

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Student<sup>1</sup> v. Bethel Board of Education

Appearing on behalf of Student:

Attorney David C. Shaw  
Law Office of David C. Shaw, LLC  
34 Jerome Avenue, Suite 210  
Bloomfield, CT 06002

Appearing on behalf of the Board:

Attorney Susan C. Freedman  
Attorney Christopher A. Tracey  
Shipman & Goodwin LLP  
One Constitution Plaza  
Hartford, CT 06103-1919

Appearing before:

Attorney Janis C. Jerman, Hearing Officer

**FINAL DECISION AND ORDER**

Procedural Posture

A special education hearing in the above-captioned matter was requested by Student's Attorney via letter dated November 19, 2009.<sup>2</sup> It was received by the Bethel Board of Education ("BBOE") on November 20, 2009. The 30-day resolution period ran through December 20, 2009 and the original deadline for mailing the final decision and order was February 3, 2010.

A pre-hearing conference was held on December 17, 2009. Attorney Shaw appeared on behalf of Student and Attorney Freedman appeared on behalf of BBOE.

Issues

The issues identified for hearing are:

1. Did BBOE propose an appropriate program for Student for the 2008-09 school year?
2. Did BBOE propose an appropriate program for Student for the 2009 extended school year?
3. Did BBOE propose an appropriate program for Student for the 2009-10 school year?
4. Was BBOE's action in placing Student in a self-contained afternoon program during the 2009-10 school year appropriate?

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<sup>1</sup> In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g and related regulations at 34 CFR § 99, this decision uses "Student", "Parents", "School" and titles of school staff members and certain other witnesses in place of names and other personally identifiable information. The school district is identified by name, as are district-wide staff whose identity will not reveal the particular school, program, or student.

<sup>2</sup> All dates are 2010 unless otherwise indicated.

5. Did BBOE properly support Student in the regular kindergarten class during the 2009-10 school year?
6. If the answer to any of the above issues one through five is no, what shall be the remedy?
7. Did BBOE violate Parents' procedural rights under the IDEA by obstructing their right to an independent educational evaluation?
8. Did BBOE violate Parents' procedural rights under the IDEA by failing to offer an appropriate IEP by the beginning of the 2009-10 school year?
9. Did BBOE violate Parents' procedural rights under the IDEA by continuing Student's diagnostic placement?
10. If the answer to any of the above issues seven through nine is yes, what shall be the remedy?

Via e-mail dated January 8, Student's Attorney requested an extension of the mailing date from February 3 to March 15 because the parties were not able to identify sufficient mutually available dates to complete the hearing prior to the mailing date. After fully considering the positions of the parties, the Hearing Officer granted an extension of the deadline to mail the final decision and order until March 5.

The Hearing Officer offered the parties numerous dates for hearings but they were only mutually available on one of the offered dates. The hearing convened on January 15, at which time both parties made opening statements and Mother testified on direct examination.<sup>3</sup> At said hearing, Student's Attorney's January 13 request for an additional extension of the deadline for mailing the final decision and order was considered. The request was made to address continued scheduling issues. The request for an extension of the mailing date was granted on the record after full consideration of the positions of the parties. The deadline for mailing the final decision and order was extended to April 4.

Two hearings scheduled in February were cancelled, one due to weather and one due to a change in the federal trial schedule of Student's Attorney.

On February 10, Student's Attorney filed a Motion For Order Enforcing Stay-Put Placement. The motion sought to have BBOE "rearrange the related services within the Student's revised schedule, to the extent possible, not to terminate the related services altogether." The motion requests that the Hearing Officer "order [BBOE] to provide the related services set out in the IEP during the morning session to the extent possible, and to work with the family to schedule any related services that cannot be delivered during the morning session during the afternoon."

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<sup>3</sup> The order of testimony of witnesses, all of whom testified under oath, is listed in Attachment A.

BBOE's Attorney filed a timely objection on February 17, arguing that the last-implemented IEP "on its face requires related services to be delivered outside of the regular education kindergarten setting." BBOE argued that Student's IEP requires him to be fully included in morning kindergarten and receive related services in the afternoon in a non-inclusion setting and that stay put "requires the maintenance of this status quo."

Student's requested stay put remedy would have required BBOE to modify the IEP as to 1) the number of hours Student spends in the regular classroom; 2) the number of hours Student spends in the self-contained classroom; 3) the number of service hours to be provided since he is only present during half day instead of the full day; and 4) the location of services. The stay put requirement of the IDEA does not permit a party to amend the IEP in terms of service hours or location of services to conform to a unilateral placement. The Hearing Officer does not have discretion to design an educational placement for purposes of a stay put order and the stay put placement is "the placement that was in effect at the time of the student's last-implemented IEP."

The Hearing Officer found that the November 6, 2009 IEP, including the service hours, classroom identifications, and schedule identified in it, served as the current educational placement for purposes of stay put and ordered stay put accordingly.

The March 16 hearing was scheduled to begin with cross-examination of Mother. On March 12, Student's Attorney informed the Hearing Officer that Mother was unable to continue testifying due to illness. Student's Attorney moved for an order "excusing her from cross-examination and postponing the decision as to what weight her testimony should be given or whether her testimony should be stricken until after the Hearing Officer hears all the evidence and can make a more accurate assessment of the importance of her testimony." BBOE asked the Hearing Officer to dismiss the case without prejudice or strike the testimony. After fully considering the positions of the parties, the direct testimony of Mother was excluded from evidence.

The parties' attorneys participated in oral argument regarding several outstanding evidentiary motions on March 16. Hearings were held on March 17 and 18. On March 18, Student's Attorney filed an additional request for an extension of the mailing date to allow the parties additional hearing dates. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended to May 4.

Hearings were held on March 19, 26, and 31, and April 12, and 15. On April 15, Student's Attorney filed a request for an additional 30-day extension of the mailing date because additional hearing dates were

necessary to complete testimony. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended to June 3.

Hearings were held on April 27, and May 6, 17, and 19. On May 20, Student's Attorney filed a request for an additional 30-day extension of the mailing date because additional hearing dates were necessary to complete testimony. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended to July 3.

Hearings were held on May 24 and 27. The parties were not mutually available for any hearing dates in June due to vacation and trial schedules. On June 11, BBOE's Attorney filed a joint request of the parties to extend the mailing date in order to complete testimony and accommodate a briefing schedule. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended to August 2. Five additional hearing dates were scheduled and the parties were notified that additional hearing dates would not be granted absent exceptional circumstances.

Hearings were held on July 15, 20, 21, 23, and 26, at which time testimony was completed and the parties made closing statements. On July 28, Student's Attorney filed a request to extend the mailing date in order to permit the parties to file written briefs. After fully considering the positions of the parties, the request was granted and the deadline for mailing the final decision and order was extended to September 1.

The parties were given until September 1, to file briefs and proposed findings of fact given the understanding that the parties would request another extension of the mailing date to permit the Hearing Officer time to prepare a complete and thorough decision. On August 27, Student's Attorney filed such request for an extension of the mailing date. After fully considering the positions of the parties, the request was granted and the deadline for mailing the final decision and order was extended to October 1.

The parties filed their briefs and proposed findings of fact on September 1. On September 22, the Hearing Officer notified the parties that she was working on the final decision and that the decision needed to be sent to the Due Process Unit by September 24 in order to have it processed and mailed by the then-current mailing date. The Hearing Officer also notified the parties that, due to a busy hearing schedule and unexpected family matter in September, she was not prepared to issue a thorough and complete decision by the current deadline given the voluminous testimony and documentary evidence in the case.

On September 22, BBOE's Attorney filed a request for an extension of the mailing deadline to permit the Hearing Officer sufficient time to review the extensive evidence and issue a decision. After fully

considering the positions of the parties, the request was granted and the deadline for mailing the final decision and order was extended to October 31.

#### Findings of Relevant Fact<sup>4</sup>

1. Student is currently a seven year-old child who resides with his Parents in Bethel, CT (Exh. B-7, B-43; Testimony of Father). Father is employed as an attorney (Testimony of Father).
2. At all relevant times, Student was identified by BBOE as a child in need of special education and related services under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et. seq. (“IDEA”) under the disability category of Autism (Exh. B-7, B-43; Testimony of Pica). Student’s disabilities result in language delays, atypical social interactions, maladaptive behaviors, delayed academic skills, and difficulty generalizing skills.
3. Student requires a program of specialized Applied Behavioral Analysis (“ABA”) instruction and classroom supports, as well as related services including speech and language, occupational, and physical therapies (Exh. B-7, B-11, B-13).
4. Student attended the Birth-to-Three program on the recommendation of his pediatrician (Testimony of Father).
5. When Student reached his third birthday in May 2006, he was placed in the BBOE’s preschool program where he remained until February 2007 (Exh. B-7 at 54; Testimony of Father, Pica). In February 2007, Parents withdrew Student from BBOE’s preschool program and placed him at a private nursery school in Bethel (“Private Nursery School I”) and at a private provider of special education services (“The Center”) in Norwalk, where he remained for the rest of the 2006-07 school year (Testimony of The Center Director).
6. The Center is a private provider of special education services to individuals with autism and other developmental disabilities. The Center operates on a full-service model in that it primarily provides one-to-one programs for young children until they “age-out” at which time they are transitioned to a preschool with support services. Beginning at age 4.5 to 5.5, The Center decreases one-to-one services and increases participation in preschool with the goal that, by the time the child is eligible for kindergarten, he is able to participate in a public school kindergarten (Testimony of The Center Director).

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<sup>4</sup> Findings of Fact are cited as “FOF” in the discussion section.

7. The Center is not a state-approved school. The Center does not employ speech-language pathologists, occupational therapists, physical therapists, or certified teachers (Testimony of The Center Director). Staff at The Center have never given Student a comprehensive standardized assessment and are not aware of any standardized assessments conducted by anyone but BBOE (Testimony of The Center Director).
8. In addition to providing special education services, The Center is an approved day-care center. Student occasionally attends activities at The Center with children from the day-care (Testimony of The Center Director).
9. Student attended Private Nursery School I, which did not include any other children with disabilities, with a paraprofessional shadow from The Center (Testimony of Father, The Center Director). In addition, a BCBA from The Center came to Student's home on the weekends and Student also received private occupational therapy, speech and language therapy, and physical therapy from private providers (Testimony of The Center Director).
10. Parents and BBOE entered into a Mediated Settlement Agreement in November 2007 that resolved disputes regarding the 2007-08 school year (Exh. B-2). The agreement waived the obligation of BBOE to create an IEP for Student for the 2007-08 school year (Stipulation of Attorneys). The agreement provided that Student would be privately placed for the 2007-08 school year. During the 2007-08 school year, Student attended The Center and Private Nursery School I and received speech and language therapy from a private provider ("Private Speech-Language Pathologist") (Exh. B-7; Testimony of Father, Speech-Language Pathologist). The agreement also provided that BBOE would plan a program for Student for the 2008-09 school year (Testimony of Pica).
11. On February 26, 2008, Linda Pica, BBOE Director of Special Education and Pupil Services ("Pica") wrote to Parents to begin planning Student's transition from The Center to BBOE's Elementary School, in fulfillment of the terms listed in paragraph four of the Mediated Settlement Agreement. The letter indicated that BBOE staff would observe Student at The Center, Private Nursery School I, and Private Speech-Language Pathologist. They would also review data and reports from these service providers and perform an evaluation of Student in March. Consent forms were enclosed with the letter. Pica also indicated that they would like to meet to talk about Student's needs and get Parents' input prior to planning Student's IEP at a May PPT meeting (Exh. B-2; Testimony of Pica).
12. Pica contacted Parents by phone to discuss details of the evaluation and transition plan (Testimony of Pica).

13. On February 29, 2008, Mother signed the requested forms to consent to evaluations and release forms to permit BBOE to get information from Student's private providers, including The Center (Exh. B-3). On May 21, 2008, Mother signed a release of confidential information to permit Student's private occupational therapist to provide evaluations to BBOE (Exh. B-5).
14. BBOE's consent forms permit an on-going two-way conversation between BBOE staff and the outside providers (Testimony of Pica).
15. BBOE's Board Certified Behavior Analyst ("BCBA") observed Student at both The Center and Private Nursery School I. He observed Student in a play session at The Center on April 1, 2008; in an academic session at The Center on April 3, 2008; and at Private Nursery School I on April 11, 2008 (Exh. B-7; Testimony of BCBA). During the observations at The Center, BCBA had access to look at Student's program book, which contained up to two to three months of data and program listings (Testimony of BCBA; The Center Director). BCBA did not receive a written copy of any information (Testimony of BCBA).
16. BBOE's Speech-Language Pathologist observed Student at Private Speech-Language Pathologist (Exh. B-7).
17. BBOE's Physical Therapist, Occupational Therapist, Speech-Language Pathologist, Special Education Teacher, and School Psychologist completed evaluations of Student in May 2008. BCBA completed observations and recommendations of Student in May 2008 (Exh. B-7).
18. On May 2, 2008, Pica sent Parents notice of a PPT meeting scheduled for May 29, 2008 (Exh. B-7). The notice indicated that the purpose of the meeting was to review evaluation results and determine eligibility for special education and to develop, review, or revise the IEP.
19. On May 22, 2008, Pica wrote to The Center indicating that BBOE staff observed Student at The Center but did not receive any data, summary of programs, or progress reports. The letter requested The Center to fax data summary sheets, lists of programs, and progress notations to allow BBOE to get a clear picture of Student's current levels of progress (Exh. B-6; Testimony of Pica). Parents were copied on the letter. The Center received the letter but did not contact BBOE or provide BBOE any documents in response to the request (Testimony of The Center Director).
20. Prior to the PPT convening to plan Student's 2008-09 IEP, Parents instructed The Center Director to not provide any information to BBOE because they were going to reject the IEP (Testimony of The Center Director).

21. Prior to the PPT meeting, Pica and Special Education Supervisor met with Parents to determine whether they preferred that Student be placed in preschool or kindergarten for the 2008-09 school year. Parents indicated that they thought the preschool setting was more appropriate for Student. The PPT adopted this recommendation (Exh. B-7; Testimony of Pica).
22. On May 29, 2008, BBOE convened a duly noticed PPT meeting to plan Student's IEP for the 2008-09 school year (Exh. B-7). Parents attended the meeting (Testimony of Father). The PPT determined that Student was eligible for special education under the primary disability category of autism. The PPT reviewed and documented Student's present levels of educational performance, Student's evaluations, and developed goals and objectives for him (Exh. B-7). The IEP developed included full inclusion in BBOE's Preschool program<sup>5</sup> plus individual ABA programming; specialized instruction in the integrated preschool; 2.5 hours per week of speech and language therapy; 1 hour per week of occupational therapy; 1 hour per week of physical therapy; weekly consultation with BCBA; team meetings; and Parent training (Exh. B-7). The occupational, speech and language, and physical therapies were to be provided in the resource room. The IEP provided that the PPT would meet six weeks after school started in order to revise the IEP, if necessary after observing Student in the classroom.
23. A Behavioral Support and Intervention Plan was adopted as an addendum to the IEP on June 3, 2008 (Exh. B-7).
24. On June 5, 2008, Pica mailed a copy of the proposed 2008-09 IEP and evaluation reports to Parents. The transmittal letter indicated that Pica would be happy to meet with Parents to address any questions regarding the IEP (Exh. B-7).
25. Parents did not visit BBOE's preschool program, did not meet with Speech-Language Pathologist or School Social Worker, or raise any concerns about the IEP (Testimony of Father, Pica).
26. On July 14, 2008, Pica had a phone conversation with Father to inquire about whether he had any concerns about the IEP because Student was not yet registered for school (Exh. B-9). Pica offered to meet with Parents to discuss the IEP, to convene a PPT meeting to consider revisions to the IEP, and extended a second invitation for Parents to visit BBOE's preschool and meet the new Speech-Language Pathologist (Exh. B-9).

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<sup>5</sup> The full integrated preschool program consists of four half-days. Student's IEP added an additional full-day for related services and ABA instruction (Testimony of BCBA, Pica).



27. Via letter dated July 23, 2008, Pica confirmed their phone conversation in writing and reiterated the information discussed (Exh. B-9). Father does not recall whether he ever met with Pica in response to her offer to discuss the IEP (Testimony of Father).
28. On August 1, 2008, Pica sent The Center a release form signed by Parents and requested updated program information, procedures, data summaries, updated assessments and results (Exh. B-10; Testimony of Pica). The Center received the letter but did not contact BBOE or provide BBOE any documents in response to the request (Testimony of The Center Director; Pica).
29. On August 5, 2008, Parents wrote to Pica indicating that the proposed IEP “is an inappropriate program lacking the intensity, expertise and individualization” that Student is entitled to (Exh. B-11). The letter indicates that the biggest problem is that the proposed program does not include an appropriate ABA therapy program. Parents expressed concern that the assigned paraprofessional will “lack the training, experience, and qualifications to properly and effectively administer an appropriate program of ABA therapy.” Parents indicated that they will assume the program to be inappropriate until provided with the name and credentials of the assigned paraprofessional. Parents also indicated that they had been advised that a 30-hour per week ABA program was appropriate for Student. Parents requested that speech and language therapy be increased from 2.5 to five hours per week and that they be provided with the names and qualifications of all Student’s service providers. Parents indicated that they intend to place Student in a private placement and seek reimbursement from BBOE (Exh. B-11).<sup>6</sup>
30. On August 18, 2008, Pica again sent The Center a signed parental release and requested updated program information, procedures, data summaries, updated assessments and results (Exh. B-12). The Center received the letter but did not contact BBOE or provide BBOE any documents in response to the request (Testimony of The Center Director, Pica). Similarly, Speech-Language Pathologist requested documentation, including lists of Student’s objectives, from Private Speech-Language Pathologist but did not receive any documentation (Testimony of Speech-Language Pathologist).
31. On August 28, 2008, BBOE convened a duly noticed PPT meeting to review or revise Student’s IEP for the 2008-09 school year, which had already started, and to discuss Parents’ concerns (Exh. B-13; Testimony of Pica). Parents attended. The PPT made revisions to the IEP, provided Parents with additional information about the IEP, and answered questions raised in the August 5, 2008 letter. The

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<sup>6</sup> Father testified that he did not feel satisfied and was “suspicious about things.” (Testimony of Father).

PPT increased Student's speech and language therapy from 2.5 hours to three hours per week<sup>7</sup> in the form of two hours of individual sessions in the resource room and one hour of individual sessions in the preschool classroom, increased the speech language consultation from half hour to a minimum of three-quarters hour per month, and revised Student's physical therapy services (Exh. B-7; B-13). Team meetings were increased to every three weeks for the first three months of Student's enrollment and then switched to a monthly schedule. Pica explained the qualifications of staff, including what licenses and/or certifications are required.<sup>8</sup>

32. The PPT clarified that the special education services provided both in the special education classroom (18.33 hours per week) and in the regular education classroom (9.17 hours per week) are ABA-based services. Physical therapy services are provided one-half hour per week as individual pull-out services and one-half hour per week of group service in the preschool classroom. The PPT clarified that the speech and language therapy, occupational therapy, and physical therapy services are provided by the related service professional for each respective service (Exh. B-7; B-13). Student will be in the integrated preschool classroom for 10.67 hours per week, which is the full-time preschool class time. Regular preschool at BBOE's Elementary School is four three-hour days per week, for a total of twelve hours. The PPT scheduled Student in a five-day program (32.5 hours per week) because he needed a more intensive, consistent program (Testimony of Pica). The additional instructional hours were intended to allow pre-teaching to permit Student to learn grade-level skills and receive related services. The goal was to teach Student skills and help him generalize those skills in a typical school environment. The intensity of the full program was atypical for a preschool student (Testimony of Pica).
33. The PPT proposed that Dr. Michael Powers and Dr. Mark Palmieri perform an evaluation of Student to provide the school and Parents with a new baseline of shared understanding of Student's needs and learning abilities. The evaluation would consist of an in-school observation of Student with a follow-up consultation six months later to observe Student, review data, and provide feedback to the PPT. The evaluation was tentatively scheduled for September 24, 2008. Parents declined the offer for the independent evaluation (Testimony of Pica).
34. Parents were offered the opportunity to visit the program and meet Student's service providers. Parents never visited the program or met the staff members (Testimony of Father, Pica).

