

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Fairfield Board of Education

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Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

The Parent's attorney requested this hearing on June 24, 2005. Hearing Officer Exhibit 1. This hearing officer was assigned to the case on June 29, 2005. A prehearing conference was held on July 8, 2005. Hearing dates were agreed on for August 23, September 2, 7, 12, 27 and 28. The parties agreed that the stay-put placement for the Student was at Foundation School, however they disagreed that psychosexual counseling with Diane Cox-Lindenbaum, an outside consultant, was part of stay put. The Parent's attorney agreed to file her Motion for Interim Order by July 20. The Board's attorney was given until July 28 to file a response. The Hearing Officer was to issue a decision by August 15, 2005. Following the prehearing conference, the Board's attorney filed a counter-statement of the issues. Hearing Officer Exhibit 2. After receipt of the Board attorney's letter, the Parent's attorney wrote a letter requesting an extension of the decision deadline from August 8 until October 21, 2005, that the hearing commence on September 2 because the Parent was not available on August 23 and an additional week to file her Motion for Interim Order. The Board's attorney objected to starting the hearing on September 2 and to the additional time to file the motion. The Parent's attorney's requests were granted. The hearing was scheduled to begin on September 2, the decision deadline was extended to October 21, and the Parent's attorney was given until July 25 to file her motion. The Board's attorney was allowed until August 2 to respond. The decision date remained the same – August 15. The Parent's attorney filed the motion on July 25. On July 27, the Board's attorney requested an additional week to respond to the motion. The request was granted. The Board was allowed until August 9 to file a response and the decision date was extended to August 22. On August 11 following the filing of the Board's response, the Parent's attorney wrote to the

Hearing Officer regarding the factual disputes between the parties. She indicated that she would notify the Hearing Officer whether additional stipulated facts would be submitted. On August 22, the Hearing Officer denied the Motion for Interim Order without prejudice to the presentation of additional evidence on September 2 or additional stipulated facts prior to that date.

The parties were directed to file witness lists and exhibits by August 26. The Board filed Exhibits B-1 through B-134 and its witness list on August 17. On August 24, the Parent's attorney requested a postponement of the September 2 and 7 hearings so that the parties could proceed with an advisory hearing. The request was granted, and the Parent's attorney was allowed until September 6 to file her witness list and exhibits. On September 7 the Parent's attorney filed her list of witnesses and Exhibit P-1. On September 8 she filed Exhibit P-2. The hearing convened on September 12 with presentation of evidence on the Motion for Interim Order and the Parent's case-in-chief.

The Board filed Exhibits B-135 through B-138 on September 12. There were no objections to Board Exhibits, therefore, B-1 through B-138 were received into evidence as full exhibits. The Board objected to Parent Exhibits 1 and 2 because they had not been filed 5 business days prior to the September 12 hearing. They were marked for identification only. The parties waived opening statements on the main case. The Hearing Officer asked the attorneys to give opening statements on the Motion for Interim Order. The Parent then presented testimony from Michael Nicholson, Director of the High School program at Foundation School and the Mother.

On September 14 the Parent's attorney filed Exhibits P-3 through P-5 regarding Camp Ramapo. On September 19 the Board filed Exhibits B-139 and B-140. On September 27, the Board objected to the admission of the Parent exhibits, therefore, they were marked for identification, subject to later offer and argument on objections. The Board's exhibits were admitted without objection. The Parent presented testimony from Diane Cox-Lindenbaum and rested their case on the Motion for Interim Order. The Board began its case in the afternoon of September 27 with direct testimony from Barbara Giaquinto, Secondary Special Education Coordinator. The Board continued its case on September 28 with completion of testimony from Ms. Giaquinto. The Parent presented testimony from John Gelinas, Jr., M.D. on September 28 as part of her case-in-chief. Evidence from both parties regarding the Motion concluded on September 28. On September 29 additional hearing dates were scheduled for October 25 and November 3, and the decision date was extended to November 28, 2005. On September 30 the Parent's attorney requested the opportunity to file a letter brief on the evidence that was presented by October 11. The Board objected to the request. On October 11 the Hearing Officer granted the request and allowed simultaneous briefs by October 11 of no more than 10 pages. On October 17 the ruling on the Motion for Interim Order was issued, directing the Board to immediately implement one hour weekly sessions with Ms. Cox-Lindenbaum at Foundation School and denying the request for payment of past services without prejudice.

On October 3 the Board filed Exhibits B-141 and B-142. On October 20 the Board filed Exhibit B-143. On October 24, the Board filed Exhibit B-110a. On October 25 at the beginning of the hearing, the Parent rested her case-in-chief. There were no objections to Board Exhibits

B-141, B-142 and B-110a, which were admitted as full exhibits. The Board began its case with testimony from Wendy Opotzner, Special Education Teacher. On November 3 the Board continued its case with testimony from Ann Leffert, Program Support Teacher, and Cynthia Chick-Hoffkins, Speech Language Pathologist. Additional hearing dates were agreed on for November 14 and 29 and December 14. The decision deadline was extended to January 9, 2006. On November 14 the Board presented testimony from Ellen Siff, School Social Worker, and Christopher Librandi, Transition Specialist. The hearing for November 29 was postponed at the request of the Parent's attorney. The December 14 hearing was postponed at the request of the Board's attorney because her witness was not available on that date. The hearing was continued to January 11, 2006, and the decision deadline was extended to February 6, 2006. On January 6 the Parent's attorney requested an additional hearing date to present rebuttal testimony. On January 11 the Board offered Exhibits B-144 and B-145, which were admitted without objection. The Board presented testimony from Judy McCarty, Ph.D., School Psychologist and Behavior Analyst, and rested its case. The Parent requested a date to present rebuttal testimony from Mr. Nicholson and the Mother. February 7 was agreed on, and the decision deadline was extended to March 3, 2006. Rebuttal testimony was heard on February 7. During the Mother's testimony, Exhibits P-3 and P-4 were admitted as full exhibits over the Board's objections. Exhibit P-5 was admitted for the limited purpose of its effect on the Mother. Both parties rested.

The parties agreed to file simultaneous briefs by March 3 and not to file reply briefs. The decision deadline was extended to March 27, 2006. On February 28, the Parent's attorney requested an additional three days to file briefs, which was granted and the decision deadline was extended to March 30. On March 2, the Parent's attorney requested an additional two days, until March 8 to file briefs. The Board's attorney objected to any further extension of the decision deadline. The request was granted and the decision deadline was not extended. On March 6 the Parent's attorney requested an extension of time until April 17 to file briefs. The request was granted over objection by the Board's attorney, and the decision deadline was extended to May 12, 2006. On April 24, the Board's attorney requested time to file a reply brief or, in the alternative to strike the last paragraph of the Parent's brief. The Parent's attorney objected to the requests. On May 1 after reviewing both briefs and the April 24 letters from counsel, the Hearing Officer denied the requests to strike and to file reply briefs.

The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record.

ISSUES

The Parent submitted the following issues for the hearing:

1. Failure to offer an appropriate program for the 2004-2005 school year beginning in January, 2005, including the related service of psycho-sexual counseling.
2. Failure to offer an appropriate program with the ESY 2005, including psycho-sexual counseling.

3. Failure to offer an appropriate program for the 2005-2006 school year including psycho-sexual counseling.
4. Violation of 34 C.F.R. 300.505(e), by refusing [the Student] necessary psycho-sexual counseling services as a result of the Parent's refusal to consent to placement at Fairfield High School.
5. Request for continued placement at the Foundation High School for the 2005-2006 school year, including ESY 2005, with appropriate psycho-sexual counseling services.
6. Reimbursement of the Parent's privately obtained services for the ESY 2005, including special education camp at Camp R[amapo] and psycho-sexual counseling.

The Board submitted a counterstatement of the hearing issues, as follows:

1. Whether the program proposed by the Board in January 2005 for the second semester of the 2004-2005 school year at Fairfield Warde High School offered the Student an appropriate program in the least restrictive environment, or whether the Student required continued placement at Foundation School in order to receive a free appropriate public education.
2. Whether the program proposed by the Board in June 2005 for the summer of 2005 and the 2005-2006 school year within the Fairfield Public Schools offered the Student an appropriate program in the least restrictive environment, or whether the Student required continued placement at Foundation School in order to receive a free appropriate public education.
3. If the Board's proposed program does not provide the Student with FAPE in the LRE, whether Foundation School is an appropriate placement for the Student.
4. Whether the Board is obligated to provide the related service of psycho-sexual counseling in addition to the Foundation School placement, during the pendency of this due process hearing, where that related service has not previously been provided as part of the Foundation School placement and Foundation School cannot offer this service.

SUMMARY

The Student is a nearly 16 year-old student at the Foundation School. He has been in the Foundation School since second grade. The parties agree that he is entitled to special education under the category of Intellectual Disability. At the time of the January and June 2005 Planning and Placement Team (PPT) meetings, the Student (also referred to as E.) was in the eighth grade at the Foundation High School. At the January 27, 2005 PPT meeting, the Fairfield based team proposed a transition program for entry into the Fairfield Warde High School (FWHS) in the spring semester of 2005. The team also recommended psychosexual counseling once per week

with Ms. Cox-Lindenbaum, as well as a comprehensive program for special education and related services. The Parent (Mother) rejected the change of placement, but agreed to the goals and objectives of the IEP and to three visits at FWHS for the Student in February and March 2005. At the June 21 PPT meeting, the team discussed the results of the three visits, the ESY 2005 program and the 2005-06 school year program at FWHS. The Mother filed for due process following the June PPT meeting, sought stay put at Foundation School and asked for an Interim Order implementing the recommended psychosexual counseling. She rejected the ESY program offered and sent the Student to Camp Ramapo, a sleepover camp in New York State for three weeks in August. For several years, the Student had been placed at Foundation by the PPT. For the past two school years, the Student continued there as a result of stay put provisions of IDEA during the pendency of two due process requests filed by the Mother and settlements with the Board. The most recent settlement agreement ended on January 31, 2005. The Board contends that the Student must be educated in the least restrictive environment (LRE), which is at FWHS. The Board agreed that Foundation High School is stay put for the Student and entered into a contract with Foundation for the 2005-06 school year. The Board also paid for the Student to attend Foundation School in the ESY 2005.

The Board was ordered to provide one session weekly with Ms. Cox-Lindenbaum in the October 17, 2005 Interim Order. The claim for compensatory services retroactive to January 2005 and reimbursement for sessions in the summer 2005, which the Mother paid for, were reserved for final determination in this ruling. During the course of the hearing, the Mother conceded that the Student should attend FWHS, but he is not ready yet. The Board's witnesses contend that the Student is ready and that they will implement a gradual transition over the period of several weeks. The Mother contends that the transition is too fast and that the Student has behavioral issues, which would endanger his and others' safety at FWHS.

The Findings of Fact incorporate various portions of the Parties Proposed Findings of Fact.

FINDINGS OF FACT

1. The Student has a birth date of May 17, 1990, is nearly 16 years old and is currently enrolled in the ninth grade at Foundation High School (Foundation). (Testimony of Mother and Mr. Nicholson; various Board Exhibits).

2. The Student received special education services through the Early Childhood Developmental Education Center (ECDEC) within the Fairfield Public Schools beginning at age 3. (B-8). Neurological and developmental evaluations performed in early childhood showed delays in most areas of development. (B-3; B-7). Audiological evaluations indicated that the Student was able to hear normally. (B-4; B-11). Speech and language evaluations performed in early childhood showed particular delays in receptive and expressive language. (B-5; B-6). Cognitive testing performed at the age of five (5) years using the Stanford-Binet, 4th Edition provided the following IQ scores: Full Scale 74, Verbal 88+, Abstract 62, Quantitative 88, Memory 74. (B-8, page 4). The Student made steady progress in the ECDEC program as a three-year-old and four-year-old. (B-10; B-12, page 2).

