

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education

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Appearing on Behalf of the Board: Attorney Marsha Belman Moses
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Appearing Before: Attorney Gail K. Mangs, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the school district offer an appropriate program and placement for the Student for the 2001-2002 and 2002-2003 school years?
2. If the school district did not offer an appropriate program and placement for the Student, did the Chamberlain School in Middleboro, Massachusetts offer an appropriate program and placement for the Student?
3. Did the school district fail to properly evaluate the Student for the 2002-2003 school year?
4. Did the school district fail to convene a PPT following the Student's discharge from Hall-Brooke Hospital in May, 2002?

PROCEDURAL HISTORY:

This hearing was requested on January 17, 2003. The prehearing conference was convened on February 4, 2003. Hearing dates were initially scheduled for March 10, 11 and 13, 2003. The hearing went forward on March 11, 2003. March 10 and 13, 2003 were postponed to allow for completion of a neuropsychological evaluation of the

Student; April 28 and May 12, 13, 15 and 16, 2003 were added as hearing dates. April 28, 2003 was postponed because the Parent (Guardian) attorney had to appear in Federal Court. The hearing went forward on May 12, but May 13, 15 and 16 were postponed because the Student's neuropsychological evaluation was still not complete. June 18, 23 and 24, 2003 were then scheduled and the hearing went forward on those dates. July 22 and August 4, 2003 were added as hearing dates; the hearing went forward on July 22 but August 4 was postponed due to a medical situation. The hearing was rescheduled and went forward on September 5 and 9, 2003. The parties requested permission to submit briefs. Permission was granted with briefs to be postmarked by September 26, 2003. Postponements were requested by both Parent and Board attorneys; a final postponement for briefs was granted with the postmark date set as October 10, 2003; October 17, 2003 was set as the final date for the mailing of the final decision and order. The Parent called the following witnesses: The Student's Guardian; Dr. Elizabeth Baldwin, Student's Psychologist; and Lawrence Mutty, Chamberlain Director of Admissions. The Board called the following witnesses: Dr. Dorothy Stubbe, Psychiatrist; Barbara Hennes, middle school resource room teacher; Dr. Daniel French, Program Administrator of Cooperative Education Services ("CES") therapeutic day program; Dr. Robert A. Novelly, Clinical Psychologist/Neuropsychologist; and Andrea Arnold, Brien McMahon High School social worker. The Parent called the following rebuttal witnesses: the Student's Guardian; Doreen Burke, Chamberlain School Clinical Director/Therapist; and Dr. Elizabeth Baldwin.

SUMMARY:

The Student, who is now almost 16 years old and who was born with cocaine in his system, began receiving special education services as a learning disabled student when he was in the third grade. After his biological family became unable to care for the Student during his third grade year, he became the temporary and later permanent ward of the Guardian and her boyfriend. The Student made satisfactory academic progress through the end of seventh grade although he often experienced episodes of behavioral dyscontrol. When the Student was in the seventh grade, the Guardian and her boyfriend ended their relationship when the boyfriend became physically and mentally abusive towards both the Student and the Guardian. While experiencing this emotional upheaval at home, the Student also found it difficult to deal with the pressure of increasing academic expectations. During eighth grade, he began to act out and display uncontrollable rage both at school and at home culminating in a suicide threat and a one week hospitalization at the Hall-Brooke Hospital, where he was diagnosed with Bipolar Disorder and Post Traumatic Stress Disorder. In the fall of 2002, the Student began ninth grade at the school district high school. He displayed difficulty adjusting to high school almost immediately. He acted out during classes, cut classes, and was generally unable to maintain emotional stability in the school. By October, his Guardian was allowing him to stay at home. The school district provided homebound tutoring and requested, and received consent for a psychiatric evaluation. By the time the evaluation was complete in January, 2003, the Guardian had unilaterally placed the Student at the Chamberlain School and requested that the school district pay for this placement. The PPT refused to support the placement; they recommended exploring therapeutic day placements as well as a neuropsychological evaluation. The Guardian requested due process. The neuropsychological evaluation was completed in June, 2003.

