

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. New Canaan Board of Education

Appearing on behalf of the Parent: Parent, *Pro se*

Appearing on behalf of the Board: Susan C. Freedman, Esq.  
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Appearing before: Mary H.B. Gelfman, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Are the special education programs (Individualized Education Program or IEP) and placements provided for Student by the Board for the 2004-2005 and 2005-2006 school years, as referenced in the October 6, 2005 request for hearing citing Planning and Placement Team (PPT) meetings held on September 10, 2004 (Exhibit B-23), and December 8, 2004 (Exhibit B-29) and August 10, 2005 (Exhibit B-40) and September 22, 2005 (actually September 21, 2005)(Exhibit B-41) appropriate to Student's special education needs in the least restrictive environment?
2. Are the "Present Levels of Educational Performance" listed in Student's current IEP (Exhibit B-41 P. 5, dated September 21, 2005) an accurate statement; if not, what should be added or changed?
3. Does Student require the following related services and accommodations/modifications in order to benefit from special education?
  - a. Is additional assistive technology needed: voice/text software to be provided to some or all of Student's teachers; use of linked computers (for Student and teacher) in some or all of Student's classes? ("Voice/text software" is used herein to describe software such as the Kurzweil 3000 and similar programs.)

- b. Shall voice/text software be installed, at Board expense, on the computer Student uses at home?
  - c. Since homework and computer use for homework are issues, should Student complete his homework at school, as recommended by the Board?
  - d. Is the September 23, 2005 (Exhibit B-42, P. 3), behavior plan appropriate to Student's needs in school?
  - e. Is outside consultation in assistive technology for Student's teachers necessary in order for Student to benefit from special education?
  - f. Does Student require a dedicated paraprofessional [sometimes described as a Teaching Assistant (TA) or one to one aide] to assist him throughout the school day in order to benefit from special education?
  - g. Is the behavior plan incorporated in Student's IEP required in all settings during the school day, or may individual teachers determine, based upon Student's performance and behavior, whether they are necessary in specific classes?
  - h. Are the accommodations/modifications incorporated in Student's IEP required in all settings during the school day, or may individual teachers determine, based on Student's performance and behavior, whether they are necessary in specific classes?
- 4. Should Student be placed in a regular English class rather than receiving special education language arts instruction?
  - 5. Are additional evaluations (assistive technology, psychiatric) needed at this time?
  - 6. Does Student require a transition plan at this time?

**PROCEDURAL HISTORY:**

(Initially, the hearing officer identified correspondence as hearing officer (HO) exhibits. However, some of the correspondence was not entered on the record because it was irrelevant, duplicative, outside the jurisdiction of the special education hearing officer, or argumentative. Excluded documents are marked as such and filed separately with the record. Due to the unusually large volume of correspondence and notices, these documents (including HO exhibits) are filed as "Administrative Record", chronologically. Undated correspondence is marked with the date received by the hearing officer.)

This hearing was requested on October 6, 2005, but the Board did not immediately send the request to the State Department of Education. The Board's attorney sent the request to the Due Process Unit at the State Department of Education on October 21, 2006, explaining the delay by reporting that Parent had recently filed a complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), and the Board didn't know how to treat two complaints at the same time. The hearing officer was appointed on October 24, 2005.

A pre-hearing conference was held on November 1, 2005, and at that time there was an extended discussion of issues in dispute. The hearing officer suggested that further discussion of the issues could occur on December 5, 2005, before the hearing convened. Parent volunteered to write out additional issues that she wished to be included.

A resolution session was held on November 8, 2005, and the Board representatives believed that all issues had been resolved. A letter was sent to Parents, listing the issues and agreements reached and asking for Parents' signatures. Parent responded with more complaints and suggestions. The Board summarized its concerns in a letter to the hearing officer. (Ex. B-46, B-47, B-48; November 22, 2005, letter from Attorney Rudnick to the Hearing Officer with attachments, Administrative Record)

On November 22, 2005, the Board challenged the sufficiency of the October 6, 2005, request for hearing, stating that the OCR complaint and the resolution session had delayed their challenge. The hearing officer responded on November 28, 2005, denying the challenge because it was not received within fifteen days of the request for hearing, as required by Section 615(c)(2)(B)(i)(II) and (c)(2)(C), Individuals with Disabilities Education Improvement Act of 2004.

The hearing officer received an additional statement of issues from Parent on November 29, 2005. The Board objected to the lateness of submission of issues. Parent sent several further communications, including restated and additional issues and narrative discussion regarding her problems with the school system. Most of these communications were ruled inadmissible because they repeated material already on the record or concerned issues beyond the jurisdiction of a special education hearing officer.

When the hearing convened on December 5, 2005, there was discussion of issues and an attempt at settlement, which failed. Parent was informed that some of her issues were not within the authority of a special education hearing officer. Additional hearing dates of January 6 and 20, 2006, were scheduled, and the deadline for mailing the final decision and order was extended from December 23, 2005, to January 22, 2006. The hearing officer sent both parties a list of the issues in dispute that were within her jurisdiction on December 12, 2005, stating that these were the issues to be addressed in the hearing and rejecting issues that were outside her jurisdiction.

Parent notified the hearing officer on December 29, 2005, that she had been called to jury duty on January 5, 2006, and asked that the hearing session scheduled for January 6, 2006, be postponed. The hearing officer granted the postponement.

The hearing convened on January 20, 2006. Parents' exhibits and witness list were received after the five days prior to the convening of the hearing (originally scheduled for December 5, 2005) and no index was ever provided. In presenting her case, Parent reorganized selected Board exhibits, adding her own material and argument.

At the January 20, 2006, hearing session, additional dates of February 16 and March 7 and 28, 2006, were planned, and the decision deadline was extended from January 22 to February 21, to March 23, and thence to April 22, 2006. By letter dated February 22, 2006, the Board's attorney notified the hearing officer that she had a conflict on March 7, and asked that an alternate date be selected. At the February 16 hearing session, the March 7 session was postponed and April 6 and 18 were added to March 28, 2006, for additional hearing sessions. The decision deadline was again extended, to May 22, 2006.

The April 6 hearing session was postponed at the request of Parent, who was entering the hospital. April 24, 2006, was added for another hearing session. The Board representative was unavailable for April 24, so that session was changed to April 21, 2006. On April 14, the Parent telephoned from the hospital to report that she would not be discharged until April 21, and asked that the April hearing sessions be postponed: that request was granted. On May 2, the hearing officer scheduled hearing sessions for May 30 and June 5, 2006, and extended the decision deadline from May 22 to June 21 and then to July 28, 2006.

On May 15, the Parent requested that the hearing officer recuse herself, and the Board responded on May 22, arguing that the Parent's arguments did not meet the legal standard for recusal. The hearing officer responded on May 25, 2006, stating that she would not be recusing herself, and she read a longer statement into the record on May 30, 2006. On May 30, after two Board staff members had testified, Parent announced that in addition to the former High School PPT Coordinator who now works in another school district, she planned to call Student and his father as witnesses on June 5, 2006. The Board objected. The hearing officer, citing the flexibility of an administrative forum, allowed these witnesses, although only the former PPT Coordinator and Student actually appeared on June 5, 2006.

The hearing actually convened on six days: December 5, 2005, and January 20, February 16, March 28, May 30 and June 5, 2006. The hearing officer established a briefing schedule in lieu of closing arguments, with briefs no longer than 20 pages due on July 3, and responses no longer than two pages due on July 10, 2006. The record was closed on July 10, 2006.

All motions and objections not previously ruled upon, if any, are hereby overruled.

**SUMMARY:**

Parent challenged many details of the IEPs, and compliance with those IEPs, for Student's ninth grade year (2004-2005) and tenth grade year (2005-2006).

The Board, having held many PPT meetings and having made several changes to reflect Parent's wishes over the years, disagreed, arguing that its IEPs were appropriate to Student's special education needs.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence on the record. To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, see *SAS Institute Inc. v. S. & H. Computer Systems, Inc.*, 605 F.Supp.816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

### **FINDINGS OF FACT:**

From a review of all documents entered on the record of the hearing and all testimony offered on behalf of the parties, I make the following Findings of Fact.

1. Student is now 15 years old (date of birth August 25, 1990) and completing his tenth grade year in the Board's High School. His special education classification was Specific Learning Disability until the Board's Planning and Placement Team (PPT) yielded on August 10, 2005, to Parent's preference for Other Health Impaired, based on his diagnosis of bi-polar disorder. There is no dispute concerning his eligibility for special education. (Ex. B-1, B-2, B-4, B-5, B-6, B-7, B-12, B-13, B-14, B-17, B-22, B-23, B-29, B-36, B-40, B-41)
2. At a PPT meeting held on July 15, 2003, prior to Student's 8<sup>th</sup> grade year and in response to Parent concerns, several evaluations were planned. This meeting was attended by two Board Special Education Administrators, Parent, Regular and Special Education Teachers, and a School Psychologist. Parent signed the consent form for evaluations of reading comprehension, assistive technology, and a social work assessment "re: coping strategies and possible need for services". In addition, it was decided that Student would be provided with five hours of instruction in keyboarding during the summer. (Ex. B-5)
3. An on-going issue, also discussed at the July 15, 2003, PPT meeting, was the Board's recommendations concerning Kurzweil software for Student. This software program was intended as support for development of Student's reading and writing skills. The Board's staff considered this software as a modification to Student's program. Parent wanted a specific Kurzweil goal, with instruction by contracted Kurzweil specialists for Student and all staff members working with Student. The Board staff members at this PPT meeting stated that training by the Board's assistive technology staff for

Student's special education staff was appropriate, and that regular education teachers would not need this training to work with Student. Parent envisioned Student using a laptop computer and the Kurzweil software in every class: the teachers saw Kurzweil as support for reading and writing assignments, to be used in the Resource Room. (Ex. B-5)

4. During Student's eighth grade year (2003-2004) Parents both attended ten PPT meetings. (Ex. B-6, B-7, B-12, B-13, B-14, B-17, and B-59) On August 21, 2003, the results of educational testing were reported at a PPT meeting attended by two Board Special Education Administrators, Parents, Regular and Special Education Teachers, and a School Psychologist. On the Woodcock Johnson III Tests of Achievement, Student performed as follows:

[Student's] oral language skills are low average when compared to the range of scores obtained by others at his grade level. His oral expression skills are average; his listening comprehension skills are low average.

When compared with others at his grade level, [Student's] academic skills are within the very low range. His academic knowledge, fluency with academic tasks, and ability to apply academic skills, are all within the low average range. [Student's] performance is low average in reading comprehension, math calculation skills, and written expression; low in basic reading skills and math reasoning; and very low in basic writing skills. His knowledge of phoneme-grapheme relationships is low. (Ex. B-6, pp.25-30)
5. Also listed on the record of the August 21, 2003 PPT meeting were:

**Strengths:** Ability to use and navigate through technology (Kurzweil 3000); Math concepts; Reading comprehension; Creative; Risk-taker; Metacognition.

**Concerns/needs:** Long term retrieval; Phonological issues; Reading decoding; Spelling; Written expression; Visual motor; Hand/eye coordination.

