

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

CASE # 01-294 (Consolidated with Case No. 01-305)

New Milford Board of Education v. T. (Student)

T. (Student) v. New Milford Board of Education

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Appearing on behalf of the Board of Education: Attorney Nicole A. Bernabo
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Appearing before: Attorney Gail K. Mangs,
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Board issues:

1. Was the neuropsychological evaluation performed by Dr. Diana Badillo-Martinez appropriate? If not, should the Board reimburse the parents for the evaluation performed by Dr. Armin Thies?
2. Did the Board offer an appropriate program for the 2001-2002 school year?
3. Is a psychiatric evaluation necessary and appropriate?

Parent issues:

1. Did the Board offer a free and appropriate public education to T. in the June 14, 2001 IEP? If not, is homebound instruction appropriate?
2. Should the Parents be reimbursed for Dr. Thies' evaluation?
3. Were procedural violations committed by the Board?

PROCEDURAL HISTORY:

This hearing was requested by the Board on September 4, 2001 and assigned Case No. 01-294. The prehearing conference was convened on September 12, 2001. On September 8, 2001, the Parents filed for due process; this case was assigned to a different hearing officer under Case No. 01-305. A prehearing conference was held in Case No.

01-305 during which that hearing officer directed the parties to file motions to consolidate the two cases. Both parties filed motions and on September 26, 2001, the hearing officer in Case No. 01-305 issued an order granting the motion to consolidate the two cases. Also on September 26, 2001, the current hearing officer agreed to the consolidation of the two matters under Case No. 01-294. This case was convened on October 18, October 25, October 30, November 1, November 2, and November 7, 2001. The matter was also set down for October 17, 2001, but due to a misunderstanding, all parties did not appear. Final arguments were made and the hearing closed on November 7, 2001.

SUMMARY:

T., who is now eleven years old, entered the Board's school district early in second grade. His teacher quickly observed that T. was working below grade level, had a poor attention span, frustrated easily, and became obstinate when confronted with work he felt unable to do. After evaluations were performed, T. was identified as learning disabled and began receiving special education services. From second grade through the end of fifth grade, T.'s academic difficulties persisted, especially in the areas of reading and writing. Always somewhat oppositional and easily frustrated, T.'s behavior markedly declined during the fourth and fifth grades. He resisted academic tasks and often refused to comply with directions or complete assigned work. T.'s behavior did not improve with the use of behavior plans or contracts. In addition, T.'s reading skills never advanced much beyond an early second grade level. The PPT responded by increasing T.'s special education hours until he was receiving virtually all of his academic instruction in a self-contained special education classroom. The PPT also recommended that T. receive a psychiatric evaluation. T.'s parents refused to consent to a psychiatric evaluation. They also disagreed with the PPT recommendation to promote T. to the sixth grade in the Board's middle school for the 2001-2002 school year and requested homebound instruction and independent reading and neuropsychological evaluations. During the summer of 2001, counsel for the parties attempted to resolve the dispute but were unable to reach any resolution, although the Board eventually agreed to fund an independent reading evaluation about the time this hearing convened. The parents have kept T. at home since the school year opened and have provided two hours of tutoring per week during this time. In addition, they provided some evidence that T. has been receiving counseling and is now undergoing a psychiatric evaluation.

FINDINGS OF FACT:

1. The student began attending Board schools during the fall of second grade (the 1997-1998 school year). In January, 1998, his teacher referred him for testing due to his inability to do grade level work, difficulty focusing, frustration, and obstinate behavior. (Exhibit P-3)
2. Psychoeducational testing performed during February and March of 1998 revealed that T. was reading and writing at a 1.4 grade level equivalent. In addition, on the WISC-III, he received a verbal score of 115, performance score of 86, and a full scale score of 108. The PPT identified T. as learning disabled and recommended that he receive twelve hours per week of special education services. During second grade, T.

also began taking Ritalin to treat his attentional difficulties. This program was continued for T.'s third grade year (the 1998-1999 school year). The PPT recommended 6 hours of special education services for fourth grade (the 1999-2000 school year) noting T.'s "high frustration" during writing. (Exhibits P-5, P-6, P-7, Testimony of Mother)

