Ms. King and Ms. Chalmers of the Student in his mainstream classroom and reports of Mr. Hurd (his regular education teachers) indicate that the Student frequently disrupted his mainstream class over the course of the 2008/2009 school year with inappropriate verbal and physical behaviors. When he resisted efforts of Mr. Bonilla to escort him from the class to allow him to compose himself, Mr. Hurd and other staff members were frequently required to attend to the Student, thereby leaving them temporarily unable to continue teaching the other students in the classroom. (FF20, describing various illustrative episodes of this issue)

4. Inability to Provide an Effective Therapeutic Intervention. The Student at this point needs to have available to him a “time out” mechanism for those times when he is unable to maintain his composure and control his behaviors. Time out is both an educational intervention and a therapeutic intervention. Effective and proper implementation of a time out mechanism requires primarily: (a) appropriate physical facilities in which the time out will occur; (b) integration of the time out mechanism into a more comprehensive program designed to increase desired behaviors and decrease maladaptive behaviors; and (c) sufficient numbers of appropriately trained staff to implement the time out in a manner that is therapeutic (*i.e.*, maintains the Student’s composure) and safe for all concerned. Because it lacks the appropriate physical facilities, Celentano School cannot implement an effective or appropriate time out intervention for the Student – *i.e.*, an intervention which maintains the dignity of the Student, which maintains the safety of the Student, staff and peers. Because it lacks a comprehensive system of positive reinforcement of desired behaviors of which an effective time out mechanism is a component, Celentano School is also not equipped to deliver an effective behavior management program to the Student which will improve the Student’s ability to respond more appropriately to the academic and social challenges that he faces in his school environment.

B. Whether the District’s Proposed Placement has Included the Student in School Programs with Nondisabled Peers to the Maximum Extent Appropriate. Under the District’s proposed placement the Student would not participate in any mainstream settings during the 2009/2010 school year. That recommendation is appropriate primarily because of the safety threat presented by the Student at this time. The record contains evidence that is not contested of numerous incidents over the course of the 2008/2009 school year in which the Student physically assaulted staff members by kicking them, biting them, stabbing them in the hands and faces with pencils, punching them and/or spitting on them. There is also evidence that the Student physically attacked other Students, including an incident in which he bit a female peer because she was apparently sitting in his seat and an incident

in which he punched another student. The Student has also been destructive of physical property at school. These episodes of physical aggression occur at times when efforts to redirect the Student have failed and the Student is being moved to another setting per the BIP. At other times, these episodes occur in the absence of any antecedent triggering event that can be discerned by those working with the Student. (FF20, describing various episodes) These episodes occur notwithstanding that the Student receives 1:1 adult support throughout his program. The increasing unpredictability of the occurrence of these episodes of aggressive behavior as well as the potential for the Student to physically injure other students and staff during these episodes militate against participation in the mainstream until such time as the Student's social, communication and problem solving skills have improved.

10. ACES Mill Road is an Appropriate Placement for the Student. The District's proposal to place the Student at ACES Mill Road was reasonably calculated to provide the Student with a meaningful educational benefit. ACES Mill Road is equipped to address the Student's academic needs as well as the social and communication skill deficits and behavioral challenges that interfere with his participation in academic and nonacademic settings within the mainstream, and prevent him from meaningfully accessing his educational program. ACES Mill Road provides instruction in a setting with a higher teacher to student ratio than the Student is able to have in the mainstream setting at Celentano School, with fewer transitions. The Student will not have dedicated 1:1 adult support at ACES Mill Road and may therefore be expected to complete his work more independently.

ACES Mill Road is fully equipped to handle the Student's behavioral challenges. The comprehensive step or level system can reasonably be expected by design to teach the Student to function more independently within the mainstream school environment upon completion of his program at ACES Mill Road. ACES Mill Road also has in place both a comprehensive system of behavior management, which includes not only positive reinforcement through the points awarded for appropriate behavior, but also positive reinforcement for utilizing the various time-out mechanisms built into the program. The time-out mechanism is not only built into the program but also is built into the physical design of the facility. Staff are fully trained to implement the time out procedure if the Student is not able to voluntarily utilize that mechanism, and expectations for appropriate behavior are made clear. ACES Mill Road has experience in serving the needs of children on the autism spectrum and with behavioral challenges which preclude them from participating in the mainstream. A pre-planned, carefully monitored, step-by-step plan for transitioning the Student back to the District when he successfully completes ACES Mill Road will provide opportunities for the Student to test his newly developed skills in the mainstream and resolve unexpected problems. ACES Mill Road is also local to the Student's home and will allow the Student to maintain the connections he has developed with others outside of school, such as Ms. Saunders, Ms. Ricciardelli and Ms. Bromell.

FINAL DECISION AND ORDER

1. The District's recommendation that the Student be placed at ACES Mill Road for the 2009/2010 school year made at the March 24, 2009 IEP team meeting was reasonably calculated to provide the Student with a free appropriate public education in the least restrictive environment at which he can fully access his educational program at this time and given the behavioral and social skill issues he presents.

ATTACHMENT A

A. Background Through End of 2006/2007 School Year

1. The Student was identified as developmentally delayed and received Birth-to-Three services from May 2001 to November 2002, at which point he entered the District's public schools as a pre-kindergartner attending his home school ("Celentano School"). (B2, B4, B5, B102). An IEP team meeting convened on September 26, 2002 to determine IDEIA eligibility. (B6) As part of that process, several evaluations were completed. Among other things, the evaluation reports indicate that the Student had a reported history of trying to hurt others when angry (B7 at 3) and that the Mother described his "play skills" at the time as consisting of "run, hit, bite and kick." (B8 at 2)
2. The Student was identified as IDEIA-eligible at an IEP team meeting on October 17, 2002. The IEP team recommended placement in a full-time special education pre-school program in which he would have no contact with non-disabled peers, as well as a psychiatric evaluation. (B13)
3. The psychiatric evaluation was performed by Barbara Mason, MD. Dr. Mason noted in her report that the Mother (a) voiced "significant concerns" about the Student's "aggressive behavior" among other things, (b) reported that some of the gains the Student had made in the Birth-to-Three program have been lost since he began attending Celentano School, and (c) reported that the Student "requires constant supervision, as he has no awareness of danger in his environment." Dr. Mason also noted a report from the Student's teacher that although the Student has made progress in his program at Celentano School, the Student is "very aggressive in the classroom," leaves his seat to "hit another student" and has "frequent tantrums" with the tantrums decreasing somewhat over time. Dr. Mason concluded that the Student's aggressiveness "is likely due to his very limited way to express thoughts or emotions," that he fits the criteria for an "Autistic Disorder" and that it is likely he also has "intellectual deficiencies." Among other things, she recommended "close supervision" due to the safety concerns he presents, an educational environment that has a low student-to-teacher ratio and that is predictable with little extraneous stimulation or distraction, and a language-based program focusing on daily living and social coping skills. (B15)
4. At an IEP team meeting convened on February 5, 2003, the Student's IDEIA classification was identified as autism. Among other things, his IEP provided for a dedicated 1:1 paraprofessional (hereafter a "1:1 Paraprofessional")⁶³ to support his functioning with respect to safety and for a 29 hour/week program at Celentano School in which he would spend 0.5 hours/week with non-disabled peers. (B17)
5. An occupational therapy reported prepared in June 2003 indicates that the Student is "generally able to follow the classroom routine" and has shown improvement in his

⁶³ As used herein, the term "1:1 Paraprofessional" is defined to mean an individual who is not a trained behaviorist or behavior therapist.

ability to handle transitions but with continued difficulty with transitions noted. (B22)

6. Materials from a June 17, 2002 IEP team meeting indicate that the Student has made progress on all of his goals and objectives. For the 2003/2004 school year, the IEP team recommended continued placement at Celentano School in a 29.25 hour/week program in which the Student would spend 1.5 hours/week with non-disabled peers and would continue to have a dedicated 1:1 Paraprofessional in all aspects of his program. (B23)
7. During the 2003/2004 school year, the Student attended Celentano School as a pre-kindergartener. (B102) As to this school year:
 - a. An IEP team meeting convened on November 18, 2003. The meeting materials (B26) indicate that the Student was making “good progress with academics, behavior, toileting” and identified new goals, including a new social/behavioral Goal and Objectives: Goal: The Student will “exhibit self-control and inner direction” Objectives: (1) Participate in large and small group activities. (2) Follow classroom rules. (3) Manage transitions between activities. The Student’s proposed placement provided for a 26 hour school week with participation in mainstream art, physical education and music classes. A behavior plan to address self-stimulating behaviors was implemented.
 - b. An IEP team meeting convened on April 12, 2004. Extended school year (“ESY”) summer services were recommended for academics. The Student was reported to be making good progress on his IEP Goals and Objectives. The meeting materials report that the Mother declined the District’s recommendation to place the Student in a small class for children on the autism spectrum, and noted staff’s concern that the Student was not ready to attend a large, kindergarten class. The materials indicate that a compromise was reached in which the Student would continue to attend a pre-school program at Celentano School in the 2004/2005 school year. New goals and objectives were added reflecting the Student’s progress under his prior IEP. The proposed IEP contained the same social/behavioral Goal and Objectives as the prior IEP. (B26)
8. During the 2004/2005 school year, the Student attended Celentano School as a full-day kindergartener. (B32, B102) As to this school year:
 - a. An IEP team meeting convened on October 21, 2004 at the Mother’s request to discuss the impact on the Student of the “moving and transitioning during his day.” The meeting materials indicate that the Student was making progress. The IEP team determined that the Student would receive all services under the IEP in the mainstream environment to reduce the impact of transitions and to provide him more appropriate socialization models. The Student was reportedly making good progress on his existing social/behavioral Goal and Objectives and a second social/behavioral Goal and Objectives were added as follows. Goal: The Student will use appropriate interpersonal skills with peers and adults. Objectives: (1) The Student will interact with classmates in work and play groups. (2) The Student will play cooperatively for

15 minutes. (3) The Student will respond to a greeting and question from other children and adults. (B32)

- b. An IEP team meeting was convened on March 30, 2005. The Student was reported to be making progress, and new academic goals were introduced. An issue with tardiness was identified. ESY summer services were deemed to be unnecessary. It was noted that the Student was beginning to interact more positively with peers but that he “often copies negative behavior” of his peers. Social/behavioral Goal # 1 remained the same (the Student will exhibit self-control and inner direction) but the Objectives were modified as follows: (1) The Student will participate in large and small group activities with less teacher intervention. (2) The Student will manage transitions between activities. (3) The Student will work independently at each center during library and afternoon centers. Social/behavioral goal # 2 does not appear to have been continued and there is no indication of his progress on that Goal and or its Objectives. A behavior intervention plan (“BIP”) was implemented to assist the Student in maintaining positive behaviors during large and small group activities, transitions and independent work time. The Student would be assisted by a 1:1 Paraprofessional in all areas. (B34)
9. During the 2005/2006 school year, the Student attended Celentano School as a 1st grader. (B41, B102) The Student was absent 58 school days between the start of school and April 4, 2006, including the period November 30, 2005 to February 27, 2006 when he was absent every single day. Notwithstanding these absences, at an IEP team meeting convened on May 11, 2006 the Student was reported to have continued to progress in his program including progress in reading, math and behavior. Documentation indicates that the Student had been making progress on his social/behavioral goal over the course of the year prior to the period of extended absence. (B36, B37, B39, B41 at 11)
10. During the 2006/2007 school year, the Student attended Celentano School as a 2nd grader. (B102) As to this school year:
 - a. A speech and language assessment performed as part of a triennial evaluation (B44) indicates, among other things, that the Student presents with severe receptive and expressive language delays on standardized measures, but has language strengths that allow him to participate “more fully” in the classroom setting and with peers and that he was using functional communication more readily and with less prompting to make his needs and wants known.
 - b. A psycho-educational evaluation (B45) indicates the following, among other things: The Student is functioning below grade level in all areas. His teachers were reporting difficulty with transitions but improvement in this area. His teachers were also reporting that the Student “has demonstrated aggression with peers, such as scratching when he becomes upset.” The evaluator observed that the Student “exhibits concern for others when he perceives them to be ... in danger.” The evaluator did a classroom observation, noting that prior to the observation the Student had been reprimanded for scratching a classmate in the face and that during

the class he fell asleep. During testing, the Student was observed to require frequent redirection to tasks, positive reinforcement and breaks, and demonstrated distractible and hyperactive behaviors. On the Wechsler Intelligence Scale for Children (“WISC-IV”) he obtained a Full Scale IQ (“FSIQ”) score of 57. His FSIQ score and scores on the Verbal Comprehension, Perceptual Reasoning, Working Memory and Processing Speed clusters were all in the “well below average/deficient” range. On the Wechsler Individual Achievement Test (“WIAT”), the Student’s scores on the Reading and Mathematics composites were in the “well below average/deficient” range. The results of the Behavior Assessment for Children Scale – Second Edition (“BASC-2”) indicates that in the school setting the Student is demonstrating “aggressive behaviors within the At-Risk range” including defiance, teasing others, losing his temper, arguing when denied his own way and hitting other students. The evaluator indicated that the Student would benefit from direct instruction of social cues and expectations to address the poor reasoning and problem solving skills underlying various peer interactional difficulties he was having.

