

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Westport Board of Education v. Student

Appearing on Behalf of the Parent: Attorney Jennifer D. Laviano, P.C.
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Appearing on Behalf of the Board: Attorney Marsha Belman Moses
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Appearing before: Attorney Gail K. Mangs, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Board's Issue:

Whether the following evaluations should be performed:

- a. A speech and language evaluation (receptive/expressive, vocabulary and sound production) by the Board's speech and language therapist;
- b. An occupational therapy evaluation by the Board's occupational therapist;
- c. A physical therapy evaluation by the Board's physical therapist;
- d. A cognitive evaluation by the Board's school psychologist;
- e. An educational evaluation by the Board's special education teacher;
- f. A comprehensive developmental evaluation by the Board's consulting psychiatrist;
- g. A speech and language evaluation focusing on apraxia and retrieval by Dr. Paul Cascella;
- h. A neuropsychological evaluation by Dr. Armin Thies.

Parents Issues:

1. Did the Board provide an appropriate program for the 2001-2002 school year?
2. Did the Board fail to properly evaluate?

3. Were the parents procedural safeguards violated:
was there a failure to provide timely PPT minutes and IEP and failure to convene an emergency PPT promptly?
4. If the Board did not provide an appropriate program for the 2001-2002 school year, does the Foundation School provide an appropriate program?

PROCEDURAL HISTORY:

This hearing was requested on May 15, 2002. The prehearing conference was held on May 28, 2002. The hearing was convened on the following dates: June 20 and 21, 2002; July 11, 12, 23, 29, and 30, 2002; August 1 and 2, 2002; and September 5, 12, 17, 26 and 27, 2002. Briefs were mailed on October 11, 2002; reply briefs were mailed on October 18, 2002. The date for the mailing of the final decision and order was set as November 5, 2002. The Board of Education presented the following witnesses: Robin Marino, Nadine Schwab, Cynthia Gilchrest, Dr. Barbara Rickler, Dr. Paul Cascella, Dr. Armin Thies, Mary Imperioli, and Sharon Gilliland. The Parents presented the following witnesses: C.'s Mother, C.'s Father, Dr. Nancy Schwartz, Dr. Kenneth Bonnet, and Toni Giannone.

SUMMARY:

C., who is now six years old, was born with microcephaly. Recent genetic testing has shown that C. has a genetic anomaly whose long term effects are not yet known. He received services from the Birth to Three program where he presented with global delays. During the 1999-2000 school year, C. began receiving special education services from the Board. He attended the school district's integrated preschool where he attended special education and mainstream classes and received occupational, speech and language and physical therapies as well as ABA ("applied behavioral analysis"), extended school year and home programming. During the 1999-2000 and 2000-2001 school years, C. made progress on many of his goals and objectives. When C. returned to school after the summer of 2001, school district personnel felt they were seeing a different child. C. stopped making his previously slow by steady progress and appeared to have regressed in many areas. Certain disturbing behaviors were also noted by the staff. In addition, C. had ongoing ear infections which were treated with intravenous antibiotics as well as surgery. Instructional changes were made during the fall and winter of 2001-2002 to which C. did not seem to respond. The school attempted to get specific medical information but were unable to receive direct documentation from C.'s physicians until late in the school year. Finally, in February, 2002, a PPT was convened during which the school district requested parental consent for the evaluations at issue. Although the parents and school district engaged in discussions throughout the spring, the parents refused to consent to the evaluations and evaluators chosen by the school. By the end of the school year, C. appeared to be making limited progress but did not return to the developmental levels he had demonstrated in August, 2001. The Board requested due process in May, 2002; the parents countered with their own

issues and placed C. at the Foundation School for the 2002-2003 school year.

FINDINGS OF FACT:

1. C. was born on September 23, 1996 with microcephaly. As a toddler, he received speech and language/oral motor therapy, physical and occupational therapies and specialized instruction, including ABA programming, from the Birth to Three program. C. is physically small for his age and has developmental delays in the following areas: social/emotional, cognitive/academic, communication, physical development, and fine and gross motor. He processes very slowly and exhibits a long reaction time. In addition, C. has chronic ear disease. At eight months of age, ear tubes were first inserted; from then on, C. suffered recurring ear infections, bleeding from the ears, granulation, and subsequent insertions of tubes. (Exhibits P-4, B-1, B-2, B-6, Testimony of Mother)
2. At a PPT convened in June, 1999, C. was found eligible for special education services as a developmentally delayed child. Due to programming disagreements between the parents and the school district, C. did not begin his program in the district's integrated preschool until January, 2000. The district's preschool has a student body comprised of approximately two-thirds regular education and one-third special education children. C.'s educational program was not finally developed until March, 2000 when the parents and school district reached an agreement that called for the assistance of the Eden Institute of New Jersey, which provided Board Staff with ABA training and supervision, and Dr. Pappanikou, an educational consultant who recommended that C. receive all direct teaching in an isolated setting and that he receive a home program. Dr. Pappanikou also selected C.'s aide specifically for her ability to engage C. Accompanied by this paraprofessional, C. attended the special education classroom at the Board's preschool .5 hours/day in the inclusion (mainstream) classroom, and also received 3.5 hours/week of speech and language therapy, 1.5 hours/week of physical therapy and 1.5 hours/week of occupational therapy. In addition, C. received 1.5 hours per day of home programming consisting of ABA trials and functional skill development. This program provided 17.5 hours per week of programming. C. made satisfactory progress in most areas during the 1999-2000 school year. (Exhibits B-8, B-18 through B-50, Testimony of Robin Marino, Preschool Administrator)
3. The PPT provided an extended school year program for the summer of 2000 which included 20 hours per week of programming with placement in inclusion and self-contained classrooms, the provision of speech therapy, physical therapy and occupational therapy and 7.5 hours/week of home programming. During the summer program, Robin Marino made home visits to supervise the home therapist, coordinate the home/school programs, and develop a relationship with C.'s mother. C. was able to maintain most skills during the summer program. (Exhibits B-48 through B-56, Testimony of Robin Marino)

