

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Board of Education

Appearing on behalf of the Parent:

Parents, Pro Se

Appearing on behalf of the Board:

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Appearing before:

Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board provide a free appropriate public education (FAPE) in the least restrictive environment to the Student in the 2009-2010 school year?
2. If not, what shall be the remedy?
3. Did the Board provide FAPE in the least restrictive environment to the Student in the 2010-2011 school year?
4. If not, what shall be the remedy?
5. Has the Student's Individualized Education Program (IEP) been changed outside the Planning and Placement Team (PPT) process?
6. Has the Student been re-evaluated in a timely fashion pursuant to 34 C.F.R. § 300.303?
7. Ancillary claim under Section 504: have the Board or individual school staff members discriminated or retaliated against the Parents and/or the Student?

that a Board employee, scheduled to appear as a witness the next day, had a family emergency and would not be able to appear. The March 20 hearing session was postponed, and the Hearing Officer scheduled hearing sessions for April 9 and 26. On March 27, the Hearing Officer scheduled hearing sessions for May 7 and 15, and at the request of the Board extended the decision date from April 27 to May 25. Subsequently, the hearing date of May 22, 2012 was also added and the decision date was extended at the request of the Parties to June 25, 2012.

The hearing convened on November 29 and December 1, 2011; January 11 and 17; February 13, 27 and 28; March 12; April 26; and May 7, 15 and 22, 2012.

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

SUMMARY:

The Student's special education services for Autism had been provided by contracted service providers with a contracted supervisor. When the Board decided to change from contracted providers to qualified Board employees, Parents objected. Eventually a transition plan was developed between the Parties. Parents believe that the Board has not complied with the transition plan, and that Student's IEP was not properly implemented during school years 2009-2010 and 2010-2011. Parents also allege that Student's IEP has been changed outside the PPT process and that Student has not been evaluated in a timely fashion. They have also made an ancillary claim that Student and his family have been discriminated against and/or retaliated against by Board staff members.

In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g and related regulations at 34 C.F.R. § 99, the following decision uses "Student", "School", "Parent" and titles of school staff members and other witnesses in place of names and other personally identifiable information.

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. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

FINDINGS OF FACT:

After considering the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts.

1. The Student was born on August 20, 2000, and is now eleven years of age and completing his fifth grade year. His diagnosis of Autism was made when he was very young. The report of a psychological evaluation by Independent Psychologist C dated June 26, 2003, from the Center for Children with Special Needs, L.L.C., confirmed the diagnosis and made educational recommendations. Student entered the Board's pre-school program later that year. (Ex. P-1, P-3)

2. The PPT convened on November 3, 2006, with both Parents, the Board's Special Services Director, Regular and Special Education Teachers, Board Speech/Language (S/L) Pathologist, Board Occupational Therapist (OT), Contracted Behavior Analyst A, Contracted ABA Shadow A and Contracted ABA Supervisor A in attendance. Among the PPT recommendations from this meeting were:
 - Team meetings – 1 hr/month with contracted ABA [Applied Behavior Analysis] Consultant
 - Plan for transitioning Behavior Consultant and ABA Shadow to [Board] Behavior Analyst and [Board] staff will be developed and attached to the 11/3/2006 IEP. The plan will be developed by the Team, reviewed and revised on an ongoing basis through team meetings and communication between staff.

The terms "Team Meeting" and "Clinic Meeting" refer to meetings of Board employees and Contractors to the Board providing services to Student, and Parent. It should not be construed as the PPT. Eventually there were two team meetings a month: one to discuss Student's program and one to discuss progress on the transition plan. Notes from some of these meetings were entered on the record of the hearing. (Ex. P-21; P-94; P-145; P-184; Testimony, Mother, Tr. 1/17/2012, Tr. 2/13/2012)

3. Subsequent PPT meetings were held on March 7, May 30, June 13, September 20, October 18 and December 5, 2007; May 13, October 29 and November 7, 2008. (Ex. P-29; P-33; P-35; P-41; P-42; P-45; P-49; P-61)

4. Prior to the evaluations discussed at the June 17, 2009, PPT meeting (below), the following evaluation reports were entered on the record of this hearing. Each evaluation report is identified as provided by (Board) or by (Parent):