- c. The materials from a May 8, 2007 IEP team meeting indicate, among other things, that for the 2007/2008 school year the Student would be provided with 10 hours/week special education for academics, 0.5 hours/week of speech/language therapy, and 0.5 hours/week of direct occupational therapy services, continued dedicated 1:1 Paraprofessional support and ESY services. The Student would continue at Celentano School in a program in which he would spend 25.25 hours/week of his 31.25 hour week with nondisabled peers. (B46) The IEP materials do not identify any Goals and Objectives specifically targeting the areas of concern identified in the psychoeducational evaluation.

B. 2007/2008 School Year (Transfer to Generali School)

11. On July 9, 2007, the Connecticut Department of Children and Families (“CTDCF”) assumed guardianship and custody of the Student and he was placed in a foster home in Waterbury. (B47) The District was identified as nexus for educational purposes, and remained responsible for the Student’s special educational programming while the Student was in Waterbury. (B49; Chalmers Test. 9/14/09 hearing at 21-22, 27)
12. Ms. Chalmers testified as follows:
 - a. Ms. Chalmers has served as the Board’s Director of Student Services and Special Education since 2002. She has 16 years of experience as a special education teacher and has been employed by the Board since 1984. She served as a Special Education Supervisor for the Board from 1992 to 1993 and the principal of the Board’s Lincoln Bassett School from 1993 to 1996, and then resumed service as a special education supervisor from 1996 to 2002. In her capacity as a supervisor or director of special education services, Ms. Chalmers did not provide direct instruction but rather supervised other staff members throughout the Board’s school system, currently consisting of 42 schools, with respect to the provision of special education services. She has a Bachelor of Arts in Special Education and

certifications for pre-K-12 teaching in special education and administrative supervision. (Chalmers Test. 9/14/09 hearing at 15-19, 71-73)

- b. Although Ms. Chalmers did not have any direct involvement with the Student prior to his transfer to the Waterbury schools, she had been “aware” of him as a student in her capacity as Director of Student Services and Special Education since he began attending Celentano School in pre-K/first grade. (Chalmers Test. 9/14/09 hearing at 19-20)
 - c. It was Ms. Chalmers’ understanding that CTDCF became involved with the family based on allegations of educational neglect of the Student by the Parent. (Chalmers Test. 9/14/09 hearing at 21-22, 27)
13. In the 2007/2008 school year, the Student began attending the Generali School in Waterbury as a 3rd grader.
14. Mr. Copley acted as the Student’s court-appointed *guardian ad litem* and served in that capacity until approximately mid-June 2009, when the proceedings before the Juvenile Court involving the Mother which resulted in the Student being placed in foster care were terminated. Mr. Copley has no training or certification as a teacher or mental health service provider. Among other things, his responsibilities as *guardian ad litem* included monitoring the Student’s educational status and issues and reporting to the Court periodically. (Copley Test. 7/15/09 hearing)
15. Mr. Copley observed the Student on three separate occasions when he was attending Generali School and talked with his teachers there. At those times, the Student was being supported by a 1:1 aide, and seemed “well-mannered and well-behaved” and to be interacting appropriately with his aide. Mr. Copley was aware, however, that the Student was “acting out” by which Mr. Copley meant whining and crying, being non-compliant, wanting to do his own thing, and wandering around. Mr. Copley was not aware that the Student was manifesting obsessive-compulsive behaviors, verbal threats or physical aggression while at Generali. Mr. Copley was aware of the recommendation by Generali for 1:1 adult support for the Student as well as a behavior plan, but was not certain why those recommendations were made. Mr. Copley did not review the Student’s educational records from Generali. (Copley Test. 7/15/09 hearing)
16. An IEP team was convened on November 1, 2007 at Generali. Among other things:
 - a. The Mother was not invited to attend and did not attend this meeting. The IEP meeting materials indicate, among other things, that the Student is friendly, greets peers and staff and answers simple social questions, but also has a history of aggression toward staff and peers and non-compliance. The following social/behavioral Goal was identified: Student “will demonstrate appropriate behavior within the school setting.” Objectives under this Goal included: (1) Student “will refrain from aggressions (against staff, peers and objects).” (2) Student will “comply with a staff members’ direction upon the first request.” (3)

Student will “refrain from vocal disruptions (including crying, whining, yelling out or arguing with a staff member)”. There is no indication that either a functional behavioral assessment (“FBA”) or a behavior intervention plan (“BIP”) were done at this time. The IEP provided for a 31.25 hour school week, of which the Student would spend 16.85 hours/week with non-disabled peers (homeroom, language arts, math, lunch, recess, physical education, art, music and library), and would receive 29.75 hours/week of special education and related services. (B51)

- b. Generali staff recommended that the Student be assigned a behavior therapist to support his functioning at school, rather than a 1:1 Paraprofessional. The District accepted that recommendation, which was implemented by providing the Student with a Board Certified Behavior Analyst (“BCBA”) employed by the Institute for Professional Practice (“IPP”).⁶⁴
- c. Ms. Panciera attended the November 1, 2007 IEP team meeting as the Board’s representative and reported the outcome to Ms. Chalmers. While in the Board’s schools, Ms. Chalmers was aware that a 1:1 Paraprofessional had been assigned to support the Student at various times through the IEP process. It was Ms. Chalmers understanding that Waterbury, based on its experience with the Student to date, was recommending that the Student be supported on a 1:1 basis by an “ABA” therapist because although the Student was attending a restrictive classroom at Generali staffed by BCBA-trained personnel he continued to manifest aggressive behaviors. The Board agreed to provide that support, and arranged with IPP to provide the Student with 1:1 BCBA support. (Chalmers Test. 9/14/09 hearing at 23-28)

17. An IEP team convened on January 31, 2008 at Generali. Among other things:

- a. The Mother was not invited to attend and did not attend this meeting. (B52, B54) The IEP meeting materials indicate that the Student has “continued with aggressive behaviors” and that the November 1, 2007 IEP would continue to be implemented.
- b. Ms. Panciera also attended the January 31, 2008 IEP team meeting and reported back to Ms. Chalmers that the Student was continuing to manifest aggressive behaviors. The Board continued to support providing the Student with a 1:1 IPP-BCBA. (Chalmers Test. 9/14/09 hearing at 30-34)

18. Staff at Generali recorded the following data regarding the Student in the period September 2007 through March 17, 2008 (B54):

⁶⁴ As used herein, the term “IPP-BCBA” refers to a behavior therapist trained in the Applied Behavioral Analysis (“ABA”) methodology assigned to work with the Student on a 1:1 basis to provide support throughout his program.

| Month | # of Aggressions⁶⁵ | # of Noncompliance⁶⁶ | # of Vocal Disruptions⁶⁷ | Tantrums (# - Duration in Minutes)⁶⁸ |
|--------------|--------------------------------------|--|--|--|
| September 07 | 22 | 82 | 21 | 10 – 87 |
| October | 11 | 35 | 5 | 1 – 30 |
| November | 2 | 18 | 1 | 1 – 2 |
| December | 0 | 7 | 0 | 0 – 0 |
| January 08 | 10 | 12 | 3 | 3 – 20 |
| February | 0 | 3 | 0 | 0 – 0 |
| March | 0 | 9 | 1 | 0 – 0 |

19. Generali progress reports dated in March 2008 indicate that the Student was making progress on his Goals and Objectives, including the social/behavioral Goal and Objectives identified in the November 1, 2007 IEP. (B55)
20. With resolution of the issues that prompted CTDCF involvement with the family, an IEP team meeting was noticed for April 1, 2008 to plan for the transition of the Student back to the District. The Mother was invited to attend that meeting and did so. (B56)
21. Generali staff on April 1, 2008 transmitted a set of recommended behavioral and academic strategies to address “Aggressions against staff, peers, objects,” “Vocal Disruptions including crying, whining, swearing or making verbal threats,” and “Noncompliance – refusal to follow a given [Staff direction] after first command.” (B57) Among other things, Generali recommended ignoring undesired behaviors “if possible” and positively reinforcing desired behaviors. Generali recommended that the Student be given opportunities to be with non-disabled peers “as he will model their behavior.” Generali recommended that the Student be assigned a behavior therapist (“BT”) to “shadow [the Student] as much as possible to facilitate independence, keeping student in eye sight” and further that “directions should preferably come from regular ed teacher instead of BT whenever possible.” The document notes further that “Low intensity, high frequency behaviors such as [Obsessive-compulsive behavior], whining and [noncompliance] are interfering with academics” and that it was “critical” to develop the Student’s ability to comply with directions and complete tasks without opposition. (B57)
22. Ms. Trina Roque Dizon (“Ms. Roque”) first became involved with the Student in April 2008, when he transitioned from Waterbury back to the District. At that time an IPP-BCBA supervised by Ms. Roque was assigned to the Student. Ms. Roque met with the

⁶⁵ An “Aggression” is defined as “Any attempt to injure another person. Behaviors may include but are not limited to kicking, hitting, biting or grabbing. This data includes both attempted aggressions, and successful aggressions.”

⁶⁶ “Noncompliance” is defined as “Verbal or non-verbal refusal of a given task or direction.”

⁶⁷ “Vocal Disruptions” are defined as “Verbal protests which may include swearing, arguing or crying/whining.”

⁶⁸ A “tantrum” is defined as a “vocal disruption with any one of the above described behaviors occurring simultaneously.”

Student, observed him periodically between April and June 2008 and reviewed data regarding his behavior and progress. (Roque Test. 9/14/09 hearing at 208-210)

- a. Ms. Roque is an ABA Clinical Coordinator employed by IPP. She earned a Bachelor of Arts in Art/Psychology in 2005, an Advanced Certificate in Applied Behavioral Analysis (“ABA”) in 2007, and a Masters of Arts in Psychology in September 2008, and became a BCBA in 2008 as well. Her responsibilities with IPP include training and supervising behavior therapists in the ABA methodology, performing functional behavioral assessments (“FBAs”) and consulting with agencies and school districts regarding behavioral supports for academic and behavioral issues students encounter. To maintain her BCBA certification, Ms. Roque is required to complete CLE requirements on an ongoing basis, among other things. (Roque Test. 9/14/09 hearing at 202-207)
 - b. ABA is a science for looking at behaviors and the functions they serve, and then determining what interventions can be implemented to increase appropriate/desired and decrease inappropriate/undesired behaviors. (Roque Test. 9/14/09 hearing at 205-207)
 - c. IPP is an independent consulting company providing services to individuals with disabilities across the entire age spectrum. IPP contracts with various school districts, including the District, to provide ABA consultation and direct services to students on the autism spectrum. IPP therapists providing direct services have attained at least a Masters of Arts degree and are trained and supervised in ABA methodology by a BCBA. Ms. Roque has provided consulting services through IPP to the District since July 2007, including both direct and indirect services, including training 1:1 Paraprofessionals employed by the District to work with its students. (Roque Test. 9/14/09 hearing at 206-208)
 - d. While he was attending school in Waterbury, the Student was assigned an IPP-BCBA. Ms. Roque did not have any direct contact with that IPP-BCBA. As part of her work with the Student as he transitioned from Waterbury, Ms. Roque reviewed various records generated by Waterbury, including notes about his behaviors and interventions that were implemented. (Roque Test. 9/14/09 hearing at 208-210)
23. With respect to the April 1, 2008 IEP team meeting:
- a. The Mother was invited to and did attend this meeting. The IEP team meeting materials indicate, among other things, that the Student would be provided a “full time behavior therapist” and that his then current IEP Goals and Objectives would remain in effect until the annual review scheduled for May 2008. The District offered door-to-door transportation but the Mother declined and advised that she would transport the Student to and from school. The Student’s school week would remain 31.25 hours, of which the Student would spend 17.25 hours/week with non-disabled peers and receive 29.75 hours/week of special

education and related services. The Student remained under DCF guardianship at that point. (B56, B58, B59)

- b. After being notified by CTDCF that the Student would be returning to New Haven, the District scheduled the April 1, 2008 IEP team meeting to transition the Student back to the District's schools. The Mother attended this IEP team meeting. Ms. Chalmers did not attend, but District staff members who report to her did attend. The IEP team considered, among other things, a report dated April 1, 2008 (B57) prepared by Waterbury staff which outlined the Student's behavioral issues and issues with aggression and the interventions that had been implemented to address them. Among other things, it was determined that the Student would return to the District on April 28, 2008, that his then-current IEP would be implemented, and that he would continue to receive 1:1 IPP-BCBA support throughout the school day. The District offered door to door transportation, which the Mother rejected. The IEP team also recommended ESY programming for the summer of 2008 to be provided at the District's Clarence Rogers school. (Chalmers Test. 9/14/09 hearing at 32-39)
24. Ms. Sincilina Beckett ("Ms. Beckett") recalled that at this meeting Waterbury staff discussed behavioral issues and aggressive behaviors the Student was having at Waterbury and recommended that the Student be provided with 1:1 support throughout the school day to address those issues. Ms. Beckett has no reason to believe Waterbury staff's reports were inaccurate even though she has never seen aggressive behaviors by the Student. (Beckett Test. 7/17/09 hearing) Ms. Beckett is a parent advocate with AAFCAMP. In that capacity she has worked with approximately 350 families, including families with children with autism. Prior to joining AAFCAMP, she had worked in the "human services" field for 15 years. She is not certified as a teacher or certified or trained as a mental health service provider, but has completed courses toward a psychology degree and has an Associates Degree in Human Services. The Parent is one of Ms. Beckett's clients. Ms. Beckett attended either in person or by telephone the following IEP team meetings convened regarding the Student: 4/1/08 (convened to plan for the return of the Student to the District from Waterbury); 9/9/2008 (convened at Jepson School following the tooth chipping incident), 10/6/2008 (convened after the Mother placed the Student at Celentano School), 10/28/2008 (annual review), and 3/24/2009 (placement at ACES Mill Road or High Roads was recommended). Ms. Beckett did not attend either physically or by telephone the 6/19/2009 IEP team meeting. (Beckett Test. 7/17/09 hearing)