**Social/Behavioral:** In the at risk range on the BASC for hyperactivity and depression. (Ex. B-6, pp. 3, 6)
6. Student's summer keyboarding progress was reported at the August 21, 2003, PPT meeting. This instructor reported observations:
  - [Student] utilizes distractors to stall the learning process, i.e. claiming hand numbness despite his fluid expertise in using his portable GameBoy, challenging the repetitiveness of the typing exercises, looking for the sources of noises, looking for his mother at the door window, withdrawing his hands from the keyboard home-row, talking about unrelated subjects, etc.
  - [Student] accurately types all learned characters **when his eyes are closed and I dictate both letters and words to him.**
  - Despite a vellum mask crafted to show only a single line of type, [Student's] eyes shift either forward or backward slowing his progress.
  - Our overall goal for the week was to look only at the line of type and not confirm his key selection by looking at either the keyboard or screen. However, [Student] is frequently unable to locate a letter due to his

learning challenges, especially when both keyboard and screen are blocked. His first reaction is to remove his hands from the home-row and put a finger on his chin as if to help himself remember. If I am fast enough to remind him that his hands must stay on the keyboard I can talk him into remembering by calming him and discussing the key location in generalities.

- [Student] subverts his progress by looking at his hands whenever possible to disguise his disability. If I cover his hands I must point to the upcoming word on the visible line of text and sometimes “talk him through” the whole line of type.
- Although there is no doubt that [Student] tries, it takes an enormous amount of his energy to type one line with a minimum number of errors and without stopping.

Keyboarding instructor’s comments:

- [Student] appears to be a sweet tempered boy and we enjoyed many laughs together. He is, however, a master at disguising his learning challenges and I needed to watch his eyes and body language closely to discern his troubles and motivations. Through discussion, he confessed (that word seems accurate to me) specifically how the dyslexia affects his learning, that he is too short, his hands are too small, and that he is ahead of his peers in Special Ed because he is in regular math which makes him feel good. I assume the too short/too tall were his justifications for any possible perceived failures in typing progress.
- [Student’s] progress on this last day was difficult; and he used all his skills at diversion to undermine his progress and my lesson. I surmise that he reasoned it was the last day – why work. Also, he told me a reading test he had taken the day before had not gone well. Despite his mother’s assurance that he is well adjusted to his learning challenges, I know through our chats that screenings and evaluations throw him off.
- [Student] does not make a connection between the benefits of typing mastery and his overall learning progress. He seems to dismiss typing in favor of Kurzweil. While Kurzweil must be a great benefit to him in recreational reading and certainly will be an enormous aide in future academic endeavors. I am guessing that it will not assist him in the nuts and bolts of decoding words and does not assist in learning to type at this point in his current learning cycle. His objection to the repetitiveness of typing drills is understandable; but even explaining the advantages of developing muscle memory through drilling did not increase his enthusiasm or his commitment to these keyboarding sessions.

The keyboarding teacher’s suggestions:

- [Student’s] progress during these five daily one-hour sessions was below average. Lacking the gift of foresight which would have lent him the motivation to focus harder, [Student] will need at least 40 hours of one-on-one keyboard instruction offered on a daily basis to achieve reasonable keyboard mastery. After completing that tour of duty, weekly follow-ups

would be necessary to maintain his skill level for an unknown period of time.

- I therefore suggest that keyboarding lessons be deferred a year until [Student's] maturity allows him the motivation necessary to succeed. Perhaps next summer another period of lessons would determine his readiness to continue.
  - If [Student's] IEP and academic requirements preclude the time necessary to offer personal sessions during the school day, I am available to teach after my technology hours are completed at the high school during the school year whenever he is ready to begin.
  - If [Student's] parents are committed to the keyboarding sessions NOW, I can provide more summer hours and hours after my work day in this coming school year. (Ex. B-6, pp. 31-32)
7. Also at the August 21, 2003, PPT meeting, the team recommended a language evaluation, and Parents consented. The assistive technology and social work evaluations remained to be completed. Parent requested a behavior plan, and the team responded that the social work assessment would help determine behavior needs. Discussion of the laptop and Kurzweil to be purchased for Student by the school district included a review of planned use "as needed for reading, writing and doing worksheets, etc.". Student's regular education teachers would be given Kurzweil training. (Ex. B-6, pp. 2-3)
8. Parent explained the impact of Student's bi-polar disorder on his mood and behavior at the August 21, 2003 PPT meeting. She provided a list of "problematic signs" when Student should be sent to the nurse (upon his own request) for 20 minutes to calm down. (Ex. B-6, p.4)
9. Goals for Student's eighth grade year, as listed in the August 21, 2003 IEP, were:
1. [Student] will improve his reading decoding skills.
  2. [Student] will improve his reading comprehension for orally or silently read text.
  3. [Student] will increase his written expression skills.
  4. [Student] will improve spelling skills.
  5. To organize materials.
  6. To improve math skills.
  7. [Student] will improve written communication skills for greater proficiency when using writing implements and/or a keyboard.
- Student would receive 16.5 hours of resource room and in-class support and occupational therapy consultation. (Ex. B-6 pp. 9-18)
10. Program modifications/adaptations listed were:
- Materials/books/equipment:** Kurzweil 3000; use of Benetech (sic) for content areas, Manipulatives; spell check; access to calculator.
- Tests/Quizzes/Time:** prior notice of tests; alternative tests (oral); extra time – tests; pace long term projects; student write on test; extra time projects; rephrase test questions/directions; test study guide; shortened tasks; extra response time;



hands-on projects; extra time written work; modified tests; oral testing; reduced reading.

**Grading:** no spelling penalty; no handwriting penalty; base grade on ability.

**Organization:** provide study outlines; daily assignment lists; folders to hold work; extra space for work; post assignments; assignment pad; end-of-day check-out check plan book to see that assignments are clearly noted, etc.

**Behavior Management/Support:** cue expected behavior; breaks for nurse as necessary.

**Instructional Strategies:** check work in progress; extra drill/practice; use manipulatives; monitor assignments; multi-sensory approach; review sessions; provide models; concrete examples; review directions; repeat instructions; oral reminders; have student restate information; provide lecture notes/outline to student; computer assisted instruction; support auditory presentations with visuals; personalized examples. (Ex. B-6, p. 21)

11. The PPT met again on September 15, 2003, to discuss Student's difficulties in regular education language arts: "Even with in-class support [from a Teaching Assistant (TA)] and modifications he is struggling to keep up". This meeting was attended by a Board Special Education Administrator, Parents, Regular and Special Education Teachers, a School Psychologist, Guidance Counselor, and Student. Student and Parents agreed with the PPT recommendation that Student change to a special education language arts class that would be smaller and would provide more intensive instruction. This change would be evaluated after the end of the first quarter of the school year. There was also discussion of the use of Kurzweil. (Ex. B-7, pp.1-2)
12. After the September 15, 2003, PPT meeting Student's Guidance Counselor wrote to Parents, summarizing the middle school procedures for communication with teachers, including voicemail messages, the making of appointments and arranging for team meetings with her. (Ex. B-8)
13. The School Social Work Assessment dated October 9, 2003, was based on meetings with Parents, Student, Teachers and Guidance Counselor, and observation of Student in the lunchroom and his regular classes. Student was described as "a strong advocate for himself". He reported difficulties related to his bi-polar disorder and dyslexia. The School Social Worker reported that all his teachers knew that he could go to the nurse any time he felt overwhelmed, but he has not made that request. After talking with Student's Psychiatrist, School Social Worker recommended weekly counseling in school for academic support and liaison with his teachers, Parents, and Psychiatrist. (Ex. B-9)
14. A Language Evaluation dated October 15, 2003, showed that Student was in the average range for basic language skills as measured by the Clinical Evaluation of Language Fundamentals-Third (CELF-3). He scored in the above average range in expressive language and syntax skills, and average in phonological awareness composite. The evaluation concluded that Student was not a language-disordered

child, but did have a weakness in semantic relationships and rapid retrieval. (Ex. B-10, P-3)

15. Another PPT meeting was held on October 30 and continued on November 3, 10, and 20, 2003. The attendance record showed two Board Special Education Administrators, Parents, four Regular Education Teachers, one Special Education Teacher, a School Psychologist, a School Social Worker, a Speech/Language Pathologist, a Guidance Counselor, a School Nurse, Student, Student's Psychiatrist, an Advocate, and one unidentified person, but did not indicate which persons attended which of the four sessions. The IEP resulting from this meeting listed Resource Room support; Special Education Language Arts; Social Work Counseling; indirect Occupational Therapy services; a TA "in all core classes 15 x [15 periods a week] 11.25 hours for one marking period"; "Staff will work with [Student's Psychiatrist] to develop a Behavior Intervention Plan; initiate a Functional Behavior Assessment; [Psychiatrist] will work with staff for 6 sessions to help staff understand bi-polar and the student; and keyboarding is a component that must be part of the program".

The narrative notes from this meeting also mention that Student frequently does not hand in his homework, and that when he does, it is incomplete; the laptop computer is a "distraction" in class, with Student participating in class and more engaged without the laptop; Student does not come for extra help. Psychiatrist commented that "if Student is using the computer in class he cannot pay attention to auditory input, which is his strength". Problems with frustration, organization and fluctuations in mood and coping skills were also reported.

Parent commented that problems with using Kurzweil on the computer were causing problems with homework production, and that Student needed more instruction in keyboarding and in the specific software. It was noted that Student had received some keyboarding instruction during the previous summer. (Ex. B-12)

16. The Present Levels of Educational Performance listed for the October 30/November 3, 10, and 20, 2003, PPT meeting included several items:

**Social/Emotional/Behavioral:** when [Student] becomes frustrated or feels stressed, he may shut down or have difficulty managing his feelings and behavior and lessened ability to engage in learning.

**Strengths:** reading comprehension; auditory comprehension; auditory memory; oral expression; ability to formulate complete sentences.

**Concerns/Needs:** math concepts; knowledge of times tables; coping skills when frustrated; keyboarding skills; tardiness to classes, difficulty transitioning from class to class in a timely manner; impulse control – difficulty inhibiting some negative behavior; writing, spelling, decoding.

**New goals added:**

8. [Student] will increase his personal responsibility as related to his school experience.
9. [Student] will demonstrate use of coping skills to manage mood symptoms so that daily school functioning is not impaired.

**Additional modifications/adaptations:**

Texts placed into digital format for content areas.

Tests in a separate location as needed for content areas.

No grade in first semester and pending an update for the second semester for content areas.

Kurzweil 3000 conduct A[ssistive] T[echnology] evaluation to determine needs in this area. (Ex. B-12)

17. An Assistive Technology consultation by Cooperative Educational Services Regional Assistive Technology Center, dated October 28, 2003, reported that “it was clear that [Student] could navigate and open documents and have them read out loud.” Student reported that he had never used the word prediction feature of the Kurzweil to help with his writing. This consultant also met with Student’s Resource Room Teacher, his one-to-one aide, and Parent. Recommendations provided:

1. The Kurzweil program is an appropriate program for [Student] to be using to assist with his reading and writing assignments. The features available are excellent supports for him when material is presented in an organized, consistent manner. In order to enable [Student] to better organize and find his work I would recommend that the Kurzweil files not currently being used be saved onto a CD or other backup system. Current homework should be placed in a file on his desktop so he has quick and easy access to it. This will help [Student] use the program more efficiently.

2. There seem to be several issues related to the type and amount of scanning as well as whose role it is to scan [Student’s] documents into Kurzweil. This is a time consuming task. Currently it seems that both [Parent] and [Student’s] one to one aide [TA] are doing most of the scanning. There is also some concern about how the text is and should be modified. If the scanning tasks are going to continue to be shared, then a uniform, consistent format for modifying should be done. A decision needs to be made by the PPT as to who should be scanning in [Student’s] work and how it should be modified based on [Student’s] IEP goals. This decision must be put in writing and agreed upon by all parties if [Student] is going to be successful using this software.

