

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Board of Education

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Appearing on behalf of the Board: Attorney Rebecca Rudnick Santiago
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Appearing before: Attorney Mary H.B. Gelfman
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Are the Individualized Education Program (IEP) and placement provided by the Board for Student for the 2006-2007 school year appropriate to his special education needs in the least restrictive environment?
2. If not, is placement at Foundation School appropriate?

PROCEDURAL HISTORY:

This hearing was requested on December 26, 2006, and the hearing officer was appointed on December 27, 2006. A pre-hearing conference was held by conference telephone call on January 4, 2007, and the hearing was scheduled for January 30 and February 7, 8, and 14, 2007. The February 7 hearing session was postponed due to illness and the February 14 hearing session was postponed due to school closing because of a snowstorm. On February 8, additional hearing dates were scheduled: March 1, 8, and 15, 2007, and to accommodate these additional hearing dates the deadline for mailing the final decision and order was extended from March 11 to April 10, 2007, pursuant to Section 10-76h-9(c), Regulations of Connecticut State Agencies (RCSA). On March 1, 2007, one more

hearing date, March 20, 2007, was added. Closing arguments were presented on March 20, 2007, and the record was closed on that date.

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

SUMMARY:

Parents have questioned omissions of IEP services and rejection of their expert's recommendations. They are especially concerned about lack of progress with social skills, data collection, and the Board's refusal to provide a one-to-one paraprofessional for their son. Parents now ask for placement in a private special education school. The Board defended the program it has provided.

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

FINDINGS OF FACT:

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

1. Student is an eleven-year-old 5th grader in the Board's elementary school (date of birth December 1, 1995). He has been diagnosed with Asperger's Disorder, on the Autism Spectrum. He has been receiving special education services in the Board's school since pre-school. (Exhibit B-15; Testimony, Parent)
2. In December, 2004, in response to a parental request, the Board contracted with James Loomis, Ph.D., from the Center for Children with Special Needs, to perform a psychological evaluation of Student. Dr. Loomis has more than twenty years of experience as a clinical psychologist working with children with disabilities and their families. He has consulted for school districts as well parents, and has evaluated and helped develop programs for many children on the Autism Spectrum. Dr. Loomis's review of Student's history mentions slow motor development. Starting at thirteen months, he received physical therapy services through the Birth to Three System, and he started both pre-school and a special education program at age three. In pre-school, his communications skills were described as appropriate and he was "quite talkative", although he didn't initiate or sustain interactions with other children and found transitions difficult. At age four years nine months, he was diagnosed as neurologically impaired by a developmental pediatrician, based on fine and gross motor difficulties, "challenges with pragmatic communication, deficits with

imaginary play and sensory atypicalities.” He participated in a regular kindergarten at age five, with speech/language (S/L) and physical therapy (PT) support: he was described as “very quiet and demonstrated limited social interactions.” (Exhibits B-1, P-55)

3. Student had a neuropsychological evaluation at age five, and the results as reported in Dr. Loomis’s summary showed a one to two year delay in adaptive functioning. Strengths were listed as structured auditory verbal tasks and visual processing, with difficulties in visual motor integration. A S/L evaluation found average receptive and expressive language development with weaknesses in sequencing and narrative development. Distractibility was noted in first grade, and Student needed help with reading, math and writing. There were some behavioral concerns. He had an occupational therapy (OT) evaluation, which showed problems with visual motor skills, motor planning and sensory processing atypicalities. These difficulties continued in second and third grades. (Exhibit B-1)
4. The report of Dr. Loomis’s December, 2004, psychological evaluation included scores on the Stanford-Binet V: Nonverbal IQ, 75; Verbal IQ, 93; Full Scale IQ, 84. Diagnoses of Asperger’s Disorder, Non-verbal Learning Disability, and Developmental Coordination Disorder were confirmed. Dr. Loomis commented:
While the index scores on the Stanford Binet were in the low average range, the pattern of subtests and index scores indicated that he possesses learning abilities solidly in the average range which are impeded by learning disabilities in the area of visual-spatial/visual-motor processing, organizational skills, problem solving, and executive functioning. ... The discrepancy between his ability to deal with verbally based information and visual-spatial information is striking as almost every subtest in the verbal area was higher than the ones in the performance or visual motor areas.

This evaluation report concluded with many recommendations:

- Continue in mainstream, with 3½ hours of Resource Room a week.
- A one-to-one aide “to help address academic challenges as well as provide structured opportunities for social interaction ...”
- Extended year program to include academic instruction and recreation.
- Pre-teach/teach/review.
- Provide breaks for fatigue.
- Preferential seating.
- Cuing system.
- Use of graphic organizers for written work
- Concrete and sequential math program.
- Monitor homework (not too much, problems with generalizing).
- Study guides for new materials.
- Adapted worksheets to address visual motor issues.
- Note-taking and organization skills.
- Generalization cues and strategies.
- Transitional supports.

- Social skills program, including groups like Lunch Bunch and use of social stories.
 - Functional behavior analysis (FBA) should be on-going.
 - One-to-one aide: use of ABA and prompts to be faded.
 - OT for fine and gross motor problems and sensory processing.
 - S/L pragmatics, integrate with social skills program.
 - Suggestions for parents concerning behavior in the home.
 - Need to systematically teach Student self-care and home chores.
 - Recommended books about Asperger's Syndrome and Non-verbal learning disabilities.
 - Monthly team meetings to include school staff and parents.
 - Consultant in Autism to be hired by school district.
 - Re-evaluate in three years. (Exhibit B-1)
5. At a Planning and Placement Team (PPT) meeting starting on March 15 and continuing on March 24, 2005, Dr. Loomis's report was discussed and the PPT agreed to perform additional evaluations: Assistive Technology (AT), behavior assessment, OT, achievement testing, and S/L. Parents had requested independent evaluations, weekly consultation concerning ABA, a one-to-one paraprofessional for Student, and an extended school year (ESY) program. This meeting was attended by Student's special and regular education teachers, an OT, Parent, the Board's Pupil Services Director, and a behavior consultant from LEARN, a regional education service center. (Exhibits P-2(a), P-2(b))
6. At the March 15 and 24, 2005, PPT meeting, Student's strengths were listed as: reading decoding, literal comprehension, sense of humor, fluency and vocabulary. His concerns/needs were: fine motor, social/pragmatic language, written expression, inferential comprehension, visual spatial/motor processing, problem solving and encoding (spelling). (Exhibit P-2(b) p. 6)
7. Program modifications/adaptations with Student's March 15 and 24, 2005, IEP included several of Dr. Loomis's suggestions, which are marked "*" below:
- Materials/Books/Equipment: pencil grip, mechanical pencil, manipulatives, access to computer.
 - Tests/Quizzes/Time: extra time- tests, *test study guide, modified tests, scribe for open-ended questions.
 - Grading: no spelling penalty, no handwriting penalty.
 - Organization: give one paper at a time, desktop list of tasks.
 - Environment: *preferential seating close to point of instruction, clear work area.
 - Behavior management/Support: daily feedback to student, positive reinforcement, *cue expected behavior, *structure transitions, *break between tasks.
 - Instructional strategies: check work in progress, extra drill/practice, multi-sensory approach, number line, multiplication chart, *modify homework,

*pre-teach content, *oral reminders, have student restate information.
(Exhibit P-2(b) p. 17)

8. The report of an independent S/L evaluation by Karen Anthony in April 2005 described Student as displaying a moderate receptive and expressive language disorder. Recommendations included:
 - S/L services three times a week, 30 to 45 minutes each session, both individual and small group.
 - Social communication skills should be the main focus.
 - Student must be taught pragmatic language skills, and non-verbal cues.
 - Verbal formulation skills impact on classroom performance.
 - Student needs to generate stories.
 - Multi-sensory input will help him.
 - Use visual schedules and visual task lists.
 - S/L must have experience in working with children on the Autism Spectrum
 - Consultation with teachers to help with carry-over. (Exhibit P-3)