C. 2007/2008 School Year (Return to the District)

25. When he returned to the District on April 28, 2008, the Student began attending the Benjamin Jepson Magnet School. (B56, B58, B102) He was assigned to Jepson because Jepson had a seat available for him, because IPP had services already in place at Jepson and because the Student could be placed in a class with Ms. DeMeglio, a certified teacher with 10 years of experience working with students on the autism spectrum. The Student completed the 2007/2008 school year at Jepson. (Chalmers Test. 9/14/09 hearing at 39-

40)

26. At this time, Ms. Roque and IPP undertook an FBA. An FBA looks at the behaviors the student exhibits to define the function of the behavior. Ms. Roque determined that the Student's inappropriate behaviors were motivated to avoid a task and reinforced by adult attention. Document B58 is an original draft of Ms. Roque's FBA. Document B67 is a revision made in September 2008 to reflect what occurred during summer and the first day of the school year of the 2008/2009 school year. (Roque Test. 9/14/09 hearing at 220-223)
27. A BIP drafted in May 2008 for the Student by IPP (B67) identified the following as undesired target behaviors to be reduced:
- a. Non-compliance: Any instance of not complying with directions (whole group or individual) within 3 seconds of giving them.
 - b. Aggression: Any instance of or attempt to hit, slap, kick, bite, push or otherwise cause harm to another person or object.
 - c. Verbal Disruptions: Any instance of whining, crying, verbal statements indicating that he does not want to participate, raising voice above normal conversation level, requesting to go home, swearing or making verbal threats.
 - d. Flopping: Any instance of or attempt to slide off his chair. Any instance of dropping to the floor at any time during the day unless told to do so.
 - e. Bolting: Any attempt to move away from group/class/teacher/paraprofessional during work or class activities/hallway.
 - f. Environmental Destruction: Any instance or attempt to clear off (table, desks, etc.) dump out, throw, rip, bang, crush, or break materials or objects.
 - g. Tantrum: Any instance of vocal disruption in combination with aggression and non-compliant behaviors occurring simultaneously. [Student] may also be engaging in flopping, bolting, and environmental destruction.
28. The BIP identifies a number of specific and general proactive strategies to be used to address these behaviors, primarily: structuring the environment, ignoring undesired behaviors if possible, using positive reinforcers to encourage desired behaviors, cuing appropriate behaviors, and redirection rather than reprimanding or scolding the Student. The BIP also identifies the following as an "emergency procedure:"

If [the Student] is provided with a quieter environment and he is not able to regroup and engages in behaviors that may not be safe for him (elopement out of the building, environmental destruction in which furniture may fall on him) or for others (aggression), utilize physical safety procedures to escort [the Student] to a

safer area (hallway, book room, empty classroom, depending on where the behavior occurs, escort to nearest safe area) where he cannot bolt or access dangerous materials.

29. The term “physical safety procedures” as used in this BIP means a model of physical restraint referred to by various witnesses as “PMT.” (Roque Test. 9/14/09 hearing)
30. On June 20, 2008, Jepson School advised CTDCF of the following (B62), among other things:
 - a. The Student is “very sociable, respectable of his peers. He tends to model the behavior of his peers, but is often unable to differentiate appropriate from inappropriate behaviors. He often chooses to associate himself with peers who often behave inappropriately and who are not amicable towards [the Student] or others.”
 - b. The Student “can become aggressive toward staff and objects and other behaviors include whining, crying, outbursts, environmental destruction, inappropriate language, non-compliance. These behaviors can occur when instructed to do work. They are interfering with his academics.”
31. During the period the Student attended Jepson School in the 2007/2008 school year, Ms. Roque concluded that he had good imitation skills, but could not differentiate inappropriate from appropriate behavior; that he liked consistency and was not very flexible with respect to changes in routine; that his behaviors would escalate with transitions; and that he manifested non-compliance, inappropriate language, whining, crying, and flopping all of which could escalate to aggression (which she defined as an attempt or instance of kicking, biting, hitting, scratching), environmental disruption or “bolting” from the location he was supposed to be in. She recalls some instances of aggression at Jepson School during this period. She reviewed IPP data collected between May and June 2008. She noted that at one point during that period, the Mother’s car broke down and the Student was taking public transportation to school. At that time, his aggression, flopping, non-compliance, tantruming, and environmental destruction escalated sharply and became more frequent. Some of these episodes could last 30 minutes. (Roque Test. 9/14/09 hearing at 210-214)

D. Summer 2008 ESY Program

32. The Student’s ESY summer 2008 program was to be delivered at the District’s Clarence Rogers School and staffed by IPP. The Student’s attendance was “sporadic” and he missed many days of the program. It was Ms. Chalmers understanding that the Mother did not want the Student to attend the program because it was located at Clarence Rogers. (Chalmers Test. 9/14/09 hearing at 40-41)
33. Ms. Roque supervised the 6 week IPP-run ESY summer 2008 program the Student was to attend at Clarence Rogers School per his IEP. It was Ms. Roque’s understanding that

the Mother did not want the Student to attend a program at Clarence Rogers and for that reason the Student did not attend the first two weeks of the program. He attended only 3 days of the program in each of the subsequent weeks because he was involved in other activities identified by the Mother. When he attended the program, the Student was assigned an IPP staff member as an aide. The Student had episodes of aggression toward staff when he attended the program. (Roque Test. 9/14/09 hearing at 245-246)

E. 2008/2009 School Year (Jepson School)

- 34. In September 2008, the Student began attending the Jepson School as an 8 year old 4th grader, with the full time support of a 1:1 IPP BCBA. (Chalmers Test. 9/14/09 hearing at 41-42) He attended Jepson until September 29, 2008. (B102)
- 35. On September 5, 2008, the Student was unable to complete a full school day because of a behavioral difficulty. Shortly after arriving at school, the Student became non-compliant with requests to perform tasks. The BIP was implemented, with the first step of removing the Student from the classroom to allow him to calm down. He continued to escalate however, became physically aggressive toward his IPP-BCBA (Elisha Hazel) and had to be physically restrained by her twice. During the course of this incident, the Student slumped to the floor. When he attempted to bite her foot or leg, she moved her foot away and he chipped his tooth on the floor. (B66; Roque Test. 9/14/09 hearing at 218-220)
- 36. At about this time, Ms. Roque completed her FBA. (B69) The purpose of the FBA was to “review potential environmental/situational reasons for the behaviors of concern and to assess other factors that may affect [the Student’s] behavioral performance in school.” The draft FBA dated September 9, 2008 provided the following information, among other things:

| Behavior | Approximate Daily Frequency | How disruptive or manageable? | Skill or Motivation Issue? |
|--|--|---|---|
| Non-compliance: Any instance of not complying with directions (whole group or individual) within 3 seconds of giving them. | 5-10/day up to 20-40/day | Prevents participation in learning new skills. If not able to redirect appropriately may result in a tantrum. | Motivation – Student appears to lack motivation to engage in various activities and/or demands even if they are mastered tasks. |
| Aggression: Any instance of or attempt to hit, slap, kick, bite, push or otherwise cause harm to another | 0-3/day but may exceed 10/day during a tantrum | Depends on intensity; usually manageable when Student remains in smaller and quiet place. | Same as above. Student may also lack skills to cope with frustration. |

| Behavior | Approximate Daily Frequency | How disruptive or manageable? | Skill or Motivation Issue? |
|--|------------------------------------|--|--|
| person or object. | | | |
| Verbal Disruptions: Any instance of whining, crying, verbal statements indicate that he does not want to participate, raising voice above normal conversation level, requesting to go home, swearing or making verbal threats. | 20-25/day | Sometimes manageable unless the Student is swearing, which may lead to Environmental Destruction and Swearing. | Student appears to lack motivation to engage in various activities and/or demands even if they are mastered tasks. |
| Flopping: Any instance of or attempt to slide off his chair. Any instance of dropping to the floor at any time during the day unless told to do so. | 0-3/day | Usually manageable, depending on corresponding behaviors such as Aggression. | Same as above, plus escape. |
| Bolting: Any attempt to move away from group/class/teacher/paraprofessional during work or class activities/hallway. | 0-3/day | Usually manageable. | Same as above, plus escape. |
| Environmental Destruction: Any instance or attempt to clear off (table, desks, etc.) dump out, throw, rip, bang, crush, or break materials or objects. | 0-5/day | Usually manageable depending on intensity. | Same as above, plus escape. |

| Behavior | Approximate Daily Frequency | How disruptive or manageable? | Skill or Motivation Issue? |
|--|-----------------------------|---|----------------------------|
| Tantrum: Any instance of vocal disruption in combination with aggression and non-compliant behaviors occurring simultaneously. [Student] may also be engaging in flopping, bolting, and environmental destruction. | 0-3/day | Usually manageable depending on intensity. Most last about 1-5 minutes and are redirectable. Instances in which tantrum may last for 20-30 minutes and have high rates of aggression. | Same as with Aggression. |

37. The FBA indicates that these problem behaviors (1) arise when task demands or limitations are placed on the Student and (2) are positively reinforced by the attention the Student receives from others in the form of a reaction to the event. The report indicates further that the Student may lack the coping skills needed to appropriately ask for a break and/or calm himself once he is frustrated. (B69)

38. The FBA made the following recommendations (B69):
 - a. Staff working with the Student need to develop a motivational system to teach him activities that would increase his ability to cope more independently.
 - b. Staff working with the Student should familiarize themselves with the contents of the FBA.
 - c. Consistent expectations need to be established regarding the amount of work he needs to complete. Clear instruction should be provided, mastered work should be performed in the classroom, acquisition work should be done in the resource room, follow through with the initial direction until the Student complies – do not move to the next activity until he completes the interrupted activity, if target behavior occurs in response to a demand, use a “first complete the task, then get the reinforcer” approach, structure the task so that comprehension does not affect ability to complete the task, focus attention on the work he is doing not the target behavior (if he is doing the task but whining and crying, ignore the whining and crying).
 - d. Utilize his receptive and expressive verbal skills to cue him to ask for help.
 - e. To help prevent problem behaviors, assure that the Student’s day is structured. A

written schedule may be used to show him progress throughout the day.

- f. Review the 2008/2009 school year BIP for specific reactions to target behaviors.
39. Following the September 2008 tooth chipping incident, an IEP team meeting was noticed for September 9, 2008 at the Mother's request. Jepson School staff requested that Ms. Chalmers attend. This was the first IEP team meeting for the Student that she attended. Ms. Chalmers recalls that the Mother was very "upset," was claiming that the 1:1 IPP-BCBA had acted with "malice" in the tooth chipping incident, and wanted the 1:1 IPP-BCBA removed and replaced with Ms. Boyd, the 1:1 Paraprofessional who had worked with the Student while he had previously attended Celentano School. Ms. Boyd was not a BCBA. The request that Ms. Boyd be assigned to work with the Student at Jepson School was denied. There was considerable discussion at the IEP team meeting of the Mother's request and of the need for including physical restraint in the Student's BIP to address safety issues given the failure of other measures to address his aggressive behaviors. A physical restraint protocol was created for the Student for the first time. It was for that reason, in part, that the District was continuing to recommend that the Student be supported throughout his program by a 1:1 IPP BCBA. Ms. Chalmers responded to the Mother's request that the 1:1 IPP BCBA be replaced, however, by agreeing "as a trust building measure" that the Student would be supported by a 1:1 Paraprofessional who would be trained by IPP. There was no discussion at this IEP team meeting of transferring the Student to another school within the District. Based on the discussion at this IEP team meeting, Ms. Chalmers "immediately" hired a 1:1 Paraprofessional (Jose Bonilla) to work with the Student and IPP began training him. (Chalmers Test. 9/14/09 hearing at 42-49, 88-90, 94)
 40. Ms. Roque attended the September 9, 2008 IEP team meeting. The Mother expressed her dissatisfaction with the IPP behavior therapist and the District agreed to replace the 1:1 IPP-BCBA with a 1:1 Paraprofessional to be trained by IPP. IPP would train other Jepson School staff as well and provide ongoing consultation as needed. Ms. Roque trained Mr. Bonilla for approximately 3 hours regarding the FBA and BIP, and also trained other Jepson School staff members. Between this IEP team meeting and October 2, 2009, she observed the Student once at Jepson School and noted nothing of significance. There was a delay after the September 9, 2008 IEP team meeting and before Mr. Bonilla was hired during which the Student did not have a 1:1 Paraprofessional. During this period the Mother was supporting him at school. Ms. Roque was not aware of any behavioral issues during that time. (Roque Test. 9/14/09 hearing at 224-228, 255)
 41. Ms. Beckett recalls that at the September 9, 2008 IEP team meeting Jepson School staff were reporting that the Student was presenting aggressive behaviors. Both the BIP and FBA were discussed at this IEP team meeting. The Parent objected to having a "full time behaviorist" assigned to the Student and preferred to have a 1:1 Paraprofessional because he had never had a behaviorist assigned to him before. The Mother did not, however, deny permission for assigning a full time behaviorist to support him. (Beckett Test. 7/17/09 hearing)

