

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Hartford Board of Education

| | |
|---|--|
| Appearing on behalf of the Parent: | Attorney Roger E. Bunker 28 Old Village Road Bloomfield, CT 06002 |
| Appearing on behalf of the Board: | Attorney Ann F. Bird Assistant Corporation Counsel City of Hartford 550 Main Street, Room 210 Hartford, CT 06103 |
| Appearing on behalf of Capitol Region Education Council (CREC) | Attorney Linda Yoder Attorney Rebecca Rudnick Santiago Shipman & Goodwin, LLP One Constitution Plaza Hartford, CT 06103-1919 |
| Appearing before: | Attorney Mary H.B. Gelfman Hearing Officer |

FINAL DECISION AND ORDER

ISSUES:

1. What is Student's "stay-put" placement pending the outcome of this hearing?
2. Is placement at University of Hartford Magnet School (UHMS) appropriate to Student's special education needs in the least restrictive environment?
3. Is placement at Clark School appropriate to Student's special education needs in the least restrictive environment?
4. Does the hearing officer have the authority to join the Capitol Region Education Council (CREC) as a party to this hearing?

PROCEDURAL HISTORY:

Parent requested this hearing on June 20, 2006, and the hearing officer was appointed on June 23, 2006. A pre-hearing conference by telephone conference call was held on July 6, 2006. At that time, the Parties informed the hearing officer that Student's placement at the University of Hartford Magnet School (UHMS) had been changed by a Planning and Placement Team (PPT) that included both representatives of the school district and representatives of CREC, which operates the UHMS. For that reason, the parties requested that the hearing officer join CREC as a party to this hearing.

The hearing officer immediately communicated with the Executive Director of CREC and with the Principal of UHMS. There was no response until September 12, 2006, when the hearing officer received a notice of appearance on behalf of CREC, with objection to joinder.

The hearing was initially scheduled for August 16, 2006. By letter dated July 26, 2006, Parent's attorney requested that the hearing be postponed pending settlement negotiations, and that request was granted. Parent and the Board agreed that Student's "stay put" placement pending the hearing would be at Clark School. The hearing convened on September 13 and concluded on September 14, 2006. When the postponement of the August 16, 2006, session was granted, the deadline for mailing the final decision and order was extended from September 5 to October 5, 2006. Upon the receipt of a brief concerning joinder from CREC on September 28, 2006, and a response from Parent on October 2, 2006, the record of the hearing was closed and the deadline for mailing the final decision and order was extended to October 23, 2006.

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

SUMMARY:

Student, who has autism, entered UHMS for the 2005-2006 school year through a blind lottery. A transition PPT meeting during the summer adopted most of his March 14, 2005, Individualized Education Program (IEP), providing for special education services and participation in regular education classes. Almost immediately, his behavioral outbursts caused concern. The PPT met frequently, and quite soon discussions included the option of an Applied Behavior Analysis (ABA) placement at the Board's Clark School. This placement was initially described as temporary, assuming that Student's behavior could be brought under control and he could return to UHMS in twenty days. Student was transferred to Clark School in February, 2006, but the ABA classroom program provided no improvement. The Board devised an individual self-contained program, with a contracted Behavior Consultant and a Paraprofessional working with Student. Parent asked that Student be returned to UHMS. UHMS notified Parent that the place for Student, held during his placement at Clark, would no longer be reserved for him, and that summer services would not be provided for him by UHMS. Parent requested a hearing.

Note: in this decision, the terms “regular education” and “general education” are used interchangeably, as both terms were used in the record.

Witnesses for the Parent: Student’s Outpatient Therapist; Student’s Mother; and Social Worker. Witnesses for the Board: Coordinator of Special Services; Behavior Consultant, Creative Interventions; Behavior Therapist, Creative Interventions. Witness for CREC: Special Education Coordinator.

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

STIPULATIONS OF THE PARENTS AND THE BOARD OF EDUCATION:

1. [Student] is a child with autism and is qualified for special education and related services;
2. They agree on the stay put placement pending the Hearing Officer’s decision without prejudice to either party’s position as to the appropriateness of that placement;
3. They agree that placement in the ABA [Applied Behavior Analysis] classroom at Clark [School] is not appropriate;
4. The University of Hartford Magnet School is the school that [Student] would attend if he did not require special education and related services;
5. [Consultant, Creative Interventions] is qualified as an expert in programming for children with autism;
6. [Student’s Therapist] is qualified as an expert in the treatment of children with behavioral issues in general and Student in particular.

CREC also stipulated to items 1, 2, and 5.

FINDINGS OF FACT:

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

1. Student is an eight-year-old young man (date of birth May 2, 1998). He was evaluated on September 18 and October 2, 2001, and diagnosed as on the autism spectrum at three years of age. (Ex. P-1, P-2)
2. A follow-up evaluation, by the same Developmental and Behavioral Pediatrician on April 15, 2003, when Student was four years and eleven months old, was the result of his difficulties in a pre-school program and in anticipation of kindergarten. On the Pediatric Examination of Educational Readiness (PEER), a neuro-developmental assessment, he was described as "... difficult to engage in many of the tasks today, and I would not view today's testing necessarily as a reliable or valid sample of all of his skills". The evaluator noted brief eye contact, variable effort, echolalia, and bits of language described as "script" ("wow, good job"). His attention span was quite limited and it was difficult to keep him seated at the examination table. Strengths were noted in pre-academic skills, visual perception, and identifying smaller body parts. Areas of concern were difficulty with attention and very inconsistent effort. Gross and fine motor skills were below age norms. No formal language testing was performed, but the evaluator noted concerns in both expressive and receptive language skills. Echolalia, social concerns and the overall picture confirmed the diagnosis of Autistic Spectrum Disorder, although progress with academic skills was noted. (Ex. P-3)
3. The Board performed an individual psychological evaluation on February 5, 2004, during Student's kindergarten year.
Questions to be addressed were:
 - What is [Student's] current level of intellectual functioning?
 - What educational strategies/setting would best meet [Student's] needs?
 - What strategies would help him to cope with transition and change?The evaluator reported that Student's overall cognitive functioning was in the low average range on the Kaufman Brief Intelligence Test and in the deficient range (FSIQ = 57) on the Wechsler Pre-Primary Scales of Intelligence – Revised. A large and significant difference between his verbal cognitive ability (VIQ = 50) and his visual perceptual organizational ability (PIQ = 72) on the Wechsler was reported. His relative strengths were given as: visual discrimination of details and ability to visualize and synthesize wholes from their component parts. His cognitive weaknesses were: general factual knowledge, social reasoning, logical thinking, common sense reasoning, word knowledge, and verbal abstract reasoning. His visual motor integration skills were given as within normal limits, and he had a low average score on the Beery-Buktenica Developmental Test of Visual-Motor Integration. This evaluation concluded with recommendations: continued special education services and a paraprofessional to assist him. A page of specific strategies and exercises was provided. (Ex. P-4, B-1)
4. The record of a PPT meeting held on March 5, 2004, during Student's kindergarten year, summarized his present levels of educational performance:
Academic/Cognitive: [Student] has identification of all letters and numbers. He has difficulty with reasoning skills and knowledge of dangerous situations.

Social/Emotional/Behavioral: Coping skills and interpersonal skills with peers are weak – delayed. Transition skills remain difficult.

Motor: delayed.

Communication: delayed.

Strengths: rote skills are solid; can use language purposefully; responds well to praise and rewards; computer skills; reading/math skills.

Concerns/Needs: safety – must be closely monitored; communication; needs to become more independent; cognitive reasoning; attention to task. (Ex. B-2)

5. A Teacher's Report dated January 21 and 26, 2004, was included with the record of the March 5, 2004, PPT meeting. His current program was described as: One-to-one Paraprofessional, S/L Services, OT Services, Full Time Special Education Support, Transportation, and Full Inclusion into Typical Kindergarten Classroom. Some of the Teacher's comments:

Behavior: [Student] has made significant gains in the area of behavior. He is now able to sit for story and group lessons both large and small. He continues to require verbal prompts and visual prompts to transition between activities.

Physical prompting has become less during movement within the building and outside activities. He is now able to walk in line without an adult. It should be noted that adults monitor [Student] closely.

On occasion [Student] will engage in negative attention seeking [behaviors] such as: noise making, tapping or leg kicking. These behaviors are easily corrected with a verbal reminder to do the appropriate behavior. [Student] has been observed to become agitated when he does not wish to comply with a demand or when play time is over. He is now able to calm himself down with minimal adult support and continue with his day.

Although perseverative behaviors occur occasionally, [Student] should continue to be redirected to appropriate behaviors such as: placing his hands in his lap or using toys appropriately. These perseverative behaviors are observed to be spinning an object, dropping an object or tapping hands back and forth on an object.

[Student's] ability to complete a task is dependent upon his ability to attend to the task at hand. If he feels competent in a skill, he is more able to complete the activity. Paper, pencil and scissor activities present the most difficulty for [Student]. During these activities, he requires one to one support. Activities such as: painting, puzzles, books, computer games, legos, housekeeping, manipulatives and sensory table require minimal support.

