

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Stamford Board of Education

Appearing on behalf of the Parents: Attorney Jennifer D. Laviano
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Appearing before: Attorney Patricia M. Strong
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board fail to provide an appropriate program and placement for the student to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE) for the extended school year (ESY) of 2002?

2. If the Board did not provide FAPE for the ESY of 2002, was the Parents' unilateral placement at Our Victory Day Camp in Dobbs Ferry, NY appropriate and, if so, are they entitled to reimbursement?

3. Did the Board fail to provide an appropriate program and placement for the student to receive a FAPE in the LRE for the 2002-03 school year?

4. If the Board did not provide FAPE for the student in the LRE for the 2002-03 school year, was the Parents' unilateral placement at Hope Academy in Milford, CT appropriate and, if so, are they entitled to reimbursement?

5. Are the Parents entitled to reimbursement for the privately obtained speech and language and behavioral services for the 2002-03 school year?

PROCEDURAL HISTORY:

The Parents' attorney filed the hearing request on July 11, 2002. Hearing Officer (hereinafter HO) Exhibit 1. A prehearing conference was held on July 24, at which time hearing dates were selected at the mutual convenience of the parties. The hearing dates were September 17, 23 and 30, 2002. The hearings were postponed at the request of the Hearing Officer with consent of the parties' attorneys. New hearing dates were agreed on for October 29 and 31 and November 4. On October 22, the Parents filed an additional issue for the hearing (Issue #5). Exhibit HO2. The hearing commenced on October 29, after the Hearing Officer allowed the parties two hours to discuss a possible settlement. Both sides made opening statements and objections to exhibits were noted. The Parents filed exhibits labeled P1 through P16, and the Board filed B1 through B66. The Board objected to Exhibits P1 through P10 and P12 and P13. The Parents objected to B44 on the grounds they had not seen it prior to this hearing. These documents were marked for identification, subject to later proffer. The remainder of both parties' exhibits were entered as full exhibits on the first day of the hearing.

The Parents presented testimony from the Mother on October 29. The Board's objection to Exhibit P1, the Hope Academy individualized education program ("IEP") for the Student for the 2001-02 school year, was overruled and the document was entered as a full exhibit. The Board thereafter withdrew its objection to Exhibits P2 through P10, documents from the Student's file at Hope Academy. The objection to Exhibit P12, the Hope Academy IEP for the Student for the 2002-02 school year was overruled and that document was entered as a full exhibit. The October 31 hearing date was cancelled at the request of the Board's attorney. Additional hearing dates were scheduled on December 9, 11, 18 and 19. On November 4, the Parents presented testimony from Ms. Cheryl Klaiman, who is employed at the Yale Child Study Center. After permitting the Board attorney to voir dire the witness as to her qualifications to testify as an expert, the witness was accepted as a fact witness and as a limited expert witness regarding autism, over the Board's objection. Ms. Klaiman, a Doctoral candidate at McGill University, testified on the Yale Social Learning Disabilities Project report on the Student (Exhibit P13) and the March 2002 report by Rosalie M. Greenbaum, Ph.D. on the Student (Exhibit P14). December 9 was cancelled by the Hearing Officer because of another hearing. December 11 and 18 hearings were cancelled at the request of both attorneys because of scheduling conflicts. On December 19, the hearing continued with cross-examination of the Mother. Additional dates were scheduled for January 31, February 4, 5 and 26, 2003. On January 31, the Parents presented Ms. Kathryn Anne Dearani, the Student's teacher at Hope Academy. The Parents then rested their case.

The Board began presenting its case on February 4 with testimony of Maria Harris, school psychologist and neuropsychologist, and Joanne Parkhurst, occupational therapist with the school district. The hearing scheduled on February 5 was cancelled at the request of the Board's attorney. The hearing was rescheduled for February 24 and 27. Ms. Parkhurst completed her testimony on February 24. The Board also presented testimony from David Tate, Assistant Principal Westover School. On February 27, the

Board presented testimony from Dara Longo Minkler, teacher at Westover School, and Danusia Pawska, Behavioral Consultant for the Board. The Board rested its case. The Parents waived rebuttal testimony from the student's mother in order to avoid the need to schedule an additional hearing date.

At the conclusion of the hearing, the Parties requested until April 14, 2003 to mail simultaneous briefs, so that they could obtain transcripts to assist them. The Hearing Officer granted the request and set the decision deadline for May 9. The Parents' attorney requested additional time, which was not objected to by the Board, until April 21. Thereafter, the Parents' attorney requested an additional two days until April 23 to mail their brief. The requests were granted. The parties have filed proposed findings of fact and conclusions of law. Both parties also filed legal briefs with case citations in support of their legal claims. The decision deadline was extended from May 19 to June 2 and then to June 6 by the Hearing Officer because of the need for additional time to complete the decision. Both parties consented to the extension.

SUMMARY:

The Student (hereinafter referred to as "M." or the Student) is a nine-year old boy with autism. He has been so classified since he was four years old by the Stamford Public Schools. He received special education and related services from the Board from that time until he completed first grade at Westover Elementary for the 2000-2001 school year. He has what is called "high-functioning" autism with aspects of Asperger's Syndrome. M. has twin brothers who attend Roxbury School, their neighborhood school. The Parents worked with the district for several years to attempt to have M. educated appropriately in his public school system. The Mother was very involved in volunteer work at the school where M. was attending. In 2001-02 school year, the Parents made a unilateral placement of M. at Hope Academy. The stated reason was that they were dissatisfied with the Student's progress in the area of social skills and the lack of academic challenge in the mainstream classroom. The parties reached a settlement agreement in October 2001, which fully and finally settled the claims regarding that school year. In the ESY program for summer 2001, which was not part of the settlement, the Board paid for the requested placement at Our Victory Day Camp in New York. The Parents continued M. at Hope Academy for the 2002-03 school year and are seeking reimbursement for the private school tuition at Hope Academy, the speech and language therapy with Dr. Nancy Schwartz and Christine Skuburdis, occupational therapy with Marie Ossi, social skills groups with Lynn Guillmette and the play therapy with Aileen Speight. They also seek reimbursement for the cost of Our Victory Day Camp for the ESY in the summer of 2002. The Parents did not summarize the costs. The Board claims that the program and placements offered for both the ESY of 2002 and the school year of 2002-03 were appropriate and provided M. with FAPE in the LRE.

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.