FINDINGS OF FACT:

1. The Student had a problematic biological family. At birth (November 5, 1987), he reportedly had cocaine in his system and his early development was delayed. There are also reports that he was neglected and physically and emotionally abused by his parents. While in second grade, the school social worker offered services to the Student's parents because he was falling asleep in class and seemed sad and overwhelmed; he was also frequently absent. Referrals were made to the Department of Children and Families for parental neglect. (Exhibits B-3, B-5, Testimony of Guardian)
2. During November, 1996, when the Student was in the third grade, his parents were evicted from their home and became unable to care for him. The Guardian and her boyfriend, who were neighbors of the Student's family and had developed a close relationship with the Student, offered to care for him. They obtained temporary guardianship with the consent of the Student's parents. The following year, the Student's parents ended their marriage. The Student's father was then in prison; his parental rights were terminated and, with the consent of the Student's mother, the Guardian and her boyfriend became the Student's permanent guardians in November, 1997. During this time, there were incidents in school where the Student's behavior was out of control. (Testimony of Guardian)
3. Psychological and psychoeducational testing were performed during the 1996-1997 school year (third grade). While the Student's cognitive ability fell within the average range, severe weaknesses were discovered in the areas of reading, writing and spelling. The Student was found eligible for special education services as a student with learning disabilities. An IEP was developed that included two hours per week of resource room services. (Exhibits B-13, B-14, B-16)
4. During the fourth and fifth grades, the Student's attendance improved and he made satisfactory academic progress. He continued to receive resource room services as well as support with decoding. (Exhibits B-22, B-26, B-27, B-32, Testimony of Guardian)
5. The triennial evaluation was performed during September and October, 1999 (sixth grade). Reading, writing and spelling continued to be areas of weakness for the Student. His teachers reported that inconsistent performance and homework completion were areas of concern although he was making satisfactory academic progress. While in sixth grade the Student was suspended for threatening to shoot a student; during this year, the Student met with Kathy Hayes-Black, social worker, for counseling. (Exhibits B-37, B-38, B-39, B-41, B-49, B-50, B-51, B-52, B-53, B-54, Testimony of Guardian)
6. Seventh grade was a relatively successful year for the Student. He made good academic progress as well as progress both in work completion and maintaining consistent performance. He received "B's" and "C's" on his seventh grade report cards. During that year, however, the Guardian and her boyfriend ended their relationship due to his alcohol abuse and physical abuse of both the Guardian and the Student. During the winter, 2001, the Guardian moved into a nearby house leaving the Student with her ex-

boyfriend (at the Student's request). The ex-boyfriend's drinking and abuse of the Student increased; eventually the Student left the ex-boyfriend's house and went to live with the Guardian. (Exhibits B-57, B-60, Testimony of Guardian)

7. Although the Student and the Guardian were now living apart from the Guardian's ex-boyfriend, the ex-boyfriend continued to call their home and leave harassing messages directed at both the Student and the Guardian. During the Student's eighth grade school year, the Guardian obtained a restraining order against her ex-boyfriend. The Student exhibited negative behaviors and increased depression as a result of these incidents. (Exhibit P-1, Testimony of Guardian)

8. While the Student continued to experience stress at home, eighth grade also proved to be more stressful and demanding as students were expected to prepare for high school. During eighth grade, the Student was in regular education classes (some cotaught by both regular and special education teachers) and received two hours per week of special education services in the resource room. Modifications such as books on tape, oral testing and preferential seating were implemented for the Student. His eighth grade teachers, however, reported that after December, 2001, he often displayed unacceptable, disruptive behavior in class. He showed little effort and at times would shut down and refuse to work. As the assignments became more difficult, the Student expressed feelings of stupidity. The Guardian testified that during the latter half of the Student's eighth grade year, she spoke to school personnel multiple times about the Student's academic difficulties and negative behaviors. The school dealt with these issues by allowing the Student to go to the resource room to compose himself when he became upset. He received a suspension that year for making an inappropriate comment and then pushing a vice-principal. The Student received "C" and "D" grades during eighth grade. (Exhibits B-60, B-61, B-62, B-65, Testimony of Guardian, Barbara Hennes)

9. During the spring of 2002, the Student's emotional state grew worse. He experienced uncontrollable rages during which he punched walls and broke things both at home and at school. In March, 2002, the Student began treatment with Dr. Elizabeth Baldwin. On one occasion, the Student ran out of Dr. Baldwin's office during a therapy session. On another occasion, he began hitting the walls in Dr. Baldwin's office and the police were called to restrain him. The Student has broken his fingers several times as a result of punching walls. (Testimony of Dr. Baldwin, Guardian)

10. On April 30, 2002, the PPT convened to plan for the Student's ninth grade year in high school (the 2002-2003 school year). The PPT planned a program that included English, World History, General Science, Algebra I, Italian, Word Processing, 2.5 hours per week of resource room services and one half hour per week of counseling. Neither an evaluation nor a functional behavioral analysis were requested despite the Student's increasing level and intensity of behavior incidents. (Exhibit B-64)

11. In May, 2002, the Student was hospitalized at Hall-Brooke Hospital for approximately one week after an incident in which he became distraught, held a knife to his throat and threatened to kill himself. While at Hall-Brooke, the Student was diagnosed with Bipolar Disorder and Post Traumatic Stress Disorder ("PTSD"). He began taking Seroquel and Depakote, two medications he currently continues to take.