Battelle Developmental Inventory, at Student age 67 months: personal/social total, 37 months; adaptive total, 53 months; cognitive total, 53 months.

Adaptive skills: [Student's] ability to attend has improved. He is observed to produce better work when working in a quiet place with little distraction.

[Student] is sensitive to loud noises.

Weschler Individual Test of Achievement: Basic reading, 73%; Math Reasoning, 47%; Spelling, 68%; Numerical operations, 42%; Listening comprehension, 14%; Oral expression, 21%; Math total, 50%; Language total, 13%; Total score, 14%.

- Summary:** ... He attends school on a regular basis with absences due only to illness. [Student] is neat and clean in appearance. He enters school with ease and an eagerness for learning. [Student] has made gains in all areas of development. [Student] is eligible for special education support due to his delays in cognition, adaptive skills and personal social development. [Student] requires consistency and routine in order to be successful. Many of the concerns observed are common for children with Autistic Spectrum Disorder. (Ex. B-2, 26-29)
6. The IEP developed at the March 5, 2004, PPT meeting called for 27 hours per week of developmental services, to be provided by a special education teacher, a regular education teacher, and a one-to-one paraprofessional. Speech/language (S/L) therapy and occupational therapy (OT) were also planned. Modifications/adaptations were: positive reinforcement, multi-sensory approach, and support auditory presentations with visuals, all day within school environment, plus consultation with occupational therapist as needed. (Ex. B-2-17, 19)
 7. A Behavior Intervention Plan Review included with the record of the March 5, 2004, PPT meeting noted:
Continue with paraprofessional and current program to aid in transitions.
Signatures of Parent, Teacher, Psychologist, S/L Pathologist and OT appeared on the form. This plan was scheduled for review during the week of September 6, 2004.
(Ex. B-2-20)
 8. An OT report dated February 2, 2004, concluded with a summary:
[He] has made great gains in his coping skills and his attention to task. Based on standardized testing, he demonstrates average visual motor integration skills, however he demonstrates a significant delay in grasping skills. It is recommended that [Student] continue to receive [OT] for 1 hour per month direct to improve his fine motor skills. (Ex. B-2, 21-22)
 9. A S/L evaluation report dated January 30, 2004, recommended continued therapy to improve receptive and expressive language skills. (Ex. B-2, 23-25)
 10. Parent and Student's then-current Teacher took Student for another consultation with the Developmental and Behavioral Pediatrician on April 23, 2004. Following the February school vacation, Teacher had noticed a significant regression in Student's behavior and had observed significant anxiety. Student had been having difficulties on the school bus, and had required restraint. Parent and Teacher reported prior problems with transitions, and the recent regression appeared to start when Teacher was absent for three days. An OT had been working on calming techniques for Student, with some success. Pediatrician suggested that an ABA-trained individual analyze Student's difficult behavior and make a plan for intervention. (Ex. P-5)
 11. A Functional Behavior Assessment dated December 2, 2004, identified behavior of concern:

[Student] runs around the room and does not comply with adult directives to return to his place. [Student] becomes aggressive with peers and adults (hits, kicks, throws or knocks over objects) when he is frustrated.

Who is present? These behaviors occurred in the presence of classmates, paraprofessionals, art/music/physical education/library teachers, and when classroom teacher and language teacher are present, but behaviors occur much less often and with less intensity.

What is happening? [Student] is experiencing a frustrating situation. Often, behaviors occur during transitions. Most often, [Student] is in a highly stimulating situation outside the classroom.

When and Where? Behaviors occur most often when [Student] is in a highly stimulating situation or when [Student] is presented with challenging tasks. Transitions, even within the self-contained classroom are extremely difficult for [Student]. However, he generally handles transitions appropriately with adult support.

Purpose of the behavior? ... appear[s] to be avoidance of a situation or task. Aggression is an expression of frustration and anger. [Student] appears to be anxious when confronted with a transition, a highly stimulating situation, or a situation which challenges his social, language and/or cognitive skills.

What new behavior or coping skills does the student need to learn or use? ... needs to cope with transitions and frustrating experiences. Needs to verbalize frustrations appropriately. Needs to utilize coping strategies, i.e., use visual schedules, social stories. (Ex. B-3)

12. At a PPT meeting on March 14, 2005, when Student was age 6 years and ten months and in first grade, present levels of educational performance were listed:

Academic/Cognitive: PIAT-R: Reading Rec SS 90; Reading Comp. SS 78; General Info SS 70.

Key Math: Basic Concepts SS 92; Operations SS 85; Applications SS 80.

Brigance: Quantitative Concepts 3.0 yr; Color & number words 7.0 yr;

Directional/Positional Concepts 3.0 yr.

SFA Reading Assessment: Comprehension – Lesson 6; Oral Reading Lesson 21.

Social/Emotional/Behavioral: L.A.P. o.e. 36 mos.

Battelle Personal Social SS >65

CARS Behaviors consistent with moderate autism.

Motor: Brigance – Draw-A-Person 5.0 yr; Prehandwriting 6.0 (test ceiling).

Communication: OWLS: L.C. SS 71; O.E. SS 62.

Activities of Daily Living: LAP 54 months.

Strengths: visual memory, reading sight vocabulary, reading decoding skills, reading fluency, math numeration skills, geometry, responds positively to tangible secondary rewards, adult interactions, expresses enthusiasm for preferred work/play activities, engage[s] in activities independently.

Concerns/Needs: impulsivity, attention, difficulty with changes and transitions, physical aggression directed toward peers & adults, expressive language, receptive language, pragmatic language, reading comprehension, listening

comprehension, general information, peer relationships, does not avoid common dangers consistently. (Ex. B-4-5)

13. The March 14, 2005 PPT recommended:

- Continue in current highly structured self-contained program.
- Door to door transportation is required.
- Extended school year is required.
- Continue [S/L] services - 1½ hr per week.
- Continue OT services - ¼ hr per week.
- Continue adult support by one to one para[professional] on an “as needed” basis.
- Assistive technology evaluation is required.

Fourteen hours a week of special education was planned, with ¾ hr of S/L and ¼ hr of OT. Student would participate in “all non-academic activities”. (Ex. B-4-1, 26)

14. Program modifications/adaptations from the March 14, 2005, PPT meeting were listed for all day in all sites for the duration of this IEP:

Materials/Books/Equipment: Consumable workbook, manipulatives.

Tests/Quizzes/Time: Rephrase test questions/directions, extra response time, extra time- written work, modified tests.

Grading: Grade improvement.

Organization: Folders to hold work.

Environment: Preferential seating.

Behavior Management/Support: Positive reinforcement, structure transitions, visual schedule, social stories, time out from positive reinforcement.

Instructional Strategies: Use manipulatives, multi-sensory approach, visual reinforcement, provide models, pictures/charts, repeat instructions, oral reminders, visual reminders.

A one-to-one paraprofessional is required full time for the duration of this IEP.

(Ex. B-4-29)

15. The goals in the March 14, 2005, PPT record were:

[Student] will improve receptive and expressive communication skills in order to improve classroom functioning ...

[Student] will improve developmental social skills involving peer relationships to enhance functioning in the classroom and school settings.

[Student] will improve social skills involving coping with frustration to enhance functioning in the classroom and school settings.

[Student] will improve written communication skills to enhance functioning in the general curriculum and in the classroom setting.

[Student] will improve listening and reading comprehension skills to enhance functioning in the general curriculum and improve language skills.

[Student] will increase reading sight vocabulary and improve reading decoding skills to enhance functioning in the general curriculum.

- [Student] will increase understanding of basic quantitative concepts and improve math application skills to enhance functioning in the classroom and school settings and in the general curriculum.
- [Student] will improve math numeration, geometry, and operation skills to enhance functioning in the general curriculum.
- [Student] will improve fine motor and self help skills to enhance functioning in the classroom and school settings.
- [Student] will improve fine motor skills by achieving 3/3 short term objectives ... (Ex. B-4, 6-17)
16. A Behavior Intervention Plan Review attached to the March 14, 2005, IEP included “[Student’s] behavioral outbursts have decreased in frequency and duration”. (Ex. B-4-35)
17. The PPT met on June 17, 2005, to plan evaluations. The Board’s Coordinator of Special Education Services, Parent, Special Education Teacher, School Psychologist and S/L Pathologist were present. The March 14, 2005, goals continued. The PPT recommended:
- Goals, recommendations of the PPT of 3/14/05 remain in effect.
 - Psychiatric evaluation is recommended.
 - Psychological evaluation should be updated prior to 11/05 to remeet [sic] program.
 - [Student] requires adult supervision for all instructional and non-instructional activities.
- Behavior was a concern, with aggressive behaviors, anger and anxious moments reported. “Anxiety seems to rise when any type of change is introduced to his environment.” He was reported as beginning to run away “again”. Revision of the Behavior plan would be made after the psychiatric evaluation. (Ex. B-5)
18. Student and his family are residents of Hartford, and he has attended school in Hartford since his initial enrollment. The UHMS is located in Hartford, and serves Hartford and several nearby school districts. (Testimony, Mother; *Public School Choice in Connecticut: A Guide for Students and Their Families 2006-2007*. Connecticut State Department of Education, p. 20)
19. In the spring of 2005, Parent submitted an application for Student’s admission to UHMS by blind lottery. No special education information was required in the lottery process. She was notified that he had been admitted. (Testimony, Mother; Testimony, CREC Assistant Director of Student Services)
20. The University of Hartford Multiple Intelligences Magnet School is described as follows in the Connecticut State Department of Education’s publication, *Public School Choice in Connecticut: A Guide for Students and Their Families 2006-2007*: The [UHMS], managed by [CREC] is based on the theory of multiple intelligences developed by Howard Gardner of Harvard University. This theory proposes that each person has the ability to develop eight distinct “intelligences”:

the magnet school operates on the belief that each of these eight types of intelligence has importance in a child's development.