9. A school psychological report for an evaluation performed in April and May 2005, recorded observations of Student at recess on five different days. On four days, he was passively involved with a group of boys in various activities. On one day, the usual leader of the group was absent and Student was not involved most of the time. Student's classroom teacher rated Student's adaptive behavior on the Vineland scale. The school psychologist summarized the results:
 - Communication:** difficulty with listening and attending, speech skills in reference to interacting with others and expressing complex ideas, and written communications skills.
 - Daily Living Skills:** weaknesses in sensitivity to personal health care and safety, shoe-tying, assuming household chores and math skills (i.e., time, money).
 - Socialization:** problematic in areas of expressing emotions, imitation (i.e., of complex tasks), initiating interactions, showing interest in others, pursuing games/hobbies and attending extra curricular activities.
 - Other concerns:** use of manners, following time limits, keeping secrets, apologizing and responsibility regarding time and possessions.The classroom teacher described Student's strengths as: reading at grade level, enjoyment of classmates, and making occasional jokes. (Exhibit P-4)

10. A communication evaluation performed in May 2005 by a Board S/L reported that Student, in third grade at the time of evaluation, had received S/L services "through first grade." Most of his scores were within the average range: however, on the Pragmatic Communication Skills Protocol, he "does not change topics appropriately, acknowledge his peers during a conversation, take turns during a verbal interaction, terminate conversation appropriately or consider needs of others in a verbal interaction." The evaluator recommended S/L services to improve pragmatic language and syntactical structure. (Exhibit P-4(a))

11. The report of an educational evaluation performed in April and May 2005 showed Student within the average range on the Woodcock-Johnson Tests of Achievement, standard and extended battery (WJ-III) except for a lower score in punctuation and a higher score in picture vocabulary. (Exhibit P-4(b))

12. An OT evaluation in April and May, 2005, revealed the following strengths:

- Compliant; wants to be successful and be praised for work.
- Basic fine motor development and dexterity good.
- Functional strength.
- Independent with many school-based and self-care tasks.
- Capable of sufficient penmanship.
- Motivated to learn keyboarding skills.

The OT also listed areas of concern:

- Sensory processing affecting muscle tone, endurance, attention.
- Inconsistent handwriting performance for written communication.

Recommendations included a sensory diet based on the 4th grade schedule and Student's needs, use of "*How Does Your Engine Run? The Alert Program for Self-Regulation*", allowing time-outs, and limiting visual and auditory stimulation and distracters. Handwriting suggestions were: use ruled paper; explore use of a labeler for use on diagrams or charts; limit amount of written work when feasible; educate [Student] on the social implications of good handwriting; continue positive reinforcement; continue use of Alpha Smart when feasible; and continue keyboard training with Ultrakey and informal instruction/practice. (Exhibit P-5)

13. An AT evaluation in May 2005 noted Student's use of Alpha Smart and suggested addition of Co-writer to help with both finding words and spelling. On several different assignments, Student produced four words per minute. The AT evaluator recommended more use of Alpha Smart with Co-writer and work to improve typing skills. (Exhibit P-6, B-36)

14. A social and behavioral assessment was performed by Katie Harmon, from LEARN ABA Outreach. Ms. Harmon has 5½ years of experience as a special education teacher. She has completed the course work required for certification as a Board Certified Associate Behavior Analyst. During her consultation with the school district, she was supervised by Tyler Fovel, a Board Certified Behavior Analyst. Ms. Harmon made classroom observations of Student on seven days in March, April and May, 2005, including some formal data collection on Student's behavior. Student was observed playing with other children during recess and alone from time to time. In class, he was observed to be on task 87%, 84% and 92% of the time on three of the five days. Ms. Harmon also observed and recorded many successful uses of prompts. Parent and Student's regular education teacher each filled out social skills rating lists that Ms. Harmon summarized:

Teachers' Forms: All the standard scores fall within the average range. Within the domain of social skills, subscales were also looked at. [Student's] ability for Self Control scored in the average range. In the areas of Cooperation and Assertion, he scored in the fewer than average range. In the domain of Problem

Behaviors [Student's] subscale in the areas of Externalizing, Internalizing and Hyperactivity were all in the average range. In the Academic Competence scale, [Student] scored below average.

Parents' Form: The standard score from the domain of Social Skills falls into the fewer than average range. Within the subscales, [Student] scored fewer than average in the areas of Cooperation, Assertion, Self-Control, and Responsibility. The Problem Behaviors standard score falls into the more than average range. In the subscales, [Student's] scores for Externalizing, Internalizing, and Hyperactivity fall in the more than normal range.

On the Theory of Mind checklist, Student participated in activities designed to measure awareness of beliefs and emotions. The concluding remarks:

For all of these tasks, [Student's] performance was 100 percent accurate. ... however, through observation of [Student] in multiple settings, application of these skills appears to be limited. [Student's] ability to generalize and use these skills in social situations seems to be lacking. (Exhibits P-6(a), B-32a)

15. Ms. Harmon made three home consultations as part of her behavior assessment. Specific concerns raised by Parents included completion of homework, social and play skills, a lack of leisure time activities, and behavior at home such as aggressive behaviors and tantrums. Interventions for homework and household chores were devised and were reported to be successful on the last home visit. (Exhibit P-6(a))

16. Ms. Harmon described Student as "charming and intelligent", and summarized his behavior:

[Student] appears to be having success in the classroom. This is likely to be from support from his school team and hard work on his part. Strengths in the classroom are the individual attention and support [Student] receives from [Regular Education Teacher], [Student's] desire to do well and show off his accomplishments, and his performance in small group settings. Areas of concern are his attention in the classroom, especially during whole class activities, independence in classroom routines and completion of work tasks requiring written output and acquisition of new concepts.

Ms. Harmon made seven recommendations to address these concerns: those marked "*" had already been made by Dr. Loomis.

- *Continue mainstream placement with resource room support.
- *Pre-teach new material and provide extra practice on difficult concepts.
- To minimize attention problems during large group instruction, *use scheduled breaks within the day. Use rewards for staying longer on task or avoiding off task activities.
- Teach him strategies or scripts to help self-regulate his attention. Use a list of "dos and don'ts" to help him monitor his own behavior.
- *Classroom routines should be explicitly taught using prompting; prompts should then be faded to build independence.
- Consider use of a visual schedule.
- *Modify homework so that he needs little adult support.

- Assistive Technology (AT) should help build independence. Alpha Smart is being used for longer pieces of writing. On worksheets, Student has been dictating his answers for a teacher to write down. Worksheets should be modified so that he can be independent.