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<sup>7</sup> Student was receiving three hours per week of speech and language therapy from his private provider (Testimony of Speech-Language Pathologist).

<sup>8</sup> Due to ongoing labor negotiations, BBOE did not have job descriptions for the newly created ABA provider position. BBOE hired the first ABA provider specifically to work with Student (Testimony of Pica). Prior to creation of the ABA provider position, BBOE had paraprofessionals qualified to work with Student.

35. Pica indicated to Parents that two written requests for information and data summaries had been sent to The Center and that no response had been received (Exh. B-13). Mother indicated that she received verbal information from The Center and had no written data to share.
36. Parents expressed concern about returning Student to the preschool program, whether he will make progress, and whether they risk losing their place for services at the present provider.<sup>9</sup> Staff indicated that they would share data with Parents on a regular basis and invited Parents to visit the classroom. Pica explained the qualifications of all certified and licensed staff assigned to work with Student (Exh. B-13). Following questions about the qualifications of the paraprofessionals, Pica indicated that she would provide Parents with additional information. Pica did not provide the additional information about the Paraprofessionals' qualifications (Testimony of Father).
37. On September 4, 2008, Pica wrote to Parents thanking them for their active participation in the PPT and transmitting the August 28, 2008 IEP. Pica invited Parents to contact her if there was anything that was not clear or not addressed, indicated that she would provide further information about the paraprofessionals who would be working with Student, and indicated that Student would have the benefit of ABA-based instruction. Enclosed with the letter were consent for release of information, reevaluation, and placement in special education (Exh. B-14).
38. Parents did not return the consent forms. There was no contact between BBOE staff and Parents from September 4, 2008 to April 23, 2009 (Testimony of Pica).
39. During the 2008-09 school year, Student received 14 hours per week of one-to-one ABA programming at The Center. In addition, he attended Private Preschool II in Ridgefield for 7.5 hours per week with a paraprofessional shadow from The Center. Other than Student, the other seven children in the private preschool were typically developing peers. Student also received six hours of service per week in his home from The Center staff. In addition, Student received three hours per week of private speech and language therapy, one hour per week of private physical therapy, and one hour per week of private occupational therapy (Exh. B-16; Testimony of The Center Director).
40. On April 23, 2009, Pica wrote to Parents inquiring as to whether they intended to send Student to BBOE's Elementary School for the 2009-10 school year. She indicated that, if they intend to enroll Student, she would like to schedule a PPT meeting "in the next few weeks." She indicated that BBOE staff would contact Student's current service providers to learn more about his present level of

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<sup>9</sup> Father first testified that Parents did not go through their concerns in detail at the PPT but rejected the IEP and later sent a letter regarding their objections. He later testified that he explained to the PPT why he thought the IEP was inappropriate.

functioning in order to plan for his needs. Enclosed with the letter were release forms for his private school, ABA provider, speech and language therapist, and occupational therapist. The forms included a note for Parents to fill in the names of the relevant service providers (Exh. B-15).

41. On May 4, 2009, Mother e-mailed Pica and indicated that they would like to enroll Student in kindergarten and would like to attend a PPT meeting. She indicated that she would return the release forms to Pica (Exh. B-56, P-17).
42. On May 8, 2009, Father wrote to Pica informing her that they intend to enroll Student in BBOE's Elementary School for the upcoming 2009-10 school year and requesting that a PPT meeting be scheduled as soon as possible (Exh. B-4). Father's letter also indicated that he thought that the release forms provided by the school were written to permit BBOE to provide information to the private service providers, not the other way around. He indicated that he re-wrote the forms to be one form listing BBOE and the service providers together and allowing a two-way release of information. He indicated that he would sign the revised form that weekend after he got the proper names of the service providers. Father also indicated that the forms were too vague to the extent that they requested "other information relevant to educational planning" and so he omitted that category from his revised form. He also placed a time limit of June 30, 2009 on the releases. Parents did not send signed versions of the modified release form to BBOE (Testimony of Father, Pica).
43. Pica understood the letter to be refusal to give consent since the release forms had never been an issue for Parents in the past (Testimony of Pica). Father spoke with Pica about the forms and she indicated that they had always worked. The forms were identical in wording to the forms that Parents signed the previous year (Exh. B-4, B-15).
44. In the summer of 2009, Student attended The Center 15 hours per week and Private Speech-Language Pathologist at Parents' expense (Testimony of Father, Speech-Language Pathologist).<sup>10</sup> Most of this time was one-to-one instruction (Testimony of The Center Director).
45. On June 4, 2009, BBOE convened a duly noticed PPT meeting to develop, review, or revise Student's IEP and to conduct an annual review (Exh. B-16). Parents attended (Testimony of Father). At the PPT meeting, BBOE modified the release forms based on Father's concerns. Father signed consent forms permitting BBOE staff to conduct a reevaluation of Student and releases permitting Private Speech-

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<sup>10</sup> Father testified that he thought Student was receiving three hours per week of speech and language therapy. Speech-Language Pathologist testified that, based on her observation of Student at his private provider, she believed that he was receiving 1.5 hours of such therapy in summer 2009.

- Language Pathologist, Private Nursery School II,<sup>11</sup> and Student's private occupational therapist and physical therapist to provide information to BBOE (Exh. B-17).
46. During the June 4, 2009 PPT meeting, Parents reported that Student had received occupational therapy for part of the 2008-2009 school year, until it was replaced by physical therapy in February 2009 (Exh. B-16). At the June 4, 2009 PPT meeting, Parents indicated that Student's speech is lagging behind, that he is still not conversational, that he knows what he wants to say but can't get it out, and that although he was requesting using just one word he was now using simple sentences such as "I want water." (Exh. B-16).
47. The IEP developed for the 2009-10 school year, during which Student would attend BBOE kindergarten, indicated that it was "a diagnostic placement, affording the opportunity to assess [Student's] needs in the school setting, and revision of the IEP as determined based on further assessment." (Exh. B-16 at 3). A diagnostic IEP was necessary because Student had not attended BBOE's schools in the previous year and the PPT did not have any contact with Student for the previous year. The IEP indicates that the diagnostic placement IEP was explained to Parents as being up to eight weeks of diagnostic placement, beginning on August 25, 2009 at the start of the 2009-10 school year, with a PPT meeting every two weeks to review observation results and assessments and to make revisions to the IEP. Evaluating a child with autism provides some information but the PPT gained much more information by working directly with Student since generalization is often a problem for such children (Testimony of Pica).
48. The diagnostic IEP included goals and objectives and identified the following services for Student: special education instruction, ABA programming, three hours per week of speech and language therapy, one hour per week of occupational therapy, one hour per week of physical therapy, consultation by BCBA, Occupational Therapist, Physical Therapist, and Speech-Language Pathologist, monthly team meetings, and parent training (Exh. B-16).
49. The PPT proposed to conduct a reevaluation of Student's skills in the areas of cognitive and adaptive skills, functional academics and readiness skills, speech language and communication, pragmatics, articulation, fine and visual motor skills, sensory processing abilities, gross motor skills, behavioral, social, communication, and classroom readiness. The reevaluation would consist of observations at Student's private providers and individualized assessments at BBOE school (Exh. B-16).
50. Mother reported that The Center staff offered to transition Student to BBOE school. Parents indicated that they want Student to attend morning kindergarten in the fall and that they plan to continue him in

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<sup>11</sup> Parents moved Student from Private Nursery School I to Private Nursery School II for the 2008-09 school year.

- private services in the afternoon, including services at The Center and at his private therapists (Exh. B-16). Mother also indicated that she would like coordination of the BBOE and The Center programs.
51. BBOE staff asked Parents to consider the pros and cons of splitting Student's program. They explained how the full-day program would be implemented at BBOE school and that specialized instruction using ABA programming with pre-teaching and reinforcement of necessary skills would best occur in the full-day program at BBOE school (Exh. B-16).
52. During the June 4, 2009 PPT meeting, the PPT told Parents that Student was eligible for Extended School Year ("ESY") services (Exh. B-16; Testimony of Pica, BCBA, Special Education Teacher, Occupational Therapist, Speech-Language Pathologist).<sup>12</sup> The PPT asked Parents whether they intended to have Student start at the beginning of the summer or in the fall. Parents indicated that they would continue Student's private services for the summer (Exh. B-16; Testimony of Father, Pica, BCBA). Parents never asked for ESY services or requested reimbursement for Student's summer program until filing for due process (Testimony of Pica). ESY would have included related services and individualized instruction but would not have included an integrated kindergarten class component (Testimony of Pica).
53. BBOE staff initiated the reevaluation and observation process shortly after the June 4, 2009 PPT meeting (Exh. B-19; Testimony of Pica, BCBA).
54. On June 9, 2009, BCBA e-mailed The Center seeking to schedule an observation of Student. The Center indicated that they needed permission from Parents before scheduling an observation (Exh. B-19, P-17).
55. On June 10, 2009, BCBA e-mailed Mother requesting consent to observe Student at The Center (Exh. B-19, P-17). On June 11, 2009, Mother signed a release permitting The Center to provide information to BBOE (Exh. B-18).
56. On June 15, 2009, Pica sent the June 4, 2009 IEP to Parents. She reminded them that it was a diagnostic placement IEP to provide an opportunity to revise the IEP based on the planned observations and reevaluations (Exh. B-20). In the letter, Pica indicated that BBOE planned visits to the school for Student to permit transition opportunities for Student to meet the special education teacher and see the classroom. Pica invited Parents to call her with questions or anything they would like to discuss after reviewing the IEP.

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<sup>12</sup> Father testified that there was no discussion of ESY at this meeting.

57. On July 14, 2009, Father wrote to Pica indicating that Parents did not know what a “diagnostic placement IEP” was and objecting to it until they receive “a technical and accurate explanation”<sup>13</sup> (Exh. B-21). Father also indicated that BBOE has had five weeks to perform their reevaluation of Student and that the eight week evaluation period proposed at the PPT meeting was too long. He further indicated that “[c]ontinuing to delay the presentation of an IEP for us to evaluate puts us at risk of not having time to plan for and secure alternative arrangements for [Student], if necessary, and will detrimentally delay and deprive [Student] of his education and therapy.” (Exh. B-21). Father further indicated that he had informed the private service providers that they consent to BBOE’s reevaluation and observation of Student but that BBOE will have to pay any charges associated with that process. Father also indicated that Student’s primary disability should be indicated as both Autism and Speech or Language Impaired. He also indicated that he was reserving full comments until after receiving a definition of “diagnostic placement IEP.”
58. On July 17, 2009, Pica wrote to Parents to explain the term “diagnostic IEP.” She indicated that, since BBOE did not have consent to gather information prior to the June 4, 2009 PPT meeting, they did not have sufficient information to make meaningful revisions to the goals and objectives planned for the previous school year, which Student did not attend at BBOE Preschool. She indicated that the IEP was labeled as diagnostic to communicate that BBOE anticipated revising the goals and objectives based on information gathered during the reevaluation (Exh. B-22). Pica indicated that the law allows for a diagnostic IEP that begins on the day he starts at BBOE school and lasts for up to eight weeks and that it is still a full IEP. She further indicated that they will meet every two weeks until all of the goals and objectives are updated.
59. Pica also indicated that the IEP form allows for one primary disability to be noted. She indicated that BBOE staff know and agree that Student’s disability includes needs in speech and language and other skills, as identified on pages four and five of the IEP (Exh. B-22).
60. Pica invited Parents to contact her if they had any questions, if they wanted to meet with her to review the IEP, or if her explanation of the diagnostic IEP was not sufficient to answer their questions. She also indicated that Parents can contact the Special Education Supervisor with questions about Student’s reevaluations or IEP (Exh. B-22).

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<sup>13</sup> Father testified that, at the June 4, 2009 PPT meeting, the PPT said that the IEP would be diagnostic and Parents asked questions about it.

61. The PPT originally proposed that Student attend the afternoon kindergarten session so that he could receive related services and pre-teaching in the morning (Testimony of Pica, Special Education Teacher). On August 10, 2009, Mother requested that Student be moved to the morning kindergarten session to accommodate his private speech and language therapist and the family's schedule in the afternoons and so that he would not miss any kindergarten class time (Exh. B-56, P-17). If he attended afternoon kindergarten, Student would miss 2.5 hours per week due to early pick-up by Mother (Exh. P-17). She was concerned about him missing time with typical peers. Parents asked that Student not be removed from the kindergarten classroom to receive his related services (Testimony of BCBA, Occupational Therapist, Pica).
62. Student began attending BBOE's Elementary School on August 25, 2009 with a full diagnostic IEP in place (Testimony of Pica, Special Education Teacher). At that time, he attended the morning kindergarten in the regular education class with a full-time one-to-one ABA Provider and received ABA programming and related services in the resource room in the afternoons (Exh. B-16, Testimony of BCBA, Special Education Teacher, Pica). Regular morning kindergarten at BBOE's Elementary School is 16.25 hours per week (Testimony of Pica). The afternoon session consisted of 9.25 hours of ABA programming, three hours of speech and language therapy, one hour of occupational therapy, and half hour of physical therapy (Testimony of Pica). Student came to their program with a strong set of academic readiness skills but he demonstrated weakness in the ability to generalize those skills in a new setting (Exh. B-43 at 36). Student transitioned well to the kindergarten setting and the afternoon setting, which provided opportunities for pre- and post-teaching of skills and activities being offered in the kindergarten class in order to increase his independent performance.
63. Student continued at The Center for three hours on Saturdays (Testimony of The Center Director).
64. On September 1, 2009, Father wrote to Pica demanding that the diagnostic placement IEP be terminated immediately and that BBOE provide a final IEP. He stated that BBOE had sufficient time and information to create a final IEP. He stated that further delay under the diagnostic IEP is a violation of Student's rights and, if the final IEP is further delayed, they may have no choice but to place Student in a private placement at BBOE's expense (Exh. B-23).
65. On September 2, 2009, Pica wrote to Parents acknowledging receipt of the September 1 letter and indicating that she takes their concerns seriously. She indicated that, at the PPT meeting, they will address the diagnostic placement and suggest updates to Student's IEP (Exh. B-24). Pica indicated that



Student's rights had not been violated and expressed hope that they could reach mutual agreement at the PPT meeting on the following day.

66. On September 2, 2009, Father wrote to Pica to express his disagreement as to whether Student's rights had been violated. He restated his position that BBOE used the diagnostic IEP to avoid providing a final IEP before the first day of school which deprived Parents of their right to evaluate the IEP and secure alternative arrangements if the IEP was not appropriate and he insisted that BBOE terminate the diagnostic IEP and present a final IEP at the PPT on September 3, 2009 (Exh. B-25). He further stated that he believes that the current IEP is inappropriate and provides for unnecessary removal of Student from regular classes.
67. The proposed IEP did not remove Student from the regular morning kindergarten class for any related services or special education instruction (Exh. B-16; Testimony of Pica).
68. On September 2, 2009, Mother e-mailed Pica to indicate that The Center Director would attend the PPT meeting on September 3 to help answer questions (Exh. P-17 at 28). Less than an hour later, Mother again e-mailed Pica and indicated that The Center Director would not attend the PPT meeting (Exh. P-17 at 29).<sup>14</sup>
69. On September 3, 2009, BBOE convened a duly noticed PPT meeting to review or revise Student's IEP (Exh. B-26). Parents attended. At that meeting, the diagnostic IEP label was removed as requested by Parents and Student's goals and objectives were revised based on review of the reevaluation, observation, and data collection information. Student's kindergarten teacher reported that he was transitioning to the classroom and had a good start with learning routines. She indicated that he engaged in some loud vocalizations in the first couple days but that they decreased to the point of being minimal and were not disruptive to the class. The PPT reported that BCBA worked with the teachers and ABA providers to develop strategies that are working to reduce these vocalizations.
70. BCBA indicated that a goal of the kindergarten program is to teach a child how to respond to the natural environment of the classroom where the teacher, not the paraprofessional, is the focus.
71. Typical kindergarteners take several weeks to get used to the new environment (Testimony of Pica).
72. BBOE Speech-Language Pathologist, Occupational Therapist, and Physical Therapist discussed their reevaluations of Student which were completed, respectively, on July 28, 2009, August 27, 2009, and August 31, 2009. BBOE School Psychologist discussed her reevaluation which was complete in September 2009. BCBA discussed his observations to date and submitted an initial behavioral support

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<sup>14</sup> The Center Director testified that Parents never asked her to attend a PPT meeting.

- plan (Exh. B-26 at 34). Student requires specialized instruction, physical therapy, occupational therapy, and speech and language therapy to be successful in kindergarten (Testimony of Pica).
73. At the conclusion of the PPT meeting, Parents presented a pre-written letter to Pica indicating that they do not believe the IEP is appropriate or in the least restrictive environment (“LRE”) and requesting an independent evaluation of the program (Exh. B-26). Parents did not raise these issues during the PPT meeting. Nor did they express disagreement with any of the reevaluations or goals and objectives at the meeting (Testimony of Pica).
74. Pica denied the request for an evaluation of the school’s program but indicated that an independent educational evaluation (“IEE”) of Student would be provided (Exh. B-26).
75. On September 8, 2009, Pica sent Parents a copy of the September 3, 2009 IEP (Exh. B-28). She reiterated that the diagnostic label was removed from the IEP, that the request for an independent evaluation of the program was denied but that an IEE of Student will be planned if desired by Parents, that she and the Special Education Supervisor would be glad to further discuss Student’s IEP, and that BCBA will contact them to set up a visit to Student’s classrooms.
76. On September 10, 2009, Parents wrote to Pica indicating that they request an evaluation of Student, that they disagree with BBOE’s reevaluation and IEP, and that they will select an evaluator from a state list (Exh. B-29).
77. On September 10 and 11, 2009, Mother and BCBA exchanged e-mails to arrange a visit for her to Student’s classroom (Exh. B-30).
78. Mother visited Student’s classroom on September 16, 2009 (Testimony of Father).<sup>15</sup>
79. A duly noticed PPT meeting was convened on September 17, 2009 to review or revise the IEP and to review Student’s reevaluation (Exh. B-32). Parents attended. The PPT reviewed the educational and psycho-educational evaluations, which were the last two reevaluations to be completed for Student. They discussed and approved an IEE. There was continued discussion about the type of evaluation requested by Parents. Parents asked for an independent evaluation to determine whether the IEP is appropriate. Knowing that the ABA programming was very important to Parents, Pica suggested that the evaluator be a psychologist who regularly evaluates children with autism and who could also address the psychological evaluation and IQ scores (Testimony of Pica). Parents were provided with a copy of BBOE’s criteria for selecting an independent evaluator (Exh. B-27; Testimony of Pica).

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<sup>15</sup> Father testified that this observation played a role in the decision to remove Student from the afternoon program. Father did not observe Student in class.