There is a PK-5 elementary school, a family and wellness center which includes a licensed clinic with counseling and medical support services; and extended-day program; an extended year program; a parent education program; an Even Start program for young parents working toward a [GED] diploma or learning English as a Second Language; and an early childhood education center.

At the CREC website for magnet schools, the mission of UHMS is provided:

[UHMS's] mission is to ensure that all students meet high standards and develop their full potential in traditional and expanded academic areas, as defined by Dr. Howard Gardner's Theory of Multiple Intelligences. The magnet school is a multi-faceted educational facility focused on individual learning styles and strengths that brings urban and suburban children, families and faculty together to form a diverse, innovative learning community.

What is a Multiple Intelligences School?

The magnet school on the University of Hartford campus is based on the theory of multiple intelligences, developed by Dr. Howard Gardner of Harvard University. This theory proposes that each person has the ability to develop a variety of different kinds of "intelligence." Dr. Gardner has identified eight distinct types of intelligence: linguistic, logical-mathematical, spatial, musical, bodily-kinesthetic, interpersonal, intrapersonal, and naturalistic.

UHMS is founded on the belief that each of these eight types of intelligence has importance in a child's life. Each of the intelligences provides an avenue for greater learning. UHMS will help all students develop their basic skills by presenting a PreK-5 curriculum that is aligned with the Connecticut Curriculum Framework. (Ex. P-11)

21. The PPT met on July 25, 2005, to review Student's program prior to his enrollment at UHMS. This meeting was attended by the Board's Coordinator of Special Education Services, Principal of UHMS, Parent, a Regular Education Teacher, a Special Education Teacher, and a School Nurse. The UHMS program was described, including "team teaching" in regular classrooms by regular and special education teachers. A summer program at UHMS was planned. The PPT recommended:

- [Board] will continue to cooperate with parental placement @ magnet school.
- [Student] requires 1:1 paraprofessional support for all academics and transitions.
- [Student] requires door-to-door transportation during school year and for summer school.

The schedule of services indicated 14.25 hours per week of special education, with 33.5 hours per week with non-disabled peers in a 35-hour week. All special education services were to be provided in the regular education classroom, with support from a special education teacher and a paraprofessional. No goals were changed. (Ex. B-6; Testimony, Coordinator)

22. The PPT convened on September 12, 2005, with the Board's Coordinator of Special Education Services, UHMS Principal, Parent, Regular Education Teacher, Special

Education Teacher, Social Worker, S/L Pathologist, School Nurse, OT, Parent's Social Worker/Advocate, and a Substitute Special Education Teacher present. The PPT recommended:

- [Board] will continue to cooperate with parental placement @ magnet school.
- Continue 1:1 paraprofessional.
- Team requests Assistive Technology evaluation.
- Team requests psychiatric evaluation.
- Continue spec. ed. 12.5 hours.
- Continue [S/L] 1.5 hrs.
- Continue OT .25 hrs/wk

There were questions about behavior, prior psychological evaluation, triggers for behavior, and prior strategies. No goals were changed. (Ex. 7)

23. A Behavior Consultant from CREC observed Student on September 22 and 23, 2005, at UHMS. At that time, he was enrolled in second grade and was receiving services from a special education teacher, a full-time paraprofessional and a regular education teacher. He started the day well, greeting people appropriately and initially participating in his class morning meeting. After fifteen minutes in the circle, he left the circle, hugged his paraprofessional, and started playing independently. When questioned by the observer, staff explained that if they had intervened, he would have "a meltdown". References are made in this report to use of a "small room" for individualized instruction of Student, as well as a place he could be taken when his behavior disrupted the regular classroom. The use of this small room was never specifically described in his IEP, but it was mentioned frequently on the record. The Behavior Consultant provided an extensive summary and recommendations:

It is very apparent that the direct staff is fond of [Student] and wants to see him succeed. I commend them for their efforts in helping him to be successful. There are some great things in place including 2:1 support and a positive behavior plan. [Student] is very verbal as evident by his communication with staff and high amounts of self-talk. He appears to have the ability to complete grade level academics; however, his behaviors severely impact his success in the typical classroom and the success of the other students in the classroom. [Student's] behavior which includes aggression (hit, kick, punch, throwing objects); yelling (talking at socially inappropriate levels); and bolting (leaving the immediate area), greatly impacts his ability to be successful in the general education classroom and the alternative classroom that has been arranged for him. His behaviors appear to serve as a function of escape from demands and attention. He is very aware of what consequences the staff will implement given certain behaviors, and will exert control over many situations. Below is a list of recommendation and strategies for UHMS staff to use.

- While [Student] is very verbal and will pick up on verbal cues, it is difficult to tell if he truly comprehends verbal directions given to him. Try to reduce the number of verbal directions given, and have only one person giving directions at a time. ...
- Utilize a visual schedule throughout his school day. This can be in the form of written words. The schedule should display a smaller increment of time so

that it is not overwhelming. Staff did an excellent job of implementing this on my last observation. ...

- [Student] appears to enjoy and seek physical touch in the form of leaning on preferred adults, sitting in close proximity, squeezes and hugs. [Student] will often walk away from an activity and go to one of his staff members and receive some type of physical touch. This directly reinforces the escape behavior ...
- Staff has done an outstanding job in developing a behavior support plan that incorporates [Student's] visual strengths. He appears to buy into happy and sad faces and understands when he gets his choice activities. During my observation a lot of attention was given when negative behaviors occurred with respect to his behavior chart and no attention was given when positive behaviors were occurring ...
- [Student's] behaviors have a tendency to escalate to the point of him hurting himself or others. The school is in a very difficult situation because they cannot use physical management for these behaviors and there are only about five individuals in the building certified to implement physical restraint in the event that his behaviors warrant such. These individuals do not work with [Student]. His tantrum behavior is often disrupting to the community including the second grade classroom and the rooms that are in close proximity to him. He is currently the only student in a small office space with no furniture. When tantrum behavior occurs many adults stand around him to protect him and verbally give him directions, with the intent to redirect him. Given the function of [Student's] tantrum behavior, it is hypothesized that if given no attention (timeout) or a strong and immediate consequence for aggression (physical restraint), his behaviors will significantly decrease. ... [suggestions concerning staff training in physical management]
- [Student] should have as much exposure to typical peers as possible. At this point he is essentially in a self-contained learning situation ...
- [Student] displays a high degree of anxiety driven behaviors. He has also been observed to engage in these intense tantrum behaviors, then suddenly stop and ask what happened. While this could be some type of scripting behavior, I strongly recommend that [Student] be evaluated by either a Developmental Pediatrician or a Child Neurologist for further investigation. (Ex. B-8, P-6)

24. The PPT convened on October 3, 2005, with the Board's Coordinator of Special Education Services, UHMS Principal, Parent, Special Education Teacher, Regular Education Teacher, School Social Worker, S/L Pathologist, School Nurse, OT, UHMS Assistant Principal, Substitute Special Education Teacher, and Parent's Social Worker/Advocate present. Progress was reported, including a revised behavior plan. The CREC consultant's report was discussed. The PPT recommended:

- [Board] will continue to cooperate with parental placement @ Magnet School.
- Continue adult support for transitions, instructional;
- Re-meet Oct. 24 @ 3:00 to review progress;
- Request ABA teacher to observe [Student];

