

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Fairfield Board of Education

Appearing on behalf of the Parents: Atty. Nicole A. Bernabo, Klebanoff & Alfano, P.C., 433 South Main Street, Suite 102, West Hartford, CT 06110

Appearing on behalf of the Fairfield Board of Education: Atty. Michelle C. Laubin, Berchem, Moses & Devlin, P.C., 75 Broad Street, Milford, CT 06460

Appearing before: Attorney Patricia M. Strong, Hearing Officer

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

The Parent (Mother) requested this hearing on June 14, 2006. This hearing officer was assigned to the case on June 16. A prehearing conference was held on June 30, 2006 with the Board's attorney. The Parent's attorney could not be reached by telephone. The Board's attorney reported that the case was scheduled for mediation on July 18. Hearing dates were scheduled for August 15 and 17. The decision deadline was set at August 28, 2006. The parties were directed to file witness lists and exhibits by August 8. On July 20, the Hearing Officer was advised by the State Department of Education ("SDE") that the parties did not reach agreement on July 18 and to proceed with the hearing. On July 28, the Board's attorney requested a postponement of the August 15 and 17 hearings because the Board's staff representatives were not available on those dates. She proposed five other dates in August and September. On July 31, the Parent's attorney responded that the Parent wanted the hearing to take place as soon as possible and agreed to any of the proposed dates. Later that day, the Parent's attorney wrote a letter stating that she was not available on one of the dates. The postponement request was granted and new hearing dates were scheduled for August 23 and September 1. The decision deadline was extended to September 25, 2006. A second prehearing conference was held on August 10 to schedule additional hearing dates, which were agreed on for September 27, October 10 and 12. On August 16, the Parent's attorney made a written request to extend the decision deadline to November 6, which was granted. On August 18, the Parent filed a second due process request regarding the 2004-05 and 2006-07 school years. The case was assigned to another Hearing Officer.

On August 16, the parties filed witness lists and exhibits. The Parents filed Exhibits P-1 through P-39. The Board filed Exhibits B-1 through B-87. The hearing convened on August 23, 2006. The parties asked for time to discuss a possible settlement, which was granted. The

efforts to settle were not successful. The first matter heard was objections to exhibits. The Board objected to Exhibits P-21, P-26, P-27 and P32 on relevancy grounds. They were marked for identification, subject to later offer and hearing on objections. The remainder were entered as full Exhibits. The Parents' attorney objected to Exhibit B-35 and requested to examine the original document. Exhibit B-35 was marked for identification and the remainder were entered as full exhibits. The Parent's attorney requested that the second due process request be consolidated with the first request. The Board's attorney objected because there had been no resolution meeting held on the August 18 request. The June 14 request for due process, which concerns the 2005-06 school year, was marked as Hearing Officer Exhibit (HO) 1. The Board's attorney objected on jurisdictional grounds to Issue #4: "Did the Board discriminate against the family in violation of Section 504 of the Rehabilitation Act?" After hearing the parties' positions, the Board's attorney was given until August 28 to file a Motion to Dismiss. The Parent's attorney was given until August 30 to file an objection. The parties agreed to add the issues from the August 18 due process request to this case, and the Parent's attorney agreed to withdraw the second due process request. The Board was given until September 1 to file an objection to any issues in the August 18 due process request, which was marked as Exhibit HO-2. The Board's attorney stated that she had an objection to Issue #2: "Did the Board comply with the procedural requirements of federal and state law as it applies to the Board's 'child find' obligations in that the Board failed to timely identify the Student for special education services during the 2004-2005 school year, and during the first part of the 2005-2006 school year (summer and fall)?" The parties were given the opportunity to add to their witness lists and exhibits based on the new issues raised in Exhibit HO-2. The Parent's attorney waived an opening statement. The Board's attorney reserved her opening statement until commencement of the Board's case. The parties were then given an extended recess to discuss a possible resolution of the August 18 issues. This proved unsuccessful. Following the recess, the Board offered two new exhibits – Exhibits B-88 and B-89. The Parents then presented testimony from the Mother. Board Exhibits B-88 and B-89 were admitted into evidence without objection. Exhibit B-35 was admitted as a full exhibit.

On August 28, the Board filed its Motion to Dismiss as to Issue #4 in Exhibit HO-1. The Parent's attorney filed her opposition to the motion on August 31, after her request for a one-day extension of time was granted. On September 1, the Hearing Officer denied the Motion to Dismiss without prejudice. The Board was allowed to renew the motion at the close of the evidence. On October 4, the Parent's attorney withdrew one of the two Section 504 claims: "The Board and/or its agents further retaliated against the family and/or violated the family's rights by unlawfully disclosing confidential information regarding G[.]'s educational program."

On September 1 the hearing continued with testimony from Tracey Taylor, MSW. Exhibits P-40 and P-41 were admitted into evidence. The Parent's attorney made an oral motion to allow testimony by telephone from two witnesses from the Chamberlain School in Middleboro, Massachusetts. The Board objected. The Parent's attorney was advised to make additional documents from Chamberlain School available to the Board's attorney two weeks prior to their testimony. Additional hearing dates were agreed on for October 25 and 26 and November 9 and 15. The decision deadline was extended to December 8, 2006. Ms. Taylor's testimony was completed on September 27. The Parent's attorney filed a Motion for an Order Permitting Telephone Testimony. The Parent's attorney filed Exhibits P-42 through P-59, which

were marked for identification only. The Parent's attorney also filed an amended witness list, which added an FBI agent and removed a witness from Four Winds Hospital. The Board's attorney was allowed until October 4 to file an objection to these requests, which it did. The Parent was permitted to call the FBI witness, and the Board's relevancy objection was overruled. The Mother continued her testimony on September 27.

On October 9, the Parent's attorney filed a reply brief in support of her request for the FBI witness and the admissibility of the exhibits at issue. On October 10, the hearing continued with argument on the Motion for an Order Permitting Telephone Testimony, which was granted with certain conditions. Jennifer Strazdes, the Student's therapist at Chamberlain School, was permitted to testify by telephone in the presence of a notary of Massachusetts. The Board asked the Hearing Officer to reconsider her ruling allowing the FBI agent to testify, which was denied. The Board's objections to Parent Exhibits P-42 through P-59 were noted for the record. Exhibit P-51 was entered as a full exhibit since it was a duplication of Exhibit B-64 at 2. The Parent's attorney was advised that the other exhibits would have to be offered through a witness and objections ruled on at that time. Exhibits P-60 and B-90 were marked for identification. The Mother continued her testimony. On October 12 Exhibits P-61 and P-62 and B-91 were admitted as full exhibits without objection. The Parent called Kathy Shumaker, special agent FBI, with the Cyber Task Force, which investigates crimes against children. During her testimony, Exhibits P-21, P-26 and P-27 were admitted as full exhibits over objection. Exhibit B-92 was entered as a full exhibit without objection. The Mother continued her cross-examination.

On October 25, the Parent presented testimony from Melissa Connors, Director of Studies, F. L. Chamberlain School. Exhibits P-52 through P-60 were admitted over objection during her testimony. On October 26, the Parent presented testimony from Karl Kessler, M.D., a psychiatrist who is the Unit Chief of the Child and Adolescent Inpatient Service at Hall-Brooke Hospital. Exhibits P-42 through P-50 were admitted as full exhibits during his testimony. Additional hearing dates were agreed on for December 7, 15, 20 and 21. The decision deadline was extended to January 16, 2007. The Mother continued her cross-examination on October 26. On October 27, the Parent's attorney wrote to the Hearing Officer regarding the issue of the 2006-07 school year. At the next hearing date, the letter was marked Exhibit HO-3. On November 9, Jennifer Strazdes, counselor at Chamberlain, testified by telephone before a Massachusetts notary who filed an affidavit with the Hearing Officer regarding the procedures followed. Exhibit HO-4. Exhibits B-93 through B-97 were admitted as full exhibits without objection. Exhibits B-98 and P-63 were marked for identification subject to the five-day rule. The Mother completed her testimony, and the Parent rested her case.

The Board began its case on November 15 with testimony from Kirsten Sabrowski, school social worker at Fairfield Ludlowe High School (hereinafter FLHS). Exhibit B-98 was admitted over objection as a full exhibit. At the request of the parties, additional hearing dates were scheduled on January 4 and 11, 2007. The decision deadline was extended to February 5, 2007. At the outset of the December 7 hearing, the Parent's attorney moved for an order compelling Ms. Sabrowski to provide her personal notes, which were used to prepare Exhibit B-98, and to compel the Board to provide the Student's attendance record from the 2004-05 school year. A recess was taken while the attendance record was faxed to the Board's office and was entered as Exhibit B-99. After oral argument on the question of whether Ms. Sabrowski's

personal notes are educational records, the Hearing Officer deferred a ruling pending submission of briefs and relevant case decisions. Ms. Sabrowski completed her testimony on December 7, 2006. The Parent's attorney filed Exhibit P-64 at the close of the hearing. On December 13, the Parent's attorney wrote to the Hearing Officer regarding an administrative ruling from the SDE relating to production of records and that she was issuing a subpoena duces tecum for Ms. Sabrowski to appear at the December 15 hearing with her notes. On December 15 the Board's attorney filed Exhibits B-99 through B-111. Another oral argument was presented on the production of records issue. The Board's attorney asked for written briefs, which was granted. The Parent's attorney was allowed until December 19 to file her motion and brief. The Board's attorney was given until December 27 to file an objection.

The Board presented testimony on December 15 from Caryn Campbell, school psychologist at FLHS, and Greg Hatzis, Housemaster at Fairfield Ward High School since September 2006, formerly at FLHS. Exhibit P-64 was entered as a full exhibit during Ms. Campbell's testimony. On December 20, Exhibits B-100 through B-108 and B-110 through B-112 were entered as full exhibits. Exhibit B-109 was marked for identification. The Board presented testimony from Michael Lustick, M.D., child and adolescent psychiatrist. Exhibit B-109 was admitted over objection and Exhibits P-65 through P-69 and P-71 were admitted without objection during Dr. Lustick's testimony. Exhibit P-70 was marked for identification. On December 21, Daniel French, Ph.D., Director of the Emotional Disabilities Unit at CES in Trumbull, was called to testify. Greg Hatzis completed his testimony on that date. On December 19 and 26 the parties filed their briefs regarding the Motion to Compel Disclosure of Education Records. On January 3, 2007, the Hearing Officer issued a written ruling denying the motion. On January 4 additional exhibits were filed and admitted without objection—Exhibit B-113 and B-114 and P-72 through P-81. Andrea Leonardi, Director of Special Education, Fairfield Public Schools was called to testify. The Board rested its case. The Parent called the Student's grandfather to testify as a rebuttal witness. The Parent then rested her case.

A briefing schedule was discussed. Briefs were due on February 20, reply briefs were due on March 6 and the decision deadline was extended to March 30, 2007 with agreement of both parties. The January 11 hearing date was canceled. Timely briefs and reply briefs were filed. The Parent's attorney filed an Amended Brief on February 21 to correct several errors in the original.

The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record. To the extent that the findings of fact are conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to their given labels. Bonnie Ann F. v. Callahan Independent School Board, 835 F.Supp. 340 (S.D. Tex. 1993).

ISSUES

1. Should the Fairfield Board of Education have identified the Student as eligible for special education and related services during the 2004-05 school year?
2. Should the Fairfield Board of Education have identified the Student as eligible for special education and related services prior to November 22, 2005?
3. Did the Fairfield Board of Education offer the Student a free appropriate public education (FAPE) for the 2005-06 school year?
4. If not, did the program and placement at Chamberlain provide the Student with an appropriate program to meet his needs?
5. If so, is the Fairfield Board of Education financially responsible for the program and placement at Chamberlain for the 2005-2006 school year?
6. Did the Fairfield Board of Education offer the Student a FAPE for the 2006-2007 school year?
7. If not, does the program and placement at Chamberlain provide the Student with an appropriate program to meet his needs?
8. If so, is the Fairfield Board of Education financially responsible for the program and placement at Chamberlain for the 2006-2007 school year?
9. Is the Parent entitled to compensatory education for the Student for any period of time?
10. Did the Fairfield Public Schools retaliate against the Parent and/or the Student in violation of Section 504 of the Rehabilitation Act by filing a truancy petition with the Juvenile Court in January 2006?

SUMMARY

This hearing took place over 14 days, involving nearly 200 exhibits and testimony from 7 witnesses for the Parent and 6 witnesses for the Board. Both sides presented expert medical testimony from psychiatrists. The Student is a 17 year-old young man who currently attends the F. L. Chamberlain School (hereinafter "Chamberlain") in Middleboro, Massachusetts. He has been at Chamberlain since February 2006 when his parent (Mother) unilaterally placed him there. Prior to that time he was a 10th grade student at FLHS in Fairfield. The parties agree that he is entitled to special education under the category of serious emotional disturbance (SED). The parties also agree that the Student is not able to be educated at the public high school, FLHS, which he formerly attended. The Parent contends that the Student requires a residential therapeutic school. The Board believes that the Student should be in a therapeutic day school, either in Fairfield's program or in a public regional program in Trumbull. The Board believes

the program it offered complies with and is required by the least restrictive environment (“LRE”) mandate of the Individuals with Disabilities in Education Act (“IDEA”).

FINDINGS OF FACT

1. The Student, also referred to as G. herein, has a birth date of October 18, 1989 and is currently 17 years old. He is an 11th grade student at Chamberlain. Testimony of Mother.