42. The documentation from the September 9, 2008 IEP team meeting (B69, B70) indicate, among other things that:
- a. A draft of the FBA (which included the BIP) prepared by IPP was reviewed.
 - b. Jepson School staff recommended that the Student continue to be supported by a 1:1 IPP-BCBA.
 - c. "Behavioral training will be provided by IPP after the board of education hires a paraprofessional."
 - d. "Due to physical aggression, after all de-escalation techniques have failed, emergency interventions which include physical restraint and/or seclusion will be employed to maintain the safety of the student and others."
 - e. "All goals and objectives and special education support of 28.75 hours from IEP dated 11/1/07 will remain in effect."
 - f. The Student's Mother "was in agreement with all decisions."
 - g. The Student's IEP provides for a 31.25 hour school week, with 29.75 hours/week of special education and related services. The Student spends 16.85 hours/week with non-disabled peers (homeroom, language arts (1.0 hour/day), math (1/0 hour/day), lunch, recess, physical education, art, music and library) and 12.90 hours/week of academic instruction in a resource setting "to ensure progress on goals and objectives."
43. Mr. Copley had an opportunity to observe the Student on two separate occasions while he attended Jepson School. On one occasion, the Student had broken a tooth and Mr. Copley came to the nurse's office at the Parent's request. On another occasion, Mr. Copley was attending a meeting with one of the Student's teachers and observed the Student in the hallway. At that time the Student was transitioning from one setting to another and was not accompanied by a 1:1 aide. Mr. Copley did not observe the Student engaging in any inappropriate or unusual behaviors on either occasion. Mr. Copley did not observe the Student in a class at Jepson. (Copley Test. 7/15/09 hearing)

F. "Transfer" to Celentano School on October 2, 2008 and October 6, 2008 IEP Team Meeting

44. On October 2, 2008, the Student entered Celentano School as a 4th grader. (B74 at 2, B102) The following testimony was offered about this event:
- a. According to Ms. Chalmers: About 3 weeks after the September 9, 2008 IEP team meeting, Ms. Chalmers was advised by the principal at Jepson School that the Mother had transferred the Student to another school in the District. Ms. Chalmers

subsequently determined that the Mother had arranged to transfer the Student to Celentano School through the District student registration office. Ms. Boyd was still working at Celentano School at the time. Ms. Chalmers stated that District protocol required that a change of school involving a student receiving IDEIA special education and related services required convening an IEP team meeting and that that process should have been implemented in this case but was not. She was unable to explain why the protocol was not followed by the registration office in this case. She also determined that the principal at Celentano School was not made aware when the Student began attending Celentano School that he had an IEP. Ms. Chalmers convened an IEP team meeting to address this situation. (Chalmers Test. 9/14/09 hearing at 49-52, 99-104)

- b. According to Ms. Beckett, the Mother had wanted the Student to return to Celentano School when he returned from Waterbury and the Student was transferred from Jepson to Celentano School at the Mother's request after she was advised that a space had opened at Celentano. (Beckett Test. 7/17/09 hearing)
45. Mr. Bonilla continued to be the Student's 1:1 Paraprofessional at Celentano School. On October 3, 2008, Mr. Bonilla reported an incident in which the Student objected to a request that he commence a task and then scratched Mr. Bonilla in the face with a pencil. (B73) The Student was suspended from school for 1 day as a result of this incident. (B74 at 2; B94 at 1)
 46. An IEP team meeting convened on October 6, 2008. The following testimony was offered regarding this IEP team meeting:
 - a. Ms. Lewin attended this meeting for the Student along with all other members of his IEP team, the Mother and Mr. Copley. Ms. Lewin was assigned as the Student's case manager, and was responsible for overseeing implementation of his IEP and communicating with other staff regarding his IEP. The FBA and BIP prepared by IPP were discussed and were implemented during the 2008/2009 school year. Mr. Bonilla was assigned to be the Student's 1:1 paraprofessional. (Lewin Test. 9/14/09 hearing) Ms. Lewin was the Student's special education teacher when he attended Celentano School in the 2008/2009 school year. She had previously worked with the Student when he was in kindergarten at Celentano School in 2004/2005. Ms. Lewin attained a Bachelor of Arts in special education in 1975, a Master of Arts in special education in 1982, and certifications for special education pre-K-12. She has worked her entire career in self-contained or inclusive settings with elementary and middle school children. Her responsibilities include attending IEP team meetings and providing direct services to students. The Student is one of many students on the autism spectrum with whom Ms. Lewin has worked over her career. (Lewin Test. 9/14/09 hearing)
 - b. In early October Ms. Roque learned that the Student would be attending Celentano School. She attended this IEP team meeting, at which it was agreed that IPP would train Celentano School staff and that Mr. Bonilla would continue to work with the

Student. Ms. Roque trained Celentano School staff (Mr. Bonilla, Ms. Reed (the principal), the Student's regular and special education teachers and the occupational therapist ("OT") and speech and language pathologist ("SLP") assigned to work with him) on October 7 and 14, 2008. She observed the Student's teacher and Mr. Bonilla in the classroom working with the Student and provided some feedback. (Roque Test. 9/14/09 hearing at 228-230)

47. The documentation of the October 6, 2008 IEP team meeting (B74) indicates, among other things that:
 - a. The Student's Paraprofessional support would continue.
 - b. Behavioral training had previously been provided by IPP to Mr. Bonilla, and will be provided to Celentano School staff "next week" by Ms. Roque. The Student's 4th grade teacher (Mr. Hurd) and his special education teacher (Ms. Lewin) would receive behavioral training in the "near future" and the Student's teachers will receive PMT training due to the Student's "physical aggression."
 - c. All Goals and Objectives from the November 1, 2007 IEP would remain in place pending an annual review scheduled for October 28, 2008.

G. October 6, 2008 to October 28, 2008

48. Within a few weeks of the October 6, 2008 IEP team meeting, Ms. Lewin was trained in the implementation of the BIP by Ms. Roque. Ms. Lewin never had to implement physical restraint with the Student and did not observe anybody else doing so either. (Lewin Test. 9/14/09 Hearing)
49. According to Ms. Beckett, the Student's behavioral issues were a regular subject of discussion at the Celentano School IEP team meetings in the 2008/2009 school year. She was aware he was showing aggressive behaviors toward Celentano School staff and other students, was non-compliant and at times could not be redirected, at which time his behaviors would escalate. She is aware that the Student was suspended 3-4 times over the course of the 2008/2009 school year due to his aggressive behaviors. Based on her conversations with the Parent and various Celentano School staff members, Ms. Beckett does not believe that the documentation of those events generated by Celentano School staff accurately reflect the events as they unfolded. Her overall impression is that the Celentano School staff either was not trained or was not properly trained and that that lack of training contributed to various incidents that occurred in this school year. On cross, however, Ms. Beckett stated that she had no basis for knowing whether and when the training discussed at the October 6, 2008 IEP team meeting was provided. (Beckett Test. 7/17/09 hearing)
50. Ms. Beckett has observed the Student in the hallways at Celentano School and did not observe any behavioral issues on those occasions. She has not observed him in classes at Celentano School or spoken with District staff regarding the Student outside of the IEP

team meetings in which she was involved. (Beckett Test. 7/17/09 hearing)

51. Shortly after the October 6, 2008 IEP team meeting, the Mother began reporting to Ms. Chalmers that the Student was being “mistreated” by Celentano School staff and being blamed for things he did not do. Ms. Chalmers agreed to investigate and observed the Student at Celentano School shortly thereafter. She observed the Student in a hallway with his 1:1 Paraprofessional. The Student had “flopped” to the floor and in response to the 1:1 Paraprofessional’s efforts to get the Student to stand up, the Student began kicking and swearing at the 1:1 Paraprofessional. Ms. Chalmers met with the Student shortly after that and when she tried to talk with him, he began to swear at her and told her that the Mother had advised the Student that he did not need to “listen” to anybody at school. After 5-6 minutes of this behavior, the Celentano School principal intervened and the Student calmed down and was able to return to class. Ms. Chalmers reported these events to the Mother. In a subsequent meeting with the Mother, Ms. Chalmers observed the Student to fall asleep in a chair during the meeting. (Chalmers Test. 9/14/09 hearing at 52-55)
52. On October 22, 2008, following a period of non-compliant behavior, Mr. Bonilla reported that the Student scratched the back side of Mr. Bonilla’s hand. (B76)
53. Kristi Villani (“Ms. Villani”) is a speech and language pathologist (“SLP”) and was assigned to work with the Student in the 2008/2009 school year at Celentano School. She has a Masters Degree in Speech and Language Pathology. Her responsibilities include providing direct speech and language services, participating in IEP team meetings, evaluating students, and developing IEPs and behavioral plans. (Villani Test. 9/14/09 hearing) She testified as follows, among other things:
 - a. The Student presents with delays in pragmatic and expressive and receptive language skills, all of which adversely impact his academic performance. (Villani Test. 9/14/09 hearing)
 - b. In the 2008/2009 school year, in accordance with the Student’s IEP she provided speech and language services to the Student 1 hour/week in her office, which is in the related service room. She worked with him individually primarily but on occasion would work with him and another student together. Pages 9-16 of the October 6, 2008 IEP team meeting minutes (B74) is the BIP in place for the Student when he arrived at Celentano School. Ms. Roque trained Ms. Villani in the implementation of the BIP shortly after the October 6, 2008 IEP team meeting. (Villani Test. 9/14/09 hearing)
54. On October 28, 2008, Ms. Villani was working with the Student in her office. Mr. Bonilla was present. She allowed the Student to explore the room, and then attempted to develop an activity schedule for him in accordance with the BIP. She was aware the Student liked to work with red crayons, pencils, etc., and offered him a red crayon, which he refused. He wanted a thicker red marker which she did not have and he became agitated and left the room. Ms. Villani, Mr. Bonilla and a special education teacher who

was in the vicinity were able to redirect the Student back to Ms. Villani's office. When asked to pick up some Goldfish crackers he had swept to the floor earlier, the Student "refused verbally and physically by throwing his arms out and growling." Ms. Villani "blocked his arms by physically holding [the Student] back" at which point the Student "bit" her arm. The Student then crushed the Goldfish into the carpet, refused to cooperate with Mr. Bonilla, shouted obscenities ("shut up, nigga" and "no bitch") and left the room to sit in a hallway. Ms. Villani attributed the Student's escalated behaviors to anxiety about the newness of the situation. (Villani Test. 9/14/09 hearing; B75)

55. Between October 6, 2008 and October 28, 2008, Ms. Lewin worked with the Student in the resource room on an individual basis or with two other students. She was also seeing him in the classroom she co-taught with Mr. Hurd, which had approximately 20-22 students. He was supported in both settings by Mr. Bonilla. Ms. Lewin observed that the Student was having difficulty transitioning to Celentano School. She would often find him in the class sitting in his cubby. He would refuse to go to his seat or take off his coat. Mornings were more difficult due to the transition from home to school. He seemed overwhelmed by the large class size, the transitions and people coming in and out of the room. He was more successful in the resource room, where she could tailor his work to his interests. He still needed Mr. Bonilla's support even in that setting, however, because he required constant focusing. Even with Mr. Bonilla's support in the resource room setting, he would refuse to do tasks and become non-compliant. He manifested some compulsive behaviors – for example a need to use red markers. Although she believes he could perform grade-level work in various reading tasks, he scored well below grade level when she tested him. (Lewin Test. 9/14/09 hearing)

H. OCTOBER 28 IEP TEAM MEETING

56. An IEP team meeting convened on October 28, 2008 as a prescheduled annual review meeting. The documentation from this IEP team meeting (B105, B106) indicates the following, among other things:
- a. IPP's September 7, 2008 BIP was reviewed and would remain in place.
 - b. PMT training for Celentano staff has been requested.
 - c. Kim Boyd, the Student's prior 1:1 Paraprofessional was no longer available and Mr. Bonilla would continue as the Student's 1:1 Paraprofessional.
 - d. The Student was noted to be interacting more positively with peers as he continues to adjust to his new classroom, with some aggressive behavior toward peers and staff noted.
 - e. The Student's proposed IEP included the following social/behavioral Goal: "Demonstrate an improvement in socially acceptable behaviors in the school environment." Objectives under that Goal were: (1) Comply with classroom rules and regulations (i.e., discipline, inappropriate clothing); (2) Remain in seat during

classes; (3) Remain on task during the class lessons and complete class work.

- f. The IEP provided for a 31.25 hour school week, with 30 hours/week of special education and related services. The Student would spend 24.75 hours/week with non-disabled peers and participate in all aspects of the mainstream environment other than for speech, OT and reading comprehension resource/pull out.