4. For the 2000-2001 school year, the PPT again his time in the inclusion classroom. The educational program agreed upon provided 23 hours per week of programming with placement in the special education classroom and one hour per day in the inclusion classroom. In addition, the recommendation included 3.5 hours per week of speech therapy, 1.5 hours per week each of direct physical and occupational therapy, .5 hours per week each of indirect physical and occupational therapies and 1.5 hours per day of home programming. Two hours/week of ABA programming as well as ongoing paraprofessional support were also provided. The team hoped that C. would soon progress to the point where a home program was no longer necessary. (Exhibit B-61)
5. The 2000-2001 home program provided ABA programming and work on communication skills, vocabulary and developing C.'s independence with activities of daily living (ADLS); these included eating skills, toilet training, dressing, hand washing, and moving safely about the house. The home program was supervised by Robin Marino and provided by Sam Rotini and Mary Imperioli who later became C.'s special education teacher during the 2001-2002 school year. (Exhibits B-63, B-64, B-67, B-69, B-75, B-76, B-77, B-81, B-88, B-94, B-107, B-111, B-113, B-115, B-119, B-121, B-125, B-126, B-128)
6. C.'s program included consultation from the Eden Institute several times during the 2000-2001 school year; Eden consulted only once during the 2001-2002 school year. (Exhibits B-68, B-74, B-79, B-99, Testimony of Robin Marino and Mary Imperioli)
7. Frequent team meetings, including C.'s parents, teachers and therapists were held throughout the 2000-2001 school year to monitor C.'s progress and coordinate the school/home programs. (Exhibits B-66, B-70 through B-73, B-78, B-90, B-100, B-109, B-118)
8. During the 2000-2001 school year, Sharon Gilliland, C.'s speech therapist, concentrated on C.'s oral motor functioning and expressive and receptive language. C. made satisfactory progress on most of his speech and language goals. His vocabulary increased as did his spontaneous verbal output including the production of two word phrases. He was able to use more language without prompts across most school settings. C. could also imitate almost any word presented. (Exhibits B-82, B-97, B-123, Testimony of Sharon Gilliland)
9. Physical therapy sessions during the 2000-2001 school year focused on improving C.'s postural strength and control, body awareness, balance and gross motor skills; while he made progress during the school year, he continued to demonstrate deficits in all these areas. By the end of the school year, C. required less assistance to negotiate stairs and maneuver about the classroom although he still required support with his balance when walking through the halls and moving around obstacles. He also required adaptive seating (a Rifton chair) to maintain stability and an upright posture. (Exhibits B-83, B-98)

10. During the 2000-2001 school year, occupational therapy services focused on developing C.'s upper extremity strength, coordination, sensory processing, motor planning, visual perceptual skills, self-help and fine motor skills. C. made satisfactory progress on many of his occupational therapy goals and objectives. (Exhibits B-85, B-96, B-122)
11. C.'s special education teacher reported that C. made good progress during the 2000-2001 school year. He improved in his ability to follow one-step instructions and to maintain attention during both one-to-one activities and during circle time in the regular education classroom. The regular education teacher reported that preferential seating, small versions of the class schedule, a days of the week chart and a personal copy of the book being read helped C. stay focused during the circle activities. C.'s play skills also improved; although he continued to engage in parallel play, his regard of peers became more frequent and he was more aware of his environment. His spontaneous production of language also improved. C. made at least satisfactory progress on most of his special education goals and objectives. In the middle of the 2000-2001 school year, C.'s special education teacher left and was replaced by a long term substitute for the rest of the year; C. adjusted to the new teacher without difficulty. (Exhibits B-86, B-95, B-103, B-105, B-124, Testimony of Sharon Gilliland)
12. During the 2000-2001 school year, C.'s chronic ear problems, including infections, bleeding and granulation continued to a significant extent. C.'s ears were cleaned out frequently; due to his reaction to such procedures, cleaning was done under general anesthesia. C.'s mother testified that school staff did not request any medical documentation about these procedures. C. was absent approximately 12 days during the 2000-2001 school year. (Exhibit B-196, Testimony of C.'s Mother)
13. In March, 2001, C.'s parents obtained a vision evaluation. Significant delays in visual motor and visual perceptual skills were found. A diagnosis was made that included eye movement dysfunction, eye turn out, eye teaming dysfunction, focusing insufficiency and visual perceptual delay. Glasses and vision therapy were prescribed and intense occupational therapy and physical therapy were recommended. (Exhibit B-101)
14. Planning for the 2001-2002 school year occurred at PPTs convened in March, April and June of 2001. C.'s mother requested an increase in occupational therapy time and an occupational therapy evaluation based upon the results of the vision evaluation and her concerns about C.'s fine motor, visual motor and sensory needs. The occupational therapist disagreed with the need for an evaluation and increased service time. The final recommendation again included placement with a paraprofessional at the Boards preschool with 3.5 hours/week of direct speech therapy and 1 hour/week of indirect speech therapy, 1.5 hours direct physical therapy and 1 hour/week of indirect physical therapy, 2 hours/week direct occupational therapy and 2 hours/week indirect occupational therapy (an increase in time), 1.5 hours/day of ABA instruction, 1 hour/week of direct teaching (new for C.) and an increase to 11 hours/week in the

inclusion classroom. The special education classroom would have 3 children, each with their own paraprofessional. The team also recommended that C.'s school day be gradually increased until he was in school from 8:30 to 2:00 each day, a total of 27.5 hours per week. This program was immediately implemented with the agreement of everyone on the team. (Exhibits B-103,

15. At a PPT convened in May, 2001, the team agreed to provide an extended school year program for six weeks. Members of the team agreed to maintenance goals and objectives and a program that included time in both special education and regular education classrooms and the provision of speech, physical and occupational therapies and ABA instruction. At a PPT in June, 2001, the PPT agreed to provide 8 home visits during the month of July, 2001. At this PPT, team members reported that C. was making ongoing progress with his vocabulary, spontaneous language and socialization skills. He also was responding to adult and peer initiation of contact and would now tap an adults arm to gain attention. The 2001 extended school year program ended on August 10, 2001. (Exhibit B-114, Testimony of Robin Marino)
16. C. was able to maintain most skills during the 2001 summer program. By August 10, 2001, C. was using two and three word phrases, making requests with three word sentences, (I want...), and imitating words, phrases and gross motor movements. He made better eye contact, could follow directions with assistance, engaged in activities and produced more spontaneous language. The summer home program emphasized organizing C.'s home environment, oral motor skills, and the initiation of play. C.'s parents were generally pleased with the progress C. had shown over the 2000-2001 school year. (Exhibits B-130 through B-137, Testimony of Robin Marino, C.'s Mother, and Mary Imperioli)
17. The 2001-2002 school began on August 28, 2002, just 18 days after the summer program ended. During the first week of the school year, Board personnel began to feel that C. had returned to school a very different child than the one who had left on August 10. On September 12, 2001, during the first team meeting of the school year, Board staff expressed concerns about C.'s gait, tiredness, poor appetite, lack of balance, and bouts of quiet staring. They noted that C. had also been observed slapping and pulling the hair of both children and adults. Mary Imperioli testified that C.'s response time had significantly increased. C. also seemed to have lost much of his vocabulary, rarely initiated speech or peer interaction and was difficult to engage in activities without physical prompting. Ms. Imperioli also testified that C. did not always seem to know who she was (although she had provided much of his home program). In early September, staff thought C. was limping and his foot looked sore. His mother took him for x-rays and blood work to rule out Lyme's Disease; all tests were normal. Later, in March, 2002, staff members felt they were seeing more blank staring and some shuddering. Concerns were also raised about seizure-like behaviors several times during the school year. In April, 2002, the school staff thought they saw one side of C.'s face drooping during a physical therapy session; C.'s mother brought him to his otolaryngologist and dentist where everything was found to be normal. When Robin Marino recommended that C. be seen by a