Hall-Brooke made no educational recommendations, but did advise continued therapy as well as medication management. After he was discharged from the hospital, he returned to school in his regular program. A PPT was not held although the Guardian met with the Student's teachers before his return and requested that the school not make any demands or pressure him in any way. During the remainder of the school year, the Student was less motivated and produced less academic work although he attended school regularly. He failed most of his subjects for the fourth quarter and ended the year with "C's" and "D's". (Exhibit B-65, Testimony of Guardian, Dr. Baldwin, Ms. Hennes)

12. During the summer of 2002, the Student received tutoring arranged for by his Guardian; he also met with Dr. Baldwin twice per week. By mid-summer, he was feeling less stressed; sessions with Dr. Baldwin were reduced to once per week. (Testimony of Guardian, Dr. Baldwin)

13. Within the first two weeks of the 2002-2003 school year, the Student began demonstrating difficulty adjusting to high school. Instances were reported where he cut class or was tardy, walked out of classes, was truant from school, and was disruptive and insubordinate. While the high school teachers did not report feeling threatened by the Student, he was often agitated, and had episodes of yelling and swearing in classes. On at least one occasion, the high school social worker asked the Guardian to take the Student home because he was wandering the halls and she was concerned for his safety. A behavior management plan was developed during September, 2003, which allowed the Student to leave class and go to the guidance office whenever he felt frustrated and/or needed to cool down. The plan was not always appropriately implemented as his teachers were not properly instructed about the plan. His medications, as well as his sessions with Dr. Baldwin, were increased. (Exhibits B-68, B-70, B-73, B-75, Testimony of Guardian, Andrea Arnold)

14. Dr. Baldwin testified that she agrees with the PTSD diagnosis; during his rages, the Student has had intrusive recollections of his abuse in early childhood and that PTSD symptoms may reemerge when he is under stress. She also agrees with the bipolar diagnosis. While the Student is on medication, he is still quite impulsive and has difficulty managing his feelings. During September, 2002, Dr. Baldwin had to call 911 when the Student expressed suicidal thoughts, became enraged and left her office during a therapy session. Dr. Baldwin also believes that the Student's learning disabilities impact on his fragile self-esteem and feelings of inferiority; this leads him to act out against his peers and teachers. Dr. Baldwin recommends a structured, residential educational program with small classes and mental health services so that the Student's psychiatric and emotional difficulties, which are intertwined with his educational needs, can be dealt with in both the academic and residential settings. (Exhibit B-76, Testimony of Dr. Baldwin)

15. On October 25, 2002, the PPT convened to review the Student's situation and his numerous absences and tardies. His Guardian was now keeping the Student at home; she reported that he had feelings of hopelessness and had told her "other people would get hurt" if he had to return to school. She also described an incident where the Student had tried to jump out of her moving car rather than go to school. She did not feel it was safe to force him to attend school. Dr. Baldwin reported that the Student was depressed and

withdrawn. The school social worker confirmed that when she saw the Student he seemed depressed. The Guardian stated that she was exploring residential placements for the Student and requested school district support for such a placement. The PPT requested completion of a psychiatric evaluation before agreeing to any placements; the Guardian consented to the evaluation and requested homebound tutoring. The PPT agreed to provide up to 10 hours per week of tutoring and planned to reconvene after the psychiatric evaluation was completed. Goals and objectives were not modified or changed at this meeting. (Exhibit B-80)

16. Homebound tutoring generally went well although at least twice the Student lost control with the tutor. Tutoring continued until the Christmas vacation. (Exhibit B-84, Testimony of Guardian)