80. The PPT reviewed Student's progress transitioning to BBOE's Elementary School and program. Physical Therapist, Occupational Therapist, and Speech-Language Pathologist provided updates regarding Student's progress (Exh. B-32). Father expressed concern about the standardized scores, how they were interpreted, and whether they would be used again for Student in the future. The special education teacher explained standardized scores and how they are used. No changes were made to Student's goals and objectives as a result of the IQ score (Testimony of Pica). Parents also expressed concern about LRE and indicated that they think Student should leave the public school after kindergarten and attend a kindergarten readiness program with a paraprofessional (Exh. B-32).
81. The PPT revised Student's goals and objectives, emphasized that Student would have full inclusion in the kindergarten program, which is a half-day program, plus specialized instruction and related services in the afternoon and would be assigned an ABA provider for full kindergarten class, recess, and lunch (Exh. B-32).
82. On September 17, 2009, at the conclusion of the PPT meeting, Parents submitted a letter indicating that they believe the IEP to be inappropriate in that it fails to provide Student with an education in the LRE. The letter further indicated that BCBA was still evaluating Student and still adding goals and objectives to Student's ABA program which Parents believe to be a delay resulting in violation of Student's rights. Parents insisted that "this program get completed immediately." (Exh. B-33).
83. On September 22, 2009, Pica e-mailed Parents about her efforts to identify an appropriate evaluator (Exh. P-17 at 48).
84. On September 24, 2009, Pica transmitted the September 17, 2009 IEP to Parents (Exh. B-32).
85. On September 25, 2009, Parents wrote to Pica indicating that they reviewed the resumes of the evaluators recommended by BBOE. Parents determined that one evaluator was not available and one would conduct a neuropsychological exam which they felt was not appropriate. Parents indicated that their concerns revolve around "the inappropriateness of school's evaluation and the inappropriateness of the educational services currently being offered" to Student. They further indicated that they object to the use of the Powers' Group given concerns of Fairfield County parents and that they object to Dr. Mayville because they believed he had worked with BBOE in the past and does not have extensive experience with children on the autism spectrum (Exh. B-34). Parents identified Dr. Eileen Luddy as the independent educational evaluator from a list provided by the State Department of Education. They indicated that Luddy was available on October 15 and 19, 2009 and that if she was not acceptable to BBOE, they would still have her perform the evaluation at their request.

86. On October 2, 2009, Pica responded in writing to Parents regarding identifying a mutually agreeable evaluator. She asked Parents to reconsider using the Powers' Group because she believed them to be well qualified to evaluate children with autism. She also indicated that she believed Mayville is well-qualified and that BBOE has not, in fact, worked with him in the past. Pica indicated that she left a message for Luddy in order to review her credentials and determine whether she meets BBOE's criteria for IEEs. She then asked for clarification as to what Parents are seeking in the evaluation. Pica knows of Luddy as a consultant on inclusion of children. The PPT proposed a psychological evaluation with observation in the school setting to address Parents' concerns about the appropriateness of Student's IEP and the standardized score results from the school's reevaluation (Exh. B-35).
87. On October 6, 2009, Parents wrote to Pica indicating that they would like an independent evaluation of whether or not the IEP meets Student's needs (Exh. B-36).
88. On October 9, 2009, Pica telephoned Father to discuss what type of evaluation he was seeking and to identify a mutually agreeable evaluator (Exh. B-37). At Father's request, Pica sent a letter to Parents outlining her questions regarding the issue.
89. On October 13, 2009, Pica wrote to Parents confirming the phone conversation that she initiated to understand what Parents wanted to achieve from the evaluation process. She indicated that, before making a decision about the evaluator, she needed to know the type of evaluation being requested. She indicated that Parents' objective of determining whether Student's IEP is appropriate does not tell her whether they are seeking an evaluation to assess inclusion, ABA programming, or another aspect. Pica reiterated that she was seeking to reach an understanding of what Parents want to accomplish. She agreed that Luddy had fine qualifications to conduct an evaluation and make recommendations regarding inclusion and programming for students with behavioral challenges but is not qualified to address concerns about the validity of the cognitive test scores or the design of Student's ABA programming (Exh. B-37).
90. On October 14, 2009, Father e-mailed Pica to inform her that Luddy had a personal matter come up that prevents her from performing an evaluation of Student on October 15. He indicated that they retained Weiss to perform the evaluation since Luddy was not available (Exh. P-17 at 75). Father included a link to Weiss' resume in the e-mail.
91. On October 15, 2009, Father wrote to Pica regarding the independent evaluation. He stated that Pica tried to prevent Parents from conducting an independent evaluation by first arguing that they were seeking to evaluate the school program, rather than their child, then that the evaluator they picked was

- not qualified, and then that they could not have an independent evaluation unless they identified the specific type of evaluation requested (Exh. B-38). Father indicated that Pica's attempts border on bullying. Father objected to being required to identify the specific area the evaluation should cover. Father claimed that Student's skills deteriorated since he was placed in BBOE's program.
92. Despite his earlier e-mail indicating that Luddy was not available for personal reasons, Father further indicated that Pica waited until October 15, 2009, the only date Luddy had available to visit the school, to tell them that the evaluation could not go forward. He indicated that Luddy was no longer available and so they selected Dr. Michael Weiss as the independent evaluator and that Weiss would perform his evaluation on October 20, 2009 (Exh. B-38).
93. Via a conversation on October 16, 2009 and via letter dated October 19, 2009, Pica informed Parents that Weiss, a psychologist, is not licensed and that BBOE criteria for an IEE by a psychologist include that he be licensed to practice in Connecticut. Pica spoke with Weiss, who indicated that he does not conduct educational evaluations but developmental evaluations. Pica indicated that BBOE could not agree on Weiss since he is not licensed. Pica suggested two other evaluators (Exh. B-39). She also indicated that her conversation with Mother was very helpful in understanding what Parents are requesting. Pica indicated that she felt that Luddy can be appropriate for that evaluation. She also asked Parents to reconsider the Powers' Group because their evaluations are very comprehensive, specific, and detailed. Pica indicated that if Parents proceed with Weiss, it will not be funded by BBOE (Exh. B-39).
94. On October 20, 2009, Weiss observed Student for two hours on one occasion in the afternoon special education session; for three hours on one occasion in the regular education kindergarten classroom; and for 90 minutes at The Center in a natural environment language session. Weiss also had extensive discussions with Mother. He reviewed some of the evaluations completed by BBOE staff and spoke to three employees at The Center. Weiss also spoke to BCBA, Special Education Supervisor, Speech-Language Pathologist, and Paraprofessional (Testimony of Weiss).
95. During Weiss' observation at The Center, Student received no direction from the therapist but was permitted to move around the room and select his own play agenda (Testimony of Weiss). Student engaged in independent conversation during this free play period.
96. On October 22, 2009, BCBA met with Mother to discuss vocal stereotypic behaviors and possible treatment options and to discuss error correction procedures to increase the teaching effectiveness of prompts (Exh. B-41). BCBA and Mother made a joint decision as to which strategies to use to decrease vocal stereotypy.

97. On October 23, 2009, BCBA wrote up classroom support guidelines with the strategies agreed upon with Mother the previous day (Exh. B-41).
98. On October 29, 2009, Parents wrote to Pica again expressing concern about the appropriateness of Student's IEP. They noted particular concern about the afternoon portion of the program where Student receives small group instruction with other disabled children (Exh. B-42). Parents claimed that BBOE refused to make changes to the IEP, has not provided an appropriate program, and has not provided a program with instruction in regular classes with adequate supports. Parents indicated that they saw a regression in Student's skills as a result. Parents rejected the IEP and decided to remove Student from the afternoon portion of his program. They indicated intent to place Student in The Center's afternoon program effective November 13, 2009 (Exh. B-42). They indicated that November 12, 2009 would be the last day Student will attend the afternoon session at BBOE's Elementary School but that he would continue in the regular morning kindergarten class. They requested reimbursement for expenses and costs related to placement at The Center.
99. On that same day, October 29, 2009, Pica noticed a PPT meeting for November 6, 2009 to discuss Parents' concerns and to review or revise the IEP (Exh. B-43).
100. A duly noticed PPT meeting was convened on November 6, 2009 (Exh. B-43). Mother attended; Father did not attend. Student's teachers and service providers provided an update on his progress. Mother was provided with reports, graphs, schedules, and data. Mother indicated that she always thought that the afternoon program was not appropriate because Student was not with typical peers (Testimony of Pica). She also indicated that she felt Student regressed in speech and that staff are working on skills Student has already mastered.
101. The PPT proposed to continue the IEP and present program of full inclusion in the morning kindergarten program plus additional afternoon hours of specialized instruction and related services. A correction was made to correct the number of hours of ABA instruction and time with non-disabled peers due to an error incorrectly calculating recess time. BBOE refused Parents' request for reimbursement for expenses associated with placement at The Center and a paraprofessional shadow. The PPT continued to offer an IEE by a licensed psychologist or BCBA (Exh. B-43).
102. Between August 25, 2009 and November 5, 2009, Student attended 90% of the morning kindergarten sessions and 88% of the afternoon sessions. Student only stayed for the full afternoon session 32% of the time (Exh. B-43 at 36, 69-79). Student was regularly removed early from the afternoon sessions by Mother (Exh. P-17). Beginning in January, Student was removed from the kindergarten class ten

minutes early three days per week due to a permanent schedule change indicated by Mother (Exh. B-76). Student had limited exposure to direct instruction and was not always available for instruction due to removal for private services (Testimony of BCBA). Student's IEP goals and objectives were designed based on the time he was supposed to have for instruction (Testimony of BCBA).

103. Parents removed Student from the afternoon portion of the BBOE program effective November 12, 2009. After that date, Student continued to attend the morning kindergarten in the regular education classroom. He also attended The Center for 8.5 hours per week on Monday and Wednesday afternoons and Saturday morning for intense one-to-one ABA therapy; he attended a Private Kindergarten Enrichment Program in Ridgefield<sup>16</sup> on Tuesday, Thursday, and Friday afternoons with a paraprofessional shadow from The Center; and received speech and language therapy on Tuesday, Wednesday, and Thursdays at Private Speech-Language Pathologist for three hours per week (Testimony of Father, The Center Director). The Private Kindergarten Enrichment Program includes no other children with disabilities. A paraprofessional employed by The Center and trained in ABA accompanied Student to the Private Kindergarten Enrichment Program each day. It was Father's expectation that Student would eventually attend the Private Kindergarten Enrichment Program five days per week. Father wanted Student to be in a mainstream environment (Testimony of Father).
104. On November 13, 2009, Pica transmitted the November 6, 2009 IEP to Parents. She also indicated that, should Parents change their mind, Student's full-day program is always available (Exh. B-43). She also encouraged Parents to reconsider the IEE offered in the past. She stated that BBOE staff are concerned about Student missing what they believe to be an important instructional aspect of his full program.
105. On November 19, 2009, BBOE received Parents' Request for Due Process Hearing (Exh. B-48, HO-1).
106. On November 23, 2009, Special Education Teacher sent Parents a progress report indicating Student's progress toward his goals and objectives (Exh. B-47).
107. Weiss issued his report titled "School observations and recommendations to address educational needs" on December 15, 2009 (Exh. B-49).<sup>17</sup> Weiss' report indicates that Student presented with "stark differences" in the different settings. Weiss' report indicates that Student has a profound expressive language disorder that presents very differently under different situations.

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<sup>16</sup> Shortly after Student was removed from the afternoon program at BBOE's Elementary School, Parents moved him from Private Nursery School II to Private Kindergarten Enrichment Program (Testimony of Father, The Center Director). This facility was chosen for geographic and transportation considerations (Testimony of The Center Director).

<sup>17</sup> Weiss testified that he performed an observation and functional analysis, not an evaluation, of Student. He admitted that, as an unlicensed psychologist, he is not permitted to do a psychological evaluation, to make a diagnosis, to assess or to treat Student. He testified that his report and testimony is a comment on Student's evaluations, diagnosis, assessments, and treatment. His recommendations are his opinion regarding treatment and amelioration of Student's problems.

108. On December 22, 2009, Special Education Teacher sent Parents a progress report indicating Student's progress toward his goals and objectives (Exh. B-51).
109. On December 23, 2009, Pica sent Parents a notice of PPT meeting scheduled for January 11 to review Weiss' report (Exh. B-52). Pica also offered the possibility of revising Student's IEP to provide speech/language, occupational and/or physical therapies within the morning kindergarten session since he was not attending the afternoon session at BBOE's Elementary School. The January 11 PPT was not held (Testimony of Father).
110. In early January 2010, Mother provided Weiss with a substantial amount of data from The Center, covering the period from 2007 to 2010 (Testimony of Weiss).
111. Pica sent Parents a notice of PPT meeting scheduled for February 2 to discuss Weiss' report (Exh. B-89). Pica also indicated that she and Mother had discussed Parents' interest in speech and language and occupational therapies in the kindergarten classroom and a concern about Student's pencil grip and sensory needs. Pica indicated that the Occupational Therapist and Speech-Language Pathologist would each provide Student with two one-half hour sessions in the kindergarten classroom and would come to the PPT meeting with suggestions regarding services in that setting. The February 2 PPT meeting was not held.
112. Each notice of PPT meeting sent to Parents had a copy of the Procedural Safeguards attached and contained the following language: "Parent participation in this process is very important. Please make every effort to attend this meeting. You may bring any other individuals to the meeting, including those who have knowledge or special expertise regarding your daughter/son." (Exh. B-7, B-12, B-16, B-26, B-32, B-43, B-52; Testimony of Pica).
113. Parents did not invite Student's private service providers or any other individuals to attend any PPT meetings (Exh. B-7, B-12, B-16, B-26, B-32, B-43, B-52; Testimony of Pica, Father).

### Conclusions of Law

1. Parents, as the party who filed for due process, have the burden of going forward with the evidence. Connecticut Agency Regulations § 10-76h-14(a).
2. BBOE has the burden of proving the appropriateness of the child's program or placement by a preponderance of the evidence. Connecticut Agency Regulations § 10-76h-14(a).



3. Student qualifies for, and is entitled to receive, a free appropriate public education (“FAPE”) with special education and related services under the provisions of state and federal law. 20 U.S.C. § 1401, *et seq.*; Connecticut General Statutes § 10-76a, *et seq.*
4. The standard for determining whether FAPE has been provided is a two-pronged inquiry: first, whether the procedural requirements of IDEA have been met, and second, whether the IEP is reasonably calculated to enable the child to receive educational benefits. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).
5. The proper gauge for determining educational progress is “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2d Cir. 1997).
6. An appropriate public education under IDEA is one that is “likely to produce progress, not regression.” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 (2d Cir. 1998). The IDEA does not require that the school district provide the best available educational program or one that maximizes a student's educational potential. Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1121 (2d Cir. 1997).
7. Factors to be considered in determining whether an IEP is reasonably calculated to provide a meaningful educational benefit is whether the proposed program is individualized on the basis of the student's assessment and performance and whether it is administered in the LRE. 20 U.S.C. § 1412(a)(5)(A); 34 CFR § 300.114(a); A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), *aff'd*, 47 Fed. Appx. 615 (2d Cir. 2002); M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp.2d 289, 292 n.6 (D.Conn. 2000).
8. The proposed program or placement must be reviewed in light of the information available to the PPT at the time the IEPs were developed. B. L. v. New Britain Bd. of Educ., 394 F. Supp. 2d 522, 537 (D. Conn. 2005).
9. Where parents allege a procedural violation under the IDEA, a Hearing Officer may find a denial of FAPE if the violation 1) impeded the child's right to FAPE; 2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE; or 3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E); 34 CFR § 300.513(a); Winkelman v. Parma City Sch. Dist., 127 S. Ct. 1994, 2001 (2007).
10. If a school district fails in its obligation to provide FAPE, the parents may enroll the child in a private school and seek retroactive reimbursement for the cost of the private school from the school district.

School Committee of the Town of Burlington v. Dept. of Educ., 471 U.S. 359, 370 (1985); M.S. ex rel. S.S. v. Bd. of Educ., 231 F.3d 96, 102 (2d Cir. 2000).

11. Parents are entitled to reimbursement of private school tuition if the public school's proposed IEP was not reasonably calculated to enable the child to receive educational benefits, the private schooling obtained by the parents is appropriate to the child's needs, and equitable considerations support the parents' claim. 20 U.S.C. § 1412(a)(10)(C)(ii); Florence County School District v. Carter, 510 U.S. 7, 15 (1993); T.Y. v. New York City Dept. of Educ., 584 F.3d 412, 417 (2d Cir. 2009). If it is determined that BBOE offered Student FAPE, the question as to the appropriateness of the private placement is not reached. 34 CFR § 300.403; Connecticut Agency Regulations § 10-76h-14(b).
12. A private placement is appropriate if it is likely to produce progress, not regression. Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 112 (2d Cir. 2007). The private placement need not meet the IDEA definition of FAPE or meet state education standards or requirements. Frank G. v. Bd. of Educ., 459 F.3d 356, 364 (2d Cir. 2006). To be appropriate, the private placement need not provide an IEP or certified special education teachers. Ultimately, the standard to be applied is to determine whether "[the] unilateral private placement...provides education instruction specifically designed to meet the unique needs of a handicapped child." Gagliardo, supra, at 115.
13. Upon a finding that the school district's proposed placement or program is not appropriate, Parents seeking reimbursement for a unilateral placement or program shall prove the appropriateness of such placement or program by a preponderance of the evidence. Connecticut Agency Regulations § 10-76h-14(c).
14. Reimbursement for private school placement may be reduced or denied upon a finding of unreasonableness with respect to actions taken by parents. 20 U.S.C. § 1412(a)(10)(C)(iii).
15. A school district must convene a PPT meeting to determine whether ESY services are necessary to the provision of FAPE. 34 CFR § 300.106.
16. In conducting evaluations, the district must 1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under the IDEA and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum; 2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and 3) use technically sound instruments

- that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 CFR § 300.304(b).
17. Parents have the right to an IEE at public expense if they disagree with an evaluation obtained by BBOE. 34 CFR § 300.502(b)(1).
  18. An IEE is an “evaluation conducted by a qualified examiner” who is not employed by BBOE. 34 CFR § 300.502(a)(3)(i). Under the IDEA, the term “evaluation” is defined as “procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.” 34 CFR § 300.15.
  19. The district must provide parents with information about where an IEE may be obtained and the district’s IEE criteria. 34 CFR § 300.502(a)(2).
  20. If parents request an IEE at public expense, the district must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an IEE is provided at public expense unless the agency demonstrates in a hearing that the evaluation obtained by the parents did not meet agency criteria. 34 CFR § 300.502(b)(2).
  21. A district may request that a parent specify areas of disagreement with its evaluation, but may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to request a hearing to defend the public evaluation. 34 CFR § 300.502(b)(4). See also 20 U.S.C. §§ 1415(b)(1) and 1415(d)(2)(A).
  22. The choice of evaluator for an IEE rests with the parents, not the school district. Letter to Parker, Office of Special Education and Rehabilitative Services, 41 IDELR 155, 104 LRP 30069, February 20, 2004.
  23. BBOE may use a trial placement for diagnostic purposes. This shall mean a structured program, of not more than eight weeks' duration, the purpose of which is to assess the needs of a child for whom an individualized education program may be needed, but for whom the evaluation study is either inconclusive or the data insufficient to determine the child's individualized education program. The PPT is required to meet at least once every two weeks with personnel working with Student to discuss his progress and to revise, where necessary, the services being provided. A diagnostic program shall be terminated as soon as the child's needs have been determined, but in any event within eight weeks. Connecticut Agency Regulations Section 10-76d-14(b).
  24. “It is well established that ‘equitable considerations are relevant in fashioning relief’ under the IDEA.” M.C. ex rel. Mrs. C. v. Voluntown Bd. Of Educ., 226 F.3d 60, 68 (2d Cir. 2000) (*quoting Burlington v. Dep’t of Educ.*, 471 U.S. 359, 374 (1985)).

Discussion**Issue 1: Did BBOE propose an appropriate program for Student for the 2008-09 school year?**

Yes, BBOE proposed an appropriate program for Student for the 2008-09 school year.

Student was expected to begin preschool at BBOE's Elementary School during the 2008-09 school year (FOF 10). In anticipation of Student transitioning from his private programs, BBOE staff obtained from Parents releases for information and consents to evaluate Student (FOF 11, 13). BBOE staff elicited feedback from Parents and sought program and results information from Student's primary private provider, The Center (FOF 14, 15, 16, 17, 21, 22). BBOE sent three letters to The Center seeking information about Student's programs and progress. The Center did not cooperate in providing information or responding to BBOE to indicate that they would or would not provide it (FOF 19, 28, 30). Similarly, Speech-Language Pathologist requested documentation, including lists of Student's objectives, from Private Speech-Language Pathologist but did not receive any documentation (FOF 30).