- Implement agreed upon strategies.
No goals were changed. (Ex. B-9)
25. The behavior plan dated September 14, 2005, and included in the record of the October 3, 2005 PPT, listed targeted behaviors: running, kicking, and throwing objects. Goals were: participation in the regular school day with no physical outbursts, good choices regarding behavior and compliance 6/7 times (85%), and transition from one activity to another successfully 80% of the time. The plan included specific choice activities and routines for use of a behavior chart. A Safety Plan listed calling the Principal when Student “is unsafe to himself or others”, and a reminder about choices with use of sad faces on the chart. (Ex. B-9, 4-7)
26. The PPT convened on October 27, 2005, with Board’s Coordinator of Special Education Services, UHMS Principal, Parent, Regular Education Teacher, Special Education Teacher, S/L Pathologist, School Nurse, OT, CREC Supervisor of Special Education, Paraprofessional, a Special Education Teacher/ABA Consultant, and Parent’s Social Worker present. The PPT discussed “delaying the neuropsych [evaluation] until [Student] is more stable”. The PPT recommended:
- [Board] will continue to cooperate with parental placement @ magnet school.
 - ABA consultant will support staff to increase time in general ed. setting.
- No goals were changed. (Ex. B-10)
27. The PPT convened on November 29, 2005, with Board’s Coordinator of Special Education Services, UHMG Principal and Assistant Principal, Parent, Regular Education Teacher, Special Education Teacher, School Social Worker, S/L Pathologist, School Nurse, OT, Parent’s Social Worker/Advocate, a representative from CREC and two other persons present. The Special Education Teacher reported Student was 15 minutes on task, and needed structure and predictability. “Data on accepting “no” indicates inconsistent progress.” Principal reported suspension would be used for biting and head-butting staff and administrators. It was also noted that DCF (State Department for Children and Families) was investigating school staff. Parent requested internal suspension rather than out-of-school suspension. Obtaining an ABA professional, placement in another school, temporary placement (at least 21 days) in an ABA program (in another school), psychiatric evaluation were also discussed. Questions listed: Behavior has deteriorated since attending new school; are there additional conditions aside from autism? What could be the triggers that cause meltdowns? PPT recommendations were:
- [Board] will continue to cooperate with parental placement @ magnet school.
 - PPT offered a variety of programming which parent will review with attorney.
 - Amend BIPlan to include calling Mobile Crisis when physical behaviors are injurious to self & others.
 - Request psychiatric evaluation to rule out additional confounding conditions.
- No goals were changed. (Ex. 11, 1-3)
28. Progress notes dated November 29, 2005, were written collaboratively by Student’s Regular and Special Education Teachers:

In order to participate in class, [Student] needs the support of adults to redirect and monitor his response to frustration or to comply with class given directions. Although [Student] has displayed many second grade skills especially in logical mathematical area, he requires many verbal prompts to complete a task.

In reading, [Student's] strength is in decoding accuracy. He can read most grade level text, but is more challenged to demonstrate his comprehension. With verbal prompting and questioning, he can answer literal questions about what he has read. Written response is also more difficult.

In the logical mathematical area, [Student] demonstrates relative strength, especially with number sense, addition and subtraction facts and calendar understandings. Problem solving is less developed. Once given a strategy to solve a problem, [Student] is more successful.

Writing performance is inconsistent. He is most successful when given a sequence of pictures and then asked to describe them to compose a story. He sometimes will complete this task with no difficulty and yet at other times will be unable to complete the same activity. Words that he is known to be able to spell on one day are seemingly unknown on another.

Observations: [Student] is most successful with academic tasks, when activities are teacher directed and broken down into smaller steps. If a task is perceived as overwhelming or difficult, [Student] will avoid it. Most academic tasks have to be structured and independence in completing tasks is minimal at this time. He can sustain attention to an activity or task for about 15 minutes, when working in a distraction reduced environment, with adult redirection and prompting. [Student] uses visual cues and print in his environment to aid in his writing. He is hesitant to use sound spelling or rely on his memory for spelling most words. He does at times though, demonstrate the ability to use sound spelling and recall high frequency words. With prompting he can write a complete sentence with appropriate punctuation.

[Student] can read most grade level text with accuracy. His comprehension is significantly impacted and not at a level commensurate with his decoding. In math, [Student] has learned many rote level skills, however is more challenged by higher level problem solving and application of skills.

At this time, [Student's] behavioral difficulties severely impact his participation in the second grade classroom. He has been most successful when working in a 1:1 situation where structure, predictability and routines are established.

Interactions with his peers are limited mainly to greetings. Cooperative work generally requires adult facilitation. (Ex. B-11, 6-7)

29. The Principal of UHMS wrote to Parents after the November 29, 2005 PPT meeting, confirming the scheduled November 29, 2005, PPT meeting reiterating the proposed plan:

It was recommended that [Student] attend Clark School to receive ABA Training that will assist him in transitioning back to a regular education classroom environment. Upon successful completion of the training, [Student] will return to the [UHMS], Dr. Johnson's second grade classroom, with appropriate support as outlined at today's PPT. (Ex. P-6A)

30. Data Summaries for the period September 14 to November 23, 2005, showed numbers of happy faces, sad faces, “data unmeasurable due to length and severity of behavior” and use of Protective Holds. Initially the September 14, 2005, Behavior Plan was in force; notes for the week of October 31-November 3, 2005, include “Discontinue use of BIP”. The week of November 7-9 listed behavior problems of knocked over chair, grabbed easel, pinching, and “left room on 3 occasions, once to the outside door”. On Wednesday, he was picked up early by Parents “due to prolonged (60 minutes) need for Protective Hold. The week of November 14-18 threats (“I will kill you”) were reported while Student was in protective hold, and pencil poking and biting also occurred. The week of November 21-23 hair pulling and biting (2X) were reported, and Student was suspended on November 22. (Ex. 12)
31. Physical Intervention Level III (use of Protective Hold) reports were written on October 31 (1), November 1 (3), 2 (3), 7 (2), 8 (2), 9 (1), 14 (2), 15 (3), 16 (2), 17 (1), 21 (1), 22 (1). Examples of behavior: Student fell to floor and lay rolling around the room; running around room, pushing chairs, kicking teacher, kicking, pinching, spitting, hitting and kicking staff, agitated, kicking over chairs, screaming, throwing math manipulatives, verbal threats, angry in lunchroom and punched paraprofessional, ran away from classroom, climbed on table and then jumped from table to table in the lunchroom. (Ex. B-13)
32. The PPT convened on December 8, 2005, with the Board’s Coordinator of Special Education Services, UHMS Principal and Assistant Principal, Parent, Regular and Special Education Teachers, School Social Worker, S/L Pathologist, Paraprofessional, and CREC Supervisor of Special Education present. The PPT recommended:
- [Board] will continue to cooperate with parental placement @ magnet school.
 - PPT recommends placement in a small group setting with a focus on Applied Behavior Analysis in order to modify [Student’s] social and work habits, behaviors. Adult support is required.
 - [S/L] will continue 1.5 hrs/wk.
 - OT will continue.
- The proposed placement at Clark School was described as “an interim plan”, with UHMS staff to visit Student at Clark weekly. The record notes: “purpose of placement revolves around [Student’s] need to learn appropriate behavior and to accept “no””. (Ex. B-14)
33. At the December 8, 2005, PPT meeting, Student’s progress on the March 14, 2005, goals was discussed. The record of this meeting shows satisfactory progress on 67 goals and objectives; limited progress 13; mastered 22; unsatisfactory progress 3; and not introduced 10. (Ex. B-14, 5-16)
34. On the summary of special education services page of the December 8, 2005, PPT record, special education services were described as: “ABA methodology academic and social” and “Sp Ed Staff” were listed as Responsible Staff and Service

Implementer. Services were to be provided in a regular classroom and a self-contained classroom. (Ex. B-14, 17)

35. Student was referred for a psychiatric consultation after UHMS called Hartford Emergency Mobile Psychiatric Services because of his behavior. The report of the Student's December 21, 2005 consultation, included a description: [at seven years of age] presents with a history of decreased frustration tolerance, increased irritability, oppositional, defiance, and argumentative behaviors, difficulty transitioning, issues with initiating and maintaining social interactions and poor eye contact. He appears to meet the following DSM IV diagnostic criteria:

| | |
|----------|---|
| Axis I | Disruptive Disorder, NOS [not otherwise specified] PDD [pervasive developmental disorder], NOS |
| Axis II | Deferred |
| Axis III | None Acute |
| Axis IV | Severe |
| Axis V | GAF Current: 35 to 40 Highest Past Year: Unknown |

This evaluator recommended:

Continued therapy, both individual and family system, to address psycho-social issues along with interpersonal relationship difficulties and improve his self esteem with social and coping skills.

Depending upon how he progresses in therapy, psychopharmacological intervention may be necessary. (Ex. P-7, B-15)

36. The PPT convened on January 27, 2006, with Board Coordinator of Special Education Services, UHMS Principal and Assistant Principal, Parent, Regular and Special Education Teachers, School Social Worker, School Nurse, Paraprofessional, and a CREC Supervisor of Special Education present. The record of this PPT noted: 12/8/05 recommendation was delayed by agreement of PPT due to [Student's] decreased need for restraint & increased compliance with directives, and the belief that an ABA assistant occur [sic].

This emergency PPT was called to discuss behavior problems: behavior and academic work had improved since more restrictive placement at UHMS, but appropriate support (ABA assistant, restraint, staff training) was reported as "not available until February" [at UHMS]. Recent increases in difficult behavior were reported: running, and hitting staff, especially when redirected. No protective hold was to be used on this Student. The Board Coordinator described the ABA program available at Clark School. Parent requested time to decide; she also understood the need for a protective hold for safety purposes. Parent agreed to use of protective hold when needed.

"Team discussed plan including transition to U of H when ready." This PPT recommended:

- [Board] will continue to cooperate with parental placement @ magnet school.
- PPT recommended placement in a small-group setting with a focus on applied behavior analysis to modify social & work habit behaviors.
- Continue adult support.
- Continue OT, [S/L], & SpEd supports.

- Uphold 5-day suspension.
- Reconvene Feb 2nd, 2006.