3. The Student attended Sherman Elementary School within the Fairfield Public Schools for Kindergarten (1996-1997) and 1st Grade (1997-1998). (B-1; B-15; B-22). The Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and received special education services as a student with a speech and language delay. (B-2, page 2; B-8, page 5). Cognitive testing performed by Jacqueline Haines of the Gesell Institute at age 5 years, 11 months revealed the following scores on the Wechsler Preschool Primary Scale of Intelligence for Children (WPPSI-R): Full Scale IQ 59, Performance IQ 57, Verbal IQ 67. (B-12, page 6). The evaluator felt that the Student's performance on this testing was not indicative of his potential for learning, but was an indication of where he was functioning compared to other students his age. (Id. at 7). Academically, the Student's skills were found to match his developmental age of approximately four (4) years. (Id. at 8).

4. At the end of the Kindergarten school year, the April 18, 1997 PPT agreed to undertake a neurological evaluation of the Student. The Board agreed to have the Student evaluated by either Drs. Levy and Testa in New Haven or Dr. Engel in Stamford. The reason for the referral was that the Student was "displaying significant difficulties mastering concepts presented in school and there are extreme inconsistencies with his behavior and emotional modulation." Concerns in the area of emotional/behavioral noted that the Student "displays an inability to consistently control his impulses, sustain focused attention, and respond to praise or consequences." (B-13). Dr. Testa completed the Neurological Consultation Report in June of 1997, when the Student was 7 years old. The Student's teachers were reporting at the end of his Kindergarten year that his "social behavior is often inappropriate and he may be disruptive and very intrusive. He has not been able to make any friends this year in school." (B-14, page 2) Dr. Testa concluded that the Student's behaviors were "consistent with attention deficit hyperactivity disorder" which, along with developmental delays, were contributing to "psycho-emotional issues." Dr. Testa noted that "behavior modification has had limited usefulness." Additional testing was recommended. (Id. at 4). The neurological evaluation confirmed that the Student was struggling with significant ADHD issues, and these were felt to have significant impact on psychological testing. (B-13; B-14, page 4). Behavior intervention plans (BIP's) were put in place in order to attempt to modify the Student's impulsive and hyperactive behavior in the school setting. The Student made progress in a combination of regular and special education settings and services. (B-17; B-18; B-19; B-20).

5. The Student entered the first grade at Roger Sherman School in the fall of 1997. (B-16). The PPT held in March of 1998 recommended that the Student be promoted to second grade at Roger Sherman, with an increase in hours of service as progress was "slower than expected and more time is needed to help him improve." (B-20, page 3).

6. At a PPT held on August 31, 1998, at the beginning of the Student's second grade year when he was 8 years old, the Parent brought an educational advocate with her to review testing performed by Dr. Maureen Thomas. The Mother had obtained Dr. Thomas's evaluation owing to concerns with the Student's rate of progress in school. Dr. Thomas attended that PPT as well. (B-21).

7. Dr. Thomas's Psycho-Educational Assessment Evaluation Report indicated that the Student was on Ritalin, which "has made a big improvement in his behavior in terms of

greatly reducing aggressive outbursts, but he still has difficulty in focusing his attention. He also becomes hyperactive when the medication wears off at certain times within the day. He can not be on the medication throughout the whole day or he will not sleep and he will have very reduced appetite.” (B-23, page 2). Under the area of Emotional and Behavioral Issues, Dr. Thomas noted that the Student’s “impulsivity, and the anger and frustration his disabilities cause him, are important factors in (his) emotional functioning. There were signs in the evaluation sessions that he would withdraw from situations in which he expected to fail and become angry if forced to continue. He has begun to label himself as ‘stupid’ relative to other children.” While the Ritalin had reduced some of his aggressive behavior, he “is now mostly physically aggressive towards himself by picking at his skin or any sore. (He) does this very vigorously and breaks the skin and can cause infections.” (Id. at 9-10).

8. Dr. Thomas, a clinical psychologist, used the Woodcock-Johnson Tests of Cognitive Ability (WJTCAs) to measure the Student’s cognitive ability in August 1998, and obtained the following results: Long-Term Retrieval 48, Short-Term Memory 72, Auditory Processing 68, Visual Processing 54, Visual Closure 86, Picture Recognition 34, Comprehension-Knowledge 65, Fluid Reasoning 76. Achievement testing was commensurate with cognitive ability: Broad Math 33, Math Reasoning 60, Broad Written Language 47, Broad Knowledge 67. (B-23). She informed the August 31, 1998 PPT that the results she obtained in her testing of the Student were not significantly different than those performed in 1996, and she noted that there were “indications of frustration and poor self-image during the evaluation.” She “questioned the efficacy of (the Student) being educated in a mainstream environment.” (B-21, page 2). Dr. Thomas recommended that the Student attend “a specialized academic program (that) is geared towards remediating his specific multiple disabilities.” (B-23, page 10). The Mother requested that the Board support an out-of-district placement for the Student. Board staff responded that the appropriate setting for the Student in the LRE was within the Fairfield Public Schools. At the end of the PPT it was noted that the Parent would “pursue an out of district placement and give 10 days notice.” (B.21, pg. 2).

9. On September 2, 1998, the Mother sent a letter to the school district indicating that the Student would be attending the Foundation School. (B-24). The Parent then retained counsel and initiated due process proceedings against the Board to obtain reimbursement for the unilateral placement. (B-25; B-27). Foundation School initially developed an IEP for the Student as a private, unilateral placement. (B-29). The parties entered into a settlement agreement for the 1998-1999 school year, and the due process hearing before Hearing Officer Mary H.B. Gelfman was resolved. (B-31).

10. The Student attended the Foundation School for the 1998-1999 school year. (B-29). At the end of the 1998-1999 School Year, on May 20, 1999, the Board’s school psychologist and an intern observed the Student at the Foundation School. He was observed in four different classrooms with four different teachers at Foundation, in classes of 2-3 students. The observation report noted that the Student “needed request verbal redirections to remain focused on class lessons...The small class sizes were able to limit the amount of potential distractions that would have been present if more students were in his classrooms. The small class sizes also allowed teachers to quickly redirect (him) and focus their attention on him in an attempt to maintain on-task behavior.” (B-32, page 3). On May 21, 1999, a teacher and a speech

and language pathologist observed the Student at Foundation School. During this observation, he was seen in six different class settings with five different teachers at Foundation in classes of 2-3 students. This observation report noted that: “the small class size seemed beneficial to (the Student). His teachers were right there to keep him on track and to assist him maintain his on-task behavior” and “also provided (him) with the instant acknowledgement and recognition he seemed to need.” (B-33, page 3).

11. In June 1999, following observations conducted by staff from the Fairfield Public Schools, Fairfield staff recommended that the Student return to Fairfield for the 1999-2000 school year. The Parent rejected this recommendation and again sought to maintain the Student’s placement at Foundation School for the 1999-2000 school year. (B-32; B-33; B-38).

12. A PPT was held at Foundation School in September 1999 to review an Occupational Therapy evaluation completed by the Board. The Board and Foundation School agreed to incorporate the OT goals into the Student’s IEP at Foundation School. (B-41). The Student attended the Foundation School for the 1999-2000 school year. (B-42). The Board undertook no observations or evaluations of the Student during the 1999-2000 School Year.

13. A PPT was held at Foundation School to plan for the 2000-2001 school year on May 15, 2000. The recommendations of the PPT include a recommendation for the Board to “continue the placement at Foundation for 2000-2001.” (B-45, page 1). The minutes of the PPT indicate that the Mother had located Camp Summit as an appropriate program for the Student for the ESY. The Board agreed to pay the educational costs associated with the Camp Summit program. (Id. at 2).

14. The Student attended the Foundation School for the 2000-2001 school year. Progress Reports were routinely sent by Foundation School to the Fairfield Public Schools throughout the year. As of the December 2000 Progress Report, Foundation noted that the Student’s behavior continued to impact his performance, and that even in one-to-one situations, “picking his fingers until they bleed and drumming his pencil is frequent” and that even in the small environment at Foundation he “tends to kiss or hug staff.” (B-50, page 6).

15. In March 2001, the Board conducted triennial testing of the Student. This included an OT evaluation by the Board, which was providing OT services fifty minutes weekly at the time. It was recommended that OT services continue. (B-53).

16. On March 20, 2001, a “partial” Diagnostic Study was undertaken by the Board, which included the administration of the WISC-III and the VMI at Foundation School, after which the raw data was sent to Yale Child Study for completion, as the Parent was having the Student evaluated at Yale Child Study Center. (B-54, page 1). School psychologist Joan Franklin administered the WISC-III, and obtained the following results: Verbal IQ 57, Performance IQ 49, Full Scale IQ 49. The Student’s cognitive ability was characterized as mildly to moderately impaired, and the evaluator noted that a high degree of anxiety and distractibility appeared to interfere with measures of cognitive functioning. (Id.).

17. The Fairfield portion of the evaluation noted that the Student was “acutely reactive to successes and failures in his performance” during the evaluation and that his “speech was marked by numerous repetitions of his statements suggesting high anxiety.” Test results indicated that the Student was “a youngster with mildly to moderately impaired intellectual abilities in all areas” whose “intense anxiety and high distractibility interfere with cognitive functioning.” (Id. at 3).

18. Other than the OT assessment and the administration of the WISC at Foundation School, the Board of the Student undertook no other evaluations during the 2000-2001 school year, and no member of the Board staff observed the Student during that year. (Testimony of Ms. Giaquinto).

19. Leslie Baer of the Yale Child Study Center completed a Psychological Evaluation of the Student over the course of five sessions in March and April 2001, when the Student was almost 11 years old. Ms. Baer administered the Kaufman Assessment Battery for Children (K-ABC), obtaining the following results: Sequential Processing 55, Simultaneous Processing 55, Mental Processing Composite 53, Achievement 61. (B-55, page 3). She also administered the Wechsler Individual Achievement Test (WIAT), obtaining the following results: Reading Composite 74, Math Composite 52, Writing Composite 71, Language Composite 70, Total Composite 64. (Id. at 4). Findings in the area of Social-Emotional Functioning indicated that the Student “is an emotionally vulnerable child with a complicated internal world. His mood and behavior changed significantly during the social-emotional testing battery. He became increasingly agitated, as well as more withdrawn and noncommunicative. Significant anxiety also was observed. These behaviors suggest that (he) may feel particularly overwhelmed and vulnerable when confronted with confusing, emotionally provocative material...He also lacks effective coping skills to effectively handle interpersonal conflict and is therefore particularly vulnerable in social situations.” (Id. at 6).

20. Ms. Baer summarized her findings as including a diagnosis of mild mental retardation, and emphasized that socially and emotionally, the Student “is a vulnerable child who struggles with feelings of anxiety, low self-esteem, strong aggressive impulses and emerging sexual feelings. In light of his cognitive deficits, his ability to verbally express internal distress and negotiate interpersonal conflict is limited. Thus, in situations where (he) may be overstimulated or stressed in some way, he is at risk for acting out or aggression.” (Id. at 7). She noted that the Student was entering puberty and was “struggling to understand issues around sexuality” given his cognitive limitations. (Id. at 6). Continued participation in a special educational environment for children with special needs was recommended. (Id. at 7).