Parents signed consent forms permitting BBOE to obtain such information but did not in any way assist in getting the requested information, even after they learned from BBOE that The Center had not been forthcoming with the information. Father testified that Parents promptly complied with BBOE's requests by signing consent forms and allowing BBOE staff to visit and observe Student at The Center. When asked whether he followed up with The Center staff about the requested information, Father testified that he was not asked for the information and was not aware that there was a problem getting the information. Parents did not make efforts to assist in obtaining information from their private providers that would be useful to BBOE in preparing Student's 2008-09 IEP. In fact, Parents impeded that effort. The Center Director testified that Mother instructed her to not provide any information to BBOE because they were going to reject the IEP. This conversation took place prior to the PPT meeting at which Student's 2008-09 program was planned (FOF 20).

In preparing Student's 2008-09 IEP, BBOE staff conferred with Parents, conducted evaluations, observed Student, made several attempts to gather the latest available information from his private providers, developed a program with a plan to revise it as necessary based on experience with Student once he began school, offered parent training, integrated Student into the full regular preschool education class as requested by Parents, involved BCBA and related service providers, and arranged regular team meetings. BBOE prepared an IEP based on that input and information and subsequently revised the IEP based on Parents' expressed concerns and input (FOF 11-38).

BBOE evaluated Student in the following areas which resulted in the following recommendations:

1. Physical therapy (Exh. B-7 at 42-43): BBOE Physical Therapist evaluated Student by administering a standardized test and a curriculum-referenced assessment, observing Student, and reviewing his previous evaluation. She determined that Student's gross motor skills ranged from 24 to 42 months, that areas of concern are ball skills, motor planning, and higher level locomotor skills, and that improvement in these areas "would enable [him] to better participate in the PE curriculum, independently navigate all levels of the school environment/playground, and increase his opportunities for socialization on the playground." Physical Therapist recommended direct physical therapy services to address gross motor delay. The IEP incorporated Physical Therapist's recommendations. The IEP provided for one hour per week of physical therapy in the related services room to address two physical therapy goals with accompanying objectives.<sup>18</sup> The evaluation was presented to and discussed with Parents. Parents did not object to the evaluation, recommendations, goals, or objectives. More than two months later, Parents did ask for clarification regarding how much time Student will spend directly with Physical Therapist (Exh. B-11). The IEP was revised to specify that Physical Therapist would provide all direct physical therapy and to clarify how the services would be provided (Exh. B-13). Parents did not object to the revised IEP.
2. Occupational therapy (Exh. B-7 at 47-53): BBOE Occupational Therapist evaluated Student by administering a standardized test and a sensory profile, observing Student, talking with Parents and BBOE staff, and reviewing Student's previous evaluations. She determined that Student's visual-fine motor and self-help skills were relative strengths and that he had difficulties with sensory processing abilities. Occupational Therapist recommended continuing to implement sensory-based strategies and fine motor and finger-strengthening activities, address cutting skills and manipulation of classroom materials, improve pencil grasp and control, reinforce prewriting strokes and shapes, work on letter formation, and address self-help skills. The IEP incorporated Occupational Therapist's recommendations. The IEP provided for one hour per week of occupational therapy in the related services room to address two occupational therapy goals with accompanying objectives.<sup>19</sup> The evaluation was presented to and discussed with Parents. Parents did not object to the evaluation, recommendations, goals, or objectives. Parents expressly agreed that one hour of occupational therapy per week was appropriate (Exh. B-11 at 2). More than two months later, Parents asked for

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<sup>18</sup> The physical therapy goals were 1) Demonstrate an improvement in activities which require gross motor coordination needed to participate in classroom and physical education type activities; and 2) Demonstrate an improvement in mobility skills to successfully participate in educational activities and to negotiate the physical environment of the school (Exh. B-7, B-13).

<sup>19</sup> The occupational therapy goals were 1) Improve visual-fine motor skills based on the achievement of four out of six objectives; and 2) Improvement of self-help skills based on the achievement of three out of four objectives (Exh. B-7, B-13).

clarification regarding how much time Student will spend directly with Occupational Therapist and for the qualifications<sup>20</sup> of the Occupational Therapist (Exh. B-11). The IEP was revised to specify that Occupational Therapist would provide all direct occupational therapy (Exh. B-13). Pica discussed staff qualifications with Parents (FOF 31, 36). Parents did not object to the revised IEP.

3. Special education academic achievement (Exh. B-7 at 54-58): BBOE Special Education Teacher evaluated Student by administering tests of early reading ability, written language, and math ability, and by observing him. She determined that Student scored within the average range when compared to his same age peers in the areas of reading and math but that the skills demonstrated were rote skills. Student had difficulty with skills that were more abstract or contained more language-based information. Special Education Teacher recommended individualized instruction, sensory breaks, high rate of positive reinforcement, opportunity for movement, motivating manipulatives, kinesthetic teaching strategies, reduced distractions, pre-teaching concepts within the general education curriculum, visual support, and clear concise instructions. The IEP incorporated Special Education Teacher's recommendations. The evaluation was presented to and discussed with Parents. Parents did not immediately object to the evaluation, recommendations, goals, or objectives. Almost six weeks after the PPT meeting, Pica contacted Parents to determine if they intended to enroll Student in the fall. Nearly three weeks later, Parents indicated that the IEP lacked individualization and asked for the qualifications of Special Education Teacher (Exh. B-11). The PPT reconvened to discuss Parents' concerns, to clarify the proposed program, to specify the role of Special Education Teacher and the related service providers, and increased the frequency of team meetings (Exh. B-13). Pica discussed staff qualifications with Parents (FOF 31, 36). Parents did not object to the revised IEP.
4. Psycho-educational (Exh. B-7 at 59-65): BBOE School Psychologist evaluated Student by administering a standardized test of intelligence and cognitive abilities, a behavior assessment for children, the Vineland Adaptive Behavior Scales with Parents' input, observing Student, and reviewing his previous evaluations. She determined that Student's cognitive functioning was mildly delayed but cautioned that the results must be read in light of Student's significant language delays. School Psychologist also indicated that Student demonstrates behaviors characteristic of a child with

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<sup>20</sup> Father testified that he would not withdraw Student from The Center until he knew the qualifications of BBOE staff "so he can evaluate the program." However, Father did not know, even at the time of the hearing, the qualifications or credentials of The Center staff. He is not aware of whether the private occupational therapist and physical therapist are licensed. He is not aware of whether staff at Kindergarten Enrichment Program are certified teachers.

autism, significant language delays, and limited social interaction and problem-solving skills.

Parents did not return the requested feedback forms to assist in the evaluation. School Psychologist recommended that the evaluation results be shared with the PPT to develop an appropriate program for Student; social skill development through explicit instruction and supports; Student to have an opportunity to participate and interact in natural environments in integrated environments; use of social stories and scripts to provide Student with visual information and strategies to teach appropriate behaviors; role-playing in social situations; visual support strategies to teach conversational skills; visual methods of teaching; avoidance of long strings of information; ensure that Student is attending before verbal directions are given; use organization aids; and frequent interaction with Student. The IEP incorporated these recommendations. The evaluation was presented to and discussed with Parents. Parents did not object to the evaluation, recommendations, goals, or objectives.

5. Speech and language (Exh. B-7 at 66-70): BBOE Speech-Language Pathologist evaluated Student by administering a preschool language scale to assess receptive and expressive language skills and an assessment of social and communication skills for children with autism, assessing speech-language samples, collecting input from Mother, and observing Student at Private Speech-Language Pathologist. Mother completed the social and communication skills assessment with Speech-Language Pathologist. Speech-Language Pathologist confirmed Student's targeted objectives with Private Speech-Language Pathologist. Speech-Language Pathologist determined that Student's intelligibility is fair, his receptive and expressive language is below average, and that he continues to meet eligibility requirements for direct speech and language services in the areas of oral language production and comprehension. Speech-Language Pathologist recommended that expressive skills that should be targeted include pronouncing 3-syllable words intelligibly, increasing mean length of utterance, and answering basic "wh" questions. She recommended that receptive skills that should be targeted include following 2-step related directions, identifying objectives in categories, and sequencing two pictures. Social communication skills to be addressed include answering concrete yes/no questions, making a choice when two options are presented verbally, reporting on previous activities when asked, making comments to peers, and requesting a break. The IEP incorporated these recommendations. The IEP provided for 2.5 hours per week of speech and language therapy in the related services room to address three speech and language goals with accompanying

objectives.<sup>21</sup> The evaluation was presented to and discussed with Parents. Parents did not immediately object to the evaluation, recommendations, goals, or objectives. Almost six weeks after the PPT meeting, Pica contacted Parents to determine if they intended to enroll Student in the fall. Nearly three weeks later, Parents indicated that 2.5 hours of speech and language therapy was inappropriate and they asked for five hours per week of such therapy. Parents also asked for clarification regarding who will provide such therapy and for the qualifications of that staff person (Exh. B-11). The IEP was revised to specify that Speech-Language Pathologist would provide all direct speech and language therapy and to increase the amount of such therapy to three hours per week, consistent with what Student was then receiving from Private Speech-Language Pathologist (Exh. B-13). Pica discussed staff qualifications with Parents (FOF 31, 36). Parents did not object to the revised IEP.

6. ABA services (Exh. B-7 at 44-46): BCBA observed Student at both play and academic sessions at The Center and at Private Nursery School I and spoke to staff in each setting. BCBA made the following preliminary recommendations: evaluate or begin ongoing objective measurement of maladaptive behaviors to determine trends in behaviors and to guide decision-making toward modifying or maintaining strategies to manage and/or treat the behaviors; evaluate or implement objective Functional Behavior Assessment procedures to confirm or identify child-specific functions of maladaptive behaviors; evaluate, continue, or revise strategies designed to manage and/or treat maladaptive behaviors based on data analysis and functional assessment such that all persons who interact with Student can intervene, manage, and/or treat maladaptive behaviors consistently across settings; identify specific skills and skill-building activities to establish and increase appropriate alternative behaviors to current maladaptive behaviors; identify and describe teaching procedures such that all persons who work with Student can consistently maximize his potential for success; increase Student's ability to respond to teacher-delivered instructions in the context of group activities; increase Student's ability to attend to and respond to peer participation in the context of group activities; increase Student's ability to appropriately request help and/or breaks from difficult tasks; and increase Student's ability to play and interact with peers in the context of cooperative and collaborative academic and play activities. A Behavioral Support and Intervention Plan was

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<sup>21</sup> The speech and language therapy goals were 1) Student will improve his speech intelligibility and expressive language by mastering four enumerated objectives; 2) Student will improve his receptive language skills by mastering three enumerated objectives; and 3) Student will improve his social communication skills by mastering five enumerated objectives; (Exh. B-7, B-13).



appended to the IEP to address maladaptive behavior (Exh. B-7 at 70). The IEP incorporated these recommendations through goals and objectives, team meetings, consultations, and the Behavioral Support and Intervention Plan. The IEP provided for 14.75 hours per week of direct ABA programming. The report was presented to and discussed with Parents. Parents did not immediately object to the report or recommendation. Almost six weeks after the PPT meeting, Pica contacted Parents to determine if they intended to enroll Student in the fall. Nearly three weeks later, Parents raised questions about whether “individual data-based programming” as used in the IEP referred to ABA programming, raised questions about the qualifications of the ABA providers, and asked for thirty hours per week of ABA programming (Exh. B-11). BBOE held a PPT meeting to address Parents concerns. The PPT clarified that Student’s entire 27.5 hours per week of preschool classroom and special education classroom time is made up of ABA programming and indicated that BCBA consultation was a minimum of two hours per week. Pica described the qualifications of staff (Exh. B-13; FOF 31, 36). Parents did not object to the revised IEP.

Student’s 2008-09 IEP provided for integration in the full preschool program as well as a coordinated special education and related services program in an extended day session. The IEP also provided for coordination and collaboration through staff consultations, and parent meetings. It also provided parent training. Each of the goals and objectives were designed to address specific areas of need as identified by BBOE’s evaluations. The IEP also included ABA programming, which was an important component to Parents. When Parents expressed questions and concerns about the meaning of the term “individual data-based programming” as used in the IEP, BBOE clarified that it refers to ABA programming. Parents did not object to the revised, clarified IEP.

Parents argue that the IEP was inappropriate because it was written by BBOE staff that did not know Student and was therefore based on inaccurate information about Student’s potential. As indicated above, BBOE staff conferred with Parents, conducted evaluations, observed Student, and made several attempts to gather the latest available information from Student’s private providers. Parents’ actions in asking The Center to not provide relevant information about Student’s programs, progress, and abilities impeded that effort. As indicated above, BBOE made changes to the IEP based on input from Parents. Parents did not thereafter object to the goals and objectives or otherwise ask BBOE to revise the IEP to address any alleged concerns about its inappropriateness.

Parents further argue that they provided expert testimony from The Center Director and Weiss that the IEP was not appropriate. The Center Director testified that Parents instructed her not to provide

requested information to BBOE staff (FOF 20). Parents did not bring The Center Director to any PPT meeting although they were informed that they had the right to do so (FOF 112, 113). The IEP will not now be viewed through the eyes of The Center Director when her knowledge and information was intentionally withheld from BBOE at the time that the IEP was prepared.

Weiss testified that his opinion as to the appropriateness of the IEP was informed, at least in part, by the significant amounts of information and data that Parents provided to him just prior to the start of the hearing.<sup>22</sup> Those records were not made available to BBOE at the time that the IEP was prepared. The appropriateness of the IEP will not be judged retrospectively based on data and information not available to BBOE at the time of its preparation. The information and data were not available to BBOE as a result of Parents purposefully withholding it.<sup>23</sup>

In their post-hearing brief (at pages 19-20), Parents argue that “Pica never asked the Parents to become directly involved in obtaining summaries from the Center, never called [The Center Director] and never invited her to a PPT meeting...The Board never produced the Settlement Agreement at the hearing so that the Parents’ obligations under that Agreement could be understood. Moreover, the Board never claimed that the Parents were not in compliance with the Mediation Agreement. Given the fact that the Parents adhered to all of their obligations under the Mediation Agreement, complied with all requests for information, signed all consent forms, and the Parents never received any documents or data from the Center that they could have shared with the Board, the Board’s assertions of unreasonable behavior on the part of the Parents is baseless.”

The Hearing Officer finds that argument completely lacking in credibility or reasonableness. BBOE repeatedly informed Parents that they had not received information from The Center in response to written requests. BBOE copied Parents on each letter to The Center. Father repeatedly testified that Parents never had any data in their home, that they only got information verbally from The Center, and that he did not think he needed to ask The Center for the information. Parents did not work collaboratively with BBOE. Contrary to their argument, Parents did receive data from The Center that they could have shared with BBOE. On cross-examination, Father testified that the decision to remove Student from the afternoon

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<sup>22</sup> The data provided to Weiss is Exhibits P-18 through P-25 which are marked for identification only. The data consists of 2,081 pages covering the period 2007 to 2010 (See Exhibit B to Final Decision and Order). The data was excluded from evidence on several bases, including that it was not available to BBOE at the time the IEP was prepared because Parents instructed The Center to not provide the data and because Weiss and The Center Director testified that raw data alone is not useful or capable of being properly interpreted without more information, limiting its usefulness, value, and relevance in the hearing.

<sup>23</sup> Parents shared work samples and progress reports from BBOE’s program with The Center (Testimony of The Center Director). They did not share similar information from The Center with BBOE staff.

program was based on feedback from various sources, including “documents from The Center that we saw.” Parents provided extensive data and information to Weiss before the hearing began (FOF 110). Prior to the PPT meeting, Parents instructed The Center to not provide any documentation to BBOE because they intended to reject the IEP (FOF 20).

To the extent that their opinions were shaped and influenced by The Center’s data which was withheld from BBOE at Parents’ instruction, the testimony of Weiss<sup>24</sup> and The Center Director will not be given weight to support Parents’ argument that BBOE’s IEP was inappropriate, written by BBOE staff that did not know Student, and/or based on inaccurate information about Student.

Parents’ post-hearing brief identifies numerous reasons why they believe that the May 29, 2008 and August 28, 2008 IEPs were not appropriate. All of those reasons have been thoroughly reviewed and considered by the Hearing Officer and are not individually addressed here. Certain of the objections will be addressed for illustrative purposes.

Weiss, The Center Director, and Father testified that certain goals or objectives were inappropriate because Student had already mastered the skill. However, the record does not support such a finding. For example, Father testified that Student mastered ball skills and buttoning skills by 2008. However, BBOE’s evaluation and Mother’s contemporaneous e-mails and responses to the evaluation assessment indicate otherwise. As late as January 2010, after this hearing was requested, Mother indicated to BBOE that she was “concerned most with ball tossing skills” (Exh. B-99 at 2). Similarly, Mother indicated via e-mail that she would work with Student on buttoning and other dressing skills, suggesting that the skills were not mastered.

Skills that were demonstrated at home or in Student’s private settings were not mastered if they could not be generalized across people and settings, including in the public preschool classroom.<sup>25</sup> The purpose is for Student to generalize his skills so that changes in setting and staff do not affect his independent demonstration of skills.

Weiss testified that the IEP was not appropriate because there was no goal or objective relative to the use of computers to facilitate development of academic skills. He testified that Student’s handwriting goals should have keyboarding built in.<sup>26</sup> He also recommended using the computer and other visual prompts to

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<sup>24</sup> Weiss did not review any raw data from BBOE during his assessment of Student.

<sup>25</sup> Father did not appear to give credit to the concept of generalization. He testified that Student mastered certain skills because he performed them for Father. When asked why Student did not perform those skills for Mother or BBOE staff, Father testified that the problem is not the skill but the “finesse” in getting Student to do things.

<sup>26</sup> Father testified that Student had “more dire” needs than writing legibly.

reduce adult-directed prompts. BBOE staff credibly testified that the purpose of classroom readiness skills is to teach children to attend to adult prompts, and that Student needed to learn to write legibly so that he could write his name and phone number or make lists to be able to communicate if he was not able to engage in verbal communication.

There is no evidence that most of the detailed objections outlined during the hearing and in Parents' post-hearing brief were communicated to BBOE when the IEP was created.<sup>27</sup> Parents did raise a couple of issues, as discussed above, and those issues were addressed through discussion, clarification, and revision of the IEP (i.e. consultation by BCBA was increased, frequency of team meetings increased, role of paraprofessionals clarified, hours of speech and language therapy increased).

The IEP is judged as of the time that it was drafted and not based on hindsight. Student's proposed 2008-09 IEP was individualized based on his assessment and performance as known to BBOE at the time it was prepared. The IEP also provided for Student to be educated in the LRE in that it included him in the full, integrated preschool classroom with no pull-out for related services, which were provided during an extended day program in an appropriate resource room. BBOE met their burden of proving by a preponderance of the evidence that the procedural requirements of the IDEA have been met and that Student's 2008-09 IEP is reasonably calculated to enable him to receive meaningful educational benefits.

## **Issue 2: Did BBOE propose an appropriate program for Student for the 2009 extended school year?**

No, BBOE did not propose an appropriate program for Student for 2009 ESY.

BBOE has not met its burden of proving by a preponderance of the evidence that it offered Student an appropriate 2009 ESY program. Pica testified that, at the June 4, 2009 PPT meeting, the PPT asked Parents when Student would be transitioning to BBOE's Elementary School because he was eligible for ESY (FOF 52).<sup>28</sup> Pica further testified that Parents indicated that Student would remain in private services until the fall. Student remained in his private program for the summer, which was paid for by Parents (FOF 44).