3. Another issue that was expressed is [Student’s] use of Kurzweil to record answers to questions using the voice note feature of Kurzweil. He would then have the teachers listen to the voice notes. This can only be done if every teacher has access to a copy of Kurzweil. It is not practical for them to be using [Student’s] laptop to do this or to go into the resource room to do this. Other alternatives include:

a. Using the word processing features of Kurzweil. Since [Student] has an IEP goal to use Kurzweil to write two to three paragraphs, this is one option for having him answer questions about text he has read. He can begin to utilize the word prediction features of Kurzweil to help with his spelling skills.

b. [Student] also has access to voice recognition software which he can use to compose his answers and then correct his text using Kurzweil’s word prediction/spell check feature[,] then print his answers to be handed in.

c. Other options from the PPT should also be considered.

4. The staff at [middle school] who work at downloading text and scanning text for [Student] should have a membership to Bookshare.org so that they can be downloading the books [Student] needs for language arts. Information on membership is attached to this report. There are also other sources for downloading e-text into Kurzweil. A list is attached to this report.
  5. I will be meeting with the teachers who work with [Student] on Thursday November 20<sup>th</sup> to discuss any of their concerns and answer questions regarding [Student's] use of Kurzweil. I will also be meeting with [Parents] prior to the PPT meeting on November 20<sup>th</sup>. If necessary I will attach an addendum to this report if there are any additional suggestions as an outcome of these meetings. (Ex. B-12, pp. 23-25)
18. The PPT met on December 19, 2003, to address Parents' concerns about the IEP, homework completion, and Kurzweil software. Two Board Special Education Administrators, Parents, two Regular Education Teachers, two Special Education Teachers, a School Psychologist, a School Social Worker, a Speech/Language Pathologist, a Guidance Counselor, Student, and a Board Assistive Technology Specialist attended this meeting. The PPT made new arrangements for scanning of materials and added two hours of consultation per month regarding assistive technology. Student would have ten minutes a day of keyboarding instruction. The Board's Director of Special Education would consult with Student's Psychiatrist regarding an in-service program about bi-polar disorder for staff and Student's behavior plan. A TA would monitor "transitions, specials and workshop" as necessary. The Functional Behavior Analysis and Behavior Intervention Plan would be discussed at the next meeting. (Ex. B-13)
19. A behavior plan dated December 19, 2003, gave background:  
[Student's] behavior is dependent on the setting, environment and expectations placed upon him. Triggers often reflect a change in schedule or unstructured time. Therefore, the purpose of the proposed plan is to teach [Student] to manage his own behavior, to seek the help of others and to act as well as react in ways that are positive rather than negative.  
The behavior system identified behavior to be rewarded and a point system, as well as counseling. (Ex. P-16)
20. The PPT met on January 29, 2004, as a continuation of the December 19, 2003, meeting. This meeting was attended by two Board Special Education Administrators, Parents, Regular and Special Education Teachers, a School Psychologist, a Guidance Counselor, two people from Systems of Care, and Student's Psychiatrist. The Functional Behavior Assessment, developed collaboratively by nine school staff members, was discussed. Student's positive characteristics were listed as: usually sweet tempered; wants teacher's attention; and demonstrates perseverance. Problem behaviors were listed: regresses (example, crawling on floor, curling into a fetal position); bangs head on lockers; lies down on floor; breaks pencils and scrapes arms. Triggers for behavior problems were: difficult task, change in activity, change in

location/staff, and interruption in routine. Consequences had been behavior ignored, reprimand/warning, sent to office, communication with home, and increase in adult/peer attention. The perceived functions of the behavior problems were: avoid a demand or request; avoid an activity or task; gain staff attention; gain peer attention; gain parent attention; negative attention better than no attention. (Ex. B-16)

21. Parents questioned the behavior plan, because it “did not consider [Student’s] bi-polar condition” and that some of the problem behaviors might be the results of a spontaneous chemical reaction. Psychiatrist agreed: “He responds to the external and internal environment. [Student] is sensitive in ways that other children are not.” Parent presented a chart for recording Student’s moods on a daily basis, and the PPT agreed to incorporate it into the behavior plan. Moods would be recorded by Student and an adult, and discussed with Student. Psychiatrist commented that it was not always necessary to allow Student to leave the room whenever he requested that, but Parent disagreed. Parent also objected to the IEP emphasis on coping skills. After discussion, Student’s two social/behavioral goals were modified:

7. [Student] will increase personal responsibility and organize materials.

[Student] will ask for help and/or clarification with school work.

[Student] will be able to verbalize the steps to complete homework (e.g., write down assignments in planner, make sure he has materials needed, complete the work, hand in the work).

[Student] will increase the number of homework assignments he is handing in by turning in 8 out of 10 assignments over a 2 month period.

[Student] will pack all needed materials for a successful homework completion.

[Student] will organize backpack to contain only salient materials needed [,] free of extraneous items.

[Student] will write assignments down in his assignment planner.

8. [Student] will improve coping skills.

[Student] will be able to verbalize two feelings or experiences about himself in a weekly session.

[Student] will utilize the use of one or more coping skills during periods of stress (e.g., in the classroom, passing in halls, interacting with peers).

Home-school communication would be more regular, with the Special Education Teacher discussing current functioning and future assignments with Parents.

Disagreement about the role of Kurzweil and Student’s use of his laptop computer continued. (Ex. B-14)

22. Student’s Present Levels of Educational Performance, as recorded on January 19, 2004, included the following:

**Social/Emotional/Behavioral:** When [Student’s] moods fluctuate or when he feels frustrated, he may shut down and have difficulty engaging in the process of learning.

**Strengths:** Orally generates complex sentences; auditory comprehension and memory; self-advocacy; risk-taking; creativity; extrovert; meta-cognitive – self-analysis; ability to use technology.

- Concerns/Needs:** math processing and knowledge of multiplication tables; reading decoding; writing; spelling; keyboarding skills; variation in moods. In consultation with Psychiatrist and Parent, the statement on the "Present Levels" page concerning how Student's disability affects learning was revised:  
[Student's] moods and unpredictability of moods, impulsivity, sensitivity and need for structure, not just due to bi-polar but also a reading disability make it difficult for [Student] to succeed in the general curriculum. (Ex. B-14 p.8)
23. Because the January 29, 2004, discussion of Student's IEP changes had been complicated and Parents had objected to some IEP components, the Director of Special Education wrote a letter to Parents dated February 10, 2004, summarizing changes and enclosing the revised IEP and meeting record. The PPT had accepted Parents' request that the Wilson reading program be discontinued for Student. (Ex. B-16)
24. The PPT met on March 31, 2004. Present at this meeting were two Board Special Education Administrators, Parents, two of Student's Regular Education Teachers, a Special Education Teacher, a School Psychologist, a Guidance Counselor, the Board's Educational Consultant, an Assistant Principal at the High School, Student's Psychiatrist, Student, and Parents' Advocate and three consultants. Student's progress was reviewed. Teachers were still concerned about work completion and written output. A Mood Chart was presented and discussed. Parents asked that Kurzweil be used for more of Student's program, including reading instruction. The Director of Special Education responded that assistive technology, including Kurzweil, was a support service, not a form of direct instruction. Kurzweil may be used to practice skills: Parents disagreed. IEP goals and objectives were unchanged. Student would have four periods of Resource Room, four periods of instruction in reading decoding and encoding, and one period of counseling per week. An educational specialist (hereinafter Educational Consultant) would be hired by the Board to work with Student on assessing the effect of direct instruction, the efficacy of Kurzweil, realistic expectations of how much can be expected from Student, and the interplay of emotional factors as they impact Student's performance. (Ex. B-17 pp. 2-4)
25. The March 31, 2004, PPT record includes summaries of the Student Contract (behavior plan) and completed Mood Charts by weeks from February 6 through March 26, 2004. Also included is a five page statement from Parents that includes many requests (some previously made at PPT meetings), accusations, suggestions, and complaints. (Ex. B-17, pp.21-27)
26. The PPT convened on May 6, 2004, to review Student's progress and develop an IEP for 2004-2005. Present at this meeting were two Board Special Education Administrators, Parents, two Regular Education Teachers, a Special Education Teacher, a School Psychologist, a School Social Worker, a Guidance Counselor, Student's Teaching Assistant, Student's Psychiatrist, the Educational Consultant, the

High School Social Worker, a High School Special Education Teacher, Student, Parents' Advocate and a representative from the Exchange Club Parenting Center. The PPT noted "some increase in reading comprehension" and "slow improvement in writing". Problems with executive functioning were discussed. Student's Psychiatrist commented that these problems were part of Student's disability. Goals and objectives and the specific service plan would be finalized at a June PPT meeting. Occupational Therapy consultation was no longer necessary. An extended school year program would include reading, writing, math and keyboarding, six weeks for four hours a day. (Ex. B-22 pp. 3-5)

27. On May 6, 2004, Student's Present Levels of Educational Performance were given as:

**Health & Development:** Bipolar disorder medication by [Psychiatrist].

**Academic/Cognitive:** 10/15/03 Language eval. phonological awareness 88.1[;]  
Phonological memory 103[;] rapid naming 64[;] total language 85[;] blending words  
71[;] WJ-III 8/7/2003 Broad Written Language 70[;] Basic Reading Skills 72[;]  
Broad math 84[;] phon/graph know 72[;] academic knowledge 87.

**Social/Emotional/Behavioral:** When [Student's] mood fluctuates or when he feels frustrated he may shut down and have difficulty engaging in the process of learning.

**Motor:** Age appropriate.

**Communication:** Language eval. 10/15/03 total language 85.

**Strengths:** Orally generate complex sentences; Auditory comprehension and memory; Self advocacy; Risk taking; Creativity; Extrovert; Self analysis; Ability to use technology; Social individual; Resiliency; Visual learner.

