

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Norwalk Board of Education v. Student

Appearing on behalf of the Parents: Mother, pro se

Appearing on behalf of the Norwalk Board of Education: Atty. Marsha Belman Moses, Berchem, Moses & Devlin, P.C., 75 Broad Street, Milford, CT 06460

Appearing before: Attorney Patricia M. Strong, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

The following issue for the hearing was submitted by the Norwalk Board of Education:

1. Did the Board offer the Student a free appropriate public education (“FAPE”) in the least restrictive environment (“LRE”) for the 2007-2008 school year with a proposed placement at High Road School in Norwalk at the August 29, 2007 Planning and Placement Team (“PPT”) meeting?

**SUMMARY:**

The Student is a 16 year-old student who is not currently attending school. The Student, also referred to as J., is a young man with serious emotional disturbance who had attended the Academy of Information Technology and Engineering (“AITE”) in the 2006-2007 school year. The AITE program is a public magnet school program in Stamford with an exceedingly challenging curriculum for students who are focusing on engineering and technology in a college preparatory program. The Student was accepted at AITE in a lottery. The Student had numerous behavioral incidents at AITE, culminating in a manifestation determination by the PPT on March 22, 2007 that his behavior was not a manifestation of his disability. The Student’s Mother disagreed with the PPT decision and filed for an expedited due process hearing on April 2, 2007. The Student remained at AITE pending the outcome of that hearing. On May 31, 2007 Hearing Officer Mary Gelfman issued two orders in that case, first for a psychiatric evaluation of the Student overriding the Mother’s refusal of consent and, second, for an interim placement in home bound instruction. A PPT meeting was convened on August 29, 2007 to review the psychiatric evaluation and develop an IEP for the 2007-2008 school year. The PPT recommended placement of J. at High Road School, a private therapeutic day program located in Norwalk, Connecticut. The Parent (Mother) refused this placement and therefore the Board commenced this hearing pursuant to the provisions of Conn. Gen. Stats., Section 10-76h(a)(2)

and Regs. of Conn. State Agencies, Section 10-76h-3(c). The Mother did not appear at the hearing, but sent correspondence to the District claiming that the Student is living with his father in New York and that this hearing could not proceed. The District argues that the Student has not been withdrawn from Norwalk schools or enrolled in any other school district in Connecticut or New York. The District contends that the issue, which is the basis for this hearing, could recur whenever the Parent decides to return the Student to school in Norwalk.

#### PROCEDURAL HISTORY:

The Board's attorney requested this hearing on December 3, 2007 by faxing a letter to the State Department of Education (SDE) and copies to the Parent and the Board's Director of Pupil Personnel Services. Hearing Officer (HO) Exhibit 1. This Hearing Officer was assigned to the case on December 4. A prehearing conference was held with the Board's attorney and the Mother on December 12, 2007. The mailing date of the final decision was established as January 17, 2008. Hearing dates were agreed on for January 28 and 31. The Board's attorney requested an extension of the mailing date of the final decision to February 25, which was granted. A hearing notice was sent to the parties on December 17, 2007. The parties were directed to file witness lists and exhibits by January 21, 2008. Also included was a notice to the parties regarding requests for postponement of a scheduled hearing date.

The Parent did not file any exhibits or witness list. The Board filed its witness list and Exhibits B1-B194 on January 18, 2008. The hearing convened on January 28. The Parent was not present. The Board's attorney reported that the Parent had faxed a letter that morning at 8:59 a.m. to Ms. Janie Friedlander, Director of Pupil Personnel Services, stating that J. was "in New York State, living with his father. Therefore, we cannot proceed with the hearing on his educational placement scheduled for today." Exhibit HO-2. The Board's attorney stated that she had telephoned the Parent at her place of employment and left a message. The Hearing Officer asked the Board's attorney to call the Parent again to find out whether the Student had been withdrawn from Norwalk schools. The Parent did not respond to that question. The Hearing Officer spoke to the Parent and asked her if she would like to attend the hearing. If she did, time would be given for her to get there. The Parent was adamant that the hearing could not go forward because her son was living in New York and hung up the telephone. The hearing went forward with receipt of all Board exhibits, which were entered as full exhibits. The Board's attorney made an opening statement. This was followed by testimony from Roger Ayres, M.D., Board Certified psychiatrist and neurologist.

The hearing continued following the lunch break. The Board's attorney stated that the Parent had faxed a letter to the Superintendent of Schools at 11:00 a.m. stating that if the hearing proceeded, she would file a complaint with the SDE. The letter was entered into the record as Exhibit HO-3. The Board then presented testimony from Maria Christina (Tina) Rivera, Assistant Principal, AITE. The hearing continued on January 31. The Board offered a letter from Ms. Friedlander to the Parent dated January 29 regarding the procedure and form for withdrawing a student. Ms. Friedlander stated that delivery was confirmed on January 30. The letter and attached Student Withdrawal Form was entered into the record as Exhibit HO-4. The Board then presented testimony from Karin Bertero, Educational Director of High Road Student Learning Center in Wallingford. The Board then presented testimony from Ms. Friedlander, who

was appointed by the Board on August 15, 2007 as Director of Pupil Personnel Services. A letter to Ms. Friedlander from the Mother with a Withdrawal Form attached, which was faxed to Ms. Friedlander on January 31 at 10:10 a.m., was entered into the record as Exhibit HO-5. The Board then rested its case. The Board's attorney requested two weeks to file briefs.