The PPT meeting minutes and summary do not mention ESY. The document states that "[t]he Parents opt to continue [Student's] present private services for the summer and would start [Student] in the start of the 09-10 school year." (Exh. B-16 at 3). The Hearing Officer finds credible the testimony of BBOE

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<sup>27</sup> Father testified that he thought certain discussions identified in the PPT summary were inaccurate or did not happen but he did not so indicate to BBOE.

<sup>28</sup> BCBA, Special Education Teacher, Occupational Therapist, and Speech-Language Pathologist, who each attended the June 4, 2009 PPT, testified similarly although they didn't recall specifically what conversation transpired regarding ESY.

staff that Parents were told, generally, that Student was eligible for 2009 ESY. There was no evidence that a program was offered or that plans to develop an IEP for 2009 ESY were considered or discussed beyond a vague statement of eligibility.

BBOE has a legal obligation to convene a PPT meeting to determine whether an ESY program is necessary to the provision of FAPE. Credible testimony indicates that the PPT determined that Student was eligible for 2009 ESY services. BBOE argues that “once the offer of services is rejected outright, the Board is not obligated to undertake the useless and potentially counterproductive task of developing an already-rejected program.”

BBOE is not required to develop a program if previously rejected by Parents. However, BBOE is required to clearly communicate eligibility and the basic type of services that might be provided in order to engage a sufficient conversation to permit parents to make educated decisions about whether to request ESY services. That conversation should then be clearly captured in the PPT meeting summary and minutes. The Hearing Officer finds inadequate the brief, vague, and undocumented presentation of 2009 ESY services. BBOE did not meet its burden of proving by a preponderance of the evidence that it offered Student an appropriate 2009 ESY program.

The issue of remedy is discussed below under Issue Six.

### **Issue 3: Did BBOE propose an appropriate program for Student for the 2009-10 school year?**

Yes, BBOE proposed an appropriate program for Student for the 2009-10 school year.

Student did not attend preschool at BBOE’s Elementary School in 2008-09 (FOF 38, 39). In response to Pica’s inquiry in April 2009, Parents indicated that they intended to enroll Student in kindergarten at BBOE’s Elementary School during the 2009-10 school year (FOF 41, 42). In anticipation of Student transitioning from his private programs, BBOE staff obtained from Parents releases for information and consents to reevaluate Student, elicited feedback from Parents, observed Student, conducted reevaluations, prepared a diagnostic IEP based on that input and information with a plan to revise it as necessary based on experience with Student once he began school, and subsequently revised the IEP based on the completed reevaluations and Parents’ expressed concerns and input (FOF 40, 45-51, 53-62, 67, 69, 72, 75, 77-81, 84; Exh. B-16, B-26, B-32, B-43). Student’s IEP fully included Student in the regular half-day kindergarten class five days per week as requested by Parents and provided necessary related services and direct special instruction in an afternoon extended day session. Student’s IEP included ABA programming, specialized instruction in the integrated kindergarten, speech and language therapy,

occupational therapy, physical therapy, consultation by Student's related service providers and BCBA, monthly meetings with Parents, and parent training.

The diagnostic IEP proposed at the June 4, 2009 PPT meeting carried over many of the goals and objectives from the 2008-09 school year since Student did not attend BBOE's school during 2008-09, BBOE did not have consent to reevaluate Student or releases to obtain information prior to the PPT meeting, and had no experience with Student on which to base their recommendations. BBOE received consent and releases from Parents at the June 4, 2009 PPT meeting.

BBOE reevaluated and observed Student in the following areas which resulted in the following recommendations:

1. Speech and language (Exh. B-26 at 36-44): BBOE Speech-Language Pathologist observed Student at Private Speech-Language Pathologist, reviewed previous evaluations, and assessed his skills through clinical observation and three formal assessments. Speech-Language Pathologist confirmed Student's targeted objectives with Private Speech-Language Pathologist. Mother completed the social and communication skills assessment with Speech-Language Pathologist. Speech-Language Pathologist determined that Student's receptive and expressive language continues to be below average, that he was able to demonstrate understanding of some concepts and skills that he was unable to do last year, that he scored below average on a test for apraxia, that his speech intelligibility is fair to good, and that he continues to meet eligibility requirements for direct speech and language services in the areas of oral language production and comprehension. Speech-Language Pathologist recommended Student receive 2.5 hours per week of speech and language therapy. The IEP incorporated these recommendations with an increase in the amount of speech and language therapy recommended. The IEP provided for three hours per week of speech and language therapy in the self-contained classroom to address goals and objectives targeted to expressive and receptive language and social communication. The reevaluation was presented to and discussed with Parents. Parents made no specific objections to the speech and language reevaluation or goals and objectives.
2. Occupational therapy (Exh. B-26 at 45-49): BBOE Occupational Therapist reviewed Student's 2008 evaluation, spoke with Mother, administered three assessments, and observed Student in three environments. Mother completed a sensory questionnaire. Occupational Therapist determined that Student's fine motor skills were below average and that he had difficulty with fine motor and visual motor tasks. The results were consistent with Mother's reports and the previous evaluation.

Occupational Therapist recommended implementing a sensory diet into his daily school routine, improving fine motor strength and coordination, improving handwriting abilities focusing on proper letter formation, and improving manipulation skills with classroom materials. She indicated that Student requires assistance with buttons, snaps, and zippers and that he responds well to sensory breaks. The IEP incorporated these recommendations. The IEP provided for one hour per week of occupational therapy in the related services room to address three occupational therapy goals with accompanying objectives that address the issues raised in the reevaluation.<sup>29</sup> Occupational therapy was designed to be provided in the afternoon session because Parents wanted Student in the full kindergarten class and because the skills were better practiced one-on-one without distraction. The reevaluation was presented to and discussed with Parents. Parents made no specific objections to the occupational therapy reevaluation or goals and objectives.

3. Physical therapy (Exh. B-26 at 50-52): BBOE Physical Therapist administered a test of gross motor development, reviewed Student's 2008-09 IEP, and engaged in clinical observations of Student. She determined that Student met seven out of nine gross motor and mobility objectives from his 2008-09 IEP; that his gross motor skills fall below age-level expectations; that he needed additional processing time, clear concise directions, visual models, and a quiet non-distracting setting to fully participate in structured tasks; and that areas of concern include ball skills and higher level locomotor and balance skills. The IEP incorporated these recommendations. The IEP provided for half-hour per week of physical therapy in the related services room to address one physical therapy goal of improving Student's participation in classroom and physical education gross motor activities. The accompanying five objectives focused on locomotor skills, balance, and ball skills. The reevaluation was presented to and discussed with Parents. Parents made no specific objections to the reevaluation or goals and objectives.
4. Psycho-educational (Exh. B-26 at 57-67): BBOE School Psychologist administered four assessments, observed Student in multiple settings, and reviewed records. She administered the Vineland Adaptive Behavior Scales through interviews with Mother and Special Education Teacher and the Childhood Autism Rating Scale with Special Education Teacher. School Psychologist determined that Student's overall cognitive ability was significantly below average, with relative strengths and weaknesses in some areas, but that it may not be an accurate reflection of his abilities

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<sup>29</sup> The occupational therapy goals were 1) improve handwriting skills, 2) improve visual-fine motor skills, and 3) increase independence with clothing fasteners (Exh. B-26, B-32, B-43).

based on his autism. She further determined that Student exhibits low socialization skills but has relative strengths in written communication and that he demonstrates behaviors characteristic of moderate autism. School Psychologist recommended that the evaluation results be shared with the PPT to develop an appropriate program for Student; a multi-sensory and multi-modal approach to learning; visual supports for learning and teaching; repetition and review for new learning within familiar contexts; explicit step-by-step instruction for new skills introduced after he understands the prerequisite skills; use of manipulative and concrete objects when possible to illustrate concepts; ensure Student is attending through eye contact and proximity before giving verbal directions; provide positive reinforcement and tangible rewards; incidental and explicit teaching of social skills; ABA and naturalistic teaching strategies; encouraging independent functioning by minimizing prompting when appropriate; using simple board games, music, art, and other interactive activities to support learning and socialization; and expand on acquired skill of labeling pictures. The IEP incorporated these recommendations by providing visual supports, positive behavioral strategies, a multi-sensory approach, sensory input, modeling, repetition of directions, social behavior and social communication goals, and objectives to develop attending skills and responding to directives. The reevaluation was presented to and discussed with Parents. Parents did not specifically object to the reevaluation, recommendations, goals, or objectives. Parents did indicate that they disagree with the IQ score (FOF 80). The reevaluation specifically indicated that the test results may not be an accurate reflection of Student's abilities due to his autism and that the recommendations were based also on observation and feedback from Mother and Special Education Teacher.

5. Special education academic achievement (Exh. B-32 at 35-38): BBOE Special Education Teacher reevaluated Student by administering tests of early reading ability, written language, and math ability, and by observing him. She determined that Student scored within the average range when compared to his same age peers in math, below average in the area of reading, and poor in the area of basic writing. Special Education Teacher also determined that Student's demonstrated skills were rote skills and that he had more difficulty with abstract skills and complex language. Special Education Teacher recommended that Student receive clear, concise directions and pre-teaching of new concepts, individualized instruction, sensory breaks, high rates of reinforcement, visual supports, an environment with reduced distractions for acquisition of new skills, pre-teaching through individualized instruction for more abstract skills and kindergarten skills that are more difficult for Student. The IEP incorporated Special Education Teacher's recommendations. The



reevaluation was presented to and discussed with Parents. Parents did not specifically object to the reevaluation, recommendations, goals, or objectives.

6. ABA services (Exh. B-26 at 53-54): BCBA observed Student at Private Nursery School II, The Center, and in BBOE's kindergarten class. BCBA and Special Education Teacher made the following recommendations: continue to evaluate and address weaknesses in classroom readiness skills, specifically targeting skills that are not demonstrated independently; address behaviors that are disruptive to Student's kindergarten participation and potentially affecting peer participation; continue to track behaviors that occur in the school setting including levels of independence, independent task completion, following directives from teachers, and interaction with peers; and continue to assess academic abilities in the context of structured assessment and in the context of teacher-delivered instructions in the regular education classroom. A Behavioral Support Plan was appended to the IEP to address reinforcement of appropriate behavior and redirection of inappropriate behavior. The IEP incorporated these recommendations through goals and objectives, team meetings, consultations, and the Behavioral Support Plan. The report was presented to and discussed with Parents. Parents did not specifically object to the report, recommendations, goals, or objectives.

The IEP was revised on September 3, 2009 and September 17, 2009 as the reevaluations were completed and as BBOE staff had an opportunity to observe Student and assess his functional capabilities in a public kindergarten class.

At the conclusion of the September 3, 2009 and the September 17, 2009 PPT meetings, Parents provided BBOE with a prepared letter indicating that they are concerned that the IEP is not appropriate and that it fails to provide education in the LRE (FOF 73, 82). Parents indicated their desire for Student to attend the morning kindergarten and then spend the afternoon at his private providers, some of which constitute one-to-one service and not participation with typical peers (FOF 50).

As requested by Parents, Student was fully included in BBOE's integrated kindergarten program with typical peers. Parents asked that Student not be removed from the kindergarten classroom to receive his related services (FOF 61). Consistent with Parents' request and the recommendations of the related service providers, all such services were provided in the afternoon extended day session.

Student's 2009-10 IEP provided for integration in the full kindergarten program as well as a coordinated special education and related services program in an extended day session. The IEP also provided for coordination and collaboration through staff consultations, parent meetings, and parent

training. Each of the goals and objectives were designed to address specific areas of need as identified by BBOE's reevaluations. The IEP also included ABA programming, which was an important component to Parents.

Parents argue that the IEP was inappropriate because BBOE failed to invite staff from The Center to the PPT meeting, in violation of Connecticut Agency Regulation § 10-76d-12(b) and 20 U.S.C. § 1412(a)(10)(A)(iii); that the IEP was written without a special education teacher who actually taught Student and without the input of persons knowledgeable about Student; and that BBOE's reevaluations were not completed in a timely fashion.

The state regulation and federal statute cited by Parents are not applicable here. Connecticut Agency Regulation § 10-76d-12(b) contemplates a PPT meeting to review or revise an existing IEP prepared for a child in an out-of-district or private placement. Subparagraph (b) is distinct from subparagraphs (a) and (c) which refer to development of the IEP, in addition to revision and review. Subparagraph (b) does not include the term "develop," leading to the conclusion that it only applies to review and revision of existing IEPs, as expressly stated. There was no testimony that Student had an IEP in his private placement. Under this provision, BBOE's obligation to invite an outside provider is contingent on Student having an IEP in his private placement and that IEP being reviewed or revised. In the present case, BBOE was developing an IEP for Student who was not, at that time, being educated pursuant to a current IEP.<sup>30</sup>

Similarly, 20 U.S.C. § 1412(a)(10)(A)(iii) seeks to ensure that parentally-placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services in their private placement. BBOE was not required to invite Student's private providers to the PPT meeting to plan an IEP for placement within the public school system.

Each notice of PPT meeting sent to Parents had a copy of the Procedural Safeguards attached and contained the following language: "You may bring any other individuals to the meeting, including those who have knowledge or special expertise regarding your daughter/son." Parents did not bring Student's

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<sup>30</sup> BBOE's experience with The Center in this case had been that they made three requests for information and got no information, or even an acknowledgement of the request. In 2008-09, The Center did not contact BBOE in response to the three letters or return their phone calls. The Center Director testified that public schools give "casual consideration" to records from private providers and typically base the IEP on their own testing. She then testified, incredibly, that it is not necessarily valuable for the public school to have a program report for Student from the private provider. She testified that specific assessment paired with opportunities to observe Student across settings is more than adequate information to create an appropriate program. Parents' own witnesses do not support their claim that it was necessary, or even appropriate or useful, to invite The Center to participate in the PPT meetings.

private service providers or any other individuals to any PPT meeting (FOF 112, 113).<sup>31</sup> Failure of the private provider to attend the PPT meeting did not result in any substantive deficit in the IEP.

In addition to letting Parents know that they could bring anyone with knowledge or special expertise about Student, the PPT sought information from Parents, as people knowledgeable about Student's skills and needs. This information is reflected in the PPT meeting minutes and summaries, to which Parents did not object or seek correction. The PPT also obtained information through its reevaluation and observations of Student.

Parents also argue that BBOE's reevaluations were not completed in a timely fashion. Parents signed consents for reevaluation on June 4, 2009, just weeks before the end of the school year. BBOE began the reevaluation process with observations and assessments a few days later. BBOE continued their observations and reevaluations in the public school classroom when Student began attending school on August 25, 2009. BBOE's reevaluations were completed by September 17, 2009, three weeks after school started for the year. Parents argue that BBOE could have and should have completed the reevaluations earlier in the summer and/or that BBOE should have initiated the process earlier in 2009.

Several BBOE staff credibly testified that, for the observations and reevaluations to be most accurate and give a clear picture of Student's abilities and needs in the public school environment, they wanted to observe and reevaluate him in that environment after he became acclimated to the regular education kindergarten classroom. Parents also argue that BBOE could have reevaluated Student during the ESY program, if offered. ESY would have included related services and individualized instruction but would not have included an integrated kindergarten class component (FOF 52). Therefore, BBOE staff could not evaluate Student in the regular education classroom during the summer.

Parents also argue that the 2009-10 IEP was inappropriate because it was prepared on June 4, 2009 by staff who had not seen or evaluated Student for one year and who had no current knowledge about his educational needs. Father, Weiss, and The Center Director testified that, according to The Center's data, Student had mastered many of the skills that were included as goals and objectives in the 2009-10 IEP. As discussed above, BBOE did not have the benefit of that information. Therefore, the IEP will not now be judged based on knowledge and information that was purposefully withheld from BBOE.

Parents also cite Weiss' testimony that the IEP was not appropriate as evidenced by Student's demonstration of "significantly elevated amount of language at The Center" as compared to that

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<sup>31</sup> Mother indicated that The Center Director would attend the September 3, 2009 PPT meeting to help answer questions. Mother subsequently indicated that The Center Director would not attend (FOF 68). Parents were not prohibited from bringing anyone to the PPT meetings.

demonstrated in BBOE's program. Weiss testified that the point is to find the setting that produces the maximum language from Student. He acknowledged that the expectation of behavior is different in different settings (i.e. in a classroom as compared to a play setting) but testified that this is not true of the expectation of language. The credible testimony of BCBA and Speech-Language Pathologist does not support that opinion.

In discussing the 2009-10 IEP, Weiss testified that the discrepancy across settings makes Student difficult to evaluate. He noted that the goals and objectives include skills that were mastered in other settings and questioned whether it was a failure to generalize or a failure of the program. Weiss attributes the difference to teaching and therapy approaches utilized. BCBA credibly testified that Student had great pre-academic skills but that he had difficulty demonstrating those skills independently in most situations, that he demonstrated deficits in generalization, and that his classroom readiness skills were lacking.

BCBA also testified that Student received lots of prompting at The Center and at Private Nursery School II. He had some difficulty in responding to teacher directives because of the different format and because he received less prompting. BCBA recommended less prompting so that they could see what Student can and can not do independently in order to establish appropriate teaching goals and objectives. BCBA testified that Student probably has greater skills than he demonstrates because of his prompt dependence. When Student started at BBOE's Elementary School, he lost the cues and prompting that he received from his private provider setting and staff. Instead of attending to the teacher, Student attends to the prompts. The goal was to transfer the stimulus control from the prompt to the natural environment so that Student can independently demonstrate skills in varied settings.

The levels of language used at The Center as compared to in BBOE's program can not be fairly compared. The Center environment consisted of a familiar location where Student was free to roam around, select the activities he was interested in, and was free from adult-initiated instruction.<sup>32</sup> BBOE's kindergarten classroom consisted of a newer environment to Student, with structured learning, and adult-initiated instruction and demands. The fact that Student engaged in independent communication in a free-play session at The Center does not establish that Student mastered independent language goals and objectives in the context of a structured setting, which is a critical classroom readiness skill as identified in the reevaluations and IEP.

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<sup>32</sup> Weiss reported that during Student's session at The Center "the therapists did not present activities to [Student]. Rather, they allowed [Student] to roam around the room looking for things to do. He was free to walk about, sit on the floor, in a chair or a bean-bag....All of these activities were of [Student's] choosing and he was visibly having fun..." (Exh. B-49 at 4-5).

The appropriateness of the IEP is not evaluated solely on the quantity of the language produced in the classroom. The appropriateness of classroom readiness, academic, and social goals and objectives are also considered in evaluating the IEP. Father testified that skills such as identifying sounds of letters and forming letters in writing were “beneath him” and that Student’s time was better spent learning to speak. Father repeatedly indicated that Student could perform the tasks identified in the IEP goals and objectives because he saw him do it at home or in another setting. The goals and objectives indicate that Student should be able to perform those skills in the context of a structured session or a school day. Student has not mastered the skills until he can generalize them across settings – from an informal play session to a more formal classroom setting.

Student had not previously been in such a classroom setting prior to the 2009-10 school year. Weiss’ report indicates that, in the BBOE classroom, Student “struggled to sit still and attend to an adult-directed lesson.” This is consistent with BBOE staff’s conclusion that Student has not mastered certain skills such that they can be generalized to the classroom. Removing Student from the requirements of attendance to an adult-oriented lesson might increase his data points for certain behavior but it does not allow him to master skills in order to generalize them to other settings or provide educational benefit. The purpose is for Student to generalize his skills so that changes in setting and staff do not affect his independent demonstration of skills, which open the door to additional skills. The primary goal is to increase Student’s ability to independently participate in the elementary school kindergarten class.

Weiss’ opinion testimony also took into consideration the vast amounts of data provided to him by Parents from The Center. Again, BBOE did not have the benefit of that data when preparing the 2009-10 IEP and so it will not be judged against that information or opinions based on it.

Parents also argue that the IEP did not provide for education in the LRE. Student was included 100% in the full, integrated kindergarten classroom. Just as at his private providers,<sup>33</sup> he received related services in a one-to-one environment in an extended day program after the conclusion of the full kindergarten class period. BBOE’s proposed placement for student constitutes the LRE for him.