**Concerns/Needs:** Math processing and knowledge of multiplication tables with calculator; Reading decoding; Writing; Spelling; Keyboarding skills; Variation in moods. (Ex. B-22 p.7)

28. Progress reported by Student's teachers at the May 6, 2004, PPT meeting was listed by IEP goals.

Language arts: some improvement from beginning of the year (six goals) but inconsistent in one of the goals;

Science: minimal improvement in three goals, needs to be more independent in one of these goals;

Social Studies: minimal improvement however one on one (TA) allows more time for [Student] to express his comprehension (two goals), and some improvement – however needs to edit his work and complete the assignments (two goals);

Math: Improved computation but not perfected. Improved solving 2 and 3 step word problems multi-step equation solving improved considerably (one goal); Homework improved but still not acceptable 1 out of 4 (not 3 out of 4) hw's completed but 50% of hw is late (one goal). (Ex. B-22 pp. 8-9)

29. Appended to the PPT record for May 6, 2004, were program recommendations from the Board's Educational Consultant who had been working with Student:

1. Direct Reading – Specific Language Training by Margaret Klieber, systematic approach to teaching Greek and Latin based words, prefixes and suffixes/Wilson (with fluency or a Rapid Automatic Naming system i.e. *Sound Reading Systems*)

- or *Great Leaps Program* built in). All consumables can be scanned in. Additionally, continue work on the syllable types. [Student's] progress can be measured through teacher records in program progress reports and standardized tests such as CTOPP, DRP.
2. Continued clerical TA in class to support [Student] on file finding, opening and inputting data, utilizing software, etc. Currently, [Student's] TA is recording all of [Student's] homework assignments, inputting homework questions onto scanned text, helping [Student] find and access files, and keeping [Student] focused on tasks and test-taking.
  3. Study/organizational skills – continue to address note taking, highlighting outlining, writing, etc. all on the laptop through Kurzweil (or another similar program). A Learning Strategies class is an appropriate place for [Student] to work on these skills. The goal is for [Student] to eventually become independent in the use of the program by mastering these study and organizational skills. Furthermore, [Student] needs instruction in highlighting and extracting information from the Internet or text that turns to another page for study outlines, notes, to increase comprehension, etc.
  4. Currently, the workstation for the Kurzweil is in [Special Education Teacher's] room. Next year, the high school could have a similar set up in the learning strategies room. Ongoing modifications such as pre-reading focus questions, highlighting main idea, key vocabulary words, turning statements into questions and answering them, etc. can be scanned in separately and opened alongside scanned in text for [Student] to access. However, before the school year begins, required tests, books, and any other known worksheets can be scanned in including all tables of contents, indexes, glossaries, etc.
  5. Classes – proposed for high school
    - Learning strategies daily
    - Special Ed LA daily (to reinforce regular ed English)
    - Regular Ed LA – [Student] to audit the class (consider a no homework penalty for all regular ed classes for the first quarter as [Student] transitions to HS)
    - SS- pass/fail at least for first half of the year
    - Science
    - Math-M1 Algebra
    - Direct Instruction – small group or one on one reading daily to work on phonological processing, fluency, and encoding
  6. Keyboarding – as part of daily instruction. Keyboarding would be an appropriate goal for ESY as well. Currently, [Student] receives 10 minutes of *Type To Learn* instruction daily. However, [Student] is not utilizing any of the strategies and continues to type with one hand. Consider switching to *Keyboarding* by Diana Hanbury King available through EPS. This program is designed for students with reading/writing disabilities. It uses an associative strategy by teaching the keyboard through the alphabet. Since it is a consumable workbook, it can be scanned into the Kurzweil as well.
  7. IEP meeting – reconvenes to review any proposed changes to the goals and objectives after program recommendations are agreed upon.



8. May 13<sup>th</sup> – Meeting with [Board Assistive Technology Specialist], [Educational Consultant] and [Student] to review organization of files, homework management with [Student's] laptop available. (Ex. B-22, p. 28-29)
30. The Educational Consultant had also made notes about a meeting she had with the Board's Assistive Technology Specialist:
1. [Assistive Technology Specialist] recommends a high-speed scanner by Canon as a means to expedite [Board staff] time and expense in scanning books/workbooks, texts, etc.
  2. All parties involved (who are responsible for what is clearly delineated) need an organized and consistent system to file and store scanned text, homework, and completed work i.e. SS Chap 1 pg \_\_\_\_ date \_\_\_\_\_. As files are saved, they are alphabetized. Therefore, the categories must be named the same thing. Worksheets can be subfolders of SS, and homework is a separate folder and so on.
  3. Currently, the TA is typing questions for [Student] right on the text for him to answer. This is not only time-consuming, but also lowers expectations for [Student] to find information independently and turn that information into his own words. Consider scanning in a separate document that can be opened at the same time as he is reading text. Teacher notes, outlines and templates can be scanned in partially filled out with [Student's] responsibility to complete them using the text.
  4. Organization of files on desktop is currently not user friendly. The files need to be sorted by a system as aforementioned, but also, a system for removing completed files must be in place. Completed files can be removed through disks, CDs and stored for future use if necessary. Otherwise, the laptop becomes overloaded and therefore much less manageable. This is another task that can start as the responsibility of a clerical TA, with the eventual goal of [Student] managing it for himself.
  5. The Kurzweil and/or a similar type of software's purpose is for [Student] to have text read aloud to him. The program also has a word processing feature that includes word prediction and spell check. Furthermore, [Student] can record voice notes as a way of answering questions. Reportedly, [Student] has yet to utilize this feature. [Student] also has access to voice recognition software. [Assistive Technology Specialist] reports that Inspiration 7.5 has a text to speech feature so [Student] can hear what he types. These are appropriate strategies for [Student] to use to support his writing. However, [Student] needs to continue learning writing strategies such as brainstorming, chunking similar ideas, organizing paragraphs and editing. (Ex. B-22 pp. 29-30)
31. The Board convened a PPT meeting on June 14, 2004, to finalize an IEP for Student's ninth grade year in 2004-2005, at the Board's High School. Present at this meeting were the High School PPT Coordinator, Parents, Regular and Special Education Teachers, the High School Social Worker, a Speech/Language Pathologist, a Guidance Counselor, the Educational Consultant, Student, Parents' Advocate and someone from the Parenting Center. Because many of the differences between Parent and the Board were related to this specific IEP and the implementation – or lack of implementation- of it at the High School, it is described in detail. PPT recommendations were summarized:

- Team accepted goals and objectives – Counseling goal was changed.
  - [Extended School Year] ESY was recommended 4 hrs daily – academics and 2 hrs daily social/recreational.
  - Keyboarding, reading decoding, and writing to be the focus for ESY.
  - Team recommended administering Inventory of Executive Functioning.
  - OT eval. also recommended – sensory and motor skills to be focus; [Parent] will frame questions for OT.
  - Staffing to be held in the first month of school.
  - Copy of IEP to all Department Chairs.
  - Classes for next year – Language Learning Strategies, Learning Strategies, Reading, Explorations in Science, Algebra 1 Pt. 1, Freshman English, PE/Health, Elective.
  - [Educational Consultant] to consult twice from Sept. to Nov.
  - Staffings 2<sup>nd</sup> week of Sept. and end of first quarter to review progress.
- (Ex. B-59 p.1)

32. The June 14, 2004, PPT Present Levels of Educational Performance were almost identical to those from the May 6, 2004 IEP (Finding of Fact#27), except for the following additions.

**Academic/Cognitive:** [Student] has difficulty with executive functioning in the area of planning and organization.

**Social/Emotional/Behavioral:** It may be difficult for him to readily identify his feelings and emotions.

**Motor:** [Student] has well developed gross motor skills as evidenced by his overall strength, endurance, coordination, and agility. He has some difficulty with fine motor skills.

**Activities of Daily Living:** [Student] appears to have normal development in this area.

**Vocational:** Presently, [Student] is pursuing an academic program in preparation for post-secondary educational options. (Ex. B-59 p.4)

33. Goals and objectives for ninth grade were decided at the June 14, 2004, PPT meeting:

**Academic/Cognitive:**

1. [Student] will increase reading decoding as measured by curriculum-based pre/post assessments and criterion-referenced tests and quizzes.

1. [Student] will increase decode and spell using Greek and Latin-based roots, prefixes and suffixes.

2. [Student] will give meaning by breaking words into Greek and Latin-based roots, prefixes, and suffixes.

2. [Student] will increase reading fluency as measured by criterion-referenced tests and quizzes.

1. [Student] [will] read orally with no more than 2 miscues @ 50 WPM from a 6<sup>th</sup> grade passage by the end of the second quarter.

2. [Student] [will] read orally with no more than 2 miscues @ 75 WPM from a 6<sup>th</sup> grade passage by the end of the second quarter.

3. [Student] [will] read orally with no more than 2 miscues @ 100 WPM from a 6<sup>th</sup> grade passage by the end of the third quarter.
  4. [Student] will read orally with no more than 2 miscues @ 120 WPM from a 6<sup>th</sup> grade passage by the end of the fourth quarter.
  3. [Student] will increase his reading comprehension skills as measured by criterion-referenced and standardized assessments.
    1. [Student] will choose the correct main idea from a choice of 4 possible answers per passage in 4 out of 5 trials (80% accuracy) to be given quarterly when given 5 short passages at his instructional level.
    2. [Student] will choose the correct response to detail questions from a choice of 4 possible answers per passage in 4 out of 5 trials (80% accuracy) to be given quarterly when given 5 short passages at his instructional level.
    3. [Student] will choose the correct response to an inferential question from a choice of 4 possible answers per passage in 4 out of 5 trials (80% accuracy) to be given quarterly when given 5 short passages at his instructional level.
  4. [Student] will improve math skills.
    1. [Student] will choose a strategy to solve two and three step word problems and calculations not involving words.
    2. [Student] will independently choose a strategy to solve multi-step math equations involving all operations.
  5. [Student] will improve keyboarding as measured by criterion-referenced assessment.
    1. [Student] will maintain hands in “home row” position on a keyboard while isolating appropriate fingers to depress [keys].
    2. [Student] will strike keys on a keyboard using two hands at a speed 10 seconds quicker than the baseline data.
  6. [Student] will improve written expression as measured by criterion-referenced assessments.
    1. [Student] will be able to brainstorm a list of relevant key words and phrases to a topic as a pre-writing activity.
    2. [Student] will be able to generate complete sentences demonstrating use of mechanical process.
    3. [Student] will extract main ideas and details from texts to generate a graphic organizer.
    4. [Student] will transfer key words, phrases, main ideas and details from a graphic organizer to standard outline form.
    5. [Student] will turn a graphic organizer outline into a multi-paragraph essay.
    6. [Student] will proofread a rough draft essay and will correct errors using a spell check.
    7. [Student] will utilize a strategy to correct mechanical errors for all final drafts.
- Social/Behavioral, Independent Living, Employment/Post Secondary Education**
7. [Student] will increase his personal responsibility and organize materials.
    1. [Student] will ask for help and/or clarification with schoolwork from teachers when needed 3 out of 4 times.

2. [Student] will be able to verbalize the steps to homework completion, make sure he has materials needed, complete the work, hand in the work, 2 out of 4 times.
  3. [Student] will increase the number of homework assignments he is handing in by turning in 3 out of 5 assignments over a 1 month period.
  4. [Student] will either write down assignments in planner each day or use appropriate software.
  5. [Student] will utilize the calendar to prioritize and plan his academic time.
  6. [Student] will pack all needed materials for successful homework completion in his backpack in an organized way.
10. [Student] will participate in school with improved self awareness and self management as it relates to his moods.
1. In a counseling session, [Student] will develop personal problem solving skills by recording problems in a personal journal and completing the steps necessary for resolution (e.g., identify the problem, brainstorm the solutions, list the pros and cons of each solution, select a solution, assess the outcome).
  2. In a counseling session, [Student] will identify situations that have triggered feelings of fear, anxiety, or sadness, concerning self, school, or friends, and verbalize more positive, *more proper perspective or balance* or influence that person has *cause*. (italics were added in handwriting to the typed objective)
  3. In a counseling session, [Student] will make a list of significant others in his life, including family members, friends, teachers, mentors, and role models, and to rate the degree of support given, closeness felt, or influence that person has.
  4. Given knowledge in self awareness and self management of moods, [Student] will develop a chart to evaluate his progress in mood management across his core academic classes, one day per week, and report the outcome in a counseling session.
  5. Given discrepancies between self-perception and adult perception of mood management, [Student] will brainstorm possible explanations in a counseling session.