17. On behalf of the school district, Dr. Dorothy Stubbe, a child and adolescent psychiatrist, performed a psychiatric evaluation of the Student during December, 2002. In a report dated January 16, 2003, she described him as cooperative but depressed with fragile self-esteem, fear of abandonment, temper issues, poor frustration tolerance and feelings of inadequacy due to his academic struggles. When overwhelmed, he responds impulsively with avoidance or verbal or physical aggression including rude or threatening comments, punching walls, or thoughts/actions of hurting himself. Dr. Stubbe diagnosed the Student with Post-traumatic Stress Disorder, Bipolar Disorder, and Learning Disorder with moderate to severe stressors. She recommended a full day educational program of highly structured therapeutic and educational programming which can meet his emotional, behavioral and special learning needs; such instruction should take place within a small setting. Dr. Stubbe also recommended that the Student receive behavioral services or after-school therapeutic programming to stabilize his high level of reactivity as well as continuing outpatient psychotherapy and medication treatment. During testimony, Dr. Stubbe also suggested in-home behavior services to keep him stabilized because he can become violent when he is not emotionally stable; in addition, destabilization can affect his ability to be educated. According to Dr. Stubbe, one of the Student's major stressors are his feelings about school and his feeling of inadequacy with regard to learning; therefore, his teachers, therapists and Guardian must closely coordinate and collaborate. Dr. Stubbe believes that students should be residentially placed only when they have failed in other settings. (Exhibit B-83, Testimony of Dr. Stubbe)

18. On January 17, 2003, the PPT reviewed Dr. Stubbe's report. The PPT changed the Student's primary exceptionality to Serious Emotional Disturbance and recommended a neuropsychological evaluation. The Student's Guardian reported that after investigating several schools, and being turned down by at least one that felt unable to deal with the Student's disabilities, she had unilaterally placed the Student at the Chamberlain School, in Middleboro, Massachusetts, on January 2, 2003. She requested that the school district fund the placement; the PPT denied this request and offered to investigate and fund local therapeutic day programs. CES and Hall-Brooke were mentioned as possibilities at this PPT but may not have been specifically recommended at that time. The Guardian consented to an independent neuropsychological evaluation. No change was made to the IEP. (Exhibit B-84, Testimony of Guardian)

19. Dr. Robert A. Novelly, a clinical psychologist/neuropsychologist, performed a clinical diagnostic neuropsychological examination during February, March, April and May, 2003. His report is dated June 21, 2003. After reviewing educational records, administering an evaluation, visiting CES and Cedarhurst and interviewing the Student, his Guardian, Dr. Baldwin and the Student's therapist at Chamberlain, Dr. Novelly concluded that the Student's cognitive ability falls within the average range but that he does have special education needs in reading and math, slow verbal processing and weakness in the area of attention and concentration. Dr. Novelly does not believe the Student has either bipolar disorder or PTSD although the Student does have elements of PTSD and situational mood swings and depressive moods. He views the Student as having episodic behavioral dyscontrol that is close to clinical significance as a result of frontal lobe compromise contributed to or caused by the cocaine dependency present at the Student's birth. The Student's behavior is vulnerable to the conditions around him: he is easily overwhelmed but when his environment and the people around him are controlled, he can be manageable. Dr. Novelly believes that the dysfunction present in the Student's early family life as well as the dissolution of the relationship between the Guardian and her boyfriend reinforced the Student's fragile emotional status. Dr. Novelly diagnosed the Student with Learning Disorders and Personality Change/ Disorder due to cocaine dependency at birth. (Exhibit B-88, Testimony of Dr. Novelly)

20. Dr. Novelly recommended a therapeutic day program such as the Cedarhurst School or the CES program, medication management, and ongoing psychotherapy both within and outside the academic environment. Dr. Novelly believes that residential placement is overly restrictive and is currently unnecessary to meet the Student's needs although the Student requires close supervision. He also believes that residential placement could exacerbate the Student's feelings of abandonment and difficulties with attachment. Dr. Novelly testified that in addition to a therapeutic day educational program and ongoing psychotherapy, the Student also requires after school services, an extended school day and a summer program. He also suggested that the Student might need someone from the school to follow up on him in the evenings. In addition, the Guardian should receive support services and individual or family therapy. According to Dr. Novelly, these identified services are all necessary if the Student is to benefit from his education. Dr. Novelly believes residential placement may be appropriate if, after these services are in place, the Guardian is still unable to manage the Student and get him to school regularly. (Exhibit B-88, Testimony of Dr. Novelly)

