

ISSUES:

1. Was the program proposed by the Board for the 1999-2000 school year appropriate?
2. Is the program proposed by the Board for the 2000-2001 school year appropriate?

SUMMARY:

The student is a fourteen-year-old boy, presently attending the Gengras Center as his "stay-put" placement at Board expense. He had been placed there by the PPT of his then place of residence. Prior to that placement the student had been tutored at home. The student and his family moved into the Board's district in October 1998, the beginning of the 1998-1999 school year. The Board continued the Gengras Center placement, observed the student in that placement, and then the PPT recommended that the student attend the STRIVE program, presently called the SPARK program, at the Illing school, (hereinafter referred to as the program at Illing) an in-district placement, as it had concluded that it was an appropriate placement for the student in the least restrictive environment.

The mother has not made any specific objections to the goals and objectives and the related services as set out in the IEPs for the 1999-2000 and 2000-2001 school years. Her concern is the student's ability to adjust to any change in placement. In her opinion the student cannot adjust to the change. This concern on her part is based on the difficulty the student had when he was first sent to Gengras Center. At that time his behaviors were so severe that she was often called to school in order to contain him. In addition to the change being difficult for the student, it also impacted on her health and on her ability to keep a job. She is afraid that this would be repeated if the student was sent to the program at Illing.

Originally the mother appeared pro se. On September 11, 2000 the mother retained counsel. The Board was represented by counsel.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S&H Computer Systems, Inc.* 605 F. Supp. 816, (March 6, 1985) and *Bonnie Ann F. v. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993)

INTERIM RULINGS AND MOTIONS:

There were nine written Interim Rulings.

The Board's motion to include the issue of the appropriateness of the program for 2000-2001 school year was granted. The Board's motions to default the parent as to the appropriateness of the 1999-2000 and 2000-2001 programs were denied. The parent's motion to modify Interim Ruling V was denied. The parent's motion for an interim ruling after the close of the evidentiary hearing was denied.

FINDINGS OF FACT:

1. The student is fourteen years old. His classification is that of a student with multiple disabilities. (Exhibit B-12)
2. He also has an articulation disorder as well as receptive and expressive language deficits and suffers from Tourette's syndrome. He functions in the mentally retarded range at approximately the four or five year level. (Exhibits B-18, B-32, testimony Dr. J.)
3. The student had been placed at the Gengras Center in September 1997, when he and his family lived in another district in the state. Gengras Center is a private school that only serves students with disabilities and is located on the campus of St. Joseph's College in West Hartford. Prior to that time he had been tutored at home. The mother enrolled the student in the district on October 21, 1998. (Exhibits B-10, B-12, testimony social worker, then assistant director, Gengras Center, then Special Education supervisor (then SE supervisor))
4. The then SE supervisor had previously worked in the district that had placed the student at Gengras Center. That district did not have a program comparable to the program at Illing and sends its students out of district. (Testimony then SE supervisor)
5. When the student had started at Gengras Center during the 1997-1998 school year, there were temper tantrums and other inappropriate behaviors resulting in the mother having to come to and remain at the school. There even were difficulties in the beginning of the 1998-1999 school year, managed by Gengras Center staff, but as of April 2000 the student was doing very well. (Testimony then assistant director, Gengras Center)
6. A PPT was scheduled for November 4, 1998, by notice to the parent dated October 28, 1998 at the address given by the mother on the registration form. Attending were an administrative designee, a teacher, a representative from Pupil Services, a Gengras Center coordinator (who either was then, or became later the assistant director at Gengras. Since she no longer is employed at Gengras Center she has been and will be referred to as the then assistant director, Gengras Center. She was still employed by Gengras Center at the time of her testimony) and the school social worker. The mother did not attend.

The student's reading level as per the PPVT was at the five year old level as were his overall academic/cognitive levels. His expressive language was a major weakness and his articulation was also a problem. It was noted under his social behavior that he found changes to be hard. An illustration of this was the student's behavior when he returned to Gengras Center in the fall of 1998, to the same teacher he had had the prior year and reverted to the inappropriate behaviors that he had exhibited when he first entered that program.

It was noted that he had Tourette's syndrome, a past history of seizures, and ADHD. He was on medication at school.

The PPT determined to have the student observed at Gengras Center by a member of the team in the program at Illing for a possible in-district placement. The program at Illing is a language-based program that includes functional academics, prevocational skills, daily living skills and community participation. It can be, depending on the needs of the student, a completely self-contained program or one that allows for mainstreaming up to half a day.

The recommendation was for continued placement at Gengras Center as the PPT had to get more information concerning the appropriateness of a placement in the district.

An IEP was promulgated incorporating the goals and objectives in effect at Gengras Center. (Exhibits B-10, B-11, B-12, B-16)

7. The special education teacher assigned to the program at Illing (special education teacher) observed the student at Gengras Center in January 1999 and spoke to staff. She observed that a token system was used. It was her opinion that he would fit into her class and receive a FAPE. If she had not had that opinion the PPT would have continued the placement at Gengras Center. (Testimony special education teacher, Director of Pupil Personnel Services (Director, PPS), Exhibit B-49)
8. The placement at the program at Illing would provide the student an opportunity to help introduce him into the community and give him an opportunity to interact with students from that community. The primary difference between the program offered at Gengras Center and the program offered at Illing was the fact that the student would be attending school in the community in which he lives and he would have an opportunity to be with regular education students. The program at Illing would provide the student with more opportunities for vocational exploration and life skills activities than the Gengras Center program provides. (Testimony, supervisor SE, secondary level, Director, PPS)
9. The PPT was scheduled to reconvene on January 20, 1999 by notice to the parent dated January 8, 1999 for the purpose of a "transfer to Illing". That meeting was not held. By notice to the parent dated January 28, 1999 for the purpose of "possible return to district", a PPT was scheduled for February 10, 1999. (Exhibits B-13, B-14, B-15)
10. The PPT met on February 10, 1999. Present were the Director, PPS, special education teacher, school psychologist/department head (school psychologist), a special education supervisor, (then SE supervisor) and the vice principal. The mother was not present. It was decided to place the student in the program at Illing on April 26, 1999. There were to be planned visits so that the student would see the class prior to admission. If necessary, the student could start the program with a shortened day, and then increase his time.

It was reported by the then SE supervisor that she had spoken with the then assistant director, Gengras Center to review the student's performance and record. It had been stated that the student had difficulties with change and a transition must be planned.

The then SE education supervisor was to contact the mother to review the recommendation. (Exhibit B-15)

11. The then SE supervisor contacted the mother on February 12, 1999 and suggested that the mother schedule an appointment for herself and the student to visit the program at Illing. The mother told her that she did not want the student at Illing. The mother did not visit until May 7, 1999 and the student did not visit on the day scheduled for his visit, nor any time that school year. (Testimony then SE supervisor)
12. Based on the PPT's knowledge of the mother's concerns the entry date was put off until April as the special education teacher was going on maternity leave, and the PPT wanted to wait until she returned to ease the transition. (Exhibit B-15, testimony Director PPS, testimony prior SE supervisor)
13. The PPT met on March 24, 1999, notice to the parent dated February 26, 1999. The purpose was "possible return to district". Present were the Director, PPS, a special education teacher, the special education supervisor, the speech/language clinician/supervisor, who would be providing services to the student (S/L clinician) the school psychologist, the school social worker/supervisor, (school social worker) the acting principal at Illing and the guidance counselor at Illing. The then assistant director, Gengras Center was invited but did not attend. The parent did not attend. At that time it was noted that the special education teacher would not return from maternity leave until May 1, 1999 and therefore the date for the student to start was put ahead to May 3, 1999.