### **Employment/Post Secondary Education**

9. [Student] will participate in activities for preparation of post secondary/vocational options.
1. [Student] will plan, develop, and verbalize 3 or 4 personal and academic goals he needs to work on per quarter.
  2. [Student] will complete self-advocacy activities to articulate strengths and needs related to his personal learning style and related classroom modifications.
  3. [Student] will discuss his weekly progress with staff.
- (Ex. B-59 pp. 5-18)
34. Appended to the June 14, 2004, IEP were two different Mood Chart forms, one of which was noted "submitted by [Parents]", and a Student Contract [behavior plan] form. (Ex. B-59 p. 20, 28-29)
35. Modifications/Adaptations listed for the June 14, 2004 IEP were:

**Materials/Books/Equipment:** Modified worksheets after initial unmodified attempt in all content classes; access to calculator, calculator- discretion of teacher; assistive technology – texts placed in digital format, Laptop and Kurzweil or other software program.

**Tests/Quizzes/Time:** In all content classes: Prior notice of tests; Alternative tests – oral, modified tests after initial attempt at unmodified; Extra time - tests Time plus ½ for all tests; Pace long term projects; Student write on test; Extra time – projects; Rephrase test questions/directions; Test study guide; Shortened tasks; Extra response time; Hands-on projects; Extra time- written work; Oral testing; Separate location as needed [for tests].

**Grading:** In all content classes: No handwriting penalty; Base grade on ability; Grade effort + work; Pass/Fail; No HW penalty for the first quarter; In all content classes.

**Organization:** In all content classes: Provide study outlines; Daily assignment list; List sequential steps; sequential steps when necessary.

**Behavior Management/Support:** In all content classes: Positive reinforcement; Cue expected behavior.

**Instructional Strategies:** In all content classes: Check work in progress; Use manipulatives; Monitor assignments; Review sessions; Concrete examples; Have Student restate information; Provide lecture notes/outline to Student; Computer assisted instruction; Support auditory presentations with visuals; Partial notes when needed.

**Also noted:** HS staff – Kurzweil training Staff will communicate to parents – per attached form[.] Duration of IEP

The communication form to be used by teachers listed Student’s IEP modifications without comments such as “after initial attempt at unmodified [tests]” or “as needed”. (Ex. B-59 p. 19, 25)

36. Student’s final grades for the 2003-2004 school year were: Language Arts C- (shows continued overall progress); Social Studies C-; Math 8 C; Science 8 D; Chorus 8 B+; Art 8 (first semester) A; Art 8 (second semester) B+; Resource 8 B-; Physical Education 8 (first semester) C; Physical Education 8 (second semester) B- (easily distracted in class). (Ex. B-51 p.1)
37. The High School PPT convened on September 10, 2004, to review Student’s program. The High School PPT Coordinator, Parent by telephone, Regular Education and Special Education Teachers, and High School Social Worker were recorded as present. Student was to be enrolled in Civics/Practical Law to fill his schedule, and the counseling goal appeared to change:
- Goal #10 from the June 14, 2004, (see Finding of Fact #33) IEP vanished, and was replaced by recommended Goal #8, dated May 6, 2004:
    - To improve coping skills
      - A. [Student] will be able to verbalize 2 or more feelings about himself or his school experiences in weekly sessions with school social worker.
      - B. [Student] will utilize 1 or more coping skills during periods of stress (i.e. in the classroom, passing in the hall, interacting with peers).

It is not clear from the record whether this goal had been adopted on June 14, 2004, but omitted from the record – a clerical error (there is no Goal #8 in the record submitted to the hearing) or if this goal had been discarded and then revived to replace Goal #10, which included the use of a Mood Chart. However, the High School Social Worker, who was responsible for implementing Goal #10, including Mood Charts, had attended the June 14, 2004, PPT meeting and was sure that Goal #10 had been agreed. He worked on goal #10 with Student. (Ex. B-23 p.15, B-44; Tr. 5/30/06 pp. 42-46)

38. In testimony the High School Social Worker reported that he had tried to get Student interested in charting his moods but had met resistance. At some point, Parent decided that Mood Charts should be filled out by all Student's teachers, every day, and reported to her. However, the High School Social Worker started the year trying to get Student interested in filling out a Mood Chart, as the objective had been written, one day a week. After discussing the Mood Chart for several weeks, Student agreed to have a teacher fill it out, one day a week. Parent persisted in asking that all teachers use the Mood Chart every day. Student's Special Education Teacher and several teachers rotated in filling out the chart, so that different times of day were reflected. The IEP goal was never changed. (Tr. May 30, 2006, pp. 8, 47-55)
39. The High School Social Worker has eight years of experience as a school social worker, and six years as a clinical social worker and coordinator of outpatient services for a family counseling agency. He described Student in his 9<sup>th</sup> grade year:  
... typical 9<sup>th</sup> grader, on the young side, quiet, respectful, polite, soft spoken.  
Kind of shy and often by himself but seemed very happy to be at the high school.  
Never a behavior problem. Never disruptive or aggressive.  
Work production [was a problem]. [Needed] social skill development.  
Discussing the results of using the Mood Chart, the Social Worker commented that Student's behavior in school was consistent, and he usually had more energy in the morning. The Social Worker felt that the modifications and strategies had "successfully mediated any minor fluctuations in energy level or changes in mood". (Ex. B-44, B-55; Tr. May 30, 2006, p.19-20, 52)
40. On October 8, 2004, Parent e-mailed an eleven page discussion of Student's progress, comments reportedly made by teachers to Student, IEP goals, and Student's schedule to 17 people, most of them identified as Board staff members. In response on the same day, the Board's High School PPT Coordinator wrote:  
... I would like to remind you that you and I agreed that any communication you would have in this format would come to me first and I would select which staff I needed to meet with to resolve any issue. Please consider this agreement on all future communication. Once I have completed my discussions with staff I will get back to you. (Ex. B-25)
41. Addressing a variety of computer-related issues raised by Parent, the Board's High School PPT Coordinator wrote Parent on December 4, 2004:

- The school system will provide you with hard copies of text books and all school assignments.
- The school system cannot allow your computer to connect with our network through a LAN.
- The school system will accept any work completed by your son on hard copy or by a memory stick. This is so we can protect our network.
- The school system believes that we have designed a network that will allow access of assistive technology like Kurzweil that can meet your son's needs. It is similar to many college network programs.
- The school system will continue to maintain its network and all school assignments will continue to be maintained on the network, including textbooks.
- The school system invites your son to use the network in school whenever he chooses.
- The school system will maintain all network files by subject or topic.
- The school system will accept any assignments completed by your son on a memory stick that they will provide. All memory stick assignments should be submitted to the Special Education Case Manager. The Case Manager will distribute all memory stick assignments to the appropriate [Board] staff.
- The school system will support your son's access to the network from home through the Z drive, if you choose. This is his option through his high school experience. As stated previously, we will continue to maintain all assignments and textbooks on the network. (Ex. B-28)

42. A PPT meeting convened on November 3, continuing on December 1 and 8, 2004, with the High School PPT Coordinator, Parent, Regular and Special Education Teachers, a School Psychologist, the High School Social Worker, and Student present. The Educational Consultant was also present at the December 8, 2004, session. Parent requested that the School purchase Kurzweil for home use. The PPT Coordinator responded that since Kurzweil is available on the school district's network, there was no reason to buy it. There was discussion of Student's special education classification and an upcoming triennial evaluation. The Present Levels of Educational Performance were revised to reflect some of Parent's concerns. Goals agreed [not all objectives are included here]:

**Academic/Cognitive**

1. [Student] will increase decoding as measured by curriculum-based pre-post assessments.
2. [Student] will increase comprehension skills ...
3. [Student] will develop improved reading skills in order to enhance his understanding and appreciation of Literature ...
4. [Student] will develop higher order critical thinking skills ...
5. Using assistive technology, [Student] will develop mechanics of written expression ...
7. [Student] will improve math skills ...

**Social/Behavioral**

6. [Student] will increase his personal responsibility and organizational skills ...

8. [Student] will participate in school with improved social skills.
  1. [Student] will label personal emotions by reviewing adjectives that describe a variety of feelings during a counseling session.
  2. To increase self awareness and self management of moods, [Student] will evaluate his moods daily and report on the outcome in a counseling session.
  3. In a counseling session, [Student] will identify both internal and external causes of mood changes and report on subsequent behavior.
  4. Having identified a pattern between thoughts, feelings, and resulting behaviors, [Student] will identify several self-talk statements that lead to improved behavior.
  5. In a counseling session, [Student] will identify problems, brainstorm solutions, list the pros and cons of each solution, select a solution, and assess the outcome.
  6. In a counseling session, [Student] will make a list of supportive adults, rate the degree of support given, closeness felt, influence that person has, and when and how he should access the supports available.

The Board would provide 20.0 hours of special education services a week, including Language Learning Strategies, Academic/Study Skills, Reading, and Counseling, to be increased in the second semester to 28.0 hours per week, adding General Science, Civics/Practical Law, English 9, Algebra pt.1, and writing skills. (Ex. B-29)

43. Modifications/Adaptations listed on the December 8, 2004, IEP:

**Materials/Books/Equipment:** modified worksheets after initial unmodified attempt in all content classes; Laptop and Kurzweil or other software program; spell check; access to computer; calculator.

**Tests/Quizzes/Time:** Modified tests after initial attempt at unmodified; time plus ½ for all tests; alternate tests-oral tests when appropriate; prior notice of tests; pace long term projects; student write on test; extra time – projects; rephrase test questions/directions; test study guides; shorten tasks; extra response time; hands-on projects; extra time – written work; test read; separate location [for tests] as needed.

**Grading:** no handwriting penalty; base grade on ability; grade effort + work; pass/fail; pass/fail for Global History; grades based on ability for Civics, G. Science, Math; Health grade based on effort + work.

**Organization:** In all content areas: provide study outlines; daily assignment list; sequential steps when necessary.

**Behavior Management/Support:** In all content areas: positive reinforcement; cue expected behavior; time out from positive reinforcement.

**Instructional Strategies:** In all content areas: check work in progress; use manipulatives; monitor assignments; review sessions; modified content; concrete examples; partial notes when needed; have student restate information; provide lecture notes/outline to student; computer assisted instruction; support auditory presentations with visuals.



**Frequency and Duration of Supports:** HS staff – Kurzweil training; staff will write in assignment notebook for the duration of IEP; Core teachers will e-mail upcoming reading assignments to case manager who will then contact [Parent].  
(Ex. B-29 p.24)

44. By letter dated December 13, 2004, each of Student's teachers' comments were reported:

Freshman English	Effort has improved; sometimes does not complete homework; uses academic support effectively.
Global History 1	Quality of work has improved; sometimes does not complete homework; shows good effort.
Algebra 1 Pt 1	Current grade is in the 70s range; shows good effort.
Civics & Practical Law	Current grade is in the 80s range; shows more effort on homework assignments; quality of work has improved.
Exp in Science	Current grade is in the 70s range; good quality of work/performance; shows more effort on homework assignments.
Reading Seminar	Good quality of work/performance; shows enthusiasm for learning.
PE Grades 9-10	Good quality of work/performance.
9th grade Comp. Health	Good quality of work/performance.

(Ex. B-30)

45. A psychoeducational evaluation was performed by the Board's School Psychologist on January 10 and 11, 2005. The evaluator described Student:  
[Student] is a delightful, engaging young man who chatted easily with the examiner, speaking on a variety of topics. He is well spoken with a great sense of humor and casual conversation with an unfamiliar adult was appropriate.  
[Student] worked diligently and purposefully throughout the testing session, persevering when items became more difficult. As he was involved in the tasks presented, the results of this evaluation should be viewed as a valid indication of current levels of functioning.