The Hearing Officer sent the parties a letter on January 31, 2008 advising the parties that simultaneous briefs were due on February 14 and that the mailing date for the decision was extended to March 10, 2008. The parties were allowed to file proposed findings of fact, conclusions of law and any legal arguments they wished to make. The Board's attorney was directed to address the issue of whether the Student was withdrawn from Norwalk Public Schools and the effect, if any, that this would have on the Hearing Officer's jurisdiction to render a decision in this matter. The Parent was specifically advised that she could submit any statement or evidence she wished to offer, with a certification that a copy was sent to the Board's attorney. The Parent submitted a letter to the Hearing Officer on February 14 regarding her claim that the case should have been withdrawn by the Board because the Student was living in New York. She attached a copy of her January 31 letter to Ms. Friedlander, which is in the record as Exhibit HO-5 at 2. The Board's brief was mailed on February 14, 2008. On February 21, the Hearing Officer wrote to the parties confirming that she received the Board's brief on February 16 and the Parent's letter on February 14. The Board's attorney's secretary contacted the Hearing Officer and requested a copy of the Parent's letter, which she had not received. The copy was sent to the Board's attorney on February 22.

The Findings of Fact incorporate various portions of the Board's Proposed Findings of Fact. 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). 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. Id.

#### FINDINGS OF FACT:

1. The Student is currently sixteen years old. He is not currently in any educational program or attending school. Exhibit B-190; Testimony of Ms. Friedlander. Although he should be a 10<sup>th</sup> grader chronologically, he did not earn sufficient credits in 9<sup>th</sup> grade and therefore remains a 9<sup>th</sup> grader. Id.
2. The Student is eligible as a special education student pursuant to the provisions of the Individuals with Disabilities Education Act ("IDEA") under the eligibility category of Serious Emotional Disturbance.
3. The Student began attending the Norwalk Public Schools in January 2001 as a third grader, having transferred from Cooperstown, New York. Beginning in that year, the Student manifested serious behavioral issues, including defiance to teachers and staff and making inappropriate sexual comments. Exhibits B-1, B-2 and B-5.

4. Problems continued in fourth grade (2001-2002), and referrals for assistance were made by Board personnel. The school received little cooperation from the Parent. Exhibits B-3 through B-12. In April 2002, the District filed a Report of Suspected Child Abuse/Neglect as the Student expressed suicidal ideation and the Parent had refused to allow the school to conduct any evaluations of the Student. Exhibit B-13. The District also filed a Family With Service Needs Petition reflecting the Parent's refusal to allow evaluations and the Parent's refusal of a PPT meeting, despite the District's having learned that the Student had been designated a special education student in his previous district in Cooperstown, New York. Exhibit B-14.

5. Following these referrals, the Parent did agree to and did attend a PPT meeting on May 14, 2002. The PPT recommended extensive evaluations, including a psychiatric evaluation. Exhibit B-21. At that time, the team stated that "[the Student] continues to exhibit behaviors of outbursts, throwing things, defiance, oppositional, all of which are unpredictable. [The Student] has difficulty regaining self control following an outburst". Id. at 2. The Parent would only consent to an educational evaluation. Id. at 5. At the end of his fourth grade year, the school social worker wrote, "[the Student] is of great concern. He continues to talk about burning down school, killing himself and others." Exhibit B-25. See also Exhibits B-22 at 20 and B-23 at 5.

6. A PPT meeting was scheduled on June 13, 2002 to review the educational evaluation, but did not proceed because the Parent did not attend. Exhibit B-24. The Student attended a different elementary school in fifth grade because the family moved within Norwalk. The PPT convened on October 2, 2002 to review the May evaluation. Exhibit B-30. The Parent presented the PPT with a letter from Dr. George Uy, which diagnosed the Student with ADHD, combined type. Id.; and Exhibit B-15. The Student continued to struggle behaviorally during 5<sup>th</sup> grade. Exhibit B-34. In November 2002, after repeated requests and recommendations by the District, the Parent gave the Board permission for a school psychologist to conduct a psychological evaluation of the Student. Exhibit B-32. The Student was identified as an Other Health Impaired (OHI) student at a November 20, 2002 PPT, based on the ADHD diagnosis from Dr. Uy. Exhibit B-36. Two IEP goals in the areas of work/study and social/behavioral were developed, but the Parent did not give permission for the special education and related services until January 2, 2003. Id. at 7-11; and Exhibit B-37. A behavior management plan was developed on January 6, 2003. Exhibit B-38. The psychological evaluation was completed on January 17, 2003. Exhibit B-40. The school team saw some progress, although behavior continued to be a problem. Exhibits B-46 through B-48. On May 30, 2003, a PPT meeting was convened to develop an IEP and a transition plan for middle school. Exhibit B-51.

7. When the Student entered middle school Ponus Ridge Middle School in September 2003 (6<sup>th</sup> grade), his behavioral problems continued. On September 22, 2003, a manifestation determination PPT meeting was held and the Student's behavior was found to be a manifestation of his disability. The PPT recommended development of a behavior plan. Exhibit B-54. At a PPT meeting held on November 5, 2003, the school-based team recommended a psychiatric consultation, but the Parent refused permission. Exhibit B-56.

8. A Functional Behavior Assessment ("FBA") was conducted on November 20, 2003. Exhibit B-60. Additional PPT meetings were held in November and December 2003 and

January 2004 for the Student. The school-based team continued to recommend a psychiatric evaluation, which the Parent refused. Exhibits B-61, B-65 and B-72.

9. On January 9, 2004, a manifestation determination PPT meeting was held because the Student had created a poster with pictures of a gun, knife and explosives and wrote the caption: "I will kill you with this gun and knife" [sic], copies of which he distributed to peers and a teacher. The school-based team found his behavior was not a manifestation of his disability. The Parent disagreed. Exhibit B-75. At the PPT meeting, the Parent refused in school counseling and a psychiatric evaluation for the Student. *Id.* at 3. The Parent blamed the school, writing: "I am shocked that he was able to produce such materials by media and imagery provided to him at this school." Exhibit B-79. She also requested an out-placement in a private school setting. Exhibit B-77. The Student was suspended for 10 days. Exhibit B-81.

