

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Newtown Board of Education

Appearing on behalf of the Parents: Surrogate Parent, pro se

Appearing on behalf of the Board: Attorney Michelle C. Laubin
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Does the Board continue to be responsible for funding the Student's special education placement?
2. The Board and the Surrogate Parent have been notified that the Student's placement at the er will be terminated and his last day there is April 1, 2010. What is the Student's "stay put" placement pending completion of this special education hearing?
3. What are an appropriate Individualized Education Program (IEP) and placement for Student, given that the Gengras Center has stated that they can no longer provide educational services to him?
4. The current Board has requested consent for a psychiatric evaluation of Student, and the Surrogate Parent has not, as yet, consented. Shall the Hearing Officer override that lack of consent and order a psychiatric evaluation of Student?
5. Have the results of a prior Functional Behavioral Assessment (FBA) and Behavior Improvement Plan been properly incorporated into Student's IEP?
6. Has Gengras Center, Student's current placement, properly implemented Student's Behavior Improvement Plan?
7. In late January and early February, 2010, Student did not attend school for five days due to a transportation/residency dispute. Is the Student owed five days of compensatory education for that time lost?
8. Does Student need a program that includes Applied Behavior Analysis, supervised by an appropriately certified professional?

9. Does Student require two-to-one staff supervision throughout the school day and during community outings?
10. Surrogate Parent has observed no educational progress since mid-November 2009. Should goals and objectives in the IEP be revised?
11. If an interim program of homebound instruction is necessary, how many hours per week of homebound instruction is required, and where shall such educational services be provided?

PROCEDURAL HISTORY:

The Surrogate Parent (hereinafter referred to as "Parent") requested a due process hearing on March 5, 2010. Hearing Officer (hereinafter HO) Exhibit 1. Hearing Officer Mary Gelfman was assigned to the case. On March 22, she held a prehearing conference and determined that there were several issues in dispute. A hearing date was scheduled for April 27. The mailing date for the final decision was set at May 21, 2010. Because a residency hearing was scheduled on March 31 to determine Newtown's responsibility for funding the Student's placement, the mailing date was extended by 30 days to June 20. Hearing Officer Gelfman stated that if Newtown was found not to be responsible for continued funding, she would attempt to join whatever school district is responsible. Exhibit HO-3. On March 29, she issued an Interim Order determining that the Gengras Center was the Student's stay-put placement funded by the Newtown Board pending the completion of the special education hearing. Exhibit HO-6.

On March 30, the Board filed an expedited hearing request pursuant to 34 C.F.R., Section 300.532(b)(2)(ii) requesting that the issue of "stay put" be reconsidered and that a 45-day change in placement for the Student from the Gengras Center to another location be ordered for the reason that maintaining the child's current placement is substantially likely to result in injury to the child or to others. The Board requested that a hearing be scheduled on April 7. Exhibit HO-2. On March 30, Hearing Officer Gelfman issued a hearing notice for April 7 and stated that if that date was not convenient for the Parent, she would recuse herself from the case due to her unavailability from April 8 through 26. On March 31, the Parent submitted a request for postponement.

This Hearing Officer was assigned to the case on April 1. A prehearing conference was held with the Parent and the Board's attorney on April 6. Also present were Meredith Nash, Benhaven Community Training Home Coordinator, and the Student's grandmother, who is also his guardian. After a lengthy discussion, it was determined that the hearing would go forward as scheduled on April 7. The April 27 hearing was changed to April 29. The parties agreed to mediate the issues for that hearing and that the Parent could add issues from the March 18, 2010 Planning and Placement Team ("PPT") meeting. The Board had timely filed a witness list and exhibits on April 5 for the April 7 hearing. The Parent did not file a witness list or exhibits.

The hearing convened on April 7. Ms. Nash accompanied the Parent. The guardian did not attend. The Board Exhibits B-1 through B-37 were entered as full exhibits into the record. Both parties made opening statements. The Board presented testimony from Michelle Lestrud, Assistant Director, Gengras Center. The hearing continued on April 8 with testimony from Janet Calabro, Supervisor of Special Education for the Board. The Board rested its case. The Parent offered one exhibit, Exhibit P-1, which was entered as a full exhibit and presented her own testimony. The Parent rested her case. The Hearing Officer recessed the hearing to consider the evidence, then reconvened the hearing on the record and issued an order changing the Student's placement from the Gengras Center to a 45-day interim alternate placement. A formal written

interim order was issued on April 14, 2010. The interim order decided Issues 2, 4 and 11. Issue 1 is not within the jurisdiction of this Hearing Officer and is pending in the appropriate forum.

The hearing continued on six additional dates: April 29, May 25, June 4 and 28 and July 1 and 20, 2010. The Parent filed Exhibits P-2 through P-41. Several of these were not admitted into evidence. They are Exhibits P-24 through P-28, P-31 through P-38 and P-41. The remainder of the Parent Exhibits were entered as full exhibits, as were Board Exhibits B-38 through B-115. The Parent presented the following witnesses: Robyn Redinger, Ph.D., Meredith Nash of Ben Haven, Michael Mallory, Social Worker, Department of Children & Families (“DCF”), Richard Strompf, Ph.D., and herself. Her request to have Dr. Mark Rego, the Student’s treating psychiatrist, testify by telephone was denied because he is located in Milford and could appear in person to provide testimony. Dr. Rego was not produced as a witness. On May 25, 2010, the Parent attempted to present testimony from Dr. Richard Strompf regarding his recent evaluation of the Student. This testimony was excluded for failure to submit a report of this evaluation to the Board at least five days prior to the hearing in accordance with Connecticut General Statutes § 10-76h©(2)(B). The Parent was given until May 28, 2010 to submit a written report of Dr. Strompf’s evaluation to the Board and the opportunity to recall him to testify at a later date. Dr. Strompf was not recalled to testify, nor was his evaluation presented during this hearing. The Board presented the testimony of Michelle Lestrud, Dr. Dorothy Stubbe, Child and Adolescent Psychiatrist, Yale Child Study Center, Jan Calabro, Michael Regan, Ph.D., Newtown’s Director of Special Services, and Kathryn Greene, Director of Lighthouse Vocational Education Academy.

The parties requested time to file briefs and were given until August 13 to file proposed findings of fact, conclusions of law and final order on Issues 3 and 5 through 10. The mailing date for the final decision was extended to September 7, 2010 by agreement of the parties. Both parties filed timely briefs. The Parent’s brief, however, contains notes regarding her observation at Lighthouse on August 10, which occurred after the evidentiary portion of this hearing was closed on July 20. The Board’s August 26 motion to strike pages 20-24 of the Parent’s brief was granted on August 31. The Parent’s arguments on page 25 relating to this observation are disregarded.

SUMMARY:

The Student is a nineteen-year-old student with a primary diagnosis of autism and a secondary diagnosis of psychotic disorder. He is also intellectually disabled. Since 1999, he has lived with the Parent in North Branford. After he reached the age of 18, his grandmother, who resides in Bridgeport, was appointed to be his guardian. The Student’s biological mother resides in Newtown. She does not any have legal status as guardian. Exhibit B-27. For approximately 5 years, the Student was placed by the Board at the Gengras Center in West Hartford and received transportation services from his home in North Branford to Gengras. The Gengras Center had requested since February 2010 that the Student be placed elsewhere because they could not safely manage his escalating and increasingly intensive aggressive behavior. The Board and the Parent have been looking for alternative placements since then. A psychiatric evaluation was recommended at the February 23 PPT meeting, but the Parent did not consent. In March, the Gengras Center notified the parties that April 1, 2010 would be the last day for the Student in that program. The Board proposed an interim program of two hours/day of homebound instruction and a psychiatric evaluation at the March 18 PPT meeting. The Parent disagreed with both recommendations and requested that the Student remain at Gengras through the pendency of this hearing. Following the expedited hearing, the Hearing Officer granted the Board’s requests for an interim alternative placement and for an order overriding the Parent’s refusal to consent to the psychiatric evaluation. The Student’s placement at the Gengras Center was terminated effective April 8, 2010 and the Board retained Dorothy Stubbe, M.D. to conduct a psychiatric evaluation of the Student.