On the Woodcock Johnson III Tests of Cognitive Ability, Student scored in the average range in verbal ability, thinking ability, comprehension/knowledge, fluid reasoning, visual spatial thinking, auditory processing, phonemic awareness, short term memory, long term retrieval and executive processing. His scores were in the below average range in cognitive efficiency, working memory, and broad attention. Processing speed and cognitive fluency scores were in the deficit range. (Ex. B-31 pp. 1-3, 5-8)

46. Student's mother and teacher filled out the Behavior Assessment System for Students (BASC). All scores were within the average range except:

**Attending problems** (rated by his mother and his teacher as being significant) defined as “the tendency to be easily distracted and unable to concentrate more than momentarily”.

**Anxiety** (rated by teacher as at risk and parent as significant) defined as “the tendency to be worried, fearful or nervous about real or imagined problems”.  
(Ex. B-31 p. 8)

47. The School Psychologist also administered the Behavior Rating Inventory of Executive Functioning (BRIEF). T scores above 65 indicate scores which are 1.5 standard deviations from the mean and are considered abnormally elevated. T scores on the clinical scale:

	Parent	Teacher
Inhibit	81	56
Shift	54	109
Emotional control	67	66
Initiate	53	92
Working memory	61	104
Plan/organize	74	98
Organization of materials	69	136
Monitor	68	73

(Ex. B-31 pp. 4-5)

48. The School Psychologist summarized Student’s scores and commented:

Thus, while [Student] has skills at age appropriate levels in verbal and non-verbal reasoning, his weaknesses, particularly in speed and fluency, reduce his ability to perform at expected levels. As measured by the BASC, [Student’s] pattern of internalizing problems clearly impacts his performance in school. In addition, many of the executive functioning processes are noted by others as particularly weak. As such, [Student] is likely unable to apply those skills which he has mastered on a consistent basis because of interference/inefficient executive processing skills. (Ex. B-31 p. 10)

49. Recommendations from the School Psychologist, based on her January, 2005, evaluation:

It is suggested that [Student’s] program continue to provide him with instruction in the basic skills. More importantly, he should have instruction in learning strategies with emphasis on enhancing weak working memory skills.

Accommodations which will minimize his issues with processing speed are appropriate, but should not be limited just to extra time. Those with processing speed issues also need a curriculum that sorts details into idea-frames so that new material is apprehended in meaningful wholes. His educational team must be cognizant of [Student’s] dysfluent executive processing skills and provide him with alternative means of coping with the organizational requirements of school as well as with the curricular content. Finally, careful planning is needed as [Student] approaches graduation so that he is most able to apply the learned skills that he has developed. (Ex. B-31 p.10)

50. Student had an Occupational Therapy evaluation on January 28, 2005, to address his current keyboarding and fine motor skills. This evaluator commented:

[Student] was a very polite and pleasant young man to work with. He followed directions well and came prepared to our session. He is able to write legibly, however, can be laborious. [Student] is very proficient on a keyboard and has demonstrated widespread use of his laptop in his academic setting. The systems and modifications that are currently in place allow [Student] to be successful in his academic setting. Therefore, occupational therapy services are not required at this time in order for [Student] to function successfully in his school-based program. However, the following recommendations should be in place for [Student] to continue his success in the classroom:

- Use of a laptop/keyboard throughout his school day.
- Use of a calculator to check math problems.
- Use of software programs to assist in spelling and sentence formation.
- Daily review of assignments/homework individually by teachers.
- Allow typed answers on a separate sheet.
- Use of graph paper for writing math problems. (Ex. B-32)

51. Student had a speech/language evaluation on February 4, 2005. The evaluator commented:

The above test results indicate that [Student] possesses appropriate expressive language skills. However, it is noted that [Student] often required extended processing time to generate his answers. This should be taken into account by [Student's] teachers, as such he should be given time to formulate a verbal response. (Ex. B-33 p.2)

52. By letter dated March 2, 2005, Student's Teachers' comments were reported:

Freshman English	Exhibits creativity and original thought; Shows more effort on homework assignments.
Global History 1	Quality of work has improved; effort has improved.
Algebra 1 Pt 1	Current grade is in the 80s range; shows good effort.
Civics & Practical Law	Current grade is in the 80s range; performing at satisfactory level; shows good effort.
Exp in Science	Current grade is in the 70s range; shows good effort; performing at satisfactory level.
Learning Strategies	Shows good effort; organizational skills are improving.
Language Lrn Strat Alt	A pleasure to have in class.
PE Grade 9-10	Performing at satisfactory level. (Ex. B-35)

53. Student's final grades for 2004-2005 were:

Freshman English 75  
 Global History credit earned  
 Algebra 1 Pt 1 77  
 Civics & Practical Law 79                      Shows good effort, Asks good questions in class.  
 Exp in Science 71                                      Shows good effort, Participates willingly in class.  
 Reading Seminar credit earned  
 Learning Strategies credit earned              Shows good effort, Has a positive attitude.  
 Language Learning Strat Alt credit earned    A pleasure to have in class.  
 Physical Education 9-10 credit earned        A pleasure to have in class.  
 9<sup>th</sup> Grade Comp Health credit earned  
 (Ex. B-51 p.4. B—66 p. 1)

54. The PPT met for an annual review on May 4 and continued on May 23 and June 22, 2005. Present were the High School PPT Coordinator, Parent, Regular and Special Education Teachers, a School Psychologist, the High School Social Worker, and Student. Under **Academic/Cognitive** on the Present Levels of Educational Performance, Student was described as:

...engaged in learning and participates in class. He asks for help and is self-initiating. [Student] uses a laptop computer and Kurzweil rd. program. He attempts all work and is working toward less modifications and improved work product. [Student's] grades are based on effort and ability for mainstream English and Global [history]. [Student] has shown maturity and [initiative]. [Student's] executive processing skills are variable. His working memory, processing speed are likely to impact his functioning.

**Social/Emotional/Behavioral:** He is showing more independence. He is learning how to effectively use supports. He is more open to alternative ways to solve problems and it is okay to have an opinion. A behavior plan will be developed and designed by [Psychiatrist] and [High School Social Worker].

**Strengths:** technology savvy; self-advocacy; creative; positive (likes to be with people); resilient; class participation; multi-sensory learner; uses supports effectively; sensitive; empathic, compassionate, good friend, auditory comprehension and memory skills, [Parent] reports generate complex sentences orally and read non-verbal cues.

**Concerns/Needs:** organizational skills; reading; written expression; productivity; solving multi-step problems; keyboarding; social skills/social judgment. (Ex. B-36 pp. 3-4, 6)

55. Goals were adopted for 2005-2006 school year (not all objectives listed here):

**Academic/Cognitive**

2. [Student] will increase his reading comprehension skills ...
3. [Student] will develop improved reading skills in order to enhance his understanding and appreciation of Literature ...
4. [Student] will develop higher order critical thinking skills ...

5. Using assistive technology, [Student] will develop mechanics of written expression ...

7. [Student] will improve math skills ...

**Academic/Cognitive and Independent Living**

6. [Student] will increase his personal responsibility and organizational skills ...

8. [Student] will improve keyboarding as measured by base line sample.

**Social/Behavioral**

1. [Student] will participate in school with improved social skills.

1. Given 5 social skills, [Student] will choose 1 to implement each week and report on the outcome during a counseling session.

2. Given a decision making strategy, [Student] will pick a situation, time and place to implement the strategy and report on the outcome during a counseling session.

3. In a group counseling session, [Student] will participate in an activity, self evaluate, and report on the pros and cons of the experience during the session.

The Modification/adaptations page was almost identical with the one in the previous IEP. (Ex. B-36 pp. 7-17, 22)

56. In the record of the June 22, 2005, re-convening of this prolonged PPT meeting is this statement:

The PPT Chair will request a third party mediation to help the team complete the IEP process.

There is no evidence on the record that mediation was actually requested. (Ex. B-36 p. 4)

57. By letter dated May 16, 2005, Student's Teachers' comments were reported:

Freshman English	A pleasure to have in class; Demonstrates growth in reading and writing.
Global History 1	Inconsistent in quality of homework; A pleasure to have in class.
Algebra 1 Pt 1	Current grade is in the 70s range; A pleasure to have in class.
Civics & Practical Law	Current grade is in the 80s range; good quality of work/performance; shows more effort on homework assignments.
Exp in Science	Current grade is in the 70s range; good quality of work/performance; cooperates well in groups.
Reading Seminar	Reading skills are improving; shows good effort.
Learn Strategies	Uses academic support effectively; participates willingly in class.
Lang Lrn Strat Alt	Uses academic support effectively; A pleasure to have in class.
PE Grades 9-10	Shows good effort. (Ex. B-37)

58. By letter dated June 17, 2005, the High School Social Worker asked Student's Psychiatrist to consult concerning a revised behavior plan prior to the PPT meeting scheduled for June 22, 2005. The Social Worker listed eight dates on which he had attempted to reach the Psychiatrist by telephone. In testimony, the Psychiatrist stated that he did not have consent from Parent to communicate with the school. (Exhibit B-60; Tr. 5/30/06 pp. 71-76; 3/28/06 p. 144)
59. An annual review of progress on goals and objectives for Student's ninth grade year showed improvement in many areas, with some objectives met and others emerging. However, he was still reported as not consistently using all the features of Kurzweil such as spell check or listening to his papers before his last draft. He was still losing homework in his backpack, and slow to set up for class. Student was working on counseling goals and objectives, but:  
... is consistently not interested in participating in any self-evaluation particularly the use of mood charts. It would be consistent with ethical therapeutic practice to recognize his right to self-determination. (Ex. B-63)
60. Student's Special Education Teacher from 9<sup>th</sup> grade, who is also his Case Manager, discussed his reluctance to participate in charting his own moods in school. She observed that his best time was the middle of the day: sometimes he was tired in the morning, and often he was tired by the end of the school day. She had found it was more effective to have him make up missed tests during free periods during the day than after school, when he was tired. She had filled out Mood Charts after Student refused to do it as provided in the IEP. (Tr. 5/30/06 pp. 148-153)
61. Student received instruction in reading, keyboarding, and writing on three days a week during the summer of 2005. (Ex. B-39)
62. The PPT met on August 10, 2005, to develop an IEP for 2005-2006. Attending this meeting were the Board's Director of Special Education, Parent, Regular and Special Education Teachers, a School Psychologist, the High School Special Education Coordinator, and the Board's Director of Technology. The summary of PPT recommendations:  
Mood chart and behavior, home/school communication tool, teacher/student contract, transition goal to be implemented.  
Behavior plan with [Student's Psychiatrist's] input to be completed by mid-October after FBA completed in September/ behavior contract on a quarterly basis.
- It was noted that there was extended discussion of the Present Levels of Educational Performance, and some of Parent's suggestions were incorporated. Although behavior has not been an issue in school, a behavior plan would be developed with assistance from Student's Psychiatrist. Counseling would be provided by Guidance Counselor. Parent suggested a one to one TA, but Board staff members disagreed, stating that Student needed to develop independence. Board staff favored continuing Student's classification as Learning Disabled, because there was no evidence that his bipolar

disorder interfered with his learning in school and he did have several learning disabilities. Parent disagreed strongly, and the PPT accepted Other Health Impaired as the classification. The change in classification did not result in any substantial changes in the IEP. (Ex. B-40 pp. 2-3)

63. Goals for 2005-2006 developed by the PPT (not all objectives are included here):

**Academic/Cognitive**

5. [Student] will improve math skills ...