The comments about AT are similar to those in the report of an AT evaluation (see Finding of Fact 13). (Exhibit P-6(a))

17. Noting Student's greater social skills with adults than with his peers, Ms. Harmon made suggestions ("*" indicates suggestions already made by Dr. Loomis):
- Instruction in social skills on two levels: "rules" like eye contact and how to start a conversation, and perspective-taking skills. [suggested books]
 - Instruction in non-verbal communication. Ms. Harmon observed that Student used some of these skills with adults, but not with peers.
 - *Participation in a social skills group, such as Lunch Bunch.
- Ms. Harmon recommended that social skills be taught individually and practiced in small groups. Student should then be observed to monitor whether he was generalizing skills. She suggested using role playing and scripting to help address social skills. She also saw no need for specific home based interventions, but recommended regular meetings of the school team with Parents. (Exhibit P-6(a))
18. The Board's PPT convened on June 1, 2005, to discuss evaluation results. Because not everyone had reviewed all reevaluation reports, the PPT agreed to reconvene on June 15, 2005. Parent requested an independent Functional Behavior Assessment (FBA). (Exhibit P-6(c))
19. Ms. Harmon provided the PPT with an FBA in June 2005, addressing behaviors that interfered with Student's learning and independent functioning in school. Target behaviors were inattention and off-task behavior. Ms. Harmon observed Student on eight days, and collected data on four of those days. She recorded that Student was on task during whole group activities 85%, 81%, 92% and 85% of the time; and on task during 1:1/small group activities 100%, 100%, and 95% (one day there were no small group activities while she was observing). Ms. Harmon noted that Student required prompts frequently during whole class activities, and rarely in small groups. She concluded that Student's off-task behaviors were probably either:
escapes from demand situations and maximizing reinforcement or
escape from boredom by increasing self-reinforcing activities, namely day-dreaming.
- She commented that though Student "appears to enjoy pleasing adults, especially his teacher", his self-re-enforcer of day-dreaming was more powerful. (Exhibit P-6(b))
20. Ms. Harmon proposed a behavior plan including several components ("*" items had already been suggested by Dr. Loomis):
- *An adult in the classroom who will assist with academics and prompt when Student is off-task, with these interventions to be faded to encourage independence.

*A plan for inattention, with reinforcement for staying on-task, to be used by all people working with Student.

*Preferential seating near teacher, *teacher to use cues: expectations for Student to be the same as those for his classmates.

*Consultation, teacher needs to understand Asperger's Disorder and effective strategies for use with children with Asperger's.

*Pre-teach new skills individually or in small groups, coordinated with introduction of new skill in the classroom.

*Plan for ESY should include consideration of Student's issues with transitions.

(Exhibit P-6(b))

21. The PPT reconvened on June 13, 2005. This PPT meeting was attended by the Board's Pupil Services Director, both Parents, Student's Regular and Special Education Teachers, School Psychologist, S/L, OT, Ms. Harmon and another consultant from LEARN, the Principal of Student's school, Tyler Fovel, a Board Certified Behavior Analyst with twenty years of experience consulting with schools concerning children on the Autism Spectrum, and Parents' Advocate. After the OT discussed her evaluation, noting that Student had difficulties with visual motor integration, sensory motor integration and low muscle tone, Parent inquired about a sensory diet. Parent requested "a hard copy" of a sensory diet for Student by the end of September. The school psychologist reported on her observations of Student during recess: most days she observed, he was socially engaged with other children although he was "passive". One day, when a particular leader was absent, he played alone. Parent had also observed Student at recess, and reported that he played alone in the dirt that day. The team also discussed a list of requests from Parents:

- Two-three hours weekly consultation to Student's team by a Board Certified Behavior Analyst with expertise in children on the Autism Spectrum. PPT approved two hours a week, to be spent in direct observation, evaluation of progress, and staff training.
- One-two hours of monthly home visits by the consultant. PPT planned meetings with team to identify home issues and "providing consistency between home/school behavior plans."
- Weekly team meetings to start next school year, consultant to participate as needed.
- Parents' request for an extended day to provide time for pre-teaching was rejected; the PPT felt that pre-teaching could be provided within the regular day.
- Parents' request for ESY services was reduced to participation in the Board's Summer Academy for the month of July, with consultation by a behavior consultant, and individual tutoring for two hours a day for two weeks in August. Socialization would be provided for one hour a week during the two weeks in August.
- Community based instruction would be included within the regular school day.
- One-to-one aide requested by Parents was discussed: school staff found that "intrusive" and the PPT continued support in the classroom as provided.

- Another FBA to be discussed in September.
 - Consultation with a S/L with expertise in children on the Autism Spectrum was discussed. Parents recommended Ms. Anthony. Board will hire someone else.
 - Parents requested that Board reimburse Parents for independent AT and S/L evaluations; PPT refused. (Exhibit P-6(d))
22. Parent requested that an addendum be included with the record of the June 13, 2005, PPT meeting. This addendum included the following comments:
- Board had not yet contacted Parents about S/L consultant with expertise with children on the Autism Spectrum.
 - Concerns about generalizing behavior skills at home, Parent access to consultant.
 - Team meetings to discuss academic issues first, then behavior.
 - Scheduling of OT and completion of sensory diet.
 - Student's appearance of tiredness; discussion of interventions, including walking around the building. (Exhibit P-7)
23. The PPT reconvened on June 15, 2005, to finalize goals and objectives for the 2005-2006 school year. Student's reported present levels of educational performance included strengths: reading decoding, literal comprehension, fluency and vocabulary. His concerns/needs were: fine motor, social pragmatic language, written expression, inferential comprehension, problem solving and abstract conceptualization. The IEP showed special education instruction in the resource room and regular classroom, 12.5 hours per week; S/L 2 hours per week; Lunch Bunch 0.5 hours per week; consultation with a Board Certified Behavior Analyst up to 2 hours per week; and S/L consultation up to 1 hour per month. (Exhibit P-6(e))
24. Goals for the 2005-2006 school year were provided (objectives summarized or listed when relevant to issues in dispute):
1. [Student] will meet passing criteria on grade level language arts with appropriate modifications as needed.
 2. [Student] will meet passing criteria on grade level math with appropriate modifications as needed.
 3. [Student] will improve keyboarding proficiency according to Ultrakey by achievement of objectives.
(Speed 8 words per minute, 85% accuracy, look at monitor at least 50% of the time.)
 4. [Student] will improve word processing ability for general classroom and therapy tasks.
(Compose at least 6 words per minute, copy 8 words per minute, look at monitor or draft 25% of the time.)
 5. [Student] will write his name in cursive, consistently.
 6. To improve pragmatic communication skills as measured by the following objectives.

- a. In structured settings, [Student] will identify and role-play effective strategies for initiating interactions with peers.
 - b. In unstructured settings, [Student] will utilize effective strategies for initiating at least 2 social interactions with peers.
 - c. Before engaging with a peer in structured settings, [Student] will gain peer's attention in an appropriate manner (i.e., calling the peer's name, tapping the peer's shoulder, making eye contact).
 - d. Before engaging with a peer in unstructured settings, [Student] will gain peer's attention in an appropriate manner (i.e., calling the peer's name, tapping the peer on the shoulder, making eye contact).
 - e. In structured settings, [Student] will acknowledge and respond appropriately to peer-initiated interaction.
 - f. In unstructured settings, [Student] will acknowledge and respond appropriately to peer-initiated interaction.
 - g. In structured settings, [Student] will recognize nonverbal cues and articulate understanding of their meaning.
 - h. In unstructured settings, [Student] will interpret and respond appropriately to peers' nonverbal cues.
 - i. In structured settings, [Student] will maintain at least 2 conversational exchanges on a topic chosen by another individual.
 - j. In unstructured settings, [Student] will maintain at least 2 conversational exchanges on a topic chosen by another individual.
 - k. In structured settings, when [Student] is engaged in a conversation and his audience shifts topics, he will follow and respond to the new topic.
 - l. In unstructured settings, when [Student] is engaged in a conversation and his audience shifts topics, he will follow and respond to the new topic.
 - m. In structured settings, [Student] will explain another person's perspective for various scenarios and how he would use this information to guide his social behavior.
 - n. In unstructured settings, [Student] will apply perspective-taking skills to guide his social behavior.
- (unnumbered) To improve expressive language skills as measured by the following objectives. (Use of social stories was one of four objectives.)

(Exhibit P-6(e) pp. 6-20:

25. Program modification/adaptations "as needed in all academic settings" were provided ("*" had been suggested by Dr. Loomis):

- Materials/Books/Equipment: manipulatives, access to computer, *Alpha Smart word processing program, Co-writer.
- Tests/Quizzes/Time: extra time- tests, *test study guide, modified tests, scribe for open-ended questions.
- Grading: no spelling penalty, no handwriting penalty.
- Organization: give one paper at a time, desktop list of tasks.
- Environment: *preferential seating close to point of instruction.

