

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Trumbull Board of Education

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Appearing on behalf of the Board: Attorney Michelle Laubin
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Appearing before: Attorney Mary Hughes Boyce Gelfman, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Are the programs and placements proposed by the Board for 2000-2001 and 2001-2002 appropriate to Student's special education needs in the least restrictive environment?
2. If not, is placement at Second Nature, in Duchesne, Utah, and the New Haven School in Spanish Fork, Utah, appropriate to Student's special education needs?
3. Is the Board responsible for funding Student's placement at Second Nature and/or the New Haven School?
4. Whether the Board violated the Individuals with Disabilities Education Act (IDEA) and/or the Family Education Rights and Privacy Act (FERPA) when it released mental health records, previously released to the Board by third parties with parental consent, to a Board consultant without requesting parental consent?

PROCEDURAL HISTORY:

This hearing was requested on August 17, 2001, and a pre-hearing conference was held on August 23, 2001. When the hearing convened on September 20, the parties requested an opportunity to attempt settlement negotiations, and therefore the hearing session

scheduled for September 21 was cancelled and the Hearing Officer granted an extension of the mailing date for the final decision and order from October 1 to October 30, 2001. Settlement negotiations were unsuccessful, and the hearing re-convened on October 15, 2001. In response to a motion from the Board for an independent psychiatric evaluation, the hearing officer notified the parties that she would order one and asked that the parties voluntarily agree to an evaluator.

The parties agreed on an independent psychiatric evaluator, and the Hearing Officer ordered the evaluation on November 27, 2001. When the psychiatrist initially appointed to perform the evaluation withdrew, the parties were unable to agree on an alternate. The Hearing Officer selected one from lists provided by the parties, and ordered an evaluation on January 14, 2002. The report of this evaluation was received on February 4, 2002. Additional hearing sessions were scheduled for November 16, 26, 28 and 29 and December 3, 2001; January 17, 18, and 22; February 12, 13 and 25; and March 4 and 5, 2002. To accommodate these additional sessions and the evaluation, the hearing officer extended the deadline for the mailing of the final decision and order from October 30 to November 29, to December 29, 2001; and thence to January 28, February 27, and March 29, 2002. The parties requested the opportunity to submit briefs in lieu of closing arguments, which was granted. The last transcripts were received on March 28, 2002; briefs were due on April 15 and received on April 23 after an extension of the deadline requested by the Parents' attorney was granted. The deadline for the mailing of the final decision and order was extended to May 15, 2002.

The November 16 hearing session was postponed because of the illness of the hearing officer, and the recess between the December 3, 2001, and the January 17, 2002 hearing sessions was prolonged to accommodate the Parents' attorney's major surgery.

SUMMARY:

The Parents have asked that the Board fund Student's placement in a residential treatment program in Utah, as well as her participation in a wilderness program also in Utah, immediately prior to the treatment program placement. The Board believes that its responsibility is limited to the educational components of these placements, as provided by Section 10-76d(d), Connecticut General Statutes (CGS).

FINDINGS OF FACT:

To the extent that findings of fact may actually represent conclusions of law, they should be so considered, and vice versa, *Bonnie Ann F. v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D.Tex. 1993).

All motions and objections not specifically addressed on the record of the hearing are denied.

1. Student was adopted at birth, the second adopted daughter in the family. Within her first year, her adoptive mother died. At that point, her adoptive father rented his home to a couple who agreed to care for the two girls. After about two years, Student lived with her grandparents for several months and then her adoptive father returned and moved his daughters from the Washington, D.C. area to Denver. When the Gulf War started, he called his sister, asking for help with the children because he had volunteered to serve. His sister flew from New York City and stayed with the girls for two weeks. She was horrified by the conditions in which she found the children and their behavior, and tried to organize better care for them. After a few more weeks, she and her husband became guardians of Student and a neighbor took in the older child. Eventually, the adoptive father's sister and her husband adopted Student: in this decision, these second adoptive parents are referred to as Student's Parents. Student's Parents have no other children. (Testimony of Mother and Father)
2. The move from Denver to New York City occurred during Student's kindergarten year. After consulting with the Denver kindergarten teacher and the New York kindergarten teacher and observing problematic behavior herself, Student's Mother consulted with a psychotherapist and initiated therapy for Student. Student completed her kindergarten year in a New York City magnet school, and continued into first grade. In the spring of that year, the family moved from New York City to a weekend home they had already owned in the Board's school district. (Testimony of Mother)
3. Student's school enrollment history:

Kindergarten 90-91 Denver Public School/NYC Public School
First Grade 91-92 NYC Public School/Board's elementary school
Second Grade 92-93 Board's elementary school
Third Grade 93-94 Board's elementary school
Fourth Grade 94-95 Board's elementary school
Fifth Grade 95-96 Board's elementary school
Sixth Grade 96-97 Board's middle school/Unquowa School
Seventh Grade 97-98 Unquowa School
Eighth Grade 98-99 Unquowa School
Ninth Grade 99-00 St. Joseph's High School/Board's Tutorial Program
Tenth Grade 00-01 Board's Tutorial program/Board's High School
Eleventh Grade 01-02 New Haven Treatment Center, Spanish Fork, Utah
(Exhibit B-93, Testimony of Mother)
4. Student did very well academically in the Board's elementary school, in first through fifth grades, receiving A's and B's with many positive comments. Distractibility and organizational problems were mentioned occasionally. (Exhibits B-94, B-95, B-96, B-98, B-99)

5. Starting after third grade, Student attended Concordia Language Villages, a camp in Minnesota in the summer. Her Mother had enjoyed the program, and so did she. She continued to attend this camp through the summer of 2000, after her ninth grade year. She also attended day camp. (Testimony of Mother)
6. Student's increasing academic success contrasted with decreasing social success as observed by her Mother. Although her grades were very good, she had problems doing homework and she failed tests from time to time. Mother described Student's behavior as "peculiar at times" and she had few friends outside the school setting. Student's Mother reported that Student "took a nose dive" in October of sixth grade, and that subsequently Parents noticed that she seemed to have a seasonal problem. At home, Student was reported as irritable and argumentative. That year, Student also reported remarks and gestures made by a male classmate that terrified her, and her Mother considered sexual harassment. Mother discussed the problem with the school principal, who advised the boy in question not to talk to Student any more. Finding the investigation and response inadequate, Mother consulted Wendy Davenson, a psychotherapist, and looked for a private school for Student. (Testimony of Mother)
7. Student enrolled at Unquowa, a private school, midway through sixth grade. The Independent School Common Recommendation Form prepared by the Board's school for her application to Unquowa showed all good and excellent academic qualities and provided a written comment:
Perfectionist, has become easily upset at times, creative, not always a self initiator. The quality of Student's work has been mainly excellent. Her homework is usually submitted on time, but always handed in. She participates in class discussions and usually reflects good thought processes. She demonstrates excellent math skills. Her written and oral communication has been of very good to excellent quality. (Testimony of Mother, Exhibit B-103-2)
8. Student's progress in sixth through eighth grades continued to show very good academics mixed with behavior problems.

Sixth Grade, 96-97, first half, Board's Middle School. November: six A's, one B; effort, five "1", two "2".

January: six A's, three B's; effort, five "1", four "2" (Exhibit B-102).

Seventh Grade, 97-98, Unquowa School.

Math B+ Art Good

Music Outstanding Science A

Language Arts A- Foreign Language A

Computer Outstanding Physical Education Good/Outstanding

Social Studies A

All comments for all three terms were very good. (Exhibit B-105)

Mother reported weekly telephone calls from Unquowa concerning Student's behavior. Homework became a battle. (Testimony of Mother)

Eighth Grade, 98-99, Unquowa School

Language Arts A Social Studies A-

Algebra A- Science A

Music Good/Outstanding Art Good

Computer Outstanding Physical Education Good

Foreign Language A

Almost all comments for all three terms were very good. (Exhibit B-106)

9. After Student's enrollment at Unquowa in the spring of her sixth grade year, she seemed much happier and became disinterested in family therapy. Family therapy was terminated at that point. (Testimony of Mother)
10. The Report of Psychological Consultation with Thomas E. Brown, Ph.D., a clinical psychologist, was based on consultations on September 30 and December 4, 1998, and January 25, March 10, April 3 and May 5, 1999, Student's eighth grade year. The reasons for consultation were given as:

Longstanding, chronic problems in sustaining attention, restlessness, low frustration tolerance and poor short-term memory which have significantly interfered with her academic work, especially over the past three years. While her academic work has generally been good, she has shown increasing inconsistency in her class preparation, class participation and homework.

Student's WISC-III scores were: Verbal IQ 114, Performance IQ 116,
Full Scale IQ

Analysis of the WISC-III subtest scores provided Index Scores:

Index Score Percentile

Verbal Comprehension 120 91

Perceptual Organization 114 82

Freedom from Distractibility 84 14

Processing Speed 126 96

Additional testing and interviews with Student and her Mother confirmed a diagnosis of Attention Deficit/Hyperactivity Disorder. She was also diagnosed as having dysthymic disorder, with depression and irritability. Dr. Brown commented that "the intensity and severity of the mood problems described and manifested by Student might also reflect an underlying bi-polar disorder". This evaluator recommended:

- Weekly consultation with a guidance counselor or school psychologist to provide in-school support for dealing with social problems with peers. Consultation should also be available for Student to consult with

this counselor on an as-needed basis if she has problematic situations with her peers.

- Opportunity for minimal distraction environment for taking tests, as needed.
 - Consultation with a physician to arrange a trial of appropriate medication.
- Consideration of medication for mood symptoms was also suggested.

In conclusion, Dr. Brown commented:

Given Student's complex symptoms and difficult early history, I have also recommended that she and her family also have continuing psychotherapeutic support to clarify the diagnosis and to assist her and her parents in developing more adequate ways to address Student's individual, social and family problems while developing her considerable strengths. (Exhibit B-1)

11. Following Dr. Brown's 1998 report, Student began taking Dexedrine for ADHD and Prozac for depression. She also started seeing Dr. Brown about once a month as a patient. She began to have "rages" at home. She reported that a boy had touched her inappropriately in an elevator during school-sponsored community service. She denied a report that she had "inappropriately touched boys" at school. (Testimony of Mother)
12. During the summer between eighth and ninth grades, Student participated in a math and science program for girls at Choate, and returned for a month to language camp in Minnesota. (Testimony of Mother)
13. Toward the end of eighth grade, Student participated in a search for an appropriate high school. She and her mother visited several private high schools, and Student selected St. Joseph's High School, a private school. Her ninth grade year there started off well, but soon she found some friends who were interested in wicca (witchcraft), which troubled her parents. She started looking at pornography on the Internet. Some of her new friends were reported to have cut themselves. Mother saw notes that Student had exchanged with a male classmate that she termed "sexually provocative". In retrospect, Mother commented that Student seemed to attract peers who also had emotional problems. (Testimony of Mother)
14. Immediately after a confrontation about these activities, Student was hospitalized for an overdose of Advil. Three weeks later she was hospitalized again for cutting herself. Following hospitalization, Student was an in-patient at Four Winds, a nearby treatment facility, from November 10 to November 29, 1999. She attended an outpatient treatment program at Four Winds from November 29 to December 17, 1999. In therapy at Four Winds, she revealed that she had been involved in an abusive sexual relationship while at Choate the previous summer. (Testimony of Mother, Exhibits B-2, B-3, B-4-10, B-11)

15. A psychodiagnostic evaluation was performed at Four Winds on November 23, 1999, by John Stokes, Ph.D, Staff Psychologist. The reasons for this evaluation were given:

The patient was referred for psychological testing to assist in differential diagnosis and treatment and discharge planning. The Axis I disorders current under strongest consideration by her primary therapist are Major Depression with Psychotic Symptoms, Dissociative Disorder, and Post-traumatic Stress Disorder (PTSD). Information is also requested concerning the patient's risk for suicidal behaviors at the present time.

