

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Putnam Board of Education

Appearing on Behalf of the Parent: Attorney David C. Shaw
34 Jerome Avenue, Suite 210
Bloomfield, CT 06002

Appearing on Behalf of the Board: Attorney Frederick L. Dorsey
Siegel, O'Connor, Zangari, O'Donnell & Beck
150 Trumbull Street
Hartford, CT 06103

Appearing before: Attorney Gail K. Mangs, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is the Student eligible for services under the Individual with Disabilities Education Act ("IDEA")?
2. Did the May 11, 2001 Individualized Education Program ("IEP") provide the Student with a Free and Appropriate Public Education ("FAPE")?
3. Did the Putnam Board of Education provide the Student with appropriate transition services?
4. Is the Putnam Board of Education responsible for payment of the Student's foster placement, therapy and other support services provided by the Department of Children and Families ("DCF")?

PROCEDURAL HISTORY

This hearing was requested on March 25, 2003. The prehearing conference was held on April 7, 2003. On April 30, 2003, the parent moved for an order joining the Connecticut Department of Children and Families ("DCF") as a party to this hearing. On May 8, 2003, the motion was argued on the record and DCF was joined as a party. On June 6, 2003, Assistant Attorney General Paula Sullivan argued against the joinder. On June 13, 2003, DCF requested an articulation of the order. On June 13, 2003, DCF sent a letter to the hearing officer in which they declined to participate in the hearing. The parent

presented the following witnesses: Dr. Thomas Kehle, Director of School Psychology at the University of Connecticut; Bruce Garrison, Advocate from the Connecticut Office of Protection and Advocacy; the Student's mother; Dr. Ernest Pancsofar, Chair of the Special Education Department at Central Connecticut State University; the Student; and Sonji Fonseca of the Connecticut Department of Administrative Services. The Board presented the following witnesses: JoAnn Messina, Putnam Director of Student Services; John J. Maloney, therapist with Child and Family Services of Pioneer Valley; James Boone, West Springfield Evaluation Team Leader; Dr. Kathleen Bousquet, West Springfield School Psychologist; Dina Sibilis, West Springfield Guidance Counselor; and Lynn Hraba, West Springfield Special Education Teacher. The hearing convened on the following days: April 21, May 8, May 20, June 6, June 17, June 20, and July 2, 2003. Briefs were postmarked as of August 1, 2003. On August 4, 2003, parent requested reply briefs; this request was not approved by the hearing officer.

SUMMARY:

The Student, who will be eighteen years old on August 31, 2003, has a long history of residential placements and hospitalizations due to ongoing psychiatric issues. He has been living in therapeutic foster placement in West Springfield, Massachusetts for the last three years. This placement, along with therapy and other support services, has been funded by DCF who plans to withdraw all funding and supports on the Student's eighteenth birthday. During his junior and senior year of high school, the Student has participated in a computer repair and maintenance program that trains students for the workforce or college entrance. The Student has also taken a course in business entrepreneurship which teaches budgeting and independent living skills; in addition, he has received the typical services of a guidance counselor. The parent believes that the school district has provided inadequate transition services and should be responsible for the Student's foster placement, therapy and other support services, as well as planning and implementing an appropriate transition plan for the next two school years. The parent is also requesting that the school district reimburse the Department of Administrative Services should they ever seek payment for past services provided to the Student by DCF.

FINDINGS OF FACT:

1. The Student has a history of psychiatric treatment from the time he was approximately three years of age. Due to his ongoing psychiatric issues, he has had several short and long term therapeutic placements in hospitals, residential treatment centers and foster care. For the past 3 years he has been living in therapeutic foster placement in West Springfield, Massachusetts. His most recent psychiatric diagnoses are dysthymia and attention deficit/hyperactivity disorder. The Student is also impulsive, has poor judgment and does not deal well with conflict and criticism. The Student's current medications are Wellbutrin and Adderall. (Testimony of Mother, Student, and John Maloney)
2. The Student was the subject of a previous due process hearing, Case No. 95-353, before the current hearing officer. A decision dated May 20, 1996 was rendered in that

action. At the time that decision was rendered, the Student's placement was in Riverview Hospital. (Exhibit H.O.-2)