On April 12, the Student began the interim placement at Newtown's middle school with 2:1 services of a special education teacher and a board certified behavior analyst ("BCBA"). A school resource officer was available in the building if needed. The Student was transported from North Branford with an aide on the bus. The first day went well, but on April 13, after 1 ½ hours, the Student became aggressive and began pushing staff while trying to escape from the building. When he could not be calmed down, the school resource officer called 911 and police and ambulance personnel arrived. One police officer was injured while trying to subdue the Student. After being sedated, the Student was transported to an area hospital emergency room. The Student was suspended for eight school days. Following that, the Newtown had a one-week school vacation. A manifestation determination PPT meeting was held on April 28. The PPT found that the Student's behavior on April 13 was a manifestation of his disability. The team agreed to change the interim placement from Newtown public schools to All Point Care either at one of its locations or in the Parent's home.

Dr. Stubbe completed her evaluation report on May 17. A PPT meeting was held on June 8 to review the evaluation and to discuss a proposed program and placement at Lighthouse Academy for the 2010 extended school year ("ESY") and the 2010-11 school year. The Parent's request for Lighthouse to be an interim and temporary placement during the pendency of this hearing was refused. On June 20, the Student's guardian signed the consent forms. The Parent placed some handwritten notations on the forms. The Board received the forms on July 2. The Student began attending Lighthouse at their Niantic location on July 12.

The Findings of Fact incorporate various portions of the Parties' Proposed Findings of Fact. To the extent that the findings of fact are conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to their given labels. Bonnie Ann F. v. Callahan Independent School Board, 835 F.Supp. 340 (S.D. Tex. 1993). The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record. Id.

FINDINGS OF FACT:

1. The Student is 19 years old (DOB 1/7/1991) and has resided with the Parent in North Branford since 1999. Testimony of Parent. He was under the guardianship of the Commissioner of DCF and was placed with the Parent by DCF as a Community Training Home (CTH) provider. Id.; Testimony of Mr. Mallory and Exhibit B-1.

2. On May 26, 2005, DCF identified the Board as the nexus district responsible for providing special education services by virtue of the residence of the biological mother in Newtown. Exhibit B-1. At a PPT meeting on August 24, 2005, the team recommended that the Student be placed at the Gengras Center ("Gengras") in West Hartford for the 2005-06 school year. Exhibit B-39. Gengras is approved by the SDE as a private special education program. Testimony of Ms. Lestrud. The Parent consented to the placement although she did not agree that it was the "best" placement for him. Testimony of Parent; and Exhibit B-46.

3. The Student was evaluated in August 2005 by the Institute for Educational Planning at the request of DCF and the Parent. Exhibit B-3. In the report dated October 3, 2005, the evaluators noted that the Student had a regression in October 2004, when he suddenly lost the ability to perform most activities of daily living, lost his ability to interact verbally with others around him, his stereotypical behaviors increased dramatically, he would "freeze" in the middle of performing basic tasks like feeding himself, and he engaged in prolonged periods of sitting and staring with nonsensical vocalizations. Id. at 2; and Testimony of Parent. The Student's service providers stated that: "from October 2004 to the present, [the Student] has not been available to learn." Exhibit B-3 at 4. The Student was tested using the Leiter International Performance

Scale-Revised (Leiter-R), which is a non-verbal test of intelligence and cognitive abilities used with children who cannot be reliably assessed with verbally-based intelligence tests. His Brief IQ standard score was 36, falling in the “severe delay” range in the less than 0.1 percentile. Id. at 5. His Adaptive Behavior Composite was <20, putting him in the low range for adaptive functioning (severe deficit). Id. at 6. The Student’s scores on all domains of the Vineland Adaptive Behavior Scales showed a significant decrease when compared with the 2002 scores. Id. The evaluators noted that some of his interfering behaviors such as motor “freezing” and prolonged whispering to himself, overlapped with symptoms of psychosis and that psychotropic medication might help the Student. Id. at 10.

4. He had difficulty in the beginning at Gengras because of behaviors including yelling/screaming, jumping up to grab food, jumping and flapping, clapping and obsessive compulsive fixations on various objects in the classroom. He settled in for a while and became quite manageable after the staff made some physical changes in the classroom. Testimony of Ms. Lestrud; and Exhibit B-2. He made slow, incremental gains in his functioning, as expected given the severity of his disabilities. Testimony of Ms. Lestrud. The Student has autism, cognitive impairment, limited verbal ability and numerous behavior problems. Id. He is essentially nonverbal, using single words and a few two-word combinations, but has little spontaneous language. He uses his behavior to communicate. Id.; and Exhibit B-47 at 4.

5. Beginning in January 2006, the Student was given pre-vocational training at Gengras, including tasks such as sorting, preparing and shredding documents. Initially, the shredding task was done in a room at Gengras, and over time, they were able to move him to a location in the larger community of St. Joseph’s College, where the Gengras Center is located. Exhibit B-50; and Testimony of Ms. Lestrud. The Student also participated in pre-vocational training in the area of kitchen maintenance, drying lunch trays and other simple tasks. With one to one support, he was able to complete these tasks. Exhibit B-59; and Testimony of Ms. Lestrud. During the ESY program at Gengras, the Student performed a variety of tasks, such as Red Cross bottle assembly, folding pizza boxes and general cleaning. Exhibit B-62; and Testimony of Ms. Lestrud.

6. In 2007, the Student experienced a change in personality, becoming quieter and more withdrawn. The May 14, 2007 PPT noted that his caregivers missed his former “zeal.” Exhibit B-69 at 5; and Testimony of Ms. Lestrud and Ms. Calabro. The PPT meeting summary stated that his problem behaviors had decreased significantly and he transitioned well to the Life Skills Unit at Gengras, however he was “internally preoccupied,” demonstrated very little affect and had poor attention skills. Exhibit B-69 at 2. The Behavior Intervention Plan (BIP) was no longer needed. Id. at 6. His vocational training was increased from 1.5 to 3.0 hours per week, with continued work in both the clerical tasks and kitchen maintenance tasks. Id.; and Exhibits B-71 and B-80. He continued to require close staff supervision. Taking food items from others and eating non-food items were problem behaviors. Exhibit B-69 at 7. The Student’s level of progress on his goals and objectives varied from limited in some areas to mastery in others. Exhibit B-83; Testimony, M. Lestrud. He demonstrated the ability to collect lunch trays and cups, stack them, load them into the dishwasher, dry them and clean them. He continued to work on shredding documents, as well as labeling, stuffing envelopes and folding items for envelope stuffing. Exhibit B-85.

7. The Student was provided with ESY services at Gengras during the month of July. Exhibit B-69 at 26. The Student was hospitalized from July 3 to July 9 and July 17, 2007 for evaluation at a hospital in New Hampshire. Exhibits B-74 and B-79; and Testimony of Ms. Lestrud and Parent. While in attendance at the ESY program at Gengras prior to his hospitalization, he exhibited an increase in self-talk, obsessive-compulsive behaviors, and old behaviors re-emerging. He had difficulty following even familiar routines and

performing tasks with which he was familiar. Id. He returned to Gengras following his hospitalization. Testimony of Ms. Lestrud.