21. A PPT meeting was held on May 29, 2001 at Foundation School to plan a program for the Student for the 2001-2002 school year. The evaluations by the Board and Yale were reviewed. Based on the evaluations, the Student’s eligibility category was changed from Other Health Impaired (OHI) to Intellectual Disability (ID). OHI was retained as a secondary disability to recognize the impact of the Attention Deficit Disorder (ADD) diagnosis on the Student’s educational performance. (Id. at 2). Foundation School staff reported that the Student was engaging in disruptive behavior such as burping in class, and that they felt that the function of the behavior was “attention-seeking”. (Id. at 2-3). Foundation School also agreed to develop goals and objectives to address sexuality issues and have the Student participate in a sex

education curriculum. (Id. at 3). The Board decided to continue the Student's placement at Foundation School for the 2001-2002 School Year, and to fund the Foundation Summer School Program for July 2001. (Id. at 1-2). There was a disagreement as to the month of August. The Board proposed that the Student receive tutoring during the month of August. The Parent requested funding for Camp Summit. Since the Parent had reported that the Student had regressed as a result of this experience during the summer of 2000, the Board refused to fund Camp Summit for the summer of 2001. (Id. at 3).

22. The Student attended Foundation School for 2001-2002 school year. Progress reports were provided by Foundation to the Board on a regular basis. (B-61; B-62). No evaluations or observation of the Student by the Board occurred during the 2001-2002 School Year. (Testimony of Ms. Giaquinto).

23. In February 2002, the Board encouraged the Parent to visit Fairfield Woods Middle School (FWMS) to explore opportunities for the Student to transition to a less restrictive educational setting. (B-60).

24. A PPT was held at Foundation School on May 28, 2002 to plan a program for the Student for the 2002-2003 School Year. Foundation staff reported that, while the Student's behavior had improved that year, his behavior was "most problematic in the cafeteria." The Mother indicated that she had visited FWMS at the Board's request, and was concerned that the size of the Middle School (600 students) would be "very problematic" for the Student. The Board decided to continue the Student's placement at Foundation School for the 2002-2003 school year, and to fund the Foundation Summer School Program and Round Lake Camp for ESY 2002. Both ESY programs had been located and requested by the Parent. (B.64, pages 1, 3; Testimony of Mother).

25. The Student attended Foundation School for the 2002-2003 school year. Progress reports were provided by Foundation to the Board on a regular basis. (B-65; B-66; B-67; B-69; B-70; B-71; B-72). Comments from the January 2003 Progress Report include a statement regarding the Student's behavior in community outings "during which he has had the opportunity to practice reviewed appropriate social behaviors in realistic settings." While he demonstrated some improvement in this area, it was noted that he may "require more frequent redirection when he is unsure about an activity or when there are environmental distracters." He "benefits from a high level of structure to participate cooperatively in these daily activities." (B-70, page 4).

26. No evaluations or observation of the Student by the Board occurred during the 2002-2003 School Year. (Testimony Ms. Giaquinto).

27. A PPT was held at Foundation School on June 6, 2003 to plan a program for the Student for the 2003-2004 School Year. Foundation School staff reported that the Student's behavior was "almost cyclical. He will have periods where he is very good, then will exhibit behaviors for several days, then go back to good." The Board decided to continue the Student's placement at Foundation School for the 2003-2004 school year, and to fund the Foundation Summer School Program and Round Lake Camp for ESY 2003. Both ESY programs had been located and requested by the Parent. (B-73, page 3; Testimony of Mother).

28. At this PPT meeting, with her counsel present, the Parent participated in the development of a triennial evaluation for the following year. The PPT, including the Parent, agreed that the only evaluation necessary was an adaptive behavior rating scale (Vineland Adaptive Behavior Scale or VABS). (B-73, pages 3 and 36).

29. A Behavioral Support Plan was developed for the Student by Foundation School in October 2003, and provided to the Board. This Plan defined several problematic behaviors for the Student, including “Socially unacceptable language or behaviors,” which were “characterized by swearing, comments of a sexual nature, invading personal space, and unwelcome physical contact with others.” Other areas of behaviors listed were “over-reactions,” “limited awareness of non-verbal cues,” and “non-compliance.” (B-75). The Plan noted that the Student exhibited inappropriate reactions to incidents long after they had occurred, such as commenting, crying, feelings of illness and depression. The Student also exhibited a refusal to adhere to classroom rules or fulfill academic expectations. A variety of functions for these behaviors were hypothesized and interventions recommended. (Id.).

30. In April 2004, school psychologist Ken Krenke completed the VABS (Vineland) battery by interviewing the Parent, as agreed upon for the triennial evaluation, and reported the following scores: Communication 74, Daily Living Skills 72, Socialization 60, Adaptive Behavior Composite 63. The Student’s level of maladaptive behavior was reported as falling within the clinically significant range. (B-80).

31. No observation of the Student by the Board occurred during that school year. (Testimony Ms. Giaquinto).

32. On June 22, 2004, the PPT reconvened to review the triennial evaluation and plan a program for the Student for the 2004-2005 school year. The Foundation School staff reported as to the Student’s progress, and indicated that the Student’s behaviors continued to be problematic, especially during transition times and music, art and gym. (B-87, page 2). Foundation staff reviewed the Behavioral Support Plan that had been developed by Foundation at the beginning of the school year. No objections by the Board to the Foundation Behavioral Support Plan were raised or noted at the PPT. (Id.; Testimony Mr. Nicholson). The Student was 14 years of age, and was age-appropriate for a high school program. Andrea Leonardi, Director of Pupil Services for the Fairfield Public Schools, offered a program for the Student at Fairfield Warde High School (FWHS), beginning with a transition during the summer of 2004. The Parent was encouraged to visit FWHS. Foundation School staff recommended that the Student transition instead to Foundation High School for his 8th grade year. (B-87, page 2). The Parent, represented by counsel, refused the Board’s offer of a program within the Fairfield Public Schools and indicated that she would initiate a due process hearing in order to maintain the Student’s placement at Foundation School. (Id. at 2-3).

33. The Parent expressed concerns regarding the Student’s inappropriate sexual behavior. Ms. Leonardi recommended a psychosexual evaluation with Diane Cox-Lindenbaum, a clinical social worker. (Id.). The Parent signed consent for this evaluation to occur. (Id. at 41).

34. Ms. Leonardi recommended a program at FWHS, beginning just 2 weeks later on July 6, 2004 in the summer program. Ms. Leonardi suggested that the Student would “begin with one mainstream period per day.” (Id. at 2-3). The Student’s counsel suggested reconvening the June 22, 2004 PPT, as no regular education teacher was present, if the IEP was going to place the Student in the regular education environment. (Id.).

35. At the June 22, 2004, PPT, the Board refused the Parent’s request for placement at Foundation School’s summer program for ESY 2004, and for placement at Foundation for the 2004-2005 school year. The Board agreed, however, to fund the requested camp placement requested by the Student’s Mother for part of the summer. (Id.).

36. Ms. Opotzner outlined the hours of service proposed by the Board for a “self-contained” special education summer program for 19 days of the summer, from 8:15-12:30. (Id.; Testimony of Ms. Opotzner).

37. On July 6, 2004, the Parent brought a Due Process Hearing request to the State Department of Education, challenging the appropriateness of the Board’s proposed program and their failure to properly evaluate, and requesting continued placement at Foundation School. The Parent invoked Stay Put in the same letter. (B-88).

38. The matter was assigned to Hearing Officer Justino Rosado. (B-89). The Parent requested an order from the hearing officer that the Board transition the Student to the Foundation High School summer program, but the Parent’s request for an order was denied. On July 21, 2004, Hearing Officer Rosado found that the Student’s stay put is Foundation School, not a summer program which was not part of the Student’s program at the time due process was requested. (B-90). The Parent then withdrew her due process request and agreed to attempt to resolve the matter through mediation. (B-92). The parties proceeded to mediation on August 30, 2004. (B-93).

39. The Student was unable to attend the summer transition to Foundation High School and instead attended the summer program at the Foundation Middle School. (Testimony Mr. Nicholson).

40. As mediation was unsuccessful in resolving the issues in dispute, Due Process was again requested by the Parent on September 7, 2004. The Parent again invoked Stay Put, and asked for a ruling by the Hearing Officer that the Student’s Stay Put placement was at Foundation School’s high school, as the Board was claiming that the Student should remain at the Foundation Middle School during the pendency of any dispute between the parties. On September 17, 2004, Hearing Officer Rosado ruled that the Student be transported to and from Foundation High School, that his 2003-2004 IEP was his stay put program, and that the Board was responsible to pay for tuition and transportation. (B-98).

41. The due process hearing as to the 2004-2005 school year was ultimately resolved by confidential agreement between the parties resolving all claims through January 31, 2005, and the hearing request was again withdrawn. (B-100; Testimony, B. Giaquinto). The Student was then transitioned to the Foundation High School campus for September 2004.

42. Ms. Barbara Giaquinto was assigned the task of “heading up” the Board’s team to develop a transition plan for the Student to attend FWHS. During the fall of 2004, the Board conducted various observations of the Student in his home and at Foundation High School, and completed the evaluations for which permission had been granted on August 30, 2004. (B-99; B-102 through B-110a; Testimony, B. Giaquinto).

43. Special education teacher Wendy Opotzner observed the Student at Foundation High School on October 20, 2004, along with Ellen Siff, school social worker. Ms. Opotzner and Ms. Siff observed a behavior intervention plan (BIP) in place for the Student to address behaviors such as respecting personal space, not touching other students, and not using inappropriate language. They observed the Student at lunch, physical education and social skills class. Ms. Opotzner recommended “a formalized positive behavior plan, including a reinforcement menu, consistently implemented across settings and staff.” She observed that the Student would benefit from physical activities with peers at the same skill level. She further observed that the Student was not able to engage in the discussion demanded of him during the social skills group. (B-99; Testimony, Ms. Opotzner). The Observation Report further documents difficulties that the Student was having with his peers, including another student’s claim that the Student was “threatening to beat him up.” (B-99, pg. 2).

44. Ann Leffert, Inclusive Education Facilitator, observed the Student at Foundation School on November 1, 2004. After meeting with Mr. Nicholson, she observed the Student in social studies and computer lab. He was able to engage in an age-appropriate discussion about a school dance the previous Friday night, and was then able to engage in a discussion about the upcoming presidential election and argue in favor of why his preferred candidate should be elected. Although the Student engaged in some inappropriate behaviors such as belching, he could be redirected to task. He was able to engage in an activity involving taking an opinion poll and graphing the results with guidance from staff. He was not able to appropriately engage with the technology presented to him in the computer lab. Ms. Leffert’s Summary notes that the Student “appeared to work best during the more structured portions of the classes observed today. He appears heavily reliant on verbal prompts to complete work. . . . It was reported that transitions, immature behaviors and profanity toward staff are difficult areas for (him). He carries a behavioral checklist with him to classes that focus on appropriate behaviors in class and completing transitions between classes appropriately.” (B-102). Ms. Leffert testified that because the Student’s behaviors were relatively mild, he was easily redirected, and had a number of strengths, she saw no reason why the Student would not be able to receive an appropriate program in the LRE at FWHS. (Testimony of Ms. Leffert).

45. On November 4, 2004, Ms. Opotzner and Ms. Siff observed the Student in his home. The Student demonstrated his interests in playing the drums, playing age-appropriate video games, playing baseball, and playing pool. Ms. Opotzner indicated that the Student had good eye-hand coordination and a good sense of rhythm when playing the drums. She recommended that he would benefit from opportunities to engage in extracurricular activities with nondisabled peers. (B-103; Testimony, W. Opotzner). Ms. Siff interviewed the Parent to discuss the Student’s background and her concerns. The Parent indicated to Ms. Siff that although the Student had been on medication in the past to address his ADD, he was not presently on medication and she saw him as having improved developmentally in this area. The Parent indicated that she and the Student’s father were divorced and that the Student spent time

with his father on weekends, particularly visiting an amusement arcade and playing video games. The Parent further indicated that her greatest concern for the Student was his lack of opportunities for relationships with typical peers, especially as related to his need for appropriate models from whom to learn social behaviors. The Parent also informed Ms. Siff that the Student had been the target of a sexual incident with a peer at camp during the summer of 2004, and that she continued to be concerned about the Student's lack of knowledge about how to handle sexual situations. (B-104; Testimony, E. Siff). Although Ms. Siff's report noted that the Student "has not been involved in any type of psychotherapy or counseling, outside of whatever services have been available at Foundation School," she acknowledged in testimony that this statement was inaccurate, as school records clearly documented the Student's participation in outside therapy on several occasions. (Id.).