2. Concerns were raised regarding the Student’s educational performance as early as kindergarten. Id. On October 31, 1994, the Student was referred by school staff at Roger Sherman Elementary School for a child study/staffing meeting. Exhibit B-1.

3. The Student was initially referred for special education evaluation in January 1995, for concerns regarding speech and language issues. Exhibits B-2 and B-3. A speech and language evaluation was conducted, and it was determined that no special education services were recommended. Exhibit B-4. A Planning and Placement Team (PPT) meeting was held to discuss the results of the evaluation. No special education services were recommended, and the Student’s Mother was to talk with the kindergarten teacher about retaining the Student in kindergarten. Exhibits B-5 and B-6.

4. The Student repeated kindergarten and the Mother did not raise any concerns about the need for special education. Testimony of Mother.

5. On standardized achievement tests conducted in 3rd, 4th, and 5th grades at Roger Sherman Elementary School, the Student consistently scored in the average range. His scores on the 4th grade Connecticut Mastery Tests (CMT’s) were in the mastery range. Exhibits B-7 through B-9.

6. On May 15, 2001, during the Student’s 5th grade year, the Student’s surname was officially changed from his mother’s maiden name to his stepfather’s surname, reflecting the close relationship between the Student and his stepfather at the time. Exhibit B-10; Testimony of Mother. Although the Student’s biological father lived down the street from the Student, they had no relationship. Testimony of Mother.

7. G.’s scores on the 6th grade CMT’s taken in October 2001 were in the level 3 range on mathematics, reading and writing, which was below the goal range of level 4. Exhibit B-11.

8. In approximately April 2002 divorce proceedings were initiated between the Student’s mother and his stepfather. In May 2002, the Department of Children and Families (“DCF”) became involved with the family because the Student’s younger brother was alleging that the Student’s stepfather molested the younger brother. DCF has been involved on and off with the family since this initial investigation. Id.

9. In November 2002, during the Student’s 7th grade year at Tomlinson Middle School, the Student’s mother referred him for special education services, concerned that he was

not doing his homework and that his attention in class was poor. Id.; and Exhibit B-13. The school agreed to convene a PPT and agreed to conduct a full psycho-educational evaluation. Exhibits B-14 and B-15.

10. The school psychologist, Stephen Geller, stated at the November 21, 2002 PPT meeting that the Student had educational, familial and emotional issues. Exhibit B-15. The Student was seeing Barbara Murphy, a therapist from the Child Guidance Center. DCF had mandated this therapy since June 2002. Ms. Murphy attended the PPT meeting. Id. The Student had been taking many different medications, but at the time of the PPT meeting he was not on any medication. Id.

11. The results of the Woodcock Reading Mastery Tests in November 2002 showed that the Student was uniformly achieving in the average range as compared to his peers. He admitted that he did not like to read and had difficulty “getting into” a book. Exhibit B-16. Similarly, he achieved lower-end average scores on the Test of Written Language (TOWL). Exhibit B-19. His scores on the Key Math tests were within the average range overall, with some areas above average. Exhibits B-20 and B-22.

12. A school social worker made a Report of Developmental History, which noted that Dr. Schneider had diagnosed the Student with Attention Deficit Disorder (ADD) at age 12. The Mother had taken him there because of poor school performance. Although he had been prescribed medication for ADD, the Student’s mother took him off the medication because he experienced unpleasant side effects such as weight loss, trouble sleeping, and refusing to attend school. After he was taken off the medication, the Student’s mother reported that he was “doing much better.” Exhibit B-17. G.’s relationship with his stepfather had ended because of the divorce and DCF involvement with the family. Id.

13. Stephen Geller, school psychologist, conducted a diagnostic study including a variety of tests and behavior observations. He noted that the Mother believed that the Student’s poor academic performance may be due to a specific learning disability. She told him she doubted the ADD diagnosis. Exhibit B-18. Cognitive testing revealed that the Student’s cognitive abilities were in the average range, and when compared with his achievement, there were no specific learning disabilities identified. Id.; and Testimony of Caryn Campbell. The Connors Rating scales were administered to all of the Student’s teachers to evaluate their observations regarding a variety of his behaviors. The test is designed to determine whether a child has signs and symptoms of Attention Deficit Hyperactivity Disorder (ADHD). The ratings among four out of five teachers confirmed that the Student was at that time exhibiting behavior which could be classified as ADHD-Inattentive Type. Id.

14. Mr. Geller also asked the teachers to complete the Behavior Assessment Scale for Children-TRS-A (BASC). The BASC is rating system designed to “facilitate the differential diagnosis and educational classification of a variety of emotional and behavioral disorders.” The attention scale and the study skills scale both were rated as “At Risk” or “Critically Significant,” indicating a possible diagnosis of ADHD-Inattentive Type. The Student’s teachers reported that he had a “tendency to allow his socialization to interfere with his work”, that he was distractible and required firm structure in order to complete work, and that he did not complete homework. Id.

15. On January 22, 2003, the PPT met to review the evaluation reports and determined that the Student did not qualify for special education. The team noted that G.'s performance did not reveal any learning disability. It is not clear from the PPT document whether the team considered eligibility under the category Other Health Impaired, but he did qualify for an accommodation plan under Section 504 of the Rehabilitation Act as a result of the reported diagnosis of ADD, confirmed verbally by therapist Barbara Murphy from Child Guidance. Exhibits B-23 and B-88. The team noted that G. was failing English and Math. It was reported that he had poor work habits and appeared tired in Social Studies class. In Science class G. had difficulty focusing and did not always turn in assignments. Frequent absences were noted, which the Mother attributed to his being sick many times. Exhibit B-23. At no time did the Parent challenge the determination that the Student did not qualify for special education services or request a due process hearing regarding this eligibility determination. Testimony of Mother.

16. The Student's Section 504 Accommodation Plan called for him to have directions repeated and rephrased, have his assignment notebook signed at the end of each period, modified assignments, extended time for tests and assignments, tests taken in a separate setting, and standardized tests to be taken in small group, extended time and in alternate setting. The plan also called for the Student to work with a tutor two or three times per week. Exhibit B-88.

17. In June 2003, at the end of the Student's 7th grade year, the Section 504 Plan was reviewed and modified to retain the accommodations for standardized test administration, provide extra help with assignments, preferential seating, and weekly home/school communication. Id.

18. On the 8th grade CMT, the Student scored at the goal level in math, at the proficient level in reading, and the basic level in writing. Exhibit B-24. The Student's grades in middle school ranged from A's to D's and were generally in the B/C range. His grades in Science, English, Social Studies and Integrated Reading improved. His Math grade remained the same – D+. Exhibit B-25.

19. In June 2004 the 504 services were discontinued. It was noted that G. "became very motivated and focused during the last marking period." E-mail communications between school staff and home were to continue. Exhibit B-88 at 10. The Mother testified that she never received the 504 documentation, nor was she aware why G. was exited from the 504 plan. Testimony of Mother.

20. FLHS is divided into three "Houses", with administrative, guidance, and mental health support staff assigned to each "House." On a weekly basis, the House administrators and staff meet to discuss students who may be in need of intervention for various reasons. The Student was assigned to Wright House at FLHS. Greg Hatzis was the Housemaster of Wright House. On September 15, 2004, the Student was suspended from school as a result of a fight with another student. The Student was discussed at a House meeting, including the fact that the Parent had expressed concerns about the Student's family situation with the guidance counselor, Monica Struzick. The Student was referred to the House social worker, Kirsten Sabrowski, for

services as a regular education intervention. Exhibits B-98 and B-100; Testimony, Ms. Sabrowski and Mr. Hatzis.

21. Ms. Sabrowski spoke to the Parent by telephone and met with the Student to introduce herself and offer her services. The Parent advised her that the Student was on medication for ADD and that there was an ongoing custody case involving G.'s younger brother due to alleged sexual abuse by G.'s stepfather. Ms. Sabrowski was made aware that G. had no contact with his stepfather for these reasons. The Parent signed a release (a copy of which was not provided to the school) permitting communication between Ms. Sabrowski and Ms. Murphy, the Student's outside therapist at Child Guidance. Ms. Murphy advised the school social worker not to "push" the Student to accept counseling at school because the Student was in counseling with her outside of school. Over the course of the next month, Ms. Sabrowski sent passes to the Student permitting him to see her for counseling, but the Student did not avail himself of her services. Exhibit B-98; Testimony of Ms. Sabrowski.

22. In October 2004, the Student was absent from school for a period of time. The Parent explained this absence by saying that the Student had surgery to repair a condition that she referred to as "tongue-tied" that caused difficulties with breathing and sleeping. The Parent reported that the Student was continuing to receive counseling outside of school regarding the impending divorce and family situation. Exhibit B-34 at 2 and B-98 at 1; Testimony, Ms. Sabrowski and Mother.

23. On November 4, 2004, Sabrowski met with the Dean to discuss the Student's many absences, which were of concern. It was reported to the Dean that the Student was absent but there was no documentation supporting the absences. *Id.* The Dean, Eva Senzer, was to send a letter home. On November 12, 2004, Ms. Sabrowski telephoned the Mother requesting the requisite documentation so that the Student would not lose academic credit. Testimony of Ms. Sabrowski.

24. On January 28, 2005, the Student was again discussed at a House meeting because he was failing his classes for the first semester of his 9th grade year, and, although he had been advised to appeal a loss of credit due to absences, he failed to appear at the appeal hearing. On February 1, 2005, Ms. Sabrowski met with the Student, he stated that he did not know why he has not appeared at the hearing, but that he was doing better, was being taken off Depakote and planned to go snowboarding with his mother and her boyfriend. Exhibits B-98 at 1 and B-101; Testimony, Ms. Sabrowski. The Student's guidance counselor, Bridget McHugh, met with him in mid-February 2005 and developed a plan to get the missing work made up and improve his academic standing. Ms. McHugh sent an e-mail to all of G.'s teachers and advised them of the plan. Exhibit P-73.

25. The Student's promises did not result in any improvement in his school performance. On March 3, 2005, the Student was again discussed at a House meeting in regard to attendance, failing grades and behavioral issues. Exhibit B-98 at 2. Ms. Sabrowski telephoned the Mother on March 10 and was advised that he was not attending counseling with Ms. Murphy or taking his medications and that the Mother was very concerned about him. Ms. Sabrowski gave the Mother referrals for new therapists and met with G. that same day. He complained that his Mother was not taking him to therapy, that she yelled a lot at home and that

he can't cope with things there. Ms. Sabrowski invited G. to attend a men's counseling group at school. On March 11, 2005, another House meeting discussed the Student's deteriorating behaviors and getting sent out of class. The guidance counselor agreed to set up a meeting with the Mother. Id., and Testimony of Ms. Sabrowski.

26. Ms. Sabrowski met with the Mother on April 4, 2005. The Mother shared her concerns regarding G.'s visiting pornographic websites, not sleeping, bizarre behaviors, not going to therapy or taking medications. The Mother asked about Cognitive Behavior Therapy (CBT) and stated that she made an appointment for G. with Dr. Pomerience for medication. She signed permission for the school to communicate with Dr. Pomerience. Exhibits B-98 and B-102. The school was to set up a PPT meeting to discuss a referral to special education. On April 5, Ms. Sabrowski e-mailed the Mother a referral to providers of CBT. Exhibits B-98 and P-65. On April 8, Ms. Sabrowski called Dr. Pomerience and was advised that no appointment had been made. Exhibits B-98 and P-79. The Student did participate in a young men's counseling group at school, and did participate in individual counseling with the school social worker as well, during the spring of 2005. Exhibits P-74 through P-78; B-98 at 2; Testimony, Ms. Sabrowski.

27. In April 2005, the Student was referred for special education services with a concern of failing or near-failing grades in all academic areas. Exhibits B-26, B-29 and B-103. It was noted that he was having difficulty managing his emotions and responding appropriately in school and at home. Testimony, Ms. Sabrowski. FLHS staff also instituted the use of a monitoring (probation) sheet for the Student that he would present to each of his teachers for signatures over the course of the day and then home for a parent signature in the evening, to improve his classroom attendance and behavior. Id.; and Exhibit P-65.

28. A PPT meeting was convened on May 11, 2005 with the Parent and the Student present, and it was agreed that an updated psycho-educational evaluation, including behavior rating scales, achievement testing and psychosocial, would be conducted. Since the Student was exhibiting behavioral symptoms (fatigue, apathy, mood swings) consistent with illegal drug use, the team also requested a drug screening as part of this evaluation. Exhibit B-30; Testimony, Ms. Campbell. The Parent signed consent for this evaluation to occur. Exhibit B-30 at 5. Since cognitive testing had been completed in 2002 and there were no concerns raised regarding the Student's cognitive ability, the team agreed that there was no need to conduct another cognitive evaluation. Testimony, Ms. Campbell.

29. The updated psycho-educational evaluation was completed in May 2005 by school psychologist Michelle Danuszar. She administered the Wechsler Individual Achievement Test – Second Edition (WIAT-II); the BASC – Adolescent Teacher Rating Scales; the BASC – Adolescent Self Report of Personality; the BASC – Parent Rating Scales. She also conducted Behavioral Observations and File Review. The Student's scores on the WIAT-II were solidly within the average range in Reading, Mathematics and Written Language. Exhibit B-31 at 2; Testimony, Ms. Campbell. Results of the BASC completed by the Student indicated an "external locus of control, where he believes that he has little influence on events that happen to him. His scores indicate that he is At-Risk in the areas of Atypicality, Locus of Control, Social Stress, Anxiety and Sense of Inadequacy. He scored in the Clinically Significant range in the area of School Maladjustment, Particularly Attitude Toward Teachers and Sensation Seeking."