8. The Student's triennial evaluation was planned for the fall of 2007. Exhibit B-78. The Parent requested an FBA on seven target behaviors at the November 2, 2007 PPT meeting concerning behaviors of screaming, bolting, pica (eating non-food items), compulsive behaviors concerning shoes, masturbation, loud self-talk, and grabbing food. Exhibit B-77 at 2. The PPT agreed to have an FBA done by Gengras as part of the triennial evaluations. Testimony of Ms. Lestrud.

9. Triennial testing was done by Diane Bell, special education teacher at Gengras, using the Functional Assessment and Curriculum for Teaching Everyday Routines ("FACTER") and the Assessment of Basic Language and Learning Skills, Revised ("ABLLS-R"). Exhibits B-4 and B-5. A psychological evaluation was done in February 2008 by Arlene Cassidy, Ph.D., Gengras Center. Exhibit B-6. Data was collected by Ms. Bell from February 15 through March 17, 2008 on several target behaviors. Exhibit B-7. The FBA was written on March 17, 2008. Id.; and Testimony of Ms. Lestrud.

10. The May 2, 2008 PPT reviewed the triennial evaluations and developed an IEP at Gengras for the 2008 ESY and the 2008-09 school year. Exhibit B-86. The Student continued to be eligible for special education services under the category of Autism. Id. The FACTER testing provided a full assessment of the Student's current levels of functioning in all areas of daily living and school performance. It provided a blueprint for the teaching of functional skills to the Student going forward. Id. at 3; and Exhibit B-4. The ABLLS-R provided additional information about the Student's current levels of academic and functional performance. Exhibit B-5. The psychological evaluation yielded an Adaptive Behavior Composite on the Vineland Scales of 31, still at the Low level (severe deficit) but significantly improved from the 2005 evaluation. Exhibit B-6. This reflects mastery of most skills at the 2 to 3 year old level. Id. at 2. The team reported that the Student had continued to progress in the Gengras program, becoming more aware of his surroundings and responsive to others in his environment, that his anxiety had decreased, he was able to participate in some group activities, he continued to complete vocational activities with one to one support 3.0 hours per week, he was able to make a sandwich, find food in a refrigerator and perform his hygiene tasks with prompting. Id. at 5-6; and Exhibit B-89. The Parent stated that she was pleased with the program at the Gengras, that the one to one staff was "incredible" and had the strong ability to "read" the Student. Exhibit B-86 at 2. Her suggestions were considered in preparing the Student's IEP for the 2008-2009 school year. Id. at 4; and Exhibit B-87.

11. His progress on his IEP goals and objectives during the 2008-2009 school year ranged from limited on some goals to satisfactory on others. Exhibit B-90; and Testimony of Ms. Lestrud. During the summer of 2008, the Student experienced new behavioral changes, demonstrating an improvement in formulating 4 to 5 word spontaneous verbal requests, while at the same time seeking every opportunity to take food or drinks from others, and becoming obsessed with pushing in chairs in the classroom. The staff at Gengras was able to work with the Student successfully despite these changes. Exhibit B-91; and Testimony of Ms. Lestrud.

12. An assistive technology (AT) evaluation, which had been requested by the Parent, was conducted in February 2009 through Cooperative Educational Services (CES), focusing on any technology that might help the Student to perform tasks more successfully in a vocational setting. Exhibit B-8. The Student was already using a modified Picture Exchange Communication System (PECS), a token reinforcer board, an Intellikeys keyboard, a touch screen and adapted mouse for accessing the computer. Certain software was recommended for trial to improve skills in writing, sequencing pictures for task completion, and signaling task completion. Id. The evaluation was reviewed at the PPT meeting in April 2009. Exhibit B-9.

The Board provided the recommended materials to Gengras in May 2009 for the Student's use. Exhibit B-101.

13. Reports at the April 22, 2009 PPT meeting indicated that Gengras was pleased with the Student's progress during the preceding year, including an increase in the Student's smiling and talking reported by the special education teacher and growth in his communication skills, including increased spontaneous use of language noted by the speech and language pathologist. The Gengras team reported seeing the Student's sense of humor again. There were minimal problem behaviors. The PPT agreed to increase the Student's vocational training blocks to increase the length of time on task, building toward a 3 to 4 hour block of time. All members of the PPT, including the Parent, agreed to continue the placement at Gengras for the 2009 ESY program and the 2009-2010 school year. Exhibit B-9 at 2.

14. The goals and objectives developed for the Student for the 2009-2010 school year addressed all identified areas of need: social development, functional academic skills, vocational skills, household living skills, health and grooming skills, community participation skills, receptive language skills, expressive language skills, pragmatic language skills, fine and visual motor skills, work behaviors and skills. Exhibit B-9 at 8-22; and Testimony of Ms. Lestrud. The IEP continued to support the Student's need for behavioral interventions and support, as well as multisensory learning strategies. Id. at 23. In addition to the special education services at Gengras, the Student continued to receive related services of occupational therapy and speech and language therapy. The Student's community participation was increased with more vocational time on the campus of St. Joseph's College, in addition to the community outings that are part of the Gengras program. Id. at 26; and Testimony of Ms. Lestrud. The IEP provided ESY services during the month of July, continuing all services and supports that are part of the regular school year program in a recreational context. Id. at 27; and Testimony of Ms. Lestrud.

15. In June 2009, the Student's paternal grandmother, who lives in Bridgeport, was appointed Plenary Guardian for the Student by the North Branford Probate Court. Exhibit B-111. The biological mother has no legal status with respect to the Student. Exhibits B-27 and B-38. However, DCF claims that Newtown is the nexus district because the biological mother's parental rights have not been terminated. Exhibit B-113.

16. During the 2009 ESY program, the Student engaged in repetitive behaviors such as shutting doors, pushing in chairs, picking things up off the floor, looking out the window, arranging things on the table within his reach. He completed his vocational tasks of shredding, cleaning, and recycling with one to one assistance. Gengras was able to work with the Student and provide him with an appropriate program during this time. Exhibit B-104; and Testimony of Ms. Lestrud.

17. Based on the behaviors observed, Gengras proposed a BIP for the Student on September 3, 2009. Exhibit B-10. The plan, with the consultation of Dr. James Loomis of the Center for Children with Special Needs, targeted five behaviors: 1) decrease yelling; 2) decrease flopping; 3) decrease inappropriate touching of self; 4) decrease unsafe behaviors; 5) decrease taking food/beverages belonging to others. Id. Strategies were proposed to create an environment in which the Student was likely to succeed, such as consistent daily scheduling, chunking of tasks into smaller increments, use of a variety of communication methods such as verbal prompting and photographs, use of sensory strategies recommended by the occupational therapist, and a token reward system for successful completion of tasks. Id. These strategies had proven successful with the Student over the past four school years at Gengras through various behavioral changes experienced by the Student. Testimony of Ms. Lestrud. The Student was to receive a token every four minutes on his token board for completion of tasks, with a preferred activity being earned each time the board was filled. Verbal prompts were recommended for decreasing behaviors such as masturbation. A

photographic picture schedule was used to set daily schedule expectations. A time out in the intervention room was recommended as a consequence for taking food or beverage belonging to someone else. Flapping and self-talk were to be ignored, unless the Student became over-stimulated, in which case a brief removal to the hallway to calm down was recommended. As part of the contingency plan, in the event the Student's unsafe or disruptive behaviors continued, he would be escorted by staff to the "intervention room." The tasks would follow the Student to the intervention room so that he would not escape the task by engaging in the negative behavior. Only if all of these strategies failed and the Student still could not be calmed would a protective hold be initiated in the intervention room. A code would be called and additional staff trained in Physical/Psychological Management Training ("PMT") would employ protective holds and floor management techniques to ensure his continued safety as well as the safety of others. Id.; and Exhibit B-10.