3. While T. had previously displayed periods of frustration and obstinate behavior, his behavior became a major issue during fourth grade. At PPTs convened in September, 1999, the student's regular education teacher described T. as exhibiting frustration and low self confidence. The school psychologist suggested that T.'s oppositional behavior was a reflection of his frustration. The PPT increased T.'s special education hours to 7.5 and exempted T. from standardized testing in reading and writing. During the fall of 1999, T. also began receiving reading instruction with the "Let's Read" program, a structured multisensory, language based, sequential reading program. (Exhibits P-8, P-9, Testimony of School Psychologist and Middle School Special Education Chair)
4. Teachers continued to report a deterioration in T.'s behavior and work completion during the 1999-2000 school year. His behavior plan was rewritten to describe appropriate and inappropriate behaviors and their consequences. Due to continuing concerns about T.'s oppositional behavior, low frustration tolerance and lack of self esteem, the PPT recommended a psychiatric evaluation at a PPT convened on March 21, 2000. The PPT reiterated their request for a psychiatric evaluation at most of the ensuing PPT meetings. The Board believes that only a psychiatrist can comprehensively evaluate and make recommendations regarding both the psychological and medical issues that may be causing T.'s frustration, anxiety, oppositional behavior, and possible depression. The Parents have never agreed to an independent psychiatric evaluation. (Exhibit B-2, Testimony of School Psychologist, Assistant Superintendent, Mother)
5. On May 8, 2000, the annual PPT was convened. The team discussed T.'s continuing impulsive and oppositional behavior and also noted that he displayed periods of anger and feelings of inadequacy. The team recommended that T. receive 7.5 hours of special education services during the 2000-2001 school year (fifth grade) and that the triennial evaluation be administered prior to March, 2001. The parents refused the psychiatric evaluation that had been recommended at the March, 2000 PPT. (Exhibit B-4)
6. In September, 2000, the student's parents brought him to the Sylvan Learning Center for additional reading and writing assistance. The Sylvan Learning Center assessed T.'s reading ability as falling at the 1.8 grade equivalent level. (Exhibit P-11)
7. The PPT met on October 5, 2000 to discuss T.'s lack of progress in reading and writing and his ongoing sense of discouragement. T.'s parents questioned why the PPT had continued to promote T. from grade to grade, but they rejected counseling believing that it would be useless if T. did not also make progress in reading. His parents also reported that medication for T.'s attentional difficulties had been discontinued as they felt it had not provided any benefit. The IEP was revised to

increase T.'s special education services to 12.5 hours per week and to include special education instruction in math and one on one reading instruction (with the "Let's Read" program). The reading program was provided by a certified paraprofessional under the special education teacher's supervision; the teacher had received several days of instruction on presenting the "Let's Read" program. (Exhibits B-13, P-19, Testimony of School Psychologist and Kathleen Taylor, Fifth Grade Special Education Teacher)