**Academic/Cognitive and Independent Living**

2. [Student] will increase his reading comprehension skills ...

3. Using assistive technology, [Student] will develop written expression ...

4. [Student] will increase his personal responsibility and organizational skills ...

1. [Student] will bring all necessary computer accessories to each class in order to be successful (i.e., cables, memory sticks, mouse, headphones, computer, adapters).

2. [Student] will have his materials ready when class begins including his computer set-up (suggestion to arrive earlier to class).

3. [Student] will be able to locate HW on computer file or in backpack upon teacher request within 3 minutes.

**Social/Behavioral**

1. [Student] will participate in activities for self advocacy and preparation for post secondary/vocational options.

1. [Student] will plan, develop and verbalize 3 or 4 personal and academic goals he needs to work on per quarter.

2. [Student] will complete self-advocacy activities to articulate strengths and needs related to his personal learning style and related classroom modifications.

3. [Student] will discuss his progress weekly with staff. (Ex. B-40 pp. 6-10)

64. Almost all modifications/adaptations from the prior IEP were continued. Options included:

Modified worksheets after initial unmodified attempt in all content areas

Modified tests after initial attempt as unmodified; time plus ½ for all tests;

alternate tests – oral tests when appropriate.

Pass/Fail if needed (Electives)

Grades based on ability

Assistive Technology Devices: Speech to Text software, Text to speech, graphic organizers, digital schedule, laptop.

Training for parent and student on Z drive. Access to Z drive from home with parent request. Staff will write in assignment notebook for duration of IEP. Parent will be given a list of all general and special education teachers e-mail addresses and she can e-mail questions or concerns directly to staff and case manager. (Ex. B-40 p. 15)

65. The PPT convened on September 21, 2005, with the Board's Director of Special Education, Parents, Student, Regular and Special Education Teachers, School

Psychologist, Guidance Counselor, the Board's Coordinator of Special Education and the Board's Attorney present. The meeting was called to address parental concerns. PPT recommendations were:

[Student's] homework will be listed electronically.

Mood charts will be filled out daily in Learning Strategies classes.

FBA will be completed by October/ Behavior plan will be reviewed – [Student's Psychiatrist] will be contacted for his input.

HS will send progress reports from 04-05 school year that parents requested.

Parents questioned the need for revisions in the prior behavior plan, and Board representatives responded that as children grow and change, such plans may need revision. At the August PPT meeting, it had been stated that the Functional Behavior Assessment would be performed in September and that the resulting behavior plan would be reviewed by Student's Psychiatrist for input. Parent presented behavior charts that were described as "too complicated" by Board staff. Handwriting was discussed. Computer issues were discussed. Parents requested a one to one all day TA for Student. Board staff disagreed. (Ex. B-41 pp. 2-3)

66. Student's Functional Behavior Assessment, dated September 23, 2005, listed Student's strengths and possible re-inforcers. Problem behaviors were given as: "significant disorganization frequently interferes with his ability to prepare, initiate, complete, and turn in assigned work for each class." Triggers were listed as difficult tasks, new routines, new tasks, and low energy level. Concurrent events were unstructured setting and independent seat work. (Ex. B-42 pp. 1-2; Tr. 5/30/06 pp. 68-71)
67. The behavior plan developed in September, 2005, was similar to that of January, 2004, and incorporated many of the modifications/adaptations already in place. A point system with the reward of free time was proposed. (Ex. B-42 p.3; B-15)
68. Student's Special Education Teacher e-mailed Parent on October 11, 2005, reporting on problems with homework completion, failure to turn in homework, and after school extra help. An exchange of e-mails dated November 1, 2005, between Parent and Student's Special Education Teacher concerned the same issues. (Ex. B-43, B-44)
69. Parent requested a special education hearing on October 6, 2005. Because Parent had recently filed a complaint with OCR, the Board did not immediately forward the request to the State Department of Education. At a resolution session held on November 8, 2005, eight specific issues were discussed and, based on apparent agreement, the Board's Director of Special Education wrote a letter summarizing agreements and requesting Parents' signatures. Parents responded by letter received by the Board on November 21, 2005, listing more areas of disagreement and discussing Student's disability: they requested a return to the IEP of June 14, 2004. (Ex. B-45, B-46, B-48)



70. Included in the record for this hearing were 71 pages of Mood Charts: some were undated, others dated during the school years 2004-2005 and 2005-2006. By and large, these charts confirmed the High School Social Worker's comment that Student did not have noticeable mood swings in school, and was usually "pleasant, calm, satisfied, and clear minded". (Ex. B-49, B-65)
71. Student's grades for the first semester of the 2005-2006 school year were: Algebra 1 Pt 2 72; Biology 65; Foods & Nutrition 84; English 10 80; Learning Strategies credit earned; PE grades 9-10 credit earned; and Survival II 83. (Ex. B-51 p. 6; Ex. B-66 p.2)
72. The Board entered 250 pages of correspondence between Board staff members and Parent, dated 2003-2005. There are many e-mail exchanges that were promptly answered, although not always with agreement to Parent's suggestions and complaints. Many communications from Parent are undated, and many complaints are repeated over time. (Ex. B-52)
73. Addressing the issue of whether Student would benefit from having a one to one TA accompany him through the school day, as requested by Parent, the Social Worker commented:
- Being on time or attending class regularly were never issues for him. ... we have an internal system that would track that for all kids, never was he on the radar for accumulating tardies or class cuts.
- However, he acknowledged that Student did have a TA in many classes. Student's 9<sup>th</sup> grade Special Education Teacher and High School Case Manager also commented on this issue:
- [Student] is very capable of getting from Point A to Point B and he's never late. ... You know, we have to worry about his social stigma about having someone walk with you throughout the hall in high school situations.
- (Tr. 5/30/06 pp.79-80, 164-166)
74. Student's Special Education Teacher in 9<sup>th</sup> grade, who is also his Case Manager, has a Masters Degree in special education and eleven years of experience as a special education teacher. She described various ways in which she communicated with Student's Parents, including e-mails and a communication notebook that traveled between home and school. She also described Student:
- I have not seen any behavior problems at all for the past two years. [Student] has matured in the two years that I've known [him]. He's accepting more responsibility for his success. He's coming in during his free time to work on work. He's asking for help when he needs something, he can't find something ...
- These were skills that I did not see last year and so much growth has happened. This teacher assisted Student with his use of Kurzweil and other organizational issues. She reported that although the school system had bought Student a laptop computer, eventually his family bought him a different one. She confirmed that he could access the Kurzweil software on the school district network from home. She also mentioned

that Student was skillful in computer use, and had joined the Tech Team, an after-school activity. (Ex. B-53; Tr. 5/30/06 pp. 110-233)

75. The Psychiatrist who has been treating Student since 1999 has been in private practice for more than 20 years and is a consultant to several child care agencies. He diagnosed bipolar disorder while Student was in elementary school, and has prescribed medication for him. He has observed Student in elementary school and middle school, attended PPT meetings, and consulted with Board staff about Student and about bipolar disorder generally. He reported extensive PPT discussions about monitoring Student's moods in school during his 8<sup>th</sup> grade year, with various plans proposed to track possible interference with his ability to learn in school. He also confirmed that Student has a "severe reading disorder" and problems with organization. In discussing Student's special education classification, he stated that he was concerned that school staff be aware that Student had two serious problems, his dyslexia and his bipolar disorder. One way to remind everyone of the latter would be to accept Parent's opinion that his classification be changed from Learning Disabled to Other Health Impaired, bipolar disorder. He acknowledged that data collected at school concerning Student's moods could be helpful to him in treating Student, in determining the frequency of therapeutic sessions and in considering medication. He also mentioned Student's sensitivity to having a TA at the High School, making him stand out as different from other kids. (Ex. P-8 pp. 2-3; Tr. 2/16/06 pp. 166-212; 3/28/06 pp.107-195)
76. The Board's former High School PPT Coordinator attended the June 14, 2004, PPT meeting to plan for Student's transition to the High School and PPT meetings held during Student's 9<sup>th</sup> grade year. He remembered discussions and disagreements. (Ex. B-59; Tr. 6/5/06 p. 17-63)
77. Student testified briefly concerning his school experiences. In the setting of a hearing, with only the hearing officer and a court reporter in the room, he was articulate and candid. He has matured, and there is no question that he is capable of doing better in school with appropriate support and his own commitment. (Tr. 6/5/06 pp. 67-72)
78. The Board withdrew the request for a psychiatric evaluation, reducing the requested evaluations in Issue #5 to one: Assistive Technology. (Tr. 1/20/06 p. 46)

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. The jurisdiction of a special education hearing officer is set forth at Section 10-76h, Connecticut General Statutes (CGS) and the Individuals with Disabilities Improvement Act of 2004, Section 615(b)(6), and related regulations. At this time, the U.S. Department of Education has not issued final regulations for the 2004 Act, and the 1999 federal regulations remain in effect wherever they are not in conflict with the 2004 Act. The federal law defines the jurisdiction of a special education hearing officer as:

With respect to any matter relating to the identification, evaluation, or educational placement of the child [eligible for special education] or the provision of a free appropriate public education to such child; and [a complaint] which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph. In this case, there has been a continuing and expansive dialogue between Parent and several school officials concerning many aspects of Student's IEP and placement. Some of Parent's requests and actions have appeared to conflict with prior requests and actions. During the hearing, several claims made by Parent for relief under No Child Left Behind and Sections 504 and 508 of the 1973 Rehabilitation Act were ruled out of order because they fell outside the authority of a special education hearing officer. However, Parent continued to make such claims.

2. The standard for review of special education programs for individual students with disabilities was established by the U.S. Supreme Court in the case of *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). This review requires two tests: 1) were the procedural requirements of the Act complied with; and 2) was the educational program developed for the child reasonably expected to provide educational benefit. The IEP must contain all the required elements, including: (1) the child's present level of educational performance; (2) the annual goals for the child, including short-term instructional objectives; (3) the specific educational services to be provided to the child, and the extent to which the child will be able to participate in regular education programs; (4) the transition services needed for a child as he or she begins to leave a school setting; (5) the projected initiation date and duration for proposed services; and (6) objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. *M.S. v. Board of Education*, 231 F.3d 96, 103 (2<sup>nd</sup> Cir. 2000) The IEPs developed by the Board's PPT in many sessions all met the requirements of federal and state law, except for specific details listed below.

3. The Board's lapses in meeting a few procedural requirements of IDEA and Connecticut law were very damaging to an already fragile working relationship between home and school. Some of Parent's allegations do raise procedural concerns:

**Charting of moods in school:** During excellent collaboration between school staff and Student's Psychiatrist in the spring of 2004, Student's eighth grade year, a mood chart form and various methods of tracking Student's changing moods in school were discussed. Goal #10 in the June 14, 2004 IEP was agreed (Finding of Fact #33). But when Student got to the High School, he refused to chart his moods for discussion. Eventually, the High School Social Worker negotiated an alternative plan, with staff members recording moods and discussion between

Student and Social Worker in counseling sessions. However, this significant change was not presented at a PPT meeting. The absence of Goal #10 from the September 10, 2004, PPT record (see Finding of Fact #37) may be a clerical error. The High School Social Worker's perseverance with Mood Charts confirms that the spirit, if not the letter, of the June 14, 2004 IEP was implemented. However, failure to hold a PPT meeting is a violation of 34 CFR 300.343(c)(2) and Section 10-76d-11(b), Regulations of Connecticut State Agencies (RCSA).