10. On January 26, 2004, the PPT met and discussed the Parent's request for outplacement and renewed its request for a psychiatric evaluation. Time in the resource room was extended to 18.75 hours per week. Exhibit B-84. Another manifestation determination PPT meeting was held on February 23, 2004. Exhibit B-86. The Student's IEP was found to be inappropriate and his behavior to be a manifestation of his disability. The school-based team recommended outplacement in a therapeutic day treatment program at High Road School or CES and a psychiatric evaluation. The Parent refused both. *Id.* The Student did not attend school from March 15 to April 12, 2004. A truancy petition was considered by the school. Exhibits B-87 and B-89. The Parent wrote to the school on April 12 stating her belief that the Student had been suspended on March 12 following a charge of threatening. Exhibit B-90. A PPT meeting was held on April 12 to review the Student's IEP. If the Student was not accepted at Hall-Brooke, his IEP would continue in his current program. Both Parents and the Student attended. Exhibit B-91. The Board contacted Seton Academy (Hall-Brooke) for possible referral of the Student, but he was not accepted because his clinical needs were so significant that he required intensive outpatient services, after which he could be considered for admission. Exhibit B-93. The Student returned to school on April 26, 2004. Exhibits B-95 and B-96. A PPT meeting was held on May 3, 2004. The Parent was given 10 days to agree to a psychiatric evaluation or the District would initiate due process procedures. Exhibit B-96. The Parent signed the consents for the evaluation and transfer of information to Dr. Cornelia Gallo on May 13, 2004. Exhibit *Id.* at 4-5.

11. Dr. Gallo conducted the psychiatric evaluation in May and June 2004. Exhibit B-101. By this time, the Student was involved with the courts, as noted by Dr. Gallo's report. Dr. Gallo stated three diagnoses: Attention Deficit Hyperactivity Disorder (ADHD), Dysthymic Disorder and Conduct Disorder. She made various educational recommendations, including his eligibility for special education under the seriously emotionally disturbed category, as well as non-educational recommendations that J. receive intensive psychiatric treatment, and a medication consultation. *Id.* at 5-6. In a letter to Elda Kluth, the Board's then Director of Special Education, Dr. Gallo wrote in June 2004, "this young boy, [the Student], is so impaired and so at risk. I really hope you can convince his mother that he needs treatment or maybe he'll end up in a therapeutic setting that will provide that service as part of the educational package." Exhibit B-102. At a PPT held on June 21, 2004, that psychiatric evaluation was reviewed and again, the PPT recommended a therapeutic day program to meet the Student's educational needs.

The Student's eligibility category was changed to serious emotional disturbance ("SED"). Exhibit B-103. The Parent refused all programs offered to her, stating that she wanted Dr. Gallo's recommendations incorporated into the school program. Id.; and Exhibits B-105, B-106 and B-109.

12. The Student returned to Ponus Ridge Middle School as a 7<sup>th</sup> grader in September 2004. The PPT revised the IEP to provide the Student with a more intensive school-based program at Ponus Ridge, including 15 hours per week of special education services, as well as one hour of counseling. Exhibit B-109. While the year began with the Student showing some progress, his behaviors again became problematic. Exhibits B-110 at 4 and B-113. At a PPT meeting on November 5, 2004, the IEP was revised to include 22.5 hours in a self-contained classroom and 0.75 hours of counseling. Exhibit B-115 at 5. In January 2005, the family moved to another area in Norwalk, which was in the West Rocks Middle School district. The Parent and a social worker at Norwalk Hospital requested that the Student stay at Ponus Ridge, which the District allowed. Exhibits B-116 and B-117. On February 4, 2005, J.'s behavior was found to be a manifestation of his disability and the PPT revised his IEP to include 26.25 hours per week of special education services in a self-contained classroom, along with counseling services. Exhibit B-119.

13. In April 2005 the Student made a suicidal threat. When the school reported this to the Parent and requested she take him to a therapist, she did not do so. The school social worker, therefore, made a DCF referral. Exhibit B-124. As a result of the DCF investigation, the family was required to receive mandatory services from DCF. Exhibit B-121.

14. At the annual review PPT meeting on June 16, 2005, the Parent refused to continue the meeting with the school social worker present. She wanted to reconvene with an attorney present. The District agreed to reschedule the meeting. Exhibit B-125. The PPT reconvened on June 21, 2005 and drafted an IEP for 2005-2006 with 18.75 hours of self-contained classroom and 0.75 hours of counseling at West Rocks Middle School for the Students 8<sup>th</sup> grade year. Exhibit B-126.

15. On September 15, 2005, the Student's IEP was modified to provide nine hours per week in the resource room and 0.75 hours of counseling. Exhibit B-129. The Student appeared to be doing better with his behavior. Exhibits B-131 and B-135. The school psychologist reported that the Student continued to vent his anger and stress by verbal aggression, using profanity and disrespectful comments. Exhibits B-134 and B-137 at 2. On January 10, 2006, the Student's resource room was reduced to 6.75 hours and counseling continued at 0.75 hours. Exhibit B-137 at 10. On March 15, 2006, the PPT revised his IEP to nine hours of resource room and 0.75 hours of counseling. Exhibit B-140.

16. At a PPT meeting held on May 2, 2006, the Student reported that he had applied to AITE in Stamford and that he planned to attend there in September. The school-based team recommended a program for J. at Norwalk High School in the event he attended there. The 2006-2007 IEP consisted of 12 hours per week of special education through co-taught classes for English, math and social studies in regular classrooms, as well as one-half hour per week of

counseling with a school social worker. A behavior plan was developed as well. Exhibits B-145 and B-147.