8. Concerns about T.'s lack of progress and increasing behavioral issues continued. T. persisted in oppositional behavior, inattention, and work refusals. He also had difficulty completing assigned tasks and following directions. At a PPT convened on October 26, 2000, the PPT increased T.'s special education services to 17.5 hours per week although goals and objectives remained the same. In addition, the parents requested and the PPT agreed to provide a neurological evaluation. Questions were prepared for Dr. Anna Alshansky who evaluated T. and provided a report dated October 27, 2000. Dr. Alshansky concluded that T. satisfied the criteria for attention deficit hyperactivity disorder and was learning disabled; in addition, she determined that T. had fine motor function delays and poor self-esteem and anxiety possibly due to his under-achievement. She recommended full psychoeducational and language evaluations, intensive educational supports, psychological counseling, and a trial of Adderall. This report was discussed at a PPT convened on December 12, 2000, at which time the PPT recommended neuropsychological, achievement, cognition, and occupational therapy evaluations. Members of the PPT also questioned whether Dr. Alshansky's report had satisfactorily answered their questions. (Exhibits B-15, B-16, B-19, B-24, Testimony of Kathleen Taylor)
9. T. received most of his educational program during fifth grade in a small classroom at the end of the fifth grade hall; the adjoining group of classrooms housed the kindergartens. T. apparently felt that the classroom's location meant he had been relegated to the kindergarten wing. He received some mainstream instruction in science and social studies when hands-on projects, which T. enjoyed, were presented, and also had recess, lunch, and specials with regular education students. Due to the increasing class size, the Board hired another special education teacher in March, 2001; T. was placed with the new teacher. Both special education teachers testified that T.'s behavior was completely inconsistent and never really improved despite their use of behavior plans and behavior contracts. They were unable to link his behavior to any particular activity or subject. (Testimony of Mother, Kathleen Taylor and Deborah Shelley, Fifth Grade Special Education Teacher from March - June, 2001)
10. Occupational therapy, auditory, reading, cognitive and achievement tests were performed by Board personnel during the winter of 2001. The examiner who performed the learning assessment reported that T. often exhibited oppositional and uncooperative behavior during the testing. It was concluded that T. did not have a deficiency in the auditory perception and conceptualization of speech sounds. While T.'s overall cognitive ability fell within the average range, his broad reading scores were equivalent to a student of 7 years, 10 months; his basic reading skills score fell at a level equivalent to a student of 7 years, 9 months (T. was 10 years, 6 months at

the time of this testing). His broad written language score was equivalent to a student of 7 years, 2 months. His math and broad knowledge scores fell within the average range. T.'s processing speed was within the low range. On the Gray Oral Reading Test, T. scored at a 1.9 grade equivalent level. His comprehension score fell at a grade equivalent level of 3.5 (based on a subtest where the examiner reads the passage and questions aloud to the student). The occupational therapy evaluator found that T. was generally within the average range and did not require services. (Exhibits B-30, B-33, B-34, B-39A)

11. The PPT submitted questions to Dr. Diana Badillo- Martinez in preparation for the neuropsychological evaluation she administered to T. in March, 2001. Dr. Martinez testified that T. was resistant to the testing and easily frustrated; his attitude made testing somewhat difficult and therefore she was not able to answer all the questions that were posed. She concluded that T.'s intellectual abilities fell within the average range but that he learned new material slowly, worked very slowly, and had marked reading decoding and comprehension deficits. She also stated that T. becomes oppositional when he feels inadequate or thinks he might feel inadequate due to the demands that may be placed upon him. Dr. Martinez concluded that these oppositional behaviors interfere with his ability to learn and must be dealt with if he is to progress in school. She was not able to determine why T. reads so poorly. She diagnosed T. as having a Cognitive Disorder NOS, Generalized Anxiety Disorder (for which she recommended medication), Oppositional Defiant Disorder, and a Reading Disorder; she did not believe that T. had ADD but recommended that T. be monitored in order to rule out ADD. During testimony, Dr. Martinez suggested that T. needs a specific, clear behavior program that will help him learn to control his behavior and deal with his frustration. Homebound instruction will only delay his social growth and reinforce his oppositionality. (Exhibits B-29, B-37, Testimony of Dr. Martinez)
12. Dr. Martinez' report was discussed by the PPT on April 5, 2001. The PPT determined that T. continued to qualify for special education services as a learning disabled student and recommended that the IEP be continued without change for the remainder of the school year. In addition, T.'s behavior plan, as revised in March, 2001, was incorporated into the IEP. The plan called for three warnings and a time-out when T. refused to follow directions. (Exhibits B-38, B-39, Testimony of Assistant Superintendent)
13. On June 14, 2001, the PPT convened to plan for the 2001-2002 school. This meeting was quite long and characterized by many disagreements between the Board, the parents, and their respective counsel. The Board members of the PPT proposed an IEP that would promote T. to the sixth grade in the Board's middle school where he would receive 22.5 hours of special education services per week: T. would receive English, reading and math instruction in the resource room, and science and social studies instruction in collaborative mainstream classrooms. T.'s reading instruction would be provided by the Wilson program, a reading program similar to "Let's Read" but with a more mature presentation; reading instruction would be in a group of 5 or 6 students. T.'s parents rejected the promotion to sixth grade on the basis of T.'s inability to read at grade level. They also objected to the PPT being convened on June 14 as they did not feel there was sufficient information to plan an IEP; they