FINDINGS OF FACT:

1. The Student is currently 9 years old (DOB 7/6/93) and has been eligible for special education and related services since age four under the category of autism. Testimony of Mother.
2. M. attended the Board's "Kindersteps" program for the 1998-1999 school year at K.T. Murphy School, a public school within the Board's district for kindergarten. It was a small, self-contained program with seven or eight children with disabilities. This was part of the "STEPS" program, which is a program in the LEA for children with autism. Id.
3. The Board recommended that M. repeat Kindergarten, due to social skills delays. M. repeated Kindergarten, and was placed for the 1999-2000 school year in a kindergarten class at K.T. Murphy. While still part of the "Kindersteps" program, M. was placed in a regular education Kindergarten class with an aide and related services. Id.
4. During the 1999-2000 school year, there were several PPT meetings convened and evaluations were done in speech and language and two in occupational therapy. Exhibits B2, B4, B6, B8, B10, B11, B12 and B13. Progress toward goals was noted and areas of continued need were outlined. M. was recommended for first grade in the building where the Kindersteps program would be so that he could continue to get support from those staff. The Parents requested that there would be an adapted curriculum to ensure M. was challenged academically and that the same aide (Phyllis Kovacs) be assigned. Exhibit B12. ESY services in speech and occupational therapy were offered. Id. Parents requested the District pay for "Y" camp in New Canaan, including an aide. This was accepted by the PPT. Exhibit B13.
5. M. was placed for first grade at Westover Magnet School within the District, as the Kindersteps program (by then renamed "STEPS") was moved to Westover for the 2000-2001 school year. M. was placed in a mainstream, first grade classroom with 1:1 paraprofessional support, and related services of speech and occupational therapy. Id. He was making progress on his IEP goals as reported at the November 28, 2000 PPT meeting. Exhibit B19.
6. The Parents were dissatisfied with the mainstream program in kindergarten and became more dissatisfied with the mainstream program in first grade. They did not believe that he was learning social skills and they believed he was engaging in more self-stimulatory behavior (pulling threads from his socks and picking at his arms) because he was bored with the academic level of the instruction. Testimony of Mother. This increased self-stimulatory behavior was not noted by school officials and was not reported to the school by Mother. Testimony of Ms. Minkler and Ms. Pawska.
7. The Parents' psychologist, Dr. Rosalie Greenbaum, assisted by Ms. Klaiman, and the Board's school neuropsychologist, Ms. Harris, agree that M.'s academic functioning is at or above the level of average typical, non-disabled peers his age. His primary deficits are

in reading comprehension and reading social cues. Exhibits B15 and P14 and Testimony of Ms. Harris.

8. The 2000-2001 IEP set specific goals for M. in the areas of academics, communication (speech and language therapy), occupational therapy and social/behavioral skills. Exhibits B12 and B13.

9. The Parents agreed with the 2000-2001 IEP, including M.'s placement in a regular education first grade classroom, with accommodations and support services. Id. and Testimony of Mother.

10. In August 2000, approximately one month before the start of the student's 2000-2001 school year at Westover, Ms. Harris conducted a neurological, developmental evaluation of the student for the purpose of assisting in planning the student's ongoing educational needs. Testimony of Ms. Harris and Exhibit B15.

11. Ms. Harris, who has been a school psychologist for the Board for approximately ten years, is a certified school psychologist in the State of Connecticut. She holds a Certificate in Neuropsychology from The Fielding Institute in New York, and is a member of the National Association of School Psychologists, the New York Association of School Psychologists and the Connecticut Association of School Psychologists, and was formerly program committee chairman of the Connecticut Association of School Psychologists. She also holds a Certificate of Advanced Study in School Psychology. Prior to working for the Board, Ms. Harris performed clinical fieldwork at, among other places, the Yale Child Study Center. Testimony of Ms. Harris and Exhibit B62.

12. Given her extensive training and experience in neuropsychology and social programming for disabled students, including autistic students, Ms. Harris is an expert in the area of neuropsychology as it relates to school settings and programming for social skills for disabled students. Id. She has worked with programming for this Student since 1999. Id.

13. As part of M.'s August 2000 evaluation, Ms. Harris administered the following measures: Weschler Intelligence Scale for Children, Third Edition (WISC-III), Test of Nonverbal Intelligence, Second Edition (TONI-2), Developmental Neuropsychological Assessment (NEPSY), Weschler Individual Achievement Test - Screener (WIAT) and Human Figure Developmental Drawing. Exhibit B15.

14. M. scored in the average to above average range on almost all of these measures. Specifically, his intellectual functioning on the WISC-III was 86% better than the functioning of his typical peers. His TONI-2 intellectual quotient was in the 95th percentile, well above the average range. M.'s academic functioning, as measured by the WIAT, was above average to superior when compared to his typical peers. On this measure, for example, M. scored in the 99th percentile in basic reading, above the 99th percentile in math reasoning and, overall, in the above average to superior range. The measures further revealed that his primary weakness was listening comprehension. M. also had some difficulty in giving quick, concise answers using a specific format, though

Ms. Harris did not consider this to be a problem. Further, she found that M. was able to overcome some of his problems in comprehension when the information sought was cued. Finally, Ms. Harris concluded that M., like many other high functioning autistic children, had difficulty reading social cues. Id. and Testimony of Ms. Harris.

15. As a school psychologist for the Board, Ms. Harris has evaluated approximately 1,000 students with disabilities. Based on the student's performance on these measures, and her experience, Ms. Harris concluded that it was entirely appropriate to place M. in a regular education first grade classroom, especially given his stage of development and his high intellectual functioning. She believed that he was ready and able to function in the mainstream classroom setting, with accommodations and with other support services. Ms. Harris also recommended placement in a regular education classroom setting because it would provide M. with valuable, necessary opportunities to improve his reading comprehension and understanding of social cues through exposure to and interaction with typical, non-disabled peers. Ms. Harris believed that M. should have a full time 1:1 educational assistant to facilitate these socialization opportunities and to keep the student on task in class. Finally, M.'s placement in the mainstream setting was important because M. probably would not otherwise have the opportunity to interact with typical peers given his hectic schedule filled with after-school services. Id. M.'s Parents had provided him at their own expense with private speech and language therapy, occupational therapy, play therapy and other therapies after school for several years. Testimony of Mother.

16. In September 2000, Ms. Pawska and Ms. Kovacs began collecting and analyzing baseline data to determine whether or not M. was staying on task in class or needed prompting to complete classroom activities. Based on the baseline data collected, Ms. Pawska determined that M. had a low-level stereotypy. She developed appropriate programming to address this stereotypy, including interruption and redirection of these repetitive behaviors. Testimony of Ms. Pawska and Exhibit B63.

17. Ms. Pawska and M.'s educational assistant also worked together to collect additional data regarding M.'s need for prompting and redirection throughout the school year. Id.

18. M. was placed in a regular education classroom taught by Dara Longo Minkler for the 2000-2001 school year. He was one of 18 students in a class made up of 9 boys and 9 girls. Ms. Minkler, a former social worker with training and experience in working with autistic individuals, including a high functioning autistic adult, made modifications to M.'s curriculum throughout the school year to facilitate his access to the lessons and academic instruction. Testimony of Ms. Minkler; Exhibits B19 and B66.

19. Ms. Minkler was M.'s teacher for most of his academic classes, except for math and reading. M., like all other regular education students at Westover, was ability grouped for math and reading. Ms. Minkler believed that M.'s placement in the average reading class taught by Mrs. Whitbread, a class with approximately 12 to 14 students, was appropriate because that group focused on improving comprehension, which was an identified area of weakness for M. He was also placed in the advanced math class early

in the school year, a placement Ms. Minkler and M.'s math teacher, Mrs. Rebholz, believed was appropriate. Testimony of Ms. Minkler.