- Behavior management/Support: daily feedback to student, positive reinforcement, *cue expected behavior, *structure transitions, *break between tasks.
 - Instructional strategies: check work in progress, extra drill/practice, multi-sensory approach, number line, multiplication chart, *modify length of homework assignment, *pre-teach content, *oral reminders, visual reminders, have student restate information. (Exhibit P-6(e))
26. The June 15, 2005, PPT meeting planned for an ESY) program to include academic support sixteen hours a week, Monday through Thursday in July and two hours a day on four days in August, and “socialization” for one hour each of the four August days. Consultation was planned for the summer program with an ABA consultant “up to one hour per week” in July. One hour of S/L and one-half hour of OT were also scheduled for July. After a dispute about the S/L, the Board promised to provide an additional four hours during the 2005-2006 school year. Parent noted on the record that the summer social skills group had been inappropriate. (Exhibit P-6(e) p. 22; Testimony, Parent)
27. On September 21, 2005, Parents submitted an addendum concerning PPT meetings of June 1, 13, and 15, 2005.
- Parents described the summer program, and stated that they had disagreed with this plan.
 - Again requested reimbursement of independent AT and S/L evaluations.
 - Concern that behavior consultant Ms. Harmon did not observe the entire school day.
 - Need for S/L consultant with experience with children on the Autism Spectrum, Board’s rejection of Parents’ recommendation for consultant.
 - Parents did not bring their advocate to the June 15 PPT meeting because they did not understand that meeting was a continuation of the June 13 PPT meeting. (Exhibit P-8)
28. Notes from some of the collaborative team meetings concerning Student during the 2005-2006 school year were entered on the record of the hearing, as were addenda provided by Parents. A continuing Parental concern through the fall of 2005 was delays in the development of a sensory diet by the OT and eventually, implementation of the sensory diet into Student’s school day. Another concern was a behavior plan. At a meeting on November 2, 2005, Student’s distractibility was discussed. (Exhibits B-40, B-41, B-46, B-48, B-51 and P-10, P-13, P-17)
29. School Psychologist followed up the planned use of a behavioral checklist on October 13, 2005. Regular and Special Education Teachers collaborated on the checklist. School Psychologist summarized the results:
- Overall academic performance:** writing skills, far below grade level; reading comprehension, math and spelling, somewhat below grade level; reading fluency, at grade level. Student was rated as working somewhat less hard, behaving

slightly less appropriately, learning slightly less, and appearing slightly happier compared to typical students of the same age.

Academic Performance score was in the clinical range below the 10th percentile for teachers' ratings on boys 6 to 11. Total Adaptive Functioning score was in the normal range.

On the **Teacher Report Form** problem scales, Student's Total Problems, Internalizing and Externalizing scores were all in the normal range for boys aged 6 to 11. Scores on all rated syndrome scales were in the normal range. On Attention Problems subscales, Student's score for inattention was high enough to warrant concern (96th percentile) while his score for Hyperactivity-Impulsivity was within the average range. (Exhibit P-14)

30. Parents requested a PPT meeting, which was held on November 9, 2005. Parents expressed concern about Student's distractibility and asked for an FBA with observation of his full school day. PPT refused to conduct another FBA. Parents asked about ABA services in the classroom. Since the behavior consultant, Ms. Harmon, had been unable to attend this meeting, another meeting was scheduled to include her. Parents also requested that Dr. Loomis attend the next meeting. (Exhibit P-17(a))
31. The PPT reconvened on November 23, 2005. Parents repeated their request for another FBA by a Board Certified Behavior Analyst, targeting other behaviors besides attention. The PPT refused to provide another FBA. Parents requested that the Board consult with Dr. Loomis, and the PPT denied that request. (Exhibit P-17(b))
32. The PPT convened on December 21, 2005, at Parents' request. This meeting was attended by both Parents, the Board's Interim Assistant Director of Pupil Services, Student's Regular and Special Education Teachers, School Psychologist, S/L, OT, Principal of Student's school, Ms. Harmon, Mr. Fovel and Dr. Loomis. Data collection was discussed, and collaboration with Ms. Harmon and Mr. Fovel would continue. Collaborative Team meetings will be scheduled once a week, with the Parents invited once a month. Dr. Loomis offered suggestions. (Exhibit P-23(a))
33. The Board's team responded to Dr. Loomis's December, 2004, recommendations in a written report dated December, 2005. Comments relate to the list of his suggestions provided at Finding of Fact 4:
 - Resource time is 2½ hours per week – 3½ hours would be too much. Full-time aide is not happening at this time.
 - ESY occurred summer 2005
 - [Many suggested techniques were being used: summary of responses recorded here.] Time is a consideration with pre-teach/teach/review format. Fatigue and breaks, addressed by OT with sensory diet. Opportunities within daily schedule to walk. Homework: concentrate on IEP goals; modified for language arts and math; modified to only include skills he can do without requiring adult intervention; concepts are reviewed before the work is sent

home. He is using Alpha Smart with Co-writer installed to cut down on some handwriting. FBA to address off-task behavior was completed in 5/05 – strategies have been put in place to help with this. Special education paraprofessionals have training in ABA principals – but they are not “one-on-one.” [OT] Working on Ultrakey keyboarding, cursive name, “Sensory Diet” throughout day, and educating [Student] on self-regulation. Monthly meetings with Ms. Harmon and [Parent] to address home concerns. Discussions about structure of the day to help [Student], i.e., behavior chart and leisure skills, reward systems and social situations at home. In the fall 2005, we have had weekly meetings with [Parent]. Our outside [behavior] consultant is Ms. Harmon from LEARN. (Exhibits B-1, B-1(a), B-1(b))

34. The PPT referred Student for an independent S/L consultation by Wendy Marans, including an observation of Student that took place on January 10, 2006, and a review of school records. The report of this consultation is dated January 31, 2006. Ms. Marans recorded various social interactions during her observation, but commented that Student “did not seem fully included or to participate as an equal”. He was a follower, and did not read various social cues from peers. She recorded periods of inattention and resting his head on his desk. She observed that Student did not initiate, continue or bring tasks to completion without adult prompting. Written work seemed arduous for him. She also commented that although Alpha Smart was used and available, she did not observe Student using it during her visit. Ms. Marans’s report concludes with suggestions, some of which were also suggested by Dr. Loomis:

- Motor issues – consultation with OT, *sensory breaks, *more use of Alpha Smart at his desk, suggestions for OT, PT and gym.
- Attention – *need for cues, reinforcement to support attention.
- Motivation – develop an updated list of motivators (or re-enforcers) with Parents, to be used at home and in school.
- Organization – needed to support greater independence, preparedness and activity. Use written lists, boxes, etc.
- Language input – avoid too much abstract, non-literal talk without concrete supports and examples. Slow the pace.
- Previewing and reviewing – *preview and practice in resource room.
- Augmentative and technological supports – *try to incorporate Alpha Smart (and Co-writer) into a greater number of activities. Use lined paper or grid paper for math.
- *Peer relationships and social skills – teach “rules of engagement” for verbal exchanges and conversation explicitly and then provide structured practice, before giving less structured practice and generalizing the skills into the classroom.