believed that further independent evaluations were necessary in order to appropriately program for T., although they did not seem certain as to which evaluations were needed. The Board proposed a reading evaluation and reiterated their past request for a psychiatric evaluation. Towards the end of this extended meeting, the parents' attorney presented the Board members of the PPT with a letter that essentially revoked consent or agreement with any evaluations, diagnoses, behavior plans, or materials and methods of instruction heretofore proposed or supported by the Board including the IEP of April 5, 2001. There is some disagreement as to whether the parents requested any specific evaluations at this meeting, but in any case, there was great discord and the PPT ended with an agreement that the attorneys for the Board and the parents would discuss the issue of independent evaluations outside the PPT and attempt to reconcile their opposing views. (Exhibit B-50, Testimony of Middle School Special Education Chair, Kathleen Taylor, and T.'s Mother)

14. On July 9, 2001, the student's parents, through their attorney, requested a neuropsychological evaluation by Dr. Armin Thies, and a reading evaluation by Dr. Mary White-Roath. They again rejected a psychiatric evaluation. The Board refused the neuropsychological evaluation based upon the evaluation completed by Dr. Martinez, but requested further information about Dr. White-Roath. The parents responded that Dr. Thies would perform only tests that were not duplicative of those administered by Dr. Martinez; they requested an immediate response as T. was scheduled to see Dr. Thies. The parents also stated that they would allow the Board to speak with Dr. White-Roath prior to the evaluation, but only if the parents participated in the conversation. (Exhibits B-57 through B-70)
15. Despite extensive correspondence between counsel for the Board and parents during the summer of 2001, decisions were not made regarding evaluations until a PPT convened on August 23, 2001. During this PPT meeting, the Board agreed to pay for a reading evaluation by Dr. Mary White-Roath (although only if the parents allowed them to speak to her first without the parents or their attorney present). To minimize conflict and possibly avoid due process, the Board also offered to pay half the cost of Dr. Thies' evaluation. The parents rejected this offer of partial payment. Toward the end of the meeting, the parents also requested homebound instruction for T. They offered a letter dated August 22, 2001 from T.'s pediatrician, Dr. Robert Rubin, which stated "I recommend a trial of homebound instruction for T. due to his current emotional condition affecting his mental welfare. Follow-up would be very important in determining when he can return to the traditional classroom setting." In a form received on August 31, 2001, Dr. Rubin further stated the duration of homebound instruction to be "until satisfactory resolution between school, parents and physician." The Board members of the PPT rejected the request for homebound instruction based upon insufficient information. Although a date and time were arranged for the Assistant Superintendent to speak with Dr. Rubin, she was not available at that time; the Assistant Superintendent did not contact the parents to schedule another date and time for a conversation with Dr. Rubin. (Exhibits B-77, B-78, B-79, B-89, Testimony of Assistant Superintendent)
16. Dr. Armin Thies, a clinical neuropsychologist, performed a neuropsychological evaluation in July, 2001. He reported that T. became resistive toward the end of his

testing. Dr. Thies reviewed T.'s previous evaluations and found that T. works very slowly but has average to superior cognitive ability. His reading and writing fall significantly below his measured intelligence. Dr. Thies concurred with Dr. Martinez that there was little evidence of ADD but that T.'s inattention was a likely result of his emotional condition when confronted with academic tasks. Dr. Thies recommended (stating that many of the recommendations were elaborations or modifications of Dr. Martinez' recommendations) that the management of T.'s behaviors be included in his educational plan; T. must learn to manage his frustration. He also recommended a medication trial to reduce T.'s anxiety, the use of a computer for word processing, building a sight recognition vocabulary (since T. had not been successful with phonological instruction), one on one or small group reading and writing instruction, and modifications that would enable T. to participate in the regular curriculum. (Exhibit B-75)