46. Ms. Opotzner and Ms. Siff again observed the Student at Foundation School on November 12, 2004. They observed the Student doing language arts and science in the academic lab and in math class. The Student was very cooperative in the spelling and writing assignments. He seemed frustrated with the science assignment on simple machines. After 1.5 hours, he said that he did not feel well and asked to go to the nurse. Their Observation Report notes that the Student's teacher "expressed concern for (his) tolerance for frustration. He indicated that frustration is a trigger for problem behaviors, which causes a decrease in the quality of (his) work." (B-109, page 1). Instructional materials provided in math were frustrating for the Student and Ms. Opotzner assisted the Student during the math lesson. (B-109; Testimony, Ms. Opotzner). Ms. Opotzner and Ms. Siff spoke with Principal Nicholson during this visit, and were told that the Student's behavior can sometimes be difficult to deal with. They noted that when "asked what a 'bad day' would look like, the response was that (the Student) would be verbally threatening, swearing under his breath, and be unable to sit and relax." When the Student's behavior "deteriorates, his thoughts are disorganized, and he may appear to be decompensating. He needs to be listened to and receive 1:1 attention, although his train of thinking may not be rational. A 'big episode' may last all day and into the next day. Staff is extremely careful to control (his) impact on other students, as his behavior can be provocative." (B.109, page 2).

47. They recommended a "positive behavior program for [Student] [which] should include antecedent/proactive strategies to encourage positive outcomes. Supplemental skill instruction should be individualized to meet [Student's] instructional needs, including hands on activities and manipulatives. Consider psychiatric/pharmacological evaluation to clarify diagnostic issues, and appropriate clinical treatment and interventions, as previously recommended by Yale Child Study evaluation. (Id.). Ms. Opotzner testified that the instructional materials provided to the Student as part of a science unit were too abstract and not appropriate for the Student. (Testimony Ms. Opotzner).

48. A psychological evaluation was completed in November 2004 by Dr. Judith McCarty, a school psychologist and Board Certified Behavior Analyst (BCBA) with a Ph.D. in special education. Dr. McCarty was employed by the Board until August 2005. She completed the Wechsler Intellectual Scales for Children (WISC IV), obtaining the following results: Full Scale IQ 49, Verbal Comprehension 63, Perceptual Reasoning 59, Working Memory 52, Processing Speed 56. (B-105, page 3). Dr. McCarty also completed achievement testing in the

form of the Wechsler Individual Achievement Test (WIAT II), obtaining the following results: Basic Reading 67, Reading Comprehension 60, Pseudo Word Decoding 89, Spelling 90, Written Expression 69, Numerical Operations 51, Math Reasoning 61, Reading Composite 70, Written Language Composite 78, Mathematics Composite 48. (Id. at 6). Dr. McCarty also completed the Vineland Adaptive Behavior Scales (VABS) by interviewing the Parent, and obtained the following results: Communication 53, Daily Living Skills 57, Socialization 55, Adaptive Behavior Composite 51. (Id. at 7). The Student's functioning in each of the domains was low. (Id. at 8).

49. Results of Dr. McCarty's testing on the WISC IV indicated that, cognitively, the Student was functioning in the "extremely low range of intelligence with Verbal Comprehension, Perceptual Reasoning, Working Memory and Processing Speed all within this same range." (Id. at 5). Academic achievement on the WIAT-II, while below grade level was commensurate with the Student's abilities. (Id. at 9). She made 31 recommendations in the areas of behavioral strategies, attention and concentration, sequencing and organizing, social and interpersonal, auditory limitations, math and reading. (Id. at 9-11).

50. Christopher LiBrandi, Transition Specialist, observed the Student in the Foundation School setting on November 19, 2004. His role was to see what activities and instruction the Student was involved in towards post secondary life. An additional "role at FPS will be to begin to formulate the plan that will help (the Student) make the transition from Foundation School to FWHS." (B-106, page 1). Mr. LiBrandi met with Mr. Nicholson and Ms. Syme, who explained the Student's behavior plan. Mr. LiBrandi observed the Student in speech and social studies classes. Mr. LiBrandi observed that the Student engaged in an inappropriate and sexually suggestive manner toward one particularly young, attractive female teacher, and that the Student was threatening toward another student. Mr. LiBrandi stated: "It is clear that [the Student] has great sexual tension and is in desperate need of knowing and understanding boundaries." He met with the teacher at length about the sexual behavior. She said that the sexual stuff was pretty typical, but the laughing and difficulty he had that day was more than usual. She informed Mr. LiBrandi that while the Student did engage in verbally inappropriate behavior and noncompliance, in her two years at Foundation, she had not known the Student to be physically aggressive. (Id.; Testimony, Mr. LiBrandi).

51. Mr. LiBrandi observed the Student a second time at Foundation School on December 3, 2004, and again observed the Student in speech and social studies. In speech, he noted that the Student was being "verbally aggressive" with the same student Mr. LiBrandi had noted before. This was, again, a small classroom with two students and one teacher. The teacher would remind the Student that he needed to behave in order to earn credit on his Behavior Plan. (B-107, page 1). Social Studies class had four students. One of the girls "was very uncomfortable being in the room with (the Student)" as he "targets her for verbal aggression and threatening." That student asked to leave the classroom and go to the Computer Lab. After she left, Mr. LiBrandi noted that the Student again "began to become sexually expressive and suggestive" to the teacher, "who once again ignored him or tried to redirect him." Eventually the teacher removed the Student from the room and warned him that if he misbehaved again he would lose his "yes" on his Behavior Plan. When they returned to the room, the Student misbehaved, and was told he had lost his "yes" but that he could earn it back by behaving for the rest of the class. He was routinely reminded by the teacher what he needed to do to earn back his

“yes” for the remainder of the class. Thereafter, Mr. Librandi noted that while the Student continued to tease the other student, “he had come down a bit. Perhaps it was his attempt to earn back the “yes” on his sheet. This continued and there was little other remarkable activity” before the class ended. (Id. at 2).

52. After observing the Student in class, Mr. Librandi accompanied the Student to his locker. When the Student was becoming overwhelmed by how much he was carrying in his hands, he asked Mr. Librandi to hold his things. When Mr. Librandi suggested instead that the Student put down a few of his items, he became frustrated and “threw his stuff down” which “prompted looks” from the staff at Foundation, with the result that the Student “quickly calmed down gathered himself and went out the door to the bus.” Once again Mr. Librandi spoke to the teacher about the sexual issue. He concluded that the Student would benefit from “individualized sexual counseling to help address his needs.” (Id.).

53. Mr. LiBrandi observed the Student a third time on December 16, 2004 at Foundation School in the shop class. Mr. LiBrandi observed that the Student was agitated about his interactions with another student when he entered the room, but was able to restrain himself from physical aggression toward the other student. He told Mr. LiBrandi that he wanted to hit the other student, but he didn’t. The teacher told the Student she was proud of him because he was able to walk away. The Student’s Mother was also observing the Student at the same time. The male instructional aide in the shop class was able to redirect the Student to his project for the day, and he “seemed much calmer and more willing to take direction from” the aide. (B-110a).

54. Mr. LiBrandi testified that Foundation School staff allowed students to choose activities to engage in during “free time” that were not age-appropriate and constituted reinforcement for inappropriate behaviors. He thought the BIP in place at Foundation School at that time was ineffective. Mr. LiBrandi believed that with the application of an appropriate BIP, age-appropriate expectations, and typical role models for behavior, the Student’s behavior could be managed successfully in a less restrictive setting than Foundation School. The hands-on nature of the shop class was engaging and appropriate for the Student, and he was at his best during this observation. (Testimony, C. LiBrandi).

55. Diane Cox-Lindenbaum conducted a psychosexual evaluation of the Student in November and December 2004, over the course of three visits. She assessed the Student as having inadequate knowledge of age-appropriate sexual information, although she said that his “comprehension of age-appropriate sexuality was average.” (B-108, page 7). She indicated that the Student needed to deal with issues relating to his alleged sexual abuse by a male peer at camp the summer before, as well as “feelings of anger, feelings of rejection, feelings related to his parents’ divorce or early childhood disruptions.” (Id.). Ms. Cox-Lindenbaum indicated that in her initial evaluation of the Student, she was particularly concerned about how angry he was, and made several recommendations to the Parent about removing influences such as violent rap music and lyrics, and violent video games from his life. (Id. at 6, 11, 13, 15 and 16; Testimony, Ms. Cox-Lindenbaum). The Student’s demeanor improved once these influences were removed from his life. (Testimony, D. Cox-Lindenbaum; Testimony, Mother). Ms. Cox-Lindenbaum also recommended a psychiatric evaluation to rule out a possible diagnosis of Tourette’s Syndrome and “psychiatric or delusional process.” (B-108, pages 2, 13 and 14).

56. Among the inappropriate sexual behaviors in which the Student had been involved were having kissed a female classmate, “grinding” with a classmate, touching a female babysitter inappropriately, “possibly licked 4 year old cousin in mouth,” and hugging female same-age cousins inappropriately. Ms. Cox-Lindenbaum described the Student’s Predominant Mood on the Toni C. Johnson Temperament Scale as Angry, with his Expression of Anger described as “short fused.” (B-108, page 6).

57. Ms. Cox-Lindenbaum described the Student’s placement at Foundation as “a relatively small, structured educational setting where he is supervised in a general way (without 1:1 but visually supervised). If mood appears de-stabilized he can be redirected. The setting is such that overstimulation is regulated. Peers are generally same age with similarities in functioning and ability. Currently, based on incidents reviewed, the setting he requires is structured, routinized and supervised.” (Id. at 12).

58. Ms. Cox-Lindenbaum felt it was essential to minimize “random stressors, opportunities to offend, destabilizing factors, and stimuli” in the Student’s environments. Moreover, “transitions to a more complex environment (more stimulating) must be managed in a progressive, planned manner with goals reached and some behaviors addressed and adjusted before transitions can occur. Current stabilization of social sexual issues and behaviors must be addressed.” (Id. at 14-15).

59. Ms. Cox-Lindenbaum underscored that in any planning to consider less restrictive environments for the Student, “structure, supervision, multi-modal learning team collaboration, restrictions on stimuli must be incorporated. Failure to do so could result in (the Student) being subject to destructive behaviors legally, socially or otherwise.” (Id. at 15). In her testimony she emphasized his need for highly intensive therapy and the structured, supervised environment at Foundation School. (Testimony of Ms. Cox-Lindenbaum).

60. Barbara Giaquinto, Coordinator of Special Education for the Fairfield Public Schools, observed the Student at Foundation School on December 12, 2004 in his cooking, physical education and social skills classes. The Student was able to work independently during a cooking class to prepare pudding for the school’s lunch program. “When the bell rang, [he] presented his behavioral chart to the teacher, and independently left for PE.” She observed the PE class, where the Student was fairly well behaved, and at the end of the class he “presented his behavioral sheet to his teacher and then went to the fitness room.” During this time, his behavior was well contained, other than the use of some mildly inappropriate language, which was redirected by the teacher. He asked the physical education teacher to play badminton with him during gym class because “no one else can hit he ball.” Ms. Giaquinto stated that the Student “clearly has both interest and strengths in the area of sports.” The Student attended social skills class alone with the speech and language pathologist, and it was reported to Ms. Giaquinto that he had been removed from a social skills group for inappropriate behavior. The Student asked questions about relationships with girls, and could not be redirected to the lesson. Ms. Giaquinto reported that the Student would benefit from intensive counseling in the area of psychosexual behaviors and awareness, as well as sport activities geared toward his level. She further noted that in classes that the Student enjoyed he “did not display inappropriate behaviors” during the three hours she was observing him. (B-110; Testimony, Ms. Giaquinto).