In the summary of his interview with Student, Dr. Stokes included the possibility of sexual abuse in early childhood. The summary and conclusions from this evaluation:

Taken together, results of cognitive tests are free from any instances of intrusion of bizarre thought content or strained reasoning that would be consistent with a thinking disturbance. ...

Taken together, these results suggest that Student is a 14 year old youngster of superior intelligence whose present results are free of any indications of a specific learning disability. While receiving psychostimulant medication, the patient's functioning across attentional measures was an area of relative weakness, but functioning across a range of tasks measuring sustained vigilance, executive functions and strategy generation, and inhibition of impulsive responding was average. It is not clear whether this performance reflects an absence of attentional impairment, or a positive response to her current medication regimen. The nature and magnitude of difficulties on tests measuring attentional functioning is also within the range of what might be encountered in the way of cognitive inefficiency associated with a mood disorder. Comparison re-testing (on and off medication) when the patient is more clinically stable, may be helpful in determining the nature and extent of current problems in this area.

In summary, present results are most consistent with a depressive disorder of moderate intensity. Performance based measures do not suggest a likelihood of a psychotic disorder. Although the patient reported the presence of "voices" which abated when she was out of the home situation, her self-report measures do not reflect a profile pattern typical of individuals who are likely to be experiencing bizarre sensory experiences or unusual thinking on these tests. These results do indicate the presence of recurrent suicidal ideation, and other features which suggest that this adolescent is at chronic high risk for suicidal and more broadly defined self-destructive behaviors. Because she is so vulnerable to becoming overwhelmed by affective stimulation, it appears likely that her risk is likely to vary directly in response to perceived external stresses and supports. Monitoring for suicide risk is advised with special attention to changes in these features as being associated with increased risk. Given her difficulty in establishing peer relationships, individual

psychotherapy may be profitably combined with group psychotherapy and skills training programs such as assertiveness and relaxation training. Finally, the patient reports periods of experimentation with alcohol, and displays a marginal elevation on a scale measuring risk for alcohol and substance abuse problems. Adolescents with this pattern may become involved with a peer group that uses alcohol or drugs, and her potential for developing alcohol or drug problems requires attention in therapy if important life changes are to be made. (Exhibits B-3, B-4, P-1)

16. The record of this hearing includes two slightly variant versions of Dr. Stokes' November 23, 1999, report. The second report, with the same date and some identical text, also includes:

Present results do not currently reflect indications of a grossly dysphoric self-image, although they do suggest that this is a youngster with chronically low self-esteem who is predisposed to be excessively introspective in a way that dwells on faults. Her self-concept appears to involve a fixed, rather negative self-evaluation, and she is likely to be pessimistic, self-critical, and to dwell on past failures and lost opportunities. ...
 These results do indicate the presence of recurrent suicidal ideation, and other features which suggest that *this adolescent is at chronic high risk for suicidal and more broadly defined self-destructive behaviors.* ... {Emphasis in original] (Exhibit B-4)

17. In addition to medications for ADHD and depression, Student began to use medication to address sleep problems. (Testimony of Mother)
18. The Four Winds staff suggested that Student's Parents contact the Board's district, which was obligated to fund the educational component of her placement at Four Winds. Student was referred to the Board's school district on December 1, 1999. The school referral form notes that teachers at St. Joseph's were not aware of Student's emotional difficulties, and that the family had consulted Dedic Vanrenesse, an educational consultant. (Exhibits B-5, B-108, P-3)
19. Progress reports from St. Joseph's High School, requested on December 2 with a return date of December 9, 1999, show:

Biology (Honors)	1 st quarter was a 71. Three assignments were late. Attentive in class and interested in the subject. Attendance was good the 1 st quarter
PE/Health	Satisfactory
Scripture	70 average. Effort: not reaching potential – below average Conduct/behavior good. Very bright, sensitive, insightful and thoughtful – self assured in articulating personal beliefs, very aware of other's feelings.

English (Honors)	1 st quarter 67; 2 nd quarter voc. 60, comps. 76, 93 missing work, inconsistent effort. No discipline problem, attentive, involved. Absent only one day 1 st quarter. Student never performed to her ability. She was always eager to be involved in class discussion but did not do homework adequately- e.g., she had no HW notes the entire 1 st quarter. Tests ranged from 48 – 82; compositions were much be 84 – 95. Clearly, she was not doing the work expected in an Honors English class.
Spanish II	Student was doing very well in Spanish: grade, A. Effort inconsistent, missing several homework assignments. Conduct/behavior fine, cooperative in class. Student was doing very well on tests and quizzes despite the missing homework. She participated in class and worked well with her classmates. At times, Student seemed to be angry or upset; she was often frowning or had a “stressed” expression. Her behavior in class, however, did not reflect this.
Algebra I (Honors)	1 st quarter grade, 84. Good effort, a few homework assignments missing. Quiet in class. 1 st quarter never absent. First quarter she did very well in her grades especially being in a top honors class. She was quiet but would volunteer to answer questions occasionally.
Civics (Exhibit B-6)	Grade, 82; good effort and conduct/behavior.

20. In a letter dated December 13, 1999, to the Board’s Special Education Coordinator, Phyllis Topol, Ph.D., Student’s primary therapist at Four Winds, made the following report and recommendations:

Student has been attending the Four Winds Adolescent Partial Hospitalization Program since December 7th to work through some of the issues that lead her to be depressed and self-destructive. Student has been working hard in treatment and her parents have been participating regularly in family sessions. However, Student’s issues are profound and long-term, thereby requiring continued intensive treatment after discharge from our program. Therefore, we recommend that she attend a therapeutic boarding school where she can continue therapy and also be monitored for possible self-destructive behavior while dealing with painful feelings.

At home, Student continues to have difficulty tolerating conflictual, dysphoric and angry feelings without getting into major conflicts with her parents or isolating from people. She needs to be in a supportive environment away from home to begin to cope with these feelings and learn conflict resolution so that she is safe to return to live on an ongoing basis. (Exhibit B-9-1, P-5)

21. In a letter dated December 13, 1999, To Whom It May Concern, Linda Rost, C.S.W., Student's Primary Therapist, and Robert Stine, M.D., Medical Director, Westview Unit, Four Winds, wrote:

Student was a patient on our unit from 11/10 to 11/19/99. Student suffers from a depressive disorder and displays symptoms of Post Traumatic Stress Disorder. As the result of the abuse and multiple abandonments she experienced during her early childhood she has also developed significant character pathology, specifically Borderline Personality traits. We believe her to be at long-term risk for increased acting out and self-destructive behaviors. It is our opinion that she cannot be safely maintained at home, but should be placed in a structured therapeutic residential setting where she can receive intensive individual, group and family therapy. (Exhibits B-9-3, P-4)

22. The Parents' Educational Consultant suggested Grove School and Devereaux-Glenholme, both residential schools in Connecticut. However, Student's Parents worried that sending Student away to a residential program would be another abandonment for her. (Testimony of Mother and Father)
23. The Board's Planning and Placement Team (PPT) met on December 15, 1999, to discuss Student's eligibility for special education. In addition to school staff members and the Parents, staff members from St. Joseph's High School and Wendy Davensen, the Parents' Family Therapist, attended this meeting. Student was reported as receiving one hour a day of education at Four Winds. The PPT requested and received parental consent for release of records from St. Joseph's and Four Winds, and evaluations to be performed by school staff members. The PPT also planned to have Student's records reviewed by a psychiatrist and offered six sessions with the psychiatrist as part of the consultation to aid in planning for educational services, as well as one session with the current family therapist. Pending completion of the evaluations, the PPT recommended placement in the Board's tutorial program. (Exhibit B-10, Testimony of Mother)

24. The record of the December 15, 1999, PPT meeting include:

... Post traumatic stress disorder – increasing flashbacks (abuse in early childhood); characteristics of borderline and histrionic personality disorder. Student is very bright, also devious and manipulative as well as afraid and emotionally unstable. Suicidal ideation is moderately strong. Can't cope with school at present. Some "meltdowns" emotionally at 4 Winds. ... (Exhibit B-10)

25. Student's discharge summary from Four Winds, dated December 17, 1999, provided diagnostic information:

Axis I: Depressive Disorder NOS; PTSD, ADHD
Axis II: Borderline Personality Disorder
Axis III: None

Axis IV: Conflict [with] adoptive parents; trouble making friends; [declining] academic performance; history of abuse, neglect, abandonment.

GAF score: 45 (GAF on admission, 35)

The discharge plan:

Attend PPT program until boarding school placement, living with parents.

Treatment follow-up was planned to include Dr. Lawrence, a psychologist, for individual therapy; Wendy Davensen for family therapy, and Owen Schneider, M.D. for medication. Her status at discharge note included "Patient denied current suicidal ideation, but remained noticeably anxious ..." (Exhibit B-11)

26. A report dated December 20, 1999, from Four Winds summarized Student's academic status. She had been working on assignments provided by the St. Joseph's staff, and her current grades were:

English 9 H[onors] B+ Civics H N/A
Algebra H A- Biology H F
Art P[ass] Health P
Physical Education P

Student's instructional goals were listed:

To follow a grade curriculum in given subject areas.

To assist the student in achieving academic potential by increasing self-esteem.

Educational summary: It appeared that Student was very selective in choosing the subject areas she would work in. Since she claimed that she was going to repeat 9th grade next year, she was unmotivated to progress academically.

Comments from individual courses:

- English: completed most assignments with no problems, although she could have completed more work.
- Civics: was unsure of topics and area in which to work. She was not motivated to work on the subject matter and did not complete enough work to warrant a grade.
- Math: She completed a basic math inventory with remediation in weak areas. She also completed units on translating verbal phrases into algebraic language, basic equation solving, order of operations, evaluating algebraic expressions, operations on integers and areas in coordinate geometry. Student was a generally compliant and focused student who was able to complete grade appropriate assignments.
- Biology: Student worked on cellular structure and function and an introduction to plant nutrition. It was very difficult to engage Student in any

class work as she claimed she was going to repeat Biology next year. Since she did not even compete the minimal amount of work, a grade of “F” is warranted. (Exhibits B-12, B-13)

27. After discharge from Four Winds, Student began to receive family therapy from Constance Lawrence, Ph.D., a psychologist. She saw Student on a weekly basis from November 1999 through April 2001, except for times in the summer when Student was out of state. (Testimony of Mother, Lawrence)
28. Student enrolled in the Board’s high school tutorial program in early January, 2000, while she completed evaluations. The January 7, 2000, report of her first week in the tutorial program listed “always” for “punctual”, “brings materials”, “motivated to learn”, “works well independently”, and “works well in groups”. She was listed as “usually” for “has a positive attitude” and “participates”. (Exhibit B-14)
29. The Tutorial Program was located in the Board’s central office building, a small former school. The description of this program that was provided to parents includes the following statements:

The purpose of the Tutorial Program is to provide **temporary** [emphasis in original document] individualized and small group instruction to students-at-risk, while they transition into an appropriate alternative school program (e.g., Project REACH; Project REAL; Alternative High School; Out-of-System School; Hospitalization; Homebound Instruction). The program also provides an alternative setting for certain students who are expelled from school for short periods of time.