17. On September 4, 2001, the Board requested Due Process. (Exhibits B-91, H.O.-1)
18. On September 4, 2001, the parents agreed to let the Assistant Superintendent speak to Dr. White-Roath without the participation of the parents or their attorney. (Exhibit B-92)
19. Also on September 4, 2001, T. began receiving regularly scheduled therapy from Dr. D.A. Begelman, a clinical psychologist. T. has also seen Dr. Simon B. Sobo, a psychiatrist. In addition, T.'s parents have brought him to the Center for Attention and Related Disorders for a psychiatric evaluation and psycho-social assessment. (Exhibits P-55, P-57, P-67)
20. Dr. John G. Gelinas, a child, adolescent and adult psychiatrist, was asked by the Board to review T.'s records. In a letter dated October 26, 2001, he stated that a psychiatric evaluation was warranted due to T.'s history of learning disabilities and behavioral difficulties at school. Dr. Gelinas testified that only a psychiatric evaluation can assess medical and psychiatric issues. He also testified that Dr. Martinez' evaluation not only raised more questions than it answered, but that her diagnosis of "Cognitive Disorder NOS" was meaningless and therefore useless for educational planning purposes. (Exhibit B-111, Testimony of Dr. Gelinas)
21. T.'s reading level has shown little progress since he has been a student in the Board's school. In grade 2, his reading comprehension reached the 1.4 grade equivalent level. In third grade, he reached the 2.5 grade equivalent level. In grade 4, his reading comprehension was at a 4.2 grade level, although this was based upon an administration of the Gray Oral Reading Test where the examiner reads the material and questions to the child; T.'s own reading accuracy fell at the 2.3 grade level equivalent. Finally, in fifth grade, T.'s broad reading on the Woodcock-Johnson-revised test fell at the 2.2 grade level, his basic reading at the 2.1 grade level, and his accuracy at less than the 1.9 grade level. T.'s written expression tested at the 1.8 grade level when he was in the fifth grade. This was after T. had been individually instructed for almost two years with the "Let's Read" program and had moved from book 4 to book 5 in the program (although Board personnel testified that the "Let's read" program sets forth reading instruction in such a way that reading growth may

not be seen on standardized tests until the entire program is completed). T.'s Mother testified that T.'s current home tutor tested T. and found him to be reading at a grade equivalent level of 2.3. Therefore, in four years, T. has made less than one year's reading progress. (Exhibit B-115, Testimony of Middle School's Special Education Chair, Kathleen Taylor, and Mother)

22. The student has not attended school since the end of the 2000-2001 school year. His parents have arranged for T. to receive tutoring for 2 hours per week and to volunteer at a local nursing home. T.'s father testified that they did not want T. in school until a program they deemed appropriate was in place. (Testimony of Mother and Father)
23. Dr. White-Roath completed her evaluation after almost a year of Parent/Board disagreement over who should administer the independent reading evaluation to T. In the late fall of 2000, the Board and parents agreed that the evaluation would be completed by Elaine Cheeseman. However, as Elaine Cheeseman had trained the teachers who implemented the "Let's Read" program, she no longer performed student evaluations. The parents proposed Susan Wiggins, but the Board would not agree to hiring her. The Board proposed Miriam Cherkes-Julkowski, Risa Davidson, and David Zena, but the parents were unwilling to travel outside the immediate area due to their work commitments. The parents later recommended Dr. Pogge of Katonah, New York but it is unclear whether they sent his resume to the Board. As described above, the Board eventually contracted with Dr. Mary White-Roath although even after agreement had been reached and the parents allowed the Board to contact Dr. White-Roath on September 4, 2001, the Board did not officially agree to fund the evaluation until October, 2001. (Exhibits B-47, B-92, Testimony of Mother and Assistant Superintendent)
24. Dr. White-Roath tested T. during September and October, 2001. She found that T. processes very slowly, but is of average cognitive ability. Many of his reading skills tested significantly below average and his writing sample could not be scored. Dr. White-Roath's report states that T. requires a structured, intensive, comprehensive and systematic reading/spelling program which should be presented in a one to one or small group setting. Direct instruction by a trained teacher is essential. Dr. White-Roath also recommended intensive remedial instruction in reading comprehension and writing. (Exhibit B-116)

CONCLUSIONS OF LAW:

1. The parties do not dispute that T. is a learning disabled student entitled to a free and appropriate public education ("FAPE") with special education and related services as provided for under the provisions of Connecticut General Statutes 10-76 et seq., and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. 1401 et seq. T.'s learning disability lies in the areas of written language and reading, including encoding, decoding and comprehension.
2. The standard for determining whether FAPE has been provided begins with the test established by Supreme Court in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). First, the procedural requirements of

the IDEA must have been met by the school district. Second, the individualized program must be reasonably calculated to enable the child to receive educational benefit. This test has been subsequently clarified to hold that FAPE requires that the individualized educational program offered to a child must provide a more than trivial educational benefit. (See Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988), cert denied, 488 U.S. 1030 (1989)).

3. T. is an extremely complex student who has presented great challenges to the Board. Why does this child, who has at least average cognitive ability, have such difficulty with reading and writing? And why has his oppositional behavior become worse over time? This hearing transpired because with all the evaluations to which T. has been subjected, there is no concrete answer to these questions. The Board has concluded that if T.'s behavior is controlled, he will learn to read. T.'s Parents believe that if T. learns to read, his difficult behaviors will disappear. Both views are overly simplistic. It is uncertain which came first, the academic difficulties or the problem behaviors, but it is clear that they are intertwined and must both be dealt with.
4. Under 34 C.F.R. Section 300.502(b)(2), if a parent requests an independent educational evaluation, the public agency must, without unnecessary delay, either initiate a hearing to show that its evaluation is appropriate, or ensure that the independent evaluation is provided at public expense. Here, the Board has not met their burden of proof. The neuropsychological evaluation performed by Dr. Martinez gave some insight into T. but was insufficient to support any real educational planning. She could not answer all the questions posed to her and was unable to determine why T. could not read. Dr. Gelinas testified that at least part of her diagnosis was meaningless. Her evaluation provided so few answers that in response to the report, the PPT did not make any changes to T.'s IEP (an IEP that was not working). Finally, the fact that the Board still felt the need for further evaluations even after Dr. Martinez completed her report is a further indication that Dr. Martinez' evaluation, standing alone, was not sufficient or appropriate. With Dr. Martinez' evaluation providing so little assistance to the PPT, it was natural that the parents would request what they felt would be a more comprehensive neuropsychological evaluation. Dr. Thies' evaluation relied heavily on Dr. Martinez' evaluation; he did, however, supplement her testing and recommendations and made suggestions that were more specific and useful in an educational setting. Therefore, the Board must reimburse the Parents for the Thies evaluation.
5. T.'s oppositional behavior is getting in the way of his educational progress. Almost every teacher and evaluator who worked with T. reported some difficulty with T.'s behavior. As T.'s behavior and academic performance deteriorated, the Board sought a psychiatric evaluation. Both Dr. Martinez and Dr. Thies indicated that T.'s behavior was interfering with his educational progress and both recommended a trial of medication for anxiety. The possibility that anxiety plays a role in the behaviors that are interfering with T.'s educational progress must be investigated. Under C.F.R. 300.532(g), each Public Agency must ensure that children are assessed in all areas related to the suspected disability. In addition, one of the related services available to children who have been identified under the special education statutes is medical;

under 34 C.F.R. Section 300.24(b)(4) medical services are defined as "...services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services." Therefore, the Board's request for a psychiatric evaluation was reasonable and necessary. However, as it now appears that T.'s parents are in the process of obtaining a psychiatric evaluation, further evaluation *may* be unnecessary as discussed in the final order.