17. The Student was accepted for the 2006-2007 school year at the Academy of Information Technology and Engineering (AITE), a magnet school in Stamford, Connecticut. AITE is a college preparatory high school whose academic expectations exceed those in Stamford's comprehensive high schools. Its curriculum has a heavy concentration in engineering and technology. Approximately 490 students attend AITE, approximately 30% of whom are from districts outside of Stamford. The curriculum is exceedingly challenging. There are 60 staff members, including three special education teachers, a school social worker, school psychologist and part-time speech and language pathologist. Students are enrolled in AITE on a lottery basis. Testimony, Ms. Rivera.

18. Maria Christina (Tina) Rivera is the Assistant Principal at AITE and has held that position since 2004. *Id.*; and Exhibit B-178. In that capacity, she serves as the special education administrator for AITE, supervises and evaluates teachers, and handles disciplinary matters. The Student began attending AITE at the beginning of the 2006-2007 school year. He began receiving special education services from Diane Manetti, one of AITE's special education teachers. Exhibits B-150 and B-177. Ms. Rivera became involved early in the school year with the Student due to his behavioral issues. Testimony, Ms. Rivera; and Exhibit B-176 at 1-6.

19. A PPT meeting was convened on October 18, 2006 to review and revise Norwalk's IEP. The Student's teachers indicated their concerns regarding his behavior. The PPT recommended that the Student receive 12.25 hours per week of special education services and one-quarter hour per week of counseling. In addition, the team recommended a developmental history by the school social worker, as well as educational and psychological evaluations, the latter of which was refused by the Parent. Goals and objectives were developed and the team agreed to develop a behavior plan. Exhibit B-150; and Testimony, Ms. Rivera.

20. On October 19, 2006, the Student threatened a teacher. The Student Response Officer (SRO) became involved. The Student swore at him and threatened him as well. It required two adults to escort the Student to the office. Exhibit B-176 at 7-12; and Testimony, Ms. Rivera.

21. As recommended at the October 18 PPT meeting, the AITE team developed a behavior plan for the Student, which the Student signed. Exhibit B-176 at 20-22. However, the Parent rejected the plan and requested that it be removed from his records. She claimed that it was punitive and undermined his perception of himself "and his disease." She further stated that the school did not have the authority to obtain the Student's signature without her countersignature. *Id.* at 23-25. AITE honored the Parent request to not implement the behavior plan in an attempt to show their willingness to work with the Parent and with the hopes of gaining some trust. Testimony, Ms. Rivera.

22. In October and November 2006 the Student's behavioral problems continued. He was insubordinate to teachers, would walk around the classroom, was disruptive in classes, was found to view a bomb building website on a school computer and misused a golf club in physical

education. Behaviors escalated in December. Security was required in classrooms when the Student failed to respond to teacher direction. He refused to do work and would walk out of classes. The school attempted to process these issues with him and provided him with counseling, but the interventions were not successful. Id.; and Exhibit B-176 at 27-38.

23. A PPT was convened on December 12, 2006 to review the educational evaluation and developmental history recommended at the October PPT, which were completed by AITE staff. Exhibits B-157 and B-152. By December, the Student was failing all of his classes and teachers reported consistent out-of-control behavior. Exhibits B-158 and B-160. The Parent refused to allow the social worker to share the developmental history with the team. The school-based team continued to recommend a psychological evaluation. The Parent refused this, as well the implementation of the behavior plan. The IEP was continued for the student with 13.12 hours of special education services and counseling. Exhibit B-161; and Testimony, Ms. Rivera. Because the PPT meeting was not completed due to time constraints, it reconvened on January 10, 2007. The AITE team members advised the Parent that the Student was receiving the maximum amount of supports available in the magnet school environment, and he was not responding to any of the interventions. The Parent continued to refuse the psychological evaluation and the behavior plan. The IEP was changed to reduce special education time by 3.6 hours (dropping biology cotaught) at Parent request. Exhibits B-164 and B-167; and Testimony, Ms. Rivera.

24. The Student's behaviors during December 2006 through March 2007 included punching holes in the seat on the bus, grabbing the wrist of a teacher when that teacher sought to remove the power cord from the computer, dangerous behavior in the weight room, threatening to start a fire, refusing to attend class, dangerous use of materials in the science laboratory, and insubordination and disruption of classes. Exhibit B-176 at 34-51; and Testimony, Ms. Rivera. On January 19, 2007, the Student was suspended for a minimum of five days for aggressive and threatening behavior. Police presence was required. Exhibit B-168.

25. On March 22, 2007, the Student was involved in a very serious incident at AITE. Ms. Rivera was in conference with another student and heard a popping sound. Concerned, she found the Student outside her door laughing. He had popped bubble wrap, which sounded like gun fire. The security guard became involved and tried to take the bubble wrap away from the Student. The Student stuffed it in his book bag and ran out of the room. Later, the security guard gently placed his hand on the Student's shoulder telling him that his earlier behavior was uncalled for. The Student then began yelling obscenities at the officer. As the encounter escalated, the Student stated that he had a knife and he would stab the security guard. The Student was searched and no knife was found. The Student was arrested for this incident. Exhibit B-176 at 52-60; and Testimony, T. Rivera.

26. Given the severity of the behavior and the Student's past behavioral history, a manifestation PPT meeting was convened on March 30, 2007. One of the Board's Supervisors of Special Education participated in this PPT meeting by telephone. The team recommended a neuropsychological evaluation. The Parent refused. Based on the information available to it at the time, the PPT determined that the Student's behavior was not a manifestation of his behavior. The Parent disagreed. Exhibit B-172.