This report concluded with a list of references on Asperger’s Syndrome. (Exhibit P-25)

35. The PPT met on February 9, 2006, with both Parents, the Board’s Interim Assistant Director of Pupil Services, Principal signing as a Regular Education Teacher, Special

Education Teacher, School Psychologist, and Ms. Harmon in attendance. Parents requested data and the PPT agreed to provide it. Mr. Fovel would conduct an FBA, as requested by Parents. (Exhibit P-25(a))

36. The PPT met again on March 9, 2006. S/L services scheduled for the summer of 2005 had not been completely provided, and four hours of services remained due. The PPT agreed to fund services by Ms. Anthony, a private provider. (Exhibit P-27(a))
37. An FBA was performed and a report dated March 28, 2006, was provided by Tyler Fovel, a Board Certified Behavior Analyst with 31 years of experience evaluating children on the Autism Spectrum and consulting on school program planning for them. Mr. Fovel is the Clinical Director at LEARN, serving 12-15 school districts. Mr. Fovel interviewed Parents, Student's Special Education and Regular Education Teachers, and other members of the school team. He observed Student in the classroom on two separate days and reviewed Student's record, including prior evaluations. The report of this assessment includes comments on specific target behaviors:
- Self-stimulatory behavior:** Mr. Fovel observed three brief instances in two days of observation. Hand flapping was observed twice and hand flapping with body movements, once. "During all three of these instances, [Student] was engaging in exciting talking to his friends prior to the self-stimulatory behavior."
- Outbursts, non-compliance, aggression, or other emotional behavior:** none.
- Social Functioning:** Frequency was high, but varied depending on the setting. In the cafeteria, he had frequent interactions. Most of his responses were on-topic. He did get silly, but so did the other boys at the table. During an indoor recess when several students were building something together, some of his suggestions were off-topic. The other students treated him with respect. In a small group in math, he helped another student.
- Whole class activities:** "during six separate whole-class activities, ... within fifteen seconds of the start of the activity, [Student] put his head on the desk and appeared to lose interest." He responded to the teacher's prompts most of the time, but did not volunteer. In a small group, he responded 32 times in nine minutes, and did not put his head down.
- The Language of Instruction:** when Student couldn't respond to a question, the teacher usually re-phrased the questions, often simplifying it and sometimes giving a hint of the answer. (Exhibits B-2, B-61; Testimony, Fovel)
38. Reviewing earlier observation reports, Mr. Fovel noted that the scope of the behaviors of concern was about the same. Inattention and social functioning "stand out as important target areas." Poor motor functioning was noted in earlier reports and not observed by Mr. Fovel, but he acknowledged that it may still be an issue.
- Self-stimulatory behavior, aggression, noncompliance and emotional control "do not seem to be frequent difficulties in school at this time, although the present structure and support probably play an important role in keeping behavior problems low and, consequently, must be maintained." Receptive

language ability with regard to complex language, following multi-step instructions, conceptual thinking and problem solving were also observed to be difficult in the present observation, in agreement with the previous reports.

- In agreement with previously reported data, [Student] did not attend during whole-class activities unless direct prompts were given. In his present classroom, the pace of the discussion and involvement of the rest of the class did not permit constant prompting, nor would it have been appropriate or positive for [Student] to receive constant verbal prompts. In mild contrast to past observations, [Student] interacted more frequently with peers than was previously reported, with a larger number of students, and with greater ability to stay on-task and relevant to the conversation. He also engaged in frequent gross motor movement during social situations and was not either overly tired or at a disadvantage with his peers. (Exhibits B-2, B-61; Testimony, Fovel)

39. Ms. Harmon and Mrs. Fovel developed a behavior improvement plan dated May 18, 2006. (Exhibit B-4)

40. The 2005-2006 goals and objectives with progress noted (see Finding of Fact #24 for goals and objectives):

1. Language Arts goal, satisfactory progress for 3rd quarter, no final mark. Objectives, four mastered in final quarter; one, satisfactory progress; one, "S/M".
 2. Math goal, satisfactory progress, final quarter. Objectives, three mastered, final quarter; three, satisfactory progress; one, satisfactory progress 3rd Quarter, no mark for final quarter.
 3. Keyboarding goal, satisfactory progress final quarter. Objectives, two mastered, one in progress.
 4. Word processing goal, satisfactory progress – likely to achieve goal. Objectives, one mastered, one satisfactory progress, one in progress.
 5. Name in cursive goal, mastered. Objectives, two mastered.
 6. Pragmatic communication goal, satisfactory progress for 3rd quarter, no final mark. Objectives, all 3rd quarter, no final mark: eight mastered, four satisfactory progress, two in progress.
- (unnumbered) Receptive language goal, in progress 1st quarter, no other marks.
(unnumbered) Expressive language goal, in progress 1st quarter, no other marks.

(Exhibit P-27(c) p. 1- 9)

41. The PPT convened on June 8, 2006, for an annual review. Present were Board's Interim Assistant Director of Pupil Services, Parent, Parent's Sister, Student's Special and Regular Education Teachers, S/L, and an OT. Student was reported to have "shown growth in academic, language, pragmatic, and fine motor areas." Goals and objectives for 2006-2007 were discussed. Parent requested placement at Foundation School, and also ESY for summer of 2006 at Foundation. The PPT refused both requests. (Exhibit B-5 pp. 1-2)

42. Two separate pages dated June 8, 2006, listed strengths and concerns/needs. On B-5 p. 4, Student's strengths were listed:

Spelling (closed + silent e syllables), word recognition, multiple choice comprehension questions, when using manipulatives [Student's] performance improves, hands-on activities.

Student's concerns/needs:

Spelling (vowel team (sic), vowel r, words with endings), writing mechanics, written expression, literal comprehension, math facts, word problems, math calculations, organization of materials, assignments, assignment notebook, content area tests, projects.

On B-5 p. 6, strengths were listed as:

Sense of humor, motivated to be with his peers, speech intelligibility, understanding semantic content of oral language, grammar skills, basic fine motor and dexterity good, independent w/many school based/self care tasks, motivated by computer.

Student's concerns/needs:

Attention/focus in groups, "silly" behaviors, non-compliant behaviors, pragmatic communication, oral story construction, verbal problem-solving, processing of auditory information, low muscle tone, endurance, attention, inconsistent handwriting ability. (Exhibit B-5 pp. 4,)

43. Goals for 2006-2007 (objectives provided when related to issues in dispute):

1. Given the district's 5th grade language arts curriculum scope and sequence, [Student] will demonstrate mastery of the 5th grade goals in reading, written expression and spelling.
2. Given the district's 5th grade math curriculum scope and sequence, [Student] will demonstrate mastery of the 5th grade goals for math applications and calculations, as measured by the completion of the objectives.
3. [Student] will improve his organizational and study skills.
4. To improve receptive language skills, as measured by the following objectives.
5. To improve expressive language skills, as measured by the following objectives.
6. [Student] will continue to improve with pragmatic social skills so that he responds grade-appropriately to peers.
 - [a] [Student] will assess a social situation and initiate/interrupt a conversation at appropriate times.
 - [b] [Student] will identify appropriate potential conversational topics and compose a comment or question in order to initiate a conversation with peers.
 - [c] [Student] will identify the conversation topic already in progress and compose an appropriate comment or question to join in conversation with peers.
 - [d] [Student] will show active listening during a social activity with effective nonverbal signals (i.e. orienting body toward speaker, maintaining appropriate eye contact, nodding head).
 - [e] To maintain a conversation, [Student] will accurately respond to another's intent/perspective during a social activity by offering relevant comment(s) or question(s).

[f] [Student] will resolve social/interpersonal dilemmas using non-confrontational methods (i.e., analyzing situation rather than jumping to a conclusion, requesting staff assistance when needed.)