Parents also argued that Student regressed during the school year, as evidence that the IEP was inappropriate. The Center Director testified that, after Student was removed from BBOE’s afternoon program, The Center staff had to re-teach him certain skills. The Center Director was not specific about what those skills were, how regression was measured, or whether those skills were being taught or were

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<sup>33</sup> Father testified that, at The Center, Student is in a one-to-one program most of the time and occasionally interacts with other children and teachers. Father testified that he does not think there are typical peers at The Center with Student and that sometimes another disabled child is with him.

appropriate to be taught in the kindergarten program. Parents did not provide information or evaluations indicating that Student regressed.<sup>34</sup> They claim that Student regressed in speech but did not provide any evidence or testimony from Private Speech-Language Pathologist indicating his level of functioning or evidence of regression. Student missed twelve half-hour speech and language therapy sessions at BBOE from September 17, 2009 to November 6, 2009 due to absences (Exh. B-43 at 80).

Father testified that evidence of Student's regression was that he was using shorter sentences. Speech-Language Pathologist testified that during her observation of Student at Private Speech-Language Pathologist in preparation for the 2009-10 IEP, the private provider indicated that Student had been using five to six word sentences but at the time of observation was only using three to four word sentences. That speech regression occurred while Student was attending his private providers and before he began attending BBOE's Elementary School. Based on that observation and communication from Private Speech-Language Pathologist, Student's IEP included objectives to independently produce three to four word sentences.

On rebuttal, Weiss pointed to BBOE's year-end progress report (Exh. B-111) to demonstrate that Student experienced significant regression in BBOE's program. However, that data captured Student's behavior over the course of the full school year, most of which time he was removed from the afternoon program, including his related services. Testimony did not prove that the regression was caused by the design of the IEP, Student's lack of attendance in the afternoon session and related services, or other factors.

Parents' post-hearing brief identifies numerous reasons why they believe that the 2009-10 IEPs were not appropriate. All of those reasons have been reviewed and considered by the Hearing Officer and are not individually addressed here. Certain of the objections will be addressed for illustrative purposes.

As indicated above in relation to the 2008-09 IEP, Weiss, The Center Director, and/or Father testified that certain goals or objectives were inappropriate because Student had already mastered the skill. However, the record does not support such a finding. With regard to certain skills, Father's testimony is contradicted by BBOE's reevaluations and Mother's contemporaneous e-mails and responses to the reevaluation assessments. The testimony does not give credit to the concept of generalization wherein skills are not deemed mastered until they are able to be demonstrated across settings and people.

The Center Director testified that the 2009-10 IEP was inappropriate because it did not include a behavior management plan to address the Student's aggression and stereotypies. The IEP includes classroom readiness and social behavior goals designed to increase those skills. The IEP identifies program accommodations and modifications to include behavioral interventions and supports (including break

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<sup>34</sup> The Center does not have any progress reports or report cards for Student (Testimony of The Center Director).

between tasks, cue expected behavior, modeling expected behavior by adults, positive reinforcement, ABA programming, immediate feedback, multi-sensory approach, sensory integration strategies, proactive behavioral strategies), a behavioral support plan communicated to all providers, a full-time ABA provider, and team consultations. The September 3, 2009 revised IEP included goals for social behavior that specifically included objectives for decreasing aggression and disruptive behaviors. These behaviors were also addressed in meetings between BCBA and Mother, which resulted in intervention and support strategies and treatment options that were communicated to Student's service providers (Exh. B-41, B-43 at 33-35). These various modifications, accommodations, and programs addressed those behaviors.

The Center Director testified that the objectives under the social communication goal were not meaningful social language skills. These objectives included answering yes/no questions, responding to greetings, and telling about an activity that occurred within the last hour. BBOE staff credibly testified as to the value these skills brought to Student's social language skills. The skills, when performed independently, allow Student to greet peers, respond to questions, and share stories. The Center Director also testified that objectives that require Student to use a full sentence are not appropriate. This is inconsistent with Weiss' testimony that increased language and mean language utterances are Student's most important needs. It is also inconsistent with Father's testimony that Student is in "dire need" of learning to fit in with regular kids, imitate conversation, and *answer in complete sentences* and that this is more important than the skills identified as goals and objectives in the IEP.

Father testified that the goals and objectives related to increasing independence with clothing fasteners (i.e. buttons, snaps, zippers) are inappropriate because Student already has the skills and because Parents work on it with him every day. Father's testimony was inconsistent with Mother's contemporaneous e-mails and reevaluation assessments as to whether Student mastered this skill. The fact that Parents work on a skill with Student at home does not make it inappropriate in an IEP.

There is no evidence that most of the detailed objections outlined during the hearing and in Parents' pre-hearing brief were communicated to BBOE when the IEP was created. Parents disagreed with the IQ scores and expressed concern about the impact of those scores being in Student's record.<sup>35</sup> Parents offered no detailed objections to the IEPs prior to filing for due process. They expressed disagreement with the IQ score, indicated generally that they disagreed with BBOE's reevaluation, and indicated that the IEP did not provide education in the LRE.

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<sup>35</sup> The evaluation specifically indicated that the test results may not be an accurate reflection of Student's abilities due to his autism and that the recommendations were based also on observation and feedback from Mother and Special Education Teacher.

As BBOE completed Student's reevaluations, learned more from Parents, and observed Student in the public school kindergarten class, they revised the IEP to reflect his individualized needs and current levels of functioning. BBOE revised the June 4, 2009 IEP on September 3, 2009 and again on September 17, 2009 and made a correction to the special education hours on November 6, 2009 (Exh. B-26, B-32, B-43).

Weiss testified that three hours per week of speech and language therapy was not appropriate given Student's limited communication skills. However, Parents initially requested that Student attend the morning kindergarten and attend The Center and three hours per week of speech and language therapy at Private Speech-Language Pathologist. The IEP provided Student with three hours of speech and language therapy, consistent with what Parents indicated they wanted for him.<sup>36</sup>

Parents argue that the November 6, 2009 IEP was inappropriate because the PPT meeting was held to discuss Parents' concerns in light of their decision to remove Student from the afternoon portion of his IEP yet no substantive changes were made to the IEP in light of this decision. They further argue that there was no discussion about whether Student's related services or goals and objectives would be modified as a result of the removal.<sup>37</sup>

Parents' argument puts BBOE in a catch-22. When the 2009-10 IEP was developed in June 2009, Parents indicated to BBOE that they wanted Student in the morning integrated kindergarten and in private services at The Center and Private Speech-Language Pathologist in the afternoon. The PPT discussed the pros and cons of that program with Parents. Parents eventually enrolled Student in the full day program at BBOE's Elementary School.<sup>38</sup> Mother removed Student from his afternoon program early on many occasions so that he could attend Private Speech-Language Pathologist in the afternoons. Student missed speech and language therapy and other related services and specialized instruction in BBOE's afternoon program as a result.

Parents removed Student completely from the afternoon program to receive related services in the afternoons from private providers. Parents were very clear that they wanted Student in the full integrated morning kindergarten and did not want him pulled out for related services. Given that he was removed from

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<sup>36</sup> The Center Director testified that Student should be in the full half-day integrated kindergarten at public school and be in a community-based 5's program for the remainder of the day where he is with typical peers. This testimony is not consistent with Student's private program, Parents' stated wishes, or Weiss' recommendations. BBOE, Parents, and Weiss concur that Student needs related services not just full-time kindergarten with an ABA provider.

<sup>37</sup> This argument and situation was the basis for the stay put motion and order (*See*, Procedural Posture, above).

<sup>38</sup> Although they enrolled Student in the full-day program at BBOE's Elementary School, Parents continued Student in his private placements, evidencing an intent to reserve his spot and keep him there. Student was removed from portions of his afternoon session at BBOE to attend private providers, prior to being fully removed from BBOE's afternoon session.



the afternoon session to receive those services privately, it seems disingenuous to complain that BBOE did not revise the IEP to provide those services at another time or location. Parents made it clear that Student would not be there in the afternoon. They also made it clear that Student was not to be removed from the morning kindergarten for those services.

On one hand, Parents argue that Student was not educated in the LRE and emphasize their desire to have Student fully included in the full integrated kindergarten. On the other hand, they complain that BBOE did not revise Student's IEP to provide related services and specialized instruction in the morning kindergarten class which would require pull-out services and/or individualized instruction within the kindergarten classroom, separating him from typical peers and adding distractions to the environment, thereby negatively impacting the success of his learning opportunities and strategies.

"IDEA requires great deference to the views of the school system rather than those of even the most well-meaning parent." A.S. and W.S. v. Trumbull Board of Education, 414 F. Supp. 2d 152 (D.Conn. 2006). BBOE's PPT members are qualified and experienced in public schools. They believe, in their professional judgment, that the IEP is appropriate for Student. The opinions of Parents, The Center Director, and Weiss were thoroughly considered and evaluated. Their opinions were not granted more weight than those of BBOE staff who evaluated, observed, and worked directly with Student in the public school setting and who demonstrated sincere interest in Student's educational advancement.

The IEP is judged as of the time that it was drafted and not based on hindsight. Student's 2009-10 IEP was individualized based on his assessment and performance as known to BBOE at the time it was prepared and revised. The IEP also provided for Student to be educated in the LRE in that it included him in the full, integrated kindergarten classroom with no pull-out for related services, which were provided during an extended day program in an appropriate resource room, as had been provided at his private providers. The IEP and Behavioral Support Plan address maladaptive behaviors and the PPT considered and implemented strategies to address such behaviors so that they do not impede Student's ability to learn. BBOE staff indicated that, between August 25, 2009 and November 6, 2009, they observed "increased abilities to demonstrate his skills while at the same time has observed decreases in his levels of prompt dependency." (Exh. B-43 at 36).

BBOE met their burden of proving by a preponderance of the evidence that the procedural requirements of the IDEA have been met and that Student's 2009-10 IEP was reasonably calculated to enable him to receive meaningful educational benefits.

**Issue 4: Was BBOE's action in placing Student in a self-contained afternoon program during the 2009-10 school year appropriate?**

Yes, BBOE's action in placing Student in a self-contained afternoon program during the 2009-10 school year was appropriate.

As indicated above under Issue Three, Student was included 100% in the full, integrated kindergarten classroom. Just as at his private providers, he received related services in a one-to-one environment in an extended day program after the conclusion of the full kindergarten class period.

Receiving specialized instruction and related services in the self-contained classroom provided Student an opportunity to receive pre- and post-teaching opportunities, to learn new skills with minimal distractions, and to receive individualized ABA programming. Weiss' report indicates that he finds merit in dividing Student's day into a therapeutic component combined with inclusion in the regular classroom (Exh. B-49 at 8).<sup>39</sup>

The Hearing Officer finds that Student was offered an IEP in the LRE. BBOE met their burden of proving by a preponderance of the evidence that the IEP provided for Student to be educated in the LRE in that it included him in the full, integrated kindergarten classroom with no pull-out for related services, which were provided during an extended day program in an appropriate resource room.

**Issue 5: Did BBOE properly support Student in the regular kindergarten class during the 2009-10 school year?**

Yes, BBOE properly supported Student in the regular kindergarten class during the 2009-10 school year.

As indicated above under Issue Three, Student's IEP fully included Student in the half-day kindergarten class five days per week. As requested by Parents, Student was fully included in BBOE's kindergarten program with typical peers. Parents asked that Student not be removed from the kindergarten classroom to receive his related services. Consistent with Parents' request and the recommendations of the related service providers, necessary related services and direct special instruction were provided in the afternoon extended day session.

Student's IEP also included ABA programming and specialized instruction with the full-time one-to-one assistance of a trained ABA professional in the integrated kindergarten, a sensory diet designed to

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<sup>39</sup> The Center Director testified that Student does not stand to benefit from a self-contained classroom but that is the environment he is in at The Center: one-to-one service outside of a regular education classroom.

keep Student engaged, consultation by Student's related service providers and BCBA, observation in the kindergarten classroom by related service providers, and monthly Parent meetings. BBOE provided Parents with regular and detailed information about Student's progress. When data indicated that sufficient progress was not made or that Student was not grasping the skill, changes were made to the teaching method (B-43 at 38).

BBOE met their burden of proving by a preponderance of the evidence that they properly supported Student in the regular kindergarten class during the 2009-10 school year.

**Issue 6: If the answer to any of the above issues one through five is no, what shall be the remedy?**

The answer to each of Issues One, Three, Four, and Five is "yes." Therefore, there is no question pending regarding remedy for those issues. The answer to Issue Two is "no," necessitating an answer to the question of remedy.

Parents seek reimbursement in the amount of \$10,764 for summer services at The Center and Private Speech-Language Pathologist and for transportation in the form of mileage reimbursement. Parents' entire argument regarding the appropriateness of Student's 2009 summer program states: "In light of the Board's failure to offer or provide an appropriate ESY program, the Parents placed the Student in the Center's ESY program. The Board offered no evidence to prove that the Center's ESY program was inappropriate. The Parents offered the uncontested testimony of [The Center Director] and [Father] that the program was appropriate because the Student continued to demonstrate new skills and maintain the skills acquired throughout the previous year" (Parents' Post-Hearing Brief at 24, citations omitted). Parents seek to place the burden of proving by a preponderance of the evidence the appropriateness of Student's private summer program on BBOE.

To prevail on a claim for reimbursement of a private placement, Parents must prove the appropriateness of their private program by a preponderance of the evidence. Parents have failed to adequately describe or document what services Student received during summer 2009, much less provide evidence to establish the appropriateness of the program.

The record is devoid of any detailed description of the programs provided or objectives worked on with Student by The Center or Private Speech-Language Pathologist in summer 2009. The Center Director testified as to her opinion regarding the appropriateness of BBOE's IEPs but did not provide detailed information about the program provided to Student by The Center. The Center Director was not Student's direct service provider. No direct service providers from The Center or Private Speech-Language

Pathologist were called to testify. Father was not able to provide information about the programs Student was working on in summer 2009. Father testified that he can't say "first hand" what happens at The Center. Father had little contact or communication with Student's private providers and did not recall what they were working on.

The record on this issue is limited to testimony from Father and The Center Director that Student's summer program was appropriate because he continued to demonstrate new skills and maintain skills acquired the previous year. Parents have not met their burden of proving by a preponderance of the evidence the appropriateness of Student's private summer 2009 program.<sup>40</sup>

Although the above findings are sufficient to deny a request for reimbursement, the Hearing Officer also finds that Parents' request is not credible and that Parents did not evidence any intent to send Student to BBOE's Elementary School and would not have sent him to their 2009 ESY program even if presented with a full ESY IEP. Parents' conduct has consistently evidenced intent to keep Student in his private programs and to not send him to BBOE's schools.

Prior to a PPT meeting convening to plan Student's 2008-09 IEP, Parents told The Center Director that they intended to reject the IEP. BBOE proposed an IEP for Student for 2008-09. Parents did not participate in parent trainings, visit the BBOE preschool classroom, or meet the preschool staff in anticipation of Student enrolling in BBOE's preschool. They did not express any objections to BBOE until Pica contacted them in the summer, almost six weeks after the IEP was offered, to determine if they intended to enroll Student for the fall. When they did then express objections, the PPT met and the IEP was revised to address those objections. Parents did not express any further objections and did not enroll Student for the 2008-09 school year. Parents expressed concern about Student losing his place at his private provider if he was enrolled in BBOE's preschool program.

The Hearing Officer finds that Parents did not evidence any intent to send Student to BBOE's Elementary School and would not have sent him to BBOE's 2009 ESY program even if presented with a full ESY IEP.

Father's testimony and request for reimbursement are not consistent and are not found to be credible. Parents' request for due process states that "[d]isagreements over the 2009 ESY program arose during the PPT meeting on June 4, 2009. During that meeting the Board failed to offer an IEP or placement for the

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<sup>40</sup> Parents' expert witness could not testify as to the appropriateness of The Center. He testified that he does not know how often Student goes to The Center, he only knows what Student was working on in October and November, and he does not know whether Student's time at The Center is consistent with the 90 minutes that he observed.

2009 ESY. As a result, the parents indicated they would continue to place [Student] with [The Center] for the 2009 ESY at Board expense. The Board has not reimbursed the parents for this placement.”

There is no evidence that there was disagreement about 2009 ESY at that PPT meeting or that Parents requested reimbursement for summer services. In fact, Father testified that there was no discussion of ESY at that meeting. There is no evidence that Parents ever raised ESY or failure to offer ESY as an issue or requested reimbursement for Student’s summer program until they filed for a due process hearing in November 2009. Parents’ letters to BBOE never addressed ESY, never asked for a correction to the documents to indicate a disagreement over ESY, or requested reimbursement for ESY (Exh. P-17, B-11, B-21, B-23, B-25, B-26 at 35, B-29, B-33, B-34, B-36, B-38, B-42). Father’s testimony regarding ESY and the reason for Student’s private summer placement is not credible.

The Hearing Officer finds that Parents are not entitled to reimbursement for private 2009 summer services.

**Issue 7: Did BBOE violate Parents’ procedural rights under the IDEA by obstructing their right to an independent educational evaluation?**

Yes, BBOE violated Parents’ procedural rights under the IDEA by obstructing their right to an independent educational evaluation.

Parents have the right to an IEE at public expense if they disagree with an evaluation obtained by BBOE. The district must provide information about where an IEE may be obtained and the district’s IEE criteria. If parents request an IEE at public expense, the district must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an IEE is provided at public expense unless the agency demonstrates in a hearing that the evaluation obtained by the parents did not meet agency criteria. If a parent requests an IEE, the district may ask for the parent’s reason why they object to the public evaluation but may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. The choice of evaluator for an IEE rests with the parents, not the school district.

At the conclusion of the September 3, 2009 PPT meeting, Parents submitted a written request for an “independent evaluation of [BBOE’s] program at [BBOE’s] expense.” (FOF 73; Exh. B-26 at 35). At that time, BBOE’s speech and language, occupational therapy, physical therapy, and psycho-educational reevaluations were complete and BCBA had completed his observations of Student and made

recommendations (Exh. B-26 at 36-67). Parents did not express disagreement with any of the reevaluations at the PPT meeting (FOF 73). BBOE denied the request for an evaluation of the school's program but indicated that an IEE of Student would be provided (FOF 74; Exh. B-26, B-28).

On September 8, 2009, Pica transmitted to Parents the IEP as revised on September 3, 2009. Pica's transmittal letter stated, *inter alia*, that "[i]f you would like an independent evaluation of [Student], please let me know and we would plan such an evaluation." Pica's letter did not provide Parents information about where an IEE may be obtained or BBOE's IEE criteria (Exh. B-27).

On September 10, 2009, Parents indicated in writing that they disagree with BBOE's "lengthy evaluation of our son...and we disagree with our son's special education program" (Exh. B-29).<sup>41</sup> The letter further states that Parents will select an evaluator from a state list. The letter did not identify a specific evaluation to which they disagreed (FOF 76; Exh. B-29). There is no evidence that BBOE responded to Parents' September 10, 2009 letter.

At the September 17, 2009 PPT meeting, Parents and BBOE discussed, *inter alia*, the type of evaluation desired by Parents. Parents asked for an independent evaluation to determine whether the IEP is appropriate (FOF 79). BBOE suggested several potential evaluators and provided Parents with a copy of BBOE's criteria for selecting an independent evaluator (FOF 79; Exh. B-27). Knowing that the ABA programming was very important to Parents, Pica suggested that the evaluator be a psychologist who regularly evaluates children with autism and who could also address the psychological evaluation and IQ scores (FOF 79). At that PPT meeting, the special education academic achievement reevaluation, which was completed on September 10, 2009, was discussed. That was the last evaluation to be completed as part of BBOE's reevaluation process (FOF 79).