21. The Chamberlain School is approved by the Massachusetts Department of Education to provide special education and therapeutic treatment. Students can receive a high school diploma from Chamberlain although the average student stays about a year and a half. The school serves students aged 11 through 18 with overlapping educational and emotional disabilities and average to above average cognitive ability. The Student's emotional and learning profile is similar to other students at Chamberlain. There are currently 66 residential and 25 day students. The school operates on a 12 month schedule. Students receive all their core academics in a classroom of approximately 8 students with two teachers one of whom is a certified special education teacher; specialists come into the classroom to teach art, music, drama and Spanish. Campus staff who interact with the Student include a therapist, residential staff, nursing staff, a psychiatrist and a group therapist. Once a week, the Student receives both group and

individual therapy. A point and level behavior system is used to motivate the students. Home visits are possible on the weekends based upon the decision of the student's team; home visits are linked to the level system as needed. (Testimony of Lawrence Mutty)

22. Shortly after arriving at Chamberlain, the Student became quite ill and had to return home to be hospitalized; he returned to Chamberlain towards the end of February. The Student's weekends home are linked to his progress on the school's level system; his desire to continue biweekly weekend visits home is his primary motivation in this system. Despite this motivation, the Student has experienced struggles following rules, staying in class, and avoiding disputes with his peers. He has had to be physically restrained on at least six occasions since arriving at Chamberlain. He has also had frequent verbal altercations with students and teachers and often refuses to do school work. Doreen Burke testified that these behaviors must be changed before he can return home permanently. She also testified that she concurs with the PTSD and bipolar diagnoses. The Student's behavior remains inconsistent; in August, 2003, the Student was actually at a lower psychological point than he was in February, although since then, he has improved. (Exhibits P-3, P-6, Testimony of Doreen Burke, Guardian)

23. At Chamberlain, the Student studies math, English, social studies, science, Spanish, health, art and physical education. During his first term, he received grades of "A's," "B's," and "C's" although he still experiences difficulty completing assignments and staying in class. When he is unable to work in class (usually because he is agitated by his peers), he is allowed to work on school assignments in the hallway outside the classroom. (Exhibits P-3, P-4, Testimony of Doreen Burke)

24. The Student currently smokes marijuana when he is at home. By all reports, he does not use marijuana at Chamberlain. Both Dr. Novelly and the Guardian testified that the Student's marijuana use is a form of self-medication that has a quasi-tranquilizing effect. (Testimony of Guardian, Dr. Novelly)

25. Cooperative Educational Services or "CES" has been proposed by the school district as an appropriate placement for the Student. CES is a public special education school that serves students from the surrounding region with significant behavioral and/or social/emotional difficulties. It is a ten month program and does not have an extended day program. The CES high school serves from 40 to 46 students in 6 classrooms of 5 to 9 students per class. Each class has at least one special education teacher and one paraprofessional. Behavior contracts and a point system are used to earn rewards such as being able to wear hats in school or visit other classrooms. Each student receives a minimum of 45 minutes per week of both individual and group therapy. CES also employs speech and occupational therapists, clinical social workers and a psychologist. The students present with a variety of difficulties including anxiety, mild to moderate conduct disorders, school phobia and depression; some of the students are also learning disabled. CES works closely with the family in school resistance situations. CES teaching staff have physical management training and have been trained to de-escalate situations that require such intervention but the school does not accept students with a history of physical aggression or assault. Major rule violations such as leaving the building without permission or creating a number of serious class disruptions can lead to suspension. (Testimony of Dr. Daniel French)

26. On June 16, 2003, the PPT convened to review Dr. Novelty's report. At that time, the PPT proposed placement either at the high school or at CES with two hours per week of counseling with the school psychologist, a school to work program which meets for two hours after school, and a summer program. (Exhibit B-86)

27. While the Student resisted attending Chamberlain and wanted to return home, he now seems to have accepted his placement. His Guardian testified that the Student feels he has more of a life at Chamberlain than he would if he were attending CES, after-school programs, summer programs and therapies. While his behavior at home has improved, he continues to have periods of dyscontrol. His relationship with his Guardian, however, remains close and he does not feel abandoned. (Testimony of Guardian)

CONCLUSIONS OF LAW:

1. Both parties agree that the Student, who has been identified as emotionally disturbed and as having learning disabilities, is 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 Sections 10-76 et seq, and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. 1401 et seq.

2. In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the Supreme Court set forth a two part test for determining whether FAPE has been provided. First, it must be shown that the procedural requirements of the IDEA have been met and second, the individualized program must be reasonably calculated to enable the child to receive educational benefit.