27. The Parent filed for an expedited due process on April 2, 2007 to challenge the manifestation determination. The Stamford Board of Education was joined as a party. Attorney Mary Gelfman was assigned as the Hearing Officer to this matter. Both Boards of Education filed a joint Motion requesting that the Hearing Officer order a psychiatric evaluation and order an interim placement for the Student at High Road School in Norwalk pending the outcome of the psychiatric evaluation. Hearings were held and on May 31, 2007, Hearing Officer Gelfman ordered the psychiatric evaluation over the objection of the Parent. She also ordered homebound tutoring sufficient to replicate the Student's full program. Exhibit B-185 at 11. On June 11, Hearing Officer Gelfman issued a clarification of her May 31 order and required tutoring in the areas of social studies and English, where he had the best chance of earning credits, and counseling with the school social worker during the last two weeks of June. Exhibit B-187. She also suggested, and the Board agreed, to continue the tutoring during the summer in an attempt to permit the Student to attempt to garner some credits for the 2006-2007 school year. Id.

28. Because the commencement of the hearing created a stay put for the Student at AITE, and because the Parent opposed any other placement for the Student, the Student remained at AITE pending the outcome of that case. During April and May, his acting out behaviors escalated. He walked around classrooms, threw things in class, and was consistently defiant. On April 12, 2007, he completed a paper (which was not one that was assigned to him), which included racist, anti-Semitic and homophobic comments, as well as obscene language. Exhibit B-176 at 63. The content of this paper was extremely disturbing. Ms. Rivera spoke to the Student about it. The Student stated that it was just a joke and laughed about it. Id.; and Testimony, Ms. Rivera. In his Photo Shop class, he completed an assignment with an inappropriate design of a t-shirt containing an obscenity and images of marijuana leaves. Exhibit B-176 at 64-656. In May 2007 he was found playing with a computer using a plastic knife with staples attached to it. Id. at 69. He drew a picture of two individuals hanging from a tree with nooses around their necks, with another figure standing next to them wearing a swastika on his shirt and holding a torch in his hand. Id. at 71.

29. Throughout his year at AITE, the Student had no friends and most of his interactions with other students were negative. His behavior was unpredictable. He never demonstrated any remorse for his actions. He acted as though he could do what he wanted without consequences. He failed all of his courses at AITE. Testimony, Ms. Rivera.

30. In Ms. Rivera's opinion, the Student was dangerous and required a therapeutic school, which could provide a smaller, more contained setting and more counseling for the Student. Id.

31. The psychiatric evaluation as ordered by the Hearing Officer Gelfman was conducted by Dr. Roger Ayres, a child and adolescent psychiatrist, certified by the American Board of Psychiatry and Neurology. He has extensive experience, both in his private practice and in conducting evaluations of students. He also serves as the treating psychiatrist for the Midwestern Connecticut Council for Alcoholism, a program consisting of approximately 15 female adolescents who attend High Road School in Norwalk. Dr. Ayres is familiar with the program at High Road. Exhibit B-179; and Testimony, Dr. Ayres.

32. Dr. Ayres conducted a thorough evaluation of the Student and followed the same protocol that he followed in completing all psychiatric evaluations for educational reasons. He first interviewed the Parent. He next interviewed the Student. He reviewed the Student's educational records, including the prior psychiatric evaluation by Dr. Gallo. He spoke with staff and administrators at AITE, as well as staff at West Rocks Middle School. He also spoke with Kathleen Toombs, the family therapist who had been providing counseling for initially the Parent and then for the Student. She stated that she saw the Student once a month but did not provide him with psychotherapy. Dr. Ayres prepared a report. He also met with the Parent after the evaluation was completed because of his concern that the Student was not receiving the proper treatment that he required. Although such a meeting was not part of Dr. Ayres' standard assessment protocol, he did so in this case because he was so concerned about the Student. The Parent, however, did not agree with Dr. Ayres' concerns and indicated that there were no problems at home, only at school. Exhibit B-191; Testimony of Dr. Ayres.

33. Dr. Ayres concluded that the Student "is an emotionally and behaviorally disturbed young man. . . . His mood is suggestive of an individual with a complicated history of mood disorder with accompanying deficits of attention and disruptive behavior. . . . Although he may not be an imminent danger to himself or others, I would consider him dangerous and his condition very serious." Id.; and Exhibit B-191 at 7.

34. Dr. Ayres diagnosed the Student with Attention Deficit Disorder, Combined Type, Mood Disorder, Not Otherwise Specified, and Conduct Disorder. He explained that the conduct disorder diagnosis is often a precursor to sociopathy. He described this diagnosis as "the last stop before a diagnosis of anti-social personality disorder," which cannot be made prior to 18 years of age. Central in this diagnosis was the Student's lack of remorse or apology for his behavior and lack of respect for others and authority, symptoms also seen by the AITE staff. Testimony, Dr. Ayres and Ms. Rivera.

35. In the course of his evaluation, it was reported that the Student had had multiple head traumas. Dr. Ayres was therefore concerned about a possible traumatic brain injury. He recommended that the Student be evaluated by a neuropsychologist. Exhibit B-191 at 9; and Testimony, Dr. Ayres.

36. Dr. Ayres concluded that the Student required "a highly structured therapeutic school setting in which he can receive ongoing and consistent assistance to further develop age-appropriate social, emotional and/or intellectual skills." Dr. Ayres also recommended that J. should receive immediate treatment by a competent child and adolescent psychiatrist and pharmacological interventions. Exhibit B-191 at 9-10; and Testimony, Dr. Ayres.

37. A PPT meeting was convened on August 29, 2007 for the purpose of reviewing Dr. Ayres' evaluation and planning an IEP for the Student for the 2007-2008 school year. Participating in that PPT were the Parent, the Student, Ms. Friedlander, Joann Shippee (one of the Board's supervisors of special education), Seth Stevens (a school psychologist from Norwalk High School), AITE staff and administration and Dr. Ayres. Dr. Ayres reviewed his evaluation with the PPT. When Dr. Ayres raised his concern about head injuries, the Parent denied any,

although the Student confirmed them. Exhibit B-190. AITE staff reported on the Student's performance at AITE during the 2006-2007 school year. The Parent stated that she wanted the Student to attend AITE with further accommodations. The Student stated that he did not want to go to AITE. The school team discussed possible placements for the Student at High Road, Lorraine Foster School or Cedarhurst. The team ultimately recommended High Road School, since it was located in Norwalk and that program had produced good results for other Norwalk students. Dr. Ayres and the AITE staff were in agreement with the recommendation for placement at High Road School. The PPT developed IEP goals and objectives and also recommended a neuropsychological evaluation, as recommended by Dr. Ayres. The Parent disagreed with the recommendation regarding placement. She indicated that she would agree to the neuropsychological evaluation. Although she never signed permission for the evaluation to be conducted, she believed that it should be completed prior to any programming recommendations being made. Id.; and Testimony, Dr. Ayres, Ms, Friedlander and Ms. Rivera.