Exhibit B-31 at 3. The BASC completed by two of three of the Student's teachers revealed At-Risk behavior in the area of School Problems Composite, including Attention Problems. One of the three teachers rated both Attention and the School Problems Composite in the Clinically Significant range. She rated Learning Problems in the At-Risk range. Two of the three teachers rated Adaptive Skill Composite, Social Skills and Study Skills in the At-Risk Range. No results were given for the Parent. Id. at 4-5. The conclusion reached was that G.'s "emotional issues as well as his possible ADHD appear to be having a detrimental effect on his schoolwork and ability to maintain good grades. Id. at 6; and Testimony, Ms. Campbell.

30. Ms. Danuszar recommended: "1. Counseling support in school in order to address issues of social stress, interpersonal relations and self-esteem. 2. Continue to encourage [the Mother] to get outside counseling for G[.] in order to address emotional issues. 3. G[.] should be encouraged to participate in non-academic activities in order to facilitate positive social situations." Exhibit B-31 at 6.

31. A Social Work Assessment Update was completed on June 14, 2005 by Ms. Sabrowski. She noted that: "In his 9th grade year here at Ludlowe, [the Student] has received mostly D's and F's on his report card. Also, due to poor attendance, 34 days as of this report, he has lost credit in all classes. As reported by his Dean, Eva Senzer, [the Student] has had 17 disciplinary referrals and one 4-day suspension for fighting in September." Exhibit B-34. She further recited the Family history regarding the Student lack of relationship with his biological father and his stepfather, who had been accused of molesting his younger brother. The Parent reported that she was continuing to have legal battles with her ex-husband (the Student's stepfather) regarding the charges of molestation and whether he would be permitted to have unsupervised visitation with the Student's younger brother, putting great emotional and financial strain on the family. In addition, the Parent was unemployed and needed to seek financial assistance from her parents. All of these aspects of the Student's life were causing stress and negatively impacting his emotional state. "According to [the Mother], [the Student] is presenting to be depressed lately, and has been unable to get out of bed to attend school. She states that when he is home he is defiant, aggressive and explosive. Referrals to an outpatient program at Hall-Brooke are being explored." Id. Ms. Sabrowski offered to facilitate this by visiting the program with the Parent. Exhibit B-98 at 2; Testimony of Ms. Sabrowski and Mother.

32. A PPT meeting was convened on June 15, 2005 to review the results of the psycho-educational evaluation. The team members, including the Parent, agreed that the Student did not have a learning disability. They agreed to pursue further evaluations for an emotional component and attention. Exhibit B-33. Since the May 11 PPT meeting, there were five new Dean referrals for inappropriate behavior during class and one day of truancy. The Parent reported that the Student's emotional and behavioral difficulties at home were ongoing, and that she was having difficulty persuading the Student to attend counseling. The team agreed to obtain additional information concerning the Student's previous diagnosis of ADD and emotional/behavioral issues by contacting therapist Barbara Murphy and obtaining a psychiatric evaluation. The Mother agreed to have the school contact Barbara Murphy. The Student, who attended the PPT meeting, did not agree he needed help. Id.; Testimony, Ms. Sabrowski and Ms. Campbell.

33. When Ms. Sabrowski called Barbara Murphy on June 16 regarding obtaining documentation of the Student's current diagnosis, she was told that the Parent had called the night before to revoke her consent to communicate with the school, and that she could not provide any information concerning her work with the Student. Ms. Sabrowski called the Mother and left a message. Exhibit B-98 at 3; Testimony, Ms. Sabrowski.

34. On June 20, in a telephone conversation with Ms. Sabrowski, the Mother explained that she had revoked her consent for the school to speak to Barbara Murphy and did not wish to provide consent for the school to conduct a psychiatric evaluation of the Student because she was upset about the PPT meeting and did not want the Student to be labeled. Ms. Sabrowski explained the PPT process and why the school needed a label for the Student in order to provide services. Ms. Sabrowski called Hall-Brooke to see what services they provided and found that the Mother had called for an appointment. *Id.* On June 29 Ms. Sabrowski called the Mother because the consent for a psychiatric evaluation had not been signed. Ms. Sabrowski offered to bring the form to the Mother's home. The Mother refused to provide consent and stated further that she may be enrolling him in a treatment program at Hall-Brooke Hospital, but that if she did, she did not intend to share the information with the school. The Mother said she would provide documentation on the previous diagnosis of ADD. *Id.*; and Testimony of Mother. Ms. Sabrowski advised Mr. Hatzis of the refusal of consent and suggested a PPT meeting be convened when school resumed in September. Exhibit P-66 at 2. On August 29, the school team met to follow up on the summer and set up a PPT meeting. Exhibit B-98 at 3.

35. During the summer 2005, the Mother enrolled the Student at an outpatient therapy program at Hall-Brooke Hospital. Testimony of Mother. The Student also began summer school to make up some coursework, but was thrown out of the program due to alleged behavioral issues. Testimony of Grandfather.

36. In August 2005, a Federal Bureau of Investigation special agent, Kathy Shumaker, visited the Student's home and spoke to the Student's mother, who was asked to identify photographs of G. Ms. Shumaker advised the Mother that the Student had been victimized by an Internet sex predator. Testimony, Ms. Shumaker. Shumaker did not share any detailed information regarding the incident with the Student's mother. *Id.*; and Testimony of Mother. The mother met with the Student and his therapist at Hall-Brooke about the incident toward the end of his treatment over the summer. He denied the incident and claimed that someone must have stolen his screen name. Testimony, Mother.

37. On September 8, Ms. Sabrowski met with the Mother, who reported that G. attended Hall-Brooke and that he was beginning therapy with Tracey Taylor in Stamford. The Mother also stated that the FBI was involved because G. was molested by a "pedophile via the Internet." G. had disclosed this to a therapist at Hall-Brooke. She stated that she did not want to provide consent for the school to conduct a psychiatric evaluation, and had no interest in having the Student identified as eligible for special education services. Exhibit B-98 at 3; and Testimony of Ms. Sabrowski. The Mother withdrew her request for special education services. Ms. Campbell wrote a statement to that effect for the school's records. Mr. Hatzis was asked to join the meeting for the express purpose of providing further explanation to the Mother concerning the implications of her decision to withdraw consent for the evaluation and not to

provide further information to the school. The Mother signed a statement acknowledging that she understood that “without full disclosure of information from Hall-Brooke, G[.] is not eligible for special education services.” Exhibit B-35. She did not request an opportunity to speak with anyone outside of the school before signing the statement. The Mother signed it in the presence of Ms. Sabrowski, Ms. Campbell, Ms. Struzick and Mr. Hatzis. *Id.*; Exhibit B-104; Testimony, Ms. Sabrowski, Ms. Campbell, Mr. Hatzis and Mother. During the hearing, the Mother questioned whether she had signed the document, although she admitted “that looked like [her] signature,” but that she did not recall having signed the document. Upon further examination, it became clear that the Parent had, in fact, signed the document, and that the signature on that document is identical to numerous other signatures appearing in the record. Testimony, Mother.

38. A PPT meeting was held on September 14, 2005 for the purpose of reviewing evaluations and determining eligibility. The team noted the statement signed by the Mother, as well as her verbal statement on September 8 that she had no intention of attending this meeting. Because the Parent had withdrawn her consent and had provided no evaluative data, the Student was found not eligible for special education services. Exhibit B-36; Testimony, Ms. Sabrowski, Ms. Campbell, Mr. Hatzis, and Mother.

39. Although the Mother claimed she had signed a Release for information – oral and record information - to be exchanged between Board staff and Hall-Brooke staff about the Student’s treatment, no records or information concerning this program were shared with the Board prior to this due process hearing. *Id.*; and Testimony, Ms. Sabrowski and Ms. Campbell. The Parent submitted as an exhibit a copy of a letter dated September 19, 2005 from Hall-Brooke Behavioral Health Services in Westport addressed to her, indicating that the Student attended the Adolescent Intensive Outpatient Program (AIOP) from July 13, 2005 to September 12, 2005, three afternoons per week, during which time he attended group counseling on coping skills, symptom management, anger management, goals identification, family issues and expressive therapy. He also attended family therapy sessions and met individually with his treatment coordinator and the staff psychiatrist. He was diagnosed with Post Traumatic Stress Syndrome and Intermittent Explosive Disorder. Exhibit P-1.

40. The Student was not attending school during the week of September 12, and the Parent was reporting to the school that he was sick. Exhibits P-66 at 3 and P-80. He attended on Thursday, September 15, but was dismissed early after visiting the nurse. On Friday, September 16, the Student was tardy and later visited the nurse. This and the fact that he fell asleep in class were reported at a House meeting on September 16. Exhibit B-98 at 3. He did not attend school at FLHS after that date. Exhibit B-99 at 3-6. On September 19, 2005, the Mother called FLHS to report that the Student was not attending school because he had received threatening e-mails from other students. When Ms. Sabrowski offered to make a home visit to discuss the situation with the Student and the Mother, she declined. Exhibit B-98 at 3; Testimony, Ms. Sabrowski.

41. On September 20, 2005, the Student was hospitalized at Four Winds Hospital in Katonah, New York for psychiatric reasons following an argument with the Mother, during which he threatened to cut himself with a knife. The Parent initially reported to FLHS that she was not giving permission for the school to communicate with Four Winds, and then later gave permission to communicate because it had been requested by Four Winds. Exhibits B-37 at 1, P-2 and B-98 at 4; Testimony, Mother and Ms. Sabrowski. The consent form, which was provided

to the Board on September 28, states that the specific information to be disclosed was the Student's diagnosis, dates of admission and/or discharge, verbal and written communication for discharge, and educational materials or verbal academic reports. The release did not provide consent for disclosure of the admission/psychiatric assessment, discharge summary, psychological testing, psychosocial assessment, progress notes, and medical lab reports. Exhibits B-37 at 1 and P-2. FLHS assembled and sent records to Four Winds as requested, including the chronological notes kept by Ms. Sabrowski concerning her attempts to provide intervention and assistance to the Mother and Student. Exhibit P-67; Testimony, Ms. Sabrowski and Mr. Hatzis.

42. Ms. Shumaker is currently assigned to the Cyber Task Force. Her primary responsibility is to investigate crimes against children, specifically as they relate to the Internet and computers, like the Student's situation in this case. She has investigated hundreds of cases during her assignment at the Cyber Task Force. There is no one profile of a child who may become a victim of an internet predator. Shumaker arranged to interview the Student on September 30, 2005 at Four Winds Hospital with his counselor, Fran Rosato, so as to not re-victimize him when he spoke with her about his contact with the Internet predator. Her investigative questions took a very narrow focus (e.g., did he meet a man online? Did that man ultimately travel in some way, shape, or form? Did they have some sort of sexual activity?) in order to prove the elements of the crime. She did not ask for every detail to avoid re-traumatizing the Student because he was clearly embarrassed. The Student confirmed that he met the Internet predator online, spoke with him in chat rooms and that he subsequently had sex with him. The Student also drew a map detailing where the sexual activity occurred, in the vicinity of the Student's home in the fall 2004. Exhibit P-62. The predator met the Student on a second occasion during which no sexual activity occurred but he gave the Student money. After this second meeting, the Student began to get scared and no longer wanted to meet with him. When he refused to meet him again, the predator threatened to blackmail G. The Student believed that the predator was driving by his house, and he knew the Student's home phone number. Testimony, Ms. Shumaker. Ms. Shumaker testified that the predator had been blackmailing his victims by publicizing to their parents and the community that they were gay. Id. The predator was a previously convicted male pedophile in his mid-thirties who lured young male victims over the Internet. Although the predator didn't have a gun or knife, the predator "... groomed him before he even knew what was happening to him." Id.

43. After his discharge from Hall-Brooke in September 2005, the Student received treatment from Tracey Taylor, a licensed clinical social worker who specializes in child/adolescent sexual abuse. Exhibit P-40; Testimony of Ms. Taylor and Mother. During this time, the Student was also treated by a psychiatrist, Dr. Stein. Testimony, Mother. Taylor diagnosed the Student with Post Traumatic Stress Disorder. Exhibit P-41. Taylor saw the Student in a counseling capacity at her office for approximately 50 minutes, three times over a three week period. She also spoke with him and his Mother by telephone on a number occasions. Testimony, Ms. Taylor. She helped to facilitate the hospitalization at Four Winds after receiving a phone call from the Mother in September. She was panicked, quite frantic and hysterical, and stated that G. was holding a knife, wanted to hurt her and himself, and then had locked her out of the house. Ms. Taylor instructed her to call the police, which she had done. She also spoke to G. while he was in the house and calmed him down a bit before the police

arrived. Ms. Taylor made arrangements with St. Vincent's Hospital, spoke to the social worker there, let them know G. was coming and worked with her in getting him in Four Winds. After the Student was hospitalized, their sessions stopped, but Taylor spoke with the treating social worker, at both the inpatient and out-patient program at Four Winds. She also kept in contact with the Student's Mother until the Student was ultimately placed residentially in February 2006. She spoke with Sabrowski several times and attended two PPT meetings for the Student. Id.