The procedures and rules in the program description show that the Tutorial Program is highly structured and closely supervised with specific penalties for noncompliance. A weekly progress report is prepared by each student with a tutor and copies are sent to the student’s Counselor/Pupil Services Representative and parent. (Exhibit B-122, Testimony of Rosenberg)

30. Marilyn Rosenberg, head tutor for the Tutorial Program, characterized the program as “a short-term program for students at risk”. Those whose status improves go on to the middle school or high school; others, whose status deteriorates, enter structured long-term programs such as the Board’s REACH. (Testimony of Rosenberg)
31. Renata Weissberg, M.D., the psychiatrist provided by the Board, wrote a psychiatric summary based on her review of Student’s records and sessions with Student starting January 10, 2000. After reviewing reports from Dr. Brown and Four Winds, Dr. Weissberg described Student’s current status:

Student presented on the 10th of January of 2000 for a number of sessions to determine the appropriateness of her medications and clarification of her symptomatology. Student came in with a history of high intellectual functioning,

but difficulties with peer interactions. There were a number of situations of “harassment”. There were a number of school changes. She was always able to achieve academically, but not up to her potential. Her lack of interest in schoolwork lowered her grades.

She has a history of volatile, moody and cyclic behaviors. She apparently did respond to her antidepressants and mood stabilizer with less lability and depression.

In her sessions Student often presents as a mature, very engaged and witty youngster. Her intellectual capacity is evident and often misleading the observer to believe that she has more emotional resilience. However, Student continues to have difficulties handling the emotional and often the potentially emotional content of therapy. There is resistance to deal with issues that seem to come to surface in various situations. There is fragility that will require continued individual-family therapy and continued pharmacological support.

Student does fulfill criteria for a Depressive Disorder NOS by history, as well as ADHD, PTSD, and Mood Disorder NOS. At present there is no evidence of a psychotic process. The impulse control seems to be improved. Student should continue to comply with her current medication regimen, with a therapeutic and academic support. Student seems to do better in a supportive environment, where she can find guidance with her school work and peer difficulties. (Exhibit B-18)

32. The report of an educational evaluation by Rebecca Rosen, a Board examiner, dated January 24, 2000, summarized Student’s academic performance:

Overall Reading is an area of strength for Student. In the area of Math, Student demonstrated stronger skills when solving raw math calculations in isolation than when solving problems in context. In the area of Written Expression, Student demonstrated the ability to write compound and complex sentences in response to prompts. (Exhibit B-24)

33. The report of a psychological evaluation by Dr. Richard Seaman, the Board’s school psychologist, dated February 7 and 25, 2000, noted Student’s chronic high risk for suicidal and more broadly based self-destructive behaviors and that the risk varies directly in response to perceived external stresses and supports.

Student reported sexual abuse, drinking and sexual harassment, and limited many of her responses. She identified her main problem as “expressing her feelings”. This evaluator discussed ratings on the Behavior Assessment Systems for Children (BASC) from Student’s Parents, her Tutor, and teachers at St. Joseph’s. In conclusion, he wrote:

Student obviously presents a different picture to each rater. I would concur with the evaluation at Four Winds that no thinking disturbance is present, that she presents a depressed manner with serious difficulty when pressed into affective laden situations. Coping skills certainly aren't well developed and she probably would not deal effectively with stress. On a positive note she seemingly has some insights and regrets, seems to want to change for the positive and has a variety of interests that she speaks of, that if accurate, attest to ways that can channel her behaviors. ... (Exhibit B-28)

34. A letter dated March 2, 2000, from Dr. Lawrence to Dr. Minotti, the Board's Director of Pupil Services, addressed Student's current status and needs:

I have been meeting with Student weekly since the end of December [1999]. It is my strong recommendation that Student be continued in the tutorial program through the end of this school year.

Since she started in this program in late December she has shown a lessening of anxiety, steady improvement in attitude and behavior, and has become more stable in general. However, I don't believe Student is yet ready to handle mainstreaming back to a regular classroom setting. Since the period from September through December '99 was so traumatic, I believe that Student needs the structure and security of her present program to continue through the rest of this school year. (Exhibit B-29)

35. The PPT met on March 6, 2000, to discuss evaluation results. This meeting was attended by Ms. McNeal, coordinator of special education for the Board; Ms. Rosenberg as Student's regular education teacher; Ms. Feeney as Student's special education teacher; Mr. Seamon, the school psychologist who evaluated Student; Mr. Stapleton, school social worker; Dr. Weissberg, consulting psychiatrist; Ms. Fox, PPS representative; Ms. DiNapoli, school psychologist; and Student and both her parents. Student was formally identified as in need of special education as seriously emotionally disturbed. The PPT decided to continue placement in the Tutorial Program to the end of the school year and to provide weekly counseling with Ms. DiNapoli. The Individualized Education Program for Student included a single goal:

Given weekly counseling and immediate feedback on school behaviors, Student will develop the coping skills needed to achieve academic success in 9th grade.

Progress was to be measured by achievement of three objectives and counselor and teacher logs. Ms. DiNapoli would also coordinate visits to other programs under consideration for the next year. Parents agreed to continue outside counseling and medication. (Exhibit B-31)

36. The record of the March 6, 2000, PPT included a summary of Dr. Weissberg's report at the meeting. She discussed cognitive and academic factors and attentional difficulties. She attributed Student's difficulty completing assignments and frequent

lack of motivation to attentional difficulties, psychological difficulties, and perceptions of stressful situations. Student's emotional problems and psychiatric diagnoses of PTSD, depressive disorder NOS, mood disorder NOS and ADHD require continued structure in the school environment. She reported some progress in therapy. (Exhibit B-31-2)

37. Ms. Rosenberg reported progress in the Tutorial Program, and some immature behavior. Student was responsive to her assignments and appeared eager to learn. (Exhibit B-31-3)
38. Weekly progress reports found in the record of this hearing show (see Finding of Fact # 28 for specific behaviors):

January 14, 2000	Always, four checks; Usually, three checks Student is really settling into the program. She feels comfortable here and is beginning to be productive. Since her courses are now coming from the high school she can move as quickly as her motivation allows and actually do work as independent study. I will be assigning projects in English and History for the beginning of the next marking period. (Exhibit B-19)
February 4, 2000	Always, two checks; Usually, four checks Student has started off the new semester. Now that we can start fresh, we will be able to challenge her and keep her education on track. Student is a lovely girl and we are quite fond of her. (Exhibit B-23)
February 24, 2000	Always, seven checks Student is a pleasure. She seems happy, is productive in her work and is a leader in kindness in the room. (Exhibit B-27)
March 3, 2000	Always, seven checks Student is doing beautifully. It is wonderful to watch her blossom here. She is very productive and a pleasure to have in the program. (Exhibit B-30)
March 10, 2000	Always, seven checks Student had another terrific week. She was very productive and able to concentrate on her studies. She appears very happy and settled here. (Exhibit B-32-1)
March 24, 2000	Always, seven checks Student had another terrific week. She is happy, focused, and productive. Keep it up, Student! (Exhibit B-32-2)
March 30, 2000	Always, six checks Student loves Spanish and always enjoys and participates fully in our sessions: reading, grammar, vocabulary. (Exhibit B-32-3)
April 7, 2000	Always, seven checks

I know you are probably getting bored reading about how wonderful Student is doing, how smart she is, how productive and helpful and how lucky we are to have her here, but I can't help repeating myself. She is ending the marking period (April 14) with splendid grades. (Exhibit B-32-4)

April 14, 2000 Always, five checks; Usually, two checks
Student had a good week. Now that spring is here, we want to make sure that Student stays focused. The last marking period starts Monday. (Exhibit B-32-5)

April 28, 2000 Always, three checks; Usually, two checks; Sometimes, two checks
As we discussed, Student's attitude is in flux right now. We are noticing defiant, oppositional and disruptive behavior. We still love her and we would like to help her work through this difficult patch. We would like to see her concentrate on her academics while she is here. (Exhibit B-34-1)

May 5, 2000 Always, four checks; Usually, two checks
Student is still being very productive with her work. Her behavior continues are mentioned previously. (Exhibit B-34-2)

May 12, 2000 Always, one check; Usually, three checks
We have seen improvement this week including an increase in productivity. Let's keep up the good work. (Exhibit B-37)

39. While enrolled at the Board's Tutorial Program, Student achieved excellent grades:

Course	2 nd marking period	3 rd marking period
English	A	A+
Spanish II	A	A
Algebra	A	A+
Biology	A	A+
Global Civilization	A-	A+

(Exhibits B-33, B-36)

40. Dr. Lawrence, wrote To Whom It May Concern on June 5, 2000:

I continue to meet weekly with Student.
I believe the tutorial program has been very helpful to her. She has become more stable, is generally making an effort and her behavior has improved. However, she still evidences a high degree of anxiety and is easily overstimulated and overwhelmed. Therefore, I strongly recommend that she be continued in this program next year.

I suggest that it would be helpful, from both a psychosocial and enrichment standpoint, as well as breadth of learning, to try mainstreaming her into some of the elective programs with the general school population. (Exhibit B-116)

41. The Board's PPT met on June 7, 2000, to plan Student's 2000-2001 program. This meeting was attended by the Board's administrator, Dr. Minotti; Ms. Rosenberg who was providing some of Student's tutoring was listed as her regular education teacher; Ms. Twiss, the high school chairman of special education was listed as her special education teacher; Ms. DiNapoli, a school psychologist who was designated as Student's case manager; Ms. McGrath, head of the Board's REACH program; and Student and both her parents. (Exhibit B-38-1)

42. Under present levels of educational performance, the June 7, 2000 PPT listed the following:
 - Health and development: Typical, no major illnesses.
 - Academic/cognitive: Strengths in all subject areas. Interacts w/ teachers and materials, questions, interacts in discussions and looks for enrichment.
 - Social/emotional/behavioral: Varies from day to day. Can be loud. A high energy level is displayed.
 - Motor: Draws and writes well.
 - Communication: Age appropriate.
 - Activities of daily living: Age appropriate.
 - Academic areas are superior.
 - Student needs clear expectations and review of assignments. Keeping current with assignments is essential! Emotionality is a concern.
 - In order to meet with academic success, Student needs special education supports beyond classroom accommodations. (Exhibit B-38-4)

43. One option discussed by the PPT on June 7, 2000, was the REACH program, a structured program on the grounds of the Board's middle school. For Student, REACH had the disadvantage of not offering honors level classes. On a visit to REACH with Ms. DiNapoli, neither Student nor her Mother liked the program. Her Mother commented that Student would be likely to "take on the [negative] characteristics of the sickest kid". (Exhibit B-38, Testimony of McGrath, Mother)

44. Because of her demonstrated academic strength, the PPT recommended for 2000-2001 that Student start each day at the Tutorial Program for Honors English, Spanish, Math and Honors Chemistry. She would then be taken by bus to the high school, where she would have U.S. History, Band and Honors Chemistry lab. She would be supported with counseling and resource at the high school, one day per week. (Exhibit B-38, Testimony of Mother)

45. Progress on the March 6, 2000, goal was reported as satisfactory. Goals adopted by the PPT for 2000-2001 were:

1. Given weekly counseling and immediate feedback on school behaviors, Student will develop the coping skills needed to achieve academic success in 9th grade [continued from prior year].
2. Student will begin to explore post high school plans by completion of the following objectives
 - Student will explore volunteer opportunities in the community.
 - Student will take the practice PSATs with the sophomores.