18. The Student moved to a new classroom with a new special education teacher for the 2009-2010 school year, but the same one to one instructional assistant moved with him to maintain continuity. Exhibit B-11; and Testimony of Ms. Lestrud. After a successful transition, in October 2009, a significant increase was noted in aggression in the form of pushing, hitting, kicking and grabbing staff and, if allowed, students. For the safety of other students and staff, the staff was forced to escort the Student to the intervention room when these behaviors occurred in order to allow him to deescalate. Testimony of Ms. Lestrud. On October 26, aggressive behaviors of hitting, kicking and grabbing were added to the behavior data sheets. Exhibit B-15 at 12-47. For example, on October 29, the Student was placed in a 5-point hold after he punched the doctor and kicked two staff members. Id. at 15. On December 23, pushing was added to the list of aggressive behaviors. Id. at 48-59. The BIP data were analyzed for the different target behaviors, time of day, day of week, antecedent analysis, consequence analysis and function analysis. Exhibit B-16.

19. The Student had a change in medication on or about November 20, 2009, when he was prescribed Zyprexa by his treating psychiatrist, Dr. Rego. Gengras staff noted a particular increase in aggression following that medication change, particularly when the staff tried to redirect him away from performing compulsive behaviors such as operating zippers until they broke, putting hangers in order, pushing chairs in, picking things up off the floor, organizing things in the classroom, picking lint off people's clothing, and slamming doors shut. Exhibit B-11. A letter and an addendum was written by Gengras staff and given to the Parent to provide to Dr. Rego. Id.; and Exhibit 12. If the staff intervened or placed themselves between the Student and the item he wanted for his compulsive behaviors, he would physically push through them in his desire to obtain the item. This was new behavior, and the staff worked with their behavioral consultant, Dr. Loomis to modify their behavioral approach to better meet the Student's needs. A BCBA, Dr. John Molteni of St. Joseph's College, also provided consultation to Gengras regarding the Student's needs. Testimony of Ms. Lestrud.

20. Although the Student is thin and wiry, he is very strong. Id. While he could be redirected with one to one instruction in September and October, since November 24, the Student has been "unable to return to task without the frequent use of the confines of the Intervention Room. . . . Once the episode has begun, [Student] is unable to resume his work safely in the classroom or vocational settings. Two to three staff members assisting [Student] during this time are necessary." Exhibit B-12. In September 2009, there were 5 codes called. In October 2009 there were nine codes but only one required a protective hold. In November 2009 there were five codes, one requiring a low stimulation room and one requiring a protective hold. In the first two weeks of December 2009, there were three codes, each with protective escort from PMT trained staff due to yelling, screaming, bolting, jumping, hitting and kicking. While previously, he only required a one to one aide for personal assistance, he now required two to three staff for protection of himself and others. Id.; and Testimony of Ms. Lestrud. Since most of the behavioral outbursts occurred during the vocational training portion of the day, Gengras tried, in conjunction with their behavioral consultants, a number of different interventions targeted at that time of day to try to change the behavior, including changing the tasks more

frequently and going back to very familiar tasks to see if that made a difference. Nothing did. Testimony of Ms. Lestrud.

21. On January 12, 2010, Gengras proposed a revised BIP to decrease kicking, hitting, and aggressive behavior toward staff, yelling, masturbation, unsafe behaviors, and taking food or beverage belonging to others. Id.; and Exhibit B-14. The time on task needed to earn a token was reduced to two minutes and the Student was allowed a break after every successful two minutes on task. The BIP proposed use of primary food reinforcers (carrots, raisins, and celery) for task completion during difficult work periods to maintain focus and safety. In response to disruptive or unsafe behavior, the Student was escorted to the intervention room by multiple staff, and once in the intervention room, was presented with the same task again to decrease use of behavior as a task avoidance tool. Id. The Student was not able to participate in community outings due to the lack of control demonstrated by the Student and because it was not feasible to remove the Student to an intervention room in the event of disruptive or unsafe behavior. Exhibit B-22 at 2; and Testimony of Ms. Lestrud.

22. Gengras staff took extensive data regarding the Student's behaviors. Dr. Molteni asked for more information on the data sheets and, at his suggestion, the data was taken in the antecedent-behavior-consequence (ABC) format on a daily basis beginning on October 5, 2009. Exhibit B-15; and Testimony of Ms. Lestrud. Even before Gengras changed their data collection to the ABC format, the staff made notes in the data sheets concerning any perceived reason for the Student's behavior, such as "bolted to get food." Id.; and Exhibit B-15 at 3. When daily behavior charts no longer sufficed, Gengras moved to a minute-by-minute collection of behavioral data on January 19. Exhibit B-35; and Testimony of Ms. Lestrud. Gengras also conducted a periodic analysis of the raw behavioral data collected by staff by time of day, day of week, activity, antecedent, consequence, and function. Exhibit B-16; and Testimony of Ms. Lestrud. They maintained detailed records of the Student's work on academic and functional goals and objectives, time in the intervention room and low stimulation room, as well as protective holds and other physical behavioral management techniques. Exhibits B-32, B-33 and B-34; and Testimony of Ms. Lestrud. Communication between home and school was accomplished via a home-school communication book and detailed daily behavior sheets sent home to the Parent. Exhibits B-36 and B-37; and Testimony of Ms. Lestrud.

23. On January 27, the Student received a one-day suspension following his behavior in fixating on peers and aggressively attempting to gain access to them. Eight codes were called and seven protective holds were used on that day alone, which was an early dismissal day. Exhibit B-17; and Testimony of Ms. Lestrud. At that time, Gengras was using an emergency plan to deal with the Student's behavior on a daily basis. Testimony of Ms. Lestrud. Gengras felt that the Student was a danger to himself and others and suspended him for January 28, 2010. The staff was concerned because the Student was focusing on other students and they were in the position of placing themselves between the Student and other students to keep him from being aggressive toward them. Id.

24. For the first time since he began attending the Gengras Center, his report card for the second quarter of the 2009-2010 school year reflected "limited progress." Exhibit B-18. The lack of progress seemed to be caused by the Student's psychiatric condition. Testimony of Ms. Lestrud.

25. Gengras requested a PPT meeting to review the Student's program and lack of expected progress, around the time that the Student was suspended at the end of January. Id. The Board was informed by Gengras that a plenary guardian had been appointed for the Student and that the plenary guardian resided in Bridgeport. The Board questioned whether it continued to be the Student's "nexus" district and whether it should be the district convening the PPT meeting. Exhibits B-112, B-113 and B-114; and Testimony of Ms. Calabro. The PPT meeting was delayed for a few days while this question was explored by the Board,

through communication with the other district and DCF. Testimony of Ms. Calabro. However, the exploration of other possible appropriate placements for the Student was not delayed. The Board was in constant communication with the Parent and immediately sought permission from the Parent to send applications on behalf of the Student to other day placement settings, including Oak Hill School. Id.; and Exhibits B-19, B-20 and B-22 at 2.

26. Due to the “nexus” dispute, the Board ceased transportation for the Student to attend Gengras on four days: February 1, 2, 3 and 4, 2010. The Board never stopped payment for the Student’s tuition to Gengras. Testimony of Ms. Calabro and Ms. Lestrud. The Student could have attended Gengras if the Parent had transported him, but she did not. Testimony of Ms. Calabro and Parent. Transportation services were restored by the Board on February 5, 2010. A written request for a residency hearing under Connecticut General Statutes Section 10-186 was received from the Parent on March 10, 2010. Exhibit B-115. The nexus issue is still pending in another forum.