61. All of the evaluation reports, observations, and draft goals and objectives were forwarded to the Parent in advance of the January 27, 2005 PPT meeting. (B-111; B-112; Testimony, M. Giaquinto). The Parent also visited FWHS on December 8, 2004, and was given an opportunity to observe several classes that were under consideration for the Student to attend, including Elements of Math, Resource Room, Symphonic Band, Graphics, Culinary Arts, Film Club, PE, and a history class. (B-140; Testimony, Ms. Siff).

62. The Parent attended the January 27, 2005 PPT meeting with counsel. The observation and evaluation reports collected by the Board were reviewed at this PPT meeting. Dr. McCarty summarized her evaluation. She commented that the Student is easily distracted, but easily redirected. Ms. Cox-Lindenbaum was unable to attend the PPT due to a medical emergency in her family, but Ms. Siff reported on her findings in her absence, noting that “there were many recommendations made for [the Student’s] program, with the focus being on the home and school teams working together, anger management, psycho-sexual needs and environmental issues.” Mr. Librandi reported on his observations of the Student at Foundation School and stated that the Student “needs more opportunity to have contact with typical peers in a very structured setting.” Ms. Leffert reported on her observation and noted that the Student’s needs include “transition difficulties and peer interaction,” that she observed “impulsive behaviors” and the use of “some inappropriate language when classroom time was less structured” at Foundation School. Overall, she felt that at Foundation School the Student was “engaged in class, appeared to enjoy class, yet in summary requires intensive prompting from staff.” Ms. Opotzner reported on her observations and described the Student as “charismatic and friendly.” She said that he had been teased by other students at Foundation during her observation; his “reaction appeared disproportionate to the level of teasing,” but the teacher at Foundation “helped him through his difficulty.” She also stated to the PPT that the Student is “very strong physically.” She suggested a formalized behavioral support plan to address his behaviors. (B-114, page 2). Ms. Giaquinto reported on her observation. She thought that the Student was looking for someone “to play with more on his physical level” in PE. She noted that in the social skills class she observed, the Student “had many questions about girlfriends, kissing, etc.” Ms. Giaquinto said that the social skills leader “did not respond well to (his) questions.” (Id. at 3).

63. Mr. Nicholson responded to the commentary by the Board staff at the PPT meeting, specifically in regard to the claims that the Student’s behaviors merely required a more structured behavioral support plan. He said that the Student “isn’t always able to relate why he’s mad or upset,” as he “has not yet developed independent coping strategies.” He also noted that the Student “has difficulty learning” in larger groups “because he is so distracted.” As a result, Foundation School had decided to “separate information time from social interaction time. Team activities are difficult for him.” While his physical abilities are well developed, Mr. Nicholson cautioned that: “he cannot generalize those skills to a team activity. [He] becomes very competitive.” (Id.).

64. Ms. Siff raised the issue of whether a psychiatric evaluation should be undertaken for the Student. Counsel for the Parent noted that this had been one of the recommendations of Ms. Cox-Lindenbaum as well, particularly to ascertain whether the Student had Tourette’s Syndrome. For this reason, counsel for the Mother recommended that the psychiatric evaluation be conducted by Dr. John Gelinas, as he had evaluated another student for this very reason with

whom counsel was familiar. The Team agreed that a psychiatric evaluation would be appropriate. Fairfield members of the PPT also recommended a speech and language evaluation and Functional Behavioral Assessment (FBA). The Student's Mother signed permission at the meeting for the evaluations to occur, as well as a release so that the Student's educational records could be provided to the chosen psychiatrist. (Id. at 3 and 44-45; B-117; B-118; B-119; Testimony, Ms. Giaquinto and Ms. Siff).

65. The Parent's primary concern at the January 27, 2005 PPT was that the Student's psychosexual issues be addressed. Goals and objectives drafted by Ms. Cox-Lindenbaum were reviewed, and the team agreed to add them to the IEP immediately. The minutes indicate that the "team agreed that 100% accuracy level is necessary regarding the psycho-sexual goals and objectives." It was agreed that the counseling services of Ms. Cox-Lindenbaum would be added to the Student's IEP. (B.114, pages 1, 3, 5). It was further agreed that these services would be provided on the Student's proposed visits to FWHS. (Id. at 4).

66. The January 27, 2005 PPT also revised some of the academic and social skills goals and objectives in the Student's IEP, which Mr. Nicholson agreed he was comfortable implementing at Foundation School. He further agreed that Foundation School staff would review other academic goals and objectives suggested by the Team "to see if the goals and objectives can be paired down and synthesized." The Mother agreed to "continuing current IEP goals and objectives and adding psycho-sexuality and social skills goals/objectives." These were to be "added to the current goals and objectives already in place." (Id. at 3-4).

67. On behalf of the Board, Ms. Giaquinto stated at the January 27, 2005 PPT that since the Student "has been in a different environment, out of district, for several years," the Board was proposing a "transition plan beginning on February 4th" for a full-day proposed schedule. They recommended a program for the Student at FWHS, including 10.5 hours per week of special education classes, 1.5 hours per week social skills training, 1.0 hour per week psycho-sexual counseling, 0.7 hour Adaptive Physical Education (APE), 2 typical PE classes per week, and "intensive staffing support" consisting of one-to-one adult support throughout the school day. They also recommended two sessions of typical PE weekly. The Student would not participate in any regular education classes. He requires specialized instruction for academics, counseling, PE and psychosexual counseling. He would participate in regular education classes for electives. A proposed schedule was attached to the IEP. For Academic Support (IEP goals), the Student would be in a small group of 2-3 students in a resource room. (B-114; Testimony, Ms. Giaquinto and Ms. Opotzner).

68. The transition plan called for the Student to begin on Friday afternoon on February 4 from 11:44 a.m. to 2:30 p.m. followed by after school extracurricular activity. The next week the Student would attend FWHS on Thursday and Friday afternoons. The third week the Student would attend FWHS on Monday, Thursday and Friday afternoons. The fourth week the Student would attend FWHS Monday through Friday afternoons, with extracurricular activities on Monday, Wednesday and Friday. On Friday, March 4 the Student would attend the full day at FWHS from 7:30 a.m. to 2:30 p.m. with extracurricular activity after school. On Thursday, March 10 and Friday, March 11 the Student would attend FWHS the full day. On Monday, March 14, Thursday, March 17 and Friday, March 18 the Student would attend FWHS

the full day. On Monday, March 21 through Friday, March 25 the Student would attend FWHS full time with daily after school extracurricular activities. Until the last week of the transition, the Student would attend Foundation School on the mornings and days when he was not attending FWHS. This system is called “backward chaining.” There would be team meetings on February 15 and March 7 and 15 to discuss any problems. (B-116; Testimony of Ms. Giaquinto).

69. In response to the Board’s proposed transition beginning February 4, 2005, the Student’s Mother, who had visited FWHS on December 8, 2004 to see the options proposed by the Team (B-140), disagreed with the Board’s plan to send the Student to FWHS. She stated that, while she was in agreement with the possibility of a “slow transition,” the plan outlined by the Board was “too much, too quickly.” Ms. Giaquinto asked the Mother what kind of transition she would be comfortable with. The Mother informed the Team that she would be happy to begin introducing the Student to the FWHS community by participating in extra curricular activities first, to see how he adjusted to a larger environment with support. (B-114, page 4; Testimony of Mother). The Board, through counsel, stated their view that “after school activities by themselves wouldn’t really help [the Student] become acclimated to FWHS.” Parent’s counsel responded by suggested that the Team begin with having the Student visit FWHS. Mr. Nicholson suggested three consecutive Wednesdays might give the Student consistency. As a result of the discussion, the January 27, 2005 PPT agreed that: “3 full day visits were recommended between now and next planned PPT (approximately 1 month away).” (B-114, page 4).

70. The January 27, 2005 PPT meeting ended with the Board restating its recommendation immediate full-day placement for the Student at FWHS and the Parent disagreeing with this proposal and invoking stay-put at Foundation School. (B-114, page 4; Testimony, Ms. Giaquinto and Ms. Opotzner).

71. By agreement at the January 27, 2005 PPT between the Parties through their counsel, the Parent would not file Due Process about the proposed program until results of the visits and evaluations were complete and had been reviewed, if the Board would honor the Student’s stay-put placement at Foundation, as ordered by Hearing Officer Rosado. Shortly after the PPT, the Board’s business office contacted Foundation School’s bookkeeper to notify them of the intent to terminate the Board’s financial obligation to Foundation School beginning January 31st. The Board had apparently failed to notify their business office that the Student’s placement at Foundation School was to continue. This issue was quickly resolved, and the Board agreed to honor its obligations and assurance as given at the PPT. (B-117; B-118; B-119).

72. Following the January 27, 2005 PPT meeting, a proposed schedule was developed to allow the Parent to visualize one possible way to schedule the Student’s day at FWHS. (B-115; Testimony, Ms. Giaquinto and Ms. Opotzner). A transition plan was also proposed and distributed at the January 27, 2005 PPT that would have had the Student beginning one day per week (Friday) at FWHS in February 2005, and over a period of time, adding more days at FWHS until he was spending the entire day there. (B-116; Testimony, Ms. Giaquinto, Ms. Opotzner, and Ms. Leffert).

73. The Student visited the proposed program at FWHS on three occasions and on each occasion, stayed for a full school day from 8:00 a.m. until 2:15 p.m. On Tuesday, February 15, 2005, the Student sampled classes such as PE (floor hockey), English, Elements of Math, and Resource Room. He also participated in psychosexual counseling with Ms. Cox-Lindenbaum and attended lunch. Although he expressed some appropriate feelings of nervousness at first, the Student quickly adjusted and was successful in each of the sampled environments with the assistance of an adult. (B-135; Testimony, W. Opotzner). On Thursday, March 3, 2005, the Student sampled classes such as Reading Lab, English, Elements of Math, PE and Culinary Arts. He also participated in counseling with a school social worker and attended lunch. He was successful in each of the sampled environments and on rare occasions when he exhibited socially inappropriate behavior, demonstrated that he was able to take redirection from either an adult or a typical peer in the classroom and return to task. (B-136; Testimony, W. Opotzner). On Tuesday, March 8, 2005, the Student sampled classes such as Culinary Arts, Elements of Math, PE (floor hockey), and a regular education Earth Science class. Once again, the Student was successful in each of the sampled settings and in the high school in general. The Student was particularly excited about the PE class, where he was able to play floor hockey with non-disabled peers, and when the class was over, asked if he could stay. The Student once again participated in psychosexual counseling with Ms. Cox-Lindenbaum and in speech and language therapy with Ms. Hoffkins. (B-137; Testimony, W. Opotzner).

74. When, during his visits to FWHS, the Student began talking about whether he should attend FWHS, Ms. Opotzner encouraged him to make a list of reasons for and against attending FWHS so that he would be able to articulate his arguments. The Student listed twelve reasons in favor of attending FWHS, including “because I like the classes” and “because I can make friends,” but he did not write down reasons why he should not attend FWHS. (B-138; Testimony, Ms. Opotzner).

75. There were differences in the schedules of the visiting days and the scheduled proposed at the PPT meeting. (B-115; B-135; B-136; B-137). The Student was accompanied during these visits not by a paraprofessional or aide, but rather by a special education certified teacher, Ms. Opotzner, who remained with him throughout almost the entirety of his visitations. On some occasions during the visiting days, several adults accompanied the Student. In addition, a good portion of the Student’s visitation days were taken up by “orientation” with Ms. Opotzner, direct counseling by Ms. Cox-Lindenbaum, snack and lunch with adults at times when other students were not scheduled to be in the cafeteria, gym, and speech and language testing by Ms. Chick-Hoffkins. (Id.; Testimony of Ms. Opotzner).