The IEP proposed by the Board included the goals and objectives set out in the Gengras Center Service Delivery Plan adopted at Gengras Center for the 1999-2000 school year. (Exhibits B-17, B-18)

14. On May 3, 1999 the bus arrived to take the student to Illing. However the bus driver made a mistake and brought the student to Gengras Center. The then SE supervisor spoke to the mother, who reiterated her opposition to the move. The Board continued to transport the student to Gengras Center. (Testimony then SE supervisor)
15. On May 12, 1999 the Board received from the mother a "To whom it may concern," letter stating that she had observed the program at Illing and that she did not think it would meet her son's needs. It should be noted that at no time did she state her specific objections to the program, either to Gengras Center staff, school staff or at this due process hearing. She stated that the student had learned to trust his classmates at Gengras and felt that his teacher was his best friend. She asked to be contacted to talk about the situation.

It was determined that the student remain at Gengras Center for the balance of the 1998-1999 school year. (Exhibit B-20, testimony then SE supervisor, social worker, Gengras Center, Record)

16. The PPT met on June 16, 1999, notice to parent dated June 3, 1999, the stated purposes was "possible return to district". The mother did not attend. Present were an administrative designee (then SE supervisor), the special education teacher, the school social worker and the S/L clinician. The then assistant director, Gengras Center was invited but did not attend. The PPT determined as a method of helping the student transition from the Gengras Center to the district school to have him attend a district summer program, even though he did not technically meet the criteria for an extended school year. Some of the children attending the summer program would be in his class at Illing and some of the staff would be working with the program at Illing. The program was in session from June 25, 1999 until August 6, 1999, for six hours a day, five days a week and the district would provide transportation as well as tuition.

An IEP was promulgated providing for placement in the program at Illing, a self-contained class for the 1999-2000 school year. The only mainstreaming would be lunch. If lunch in the mainstream did not work for the student, that could be changed. In addition to his time with the special education teacher, the student was to receive one and a half hours a week, direct and indirect speech/language services, a half hour a week of occupational therapy and three quarters of an hour a week of counseling by the school social worker.

The genesis of the 1999-2000 IEP was the Gengras Center Service Delivery Plan for 1999-2000 adopted by the PPT on March 24, 1999, when it was expected that the student would attend Illing in May of 1999. The PPT on June 16, 1999 set out the IEP on its own forms based on collaboration with Gengras Center staff and encompassed what was set out in the 1999-2000 Gengras Center Service Delivery Plan for the 1999-2000 school year: academic themes, self-help routines, home community themes and social themes. (Testimony S/L clinician)

The goals were to: increase math skills, improve language skills, increase pre-vocational skills, improve fine motor skills, increase social skills and to improve communication skills.

It was noted under Present Levels of Educational Performance that the student had Tourette's syndrome, a past history of seizures and ADHD with medications being administered at school. He functioned at approximately a five year old level academically and had been identified as mildly mentally retarded. It was also noted that his expressive and receptive language skills were "well below age level" and that his ADL activities required "some supervision." (Exhibits B-23, B-24, testimony then SE supervisor, Director, PPS)

17. The PPT met on July 23, 1999, by notice to the parent dated July 23, 1999, (the five day notice having been waived) for the purpose of planning evaluations. Present

were the Director, PPS, the special education teacher, the school psychologist, the school social worker, the S/L clinician, and the assistant school principal. The mother and grandmother were present. It was determined that the following evaluations be administered: psychological, educational, adaptive behavior scale, speech/language, occupational therapy, and a social work assessment. It was also determined that the parent have up to three sessions with a Dr. A. Meiser for counseling. The mother signed the consent to evaluate form on that date. (Exhibits B-25, B-26, B-27)

18. Dr. Meiser was an independent consultant who had been retained by the Board to address the mother's concerns about the transition from Gengras Center to the program at Illing. (Testimony Director, PPS)

19. The social work assessment was done on July 23, 1999 and August 13, 1999.

The evaluation included the Behavior Disorders Identification Scale for Home, home visits, interviews with the mother, observation of the student and his interactions at home with the mother and a review of the school record.

Under the Assessment portion of her report, the school social worker wrote: the student's "reaction to change could result in violent temper tantrums which may trigger severe seizures. [His mother] is a powerful force and stabilizing influence in [the student's] life as are all the other members of his extended family." The school social worker further noted that it had taken him a long time to adjust to Gengras Center. The information concerning the student's past history came from the mother.

The recommendations were, inter alia, that if the decision would be to transfer the student from Gengras Center, the PPT should assist the mother in getting time off of her job, without losing Title 19 assistance, to consider realistically the effects of moving the student after input from a Dr. "Bronquell" and personnel at the Gengras Center, and if it was decided to transfer the student, a transition plan had to be implemented to minimize the negative effects. (Exhibit B-32)

20. The school psychologist did the psychological evaluation on July 26, 1999.

The student's IQ, as measured by the WISC was: Verbal 26, Performance 46 and Full Scale 40, in the intellectually deficient range. His academic achievement as measured by the Kaufman Test of Educational Achievement and both the age norms and grade norms showed him in the "Extremely Low" descriptive category. All scores being under grade one equivalencies and in the first stanine.

The school psychologist found the student to be cooperative and motivated with an adequate attention span. He found the student to be extremely deficient in receptive and expressive language, visual motor perception and spatial conceptualization, and in verbal, concrete and abstract thinking and verbal concept formation. While the student's problems with expressive language required the evaluator to ask him to repeat his answers and the student's problems with receptive language required the evaluator to repeat the questions, the student did not appear frustrated.

He found the student to have an extremely positive attitude toward the testing. His grandmother was able to leave the student with the evaluator, much to her surprise. (Exhibit-28, testimony school psychologist)

21. The school psychologist recommended the program at Illing and, contingent on the results of the speech and language evaluation, speech and language therapy. When he testified he gave his reasons: the program at Illing would meet the student's educational needs and the student's attitudes; feeling good about himself, liking school and his family would be positives in the program at Illing. (Exhibit B-28, testimony school psychologist)
22. In his testimony, on February 24, 2000, the school psychologist stated that he found the student eager to please adults and that he would respond to a reward system which would ease his transition into the program. While it would have been best if the student had started in the program in the fall it did not mean he could not start at another time. The student would need support during the transition. The family and staff would have to work together. Based on his contact with the student he did not see any need for the student to have one-on-one support. (Testimony school psychologist)
23. The Speech and Language evaluation was done on August 13, 1999 at the grandmother's apartment by the S/L clinician. She found the student to be very cooperative. The mother was present. The occupational therapist was also present to do her evaluation. The S/L clinician had previously met the student and his mother at the time the school social worker had done her interview. The S/L clinician became aware of the mother's "very high level of anxiety" concerning the proposed move to Illing.

On the Listening Comprehension subtest of the Oral and Written Language Scale, the student had a standard score of 51, which is below the 1%ile. The test-age equivalent was five years and one month.

On the Oral Expression part of that test his score was 40, below the 1%ile and with a test-age of three and half years. In further elaboration of the student's difficulties with oral expression the evaluator wrote that the student had not "truly" combined two words in any utterance. His "extreme deficit in expressive language" makes verbal communication very difficult and could contribute to his behavioral difficulties. In addition the student's articulation was "problematic." The S/L clinician found that the communication difficulties were a source of frustration to the student.

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The S/L clinician noted that the student used a variety of methods to make his wants known and that methods should be explored so that he could use alternative methods of communication. (Exhibit B-31, testimony S/L clinician)

24. The S/L clinician felt that the student's speech and language needs could be met in the program at Illing which is language based. The program uses a picture-based system to augment verbal communication. The strategies include the use of the Meior Johnson pictures system, now a computerized system called Board Maker, which allows the staff to design individualized schedule boards, communication boards and pictures. This individualization is important for the student.

The staff is experienced with the materials and has used them with other students who have similar communication needs. (Testimony S/L clinician)

25. The staff, to ease the transition during the 1999-2000 school year, had planned to take pictures of the new setting and new staff that would work with the student so that he would feel it was familiar. There were plans to meet with the student and his family prior to entrance in the program at Illing. Another possibility to ease the transition would be if the student's sister would transfer to Illing. (Testimony S/L clinician)
26. In looking over the Gengras Center Service Delivery Plan promulgated at Gengras Center and comparing it with the IEP developed by the PPT on June 16, 1999, the S/L clinician found them to be in agreement in most areas. (Testimony S/L clinician)
27. The S/L clinician found the mother to be protective of the student and she further characterized their relationship as "enmeshed". (Testimony S/L clinician)
28. The educational-occupational therapy evaluation was administered to the student on August 13, 1999 in the same time frame as the speech-language evaluation. His mother was present.