Classroom modifications to be provided in all classes included an assignment pad for organization; preferential seating; behavior management/support by daily feedback to Student and positive reinforcement; and instructional strategies of checking work in progress and reviewing directions. Goal #1 was to be evaluated by counselor and teacher logs. Goal #2 was to be evaluated by completing visitations and a guidance report. Progress reports were to be provided to the Parents quarterly. (Exhibits B-38-5, B-38-6, B-38-9, B-38-11)

46. Final grades received by Student for the 1999-2000 school year were:

Honors English A Spanish II A
Algebra A Honors Biology A
Honors Global Civilization A (Exhibit B-111-2)
Student's attendance in the tutorial program was excellent. (Exhibit B-123)

47. For the 2000 summer program, the PPT arranged a volunteer job in a local nursing home. After a good start, Student became less cooperative at the nursing home, refusing to accept some assignments. She was chastised for smoking, and eventually did only filing. Her Job Coach reported:

Although there were some difficulties with Student's behavior, her work skills seem strong, as she was quite capable of completing all that was asked of her. (Exhibits B-38-1, B-39, Testimony of Mother)

48. Student's tenth grade year started off well, but soon she was struggling in honors chemistry and skipping band (which she eventually dropped). She was suspended twice, once from the Tutorial Program and once from the high school, for smoking. (Exhibits B-41, B-42, Testimony of Mother)

49. The PPT met January 19, 2001, to plan Student's program for the second semester and to determine the annual review date. The PPT formalized the change from honors chemistry to regular chemistry. This program change had been discussed by Student with Ms. DiNapoli, her school psychologist, and the chemistry teacher. Student's resource time was increased to one period each day, to support classes at the high school. This PPT meeting was attended by Ms. Twiss as the administrative designee; Student and her Mother; Student's history teacher as a regular education teacher; Ms. Seipel, Student Resource Teacher as her special education teacher; and Ms. DiNapoli, school psychologist. The PPT added a resource goal:

Student will demonstrate success in 10th grades classes by completion of the following objectives:

1. Given strategies, Student will study for tests and quizzes in resource class.
2. Given calendars, advanced organizers, and time management strategies, Student will plan for long term projects and assignments.
3. Given cues, Student will ask for assistance from appropriate person.

Student's progress with this goal was to be evaluated by successful completion of task/activity, a resource log, monitoring, and reports. (Exhibit B-44)

50. Reports from the Tutorial Program continued (see Finding of Fact # 28 for specific behaviors):

- | | |
|--------------------|--|
| September 1, 2000 | Always, six checks; Usually, one check. Mrs. Jenkins and I both missed Student very much over the summer. She is a wonderful girl and it is a pleasure to watch her mature and grow. Student is making good progress in all of her subjects. (Exhibit B-125-1) |
| September 8, 2000 | Always, seven checks, usually, one check. Student had a wonderful week. She is cooperative and hard working. Keep up the good work. (Exhibit B-125-2) |
| September 28, 2000 | Always, seven checks. Student's academic progress is excellent. She has A's in all her tutorial subjects. She is working hard and keeping up to the high school standards. She has set some goals for herself and is working on them. Her behavior, attitude and cooperation are very good at this time. (Exhibit B-125-3) |
| October 20, 2000 | Always, seven checks. Student had a good week. She was cooperative with staff and worked hard in all of her subjects. Student is making a visible effort to hold it together and should be commended for succeeding this week. (Exhibit B-125-4) |
| November 17, 2000 | Always, three checks, Usually, three checks. Student's effort has improved this week. We have worked to minimize distractions to her and we believe they are succeeding. She has completed several assignments in English and I am satisfied with the results. Her attitude also seems to be more relaxed. (Exhibit B-125-5) |
| December 21, 2000 | Always, one check; Usually, three checks; Sometimes, two checks. Student seems to be heading in the wrong direction. She has missed several homework assignments and she continues to have trouble focusing on her work. Her grades will definitely be affected by the decline in her work. (Exhibit B-125-6) |
| January 12, 2001 | Always, three checks; Usually, three checks. Student was very busy this week working on mid-term exams for Math |

and Science. She completed her exams in those subjects. Next week she will take English and Spanish. She will only go to the H[igh] S[chool] for her History exam (Thurs. I think). She will [illegible] after exam. Next semester begins on 1/22/01. (Exhibit B-126-1)

February 2, 2001

Always, six checks. Student had a good week. Her attitude showed marked improvement. The Spanish Tutor remarked on it also. She completed her homework assignments and was cooperative with all staff members. Keep it up! (Exhibit B-126-2)

Student's attendance in the Tutorial Program was reported as excellent. (Exhibit B-48)

51. In testimony, Marilyn Rosenberg, who tutored Student and also served as coordinator of the Tutorial Program, described Student's performance. Student was capable of excellent work when she was focused, but she frequently argued with her tutors over details and occasionally had "bad days". One of the options for "bad days" in the Tutorial Program was calling a parent and asking that the student be taken home: that method had been used with Student, but not often. In addition to the written reports, Ms. Rosenberg reported many telephone contacts and brief visits with Student's Mother when she brought her to the Tutorial Program in the morning. Student's Mother would call Ms. Rosenberg when Student had been particularly difficult at home, warning of possible problems during the school day. Ms. Rosenberg, in turn, called when Student had failed a test and might come home angry. Student was a more serious student and better behaved than many of the others in the Tutorial Program, and her attendance was excellent. (Exhibits B-48, B-65, Testimony of Rosenberg)
52. Student became involved with a boyfriend in tenth grade. There were reports of sexual activity, at least one incident at school. This relationship broke up in the spring of 2001. (Testimony of Mother, Rosenberg)
53. Student's behavior at home deteriorated, with many arguments and physical confrontations. Her tantrums increased in frequency and length. Parents consulted with school staff and Student's therapists and increased her medication. Student's inappropriate dress for school distressed her Mother, but in the context of other students similarly dressed, was not considered a serious problem at school. (Testimony of Parents, Rosenberg, McNeal)
54. The PPT met on April 11, 2001, to discuss Student's placement. This meeting was attended by Student and both her Parents; Dr. Minotti for the Board's administration; Ms. Rosenberg as Student's regular education teacher; Ms. McGrath listed as Student's special education teacher; Ms. DiNapoli, school psychologist; and Ms. McNeal, the Board's special education coordinator. After prolonged discussion, it was decided that in light of Student's excellent grades and relatively good behavior in

the combination tutorial/high school placement, she would attend the high school all day. She would receive English, Geometry and Spanish in tutorial form at the high school. Her Parents were unhappy about this decision, but Student appeared to be happy to go to the high school all day. Dr. Minotti favored the high school placement and Student remarked that he “was the only one who believed in her”. There is conflicting testimony about several aspects of this meeting. However, it was clear that despite the Parents’ request, school staff members were unable to discuss program options with Dr. Weissberg prior to this meeting. (Exhibit B-47, Testimony of DiNapoli, McNeal, Minotti, Mother)

55. The April 11, 2001, PPT meeting discussed the options of the Board’s REACH program, to address behavior in a highly structured therapeutic program, and honors classes at the high school, to build on Student’s academic strengths and relatively good behavior in the high school class setting. Student did not want to go to REACH and did want to be at the high school. Her Mother doubted that she would be safe at the high school full time. (Exhibit B-73, Testimony of DiNapoli, Rosenberg, Mother)
56. The PPT also requested, and did not receive, consent from the Parents at the April 11, 2001, meeting for an independent psychiatric evaluation of Student. (Exhibit B-73)
57. The April 11, 2001, PPT meeting occurred on a Wednesday; the next day was the last day of school before a vacation. The PPT planned for the shift to the full day high school placement to begin after the vacation. The day before the new program was implemented, Mother called the school and requested a “shadow” to insure that Student was safely passing from class to class. On days when no shadow was available, Student carried an attendance sheet to each class for teacher signature. Student actually attended the new placement for only seven days. (Exhibits B-124, P-50, Testimony of Mother, McNeal, DiNapoli, Twiss)
58. Ms. DiNapoli, the Board’s school psychologist who was Student’s counselor as well as her pupil services representative (case manager) prepared a “Summative Review 2000-01” for the annual review that was scheduled for May 7, 2001. This meeting was cancelled due to Student’s hospitalization and actually convened on June 4 and 11, 2001. In testimony, Ms. DiNapoli described her role as consultation and counseling: she kept close track of Student’s progress and behavior in the Tutorial Program, and she met with Student frequently, if not weekly. She kept no “counselor’s log”. Her report cited many contacts with Student and with her Mother, as well as Board staff members who were working with Student. Although Student’s behavior in classes at the high school was good, her behavior in the Tutorial Program had deteriorated in November 2000, and a meeting was held with Student, her Mother, two tutors, and Ms. DiNapoli. A behavior checklist devised by Ms. DiNapoli was used from November 2000 into January 2001, and it was reported that behavior in the Tutorial Program improved substantially. Overall, behavior and academic performance remained inconsistent. One of the strategies agreed to in the November 2000 meeting was to address behavior problems in school only, and not report “daily

transgressions” to Mother: it was hoped that this would avoid having school problems increase stress at home. (Exhibit B-73, Testimony of DiNapoli)

59. Ms. DiNapoli requested reports from teachers concerning Student’s progress during the third quarter. Ms. Hamilton reported that Student had shown excellent effort as a volunteer aide in a class for developmentally disabled students:

Student worked with individuals appropriately with much success. She initiated leading group instruction at times as well. She was an asset to our class! Student seemed to enjoy her success with my students. I recommend similar experiences where Student can use her talents with children and thrive off of her success! In testimony, this teacher praised Student’s efforts as a volunteer and said that she thought Student should consider teaching as a career.

Mr. McGrath, Student’s U.S. History teacher reported:

I speak with Student on a daily basis to let her know how she is doing in class and just to find out how she is doing. Student is doing well in class. Grades: 110, B-, B-. Effort: always prepared and willing to contribute. Conduct/behavior: well behaved. Attendance: two absences. In testimony, this teacher described Student as a very good student, responsive in class and well-behaved.

Ms. Seipel, Student’s Resource teacher:

Grade, A; Excellent in effort, conduct/behavior and attendance. When Student has work she brings it in and does it. When she does not have work she uses computer disks for different activities or helps teacher with computer problems. In testimony, this teacher complimented Student’s behavior and helpfulness.

Ms. Jenkins, Student’s Chemistry teacher:

Success of classroom modifications: fair. Grades: in class 23 days of semester, inconsistent work completion. Effort: fair (good when in class). Conduct/behavior: good. Attendance: missed two days first week. Skipped class twice. Grade from Honors Chem[istry] transferred into this class – C avg.

(Exhibit B-50, Testimony, Hamilton [now Anderson], McGrath, Seipel)

60. Student’s behavior at home continued to deteriorate, with extreme outbursts and violence. She dressed for school in ways that her Parents considered inappropriate, resulting in daily battles. While the high school did not offer a specific dress code in evidence, staff members agreed that Student and others sometimes were inappropriately dressed. They provided informal counseling about dress when they could. Parents’ reports of foul language were addressed similarly: the school disapproved of foul language, and staff members corrected students when they use it. (Testimony of Mother, DiNapoli, McNeal)

61. Dr. Lawrence reported that Student’s progress in family therapy between January 2000 and April 26, 2001, had been up and down. Although she seemed anxious to please initially, she couldn’t tolerate discussion of serious issues. She had rages at home and sometimes at therapy sessions became very angry and would run out of the office. She appeared to have no memory of her outbursts afterwards, raising the

possibility of a dissociative disorder in early 2001. Dr. Lawrence also diagnosed bipolar disorder, depression and borderline personality disorder.