38. The August 29, 2007 IEP recommended by the Board ("the 2007-2008 IEP") included goals and objectives in the areas of improvement of comprehension skills; improvement in mathematical concepts, reasoning and computation; organization, study skills and learning strategies; improvement in socially acceptable behaviors in the school environment; and career and vocational exploration. Exhibit B-190 at 8-16. Service hours recommended were 30 hours per week of special education and 1.25 hours per week of counseling, both in a group and individually. Id. at 20.

39. Although the Board had no obligation to provide any tutoring for the Student beyond the summer, the Board continued the tutoring for the Student as an accommodation to the Parent. Ms. Friedlander also suggested other possible therapeutic day placements for the Student to the Parent in the hopes that they could work together. However, the Parent refused any placement other than AITE, tutoring was stopped on November 5, 2007 and the Board advised the Parent that it was legally obligated to commence a due process hearing. Exhibits B-192 and B-193.

40. Karin Bertero is the Educational Director of High Road School. She holds a Masters degree in social work and is certified by the State of Connecticut both as a school social worker and a school administrator. Ms. Bertero has worked for High Road School since 1996, initially at its program in Wallingford. High Road has three separate educational programs in Wallingford, one of which is primarily a program for students with emotional disturbances. In September 2006, High Road opened its program in Norwalk, which replicated the Wallingford program for emotionally disturbed students. The High Road schools, including the Norwalk school, are all approved as private special education programs by the SDE. In her role of Educational Director at High Road School in Norwalk, Ms. Bertero is in charge of the academics and programming, she supervises staff and is in charge of the budget. She functions as the principal at High Road in Norwalk. Testimony, Ms. Bertero.

41. There are currently 38 students in attendance at the Norwalk High Road School program that was recommended for the Student. All students are placed by school districts and have an IEP. Eligibility categories of the student population include Serious Emotional Disturbance, Other Health Impaired, Language Disability and Learning Disability. Students

carry diagnoses such as depression, bipolar disorder, mood disorder, conduct disorder and pervasive developmental disability with aggression. All students require structure to meet their behavioral and emotional needs. Students are between the ages of 8 and 18. There is one elementary school classroom. The majority of the students are in grades 7 through 12. Id.

42. There are five classrooms, each staffed by a special education teacher and an assistant. Some of the special education positions are currently filled by long-term substitutes due to staffing issues, but this does not affect the classroom to which the Student would be assigned at High Road. There are three high school classrooms. Two are staffed by special education teachers and an aide and one is staffed with a long-term substitute and an aide. In addition, three students have one-on-one aides assigned to them. (Testimony, K. Bertero).

43. The school also has two full-time social workers. Psychiatric consultation from Dr. Renata Weissberg is available as needed. The school contracts for OT and speech and language services. If a student's IEP requires those related services, they are provided at High Road School. Id.

44. All students receive daily individual and group counseling at High Road, as well as crisis intervention as necessary. There is a built-in token economy level system which is part of all aspects of the program. Students earn or lose points based on their performance throughout the school day, and are moved up or down the level system accordingly. The students earn different amounts of freedom through this system. In addition, individual behavior plans are developed for students as needed, based on FBAs which are conducted by High Road staff. Id.

45. The school day is divided into twenty-minute segments, which addresses students' motivation and attentional issues. The academic levels of the students vary, but all academics are individualized. In addition to the core academics of language arts, math, science and social studies, students are offered electives on a rotational basis consisting of courses such as Spanish, music, art, Tech Ed, and Career Ed. All students participate in physical education once a week at the Norwalk YMCA. In addition, all students participate once a week in a social skills and anger management program conducted by the social worker. This service from the social worker is in addition to any counseling services required by a student's IEP. The school social worker also comes into elective classes as a co-teacher. One of the goals of the High Road program is to return students to their public schools as soon as is appropriate. Id.

46. Ms. Bertero reviewed the 2007-2008 IEP, including the proposed goals and objectives. She also reviewed Dr. Ayres' evaluation. Based on that information, in her opinion, High Road is an appropriate placement for the Student and can implement the 2007-2008 IEP. In addition, to the 1.25 hours per week of counseling as set forth in that IEP, the Student would receive group counseling once per week. If, after the Student commenced attending High Road, it appeared that additional services were required, a PPT meeting would be convened and the services could be increased as determined by the PPT. Id.

47. Janie Friedlander has been an educator for over 25 years. She is certified as a school psychologist and an educational administrator by the State of Connecticut. She became

the Board's Director of Pupil Personnel Services in August 2007. She convened the August 29, 2007 PPT for the Student and prior thereto, reviewed his record. She also spoke with the Parent prior to the PPT. The date and time of the PPT were based on Parent request. The PPT discussed various placements. Mr. Stevens was present in order to discuss counseling services available at Norwalk High School. The Student stated that he did not want to attend Norwalk High School. The school staff did not believe that Norwalk High School could implement the IEP for the Student. Ms. Friedlander also supported the recommendation for High Road School. She was familiar with the program and had in her prior experience found the High Road philosophy and techniques to be very successful with students like J. Exhibit B-190; and Testimony, Ms. Friedlander.