The student did not establish eye contact with the evaluator unless asked. He preferred to look at his mother. He was polite, had a positive attitude and said he liked school. He and his mother worked well together.

The evaluator was told that the student was independent in ADL activities. He asked for money to go to the corner store and buy a drink. When permission was granted, he went off and accomplished the task with his sister.

The evaluator concluded that the student's visual and motor deficits impacted on his ability to write and recognize letters and numbers. His strengths were his functional living skills and "apparent" social skills with family and friends. She recommended occupational therapy consult within the classroom. (Exhibit B-33)

29. The then assistant director, Gengras Center, who had attended PPT meetings, administered the Adaptive Behavior Testing on September 12, 1999. The Scales of Independent Behavior...Revised was the evaluative tool.

The evaluator concluded that the student's Broad Independence, which was an overall measure of adaptive behavior, was comparable to an average child of five years one month. His functional independence was very limited; as were his personal living skills. The student's social interaction, communication skills and community living

skills were also very limited. The latter resulted in the lowest scores. His personal living skills were his greatest strength.

The student was found to be limited in gross-motor skills, fine-motor skills, social interaction, language comprehension, language expression, eating and meal preparation, toileting, dressing, personal self-care, time and punctuality, money and value, work skills and home/community orientation. The evaluator also found the student to have normal problem behaviors, but marginally serious internalized maladaptive behaviors.

She concluded that the student would “need limited support, much more than others his age, primarily because of very limited adaptive behavior.” (Exhibit B-38)

30. The student did not attend the summer program recommended by the PPT as his mother felt that it would be better for him to have the summer at home. (Testimony then SE supervisor, mother)
31. A PPT was held on August 23, 1999, notice to parent dated August 5, 1999 to review the evaluations and develop, review or revise the IEP. Present were the Director, PPS, a special education teacher, the school psychologist, the nurse, and the school social worker. A representative from Gengras Center was invited but did not attend. The mother did not attend.

The evaluations had been completed, administered by qualified evaluators and conforming to the standards set out in 34 CFR 300. The sessions with Dr. Meiser had been arranged and he had met once with the mother. It was also determined that the IEP promulgated on June 16, 1999 would be implemented at the Gengras Center not at the program at Illing because of the mother’s objections to that change. Since the parent had not attended the PPT, it was determined to reschedule it on September 15, 1999, to discuss the proposed move to the program at Illing. (Exhibits B-30, B-35)

32. A PPT was held on September 15, 1999, by notice to the parent dated September 8, 1999 for that purpose. Present were an administrative designee, the special education teacher, the school psychologist, the nurse, Dr. Meiser, the then director Gengras Center and two Board social workers. The parent did not attend.

Dr. Meiser reported that he had met with the student and his mother both of whom had great anxiety about change and separation. He stated that the transition had to be planned and supported and it “must be joint between Gengras and [the Board] and mother”.

The IEP was again confirmed, transition plans made to enable the student to start the program at Illing by the end of January of 2000, the beginning of the 2nd semester. These plans included Gengras Center staff, Board staff and Dr. Meiser meeting with the parent in the home, and Gengras Center staff and Board staff to meet with the family every two weeks. (Exhibit B-39)

33. The Director, PPS did not feel that the student entering the class during the school year would pose any problems. Students do enter the class at different times during the school year without adverse consequences and the instruction itself is individualized so that there is no problem with catching up to the class. (Testimony Director, PPS)
34. On October 6, 1999, the Director, PPS wrote the mother scheduling a meeting with Dr. Meiser, a Gengras staff member and at least one member of the Illing staff. (Exhibit B-40)
35. The mother did not make herself available for any but the first meeting with Dr. Meiser. (Testimony Director PPS)
36. The Board initiated this due process hearing on December 15, 1999. (Exhibit H.O.-1)
37. The then assistant director, Gengras Center, who had attended the PPTs, testified that the goals and objectives promulgated by the PPT were consistent with the goals and objectives being implemented at Gengras Center and that she had no concern about the appropriateness of the curriculum or objectives. In fact the speech and language, occupational therapy and the functional life skills objectives were developed in conjunction with Gengras Center staff. (Testimony then assistant director, Gengras Center)
38. She had recommended that the student be in a classroom setting, similar to that at Gengras Center which was a class of nine students with one teacher and one assistant. In addition, two of the students had their own aides. The classroom was a language-based classroom and some of the students were appropriate language role models for the student. She felt that what the Board was offering, with appropriate supports would be successful for the student. These supports would be small classroom size and support for him in preparation for transitions. (Testimony then assistant director, Gengras Center)
39. She was concerned with the transition to the district school. The student would need support from Gengras Center staff, district staff and the parent. If the transition occurred during the school year, a Gengras Center staff person would accompany the student to the Illing program. If the student attended a summer program there would have to be a key person that he could relate to during the beginning of the school year. The school staff never rejected any of the transition suggestions made by Gengras Center staff. (Testimony then assistant director, Gengras Center)
40. At the time of her testimony, April 4, 2000 the student was upset at the thought of changing schools and in one instance put his sweater over his head and sucked his thumb. (Testimony then assistant director, Gengras Center)
41. An IEP for the 2000-2001 school year was promulgated on March 29, 2000. Present were the following staff from Gengras Center: then assistant director, student's special education teacher, S/L therapist, social worker, and vocational instructor and the following Board staff: supervisor SE, secondary level, special education teacher

and S/L clinician. The mother did not attend. The goals included: increasing math skills, improving language skills, increasing pre-vocational skills, improving fine motor skills, increasing social skills, and improving communication skills. There was one and a half hours a week of speech and language services, direct and indirect, a half hour a week of occupational therapy and three quarters of an hour a week of counseling.

The IEP was to be implemented in the program at Illing. The student was to be in school for the regular school day. Placement at Gengras Center was rejected, as it was not the least restrictive environment. (Exhibit B-41)

42. The special education teacher had observed the student again at Gengras Center on February 11, 2000 for an hour and a half. Based on her observation, the student's IEP and records and her ten years of experience she felt that the program at Illing was an appropriate program. Her program was flexible and addressed the student's needs. At the time of her testimony, April 7, 2000 there were nine children in her class and nine adults. The student to adult ratio allowed for great flexibility in meeting the individual needs of the students. The projection for the next school year was for the same ratio of adult to child. She would continue to teach that program during the 2000-2001 school year. (Testimony special education teacher)

43. The program is designed as a pre-vocational special education program for students with developmental disabilities. It is designed to address communication skills, self-help skills, fine and gross motor skills, independent living, social and leisure skills, and pre-vocational opportunities. There is the opportunity for reverse mainstreaming as well as mainstreaming. Board specialists in the respective areas set forth in the IEP would provide the related services.