20. In addition to making modifications to the curriculum for M., Ms. Minkler collaborated with the other educators and professionals working with M. to implement M.'s program, including his educational assistant, Ms. Kovacs, the school psychologist, Maria Harris, the behavior consultant, Ms. Pawska, the occupational therapist, Ms. Parkhurst, and the Assistant Director of Special Education, Mary Ellen Herzog. For example, when Ms. Minkler would have questions about a particular behavior she observed or a proper response to a particular behavior, she would usually consult with Ms. Harris and/or Ms. Pawska. Id.

21. Ms. Parkhurst is a certified occupational therapist who has more than ten years of experience providing occupational therapy services to children. For the past four years, she has worked with autistic children in the Stamford Public Schools. She has worked with approximately 15 to 20 children on the autism spectrum within the school environment. During the 2000-2001 school year at Westover, she provided pull out (one-on-one or direct) services and in-class (indirect) services to M. in accordance with his IEP. Testimony of Ms. Parkhurst; Exhibit B58.

22. M.'s IEP with respect to occupational therapy was appropriate. Ms. Parkhurst developed yearlong goals for M. in March 2000 and again in March 2001. She worked with M. in three areas: sensory input, self-care and visual motor skills. Testimony of Ms. Parkhurst.

23. Before M. started his 2000-2001 school year at Westover, the behavior consultant to the STEPS program, Danusia Pawska, provided a three-day in service training to Westover staff, including Ms. Kovacs, on working with children with autism, such as M. Ms. Pawska is a board-certified Associate Behavior Analyst trained in developing individualized programs for autistic and developmentally disabled children who worked as a consultant to the Board in developing M.'s program. Exhibit B60; Testimony of Ms. Pawska.

24. Ms. Pawska also worked Ms. Kovacs on an individual, ongoing basis throughout the school year to teach Ms. Kovacs new and additional behavior management strategies to use with M. Ms. Pawska also trained Ms. Kovacs and much later in the school year, Ann Marie Pelleni, Ms. Kovacs's replacement, to facilitate M.'s social interactions. Ms. Pawska also provided teachers at Westover, including M.'s first grade teacher, Ms. Minkler, with a manual explaining methods and approaches for instructing children with autism. Finally, throughout the school year, Ms. Pawska supported the Westover staff in implementing M.'s program, developing data collection systems, monitoring his program and making appropriate adjustments to his program. Id.

25. Ms. Pawska also developed a daily communication log that was used both to monitor M.'s daily behaviors and social interactions and to provide this information to M.'s team and Parents. The log was sent home on a daily basis and was helpful in keeping the Parents apprised of relevant information regarding M.'s program. Ms. Pawska also used

the record of the number of prompts in the daily communication log to determine if existing strategies were successful in reducing the number of prompts. If she found that M. needed too much prompting, she and the team would make modifications to the behavior management strategies to help reduce the number of prompts. Finally, the social interaction – which tracked significant social interactions -- section of the daily communication log allowed M.'s Team and Parents to monitor his progress in increasing his social interactions with his typical peers. Testimony of Ms. Pawska and Exhibits B16, B41 and B63.

26. Ms. Minkler worked with every member of M.'s team in furtherance of M.'s goals, including his occupational therapy and social/behavioral goals. With respect to his occupational therapy goals, the team worked with M. to slow down the pace of his work and to add detail to his handwriting and coloring. Ms. Parkhurst, Ms. Minkler, Ms. Pawska, and Ms. Kovacs all worked together to further M.'s visual motor skills goals, particularly his goals of adding detail to his writing and coloring and slowing down the pace of his work to increase his accuracy. Ms. Pawska, for example, provided Ms. Minkler with a self-monitoring checklist that M. would use to monitor the level of detail in his writing. Ms. Minkler and/or educational assistant also used peer modeling to teach M. to add detail and slow down the pace of his work by directing his attention to the work of the other students in the class. Ms. Minkler and M.'s other teachers discussed these and other strategies at the teachers' weekly meeting. Testimony of Ms. Minkler, Ms. Pawska and Ms. Parkhurst; Exhibit B28.

27. Throughout the year, Ms. Harris worked with M.'s teachers to further his program. When M. first arrived at Westover in the fall of 2000, Ms. Harris provided all of the first grade teachers, including M.'s teachers, with a list of M.'s strengths and weaknesses and suggested approaches and methods for working with M. in the classroom. Ms. Harris continued to stay involved with M.'s teachers, making suggestions as to new or different strategies and methodologies. For example, she worked with Mrs. Rebholz, M.'s math teacher, in addressing an issue with M.'s fidgeting during class. After observing the class, Ms. Harris concluded that M. was having a hard time seeing around another student and that he should be moved. Mrs. Rebholz implemented Ms. Harris' suggestion and his fidgeting problem was resolved. Ms. Harris also worked with M.'s reading teacher, Ms. Whitbread, to develop programming that would assist M. in reading comprehension. She worked with Ms. Whitbread to develop cueing to teach M. how to retell a story. Testimony of Ms. Harris.

28. Ms. Harris monitored M.'s progress within the classroom on a weekly basis as well. Ms. Minkler spoke with Ms. Harris throughout the school year regarding behavioral, academic and other issues in the classroom, including M.'s impulsive coloring and tendency to rush through assignments at the expense of accuracy and legibility. Ms. Harris provided Ms. Minkler with suggested techniques to resolve those issues, which were successfully implemented. They also discussed strategies for helping M. initiate conversations and communications with other students, which Ms. Minkler also successfully implemented. Id.

29. Other members of M.'s team also collaborated with the teachers and other professionals on the implementation of M.'s IEP, including M.'s occupational therapist, Joanne Parkhurst. Ms. Parkhurst, who provided occupational therapy services to M. at K.T. Murphy and Westover, communicated on a regular basis with M.'s Parents, his educational assistant, teachers and other professionals regarding his progress in his occupational therapy program. For example, she and other staff worked together to find and implement sensory breaks in M.'s days, particularly in the afternoons. After some trial and error, the team, with Ms. Parkhurst's professional input, concluded that M. needed naturally occurring sensory breaks, such as getting a drink of water from the water fountain, handing out papers or cleaning the whiteboard in the afternoons. Id. and Testimony of Ms. Parkhurst and Ms. Minkler.

30. Ms. Parkhurst also worked directly with Ms. Kovacs, and later her replacement, Ann Marie, to implement and carry over M.'s occupational therapy program in the classroom. Testimony of Ms. Parkhurst. M.'s teachers also had the full time support of M.'s educational assistant, who, in consultation with Ms. Pawska and others, provided intervention or redirection assistance to M. only when he needed it to stay on task. In addition, Ms. Pawska trained and continuously worked with the educational assistant to prompt and/or facilitate social interactions with his peers. Testimony of Ms. Pawska.

31. The team also worked together to address M.'s social and behavioral deficits. For example, different members of the team worked with M. to address his behavioral issues stemming from changes in his schedules. Ms. Pawska wrote and implemented, through Ms. Kovacs and others, a social story to teach M. flexibility in his schedule. Ms. Parkhurst used the same story when M. would become upset because of changes in his occupational therapy program. Eventually, M. learned not to become upset or anxious if he or someone else was a few minutes late for an appointment. Id.; Testimony of Parkhurst and B63 pg. 5.