48. On January 28, 2008, the first day of the hearing, the Parent called Ms. Friedlander and left a message for her that the hearing should not proceed because the Student was with his father in New York. She also sent a letter, which was admitted into the hearing as Exhibit HO-2. Once the hearing was convened, and this letter presented to the Hearing Officer, the Hearing Officer directed the Board counsel to attempt to contact the Parent. Counsel did so and asked the Parent if the Student was withdrawn from the Norwalk Public Schools. The Parent did not answer that question. She also asked the Parent if the Student was enrolled in another school district. He apparently was not. The Hearing Officer then spoke with the Parent and asked whether the Parent intended to attend the hearing. The Parent told the Hearing Officer that she (the Hearing Officer) had no right to proceed with the hearing and then hung up the telephone. The Hearing Officer stated that the Parent did not request that the hearing be postponed and, therefore, the hearing would proceed. The Parent then sent a letter, also dated January 28, 2008, to the Norwalk Superintendent of Schools. Exhibit HO-3.

49. In order to determine whether in fact the Student was withdrawn and enrolled in another school, Ms. Friedlander sent a letter on January 29 to the Parent with the form necessary to withdraw the Student from the Norwalk Public Schools. Exhibit HO-4. The Parent partially completed the form, indicating that the Student had moved outside of Norwalk, but deleted that portion of the form that stated that the Student had transferred to another program. She also wrote a letter misstating and mischaracterizing her communication with the Board's counsel and the Hearing Officer. The letter further stated that the hearing could not have proceeded given that she had not received "even one day written notification." Exhibit HO-5. The hearing dates were agreed upon at the December 12 prehearing conference in which the Parent participated and were chosen based on her availability. The Hearing Officer sent written notice of these dates on December 17, 2007.

50. The Parent sent a letter to Ms. Friedlander dated November 13, 2007, claiming, among other things, that the Student had not been provided the counseling services ordered by Hearing Officer Gelfman. Exhibit B-194. After discovering the administrative oversight, Ms. Friedlander offered it to the Student commencing on January 3, 2008, which the Parent accepted. The Student attended three counseling sessions in January. On or about January 28, 2008, the Parent represented to Mr. Fields, the school social worker who was providing counseling to the Student, that the Student was visiting his father in New York. Testimony, Ms. Friedlander.

51. After the last day of hearing, the Parent contacted Mr. Fields twice, once on February 6, 2008 to report that the Student “may be in counseling next week” and again on February 13, 2008 to cancel the counseling session because the Student was still with his father in New York. She stated that she would call Mr. Fields if there were any changes in the scheduling of the next session which was scheduled for February 28, 2008. Affidavit of Janie Friedlander.

52. The Board has not received any request from either of the Student’s Parents or from any district for the Student’s educational records. The Student is not enrolled in any school either within or outside of the State of Connecticut. The Parent continues to be a resident of Norwalk and has two other children attending the Norwalk Public Schools. Id.

53. On February 28, the Board’s attorney wrote a letter to the Hearing Officer regarding the residency issue and attached a supplemental affidavit from Ms. Friedlander. On February 27, the Parent telephoned Mr. Fields and stated that the Student was “back in town” and asked to confirm that he would receive counseling on February 28. Supplemental Affidavit of Janie Friedlander.

54. On March 3, the Parent sent a letter to the Hearing Officer complaining that the Board’s attorney’s February 28 filing after the closing date of February 14 made filings a “free for all.” She wanted to add her response to the Board’s February 14 and 28 documents. The Parent stated that the Student went to live with his father in New York on January 19 and that she was not advised of this until January 27 when she returned from business travels. She states that J. is 16 years of age, is not obligated to attend school or live with his Mother. His education is the responsibility of his Father and J. She further states that J. is of legal age to “either acquire his GED, attend school in another state, or withdraw from school altogether. None of these decisions are irreversible.” She explained that J. returns to her home periodically for dental appointments related to his braces and that she was scheduling counseling appointments with Norwalk that should have been provided following Hearing Officer Gelfman’s June 2007 order. Letter from Mother dated March 3, 2008.

#### CONCLUSIONS OF LAW:

1. The Parties agree that the Student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) with special education and related services under the provisions of state and federal laws. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. The Parties also agree that J. is a Student with serious emotional disturbance, referred to in IDEA as “emotional disturbance.” 34 C.F.R. Section 300.8(c)(4). As a child with a disability, J. is entitled to a free appropriate public education (“FAPE”). 34 C.F.R. Section 300.1(a).

2. Following a due process hearing requested by the Parent in April and May 2007 and a psychiatric evaluation conducted in June, July and August 2007, which was ordered by that Hearing Officer in June 2007, the PPT met on August 29, 2007 and developed an IEP for the Student at High Road School in Norwalk for the 2007-2008 school year. The Parent refused consent for this out-of-district program. After several months of trying to obtain consent from

the Parent for High Road or other comparable placements, the Board commenced this due process hearing, which it was required to do under state law. Conn. Gen. Stats., Section 10-76h(a)(2) provides in relevant part:

In the event a planning and placement team proposes private placement for a child or pupil who requires or may require special education and related services and the parent . . . withholds or revokes consent for such placement, the local or regional board of education shall request a hearing in accordance with this section . . . provided such action may be taken only in the event such parent . . . has consented to the initial receipt of special education and related services and subsequent to the initial placement of the child, the local or regional board of education seeks a private placement.

See also Regs. of Conn. State Agencies, Section 10-76h-3(c). In this case, the Parent had consented to special education and related services for the Student since January 2, 2003, after he was identified as an Other Health Impaired student in November 2002 based on an ADHD diagnosis from his physician. On June 21, 2004, following a psychiatric evaluation, the Student's eligibility category changed to SED. His Mother continued to consent for special education and related services for the next three school years. The Board, after proposing a private placement on August 29, 2007, and failing to obtain the Parent's consent, was required to file this due process complaint, which it did on December 3, 2007. This Hearing Officer, therefore, had jurisdiction to adjudicate this case at the time the Board filed it.