neurologist due to his staring and lack of balance, C.'s mother took him to Dr. Laura Ment who performed an MRI; the results were normal. Each time school personnel expressed concerns to C.'s mother about his behaviors or symptoms, she brought C. to physicians. According to C.'s mother, no physician expressed concerns about what the school was seeing although no medical documentation was provided. Robin Marino testified that many of these behaviors and symptoms had been noted at various times in previous years, but never as intensely or as frequently as during the 2001-2002 school year. In addition, these behaviors and symptoms had not been seen in combination with the cessation of C.'s previously slow but steady progress and his regression in so many skill areas. Some of the concerning behaviors were also seen at home, but, according to parent report, never to the extent and intensity reported by the school.. (Exhibits B-140, B-165, B-169, B-174, B-185, Testimony of Robin Marino, C.'s Mother, C.'s Father and Mary Imperioli)

18. In response to the changes noted in C.'s behavior, C.'s teachers and service providers made some instructional changes. Extra physical and verbal prompts were added and tasks were broken down. Primary reinforcers, a narrower range of choices, three dimensional icons to facilitate choice of activities, visual supports, duplicate materials, and exaggerated presentations were tried in order to elicit more participation and language from C. C.'s teachers returned to material previously mastered and limited the introduction of new material. The school psychologist collected data to determine antecedents for C.'s behaviors but the data was not conclusive; in addition, the data was reviewed to find patterns of behavior although the data was not collected or charted in an organized way. Scripts and verbal expectations were created in the fall of 2001 to encourage language and interaction but C.'s performance remained inconsistent. Play schemes were repeated to help C. develop appropriate spontaneous play. In January, 2002, ABA drills were stopped and the team moved to play-based teaching but again, C.'s performance was inconsistent. Despite C.'s limited reaction to these instructional changes, the IEP was not changed and a PPT was not convened until February, 2002. In December, 2001, Robin Marino recommended obtaining evaluations and performing the triennial earlier than required. (Exhibits B-140, B-141, B-145, B-157, B-165, B-185, B-201, B-204, Testimony of Robin Marino, Sharon Gilliland, and Mary Imperioli)
19. In September, 2001, C.'s mother alerted the school that C. had a cholesteotoma, a growth of tissue in his ear, that might require surgery. On October 2, 2001, C. received general anesthesia in order to remove granular tissue from his ear canal. At the same time, a midline catheter was inserted in his arm for the administration of intravenous antibiotics to treat his chronic ear infections. C. returned to school wearing long sleeves as a covering for the wrapped catheter. C.'s mother sent a letter to the preschool outlining the treatment and stated that the school should not take any special precautions or provide any special care other than keeping the site dry. C.'s mother was told that this was not sufficient as the school required written documentation directly from C.'s physicians. The school district Nursing Supervisor, Nadine Schwab, testified that the school usually gets medical orders for children who return to school with catheters; the orders cover what to do if the catheter dislodges

and the medications given so the school nurse can monitor the child for reactions and/or complications. In addition, medical orders were needed with regard to C.'s surgery; nurses can only take medical orders from physicians, not from parents. The catheter was eventually removed in November, 2001 after which C. had another ear infection. (Exhibits B-80, B-142, B-185, Testimony of Nadine Schwab and C.'s Mother)

20. In the November 28, 2001 team meeting, the team discussed their ongoing concerns about C.'s decreased performance. They wondered whether the changes they saw were the result of physical, medical or neurological concerns. Tangible reinforcers were used to increase C.'s verbal output; some success was noted with these. C.'s mother reported to the team that C. was doing well at home and used language when motivated. It was agreed to have the speech therapist observe C. at home with his mother and to have C.'s mother observe C. in school and act as his paraprofessional for a day. (Exhibit B-143)
21. Sharon Gilliland observed C. at home with his mother on November 28, 2001. C. exhibited essentially the same behavior at home as at school. He produced the same amount of language as in school and his utterances were of similar length although he was very engaged with his mother during their interaction. (Testimony of Sharon Gilliland)
22. Progress reports dated January, 2002 indicated that c. had made little progress since the 2001-2002 school year had begun. Mary Imperioli and C.'s speech therapists believed that C.'s illnesses, medical issues and poor attendance had compromised C.'s progress. C. was absent approximately 41 days during the 2001-2002 school year; these included absences after his surgeries as well as family vacations. Mary Imperioli noted that there had been no progress in the area of following verbal commands or directions; he continued to need numerous verbal prompts, tangible reinforcers and physical prompts. C. also continued to demonstrate slapping and hair pulling. C.'s speech therapists reported that C.'s spontaneous expressive language as well his receptive language skills were significantly decreased as compared to August, 2001. They also stated that C. required facilitation to follow simple routines. C.'s physical therapist reported that C. had made limited progress in being able to move through the school environment with his head and upper trunk in an upright position, although he had made progress in maintaining an upright posture when sitting in chair. (Exhibits B-144 through B-147, B-187)
23. On January 3, 2002, a tympanomastoidectomy was performed on an outpatient basis to clear out infection in C.'s mastoid bone. On January 16, 2002, C. returned to school with gauze wrapped around his head to keep cotton in his ears. The school nurse asked C.'s mother to provide written medical documentation about the procedure. School staff felt that C. was even more distracted after the surgery; sometimes he seemed unaware of what was going on around him. (Testimony of C.'s Mother, Robin Marino and Mary Imperioli)