7. Improve keyboarding and word-processing skills to complete appropriate assignments, by achievement of the following [objectives]:
- [a] [Student] will compose at least 9 words per minute from 7 baseline, using a computer or laptop, in 50% of opportunities.
 - [b] [Student] will copy from a draft or other text at least 6 words per minute from 4 baseline, 50% of opportunities. (Exhibit B-5, pp. 8-18: note, some of these pages were marked "B-6", but they all refer to the June 8, 2006, PPT meeting.)
44. Accommodations and Modifications listed on the June 8, 2006, IEP, for all classes, all year:
- Materials/Books/Equipment:** Access to computer with spellcheck in Language Arts, Science and Social Studies; manipulatives in math; supplementary visuals, alternative worksheets, highlighted texts and worksheets in all academic areas.
 - Tests/Quizzes/Assessments:** Test study guide for science, social studies; prior notice of tests; preview test procedures, modified tests in all areas as needed, directions read orally, rephrase test questions/directions, extra time-tests.
 - Grading:** No handwriting penalty, modified grades based on IEP.
 - Organization:** Daily schedule and list of tasks to be completed, routines posted, work folders, extra space on worksheets, give one paper at a time, assignment pad, daily homework list.
 - Environment:** Clear work area, preferential seating, reduced auditory stimulation, structured transitions.
 - Behavior Interventions and Support:** see 05/18/06 behavior intervention plan, cue expected behavior, chart progress and maintain data.
 - Instructional Strategies:** Provide notes/outline and vocabulary word banks, support auditory presentations with visuals, multi-sensory approach, assign study partner, check work in progress, concrete examples, review directions, use mnemonics (sic), cueing/prompts. (Exhibit B-5 p.19 note, some of these pages were marked "B-6", but they all refer to the June 8, 2006, PPT meeting.)
45. The June 8, 2006, IEP for 2006-2007 provided for special education paraprofessional support in the regular classroom for Language Arts, five hours per week; Math, 3.75 hours per week; Organization/Content, 1.25 hours per week; and S/L one hour per week. Student would receive resource room support 2.5 hours per week and he would received S/L one hour per week, OT 0.5 hours per week, and counseling 0.5 hours per week in the resource room. (Exhibit B-5 p.24, note, some of these pages were marked "B-6", but they all refer to the June 8, 2006, PPT meeting.)
46. A summer program for 2006 was also proposed, with five hours of tutoring to be provided on agreed upon dates between "07/06 and 08/17/06", and twelve 50-minute social skills group sessions between July 10 and August 17, 2006. (Exhibit B-5 p.23,

note, some of these pages were marked “B-6”, but they all refer to the June 8, 2006, PPT meeting.)

47. Parent asked to have a statement added to the record of the June 8, 2006, PPT meeting:

I do not feel that the public school program is appropriate for my son. It does not meet his multiple needs. Many portions of the IEP have not been implemented. [Student] has not made appropriate progress in this program in any area of functioning. He does not have friends, appropriate social skills or expected academic skills. The school has failed to provide a consistent, appropriate educational program. I am requesting placement at the Foundation School for the 2006 summer and 2006-2007 school year as they have the small, structured, consistent setting and programming designed to meet his educational, emotional and social needs. (Exhibit B-5 p. 5)

48. Dr. Loomis provided a consultation that included a record review, review of data collected by school staff, an observation of Student and a meeting with the school team and Parent on October 2, 2006. The report of this consultation included a consultation analysis largely confirming all previous observations:

- [Student] has great difficulty engaging in learning tasks without constant attention from instructors. He does well in 1:1 and 1:2 formats, but shows poor attention and task engagement in groups. He is more able to sustain silent reading or motor activities (e.g. cutting out flashcards) than writing or listening to teacher delivered lessons. ...
- [Student] has shown improvement in social skills. He has a group of friends and enjoys regularly interacting with them. There is no teasing in evidence. His behavior has an immature quality and his social bids are not always appropriate. In groups and unstructured play settings, he tends to stay on the periphery with less involvement.
- [Student] does well with handling the routines and transitions in his school day. He enters and leaves without difficulty and can manage noisy, crowded hallways.
- There are no behavioral difficulties in evidence. He exhibits some mild mannerisms (e.g. facial grimaces, mouth opening), and picking his skin and teeth.
- Possible difficulties with postural control are evident as he frequently rests his head on his desk and leans his body against supports rather than sit upright.

Dr. Loomis listed strengths of Student’s school program – especially the experience and skills of his Special and Regular Education Teachers and the structure of the classroom. He noted, however, that some classroom instruction was too fast for Student, and that some of his earlier suggestions had not been implemented. (Exhibit B-9)

49. Dr. Loomis concluded his October 2006 report with recommendations, summarized below, many of which have been made before and have been implemented, although perhaps not observed on the day of Dr. Loomis’s visit:

- Academic recommendations: pre-teaching, study guides, visual context cues, and adapting simpler instructional language.
- More 1:1 or 1:2 instruction, in the resource room with less distraction
- 1:1 writing instruction 30 to 45 minutes a day, using Alpha Smart (or, if his keyboarding is difficult, voice recognition software).
- Math -visual aids, including grid paper and adapted worksheets, access to a calculator.
- Prompting should be faded as much as possible. Written checklists or problem solving steps should replace verbal prompts, and when he initiates and sustains engagement he should be re-enforced.
- Careful monitoring of academic progress, more specific data collection.
- Social skills program is good, but needs further opportunities for generalization.
- Positive behavior plan with immediate feedback.
- Data collection should be revised.
- OT and PT should be consulted about postural issues, per Marans report.
- Work on self-regulation.
- Full time paraprofessional.
- Home-based behavior assessment, and parent training.
- More consultation from an Autism expert.
- Better communication between home and school, including a communication book and monthly meetings. (Exhibits B-9, P-35(a))

50. Student's report card for the first trimester of the 2006-2007 school year shows grades: Language Arts, B; Math, A-; Social Studies, A-; Science, B; World Language, B; Art, B-; Music, B-; and Physical Education, A-. Most of the comments were (1) "does not meet expectations" or (2) "beginning to meet expectations", except in Music, one (3) "meets expectations" and in Physical Education, four 3's and one (4) "exceeds expectations". In the area of social responsibility, Student received all "sometimes", and in academic responsibility, he received five "sometimes" and five "rarely". His teacher wrote: [Student] has made a fine adjustment to fifth grade. He is well liked by his classmates. He has made progress in working independently and is developing his organizational skills. In recent weeks he has been more motivated and has begun to stay with tasks until he has completed them. [Student] continues to have a positive attitude and takes pride in his accomplishments. These grades were modified as per Student's IEP. (Exhibits P-49, B-18, pp. 1-4)

51. An IEP progress report for August 31, to November 30, 2006, listed progress by goals and objectives (see Finding of Fact 43):

Language Arts goal, making progress. Objectives, one, satisfactory progress; three, making progress; one (using rules of capitalization and punctuation when responding to text in written form) unsatisfactory progress; one not introduced. Math goal, making progress. Objectives, four making progress; two not introduced.