44. On October 11, 2005, Four Winds Hospital sent a letter to FLHS addressed "to whom it may concern" indicating that the Student had been hospitalized from September 20, 2005 to October 11, 2005. They recommended that the Student should be placed on homebound instruction until a PPT meeting is held to develop a plan for G.'s education. They recommended placement in a therapeutic day school. The letter was signed by Fran Rosato, LMSW, and Rob Stine, MD. Exhibit B-38.

45. Following receipt of the October 11th letter from Four Winds, Fairfield staff contacted Four Winds to inform them that additional information would be needed in order to establish the Student's eligibility for special education. Ms. Sabrowski spoke with Fran Rosato on October 17. She stated that the Student was being discharged from the in-patient program and recommended for an out-patient program, but the Mother was refusing to drive the Student to and from Four Winds to enable him to access the recommended therapy. Ms. Sabrowski also spoke with Ms. Taylor, who stated that the Mother was afraid of the Student's violence and wanted him placed residentially. Ms. Sabrowski advised her that the Student was not in special education because of the Mother's refusal of consent. Ms. Taylor stated that she would make a report to DCF because G. disclosed information to the counselor at Four Winds that was never reported. Exhibit B-98 at 4; Testimony, Ms. Sabrowski.

46. On October 17, 2005, Four Winds submitted a second letter to FLHS, indicating the Student's diagnoses of Major Depressive Disorder (single episode, severe, without psychosis) and Post Traumatic Stress Disorder (PTSD). This second letter continued to recommend homebound instruction followed by placement in a therapeutic day setting "at the very least." Exhibit B-39. The second letter provided diagnostic information, but the school claimed it was still insufficient to establish the Student's eligibility for special education services without additional information concerning the Student's condition, prognosis, and impact on his ability to benefit from educational services. Exhibit B-98 at 4; Testimony, Ms. Sabrowski and Ms. Campbell.

47. On October 19, the Mother called Ms. Sabrowski and told her that the Student was discharged from Four Winds for one day. The Student threatened to sign himself back in to the hospital as an in-patient because he did not feel safe at home. The Parent then agreed to transport the Student to access the outpatient therapy program. Exhibit B-98 at 4; and Testimony of Ms. Sabrowski.

48. Ms. Sabrowski called the Student's new therapist Ray Diciccio at Four Winds on October 24, 2005. He indicated that he could not provide any additional information because he did not know the Student well enough. There was a team meeting at FLHS to discuss the Student's educational needs. Id.

49. The mother enrolled the Student in the outpatient hospital program at Four Winds, per Four Winds' recommendation; he attended between October 19 and early December 2005. Testimony, Mother. The program ran daily from 9:00 a.m. to 4:00 p.m. Testimony, Ms. Taylor. The Mother expressed some concerns about the one-hour travel time in terms of getting the Student to the therapeutic day treatment program. Testimony, Ms. Sabrowski.

50. A PPT meeting was convened on October 26, 2005 to review the available information concerning the Student's eligibility for special education services. The Parent attended and participated in this PPT meeting. Exhibit B-41. The Fairfield members of the PPT continued to request that the Student be made available for a psychiatric evaluation, but were able to obtain consent from the Parent only to conduct a consultation with the district's consulting psychiatrist that would not involve any direct evaluation of the Student. In an effort to work cooperatively with the Parent, the district agreed to proceed with the consultation to obtain the information they needed from Four Winds. The team discussed the Student's need for educational services, but was informed by the Parent that he was enrolled in the Partial Hospital Program (PHP) at Four Winds and was receiving educational services there. The team therefore agreed that there was no need to recommend a diagnostic placement their PAL program pending the psychiatric consultation. The Mother was to meet with Ms. Sabrowski to discuss "wrap around" services for the Student. Id.; Testimony, Ms. Sabrowski, Ms. Campbell and Mr. Hatzis.

51. On October 26, 2005, the Parent signed a consent form permitting the Board to conduct a psychiatric consultation with Dr. Lustick, as well as an additional form permitting the Board to obtain and release information regarding psychological, psychiatric, medical and educational information from Four Winds, Hall-Brooke, and Tracey Taylor. Exhibit B-41; Testimony, Ms. Sabrowski and Mother.

52. On October 28, 2005, the Student's Four Winds therapist, Ray Diciccio, telephoned Ms. Sabrowski to inquire about the school's plans because the Student's partial hospitalization program was scheduled to end. He wanted to know why the Board was not placing the Student residentially. Ms. Sabrowski explained the PPT process to him. She called the Mother about her plans for the Student after Four Winds and offered to make a home visit and meet with her at school to explore wrap around services. The Mother refused. They discussed programs at Clifford Beers, Hall-Brooke IOP, Yale and others. The Mother said that she did not want the Student receiving services from "all over the place." Exhibit B-98 at 4; Testimony of Ms. Sabrowski.

53. On November 7, Ms. Sabrowski telephoned the Mother to ask when G. was being discharged from Four Winds and where he going. She offered assistance with paperwork, which the Mother declined. The Student was refusing to attend the PAL program. Id.

54. Dr. Michael Lustick, the Board's consulting psychiatrist, conducted a psychiatric consultation concerning the Student and wrote a brief consultation report dated November 21, 2005. Dr. Lustick reviewed the relevant records that had been provided to or were in the possession of the Board, spoke with Fran Rosato and Ray Diciccio from Four Winds and Ms. Taylor. Ms. Rosato reported that the Student had done well in their inpatient hospital program. The Student had also done well in their outpatient program. Ms. Taylor felt that the Student

needed a residential placement. Dr. Lustick concluded that the Student should be identified as having a Serious Emotional Disturbance (SED), and that he was managing well at that time in the context of a therapeutic day setting. He recommended that the district consider placement in a therapeutic day school such as Cooperative Educational Services (CES). He did not see evidence that residential placement was required at that time. Exhibit B-43. Dr. Lustick believes that there must be a compelling reason to remove a child from home and place him in a residential setting. Testimony, Dr. Lustick.

55. Dr. Michael Lustick is a Board Certified Child and Adolescent Psychiatrist licensed to practice medicine in the State of Connecticut with more than 20 years of experience in the field. Since May 1985 he has had a private practice devoted mainly to the treatment of children and adolescents with psychiatric difficulties. He continues to act as an Assistant Clinical Professor of Psychiatry at Yale University School of Medicine, and as a psychiatric consultant in several school systems in the State of Connecticut. In the last five years, he has done 20-30 school consultations. He also has experience working in psychiatric hospitals and residential treatment centers for children and adolescents with psychiatric disabilities and is familiar with the standards of practice applicable in these settings. Exhibit B-112; Testimony, Dr. Lustick.

56. In referencing CES in his consultation report, Dr. Lustick was considering the fact that the Parent was negatively biased against the therapeutic day school available within the Fairfield Public Schools, called the Program for Alternative Learning (PAL). He was familiar with the CES program and thought that a program "like CES" would be appropriate to meet the Student's needs from an educational perspective. He was unfamiliar with the PAL program and, therefore, was not in a position to endorse it. He viewed his role as recommending a therapeutic day program "like CES" and it was not his role to recommend any one particular program. Exhibit B-43; Testimony, Dr. Lustick.

57. Dr. Lustick attended a PPT meeting on November 22, 2005, at which time he reviewed his psychiatric consultation and related his opinions regarding the Student's eligibility for special education services and need for a therapeutic day setting. The PPT found the Student eligible for special education under the category SED and discussed IEP goals and objectives, and a diagnostic placement at the PAL program in Fairfield. The Parent's request for placement in a residential setting was considered but rejected. Exhibit B-44; Testimony, Dr. Lustick, Ms. Sabrowski and Mr. Hatzis.

58. The IEP developed for the Student at the PPT meeting on November 22, 2005 developed goals and objectives in the areas of organization and study skills, decreasing impulsive behaviors, improving on-task behavior and performance in the classroom setting, developing coping skills, improving peer relations, and transition services. These were the areas that had been identified by the school-based team as problematic for the Student from the perspective of interfering with his ability to succeed in a school setting. Exhibit B-44 at 5-11; Testimony, Ms. Sabrowski and Ms. Campbell. The diagnostic goals were to identify supports and services for educational needs and identify therapeutic counseling needs. Exhibit B-44 at 17. The Mother claimed that there were no goals and objectives developed during the PPT meeting.

59. The PAL program is a therapeutic day program located within the Fairfield Public Schools serving students in grades 9 through 12. It features small class size, a high teacher to student ratio, and therapeutic support staff such as social workers and school psychologists. The program serves students identified with various forms of emotional disturbance, generally identified as SED, Other Health Impaired (OHI), or Learning Disabled (LD). Students have successfully attended the program who have had various psychiatric diagnoses, including depression and Post Traumatic Stress Disorder (PTSD). Students in the program have opportunities for individual and group counseling on a weekly basis, as well as counseling as needed for difficult emotional issues that may arise over the course of the school day. Both general and special education certified teachers are available to teach students as required. If students are appropriate to be included in the larger high school setting for part of the day, there are opportunities for students to attend a partial school day in the high school and receive the remainder of their instruction at the PAL program. Testimony, Ms. Leonardi.

60. Because the placement at PAL had been recommended as a diagnostic placement, the PPT was scheduled to meet every two weeks as required by Connecticut regulations concerning diagnostic placement, and PPT invitations were issued to the Parent for these PPT meetings. Exhibits B-44; B-46, B-47, B-48.

61. The Student was scheduled to be discharged from the Four Winds partial hospitalization program the day following the PPT. Testimony, Ms. Sabrowski. She telephoned Four Winds with the Mother to inquire what the plan was for wrap around services and was told there was none. Exhibit B-98 at 5; Testimony of Ms. Sabrowski and Mother. The discharge plan at Four Winds provided for individual therapy with Ms. Taylor and Dr. Pomerience. Appointments were to be arranged by the family. Exhibit P-9. There was no specific transition for the Student from the hospital program. Ms. Sabrowski requested that Four Winds make a referral to Systems of Care with DCF. Exhibit B-98 at 5; Testimony of Ms. Sabrowski.

62. The mother visited the PAL program with Ms. Sabrowski, and met with the Director, Brian Barlow on November 28, 2005. Id. The mother again told Sabrowski and Barlow during this visit that she didn't believe that the PAL program could meet her son's emotional and academic needs to receive therapy for his Post Traumatic Stress Disorder (PTSD) and history of sexual abuse. The only therapy provided to the Student outside of school following his discharge from the partial hospital program (PHP) at Four Winds was weekly therapy with Tracy Taylor. Although Ms. Sabrowski attempted to facilitate the Student's referral to Systems of Care for counseling and two different DCF caseworkers were assigned at different times, the Student never received services from this agency. The reason apparently was that there was an open protective services file on the Student's younger brother and DCF policy prevented G.'s acceptance into Systems of Care until that investigation was complete. Exhibit B-98 at 5-6; Testimony, Ms. Sabrowski, Ms. Taylor and Mother.

63. The Parent attended the first diagnostic placement PPT meeting held on December 5, 2006 with Tracy Taylor and with a friend. Exhibit B-49. As of that date, the Student had not attended the PAL program as recommended by the PPT. When asked why the Student had not attended, the Mother indicated that the Student was living in Guilford with his grandparents. Id.; Exhibit B-98 at 5; Testimony, Ms. Sabrowski. The Mother disputes that this

was correct. She claimed that the Student stayed at the grandparents on weekends and was at home during the week. He was not attending any school or hospital program between November 23 discharge from Four Winds and the PPT meeting. Testimony of Mother.

64. Since the Student had still not attended the PAL program on a diagnostic basis, the Fairfield members of the team sought further information regarding the Student's emotional issues by obtaining a psychiatric evaluation by Dr. Lustick. Exhibit B-49; Testimony, Ms. Sabrowski and Ms. Campbell. The Parent signed the consent form permitting the psychiatric evaluation to proceed. She also agreed to consult with DCF voluntary services. Exhibit B-49.

65. On December 16, 2005, the Parent told Ms. Sabrowski that she was in court for a trial pertaining to the custody of the Student's younger brother, and that she had lost custody of the child in these court proceedings. The Student remained out of school at the home of his grandparents in Guilford for the first 15 days of December so that the Mother could attend court. Exhibit B-98 at 5-6; Testimony, Ms. Sabrowski, Mother and Grandfather. Because the Board was trying to work with the Parent and the Student to obtain further psychiatric consultation and persuade the Student to attend the diagnostic placement at PAL, the school did not make a truancy referral regarding the Student's absences during this period of time. Testimony, Ms. Sabrowski and Mr. Hatzis.

66. The PPT reconvened on December 19, 2005 and attempted to reach the Parent by telephone for the meeting, but she was not available to take the call. She called the school after the PPT meeting and was informed as to the brief discussion at the meeting. As of the time of this PPT meeting, the Student still had not attended the PAL program, and had been to see Tracy Taylor for therapy four (4) times. Since no additional information was available to the PPT, the team agreed to reconvene once the results of the psychiatric evaluation were available from Dr. Lustick. Exhibit B-50; Testimony, Ms. Sabrowski, Mr. Hatzis and Ms. Taylor.

67. Some of the information from the September 2005 Four Winds hospitalization was made available to Dr. Lustick as part of his evaluation. The records, made available in full for the first time during this due process hearing, show that the Student was hospitalized on September 20, 2005 after his mother threatened to take the computer away from him, at which time he threatened to stab himself with a knife. Exhibits P-3; P-7 and P-8. The Student told Dr. Lustick during the psychiatric interview that he had never intended to harm himself, he just wanted his possessions returned to him and used this threat as a way of obtaining that objective. Exhibit B-51; Testimony, Dr. Lustick.