No goals were changed. (Ex. B-16)

37. The PPT convened on February 2, 2006, with the Board's Coordinator of Special Education Services, UHMS Principal and Assistant Principal, Parent, Special Education and Regular Education Teachers, School Social Worker, S/L Pathologist, Paraprofessional, School Nurse, CREC Supervisor of Special Education and Parent's Social Worker/Advocate present. This meeting was convened to discuss the proposal made at the December 8, 2005, and January 27, 2006, PPT meetings to transfer Student from UHMS to Clark School's ABA program for 20 days, pending a psychiatric evaluation. The stated purpose of the psychiatric evaluation was to rule out additional conditions [in addition to autism]. A PPT would convene after 20 days. Parent requested inside suspension: Principal responded that inside suspension was not available at UHMS. This PPT recommended:

- [Board] will continue to cooperate with parental placement @ magnet school.
- Continue recommendations from 12/8/05 for 20 school days.
- PPT will convene by March 10 if possible to review progress.
- Door-to-door transportation.
- Continue adult support.
- [S/L] 1.5 hrs, OT .25 hrs/week.

No goals were changed. (Ex. B-17)

38. The record does not show the exact date on which Student left UHMS and enrolled at Clark, an elementary school in Hartford. Testimony suggests that this transfer took place early in February, 2006. His Mother understood that this was a temporary placement and that Student would return to UHMS. (Testimony, Mother)

39. Program suggestions dated February 13, 2006, and not otherwise identified, were probably developed by the Clark School ABA staff. A token economy system for reinforcing Student was described. Observed challenging behaviors were listed:

- [Student] flips/plays with his ears. Physically redirect his hands down on his desk without saying anything when he is flipping his ears.
- Screams and cries when he becomes frustrated or makes mistakes. We will start prompting [Student] through difficult tasks and try reinforcing [Student] when he fixes a mistake or asks for help without screaming and crying. If this is not effective we can consider implementing a "mistake program" in which we purposely make mistakes and teach [Student] to fix them without exhibiting challenging behaviors.
- Ignore avoidance or escape behaviors. Example: [Student] is in the middle of doing a worksheet and he begins talking about what another student is doing or commenting on what is happening in the classroom. Ignore all this commenting it is escape and/or avoidance behavior to prolong finishing the worksheet which leads to frustration and challenging behaviors.
- [Student] shows some obsessive-compulsive behaviors during programs. Example: [Student] wants to erase and rewrite numbers if they do not fit

perfectly in a box. Do not allow [Student] to go back and perfect his numbers. Work him through the rest of the worksheet and reinforce him for not giving into his compulsive behaviors. The world is not a perfect place and [Student] needs to learn how to cope with this in a healthy manner.

There was also a token system for reinforcement. (Ex. B-18)

40. By letter dated March 2, 2006, to the Principal of UHMS, Parent conditioned her consent to the use of physical restraint:

I ask that the school over a period not less than two weeks document the instances of “non-compliant behavior which escalates into physical aggression,” including in the documentation the circumstances under which the behavior occurs and how long it lasts when 1) staff and other students withdraw physically (in the case of hitting, kicking, or biting) or 2) a staff person follows [Student] at a discrete distance without making physical contact (in the case of bolting).

Once the data have been gathered, I request an opportunity to analyze them with staff to determine (1) the cause of [Student’s] behavior, (2) visible signs in [Student] of an impending outburst, and (3) possible means of preventing the behavior. Following the analysis, I request that a plan consisting of preventative interventions be formulated and adopted by school teachers, para, and staff. If this plan, once implemented, fails to address the behavior problem, I will consent to the use of physical restraint. (Ex. P-7a)

41. The PPT convened on March 10, 2006, with Board’s Coordinator of Special Education Services, Assistant Principal of UHMS, Parent, Regular and Special Education Teachers, S/L Pathologist, Student’s Case Manager, Paraprofessional, ABA Consultant, a representative from CREC Student Services, and UHMS Special Education Teacher present. This meeting was an annual review and Student’s Home School was identified as UHMS, although he was currently attending Clark. Student’s Teacher reported a 20-minute “meltdown” on the first day at Clark, but also indicated that meltdowns have decreased in frequency and duration, and Student is “beginning to understand “no””. Paraprofessional reported “some progress in calming down, but still needs adult prompts”. They are working with Student on respect for all adults and improving manners. He has been completing all work, although “Too much stimulation is a trigger for tantrums”. The ABA Consultant explained the token economy system, and that library class size overwhelms [Student], who stays for 5 minutes, echolalic speech begins and he tries to bolt. They are using Differential Reinforcement of Other [good] Behaviors (DRO). Student was reported as easily distracted. Parent reported that homework was being completed at home, and behavior there had improved. Participation in a regular education math class was discussed. Parent asked that Student be returned to UHMS on March 13, 2006, and reminded PPT that they had agreed to 20 days at Clark. The psychiatric evaluation was scheduled for March 23, 2006. This PPT recommended:

- PPT recommends continuing placement in ABA methodology at Clark to increase ability to function behaviorally in general ed setting.
- S/L 1 hr/wk direct, ½ hr. consult; OT 1 hr/month direct.
- Continue adult support.

- PPT will terminate [because] Parent has determined that she will go to due process about returning [Student] to UHMS. (Ex. B-19)

42. The March 10, 2006, Annual Review PPT revised Student's goals:

[Student] will increase his reading skills ...

[Student] will increase his math skills ...

[Student] will increase his writing skills ...

[Student] will improve his understanding and use of the language used in classroom material at his grade level.

[Student] will continue to develop his social skills when interacting with adults and peers to improve functioning while at school.

[Student] will improve fine motor skills ... (Ex. 19, 6-11)

43. The special education services summary page for the March 3, 2006, IEP showed 27½ hours of special education reading, writing and math in regular and self-contained classrooms, to be taught by special education and general education teachers. (Ex. B-19, 24)

44. The March 10, 2006, Annual Review PPT record includes progress reported on goals and objectives on the March 14, 2005, IEP:

| | | | |
|------------------|---|-----------------------|----|
| Not Introduced | 9 | Satisfactory Progress | 86 |
| Limited Progress | 5 | Mastered | 15 |

(Ex. B-19, 12-23)

45. Program modifications/adaptations listed on the March 10, 2006, IEP:

Materials/Books/Equipment: Consumable workbook, modified worksheets, access to calculator.

Tests/Quizzes/Time: Student write on test; Rephrase questions, directions; Hands-on projects; Extra time – written work.

Grading: Base grade on IEP.

Organization: Give one paper at a time; Post routines.

Environment: Preferential seating.

Behavior Management/Support: Daily feedback to student; Positive reinforcement; Cue expected behavior; Proximity touch control; Chart progress; Collect baseline data; Structure transitions; Contingency plan; Behavior contracts; Set/Post class rules; Break between tasks; Time out from positive reinforcement.

Instructional strategies: Check work in progress; Multi-sensory approach; Visual reinforcement; Mimed clues/gestures.

[S/L] will consult with classroom staff ½ hr/wk for generalization of skills into the classroom. (Ex. B-19-27)

46. A report from Student's Special Education Teacher dated March 9, 2006, was included in the March 10, 2006 PPT record:

Reading: [Student] is able to decode words and read, but he has some difficulty with comprehension. He has to look back for answers, however, when someone is reading to him, he can answer who, what and where questions. He can get into

the meaning of a story by looking at pictures that are provided in the books he is reading.

Math: [Student] is able to add and subtract using the skill of regrouping. He can tell time, and use all coins to add up to one dollar.

Printing: [Student] is copying words and sentences accurately. His spacing of words is improving. He is working on formulating his own sentences. [Student] will be working on filling in the missing words in a story and the emphasis will be on accurate spelling.

Computer: [Student] is very capable of using a computer. He knows how to turn it on and begin programs. We are looking into locating computer programs that will help [Student] in all areas of academics. (Ex. B-19-29)

47. The March 10, 2006, PPT updated Student's Behavior Improvement Plan. Student earns tokens for good behavior, such as nice sitting, working appropriately, eye contact, checking his schedule, correct responses. Challenging behaviors include but are not limited to: noncompliance, bolting (running away), flopping on the floor, screaming, biting, hitting, kicking, and verbal [abuse]. Target behavior was given as aggression (punching, kicking, stomping, hitting and biting). Data would be collected on duration and frequency of aggression. Intervention strategies were given as always set a timer for the duration of play and the use of tangible reinforcers. Do not make many demands during transitions. Move through [Student's] schedule quickly changing locations around the room or school as frequently as possible. For transitioning smoothly from a preferred activity, Student receives an "edible reinforcer". Noncompliance (bolting, flopping, or refusing to do work) is addressed by redirection and prompts. If necessary to move Student, a two person escort was required. Aggression toward a staff member or student, or self-injurious behavior would result in a protective hold. (Ex. B-19, 30-31)

48. By letter dated April 4, 2006, an Education Consultant at the State Department of Education advised the CREC Director of Student Services concerning "holding of seats in magnet schools for students with disabilities":

The magnet school is under no obligation to hold that seat for the student unless the PPT determines that this new placement is for a specific period of time and the expectation is that the student will return to the magnet school. (Ex. B-20, P-8)

49. The PPT convened on April 27, 2006, with the Board Coordinator of Special Education Services, Principal of UHMS, Parent, Clark Special Education Teacher, UHMS Special Education Teacher, S/L Pathologist, two CREC representatives, Paraprofessional, ABA Consultant (Behaviorist), Parent's Social Worker/Advocate and Student's Social Worker present. The PPT agreed to return Student to UHMS on May 4, 2006. Other PPT recommendations were:

- Protective hold will be used when needed per behavior plan.
- Will require CREC paraprofessional for adult support for transitions, reinforcement & academics.
- Re-meet June 1 @ 1:30.