6. The Board did not, however, do enough to modify T.'s behavior. Practical strategies for working with T. were never developed. As T.'s oppositional behaviors continued to escalate, PPTs were convened; but for the most part, no specific usable behavior interventions emerged from these meetings. Behavior plans were written (see Finding of Fact No. 12) and behavior contracts were employed (Finding of Fact No. 9), but to no avail. T.'s teachers were unable to link instances of his resistant behavior to any particular activity or subject. They suggested that T.'s problem behaviors just appeared from nowhere; this seems somewhat unlikely. The PPT should have obtained a functional behavior assessment; when completed by a qualified individual, such assessments often yield information that can be translated into useful, successful behavior plans. A functional behavior assessment is still in order.
7. Throughout the 2000-2001 school year, the Board's response to T.'s negligible academic progress and escalating behavior difficulties was to increase his time in the self contained special education classroom. Even though the increased hours did not seem to ease the situation, they continued to decrease the amount of time T. spent in the regular education classroom (see Findings of Fact Nos. 7 and 8). It is not clear that T. ever had an integrated, comprehensive educational program that exposed him in any meaningful way to the grade level content he was cognitively capable of handling. The IDEA requires that children with disabilities are educated in the least restrictive environment ("LRE"); that is, with children who are not disabled, and, that children with disabilities are to be removed from the regular education environment "...only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (20 U.S.C. Section 1412 (a)(5)). 34 C.F.R. Section 300.552(e) also requires school districts to ensure that "A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modification in the general curriculum." It is clear that T.'s instruction was provided in an increasingly restrictive environment that did not meet his needs and provided negligible educational benefit.
8. The Parents have argued that the PPT's decision to promote T. each year was not appropriate. Although T. does not work at grade level and has never made the expected progress each year, the issue is not the grade to which T. is assigned; it is whether his educational program was appropriate.
9. The program offered by the Board for the fall of 2001 as contained in the IEP dated June 14, 2001 is really more of what T. received during the 2000-2001 school year. Although little reading progress could be demonstrated by T. after two years with

“Let’s Read” (see Finding of Fact No. 21), the Board proposed that he receive educational instruction with the Wilson program, which, as described by Board witnesses, is quite similar. The IEP contains no new behavior initiatives and, as in the previous year, most of T.’s academic instruction would take place in the resource room. Placement in collaborative classrooms for social studies and science was a positive change, but without viable behavioral or reading programs in place, it is unlikely that T. would have experienced much success in those classes. While this IEP looks good on paper, it does not meet T.’s individual needs and therefore is not calculated to provide educational benefit as required by Rowley.

10. The Parents’ response to this IEP, however, can not be supported. Homebound instruction is described in the Regulations of Connecticut State Agencies Section 10-76d-15, which states that such instruction shall be provided only when the PPT finds that at least one of the following conditions applies: “(1) A physician has certified in writing that the child is unable to attend school for medical reasons and has stated the expected date the child will be able to return to the school. (2) The child has a handicap so severe that it prevents the child from learning in a school setting, or the child’s presence in school endangers the health, safety or welfare of the child or others. (3) A special education program recommendation is pending and the child was at home at the time of referral. (4) The child is pregnant or has given birth and a physician has certified that home bound or hospitalized instruction is in the child’s best interest and should continue for a specified period of time.” (Section 10-76d-15(b) In addition, the regulation states that homebound instruction “...shall be provided when a child’s condition will cause an absence of at least three weeks’ duration.” (Section 10-76d-15(c)) Conditions 2, 3 and 4 can be eliminated immediately. As to the first condition, the letter sent by Dr. Rubin is overly vague and broad (see Finding of Fact No. 15). The PPT could not make a decision based upon such insufficient information. Also, there was no suggested date on which T. could return to school, nor was there any reason to believe his absence would last at least three weeks. Most telling is Dr. Rubin’s second communication which suggests that the real explanation for the absence was the lack of agreement between the Parents and the PPT. Also worth noting is the fact that no other evaluator, including Dr. Thies, suggested that T. would benefit from homebound instruction. Finally, home bound instruction would not meet the LRE requirements as applied to T.’s individualized needs. While the Board did not overextend itself in its efforts to discuss the situation with Dr. Rubin, neither did the Parents request that Dr. Rubin send a more detailed explanation of the need for homebound instruction.
11. The Parents have alleged several procedural violations on the part of the Board. While the Supreme Court in Rowley recognized the importance of meeting all procedural requirements, there must be some rational basis to believe that procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.” Roland M. v. Concord Sch. Comm., 910 F.2d 983, 994 (1st Cir. 1990), cert. denied, 499 U.S. 912 (1991).
12. The Parents have argued that the PPT meeting of June 14, 2001 should not have gone forward as they were not yet prepared. They also argued that the IEP was prepared