24. On January 21, 2002, C.'s mother spent the day at school to observe and act as C.'s paraprofessional. She reported that in the integrated classroom there was little interaction between C. and the other children and that the adults did not facilitate such interaction. She also noted that C. did not seem to have had the preteaching he would need to participate in circle time, there was no preparation for transitions, and expressive language expectations for C. and that he consistent transition language was not used. Also, she felt that there were few seemed isolated in the inclusion classroom. C.'s mother described the special education classroom as having too many noisy distractions. Finally, C.'s mother stated that little was being done to make C. use his language at school. C.'s mother testified that in the 2000-2001 school year, there had been preteaching each afternoon for the following morning's circle time and that specific vocabulary was targeted for C. She also felt that this year, in contrast to the previous school year, C. was unengaged and totally different from the child she saw at home. Mary Imperioli testified that many of the elements of the program that C.'s mother thought were missing were actually in place, but that they did not implement their usual programs that day as the team thought that C.'s mother was going to demonstrate how she works with C. to elicit spontaneous language and play. (Exhibit P-3, Testimony of C.'s Mother and Mary Imperioli)
25. After C.'s mother served as his paraprofessional on January 21, 2002, a team meeting was held and several changes were made. Preteaching was increased and more specific scripts were used. Where theme vocabulary had been orally shared, it would now be put into writing. (Testimony of Mary Imperioli and Sharon Gilliland)
26. A series of letters and phone messages were sent to C.'s parents to elicit documentation from C.'s physicians with regard to his medical procedures during the 2001-2002 school year. Robin Marino left a phone message for C.'s parents on January 4, 2002 requesting medical information and followed up the call with a letter on January 14, 2002 reiterating the need for the necessary information from C.'s physician as to the procedure that was completed, the possible side effects or complications, and C.'s status in attending school. She stated in the letter that obtaining such information is their usual procedure when a child has undergone a medical procedure. On February 13, 2002, Nadine Schwab met with C.'s mother to emphasize the need for documentation from C.'s physician. On March 14, 2002, Robin Marino again requested medical documentation fully explaining the reasoning behind the request. She set March 25, 2002 as the date on which such information had to be received by the school district or C. might be excluded from school. Another letter was sent on March 22, 2002 by Robin Marino stating that after consultation with Cynthia Gilchrest (Director of Pupil Services) and Nadine Schwab, C. would be excluded from school beginning March 26, 2002 if the medical information was not received. On March 25, 2002, C.'s mother brought a brief letter from C.'s pediatrician stating that C. was healthy and could fully participate in all school activities. At a PPT dated April 25, 2002, C.'s mother presented a letter from C.'s surgeon, Dr. Kveton, generally stating that C. was not at any risk related to his surgery and that he could participate in all school activities and therapies without restriction. He also stated that other students were not at risk from the discharge from

C.'s ear and that treatment of the ear was not required by school staff. Nadine Schwab did not consider these letters sufficient a neither letter answered all the school questions nor did they address their concerns about C.'s ear canal which, due to his surgeries, was now wide and short with the ear drum easily reached. The letters were, however, sufficient to allow c. to remain in school. C.'s mother testified that until she spoke with Nadine Schwab, she did not realize that written doctors' orders were necessary. (Exhibits B-148, B-158, B-159, B-161, B-162, B-163, B-164, B-176, Testimony of Nadine Schwab and C.'s Mother)

27. On February 13, 2002, A PPT was convened to plan the triennial evaluation. Due to their concerns about C.'s regression, the team recommended doing the triennial immediately rather than waiting until June. The team recommended that Board staff complete speech, physical and occupational therapy evaluations as well as cognitive and educational evaluations. They also recommended that a comprehensive developmental evaluation by Dr. Barbara Rickler, a child psychiatrist, be performed. This multi-disciplinary approach would include a medical and developmental history as well as observations, a home visit, review of educational records, and standardized testing. Robin Marino explained that a psychiatrist was necessary as she has the expertise to pull together C.'s medical and educational issues. The Board also requested consent for an independent speech and language evaluation by either Wendy Marans or Paul Cascella to obtain more information about C.'s word retrieval difficulties and possible apraxia. The PPT minutes indicate that the team hoped to use the information gained to better understand C. and to develop the most appropriate educational program to meet his needs. C.'s mother stated that she needed to meet with the proposed evaluators before she could agree to the evaluations. (Exhibit B-151, B-160, Testimony of Robin Marino)
28. Nadine Schwab testified that she considered a developmental assessment essential for C. and that it should be performed by a psychiatrist who could provide the broadest assessment. She also stated that even if all the behaviors that concerned the school staff had been demonstrated by C. in previous years, she would still recommend a developmental assessment. (Testimony of Nadine Schwab)
29. While the parents believed that evaluations were needed, they also felt that C.'s lack of progress was due to the inappropriate nature of the Board's program. C.'s mother believed that changes in personnel during the 2001-2002 school year had negatively affected C. and testified that by the end of the first week of school, C. was exhibiting separation problems. C. had a new special education teacher, Mary Imperioli (although he knew her well as she had provided part of his home program from July, 1999 through the summer of 2001). C. had the same regular education teacher and speech therapist, although in October, 2001, due to staffing issues, C.'s speech therapy program was divided between his original speech therapist, Sharon Gilliland, and a new speech therapist. C.'s mother described the two therapists as having very distinct approaches and using different techniques. She believed they could not present a coordinated program and that this was confusing for C., although Sharon Gilliland testified that she and the new speech therapist communicated frequently and

were well aware of what the other was doing. C.'s mother particularly felt that the introduction of two new paraprofessionals in the fall of 2002 as well as a new occupational therapist contributed to C.'s lack of progress. (Although C.'s prior occupational therapist worked with the new occupational therapist during the first month of school to help C. make the transition.) C. also had a longer school day in the 2001-2002 school year (although he was gradually transitioned to this new schedule). C.'s parents also felt that C. was negatively affected by the provision of his speech therapy and ABA drills in spaces different from those used the previous school year. C.'s mother saw the ABA cubicle as too noisy and the speech therapy room as visually distracting (although Sharon Gilliland described it as larger, quieter and closer to his classroom). C.'s parents were also upset by the discontinuation of the home program for the 2001-2002 school year and by what C.'s mother had observed during her day as C.'s paraprofessional. (Exhibit B-175, Testimony of C.'s Mother, Robin Marino and Sharon Gilliland)