When asked about Student's educational placement, she acknowledged that adding some classes at the high school in the fall of 2000 after Student's demonstrated academic success in the Tutorial Program was worth a try, based on her school behavior. However, she also stated that her full-time placement at the high school in April 2001 could have contributed to her breakdown and hospitalization, because of the psychosocial stress of being in the high school. (Testimony of Lawrence)

62. On May 5, 2001, a Saturday, Student's out-of-control behavior led her Parents to hospitalize her. After a brief stay in a general hospital, she was transferred on May 8 to Silver Hill, a nearby psychiatric treatment facility with a program for teenagers. While she was hospitalized, Parents searched her room at home and found a hunting knife hidden under her mattress, a box cutter and a collection of approximately 40 pills: apparently she had been avoiding swallowing her medications. (Testimony of Parents)
63. After a therapy session on April 26, 2001, in which Parents reported violent behavior at home and Student could not recall some of the incidents, Dr. Lawrence became concerned about safety issues. In telephone consultations with Parents after Student's hospitalization, Dr. Lawrence recommended a wilderness program and residential treatment: she outlined criteria for placement upon discharge from Silver Hill: a safe therapeutic environment, a single sex residential program; good academic component; access to treatment for psychiatric illness. Based on information provided by the Parents, she believed that the New Haven program met all her criteria for Student. She suggested a wilderness program because she had found such programs helpful in similar cases. She favored residential placement because Student required constant therapeutic help and supervision, including individual therapy, group therapy, social skills training, family therapy and recreational therapy. (Testimony, Lawrence)
64. After the Board-funded six sessions with Dr. Weissberg, a psychiatrist, Parents asked her to continue seeing Student. Initially in early 2000, she did not feel that Student was suicidal or homicidal, she seemed to have enough supervision and structure and her parents were dealing with her appropriately. She did not agree with the Four Winds discharge recommendation for residential placement, based on Student's presentation at that time. She agreed with the PPT proposal of the Tutorial Program. She was hopeful that medication and therapy would address Student's problems. Although she saw inconsistency, she also considered Student relatively stable. She confirmed diagnoses of ADHD, bi-polar disorder, Post Traumatic Stress Disorder, and features of dissociative disorder, commenting on the problems caused by symptoms which overlap and medications which might mask symptoms. She also cautioned that some DSM-IV diagnoses were not appropriate for children under the age of 18. She described Student as a pleasure when well: bright, quick, empathetic, a rewarding patient to work with. However, she was also a "master of avoiding the issues" that needed exploration.

After building Student's trust, she worked with her on personal goals, one of which was to attend school in regular classes. Dr. Weissberg had witnessed Student's outbursts and her anger directed at her Mother. Because therapy required Student to begin dealing with issues in her past that she was reluctant to discuss, her progress in therapy might have actually contributed to her dissociative episodes. She also mentioned a seasonal pattern of increased problems and the breakup with her boyfriend as possible contributing factors. Dr. Weissberg did not see Student after her hospitalization on May 5, 2001: she consulted by telephone with Parents and Silver Hill staff. She was "very impressed by how fast things deteriorated", and by Student's risk-taking behaviors, and supported a residential placement for safety, structure and supervision. (Testimony, Weissberg)

65. A PPT meeting had been scheduled for May 7, 2001: that day, Mother called Ms. McNeal to report that Student had been hospitalized and to ask that the meeting be postponed. Her request was granted. On or about May 16, Mother again called Ms. McNeal, asking that the PPT be scheduled. After a discussion of possible dates, June 4 was selected. Mother reported that Student was at Silver Hill, and would be there "indefinitely". (Testimony of Mother, McNeal)

66. Dr. Lawrence wrote To Whom It May Concern on May 21, 2001:
I believe that [the Board's] current school options for Student do not offer an adequate balance between her educational and therapeutic needs. It has become apparent that they are unable to provide the emotional and psychological support necessary to meet her educational requirements.
Based on her increasingly decompensating behavior, I recommend a residential program which can provide the integration of education, structure and therapy needed to meet Student's needs. (Exhibit B-117)

67. Parents' educational consultant assisted them in locating a wilderness program and several residential treatment program options. Student left Silver Hill on May 24, 2001, with professional escorts, and was taken to Second Nature, a wilderness program in Duchesne, Utah, which she attended from May to July 17, 2001. (Testimony of Mother)

68. Silver Hill provided a Summary of Inpatient Care dated May 24, 2001, and signed by Ellen Shander, M.D.

History: Over the past year, the patient has become increasingly angry and verbally abusive with parents. Just prior to this admission, they were extremely concerned for their lives as the patient was sequestering weapons in her room. Of note, she has been throwing knives and plates around the house and then acting innocent, as if she did nothing. Patient has some dissociative symptoms and doesn't remember what happened at times when she is confronted. Patient has a history of cutting herself and being unresponsive to therapeutic interventions.
Admission Mental Status: Patient was neat and clean. Her speech was slow. She was oriented times three. Her concentration was poor. She was actively suicidal,

wanting to die and at other times denying this. Her memory was impaired for recent and remote events. She was depressed and withdrawn. Her mood was dysphoric. Her judgment was grossly impaired. Her attitude was at times cooperative, but at other times evasive.

Hospital Course and Condition at Time of Discharge: Problem #1 – Depression/Dissociative Disorder: Patient did very little in terms of treatment during the hospitalization. She laid in bed at times and had many psychosomatic pains, headaches, aches in her body. She complained of nausea when she had to go to school. At times she was belligerent and difficult with the staff. At other times her mood changed and she was quite child like. She had very little insight into the abuse that happened to her prior to the hospitalization and was blaming and in denial about her adoptive parents.

She stabilized somewhat on the medication prior to discharge. Patient was transferred to a Wilderness program in Utah that was chosen by her parents. She was escorted there by an escort service.

Medications at Time of Discharge from Inpatient: Depakote 500 mg in the morning and 750 mg at night, Risperdal .5 mg at night and .25 mg po qam, Effexor 75 mg po qam.

Admission/Discharge Diagnosis from Inpatient

Axis I Bipolar Disorder, depressed
R/O dissociative disorder
Axis II No diagnosis
Axis III No diagnosis
Axis IV Psychosocial stressors: 2 – mild
Axis V Admission GAF: 45
Discharge GAF 45
Highest GAF past year: 45 (Exhibit B-52)

69. By letter dated May 29, 2001, To Whom It May Concern, Dr. Lawrence summarized her current recommendations:

I have been meeting with Student weekly since November 5, 1999 for outpatient psychotherapy. Student has also been meeting weekly with her psychiatrist, Dr. Renata Weissberg. During that time Student has been able to maintain a façade of health through denial and avoidance and has not been facing and working through her issues.

She has strong compensating strategies which enable her to appear functional and to relate socially to her peers during the school day. Outside of school, she sees no friends and is not invited to social activities. Even more serious, Student has been increasingly more hostile and agitated to the point where I recommended a residential program even before Student's admission to Silver Hill Hospital. Although she seemed to hold things together during the school day, at home she decompensated into angry tantrums and has become a danger to herself and her

family. Her behavior has gone from verbal hostility and abuse to physical acting out.

It is apparent to me that Student cannot tolerate the academic and social pressures of a normal school day, as evidenced by her increasing decompensation at home. Her emotional instability puts herself and her family at physical risk, and negatively affects her ability to learn.

Dr. Lawrence recommended a residential, highly structured therapeutic educational program. She reiterated her recommendation on the record of the hearing in testimony. (Exhibits B-57, B-118)

70. Pearl Berger, a social worker at Silver Hill Hospital who was the Treatment Care Coordinator for Student wrote Ms. McNeal, Coordinator of Special Education for the Board, on June 1, 2001:

[Student's] current behavioral and emotional status has a negative effect on her ability to obtain an appropriate education:

1. She has developed compensatory strategies that allow her to present herself as self controlled and functional. However, her ability to maintain these strategies appears to be diminishing over time. As Student continues to rely on these increasingly ineffective strategies, her ability to benefit from any educational or therapeutic program will also diminish.
2. Student denies her need for therapy and is resistant to accept help, although her attitude toward participation in group, individual and family therapy sessions here improved marginally over her stay.
3. Student appears to have developed a habit of self stimulated raging.
4. Student presents behaviors that suggest potentially dissociative issues which cannot be adequately observed or diagnosed without rigorous observation and therapeutic intervention.
5. Student displays and describes inappropriately sexualized interests in social relationships and lacks empathic and interpersonal skills to allow her to form attachments to peers.
6. Student is highly volatile and has exhibited hostile behavior in her home setting. Her history includes self mutilation and suicidal ideation, and recently escalated aggression toward her parents.

Because of her behavioral and emotional status, we recommend that Student participate in a wilderness intervention program followed by placement in a single sex, highly structured, academically accredited residential school with a particular emphasis on therapy. We strongly recommend that she not be maintained at home or in outpatient therapeutic programs as she potentially is a danger to herself and others. Rather, we recommend that Student be placed in a full time educational and therapeutic residential facility that emphasizes psychodynamic therapies and academic achievement sufficient to educate Student both emotionally and intellectually. (Exhibit B-60)

71. The report of Student's school participation while she was an inpatient at Silver Hill was poor:

Out of a possible 13 days, Student attended 5 and tried to sleep for most of that time. She was difficult to interview due to her sleepiness. Given assignments to work on independently during a structured time frame she demonstrated intelligence, good vocabulary and reading and writing skills. She refused to attend school and all programs the remaining 8 days of her stay here.

She was graded "unsatisfactory" in all behavioral/social measures. She received a passing grade in English and social studies for the days that she did attend class. (Exhibit B-60)

72. Parents wrote several letters to Board staff members (dated May 24 and 29 and June 5, 6, 14, 2001) concerning their daughter and the PPT meetings held to plan for her education. They articulated omissions and other shortcomings of the PPT notes. They provided their own summary of Student's school problems and their perceptions of how the problems were handled. In some cases, their views were confirmed by testimony from school staff members, and in other cases, school staff members disagreed strongly with the Parents' statements. (Exhibits B-55, B-58, B-66, B-68, B-77, Testimony of Mother, Father, Ms. McNeal, Dr. Minotti, Ms. DiNapoli)

73. Dr. Weissberg wrote another summary of Student's case on July 12, 2001:

[slow progress initially] She was compliant with her medications and for the most part remained stable until earlier this year, when adjustments had to be made. She started having mood changes and anger outbursts. She did seem to respond to the adjustments [in medication] for short periods of time. This course was reminiscent of her status before the last hospitalization. She was able to sustain her schoolwork with all of the supportive services in place. There were many instances of acting out in school, but these were not ostentatious or disruptive to others.

Her emotional stability was more difficult to maintain toward the end of the school year. Her behavior at home was deteriorating and complicated by the on and off conflicts with her parents. She was defiant one moment and remorseful the next. Her behaviors were inconsistent and she did not seem to have control over the frequent and extreme mood changes. Only in the final moments before her hospitalization it became more apparent that she was experiencing dissociative symptoms.

In a sense Student's ability to progress in therapy could have caused her slipping into the dissociative states, as the content of therapy became more difficult to handle. ... (Exhibit B-81)

74. Sam Dahlin, a wilderness therapist at Second Nature, described the program in telephone testimony. He is currently a Ph.D. candidate in marriage and family therapy, and a team leader at Second Nature. He is working toward licensure under the supervision of a licensed marriage and family therapist. Participants in the

program have a range of psychiatric diagnoses including opposition defiant disorder, depression, anxiety, mood disorders, and personality disorders. The therapy program includes two hours of group therapy every day, individual therapy and family therapy. There is no organized education component, although participants can get physical education credits and may work on individual study packets. The main focus of the program is treatment.