3. From April, 1996 through June, 1997, the Student was placed at Harmony Hill School, a residential therapeutic school in Rhode Island. He then lived at home with his mother and step-father for approximately 9 months during which time he demonstrated aggressive and assaultive behaviors towards his mother. This led to hospitalizations at Natchaug and Riverview Hospitals. On June 18, 1998, he was admitted to Brightside Residential Treatment Center in Springfield, Massachusetts. (Exhibit B-4, Testimony of Mother, Bruce Garrison)

4. The Student's placements have been made by DCF under a voluntary agreement for non-committed placement. Under this agreement, the Student's mother retains guardianship of the Student, agrees to participate in family therapy and remains responsible for the unreimbursed per capita cost. The family would become responsible for full or partial payment in the event they received a windfall such as a decedent's estate; liens are not placed on wages and bank accounts so there is little chance of the state ever recouping its costs. Currently, the Student's family has no outstanding payment obligation. (Exhibits P-50, P-54, P-55, B-4, Testimony of Sonji Fonseca)

5. In August of 1999, the Student moved to a group home on Brightside grounds. About the same time, the Student began ninth grade at West Springfield High School where he received special education services as a student with an emotional disability (1999-2000 school year). During ninth grade, he attended mainstream classes and received 3.75 hours per week of support in a resource room. He was a member of the swim team and passed all his ninth grade classes with "B" and "C" grades. (Exhibits P-2 and P-11, Testimony of Mother, Bruce Garrison)

6. During the summer of 2000, the Student moved to his first therapeutic foster home; shortly after, the Student began his sophomore year at West Springfield High School. The foster placement was initially successful, but problems developed between the Student and his foster parents with regard to their structure, demands for chores and the Student's difficulty in accepting their authority. As problems developed within the foster home and his residential situation became uncertain, the Student's grades began to slide. DCF wanted him to return home at the end of the school year, but the Student was adamantly opposed to leaving West Springfield and returning to Putnam. This situation was resolved when another therapeutic foster home was finally located during the summer of 2001. (Exhibits P-6, P-25, B-13, Testimony of Mother, Bruce Garrison)

7. The current foster home has become a successful placement for the student where he has developed a good relationship with his foster parents. In addition to supporting the foster placement, DCF provides, through a contract with Tri-County Youth Programs, 24 hour on-call emergency support, therapy, case management services and medication management. His mother feels that the foster parents, while qualified and effective in many respects, have given her son few responsibilities or chores, leaving him unprepared for independent living. The Student spends every second or third weekend with his mother and stepfather. These visits generally go well although there are conflicts if the Student's mother tries to set limits. (Testimony of Mother, Bruce Garrison)

8. At a PPT convened on May 11, 2001, two goals were established for the Student's junior year of high school. First, the Student will be successful in the high school environment, with modifications when necessary (currently, stresses and foster home uncertainty very significant). Objectives for this goal included successful completion of assignments, taking responsibility for homework, classwork and test preparation, and using strategies to regain calmness with emotional support from the learning center. The second goal calls for the Student to complete general education high school courses/guidance programs appropriate for his post-graduation employment/technical school plans. Objectives listed under the second goal included access to routine guidance counselor sessions, completion of vocational interest inventories available from guidance, and the Student's continuing responsibility to coordinate his community-based counseling and medications in preparation for adulthood. The IEP provided for regular education classes; 45 minutes of support every other day in the learning center was the only special education service noted. This plan was also in place for the Student's eleventh and twelfth grade years. With regard to transition services, the IEP stated that the Student's adult career service needs were fully met by regular education and that his psychiatric/other needs were appropriately met by community-based counseling through DCF. It was noted that the Student had difficulty complying with course expectations and needed reminders to complete work. In addition, the IEP states that the Student chose to procrastinate and/or complete only the minimum to pass classes. (Exhibits B-15, B-18, P-8, Testimony of James Boone)

9. The Student was able to pass all his classes and receive full credit for tenth grade (except for algebra, which he dropped), although there were many struggles with motivation, organization and work completion. During the Student's junior year of high school, 2001-2002, the Student began a two year regular education computer program, the Lower Pioneer Valley Educational Collaborative Computer Maintenance Repair Program. This program provides training in computer maintenance and repair and eventually leads to certification ("A++ certification"), making entry level employment possible. The program requires daily attendance each morning (at another site) and high school attendance in the afternoon. The Student continued this program during twelfth grade as well. In addition, during his junior year, he took a course on business entrepreneurship which teaches budgeting and independent living skills. (Exhibits B-18, B-19, B-24, B-37, B-59, Testimony of Mother)