The student would also have available to him art, music, physical education, cooking and hygiene instruction as well as academics and a one-on-one aide for the 2000-2001 school year as recommended by the supervisor, SE, secondary level, Dr. J., and the then director, Gengras Center. A parent group is available. (Testimony special education teacher, testimony then SE supervisor, supervisor, SE, secondary level, Dr. J., then assistant director, Gengras Center, S/L clinician)

44. The then assistant director, Gengras Center testified that at the PPTs attended by Gengras Center staff the services provided at Gengras Center were set out so that the student would receive them in the transition period. The witness understood that the IEP had been developed from the Gengras Center program. (Testimony then assistant director, Gengras Center)

45. At the April 4, 2000 session of this hearing, the mother, from what she had heard, did not consider Dr. Meiser as an expert in transition and she wanted Dr. Brunquell, the student's neurologist to serve in that capacity. The Board objected. With the consent of the respective parties the hearing officer appointed Dr. Meiser as the Board's surrogate (later changed, because of time constraints, to Dr. Black.) and Dr. Brunquell as the mother's surrogate to choose an independent consultant to serve as a

transition consultant. The surrogates selected Dr. J. of Connecticut Children's Medical Center, (a colleague of Dr. Brunquell). Due to delays in the selection process and Dr. J.'s schedule, Dr. J. did not see the mother and student until June 17, 2000 and did not testify until July 17, 2000. (Exhibit H.O.-2, Record April 4, 2000)

46. Dr. J. determined that due to the student's mental age, functioning at the four to five year old level, and his level of dependency, his attitude and feelings about the transfer to the program at Illing would reflect the attitude and feelings of his family, particularly his mother. The mother had told Dr. J. about the one and a half years it had taken the student to adjust to Gengras Center, the demands on her in constantly being called to the school, that she had lost her job because of this and that it took a toll on her physically. She felt that the same thing would happen at the program at Illing and therefore did not want to attempt it. At his interview with the student and his mother the student indicated his willingness to change schools. (Exhibit H.O-2)
47. In his report, Dr. J. recommended that the transition to the program at Illing be a gradual process. He recommended that the student become acquainted with the Board school and staff prior to the start of school. He recommended a full time aide, a highly structured and predictable day, and at the beginning the student not attend for a full day.

He also stated that there should be consultation with Gengras Center staff concerning what the student responded to in that program, academically and behaviorally. However, Dr. J. felt it would be detrimental to the student to involve Gengras Center staff in the physical transition to the program at Illing, as it would just be confusing to the student. He felt that Board staff working with the student in August, before the start of school would allay the student's fears and allow a transition to the Board program.

It was "imperative" that the mother would agree to the transition plan and she would need support. He further felt that the student must not be fearful in the school environment because he had few resources to deal with "fearful and stressful circumstances." (Testimony Dr. J., Exhibit H.O-2)

48. The Board social worker did not believe that the student would have the same problems in adjusting to the program at Illing as he had when he started at Gengras Center because he was older, was coming to Illing from a school experience, not an extended time at home, and there was not the family problems that had been the case earlier. (Testimony social worker)
49. On July 25, 2000 the special education teacher spoke with the student's teacher during both the 1999-2000 school year and the summer program at Gengras Center. They discussed the student's strengths and weaknesses and his likes, and how to handle behaviors. (Exhibit B-49)
50. The PPT met on July 28, 2000. Dr. J. was present as were the mother and grandmother. The mother became upset during the PPT and left, despite the efforts of

both Dr. J. and the grandmother (who did remain) to have her stay. The PPT approved, inter alia, a transition plan, which provided for activities in August to prepare the student for the program at Illing. These activities included school visits, home visits and a picture schedule book so that the student would be familiar with the school and school staff prior to the first day of school. The plan also provided for a diagnostic placement at Illing, the length of the school day, PPTs every two weeks, a communication sheet, a behavior management plan, and criteria for judging if the transition to the program was progressing adequately.

The IEP promulgated on March 29, 2000 was reviewed and continued with the exception that since the student was to arrive shortly after the official beginning of the school day a cab with a staff person would be used. This was the only reference to transportation. The PPT offered the mother counseling by Dr. J. (Exhibit B-42)

51. A behavior intervention plan was adopted that provided for positive reinforcement strategies such as rewards. These rewards could be computer time and time to play baseball, activities that would appeal to the student. Dr. J. agreed with this approach. (Exhibit B-42, testimony S/L clinician)
52. While the PPT included physical restraint as a possible strategy in the student's behavior plan for the 2000-2001 school year to address concerns of the student's mother and grandmother expressed to the PPT, the school staff was not anticipating a problem. According to the grandmother no incidents requiring restraint occurred during the 1999-2000 school year at Gengras Center, no Gengras Center staff members had raised concerns regarding the need for physical restraint as the tantrums, according to the then assistant director, Gengras Center, experienced with the student occurred mostly in his first year at Gengras Center. (Testimony former assistant director, Gengras Center, grandmother, Exhibit B-42)
53. Dr. J. testified that the chance of the student having tantrums at the program at Illing was slim because of the planned involvement of his teachers in home and school visits. (Testimony Dr. J.)
54. If the need did arise for physical restraint to deal with any tantrum reaction to the student's transition to the program at Illing, the Board would follow a written protocol for restraint of children in the classroom, and the classroom teacher and classroom paraprofessionals, who have been trained in restraint, would implement it. (Testimony S/L clinician)
55. School staff at the program at Illing can work on a student's behavior problems in the school without the cooperation of the parent due to the resource team of the speech and language clinician, social worker, and other therapists in the program. The building administrators, social worker and psychologist S/L clinician at Illing, and the special education teacher in the program at Illing are very experienced in managing behavior of disabled children and handling behavior problems. (Testimony Director, PPS, special education teacher)

56. The parent was concerned about the student having a seizure in class, as he had a history of seizures.

Dr. Brunquell on November 24, 1998 wrote in his report that student had a remote history of seizures but no reports of recurrence since May 1994. The student had been taken off anti-convulsive medications. These medical records were released in August 1999. There had been no seizures at Gengras Center.

The special education teacher has had experience working with children with seizures, and if a child has a seizure she would call the nurse. They could and would ensure the student's safety. There had never been a parental complaint regarding her handling of student seizures at the program at Illing. (Testimony special education teacher, grandmother, Exhibit B-34)

57. On August 5, 2000 Interim Ruling V was promulgated. It incorporated the plan set forth in the minutes of the PPT of July 28, 2000, with the following changes: the Trial Placement for Diagnostic Reasons was to extend for eight weeks, subject to further order from the hearing officer or agreement between the parties, and that the visits with the student should not be limited, but based on the student's needs. Further the Order provided that the mother have the student available on the days agreed to by her and the Board, (the days had been set up at a telephone conference with the hearing officer Board attorney, Director, PPS, the mother and grandmother) and that the Board schedule the exact times of the visit. (Interim Ruling V)
58. The mother did not set dates to have school staff meet with the student and there were no school visits during the month of August 2000. The Board sent staff to the mother's home and while conversations took place there was little if any movement toward implementing the transition plan. The mother refused counseling through the school social worker. The mother told the S/L therapist when she attempted a home visit that the student was not going to the program at Illing and that she was not going to participate in the transition plan. The mother also stated that she would rather hire a tutor. The mother refused to set up an appointment when called by the special education teacher. (Exhibits B-45, B-48, testimony S/L therapist, testimony Director PPS)
59. The PPT met on August 30, 2000, the date scheduled at the mother's request, as she could not make the prior scheduled meeting. She did not attend. The PPT did not take into consideration the fact that the plan to be implemented in August had not been implemented in a meaningful way, and continued its recommendations for the first day of school. The feeling was that without the mother's input there was no possibility of changing the plan and that there would be no difficulties getting the student on the transportation. The PPT had had no information to lead them to think that the student had had problems taking school transportation to Gengras Center. (Testimony Supervisor SE, secondary level, S/L clinician, Director, PPS)
60. On the first day of the 2000-2001 school year, the district, by mistake, sent the van that brought children to Gengras Center to the family home. When the mother

inquired of the driver where the van was going, she was told Gengras Center and the student boarded the bus. Gengras Center notified the Board and the supervisor SE, secondary level came with a cab to pick up the student. She called the mother who did not want the student taken to Illing. The supervisor SE, secondary level brought the student home as the mother had asked. He was very cooperative. (Testimony supervisor SE, secondary level)

61. Subsequently the student refused to get in the cab with school staff to go to school. This resulted in him not attending school on the next two school days, September 1 and September 5, 2000. On September 6, 2000 the mother brought the student to school for less than an hour. She stated in her facsimile to the hearing officer of that date, that the student would not remain and she requested a hearing on September 11, 2000. The request was granted. It should be noted that this hearing was scheduled to convene on September 13, 2000. (Facsimile dated September 6, 2000, Record September 6, 2000)
62. On September 7, the mother was to bring the student to school. He was not brought to school. On September 8 the student his mother and friend came to school. (Exhibit B-45)
63. At the September 11, 2000 session of this hearing the mother was represented by counsel. The parties, through their attorneys agreed to the following: the student would arrive at school at the same time as the other students and therefore be able to ride the school van, the student's assigned aide would ride the van with him. In the event the student would not get on the van his special education teacher would come to the home to encourage the student to get on the van. If the student refused to get on the van assigned school staff would work with him at home, that the IEP would be modified to allow for some flexibility as to activities outside the self-contained classroom.