The average stay in this program is six to eight weeks, and the cost is \$395. per day. Second Nature is licensed by the Utah State Division of Human Services. The program is organized with groups of 8 girls and three staff members. (Exhibits B-88, B-89, Testimony of Dahlin)

75. Mr. Dahlin served as Student's primary therapist from May 24 to July 13, 2001. He described her as one of the most severe cases he had seen, suicidal, volatile and aggressive upon her arrival. During her stay at Second Nature, she was not provided with any academic services: she might have received credit for physical education. She participated in therapy addressing social skills and anger management. No formal assessments were performed at Second Nature. (Testimony of Dahlin)
76. Student's Father reported that Student's self confidence was greatly increased by her stay at Second Nature. He saw her as "more age appropriate" and responding to the incentives of the "level systems" used at Second Nature and New Haven. After adjustment of her medications at New Haven, she seemed much better. (Testimony, Father)
77. Upon completion of the Second Nature program, Student was enrolled at New Haven, a treatment center with an educational component in Spanish Fork, Utah, on July 12, 2001. She has continued in this program to date. (Testimony of Parents)
78. Craig Lamont, who is supervising Student's therapy program at New Haven, described the facility and the program on September 20, 2001. Mr. Lamont has a Master's Degree in marriage and family therapy, and has been licensed to practice marriage and family therapy in the State of Utah for six years. He has had experience as a staff member at several residential treatment programs. New Haven was founded by Mr. Lamont six years ago, and treats a population of severely emotionally disturbed female adolescents. Family participation in the program is a requirement for admission. The current enrollment at New Haven is 32, and the girls have diagnoses of depressive disorders, anxiety disorders, eating disorders, alcohol and substance abuse problems, and oppositional defiant disorder. Most of the population has failed in prior treatment programs. The average length of stay is four months and one week, although some stay for a year. The program is licensed by the State of Utah as a "special purpose school" and as a mental health treatment center, providing residential treatment, transitional care, and substance and alcohol abuse treatment. New Haven is also accredited by the JCHA as a mental health treatment center. In the school, classes are usually three to five students. The medical director is a child and adolescent psychiatrist. The staff at New Haven includes a clinical psychologist, four

marriage and family therapists, three recreation therapists, two licensed professional counselors, and five social workers. When questioned about the charges for treatment and a breakdown for educational costs, Mr. Lamont was uncertain about specific details, but gave a daily charge of \$460. for those with insurance coverage and \$350. for those without. He estimated the education costs at \$75. per day and clinical costs at \$315. per day. He was unable to report on the certification status of the teachers at New Haven. (Exhibits B-90, B-91, Testimony, Craig Lamont)

79. Student's current diagnoses at New Haven are: opposition defiant disorder, attachment disorder, borderline personality disorder, dissociative disorder, bipolar disorder, and failure to thrive. She is under constant supervision, on campus and on trips into town. Mr. Lamont described Student as "spiraling downward into pathology, ... becoming less functional". Without treatment, her future is in doubt. In testimony on September 20, 2001, he estimated her GAF score at 38 and reported that she was receiving 24½ hours of therapy per week. Asked for the reason for Student's placement, Mr. Lamont stated that she needed the safety of 24-hour supervision because she was at risk of a suicide attempt. (Testimony, Craig Lamont)
80. The Board's PPT met on June 4, 2001, to discuss Student's status and to respond to the Parents' request for funding of the Utah placements. Present at this meeting were: Student's Parents; Ms. McNeal representing the administration; Ms. Rosenberg as Student's regular education teacher; Ms. Twiss as Student's special education teacher; Ms. DiNapoli school psychologist; Dr. Weissberg, Student's psychiatrist; Ms. Lewis, Parents' advocate; and Ms. McGrath, from REACH. Based on Student's previous performance and demeanor in school, the PPT suggested several options, including the Board's REACH program, a highly structured program that had been previously considered. The REACH program had been revised to provide for Honors classes at the high school, which met one of the Parents' earlier objections. Information that had been requested from Silver Hill had not yet arrived, and efforts to have Ms. Berger, Student's social worker at Silver Hill, participate in the PPT by telephone were unsuccessful. Dr. Weissberg reported that Student's behavior had deteriorated at an accelerated rate, to the point of extremely aggressive behavior. Because of the severity of her condition, Dr. Weissberg recommended a residential treatment program for Student. Parents described the wilderness program in which Student was currently enrolled and New Haven as an example of her next projected placement, and asked that the Board fully fund these placements. (Exhibits B-63, B-64, Testimony of Mother, Father, Weissberg McNeal)
81. The record of the June 4, 2001, PPT meeting concludes with a list:
Needed: academic, psychiatric profile, progress reports from the high school and the Tutorial Program. (Exhibit B-63-4)
82. The Board's PPT met again on June 11, 2001. Present at this meeting were: Student's Parents; Dr. Minotti for the administration; Ms. Rosenberg as Student's regular education teacher; Ms. McGrath as Student's special education teacher; Ms. DiNapoli as school psychologist; Mr. McLaughlin as social worker; Ms. McNeal as

special education coordinator; and Ms. Lewis as Parents' advocate. Student's present levels of educational performance, based on information provided by Board staff members and reports from Silver Hill, was given as :

Health & Development: Reports from psychiatrists attached. Dissociative disorder added to her diagnosis. Medications affected performance. Taking Risperdal (added to previous recorded medications).

Academic/cognitive: Overall ability is in superior range. Academic progress has been inconsistent, but Student did move forward through the curriculum. Grades ranged from A+ to D. Successfully completed grade 10 – school granting credit as she has met standards.

Social/Emotional/Behavioral: Difficulty relating to peers. Manipulative within personal relationships. Friends established at school – no carryover to outside of school. Last two weeks of school – a shadow was employed to monitor passing to class. Intimidation (verbally) to gain needs.

Vocational: College prep program through May 4th. Taking Honors courses. Two vocational experiences. The one w/ teacher assistant in EMR class was successful. Experience at [nursing home] not as successful (ESY 2000).

Activities of Daily Living: Difficulty regulating time and managing her day unless structure is imposed.

Strengths: Superior ability intellectually. Artistic, creative. Has exhibited strong reading skills. Charming with adults. Weaknesses: Emotionality impacts academic functioning – as well as social, personal. Some former strengths not in evidence. (Exhibit B-72-5)

83. The June 11, 2001, PPT provided the following goals and objectives for Student's 2001-2002 school year:

1. Will maintain success in 11th grade
 - Will report needs to mainstream/resource teacher
 - Will study for tests using study strategies (notecards, graphic organizers, outlining, etc)
 - Will employ a time-management system for organizing academic requirements.
2. Student will demonstrate social skills as indicated by the following objectives:
 - Student will make friends across all social settings.
 - Student will view peers as equals, not making herself superior or viewing her peers as inept.
 - Student will not use intimidation or manipulation as a coping strategy.
3. Student will begin to develop her own vision of post secondary education and career interests.
 - Will explore career interests through a variety of means (i.e., interest inventory, extracurricular activities, elective classes)
 - Student will discuss her experiences and information gathered with appropriate staff.

Progress toward these goals would be measured by passing grades on her report card, successful completion of task/activity as recorded in resource and teacher logs, the REACH level system, and student reports. (Exhibit B-72, 6-8)

84. There was discussion at the June 11, 2001, PPT meeting of several local program options: 1) REACH; 2) REACH with extended day at therapeutic program at Yale Guidance; 3) CES day treatment program; 4) Cedarhurst day program; 5) Gray Lodge – residential placement combined with educational program (single sex setting); 6) Elmcrest Day Treatment; 5a) residential program as recommended by psychiatrist at Silver Hill and Dr. Weissberg (as requested by Parents) [numbering confused in record]. The final recommendation of the PPT was a combination of the REACH program and an extended day afternoon therapeutic program at Yale Psychiatric Institute. In testimony, Parents questioned both the conduct of this meeting and the “lack of meaningful discussion” of residential placement. (Exhibit B-72, Testimony of Parents, McNeal)
85. At the June 11, 2001, PPT meeting the Board again requested an independent psychiatric evaluation and provided three names for the Parents’ consideration. The Parents explained that Student was in Utah and would probably not be returning to Connecticut “any time soon”. (Exhibit B-72-3, Testimony of Parents)

86. Student’s final grades from the Board for the school year 2000-2001 were:

Honors English C Spanish III B+
Geometry B+ Marching Band C
Chemistry C- U.S. History A-
Resource Pass (Exhibit B-92, B-113)

87. In Student’s application dated May 22, 2001 and submitted to the Second Nature Wilderness Program, Parents described “significant events leading to your decision to enroll your child”:

Increasingly oppositional behavior; disregard for home boundaries; abusive, profane speech; often tyrannical and irrationally demanding; violent gestures; knife found under mattress.

Parents described Student’s weaknesses:

Immature, quits things without trying because she seems too easily frustrated, impulsive, very distractible and suggestible, self-absorbed.

Parents described Student’s strengths:

Bright, good sense of humor (when feeling related), affectionate, very pretty, [illegible], graceful (good dancer), artistic (good photographer)

In response to question of whether child has ever attempted or discussed suicide:

Described suicidal ideation as recently as one year ago, was hospitalized with depression in Nov. 1999 and described at that time that she considered suicide about once a month. Claims not to be depressed/suicidal [illegible] the past year.

In response to question of whether child has demonstrated violence toward self or others:

Has hit parents and thrown household objects during rages, mostly prior to treatment for bipolar disorder, although she's increasingly violent intent lately (threw a fork and a plate at dinner in April). (Exhibit HO-2)

88. The Hearing Officer ordered an independent psychiatric evaluation, to be performed in Utah at Student's placement, pursuant to Section 10-76h(c)(3), CGS. The questions directed to the independent psychiatric evaluator were:

Student is currently the subject of a special education hearing. Testimony and her educational records strongly suggest, over time, a complex mental health history and the use of a variety of medications to address her problems.

1. What is the current psychiatric diagnosis (or diagnoses) for Student?
2. Is Student reasonably stable with medication at this time?
3. Is Student reasonably stable with psychotherapy at this time?
4. During prior periods of relative stability, Student has been an excellent student, although she has had social difficulties with her peers in several different school settings. Can you recommend any particular educational strategy, that might enable her to progress educationally?