3. The IDEA also requires that children with disabilities be educated in the least restrictive environment ("LRE") and are to be removed from regular education 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)(A)). In order to meet this requirement, school districts must "...ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services." (34 C.F.R. Section 300.551(a)) These alternative placements must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. (34 C.F.R. Section 300.551(b)(1)) Therefore, the IDEA contemplates the necessity of a wide range of placements in order to appropriately meet the individualized needs of disabled students. There is no requirement that a student be unsuccessful in one placement before moving to a more restrictive placement.

4. The program proposed by the school district for the 2002-2003 school year was not appropriate. The IEP written in April, 2002 and found in Exhibit B-64 is not appropriate nor is the IEP that was proposed on June 16, 2003 (Exhibit B-86). Between these two PPT meetings, other meetings were convened but did not result in any change in goals or objectives.

5. The evaluations offer a fairly consistent picture of the Student. He was diagnosed with PTSD and bipolar disorder at Hall-Brooke Hospital; Dr. Chamberlain, Dr. Stubbe and the Student's therapist at Chamberlain have all concurred in this diagnosis. Although Dr. Novelty believes that the Student's symptomology does not rise to the level of a clinical diagnosis of PTSD or bipolar disorder, he does confirm the existence of behavior dyscontrol close to clinical significance, depressive moods, a fragile emotional status and special education needs.

6. Based upon his evaluation, Dr. Novelty concluded that the Student requires close supervision in a program that essentially offers services around the clock. Dr. Novelty specified the Student's need for the following program components: a therapeutic day program, medication management, after school services, an extended school day, a summer program and ongoing psychotherapy both within and outside the academic environment. He also suggested that the Student might need someone from the school to follow up on him in the evenings. In addition, he recommended that the Guardian receive support services and individual or family therapy. Dr. Stubbe, who testified on behalf of the school district, recommended behavioral services or after-school therapeutic programming to stabilize the Student's high level of reactivity as well as continuing outpatient psychotherapy and medication treatment. During testimony, Dr. Stubbe also suggested in-home behavior services to keep him stabilized because he can become violent when he is not emotionally stable and destabilization can affect his ability to be educated.

7. The program offered by the school district diverges sharply from what was recommended by Dr. Stubbe and Dr. Novelty, upon whose reports the school district relied. The school district offered placement either at the high school or at CES with two hours per week of counseling with the school psychologist, a school to work program, which meets for two hours after school, and a summer program. This proposed program does not come close to meeting the program requirements as delineated by either Dr. Stubbe or Dr. Novelty. Two hours per week of counseling with the school psychologist does not provide therapy equivalent to ongoing psychotherapy with a therapeutic professional nor does it offer any therapy outside of school as the Student so obviously requires and the school district experts recommended. The IEP contains no description of what the school to work program entails or how it meets Dr. Stubbe's requirement of after-school therapeutic programming that can stabilize the Student's high level of reactivity. The proposed program also does not offer any in-home services to keep the Student stabilized and on task as suggested by both Dr. Stubbe and Dr. Novelty. Finally, the June 16, 2003 IEP provides counseling for the Guardian but offers no details so it can not be determined whether it fulfills Dr. Novelty's recommendation of therapy and support services.

8. It is also unlikely that CES alone can meet the Student's needs. It does not provide any services outside the school or outside school hours. It does not provide a reward system that would be particularly meaningful to the Student. According to Dr. French, CES also does not accept students who are assaultive or physically aggressive. In addition, CES suspends students who seriously disrupt classes or leave the building without permission. It is highly doubtful that the Student would have been able to stay at CES had he enrolled there during the 2002-2003 school year. However, as stated above,

the Student does not need to first attend, and either be unsuccessful, or asked to leave CES before moving on to a more appropriate, albeit more restrictive, placement.

9. 34 C.F.R. 300.302 states that “If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.” It is clear that the Student requires residential placement in order to benefit from his educational program. During the fall of 2002, the Student continued on a downward spiral that had begun during the previous winter. His problems adjusting to school began almost immediately. The findings of fact are replete with references to his cutting class, tardies, walking out of classes, punching walls and disruptive behavior such as yelling and swearing in class. At least one time, the Guardian was called and asked to take the Student home because he was wandering the school halls arousing concerns about his safety. In addition, the Student was making threatening comments and, during one incident, had jumped out of his Guardian’s car rather than go to school. The behavior plan that was developed to deal with these behaviors allowed the Student to leave class when he was frustrated or needed to cool down; this plan was insufficient to meet his needs (it should be noted that a functional behavior assessment was never done). Clearly, the Student was deriving no educational benefit from the school district program at that time. Finally, the Student’s Guardian allowed him to stay at home and the PPT agreed to provide homebound tutoring. While he continued to attend therapy sessions and his negative behaviors and depression abated somewhat, the Student continued to present with psychological problems that interfered with his ability to attend school or even be educated at all.