27. The PPT meeting was held on February 23, 2010. Gengras reported that the Student had significant behavioral regression, was unable to attain his academic objectives because of this regression and was no longer participating in the community because of the dangers of his problem behaviors. Exhibit B-22 at 2. At times, he required a six to one staffing ratio. Id. Gengras had tried a number of strategies, interventions and modifications, including consultations with Dr. Loomis, an occupational therapist and a BCBA; adapted strategies, studying the functions of his behaviors, choice boards, preference assessments, primary reinforcers on a dense schedule of reinforcement, and lowering expectations and demands. They suspected internal factors of the Student, rather than escape, which seemed to be the function of the behaviors in the beginning. Id. The Student’s current levels of behavioral functioning were: “Earlier this year, [the Student] could follow verbal direction with an occasional physical prompt (particularly to prevent masturbation). Now needs multiple PMT trained member to redirect and try to focus on task. Unable to attend to known tasks or novel tasks. His level of prompting has switched from verbal to guided, to physical, constant redirection with staff hand over hand assistance and he is still unable to attend. Will attempt to move through staff and students to attain item of fixation/compulsion. Will bolt, consume non-food items, jump up and down continuously, aggress at staff/students and masturbate. No internal control – looks to staff to assist him.” Id. at 5.

28. Gengras stopped the Student’s participation in the vocational program due to the prevalence of unsafe behaviors in that setting and changed his therapies to individual settings for the same reason. Id.; and Testimony of Ms. Lestrud. Instead of removing the Student to the intervention room, they tried removing all of the other students from the classroom and leaving the Student in the room instead. This didn’t help and led to more disruption for his peers. Testimony of Ms. Lestrud. They used preferred activities such as having him walk in the hallway with a weighted shopping cart. These produced only temporary positive effects. Id. The Board offered a psychiatric evaluation and proposed seeking alternative placements with the Parent. The PPT recommended Dr. Stubbe for the psychiatric evaluation because of her experience in evaluating students with an autism spectrum disorder. Id.; and Exhibit B-22 at 2. The Parent wanted time to think about the recommendations and to confer with the guardian. There was discussion regarding who should be signing release forms. A PPT meeting was scheduled for March 18. Gengras agreed to continue the Student’s placement for three weeks pending the psychiatric evaluation to see whether the Student’s behavior could be improved to the point where he required only one-to-one support, as he had at the beginning of the year. Id.; and Exhibit B-22 at 2.

29. The PPT met on March 18. Exhibit B-31. Gengras staff presented data showing that the Student required 2+ staff for 72% of the day from February 23 through March 9. Exhibit B-21 at 2. From March 10 through 15, he required 2+ staff 53% of the day. Id. at 3. They also presented a chart showing the

steady increase in the number of codes and holds from December through March. Id. at 4. Gengras agreed to continue the Student until only April 1, even with the Board's agreement to fund a 2:1 staffing ratio. The Board recommended homebound instruction for two hours/day beginning on April 5 after the Student was exited from Gengras. The Parent disagreed with the need for a psychiatric evaluation and with homebound instruction, unless it was provided for four hours/day. Id. The guardian refused consent for the psychiatric evaluation. Exhibit B-29. The guardian brought signed consent forms, which were sent to her several weeks prior, to release application materials to ACES (Area Cooperative Educational Services), Oak Hill, Riverview, CREC (Capitol Region Education Council), Ben Haven, CCCD (Connecticut Center for Child Development), and High Road Student Learning Center. Exhibit B-30. By then, Ms. Calabro and the Parent had explored those schools and none had agreed to accept the Student. Testimony of Ms. Calabro and Parent. Oak Hill School declined to accept the Student because he was in "psychiatric crisis." Exhibit B-31. ACES would not accept him because of the level of staffing he requires. Id. The PPT agreed to continue looking for another placement. Dr. Loomis recommended hospitalization at Bradley Hospital in Providence, RI to stabilize the Student's psychiatric condition. The Board offered to explore and fund, either in whole or in part, a residential placement for the Student, but the Parent refused this option, citing a desire to maintain his placement in her home. Id. The lack of information about the Student's psychiatric condition and the refusal of the Parent to consider residential options were major barriers in relocating the Student to an appropriate program. Testimony of Ms. Calabro.

30. The Board even endeavored to have the Student's biological mother sign consent forms, but DCF advised Ms. Calabro that the mother had no legal status and that her signature would not be acceptable. Id.; and Exhibits B-25 and B-27.

31. On March 23, at 12:42 p.m., Gengras called a 911 emergency code for the Student because after 30 minutes in restraints, he wasn't calming down. Two police officers and two EMTs with an ambulance arrived. They were unable to restrain him with cloth holds on his wrists and ankles; he was sedated in the ambulance and taken to Hartford Hospital. He was still agitated when the ambulance arrived. He was sedated again in the ambulance and restrained with leather straps on a hospital bed. The Parent arrived at the hospital several hours later at 6:00 p.m. and the Student was released to her. Testimony of Ms. Lestrud and Exhibit B-32 at 2.

32. Several staff have been injured by the Student's hitting and kicking them. Four workers' compensation claims have been filed by Gengras staff as a result of the Student's injuring them. Testimony of Ms. Lestrud. In the period from January 4, to March 26, 2010, the Student had 155 codes, which were 43% of the total for the entire school. Exhibit B-33. He required the use of protective holds 32 times in January, 25 in February and 39 in March. Id. and Exhibit 21.

33. The Parent and guardian unreasonably delayed and withheld consent for a psychiatric evaluation and did not provide the Board or Gengras with psychiatric information or records from Dr. Rego. Testimony of Ms. Calabro and Ms. Lestrud. Following the Hearing Officer's Interim Order on April 8, the Board promptly arranged for a psychiatric evaluation of the Student by Dr. Stubbe and for homebound instruction to begin on April 12. Testimony of Ms. Calabro. Homebound instruction is appropriate for the Student because the Parent says he is not a problem at home. Testimony of Ms. Lestrud; and Exhibit 36. The Student would likely not benefit from more than two hours/day of home instruction since that is more than he is able to access at Gengras. Testimony of Ms. Calabro. The Parent, however, refused to have homebound instruction in her home or to allow Newtown staff in her home. Testimony of Parent.

34. The Board terminated the Student's placement at Gengras on April 8 and attempted to implement the 45-day Interim Alternative Educational Setting (IAES) in a mutually agreeable location in

Newtown at the Board's middle school. The Board provided two special education teachers for the Student, as well as two BCBA's. A school resource officer was also on hand outside of the classroom in case of emergency. Testimony of Ms. Calabro. The Board's staff consulted with Gengras staff regarding appropriate behavioral interventions before starting to work with the Student. Testimony of Ms. Lestrud. The first day, April 12, 2010, the Student attempted to bolt out of the assigned space and had to be caught by staff before reaching the outside of the building, but successfully completed the two-hour tutoring session. The second day, April 13, 2010, the staff set up rolling gates to prevent the Student or others from being injured if he should attempt to bolt into an unsafe area. The Student asked to use the bathroom, and when the staff asked him to wait a moment to move the gate, the Student became agitated and began jumping and screaming. When the Student's path was blocked and the staff attempted to calm him before proceeding to the bathroom, he physically pushed the staff to get to the hallway. PMT techniques were required to restrain the Student to prevent injury to the Student or others in the school. The staff called 911 and an ambulance responded to transport the Student to the hospital. The Board suspended the Student for a period of eight school days and convened a manifestation determination PPT meeting, which was set up for April 28, 2010, following the one-week April school vacation. The school resource officer was injured while restraining the Student and forced to remain out of work for several weeks. Exhibit B-106 at 5; and Testimony of Ms. Calabro.