Organization and study skills goal, Other, making progress. Objectives, two making progress; one (record daily homework assignments in an assignment book

- and place his materials needed to complete his homework in his backpack) unsatisfactory progress.
- Communication goals, in progress. Objectives, one satisfactory progress; six making progress.
- Pragmatic language goal, making progress. Objectives, one satisfactory progress; four making progress, one not introduced.
- Keyboarding/word-processing goal, satisfactory progress. Objectives, two satisfactory progress. (Exhibits B-12, P-44)
52. The Board entered excerpts from a home-school communication book dated November 2006-January 2007 in evidence for the hearing. Much of the communication consisted of homework assignments and reminders about assignments and tests, written by adults. There were no recognizable notes from Parents in this excerpt. (Exhibit B-14)
53. Parent described Student as anxious and sensitive. He requires prompts to get up in the morning and to complete the morning routine. He comes home from school agitated, and complains about noise at school. His social interactions are inappropriate at times. He doesn't socialize outside of school, and doesn't receive telephone calls from his school friends. He has a coordination disorder that results in poor posture and problems with handwriting. He has reported incidents of threats and harassment that Parents feel were not taken seriously by the School. (Testimony, Parent)
54. The PPT convened on January 9, 2007, to review Dr. Loomis's consultation. This meeting was attended by the Board's Director of Pupil Services, both Parents, Student's Regular and Special Education Teachers, School Psychologist, S/L, OT and Principal of Student's school. Discussion revealed that most of Dr. Loomis's suggestions (see Finding of Fact 48) were already in place. Planned changes were:
- Modify behavior plan such that feedback system will provide more frequent feedback.
 - Implement sensory feedback system (e.g. *How Does Your Engine Run*).
 - Assess game playing skills (e.g. appropriate turn taking, rules of games) to rule out skill deficit as impediment to leadership in recess activities. PE teacher to teach missing skills if needed. Engage student in structured recess activity three times per week during recess.
 - Increase opportunities for peer support in daily routine and on task behavior.
 - Monthly meeting between parents and S/L, OT and Special Education Teacher to instruct parents in techniques and provide carryover to home environment.
 - [The Board] to hire consultant up to 4 hours per month to oversee program and assist the team. (Exhibit B-15 p.2)
55. Parents submitted amendments to the record of the January 9, 2007, PPT meeting, summarized below.

- *How Does Your Engine Run* had been used last year without noticeable results. Had the OT been trained to work with this resource? With 0.5 hours of OT a week for typing, when and how will this be done?
- How will the Special Education Teacher implement the increased behavioral feedback system?
- School Psychologist and S/L to implement structured activities at recess: are they trained? [PPT notes identify PE Teacher for recess activities.]
- Parents feel that Student has the skills, that recess issues are social skills issues.
- Parents object to “monthly meetings” without dates being provided and question the school staff’s expertise in Asperger’s Disorder.
- Consultant not identified, no explanation of how consultation would be implemented.
- Dr. Loomis recommended a trained one-on-one paraprofessional; Parents object to using a peer to help keep Student on task.
- Parent does not believe that school can produce an appropriate program because of failure to do so in the past and failure to implement Dr. Loomis’s suggestions.
- Parents do not agree that school has implemented Dr. Loomis’s suggestions.

(Exhibit B-15 pp. 26-27)

56. Student’s Special Education Teacher in 3rd and 4th grades (2004-2005 and 2005-2006) is certified to teach special education pre-school through 12 and also as a reading specialist. She has 30 years of experience in special education, and has taught children with many different disabilities, including children on the Autism Spectrum, among them some with Asperger’s Disorder. She uses ABA techniques when she needs them. She saw Student daily in the resource room and the regular classroom, and last year she was Student’s case manager. He blended in with his class and seemed happy most of the time. He was sometimes anxious about his regular class assignments, but she broke the work down for him and he did well. She reviewed Dr. Loomis’s suggestions and had already been using many of them. She opposed using a one-to-one paraprofessional for Student, because “he wants to be independent” and because there has been and still is paraprofessional support in Student’s classroom, working as a team with the teacher and serving several children. She acknowledged problems with Student and homework, but noted that he improved toward the end of his 4th grade year. She appreciated Ms. Harmon’s consultation. She successfully addressed Student’s attention problems with prompts. She used ABA techniques and collected data on Student’s performance, but did not provide any documentation on the record of the hearing. Although Student was observed by several experts, many of the techniques being used were either not observed or not recorded by the experts. (Exhibit B-22; Testimony, Prior Special Education Teacher)

57. School Psychologist has twelve years of experience as an elementary school psychologist and a variety of educational and clinical experience before that. She has worked with children on the Autism Spectrum, including those with Asperger’s Disorder. She organizes and runs the Lunch Bunch, a weekly opportunity to develop

social skills. She described Student as kind, cooperative and helpful, somewhat passive in social situations. She had collected data on Student's behavior, but no longer does. He fits in, looks happy at school. She has noticed that he gets fatigued and sometimes stays on a favorite topic longer than others. She believes that a one-to-one paraprofessional would isolate and stigmatize Student, and that he is doing well with the current support available in the classroom. She had seen him playing kickball at recess. (Exhibit B-31; Testimony, School Psychologist)

58. The OT who has worked with Student for several years has eighteen years of professional experience. She has worked with Student on handwriting and typing. She noted his visual motor integration problems and his frequent fatigue. She has used *How Does Your Engine Run* to help him with self-regulation, although he seemed "not very interested". She devised the sensory diet requested by Parent, and feels that walking around the school building during breaks and resting in a beanbag chair (brought in by Parent) have helped him. She agrees that he has postural issues and lacks upper body strength. She described his sensory issues as "mild" and felt that a formal sensory diet was no longer necessary. She had observed that he puts his head down on the desk for many reasons and usually during "whole class instruction" in the classroom. She has not collected formal data on Student. (Exhibit B-30; Testimony, OT)
59. Student's current Regular Education Classroom Teacher has ten years of experience as an elementary school teacher. She described Student as happy and getting along with his classmates. Unlike other children, he says he hopes that there will not be a snow day. She recounted Student's daily schedule, and commented on his increasing use of the computer for written work. She tries to communicate regularly with Parents. She opposes a one-to-one paraprofessional for Student, feeling that he wants to be independent. She commented that the day that Dr. Loomis and Mr. Fovel observed Student was "not a normal school day" and there are many things that they either didn't see or didn't record. The students thought they were from the FBI, or perhaps the CIA. She doesn't see a need for a behavioral checklist for Student. (Exhibit B-20; Testimony, Current Classroom Teacher)
60. Student's current Special Education Teacher has nine years of teaching experience. In addition to seeing him every day in his classroom and in the resource room, she is his case manager. She works with Student on writing, sometimes scribing for him. She sees him volunteering in class. He is using the computer more, and likes the larger screen of the laptop better than the screen of the Alpha Smart. She uses a reward system, providing choice of free time activities based on a checklist. This "behavior plan" was developed outside the PPT, and without consulting the Parents. This teacher opposes a one-to-one paraprofessional for Student, commenting that there are "lots of adults" in his classroom, and he responds well to cues from them. She explained about "walking laps at recess": the school has a rule that children may not be kept inside from recess, and walking laps outside is an accepted penalty for some infractions of school rules. She also reported that the laptop computer used by Student does not go home with him. Student likes to please his teachers, and that is a

good re-enforcer. (Exhibits B-17, 19; Testimony, Current Special Education Teacher)

61. The S/L Pathologist has provided services to Student since September 2005. She has almost thirty years of experience in clinical settings and schools. She is working with Student mostly on pragmatics. Student has been becoming less passive in social situations. Although there is not a specific goal for generalization, Student generalizes some of his S/L skills in the classroom. Dr. Loomis did not observe that in October 2006, but the S/L sees it. (Exhibit B-21, Testimony, S/L)
62. Mr. Fovel had observed Student in October 2006 and March 2007, and stated for the record that Student had made “enormous progress” since he first observed and evaluated him in March 2006. He observed him behaving appropriately and participating in class, although he still has some social skills issues. Student responds well to prompts from the classroom paraprofessionals and teachers. Mr. Fovel commended the teachers he had observed, but acknowledged that data collection was inconsistent. He observed several good social interactions between Student and his classmates, remarked that his classmates respect him, and stressed the important of non-disabled peers as role models. Mr. Fovel did report that Student is prompted 3-4 times as often as his classmates, and may be becoming prompt-dependent. (Testimony, Fovel)
63. Parents’ attempts to call a witness from Foundation School were unsuccessful. A brochure describing the Foundation School program was offered for the record. Parent had visited Foundation with Student, and reported that Student had been accepted for enrollment. Foundation School is approved by the State Department of Education for special education placements by local school districts. (Testimony, Parent; Exhibit P-57; Connecticut Education Directory 2006-2007)