While the parties had agreed to an independent educational evaluation by an educational consultant from the Connecticut Children's Medical Center, they disagreed concerning whether that person should be a witness. The hearing officer ordered the evaluation and that she would determine whether or not the individual would be called as a witness. (Record, September 11, 2000)

64. The PPT convened on September 12, 2000. Present were the Supervisor SE, secondary school, special education teacher, S/L therapist, the social worker, the assistant principal, Board attorney and parent attorney and the agreement of September 11, 2000 was adopted by the PPT, including giving the special education teacher authority to determine when some mainstreaming activities would be appropriate and phased into the student's program. (Exhibit B-46)
65. School staff went to the home and spoke to the student about the van on September 12, 2000 and the student was "attentive". The visit lasted one and one-half-hours. On September 13th and 14th the student refused to leave the house, on September 15th

he refused to get on the van and on September 18th no one was at home. (Exhibit B-46)

66. An emergency PPT was called for September 18, 2000, by notice on September 15, 2000. The following were present: Director, PPS, special education teacher, social worker, S/L clinician, guidance counselor, supervisor SE, secondary level, assistant principal, Board attorney and parent attorney. The mother's attorney suggested that the student be placed at Gengras Center and transitioned from there. The PPT rejected that suggestion based on Dr. J.'s prior testimony that working with Gengras staff and Board staff would be confusing to the student. The special education teacher, social worker, Director, PPS, and the supervisor, SE, secondary level reported on the efforts made to have the student board the van. The PPT offered taxi transportation for the mother and student, and discussed that the family or friend transport the student until October 6, 2000. (Exhibits B-44, B-45)

67. On September 19, 2000 the student, a cousin and his mother visited the school. This was the only visit on which there was testimony. The family arrived at a little after nine a.m. While the cousin was supportive of Illing and encouraged the student, the mother distanced herself. She was going to attend the due process hearing on that date, was constantly looking at her watch and in the opinion of the S/L therapist present was sending signals to the student to leave with her. The student refused to join the class, saying "leave" as the mother looked at her watch and when she asked him if he wanted to stay he replied in the negative. The mother on the other hand testified that she did not feel the staff did enough to insist that the student remain.

The S/L clinician determined that in her professional judgment it was not in the student's best interest to force the issue. (Testimony S/L clinician, Exhibit B-47)

68. On September 20, 2000 the van arrived to pick up the student at his grandmother's (where he was to be in the mornings as his mother had started working) but was not at the correct place of the apartment complex.

69. The Director, PPS learned for the first time, from the grandmother on the night of September 20, 2000 when she had called the grandmother, for the first time that the student would not go on the school van when he first attended Gengras Center and his family had to transport him for a considerable period of time. (Testimony Director PPS)

70. The hearing convened on September 21, 2000. Both the mother and grandmother were present. The hearing officer called Dr. J., who as per her order, had received daily reports from the Board. He felt that the mother was "sabotaging" (whether or not it was deliberate was not the issue to him) the process of getting the student to the program at Illing. He also felt that the issue had become one of getting the student on the van from his home. He felt the matter was at an impasse but hoped that since the student would now be picked up at the grandmother's home since the mother was working things might be easier. He did not think it would make any difference to the student whether or not he attended Gengras Center or the program at Illing. He also

felt that the student would not have trouble adjusting to the program at Illing, the problem now was to get him to the school. (Testimony Dr. J.)

71. During that hearing session it was determined that an aide would be on the van to facilitate the student's getting on the van, and if he would not, to remain with him so that he might feel comfortable with Board staff. The grandmother agreed to let the Board staff have access to the student. (Record September 21, 2000)
72. The hearing officer issued Interim Ruling 6 on September 22, 2000, which, inter alia affirmed the above plan and ordered a staff behavior specialist (the Board had been unable to identify an available independent behavior specialist) to assist the grandmother and staff person. The Director, PPS assumed the role of behavior specialist. (Interim Ruling 6, testimony Director PPS)
73. On September 21, 2000 the student was not at his grandmother's apartment even though she expected him to have been left with her. She did not know where he was and the Board could not locate him. (Exhibit B-50, testimony grandmother, Director PPS)
74. Starting on September 25, 2000 with the efforts of the Director, PPS acting as a behavior specialist, the aide and social worker made slow progress in getting the student out of the basement (where he was in the mornings, watching television with his sister) of his grandmother's apartment, putting on his shoes and finally on Friday, September 29, 2000 he got on the bus, related well to the bus driver but did not wish to go to school. The Board staff did not insist. He also at least once hugged the aide. The mother was told of this progress. (Exhibits B-52, B-53, B-55, B-56, B-57, testimony Director, PPS)
75. There also was a home visit on the evening of September 26, 2000. The Director, PPS, S/L clinician and social worker came to the grandmother's apartment. The mother and grandmother were present. The mother stated that she wanted the school staff to tell the student that the van was ready to take him to school, and if he did not go, to try the next day. She did not want anyone of the family or staff to transport him and she wanted him to go to Gengras Center. On the days that the student did not get on the van, the family confirmed that the special education teacher had called him. (Exhibit B-54)
76. While the staff wanted to use a reward system and distractions to get the student on the bus, an accepted methodology and endorsed by Dr. J., the mother stated that she considered it bribery and threatened to deny access to staff if the toys and games were brought again. (Exhibit B-54)
77. On the Monday, October 2nd after the Friday when the student had gotten on the bus, the mother took him to work with her. On Tuesday the Director, PPS was not able to get the student to remain upstairs and the grandmother did not allow her to go down to the basement. There was a great deal of confusion, with the mother on the phone talking to the sister downstairs and to the Director, PPS. She stated that the Director

PPS was to leave the student alone if he did not want to do anything. On Wednesday, October 4, 2000 the student would not come up from the basement. The Director, PPS was not given permission to go into the basement even though she had been allowed on prior occasions. On Thursday, October 5, 2000 the student would not come up from the basement and the Director, PPS was permitted to go halfway down the stairs. (Exhibits B-58, B-59, B-60, testimony Director, PPS)

78. The student had great difficulty with his mother leaving him at the grandmother's on her way to work. (Testimony grandmother)
79. The Director of Gengras Center testified. He had assumed this position in August 2000. His one personal contact with the student had been when he was mistakenly driven to Gengras at the start of the 2000-2001 school year.

The witness had familiarized himself with the student's file and had spoken to the student's teacher, social worker and a coordinator at Gengras Center, partially in preparation for the hearing but also because Gengras Center was the student's "stay-put" placement. The staff consensus was that he had made "significant progress" not necessarily in the academic sense but in his ability to cope with the school day, behaviorally he was a model student, a leader. "... he was surely showing the kind of skill development that would make him a success in the public school setting."

In transition plans that used Gengras Center as a base, some children had no trouble and looked forward to getting on the bus to go to their public school program. As to other "...sometimes you have to drag the out of the building because something's uncomfortable for them."

Children like the student with cognitive limitations use others as models. They need the direction from others rather than thinking things through themselves and they look to people they can trust. The first one of choice is the parent. However once would be in a program he can decide if he is safe, comfortable and with good people he can trust. He needs to be with someone he trusts to go in that door at the program at Illing. It is very difficult for a child like the student to deal with a parent that is not supportive of his educational program.