- Defer return until Parent agrees to suspension protocol & informed consent.
- Clark ABA program is offered if needed.
- Continue [Board] paraprofessional until CREC para. is hired.

There was extended discussion at this PPT meeting. Teacher reported that Student was participating in general education at Clark School more than three hours a day. He had punched the Teacher five times on April 26, 2006, when he was denied use of the computer. Paraprofessional reported that Student had attended a general education class for 20 minutes with “high level of engagement”. Paraprofessional had successfully used verbal reminders to calm Student down from “meltdowns”. The ABA Consultant stated that Paraprofessional has established “instructional control” with Student, but that he tests other staff members. Tantrums have decreased. Student’s Social Worker reported that he exhibits a high level of anxiety, and questioned whether he would be over-stimulated at UHMS. The Special Education Teacher noted that there was no quiet place at UHMS. Paraprofessional said that noise was often a trigger for a meltdown. The ABA Consultant noted that negative behavior by Student increased when preferred activities ended. Protective holds would be used at UHMS if needed, as allowed by state law. Parent requested in-school suspension, and was again told that UHMS did not provide that. No changes were made to Student’s goals. (Ex. B-21)

50. An undated report from the Creative Interventions Behavior Consultant, likely considered at the April 27, 2006, PPT meeting, strongly endorsed returning Student to UHMS with a small classroom available and curriculum modifications. This individual’s report and her testimony at the hearing were persuasive. Her colleague, who has been providing services to Student on a daily basis, was also hopeful about Student’s ability to improve his behavior with an ABA-based individual program. (Ex. P-13, Testimony, Behavior Consultant, Behaviorist)
51. A report of IEP progress included with the record of the April 27, 2006, PPT meeting showed that Student was making satisfactory progress in all but 4 areas, and those were marked “limited progress”. (Ex. B-21, 8-13)
52. A Behavior Plan, last updated April 28, 2006, included a list of challenging behaviors: noncompliance; bolting (running away); flopping (falling to the ground); screaming; crying; punching (closed fist); slapping (open hand); kicking; furniture climbing; easily distracted; trouble with changes in his daily routine; becomes frustrated when presented with difficult tasks, immediately says “I can’t do it”, occasionally cries and becomes noncompliant; scripting; perseverates on numbers (timers, calculators, clocks); verbal threats – “I’m going to have you fired”; tantrums – a combination of 3 or more of the above behaviors lasting for more than 30 seconds. (Ex. B-22-1)
53. The April 28, 2006, behavior plan gave two targeted behaviors: aggression and noncompliance. Protective holds were to be used if Student was aggressive or self-injurious. If aggressive behaviors continued to escalate for more than 15 minutes and Student was a danger to himself or others, he would be suspended. The plan also

included data collection, a list of intervention strategies, DRO targeting noncompliance, and integration (participation in regular education). (Ex. B-22)

54. Some time in the spring, 2006, Parents received a letter from UHMS, asking whether Student would be returning for the 2006-2007 school year. Mother returned the enclosed postcard, indicating that Student would return. (Testimony, Mother)
55. At some time in May, 2006, it was decided that the other students in the Clark ABA classroom were significantly lower-functioning than Student, and that his behavior was deteriorating. He was assigned to a small classroom for individualized instruction with 2:1 support. These arrangements were not formally documented, but were referred to in later reports and testimony. (Ex. B-27, 7, Testimony, ABA Consultant)
56. The PPT convened on May 12, 2006, with Board's Coordinator of Special Education Services, Principal of UHMS, Parent, Special Education Teachers at Clark and at UHMS, S/L Pathologist, two representatives from CREC, Board Certified Behavior Analyst, Behavior Consultant, Parent Assister, Parent's Social Worker/Advocate, and Parent's Attorney present. Coordinator reported that Student was working on grade level and spending an average of 2½ hours per day in regular education classrooms at Clark. The ABA consultant discussed task analysis and the token economy in use for Student, and observed that Student's behavior is escalated by noise and movement. Several people questioned whether UHMS was an appropriate placement, and Student's attorney responded that there were no "solid" reasons for not returning Student to UHMS. The PPT adjourned and planned to make a focused visit to UHMS prior to re-convening on June 1, 2006. No changes were made in Student's IEP. (Ex. B-23)
57. The PPT re-convened on June 1, 2006, with Board's Coordinator of Special Education Services, Parent, two representatives from CREC, Special Education Teacher, S/L Pathologist, three ABA consultants from Creative Interventions, Paraprofessional, Parent's Social Worker/Advocate, and Parent's Attorney present. The PPT discussed the relative appropriateness of the current Clark placement and a return to UHMS, after visits to UHMS. The ABA Consultant from Creative Interventions (currently providing ABA services to Student by contract with the Board) stated that the program could be provided at UHMS if there was an observation room available and curriculum modifications could be made. There was discussion of a summer program, without any conclusions, although concerns were expressed that the summer program was too short to establish the appropriateness of the ABA program. The PPT recommended:
- ABA at Clark with ABA Consultant support.
 - Due Process will [illegible] by Parent. There were unanswered questions concerning the status of Student's "slot" at UHMS, and UHMS refused to provide a summer program. (Ex. B-24)

58. The PPT convened on June 26, 2006, with Board Coordinator of Special Education Services, Parent, Regular Education and Special Education Teachers, S/L Pathologist, two ABA Consultants from Creative Interventions, Parent's Social Worker/Advocate and Parent's Attorney present. This meeting was requested by Parent to resolve the issue of a summer program. Student's behavior was reported to be deteriorating, and he was not responding to behavioral interventions "as would be expected". The PPT recommended:

- Re-request psychiatric evaluation.
- Summer program at Clark with ABA Consultant, OT, S/L. (Ex. B-25)

59. In testimony, Coordinator suggested that the delay in returning Student to UHMS was caused by Parent's reluctance to sign consent forms and delaying the psychiatric evaluation. Parent addressed these allegations in her testimony: no fact determination could be made concerning this conflicting testimony.

60. A psychiatric evaluation was performed on July 31, 2006, and a report dated August 9, 2006, was provided. The evaluation interview was attended by Mother, Student, Board's Coordinator, and Creative Interventions ABA Consultant. The questions posed were those raised in January, 2006:

- Initially (September to late November), [Student's] behavior deteriorated at [UHMS]. Does [Student] have any additional emotional disorders that may complicate his current diagnosis of Autism?
- The team would like to know any potential triggers that lead to meltdowns. [Student] has no observable catalysts that are predictable.

After reviewing Student's history, Psychiatrist noted that Student had been seeing a Social Worker for about a year. Psychiatrist described Student as "difficult to engage and had little interest in interacting with the examiner". He also noted Student's "extreme anxiety" leading to his reality breaking down and aggression towards persons or property. Student's report that he sometimes hears voices inside his head may be a symptom of psychosis. The diagnosis was:

- Pervasive Developmental Disorder, Not Otherwise Specified
- Intermittent Explosive Disorder
- Rule out Psychotic Disorder, Not Otherwise Specified (Ex. B-27, 1-11)

61. Psychiatrist made fifteen recommendations:

- [Student] continues to require a very intensive level of support and supervision, as noted by his recent aggression when the Paraprofessional was absent and he had only one to one paraprofessional support in the classroom. Behavioral expectations and support of his capacity to make good choices should be reviewed with [Student] before making a demand, setting a limit, or anticipating a mistake in his academics.
- [Student] should be with regular education students as much as he can profit by that, but he continues to require availability of a smaller and much more highly structured classroom setting, where he could complete work in a less stimulating environment, and experience less performance anxiety.