30. C.'s parents could not understand why a psychiatrist was needed for the evaluation; they felt that all medical questions had been resolved by their trips to C.'s physicians to confirm that C. was physically healthy. They also did not want C.'s medical information included in his educational records as they did not want C. viewed as having medical difficulties in addition to his other issues. C.'s parents objected to the use of school district staff for some of the evaluations as they felt that if C.'s teachers were unable to effectively work with him, then they could not effectively evaluate him. (Testimony of C.'s Mother)
31. Robin Marino testified that school personnel did not believe that the staff changes were causing C.'s regression and lack of progress; most children respond to the same instructional strategies even while adjusting to new routines and staff. In addition, C. had been exposed to staff changes before and had made good transitions. The school staff believed that the extreme and sudden changes they were seeing in C. were more likely due to medical or neurological issues. Therefore, they felt that medical issues had to be ruled out before making any changes to C.'s IEP. Nadine Schwab testified that she considered C. to be medically complex; it was concerning to her that there were no evaluations or documentation to show if the changes they were seeing were medical or neurological. (Testimony of Robin Marino and Nadine Schwab)
32. C.'s mother met with Dr. Barbara Rickler, a board certified psychiatrist, in February, 2002. She concluded that Dr. Rickler did not have the necessary neurological background to appropriately evaluate C. and would only look at C. from a psychiatric point of view. The offer of Dr. Dorothy Stubbe was also rejected as another psychiatrist with no neurological expertise. C.'s mother talked to Dr. Cascella but felt he did not have sufficient clinical experience nor the specialization in neurological speech issues to appropriately evaluate C. In addition, she believed that Dr. Cascella had assumed that C. was retarded and had rejected the neurological aspects of C.'s speech difficulties. Dr. Cascella, who is licensed by the states of Connecticut and New York as a speech and language pathologist and is an associate professor in the Department of communication Disorders at Southern Connecticut State University,

testified that he teaches courses that cover developmental apraxia syndrome.
(Exhibits B-175, B-194, B-197, Testimony of C.'s Mother and Dr. Paul Cascella)

33. On April 5, 2002, in a meeting between C.'s parents and the preschool director, C.'s parents requested a neuropsychological examination. Robin Marino stated that she would try to get names of neuropsychologists. (Exhibit P-4)
34. On April 18, 2002, an outpatient tympanomastoidectomy was performed on C.'s other ear. Since the second surgery, C. has not had another ear infection.. (Exhibit B-179, Testimony of C.'s Mother)
35. On April 8, 2002, the parents requested an emergency PPT and listed several dates on which they were available; one of these dates was April 25, 2002. The PPT was convened on April 25, 2002 to discuss the parents concerns about C.'s progress and the lack of agreement on evaluators. At the meeting, C.'s parents requested that a neuropsychological evaluation be performed by Dr. Kenneth Bonnet and his team at The Learning Lab in Stamford, and that Dr. Nancy Schwartz, who had provided speech therapy to C. on a private basis from July 1998 until January, 2001, perform the speech and language evaluation. They also asked for an independent occupational therapy evaluation. Cynthia Gilchrest stated that DR. Schwartz was not acceptable as she would not bring a fresh perspective. She offered to have Dr. Armin Thies perform the neuropsychological evaluation but state that she would also research the credentials of Dr. Bonnet and his team. Nadine Schwab requested more information about C.'s ear surgeries and Robin Marino requested permission to speak to C.'s surgeon and pediatrician. In response, C.'s mother presented a letter from C.'s surgeon, Dr. Kveton, dated March 25, 2002 but stated that C.'s doctors did not want to be involved with school issues and that there was no reason for the school to talk to them. By the end of the PPT, the parents had not consented to the proposed evaluations. (Exhibits B-167 and B-176)
36. In a letter dated April 25, 2002, Robin Marino requested written documentation from C.'s surgeon as to the procedure performed, possible side effects, C.'s status with regard to school attendance and participation in school therapies, a list of C.'s medications, and any medical orders. Dr. Kveton responded in a letter dated April 26, 2002. He stated that C. could participate in all school activities and therapies without restriction and that school staff did not have to provide any treatment or care. (Exhibits B-178 and B-179)
37. In a letter dated May 7, 2002, Cynthia Gilchrest stated that she had reviewed Dr. Bonnet_s credentials and had also called other Pupil Services directors and professionals in the fields of psychology, neuropsychology and psychiatry but was unable to find anyone who could recommend Dr. Bonnet. She again proposed Dr. Thies for the neuropsychological evaluation as well as the other evaluators previously proposed. (Exhibit B-180)

38. Dr. Nancy Schwartz provided speech therapy privately to C. from July, 1998 until January, 2001 when therapy was discontinued due to ongoing health issues with C.'s ears. When she initially worked with C., his primary needs were in the areas of apraxia and language comprehension and use. C. also required a very long processing time. In April and June, 2002, Dr. Schwartz evaluated C. finding that although he had made progress, the progress was minimal. He still had major comprehension and expressive language needs as well as word retrieval difficulties. She recommended an intensive language program with at least 1.5 hours/day of speech and language intervention of which 2/3 should be individual. (Exhibit P-5, Testimony of Dr. Nancy Schwartz)
39. Dr. Kenneth Bonnet is a neuropsychologist who works with The Learning Laboratory, a private group that specializes in learning disabilities. He is also a research professor at the New York University School of Medicine. At the request of C.'s parents, he saw C. about six times during the spring of 2002. He described C. as developmentally delayed in the areas of fine and gross motor skills and receptive and expressive speech, and as having a limited ability to interact. Dr. Bonnet also commented on C.'s poor balance and very slow response time. He believes that C. can not be fully evaluated at this time due to his limited language development and possible vision and hearing limitations. He based his assessment on observation, the Peabody Picture Vocabulary Test (PPVT) and the Bayley Scales of Infant Development. At just over 5.5 years of age, C. tested at approximately the 2.6 year level. Dr. Bonnet also studied C. with visual evoked potentials and EEG testing which showed no evidence of seizure activity. Dr. Bonnet noted certain physical abnormalities in C. such as double hair whorls, the shape of his head and ears and the lack of a lifeline in his palms (which suggested the possibility of a genetic anomaly). He recommended that the parents see a geneticist for a more intense genetic study. C.'s parents complied with this request. The genetic study performed at Yale University resulted in the finding of a submicrodeletion on chromosome 7 (a discussed below). Dr. Bonnet also recommended that C.'s MRI be studied again by C.'s neurologist. He believes that while the MRI was grossly normal, it is not normal in certain details that are often related to autism and Asperger's syndrome. Finally, Dr. Bonnet recommended that C. be seen by an ophthalmologist and audiologist. (Exhibits P-1 and P-11, Testimony of Dr. Kenneth Bonnet and C.'s Mother)
40. When C. was two years old, he was examined by the genetics group led by Dr. Greta Seashore at Yale University. At that time, no genetic abnormalities were found. At the suggestion of Dr. Bonnet, C.'s parents brought him back for further testing in May, 2002. With new testing now available, the submicrodeletion was found on chromosome 7. This microdeletion probably caused C.'s microcephaly and affected his central nervous system; it may also be the cause of C.'s vestibular manifestations (lack of balance, unsteady gait, difficulty maintaining a heads-up posture, etc.). According to information C.'s parents received, children with this genetic anomaly usually follow a normal developmental path but are very delayed. In addition, C.'s cognitive ability is uncertain and there is no definite link between his cognitive delays