The witness felt that in dealing with the student and his mother that "...the issue is dealing with [the student], but part of the solution deals with the parent." (Testimony director, Gengras Center)

80. The staff at Gengras Center can be very supportive of the transition to the program at Illing and it is a goal at Gengras Center for the students to be able to transition back to their district schools. (Testimony then assistant director, Director, Gengras Center)
81. While it had been noted at the PPT that the student had a history of school phobia, according to the social worker, Gengras Center his actions did not meet the criteria set out in DSM IV for school phobia. She had worked with the student and his mother during his last year at Gengras Center. (Testimony Gengras Center social worker, Exhibit B-41)

82. The student did pick up the anxiety of those around him. (Testimony Gengras Center social worker)
83. Dr. Brunquell, an associate professor of pediatrics and neurology affiliated with the Connecticut Children's Medical Center is the student's neurologist. He conducted neurological evaluations and supervised the student's medication. According to medical records obtained by the Board in August 1999, the student had been seen in July 1994, July 1995, January 12, 1996, October 2, 1997, and November 24, 1998. There had been missed follow up visits between these examinations.

On March 6, 2000 Dr. Brunquell wrote on his prescription pad "I recommend that the patient remain at the Gengras Center rather than transfer to public School." On March 16, 2000 the mother did not attend the hearing due to her son's illness and was planning and having him see Dr. Brunquell. (Exhibit B-34, P-1, Record March 16, 2000)

CONCLUSIONS OF LAW:

1. The student is an individual with disabilities and is entitled to a free appropriate public education (FAPE) under the IDEA.
2. The Supreme Court in *Board of Education of Hendrick Hudson Central School District v. Rowley* 458 U.S. 176 1982) stated that a FAPE is one "specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction" and set out the following two-prong seminal test for determining whether a student has received a FAPE. Was there compliance with the procedures set forth in the IDEA and was the IEP developed through those procedures "reasonably calculated to enable the child to receive educational benefits?"
3. In the instant proceeding the Board is seeking to transfer the student from an out of district placement at Gengras Center that was initiated by a prior school district and continued by the Board after the student became a resident in October of 1998. After a PPT in November 1998 when it determined to investigate the possibility that the student could be provided with a FAPE in the district and its determination that a FAPE could be implemented at a Board school, the Board has attempted to transition the student to an in district placement; the program at Illing.
4. The Board has challenged the placement at the Gengras Center on the grounds that it is not the least restrictive environment for the student.
5. The appropriateness of the program for 1998-1999 is not at issue.
6. The Board has the burden of proof in determining whether or not it has offered the student a FAPE.

7. The evidence of school staff made it apparent that the student's unique needs were considered in the formulation of the goals and objectives and related services set forth in the IEPs for the 1999-2000 and 2000-2001 school years, that they could be implemented by the staff in the program at Illing, and were calculated to afford the student more than reasonable educational benefit. There was no evidence presented to the contrary.
8. Throughout the time the IEPs for the 1999-2000 and 2000-2001 were being drafted there was cooperation with Gengras Center, through discussions and/or at PPTs.

The genesis of the 1999-2000 IEP was the Gengras Center Service Delivery Plan for 1999-2000 adopted by the PPT on March 24, 1999, when it was expected that the student would attend the program at Illing in May of 1999, and affirmed after a complete set of appropriate evaluations. The 2000-2001 IEP was promulgated on March 29, 2000 after discussion with Gengras Center staff and affirmed at a PPT with four Gengras Center staff present.

9. The PPT team under the IDEA includes the parents. The basis for this is the realization of the importance of parental planning in the education of a child. This inclusion is a right of the parents and it also is a responsibility of the parents. The mother was invited to the PPT meetings. There has been no evidence presented to the contrary. When she asked for a postponement of a meeting it was granted. She received copies of the IEPs. She was present at the July 28, 2000 PPT when the IEP for 2000-2001 was reviewed, but left because she was upset at the transition planning. She was given the opportunity to help develop the goals and objectives in the IEP at PPT meetings and by not attending, did not avail herself of that opportunity.
10. While the mother has not accepted on a regular basis, the responsibility of attending PPT meetings, she has however worked with school staff outside of the PPT meeting concerning the student's transition to the program at Illing.
11. In fact it was apparent from the start of this proceeding, when the mother appeared pro se and continuing to the time the mother, through her attorney, rested, without making any objection at any time to the goals and objectives and related services set forth in the IEP and without putting in evidence anything concerning the goals and objectives and related services to counter the Board's evidence, that the parent had no issue as to the appropriateness of the goals and objectives and related services as set out in the IEPs of the 1999-2000 and 2000-2001 school years.
12. Further, it is evident from the evidence presented, both written and oral, that the only aspect of the PPT's decision that was of concern to the mother was the student's placement at Illing. And, while her participation, by her own choice was outside the PPT meeting process, the PPT did consider her concerns. She was informed about the decision making process to place the student at Illing, she

contacted school staff and was contacted by them, she made known to the PPT that she was opposed to the transfer and the staff attempted to alleviate her concerns and provide counseling.

13. In fact the Board put off the transfer to Illing in an effort to gain parental cooperation from May 1998 until it started this due process hearing in December of 1999. (Except for the attempt on May 3, 1998). While the PPT was obligated to consider the mother's concerns, it was not obligated to accede to her desire that the student remain at Gengras Center.
14. No precedent has been cited, nor is the hearing officer aware of any that given the above facts: that the goals and objectives and related services set forth in the two IEPs were, at the very least, reasonably calculated to give the student educational benefit, that the mother had, even by the time this hearing closed, no objection to the goals and objectives and the related services, that there was no evidence of any detriment to the student, and that the mother was given full opportunity to participate in the PPTs, to mandate a finding that the goals and objectives and related services set out in the IEPs were inappropriate or to mandate the finding that the student has been denied a FAPE.
15. The mother's contention, set forth for the first time in her brief, that the Board did not sufficiently provide for her participation in the development of the goals and objectives and therefore the student was denied a FAPE is rejected.
16. It is well established that if it is determined that a local school district can provide a FAPE for a student, it is not relevant that the private placement's program is appropriate, better than, different from that proposed by the district or preferred by the parent.
17. 34 C.F.R 300.550 requires that "(b) each public agency ensure (1) that to the maximum extent appropriate, children with disabilities ... are educated with children who are nondisabled, and (2) the special classes, separated schooling or other removal of children with disabilities for the regular education environment occurs only when the nature or severity to the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily..."

The "strong congressional preference" of Congress for integrating children with disabilities in regular classrooms was stated in *Oberti v. Board of Educ* (3rd Cir. 1993) 19 IDELR 908, citing numerous court decisions.

Taking this mandate a step further the Second Circuit Court of Appeals in *Walczak, Walczak v. Florida Union Free Sch. Dist*, 142 F.3e 119, (2nd Cir. 1998) citing with approval, *Sherri A.D. v. Kirby*, 975 F.2d 193, 206 (5th Cir.1992) "Thus, '[e]ven in cases in which mainstreaming is not a feasible alternative,' the statutory preference for a least restrictive placement applies."

18. Gengras Center is a private facility that has no mainstreaming potential. The program at Illing provides a continuum of mainstreaming opportunities. Even if the student's needs require him to be in a self-contained environment at the beginning, there has been nothing to indicate that he would not eventually benefit from some mainstreaming, and this is referred to in the IEP of the 2000-2001 school year. The important fact is that there is the possibility of interaction with non-disabled students when the student is ready at Illing. There is no such possibility at Gengras Center.
19. The parent's argument set forth in its brief that Gengras Center is a less restrictive environment than Illing is not persuasive and is rejected.
20. Furthermore, Illing is closer to the student's home than is Gengras Center, thus satisfying the requirement of 34 CFR 300.352(b)(3)
21. The Board has sustained its burden of proof and the standard set out in *Rowley*, supra, met.
22. The Board, in its proposed Final Decision and Order, requests the following relief, inter alia. "4. Immediately upon release of the Final Decision and Order, [the student] shall be placed in the [program] at Illing Middle School on a full time, permanent basis.
23. One must look at the history of the transition planning in order to make that determination.
24. The fundamental issue to the mother was her belief that the student could not transition to the program at Illing successfully and that any Board attempt would result in inappropriate behaviors from the student, in his being inordinately upset and that the demands on her to contain him in the classroom would be detrimental to her health and to her employment. This belief was based on past experience when the student first went to Gengras Center in 1997.
25. The Board was aware of her attitude and also the concerns expressed by Gengras Center staff that the transition would be difficult for the student and that it had to be done with care. Therefore plans for the transition to Illing were made.
26. The initial plan for starting at Illing was to be in early spring of the 1998-1999 school year. When it became apparent that there would be no transition then, a program at the district summer camp was offered as a transition device, which the parent refused. The student started the 1999-2000 school year at Gengras Center and plans for a transition during that school year were premised on that fact. Therefore the discussion was on the cooperation and assistance of Gengras Center staff during the transition. Both Gengras Center staff and Board staff felt that the student could make the transition to Illing with careful planning. The mother did not. This was the situation when the Board initiated this due process proceeding on December 15, 1999, with the intent of having a decision before the end of the 1999-2000 school year.