76. The PPT meeting was not reconvened in March 2005 following the Student’s visits to FWHS because the psychiatric evaluation requested by the PPT had not yet been completed. (B-126; Testimony, B. Giaquinto).

77. The speech and language evaluation requested by the PPT was completed in March and April 2005 by speech and language pathologist Cindy Chick Hoffkins. Ms. Hoffkins administered the Clinical Evaluation of Language Functions (CELF-3), and attained the following results: Receptive Language Score 50, Expressive Language Score 50. On the Peabody Picture Vocabulary Test III (PPVT-III), the Student attained a standard score of 52. (B-120, page 2). Ms. Hoffkins noted that the Student exhibited strong social skills relative to his

receptive and expressive language scores, which make it appear that he understands more than he does. She also noted that the Student “will have difficulty following directions that are more complex and following classroom lectures. Expressively, (he) has difficulty formulating sentences that are more complex.” (Id. at 4). During her review of her evaluation results with the Parent, Ms. Hoffkins discussed the Student’s pragmatic language skills and formulated goals and objectives for the Student’s IEP in all of these areas. (Id.; Testimony, Ms. Chick Hoffkins).

78. The Functional Behavioral Assessment requested by the PPT was completed during the spring of 2005 by Dr. Judith McCarty, who conducted three observations at the Foundation School in March and April of 2005 and visited the Parent at home on May 11, 2005. She did not observe during the visiting days to FWHS to ascertain how the Student performed in a less restrictive environment. Dr. McCarty identified numerous problem behaviors that the Student exhibited that were interfering with his learning or the learning of other students, including difficulty following directions, swearing, off-task talking, laughing inappropriately, purposeful burping, drumming on the desk, and not arriving to class on time. Dr. McCarty hypothesized the function of the majority of these behaviors as being attention-seeking behaviors and provided a detailed intervention plan to extinguish the behaviors and increase positive school behaviors. (B-121; Testimony, Dr. McCarty).

79. On March 29, 2005, Ms. Giaquinto sent a “letter of intent” of financial responsibility on behalf of the Board for Dr. John Gelinis to conduct a psychiatric evaluation of the Student. She listed six questions to be addressed by the evaluation. (B-142). The psychiatric evaluation was completed on May 17, 2005 and received by the Board of May 24, 2005. Dr. Gelinis conducted an extensive review of the Student’s educational records, including reports from Foundation School, evaluations and reports by Board personnel, and the very recent evaluation by Ms. Cox-Lindenbaum. Dr. Gelinis also met with the Student and the Student’s Mother. He also administered the Conners’ Parent Rating Scale, the BASC Parent Rating Scales, and the Achenbach’s Child Behavior Checklist. (B-126).

80. After completing the testing, records review, and interviews, Dr. Gelinis reviewed the criteria for various disorders in the DSM-IV, to determine what, if any, psychiatric or other diagnoses would be appropriate to assign to the Student. His Diagnostic Impression of the Student was of an individual with “moderate mental retardation,” ADHD (in remission), and Transient Tic Disorder who had been sexually abused by a male peer and physically abused by a male adult (day care worker when the Student was 9 months old. He further noted that there “is a psychiatric diagnostic triad (which) exists that includes symptoms of ADHD, Tic Disorders, and OCD, and (the Student) appears to fall within that paradigm.” (Id. at 10).

81. Dr. Gelinis offered five recommendations. First: the Student “must continue to be placed in a highly structured educational setting with a high teacher-to-student ratio, within a therapeutic and safe milieu, such as at the Foundation School.” Second: he “should receive vocational support and job coaching in the future.” Third: He should continue social-sexual counseling with Ms. Cox-Lindenbaum, as his “naiveté, inexperience, and history of sexual overstimulation and abuse, in the context of his burgeoning sexuality, mandate thoughtful guidance and counseling.” Fourth: The Student “needs assistance to make psychosocial and developmental progress in regard to his interpersonal relatedness, social skills and anger

management. E[.] must be encouraged to engage in socially acceptable and compliant behaviors, especially during less structured times.” Fifth: the Student “must remain safe at school and at home, and must be encouraged to seek a trusted adult if he is threatened, harassed or over-stimulated by another.” (Id. at 11).

82. In response to the 6 questions posed by Ms. Giaquinto, Dr. Gelinas indicated 1) that the Student had a Transient Motor Tic Disorder, which would be considered Chronic if it were to continue beyond 12 months. Only if the tics included vocal tics beyond the 12 month period would Tourette’s Disorder criteria be met; 2) that a neuropsychological evaluation was not necessary; 3) that the Student was not only “struggling with the ramifications of his neuropsychiatric status and psychosocial (including psychosexual) history, he is progressing through the stages of normal adolescent development. This is a formidable time” for the him; 4) the Student has “manifested a pervasive pattern of inattentiveness,” but not a thought disorder; 5) the Student “continues to manifest impulsive behaviors” but that he did not recommend medication to address those at this time; and 6) his view of supports necessary for the Student were addressed in his list of Recommendations. (Id. at 12).

83. Dr. Gelinas was not asked, as part of the psychiatric evaluation, to provide an opinion on whether the Student should stay at Foundation School or be moved to a less restrictive setting, and to the extent that he recommended that the Student remain at Foundation School, he did so because he thought the Student would be safe there and that was his primary concern. He has no particular knowledge or experience that would allow him to determine the appropriate educational placement for students, and no knowledge of least restrictive environment principles. (Testimony, Dr. Gelinas).

84. Following receipt of Dr. Gelinas’ psychiatric evaluation, a PPT meeting was scheduled for May 31, 2005. (B-127). After agreeing to that date, Parent’s counsel requested that the meeting be cancelled and re-scheduled because she had inadvertently double-booked herself for that date. (B-129). Although the Board offered the Parent the option of attending the PPT meeting on May 31, 2005 without counsel, she elected to re-schedule the meeting for late June rather than attend without her attorney. (B-130; B-131).

85. Ms. Cox-Lindenbaum issued a Clinical Progress Report on the Student on May 25, 2005. As of that time, she had seen the Student for 4 clinical sessions. In her initial sessions with him, he was “excited about the possibility of attending Fairfield High School and attending a school with ‘more girls.’ Initial reaction was hyper reactivity with primary focus being ‘girls.’” “Recently . . . he has expressed concern of whether the transition to Fairfield would be overwhelming for him.” (B-128, page 1). During both the evaluation and the clinical sessions with Ms. Cox-Lindenbaum, the Student “recounted his former sexual abuse...Impulsive thoughts regarding his abuse currently arise in daily living experiences. This issue of safety needs our consistent attention.” (Id. at 2). She restated 35 interventions and 11 recommendations for the Student from her initial evaluation report. (B-108; B-128, pages 2-6).

86. The PPT meeting was convened on June 21, 2005, to review the evaluations, data from the Student’s visits to FWHS, and the Student’s progress to date and to recommend a program for the Student for the 2005-2006 school year and to make changes to his IEP. The

meeting took place over the course of several hours at Foundation School, and involved numerous individuals. Present were Ms. Giaquinto, the Mother, regular education teacher R. Morrow, Ms. Opotzner, Dr. McCarty, Ms. Siff, Speech/Language B. Wurtzel (Foundation School), Mr. Nicholson, Ms. Cox-Lindenbaum, K. Len (math teacher Foundation School), Ms. Chick Hoffins, Ms.. Leffert and attorneys for the Parent and Board. (B-133, page 1).

87. Several evaluations were reviewed at the June 21, 2005 PPT, including the speech and language evaluation by Ms. Chick-Hoffkins, the functional behavioral assessment and proposed Behavior Intervention Plan by Dr. McCarty, and Dr. Gelinas' evaluation. Dr. McCarty expressed her view that most of the Student's behaviors were attention seeking, and should be so treated. She believes that many of these behaviors can be extinguished by denying attention for inappropriate behaviors. Her report describes a "recommended check reinforcement system, using differential reinforcement procedures. The system is a positive behavioral supports system." (Id. at 37). Ms. Cox-Lindenbaum responded that: "in her opinion, [the Student's] emotions also play a role in his behaviors." She noted that currently at Foundation School, the Student was met at the bus by a staff member, who will give him the opportunity to talk through his feelings with staff members before beginning his day if he arrives to school upset about something. Ms. Cox-Lindenbaum further noted that the Student was "less angry and anxious" at that time than he had been when she had first met him. (Id.).

88. Ms. Giaquinto reviewed Dr. Gelinas' evaluation, mentioning that the Student appeared to have "no other psychiatric issues at this time." The Parent's attorney emphasized his recommendation for ongoing psychosexual counseling with Ms. Cox-Lindenbaum. (Id. at 38).

89. Ms. Opotzner described her impressions of the Student's three visits to FWHS in February and March and noted that in "less structured environments [the Student] would need intensive support." (Id.; Testimony of Ms. Opotzner). Mr. Morrow described the Student's participation in his Earth Science class. He said the Student "interacted appropriately with students and staff, and exhibited a good comfort level during the class. He made appropriate contributions and observations regarding the materials." Mr. Morrow thought it was a positive experience for him. Ms. Opotzner stated that the Student greatly enjoyed the PE class. Ms. Giaquinto summarized the visits and noted that while the staff said that they did not see any negative behaviors during these visits, they "did observe some perseveration regarding girls and he did ask questions about behavior he saw typical kids engaging in." (B-133 at 39).

90. Mr. Nicholson told the PPT that the Student's "interest in the behavior of others can interfere with his academic time" and that the FWHS staff "may find that they have to address (his) perseverations about the behaviors of other students before (the Student) will be able to get down to work." Dr. McCarty opined that the Student "has not been exposed to the peer models he would have in a typical high school setting, but with exposure to the environment, he would likely become desensitized to the setting." The Mother responded that once the Student became comfortable at FWHS, "staff will begin to see behaviors reappear." "Dr. McCarty noted that this is why it would be important to have an appropriate behavioral support plan in place, to extinguish negative behaviors." (Id.).

91. Ms. Cox-Lindenbaum told the PPT that the Student was much happier than he was a few months ago. She said the Student had freedoms at Foundation School and that "a

transition to FWHS needs to be planned carefully so that he doesn't end in a more restrictive setting at FWHS." (Id. at 40). She testified that one of her greatest concerns about the appropriateness of FWHS for the Student is that it is a very large high school where the Student would be extremely vulnerable to witnessing typical students kissing and being otherwise affectionate in the hallways, when different rules apply to him. (Testimony of Ms. Cox-Lindenbaum).

92. The FWHS staff stated their opinion that, based on the three visiting days, the Student would be able to learn at FWHS. Ms. Wurtzel, a speech and language pathologist from Foundation School who had worked with the Student, informed the PPT that, even at Foundation School the Student had to be removed from a very small social skills group to 1:1, because he was having difficulty working with the larger group. Ms. Len, the Student's math teacher at Foundation School, added that the Student was also switched to a smaller group for math even at Foundation, "due to behavior problems." (B-133, page 40).

93. After a lengthy discussion the team began to consider proposed goals and objectives. All present at the meeting agreed to the proposed behavior intervention goals and speech and language goals and objectives. Mr. Nicholson presented a set of goals and objectives proposed by the Foundation staff. After discussion and comparison of the two sets of goals and objectives, all members, including the Mother, agreed to goals and objectives in academic, community, leisure, independent living, vocational, behavioral, speech-language and extra curricular activities. Based on these revised goals and objectives, the Board members of the PPT "continue to recommend the program proposed at the January 27, 2005 PPT, with the addition of 1.4 hours per week speech and language therapy, BIP proposed by Dr. McCarty, weekly team meetings, and consultation." The Mother requested continued placement for the Student at Foundation School for the 2005-2006 School Year, with psychosexual counseling to be part of the Foundation program. (Id. at 41- 42).