35. The Board obtained a psychiatric evaluation of the Student with Dr. Stubbe, which was immediately pursued during the April school vacation. Dr. Stubbe immediately issued a Clinical Letter dated April 28, 2010 for the PPT stating that it would be dangerous to continue the Student's interim placement in the Board's middle school, and recommending homebound instruction. Exhibit B-106 at 7-8; and Testimony of Dr. Stubbe. Dr. Stubbe noted that Dr. Rego had given the Student a diagnosis of Autistic Disorder and Psychotic Disorder, Not Otherwise Specified (NOS) and that the Student's present medications included Seroquel 400 mg twice daily and Depakote 500 mg twice daily with Zyprexa 15 mg daily added, as well, without significant improvements. Id. Dr. Stubbe's diagnosis was Autistic Disorder and Psychotic Disorder, NOS with aggressive outbursts. Id. Her opinion was that the Student required medical treatment for his psychiatric condition in the form of stabilization through medication, which could be accomplished via hospitalization if it could not be accomplished in an outpatient setting. Id. The Parent and guardian did not agree that the Student required hospitalization because his behaviors were usually under control in the home setting, and continued to provide the Student with psychiatric care as an outpatient through Dr. Rego. Testimony of Parent. The Student had been hospitalized several times for psychiatric reasons in 2004 and 2007. Id.; Exhibit B-107 at 2; and Testimony of Dr. Stubbe.

36. The PPT determined that the Student's conduct resulting in his suspension from the IAES on April 13 was a manifestation of his disability, and recommended a change in location and provider to All Point Care, provided at the facility in Cheshire or in the Student's home. Exhibit B-106 at 2 and 21-22. All Point Care is the agency that is currently contracted to supply home care services to the Student through DCF. Testimony of Parent and Ms. Calabro. The Parent initially agreed to the change in location to her home, but then changed her mind following the PPT meeting and refused to allow the instruction to take place in her home, citing concerns that the Student's behavior in the home would decompensate. Testimony of Ms. Calabro and Parent. The PPT proposed conducting an FBA once the Student is in a new educational placement to develop an effective BIP for that setting. Exhibit B-106 at 2. The Parent did not make any requests at the April 28, 2010 PPT meeting that were refused by the Board. Id. at 3; and Testimony of Ms. Calabro.

37. Dr. Stubbe's final report was prepared May 17, 2010. She noted his triple diagnosis of Autism, Mental Retardation, and Psychosis. Psychosis is defined to include losing touch with reality, severe confusion, not understanding what is real and not real, internal agitation, unwarranted fears. Dr. Stubbe noted that Dr. Rego had become increasingly concerned about the Student's level of agitation, deteriorating

emotional control, and regressions, and attempted to intervene with various medications. Medication at the time of the evaluation consisted of Seroquel and Depakote, anti-psychotic medications. Clozapine, another anti-psychotic medication, was recommended for trial but had not yet been started as of the time of the evaluation. Exhibit B-107 at 2; and Testimony of Dr. Stubbe. She noted that during the Student's prior hospitalizations, attempts have been made to determine whether the Student was suffering from a deterioration in functioning due to Autism, or schizoaffective disorder. Previous history indicated that the 2004 and 2007 deteriorations in function may have been due to psychosis, or what is commonly called a "psychotic break." The Student's genetic family history includes a strong history of psychotic disorder, which suggests that even though we cannot know what the Student is thinking or if he is experiencing delusions, this probably explains the Student's otherwise inexplicable behaviors. Id.; and Exhibit B-107 at 2-4. Psychosis would explain why the Student is not able to progress on his goals and objectives even though he has been able to do so in the past. It is likely that during the winter and spring of 2010, the Student was not available for learning due to his psychiatric condition. Delusional thoughts can be upsetting to any individual, but would be particularly hard to comprehend for a student diagnosed with Autism and Severe Mental Retardation such as the Student. Testimony of Dr. Stubbe.

38. The extent to which DCF, the Parent, and Ben Haven, the supporting agency for the Community Training Home, were aware of the level of concern or the seriousness of the Student's diagnosis is unclear. Mr. Mallory, the Student's DCF social worker, had very little knowledge about the Student. Notably, he has no academic degree in social work. The title was given to him by DCF after attending the DCF training academy and two years on the job. He was assigned to the Student in mid March 2010. Testimony of Mr. Mallory. He did visit with the Student at the hospital on April 13 and attended the April 28 PPT meeting. Id. The Parent did not appear to be aware that Dr. Rego had recommended Clozapine and denied knowing of any diagnosis of psychotic disorder until this hearing. Testimony of Parent. Meredith Nash, the Community Training Home Coordinator from Ben Haven, participated in treatment visits with Dr. Rego and had heard the diagnosis of Intermittent Explosive Disorder, but claimed she never heard Psychotic Disorder NOS. She had been assigned to support the Student's home since August 2008. Testimony of Ms. Nash. She believed that the Student's behavior was influenced by the Zyprexa medication and unspecified "environmental issues." Id. This belief was advocated vociferously by the Parent, as well. Testimony of Parent. It is unlikely that the Zyprexa caused the regression in the Student's behavior; it is more likely that the Student simply experiences these types of regressions periodically as part of his psychiatric condition. Testimony of Dr. Stubbe.

39. Dr. Stubbe recommended education within the Student's home as the most appropriate alternative pending location of another appropriate day program for him. Exhibit B-107 at 5. The Parent continued to refuse to allow the Student to receive educational services in her home. The Board continued to fund the services of All Point Care in their facility in Cheshire between the April 28, 2010 PPT meeting and the end of the 2009-2010 school year. The Board was restricted in its ability to oversee the services provided by All Point Care based upon the insistence of the Parent in being personally involved in all conversations and communications between the Board and All Point Care. Exhibit P-39; and Testimony of Ms. Calabro. Ms. Calabro offered to conduct these meetings on weekends or evenings in order to facilitate supervision of the Student's program on the terms imposed by the Parent. The Parent did not make herself available to participate in such communications, which further restricted the ability of the Board to supervise these services. Nonetheless, the Board continued to provide tutoring service to the Student through the end of the school year using All Point Care in Cheshire, and transported the Student to and from his home in North Branford to the facility in Cheshire, as requested by the Parent. Testimony of Ms. Calabro.

40. For the Student's next educational placement, Dr. Stubbe recommended that the Student receive day treatment services including a functional curriculum, high level of staffing, nursing staff to

provide medication administration and monitoring of side effects, and staff skilled at working with students with the triple diagnosis of Autism, Mental Retardation, and Psychosis. Dr. Stubbe did not recommend that the Student receive an Applied Behavior Analysis (ABA) program, recommending instead that the program focus of functional skills including vocational skills and activities of daily living. Exhibit B-107 at 5; and Testimony of Dr. Stubbe.

41. The PPT reconvened on June 8, 2010 to review Dr. Stubbe's evaluation and revise the Student's IEP. The Board proposed placement for the Student at the Lighthouse Vocational Education Center in Groton and Niantic, Connecticut ("Lighthouse") for the 2010 ESY and the 2010-2011 school year. Lighthouse is a program with many years of experience providing functional educational services to students with the type of diagnoses presented by the Student. Many of their students who now are calm and able to benefit from their services initially came to them out of behavioral control and unable to benefit from their educational programs. Lighthouse has a focus on transitional services for students in the 18 to 21 age group. Lighthouse also provides services to adults over the age of 21 under the auspices of the Department of Developmental Services (DDS) if funded by DDS once the student is no longer eligible for special education services. They work on vocational skills, independent living skills, and community participation, along with functional academic skills. They use a behavioral intervention program focusing on positive behavioral supports and pre-intervention strategies rather than on physical management of students. They have strong relationships with businesses in the communities where their programs are located to facilitate providing practical work experiences, job shadowing and job coaching as needed. Exhibit B-108 at 3; and Testimony of Ms. Calabro and Ms. Greene.