10. The need for transition planning was discussed at a PPT convened on October 12, 2001. Tri-County Youth Programs was asked to complete a functional independent living skills assessment. The PPT also agreed, as part of the Student's transition planning, to make referrals to the Massachusetts Rehabilitation Commission and Department of Mental Health. The Student's mother and OPA advocate felt that the IEP was not appropriate in that it included neither an adequate evaluation of the Student's transition needs nor a comprehensive transition plan that incorporated future residential needs. (Exhibits B-26, B-27, B-30, B-31, B-35, P-11, P-13, P-14, P-15, P-17, P-58)

11. The Massachusetts Rehabilitation Commission determined they were not the appropriate agency for the Student. The Massachusetts Department of Mental Health refused to make a determination of the Student's eligibility until he was closer to his 18th

birthday. As of yet, no adult service agency has been identified that can provide the Student with transition services. (Exhibits B-29, B-38, Testimony of Bruce Garrison)

12. An Independent Living Skills Assessment was completed by the Student with the assistance of his Tri-County Case Manager. The Assessment consisted mostly of self-reporting through the use of a checklist. (Exhibit P-16)

13. The Independent Living Skills Assessment was reviewed by the PPT on December 20, 2001. School district members of the team concluded that the Student's current program was sufficient to meet his transition needs. The team stated that his money management needs were being met through his math course which covered budgeting, use of a checking account, contracts and leases. The team also found that the Student's needs with regard to vocational and college planning were being met both in the collaborative computer program and in a course he would take the following school year that would cover job seeking, resumes and interview skills. The IEP stated transition services as, "5-11'01 annual statement of transition services remains appropriate. Also, [the Student] will benefit from continued natural teenage life experiences to apply skills being taught/learned for independence in adulthood." During this PPT, a DCF representative stated that DCF would only support the Student's residential placement until his high school graduation. The Student's mother and OPA advocate stated that further transition goals, evaluations and planning for the Student's future residential needs were necessary; the rest of the team did not agree. The Tri-County Case Manager stated that the Student was capable of achieving anything he wanted although he needed to be more motivated. (Exhibits P-19, P-20, P-21)

14. The Student's mother requested, and the PPT agreed to provide, an Independent Education Evaluation by Dr. Ernie Pancsofar. Dr. Pancsofar completed an evaluation of the Student's transition plan and prepared a report dated March 30, 2002. In preparing the report, Dr. Pancsofar reviewed educational records provided by the school district, met with the Student's OPA advocate, and conducted telephone interviews with the Student and his mother; he did not talk to the Student's foster parents or school personnel. Since writing the report, he has spoken to the Student's guidance counselor and computer teacher. Dr. Pancsofar concluded that the IEP goals and statement of transition services were insufficient to meet the student's transition needs in the area of interpersonal/social skills development. Dr. Pancsofar testified that the Student's behavior would not be tolerated on any normal job site. He recommended that the time allotted to the Student's special education services be increased, that a situational assessment be conducted to determine what supports the Student would need to live independently, and that linkages be made to agencies that would be able to provide post-high school support. Dr. Pancsofar concluded that the Student's academic skills are adequate; therefore, the Student's high school years would be better spent in acquiring work-related skills, social and behavioral skills, functional living competencies, and self-management strategies. (Exhibits B-44, B-48, P-24, P-26, P-27, testimony of Dr. Ernie Pancsofar)

15. At a PPT convened on May 2, 2002, Dr. Pancsofar's report was discussed. The PPT agreed to purchase ten more hours of Dr. Pancsofar's time so he could interview school

personnel. It was also agreed that a re-evaluation would be performed after which a new IEP would be prepared. (Exhibit P-32, Testimony of Dr. Ernie Pancsofar)

16. A psychoeducational assessment was performed on May 29 and 30, 2002 by West Springfield school psychologist Dr. Kathleen Bousquet. On the WISC-III, the Student received a verbal score of 98, a performance score of 119, and a full scale score of 108 (within the average range). On the Woodcock Johnson III-Tests of Achievement, the Student received scores ranging from low average to above average; in those areas where his achievement was lower than expected, they did not appear to compromise his ability to function within his academic environment. The evaluator concluded that the Student did not qualify for either 504 or special education services based on intellectual, learning or neurological criteria. (Exhibit P-35)