Initially, the Parents and the Board agreed on an evaluator on November 26, 2001; however, that psychiatrist withdrew and another was appointed by the Hearing Officer on January 14, 2002, when the Parents and the Board could not agree. (Exhibit HO-6)

89. The report of the independent psychiatric evaluation, dated January 2002, included a summary of prior evaluation reports provided by both parties and interviews with New Haven staff members and Student. New Haven reported various modifications of her medications and provided a Problem List:

1. Fluctuating affect/mood states
 2. Oppositionality
 3. Inability to sustain initiative or motivation
 4. Extremely immature peer social skills
 5. Sexualization of relationships with any peer age boys
 6. Chronic feelings of emptiness
 7. Somatization and withdrawal for coping with stress
 8. Need for complex medication regiment
 9. Probably history of sexual abuse and history of neglect – both prior to age 5
- (Exhibit HO-5)

90. After a discussion of Student's difficulties with adolescence and her being confusing and difficult to work with or live with on a daily basis, the independent psychiatric evaluator wrote a prognosis for the next two years:

Student's prognosis over the next two years has to be viewed as guarded. The psychiatrists who have worked with her all have seen her as extremely fragile and even now in a relatively secure setting the psychiatrist is appropriately concerned making medication changes for fear that she will destabilize even further. When Student lived at home there were serious questions about whether she would survive. Currently, she appears ready to accept her life as having some value, but it is extremely tenuous and she experiences virtually no sense of true security and comfort – except possibly her evolving relationship with her parents and her sister and her therapist at New Haven School. Her prognosis will remain guarded until she can begin to have consistently improved relationships with peers and find ways to explore some of her abilities/aptitudes in her everyday life. Unfortunately, she has enormous challenges ahead that will require courage on her part and sensitive professional care from others, and the devotion of her family. (Exhibit HO-5)

91. In response to specific questions from the Hearing Officer, the independent psychiatric evaluator provided the following:

Diagnosis

Axis I – Victim of Sexual Abuse and Neglect by history

*Post Traumatic Stress Disorder - chronic

ADHD combined type - moderate

Mood Disorder NOS – moderate

*Identity Problem – severe

Oppositional Defiant Disorder – severe

Axis II – Features of Mixed Personality Disorder – Borderline and Dependent

Axis III - ?Hemophilia

Axis IV – Educational, Living Situation

Axis V - Current 45

Highest in past 6 months – 48

Lowest in past 6 months - 38

Discussion

I believe that Student's primary diagnosis is an Identity Problem which is sometimes the precursor for an Axis II Personality Disorder. Student's other problems – mood disorder, ADHD, and oppositionality either stem from or are complicating her basic Identity Problem which is based on her profound confusion about who she is and what she wants. That Identity Problem stems directly from early experience of neglect and abuse.

Stability of Student on current medication

Student is not stable emotionally or behaviorally and although the medications are likely of significant help to her, she is a very difficult person to adjust medication for potential optimal affect because of her fragility that can threaten her ability to

function in any setting other than a hospital. Student is relatively stable for Student, but as evidenced by her ongoing GAF of less than 50, she is seriously compromised in functioning and never very far from regressing to complete dysfunction.

Stability with psychotherapy

Again I would note that Student is not stable emotionally or behaviorally; however, the work she is doing with her current therapist is impressive and important and she is exercising muscles that are critical for her in order to be less fragile. I believe that given the critical nature of this work it would be in Student's best interest to be seen at least twice per week in individual treatment.
(Exhibit HO-5)

92. The independent psychiatric evaluator recommended the following strategies for Student's educational program:

Project oriented learning is more likely to be successful especially ones that require different types of expression and are developed in collaboration with Student with one of the criteria being how meaningful that project feels to her. Clearly, Student needs well supervised educational services so that she does not create endless social/emotional distractions that only would serve to keep her confused and suffering. The adults supervising need to be well versed in working with provocative teenage girls and there needs to be a well structured milieu approach to behavior that helps Student feel that she is treated like other girls within the structure. Individual tutorial to support project development would seem to be a useful way to help Student take more responsibility for her educational goals with the tutor collaborating with Student's therapist to help identify meaningful projects. As much as possible, curriculum should be built into the projects after the basic idea for the project has been developed. Incorporation of Student's love and commitment to animals, her need to find ways to constructively use her body (i.e., dance, gymnastics) and her need to engage herself in physically challenging activities that involve acceptable risk would facilitate the chances that Student will find meaning. (By risk I mean activities like mountain biking, Alpine skiing, rock climbing, and adventure hiking. These types of activities can get into Student because of the risk. The risk makes it easier for her to experience the activity as real.)

I believe that Student continues to need to spend most of her time with same sex peers both in and outside of school. Any exposure to boys needs to be carefully monitored and she needs to be able to "debrief" those contacts with her therapist.
(Exhibit HO-5)

93. The Board hired a consultant who runs a nearby regional program for emotionally disturbed students. This program had been mentioned at the June 11, 2001, PPT meeting as an option for Student. The Board released Student's records, including some psychiatric reports that had been released to the Board with parental consent, to their consultant. This consultant was then presented as an expert witness at the hearing. The Parents allege that unconsented released of psychiatric records in this

case was a violation of the Family Educational Rights and Privacy Act (FERPA).
(Transcript, March 5, 2002)

94. The Parents offer an Individualized Education Program provided by New Haven, dated July 12, 2001. The only participant in the IEP team listed is Laurie Laird, a staff member at New Haven, who is identified as representing the local education agency. The IEP provides for five hours a week of instruction in the regular academic program and twenty-four hours a week of treatment, to include individual therapy 1½ hours a week; group therapy two hours a day six days a week; family therapy 1½ hours a week; and recreational therapy two hours a day six days a week.

Goals listed:

1. By January 2002 Student will connect in relationships without pushing people away (develop an emotional intimacy with the person).
2. By January 2002 Student will explore attachment difficulties and work on improving her ego defenses which she uses frequently to protect herself from attachment.
3. By January 2002 Student will demonstrate significant improvement in her attitude and oppositional defiant disorder.

Also titled Master Treatment Plan, this document was signed by the primary family therapist, the nursing director, the education director, and the clinical director of New Haven. Three educational interventions were illegible. (Exhibit P-35)

95. The report of an educational evaluation from New Haven dated July 19, 2001, summarizes her performance:

When compared to others at her age level, Student's performance is very superior in Reading Comprehension; her performance is high average in Basic Writing Skills; her performance is average in Basic Reading skills, Basic Mathematics Skills, Mathematics Reasoning, Written Expression, and Broad Knowledge. She demonstrated a significant intra-achievement strength in Broad Reading. Student will find the performance demands of age-level tasks involving Reading Comprehension very easy; age-level tasks involving Basic Writing Skills will be easy; age-level tasks involving Broad Knowledge, Basic Reading Skills, Basic Mathematics Skills, and Written Expression will be manageable; age-level tasks involving Mathematics Reasoning will be difficult for her. (Exhibit P-39)

96. A psychiatric admission evaluation for New Haven dated July 12, 2001, and signed Sam J. Coates M.D. provides a diagnosis:

Axis I Bipolar I Disorder, most recent episode manic. R/O Attention Deficit Hyperactivity Disorder, R/O PTSD, R/O Reactive Attachment Disorder.

Axis II No diagnosis, but R/O borderline features

Axis III Healthy female

Axis IV Current stressors moderate to severe
 Axis V Current [GAF] 38/38

This psychiatric evaluator also provides recommendations:

1. The patient is on a complicated medication regimen at present but her mood has been generally stable during the last period at the Second Nature Wilderness Program. We will just continue to watch her on her current medications and draw labs at this time.
 2. It appears from the history that it is possible that the patient's moods went more out of control after starting Dexadrine in the eighth grade. We may want to consider a trial off Dexadrine and see if it is a necessary part of the medicine protocol at this point.
 3. There are still significant issues in terms of the patient's stubbornness, social delays, self esteem and possible manipulative behaviors as well. We will address these in therapy. (Exhibit P-41)
97. Treatment goal progress listed for August 12 and September 12, 2001, show "insufficient progress to meet goal (review goal)" in all three goals. (Exhibit P-42)
98. Grades given Student at New Haven on September 28, 2001:
 Subject Grade Absences Subject Grade Absences
 English 12 D 2 Economics C- 4
 Chemistry F 0 Algebra II F 0
 Comments address problems with attitude, missing assignments, and absences from class. (Exhibit P-43)
99. Grades from New Haven dated November 8, 2001:
 English 12 C- Economics F
 Physics C Algebra II B+
 Art Fundamentals A Physical Education A
 Healthy Lifestyles A (Exhibit P-44)
100. The report of a psychological evaluation by Marina A. Starling, Ph.D., dated November 1, 2001, provides a diagnosis:
- | | |
|--------|---|
| Axis I | Bipolar I Disorder, Most Recent Episode Unspecified
R/O Attention-Deficit/Hyperactivity Disorder, by history
R/O Posttraumatic Stress Disorder
Reactive Attachment Disorder of Infancy
Sexual Abuse of Child (Rape)
Physical Abuse/Neglect of Child, by report
Axis II Diagnosis Deferred
Features of Borderline Personality Disorder
Axis III See Medical Report |
|--------|---|

Axis IV Psychosocial Stressors:
Primary Support Group: Twice adopted; neglect from adoptive father; death of adoptive mother; caretaker abuse; abandonment
Social Environment: Poor peer relations; Sexual promiscuity.
Educational Problems: Behavioral problems; Not achieving.
Axis V GAF Past Year 35 Current GAF 40

This evaluation lists eleven treatment issues and recommends individual therapy, family therapy, group therapy, and psychiatric services concerning medications. (Exhibit P-45)

101. Grades from New Haven dated January 11, 2002:

English F Economics F
Physics D Algebra II F
Art Fundamentals F Physical Education P
Healthy Lifestyles A
(Exhibit P-49)

102. Progress recorded on February 8, 2002, on IEP goals dated January 12, 2002, at New Haven:

1. Student will demonstrate acceptance of classroom tasks. Progress has been made.
2. The Student will demonstrate ways to follow routines and procedures. Progress has been made.
3. By June, 2003, Student will connect in relationships without pushing people away (develop an emotional intimacy with the person). Progress has been made.
4. By June, 2002, Student will explore attachment difficulties and work on improving her ego defenses which she uses frequently to protect herself from attachment. Progress has been made.
5. By June, 2003, Student will demonstrate significant improvement in her attitude and oppositional defiant disorder. Progress has been made and objective is on track. (Exhibit P-51)

103. Semester grades from New Haven dated February 12, 2002:

English 12 C- Economics no grade, no credit
Physics C Algebra C-
Art Fundamentals C Physical Education B
Healthy Lifestyles A (Exhibit P-52)

CONCLUSIONS OF LAW:

1. There is no disagreement that Student is eligible for special education as emotionally disturbed. The regulatory definition of emotionally disturbed, at 34 C.F.R. 300.7(c)(4), is as follows:

The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects her educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- Inappropriate types of behavior or feelings under normal circumstances.
- A general pervasive mood of unhappiness or depression.
- A tendency to develop physical symptoms or fears associated with personal or school problems.

Much of Student's problematic behavior has occurred at home, as reported by her Parents and therapists. Her difficulties in maintaining relationships with peers have been well documented, as has her inappropriate behavior under normal circumstances. She has twice been hospitalized for psychiatric emergency treatment.