10. In order to be educated, the Student requires an integrated program that provides all of the services recommended by Dr. Stubbe and Dr. Novelly. As Dr. Stubbe noted, one of the Student’s major stressors are his feelings about school and his feeling of inadequacy with regard to learning. In addition, destabilization affects the Student’s ability to be educated; this leads to a vicious cycle of stress caused by his learning difficulties thereby leading to greater stress. Therefore when, as here, a student’s emotional problems, which require residential treatment, are completely intertwined with educational difficulties, the school district is responsible for the residential placement. “The fact that a residential placement may be required to alter a child’s regressive behavior at home as well as within the classroom, or is required due primarily to emotional problems, does not relieve the state of its obligation to pay for the program under federal law so long as it is necessary to insure that the child can be properly educated.” Mrs. B. ex rel M.M. v. Milford Board of Education, 103 F.3d 1114 (2d Cir. 1997) In addition, in Naugatuck Board of Education v. Mrs. D., et al, 10 F.Supp.2d 170 (D.Conn. 1998) the Court ordered the school district to pay for residential placement where the student’s academic needs were not serious, but his social and emotional problems were severe and qualified as educational needs warranting residential placement. For the Student, the educational and psychological support services needed and recommended are so numerous, and so totally encompassing of the Student’s waking hours, that realistically, they can only be appropriately provided and integrated in a residential setting.

11. Both Dr. Novelty and Dr. Stubbe testified that they would not recommend residential placement unless the Student was first unsuccessful in a day treatment program. As previously discussed, the Student does not have to fail in a day program in order to prove his need for a residential placement.

12. Under the line of cases that includes Burlington v. Dept. of Educ., 736 F.2d 773 (1st Cir. 1984), aff'd 471 U.S. 359 (1985) and Florence County Sch. Dist. Four v. Carter, 510 U.S. 359 (1985), a parent can unilaterally place their child in a private school and seek payment for such placement from their school district. This first requires a finding that the school district's proposed program was not appropriate, and second, that the parental placement is appropriate. The program proposed by the school district was not, as explained above, appropriate to meet the individualized needs of the Student.

13. Considering the Student's needs and under the circumstances presented to the Guardian at the time she unilaterally placed the Student, the Chamberlain School offered an appropriate program for the 2002-2003 school year. While the school district has asserted that Chamberlain, as a private, residential school for students with overlapping educational and emotional disabilities is overly restrictive and inappropriate, a parent's private placement need only be appropriate; it does not have to be perfect. In Norton School Committee v. Massachusetts Department of Education, 768 F. Supp. 900 (D.Mass. 1991), the Court stated that in unilateral placement cases, the requirement that parents show that the school's proposed IEP was inappropriate, and that their placement was appropriate, "...cannot be viewed in a vacuum, and a school's failure to provide an appropriate education should be considered when determining if the parents' placement for the child was appropriate...it is not necessary for a parent, when faced with a pressured decision of where to place her child, to seek out the perfect alternative placement."

14. The Student's Guardian was faced with just such a decision. The Student was unable to attend classes in the high school; his educational program consisted of a schedule of (up to) 10 hours per week of tutoring. It was not clear how long it would take to change the educational situation. Dr. Stubbe's report was not completed and reviewed until January at which time she recommended a neuropsychological evaluation and the PPT discussed the possibility of exploring therapeutic day placements. But nothing was specifically offered and the neuropsychological evaluation was not completed until June. The Guardian believed that sitting at home was not helping the Student and very possibly, was exacerbating the situation. After looking into several possible residential placements, and being turned down by schools who stated they were unable to accept the Student due to the nature and severity of his disabilities, she chose a school that provided a program reasonably calculated to provide educational benefit and that was willing to accept the Student.

15. Chamberlain is approved by the Massachusetts Department of Education to provide special education and therapeutic treatment. It serves students with overlapping educational and emotional disabilities through a curriculum that includes core academics taught by a certified special education teacher (and assistant) and extracurricular subjects. It provides both group and individual therapy and academics on a twelve month schedule. Chamberlain has all the components of an appropriate program for the Student. But there

is no doubt that the Student has had a rocky time at the school. He has demonstrated many of the same behaviors that were seen at Brien McMahon High School and in his home. While it appears that he never had to be physically restrained at McMahon, he was only there for six weeks. He also had the ability to leave classes and the building; as previously mentioned, his Guardian was even asked to take him home on at least one occasion. As the Student's behavior deteriorated, his Guardian chose to keep him at home; had he been forced to attend Brien McMahon, it is uncertain how he would have reacted. Chamberlain is not perfect, but it was appropriate.