57. The following testimony was offered regarding the October 28, 2008 IEP team meeting:

- a. Ms. Lewin prepared Goals 1, 2 and 3 and their related objectives for the Student reflected in the IEP discussed at the October 28, 2008 IEP team meeting. The BIP was to be continued. There was a discussion about PMT training for the Celentano School staff, which Ms. Lewin believes was ultimately completed in February 2009. She believes Mother was pleased with the Student's progress as reported at this IEP team meeting. (Lewin Test. 9/14/09 hearing)
- b. Ms. Roque attended an IEP team meeting on October 28, 2008, which was also conducted as an annual review. The IEP team agreed that the BIP developed by Ms. Roque would remain in place. (Roque Test. 9/14/09 hearing at 230-238)

I. OCTOBER 28, 2008 TO MARCH 24, 2009

- 58. Between October 28 and December 9, 2008, Ms. Villani observed the Student's behavior to be inconsistent. In his interactions with her he used inappropriate language but was verbally redirectable. She was implementing the BIP and concluded it was working to address his behavioral issues. (Villani Test. 9/14/09 hearing)
- 59. Ms. Lewin reported that after the October 28, 2008 IEP team meeting, the Student's behaviors in the classroom continued to interfere with his learning in that setting. He was more successful in the resource room setting where Ms. Lewin could tailor the curriculum to his interests. (Lewin Test. 9/14/09 hearing)
- 60. On November 5, 2008, the Student was non-compliant. When his regular education teacher (Mr. Hurd) attempted to redirect him, the Student scratched Mr. Hurd on his arm and punched Mr. Bonilla in the stomach. During lunch the Student started swearing at another student, and scratched and punched the other student. (B76)
- 61. On November 13, 2008, after being re-directed by Mr. Bonilla, the Student lunged at Mr. Bonilla scratching Mr. Bonilla's hand hard enough to break the skin. (B76)
- 62. In this school year, the Student had ongoing conflicts with another male peer (designated as "E*" herein). On November 13, 2008, the Mother advised Mr. Bonilla that the Student does not want E* to come to the Student's birthday party because E* has been mean to the Student "like pulling his hair." She reported that E* knows that the Student will "attack." (B95 at 14) She repeated this concern on December 14, 2008. (B95 at 15)

63. On November 19, 2008, after being re-directed by Mr. Bonilla, the Student “came right at [Mr. Bonilla] with his nails at [Mr. Bonilla’s] face.” The Student ultimately scratched Mr. Bonilla on his right arm sufficiently hard to cause bleeding and require attention from the school nurse. (B76)
64. On November 20, 2008, after the Student returned to the art room with Mr. Bonilla he “went straight for a student that was sitting down working and bit her on the back” apparently because she was sitting in his seat. Later in the day, after being redirected by a teacher the Student punched the teacher in the stomach and swore at him. An administrator approached the Student, who tried to punch, scratch and kick the administrator. (B76)
65. On November 25, 2008, following a period of non-compliance, the Student retreated to his cubby and remained there. Another student approached the cubbies to get something out of his own backpack, and the Student hit the other student in the face. When Mr. Bonilla attempted to direct the Student out of the class, the Student took a swing at Mr. Bonilla. As they were walking to the office, the Student turned and ran at Mr. Bonilla swearing, punching, scratching and biting. (B76)
66. On November 25, 2008, the Mother wrote to Mr. Bonilla suggesting that Mr. Bonilla tell the Student to “keep his mouth shut [talking] crazy in class.” (B95)
67. Exhibit B77 is a set of running daily notes regarding the Student maintained by Mr. Hurd (his regular education teacher) for the period October 14, 2008 through December 1, 2008. The log shows a number of entries indicating that the Student was able to participate appropriately on some days, other entries showing that he fell asleep during class on a number of other days, and other entries indicating physical aggression toward staff and other students on several days. The reports of physical aggression include reports that the Student attempted to stab other students with pencils, and to bite and spit at them. There are also reports of inappropriate statements to female students and statements in which the Student said he would “kill” others.
68. Exhibit B96 are charts graphing the Student’s behavior on a daily basis in 15 minute intervals for 10 specific behaviors. There are charts for 25 days over the period December 2, 2008 through April 28, 2009. The behaviors charted and the number of days on which an occurrence of the behavior was noted are summarized below.

| Behavior | Number of Days an Occurrence Was Reported |
|--------------------|--|
| Swearing | 23 |
| Crying | 2 |
| Screaming | 4 |
| At desk | 24 |
| On floor | 20 |
| In hallway | 22 |
| Aggressive | 6 |
| Removed from Class | 2 |

| Behavior | Number of Days an Occurrence Was Reported |
|-----------------|--|
| Off task | 25 |
| On task | 24 |

69. On December 9, 2008, Ms. Villani reported an incident that occurred when she was working with the Student in her office. The Student began to perseverate regarding his request to have 25 Goldfish crackers as a reinforcer for a task. He was also getting up to go to the door and poking his head into the hallway. He was not responsive to verbal redirection. His behavior escalated and when he attempted to leave the room, Ms. Villani and Mr. Bonilla blocked him from doing so without physically restraining or touching him, as they had been trained to do. He ultimately punched Ms. Villani in the left temple, scratched her hand drawing some blood and started kicking. Ms. Villani and Mr. Bonilla were able to calm the Student and she worked with him to develop a list of rules for the room – no hitting or kicking, etc. Ms. Villani believes that the Student’s agitation resulting in his physical aggression toward her arose because the Student felt physically blocked from leaving and she and Mr. Bonilla may have been standing too close to him. (Villani Test. 9/14/09 hearing; B80)
70. On December 24, 2008, the Mother wrote to Mr. Bonilla to advise him that the Student is reporting that E* hits him, smacks him or breaks something of his everyday, and that Mr. Bonilla is not doing anything about it. The Mother asked that E* be kept away from the Student and that the Student is “trying to be good” but that “once he fights back he’s not just going to fight [E*] will be everyone.” [sic] (B95 at 7)
71. On January 7, 2009, an incident occurred in which a teacher reported that the Student called him an “asshole” after the teacher asked the Student to complete a worksheet. The Student then “stabbed” the teacher in the face with a pencil, causing an injury that broke the skin. (B107)
72. On January 20, 2009, Mr. Hurd reported that the Student called him an “asshole” after Mr. Hurd asked the Student not to run down a hallway. The Student earned a 3 day lunch detention for that incident. (B107)
73. On January 21, 2009, the Mother wrote to Mr. Bonilla to advise him that other students have told her that the Student “gets treated bad in school” and that the Student has told her that he feels everyone at school is “against him” including Mr. Hurd and Mr. Bonilla. She expressed concern that because he feels he is alone at school and is being attacked, he “will fight back to protect himself.” She also reported that the Student has “been through to much in the past year more than you know.” [sic] (B95 at 21)⁶⁹
74. On February 5, 2009, the Student was reported to have hit another student in the face. (B107)
75. On February 10, 2009, the Student reportedly eloped from the building while being taken

⁶⁹ The Mother made similar references during testimony of various Board witnesses. She did not, however, explain what she meant by these statements either while she testified or through testimony from any of the witnesses who testified.

to the restroom. He returned with verbal direction, but slapped a staff member twice in the face and then had to be restrained after he attempted to bite his OT's arm and scratch her face. (B107)

76. On February 11, 2009, an incident occurred in which the Student was taunting another student in Mr. Hurd's classroom. After efforts to stop the Student were not successful, Mr. Hurd asked his 1:1 Paraprofessional that day (Ms. Rosadini) to take the Student from the classroom. Ms. Rosadini reported that "While closing the door, [the Student] called me a bitch, scratched my face forcing my glasses to the floor [and] tried to bite me." (B82)
77. On February 26, 2009, the Mother wrote to Mr. Bonilla to advise him that she is aware that E* is "bothering" the Student and that she had told the Student to defend himself "so if he doesn't stop with just [E*] to bad your suppose to be helping [the Student]." [sic] (B95 at 29)
78. On March 5, 2009, the Mother wrote to Mr. Bonilla to advise him that Mr. Bonilla needs to keep E* and the Student apart and that the Student is "stuck on getting even with [E*] for all the crap he has done to him." She states further that "Yesterday [E*] had the nerve to tell me that [the Student] has been touching him. I told him then to leave [the Student] alone and [the Student] won't bother him." She also reported that the Student has told her that "some kids throw food at [the Student] at lunch and he eats it and everyone laughs." (B95 at 31)
79. On March 12, 2009, Mr. Bonilla reported that the Student was pinching another student, and when Mr. Bonilla intervened the Student called him several names and scratched Mr. Bonilla's face. The Student tried to bite Mr. Bonilla's hands when Mr. Bonilla escorted him to the office and when they reached the office, punched Mr. Bonilla several times. (B107)
80. On March 15, 2009, the Mother asked Mr. Bonilla to keep [E*] away from the Student and to stop holding the Student's arms. (B95 at 2)
81. On March 16, 2009, the Mother wrote to Mr. Bonilla advising him that the Student is reporting that peers are "being mean to him, hitting him, kicking him and knocking him to the floor." (B95 at 3)
82. On March 18, 2009, an incident occurred in gym class in which the Student was "running around the gym swinging at the other students," and in response to Mr. Bonilla's request that he stop, the Student "charged" Mr. Bonilla twice. The Student's behavior then escalated to the point that he scratched Mr. Bonilla on the arms and was restrained by Mr. Bonilla. The Student was suspended for 2 days as a result of this incident and the Mother requested a program review. (B83)
83. On March 20, 2009, the Mother wrote to Mr. Bonilla to advise him that the Student's behavior outside of school has changed. (B95 at 4) The Mother offered no testimony or

explanation regarding what was occurring, either through her own testimony or examination of witnesses.

J. MARCH 20, 2009 THROUGH MARCH 24, 2009

84. On March 20, 2009, the Mother met with Ms. Chalmers. According to Ms. Chalmers: In March 2009, Ms. Chalmers was receiving reports from Celentano School that the Student's aggressive behaviors had continued and were escalating. Ms. Chalmers was contacted by the Mother as well and met with her on March 20, 2009. At that meeting, Ms. Chalmers reported to the Mother that Celentano School staff were reporting to her that the Student's aggressive behaviors were escalating. The Mother reported to Ms. Chalmers her concerns that the Student's behaviors were being misjudged by Celentano School staff, that staff was inappropriately restraining him physically, and that staff had failed to respond to and address an ongoing conflict between the Student and E*, which the Mother blamed for some of the Student's behavioral issues being reported by staff. The Mother renewed her request that Ms. Boyd be assigned to work with the Student. Ms. Chalmers asked Ms. King to join the meeting and directed Ms. King to investigate the claims being made by the Mother. At that time, Ms. King was the Supervisor of Special Education responsible for Celentano School. Ms. Chalmers further advised the Mother that if the Student's behaviors continued to escalate, the District would have to start looking at a more restrictive placement for him. Ms. Chalmers recalls specifically identifying ACES Mill Road as a potential placement, and asked that the Mother not oppose that recommendation should Ms. King's investigation both not substantiate the Mother's concerns and indicate a need for a more restrictive placement such as ACES Mill Road. Ms. Chalmers, based on the discussion at this meeting, believed that the Mother understood and agreed with Ms. Chalmers' request and plan. (Chalmers Test. 9/14/09 hearing at 56-59, 64-67)
85. Ms. King is currently a Supervisor of Special Education for the Board and has held that position since 2000. For the past 7 years, her responsibilities have also included acting as the Special Education Supervisor for students placed outside of the District. She earned a Bachelor of Arts in special education in 1978, a Master of Arts in special education in 1987 and a 6 year certificate in 1990. She began working for the Board in 1978, and prior to assuming her current position served as a middle school special education teacher for 21 years and an on-site IEP team meeting chair. (King Test. 9/14/09 hearing at 274-276)
86. Ms. King testified as follows about the March 20, 2009 meeting: Ms. King's first direct involvement with the Student's situation occurred on March 20, 2009, when she was asked by Ms. Chalmers to join a meeting with the Mother. The Mother was reporting that Celentano School staff were "discriminating against" the Student, not treating him fairly and abusing him. The Mother wanted any portion of the Student's IEP and BIP authorizing the use of physical restraints to be terminated and voiced complaints about Mr. Bonilla. Ms. Chalmers asked Ms. King to investigate the Mother's claims and to observe the Student at Celentano School and report back to Ms. Chalmers. Ms. Chalmers told the Mother that if Ms. King determined that the Mother's claims were

correct, Ms. Chalmers would respond by making appropriate changes. Ms. Chalmers also told the Mother that if Ms. King determined that the Mother's claims were not correct, Ms. Chalmers was going to recommend an out of district placement and asked the Mother to agree to consider that placement. (King Test. 9/14/09 hearing at 276-278)

87. On March 23, 2009 the Mother asked Ms. Chalmers about the results of the investigation of the Mother's concerns regarding the Student's suspensions, the use of physical restraint, and the "bullying" of the Student by E* since 4th grade. (B84)
88. On March 23, 2009, the Student was reported to have slapped another student in the face. The Student also threw a first aid kit at a staff member who escorted him to the hallway following that incident, and attempted to bite, scratch and spit at the staff member. (B107)
89. On March 23, 2009, the District noticed an IEP meeting for March 24, 2009. (B85)

K. March 24, 2009 IEP Team Meeting – Out of District Placement Recommendation

90. In response to Ms. Chalmers' request to investigate the Mother's claims, Ms. King reviewed the Student's records and spoke to staff who had worked with him. On March 24, 2009, before the scheduled IEP team meeting, Ms. King went to Celentano School and observed the Student in a Spanish class. He was accompanied by Mr. Bonilla. As the class was being conducted, the Student began walking around the classroom hitting other students on their backs and knocking things off of their desks. Mr. Bonilla's efforts to redirect him were not successful. The Student attempted to knock the overhead projector off its table. He then approached E*, unzipped E*'s backpack and dumped its contents out. Ms. King did not observe anything that E* had done to warrant the Student's behavior. The Student then "attacked" another student, injuring the student and drawing blood. Ms. King did not observe anything that the second student had done to provoke that response from the Student. At that point, Mr. Bonilla escorted the Student out of the classroom. The Spanish teacher advised Ms. King that the behaviors she observed the Student manifesting were typical for the Student. (King Test. 9/14/09 hearing at 278-283)
91. Ms. Lewin reported that as of the March 24, 2009 IEP team meeting, the Student had become more oppositional and was completing less work in the classroom. Up to that point, Ms. Lewin had selected students to pair him with in the resource room setting to help him be successful there, but even in that setting he was becoming more argumentative, more sensitive to his peers, and exhibiting more disruptive behavior. She was able to keep him from escalating by proximity seating control. She changed the composition of the group and noted some improvement in his behavior, but ultimately his behavior started to deteriorate. The strategies that had previously worked for Ms. Lewin were increasingly unsuccessful. The Student was less compliant, his episodes of non-compliance were of longer duration when they happened, and he was less redirectable. In the regular education classroom he was exhibiting these behaviors but

was also more disruptive and less on task. He was not aggressive physically in the resource room and she did not observe aggressive behaviors outside of the classroom. She did observe non-compliant behaviors in the hallways. (Lewin Test. 9/14/09 hearing)