3/23/2003	Speech/Language (S/L) evaluation (Parent) (Ex. P-2)
6/26/2003	Psychological evaluation (Parent) (Ex. P-3)
4/22/2004	Occupational Therapy (OT) evaluation (Board) (Ex. P-8)
5/2005	S/L evaluation (Board) (Ex. B-1)
7/11/2005	Psychological evaluation (Parent) (Ex. B-1)
12/28/2005	S/L evaluation (Parent) (Ex. P-16, B-1)
4/18/2006	OT evaluation (Board) (Ex. B-1)
5/30/2006	Psychosocial/Behavioral Evaluation (Board) B-1)
11/2007	OT evaluation (Board) (P-44; B-1)
3/11/2009	Psychological evaluation (Parents) (Ex. B-18; P-80)
6/8/2009	S/L evaluation (Parents) (Ex. B-14; P-80)

PROCEDURAL HISTORY:

This hearing was requested by Parents on August 17, 2011. The Hearing Officer was appointed on the same day. The date for mailing the decision was October 31, 2011. The Hearing Officer offered September 8, 16, and 22 for a pre-hearing conference, without success.

The Board filed a Motion to Dismiss and to Sequester on August 26, 2011, and Parents responded on September 2, 2011. The Hearing Officer responded on September 8, 2011, dismissing some of the Parents' issues as not within the scope of authority of a Special Education Hearing Officer.

A pre-hearing conference was held on September 29, 2011. At that time, the Parties reported that a resolution meeting had been held. The hearing was scheduled for November 29 and December 1, 2011, and the Parties requested an extension of the decision date to accommodate the hearing dates. The decision date was extended to November 30 and thence to December 30, 2011. On November 12, 2011, the Hearing Officer added an additional hearing day of January 11, 2012. After the first day of hearing, hearing dates of January 17 and 19, 2012, were scheduled. The Parties requested another extension of the decision date, which was granted on the record of the hearing on November 29, 2011. The decision date was extended to January 27, 2012.

Parents requested that several witnesses be subpoenaed to appear at the hearing. Those on the Parents' list who are current members of the Board staff will be provided by the Board without subpoena. Those on the Parents' list who are not residents of Connecticut cannot be subpoenaed. The Hearing Officer agreed to arrange for the remaining witness, who had been the Student's Applied Behavior Analysis (ABA) Shadow A, to be subpoenaed.

Substantial amounts of time on November 29 and December 1, 2011 were required to review all documents proffered by the Parties and to determine which ones were relevant and material to this hearing. After receiving documents from both Parties, the Hearing Officer stated by memo and on the record of the hearing that she was excluding several classes of documentary submissions. That memo is Appendix A to this decision, and a list of excluded documents is Appendix B.

At the January 11, 2012 hearing session, the Parties agreed to additional hearing dates of February 1, 13 and 27, 2012 and requested another extension of the decision date. The Hearing Officer extended the decision date to February 24, 2012 on the record of the hearing. At the hearing session on February 13, the Parties agreed to additional hearing dates of March 12, 16 and 20, 2012, and requested extension of the decision date to accommodate these dates. The Hearing Officer extended the decision date to March 25, 2012 on the record of the hearing. On the record of the February 28, 2012 hearing session, the Board requested an additional extension of the decision date. The Hearing Officer granted that request, and extended the decision date to April 27, 2012 on the record of the hearing. On March 19, the Board notified Parents and the Hearing Officer

5. The Parties discussed a transition in contracted ABA service providers for Student, and developed a Transition Plan. This Plan went through various revisions: the February, 2009 version, developed by Contracted ABA Supervisor A, included the following elements:

Transition Phase 1: The new Behavior Analyst would begin observing Student's ABA sessions and meetings about Student in March 2009. Observations would include:

- A) Review of Student's files
- B) Two initial meetings lasting 1½ hours between Board staff Behavioral Analysts and [prior Contracted ABA Supervisor].
- C) Two home observational sessions, 1½ hours each (structured and unstructured time).
- D) Six school observations across a variety of daily activities for 1½ hours each. It is expected that at least three observations will be joint observations with prior Contracted [ABA] Supervisor.
- E) Two Clinical Team meetings.

Transition Phase 2 New ABA providers will learn to collect Student-specific data and to implement specific teaching strategies and lessons prescribed by the prior [ABA] Contracted Supervisor. [Detailed description was included, of how this will be organized and how specific competencies that would be taught.]

Transition Phase 3 New Board staff ABA instructor(s) will begin to deliver direct services to Student while prior contracted staff fades back hours of direct service in the following form:

- A) Period one (date TBD) Board 10, Prior provider balance
- B) Period two (date TBD) Board 15, Prior provider balance
- C) Period three (date TBD) Board 20, Prior provider balance
- D) Period four (Date TBD) Board 25, Prior provider balance
- E) Final Period (date TBD) Board all hours, Prior provider observes Board staff delivering all hours until competency reached.