68. Dr. Lustick's psychiatric evaluation, reviewed at the PPT meeting on January 9, 2006, indicated that the Student was diagnosed as a victim of sexual abuse with "Disruptive Behavior Disorder with oppositional and conduct disordered features." He added that the diagnoses of Post Traumatic Stress Disorder (PTSD), Mood Disorder, and Attention Deficit Hyperactivity Disorder (ADHD) could not be confirmed and were termed "rule-out" diagnoses. Exhibit B-51 at 4; Testimony, Dr. Lustick. Dr. Lustick stated that the Student had shown a remarkable deterioration in functioning over the last 14 months that seemed to coincide with his "being sexually assaulted and being told that his step dad allegedly molested his younger brother. Since then he has been unable to recover his equilibrium and his life has become a roller coaster

of melodrama and suspicion.” Exhibit B-51 at 4. Dr. Lustick was concerned that since the Student viewed his grandparents’ home in Guilford as a “safe haven” and they were about to leave for their winter home, that the Student would be likely to experience significant stress living at home with his mother again. Id.

69. Dr. Lustick recommended a “small, relatively self-contained educational setting with a high staff to student ratio, where staff are experienced in working with emotionally and behaviorally disturbed students,” and that “there should be opportunities for [the Student] to ‘process’ interpersonal conflicts at school in a structured manner supervised by staff.” He suggested that the school day should be “relatively long so that [the Student] has less time to be in unstructured situations after school.” He suggested that the Student have an individual counselor at school to meet with on a regular basis and as needed when under particular stress, and he suggested that person should have regular contact with the therapist seen by the Student outside of school. He said with regard to “Other Support Services Needed:”

G. needs individualized academic tutoring to help him get caught up over the coming months. It is possible that the stress of returning to live with mother may make the above plan unsuccessful in which case a residential school may be needed to enable G[.] to participate in his education successfully.

Id. at 5.

70. As recommendations made to the family, he suggested that the Student needed at least twice weekly by his therapist. Given his current level of stress, an intensive outpatient program should be considered. They may want to obtain services from the DCF IICAP for this purpose if they could not provide it on their own. Id. Dr. Lustick was particularly impressed with the ability of the Student to be successful in school while attending the partial hospital program at Four Winds, as he learned from speaking to Four Winds staff during his initial psychiatric consultation. Testimony, Dr. Lustick.

71. Upon review of Dr. Lustick’s recommendations at the PPT meeting on January 9, 2006, the Fairfield members of the PPT determined that the proposed diagnostic placement at PAL met the requirements of an appropriate therapeutic day program as described by Dr. Lustick. The PAL program has a high staff to student ratio, with staff experienced at working with emotionally and behaviorally disordered students, and the Student would be assigned to an individual counselor with whom he would meet on a regular basis as well as “as-needed” for particular issues during the school day. The hours at PAL are 8:00 a.m. to 1:30 p.m. While the family perceived the length of the school day as “shortened” as compared to the regular high school day, the reality was that the day was only 30 minutes shorter because there was no need to accommodate “passing time” into the students’ schedule. Exhibit B-52; Testimony, Ms. Sabrowski, Mr. Hatzis and Ms. Leonardi.

72. The Student attended the PPT meeting on January 9, 2006, at the request of the Fairfield members of the team, who wanted to speak to the Student about his educational program. The Student participated in the meeting and spoke about his preference to attend a

residential school because of his need for “structure.” The Student was advised that January 10 would be his first day at PAL and if he is marked truant four days, the school will file a truancy petition. Exhibit B-52. His demeanor at the PPT was appropriate and the team saw no evidence of an emotional breakdown as a result of his participation in the meeting. PAL school psychologist Brian Barlaam saw the Student after the meeting and invited him to see the PAL program after school. The Student responded that he might be willing to come later in the morning, and did not appear emotionally distressed. Exhibit P-70 at 2. At no time during the PPT meeting did either the Student or the Parent provide any information to the Fairfield members of the PPT concerning the details of the sexual assault experienced by the Student or the geographical location of that event. The Parent testified repeatedly during the hearing that she could not have provided this information to the team because she did not know herself what had happened and she did not speak to the Student about the event. Exhibit B-52; Testimony, Ms. Sabrowski, Mr. Hatzis and Mother. They agreed that if they had known, they would not have insisted on the PAL placement.

73. The records from Four Winds Hospital made available to Fairfield for the first time during the due process hearing confirm the information concerning the location of the Student’s sexual encounter with the Internet pedophile was not contained in those records. The psychiatric evaluation done for the Four Winds outpatient program on October 19, 2005 states only that the Student “reports a history of past sexual molestation by an adult male about a year ago when he got acquainted through the Internet. He recently reported this incident to the FBI and the perpetrator is currently in custody.” This would not have provided sufficient information to the Fairfield staff to look more closely at the issue of whether the Student would be able to attend school at the PAL program based on the geographical location of the sexual molestation. Exhibit P-8.

74. The discharge summary from Four Winds Hospital dated November 23, 2005, does not indicate that the issues addressed with the Student during therapy in the outpatient program were the alleged sexual molestation by the Internet pedophile. Four Winds recommended that the Student attend a therapeutic day school upon discharge, and stated that if such a program was not sufficient, the Student would benefit from placement in a therapeutic boarding school. Exhibit P-9.

75. The Student’s statements at the January 9, 2006 PPT meeting were inconsistent with the statements made to Dr. Lustick during the psychiatric evaluation conducted in December 2005, in which he stated that he saw no reason to attend a residential school. He also told Dr. Lustick that he was not depressed and denied any effect from the sexual assault by the pedophile or his brother’s molestation by his stepfather. Exhibit B-51. The Student’s statements could not be taken at face value. The Fairfield members of the team did not foresee that the discussion with the Student and the Mother that the Student needed to attend school and informed them that the decision not to attend school could result in a truancy filing would result in the Student’s hospitalization later that evening. Nor did they foresee that requiring the Student to participate in the PPT meeting would cause an emotional breakdown. Testimony, Ms. Sabrowski and Mr. Hatzis.

76. The Student was hospitalized at St. Vincent's Hospital shortly after this PPT meeting and he was later transferred to Hall-Brooke Hospital's psychiatric unit. Testimony, Mother and Ms. Sabrowski. He was admitted to Hall-Brooke on January 11, 2006. According to the discharge summary, the precipitating incident was an argument with his Mother where the Student became angry, pushed her to the ground, punched a hole in a wall and broke a door. Exhibit P-42. The Mother claims that his hospitalization was the result of the staff's treatment of the Student during the PPT meeting. Testimony of Mother. A friend of the mother's called Sabrowski to inform her about the hospitalization. Sabrowski told her that the school needed documentation of the hospitalization. Testimony of Mother. On January 18, 2006, the Mother sent a letter to Mr. Hatzis in which she authorized the school to speak with Hall-Brooke staff regarding G. "Specifically, I authorize Fairfield Ludlow High School to speak and receive documentation regarding the recommendation and referral to a Therapeutic Boarding School, F.L. Chamberlain located in Middleboro, MA. In addition, you may also confirm G[.]'s date of admission to Hall Brook for your records." Exhibit B-55.

77. Hall-Brooke sent a letter dated January 31, 2006 to the school district informing them of the hospitalization from January 11 to January 20, 2006. Exhibits B-58 and P-13. Mr. Hatzis sent a letter to the Mother dated February 1, 2006 requesting documentation of absences from January 9 to February 1 (16 days). Exhibit B-60. Contrary to the Mother's claim that the Board was being vindictive, it is found that the letter from Hall-Brooke had not reached Mr. Hatzis' attention prior to his February 1 letter. Testimony, Mother and Mr. Hatzis. This is supported by a second letter from Hatzis dated February 6, 2006 acknowledging the Hall-Brooke communication. Exhibit B-62. The Mother did not provide documentation for the January 9 and 10 absences, which presumably were hospital days at St. Vincent's, but the school did not press that issue. Mr. Hatzis requested documentation for January 23-27 and January 30-31. The Mother called the school about the absences after the hospitalization and told staff that the Student was unable to function and she felt that it was vindictive that they would allege truancy given their knowledge of the situation. Testimony, Mother. She could not attend the January 26, 2006 PPT meeting, and the school rescheduled it for February 14, 2006. Exhibits B-56 and B-57. The Board filed a truancy petition with the Connecticut Superior Court, Juvenile Matters, on February 6, 2006. Exhibit B-63.

78. The Student was hospitalized a second time at Hall-Brooke from February 1 through February 8, 2006. Exhibit P-15. The precipitating event was an argument with the Mother during which the Student became violent and broke the stove. The Mother called police. Exhibit P-49. Dr. Carl Kessler, a Board certified, adolescent psychiatrist on staff at Hall-Brooke, saw the Student daily during his two hospitalizations in January and February. Testimony of Dr. Kessler. Upon admission on the first hospitalization, the Student's global functioning (GAF) score was 30; "his highest functioning over the past year, in Dr. Iacobello's opinion, was a 50 which is still a fairly low GAF score." Id. The Student was depressed, and had periodic suicidal thoughts for approximately a year. He also had symptoms of Post Traumatic Stress Disorder. Id.

79. During the hospitalizations, the Student's Mother participated in family therapy. Id. Upon discharge from the hospital on January 20, Dr. Kessler recommended: "[d]ischarge him home with his mother with admission in the very near future to the F.L. Chamberlain

Therapeutic Boarding School.” Exhibits P-13 and P-42 at 3. He was also taking some psychiatric medication once a day as a calming agent.” Testimony, Dr. Kessler. He recommended the therapeutic boarding school based on the Student’s extensive history of emotional and behavioral problems indicating that the Student simply couldn’t function academically, socially or emotionally. Id.; and Exhibit P-48. He wrote a letter to the school district, which documented this recommendation. Exhibit B-58. The Student’s prior treatment in the fall – the full day program and intensive outpatient hospital/therapeutic day programs at Four Winds – were not successful because past behavior is the best predictor of future behavior. Id. He disagreed with Dr. Lustick’s opinion that the Student needed to try a therapeutic day program as a first step. The Student should be admitted directly to a residential, therapeutic school. Id.

80. On January 18, 2006, Taylor spoke with Sabrowski and confirmed that he was in Hall-Brooke, that they were going to discharge him because he was presenting as fine, but she disagreed with the discharge because he had been “blogging” online about suicidal threats. Testimony, Ms. Sabrowski. She also shared with Sabrowski at that time that the Student had been interviewed at the Grove School, that he broke down and cried, and that they were no longer interested in him. Id.; and Testimony, Grandfather. Taylor provided her opinion to Mr. Hatzis that a residential, therapeutic school was necessary for the Student because he needed a “safe, full-time therapeutic environment in order for him to learn and grow and maintain his mental health.” Exhibit B-53. She did not recommend a specific residential, therapeutic placement in her January 10, 2006 letter because there were none that she was aware of that would be appropriate for the Student in the nearby vicinity. Testimony, Ms. Taylor. At the time of her testimony in September 2006, she believed the F.L. Chamberlain School is an appropriate program for the Student based on her understanding of the components of the program and based on her understanding of the Student’s progress at that time. Id.; and Exhibit P-14.

82. Ms. Sabrowski spoke with the Hall-Brooke staff several times between January 18 and February 2, 2006 attempting to get documentation of the Student’s hospitalization dates. She also continued to make calls for DCF services, but none were provided. She admitted at the hearing that there was a lack of interagency cooperation and that the whole family needed services, including the Mother. Testimony, Ms. Sabrowski. There was no evidence that the Student could have been successful in a program like PAL, which had hours from 8:00 a.m. to 1:30 p.m. without an afternoon therapeutic program to complement it.

83. A PPT meeting was held on February 14, 2006. Exhibit B-65. The Mother participated by telephone because she was home with the Student. Testimony of Mother and Ms. Sabrowski. The following Board staff were in attendance: Sabrowski, Hatzis, mother (by phone), Kevin Keating, special education teacher, Mike DeStefano, school psychologist, and Kirsten Kenny, guidance counselor intern. Exhibit B-65. No regular education teacher was present. Id. The purpose of the meeting was to finalize placement decision following diagnostic placement at PAL. The Mother again rejected the PAL placement, and in addition to other reasons already stated, she voiced at this meeting that the placement was too close to home. More specifically, she shared that he didn’t feel safe at home and that she always had to get him out of there, keep him busy in the afternoons. The Mother also believed that he was molested at home either by the stepfather or the pedophile, she wasn’t sure. The Mother reported that the Student had been formally accepted at the Chamberlain School, a therapeutic, residential school in Massachusetts,

and requested that the Board make this specific placement. Testimony of Mother. The team rejected the Mother's request and formalized the PAL placement and continued the November 22, 2005 IEP without making any changes to it as the Student's recommended placement for the remainder of the 2005-06 school year. Exhibit B-65. No service page indicating the specific services, dates of service or dates of reporting progress was placed into the IEP document. Id.

84. Dr. Vanja Kondev, Staff Psychiatrist at Hall-Brooke, wrote a letter to Ms. Sabrowski dated February 8, 2006 in which she stated that: "Based on the fact that G[.] was re-hospitalized less than two weeks after his discharge and his history of emotional and behavioral problems it is recommended he be placed in a therapeutic residential school." Exhibit B-64. It does not appear that this letter or the January 31 letter from Dr. Kessler were reviewed and considered at the February 14 PPT meeting or that the truancy petition was discussed. Exhibit B-65. Ms. Sabrowski testified that this petition was filed "because at this point we had no documentation that he was hospitalized and he had not been to school since September." She and Mr. Hatzis thought that the petition would result in G.'s attending school and/or getting services from DCF. Id.; and Testimony, Mr. Hatzis.