16. The Guardian also claims that the program offered for the 2001-2002 school year was not appropriate. The parties agree that the first half of the school year went well. But during the second half of the year, the Student's behavior and academic performance severely declined. The combination of the stressful situation at home and the increasing pressures from academic work meant to prepare students for high school, led to decreasing grades and increasing rage in the Student. This culminated in the emergency Hall-Brooke hospitalization. The Student returned to school for the remainder of the school year but flunked most of his subjects for the fourth quarter. During this entire period, there was no evaluation, no functional behavioral analysis and only one PPT, which was convened to plan a program for the following school year.

17. 20 U.S.C. Section 1414(a)(2) requires reevaluations when conditions warrant a reevaluation or if a child's parent or teacher requests a reevaluation, but at least every three years. 20 U.S.C. Section 1414(d)(4)(A) requires IEP teams to review the IEP periodically and to revise the IEP to address lack of expected progress, results of reevaluations, information about the child, the child's anticipated needs, or other matters as needed. Certainly the Student's deteriorating academic performance and behavior should have triggered some action on the part of the PPT if not before his hospitalization, than at least after. But the Student returned to school with no change in his program other than the school complying with the Guardian's request that they not push him. That the Guardian did not ask for a PPT or reevaluation is of no consequence; it is the school's responsibility as the educational professional to take the appropriate action when an educational program is not providing benefit to a student or when a change in the student's life impacts negatively on his educational performance as it did here shortly before and then after the Student's stay at Hall-Brooke.

18. The school district has argued that the appropriateness of the programs offered for the 2001-2002 and 2002-2003 school years, the failure to evaluate and the failure to convene a PPT after the Student's discharge from Hall-Brooke are not properly issues as they were not raised first at a PPT; and, that this hearing was requested before hearing officers were instructed in July, 2003 not to require that hearing issues first be raised at a PPT. The purpose behind this original requirement was to be sure that parties had ample notice of issues, time to resolve such issues, and time to prepare for hearing on those issues. It was never intended to be a bar to appropriate hearing issues of which the school district had at least constructive notice. The Office of Special Education Programs of the Federal Department of Education has therefore found that this requirement is inconsistent with IDEA requirements and shall not be used to bar a party from exercising their right to a due process hearing. The school district in this hearing is well aware of their responsibilities. In any case, there is no doubt that the school district

knew of the Guardian's dissatisfaction with the programs offered; she would not have placed the Student at Chamberlain if she believed the school district program was appropriate. In addition, this hearing was requested in January, 2003, did not convene until March, and has been stretched out over many months; the school district has had ample time and notice.

19. Therefore, it is concluded that the school district should have evaluated the Student in the spring of 2002 and should have convened a PPT after the Student's hospitalization at Hall-Brooke. It appears that the Student's behavior truly began to escalate in the late winter of 2002. By April, the PPT should have been seriously studying the Student's declining academic and emotional situation. Considering that the Student failed most of the fourth quarter, an extended school year should have been provided (as recommended by Dr. Novelty), but it was not even considered. Therefore, the Student is entitled to compensatory education for April, May, and June of the 2001-2002 school year and July, 2002 through June 2003 (the 2002-2003 school year). Thus, the Guardian will be reimbursed for the total costs incurred in sending the Student to Chamberlain for 15 months, including tuition, books, residential, travel, therapeutic and any other costs associated with attendance as a residential student at Chamberlain. Should the Student not complete 15 months at Chamberlain for any reason, such compensatory education shall be provided by payment for a similar school as agreed to by the Guardian in consultation with school personnel.

FINAL DECISION AND ORDER:

1. The school district did not offer an appropriate program for April, May and June of the 2001-2002 school year or the entire 2002-2003 school year.
2. The Chamberlain School does provide an appropriate program and placement to the Student.
3. The school district failed to appropriately evaluate the Student in the spring of 2002 for the 2002-2003 school year.
4. The school district should have, but failed to convene a PPT following the Student's discharge from Hall-Brooke Hospital in May, 2002.
5. The school district shall reimburse the Guardian for the costs incurred in sending the Student to Chamberlain as described in Conclusion of Law no. 19.