94. The Board would provide intensive adult support during the transition to FWHS. Additional resources available to the Student as part of the proposed program at FWHS included the services of a Transition Specialist and an Inclusive Education Facilitator as supports to the Student and the team at FWHS. (Testimony, Ms. Giaquinto and Ms. Leffert).

95. The Fairfield program also included an Extended School Year (ESY) program for the summer of 2005, including summer school for 19 days from 8:30 a.m. to noon during the month of July 2005, 0.5 hour per week speech and language therapy, 1 hour per week counseling for psychosexual issues, 1 hour per week consultation to home and school regarding psychosexual issues, and 10 hours per week of individual support during the month of August to identify preferred leisure activities. The team also recommended three visits to FWHS at the end of August prior to the beginning of the school to facilitate the Student's transition to the new building. (B-133, pages 1 and 42; Testimony, Ms. Giaquinto).

96. Mr. Nicholson recommended that the Student attend the ESY program at Foundation School, and the Mother requested that the Board fund the Student's attendance at Camp Ramapo following the completion of the Foundation ESY program. The Board refused these requests. (B-133, page 42). Ms. Giaquinto questioned the appropriateness of summer

camp considering his camp experience during the summer of 2004. (Id.; Testimony Ms. Giaquinto).

97. Following the June 21, 2005 PPT meeting, on June 24, 2005, the Parent filed for due process and invoked “stay put” to maintain the Student’s placement at Foundation School, including transportation, beginning with the summer ESY program during July 2005. (B-134). The Student has been attending Foundation School during the pendency of these proceedings at the expense of the Board, including the 2005 ESY program, despite the fact that the Board does not believe that the Foundation School program provides the Student with an appropriate program in the LRE. (Testimony, Mother, Mr. Nicholson and Ms. Giaquinto).

98. The Student’s greatest barrier to learning at this point is his behavior, including low frustration tolerance, and need to learn appropriate social skills. The program offered to the Student would meet his needs with an individualized day including co-taught special education classes, individualized special education classes, general education opportunities, and related services. (Testimony, Dr. McCarty, Ms. Opotzner and Ms. Leffert).

99. The Student needs to be provided with interesting instructional materials and lessons, preferably involving hands-on activities that will hold his interest as well as activities that will work toward achievement of transition goals and objectives in the area of vocational skills, independent living skills, and community participation. This type of stimulating academic curriculum can be provided to the Student at FWHS through both special education settings and regular education settings with special education support. Appropriate academic goals and objectives, which the Parent is in agreement with, are included in the Student’s IEP. Ms. Opotzner, who is dually-certified as a special education teacher and regular education teacher in math, testified that she would provide special education instruction to the Student in math. Classes that the Student enjoys at Foundation such as the Multi-Shop, Cooking and PE can be provided to the Student in classes with non-disabled peers at FWHS. (B-133, pages 4-9, 25-31 and 33; Testimony, Ms. Opotzner, Mr. LiBrandi, Ms. Giaquinto).

100. The Student exhibits inappropriate behaviors that interfere with his own learning and the learning of other students, if not handled effectively. The program offered to the Student at FWHS includes a strong behavioral management component, including consultation from a behavior analyst to assist highly trained staff in the implementation of the recommended positive BIP. The system at Foundation School, on the other hand, has resulted in the Student’s removal from social skills class to a 1:1 situation with the speech-language pathologist. (B-133, 1 and 13-14; Testimony, W. Opotzner, J. McCarty).

101. The Student needs to be taught age-appropriate and developmentally appropriate information concerning human sexuality. The program offered by the Board includes psychosexual counseling services to provide him with this information in a developmentally appropriate format and addresses issues of typical adolescent development that he may have difficulty handling, given his past experiences and cognitive limitations, as well as consultation to staff in this area. (B-133 page 1, 17 and 33; Testimony, Ms. Giaquinto and Ms. Cox-Lindenbaum). The Board also has the ability to provide the Student with a developmentally appropriate curriculum through group counseling sessions with school social workers using the Circles program and related materials described in testimony. FWHS staff have received

specific training in these issues from, among other sources, Diane Cox-Lindenbaum, who testified that the staff has been trained and is prepared to work with the Student. (Testimony, Ms. Siff and Ms. Cox-Lindenbaum).

102. The Student will likely have difficulty adjusting to a new, larger high school setting with typically developing adolescents. The Board's proposed program includes intensive adult staffing which would involve the presence of direct adult support at all times when the Student initially transitions to FWHS (paraprofessional or special education teacher support, as appropriate). The Board has the flexibility to allow the Student to transition between classes either before or after the other students change classes, to avoid having the Student in the hallway with large numbers of peers, at least during the transition. If the Student has difficulty eating lunch in the cafeteria with his peers, the Board has the flexibility to allow him to eat lunch with a smaller group of peers at first. Accommodations like these can be continued for as long as necessary, or until the Student is comfortable navigating the building and larger group situations. (Testimony, Ms. Opotzner, Ms. Leffert and Ms. Giaquinto). The Mother has many reservations about the plan, whether the Board would in fact utilize all these accommodations and what would happen if the transition was not working. (Testimony of Mother).

103. The Student needs speech and language services to address his deficits in receptive and expressive language, as well as facilitated group activities to address pragmatic language and social skills issues. The program offered by the Board provides for the Student to receive speech and language therapy as part of the Student's regular and special education program, with participation in group counseling and/or lunch groups, as appropriate to meet the Student's needs. (B-133 pages 1, 15-16, 18-24 and 33; Testimony, Ms. Chick Hoffkins and Ms. Siff).

104. The Student is nearly sixteen years of age, and needs to begin working on vocational skills and transition goals, based on an assessment of his interests. The program offered by the Board includes the services of a Transition Specialist who can help the Student and his family identify his needs and interests, and begin working along with the special education teacher to develop a program to develop the Student's skills and enable him to meet his post-secondary goals. (B-133 pages 25-31 and 33; Testimony, Mr. LiBrandi and Ms. Leffert).

105. The Student needs to interact with typical peers, to be able to learn from typically developing role models how to handle all types of social interactions and situations, to develop more effective communication skills, to learn to refrain from engaging in socially inappropriate behaviors and increase his use of positive social behaviors. The program offered by the Board will give the Student access to typical peers in both academic and social situations. The Student has a desire to interact with non-disabled peers, has an ability to benefit from these interactions and model the behavior of typical peers, and the Parent has agreed that this is one of her primary areas of concern for the Student. (B-133, 33 of 43; Testimony, Ms. Opotzner, Mr. LiBrandi, Ms. Leffert, Dr. McCarty, Ms. Chick Hoffkins and Ms. Giaquinto).

106. At Foundation School, he has very limited access to typical peers and appropriate peer role models. FWHS has appropriate and stimulating academic and vocational instruction, with daily access to non-disabled peers in a regular high school in his home school district that is

capable of meeting all of his academic and non-academic needs identified in the January and June 2005 PPT meetings. The Student needs to prepare for transition to a world outside of high school filled with typical peers and situations. The Student currently does not participate in any extra-curricular activities at Foundation. In addition to available typical peer models during the regular school day, the Student would also have access to FWHS extra-curricular opportunities after school. (Testimony, Ms. Giaquinto and Ms. Opotzner).

107. The Parent's preference to provide the Student with exposure to non-disabled peers by having him participate only in extra-curricular activities at FWHS would not meet the Student's needs for a program where he would have opportunities to interact with the same peers both during the regular school day and after school in order to build relationships with those peers. (Testimony, Ms. Siff).

108. Mike Nicholson, Principal of Foundation High School, has worked there for 30 years, his entire professional career. Foundation High School has 63 students all with disabilities, including autism, behavior issues and intellectual disabilities. The program is academic, prevocational and vocational. Most classes have 2-3 students. He stated that Foundation School was "struggling" to appropriately educate the Student there. Foundation has been implementing Dr. McCarty's behavior plan since fall 2005. He and Dr. McCarty disagree as to the efficacy of the behavior plan at Foundation. He thinks that a less restrictive high school setting may also have difficulty providing appropriate educational services to the Student. (Testimony, Mr. Nicholson).

109. The Student requires an appropriate ESY program that allows him to maintain his academic level of functioning during the summer school vacation and also provides him with opportunities to begin working on community participation and identification of appropriate leisure activities in his home community. The Board offered a program for the Student for the summer of 2005, consisting of an academic ESY program within the Fairfield Public Schools for the month of July and individualized support in his home community for the month of August. The transition plan was for the Student to visit FWHS three times at the end of August. (B-133 page 1; Testimony, Ms. Giaquinto). As a result of the Parent's filing due process, the Board paid for the Student to attend the ESY program at Foundation School in July 2005. The Board did not fund the summer camp in August.

110. During August 2005 the Parent funded a camp experience for the Student at Camp Ramapo, a sleep-away camp for "special needs and at-risk children" located in Dutchess County, New York. She located Camp Ramapo through the National Camp Association, a referral service that she had used in the past. (P-3; Testimony Mother). The Parent submitted a printout from the Internet describing the camp in general terms. She did not provide the camp with a copy of the Student's IEP. No special education or related services were provided to the Student at Camp Ramapo, the camp has no State approval to provide special education services from either New York or Connecticut. It is not known whether the camp counselors have educational credentials. No evidence was provided to show that the Student obtained any educational benefit from the camp experience during the summer of 2005. The Mother believed the Student enjoyed the experience. (P-4; Testimony Mother).

111. In choosing Camp Ramapo, the Mother relied upon literature about the program, which indicated that it was a camp designed for special needs children, with a staff of mostly college graduates who provide strong supervision to the students who attend the program. She also spoke with the Executive Director of the Camp, who “holds advanced degrees in Special Education, and School Supervision and Administration.” In her conversations before, during and after the Student’s attendance at Camp Ramapo, the Mother found no discrepancies between what she had learned about the camp in the literature and what was actually taking place there. (Id.).

112. The Mother was given a progress report from Camp Ramapo, which outlined how the Student performed on a number of Skills for Social Success. She was concerned that some of the Student’s lowest scores were in important areas like “avoids using physical aggression (e.g. hitting, grabbing, pushing, etc.),” “controls temper/anger,” and “knows how to judge a potentially dangerous situation.” (P-5, page 3; Testimony of Mother). The Mother had informed the camp director that the Student had been sexually molested by a disabled peer at Camp Round Lake in the summer of 2004. He advised the camp counselors and assured the Mother that the Student would be safe. She, Mr. Nicholson and Ms. Cox-Lindenbaum filled out questionnaires for Camp Ramapo prior to the Student’s attendance there. (Testimony of Mother).

113. In addition to funding Camp Ramapo, the Student’s Mother paid \$625.00 for five sessions for the Student with Ms. Cox-Lindenbaum in the summer 2005 prior to camp. Since the Board was refusing to provide Ms. Cox-Lindenbaum’s services, she felt it was necessary for him to receive these services. (Id.).

114. All parties agree since the January 27, 2005 PPT meeting that the Student requires psychosexual counseling and that it is to be provided by Ms. Cox-Lindenbaum. Ms. Cox-Lindenbaum currently provides services at Foundation High School to the Student pursuant to the Interim Order dated October 17, 2005.

115. A mutually acceptable educational consultant who understands intellectual disabilities and behavior issues as manifested by this Student, understands how to transition a Student from a long-term segregated environment like Foundation School to a public high school, who understands how to draft and implement an IEP, and can establish a trusting relationship with all of the PPT members is necessary to assist in the planning and implementation of an appropriate transition to FWHS for the Student.