17. At the request of the West Springfield school district, a licensed clinical psychologist, Dr. Meredith S. McCarran, performed a psychological evaluation of the Student in May, 2002. Clinical interviews, the Millon Adolescent Personality Inventory, the Rorschach, the Carlson Psychological Survey and the Thematic Apperception Test were used to perform the assessment. Dr. McCarran diagnosed the Student as having Dysthymia and Attention Deficit/Hyperactivity Disorder. She described the Student as showing no evidence of emerging major psychiatric conditions and stated that his behavioral and emotional status were stable and improving. However, she found that his self-esteem is fragile and that he has not fully internalized coping skills; therefore, any major stressor could send him spiraling down. Dr. McCarran recommended that the Student remain at his current foster home and school for the immediate future and further suggested that he could benefit from remaining at the foster home during any post-high school training. She also advised continuation of his psychological counseling and medication regimen. Finally, Dr. McCarran stated that while the Student "...is not diagnosable with any disabling condition at present, the removal of current supports would quickly put him at risk of acting out again." (Exhibit P-36)

18. In May, 2002, the Student's guidance counselor reported on research she had done on two and four year colleges that offer a computer repair major. Both Springfield Technical Community College and Curry College in Plymouth, Massachusetts offer computer repair as well as educational supports. She recommended that the Student tour the schools, apply to take the SAT's and do research on other potential schools. Neither the Student's case manager nor his mother took him to see either school; they also did not sign him up to take the SAT's. (Exhibit B-58, Testimony of Mother)

19. The Student passed all his classes for the 2001-2002 school year with final grades ranging from 67 to 86. On June 14, 2002, the PPT convened to review the evaluations and the IEP and to conduct an annual review. Based upon the results of the reevaluation, the PPT concluded that the Student could no longer be identified as a student with Serious Emotional Disturbance. The team recommended that the Student be exited from special education for the 2002-2003 school year (his senior year). The Student's mother disagreed with the team's decision and requested an Independent Educational Evaluation. (Exhibits P-40 and P-42)

20. The school district agreed to provide an Independent Educational Evaluation by Dr. Thomas Kehle. Dr. Kehle reviewed evaluations, school progress reports and the previous due process decision, interviewed the Student and his mother, and administered the Youth Self-Report to the Student and Child Behavior Checklist to the mother. He did not observe the Student at school or talk to any school personnel. Dr. Kehle concluded that the Student exhibits characteristics and behaviors similar to students who have been classified with serious emotional disturbances and attention deficit/hyperactivity disorders. In addition, he found the Student to be anxious and depressed with social and conduct problems. Dr. Kehle testified that the Student's friendships are not reciprocal and that the Student is currently unable to build relationships. In September, 2002, the Student began working at a store in West Springfield; Dr. Kehle noted this in his report and predicted that the Student would be unable to maintain a job for any extended length of time. Dr. Kehle concluded that the Student continues to require special education and related services and needs a program that will help the Student learn independent living skills in a natural setting. Dr. Kehle also testified that the Student should continue in the current foster placement with ongoing therapy and case management. He also testified that the Student lives in his own section of the foster home, has few supportive restrictions and is allowed to come and go as he pleases. In addition, Dr. Kehle stated that the Student would not be successful living at home because his mother tries to restrain his behavior; without supports, this could lead to volatile behavior. (Exhibits P-41, P-43, P-47, Testimony of Dr. Thomas Kehle)

21. Dr. Kehle presented the results of his evaluation at a PPT convened on October 17, 2002. The team reviewed the Student's then current level of functioning noting that there were no attendance or discipline problems and that the Student was making good academic progress and maintaining appropriate teacher and peer relationships. The Student's mother reported that his weekend visits were going well. His foster father reported that he saw no unhappiness or depression and viewed the Student as having more self-control. Based upon these reports, the PPT determined that the Student continued to be ineligible for special education. Dr. Kehle, the Student's mother and his OPA advocate disagreed with the PPT and expressed their belief that the Student remained eligible for special education and transition services. (Exhibit P-44, Testimony of Mother, Dr. Kehle)

22. West Springfield school district personnel testified that Dr. Kehle was very direct with the Student at the October 17, 2002 PPT, telling the Student that he was emotionally disturbed, incapable of maintaining relationships and that he would be unable to hold a job for any length of time. Mr. Boone believes that the Student's performance began to deteriorate after this meeting. In Mr. Boone's opinion, the Student's diagnoses did not affect his ability to make effective educational progress. (Testimony of James Boone, Dr. Kathleen Bousquet, Dina Sibilia)