CONCLUSIONS OF LAW AND DISCUSSION:

1. Section 10-76(d), Connecticut General Statutes (CGS), authorizes an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 10-176e through 4-180a, inclusive, and Section 4-181a. Section 615(f)(1)(A) and 615(f)(3)(E), Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), also authorizes special education hearings.
2. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). It must first be determined whether the Board complied with the procedural requirements of the Act. The second *Rowley* test is whether the IEP was reasonably calculated to enable the child to receive some educational benefit. Since *Rowley*, courts have clarified the requirements of FAPE to hold that IEPs must provide more than a trivial educational benefit. (See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988), Cert. Denied

488 U.S. 1030 (1989) and *Oberti v. Board of Education of the Borough of Clementon*, 995 F.2d 1204 (3rd Cir. 1993).

3. Parents claim that the Board made many procedural errors. A significant one was the Board's PPT either deferring or refusing evaluations requested by Parents as early as March 2005. Section 10-76d-9, RCSA, requires that an evaluation shall be performed "upon the request of the parent or personnel working with the child". And 34 CFR §300.502 requires school districts to provide an independent evaluation at public expense "if the parent disagrees with an evaluation obtained by the [school district]", and further requires that the school district initiate a hearing when they refuse to fund an independent evaluation. Failure to respond promptly to Parents' concerns led directly to Parents' loss of trust. Evaluations can be useful for identifying specific needs, but they can also be useful for ruling out some alternatives. Some of the procedural errors and delays in discussing evaluations and other issues did interfere with Parents' opportunities to fully participate in PPT meetings. However, the IEPs that have evolved, guided in part by a variety of expert consultants, have provided sound educational progress by Student.

3. Section 10-76h-14(a), RCSA, provides that the party who filed for a special education hearing has the burden of going forward with the evidence. The Board of Education has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by said Board. This burden shall be met by a preponderance of the evidence, except for hearings held pursuant to 34 CFR 300.521 [placement in an interim alternative educational setting]. In this case, the IEP looks reasonable and the staff are experienced and dedicated, but the IEP has not been implemented consistently.

- In the area of behavior management, Parents resisted several evaluations and plans. Eventually, the current special education teacher adopted a reward system independent of the PPT. No data has been produced against which the effectiveness of the plan could be measured. The May 18, 2006, behavior improvement plan was noted as a modification/accommodation in the 2006-2007 IEP, for all classes, but there were no related goals and objectives. Teachers devised individual approaches to Student's behavioral issues. In the Resource Room and small groups, Student presented no recorded behavioral issues.
- Handwriting is mechanically difficult for Student, in part because of his visual motor coordination problems. He also has difficulty formulating his ideas. Several consultants recommended using Alpha Smart, Co-writer, and a computer. It appears that there wasn't a unified plan for helping Student with writing across all settings until very recently. Parents complained that he was required to hand write spelling words many times over. The location of the classroom computer was inconvenient. The laptop he now uses doesn't go home with him. The bottom line here should be helping Student to express himself with the best mix of skills, given his individual difficulties.

- Data collection is essential to help measure Student's progress and evaluate the success or failure of interventions. Visiting experts produced data that indicated that Student was doing well with two exceptions: he requires a great deal of prompting in the classroom, and his attention is poor during whole class instruction. The lack of any data generated by Board staff in the hearing is troubling, especially when Mr. Fovel commented that he could help train the staff to collect data easily in a very short time.
- Homework is an issue at home. It appears that teachers write down the assignments for Student. Homework is supposed to be modified so that Student can do his assignments without adult support, yet Parents feel burdened by his need for help. One Parent writes for him. Ms. Harmon made three home visits and had some success working with Parents, yet several parental requests for help with home issues have been answered with discussion in meetings at school, not home consultation and support.

Each of these areas of dispute contributed to Parents lack of trust and eventually anger over the school's apparent lack of concern about Student and his progress.

4. The test for establishing the least restrictive environment for a particular special education student was articulated in the case of *Daniel R.R. v. State Board of Education*, 874 F. 2d 1036 (5th Cir. 1989) as applied in *Oberti v. Board of Education of the Borough of Clementon School District*, 995 F.2d 1204 (3rd Cir. 1993):

- 1) Can the child be educated in a regular class with supplementary aids and services, considering the whole range appropriate to the child's disabilities;
- 2) Are there educational benefits to the child in regular class compared with benefits in a segregated class;
- 3) Are there possible negative effects of the child's presence in the regular class for the other students.

Student clearly benefits from participation in the classroom. The one problem is maintaining his attention in whole class instruction. The rule is that students with disabilities must be educated with students who are not disabled to the maximum extent appropriate to each student with disabilities (34 C.F.R. 300.114). Removal from the regular education classroom is permissible: "... only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (20 U.S.C. §1412(a)(5)(A)).

5. Parents have called for outside consultants, and then rejected their recommendations. They question the "training" of school staff members. They have rejected suggestions at the same time that they complain that Dr. Loomis's 2004 suggestions have not all been adopted by the PPT. In fact, almost all of Dr. Loomis's suggestions from 2004 have now been adopted, with two major exceptions: a one-to-one paraprofessional and increased resource room time. It appears from testimony that in this case, the two to three adults in the classroom manage to support Student with prompts and individualized instruction smoothly while encouraging his independence. As for Resource Room, Student does

very well in small groups and rather worse in whole class instruction. By increasing time in the Resource Room and/or re-configuring group activities in the classroom, the Board should be able to provide more small group instruction. Whole class instruction for Student should feature subject matter that motivates him to pay attention and to participate.

6. The Board needs to take notice of the related service at 34 CFR §300.34(c)(8):
- (i) *Parent counseling and training* means assisting parents in understanding the special needs of their child;
 - (ii) Providing parents with information about child development; and
 - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

However, not all techniques used in school will be appropriate in every home, and vice versa.

7. It is not unusual for the school to see a child in a different light from what parents see. The reluctance of either party to consider the other's observations has resulted in increasingly poor communication and lack of trust. A further disintegration of Parents' trust followed repeated delay or lack of follow-through on IEP commitments. An open-minded approach to major areas in dispute, such as recess activities, homework, handwriting/computer use and social skills, should aim for middle ground. The introduction of structured playground activities at recess on some days is a step in the right direction. Another step could be the appointment of a case manager with social work skills, who could focus on improving home-school communication.

8. Repeated requests for data were made by Parents. This is a natural approach to trying to understand why Student appeared to be doing well in school and not so well outside of school. Timely data, systematically collected and analyzed, could either confirm the school's good reports or reveal lack of significant progress. Several school staff members mentioned keeping data, but none produced documentation. Despite the hearing officer's instruction in the January 4, 2007, memorandum summarizing the pre-hearing conference, that witnesses should bring any documentation they had concerning Student to the hearing, school witnesses were empty handed.

9. The Board had access to many evaluations with impressively consistent recommendations. Based on the testimony of Student's current teachers, recommendations have not been followed consistently and staff members have modified the IEP informally without discussing such changes with the PPT.

10. Parents are concerned about Student's lack of friends outside of school and lack of contact with school friends outside of school hours. It is not the responsibility of the school to create out-of-school social life for students. The social skills program could be enhanced and generalization of these skills fostered. The PPT should consider such suggestions in the light of his whole educational program and a realistic prioritization of Student's school hours.

FINAL DECISION AND ORDER:

The IEP and placement provided for Student by the Board for 2006-2007 are appropriate, although the inconsistency of follow through on IEP services (development and use of behavior plan, handwriting issues, and responses to parental concerns in particular) and the varied approaches of staff members have created problems that must be addressed.

Placement at Foundation School is not appropriate for this child, because he functions well with a combination of regular classroom instruction with support and resource room support.