On September 25, 2009, Parents rejected each of the evaluators suggested by BBOE, indicating their reason for rejecting each (FOF 85). In that same correspondence, Parents indicated that they selected Luddy to conduct the IEE on October 15 and 19, 2009 (FOF 85). They also indicated that, if Luddy was not acceptable to BBOE, Parents would still have her perform the evaluation at their request.

Pica responded on October 2, 2009 by, again, asking parents to reconsider the Powers' Group, who Parents had already rejected. Pica continued to ask for clarification as to what Parents were seeking in the evaluation (FOF 86). Parents responded on October 6, 2009 that they wanted an "independent evaluation of whether or not the IEP meets [Student's] needs." (FOF 87; Exh. B-36). Three days later, Pica telephoned

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<sup>41</sup> Father testified that he thought BBOE's evaluation was not appropriate because the results were not what Parents thought they should be.

Father to, again, discuss what type of evaluation Parents were seeking and to identify a mutually agreeable evaluator (FOF 88). Four days after the phone call, Pica wrote to Parents to indicate that she needed to know the type of evaluation being requested before she could confirm their choice of evaluator (FOF 89; Exh. B-37). The following day, on October 14, 2009, Father informed Pica that, in light of Luddy's unavailability due to a personal matter, Parents selected Weiss as the evaluator (FOF 90; Exh. P-17 at 75).

On October 16, 2009, Pica informed Parents that BBOE could not agree on Weiss since he is not licensed (FOF 93). She further indicated that she felt that Luddy can be appropriate for the evaluation and, again, asked Parents to reconsider the Powers' Group (FOF 93).

Parents requested an IEE on September 3, 2009. It was not until September 17, 2009, two weeks after the request, that BBOE provided Parents with the district's IEE criteria or suggested evaluators. It was not until October 16, 2009, six weeks after the request, that Pica agreed to an evaluator. However, she knew that the evaluator that she agreed to, Luddy, was not available due to a family matter. Pica testified that, at the end of the October 9, 2009 phone conversation with Father, she thought Luddy was going to conduct the evaluation on October 15. However, after that date, she continued to correspond with Parents seeking clarification as to their request and trying to steer them to a mutually agreeable evaluator and to the Powers' Group.

BBOE did not provide Parents with information about where an IEE may be obtained or BBOE's IEE criteria until two weeks after their request for an IEE. Parents did not object to a specific reevaluation but did notify BBOE in their September 10, 2009 letter that they object to the "lengthy evaluation" conducted by BBOE. Parents were not required to give BBOE notice of their intent to seek an IEE or explain the basis for their objection to BBOE's evaluation. Pica repeatedly asked for details and clarification about Parents' request and required an explanation before she would agree to an evaluator at public expense. BBOE engaged in six weeks of such correspondence and communication, from which they apparently did not get clarification to their satisfaction, without either paying for an evaluation or requesting a hearing to defend its own evaluation.

BBOE agreed to an IEE "by a mutually agreeable evaluator." (Exh. B-32 at 5). The IDEA does not require the parties to agree to the evaluator. The choice of evaluator rests with the parents. BBOE disagreed with Parents' proposed evaluator without either paying for the evaluation or requesting a hearing to defend their own reevaluation. Pica concluded the matter by indicating that BBOE did not agree to Weiss since he is not licensed and that if Parents proceed with Weiss it will not be funded by BBOE (FOF 93; Exh. B-39).

BBOE refused to pay for Parents' IEE but did not request a hearing to defend their own reevaluation. If BBOE believes that Parents' evaluator does not meet district criteria, they must prove that in a hearing.

BBOE argued that Parents were not entitled to an IEE because they did not object to a specific evaluation. Parents stated in writing that they disagreed with BBOE's "lengthy evaluation" but did not indicate which evaluation or what aspect of the evaluation. BBOE argued that it worked diligently to understand the type of evaluation sought by Parents and that it "attempted to help the Parents understand their right to an evaluation of [Student] in a specific area." Pica testified that BBOE agreed to an IEE, even if it was not due to disagreement over an evaluation, but in response to Father's testimony that he wanted an evaluation to determine if the IEP was appropriate. Father testified that he did not request an IEE because he disagreed with the evaluations but because he disagreed with the goals and objectives and staffing.<sup>42</sup> He objected to the goals and objectives because he thought that BBOE staff "did not know [his] son." Parents unilaterally selected and scheduled an evaluator who was timely permitted access to BBOE's classrooms for observation. There is no evidence that BBOE informed Parents that they were only entitled to an IEE if they object to BBOE's evaluation or that they were not entitled to an IEE because they did not indicate objection to an evaluation.

BBOE argues that its actions were not unreasonable since Weiss did not meet BBOE's criteria and was not legally authorized to evaluate Student yet was permitted by BBOE to observe Student within two weeks of being identified by Parents. BBOE can not simply say no and do nothing. Their choice is to fund the evaluation or proceed to hearing. They did neither.

In this case, where there were no school breaks or other time impediments, the Hearing Officer finds that BBOE did not, without unnecessary delay, request a hearing or provide an IEE at public expense as required by the IDEA. BBOE did not meet their burden of proving by a preponderance of the evidence that they did not violate Parents' procedural rights under the IDEA by obstructing their right to an independent educational evaluation.

**Issue 8: Did BBOE violate Parents' procedural rights under the IDEA by failing to offer an appropriate IEP by the beginning of the 2009-10 school year?**

No, BBOE did not violate Parents' procedural rights under the IDEA by failing to offer an appropriate IEP by the beginning of the 2009-10 school year.

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<sup>42</sup> The IDEA does not provide a right of action on behalf of students or parents for a district's failure to employ highly qualified staff. 34 CFR § 300.18(f). *See also*, 71 Fed. Reg. 46,561 (Aug. 14, 2006).



As indicated above under Issue Three, BBOE proposed an appropriate program for Student for the 2009-10 school year. An appropriate diagnostic IEP was in place and implemented at the start of the 2009-10 school year (FOF 62). The IEP was revised twice over the next three weeks as permitted by Connecticut Agency Regulations governing diagnostic IEPs (FOF 69, 81).

As discussed more fully under Issue Three above, BBOE met its burden of proving by a preponderance of the evidence that it offered and implemented an appropriate IEP for Student at the beginning of the 2009-10 school year.

**Issue 9: Did BBOE violate Parents' procedural rights under the IDEA by continuing Student's diagnostic placement?**

No, BBOE did not violate Parents' procedural rights under the IDEA by continuing Student's diagnostic placement.

BBOE staff determined that a diagnostic placement was appropriate to assess Student's needs since they had not evaluated or seen him for a year. Consistent with Connecticut Agency Regulation Section 10-76d-14(b), the PPT specified, in writing, "diagnostic goals and objectives, as well as the types and amounts of services needed to conduct the program in order to determine more conclusively the child's needs." (FOF 47, 48, 58). The diagnostic IEP, initially developed on June 4, 2009 with input and information provided by Parents, and to be effective on August 25, 2009, indicated that the PPT would meet every two weeks to discuss Student's progress and to revise, where necessary, the services being provided.

BBOE began observation and reevaluation of Student in June 2009 and continued those assessments after Student began attending kindergarten on August 25, 2009. The diagnostic IEP specifically indicated that it was "a diagnostic placement, affording the opportunity to assess [Student's] needs in the school setting" and began on August 25, 2009, when Student began attending BBOE's Elementary School and began receiving services (FOF 47, 62). The diagnostic label was removed from the IEP on September 3, 2009 – nine calendar days after school began - pursuant to Father's request (FOF 64, 69). At that time, the speech and language, occupational therapy, and physical therapy reevaluations were complete (FOF 72).

Parents argue that BBOE should have started the reevaluation process earlier in the year, as done in 2008, and that the reevaluations could have been completed during the summer so that a full non-diagnostic IEP was in place at the start of the school year.

The 2008-09 IEP process was initiated by BBOE in February 2008 pursuant to the provisions of the Mediated Settlement Agreement (FOF 11). The 2009-10 IEP process was initiated by BBOE in April 2009 (FOF 40). The Mediated Settlement Agreement was not placed into evidence and there was no testimony indicating whether it specifically identified the date by which BBOE was required to initiate the IEP process for the following school year. Nor was there testimony or evidence indicating that the timing of the 2009-10 IEP process was unreasonable.

Even if the 2009-10 IEP process were initiated two months earlier, it would not have provided BBOE an opportunity to reevaluate and assess Student in a public school kindergarten since he was not attending public school at that time. The Hearing Officer finds that the timing under which BBOE initiated the process did not lengthen or delay the diagnostic placement period, which still would have begun on August 25, 2009. BBOE began observation and reevaluation of Student in June 2009 when it received signed releases and consents and continued those assessments after Student began attending kindergarten (FOF 42, 53, 54, 55, 72).

Parents' argument fails to acknowledge that the IEP was a diagnostic placement to assess Student's performance and needs *in the school setting*. Assessment of his performance in the school setting could not have been done prior to August 25, 2009 since Student did not attend BBOE's Elementary School in 2008-09 and since ESY programs provide only individualized instruction and related services and not regular integrated kindergarten classroom opportunities (FOF 52). The first opportunity for BBOE to observe and assess Student's performance and needs in a public school setting was after he began attending their integrated kindergarten class on August 25, 2009.

Father began complaining about the duration of the diagnostic IEP on July 14, 2009 when he wrote to Pica indicating that that BBOE already had five weeks to perform their reevaluation, that an eight week diagnostic period was too long, and that "[c]ontinuing to delay the presentation of an IEP for us to evaluate puts us at risk of not having time to plan for and secure alternative arrangements for [Student], if necessary, and will detrimentally delay and deprive [Student] of his education and therapy." (FOF 57). Father testified that he was concerned about the continuation of the diagnostic IEP because he was concerned that he could not bring a due process request until the IEP was final.

BBOE met their burden of proving by a preponderance of the evidence that they did not violate Parents' procedural rights under the IDEA by continuing Student's diagnostic placement.

**Issue 10: If the answer to any of the above issues seven through nine is yes, what shall be the remedy?**

The answer to each of Issues Eight and Nine is “no.” Therefore, there is no question pending regarding remedy for those issues. The answer to Issue Seven is “yes,” necessitating an answer to the question of remedy.

Under Issue Seven, above, it was found that Parents stated disagreement with BBOE’s reevaluation, that they did not and were not required to explain their disagreement, and that BBOE did not file for due process without unnecessary delay to defend their reevaluation.

BBOE’s refusal to fund the IEE was based on their opinion that Weiss was not qualified to perform an IEE and did not meet their criteria. To avoid being ordered to reimburse Parents for an IEE, BBOE has the burden of proving by a preponderance of the evidence that its reevaluation was appropriate and that Weiss’ IEE was not appropriate.

As demonstrated under Issue Three, above, BBOE’s reevaluations were conducted using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student, including information provided by Parents, that may assist in determining the content of Student’s IEP, including information related to enabling him to be involved in and progress in the general education curriculum. BBOE’s reevaluations did not use any single measure or assessment as the sole criterion for determining an appropriate educational program for Student. BBOE used standard technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

The record supports a finding that the reevaluations were administered in the form most likely to yield accurate information on what Student knows and can do academically, developmentally, and functionally. BBOE staff evaluating Student utilized sensory breaks and other appropriate measures toward this effort, and considered the impact of Student’s autism and speech and language weaknesses on the results.

The reevaluations were administered by trained and knowledgeable staff as evidenced by their testimony, resumes, skills, experience, and job requirements (Exh. B-59, B-60, B-61, B-62, B-63, B-64, B-65, B-86, B-87, B-92, B-93, B-109). The assessments and other evaluation materials included those tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient. The assessments were selected and administered with a mind toward Student’s autism and related weaknesses that may impact the test results. Student was assessed in all areas related to his

disability, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

The evaluations included discussions with Parents and Student's private providers and review of previous evaluations. BBOE's evaluations were sufficiently comprehensive to identify all of Student's special education and related services needs. BBOE met its burden of proving by a preponderance of the evidence that its evaluation was appropriate.

BBOE argues that Parents' IEE is not appropriate because Weiss does not meet the district's criteria for independent evaluators since he is not licensed, that he is not able to conduct evaluations, that he conducted a private observation for Parents in anticipation of litigation not an evaluation for educational purposes, and that Parents were not entitled to an IEE because they did not object to a specific BBOE evaluation.

Weiss holds a PhD in psychology (Exh. B-49 at 16; Testimony of Weiss). At the time of his assessment of Student, Weiss was not and had not ever been licensed as a psychologist in the State of Connecticut (Exh. B-49; Testimony of Weiss). BBOE's criteria require a psychologist conducting a psychological or psycho-educational evaluation to hold a valid Connecticut Department of Health license as a psychologist in good standing (Exh. B-27).<sup>43</sup> Weiss admitted that he did not meet that criteria at the time of his assessment of Student.<sup>44</sup>

Weiss also admitted that, as an unlicensed psychologist, he is not permitted to do a psychological evaluation, to make a diagnosis, to assess, or to treat Student (FOF 93, 107). He has not performed any psychological testing since the early 1990s and rarely does testing (Testimony of Weiss). Weiss administered no tests or assessments to Student and did not utilize any psychological evaluation checklists in his observations and interactions with Student. Weiss reviewed *some* of the evaluations completed by BBOE (FOF 94). Weiss testified that his report and testimony is a comment on Student's evaluations, diagnosis, assessments, and treatment. His recommendations are his opinion regarding treatment and amelioration of Student's problems (FOF 107).

To be qualified to conduct an educational evaluation, BBOE's criteria require a professional educator certificate in special education from the State of Connecticut Department of Education (Exh. B-

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<sup>43</sup> The Comments to 34 CFR § 300.502 state, in pertinent part, that "it would be appropriate for a public agency to require an IEE examiner to hold, or be eligible to hold, a particular license when a public agency requires the same licensure for personnel who conduct the same type of evaluation for the agency." 71 Fed. Reg. 46,689 (Aug. 14, 2006). *See also*, Letter to Petska, 35 IDELR 191 (OSEP 2001). BBOE's criteria require licensure, not eligibility for licensure (Exh. B-27).

<sup>44</sup> Weiss was licensed as a psychologist in Massachusetts from 1989 to 1996 (Exh. B-49).

27).<sup>45</sup> Weiss does not hold such certification. In response to that line of questioning, Weiss testified that he performed an observation and functional analysis, not an educational evaluation.

BBOE criteria also states that evaluators “must restrict their evaluations to their specific area of expertise and may not make opinions or recommendations on matters outside of their specific area of expertise.” Weiss’ report and testimony discusses Student’s language skills and needs. Weiss testified that he believes that Student should be placed in the environment that generates the most independent language. Weiss is not a speech-language pathologist and is not qualified to perform such an evaluation yet offered opinions and recommendations on matters relating to speech and language pathology.

Weiss testified that he gave an opinion as to Student’s aptitude and skills since he is not authorized to perform an educational or psychological evaluation. Weiss was not qualified to conduct either a psychological evaluation or an educational evaluation of Student and is not a qualified examiner under the IDEA for purposes of an IEE in this case.

Even if found to be a qualified examiner, Weiss’ opinion and report do not meet the evaluation standards set out in the IDEA, specifically in 34 CFR § 300.304 through 34 CFR § 300.311 as required by the IDEA definition of “evaluation.” Weiss did not conduct assessments or review raw data from BBOE during his assessment of Student. His written report makes no mention of the evaluations that he reviewed or took into consideration and does not specifically reference any IEP or opinions as to whether the goals and objectives are appropriate.

BBOE also argues that Weiss did not conduct an evaluation but conducted an observation for Parents in anticipation of litigation. Weiss did not complete an IEE. He wrote a report at Parents’ request for the purpose of testifying as an expert in this hearing. His observation report was written a month after Parents unilaterally removed Student from the afternoon portion of his program. Parent’s post-hearing brief, at 36, indicated that Weiss’ report “was submitted for consideration at the hearing and not for use at a PPT.”

Parents have the right to select the evaluator, as long as he is a qualified examiner and meets the district’s criteria. Parents take the risk of not getting reimbursement if the evaluator is not appropriate. Similarly, Parents risk not receiving an award of reimbursement if the outside evaluation is used for purposes other than contesting the district’s evaluation. R.L. v. Plainville Bd. of Educ., 363 F. Supp. 2d 222 (D. Conn. 2005).

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<sup>45</sup> The question as to whether such licensure requirement is reasonably necessary for such an evaluation or whether it is consistent with a parent’s right to an IEE, as discussed in Letter to Petska, *supra*, is not reached in this case where Weiss testified that he did not conduct an educational evaluation.

If a parent elects to obtain an IEE by an evaluator not approved by the district, the district may initiate a due process hearing to demonstrate that the evaluation obtained by the parent did not meet the public agency criteria applicable for IEEs or that there is no justification for selecting an evaluator that does not meet agency criteria. Generally, if the public agency chooses not to initiate a due process hearing, it must ensure that the parent is reimbursed for the evaluation. As indicated, BBOE did not request a hearing to demonstrate that Weiss was not qualified and/or did not meet their IEE criteria. In this case, Parents requested a due process hearing after requesting an IEE and selecting Weiss but before Weiss' report was complete.

The Hearing Officer treats BBOE's failure to file for hearing as harmless error because Parents' due process filing prior to the completion of Weiss' report resulted in a due process review of all of the issues between the parties, including a review of whether BBOE's evaluation was appropriate and whether the IEE was appropriate. BBOE's procedural violation did not impede Student's right to FAPE, significantly impede Parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefits.

In light of the findings that Weiss is not a qualified examiner, did not meet BBOE's criteria, and did not conduct an evaluation consistent with the IDEA, that BBOE's reevaluations were appropriate, and that the procedural violation did not result in denial of FAPE for Student, reimbursement of Weiss' fee is denied.

Comments on the Conduct of the Proceedings Pursuant to Connecticut Agency Regulations  
§ 10-76h-16(b)

In preparing this final decision and order, the Hearing Officer thoroughly reviewed and considered the following:

1. testimony of all witnesses except Mother, whose testimony was excluded (see Attachment A – Order of Testimony of Witnesses);
2. all exhibits admitted into evidence as full exhibits (see Attachment B – Exhibits Offered);
3. arguments and rulings for all exhibits offered but not admitted into evidence as full exhibits;
4. opening and closing arguments of the parties' attorneys; and
5. post-hearing briefs and proposed findings of fact filed by the parties.

### Credibility and Weight of Father's Testimony

Limited credibility and weight was attributed to Father's testimony. Father did not visit BBOE classrooms, meet staff in preparation for Student enrolling in school, attend parent meetings or trainings, know what programs and goals Student was working on at his private providers, or know the qualifications of the private providers.<sup>46</sup> Yet, despite lacking that first-hand knowledge, he testified that The Center's program was appropriate and that BBOE's programs were not appropriate.

Father's testimony that Student mastered certain skills was contradicted by contemporaneous e-mails and assessments completed by Mother who did visit BBOE classrooms, meet staff, and attend parent meetings. On direct examination, Father testified very definitively about what Student knew, what skills he had, and at what age he demonstrated those skills. On direct examination, he was very precise in remembering what skills Student had mastered and when but, on cross-examination, particularly when confronted with Mother's contemporaneous e-mails and completed assessments of Student that contradicted his testimony, he did not recall specifics. On cross-examination, Father was defensive and was argumentative about terms and definitions that he did not question on direct examination. Father was the only witness whose behavior and demeanor changed drastically between direct examination and cross-examination.

### Conduct of Attorneys

At numerous times, the parties' attorneys' conduct was overly contentious and repetitive, requiring the Hearing Officer to instruct them on appropriate, positive, and productive conduct during the hearing. The attorneys repeatedly argued the same issue - production of raw data - that was resolved on motion to and by ruling of the Hearing Officer early in the hearing. The parties were warned numerous times that the data argument was not to be repeated. The continuing arguments throughout the hearing did not address new information or argument but continued to repeat the same argument over and over.