27. Based on the concerns of the mother and the concerns evidenced in the Board reports and the testimony of the then assistant director, Gengras Center the hearing officer ordered the appointment of an independent consultant to aid in transition planning on April 4, 2000.¹
28. Unfortunately, and not due to the fault of either party, the consultant did not see the mother and student until June 19, 2000 and did not testify until July 17, 2000 resulting in the student completing the 1999-2000 school year at Gengras Center, which changed the parameters of the transition plan.
29. The transition plans for the 1999-2000 school year, visits to the program at Illing, counseling to assist the mother to feel comfortable with the transition, and the input and assistance of the Gengras Center staff were, when adopted, reasonable for that year. However there was no implementation given the parental objection, the refusal of counseling, the Board's decision not to force the issue independently of a due process hearing and the time of the report of the independent consultant.
30. It was the opinion of Dr. J., the consultant, knowing that the transition would take place at the start of the new school year 2000-2001, the transition should be done without the physical presence of Gengras staff, as that would be confusing to the student. He also realized that the student's difficulties with change and his dependence on his family, particularly the mother for cues as to responses, made it "imperative" that the mother be comfortable with the transition. The PPT at its July 28, 2000 meeting agreed with his recommendation and promulgated a transition plan and approved a Trial Placement for Diagnostic Reasons.
31. The transition plan for the 2000-2001 school year was a well thought out approach incorporating the recommendation of Dr. J. that the transition begin in August of 2000, a month between the end of the summer program that the student attended and the start of school. The purpose of the activities proposed, visits to school by the mother and student, home visits by staff, and a picture book, was to make the student familiar with school staff and the school and to give the mother support to alleviate her fears.
32. Interim Ruling V dated August 4, 2000, reflecting the transition plan and the goals and objectives adopted at the July 28, 2000 PPT, ordered, inter alia a Trial Placement for Diagnostic Reasons. This placement is considered in Connecticut as an evaluation and is not a change of placement. The purpose of such trial

¹ Of the five scheduled hearing dates, including January 5, 2000 the first day of the hearing and April 4, 2000 when an independent transition consultant was ordered the mother appeared twice. She did not appear on the first day of the hearing and there was no request for an adjournment and no explanation. She appeared on January 26, 2000 and requested an adjournment to obtain counsel. The request was granted. She appeared on February 24, 2000 without counsel and testimony was taken. She did not appear on March 16, 2000, stating by telephone on the record that she had a sick child. (The then assistant director, Gengras Center was present, having been called at the mother's request.) The hearing was adjourned. She did not appear at the April 4, 2000 hearing until spoken to by the hearing officer on the telephone. The then assistant director, Gengras Center was a witness. Testimony was taken.

- placement was to monitor and evaluate the student's transition plan and goals and objectives as set out at the July 28, 2000 PPT. The trial placement would have given the school staff and the mother information concerning the student's adjustment to the program. There would have been mandated PPTs every two weeks, or more frequently if desired by the parent. Further, since this due process hearing was in session there would be access to that process.
33. Unfortunately, when the evidentiary portion of this hearing concluded on October 5, 2000, the student had as yet to begin the Trial Placement for Diagnostic Reasons due to the fact he would not get on the transportation provided.
 34. It must be noted that the appropriateness of an IEP is evaluated at the time of its promulgation. Therefore that the 2000-2001 IEP was not implemented due to the circumstances in this proceeding does not make it inappropriate.
 35. The implementation of the August program depended on the mother's active cooperation, which was not forthcoming. She did not make the student available, did not visit the school, and did not avail herself of the counseling. The result was, that at the beginning of the school year, the suggested familiarizing steps had not been accomplished. The Board had made attempts to elicit the mother's cooperation.
 36. There was a PPT meeting just prior to the beginning of school. The original date scheduled for the PPT had been changed because of the mother's request, however she did not attend. The PPT did not consider if there should be any adjustments to the plans for the beginning of school, due to the inaction in August. It basically felt that the student would start school on the first day and school staff would cope.
 37. There had been nothing in the information provided to the PPT at that time to indicate that there would be any problem in the student getting on the provided transportation. And in fact the student rode the bus, mistakenly sent for him to Gengras Center. However, the student refused to get on the provided transportation after the first day.²
 38. The refusal of the student to get on the provided transportation presented the PPT with another and unexpected problem and steps were taken.

First the method of transportation was changed, from a taxi to a school van also with school personnel. This was agreed upon by the parties. It should be noted from that time the mother was represented by counsel.

However, the student refused to utilize that transportation.

² If in fact the student had boarded the provided transportation and there had been real difficulties in the program at Illing, the fact that the PPT did not consider the implications of the failure of the August plan might well be significant. However the student never did get to school.

- Appropriately an emergency session of the PPT was called on September 15, 2000, for September 18, 2000 to deal with that issue. The plan presented by the mother's attorney, a split program with Gengras Center and transitioning from Gengras Center was considered and rejected, based on Dr. J.'s opinion. The staff proposals were based on the mother getting the student to school, either in a taxi with him or by family members or friends driving him. These were not accepted.
39. The plan set forth on the next day at the September 19, 2000 session of this hearing was predicated on the belief of school staff and Dr. J. that when the student was picked up at his grandmother's house that it would be easier to get him on the van, his mother not being present. Both Dr. J. and the school staff thought that the mother's negative attitude impacted on the student going to the program at Illing. A plan was adopted, and incorporated in Interim Ruling 6, which added a behavior specialist to assist.
 40. There is no doubt that up to a point progress was made, in fact, on Friday, September 30, 2000; he boarded the van, though he did not want to go to school. However on the following Monday, October the 2nd his mother did not bring him to the grandmother's home and the rest of the week ended with him not even coming up from the basement TV room.
 41. The grandmother is not the child's guardian but his caregiver. She herself was constrained by the mother's instructions to give the student the choice of getting on the bus. While the mother had at times told the student to go on the school bus, she did not convey that it was important and that she felt it would be all right for him to go to the program at Illing. The progress that had been made up until the week of October 2nd was made with the passive cooperation of the grandmother. And while it was found that she did not take a forceful stand with the student, she did not actively interfere until the last few days when she denied school staff access to the basement, as she was tired of the school staff coming into her home.
 42. The progress that was made up until the week of October 2nd was also made without the use of a reward system or distractions to get the student on the bus, accepted methodology and endorsed by Dr. J. because of the mother's refusal to permit same.
 43. The Board alternatives to get the student to school, the mother or family driving him to school, alternate methods of transportation with family participation, and his sister transferring from the neighborhood school to Illing were all refused by the mother. While it is true that if the mother had bought into sending the student to Illing, she might have been willing to try these alternatives, and they would have had a good chance of being successful. The fact is that she is opposed to the transfer, believing that it would be harmful to the student and to her. It should be noted that it is the Board's responsibility to provide transportation to the student.