3. The Parent claims that one week before the commencement of the hearing on January 28, the Student moved to New York to live with his father. The Parents have lived apart for many years. The Student has lived with his Mother in Norwalk and visited his father in New York for at least several years. The Mother continues to live in Norwalk and has two other children enrolled in the Norwalk public schools. Conn. Gen. Stats., Section 10-184 provides in relevant part:

[E]ach parent . . . of a child five years of age and over and under eighteen years of age shall cause such child to attend a public school regularly during the hours and terms the public school in the district in which such child resides is in session, unless such child is a high school graduate or the parent . . . is able to show that the child is elsewhere receiving instruction in the studies taught in the public schools. The parent of a child sixteen or seventeen years of age may consent, as provided in this section, to such child's withdrawal from school. Such parent . . . shall personally appear at the school district office and sign a withdrawal form.

The Parent acknowledges that the Student is not receiving instruction in any school in New York or Connecticut. The Parent has not shown compliance with state law regarding the withdrawal of J. from school. The Parent has not produced sufficient evidence to prove that J. has changed

his residency to New York. The Board has produced evidence that the Student is visiting his father and has not changed his legal residence. Further, as the Mother concedes, the Student can return to Norwalk at any time. In that event, the issue in this case would reoccur. Therefore, the Board is entitled to a ruling on the appropriateness of the program offered to the Student for the 2007-2008 school year.

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 District complied with the IDEA’s procedural safeguards by sending the Parent the notice of the August 29, 2007 PPT meeting. The Parent and the Student attended and participated in the PPT meeting. The Parent has not alleged any procedural violations. As to the second prong of the Rowley inquiry: “IDEA requires only that school districts provide an ‘appropriate’ IEP, gauged by whether the IEP is ‘sufficient to confer some educational benefit.’” Id. In this Circuit, the Court of Appeals has said that the proper gauge for determining educational progress is “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2<sup>nd</sup> Cir. 1997). The Student’s IEP for 2007-2008 contained all of the requisite components under the IDEA and state law. The IEPs included: 1) a statement of J.’s present levels of [academic and functional] performance; 2) annual goals and short-term objectives; 3) the specific educational services to be provided; 4) an explanation of the extent to which J. would not participate in the regular education programs; 5) objective criteria and evaluation procedures for determining whether objectives are being met; and 6) the projected initiation date and duration of proposed services. 20 U.S.C. Section 1414; See Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 122 (1998). The IEP is sufficient for J. to receive meaningful educational benefits.

5. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. Board of Education of the Hendrick Hudson Central School District v. Rowley, supra., 181; 34 C.F.R. Section 300.114(a). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. Sections 300.114 through 300.120; Conn. State Regs. Sections 10-76a-1 and 10-76d-1. School districts must evaluate whether a student can be educated in a regular classroom if provided with supplemental aids and services, and a full range of services must be considered. Oberti v. Board of Education, 995 F.2d 1204, 1216 (3d Cir. 1993). The district must examine the educational benefits, both academic and nonacademic, to the student in a regular classroom. Among the factors to be considered are the advantages from modeling the behavior and language of non-disabled students, effects of such inclusion on the other students in the class and the costs of necessary supplemental services. Id. “Least restrictive environment” is defined as follows under IDEA:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs



only when the nature or severity of the disability of a child is such that such education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. Sec. 1412(a)(5); 34 C.F.R. Sec. 300.114(a). FAPE must be provided to disabled children "in the least restrictive appropriate environment." Polera v. Bd. Of Educ., 288 F.3d 478, 481 (2d Cir. 2002).

6. Section 300.116(b) provides: "The child's placement—(1) is determined at least annually; (2) is based on the child's IEP; and (3) is as close as possible to the child's home." In this case, the PPT developed an IEP for the Student for his 10<sup>th</sup> grade year of high school at High Road school, a state-approved facility in Norwalk which provides special education and related services in a therapeutic environment. Although the Mother claimed at the PPT meeting that the Student should be educated at AITE, no one else supported this preference, including the Student, at the PPT meeting. To the contrary, the staff at AITE, the consulting psychiatrist and Norwalk staff all advocated against the Student's continued placement at AITE. They all supported his placement at High Road. The evidence is abundant that the Student could not be educated at AITE or the public high school and that because of his long history of disruptive, aggressive and oppositional behavior he required a therapeutic environment in order to access education. High Road provides such a program in the town in which the Student lives.

7. While the IEP does not have to maximize the child's educational potential, it must provide "meaningful" opportunities and the possibility for more than "trivial advancement." Walczak, supra at 130. There is substantial evidence in the record that the Student does require an out-of-district placement in order to be educated. The evidence does not support the Parent's claim that the Student could have been educated successfully at AITE. The Parent did not attend the hearing or request a postponement to present any evidence in support of her position advocated at the August 29, 2007 PPT meeting. Even with the maximum amount of supports and services made available to him at AITE, the Student did not receive educational benefit during the 2006-2007 school year. This conclusion is supported by the lengthy disciplinary problems the Student had and his failing all courses.

8. The Board has proven by a preponderance of evidence that the proposed placement at High Road provides the Student with a meaningful education in the least restrictive environment as required by the IDEA. 20 U.S.C. Section 1412(a)(5); 34 C.F.R. Section 300.114 (2006 Rev.). Therefore, the Board's proposed IEP and placement for J. for 2007-2008 provided him with FAPE.

FINAL DECISION AND ORDER:

1. The program proposed by the District on August 29, 2007 for the 2007-2008 school year at High Road school in Norwalk offered the Student a free appropriate public education in the least restrictive environment.

2. The Student should be placed for the 2007-2008 school year at High Road school.