and the microdeletion. Also in May, 2002, C.'s parents brought C. for his second visit to his endocrinologist to repeat blood tests because his molars were coming in quite early. It was determined that C.'s hormones are normal but his bone growth is immature so he has not finished growing. In July, 2002, C. visited an ophthalmologist who found that C.'s eyes are physically normal but that he does not blink enough. C. apparently does use his vision but it is unclear how his brain interprets what his eyes see. Vision therapy was again recommended. (Testimony of C.'s Mother)

41. Dr. Armin Thies, a neuropsychologist formerly associated with Yale and now in private practice, testified that EEG's and visually evoked potentials are medical procedures not usually administered by neuropsychologists and not relevant to educational planning. He also testified that neuropsychologists often evaluate people with language, hearing and vision deficits. Once a general level of functioning is determined, it is possible to choose from among certain appropriate tests. Since C. appear to hear, see and respond to direction, he could be cognitively assessed. Dr. Thies criticized Dr. Bonnet's report and recommendations as being based mostly on observation and lacking organized data; therefore, there is little basis for drawing conclusions or making educational recommendations. Finally, Dr. Thies testified that it is standard practice to request medical records if they might relate to central neurological functioning. (Exhibit B-198, Testimony of Dr. Armin Thies.)
42. On June 20, 2002, a PPT convened to discuss the extended school year program for C. Although the team felt that some improvement had been seen in May and June, 2002, they were still concerned about C.'s limited progress on his goals and objectives during the 2001-2002 school year; therefore, the proposed goals and objectives for the summer of 2002 concentrated on his then current needs rather than skill maintenance. The parents disagree with the proposed goals and objectives as being too low. They also stated that the programming and level of expertise the school district could offer was not appropriate to meet C.'s needs. They requested that the Board pay for their placement of C. at the Foundation School for the summer of 2002. The Board denied the parents request. The IEP does not reflect that the parents requested payment for the 2002-2003 school year; the parents claim that the request was made at the PPT although they did not request that the minutes be changed to reflect the request. (Exhibit B-195, Testimony of C.'s Mother)
43. The Foundation School is a state certified private special education school for children with intense speech and language needs. There are 37 children aged 3 through 9 in the lower school; one third of them have been diagnosed with autism with the remainder having been identified with pervasive developmental delay, hearing impairment, learning disabilities or Asperger's Syndrome. Most of C.'s program during the summer was one on one; he received speech therapy (four, half hour sessions per day), occupational therapy-based perception classes, gross motor class and lunch/social group (gross motor and lunch each had approximately 3 children). In an occupational therapy screening performed at the Foundation School in September, 2002, it was noted that C. was easily distracted and had minimal self

directed play skills. Areas of challenge included postural control, motor coordination, visual motor integration and motor planning (he often bumped into walls) and self help independence. In addition, limitations in sensory processing, language and visual attention were seen as significantly contributing to his delays. During the summer, C. appeared to develop better upper body strength, more social regard for teachers and students, increased eye contact and more spontaneous speech. (Exhibits P-12 and P-13, Testimony of Toni Giannone, Director of Foundation School's Lower School)

44. C. began the 2002-2003 school year at the Foundation School on September 3, 2002. C.'s current program consists of 4 direct speech classes per day, 2 perception classes (occupational therapy-based), 1 perception music class, 1 gross motor class and lunch/social group. All classes are one on one except for music, gross motor class and lunch, each of which have 3 or 4 children. In the lower school, three children, one of whom is C., have one on one programs due to their complex, multiple needs. C. has two different speech therapists at Foundation to help him generalize skills. The Foundation School does not have a physical therapist on staff. C. still has severe speech retrieval problems; it can take him 1 to 1 1/2 minutes to retrieve a word. Foundation staff believe that C.'s staring episodes are related to his long retrieval periods. To decrease this response time, a program has been developed which gives him 15 seconds to respond after which a system of cues and prompts are used to help retrieve the appropriate word. Foundation has recommended an evaluation in the area of visual perceptual and visual motor planning due to their concerns about C.'s tracking, peripheral vision and limited social regard and eye contact. They are planning to perform an auditory evaluation in the future; while C. seems to have functional hearing, concerns remain about a possible hearing loss. (Testimony of C.'s Mother and Toni Giannone)
45. On September 13, 2002, Board personnel observed C. at the Foundation School. Mary Imperioli reported that Foundation teachers did not continue to pursue activities with C. once he demonstrated an inappropriate behavior. Most work was physically prompted and done hand over hand; C. did not seem engaged. Teachers appeared to give C. little time to respond to verbalizations. At lunch, there was little language and no interaction between C. and other children. Ms. Imperioli testified that the Foundation School appeared to be working on lower level skills than the school district had been in June, 2002. Based upon her observation, Sharon Gillilands overall impression was that C. seemed not to have changed; she heard no new language and he still required extensive facilitation and prompting. Both Ms. Gilliland and Ms. Imperioli also testified that although they were in C.'s line of vision, he did not seem to recognize them. (Testimony of Mary Imperioli and Sharon Gilliland)

CONCLUSIONS OF LAW:

1. Both parties agree that C. is eligible to receive a free and appropriate public education (FAPE) with special education and related services under the provisions of Connecticut General Statutes, Section 10-76a et seq and the Individuals with Disabilities Act (IDEA), 20 U.S.C. Section 1401 et seq.
2. The initial issue was brought by the school district, requesting that the hearing officer order the evaluations at issue after the parents refused consent. 20 U.S.C. Section 1414(a)(2) states that an educational agency shall ensure that a reevaluation of each child with a disability is conducted if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years. Therefore, the school district is obligated to conduct evaluations.
3. 20 U.S.C. Section 1414(c)(3) requires the educational agency to obtain informed parental consent before conducting such reevaluation. Absent such consent, the school district may, as they have done here, request due process and seek an order from a hearing officer. (C.G.S. Section 10-76h(d)(1))
4. 20 U.S.C. Section 1414(b) sets forth the procedures a school district must follow with respect to evaluations. First, the school district must provide the parents with written notice and descriptions of the proposed evaluations. This was clearly done here; there is ample evidence in the record of written notices and consent forms given to the parents in hand and by mail. In addition, the parents and school district personnel engaged in numerous meetings and discussions about the proposed evaluations and the parents interviewed some of the proposed evaluators. It can not be claimed that there was insufficient notice or understanding of the proposed evaluations.
5. Next, a variety of assessment tools and strategies must be used to gather relevant functional and developmental information with no single procedure used as the sole criterion for determining an appropriate educational program. In addition, the child must be assessed in all areas of suspected disability. The evaluations proposed by the school district are broad based and comprehensive. They include all suspected areas of disability including reviewing the possibility that medical issues are impacting C.'s progress.
6. 34 C.F.R. Section 300.532(c)(ii) also requires that any standardized tests that are given be administered by trained and knowledgeable personnel. All the evaluators proposed by the school district, including those who are school district employees, are trained and knowledgeable in their areas of expertise. C.'s mother rejected school district employees because she felt that if they were having difficulty programming for C. then they could not evaluate him appropriately. On the contrary, these employees had worked with C. successfully in the past and therefore had a good understanding of his potential range of performance. C.'s mother also rejected Dr. Rickler and Dr. Cascella as having inadequate backgrounds in neurological issues. Both of these individuals, however, have sufficient experience with childhood

disabling conditions, including neurological, to perform the evaluations as requested by the school district.

7. C.'s parents specifically feel that the comprehensive developmental evaluation, to be performed by a psychiatrist, is inappropriate. The school district explained that a psychiatrist is in the best position to pull together C.'s medical, educational and developmental issues and that they are not looking for a psychiatric diagnosis. C.'s parents have refused to see that C.'s medical issues may have some impact on C.'s educational issues and, at the very least, must be studied thoroughly if only so that they can be ruled out. Understandably, C.'s parents do not want C. to be seen as a medical case in addition to his other issues. But it can not be denied that C. had medical issues during both the 2000-2001 and 2001-2002 school years that caused absences, days when he was not available for learning, and possibly impacted his ability to make progress to a greater extent than is currently known. These issues include the ear surgeries and severe ear infections which may have affected C.'s hearing, language, balance, and neurological status. In fact, on Dr. Bonnets advice, the parents did eventually seek further medical information and consulted or plan to consult several different physicians. Whether C.'s parents saw at home what school district personnel were seeing in school, the testimony is convincing that C. was demonstrating concerning behaviors in school of an intensity and frequency that had not been seen before the 2001-2002 school year; and, that these behaviors were being seen during a time when C. was undergoing medical procedures and treatments. Therefore, it was reasonable for the school district to seek consent for a comprehensive evaluation that included a review of all of C.'s medical records and information. In addition, Dr. Thies testified that it was standard practice to request medical records if they might relate to neurological functioning. It should also be noted that the parents own expert, Dr. Bonnet, recognized that certain medical issues had not been sufficiently considered and accordingly, recommended several different medical consultations to the parents.
8. Finally, with regard to the choice of evaluators, the school district engaged in long discussions with the parents and allowed them to interview their recommended evaluators. The parents refused to consent to any of the proposed evaluators or evaluations. Case law supports the right of a school district to choose its own evaluators as long as the evaluations and evaluators meet the standards previously discussed. In *Vander Malle v. Ambach*, 673 F.2d 49 (1982), the Second Circuit held that the local educational agency, in determining the appropriate placement, was entitled to an evaluation by an evaluator of their own choosing. In *Dubois v. Connecticut State Board of Education*, 727 F.2d 44 (1984), the Court cited *Vander Malle* in holding that a ...school system may insist on evaluation by qualified professionals who are satisfactory to the school officials. In *Andress v. Cleveland Independent School District*, 22 IDELR 1134 (1995), the Fifth District held in a case involving reevaluation that if a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation. No cases

have been cited to the contrary and, as discussed above, the proposed evaluations and evaluators meet the appropriate statutory standards.

9. Therefore, the evaluations and proposed evaluators, as requested by the school district and spelled out in the statement of issues, comply with all state and federal requirements. The proposed evaluations are appropriate to evaluate C.'s needs in all areas of suspected disability and will provide a comprehensive and necessary assessment of C. by competent evaluators.
10. The next issue is whether C.'s 2001-2001 program was appropriate. The school district has the burden of proving the appropriateness of the program by a preponderance of the evidence. (Regulations of Connecticut State Agencies Section 10-76h-14). The standard for determining whether FAPE has been offered or provided begins with the two prong test established by the Supreme Court in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). First, the procedural requirements of the IDEA must have been met by the school district and second, the individualized educational program must be reasonably calculated to enable the child to receive some educational benefit.
11. Since *Rowley*, courts have clarified the requirements of FAPE to hold that individualized educational programs 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)).
12. Almost from the first week of the 2001-2002 school year, it was clear that something was wrong. C. returned from vacation a different child. Having made generally satisfactory progress during the previous school year and the summer of 2001, not only was C. no longer making progress during the fall of 2001, he was regressing. C. no longer seemed capable of goals and objectives he had previously mastered. In addition, C. demonstrated concerning behaviors; while they had been seen by school personnel before, they had never seen them as frequently or as intensely as during the 2001-2002 school year. Where C. had begun to initiate speech and peer interaction, he now rarely did so; physical prompting was needed to engage C. in activities; much of his previously expanding vocabulary appeared to be gone and he seemed to require an extremely long time to process and respond. In addition to these behaviors were the medical episodes as described in the Findings of Fact. C.'s mother believes that medical issues were not impacting on C.'s progress and that the concerning behaviors have been magnified by the school district. But as previously stated, the testimony and evidence are convincing that C. was demonstrating disturbing changes signaling that something was wrong.
13. During this period, school personnel made instructional modifications. These instructional changes were essentially bandaids while the educational program itself remained unchanged (Finding of Fact No. 18). No other actions were taken despite the schools obvious frustration with C.'s deteriorating situation. Some data was taken

on C.'s behaviors to find antecedents, but this was done only once; although the data was inconclusive, data collection was not repeated. Data was also taken on response time but was not charted in an organized or usable way. Outside consultants were not brought in to assist; where the Eden Institute consulted with the Board several times during the 2000-2001 school year, they only visited the preschool one time during the 2001-2002 school year and that was very early in the year. Finally, C.'s mother testified as to the program elements that were missing the day she acted as C.'s paraprofessional. Testimony that the school did not run their usual programs because of the presence of C.'s mother is not credible. These are not procedural issues as the Board has argued in its brief; they are essential elements of appropriate educational practice if an educational program is to provide more than a trivial educational benefit.