92. The following testimony was offered regarding the March 24, 2009 IEP team meeting:
- a. There was discussion about placing the Student at ACES Mill Road or High Roads. (Lewin Test. 9/14/09 hearing)
 - b. Ms. Beckett understood the purpose of this meeting to be to develop a plan to deal with the Student's behaviors. The teachers who attended reported that the Student was doing well on his IEP Goals and Objectives, with one teacher reporting that he did well once he could be focused but that the difficulty was in getting him to focus and get started. The Celentano School principal was reporting that the Student's behaviors were becoming more "severe," that he posed a danger to staff and other students, that Celentano School was not able to handle his behavioral issues and that staff were recommending an out-of-district placement. The Mother objected to that proposal and eventually sought to leave the IEP team meeting. The Mother did sign a consent to allow disclosure of information to the proposed out-of-district placement but only after Ms. Beckett suggested that she do so to demonstrate to CTDCF that she was complying with recommendations made for the Student by service providers. Based on the discussion at this meeting, Ms. Beckett had the impression that District staff training on physical management of behaviors had not yet been completed. (Beckett Test. 7/17/09 hearing)
 - c. Ms. King conducted her investigation, concluded that the Mother's concerns were not substantiated, and concluded that a more restrictive placement was warranted. That recommendation was reflected in the March 24, 2009 IEP meeting materials. (Chalmers Test. 9/14/09 hearing at 59-60)
 - d. Ms. King attended and reported her conclusion that the Student requires physical restraint because he presents safety risks to himself and others. The Mother expressed her opinion that the physical restraint being used with the Student was the cause of his behavioral escalations. In contrast, District staff members reported that the behavioral escalations occur first, and that he requires restraint until he can regain control. In Ms. King's opinion, the Student needed a "real time out room" and that facility cannot be provided at Celentano School. The District staff recommended an out of district placement, either at ACES Mill Road or High Roads. The Mother rejected that recommendation and started to leave the meeting. Ms. Beckett intervened and persuaded the Mother to sign a release of records authorizing the District to disclose the Student's records to these programs and to arrange a visit. At the time, Ms. King thought the Mother agreed to do so because she was willing to consider an out of district placement. Ms. King was surprised to hear testimony at hearing to the effect that the Mother was advised by Ms. Beckett to execute the release and had agreed to do so to keep up appearances for CTDCF that the Mother was cooperating with recommendations made regarding the

Student. (King Test. 9/14/09 hearing at 283-287)

93. The March 24, 2009 IEP team meeting materials (B86) indicate the following, among other things:
- a. The Student “had begun to interact more positively with peers as he adjusted to new classroom in Fall and Winter.”
 - b. The Student “has exhibited verbally and physically aggressive behavior towards staff and classmates with increasing frequency during the last month.”
 - c. The Student’s “social emotional weakness, particularly when asked to perform a task he does not want interferes with his ability to perform in the general education setting.”
 - d. The Student was reported through January 30, 2009, to have made satisfactory progress in all objectives under the Goal to “improve his math skills,” the Goal “Demonstrate an improvement in comprehension skills necessary to read for information and understanding,” and the Goal demonstrate “an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction.” The documentation indicates that the Student was not making satisfactory progress on the Goal “[u]tilizing a variety of strategies, [the Student] will increase participation in fine/visual-motor and self-care tasks within his school curriculum” and its Objectives.
 - e. The Student was also reported through January 30, 2009 to have made satisfactory progress on the Goal “Demonstrate an improvement in socially acceptable behaviors in a structured environment” and each of its Objectives - #1 “Comply with classroom rules and regulations given cues if necessary.” #2 “Attend to task at hand with increasing periods of duration.” #3 “[V]erbalize his needs in replacement of his disruptive behaviors.”

L. March 24, 2009 To End of 2008/2009 School Year

94. Ms. Lewin “absolutely” agreed with the recommendation for an out of district placement at ACES Mill Road. She understands that ACES Mill Road is a small group setting which focuses on getting problematic behaviors under control. She believes the Student needs consistency and predictability, a smaller setting, a program with a strong behavioral component and staff well trained to handle the sorts of behaviors he was manifesting. The Student’s behavioral issues need to be addressed so that he can access his academics. In her opinion, Celentano School cannot provide the consistency the Student needs and he is overwhelmed by the number of people and all of the “commotion and [transitions] of a typical school environment.” She also observed that he tends to associate with peers who exhibit negative behaviors. (Lewin Test. 9/14/09 hearing)
95. Ms. Villani is familiar with the ACES Mill Road program based on discussions she has

had with others. She understands the program to be highly structured with on-site behaviorists and a staff that has been trained on PMT and can provide consistent responses to the Student's behavior. She believes the Student would benefit from being in a highly structured program with "lots of consistency" and opportunities to be removed for sensory breaks or to be able to complete an activity, and which can focus on developing his social skills. (Villani Test. 9/14/09 hearing)

96. Ms. King is familiar with the ACES Mill Road program and supports placement of the Student there. In her opinion, the Student needs a highly structured very consistent program that provides him with reinforcement throughout the day, and that is administered by staff skilled in behavior management techniques. The Student presents safety issues (both to himself and others) that cannot be adequately managed at Celentano School. All ACES Mill Road staff including bus drivers are fully trained to work with the students attending the program, and some of them are actually the staff members who work with the students. The Student needs direct instruction in social skills including prerequisite skills that need to be taught in small group settings. The ACES Mill Road program is designed to return students to their sending districts and Ms. King would expect the Student to return to the District. The Student can benefit from use of a time out room mechanism to help him learn to cope with issues and challenges and learn to control his behaviors. ACES Mill Road incorporates a time out mechanism. Celentano School cannot provide that intervention. (King Test. 9/14/09 hearing at 287-291)
97. Based on her review of the Student's records, her observations of the Student, the reports she was receiving and her familiarity with the ACES Mill Road program, Ms. Chalmers concluded in her professional opinion that placement at ACES Mill Road was required at this time to provide the Student with a FAPE. The Student at this time is not able to access his IEP within the District's mainstream public school environment because of his problematic behaviors and social skills deficits and needs direct, explicit instruction in social skills. ACES Mill Road has trained staff and a program designed to address these types of issues, and provides a highly structured program with a small student to adult ratio that would benefit the Student. (Chalmers Test. 9/14/09 hearing at 60-62)
98. No recommendation was made to do another FBA or modify the BIP that was developed in connection with and following the return of the Student to New Haven after his placement in Waterbury. Ms. Chalmers does not believe that it was necessary to do that or that doing would have resolved the issues the Student was manifesting in the winter of 2009 which led to the March 24, 2009 recommendation for placement at ACES Mill Road. Ms. Chalmers also believes that reinstating the 1:1 IPP BCBA support would not be successful. According to Ms. Chalmers, the Student "internalizes" what the Mother tells him and the Mother wants Ms. Boyd to support the Student not an IPP BCBA. (Chalmers Test. 9/14/09 hearing at 60-67)
99. Ms. Roque attended the March 24, 2009 IEP team meeting. Ms. Roque concurs in the recommendation for placement at ACES Mill Road. ACES Mill Road incorporates a time out mechanism rather than physical restraint, and the Student would benefit from

access to a time out mechanism. In her opinion, his behaviors escalate when somebody attempts to physically restrain him so having him remain in a mainstream environment with a 1:1 BCBA therapist assigned to him rather than a 1:1 Paraprofessional would not make a difference. The IEP team reviewed the FBA and BIP developed by Ms. Roque at each IEP team meeting and concluded it did not need to be modified. The BIP distinguished between attention for negative task avoidant behaviors in contrast to negative safety behaviors. In accordance with the FBA, the BIP provided that negative task avoidant behaviors would be ignored. Staff could not, however, ignore negative safety related behaviors (*e.g.*, aggression). If redirection failed and he continued to present a threat to himself, others or the environment, he would be removed from the classroom and returned when he calmed down. The problem was the lack of a “safe space” for the Student at that point in time – there is no time out room and, accordingly, he had to be monitored and physically supervised by staff. (Roque Test. 9/14/09 hearing at 237-240, 259-263, 268)

100. Following the March 24, 2009 IEP team meeting, Ms. King began the referral process for High Roads and ACES Mill Road. She determined that there were no seats available at the time at High Roads, and that ACES Mill Road would make space for the Student. She made an intake appointment at ACES Mill Road and contacted the family’s CTDCF case worker (Ms. Hodges) to arrange transportation for a visit. Ms. King followed-up a few days later with CTDCF and was advised that the visit did not occur as scheduled. (King Test. 9/14/09 hearing at 287-288)
101. On March 25, 2009, Mr. Bonilla reported an incident in which the Student was walking to class and punched a teacher in the face and threw an object at Mr. Bonilla. The Student was placed in seclusion for 15 minutes, at which point he was able to return to his regularly scheduled activities. (B88)
102. On March 27, 2009, Mr. Bonilla reported an incident in which the Student bolted from his classroom and tried to hit Mr. Bonilla. (B89) Another incident occurred on March 27, 2009 in which the Student was kicking and hitting Mr. Bonilla and other staff members responded. The Student’s behavior continued to escalate and he was taken to an administrator’s office. He continued to escalate, throwing binders off a table, spitting, lunging at and attempting to bite staff members who were trying to redirect him, yelling obscenities and attempting to rip a phone out of the wall.
103. On March 27, 2009, Ms. King reported the results of her investigation by letter to the Mother (B90), advising as follows:
 - a. “I found no evidence to support your allegations that [the Student] is being mistreated at Celentano School.”
 - b. “What I did observe and I reported at the [IEP team meeting] was that [the Student’s] behavior is erratic and explosive and that he attacked another child in the classroom making him bleed, while I was there. This attack was completely unprovoked. Additionally, he ran around the room, ripped up papers that were on

his teacher's desk, attempted to dump [E*]'s backpack all over the floor and tried to break the projector.”

- c. The District staff members of the IEP team recommended for the Student's safety and the safety of other students placement in a more restrictive special education setting, either ACES or High Roads Learning Center.
104. Between October 2008 and April 2009, Ms. Villani saw an improvement in the Student's behavior in her office. He responded well to structure and consistency and her practice of having a supply of reinforcers available immediately for appropriate behavior and of previewing the rules for the activity with him. She communicated that to her colleagues in B93. The Student's behavior deteriorated starting in mid-May 2009 however. He was no longer responsive to the structure she was utilizing and exhibited increasingly non-compliant behavior and occasional inappropriate behavior and ceased doing his work. The reinforcement strategies she had been using were no longer working. She consulted with other team members, all of whom were reporting similar issues arising at that time. Ms. Villani attributed the change in behavior in part to the disruptions in the Student's normal schedule associated with routine end of the school year activities. (Villani Test. 9/14/09 hearing)
105. Between March 24, 2009 and June 2009, the Student was getting more non-compliant. He was having a harder time with the changes in structure and routine inherent as the end of the school year approaches, and was acting out. He was “totally oppositional” and very difficult to redirect. At this point, in Ms. Lewin's opinion, he was not available to access his academic program due to his behavioral issues. Other team members were reporting similar experiences. (Lewin Test. 9/14/09 hearing)
106. Over the course of the remainder of the 2008/2009 school year, Ms. Roque provided consultation to Celentano School staff, observed the Student approximately 15 times, and reviewed data collected by Celentano School staff. The Student continued to exhibit the problematic behaviors identified in the FBA. As the school year progressed, the problematic behaviors began to occur more frequently but also became more unpredictable. This was a change, inasmuch as previously there were clear antecedents for aggressive behaviors that could be recognized. Ms. Roque was called in a couple of times when Celentano School staff had not been able to get the Student to calm down and comply after episodes of escalated behavior lasting more than 1 hour. Toward the end of the school year, she observed an incident in which Student was specifically aggressing toward a particular male staff member (biting, kicking, scratching) who applied PMT successfully. It was her understanding that the de-escalation following this restraint required 40 minutes, and that the episode of escalated behavior prior to the restraint had lasted approximately 1 hour during which time various techniques were utilized to try to calm the Student so he could return to his program. (Roque Test. 9/14/09 hearing at 230-238)
107. Ms. Villani was aware of the Mother's complaints and position that the Student's behavioral problems arose from the conflict between E* and the Student. She did not

observe any such conflict and discussed the issue with Mr. Hurd, the Student's regular education teacher, who was also aware of the issue. Neither believed that the conflict with E* was a primary cause of the Student's behavioral issues. (Villani Test. 9/14/09 hearing)