85. On January 18, 2006 the Mother wrote to Mr. Hatzis authorizing the school to speak to the admissions office at Chamberlain and to release his school records to Chamberlain. Exhibit B-54. Ms. Sabrowski prepared a "green file" to send to Chamberlain on January 20, 2006. Exhibit B-98 at 7. On January 27, 2006, the Mother sent a letter to Fairfield Superintendent of Schools, Dr. Ann Clark, notifying the Board of her intent to place the Student at Chamberlain and requesting reimbursement of costs for the placement. Exhibit P-12. The Mother signed a Release to exchange information between the Chamberlain School and Board staff on February 6, 2006. Chamberlain faxed the form to FLHS on February 14, 2006. Exhibits B-66 and P-16. The Board believed that the release authorized only records and communication from FLHS to Chamberlain, but not the reverse. Testimony of Ms. Sabrowski and Ms. Leonardi. After sending the file in January, Ms. Sabrowski called Chamberlain on March 7, 2006 to confirm that the Student was actually in attendance there. Exhibit B-98 at 8. The Mother retained counsel on February 21, 2006. Exhibit B-68. The Board's attorney sent a letter to the Mother's attorney on March 3 requesting consent to conduct an observation, obtain information about G. and speak to staff at Chamberlain. Exhibit B-71.

86. Chamberlain is an approved, therapeutic residential school in the Commonwealth of Massachusetts. It is accredited by the National Association of Therapeutic Schools. Testimony of Melissa Connors and Jennifer Strazdes. There are approximately 110 students currently enrolled for the 2006-2007 school year. Approximately 95 of these students are residentially placed. There is a 2:9 staff/student ratio. The majority of the students are identified with emotional disabilities. The campus has 12 different buildings with walking paths between the buildings, four of which are used for classrooms. The Student lives at 29 Plymouth Street with approximately 15 other boys. The age range of students is between grades 6-12, and some students who are beyond grade 12, but need further vocational and functional educational programming. There are approximately 100 individuals on staff, including a clinical director who is a licensed social worker, 11 Master's level clinicians trained in various areas, and two psychiatrists among other teaching, residential and assistive staff. The academic portion of the day is held between 8:00 a.m. and 3:30 p.m. The Student attends class with seven other students for the entire day, which adds some predictability to the schedule. He changes classrooms for art,

physical education, lunch and electives. He is exposed to movement and transition, but with the same group of students. He joins with another class for gym. The Student also participates in individual and group counseling. Id.

87. The school uses a therapeutic management system for behaviors using a point system, which was modeled after a program called *Lessons from the Lion's Den* by Nancy Cotton. Id.; and Exhibit P-14. Various consultants assist from time-to-time at Chamberlain, including Lynn Sanford, social worker, who is published in the area of sexual abuse. Testimony, Ms. Connors. Ms. Sanford was Ms. Stradzes' supervisor in her first year of employment at Chamberlain in 2002-03. Testimony of Ms. Stradzes. Students have a daily point sheet that is transferred from staff on the overnight to the day to the afternoon. Daily reporting of student activity occurs each afternoon at 3:00 p.m. following the day program. Each teacher reports on what the students have done that day, anything not in keeping with a student's goals or something out of the ordinary. Testimony, Ms. Connors.

88. Chamberlain staff convene a service planning meeting within approximately six weeks of the Student's admission to discuss the student's progress and the goals for the next six months, and then another six months thereafter. Id. The Student's initial meeting occurred on April 12, 2006. Exhibit P-35. The service plan contains a report from each of the three departments, residential, clinical and educational in order to review progress and needs in each area. The Student's initial therapist was Kendra Nash. Initial short-term therapeutic goals for the Student focused on: being able to identify most situations that make him emotionally vulnerable and implement strategies that will assist him with coping, to take more responsibility for his actions as well as being honest with himself and his therapist, being able to identify feelings when feeling overwhelmed by focusing more on his treatment than outside influences. Id. at 4. The long term goals that were identified and worked on include: developing a trusting relationship with his therapist and feel safe to discuss past trauma history; to work with support staff and his therapist to develop and implement strategies and techniques to help him with emotional difficulties; and to continue working toward family stabilization by having successful home visits and respond appropriately to limit setting. Id. at 5.

89. Ms. Connors has observed the Student in his classroom and also had an opportunity to interact with him on an informal basis weekly. She has also had an opportunity to attend daily meetings during which Student progress has been noted. Given these interactions, she testified that the Student has made progress although it's been inconsistent. Testimony, Ms. Connors.

90. A triggering event for the Student involved his testimony at the criminal trial of the Internet predator. The Student had come home in May for the trial, but it was postponed. After months of postponements, on July 10, 2006, the Student testified against the predator in federal court in New Haven. Testimony, Ms. Shumaker; Exhibits B-92 and P-21. Just prior to his testimony in court, Shumaker was called down to the room where the Student had been waiting to testify in a witness room with his Mother; however, his mother was unable to comfort him. Other individuals were unable to communicate with him; he was rolled up in a ball in a non-responsive state. Id.; Testimony of Mother. Although the Student failed to acknowledge how the victimization had affected him when speaking with Dr. Lustick and treating psychiatrists

and therapists, it became clear at the time of the trial that he was severely affected. Shumaker testified that:

He was in the corner of a room. I'll never forget it. He was just -- he was in a fetal position, eyes closed, non-responsive. And I think I physically had to pick him up. He wouldn't -- I had to comb his hair. And I said we've just got to do this. And he just -- he just was blank. It was -- I'll remember that for a long time.

Testimony, Ms. Shumaker. The Student testified at trial, and the predator was convicted of the criminal charges against him. Id.; Exhibits P-26 and P-27.

91. In preparation for mediation to attempt to resolve the dispute between the parties, the Board requested permission to observe the Student at Chamberlain. Exhibit B-71. In response to requests from Parent counsel for a release form to be signed by the Parent to allow this observation, a release form was provided to the Parent. Exhibits B-72, B-73, B-74. This form was never returned to the Board, signed by the Parent. The Mother nevertheless indicated to the Board that she had given permission for the observation to occur and had signed the appropriate forms at Chamberlain permitting the observation and exchange of information. Testimony, Ms. Leonardi and Mother. Fairfield special education administrators Andrea Leonardi and Barbara Giaquinto visited Chamberlain on May 16, 2006. The meeting was scheduled directly with Chamberlain, but as the date neared it became unclear whether the Student was going to be at school due to the federal trial preparation. Chamberlain staff called the Board the day before the scheduled visit to say that the Student went home for the weekend and that it was unclear whether he would be at school on May 16. Given the schedule in the last four weeks of the school year, it was not possible to re-schedule the observation to another date later in the school year, so Fairfield proceeded with the observation. The Student was not present, so Fairfield spoke to his teachers to attempt to obtain information about the Student's program at Chamberlain. Testimony, Ms. Leonardi.

92. They met with Kendra Nash, social worker, Bryan Hancock, special education teacher also certified in science, and Julie Davignon, team leader. In their Observation Report, Ms. Leonardi and Ms. Giaquinto raised several areas where they found the program inadequate and certain information, including the Student's psychiatric diagnosis, inaccurate. Exhibit B-79. Ms. Connors testified that the information contained in the report was not completely accurate. Since the Board was unable to speak with all of the Student's treatment providers and observe the Student, the report does not summarize all of the components of the Student's program. While at Chamberlain, Ms. Leonardi requested a copy of the Student's records, but was advised by Ms. Davignon that she did not have the authority to provide them. She agreed to check with her supervisors. Ms. Leonardi gave her a handwritten list of what was being requested. The Board did not receive the records until several letters were exchanged. Chamberlain sent the records via Federal Express on August 21, 2006, but the records were misdirected at the Board offices. Ms. Leonardi received them on September 11, 2006. The Mother had sent a letter dated July 18, 2006 to Chamberlain restricting the type of information she was willing to release and also revoking her consent for any verbal communication with Fairfield unless she was present or conferenced in by telephone. Exhibit B-85.

93. The Student has made progress at Chamberlain. He received A's and B's for the marking period between February 27 and May 19, 2006. He was absent five days out of 55 possible days. Exhibits B-76, B-77 and P-36. The absences were due to the criminal trial. Testimony, Mother. Although he had serious behavioral incidents on March 23, April 27 and June 2 for which repair contracts were required, he has generally been successful with the behavioral system at Chamberlain. Exhibits P-28, P-29, P-33, P-57 and P-58; Testimony, Ms. Connors. The Student's self-esteem has increased, he is in more control of his emotions, has a better understanding of how to modulate his feelings, and has goals for the future. Testimony of Ms. Connors and Grandfather. The Mother is now seeing improvement, maturity and positive behaviors that she hasn't seen in many years. The Chamberlain psychiatrist, Dr. Van Batchis, reported progress. Exhibit P-60. After Kendra Nash left Chamberlain in the late summer 2006, G. was assigned to a different therapist, Jennifer Stradzes. Ms. Stradzes met with Ms. Nash, reviewed G.'s records and met with G. and Ms. Nash to discuss the transfer to her caseload. She attends G.'s sessions with Dr. Batchis once monthly and discusses G.'s issues with Dr. Batchis. G. has significant difficulty with making progress around his trauma. The criminal trial and the due process hearing have been very stressful for him and held him back from progressing. As of November 9, when she testified, Ms. Stradzes did not believe that G. was ready for discharge from Chamberlain. He needs to make more significant progress on his goals. This was the consensus of the therapeutic team meeting held on October 31, 2006. Testimony, Ms. Stradzes.

94. The Mother expressed concern about the Director of Special Education, Andrea Leonardi's involvement in the case due to the Director's alleged relationship with the Mother's ex-husband. Testimony of Mother; Exhibits B-85 and B-86. The Student has also expressed concerns about information shared with Fairfield staff from his therapy. Testimony of Ms. Stradzes; Exhibit P-63. There was no credible evidence that Ms. Leonardi had any personal relationship with the Mother's ex-husband other than as a casual acquaintance of mutual friends. Testimony of Ms. Leonardi. She did not need to recuse herself from involvement with this Student and his Mother in the course of her duties as Director of Special Education.

95. A PPT meeting was convened on August 23, 2006 to review the information obtained from Chamberlain and to further discuss the Student's proposed educational program for 2006-07. The Mother attended the PPT meeting with her attorney and director Melissa Connors and teacher Bryan Hancock participated by telephone from Chamberlain. Several staff from FLHS attended as well as Ms. Leonardi. Exhibit B-90. Although Chamberlain had sent additional records regarding the Student to Fairfield, the records had not been received by Ms. Leonardi's office as of the time of the PPT meeting. Fairfield staff attempted to ask questions of Chamberlain staff regarding the plans for the Student to be discharged from Chamberlain, Chamberlain staff indicated that they were not the clinical staff and therefore were not in a position to respond to those questions. The PPT agreed to reconvene a "clinical team" including clinical staff from Chamberlain and consulting psychiatrist Dr. Lustick for Fairfield to discuss the clinical discharge plan issues. Id.; Testimony, A. Leonardi.

96. At the PPT meeting on August 23, 2006, the Mother requested that the team continue G.'s placement at Chamberlain and expressed opposition to placement at the PAL program. Although continuing to believe that the PAL program would be an appropriate therapeutic day setting for the Student, as an accommodation to the Parent and Student, the Fairfield team offered to place the Student at Cooperative Educational Services (CES), a

therapeutic day program offered by the Regional Education Services Center (RESC) serving the Fairfield Public Schools, as an alternative to PAL. The Board also offered the services of a behavioral management specialist to work with the Student and the Parent after school hours to address the issues presented by the difficult relationship between the Student and the Parent. Id. The proposed IEP had one goal and 13 objectives related to demonstrating improvement in socially acceptable behaviors in the school environment. They were revised in response to the information received in the April 12, 2006 treatment plan from Chamberlain. Exhibit B-90 at 8-12; Testimony, Ms. Leonardi. After it was pointed out that the service grid page on the August 23, 2006 IEP was clearly in error, describing the program as 30 hours per day, Fairfield issued a corrected service grid page. Exhibit B-110; Testimony, A. Leonardi. The Mother sent a letter dated November 6, 2006 outlining, among other things, her disagreement with the IEP document. Exhibit P-63.

97. The PPT reconvened on October 31, 2006, with Dr. Lustick and Dr. Daniel French, clinical director of the therapeutic day program at CES, present in Fairfield. The Parent and her attorney participated in the PPT meeting by telephone from Chamberlain, along with director Melissa Connors, therapist Jennifer Strazdes, and teacher Franco Aves from Chamberlain. Although the PPT minutes state that Ms. Strazdes, the Student's social worker at Chamberlain, described her work with the Student as a temporary assignment beginning in August, this was not indicated in her testimony on November 9. When asked what the barriers were to the Student returning home and attending a therapeutic day program, Chamberlain staff stated that they did not think that the Student was "ready" to return home. When Dr. Lustick asked whether the Chamberlain staff had considered obtaining any other resources for the Student given his lack of progress in therapy, Chamberlain was not able to identify any such resources. It was noted that the PPT meeting occurred prior to the therapeutic team meeting at Chamberlain. Ms. Connors did not think that six months of treatment is a long time given G.'s issues and she disagreed with Dr. Lustick that there has been no progress. She agreed to send the service plan, which will be completed later in the day. She said G. would need to engage in a therapeutic relationship and make progress on long term goals, short term goals, accepting limits from authority figures, developing trusting relationships, dealing with trauma and increasing coping strategies. Ms. Strazdes said G. requires a 24-hour residential setting to deal with trust issues. Dr. French stated that based on the information he had heard, he believed that CES could provide the Student with an appropriate program. The CES program continued to be offered to the Student. Exhibit B-109; Testimony, Ms. Leonardi and Dr. Lustick.