32. With respect to M.'s social and behavioral deficits, the team used several different methods to teach and improve M.'s social and behavioral skills, such as social skills groups, social stories, behavior contracts, observational learning, group class work and social interaction facilitated by his educational assistant. Testimony of Pawska; Exhibits B41 and B63, pp. 5-9, 14-16.

33. M. had two social skills groups during his first grade year at Westover. The first social skills group, from September through approximately November 2000, was a weekly lunch bunch, with typical peers, which was conducted by Westover's psychologist, Dr. Woodring. M. was included in that social skills group because his team believed it would be an appropriate way to teach social skills. Testimony of Ms. Harris and Mother.

34. At the November 28, 2000 PPT, the Board notified the Parents that, starting in January 2001, Ms. Harris would be organizing and running a weekly, one hour after-school social skills group. The team recommended that M. participate in the group. M.'s Parents eventually agreed to allow M. to participate in this social skills group in February 2001. This social skills group focused on learning how to listen to one another, how to

open a conversation, how to take turns, how to read body language and how to respond appropriately to body language. The social skills group was held for one hour per week, with the first 15 minutes being unstructured social interaction among the four members of the group. M. did well during the weekly group. Ms. Harris observed M. successfully implementing many of the skills during the group's unstructured time. She also observed M. use many of these same skills in his language arts class. Testimony of Mother and Ms. Harris; Exhibits B21 and B28.

35. M.'s team of teachers and professionals also used social stories to teach appropriate social behavior and interaction. Social stories are a recognized way of addressing social and/or behavioral deficits in high functioning autistic children who have difficulty reading social cues or who do not understand or know what is expected of them in social environments. Ms. Pawska wrote social stories for M. on a variety of issues, including becoming more flexible about schedules and time, appropriate social distance, and learning to listen to others. Testimony of Ms. Pawska and Ms. Minkler; Exhibit B63, pp. 5-8.

36. Ms. Pawska worked with M.'s team of educators and professionals and his Parents to identify the behaviors that should be addressed through social stories. For example, Ms. Pawska asked M.'s mother to list M.'s traits (from a list of typical qualities or traits of high functioning autistic children) to develop appropriate social stories and to facilitate his educational assistant's behavior and social intervention strategies. One of the areas or traits that identified by M.'s mother was Asperger's Syndrome, and this identifying information was then used in social and behavior programming. Testimony of Ms. Pawska and Exhibit B63, pp. 21-27.

37. She also worked with them to identify M.'s inappropriate or stereotypic behaviors. Once the team identified the stereotypic behaviors, Ms. Pawska would develop specific behavior management techniques to address those behaviors, usually by teaching M. alternative behaviors. One of the most successful techniques was the behavior contract. The behavior contract, known as the Daily Point Chart, provided M. with rewards for "quiet hands," or controlling his self-stimulatory behaviors. The Daily Point Chart taught M. self-awareness and self-control by requiring M. to assess his behavior after each class period. If his assessment was correct, then he would receive two points. If, at the end of the day, he had at least 10 points, he would receive a reward of his choosing. Initially, his behavior contract started with quiet hands. Later, the contract was expanded to teach M. to follow directions. The behavior contract fulfilled its purpose, which was to increase M.'s self-awareness of his behaviors and gradually to put responsibility on M. for the contract and his behaviors. Id. and Exhibit B63, pp. 10-12, 14-16.

38. Further, M.'s educational assistant would reinforce or praise any appropriate behaviors throughout the day. Id. and Exhibit B63, p. 17-19.

39. M.'s social behavioral program also incorporated daily opportunities for learning appropriate social interactions and behaviors within his regular education classroom. The first grade curriculum provided social skills instruction, including learning how to greet one another, how to initiate conversations, how to ask for help, how to offer help and

generally how to engage in normal conversation. Further, Ms. Minkler carefully selected M.'s seat at a table with three other children whom she thought would facilitate M.'s social interactions. Her careful selection of the students at M.'s table increased M.'s social interactions within the classroom setting. Ms. Minkler recalled one significant social interaction between M. and a fellow classmate who sat at his table in which M., on his own, comforted his crying classmate. Ms. Minkler believed that M.'s response in providing comfort to his classmate was appropriate and an important step in his social interactions. Testimony of Ms. Harris, Mother and Ms. Minkler; Exhibits B41, p. 193; B19 and B28.

40. Ms. Minkler saw M.'s social interactions gradually increase over the course of the year. As the school year progressed, M. began initiating conversations with her and with his peers, sometimes without any prompting from M.'s educational assistant. M. was not alone in initiating conversations with his classmates. In fact, his classmates often sought the help of M. with assignments and other projects. Ms. Minkler observed that M.'s educational assistant's role lessened throughout the school year because M. was becoming more independent in the classroom. Further, M. did not suffer any stigma as a result of the shadowing of his educational assistant because the students' kindergarten class had both a teacher and educational assistant. Testimony of Ms. Minkler.

41. Ms. Parkhurst, who worked with M. once a week during his language arts class, also observed M.'s improved social interactions with his classmates during her sessions. Ms. Parkhurst found that M. made progress in gaining independence and confidence, especially in his social interaction with the students at his table. Further, in her direct sessions, Ms. Parkhurst found that M. started to discuss other children in his class and different activities that he and the other students performed, an important development in M.'s awareness of himself and others. Testimony of Ms. Parkhurst.

42. Throughout the school year, the Parents and the members of M.'s Team met to review his program and progress. At each meeting, the teacher(s) and other professionals discussed the goals of M.'s program and his progress towards those goals. The Board professionals met in November 2000, for example, to discuss the program as well as observations of gradual progress. Both Ms. Pawska and Ms. Harris reported that M. was becoming an observational learner, or someone who learns to pick up cues from his or her environment as to how he or she is supposed to behave. Further, Ms. Kovacs and Ms. Harris discussed M.'s improvement in connecting and controlling his self-stimulatory behaviors when redirected. Testimony of Mother, Ms. Pawska; B-19; B-28; and B-40.

43. The PPT meetings noted the important progress M. was making in the non-academic areas of his program. Ms. Harris, who observed him several times a week, met with his team regularly, met with his mother twice a month and taught him social skills once a week, reported on M.'s progress. As the 2000-2001 school year progressed, it was clear to Ms. Harris that M.'s educational assistant was lessening her interventions, as M. was learning to defer some of his impulsive responses. He was also learning self-awareness and self-monitoring, which also increased his independence in the classroom. Testimony of Ms. Harris.

44. In her role as case manager for M.'s program, Ms. Harris regularly reported M.'s progress to his mother. Ms. Harris discussed the reports of progress from M.'s teachers and other service providers, as well as her own observations in the classroom and in the weekly after-school social skills group. Ms. Harris discussed M.'s increasing interactions with other children and independence in his classes and in the school as a whole. Ms. Harris informed M.'s mother that M. was gaining independence in his classes and in the school. In the school, for example, M. was now able to navigate the hallways of Westover to go to his classes or his pull out services, such as occupational therapy, without the assistance of his educational assistant. Id.