42. The Parent and guardian provided consent on June 20, 2010 for the Student to begin receiving services at Lighthouse. Exhibit B-109. The Student began attending Lighthouse in Niantic on July 12. Testimony of Ms. Greene. The Parent requested that the placement at Lighthouse be considered only a temporary placement until the outcome of the due process hearing. This request was denied by the PPT since the program at Lighthouse is appropriate to meet the Student's needs. Exhibit B-108 at 4; and Testimony of Ms. Calabro. At the time of Ms. Greene's testimony, the Student had been attending Lighthouse for about one week. They had set up a special room for him in the center of the building, away from the doors, where he could receive individual special education services with a two-to-one staff to student ratio, using male staff hand-picked for this assignment. To date, there had been no incidents of aggression or severely disruptive behaviors of the type seen previously. The Student starts at 8:00 a.m. with a morning routine and a physical activity, then a morning meeting and work time, lunch, and then a daily job he chooses. He is working on preferred activities such as puzzles with other students to prepare him for possible work tasks in a group setting. The afternoon program is a continuation of the day with additional work time and community activities. Lighthouse is currently using the BIP supplied by the Parent. The Student also has a feeding plan and a home-school communication book. Exhibit B-108 at 5; and Testimony of Ms. Greene.

43. Lighthouse is approved to provide special education services by the State Department of Education for children ages seven to twenty-one. They have two special education teachers at each of the three locations, which each have 10 students. Two special education administrators each oversee a caseload of 15 students. They also have an educational consultant and a BCBA to oversee behavioral programming for students. Testimony of Ms. Greene. Lighthouse is able to maintain the Student's safety by utilizing an intensive staffing ratio, as well as devices and environmental modifications that prevent their students from bolting into unsafe areas. They plan to wait until the Student is comfortable in the program and they get to know him before bringing him into the community. Id. The Parent's fears that the Student is unsafe at Lighthouse are not well-founded.

44. The IEP developed for the Student at the June 8, 2010 PPT meeting contains all of the elements of an appropriate IEP for the Student including the placement at Lighthouse. His needs for training in functional academics, social and behavioral training, daily living skills, community participation, and communication are addressed. The Student will have the opportunity to work on following directions, working with peers, appropriate break activities, use of laundry, banking, restaurants, leisure activities, taking care of personal hygiene needs, safety in streets and parking lots, making choices, and communication, among other things. Lighthouse has access to community sites such as a beach and boardwalk, museum, Laundromat, bowling alley, orchard, movie theater, and local restaurants. Work sites are chosen based on individual student preferences and skills, but in the past have included a CVS pharmacy, book barn, grocery store, and hair academy. The program at Lighthouse contains both a regular school day from 8:00 a.m. to 2:00 p.m., five days per week, and an extended school day (“ESD”) from 2:00 p.m. to 6:00 p.m., four days per week. This ESD provides ample opportunity for the Student to work on all of his goals and objectives and to make up any time lost during the 2009-2010 school year when he was not medically available for instruction. In addition, the Lighthouse program is available to the Student most business days during the year, with only a few days of closure for holidays during the year. ESY services are provided 30 hours per week, while regular school year services amount to 46 hours per week. The IEP authorizes door-to-door transportation, with an aide. Lighthouse will conduct the FBA previously recommended for the Student to develop an appropriate BIP, in conjunction with their consulting BCBA. Id.; and Exhibit B-108.

45. The Student does not require an ABA program to receive a FAPE. ABA is based upon the ability of the adults to manipulate changes in the environment to influence a student’s behavior. The Student’s behavior is presently dys-regulated based upon the influence of internal stimuli (psychosis, obsessive-compulsive behaviors associated with Autism), which cannot be altered by the application of ABA principles. The scientific literature reflects that ABA is effective with younger children, but there is not a similar research base for use of ABA with students at the age of 19 or older. Testimony of Ms. Calabro. It would not be appropriate for the Student to be enrolled in a program focused on acquisition of discrete skills at a desk setting; the Student needs a functional life skills program where he is walked through and taught the entire chain of skills in a functional way. The Student does not generalize well, so it is important that he learn each skill in the setting where he is expected to demonstrate it, rather than acquiring the skill in isolation and expecting him to generalize it to a more functional setting. It is appropriate for the Student to have adult programming focused on transition needs at this stage of his life, rather than an ABA program. Testimony of Dr. Stubbe.

46. It was not a lack of communication, data collection or analysis that was responsible for the increased behavioral challenges presented by the Student at Gengras. As had been the case at times in the past due to the Student’s multiple severe disabilities, in the winter and spring 2010, the Student was in a state of psychiatric crisis requiring medical treatment and was not available for instruction. Id.

CONCLUSIONS OF LAW:

1. The Parties agree that the Student qualifies for and is entitled to receive a FAPE with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and IDEA, 20 U.S.C. Section 1401, et seq. They also agree that the Student’s primary disability is autism. 34 C.F.R. Section 300.8(c)(1).

2. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-207. “IDEA requires

only that school districts provide an ‘appropriate’ IEP, gauged by whether the IEP is ‘sufficient to confer some educational benefit.’” Id. In this Circuit, the Court of Appeals has said that 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 (2nd Cir. 1997). The Court of Appeals has also cautioned that meaningful education benefits are “not everything that might be thought desirable by loving parents.” Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2d Cir. 1989). Moreover, the Second Circuit has made clear that any advancement or progress by the student must be “viewed in light of the limitations imposed by the child’s disability.” Mrs. B. v. Milford, supra at 1121. The Board has the burden of proof on the appropriateness of the 2009-2010 and 2010-11 IEPs. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998). In Connecticut, the party who requested a due process hearing has the “burden of going forward” with the evidence. Conn. Agencies Regs. Section 10-76h-14. The Parent, as the party who requested this due process hearing, has the burden of producing evidence in support of her claims.

3. The Parent claims that the 2009-2010 IEP was deficient because the FBA and BIP conducted by Gengras were not properly incorporated into the IEP. Other than her own opinion, she provided no evidence or legal precedent to support this claim. The IDEA requires that when developing an IEP for a child, the local education agency must, for “a child whose behavior impeded the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior”. 34 C.F.R. § 300.324(a)(2)(i). There is no dispute in this case that the Student’s behavior impedes his learning, as well as that of others. The Student’s April 2009 IEP had goals and objectives that addressed the Student’s behavior. It includes accommodations and modifications for behavioral interventions and support, including positive reinforcement, cueing expected behaviors, and tangible rewards. The Student’s need for one-to-one assistance was also documented in his IEPs for the 2009-2010 school year. In addition to the positive behavioral intervention and supports included in the IEP, the Student also had a behavior plan. The IDEA does not require that behavior plans be included in the Student’s IEP. *See Letter to Huefner*, 23 IDELR 1072 (OSEP 1995) (“Part B, however, does not require IEP’s to include the students’ behavior management plans.”)

4. The Parent claims that the Gengras Center did not properly implement the Student’s BIP. The evidence produced by the Board shows that Gengras Center staff implemented the Student’s BIP during the 2009-2010 school year and that the Student accordingly received FAPE. The Gengras Center completed an FBA on March 17, 2008, which the team used in developing an appropriate BIP for the Student. The Student had a BIP in place for the 2009-2010 school year. According to the plan, the Gengras Center staff would review the Student’s BIP quarterly and make changes accordingly. A revised BIP was presented in September 2009 based upon the Student’s behaviors during the 2009 ESY program, and the plan was revised again in January 2010 based on further changes in the Student’s behaviors. Gengras continued to make adjustments to maintain the safety of the Student and others until his release from the program on April 8, 2010. At the April 28, 2010 PPT meeting, the team agreed to conduct a new FBA once the Student had been placed in an appropriate program.