2. The legal standard for review of special education provided to a student with disabilities is enunciated in *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982): there must be compliance with the procedures of the Individuals with Disabilities Education Act (IDEA); and the IEP and placement must be reasonably calculated to provide educational benefit to the student.
3. The record is replete with procedural errors by both parties. Only those with actual or potential impact on the provision of a free appropriate public education to Student will be addressed in this decision.
 - From Student's enrollment in January, 2000, the Board requested a psychiatric evaluation. The Parents' reluctance is revealed in PPT notes: she has a history of hospitalization, can the reports and discharge notes suffice? Weren't the six appointments with a Board-provided psychiatrist an evaluation? When an independent evaluation was agreed to in principle during the hearing, discussion of the psychiatrist to be selected extended over many weeks. Unfortunately, the one psychiatrist the parties could agree upon declined the assignment. The Hearing Officer had delayed appointing an evaluator in the hopes that the parties could come to agreement, and that a mutually selected evaluator would enjoy more confidence from both parties than one assigned by order. It is impossible to say how the case might have gone if a timely evaluation had been made, but at the very least, the school personnel might have had an objective picture of the complexity of Student's mental illness to contrast with her relatively good behavior and performance in school.
 - The Parents, both well-educated and skillful researchers, plead ignorance of the finer points of special education due process procedures. While it is true that the document provided to parents (and approved by the U.S. Department of

- Education) is daunting and does not cover every possible eventuality, it appears from the record that they did not inquire into procedural matters, nor did the school staff offer help beyond general inquiries about possible questions.
- The Board argues lack of notice about the unilateral placement, as required by 34 C.F.R. Section 300.403(d). This regulation requires notice at “the most recent [PPT] meeting” (presumably oral) and written notice “at least ten business days prior to the removal of the child from the public school”. The PPT had received adequate oral notice on several occasions, and was well aware of the Parents’ search for a residential facility. The lack of timely written notice is harmless error in this case.
 - The Board has claimed that the Parents withheld evaluations in violation of 34 C.F.R. Section 300.509(b). It appears from the record that no significant evaluations were performed at either Second Nature or New Haven before the beginning of the hearing.
 - The school psychologist described a program of close monitoring of Student in the Tutorial Program and infrequent counseling sessions. However, the program in the IEP required regular counseling once a week, and in the “evaluation” section of the IEP, “Counselor’s log” was noted as the source of data to be used. While the services delivered appeared helpful and may have been appropriate, they did not meet the standard established in the IEP.
 - The Board’s PPT meetings included people with the professional credentials required under federal and state law, with an exception: 34 C.F.R. Section 300.344(a)(2) requires at least one regular education teacher of the child and 34 C.F.R. Section 300.344(a)(3) requires at least one special education teacher of the child. The Board’s actions in designating a special education teacher at each PPT meeting were not a violation of the procedural requirements. During the 1999-2000 school year, Student was attending the Tutorial Program: she did not have a special education teacher and her regular education teachers were her tutors. At the January 19, 2001 PPT meeting, Student’s resource teacher and history teacher were present. The April 11 and June 4 and 11, 2001 PPT meetings did not include Student’s special education or regular education teachers. Since people who were well informed about Student’s academic progress and behavior in school and familiar with the options under consideration did attend all meetings, this procedural error is not fatal.
4. The Board’s tutorial program, intended to be short-term and transitional, was appropriate to Student’s needs upon her discharge from Four Winds. When she demonstrated her academic strengths, it was appropriate that she receive some carefully selected classes at the Board’s high school. When she continued to do well, it was appropriate to consider increasing her regular education program and moving the tutorial component of her program to the high school. The underlying structure of the Tutorial Program is transitional: students are either getting better, and headed for the high school, or they are getting worse, and headed for more tightly structured programs such as REACH or for hospitalization. School staff members did not appear to consider the tutorial program as an appropriate long-term placement for Student, although that appears to have been a desire of the Parents. From the standpoint of

Student, the Tutorial Program meant constant changes in her peer group, which was a deterrent to developing individual friendships as well as participation in a student culture. Student appears to have been working hard toward the “reward” of placement at the high school. Lacking an appropriate psychiatric evaluation and on-going psychiatric consultation at the PPT, and considering Student’s own preference for a high school placement, the April 11, 2001, PPT decision is reasonable. Student was not in this program long enough to determine whether it was appropriate or not: while the increased stress of being at the high school all day may have contributed to her breakdown, no professional witness considered the program change the only cause.

5. The June 4 and 11, 2001, PPT recommendations for placement were reasonable, based on the Board’s knowledge of Student’s academic performance at that time. The last proposal, a structured local program (REACH) plus after school treatment at Yale Psychiatric Institute, was reasonably calculated to meet her needs as known to the Board. The Board recognized the need for more information and again requested an independent psychiatric evaluation, and the Parents again deferred evaluation.
6. It must be noted that decisions regarding medical care for minors are the responsibility and the prerogative of parents. When the parents either fail to provide appropriate care or cannot do so for other reasons, the public agency that is available for consultation and, in some cases assistance, is the Department of Children and Families.
7. The issue of communication and consultation between parent/insurance-funded therapists and school staff members was raised on the record of this hearing many times. The Parents provided consent for such communication, and requested consultation several times. Dr. Weissberg, who had been originally funded for six sessions by the Board, attended two PPT meetings. Material from Silver Hill was not received in a timely fashion, but the PPT re-convened to accommodate that problem. In any case, therapists make treatment recommendations and educators address educational options. While a timely dialogue between the two disciplines can be helpful, it does not guarantee agreement on or success in any particular educational program.
8. Student presented herself very differently at school and at home. To further confusion between home and school, many of the milder specific behavioral issues cited by Parents looked quite different in the context of current teenage culture in the Tutorial Program and at the high school. Inappropriate dress and foul language are not approved by the Board’s staff, but both are common in high school, and not overtly dangerous. The response of Board staff members to Student’s occasional inappropriate dress and foul language was reasonable. It is possible that various school staff members used the Parents’ “excessive” concern about relatively trivial behavioral issues as an excuse to minimize their reports of more serious issues.
9. When a student requires hospitalization and subsequent long term professional treatment for mental health problems, Section 10-76d(d), CGS, provides that the school district remains responsible for funding the educational services provided:

- Whenever any child is identified by a local or regional board of education as a child requiring special education and said board of education determines that the requirements for special education could be met by a program provided within the district or by agreement with another board of education except for the child's need for services other than educational services such as medical, psychiatric or institutional care or services, said board may meet its obligation to furnish special education for such child by paying the reasonable cost of special education instruction in a private school, hospital or other institution provided said board or the commissioner concurs that placement in such institution is necessary and proper and no state institution is available to meet such child's needs.
10. The Board has assumed educational costs for the Silver Hill placement, and has offered reimbursement for educational services at Second Nature and New Haven. The record does not include documentation for what services were actually provided and what the charges are: testimony about charges by staff members from Second Nature and from New Haven was casual at best, and costs were undocumented. The Board is responsible for funding such educational services to Student at Second Nature and New Haven as can be documented.
11. The case of *Clovis Unified School District v. California Office of Administrative Hearings*, 903 F.2d 635, 16 EHLR 944 (9th Cir. 1990), addresses the distinction between residential placement for educational purposes and residential placement for other than educational purposes. A student had been hospitalized for "an acute psychiatric crisis" and after the parents' insurance coverage for the hospitalization was exhausted, they initiated due process in an attempt to secure funding from the school district. The Ninth Circuit Court of Appeals framed the question, which is the same question in this case:

... our analysis must focus on whether [Student's] placement may be considered necessary for educational purposes, or whether the placement is a response to medical, social, or emotional problems that is necessary quite apart from the learning process.

The court found that a range of psychotherapeutic services provided in a psychiatric hospital were not "related services" under the IDEA:

The psychotherapeutic services [Student] received at King's View may be qualitatively similar to those she would receive at a residential placement, and it is clear that some psychological services are explicitly included within the definition of related services under the Act when pupils need such services to benefit from their special instruction. However, the intensity of [Student's] program indicates that the services she received were focused upon treating an underlying medical crisis. Where, as here, a child requires six hours per day of intensive psychotherapy, such services would appear "medical" in that they address a medical crisis.

12. The Master Treatment Plan described in Finding of Fact #94 is just that: it provides for five hours a week of instruction without any specific educational goals or identification of academic subjects. There is no individualized statement explaining why Student cannot participate in a regular education program with supports, as she did while in the Board's district, or why her educational program is limited to five hours per week.
13. The sequence of events related by Student's Parents in the instant case, increasing and unpredictable violence within the home, with confirming documented psychiatric diagnoses from several professionals, was indeed a medical crisis leading to hospitalization. After a few days in a general hospital and a few weeks in Silver Hill, a psychiatric hospital, Student's Parents followed the advice of the mental health professionals and their private educational consultant, and placed their daughter in treatment programs. The unanimous recommendations for residential treatment provided by mental health professionals working with Student do not automatically obligate the Board to provide that treatment as an educational service. Pursuant to the IDEA and related state law, the Board is responsible for special education and such related services as may be necessary to enable a student to benefit from that education. In this case, counseling within the school program addresses issues related to education: while there is some overlap, the Board is not responsible for providing psychotherapeutic services addressing primarily individual and family issues.
14. Another measure of the nature of Student's current placement is the need for close medical monitoring of her several medications and on-going therapy. The independent psychiatric evaluator found that she was still unstable in both medication and therapy. This suggests that the crisis is not over, and her treatment needs have priority over her educational needs.
15. Furthermore, her academic performance at New Haven has deteriorated from that achieved under the Board's program. While this setback may be related to the seriousness of her illness and the intensity of her therapy, it is a concern since she appeared to take pride in her academic strengths while attending the Board's programs.

Grades provided from New Haven show the same pattern of inconsistent effort reported in the Board's program.

16. Section 34 C.F.R. Section 99.31(a)(1) provides that an educational agency may release educational records to "other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests." This provision of the regulations for the Family Education Rights and Privacy Act of 1974 has been interpreted by the U.S. Department of Education to include contracted service providers to school districts (Letter to Presto, EHLR 213:121 (OSEP 1988) and Letter to Diehl, 22 IDELR 734 (OSEP 1993)). The release of records to a consultant is not a violation of FERPA.

DISCUSSION:

Nothing in this decision is intended to suggest that the Parents' actions in addressing their daughter's needs were faulty or untimely. Likewise, nothing in this decision is intended to suggest that the school staff failed to do everything in their power, based on the information available to them at the time, to provide for Student's educational needs. As confirmed by all the mental health professionals, it is very difficult if not impossible to identify specific causes, effects, and future outcomes in cases like Student's. The record of this hearing shows good faith, concern and tremendous commitment to Student on the part of both family and school staff.

The issue of selection of an independent psychiatric evaluator delayed PPT access to information concerning the severity and the complexity of Student's mental illness. Because of her relatively good behavior in school and her excellent academic performance at times, several school staff members simply did not believe that her problems were as serious as the Parents' reports suggested. However, the record also included several statements of serious concern from mental health professionals. In addition to psychiatric diagnoses, these experts noted Student's high intelligence and her manipulative behavior. When the school receives a mixed message about a student who is already identified as emotionally disturbed, further evaluation may assist in confirming relevant information for educational planning. The PPT deferred to the Parents' reluctance to consent to an independent psychiatric evaluation, perhaps in hopes of preserving the good working relationship between Parents and school. The Board could have pressed to the point of initiating a hearing to override lack of consent.

Without minimizing Student's illness, the record strongly suggests that she chose to work hard and behave appropriately in some classes and for some teachers. This record supports PPT efforts to provide a program that Student liked, as opposed to REACH, which she rejected. This inconsistency continues in the program at New Haven, despite massive amounts of therapy.

In several cases, the PPT proposed programs for emotionally disturbed students that they were familiar with because similar students from the district had participated successfully in them. Student's Mother followed up with telephone calls and a few visits. In one case, Student, her Mother, and the Board's school psychologist visited the REACH program together. The Parents complained that many of the suggested programs did not meet the criteria provided by Student's family therapist, Dr. Lawrence. However, the PPT had not incorporated these criteria into an IEP for Student. Once the PPT determines that a particular outplacement might be appropriate for a specific student, that student's IEP must be discussed with the facility: when the student, like Student, presents a variety of concerns, the PPT and the facility may negotiate modifications in or variations of the program originally discussed.

FINAL DECISION AND ORDER:

Student's placements at Second Nature and New Haven were made for treatment of mental illness. Therefore, the Board is responsible only for properly documented educational charges in each placement.

While perhaps undiplomatic, the Board's release of Student's records to a contracted consultant was not in violation of FERPA.