In addition to repeatedly raising the issue that had been ruled on, the attorneys took inconsistent positions with regard to their arguments. Each made an argument about why their raw data should be admitted and argued that the other side's position was inappropriate, disingenuous, and/or without merit.

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<sup>46</sup> There were many facts that Father did not know, including: the number of hours that Student spends in Private Kindergarten Enrichment Program, what town it is in, what type of facility it is in, why Mother changed Student's placement from Private Nursery School II to Private Kindergarten Enrichment Program, whether The Center Director instructs Student, whether The Center is a state-certified school, whether The Center is licensed by any regulatory body; whether The Center staff hold any licenses, or what involvement Mother had in the evaluation process or in filling out the inventory which disagrees with some of his statements of Student's capabilities. Most of the evidence about Student's private programs in terms of service hours was provided by The Center Director, PPT meeting minutes, and BBOE staff who observed Student in those settings.

However, when the argument switched to the issue of admission of the other party's data, they swapped arguments. After calling the other side's argument disingenuous or with merit, they adopted that argument in defense of their own data.

There was excessive argument in this case, causing unnecessary and unproductive delays in the hearing. In several instances, the attorneys continued to argue after the Hearing Officer issued a ruling.

#### Impact of Potential Future Litigation

In closing argument, BBOE's Attorney asked the Hearing Officer to be mindful that any award in favor of Parents would create further litigation in the form of a federal court proceeding for Parents to seek attorneys' fees. Student's Attorney objected to the argument as being improper. The Hearing Officer permitted BBOE's Attorney to make her argument and indicated that opening and closing arguments and arguments on motions and objections were treated as argument only and not as evidence. The Hearing Officer performed her own research and analysis and considered but did not rely solely on the arguments or statements of law presented by the parties. The Hearing Officer's final decision and order is based on that thorough research and analysis and not on what additional or potential future litigation may or may not occur as a result of any actions in this case. The Hearing Officer's efforts were to focus on Student and his rights and needs and to make the best and most accurate rulings and findings on each issue presented in this case without regard for what future litigation might or might not result.

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

1. The Board of Education proposed an appropriate program for Student for the 2008-09 school year.
2. The Board of Education did not propose an appropriate program for Student for the 2009 extended school year.
3. The Board of Education proposed an appropriate program for Student for the 2009-10 school year.
4. The Board of Education's action in placing Student in a self-contained afternoon program during the 2009-10 school year was appropriate.
5. The Board of Education properly supported Student in the regular kindergarten class during the 2009-10 school year.
6. The question of remedy is not reached with regard to Issues One, Three, Four, and Five. No remedy is ordered with regard to Issue Two.



7. The Board of Education violated Parents' procedural rights under the IDEA by obstructing their right to an independent educational evaluation.
8. The Board of Education did not violate Parents' procedural rights under the IDEA by failing to offer an appropriate IEP by the beginning of the 2009-10 school year.
9. The Board of Education did not violate Parents' procedural rights under the IDEA by continuing Student's diagnostic placement.
10. The question of remedy is not reached with regard to Issues Eight or Nine. No remedy is ordered with regard to Issue Seven.

Attachment A – Order of Testimony of Witnesses

January 15, 2010	Direct examination of Mother
March 17, 2010	Direct examination of Weiss
March 18, 2010	Direct examination and cross-examination of Weiss
March 19, 2010	Direct examination of Father
March 26, 2010	Oral argument on Motion to Exclude Exhibits
	Continued direct examination of Father
March 31, 2010	Continued direct examination of Father
	Cross-examination of Father
April 12, 2010	Direct examination of The Center Director
	Cross-examination of The Center Director
April 15, 2010	Continued cross-examination of The Center Director
April 27, 2010	Continued cross-examination of Father
	Redirect of Father
	Student Rested
	Direct examination of Pica
May 6, 2010	Continued direct examination of Pica
May 17, 2010	Continued direct examination of Pica
	Cross-examination of Pica
May 19, 2010	Continued cross-examination of Pica
	Redirect of Pica
	Re-cross-examination of Pica
May 24, 2010	Direct examination of BCBA
May 27, 2010	Continued direct examination of BCBA
	Cross-examination of BCBA
July 15, 2010	Continued cross-examination of BCBA
	Direct examination of Special Education Teacher
July 20, 2010	Continued cross-examination of BCBA
	Continued direct examination of Special Education Teacher
	Cross-examination of Special Education Teacher
July 21, 2010	Direct examination of Occupational Therapist
	Cross-examination of Occupational Therapist
	Redirect of Occupational Therapist
	Direct examination of Speech-Language Pathologist
July 23, 2010	Continued direct examination of Speech-Language Pathologist
	Cross-examination of Speech-Language Pathologist
	Redirect of Speech-Language Pathologist
	Board of Education rested
July 26, 2010	Direct examination of Weiss on rebuttal
	Cross-examination of Weiss
	Redirect of Weiss
	Direct examination of Father on rebuttal
	Cross-examination of Father

Attachment B – Exhibits Offered

Parents' exhibits are identified as "P-#"; Board of Education exhibits are identified as "B-#"; and Hearing Officer exhibits are identified as "HO-#. All exhibits were admitted into evidence as full exhibits unless marked otherwise with an asterisk. Those with an asterisk were marked for identification only.

<u>Exh</u>	<u>Date</u>	<u>Description (# of pages)</u>
HO-1	11/19/09	Parents' Request for Due Process Hearing (4 pp)
P-1*	02/05/07	Occupational Therapy Update (1 p)
P-2*	02/08/07	PPT Meeting Summary & IEP (33 pp)
P-3*	02/09/07	Physical Therapy/Initial Evaluation (3 pp)
P-4*	02/12/07	Letter from Pica to The Center (1 p)
P-5*	02/13/07	Letter from Pica to Parents (1 p)
P-6*	04/10/07	Letter from Pica to Parents (1 p)
P-7*	04/11/07	Notice of PPT Meeting 05/03/07 (1 p)
P-8*	05/03/07	E-mail from Parents to Special Education Teacher re PPT attendance (1 p)
P-9*	05/03/07	PPT Summary & IEP (33 pp)
P-10*	05/10/07	Letter from Pica to Parents re IEP developed (1 p)
P-11*	05/17/07	Letter from BBOE to Parents re missing page (1 p)
P-12*	08/28/08	Prior Written Notice Sheets (4 pp)
P-13*	05/08/09	Response Letter from Parents to Pica's 4/23/09 Letter (2 pp)
P-14*	11/19/09	Hearing Request (4 pp)
P-15	11/30/09	Letter from Pica to Parents – response to due process request (58 pp)
P-16*		Data sheets on skills (28 pp)
P-17	02/09/09-11/30/09	E-mails between Parents and school (124 pp)
P-18*		Data from The Center – Packet 1: Skills data from 2007-2010 (159 pp)
P-19*		Data from The Center – Packet 2: Skills data from 2007-2010 (115 pp)

P-20*		Data from The Center – Packet 3: Skills data from 2007-2010 (279 pp)
P-21*		Data from The Center – Packet 4: Play Group data (105 pp)
P-22*		Data from The Center – Packet 5: Play Group data (260 pp)
P-23*		Data from The Center – Packet 6: Play Group data (441 pp)
P-24*		Data from The Center – Packet 7: Play Group data (516 pp)
P-25*		Data from The Center – Packet 8: Play Group data (206 pp)
P-26	09/08-06/09	Out of Pocket Costs for Private Services (1 p)
P-27		Photo of Student (1 p)
P-28*		Withdrawn and later resubmitted as Exh. P-32
P-29		CV of The Center Director (3 p)
P-30*	01/29/10	E-mail from Attorney Shaw to Hearing Officer requesting order as to data (1 p)
P-31*	01/19/10	Letter from Attorney Freedman to Hearing Officer in response to request for order (2 p)
P-32*	02/02/10	E-mail from Attorney Shaw to Hearing Officer withdrawing request for order (1 p)
P-33*		ESY – Blank Parent Confirmation Form & Health Form (1 p)
P-34*	02/01/10	Letter from Attorney Freedman to Attorney Shaw in response to Attorney Shaw’s 1/27/10 letter (2 p)
P-35*	02/02/10	Letter from Attorney Shaw to Attorney Freedman in response to Attorney Freedman’s 2/1/10 letter response (2 pp)
P-36*	02/10/10	Parents’ Motion for Order Enforcing Stay-Put (11 pp)
P-37*	02/17/10	Board’s Response to Parents’ Motion (11 pp)
B-1	02/08/07	Release of Confidential Information to Center for Growth and Development (1 p)
B-2	02/36/08	Correspondence to Parents from Pica regarding evaluations and observations as per Settlement Mediation Agreement (includes Notice and Consent to Conduct Evaluations and Release of Confidential Information) (7 pp)

- B-3 02/29/08 Notice and Consent to Conduct Initial Evaluation forms signed by Mother (4 pp)
- B-4 05/08/09 Correspondence to Pica from Father regarding enrollment of Student in Bethel Public Schools and Parent revision of Two-Way Release of Confidential Information Form (2 pp)
- B-5 05/21/08 Release of Confidential Information Form for Occupational Therapist signed by Parent (1 p)
- B-6 05/22/08 Correspondence to The Center from Pica requesting records/data concerning Student (1 p)
- B-7 05/02, 05/29 and 06/05/08 Notice of Planning and Placement Team Meeting (“PPT”) and letter of transmittal from Pica of PPT minutes, including Physical Therapy Reevaluation, Applied Behavior Analysis Services Report, Occupational Therapy Reevaluation, Special Education Academic Achievement Evaluation Report, Psycho-educational Evaluation, and Speech-Language Reevaluation (70 pp)
- B-8 06/16/08 Occupational/Physical Therapy Prescription (1 p)
- B-9 07/23/08 Correspondence from Pica to the Parents regarding conversation of July 14, 2008 and registration of Student (1 p)
- B-10 08/01/08 Correspondence to The Center from Pica regarding Student’s current program information (1 p)
- B-11 08/05/08 Correspondence to Pica from Parents regarding proposed program for Student (3 pp)
- B-12 08/18/08 Correspondence to The Center from Pica requesting Student’s current program information (Second Request) (1 p)
- B-13 08/08 and 08/28/08 Notice of PPT Meeting and PPT Meeting Minutes, including Waiver of Five-Day Notice of PPT (42 pp)
- B-14 09/04/08 Correspondence to Parents from Pica regarding Student’s Program and Consent Forms for Special Education Placement, Release of Confidential Information and Notice and Consent to Conduct a Reevaluation (4 pp)
- B-15 04/23/09 Correspondence to Parents from Pica regarding scheduling of PPT and Release of Confidential Information Forms (5 pp)
- B-16 05/14 and 06/04/09 Notice of PPT Meeting and PPT Meeting Minutes (38 pp)

B-17	06/04/09	Notice and Consent to Conduct a Reevaluation and Release of Confidential Information Forms signed by Father (6 pp)
B-18	06/11/09	Release of Confidential Information Form signed by Mother (1 p)
B-19	06/10- 06/12/09	Email correspondence between BCBA and The Center and Parents regarding observation scheduling (9 pp)
B-20	06/15/09	Correspondence to Parents from Pica regarding Student's IEP (1 p)
B-21	07/14/09	Correspondence to Pica from Parent regarding Student's PPT, evaluations and program (2 pp)
B-22	07/17/09	Correspondence to Parents from Pica regarding diagnostic placement IEP (2 pp)
B-23	09/01/09	Correspondence to Pica from Parent regarding upcoming PPT and request to terminate diagnostic placement for Student (1 p)
B-24	09/02/09	Correspondence to Parents from Pica regarding upcoming PPT and concerns regarding diagnostic placement (1 p)
B-25	09/02/09	Correspondence to Pica from Parent regarding diagnostic placement and placement for Student (1 p)
B-26	08/25 and 09/03/09	Notice of PPT Meeting and PPT Meeting Minutes including Speech-Language Reevaluation, Occupational Therapy Evaluation, Physical Therapy Reevaluation, Applied Behavior Analysis Services, Psycho-educational Evaluation and Parents' request for evaluation of school program (67 pp)
B-27	Undated	Independent Educational Evaluations Guidelines for Bethel Public Schools (6 pp)
B-28	09/08/09	Correspondence to Parents from Pica regarding recent PPT (1 p)
B-29	09/10/09	Correspondence to Pica from Parents regarding request for evaluation (1 p)
B-30	09/11/09	Email correspondence between Parents and BCBA regarding observations (3 pp)
B-31*	09/16/09	Correspondence to Parents from Pica regarding PPT of 9/3/09 (1 p)
B-32	09/04, 09/17 and 09/24/09	Notice of PPT Meeting and PPT Meeting Minutes including Special Education Academic Achievement Evaluation and correspondence addressed to Parents from Pica regarding PPT (38 pp)

B-33	09/17/09	Correspondence to Pica from Parents regarding recent PPT meeting(1p)
B-34	09/25/09	Correspondence to Pica from Parents regarding independent evaluators (1 p)
B-35	10/02/09	Correspondence to Parents from Pica regarding independent evaluators (2 pp)
B-36	10/06/09	Correspondence to Pica from Parents in response to previous correspondence regarding independent evaluators (1 p)
B-37	10/13/09	Correspondence to Parents from Pica responding to previous correspondence regarding independent evaluators (1 p)
B-38	10/15/09	Correspondence to Pica from Parent regarding independent evaluators (2 pp)
B-39	10/19/09	Correspondence to Parents from Pica regarding meeting with Mother (10/16/09) regarding independent evaluators (2 pp)
B-40	10/13 - 10/15/09	Email correspondence between BCBA and Parents regarding team meeting (3 pp)
B-41	10/22/09	Applied Behavior Analysis Services Report and Classroom Support Guidelines prepared by BCBA (4 pp)
B-42	10/29/09	Correspondence to Pica from Parents regarding Student's IEP (1 p)
B-43	10/29, 11/06 and 11/13/09	Notice of PPT Meeting and PPT Meeting Minutes including Progress Update, Schedule of Activities, Speech-Language Update, Occupational Therapy Progress Update Report, and Physical Therapy Update Report and correspondence to Parents from Pica regarding PPT (93 pp)
B-44	10/27 - 11/10/09	Student Behavior Guidelines written by Special Education Teacher, revised by Speech-Language Pathologist (2 pp)
B-45	11/19/09	Correspondence to Parents from Special Education Teacher regarding schedule of meetings for 2009-2010 school year (3 pp)
B-46	09/10 - 11/12/09	Student Behavior and Staff Behavior Logs (6 pp)
B-47	11/23/09	Correspondence to Parents from Special Education Teacher including Student's progress report (13 pp)
B-48	11/24/09	Correspondence to Parents from Pica regarding Resolution Session (2 pp)

B-49	12/15/09	Evaluation Report prepared by Dr. Michael J. Weiss, Developmental Psychologist (29 pp)
B-50	12/18/09	Log of Diet and Behaviors (35 pp)
B-51	12/22/09	Correspondence to Parents regarding Student's Progress toward goals and objectives (13 pp)
B-52	12/23/09	Correspondence to Parents from Pica regarding upcoming PPT (PPT notice included) (2 pp)
B-53	July 2005	State of Connecticut Guidelines for Identification and Education of Children and Youth with Autism (128 pp)
B-54	08/27 - 11/04/09	Email correspondence between Parents and Occupational Therapist (14 pp)
B-55	08/28 - 11/02/09	Email correspondence between Parents and Physical Therapist (8 pp)
B-56	05/04 - 10/23/09	Email correspondence between Parents and Special Education Supervisor (11 pp)
B-57	12/02 - 12/21/09	Email correspondence between various Parties and Physical Therapist (10 pp)
B-58	Undated	Handouts: Exercises & Information for use with Theraplast and Color-coded therapy Putty, Activities to Develop Fine Motor Skills (Sent home 12/11/09) (13 pp)
B-59		Resume of Linda A. Pica (6 pp)
B-60		Resume of Occupational Therapist (3 pp)
B-61		Resume of School Psychologist (5 pp)
B-62		Resume of BCBA (15 pp)
B-63		Resume of Speech-Language Pathologist (2 pp)
B-64		Resume of Physical Therapist (11 pp)
B-65		Resume of Special Education Teacher (3 pp)
B-66		License Information - Dr. Michael J. Weiss (3 pp)
B-67	August 2004	Behavior Analyst Certification Board Guidelines for Responsible Conduct (19 pp)



B-68	10/22 and 12/17/09	Parent Meeting Minutes (5 pp)
B-69	12/23/09	Summary of Behavior Data (11 pp)
B-70	2009-2010	Log of Special Ed Classroom Observation/Consultation Notes (3 pp)
B-71	September 2009	Behavior Guidelines (4 pp)
B-72	Undated	Daily Behavior Data Sheet and Definitions (2 pp)
B-73	December 2009	Observation and Consultation Log (1 p)
B-74	2009	Lesson Plans and Data Sheets in ABA Data Books (91 pp)
B-75	2009	Writing Samples (18 pp)
B-76	01/2010	Email correspondence between Various Parties and Parents (3 pp)
B-77	10/2009	Email correspondence from Pica to Department of Health regarding Weiss's license (1 p)
B-78		Resume of Dr. Michael J. Weiss, Ph.D. (13 pp)
B-79	December 2009	Concepts of Print Checklist (1 p)
B-80	December 2009	Math Assessment (9 pp)
B-81	December 2009	Phonological Assessment (3 pp)
B-82	11/09-11/20/09	Applied Behavior Analysis Services Calendar (2 pp)
B-83	12/22/09 - 01/05/2010	Log of Sensory Diet and Behaviors (3 pp)
B-84	September 2009-June 2010	Classroom Meeting Schedule (1 p)
B-85	11/20 - 12/18/09	Observation and Consultation Log (1 p)
B-86		Resume of Kindergarten Teacher (1 p)
B-87		Resume of Special Education Supervisor (3 pp)
B-88	School Year 2009-10	Elementary Report Card - Kindergarten (2 pp)
B-89	01/21 and 01/22/2010	Notice of PPT Meeting and Correspondence to Parents regarding same (2 pp)
B-90	08/25/09 - 01/27/2010	Graphical Behavioral Data (10 pp)

B-91	10/6/09 - 01/29/2010	Log of Sensory Diet and Behaviors (64 pp)
B-92	Undated	Job Description - Behavior Analyst (2 pp)
B-93	Undated	Job Description - Applied Behavior Analysis Provider (2 pp)
B-94	Undated	List of Independent Evaluators (2 pp)
B-95	01/14/2010	Parent Meeting Minutes (3 pp)
B-96	12/07/09 - 02/01/10	Observation and Consultation Log, Speech-Language Pathologist (2 pp)
B-97	11/20/09 - 01/29/2010	Observation and Consultation Log, Occupational Therapist (1 p)
B-98	01/13 - 01/21/2010	Correspondence between Special Education Teacher and various parties (9 pp)
B-99	01/04 - 01/28/2010	Email correspondence to Parents from Physical Therapist (3 pp)
B-100		Connecticut Statute Sec. 20-187a. Licensure Required (2 pp)
B-101		Connecticut Statute Sec. 20-195. Exempted Activities and Employment (2 pp)
B-102		Photographs of location of The Center (2 pp)
B-103*	09/03/09 - 03/11/2010	Daily Data Sheets (200 pp)
B-104	09/10/09- 03/01/2010	Sensory Diet Logs (12 pp)
B-105	12/07/09 - 02/09/2010	Observation and Consultation Log (2 pp)
B-106	01/28 - 02/24/2010	Email correspondence between Various Parties regarding Student's activities and classroom work (11 pp)
B-107	02/18/2010	Parent Meeting Minutes (2 pp)
B-108		State of Connecticut Department of Education Special Education: Procedural Safeguards (13 pp)
B-109		Resume of Speech-Language Pathologist (3 pp)
B-110	12/07/09 - 06/02/2010	Observation and Consultation Log (2 pp)
B-111	06/08/2010	Special Education Annual Review Report (17 pp)