**Denial of requested evaluation:** Parent has asked on more than one occasion that Student have additional evaluations. Section 10-76d-9, RCSA, requires that an evaluation be performed whenever a teacher or parent request is made. Sometimes, an evaluation serves as a "rule out": an example in Student's case was the OT evaluation conducted as part of the 2004 triennial. OT services had been stopped earlier, and this evaluation confirmed that services were not needed, but also provided a list of concerns that are reflected in modifications/adaptations for Student. If school professionals believed that Student did NOT have problems with executive function issues when Parent believed that he did, an evaluation might have resolved this disagreement and been helpful in planning support services for Student.

**Delay in forwarding request for hearing to State Department of Education**

Parent requested a hearing on October 6, 2005. This request was forwarded to the State Department of Education (SDE) on October 21, 2005. The reason provided by Board Counsel, that there was confusion because Parent had recently filed a complaint with the Office for Civil Rights, U.S. Department of Education, may be factual but does not address the timelines required for hearings. Section 10-76h(e), RCSA, requires the local school district to notify the SDE **the same day by facsimile**, and to send the original request within seven days.

**Transition** There are two transitions of concern in Student's case. First is the transition from Middle School to High School. The PPT meetings in the spring of 2004, Student's 8<sup>th</sup> grade year, included representatives from the High School who participated in planning for 9<sup>th</sup> grade. Confirming the commitment, the High School Social Worker worked hard to implement the plan for Student to chart his moods in school. The Parent may not have agreed with all the transition plans or activities, but the record shows both good planning for the whole 8<sup>th</sup> grade and individualized arrangements for Student.

The second transition, from high school to higher education and/or the world of work, requires planning for special education students starting at age 14, see (34 CFR 300.347(b)(1)). The IEPs after Student's 13<sup>th</sup> birthday (August 25, 2003) should have included a "Transition Summary Page". PPTs held on September 15, October 30, November 3, 10 and 20, and December 19, 2003, January 29 and March 31, 2004, did not include that page. Starting on May 6, 2004, a Transition Summary Page was included in each subsequent IEO. Many of the PPT meetings prior to May, 2004, did not complete work on goals and objectives and had to re-convene. While the apparent absence of transition planning activities is a

technical violation of Federal regulation, Parent failed to suggest any specific harm resulting from this delay. With frequent PPT meetings and consideration of many parental requests during that period, it cannot be claimed that omitting transition planning interfered with Student's opportunity to receive a free appropriate public education or Parents' opportunity to participate in the IEP process.

Several other complaints by Parent were either unfounded or not violations of any specific regulation:

**Present levels of educational performance** were disputed in several PPT meetings. While many of the disagreements concerned niceties of language over which reasonable people could differ, the problem of whether the primary disability should be listed as Learning Disabilities or Other Health Impaired (bipolar disorder) was a serious difference of opinion. The Board's position, that most if not all of Student's problems in school were related to his learning disabilities, appears to have infuriated Parent, who believed that the effects of bipolar disorder were responsible for many of the same problems. This is a disagreement that cannot be resolved, and eventually the PPT did the wise thing and deferred to Parent's preference.

**Request for mediation in June 2005:** Failure to follow through with mediation when the record appears to show an agreement to do so is another example of a missed opportunity to try to repair communication between the school and Parents.

4. The second *Rowley* test is whether the IEP was reasonably calculated to enable the child to receive some educational benefit. Since *Rowley*, courts have clarified the requirements of FAPE to hold that IEPs must provide more than a trivial educational benefit. (See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3<sup>rd</sup> Cir. 1988), Cert. Denied 488 U.S. 1030 (1989) and *Oberti v. Board of Education of the Borough of Clementon*, 995 F.2d 1204 (3<sup>rd</sup> Cir. 1993). Student did progress during 2004-2005 and 2005-2006, as demonstrated by his report cards. His program, both the goals and objectives and the modifications and accommodations, addressed the difficulties revealed in his evaluations. Carrying forward the same or similar goals, addressing homework completion, reading and writing, indicates that progress has been slow, but recent improvements confirm that work on these basic areas would, eventually, pay off.

5. Section 10-76h-14(a), R.C.S.A., provides that the party who filed for a special education hearing has the burden of going forward with the evidence, and the Board of Education has the burden of proving the appropriateness of the child's program or placement. This burden shall be met by a preponderance of the evidence, except for hearings held pursuant to 34 CFR 300.521 [placement in an interim alternative educational setting]. The Board met its burden, and Parent failed to show that Student's IEPs and placements for 2004-2005 and 2005-2006 were inappropriate.

6. The IDEA requires that students be removed from the regular education classroom: "... only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (20 U.S.C. §1412(a)(5)(A) Student was described as struggling in Regular Education Language Arts in 8<sup>th</sup> grade: in 9<sup>th</sup> and 10<sup>th</sup> grades, he had supportive special education classes and a TA in his Regular Education English classes. Whether or not he was benefiting from placement in a regular English class with modifications is a professional judgment for the PPT. An important factor in that judgment, Student's self esteem and confidence, changes from year to year and even from day to day. At the end of 10<sup>th</sup> grade, Student is better prepared for regular education classes, but he still requires modifications to be determined by the PPT and teachers working with him.

7. The Family Educational Rights and Privacy Act (FERPA) and its regulations provide parents with access to virtually all personally identifiable school records of their children (34 CFR 99.10). The usual procedure is for a parent to make a written request, usually on a form provided by the school district. Parent had the right to inspect the records of Student's Mood Charts. No record of such a request was included in the documentation provided for this hearing. None of the IEP documentation – either the summaries or the actually goals – mentioned parental access, so the Board was not required to provide access or copies without a request.

8. Parent's position on the use of Kurzweil throughout the school day, in every class, was extreme and unreasonable. Members of the PPT reiterated that Kurzweil was intended as support for reading and writing, to be used in the Resource Room and for assignments. One teacher noted that Student's computer use in class isolated him from classroom participation. The Educational Consultant noted that Student wasn't using some of the features of Kurzweil that could be beneficial for him. An additional problem was the struggle to teach Student keyboarding in the correct way, which could have given him greater speed in his work. Finally, the modifications listed "in all classes" and "as needed", presenting each teacher with a dilemma. It appears that each teacher made a judgment about computer use in his or her class. There is no record of a discussion at a PPT meeting of what was perceived as an appropriate role for Student's computer in each class. Furthermore, as Student began doing better in school during the course of this prolonged hearing, it is certainly possible that his need for his laptop and Kurzweil changed. The recommendations of the Educational Consultant and the Assistive Technology Specialist were clear and practical: Parent's desire for maximum computer use in every class, with all teachers also using computers to communicate with Student, was unrealistic, impractical, and intrusive on the teaching and learning of other students in the classes. The Board's positions concerning assistive technology for Student conform to the requirements of 34 CFR 300.308,

9. During the 2003-2004 and 2004-2005 school years and from time to time during this hearing, Parent made demands on school staff members to meet with her immediately during the school day, to respond to long, detailed e-mails, and to generally provide an educational program for Student exactly the way she wanted it to be. She also frequently

changed her mind about what she wanted, and sometimes Student simply refused, quietly, to do what she and/or the PPT had planned. All of these behaviors are normal in moderation, but in this case became extreme, interfering with the operation of the school and with Student's educational program.

10. In the spring of 2004, a remarkable collaboration was developing: Student's Psychiatrist attended several PPT meetings, consulted with school staff about Student's program, and provided an in-service program about bi-polar disorder. This unusual degree of collaboration was undoubtedly productive, not only for Student but also for other students with that disability. In testimony, both the Social Worker and the Psychiatrist referred to the Parent's later termination of consent to communicate, and they both respected that decision.

11. While two "compromises" made by the Board with Parent in an attempt to restore harmony, the adoption of a behavior plan and the change of classification for primary disability, were made in good faith and can be sustained based on the facts of this case, the PPT should be wary of compromise for compromise's sake. When the PPT recommends a program or service that they regard as appropriate for Student, and Parent's counter proposal is not appropriate in their collective professional judgment, they should rely on their professional judgment.

#### **FINAL DECISION AND ORDER:**

- 1, The IEP and Placements for Student in the 2004-2005 and 2005-2006 school years were appropriate to his special education needs in the least restrictive environment.
2. The "Present Levels of Educational Performance" listed in the IEP at Exhibit 41, dated September 21, 2005, are accurate in terms of the information available to the Board relevant to Student's education. It is important to remember that this information is based on Student's performance in school, to be used in developing the school program and placement.
3. The arrangements already in place for computer access and software are sufficient to Student's current needs. Kurzweil or equivalent software, with access to the school district's network, is a reasonable support to Student's reading and writing, if he is willing to avail himself of the features that are part of this package.
4. Given access for Student from his home computer to the school district's network, it is not necessary for the school district to install any additional educational software on his home computer.
5. Homework completion has improved, but is still an issue. Student should have access to the option of doing his homework in school in a supportive setting. However, this should be a PPT decision, based on Student's input.

6. The behavior plan found at B-42 page 3, dated 9/23/05, is almost a year old. For Student's 11<sup>th</sup> grade year, the PPT shall consider revisions to this plan in the light of 10<sup>th</sup> grade achievement and greater maturity. If the PPT decides that no behavior plan is required to meet school needs, this issue should be reviewed within two months of the beginning of school for 2006-2007.
7. The Board's Assistive Technology staff members have demonstrated their expertise and tact: they are able to determine when and whether outside consultants are needed. Student does need additional instruction/practice in keyboarding and in the features of Kurzweil.
8. Student does not require a full-time Teaching Assistant. The PPT shall meet (see # 13 below) to address the question of whether he requires a TA in some or all regular education classes. If a TA is assigned to help him, TA duties shall be carefully spelled out and explained to Parent. The TA is a school district employee, working under the supervision and direction of Student's Special Education Teacher.
9. The modifications/adaptations listed on the September 21, 2005, IEP clearly stated that unmodified tests etc should be tried before using modifications, on a class by class basis. Individual teachers may decide, based on their professional judgment, whether a behavior plan is necessary for Student in their classes. If his behavior and/or work production suggests a need for more individualized support, the PPT shall address that need on an individualized basis. Student's Case Manager shall keep a record of which modifications are being implemented in which classes each quarter of the school year. Student's personal goal is commendable: elimination of modifications and participation in as much of the regular curriculum as possible should be the overall goal.
10. The combination of regular English and supportive special education classes such as Learning Strategies has proven relatively successful for Student. The PPT shall consider (see #13 below) how best to continue strengthening Student's reading and writing.
11. This hearing did not reveal any needs for additional evaluation at this time. However, the PPT should be reminded of the requirements under state regulation (see Conclusion # 3 above).
12. Student does require a transition plan at this time. However, if one of his realistic options is higher education, transition planning should not reduce his academic opportunities.
13. The PPT shall meet within 30 days of receipt of this decision, to plan for Student's 11<sup>th</sup> grade year. If an IEP has already been devised, that may serve as the draft for consideration. In the light of past experience, the PPT shall work with Parent to develop a practical way for home-school communication to occur with minimal disturbance of teachers' school day responsibilities. If there are difficulties in reaching consensus, mediation should be considered as a tool toward a better working relationship.