108. Ms. Lewin was aware of the conflict between E* and the Student. Based on her observations of the Student, "he would always find the other student he could get into it with." The Student was having conflicts with students other than E* and was often, although not always, the initiator of conflicts with his peers. (Lewin Test. 9/14/09 hearing)
109. On May 11, 2009 an incident occurred in which the Student reportedly assaulted another student. He was given a 2 day out of school suspension for this incident, and was scheduled to return to school on May 14, 2009. (B94 at 3)
110. On May 27, 2009, an incident occurred in which the Student ran out of class, was brought back to class by Ms. Lewin, and on his return he "immediately went after" E*. A staff member intervened and the Student threw a pencil in her face and kicked her in the stomach. Ms. Lewin then escorted the Student to the office. During that transit the Student kicked, punched, bit and scratched Ms. Lewin on her hands and arms, and threatened to kill Ms. Lewin and called her a "motherfucker" among other names. (B101, B108)
111. On May 28, 2009 an incident occurred in which the Student reportedly "grabbed a student ["S*"] by the face and scratched him," "punched and scratched another student" and "threatened to kill his teacher," and called his teacher a "motherfucker" and a "fucking asshole." The Student was given a 3 day out of school suspension as a result, and was scheduled to return to school on June 3, 2009. (B94 at 2, B109) The face grabbing incident occurred when the Student was observing a fight between S* and another student, and the Student "jumped into" that fight. While staff were "sorting out" that fight, the Student "punched and scratched [E*]." He also told the teacher he threatened to kill that he would "tell lies to [the Mother] so [the teacher] will get fired." (B101 at 3)
112. An IEP team meeting was convened on June 19, 2009 to correct documentation from the March 24, 2009 IEP team meeting to clarify that District staff were recommending placement at ACES Mill Road for the 2009/2010 school year. The documentation states that the Student needs a "highly structured environment with less stimulation in order to maintain self-control and on task behaviors." The documentation (B103) indicates that the Mother attended this IEP team meeting.
113. The Student's progress in meeting IEP Goals and Objectives in the period November 14, 2008 through June 25, 2009 was reported (B110) as follows. A rating of "S" indicates "Satisfactory Progress" in meeting a goal or objective, a rating of "U" indicates "Unsatisfactory Progress", a rating of "M" indicates "Mastery" and a rating of "N" indicates "No Progress."

| | 11/14/08 | 1/30/09 | 4/9/09 | 6/25/09 |
|---|----------|---------|--------|---------|
| Goal # 1: Improve Math Skills | S | S | S | U |
| Goal # 1: Improve Math Skills – Objective #1 – Name the value in the tens and ones place | S | S | S | U |
| Goal # 1: Improve Math Skills – Objective # 2 – Add numbers [up to two digits] with carrying | S | S | S | U |
| Goal # 1: Improve Math Skills – Objective #3 – Use manipulatives to solve simple subtraction problems | S | S | S | S |
| Goal # 2: Demonstrate an improvement in comprehension skills necessary to read for information and understanding | S | S | S | U |
| Goal # 2: Demonstrate an improvement in comprehension skills necessary to read for information and understanding – Objective # 1 – Identify and use sight words at his instructional grade level used in the classroom. | S | S | S | S |
| Goal # 2: Demonstrate an improvement in comprehension skills necessary to read for information and understanding – Objective # 2 – Demonstrate the ability to understand the main idea in a given passage. | S | S | S | U |
| Goal # 2: Demonstrate an improvement in comprehension skills necessary to read for information and understanding – Objective # 3 – Demonstrate the ability to correctly answer who, what, where, when and why questions regarding a passage | S | S | S | U |
| Goal # 3: Demonstrate an improvement in socially acceptable behaviors in a structured environment | S | S | S | U |

| | 11/14/08 | 1/30/09 | 4/9/09 | 6/25/09 |
|--|----------|---------|--------|---------|
| Goal # 3: Demonstrate an improvement in socially acceptable behaviors in a structured environment – Objective # 1 – Comply with classroom rules and regulations given cues if necessary | U | S | S | U |
| Goal # 3: Demonstrate an improvement in socially acceptable behaviors in a structured environment – Objective # 2 – Attend to task at hand with increasing periods of duration | U | S | S | U |
| Goal # 3: Demonstrate an improvement in socially acceptable behaviors in a structured environment – Objective # 3 – Verbalize needs in replacement of disruptive behavior | S | S | S | U |
| Goal # 4: Demonstrate an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction | S | S | S | U |
| Goal # 4: Demonstrate an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction – Objective # 1: Demonstrate the retention of the sequence within verbally presented stories using maximum-moderate verbal and visual cueing | S | S | M | M |
| Goal # 4: Demonstrate an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction – Objective # 2: Demonstrate the comprehension of information from verbally presented stories (character, plot, setting, etc.) using maximum-moderate verbal and visual cueing | S | S | M | M |

| | 11/14/08 | 1/30/09 | 4/9/09 | 6/25/09 |
|--|----------|---------|--------|---------|
| Goal # 4: Demonstrate an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction – Objective # 3: Demonstrate the ability to comprehend and use basic sentence patterns (e.g., agent/action/object/adjective/adverb) with maximum-moderate verbal and visual cueing | S | S | S | U |
| Goal # 4: Demonstrate an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction – Objective # 4: Demonstrate the ability to respond appropriately in a role playing situation with an adult or peer for 3-5 exchanges using maximum-moderate verbal and visual prompting | S | S | S | U |
| Goal # 5: Utilizing a variety of strategies, the Student will increase participation in fine/visual-motor and self-care tasks within his school curriculum. | -- | U | N | U |

114. Mr. Copley offered the following testimony regarding his involvement with the Student in the 2008/2009 school year:

- a. Mr. Copley observed the Student on three separate occasions when he was attending Celentano School. Mr. Copley did not, however, observe the Student in a classroom setting. The most recent observation was in April or May 2009, at which time Mr. Copley observed the Student transitioning in the hallway without supervision or 1:1 support. Mr. Copley did not observe the Student having any difficulty or acting inappropriately. The second occasion was sometime between January and April 2009 when Mr. Copley came to the assistant principal’s office after an incident in which the Student had scratched his 1:1 Paraprofessional. Mr. Copley’s impression was that the Student understood that what he had done was wrong and inappropriate. The third occasion was also related to a disciplinary incident, but Mr. Copley could not recall any more detail about that. (Copley Test. 7/15/09 hearing)
- b. Mr. Copley recalled meeting in April 2009 with Mr. Hurd, who reported that

English and arithmetic were not going as well for the Student as could be and that the Student's behavior had deteriorated and was interfering with his progress. Mr. Copley recalled Mr. Hurd indicating, however, his opinion that the Student's behavioral issues could be "handled" within the Celentano School environment. (Copley Test. 7/15/09 hearing)

- c. Mr. Copley knows that the Student has been restrained or placed in seclusion at times at Celentano in the 2008/2009 school year, but does not know how many such events occurred, how many arose from conflicts between E* and the Student, or how many between the Student and students other than E*. Mr. Copley does not feel qualified to determine whether an aggressive incident is "serious" or not, and relies on the professional judgment of staff and others. Mr. Copley agrees that the December 9, 2008 incident in which the Student punched Ms. Villani in her temple described in B80 is "aggressive behavior." (Copley Test. 7/15/09 hearing)

M. Summer 2009 ESY Program

115. Ms. Roque supervised the 6 week IPP-run ESY summer 2009 program that the Student was to attend at Clarence Rogers School. The Student only attended 3 to 4 days of the program. Ms. Roque does not know why the Student was not attending. (Roque Test. 9/14/09 hearing)

N. 2009/2010 School Year

116. At hearing on September 14, 2009, the parties reported that the Student was not attending either Celentano School (his stay-put placement) or the Cook Hill School (the Mother's preferred placement), and was instead being "home schooled" at the Mother's request. The Mother reported that Cook Hill School advised that whether the Student can attend Cook Hill School under Open Choice depended on the outcome of this hearing, and that his enrollment there is on hold for this reason. (Statements of Board Counsel and the Parent, 9/14/09 hearing at 271-273)

O. ACES Mill Road

117. Erika Forte ("Ms. Forte") has been the Principal of the ACES Mill Road school since 1998. (Forte Test. 9/24/09 hearing) Ms. Forte earned a BS in Special Education in 1976, an MS in Special Education in 1982 and a 6 year degree in administration in 1990. Between 1977 and 1992 she was employed as a special education teacher in various public school systems, and between 1992 and 1998 served as the Supervisor of Special Education (middle and high school level) for the Milford Connecticut board of education.
118. ACES is an acronym for "Area Cooperative Education Services." ACES is one of 6 Regional Educational Service Centers ("RESCs") established by the CTDOE. ACES operates 4 regular education magnet and 5 special education schools within its service territory. ACES Mill Road is located in North Haven approximately 10 minutes from the

Board's offices in downtown New Haven. (Forte Test. 9/24/09 hearing)

119. ACES Mill Road serves a population of between 135-145 students in grades K through 8 with social difficulties and with cognitive difficulties that adversely impact their ability to benefit from and participate in a mainstream educational setting. Students attending ACES Mill Road have been referred through an IEP process due to manifestation of issues in their home district schools which precluded them from being successful in that setting at that time. (Forte Test. 9/24/09 hearing)
120. ACES Mill Road is organized into teams, with separate teams serving students in K-3rd grade, 4th -5th grades, 6th -7th grades and 8th grade. ACES Mill Road also has a "functional team" for students in grades 3-8 who present with both social and cognitive difficulties. The functional team is a program consisting of 3 classrooms, each of which can service between 8 to 10 students. The younger classroom is for 3rd -5th graders, the middle classroom is for 5th -6th graders and the older classroom is for 7th-8th graders. Each classroom is staffed by a certified special education teacher and a teaching assistant. Each team has a social worker assigned to it. ACES Mill Road has speech and language pathologists, occupational therapists and physical therapists available on site, as well as a psychiatrist who consults with program staff on a regular basis. (Forte Test. 9/24/09 hearing)
121. The Student has not completed the intake process for ACES Mill Road and other than a brief encounter in the hallway outside of the hearing room at the September 24, 2009 hearing, Ms. Forte has not met the Student. She has reviewed records sent to her by the District, including IEPs, evaluation reports, and the IPP FBA. It is Ms. Forte's understanding that the Student has been identified as IDEIA-eligible on the basis of autism and that the referral was made because he was manifesting aggressive or assaultive behaviors at school. Ms. Forte reported that this pattern is characteristic of students attending ACES Mill Road, and that the program has successfully served students with presentations similar to that of the Student. Based on her review of records, and her professional experience and training, Ms. Forte concluded that the Student should be placed in the middle classroom of the functional team, and that ACES Mill Road was an appropriate program for the Student and can provide services that he requires at this time. She testified that ACES Mill Road can fully implement the Student's current IEP, which is the March 24, 2009 IEP (B86). Barring unexpected medical/health findings, Ms. Forte testified that she saw no impediments to entry of the Student to ACES Mill Road at this time. (Forte Test. 9/24/09 hearing)
122. ACES Mill Road does not utilize an ABA approach. (Forte Test. 9/24/09 hearing)
123. In terms of behavior management, ACES Mill Road provides a comprehensive environmental/programmatic behavioral management system that is operative in all phases of the program, from the moment the student prepares to enter the bus on his/her way to ACES Mill Road until the time the student leaves the bus on his/her way home after school. A central part of the ACES Mill Road program is the use of a system of positive reinforcement to increase adaptive, appropriate behaviors. That aspect of the

program was described as follows (Forte Test. 9/24/09 hearing):

- a. Positive reinforcement is used to encourage students to make “good decisions” with respect to behaviors and responses to difficulties and challenges. Each student entering ACES Mill Road is placed at the White level. White level students manifesting positive behaviors for a defined period of time advance to the Green level. Green level students manifesting positive behaviors for a defined period of time advance to the Gold level, and then similarly ultimately to the Gold Star level. As the student advances through this color coded level system he/she is also expected and allowed to function more independently within the program. White level students are subject to the most comprehensive supervision by staff, whereas students at the Gold Star level have the greatest opportunity for independent functioning. Gold Star level students can, for example, have jobs within the program. Students move up and down through this level system based on behavior.
 - b. In addition to the reinforcement of increasingly independent functioning, students at each level can earn points throughout the day, up to 400 points. Students can use their points to purchase items from showcase (games, toys, sporting equipment or other age appropriate items), or healthy snacks, or school supplies, or time in the game room or an art, PE, or library activity at the end of the day beyond the specials the student already has in his/her schedule. A point earned by a student at a higher level in the step system is worth more than a point earned by a student at a lower level in the step system. The reinforcers are designed to reflect items of interest to the students.
 - c. The system and a student’s status in the system is presented through extensive visual aides, organizers and cues. Students become “attuned” to this point and level system quickly.
 - d. Whereas points earned at the entry levels in this step system tend to be for compliance with program rules and expectations (*e.g.*, no aggressive behaviors, transitioning appropriately, etc.), as the student progresses through this level system, earning points involves both making academic progress and manifesting good decision-making with respect to behaviors.
 - e. ACES Mill Road bus drivers are also trained in the implementation of the positive reinforcement systems and the color level system. In some cases, the ACES Mill Road bus drivers are staff members who work with the students in the program.
124. The other feature of the ACES Mill Road behavior management system is the seamless integration into the program of the use of a time out mechanism to manage maladaptive behaviors. This system was described as follows (Forte Test. 9/24/09 hearing):
- a. The program differentiates between Level I and Level II maladaptive behaviors. An example of Level I behavior is non-compliance with a teacher directive – for example, the teacher asks the student to take out his math book and he does not

comply. In that circumstance, the teacher will attempt to use redirection to secure compliance (defined as giving 2 reminders of the direction). If the student remains non-compliant, the student will be given a verbal warning that he will lose the opportunity to earn points due to non-compliance. If the warning is not sufficient, the student will be directed to a “quiet area” within the classroom. The quiet area consists of an open carrel with partition walls approximately 4-5 feet high in which there is a built in desk for the student to use to do his work while in the quiet area. The student is expected to go to the quiet area when directed. If the student remains in the quiet area for two consecutive “quiet minutes,” the student can then return to the class and will remain on his color level within the system.