45. Ms. Minkler reported that M. made progress in the important area of listening and responding appropriately to the speaker. At the beginning of the year, he would need a lot of prompting from either Ms. Minkler or Ms. Kovacs. Towards the end of the year, however, M. was reacting to visual cues. There were other changes as well. At recess, for example, M. made dramatic progress. He went from not playing with the other students to voluntarily joining in their games. In addition, he started volunteering for activities, such as accompanying other students on errands around the school and performing a life skills lesson of taking a phone message in front of the class. Ms. Minkler believed that all of these actions represented significant progress towards his goals. Testimony of Ms. Minkler; B19; B38; and B40.

46. M.'s mother also recognized M.'s progress in social interactions throughout the year as well, including his appropriate social behavior and interaction with classmates at a fellow student's birthday party. M.'s mother reported that M. interacted well with the other students at the party. Recognizing the importance of these after school or off-campus socialization opportunities, Ms. Minkler offered to set up or find additional opportunities, such as play dates and after-school athletic programs. The Parents, however, never responded to Ms. Minkler's overtures. Similarly, Ms. Pawska offered to meet with M.'s Parents in January 2001 to teach them how to use the behavior contract to increase M.'s social skills during play dates. M.'s Parents informed Ms. Pawska that they would not meet outside of the IEP/PPT context. Testimony of Ms. Pawska and Ms. Minkler; Exhibits B24 and B63, p. 77.

47. Ms. Parkhurst also reported on M.'s progress. In her classroom sessions with M., she saw that M. and his classmates would ask each other questions, discuss the story they were writing or ideas they had, and engage in other typical in class conversations. M. gradually began to initiate conversations with his peers on a much more frequent basis and usually in a much more appropriate manner. Ms. Parkhurst recalled, for example, that M. would provide his classmates with help in spelling, and that he began to rely on his classmates instead of his teacher. Testimony of Ms. Parkhurst.

48. M. gradually gained independence in terms of his schedule and moving between classes. Indeed, by the end of the year, M. was going to and from classes and his pullout occupational therapy sessions on his own. Ms. Parkhurst saw that M. had gained independence in the classroom as well as by learning to ask for appropriate class materials, ask questions of the teacher, and other tasks that would have previously been handled by his educational assistant. Id.

49. This progress in gaining independence was also recognized by other professionals and educators including Assistant Principal Tate, who regularly observed M. in his classroom. Mr. Tate testified that M.'s educational assistant became just a shadow to make sure that M. would be redirected or prompted only when needed. In fact, based on his observations, he believed that M. adjusted nicely to Westover, and was having a positive experience, academically and socially in learning to interact with his typical peers. Testimony of Mr. Tate.

50. Ms. Pawska noticed similar progress towards his goals. Ms. Pawska believed that M.'s program in the mainstream first grade class at Westover, particularly the daily opportunities for modeling of his typical peers, was instrumental in helping M. make progress. M. was observed conveying sympathy to an upset student in his class and was also seen giving compliments to peers for their work. Testimony of Ms. Pawska.

51. M. also made progress towards his 2000-2001 IEP occupational therapy goals in the areas of fine motor skills, visual motor skills and self-care skills. With respect to his visual motor skills goals, M. mastered the task of accurately copying one sentence using correct letter formation, sizing, spacing and using the lines. He made progress in adding more detail to his drawings and writings, including adding additional colors, facial features and items of clothing to his drawings. M. learned important self-care skills, including tying his shoelaces and buttoning his shirt and pants. M. made progress in self-awareness and independence, often noticing and correcting errors in his work and moving between classes and occupational therapy sessions on his own and without the help of this educational assistant. Testimony of Ms. Parkhurst and Ms. Minkler.

52. M.'s speech and language pathologist also concluded in a May 2001 annual evaluation that M. made progress towards his 2000-2001 communication goals, including improvement in his inferences from picture cues, and Mr. Tate, who was previously a speech and language pathologist, also noticed improvements in M.'s communication skills, particularly in the important area of the prosodic features, or inflections, of his speech. The speech pathologist further recommended that speech and language services continue "for the ongoing progress of his communication skills." Testimony of Mr. Tate; Exhibits B36; B40, pp. 9-10.

53. Finally, in addition to his progress in all of the non-academic areas of his program, M.'s teachers and other professionals also concluded that M. demonstrated progress in his academics during the 2000-2001 school year. Ms. Minkler reported that he made grade level progress in his regular education classes. In his language arts class, for example, he made progress in word identification skills, word-meaning skills, written communication skills, grammar and usage, oral communication, and handwriting skills. He made similar grade-level progress in his reading and math classes. Testimony of Mother, Ms. Minkler, and Ms. Harris; Exhibits B-38; B-40, p. 2; B-51.

54. M.'s Parents believed that he was "bored" with his math class and therefore required more advanced instruction. The Board denied the Parents' request based on the opinion of M.'s math teacher -- an experienced former third grade math teacher familiar with the nature and demands of higher level curriculum -- who did not believe that he should be

placed in a higher level class. His math teacher, Mrs. Rebholz, believed that he still needed help building the base line math concepts and improving his accuracy. Indeed, Mrs. Rebholz was working with M. to slow down the pace of his work and thereby improve his accuracy in math. Mrs. Rebholz, however, did provide M. and his Parents with additional sources for more challenging math problems consistent with her first grade math curriculum. Id. and B33.

55. The Parents did not believe that M. was successful in the mainstream program, and wrote several letters of concern to Board staff. Testimony of Mother; Exhibits B16, B21, B24 and B32. In a letter dated January 11, 2001, the Parents stated that they would discuss aspects of M.'s program, including the social skills program, only at a PPT meeting with their counsel present. Exhibit B24. They declined to meet with the team to discuss social skills in an informal meeting with the team. Id. There were 10 telephone and written contacts with the Parents before the February 9, 2001 PPT meeting was convened. Exhibit B26. The Parents attended with counsel. At that PPT they expressed their concerns about M.'s placement and progress. The Board responded by adding a "case manager" to his program. The case manager was Maria Harris, who is a school psychologist within the District. Exhibit B28.

56. By the second half of the 2000-2001 school year, the Parents believed that M. was continuing to do poorly, and they began to explore alternative placements. The Mother contacted Eagle Hill and Villa Maria, both of whom told her that they did not accept children with autism. She saw a brochure for Hope Academy at M.'s private speech pathologist's office, and contacted the school to see if they would accept M. Testimony of Mother.

57. On March 2, 2001 a short-term review PPT meeting was held. Exhibit B30. M.'s IEP was revised in accordance with Parents' requests. There was nothing noted about the Parents' seeking alternate placements. Id.