23. The Student obtained a automobile in November, 2002. After several accidents, he could no longer afford the insurance; currently, he is not driving. He also lost his job after allegedly stealing money from his employer. (Testimony of Mother, Dr. Thomas Kehle)

24. Dr. Kehle performed a re-evaluation of the Student in January, 2003. In addition to again interviewing the Student and his mother and reviewing past evaluations, Dr. Kehle reviewed three Teacher Report Forms and observed the Student in classes. He noted that the Student's behavior was appropriate in one class and inattentive in another. In the third class, the collaborative computer class, the Student was productive and on task until the assignment was completed. At that point, his behavior deteriorated. Dr. Kehle concluded that the Student continued to be in need of special education and related services to assist him in making a successful transition to independent community life. (Testimony of Dr. Kehle)

25. Sometime after the October 17, 2002 PPT, the Student's class attendance began to deteriorate. By the end of the first semester, he was flunking most of his subjects and had stopped attending his physical education class. During the winter of 2003, the Student attended class only sporadically and handed in little homework. He also incurred several detentions and suspensions. By February, 2003, there was a real possibility that the Student might not graduate in June. However, even during these periods of poor attendance and performance, the Student continued to attend the collaborative computer course. The Student's attendance improved somewhat during the spring of 2003 when the school became proactive in calling his mother and caseworker when he skipped school. (Exhibits B-85, P-48, P-51, P-59, Testimony of Bruce Garrison, Student)

26. The Student's therapist, John J. Maloney, testified that the Student most likely deliberately sabotaged his school performance. As the reality of graduation and independence grew closer, so did the Student's fear that he might lose his foster home and support services and need to financially support himself. Mr. Maloney testified the Student admitted to him that he was consciously skipping classes due to stress and his fear of independence. James Boone also testified that the Student had confided to him that he had undermined his program in order to avoid graduation. (Testimony of John J. Maloney, James Boone)

27. The Student finished the 2003-2004 school year, what was to be his senior year of high school, by flunking all of his classes except for the collaborative computer repair course, which he successfully completed with a grade of 73 thereby earning the A++ certification. He also passed the MCAS, an examination required for graduation by Massachusetts. The Student did not graduate from high school although English and physical education are his only outstanding graduation requirements. (Exhibit B-86, Testimony of Bruce Garrison)

28. The Student has also been the subject of a Putnam Probate Court Hearing. On March 3, 2003, Judge Ernest J. Cotnoir ordered the Department of Children and Families to continue the provision of services or placement and reunification efforts until August 31, 2003 and to develop, with the parent and child, a school to work transition plan on or before April 18, 2003. (Exhibits P-49)

29. The Student's foster parents have indicated that the Student could continue living with them even if DCF withdraws their support, but they would expect the Student to help with his household expenses. (Testimony of Mother, Student, Bruce Garrison)

30. The Student's current therapist, John J. Maloney, has been working with the Student since September, 2000. During that time, Mr. Maloney has had little contact with the school district. He also provided family therapy to the Student and his mother but neither the Student nor his mother wanted to discuss their issues, and the mother found it difficult to drive the somewhat long distance necessary to attend the counseling sessions. Mr. Maloney believes the Student is not yet ready to live as a self-sufficient, independent adult. The Student's decision making and reasoning are a few years behind his chronological age although he should catch up in a couple of years. Mr. Maloney believes it is crucial that the Student receive transition services, most importantly counseling and medication management. (Mr. Maloney testified that without Adderall, the Student can barely attend to simple questions.) He sees the Student's emotional and psychiatric issues as inseparable from his educational needs. He is not certain if the Student would be successful living at home; although the weekend visits go well, he is unsure if conflict between the Student and his mother could be avoided over longer periods of time. In addition, neither the Student nor his mother are particularly interested in his living at home. (Exhibit B-17, Testimony of John J. Maloney)

CONCLUSIONS OF LAW:

1. Initially, the parent challenged the school district's decision to exit the Student from special education. On the opening day of the hearing, the school district stated that it no longer contested the eligibility of the Student to receive such services. Therefore, there is no dispute that the Student, who has been identified as having a Serious Emotional Disturbance, 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. 1410 et seq.

2. IDEA defines special education as "...specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability..." (20 U.S.C. Section 1402(25)) FAPE is defined as special education and related services which: "(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program..." (20 U.S.C. Section 1402(8))

3. The standard for determining whether FAPE has been provided begins with the two prong test established by the 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 educational program must be reasonably calculated to enable the child to receive educational benefit. Since Rowley, courts have clarified the requirements of FAPE to hold that individualized educational programs offered to children with disabilities must provide more than a 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)) Procedural errors have not been alleged in this hearing.