CONCLUSIONS OF LAW

1. The Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. The Parties also agree that E. is a child with intellectual disability (mental retardation). 34 C.F.R. Section 300.7(c)(6).

2. The IEP serves as the centerpiece of a student’s entitlement to special education under the IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). The primary safeguard is the

obligatory development of an IEP which must contain a statement of the child's current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of "measurable annual goals, including benchmarks or short term objectives related to meeting the child's individual needs." 20 U.S.C. Section 1414(d)(1)(A)(ii); 34 C.F.R. Section 300.347; Roland M. v. Concord School Committee, 910 F.2d 983, 987 (1st Cir. 1990), cert. denied 499 U.S. 912 (1991).

3. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is "reasonably calculated to enable the child to receive educational benefits." Id. at 206-207. The parties disagree on who has the burden of proof on the appropriateness of the program for the 2004-2005 and 2005-06 school years and the 2005 ESY. In Schaffer v. Weast, 126 S.Ct. 528, 537, 1634 L.Ed.2d 387 (2005), the United States Supreme Court determined that the burden of proof in an administrative hearing under the IDEA properly rests with the party seeking relief. Therefore, the Board claims the Parent, as the party who initiated the due process proceedings and the party seeking relief, bears the burden of proof. The Board relies on A.S. and W.S. by and through Mr. and Mrs. S. v. Trumbull Bd. of Ed., 414 F. Supp.2d 152, 45 IDELR 40 (D.Conn. 2006), which applied Weast to a Connecticut administrative hearing conducted in 2003-2004: "A party dissatisfied with a proposed educational plan may challenge it in an administrative hearing, in which the party bears the burden of proving the plan to be inadequate. See Schaffer ex rel. Schaffer v. Weast, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005)." There is no discussion of Connecticut statutes or regulations. The Parent claims that the burden is on the Board because Weast does not overturn state statutes which assigned the burden of proof to one party or another. In Escambia County Bd. of Ed. v. Benton, 44 IDELR, 106 LRP 579 (S.D.Alabama 2005), the court held that Weast did not affect a state regulation placing the burden of proof on the district. Regulation of Conn. State Agencies Section 10-76h-14(a) provides:

The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 C.F.R. Section 300.521.

In Circular Letter, Series 2005-2006, C-9 (February 22, 2006), the State of Connecticut Commissioner of Education announced that she does not plan to seek repeal of Section 10-76h-14(a). She said: "... the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP." Therefore, since the statement quoted above in A.S. and W.S. by and through Mr. and Mrs. S., supra, was not a ruling on the validity of Section 10-76h-14(a) and since the SDE Commissioner has affirmed its validity, the Board bears the burden of proof in this case. As set forth in Section 10-76h-14(c), if the Board's program is found inappropriate, the Parent has the burden of proof on reimbursement for any unilateral placement or program.

4. The evidence in this hearing shows that the Board conducted comprehensive evaluations and assessments of the Student's current levels of performance in academics, social and behavioral skills in the fall of 2004. The IEP developed at the January 27, 2005 PPT meeting was appropriate. The Parent does not challenge the goals and objectives, but only the placement. The Student received educational benefit from the IEP, which was implemented at Foundation School. "IDEA requires only that school districts provide an 'appropriate' IEP, gauged by whether the IEP is 'sufficient to confer some educational benefit.'" Board of Education of the Hendrick Hudson Central School District v. Rowley, *supra*. In this Circuit, the Court of Appeals has said that the proper gauge for determining educational progress is "whether the educational program provided for a child is reasonably calculated to allow the child to receive 'meaningful' educational benefits." Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2nd Cir. 1997). The Court of Appeals has also cautioned that meaningful educational benefits are "not everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free School Dist., 873 F.2d 563, 567 (2nd Cir. 1989). "Clearly, Congress did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial." Hall v. Vance County Bd. Of Educ., 774 F.2d 629,636 (4th Cir. 1985). "Of course, a child's academic progress must be viewed in light of the limitations imposed by the child's disability." Mrs. B. v. Milford, *supra* at 1121.

5. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. Board of Education of the Hendrick Hudson Central School District v. Rowley, *supra.*, 181; 34 C.F.R. Section 300.550(b). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. Sections 300.550 through 300.556; Conn. State Regs. Sections 10-76a-1 and 10-76d-1. School districts must evaluate whether a student can be educated in a regular classroom if provided with supplemental aids and services, and a full range of services must be considered. Oberti v. Board of Education, 995 F.2d 1204, 1216 (3d Cir. 1993). The district must examine the educational benefits, both academic and nonacademic, to the student in a regular classroom. Among the factors to be considered are the advantages from modeling the behavior and language of non-disabled students, effects of such inclusion on the other students in the class and the costs of necessary supplemental services. Id. "Least restrictive environment" is defined as follows under IDEA:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that such education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. Sec. 1412(a)(5); 34 C.F.R. Sec. 300.550. FAPE must be provided to disabled children "in the least restrictive appropriate environment." Polera v. Bd. Of Educ., 288 F.3d 478, 481 (2d Cir. 2002).

6. In this case the Student has been placed in an out-of-district school for children with disabilities. He has not been educated in the public schools in his home district of Fairfield

since first grade. This occurred as noted in the findings of fact from an initial unilateral placement followed by a series of due process complaints and settlements and Board placements through the PPT process. Since at least June 2004 the Board has been attempting to return the Student to a program in the district at FWHS where he would attend if he were nondisabled. Section 300.552(b) provides: "The child's placement—(1) is determined at least annually; (2) is based on the child's IEP; and (3) is as close as possible to the child's home." In this case, the PPT developed an IEP for the Student, which provided for special education in his academic classes to be in small groups or one-to-one in a resource room. He would also receive related services of counseling and speech-language in group or individual settings. His electives would be in general or regular education classes. The Parent claims that the IEP is not definite enough for her to make an informed decision because the exact schedule of classes was not made a part of the IEP and the types of students who would be in his social skills group were not identified. The Parent also claims that she did not know whether the Student would be eating lunch with the large group in the school cafeteria and changing classes in the hallways at the same time as other students. As set forth in the testimony, there would necessarily be a process of transition for the Student to adjust from a small segregated school of 63 students to a large public high school. The Student would not be set loose in the school. He would be accompanied by an aide at all times. The transition plan proposed for February and March 2005 would have given the Student time to adjust gradually. Unfortunately, the Parent refused to have the Student participate in it. The three visits were successful. The Board conducted further evaluations in the spring and in June 2005 the PPT again proposed an appropriate program at FWHS for the ESY 2005 and the 2005-06 school year.

7. The Board's programs offered the right balance between special education and regular education. R.L. by Mr. and Mrs. L. v. Plainville Bd. of Ed., 363 F.Supp.2d 222 (D.Conn. 2005):

Because the statute expresses that disabled children should be educated alongside non-disabled peers 'to the maximum extent appropriate,' special education services must be provided in the least restrictive environment consistent with the child's educational plan. Only when "'the nature or severity' of a child's disability is such 'that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily' should a child be segregated." *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir. 1998) (quoting 20 U.S.C. § 1412(5)).

In order to ensure that the balance of services required to meet these goals is specifically fitted to the particular child, the IDEA requires that each child receive an individualized education program. The IEP is intended to be "the result of collaborations between parents, educators, and representatives of the school district." *Lillbask v. Connecticut Dep't. of Educ.*, 397 F.3d 77, 2005 U.S. App. LEXIS 1655, (2d Cir. Feb. 2, 2005). While the IEP does not have to maximize the child's educational potential, it must

provide "meaningful" opportunities and the possibility for more than "trivial advancement." *Walczak*, 142 F.3d at 130.

8. The Hearing Officer may "grant such relief as [she] determines is appropriate." 20 U.S.C. Section 1415(i)(2)(B)(iii). See also Conn. Gen. Stats., Section 10-76h(d)(1):

The hearing officer . . . shall have the authority to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education to the child or pupil . . . or to prescribe alternate special educational programs for the child or pupil. . . .

The Parent claims that the Board violated 34 C.F.R. Section 300.505(e) because it conditioned the provision of psychosexual counseling services, which are necessary to provide the Student with a FAPE, on the Parent's consent to a change in placement from Foundation School to FWHS. The Board's argument that stay put provisions of IDEA did not require it to provide the services has been overruled in the Interim Order dated October 17, 2005. Accordingly, the failure to provide the services violated Section 300.505(e). Mr. And Mrs. S. v. Timberlane Regional School District, 40 IDELR 260 (D.N.H. 2003). It is appropriate to order that the Student receive the services he would have had if the IEP had been implemented. Reid ex rel. Reid v. District of Columbia, 401 F.3d 516 (D.C.Cir. 2005). The Parent should also be reimbursed for the sessions she paid for.

9. The Parent has requested in her brief that in the event that this Hearing Officer issues an order proposing a transition of the Student to FWHS that she order the Board to fund the consultation services of Ms. Cox-Lindenbaum and Dr. Gelinis to assist in the development of that transition. The Parent further requested an order that, in the event of a dispute between the Parent and the District as to appropriate programming during the course of the transition of the Student to FWHS, that "stay put" be delineated as Foundation High School. The Board in a post-brief letter argued that Ms. Cox-Lindenbaum and Dr. Gelinis have no appropriate credentials to participate in designing a transition for the Student and that ordering a stay put beyond the expiration of the due process proceeding is beyond the jurisdiction of the Hearing Officer. Based on the findings and conclusions in this decision, a plan is necessary for the Student to transition to FWHS. The development of a plan requires the assistance of a mutually acceptable independent educational consultant to oversee this process. Ms. Cox-Lindenbaum and Dr. Gelinis are not acceptable to the Board as consultants in this capacity, therefore, the Hearing Officer will not order the Board to pay for their services. This Hearing Officer cannot retain jurisdiction of this case. Since the close of the 2005-2006 school year is only a few weeks away, the Student will soon need a new IEP. In view of the long-term nature of the dispute involving the Student's placement, it is appropriate to order the Board to fund the services of a mutually acceptable educational consultant to assist the PPT with developing a transition plan.

FINAL DECISION AND ORDER

1. The program proposed by the Board in January 2005 for the second semester of the 2004-2005 school year at Fairfield Warde High School offered the Student an appropriate program in the least restrictive environment.

2. The program proposed by the Board in June 2005 for the summer of 2005 and the 2005-2006 school year within the Fairfield Public Schools offered the Student an appropriate program in the least restrictive environment.

3. The Board violated 34 C.F.R. 300.505(e), by refusing the Student necessary agreed upon psychosexual counseling services beginning after the January 27, 2005 PPT meeting because the Parent refused to consent to placement at Fairfield Warde High School.

4. The Parent's request for continued placement at the Foundation High School for the 2005-2006 school year is granted only until such time as a transition to Fairfield Warde High School can be made.

5. Reimbursement of the Parent's privately obtained services for the ESY 2005 at Camp Ramapo is denied.

6. The Board is ordered to reimburse the Parent's privately obtained services in the ESY 2005 for the psychosexual counseling services of Ms. Cox-Lindenbaum in the amount of \$625.00.

7. The Board is ordered to provide the Student with psychosexual counseling services of Ms. Cox-Lindenbaum through June 19, 2006, which is the end of the current school year's IEP.

8. The Board is ordered to provide the Student with additional psychosexual counseling services of Ms. Cox-Lindenbaum to compensate for the services he would have received if the IEP had been implemented from January 27 through October 17, 2005, the date of the Interim Order.

9. The parties are directed to convene a PPT meeting within 30 days to develop a plan for the transition of the Student to FWHS. If the parties cannot agree on a plan, they are directed to select a mutually agreeable educational consultant to be paid by the Board to assist the PPT in formulating a transition plan.