58. The April 11 PPT meeting was cancelled at the request of the Parents. Exhibit B26. On May 3 a PPT notice was sent for a meeting on May 18, 2001. Prior to the May 18, 2001 PPT meeting, Ms. Harris and the other professionals on M.'s team prepared reports evaluating M.'s progress and making recommendations as to his 2001-2002 school year program. Ms. Harris prepared a Triennial Review, which recommended, among other things, that M. continue in the mainstream regular education classroom for the second grade, with accommodations and support services, including continued social skills lessons and speech and occupational therapy services. Ms. Parkhurst's annual evaluation report recommended continuation of the current occupational therapy services of one hour per week to address M.'s deficits with respect to visual motor, sensory processing and self-care skills. Similarly, M.'s speech pathologist recommended continuation of speech and language services of one hour per week to address M.'s communication issues, particularly his weakness in pragmatic language. Finally, the Team, including the STEPS behavioral consultant, Ms. Pawska, drafted additional social skills goals that called for teaching appropriate social skills through small groups and classroom instruction. Testimony of Ms. Harris; Exhibits B36; B37; B39; B40, pp. 9-19.

59. The Parents (again with counsel) and the Board met on May 18, 2001 at the PPT meeting for M.'s annual review and to plan for the 2001-2002 school year. The Board and the Parents discussed M.'s progress during the 2000-2001 school year. Based on her yearlong, daily observations of, and interactions with, M., his regular classroom teacher Ms. Minkler reported that M. made progress in his program, particularly in his social interactions with his peers. His progress led her to believe that he would continue to make progress in her class in the second grade. In fact, she was looking forward to having him and his first grade classmates in her second grade class (under Westover's looping practice). The other educators and professionals made similar reports of progress and recommended that the program be continued for the following school year. Testimony of Ms. Minkler and Ms. Harris; B-40, pp. 1-6.

60. Based on M.'s progress during the 2000-2001 school year, the Board recommended continued placement in a regular education classroom at Westover for the second grade. Specifically, the Board recommended a regular education second grade class with Ms. Minkler and the STEPS program support, speech therapy services of one hour per week, occupational therapy services of one hour per week, and social skills group of one hour per week. Exhibit B40. M. was accepted at Hope Academy in the spring of 2001. The Parents requested placement at Hope Academy for the 2001-2002 school year. The request was tabled until Ms. Herzog could consult with Ms. Carol LaBruno, Director of Special Education. Exhibit B40; Testimony of Mother.

61. The professionals who worked with M. believed that M. made progress in his 2000-2001 program and would continue to make progress in his recommended 2001-2002 program. Ms. Pawska, the behavior consultant, believed that M. would have continued to derive benefit from being exposed to typical peers because it was an emerging skill that he could further develop with the continued coaching of his team. Based on the feedback from M.'s regular education teacher and the other members of the team, Ms. Pawska believed that M. did not need a self-contained environment. Rather, he needed some extra support in reading and elaborating in his writing -- areas in which the Board was already providing support. Similarly, Ms. Harris believed that he would have continued to make progress in a regular education classroom during the 2001-2002 school year. She anticipated that he would have had opportunities for accelerated learning as he progressed in his program, because she would have considered recommending him for the exceptional learners or gifted students and other enrichment programs. Testimony of Ms. Pawska, and Ms. Harris.

62. Although M.'s Parents acknowledged that M. made grade level progress in his academics, they rejected the Board's recommended program for the 2001-2002 school year because they believed that M. was not being sufficiently "challenged" in his program. They believed that M. should be placed at a school that would accelerate his math and reading skills -- a program that challenged him "to learn to the best of his abilities academically." Testimony of Mother; Exhibit B40, p. 5 of 20. M.'s Parents also disputed his progress in the social and behavioral components of his program at Westover. Id.

63. At the May 18, 2001 PPT, the Board agreed to fund M.'s ESY program for the summer of 2001 at Our Victory Day Camp. The Mother had been asked before the PPT to locate an appropriate summer program for M., and this was the placement she had secured. M. has qualified for ESY services each year since being placed in the District. Testimony of Mother; Exhibit B40.

64. M. attended Our Victory Day Camp in Dobbs Ferry, New York for the summer of 2001. It was a successful summer experience. Testimony of Mother. The Board did not share that opinion, but it was not reported to the Parents until June 19, 2002 at the next PPT. Exhibit B54. Board Exhibit 44, which was marked for identification, was not formally offered into evidence. The Parents' attorney claimed it was never shown to the Parents until it was filed with the Board's exhibits. It is not considered therefore, in determining the appropriateness of the summer of 2002 placement. A PPT was noticed on July 3, 2001 for July 11, but it was cancelled. Exhibits B42 and 43.

65. The Parents unilaterally placed M. at Hope Academy for the 2001-2002 school year, despite the reports and recommendations that M. should continue in his mainstream regular education class and the knowledge that Hope Academy did not -- and still does not -- have state certification to operate a special education program. Testimony of Mother; Exhibits B40, p. 5 and B56. M. attended Hope Academy in beginning in the fall of 2001. Hope Academy is a private school, which provides special education instruction to children with learning and other disabilities. There are 22 students, ranging in age from 8 to 14. Three other students in addition to M. have disabilities on the autism spectrum. M. was taught by Ms. Dearani, special education teacher, for five classes, for four to five hours per day. During the other one and one-half to two hours daily, M. has five other teachers for science, math, art, gym and social skills. He was placed in small classes with five to seven children. Ms. Dearani confirmed M.'s academic progress in the Stamford Public Schools when she testified that he entered Hope Academy at the start of the 2001-2002 school year with many age appropriate academic skills. She noted, for example, that when he arrived at Hope Academy from Westover, he was decoding at or above grade level. In language, he was performing at or above grade level, except in one area. Similarly, his language development skills, grammar skills, spelling, handwriting, general writing, and math computation were also at or above grade level. Testimony of Ms. Dearani. He was initially very dependent on his teachers at Hope and did not interact with the other children readily, but he made progress throughout the school year. Testimony of Mother and Ms. Dearani; Exhibits P1 through P11.

66. A Settlement Agreement was signed by the Parents and the Board to resolve the disputes for the 2001-2002 school year in October of 2001. The Board did not pay for Hope Academy, but provided transportation and paid for speech and language therapy, which was not available at Hope. The parties agreed that Hope Academy would not be considered as M.'s placement for stay put purposes. Exhibit B45.

67. As they had throughout M.'s placement in the Board's programs, the Parents supplemented M.'s program with outside speech, occupational therapy, play therapy, and social skills services at their own expense. Testimony of Mother.

68. A PPT was noticed on April 22 for May 8, but was cancelled at the request of the Parents. Exhibits B43, B46 and B47. Another notice was sent June 13 and the PPT was convened on June 19, 2002 to review M.'s current educational needs and to plan for the 2002-2003 school year and the ESY 2002 programs for M. Exhibits B53 and B54. No one from the Board had contacted the Mother regarding options for summer programming prior to this meeting, so she had arranged for M. to return to Our Victory Day Camp for the ESY 2002 program. Testimony of Mother.