- [Student] continues to require a very high level of structure and routine. He could benefit by utilization of visual charts, utilizing pictures and/or words to outline the day's activities. He continues to need a behavior intervention plan with the ability to earn preferred activities.
 - [Student] continues to need staff trained in the utilization of physical interventions to maintain his personal safety and safety of others.
 - [Student] should be praised for good choices, initiating positive social interactions, and task completion.
 - [Student] needs frequent repetition of Behavioral expectations before beginning an activity.
 - [Student] has significant difficulty in expressing his feelings in an appropriate manner. If not already implemented, a "feelings chart" with pictures of faces exhibiting various emotions could be utilized. [Student] could use them to help identify how he is feeling. Staff should work with [Student] in helping him recognize body signals that he may indicate anxiety, frustration, and build up of anger, before an explosive outburst takes place.
 - Utilize visual and auditory cues in the classroom to facilitate transitions.
 - One of the triggers for [Student] is making a mistake, which is not permitted in the context of his cognitive rigidity, and causes him significant anxiety. Staff should work with [Student] in learning self relaxation techniques and strategies, and model making mistakes in front of the classroom and talking aloud about the process of learning through trial and error, and acceptance of mistakes as part of learning and growing.
 - It is strongly recommended that Mother speak with [Student's] doctor about a trial of an atypical neuroleptic medication such as Risperdal, Seroquel, or Abilify, to decrease the intensity of his explosive outbursts, help bind his anxiety, and decrease the fragility of his reality testing.
 - If [Student] displays less frequent and severe explosive outbursts, with utilization of these supports, medical intervention, and outside counseling, then further integration into more regular education programming should be considered.
 - He should continue in outpatient therapy.
 - Additional; projective testing is recommended to provide more information about his reality testing.
 - If [Student] displays frequent explosive outbursts despite interventions noted, then consideration should be given to an alternative placement with a higher level of clinical supports in the classroom.
 - This evaluation should be integrated with other findings in determining eligibility for special education services and appropriate classroom placement.
- (Ex. B-27, 11-13)

62. The PPT convened on September 12, 2006, with Board's Coordinator of Special Education Services, a second administrative designee, Parent, Regular and Special Education Teachers, S/L Pathologist, OT, Paraprofessional, ABA Consultant, Behavior Specialist, and Attorneys for Board and for Parent present. Student's IEP

was discussed and some modifications were made. The psychiatric evaluation was discussed. Mother requested a neurological evaluation. This PPT recommended:

- Increase time with non-disabled peers with assistance from ABA Consultant & adult support paraprofessional.
- Accept goals for academic & behavioral areas.
- No projectives [testing] at this time.
- Coordinator will contact district psychiatrist.
- New behavior incentives (sic) plan will be reviewed by Parent.

(Ex. B-28, 1, 2, 7)

63. The present levels of academic achievement and functional performance given at the September 12, 2006, PPT meeting were:

Academic/Cognitive/Language Arts: Academic level about one year behind grade level.

Academic/Cognitive/Math: Good skills.

Other Academic/Nonacademic Areas: Working on behavior skills.

Strengths: [Student] has good math skills.

Concerns/needs: [Student] has a one to one paraprofessional working with him in all areas of academics especially reading and writing skills.

However, on the summary of services page of Student's September 12, 2006, IEP, his special education services were listed as reading, writing, math, [&] on-task skills to be provided by a special education teacher, paraprofessional, and ABA analyst. In testimony, the Behavior Specialist currently working with Student stated that most of the time, whether in a regular education classroom or in the small classroom where Student is individually taught, she, Paraprofessional, and Special Education Teacher worked with him. At least some of the time, he has been having more than 2:1 support. While one of the reasons for this PPT meeting was to create an IEP that reflected Student's actual program, that goal was only partly achieved. (Ex. B-28, 4, 6; Testimony, Behavior Specialist)

64. Goals included with the September 12, 2006, PPT record:

- [Student] will continue to improve his understanding and use of classroom language skills at his grade level.
- [Student] will increase his classroom readiness skills.
- By way of peer training, [Student] will engage in age-appropriate games with his peers and will expand his playing in less structured play situations to other areas (e.g., board games and black top/field) to encourage cooperative play.
- [Student] will be able to remain in the general education classroom with engaging in less than 3 instances of challenging behavior for 80% of the school day.
- [Student] will demonstrate consistency when making inferences and predictions upon reading material that is at an instructional reading level, when given guide questions and after previewing comprehension questions and reading materials. (Ex. B-28, 7-10)

65. Student's behavior plan was also discussed at the September 12, 2006, PPT meeting. The behavior documents included with the September 12, 2006, PPT record are all marked "Last updated 8/30/06". Challenging behaviors/difficult activities were again listed, repeating the list from the April 27, 2006, PPT meeting and adding head-butting, spitting, transitions, turn-taking, and trouble attending to group instruction. (Ex. B-28, 11-17)
66. A chart showing the percentage of time spent in general education classrooms for May-June, Summer program, and the beginning of September, 2006, shows progress in the summer program and variable success from day to day. (Ex. B-29)
67. The ABA Consultant and Behavior Specialist from Creative Interventions have appropriate credentials and experience, and testified about their work with Student with both compassion and commitment to helping him succeed.
68. The hearing officer takes administrative notice of *Public School Choice In Connecticut: A Guide for Students and Their Families* (2006-2007), issued by the Connecticut State Department of Education. See p.10.
- Question: Does the [Interdistrict Magnet] School provide for the needs of special education students?
- Response: Yes. The responsibility for holding planning and placement team meetings belongs to the district where the student lives. The Magnet school is responsible for ensuring that the student receives the services required by the student's individualized education program (IEP), whether those services are provided by the magnet school or by the school district in which the student resides.

CONCLUSIONS OF LAW AND DISCUSSION:

1. Section 10-76(h), Connecticut General Statutes (C.G.S.), authorizes an impartial hearing officer to conduct a special education hearing and to render a final decision in accordance with Sections 4-176e through 4-180a, inclusive, and Section 4-181a. Section 615(f)(1)(A) and 615(f)(3)(E), Individuals with Disabilities Education Improvement Act of 2004 (IDEA), also authorizes special education hearings.
2. There is no dispute that Student is eligible for special education and is appropriately classified as having autism.
3. Section 10-264l(h), C.G.S., provides:
In the case of a student identified as requiring special education, the school district in which the student resides shall: (1) Hold the planning and placement team meeting for such student and shall invite representatives from the interdistrict magnet school to participate in such meeting; and (2) [funding arrangements]. If a student requiring special education attends an interdistrict magnet school on a full-time basis, such interdistrict magnet school shall be

responsible for ensuring that such student receives the services mandated by the student's individualized education program, whether such services are provided by the interdistrict magnet school or by the school district in which the student resides.

The Board and the Magnet School complied with the PPT meeting requirement with meetings held on July 25, 2005, and throughout the 2005-2006 school year.

4. When UHMS refused to "hold a slot" for Student in the spring of 2006, the short-term placement at Clark School became a significant change in placement pursuant to § 504 of the 1973 Rehabilitation Act. At 34 C.F.R. §104.35(a), a re-evaluation is required prior to "any subsequent significant change in placement". Although many evaluations had been recommended by the PPT and by the CREC Observer in September, 2005, no comprehensive evaluation was done prior to this change in placement.

5. Section 10-76h(b)(3), C.G.S., provides:

The hearing officer or board shall hear testimony relevant to the issues in dispute offered by the party requesting the hearing and any other party directly involved, and may hear any additional testimony the hearing officer or board deems relevant.

There is no doubt that UHMS was directly involved in providing special education services to Student, although CREC's involvement was less clear.

6. Section 10-76h **Special education hearing and review procedure. Mediation of disputes.** (a), C.G.S., concludes:

For purposes of this section, a "local or regional board of education or unified school district" includes any public agency which is responsible for the provision of special education and related services to children requiring special education and related services.

Pursuant to this provision, UHMS is a public agency and must comply with relevant state and federal requirements, including participating in special education hearings concerning students to whom it is providing, or has provided, special education services.

7. Section 10-66c, C.G.S., provides that regional educational service centers are public agencies. Therefore CREC, a regional educational service center, must participate in special education hearings to the extent that it is providing special education services, and must also comply with relevant state and federal requirements.

8. A special education hearing officer lacks the authority to override the blind lottery admissions system at UHMS. The issue in this hearing, however, is not admission to UHMS, but whether Student's exit from UHMS met the legal standards of IDEA, §504, and state law. Student's initial placement at UHMS, spending much of the school day in a regular classroom with the support of a paraprofessional and a special education teacher, proved to be too difficult for Student and significantly disruptive for his classmates. In fact, his behavior became a threat to safety of classmates, staff members, and himself. UHMS improvised, using a small room for individual instruction and also for informal, undocumented timeout. Staff tried to follow the

suggestions of the September, 2005, CREC observer, without success. Mother was promised that the move to Clark School was a short-term effort to use ABA to get Student's behavior under control. Mother was reluctant to consent, but early in February, she agreed.

9. Section 10-76d-14(b), Regulations of Connecticut State Agencies (R.C.S.A.), describes **Trial placement for diagnostic purposes**. Such a placement must be a structured program, of not more than eight weeks duration, with the purpose of assessing the needs of a child "... for whom the evaluation study is either inconclusive or the data insufficient ..." for the preparation of an IEP. The Board and CREC both vehemently deny that the move from UHMS to the Clark ABA program was a "diagnostic placement". All the requirements for a diagnostic placement were not met, but the general intent seems close. A diagnostic goal was stated, although the description of services to be provided at Clark was minimal. The PPT did not meet every two weeks, but did meet frequently. The placement at Clark did not end within eight weeks.
10. However, UHMS actions in moving Student out of the regular classroom to which his IEP had assigned him may constitute a disciplinary change in placement pursuant to the provisions of 34 C.F.R. §300.519(b),
The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.
Mother had pleaded for "in-school suspension", but UHMS stated that they lacked the staffing to offer that alternative. In effect, they provided "in-school suspension" by placing Student in a small room, apart from any other students, supervised by the paraprofessional and at least one teacher.
11. Therefore, an alternate possibility was that the placement at Clark was an Interim Alternative Educational Setting (IAES), limited to 45 school days, pursuant to 34 C.F.R. §300.520, 521. This kind of placement is intended for students with disabilities whose behavior is so severe that they present a threat to the safety of classmates, staff, and themselves. Students who carry a weapon to school or possess or sell illegal drugs, or solicit the sale of a controlled substance at school (34 C.F.R. §300.520(a)(2)(i) and (ii)). However, dangerous behavior as a trigger for placement in an IAES requires an expedited special education hearing pursuant to 34 C.F.R. §300.521, and the order of a special education hearing officer.
(The 1999 IDEA regulations have subsequently been revised, and effective October 13, 2006, revised IDEA regulation 34 CFR §300.530(g), providing for school-initiated IAES placements, includes possession of a weapon or illegal drugs, plus:
[When a student whose behavior is related to his disability] has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function ...)