44. While it appeared the Board was willing to continue its efforts to transition the student from his home to the program at Illing, it also was clear that the mother has not changed her conviction that the student would not adjust to the change to the program at Illing without undue hardship on him and on her. It must be concluded given all the testimony concerning the dependence of the student on his mother that he reacted to her conviction.
45. The hearing officer on October 6, 2000 in an interim ruling ordered that the student be returned to his "stay-put" placement, Gengras Center, and a transition plan promulgated using Gengras Center as a base.
46. The reason for the interim ruling was that given the emotional atmosphere at the home, the anxiety the mother and grandmother have about the change to the program at Illing, the influence on the student of the concerns, attitudes and feelings of his mother and grandmother, and the parental objections to certain methodologies, any transition based at the home or at the grandmother's home utilizing school provided transportation would not be accomplished within a reasonable time.
47. It has now been determined that the program at Illing for the 2000-2001 school year is appropriate, that the staff assigned to that program is qualified to deal with the student and that he has related positively to individual Board staff members. While the mother's actions are based on her belief that a change for the student will initiate the same reaction as when he first transferred to Gengras Center, there is not sufficient evidence to reach the same conclusion. A preponderance of the evidence indicates that the student should be able to transition.
48. However, there has been nothing introduced to lead to the conclusion that the student does not still require a careful transition to the program at Illing. It is still true that his mother has great anxiety about the change which affects the student and that the emotional climate surrounding his getting to that program from his home or the grandmother's home would make it a long and drawn out process, which would deprive him of a school based education program for an indeterminate amount of time.
49. The question is not to assess how much the mother's refusal to accept the placement at Illing is due to her anxiety about any change for the student and her resulting unwillingness or inability to hide that anxiety from the student and be a strong positive force to convince him to board the provided transportation contributed to the present difficulties. The question is how best to make the transition to the program at Illing successful. The transitioning of the student to the program cannot and must not be seen as a power struggle between the parent with her determination to have the student remain at Gengras Center and the Board with its determination to have the student at the program at Illing. The PPT focus must be the educational benefit to the student.

50. The mother's present concerns and opinions must be discussed specifically at PPT meetings and outside of those meetings in an effort to alleviate her anxiety about the particulars of the transition. Adjustments to the plan may have to be made. It must be remembered that the more the mother becomes comfortable the easier will be the transition. Once the student is comfortable in the program at Illing and his mother recognizes his comfort, then her own anxiety will diminish. There must be a concerted effort to make the mother feel more comfortable with the transitioning and the placement in the program at Illing.
51. The student is entitled to a full day of school. He also is entitled to be in a situation that affords the greatest opportunity for social and/or academic contact with non-disabled peers. Given the facts presented in the instant case, the inability to get the student from his home, or the grandmother's home to Illing caused at least in part by the unwillingness of the mother to be a positive support to the transfer to Illing, that it is well documented that change is a problem to the student and must be handled gradually, it is important that the transition be accomplished using Gengras Center as a base and with the use of Gengras Center staff³. Not only does Gengras Center staff have the experience and commitment to work with the PPT in transitioning the student to the program at Illing, it has the trust of the mother.
52. It should be noted that the mother through her attorney, suggested transitioning from Gengras at a PPT and in her Motion to Modify Interim Ruling V this was also suggested. It could be concluded that this process would help allay her anxiety.
53. There has been no evidence to warrant the conclusion that it is in the student's interest for an immediate fulltime placement at the program at Illing. A transition is still appropriate.
54. Even though the student is in his "stay-put" placement, it is the Board that is responsible for his education. It is not a parent's prerogative to determine what staff person, or whether it is Board staff or Gengras staff that provides services to the student.
55. Dr. Brunquell was not called as a witness. He has not seen school records and is not familiar with the program at Illing or the transition plans. Therefore his note on the prescription pad which offered no reasons for his conclusion does not cast any sufficient doubt on the evidence presented by the Board.
56. All of the evidence presented, both oral and written as well as the briefs submitted have been carefully considered, as to relevancy, materiality and probative value, whether or not specifically referenced in this Final Decision and Order.

FINAL DECISION AND ORDER:

1. The program proposed by the Board for the 1999-2000 school year was appropriate.

³ Dr. J.'s concerns are now moot as the student is at his "stay-put" placement at Gengras Center.

2. The program proposed by the Board for the 2000-2001 school year is appropriate.
3. The student shall continue the transition to the program at Illing using Gengras Center, his "stay-put" placement, as a base during the 2000-2001 school year.

Nothing in this Final Decision and Order limits the behavior modification techniques, including a reward system that may be adopted by the PPT in conjunction with Gengras staff.

Nothing in this Final Decision and Order limits the allocation of time between Gengras Center and the program at Illing or limits the time of day, or the method of transportation.

Nothing in this Final Decision and Order prohibits the student from attending the program at Illing in the middle of the day and then coming back to Gengras Center accompanied by Gengras Center staff.

Nothing in this Final Decision and Order prohibits the PPT from determining that more counseling or other interventions are necessary prior to assigning time to the program at Illing.

4. Gengras staff, as the on site service provider, shall have the authority to determine, if on a given day it is not in the student's interest to attend the program at Illing. All such instances shall be reported to the PPT.
5. A one-on-one aide shall continue to be available to assist in the transition process and at the program at Illing as long as appropriate.
6. If it becomes apparent that the one-on-one aide is not sufficient to get the student to the program at Illing, the Gengras staff is to be used to transport the student between Gengras Center and the program at Illing. If deemed appropriate by the Gengras staff person, he/she shall remain with the student at the program at Illing if deemed necessary.
7. In the event that the student has since the close of this hearing started the Trial Placement for Diagnostic Reasons said placement shall continue and the PPT with Gengras staff shall continue its transportation planning and implementation.
8. In the event that the student has not started the Trial Placement for Diagnostic Reasons, Interim Rulings V and VII ordering such placement are hereby overruled. The transition planning with the PPT and Gengras Center staff shall continue. The goal is to have the student fully transitioned by April 2001. This means that the student will feel secure and comfortable in the program at Illing, he will be receiving his IEP at the program at Illing, and he will be boarding school provided transportation from his home or his grandmother's home (or at another caregiver's home that might be designated by the mother).

9. The independent educational evaluation by an educational consultant from the Connecticut Children's Medical Center, conceptually agreed upon by the parties and ordered by the hearing officer on September 11, 2000, shall be scheduled at a time determined by the PPT, based on the student's participation in the program at Illing.
10. In the event that the PPT with Gengras staff determines that the transition can not be effectuated after a reasonable effort, there shall be independent psychological and psychiatric evaluations done by independent evaluator or evaluators agreed to by the parties. The evaluators shall address, inter alia, transition needs. If there is no agreement on the evaluator(s) each party within a week, each party shall appoint a surrogate within a week of the impasse and the surrogates shall within two weeks appoint such evaluator or evaluators. The PPT may order additional evaluations if it deems them necessary.
11. PPT meetings with Gengras Center staff shall be held every two weeks until it is determined that the student is comfortable at the program at Illing. Subsequently the meetings shall be held as needed or at the request of the mother.
12. The mother shall meet with her attorney within five business days of the receipt of this Final Decision and Order. She shall list her specific concerns about the transition plan and implementation, and what would make her feel more comfortable. She is to list what in particular she feels is not working or is making her uncomfortable, and why, and what alternatives she might suggest. This list shall then immediately be submitted to the PPT and Gengras staff and a PPT scheduled within seven business days or at the next regularly scheduled PPT, whichever is earlier. At that PPT these concerns shall be specifically addressed with a view to making accommodations. This is not to say that the PPT must accede to every request, but there must be a reasoned response.
13. Counseling shall be provided to the mother, and grandmother if she is willing and the mother agrees, to enable her (them) to deal with her (their) own anxiety and to assist in having the student benefit from his transition and placement at the program at Illing.
14. In the event there are problems with implementing the transition, neither party shall in any way limit the student's entitlement to a regular school day. These problems must be worked out at PPT meetings including Gengras staff.
15. Those directives in prior interim rulings that are in conflict with this Final Decision and Order are hereby overruled.
16. All motions not specifically granted in writing or on the record are hereby denied.