69. To prepare for the June 19 PPT meeting, Ms. Herzog, the Board's Assistant Director of Special Education, and Ms. Pawska reviewed the documents provided by M.'s Parents, including M.'s portfolio of class work from Hope Academy, a March 2002 psychological evaluation by Dr. Greenbaum and a speech and language report by Dr. Nancy Schwartz. Testimony of Ms. Pawska; Exhibit B54. The Board's request for observation of M. was denied by Hope Academy. M.'s mother testified, however, that she was permitted to observe her son during class instruction using Hope Academy's one-way mirror. No such observation was offered to the Board. Testimony of Mother and Ms. Pawska. Those in attendance were Ms. Herzog, the Parents and their attorney, Ms. LaBruno, Ms. Maria Gianetti, third grade regular education teacher (available by phone), Ms. Parkhurst, Ms. Sherry Ellis, a speech and language pathologist, and Ms. Gail Flaster, Principal of Roxbury School. Two others who were invited, but who did not attend were the Hope Academy special education teacher and Ms. Martha Lee Melis, social worker. Exhibits B53 and B54. The Parents complain that only one person attended the PPT who had ever worked with M. previously, Joanne Parkhurst, his OT while at Westover. They argue that OT was not a concern of M.'s Parents when he was in the public schools. No special education or regular education teacher participated in the PPT. *Id.* and Exhibit B54. It does not appear that Parents were harmed by these facts, since they did not wish to consider the Board's recommendations. At the outset of the PPT they stated their position that they wanted the Board to place M. at Hope Academy. Exhibit B54.

70. M.'s performance on the psychological assessments administered by Ms. Klaiman in January and February 2002 in the Dr. Greenbaum report was similar in many respects to his performance on the assessments administered by Ms. Harris during the 2000-2001 school year. Specifically, M. was still functioning at average or above average levels (as compared to typical peers) in many areas of his intellectual and academic functioning, with his primary deficits still being in the areas of comprehension and reading social cues. Further, both Dr. Greenbaum's report and Ms. Harris' evaluation recognized the fundamental importance of M.'s daily access to typical peers, especially given his ability to model the behaviors of these peers. There were also several notable differences between the evaluations, as explained by Ms. Harris. First, M.'s verbal functioning or IQ had decreased, which was troubling because, in Ms. Harris' expert opinion, the verbal functioning scores of high functioning autistic children and particularly Asperger's children should increase with age. Second, M.'s comprehension scores, or his ability to comprehend information, decreased, which was troubling to Ms. Harris because she had expected to see an increase in his fund of information. Third, M.'s picture arrangement abilities declined. Testimony of Ms. Harris; Exhibit P14. The Yale Report submitted by the Parents at this hearing, which was not available to the Board when it was drafting the

recommendations for the 2002-2003 IEP, simply adopts the findings of Dr. Greenbaum's report. Exhibits P13, B15 and B39.

71. The psychological report by Dr. Greenbaum provided information regarding M's functioning, as of March 2002, in the following areas: intelligence or cognitive functions, academic achievement, language skills, adaptive skills, daily living skills and socialization skills. The evaluation was based solely on the tests, some of which were incomplete, administered by Ms. Klaiman, Dr. Greenbaum's conversations with M.'s Parents and Dr. Greenbaum's review of records. Testimony of Ms. Klaiman; Exhibit P14. Neither Dr. Greenbaum nor Ms. Klaiman observed M. in any classroom setting or spoke to any teachers at Hope Academy. Id.

72. M.'s overall scores on the assessments and his decline in certain areas of functioning led Ms. Harris to conclude that M.'s educational program would need to include programming for social interaction, social skills, picture stories for social interactions and pre-practicing social interactions. Ms. Harris continued to believe, however, that M. should not be placed in a self-contained special education classroom setting because such a setting would likely harm the development and advancement of M.'s social skills. Testimony of Harris; Exhibit P14, p. 14.

73. Dr. Greenbaum's report recommendation for placement in a small, structured environment to avoid distractions and to provide one on one instruction from the teacher, could be accomplished if M. had an educational assistant to redirect him and provide one on one instruction within the larger school or larger classroom setting. Testimony of Ms. Klaiman.

74. The recommendation that M.'s educational program incorporate social scripting, such as Carol Grey social scripting is consistent with the Board's program. Ms. Pawska testified that she regularly relied on two social scripting books, Directing Discourse and Teaching Children to Mind Read. The recommendation that M. be placed in a school with a behavioral consultant who could train teachers and staff to work with autistic children and a speech pathologist who would work directly with M. in the school setting is also consistent with the Board's program, which, at all relevant times, had the involvement of and oversight by a trained behavioral consultant, Ms. Pawska. Testimony of Ms. Klaiman and Ms. Pawska; Exhibit P14, p. 14.

75. Ms. Pawska has provided consulting and training services to 5 autistic Roxbury students and the Roxbury staff with whom they work throughout the 2002-2003 school year. She has, for example, helped with the initial assessment of the students' needs and programming requirements. Ms. Pawska has also provided training and staff development to the educators and other staff on the implementation of appropriate behavioral strategies. She has also assisted Roxbury Elementary School educators and staff in the revision or fine-tuning of social/behavioral programming. Ms. Pawska testified that she would have provided the same services, including teacher training, to those staff members who would have worked with M. during the 2002-2003 school year, as well as weekly consultations with M.'s team. Ms. Pawska also would have followed the baseline data collection procedure she implemented at Westover during the 2000-2001 school year in order to gauge M.'s specific deficits or needs in the classroom and to

develop appropriate social programming, communications systems and tracking systems to address those needs. Testimony of Ms. Pawska.

76. The PPT recommended placement in a regular education third grade classroom at Roxbury Elementary School, with instructional, behavior management, testing, organizational and environmental accommodations and support services, including a full-time 1:1 educational assistant. The 2002-2003 IEP also recommended speech therapy of 1.5 hours per week, occupational therapy of 1 hour per week, with a re-evaluation in September 2002 to determine any necessary changes in the recommended occupational therapy program, social skills group with typical peers, and weekly consultation with the STEPS behavior consultant. Exhibit B54, pp. 1, 6. M. had not been receiving occupational therapy at Hope Academy so there were no records or evaluations upon which Ms. Parkhurst could rely in drafting M.'s occupational therapy goals. Id. at 21; Testimony of Ms. Parkhurst.

77. The PPT's recommended 2002-2003 IEP focused much of its programming on developing and enhancing M.'s social and behavioral skills. In addition to his social skills group, it was anticipated that M. would also gain social skills within the academic classroom setting. It was equally likely that group-based social skills goals could also be achieved through the weekly 1-hour group speech therapy sessions. Further, because the IEP called for a short-term review six weeks after the start of the school year, the team would have had the opportunity to revise the methods for implementing the social skills goals. Testimony of Ms. Pawska.

78. The 2002-2003 IEP recommended placement at Roxbury Elementary School was appropriate because Roxbury Elementary School is M.'s neighborhood school, a school with which M. is quite familiar since both of M.'s siblings attend the school. M. has attended fairs, after-school programs and other activities at the school. Further, the Board was opening a STEPS program at Roxbury Elementary School in the 2002-2003 school year. Ms. Pawska, who would have continued serving as the consultant to M.'s program, has been working with five other autistic students at Roxbury Elementary School during the 2002-2003 school year. Testimony of Mother and Ms. Pawska; Exhibit B54, p. 1.