12. While either a diagnostic placement or an IAES were reasonable options for Student as his behavior deteriorated, the records of twelve PPT meetings did not reveal consideration or discussion of either possibility.
13. What had originally been proposed as a 20-day placement was extended by the PPT, and on April 27, 2006, another PPT meeting was held and all agreed that Student could now return to UHMS. The planned May 4, 2006, return to UHMS was “deferred until Parent agrees to suspension protocol and informed consent”.
14. Meanwhile, Mother had returned the enrollment card for 2006-2007 to UHMS, which had been sent out by the school. Suddenly, UHMS decided NOT to re-admit Student.
15. The staff who have been working with Student deserve enormous credit for persevering in the face of extremely difficult and in many instances dangerous behavior. Several minor injuries have been reported.
16. While the Board and the Hearing Officer have no authority to order medication for Student, it is hoped that Parents will consider Psychiatrist’s recommendations concerning medication. If medication could reduce the number and the violence of Student’s outbursts, it would help him both academically and socially. Psychiatrist also recommended that if Student’s behavior could not be controlled, a more secure clinical setting should be considered.
17. The Board’s PPT recommended evaluations at many meetings:

| | |
|------------------------|--|
| March 14, 2005 | Assistive Technology |
| June 17, 2005 | Psychiatric, Psychological |
| September 12, 2005 | Assistive Technology, Psychiatric |
| (September 22-23, 2005 | CREC Observer recommended evaluation by a Developmental Pediatrician or Child Neurologist |
| October 3, 2005 | ABA teacher to observe Student |
| November 29, 2005 | Psychiatric |
| February 2, 2006 | Psychiatric |
| June 26, 2006 | Psychiatric |

Psychiatric evaluations were performed on December 21, 2005, and July 31, 2006. The PPT records do not make clear any reasons for the delays in evaluations. Testimony concerning parental reluctance was inconclusive. Considering the severity of Student’s behavior, it is baffling that the Board did not even discuss the possibility of requesting a hearing to override Parent’s reluctance to consent. It should also be noted here that Student enjoys using a computer and has developed good computer skills. One reason for an assistive technology evaluation is to address the question of whether computer programs are available that could enhance his educational and behavioral programs.

18. The CREC observation in September, 2005, described a situation in which the IEP was not being implemented consistently and school staff members were working

primarily to contain Student and avoid “meltdowns”, in which he became violent and aggressive. This report also mentioned the lack of training of staff for physical management. Many of this consultant’s suggestions were incorporated into Student’s program.

19. The Board and UHMS committed several procedural errors:

- Failure to document many modifications to Student’s IEP, including but not limited to his increasing isolation in a small room used for individual instruction and also as a timeout room, both at UHMS and at Clark School.
- Failure to complete evaluations as recommended by the PPT.
- Failure to perform an evaluation prior to moving Student from UHMS to Clark, or prior to UHMS’s refusal to accept Student back from Clark, as had been agreed.
- Failure to identify removal from the classroom as disciplinary removals.

20. The standard for determining whether a free appropriate public education 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, whether the IEP is “reasonably calculated to enable the child to receive educational benefit.” *Id.* At 206-207. The Board must establish these conclusions by a preponderance of the evidence. *Walczak, supra*. The procedural failings listed above establish the Board’s failure to meet the first *Rowley* test: the sorry record of Student’s explosive behavior establishes the Board’s failure to meet the educational benefit test. Student’s academic progress was limited by his behavior.

21. Also pursuant to Section 10-76h(b)(3), C.G.S., the hearing officer has the authority to order a complete and independent evaluation of Student. There is no way to make up for the significant delays and complete failure to perform in a timely manner all the evaluations recommended by the PPT within the last year and a half. Some evaluation results may prove to be “rule outs”, establishing that a particular concern is not valid. Even that information would be of help in a very difficult situation.

22. The Board has the burden of proof on the appropriateness of the IEP and placement provided to Student for the 2005-2006 school year, as well as his current IEP and Placement. *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2nd Cir. 1998); Section 10-76h-14, R.C.S.A. Twelve PPT meetings, where staff discussed their many problems with Student, do not provide either sufficient documentation of changes that should have been reflected in Student’s IEP or sufficient documentation of the success or failure of strategies that were being changed. Student did make steady although not spectacular progress on academic goals.

23. IDEA also requires that children with disabilities be educated to the maximum extent appropriate with children who are not disabled. 34 C.F.R. §300.550(b). See also 20 U.S.C. §1412(5)(b); 34 C.F.R. §§ 300.550-330.556; Sections 10-76a-1(11) and 10-76d-1(a)(4), R.C.S.A. Placement in a regular classroom, provided with supplemental

aids and services, must be considered. *Oberti v. Board of Education*, 995 F.2d 1204, 1216 (3rd Cir. 1993). Among the factors to be considered are the advantages from the modeling of 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.* While UHMS and the Board had little choice but to remove Student from the classroom when he was violent, all observers and evaluators agreed that he benefits from as much time as possible in regular education classrooms with non-disabled peers.

24. UHMS's apparent refusal to accommodate Student because of the nature and severity of his disability is troubling, since the language of both the enabling statute for interdistrict magnet schools and the information provided by the State Department of Education and UHMS's website strongly imply that students with special education needs can and will be appropriately served. If the basic philosophy and educational climate of UHMS is contraindicated for Student because of his need for structure and his current rigidity of thinking, the PPT should have been presented with behavioral data and evaluation information to support that position. It appears from testimony that UHMS agreed to re-admit Student after a 20-day placement at Clark; later extended that placement agreement, and then without any documentation refused to re-admit him for the summer program or the 2006-2007 school year.
25. The parties have stipulated that the ABA classroom was not appropriate to Student's special education needs, largely because the other students in the class were functioning at a much lower level than Student, who was at or near grade level in most of his academic work. They have also stipulated that the current Clark program, very similar to arrangements made at UHMS to provide a small room for individualized instruction and timeout, is an appropriate "stay put" placement pursuant to 34 C.F.R. §300.514 and Section 10-76h-17, R.C.S.A..
26. Section 10-76h-14(a), R.C.S.A., provides that the party who filed for a special education hearing has the burden of going forward with the evidence. The board of education has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by said Board. This burden shall be met by a preponderance of the evidence, except for hearings held pursuant to 34 C.F.R. §300.521 [placement in an interim alternative educational setting].
27. The Board has not established by a preponderance of the evidence either that no placement for Student at UHMS could be appropriate or that the current placement at Clark School is appropriate for Student.

FINAL DECISION AND ORDER:

The current placement at Clark School, as agreed by the parties for "stay put" purposes, cannot be found appropriate as a formal placement without additional information about Student's special education needs.

The prior placements at UHMS and the Clark ABA classroom were both inappropriate, although UHMS may be found to be appropriate after evaluation as ordered.

The Board shall initiate a comprehensive evaluation of Student, to be performed at Connecticut Children's Medical Center, the University of Connecticut, or the Yale Child Study Center, as determined by the PPT with consideration of Parent's preferences. Such evaluation shall include, but not be limited to, psychological, psychiatric, educational, vision, hearing, speech/language, occupational therapy, developmental and neurological assessments and observation in the current placement by an independent expert (not from CREC). Given testimony that Student's behavior at home is less difficult than at school, the evaluation shall include a home observation and consultation with Parent, to identify any techniques used in the home that may be applicable to the school setting.

When the reports of these evaluations are complete, the Board's PPT shall meet with the evaluation team to discuss development of a special education program that will foster Student's strengths and address his behavioral issues. If, at the conclusion of the evaluations and the PPT meeting, there is a disagreement as to placement, Parent may request a hearing.

A special education hearing officer has the authority, pursuant to Section 10-76h(a), C.G.S., to require the participation of UHMS staff, including administrators, in a special education hearing.

A Regional Educational Service Center is a public agency. To the extent that a Regional Educational Service Center is engaged in the operation and/or supervision of an interdistrict magnet school, that Regional Educational Service Center and related staff members may be required to participate in a special education hearing concerning a student requiring special education attending the interdistrict magnet school.

Concerns about procedural issues concerning the Board and UHMS are being referred to the State Department of Education for further investigation.

COMMENTS ABOUT THE HEARING PURSUANT TO SECTION 10-76h(d)(1), CGS

The cooperation and civility of attorneys representing Parent, the Board, and CREC resulted in a swift and comprehensive hearing.