- b. If the quiet area mechanism is not sufficient to enable the student to regain his composure, the student will be referred to one of four Alternative Learning Areas (“ALAs”) located at the facility. An ALA is a room approximately 15’ x 10’ with built in carrels, desks and benches for the student to use that is supervised by the ACES Mill Road behavioral therapist (“ACES-BT”) staff. If a student directed to an ALA is compliant and can go independently, he will be allowed to do so. If the student refuses to go to the ALA, the ACES-BT staff will escort the student to the ALA. While in the ALA, the student is expected to complete his work. If the ALA mechanism is successful in enabling the student to regain his composure, the student and his work will be returned to his class by an ACES-BT by the end of the class period so that he can rejoin the group and transition to the next period. Upon his return to the class, the student is reinforced for making a good decision in utilizing the ALA mechanism. The theory is that the student has already served the consequence for the behavior that required placement in the ALA, such that it would not be appropriate or productive to discuss the behavioral issue further at the time the student returns to the classroom.
- c. Once in the ALA, if the student continues to manifest negative behaviors or escalates, the next intervention is Time Out. The Time Out area consists of an “outside room” and an “isolation room.” Students will be escorted to the Time Out area by ACES-BTs. Each Time Out area is staffed by 3 ACES-BTs and is proximate to an ALA. The Time Out protocols were designed by behavioral specialists for ACES Mill Road and the use of Time Out is monitored and regulated by the CTDOE. The physical Time Out facilities are regulated by the State Fire Marshall. ACES Mill Road is in full compliance with the CTDOE and State Fire Marshall regulations and requirements with respect to the Time Out protocols and facilities.
- d. A student cannot remain in the Time Out area for more than 1 hour without an “administrative override.” If the Time Out area mechanism is not working successfully for a student, ACES Mill Road will do an FBA and develop alternative means of behavior management to reduce the need for the use of the Time Out area mechanism.
- e. Depending on the nature of the behavior prompting the need for use of the Time

Out mechanism, the student may be sent to the Outside Room rather than the Isolation Room. A student placed in the Isolation Room can leave the Isolation Room after displaying two consecutive “quiet minutes” with the door to the Isolation Room shut, followed by two consecutive “quiet minutes” with the door to the Isolation Room open. Once that goal has been achieved, the student transitions to the Outside Room where he must display between 2 to 5 consecutive “quite minutes.” Once that goal is reached, the student is returned to the ALA, and then can ultimately return to the classroom in accordance with ALA protocols.

- f. Level II maladaptive behaviors include aggressive or assaultive behaviors or behaviors which present a safety risk to either the student, other students or staff or the physical environment. A student manifesting a Level II behavior is immediately removed from the classroom and transferred to the ALA. The Student will remain in the ALA for two periods rather than one period before being allowed to return to class. As is the case with Level I students, Level II students unable to comply with the requirements of the ALA are transferred to the Time Out area.
 - g. The ACES Mill Road time out and ALA protocols were designed by a Ph.D. level behavioral specialist and are educational and clinical interventions. (Forte Test. 9/24/09 hearing at 61)
125. ACES Mill Road employs 12 BTs, including male and female BTs, all of whom are trained in therapeutic intervention and behavioral management techniques, including physical restraint, under a program developed by ACES called the ACES Safety Management Technique (“ACES SMT”). ACES SMT is modeled on programs used elsewhere and typically referred to as “PMT” programs. The ACES-BTs implement the ACES SMT and train other ACES Mill Road staff members to do so. The ACES SMT model is a set of techniques that allows students based on their level of independence to maintain a safe environment, and includes training in de-escalating behaviors by starting with verbal redirection and progressing through physical guidance, to hands-on intervention, to physical restraint. These aspects of the ACES SMT are subject to regulation and oversight by the CTDCF. ACES does not utilize restraints in the form of securing students physically to furniture or walls, or “straight” jackets or other similar devices for physical restraints. Although the ACES-BTs are the first responders in behavioral management situations requiring physical restraint at ACES Mill Road, all staff are trained in and can implement the ACES SMT techniques. (Forte Test. 9/24/09 hearing)
126. The goal and focus of the ACES Mill Road program is to help students make better decisions so that they can successfully return to their public school environment. In order to return to their public schools, the students must demonstrate not only an improvement in academics and the capacity to complete academic work, but also that they can work socially with others and do not present a risk to the safety of themselves and others in the public school environment. (Forte Test. 9/24/09 hearing)
127. When a student demonstrates consistently good choices in all environments at ACES

over a period determined to be appropriate given the child's circumstances, a plan is developed at an IEP team meeting to transition the student back to the referring district. The transition is done gradually and in a graduated manner designed to address the student's specific needs and maximize the chances of successful return. (Forte Test. 9/24/09 hearing)

128. Academically, the ACES Mill Road program is designed to meet the needs of each student at his then present level of functioning and move the student forward. The curriculum is geared toward practical life skills to increase each student's ability to function independently within his community. (Forte Test. 9/24/09 hearing)
129. A typical day involves arriving by 8:40 a.m., having breakfast as a community in a session that includes planning for the day and news and information exchanges. Students will have language arts, math, social studies and science classes daily, with unified arts and specials such as physical education, health, music, art, library/library technology, and an opportunity to use the "game room." (Forte Test. 9/24/09 hearing)
130. At the intake interview, the ACES Mill Road program is reviewed with the parents. Parents will receive on a daily basis a form reporting the student's points for the day and the student's step system level and progress through the step system. (Forte Test. 9/24/09 hearing)

P. Other Testimony Offered by Parent and Her Witnesses

131. On direct, among other things, the Mother testified that because the Student's behavioral issues are limited to the school setting and particularly the Celentano School setting, the issue is "obviously" a problem with or in Celentano School. (Mother Test. 7/17/09 hearing) She identified the following school-based factors as contributing to the Student's behavioral issues at Celentano School:
 - a. Failure of staff, including Mr. Bonilla (the Student's 1:1 Paraprofessional) to properly respond to the Student because they lack proper training.
 - b. Celentano School staff are "mistreating" or "abusing" the Student; he has come home with bruises and a broken tooth.
 - c. Celentano School staff has failed to resolve the issue between E* and the Student. The behavior of E* (and other students as well) trigger the Student's aggressive behaviors.
 - d. Celentano School staff are using physical restraint and physical touch to manage the Student's behavior. The Student does not like to be physically touched and these techniques escalate his agitation.
132. On direct, the Mother also testified that CTDCF's "threats" to remove the Student from her custody if he is not compliant is also a stressor triggering some of his behavioral

issues. (Mother Test. 7/17/09 hearing) She did not elaborate on that statement.

133. On cross, the Mother agreed that the Student has been manifesting scratching and similar behaviors since at least 2nd grade, but that those behaviors were not “severe.” (Mother Test. 7/17/09 hearing)
134. On cross, the Mother agreed that in the 2008/2009 school year, some of the aggressive behaviors the Student presented in school arise from his disability (due to lack of control). (Mother Test. 7/17/09 hearing)
135. Outside of school, Ms. Beckett has never seen the Student exhibit “major behaviors” by which she meant aggressive behaviors. The Student can be stubborn and needs to be redirected. It is her understanding that the Student has been identified as developmentally delayed, is identified as being on the autism spectrum and exhibits characteristics of pervasive developmental disorder. (Beckett Test. 7/17/09 hearing)
136. Mr. Copley has observed the Student outside of a school setting on several occasions, and notes no discrepancy in the types of behaviors he observed the Student to manifest in and outside of school. The Student communicates with Mr. Copley and has not manifested any aggressive or other inappropriate behaviors. Mr. Copley related one incident in which the Student told Mr. Copley that the Student liked Pokemon. The Student became agitated when Mr. Copley misspelled the word as “Pokeman” but could not articulate a request that Mr. Copley correct the spelling. The Student “grabbed” the pencil from Mr. Copley and corrected the spelling. (Copley Test. 7/15/09 hearing)
137. Mr. Copley’s understanding of the issue in this hearing is that the District is proposing a program that the Parent is rejecting, and that she has an alternative placement that she wishes to pursue. Mr. Copley did not attend the March 24, 2009 IEP team meeting where this issue was discussed. Based on his discussions with Ms. Chalmers and Ms. King, it is his understanding that the District has concluded that the Student’s behavior’s cannot be addressed at Celentano School, particularly following incidents in which the Student has injured Mr. Bonilla and been aggressive toward other students. Mr. Copley believes that the peer-to-peer issues involving the Student center around one another male peer (E*) and is not a general or generalized problem in the school environment. Mr. Copley believes that overall the Celentano School staff have been pleased with the Student’s progress on IEP goals and objectives. (Copley Test. 7/15/09 hearing)
138. Ms. Saunders testified as follows:
 - a. Ms. Saunders has been a Connecticut Department of Development Services (“CTDDS”) Developmental Service Worker Supervisor for 9 years. Prior to that, she worked for 14 years at the Southbury Training School (“STS”) and in that capacity she went to meetings at which educational plans and programs of STS residents were discussed. She oversees the operation of the respite center and its staff. She does not provide clinical services to clients. She is trained as a nurse but is not working as a nurse at the respite center. (Saunders Test. 7/15/09 hearing)

- b. The respite center is not a school but rather provides respite care services to families with children with disabilities. Children come to the respite center and stay overnight for several nights. The activities are intended to be fun and the respite center is intended to provide them with a safe environment. Activities include off-site trips, such as grocery shopping for the center, and trips to parks and other locations at which the children can interact with others in the community. (Saunders Test. 7/15/09 hearing)
- c. The Student has been participating at Ms. Saunders' respite center since 2006. He typically comes 5 times per year and stays for a week at a time, without siblings or other family members present. To date in 2009, the Student has been at the respite center on two separate occasions, for a total of 10 days of respite care. (Saunders Test. 7/15/09 hearing)
- d. Ms. Saunders has not reviewed the Student's school records. The Student's CTDDS case manager is responsible for liaising with the school. She is not aware of the Student's behavior or educational issues at school. She has not observed him at school, has not had any direct contact with any of his teachers and has not been involved in any of the Student's IEP team meetings. (Saunders Test. 7/15/09 hearing)
- e. Ms. Saunders has had an opportunity to work with and observe the Student at all of his visits to the respite center since 2006. His behavior has shown improvement over time in a variety of areas. Initially, he presented with "lots of behavioral challenges" and required 1:1 supervision. Those challenges included aggression toward peers, particularly biting or "swinging" at other children when he was mad. He was susceptible to being influenced by observing other children's behavior, particularly their negative behaviors. His behavior has improved over time, such that at this point he no longer is aggressive toward other children, less susceptible to being influenced by negative behaviors, and better able to advise staff when there is a conflict with another child. He no longer requires 1:1 supervision, is not considered an elopement risk, has not attempted to elope, has shown improvement in ability to perform activities of daily living, including hygiene, and is better able to verbalize his needs or wants to staff. (Saunders Test. 7/15/09 hearing) Ms. Saunders spoke very positively about the Student and his progress with her.
- f. Ms. Saunders understands the Student to be developmentally delayed but was not aware of his precise diagnosis or IDEIA-eligibility classification. (Saunders Test. 7/15/09 hearing)

139. Ms. Ricciardelli testified as follows:

- a. Ms. Ricciardelli operates a community-based arts and crafts program in the New Haven area for children ages 6 to 18. The Student has been an active participant in that program for the past 4 years, and she has had an opportunity to observe and

interact with him as a participant in that program. She has not observed the Student to present with any behavioral problems and he has never been physically aggressive toward staff or other participants. She reported that at times he seems “distant” or “in his own world” but once he is given an activity he will focus on it. She once observed him participating in a karate class at an Open Choice school. She observed him to be participating appropriately in the class. (Ricciardelli Test. 7/17/09 hearing)

- b. Ms. Ricciardelli is not a certified teacher and has no formal training as a mental health service provider. She has not attended any IEP team meetings for the Student or observed him at Celentano School or reviewed any of his school records. She believes the Student is on the autism spectrum based on the following behavioral manifestations: he has communication skill deficits, he does not make eye contact when he does communicate, and he shows some compulsive features she associated with Asperger’s Syndrome (lines things up and counts). (Ricciardelli Test. 7/17/09 hearing)

140. Ms. Bromell testified as follows:

- a. She has known the Student as a friend of the family and babysitter since the Student was 3 years of age. She has an Associates Degree in early childhood development but is not otherwise trained and has not otherwise worked as a mental health service provider. She is not a certified teacher and has never taught the Student. She has observed the Student at Celentano School in gym class several times and at a school play and practices for the play. She has talked with some Celentano School staff members about the Student but has not attended any IEP team meetings for the Student. (Bromell Test. 7/15/09 hearing)
- b. The Student is inquisitive, personable and smart. She has observed him playing with her own children, who are somewhat older, and in the neighborhood generally, and reported no instances of what she would consider aggressive behavior toward other children. In that context, she described an incident in which the Student, when he was younger, responded to a neighbors dog by throwing his bicycle at the dog. The Student had been riding his bicycle and the dog was lunging at him and barking, and Ms. Bromell believes the Student felt that the dog was threatening his safety. (Bromell Test. 7/15/09 hearing)