4. IDEA also requires that the IEP planned for each child contain, beginning at age 14, a statement of the transition service needs (U.S.C. Section 1414(d)(1)(A)(vii). 34 C.F.R. Section 300.29(a) defines transition services as a "...coordinated set of activities for a student with a disability that - (1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual student's needs, taking into account the student's preferences and interests; and (3) Includes - (i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and functional vocational evaluation. 34 C.F.R. Section 300.29(b) states that "Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education." In addition, 34 C.F.R. Section 300.347(b)(2) requires the statement of transition service needs to include, if appropriate, a statement of interagency responsibilities or any needed linkages.

5. Therefore, the transition services (special education and/or related services) that the Student needs in order to move from school to post-school activities, which include independent living and employment or postsecondary education, must be identified. Then, the question becomes whether the school district has provided the appropriate, individualized transition services required by the Student.

6. There is no doubt that the Student has made academic progress and has had many successes. He has passed the MCAS, is academically capable and receives fair to good grades when he makes an effort and completes required work. He successfully reached his senior year in high school with mainstream classes and a minimum of special education services (mostly resource room support). He has also identified an area for future employment in which he is talented and has demonstrated his competence. He is even qualified for an entry level position in computer repair and maintenance with the A++ certification obtained after two years of steady work in the collaborative computer program; achieving this goal took motivation and perseverance. He also knows how to pay bills, balance a checkbook and drive a car. It is most impressive that the Student accomplished all this despite his disabilities and several changes in his living situations.

7. Having stated the above, it is clear that the Student still struggles with his disabilities. Attention deficit/hyperactivity disorder and depression continue to present obstacles. He is also impulsive and has anger management issues as well as fragile self-esteem. This combination of social/emotional/psychological characteristics make it difficult for the Student to form relationships with peers and adults and to deal with stress and uncertainty. The significant stressor in the Student's life is the uncertainty surrounding his post-high school life. During his sophomore year, when difficulties arose between the Student and his foster parents, and DCF proposed sending the Student back to Putnam, his school work deteriorated significantly. The same situation occurred during his senior year; but this time, the Student had to deal not only with the uncertain status of his foster placement, but the possibility of graduation from high school and the

independence that would follow. Fear that he would be unable to cope with this new situation led to the Student's knowing sabotage of his educational program: it was the only way he thought possible to avoid graduation, preserve his foster placement and delay his movement into adulthood.

8. The school district has not provided the appropriate transition services this student needs to move from high school to post-high school life. While it is not required that the school district provide services that will guarantee self-sufficiency (See Rowley), it is required to provide a coordinated set of activities that are based upon individual needs and promote movement towards independent living. That did not occur here.

9. FAPE is more than an accumulation of credits and academic success. The IDEA presents a full array of related services in recognition of the fact that education constitutes more than just traditional academics. The same is true for transition services (see Conclusion of Law No. 4). Here, the transition needs of the Student do not fall within traditional academic realms. Evaluators have been fairly consistent in defining the Student's transition needs. Dr. Pancsofar stressed the Student's need to develop interpersonal and social skills, appropriate job site behavior and self-management strategies. Dr. Kehle echoed these recommendations focusing on the Student's needs in the area of conduct and interpersonal relationships. Dr. McCarran, the school district's evaluator, emphasized the Student's fragile self-esteem and the need to more fully internalize coping skills. Mr. Maloney, who has treated the Student for almost three years and knows him quite well, sees the Student as immature with needs in the areas of relationships, reasoning and decision making skills. Finally, the Student needs to earn the remaining credits required for high school graduation.