before the meeting and that other forms were filled out after the meeting when they were not present. While Boards must make every effort to ensure parental attendance at PPT meetings, even if a parent objects to the PPT meeting, there is nothing to prevent a Board from going forward with the meeting without the parents in attendance so long as they have made a good faith effort to obtain the parents' attendance. In addition, Board members of a PPT may meet before the meeting to prepare a draft IEP as long as the parents have the opportunity to provide input and recommend and discuss changes. Here, the Parents did attend the meeting, but as was discussed in Finding of Fact No. 13, the meeting was characterized by dissension and culminated in the Parents' presentation of a letter revoking any and all consents and agreements they had ever granted. There was ample opportunity to reconvene the PPT and to rewrite the IEP, but communication between the parties continued to deteriorate during the summer. Therefore, a procedural violation can not be found with relation to this PPT/IEP.

13. The Parents have also argued that procedural violations exist with relation to the provision of evaluations. During the summer, the Parents requested that the Board pay for Dr. Thies' evaluation and demanded an almost immediate answer (see Finding of Fact No. 14). An immediate answer is not a reasonable expectation; the Parents did receive their answer at the August 23, 2001 PPT, after which the Board appropriately requested this hearing. The situation is somewhat different with Dr. Mary White-Roath. As described in Finding of Fact No. 23, the issue of the reading evaluation languished for almost a year due to the disagreement between the parties. Even after the Board finally agreed to Dr. White-Roath, the actual payment decision was delayed for another month. At that point, however, the Parents were holding T. out of school so the Parents cannot claim that this delay contributed to a deprivation of educational benefit.
14. The parties have clearly reached a point where trust is lacking and communication has broken down. However, it is essential that T. be immediately returned to school before he loses any more academic ground or his social skills experience any further deterioration. Therefore, a third party must be brought in to help the parties plan for T.'s educational future. This consultant will assist the PPT in planning an IEP that places T. in the sixth grade at the middle school and balances T.'s time in the mainstream with the need to remediate his reading and writing skills. In addition, the team will insure that appropriate supplementary aids and services are in place to help T. succeed in the mainstream and that the entire IEP is appropriately implemented. The independent consultant will help the PPT review all evaluations done to date and determine if any other evaluations are required. To prevent any unnecessary evaluations, the Parents will submit to the PPT the psychiatric evaluation they are currently obtaining. The consultant will assist the PPT in determining if this psychiatric evaluation is sufficient for educational planning. If not, another psychiatric evaluation will be obtained by the PPT. The consultant will also facilitate the completion of a functional behavior assessment and the creation of a behavior support plan by an individual trained in this area. The consultant will facilitate all communications with other professionals as necessary. Finally, in the event of any disagreement between the parties or within the PPT, the decision of the consultant shall be final.

FINAL DECISION AND ORDER:

1. Dr. Martinez' evaluation was not appropriate. The Board will reimburse the Parents for the evaluation performed by Dr. Thies.
2. A psychiatric evaluation is necessary and appropriate. A psychiatric evaluation will be obtained by the Board as detailed in Conclusion of Law No. 14.
3. The Board did not commit any procedural violations.
4. The program offered by the Board in the June 14, 2001 PPT for the 2001-2002 school year was not appropriate. The PPT will convene within one week of receipt of this decision to select an independent consultant who is to be paid by the Board and is agreeable to both the Parents and the Board. If the parties are unable to agree on a consultant, then each party will select a consultant; together, the two consultants will select the independent educational consultant. It is expected that this process will be completed before the end of the calendar year. It is also expected that T. will be returned to school as soon as possible. Until this occurs, the Board will provide homebound instruction.
5. The independent consultant will assist the PPT in planning an appropriate IEP that will allow for T.'s transition back to school. The various details of this task are detailed in Conclusion of Law No. 14; the consultant will make certain that the PPT addresses each of these components. The consultant's hours shall be determined by the agreement of the Board and the Parents. The educational consultant shall remain in place until both the Board and Parents agree that his or her services are no longer needed by the PPT, but at least through the 2001-2002 school year.