5. The Parent next claims that the Student requires 2:1 staffing and that the IEP was deficient in not providing it. While the Parent did not request this at the April 22, 2009 PPT meeting, if the Student was making progress with the level of support he had in place, then he did not need a higher level of staffing to receive FAPE. The Student had one-to-one staffing for the 2008-2009 school year, which the team, including the Surrogate Parent, believed was an appropriate level of staffing for the Student. As the Student’s behavior deteriorated during the 2009-2010 school year, the Gengras Center provided staffing as necessary to keep the Student safe, meaning that the Student sometimes had a six-to-one staffing ratio. The Parent did not request 2:1 staffing until the March 19, 2010 PPT meeting, when she requested the additional staffing for community

outings in his *next* educational placement. When the PPT met on June 8, 2010 to develop the Student's program for the 2010-2011 school year, the IEP included 2:1 staffing for the Student. Right now, Lighthouse feels that 2:1 staffing is necessary for the Student. At some point in the future, that may change. The PPT requires the ability to modify and adjust the Student's IEP and staffing to meet the needs of the Student. If the Parent is dissatisfied with a future staffing change, she could request a due process hearing.

6. The Parent claims that the Student requires 30-40 hours/week of ABA instruction with a certified professional. Other than her own opinion, she didn't provide any admissible evidence that this is required for the Student to receive a FAPE. The Board offered persuasive evidence that the Student does not require use of an ABA program in order to receive FAPE. The Student previously made progress at the Gengras Center, even though it is not an ABA program. The Student has transitioned well into the Lighthouse Vocational Education Center ("Lighthouse"), which is not an ABA program, but has all of the components of an appropriate program to meet the Student's educational needs. Already, the behavioral approach used by Lighthouse appears to be meeting with success in managing the Student's behaviors in ways that were not possible previously, even under the supervision of two BCBA's in the Board's IAES. The Board has discretion to decide which educational methodologies to employ in the Student's program. In *Rowley*, 458 U.S. at 207, the Supreme Court determined that courts were not in a position to make choices between educational methodologies. "The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child." The Supreme Court went on to state "once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the State". *Id.* at 208. *See also Briggs v. Board of Education of the State of Connecticut*, 882 F.2d 688, 693 (2nd Cir. 1989) ("Deference is owed to state and local agencies having expertise in the formulation of educational programs").

7. The Parent claims that she observed no educational progress since mid-November 2009. The Student's lack of progress during the second half of the 2009-2010 school year does not demonstrate that the Board failed to offer a program reasonably calculated to offer meaningful educational benefit. In *Lessard v. Wilton-Lyndeborough Cooperative School District*, 49 IDELR 180, 518 F.3d 18, 29 (1st Cir. 2008), the court ruled that limited progress after implementation of the IEP does not render an IEP inappropriate. While educational progress *can* demonstrate that an IEP provides FAPE, the lack of progress does not mean that the IEP was not appropriate:

But to impose the inverse of this rule – that a lack of progress necessarily betokens an IEP's inadequacy – would contradict the fundamental concept that an IEP is a snapshot, not a retrospective. Where, as here, a school system develops an IEP component in reliance upon a widely-accepted methodology, an inquiring court ought not to condemn that methodology *ex post* merely because the disabled child's progress does not meet the parents' or the educators' expectations. (internal citations omitted).

In holding that the district's IEP offered the Student FAPE, the court noted that "levels of progress must be judged with respect to the potential of the particular child." *See also Fuhrmann v. East Hanover Board of Education*, 19 IDELR 1065 (3rd Cir. 1993) ("the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date"); *Doe v. Marlborough Public Schools*, 54 IDELR 283 (D. Mass. 2010) ("Absence of progress toward the IEP goals *per se* does not make an IEP inadequate"); *P.K.W.G. v. Anoka-Hennepin School District*, 50 IDELR 158 (D. Minn. 2008) (district provided FAPE even though the student regressed significantly, both behaviorally and academically, during the school year, because while the IEP must be reasonably calculated to provide education benefits, the IDEA

does not “guarantee that the student actually make any progress at all”, citing CJN v. Minneapolis Public Schools, 323 F.3d 630, 642 (8th Cir. 2003)).

8. At the time the Student’s IEP for the 2009-2010 school year was offered at the April 22, 2009 PPT meeting, the Student was making progress at the Gengras Center. The Board could not have known at that time that the Student’s behavior would significantly deteriorate in the middle of the next academic year. When the Board learned that the Student’s behavior had deteriorated, a PPT meeting was convened on February 23, 2010. Prior to that PPT meeting, the Board and the Parent began exploring alternative placements if Gengras could no longer meet the Student’s needs. Three more PPT meetings were held before the end of the 2009-2010 school year in order to recommend re-evaluation and determine an appropriate placement for the Student. The Parent didn’t cooperate when a psychiatric evaluation of the Student was necessary to guide educational decision-making. Dr. Stubbe diagnosed the Student as exhibiting psychotic symptoms which clearly made him unavailable for learning during the second half of the 2009-2010 school year. No amount of educational programming, in the absence of medical treatment or a change in mental status could have produced more progress. Therefore, the Board did not deny the Student FAPE the Student’s lack of educational progress in the second half of the 2009-10 school year did not deny the Student FAPE.

9. The Board’s proposed placement at Lighthouse for ESY services for the summer of 2010 and the 2010-2011 is appropriate. As *Rowley* requires, the Student’s IEP has been reasonably calculated to provide educational benefits. At the PPT meeting on June 8, 2010, the PPT proposed Lighthouse as an appropriate placement for the Student. At Lighthouse, the Student receives ESDs four out of five days per week during his ESY services, which will continue for the 2010-2011 school year. The Student has two staff persons assigned to him. The PPT reviewed and revised the Student’s goals and objectives, based on his present levels of performance and progress during the 2009-2010 school year. The Student has transitioned well into the Lighthouse program, which appears to be uniquely qualified to address his autism, severe cognitive limitations and psychotic disorder. While the Parent prefers a placement at CCCD, the Board’s selection of Lighthouse offers the Student a FAPE.

10. The Parent is requesting compensatory education for the four days missed by the Student due to the residency dispute with the Board. “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)). “Some circuit courts have held that appropriate relief may also include ‘compensatory education,’ or replacement of educational services that should have been provided to a child before. *Reid v. District of Columbia*, 365 U.S. App. D.C. 234, 401 F.3d 516, 518, 522 (D.C. Cir. 2005) (citing cases).” P. v. Newington Bd. of Educ., 512 F.Supp.2d 89 (D. Conn. 2007). In Bruno v. Greenwich Bd. of Educ., 45 IDELR, 106 LRP 4075 (D.Conn. 2006), the Court stated that once procedural or substantive violations of the IDEA are found, the decision maker must consider whether the plaintiff is entitled to compensatory education and reimbursement for an independent evaluation. In this case, no procedural or substantive violations of IDEA have been found. Compensatory education, therefore, is not appropriate. It is also noted that the Gengras program was 30 hours/week, whereas the Lighthouse program provides the Student with 46 hours/week. Whether the Board acted correctly in suspending transportation depends on the decision in another forum pursuant to Conn. Gen. Stats, § 10-186(b)(2). The Parent can pursue her remedies in that forum.

FINAL DECISION AND ORDER:

1. The IEP and placement at Lighthouse recommended at the June 8, 2010 is appropriate for the Student and provides him with a FAPE for the 2010 ESY and the 2010-11 school year.

2. It was not necessary to incorporate the FBA into the 2009-10 IEP.
3. The Gengras Center is not the Student's current placement, however, the BIP was implemented to the extent possible, given the Student's escalating aggressive behaviors from October 2009 through March 2010.
4. The Student is not owed compensatory education for the four days that transportation to Gengras was suspended on February 1-4, 2010.
5. ABA is not required for the Student to provide the Student with a FAPE
6. The current IEP at Lighthouse provides 2:1 staffing, however, the appropriate level of staff supervision for the Student is for the PPT to determine as the Student's needs change.
7. Since the goals and objectives in the Student's April 2009 IEP have been revised by the June 2010 IEP, Issue #10 is moot.