79. The Parents believed that M. was making appropriate progress at Hope Academy, and did not believe he was prepared to return to a mainstream, regular education program. In addition, they were concerned that the environment at Roxbury would be even more distracting for M. than the environment at Westover, which has a smaller population and is a quieter school. Testimony of Mother and Mr. Tate.

80. The Parents expressed to the PPT their concerns about the placement recommended, and stated that they felt the class sizes were too large for M. to learn. The PPT did not offer a smaller class size or a more restrictive program. Testimony of Mother; Exhibit B54.

81. The Parents requested placement at Hope Academy for the 2002-2003 school year, which request was denied. Exhibit B54. The Board denied the Parents' requested placement because its educators and professionals believed that the Board's

recommended IEP was appropriate. The Board's educators and professionals did not believe that M. required a self-contained special education class in order to be educated, especially since such a self-contained class would deprive M. of the valuable opportunity to gain social and behavioral skills and to facilitate daily exposure to typical, non-disabled peers. Id. and Testimony of Ms. Harris and Ms. Pawska.

82. The Team then discussed ESY services for M. For the first time, the staff told the Parents that they had had concerns about Our Victory Day Camp the prior year, and would not support the placement. The Board recommended, based on the reports, evaluations and discussion with M.'s Parents, the following 2002 ESY program: (1) placement at the Westover Day Camp, with a full-time educational assistant; (2) a reading tutor for five hours per week for six weeks of the ESY; and (3) speech therapy of one and one half hours per week for six weeks. The program was offered from July 1 to August 9. At the time of the PPT, M. was already out of school and the Parents had arranged for him to attend Our Victory Day Camp. The Parents' request for placement and transportation to Our Victory Day Camp was refused and they unilaterally placed M. there. Testimony of Mother and Exhibit B54, pp. 1, 6, 7. The Parents did not believe the ESY program offered was appropriate, and rejected the placement. Id.

83. M. attended Our Victory Day Camp for the summer of 2002, and again had a successful experience. Testimony of Mother.

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 M. is a child with autism.

Section 300.7(c)(1)(i) defines autism in relevant part:

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. . . .

M. is a child whose disabilities fall on the high functioning end of the autism spectrum. See Report of the Connecticut Task Force on Issues for the Education of Children with Autism at 16-24.

2. The parties also agree that FAPE for M. requires an ESY program. 34 C.F.R. Section 300.309(2) provides:

Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Sections 300.340-300.350 that the services are necessary for the provision of FAPE to the child.

3. The Board has the burden of proof on the appropriateness of the program for 2002-03, as well as the ESY summer 2002 program. Walczak v. Florida Union Free School District, 142 F.3d 119, 122 (2d Cir. 1998). Conn. State Regs. Section 10-76h-14. The standard for determining whether FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether the IEP is "reasonably calculated to enable the child to receive educational benefits." Id. at 206-207. The Board must establish these by a preponderance of the evidence. Walczak v. Florida Union Free School District, *supra*.

4. The ESY 2002 program began on July 1, 2002. The PPT meeting was held on June 19, 2002. The ESY program was not discussed until the end of the meeting. At that time the Parents had placed M. in Our Victory Day Camp, which was the placement approved by the PPT the previous summer. There was no communication by the Board to the Parents prior to the June 19, 2002 PPT meeting that Our Victory Day Camp was no longer acceptable. The Board is obligated to make ESY services available in a timely manner. 34 C.F.R. Sections 300.309(a) and 300.342. The Board offered no testimony or other evidence to support the appropriateness of its 2002 ESY program, other than Exhibit B54, the record of the June 19 PPT meeting. There is insufficient evidence to meet the Board's burden of proof, therefore, it must be determined whether the Parents' unilateral placement was appropriate.

5. The Parents have the burden to prove that the unilateral placement at Our Victory Day Camp provided M. with FAPE. 34 C.F.R. Section 300.403. Florence City School District v. Carter, 510 U.S. 7, 15 (1993); M. S. v. Yonkers Board of Education, 231 F.3d 96 (2d Cir. 2000). The Parents' evidence regarding the ESY 2002 is that the Board approved the same program for the ESY 2001, that M. did well there, that they had no reason to know the Board would reject the same placement for ESY 2002 and that M. did well in the camp during the ESY 2002. This evidence is sufficient to meet their burden of proof.

6. Parents who pay to maintain a child in an appropriate placement are entitled to reimbursement. School Comm. of Burlington v. Department of Education, 471 U.S. 359, 373-374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985).

7. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. 34 C.F.R. Section 300.550(b). See also 20 U.S.C. Section 1412(5)(b); 34 C.F.R. §§300.550-300.556; Conn. State Regs. Sections 10-76a-1 and 10-76d-1. This requirement applies to children with autism. See Report of the Connecticut Task Force on Issues for the Education of Children with Autism at 50-52. 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 the 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. In this case, there is an abundance of credible evidence that the district engaged in the type of analysis required. The IEP satisfies the Board's obligations under state and federal law to provide an appropriate IEP in the LRE for the 2002-03 school year.

8. In this case the Parents are arguing that the LRE language of IDEA and state law are permissive in regard to the LRE mandate. There is no language in the statute or regulations which permits Parents to decide whether their child will be educated in the mainstream classes of a public school. The criterion is whether the child can receive an educational benefit in the mainstream. 34 C.F.R. Section 300.552 places the burden on the LEA to ensure that placement decisions are "made by a group of persons, including the parents. . .," are "made in conformity with the LRE provisions. . .," and are "as close as possible to the child's home. . . ." Clearly this Student has shown success in the mainstream classes in the Board's kindergarten and first grade classes both socially and academically. The evidence shows that the program offered for 2002-03 in a third grade regular education classroom with a 1:1 aide and related services of speech and language, occupational therapy, social skills and support from Ms. Pawska, at M.'s neighborhood school is sufficient to meet the Board's obligation to provide FAPE in the LRE.

9. Since the Board has proven by a preponderance of evidence that the IEP for the 2002-03 school year provided M. with FAPE in the LRE, the Parents are not entitled to reimbursement for the unilateral placement at Hope Academy or the related services provided privately by them. The IDEA "does not require [a local educational agency] to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility *if that agency made FAPE available to the child and the parents elected to place the child in a private school facility.*" 34 C.F.R. Section 300.403(a) (emphasis added). See also Burlington, 471 U.S. at 373-74; and M.C. ex rel. Mrs. C. v. Voluntown Bd. of Ed., 226 F. 3d 60, 66 (2d Cir. 2000).

FINAL DECISION AND ORDER:

1. The Board failed to provide M. with FAPE for the ESY for summer 2002.
2. The unilateral placement at Our Victory Day Camp provided by the Parents was appropriate for the ESY for summer 2002. Parents are entitled to reimbursement for the cost for M. to attend it.
3. The Board provided M. with FAPE in the LRE for the school year 2002-03.
4. The Parents are not entitled to reimbursement for the unilateral placement at Hope Academy.
5. Since the Board provided M. with FAPE in the LRE, which included occupational and speech and language therapy and social skills instruction, the Parents are not entitled to reimbursement for related services, which they provided at additional expense because Hope Academy did not offer them.