98. On December 8, 2006, the Mother informed the Board by letter that she had revoked her consent for the Board to communicate with either Four Winds or Hall-Brooke Hospital concerning the Student. No explanation for the revocation was provided. Exhibit B-111).

99. Cooperative Educational Services (CES) is a Regional Education Services Center (RESC) established by the State of Connecticut serving most of the Fairfield County towns, including Fairfield. CES provides a Therapeutic Day Placement (TDP) for students in grades kindergarten through 12. Of the total 120 students in the population, about 80 students are currently in the high school program in grades 9 through 12. All of the students are identified as eligible for special education services, most designated as SED or OHI (Other Health Impaired). The students carry a variety of psychiatric diagnoses, including depression, ADHD, and PTSD.

Many of them have some history of sexual trauma. Many students have been referred to the program following hospitalization, and some who are hospitalized while in attendance at the program later return following their hospitalization. At the high school level, there are generally about 7 students in each class, with a certified special education teacher and a paraprofessional staff member. Each class is assigned a social worker and a school psychologist, and students receive regular group and individual counseling in addition to counseling on an “as-needed” basis. The program has a point and level system for behavior management in which students earn points for positive behaviors that lead to increasing levels of independence and privileges. The school day runs from 8:30 a.m. to 2:30 p.m., consistent with a regular high school day. CES uses Dr. Stephen Kant, board certified child and adolescent psychiatrist, as a consulting psychiatrist and Dr. Andy Reitz as a consulting behaviorist. The clinical staff at CES also communicates with students’ outside therapists to coordinate treatment goals between home and school. Based upon review of the available records and participation in the October 31, 2006 PPT meeting, Dr. French believes that CES could provide an appropriate program for the Student and implement his IEP, subject to completion of the application and referral process. Testimony, Dr. French. CES, in combination with the services of a behaviorist to assist the family with home issues could provide an appropriate program for the Student when he is ready to transition from Chamberlain.

100. At the time of his testimony on December 20, 2006, Dr. Lustick could not give an opinion on whether a day program is appropriate for the Student. He needed to know what was standing in the way of his discharge from residential care, and he had not seen G. in one year. Nor could he give an opinion on whether Chamberlain is appropriate because he did not have enough information. Testimony of Dr. Lustick.

CONCLUSIONS OF LAW

1. It is undisputed that the Board has an obligation (sometimes referred to as “child find”) to locate, evaluate and identify students with disabilities residing within the district, and to attempt to provide those students with a free appropriate public education (FAPE) once identified. 20 U.S.C 1412(a)(3). However, the obligation to conduct an evaluation of a child who is suspected of having a disability is subject to the requirement that the school district must first obtain parental consent to conduct the evaluation. 20 U.S.C. 1414(a)(1)(D)(i)(I) (“An agency that is responsible for making a free appropriate public education available to a child with a disability under this part shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.”); 34 C.F.R. 300.300(a)(1)(i). The public agency must make reasonable efforts to obtain parental consent to proceed with the evaluation. 34 C.F.R. 300.300(a)(1)(iii). If the parent fails to provide consent for the evaluation, the school district MAY, but is not required to, pursue consent for the evaluation through due process procedures. 20 U.S.C. 1414(a)(1)(D)(ii)(I); 34 C.F.R. 300.300(c)(ii). The local educational agency does not violate its child find obligation if it declines to pursue the evaluation through due process when the parent fails to provide consent. 34 C.F.R. 300.300(c)(iii). The initial evaluation is required to be completed within 60 days or such timeframe as has been established by the state, except in cases where “the parent of a child repeatedly fails or refuses to produce the child for the evaluation.” 20 U.S.C. 1414(a)(1)(C)(ii)(II); 34 C.F.R. 300.301(d)(1). If the parent fails to provide consent to proceed with the special education identification and provision of services to the child, the school district

cannot override the failure to consent by resort to due process and cannot be held liable for the failure to identify the child and provide a free appropriate public education. 20 U.S.C. 1414(a)(1)(D)(ii)(II) (“If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.”); 20 U.S.C. 1414(a)(1)(D)(ii)(III):

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent –

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for failure to provide such child with the special education and related services for which the local educational agency requests consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the special education and related services for which the local educational agency requests consent.

Ms. Sabrowski was in contact with the Parent from September 2004 on, and invited the Student in for counseling sessions almost immediately. In January 2005, after the Student had lost credit in several classes due to absences, he was invited to appeal the loss of credit to obtain credit for those classes, but he failed to take advantage of this opportunity. When the Student failed to take advantage of the opportunity to appeal his loss of credit and his behavior in school began to deteriorate, the school then decided to refer him for special education evaluation to see whether an emotional disability might be a better explanation for his difficulties. Once the Student was referred for evaluation and a PPT meeting was held in May 2005, the Parent gave consent for the initial evaluation, which was designed to exclude the possibility that he might have a learning disability, and to re-examine for the presence of Attention Deficit Disorder (ADD) that had resulted in the Section 504 Accommodation Plan in middle school. The evaluation turned up no signs of a learning disability and very little in the way of evidence supporting ADD. The school then requested a psychiatric evaluation to look further at the social/emotional issues and determine whether a Serious Emotional Disturbance (SED) might explain the problems described. Rather than providing consent for this evaluation, the Parent explicitly refused, stating that she did not want the Student evaluated by the school, that she was going to take him for private services and evaluation at Hall Brooke, and that she had no interest in either having him identified as a special education student or in receiving services from the school. Repeated calls from the school social worker, including an offer to make a home visit to obtain a signature on the evaluation consent form, did nothing to change the Parent’s mind. The Parent’s refusal to consent to the psychiatric evaluation or provide the Board with access to the evaluation to be conducted at Hall Brooke in both June and September excuses the Board from providing special education services to the Student during the relevant period of time. The Board did not violate its child find obligations.

2. The Student was identified as eligible for special education on November 22, 2005 after the Mother gave consent for a psychiatric consultation in October 2005. As of November 2005, the Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) with special education and related services under the

provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. The Parties also agree that G. is a child with a serious emotional disturbance. 34 C.F.R. Section 300.8(c)(4).

3. The Board has the burden of proof on the appropriateness of the programs for the 2005-06 and the 2006-07 school years. Conn. State Regs., Section 10-76h-14. This is not altered in by Schaffer v. Weast, 546 U.S. ____, 126 S. Ct. 528 (2005). *Schaffer* was addressing a situation from Maryland, a state whose statutory and regulatory scheme is silent on the allocation of burden of persuasion in special education cases. The Court recognized that, similarly, IDEA is silent on the allocation of the burden of persuasion. Under the circumstance where a state is silent on the allocation of the burden, the Court found that the burden of persuasion falls upon the party seeking the relief. However, the Court did not decide the issue where states have their own laws or regulations that assign the burden to the school district. Connecticut Regulations provide that “the public agency has the burden of proving the appropriateness of the child’s program or placement or of the program or placement proposed by the public agency.” Conn. Reg. 10-76h-14. Therefore, the burden of proof remains on the Board.

4. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is “reasonably calculated to enable the child to receive educational benefits.” *Id.* at 206-207. The Board must establish these by a preponderance of the evidence. Conn. State Regs., Section 10-76h-14. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998).

5. The IEP serves as the centerpiece of a student’s entitlement to special education under the IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child’s current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of “measurable annual goals, including academic and functional goals, designed to –(aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the child’s other educational needs that result from the child’s disability.” 20 U.S.C. Section 1414(d)(1)(A)(ii); 34 C.F.R. Section 300.320(a)(2)(i); Roland M. v. Concord School Committee, 910 F.2d 983, 987 (1st Cir. 1990), cert. denied 499 U.S. 912 (1991).

6. In developing an IEP, the PPT must consider the strengths of the child, the concerns of the parents, the results of the initial or most recent evaluations, and the academic, developmental, and functional needs of the child. 34 C.F.R. Section 300.324(a)(1). Courts must also consider whether the program is “individualized on the basis of the student’s assessment and performance” when determining the appropriateness of an IEP. See A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), *aff’d*, 47 Fed. Appx. 615 (2d Cir. 2002) (citing M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp.2d 289, 292 n.6 (D. Conn. 2000)).

7. As for the first prong of the Rowley inquiry, the Parent argues that there are numerous significant procedural violations in this case. She claims the following violations, which are addressed seriatim. The bracketed references to the federal regulations are to the amendments, which took effect on October 13, 2006:

1) In developing the Student's IEP, this Board was required to complete its initial evaluation of the Student and determine his eligibility for special education within forty-five (45) school days and they did not. RSCA §10-76d-13. The Mother attended all PPT meetings in person or by telephone (at her request), except the December 19, 2005 meeting. She was not available by telephone as she prearranged and no changes were made to the Student's IEP. There was no violation of IDEA.

2) The Board was required to provide Notice of the PPT to the Parent and they did not on more than one occasion. RSCA §10-76d-13(1) and (5), 34 CFR §300.3[22](a) and (b). The Parent has not specified any PPT meeting that was held without prior notice being sent. The record is replete with PPT notices. This claim is denied.

3) The Board was required to consider the concerns and input of the Parent regarding the education of the Student and they did not. 34 CFR §300.[501(b)]. The Board made numerous attempts to obtain the Parent's input, but she withdrew or refused to give her consent for communication with the psychiatric facilities where the Student was treated until October 2005. The team did listen to the Parent, the Grandfather, Ms. Taylor and the Parent's attorney at PPT meetings. The PPT did fail to consider the Student's re-hospitalizations in January and February, including the letters from Dr. Kessler and Dr. Kondev at the February 14, 2006 meeting. The PPT also failed to give due consideration to the Chamberlain staff input at the August 23 and October 31, 2006 meetings. These were violations of IDEA.

4) The Board was required to develop an IEP containing annual goals and short-term objectives during the PPT with the Parent's input and they failed to do so. 34 CFR §300.3[20](a)(2). The November 22, 2005 PPT meeting proposed a diagnostic placement, because although the Student had been identified as eligible for special education services at that meeting, the staff had not yet had a chance to work with him in a special education setting and had only the input from regular education teachers at the high school about the Student's areas of academic need or supports needed for success in the school setting. State regulations define a "trial placement for diagnostic purposes" as being a structured program of not more than eight weeks duration, "the purpose of which is to assess the needs of a child for whom an individualized education program may be needed, but for whom the evaluation study is either inconclusive or the data insufficient to determine the child's individualized education program." R.C.S.A. §10-76d-14(b). Following the PPT meeting, the team collaborated with the Student's former regular education teachers and took into consideration all of the therapeutic information they had to date, and drafted the goals and objectives attached to the PPT minutes from November 22, 2005. These goals were mailed home to the Mother and could have been reviewed, discussed or revised at any of the subsequent PPT meetings held during the diagnostic placement between December 5, 2005 and February 14, 2006. There is no evidence that the Parent sought to discuss or revise any of the proposed goals or objectives. Chamberlain found the goals and objectives were appropriate and they are being used for the Student there. There was no violation of IDEA.

5) The Board was required to list a statement of dates that the Board will report on the Student's progress on IEP goals and objectives and they did not. 34 CFR §300.3[20(a)(3)]. There is no requirement in the IDEA or regulations that requires specific dates for reports to be

sent to Parents. The IEP states that reports will be sent home at the end of each marking period. That is sufficient to satisfy IDEA.

6) The Board was required to develop a transition plan for the Student and they did not develop an appropriate one. 34 CFR §§300.43, 300.320(b). The adequacy of the transition plan proposed in the IEPs at issue was not raised during the hearing. It is not considered.

7) The Board was required to provide the Parent with a copy of the IEP within five (5) days following the date of the PPT meeting and they did not on a consistent basis. RCSA §10-76d-13(a)(6). The failure to provide the Mother with the IEP within five days in violation of state regulation is alleged as to some, but not all IEPs. The only claim substantiated in the record is the August 23, 2006 IEP, which was sent to the Mother by Ms. Giaquinto by letter dated October 2, 2006. This is a violation of state regulation.

8. In order for a given alleged procedural violation to be considered sufficiently significant to render invalid a proposed IEP or result in reimbursement for a unilateral placement, a procedural violation must have resulted in a denial of FAPE to the student. IDEA provides:

- (i) In general. Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.
- (ii) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies –
 - (I) impeded the child's right to a free appropriate public education;
 - (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
 - (III) caused a deprivation of educational benefits.
- (iii) Rule of construction. Nothing in this subsection shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this subsection.

20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. 300.513. There were no procedural violations which would meet this standard in the evaluation and identification of the Student as eligible for special education and the development of goals and objectives for an 8-week diagnostic placement on November 22, 2005. The Board did violate the IDEA with regard to the formulation of a program and placement on February 14, 2006 and has not satisfied the first part of the Rowley test by meeting the procedural requirements of the IDEA.