14. There were personnel and room changes in the 2001-2002 school year (Finding of Fact No. 30). But the only changes that would seem to have truly impacted C. were first his new paraprofessionals; his original aide was chosen by Dr. Pappanikou for her ability to engage C. Other personnel changes were relatively minor and C. had demonstrated in the past that he could adjust to changes in his teachers and service personnel. The other major change, however, was the loss of the home program; this program not only emphasized C.'s ADLs, but provided the necessary link and continuity between the home and school. These issues only add to the conclusion that the program was not appropriate.
15. Finally, evaluations were not formally requested until almost half of the school year was over. U.S.C. Section 1414(a)(2)(A) requires that a local educational agency reevaluate a child when conditions warrant; this is an obligation of the school district. As the educational professionals, they are expected to not only notice when a program is not providing educational benefit but to take the appropriate action. Here, although the conditions clearly warranted reevaluation, the district allowed almost six months to elapse before formally requesting consent for evaluations. This is not a procedural issue: an appropriate program cannot be provided when there is a lack of understanding of the student. While it may not be clear exactly which elements of the program were not working for C., it is clear that the program was not providing educational benefit. Whether this was because parts of the program were poorly planned or executed or because something new was happening with C., his disturbing behaviors clearly announced that the program was not meeting his needs and therefore was not appropriate.
16. Under the line of cases that includes Burlington v. Dept. of Educ., 736 F.2d 773 (1st Cir. 1984), aff'd 471 U.S. 359 (1985) and Florence County School Dist. Four v. Carter, 510 U.S. 359 (1985), parents can unilaterally place their child in a private school and seek payment for such placement from their school district. Such funding requires a finding that the Board's program was not appropriate and that the parental placement is appropriate.

17. The Foundation School has many of the elements of an appropriate placement. The entire school, which is certified by the state as a special education school, is structured to meet the needs of children with intense speech and language needs. C. is receiving intensive speech therapy and classes in occupational therapy-based perception and gross motor. He is receiving his education in small group or in one on one settings. School district personnel may disagree with some of the methods being used, such as their program for reducing C.'s response time, but it is clear that the Foundation School has carefully thought out C.'s needs. Ms. Imperioli testified that C. did not seem to recognize her during her visit; but she also testified that C. did not always seem to know who she was when he was in the integrated preschool (Finding of Fact No. 17). Concern was also expressed over his lack of engagement. Again, this was one of C.'s problems in the preschool; he could not be expected to have changed in just four weeks of classes. 34 C.F.R. 300.550(b) requires that education be provided in the least restrictive environment (LRE) appropriate to meet the unique needs of each disabled student; for now, the Foundation School is that environment for C.
18. However, once the Board sought consent for the evaluations, they were taking the actions necessary to create a program that could appropriately meet C.'s needs. When the parents refused to consent to the evaluations, which have been determined (above) appropriate to evaluate C.'s educational needs, they ran afoul of U.S.C. Section 1412(a)(10)(C)(iii)(II) and (III). This statute states that if, prior to the parents removal of a child from the public school, the school notified the parents of their intent to evaluate the child but the parents did not make the child available for the evaluation, then reimbursement for private school placement may be reduced or denied. Reimbursement can also be denied upon a finding of unreasonableness with respect to the parents actions.
19. Such is the situation here. Although the evaluations were reasonable and appropriate, C.'s parents refused to allow C. to be evaluated. They did not just refuse some of the evaluations, they refused them all. They never gave the school district the opportunity to determine where and why C. and his educational program were running aground. It would be fundamentally unfair to allow parents to demand special education services from the school district when they refuse to allow the school district to properly evaluate their child. (Also, see Andress, above) Once the parents refused to make C. available for appropriate evaluations, they forfeited their claim to reimbursement. Therefore, the parents are entitled to six months of compensatory education for the period in which the inappropriate program was provided (August 28, 2001 through the end of February, 2002) until they refused to make C. available for evaluation. This period takes into account a reasonable amount of time after the evaluations were proposed on February 13, 2002 (about 2 weeks) for the parents to consider the proposed evaluations and evaluators.
20. An argument can also be made that reimbursement could be denied based upon the parents refusal to obtain medical documentation from their physicians.

Whether such documentation was requested the year before or not, when asked for the documentation, the parents should have provided it. It was a reasonable request and one that most school districts make when students undergo medical procedures. It should not have taken until March and the threat of C.'s removal from school for the parents to comply.

21. With regard to the parents' issue of violation of procedural rights, argument and testimony were not clearly presented as to the lack of timely PPT minutes or IEP. In addition, it was not addressed in the parents brief. Parents also felt that when they requested the emergency PPT, it was not scheduled quickly enough; yet the scheduled date, April 25, 2002, was one of the dates on which they said they were available. Therefore, both claims fail.

FINAL DECISION AND ORDER:

1. The evaluations and evaluators listed in the Board's issue are appropriate and necessary to assess C. The evaluations are hereby ordered. The Parent's shall make C. available for these evaluations.
2. The Board did not violate the procedural safeguards listed in the Parents issues.
3. The Board did not fail to properly evaluate; the Parents did not make C. available for the proposed evaluations.
4. The Board did not provide an appropriate program for the 2001-2002 school year. The Foundation School does provide an appropriate program but reimbursement in the form of compensatory education is limited to the cost of tuition and other associated fees for six months of C.'s attendance at the Foundation School for the reasons discussed in Conclusions of Law No. 19.
5. Once the evaluations are completed, the PPT shall immediately convene to plan an appropriate program for C.