10. The May 11, 2001 IEP contains just two goals; it also states that the Student's transition needs are fully met by regular education and that his psychiatric needs are met by community-based counseling through DCF (See Finding of Fact No. 8). While the goals are appropriate and *some* of his transition needs were being met by regular education, neither the goals nor the statement of transition needs are complete. Both goals address the Student's needs within the high school and focus on what he needs to do to graduate. Neither goal addresses the Student's social/emotional needs in more than a superficial way. While his transition needs were partially met by services provided by the guidance counselor, the business entrepreneurship course and the collaborative computer program, the description of transition services does not address difficulties the Student has now and will almost certainly have with job site behavior, interpersonal skills and conduct and organizational skills, all of which will surely impact his ability to obtain and keep a job. It's not enough to have the academic and technical skills; the Student has apparently developed those. But he has not yet developed the self management strategies that he will need in order to deal effectively with post-high school relationships and the types of job and personal stress with which he has already demonstrated an inability to cope. At the request of the PPT, Tri-County did administer an independent living skills assessment, but it was only a checklist confirming the Student's ability to prepare simple meals, clean, do his laundry and maintain appropriate personal hygiene. While this is useful information, it does not give much information about the skill areas the Student truly needs to address. Finally, the IEP transition statement does not address the Student's need for linkages with adult service agencies, a service he will clearly need.

An effort was made to connect with two Massachusetts agencies (Finding of Fact No. 11), but it does not appear that there was any follow-up after the initial approach.

11. Mr. Maloney and the evaluators have identified the transition services that the Student needs in order to move toward life post-high school. First, as emphasized by both Mr. Maloney and Dr. McCarran (the school district's evaluator), it is imperative that the Student's medication regime is continued; medication management requires psychiatric support. Next, ongoing therapy is essential. Again, both Mr. Maloney and Dr. McCarran stressed the key role therapy plays in maintaining the Student's current stability. (Family therapy is also advised but neither the Student nor his Mother seem willing to participate.) Last, an independent consultant will be needed to oversee the creation and implementation of an IEP that contains an appropriate transition plan and goals (and allows the Student to earn the credits necessary for graduation). The plan must include a functional assessment of the Student's independent living and vocational skill areas as well as identify linkages with adult service agencies. These services are essential if the Student is to receive FAPE and make an appropriate transition to post-high school life.

12. The transition services described in the paragraph above must be provided at least through the 2003-2004 school year. The Student was making progress towards his post-high school goals through the beginning of his senior year. While the May 11, 2001 IEP did not appropriately address the Student's transition needs, the school district, during the Student's junior year, provided for multiple evaluations, studied the Student's transition needs, and made the appropriate efforts towards a modification of the Student's transition statement and goals. But during Student's senior year, the school district ignored the evaluators' recommendations and did not modify the transition plan and goals. The Student reacted to this and had a most unsuccessful school year. Therefore, there must be compensation for this disastrous year.

13. Parent has also asked the school district to assume the cost of the Student's foster home when and if DCF stops funding the placement. A school district can be found liable for the full cost of a residential placement when a "residential program is necessary to provide special education and related services to a child with a disability..." In that situation, "...the program, including non-medical care and room and board, must be at no cost to the parents of the child." (34 C.F.R. Section 300.302) In Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1122 (1997), the Second Circuit held that a school district is responsible for funding the residential placement if "...the child requires the residential program to receive educational benefit." Residential placements may be required due to a student's emotional disabilities even where satisfactory academic progress has been made. Where emotional and educational needs are not severable and those needs can only be addressed through residential placement, then the school district is responsible for the total cost of that placement. (See Naugatuck Board of Education v. Mrs. D., et al., 170 F.Supp.2d 170 (D.Conn. 1998)).

14. While it appears that the Student's emotional and educational needs are intertwined, there has been no evidence presented that these needs can only be addressed through a residential placement. Most residential placements by school districts are made when a student requires a highly structured setting with integrated educational and residential

programs that allow therapeutic, educational and behavior strategies to be consistently implemented across the educational and residential components. Those needs do not exist here; the Student seems to have made progress *despite* his placement. While the Student is comfortable in his current therapeutic foster home, nothing suggests that it is therapeutic in any way. Testimony from Bruce Garrison, Dr. Kehle and the Parent all confirmed that the Student has almost total independence in the home. He lives in his own section of the house, has few chores and is free to come and go as he pleases. There was no evidence to suggest that any of the other support services he receives were provided in the foster home. Respite services and 24 hour on-call emergency services were available to the foster parents, but there was no evidence that these services were ever used or even necessary. Apparently the foster parents have received training, but there does not seem to be any in-home therapy, discipline, supervision or guidance. It would seem that the main benefit of the foster placement for the Student is that it is not his mother's house. The therapy and other support services are what have kept the Student stable; not the foster home.