9. The second prong of Rowley requires a finding that the IEP is "reasonably calculated to enable the child to receive educational benefits." The evidence here shows that on November 22, 2005, the PPT was advised that the Student was being discharged from an outpatient hospital program at Four Winds on November 23. The proposed IEP provided the Student with a diagnostic placement at PAL with two diagnostic goals and later developed goals and objectives. The diagnostic placement provided for review every two weeks by the PPT. This was sufficient for the Student to receive educational benefit from the IEP at that time. The Student did not attend the PAL program, however. He was subsequently hospitalized from

January 9 through 20, 2006 following the January 9 PPT meeting. He was home briefly, then re-hospitalized from February 1 through 8, 2006. Both were at Hall-Brooke. Two letters were sent to the Board by psychiatrists at Hall-Brooke stating that the Student's condition had deteriorated and that a therapeutic residential placement was recommended. The Board refused to consider residential placement at the February 14 PPT meeting, and instead decided to make the PAL program as the full time placement for the Student. The Board was relying on Dr. Lustick's evaluation, which had been done prior to the two hospitalizations. He did not endorse the PAL placement and he had reservations about the program as a step-down from an intensive outpatient hospital program without intensive therapy being provided to the Student. Under these circumstances, the program offered at PAL in February 2006 did not provide the Student with a FAPE. The IEPs offered on August 23, 2006, diagnostic placement at CES, and on October 31, 2006, full placement at CES, did not offer a FAPE because the Board disregarded the input of Chamberlain staff, including its psychiatrist and therapist that the Student continued to require residential placement. The Board had not observed the Student in that placement and its consulting psychiatrist had not seen the Student for nearly a year at that time. Dr. Lustick could not give an opinion as to whether the Student needed a residential placement or whether CES was appropriate.

10. The Board tries to absolve itself of responsibility for ensuring that the Student had adequate supports and services to remain at home and attend PAL or CES. They did attempt to secure DCF assistance for the family, but were not successful. When a school district writes an IEP stating that another agency is to provide some of the services, the school district is still the "agency of last resort," and parents may rightfully turn to the schools for recompense. See J.B. v. Killingly Board of Education, 990 F.Supp. 57 (D.Conn. 1997). The Board's program proposals during both school years do not establish that the Board has demonstrated either the capability to provide, or at a minimum, an intent to provide, an integrated, comprehensive program that addresses all of the Student's needs. Both parties agree that G. cannot be educated in the mainstream or even in a public high school and that an alternative placement is required. The argument is whether a clinical day school or a residential therapeutic school is more appropriate. Title 34 C.F.R. Section 300.39 states that special education includes "instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. . ."

11. In placing the Student at the F.L. Chamberlain School in Massachusetts the Parent made a unilateral placement. "Parents who unilaterally change their child's educational placement without...the consent of school officials, do so at their own financial risk." Sch. Comm. of Town of Burlington, Mass. v. Dept. of Educ. of Mass., 471 U.S. 359, 373-74 (1985); Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15 (1993). "[W]hether the parents of a disabled child are entitled to reimbursement for the costs of a private school turns on two distinct questions: first, whether the challenged IEP was adequate to provide the child with a free appropriate public education; and second, whether the private educational services obtained by the parents were appropriate to the child's needs. ...Only if a court determines that a challenged IEP was inadequate should it proceed to the second question." M.C. ex rel. Mrs. C. v. Voluntown Bd. of Ed., 226 F.3d 60, 66 (2d Cir. 2000). Since the IEPs in February, August and October 2006 were inadequate, the question is whether the services obtained at Chamberlain were appropriate for the Student's needs.

12. When it is determined that the Board's program is inappropriate, the parent is entitled to placement at the Board's expense if the parent's private school placement is appropriate. Burlington School Committee v. Department of Education, 471 U.S. 359 (1985). In selecting a unilateral placement, parents are not held to the same standards as are school systems. Since Florence County Sch. Dist. v. Carter, 510 U.S. 7, 114 S. Ct. 361, 126 L.Ed.2d 284 (1993), it is well settled that the unilateral placement does not have to meet the standards of a least restrictive environment (LRE), nor even does the unilateral placement have to include certified instructors in special education, 34 CFR §300.148(c); M.S. ex rel S.S. v. Board of Education of the City of Yonkers, 33 IDELR 183 (2nd Cir. 2000), citing Warren G. v. Cumberland County School District, 190 F. 3d 80, 84 (3d Cir. 1999) (The test for the parents' private placement is that it is appropriate, and not that it is perfect). Generally speaking, FAPE must be provided to disabled children "in the least restrictive appropriate environment." Polera v. Bd. of Educ., 288 F.3d 478, 481 (2d Cir. 2002). However, the least restrictive environment guarantee ... cannot be applied to cure an otherwise inappropriate placement. A separate setting may be the most appropriate and least restrictive environment for a student. DeVries v. Fairfax County School Board, 882 F.2d 876 (Cir. 1989).

13. "[I]f placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child." 34 C.F.R. Section 300.104. 20 U.S.C. § 1412(a)(1); § 1412(a)(10)(B). "[A]s long as the child is properly educable only through a residential placement, when the medical, social or emotional problems that require hospitalization create or are intertwined with the educational problem, the states remain responsible for the costs of the residential placement." Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1122 (2d Cir. 1997). Credible evidence proves that G.'s current "medical, social and/or emotional problems create or are intertwined with the educational problem." See also J.B. v. Killingly Board of Education, supra. G. failed all of his classes in the 2004-05 school year, he was expelled from summer school in 2005, and he was unable to attend the public high school since mid-September 2005. Since he has been at Chamberlain he has made progress academically, achieving A's and B's on his May 2006 report card. Some of the educational aspects of the residential program at Chamberlain are crucial to the Student's emotional functioning, including daily living skills, informal socialization with peers and staff members, and after school recreational activities. Residential placement in this case is necessary because the Student's emotional and academic issues are so intertwined. Continued residential placement is crucial at this juncture to give the Student stability and prevent regression – to make meaningful progress while he builds trusting relationships, which will ultimately reinforce educational and therapeutic goals. The Board has raised some legitimate concerns about the program at Chamberlain in terms of the Student's need for individual and group therapy directed to his PTSD and victimization by the pedophile and the lack of a discharge plan. These concerns are not sufficient to render the Parent's unilateral placement inappropriate. The Parent has met the burden of proving that the educational services provided by Chamberlain are appropriate under the IDEA. Sch. Comm. of Town of Burlington v. Dept. of Educ. Mass., 471 U.S. 359, 370 (1985); Tatro v. State of Texas, 703 F.2d 823 (5th Cir. 1983), aff'd. 468 U.S. 883 (1984).

14. The Board argues that the Student's placement at Chamberlain is for medical reasons and that it is not responsible for medical services, which are excluded from IDEA. 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34. Chamberlain is not a psychiatric hospital, nor is it a drug or alcohol treatment facility, therefore the cases cited by the Board are inapposite to this case. The only services provided at Chamberlain for the Student by a physician are monthly visits to the staff psychiatrist. That is arguably the only excludable related service under the statute and regulation. It is not apparent whether that expense can be segregated from the other expenses of the residential placement. If it is charged as a separate item, the Parent is not entitled to reimbursement of that expense. The Parent is not seeking reimbursement for the Student's psychiatric in-patient and out-patient hospitalizations at Hall-Brooke and Four Winds. In the Second Circuit, it is well settled that if a psychological placement is "due primarily to emotional problems" or "to alter a child's regressive behavior at home as well as within the classroom," the service must be provided under the IDEA if "it is necessary to ensure that the child can be properly educated." Mrs. B. v. Milford Bd. of Educ., *supra*. See also J.B. v. Killingly Board of Education, *supra* (what type of related services were required pursuant to the IDEA for a student who was victimized and who had unconsciously formed barriers to the child's pain and suffering experience through sexual abuse.) The Board also argues that Chamberlain is inappropriate because it is in another state. There was no evidence from the Board that there were residential placements available in Connecticut. The Parent produced testimony that the Student applied and was rejected for admission at Grove School in Madison. Simply because Chamberlain is not in Connecticut is not sufficient reason to find it inappropriate.

15. Compensatory education has been recognized as an available remedy under the IDEA for the failure to provide a free appropriate public education. *See*, K.P. v. Juzwic, 23 IDELR 5, 891 F.Supp. 703 (D.Conn. 1995); Burr by Burr v. Ambach, 863 F.2d 1071 (2d Cir. 1988), *vacated*, 492 U.S. 902 (1989), *reaffirmed*, 888 F.2d 258 (2d Cir. 1989); Mrs. C. v. Wheaton, 916 F.2d 69 (2d Cir. 1990). Moreover, most courts have characterized an award of compensatory education as an "equitable remedy" (*see*, Burlington v. Dept. of Educ., 736 F.2d 773, 801 (1st Cir. 1984), *affirmed*, 471 U.S. 359 (1985)), and have awarded compensatory education such as tuition reimbursement only where a school district "flagrantly" fails to comply with the requirements of IDEA, or commits what may be characterized as an "egregious" violation. Carlisle Area Sch. Dist. v. Scott P., 23 IDELR 293, 62 F.3d 520 (3d Cir. 1995); Lester H. v. Gilhool, 916 F.2d 865, 872 (3d Cir. 1990), *cert. denied*, 499, U.S. 923 (1991) (compensatory education awarded where district took more than 30 months to provide an appropriate placement while admitting that the in-district program was not appropriate). The Second Circuit has explicitly required a "gross" violation of IDEA as a prerequisite to an award of compensatory education, at least as it pertains to claimants over the age of 21 at the time of the institution of the claim. Garro v. State of Connecticut, 23 F.3d 734 (2d Cir. 1994) (student was denied all access to educational services until the age of 21); Mrs. C. v. Wheaton, 916 F.2d 69, 75 (2d Cir. 1990)(gross violation examples include undue delay in holding hearings, taking advantage of mental infirmity to deny a placement). There were no gross or egregious violations of IDEA in this case which would warrant an award of compensatory education.

16. The only remaining allegation pertaining to the Section 504 issues is whether the Board discriminated or retaliated against the Parent or the Student on the basis of the Student's

disability or advocacy, in reporting the Student's truancy to the appropriate State authorities. Section 504 provides:

No otherwise qualified individual with a disability in the United States as defined in section 706(8) of this title shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance....

29 U.S.C. § 794(a). This is a nondiscrimination statute, the purpose of which is to prevent recipients of federal funding from discriminating against individuals on the basis of handicap. P.C. v. McLaughlin, 913 F.2d 1033, 1041 (2d Cir. 1990). In this case, the Parent is seeking to assert a retaliation claim under Section 504. If the claim asserted is a claim of retaliation under Section 504 or the Americans with Disabilities Act (ADA), then the Second Circuit decision in the case of Weixel v. Board of Education of New York, 287 F.3d 138 (2d Cir. 2002) sets forth the relevant test:

- (1) the plaintiff was engaged in protected activity;
- (2) the alleged retaliator knew that the plaintiff was involved in protected activity;
- (3) an adverse decision or course of action was taken against the plaintiff; and
- (4) a causal connection exists between the protected activity and the adverse action.

See also, Weissman v. Dawn Joy Fashions, Inc., 214 F.3d 224, 234 (2d Cir.2000); Sands v. Runyon, 28 F.3d 1323, 1331 (2d Cir.1994). Here, the third and fourth elements of the claim cannot be satisfied. The evidence shows that the Board staff filed the petition with a good faith belief that the Student was truant in January 2006. There was no evidence that the Board filed the petition because the Parent refused the IEP offered on January 9, 2006. If some action were taken against the Parent or the Student, it would not be taken by the Board, but by the juvenile court system, and then only after a proper adjudication that the Student was in fact willfully absent from school without excuse, and that the Parent had failed in her duty to cause the Student to attend school. The duty of the parent to require the child to attend school between the ages of five and eighteen is a duty imposed by State law. *See*, Conn.Gen.Stat. § 10-184. The corresponding duty on the part of school officials to monitor school attendance and report truancy to the appropriate State officials is also a matter of State law. *See*, Conn.Gen.Stat. § 10-198a. The Parent's claim that the Board retaliated against them by filing the truancy petition is denied.

FINAL DECISION AND ORDER

1. The Board was not required to offer the Student a free appropriate public education (FAPE) pursuant to the IDEA during the 2004-2005 school year, since the Student was not eligible for special education services during that school year.

2. The Board complied with the procedural requirements of federal and state law as it applies to the Board's "child find" obligations by timely identifying the Student as eligible for special education services in November 2005.

3. The Fairfield Board of Education offered the Student a free appropriate public education (FAPE) on November 22, 2005, but failed to offer the Student a FAPE from February 14, 2006 for the remainder of the 2005-06 school year.

4. The F.L. Chamberlain program was appropriate as a unilateral placement by the Parent.

5. The Fairfield Board of Education is financially responsible for the program and placement at Chamberlain for the part of 2005-2006 school year from February 14, 2006 through the end of the school year.

6. The Fairfield Board of Education did not offer the Student a FAPE for the 2006-2007 school year at the August 23, and October 31, 2006 PPT meetings.

7. The program and placement at Chamberlain provides the Student with an appropriate program to meet his needs.

8. The Fairfield Board of Education is financially responsible for the program and placement at Chamberlain for the 2006-2007 school year.

9. The Parent is not entitled to compensatory education for the Student for any period of time.

10. The Fairfield Public Schools did not retaliate against the Parent and/or the Student in violation of Section 504 of the Rehabilitation Act by filing a truancy petition with the Juvenile Court in January 2006.