15. There is no doubt that the Student and his mother have many issues between them and that their relationship has been difficult. But both Dr. Kehle and Mr. Maloney testified that while the relationship has been volatile, it is possible that with the appropriate support services, the Student may be able to successfully live with his mother. In any case, the fact that neither one is currently interested in living together again (and choose not to participate in family therapy) is not sufficient reason to order the school district to fund the Student's foster placement. This is especially true where there is insufficient evidence that the placement has been therapeutic in any way.

16. DCF has been providing services to the Student for many years. Through various placements, support services and therapies, DCF has been a constant in the Student's life. While DCF has always claimed that they have no responsibility to provide any educational services unless a child is within their Unified School District, the services they have provided have affected the Student's ability to benefit from both regular and special education and receive FAPE. In addition, they have been ordered by the Putnam Probate Judge to develop a transition plan which is part of a free and appropriate public education. Under Connecticut General Statutes Section 10-76h(d)(1), a hearing officer has jurisdiction to determine whether FAPE has been provided. Therefore, it was concluded that a hearing officer has limited jurisdiction over DCF where their actions may impact on the Student's transition plan; accordingly, DCF was joined as a party to this hearing. DCF argued against their joinder and subsequently declined to participate in this hearing.

17. Due to their ongoing responsibility to create a school to work transition plan, DCF must coordinate their plan with that of the school district to ensure consistency, non-duplication of services, and, ideally, a more appropriate and comprehensive plan.

18. DCF has announced their intention to cease all funding of services provided to the Student as of his eighteenth birthday. Many issues would be resolved if DCF continued to provide these services. But if DCF will not do so, then the school district must. The services identified in Conclusion of Law No. 11 are transition services which are properly the responsibility of a school district. 20 U.S.C. 1414(d)(5) states that "If a

participating agency, other than the local educational agency fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(vii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.”

19. The parent has requested that the hearing officer order the school district to “hold the parent and [Student] harmless from any claim asserted by the State of Connecticut for residential, therapeutic, psychiatric and case management services provided through DCF funding during the two-year period ending on October 17, 2002, when the PPT meeting that gave rise to this dispute was held.” Currently, there is no outstanding bill owed by the parent and/or Student to the State of Connecticut. Such a bill would come due only if the family received some windfall and even then only partial payment would be expected. (See Finding of Fact No. 4) Therefore, there is no way to calculate such a bill or determine when it might come due. It would not be reasonable to order the school district to hold the family harmless with regard to a claim that might never be made, or could be made but at some distant, unknown date in the future. In addition, no statutory authority has been cited that would give a due process hearing officer jurisdiction to require a school district to hold a family harmless from a claim asserted by the State of Connecticut on behalf of DCF.

20. The parent has also requested an order prohibiting DCF from terminating the services they are currently providing to the Student. This decision has specifically delineated the transition responsibilities of the school district. It has also defined the transition planning area in which DCF must cooperate with the school district due to the impact such planning will have on the Student’s IEP and transition plan. But as to any other area of DCF’s provision of service, a due process hearing officer does not have jurisdiction. Appeal must be made directly to DCF through their own hearing procedures.

FINAL DECISION AND ORDER:

1. As conceded by the Board on the first day of hearing, the Student is eligible for special education services under IDEA.
2. The May 11, 2001 IEP did not provide FAPE in that transition planning and services were not appropriate and were never modified to meet the Student’s needs.
3. The school district is ordered to hire an independent consultant, mutually agreed upon by the family and the PPT, to oversee the creation and implementation of an IEP that contains an appropriate transition plan and goals as detailed in Conclusion of Law No. 11. The plan must include planning for the Student’s graduation when his transition goals have been met, a functional assessment of the Student’s independent living and vocational skill areas, and identification of appropriate linkages with adult service agencies.

4. The school district is ordered to pay for the Student's psychotherapy, to be provided by a therapist mutually agreed upon by the family and the PPT. Such therapy is to be provided at least twice per month.
5. The school district is ordered to pay for psychiatric supervision to appropriately manage the Student's medication regimen. The psychiatrist is to be mutually agreed upon by the family and the PPT. The psychiatric appointments are to occur on a regular basis, the frequency of which is to be determined by the psychiatrist.
6. DCF is ordered to provide on-going representation to the PPT and to coordinate their transition plan with that of the school district to ensure consistency, non-duplication of services and an appropriate and comprehensive plan.
7. The transition services described above (numbers one through six of this order) are to be provided for a period of time to be determined by the independent consultant but must be provided at least through the 2003-2004 school year.
8. The PPT will immediately convene to begin implementation of this order.