Note: Final competency and direct service hours transition to be determined by prior Program Supervisor, Board Behavioral Analyst and prior staff. Determination will be based on tracked performance on competency.

Transition Phase 4 PPT meeting to be held to confirm that all necessary steps have taken place.

A checklist of 76 specific competencies for ABA providers was included. (Ex. B-6; Testimony, Student's Mother, Tr. 1/11/2012; Tr. 1/17/2012)

6. The PPT convened on June 17, 2009, for Student's annual review and also a triennial review. The June 10, 2009, notice for this PPT meeting listed as purposes for the meeting: review or revise IEP, transition planning and ESY [extended school year services]. The cover sheet for the meeting listed as reasons for the meeting: review or revise IEP, conduct annual review, review eval/reevaluation, transition planning, determine eligibility and other: ESY. Present at this meeting were the Elementary School Principal as Board Administrative Designee, Student's Mother, Student's Regular and Special Education Teachers, a Board S/L Pathologist, Contracted ABA Supervisor A, Contracted ABA Shadow A, Parents' Advocate, the Board's

Contracted BCBA Consultant who had recently been hired to supervise ABA services to the Student, the Board's Special Services Director, Assistant Special Services Director, and a Special Education Teacher who was Student's Case Manager A. The Student's primary disability was listed as Autism. (Ex. B-13; B-19; Testimony, Mother, Tr. 1/17/2012)

7. An independent psychological evaluation arranged by Parents and dated March 11, 2009, by Independent Psychologist A was presented at the June 17, 2009 PPT meeting. This evaluator's summary:

[Student] is an 8 year 4 month old boy whose current level of cognitive functioning was assessed using the WISC-IV. [Student's] Full Scale IQ fell within the High Average range with strengths in Perceptual Reasoning and weakness in Processing Speed. On the K-TEA, [Student's] academic skills were assessed to be within the Average range in reading, math computation, written expression, spelling and listening comprehension. He performed within the High Average range in math concepts and oral expression. Grapho-motor skills were assessed to be within the Superior range. Memory skills were assessed to be within the Average range with relative weaknesses in memory for faces and memory for stories. His parents assessed [his] behavior to be within the At Risk and Clinically Significant range for Hyperactivity, Depression, Atypicality, Attention Problems, Leadership, Activities of Daily Living and Functional Communication. [ABA Shadow A] assessed [Student] to be in the At Risk range for Atypicality and Functional Communication. [Student's] adaptive behavior was assessed to be within the Moderately Low range in all areas, with the exception of Motor Skills which were assessed to be in the Adequate range. Given [Student's] deficits in language, communication, social relatedness with peers, attention and stereotypical behaviors, the diagnosis is consistent with the characteristics associated with Pervasive Developmental Disorder-NOS/ Autism Spectrum Disorder.

The PPT considered this evaluation and adopted the test scores. However, there were comments that there had been neither school observation of the Student by the evaluator nor any contact between the evaluator and school staff working with Student. (Testimony, Independent Psychologist A., Tr. 1/11/2012; Ex. B-18; B-19; P-80)

8. Independent Psychologist A, who evaluates a significant number of children on the autism spectrum and is affiliated with the Yale Child Study Center, summarized her impressions of Student:

[Student] impressed as a very bright child with his cognitive abilities. Academic abilities were certainly lower, falling within the average range, with the exception of the writing, and he displayed some concerns in the area of memory, memory for faces and memory for stories.

Some of the adaptive behavior scores fell within the moderately low range, and he evidenced some behavioral issues that parents were concerned about, in terms of hyperactivity, some depression, certainly atypicality, and certainly functional communication.

... I felt that [Student] continued to meet the criteria, because of his deficits in language, communication and social relatedness with peers, and certainly met the characteristics of what we see in children with pervasive developmental disorder on the autism spectrum ...

He had difficulty with self-regulation throughout the sessions, and ... some difficulty with social communication. Based on that, I felt that he had benefited greatly from the support he had received both in school and certainly in terms of out of school ...

And I felt that his program was appropriate, and that, as he was transitioning to a new school, that it would be essential that his program continue with him and remain in place until the transition was complete.

This evaluator commented that she was concerned about Student's reading, and recommended a reading evaluation. She also remarked that Student was "an exquisitely sensitive child ... sensitive to being wrong or being corrected". She endorsed the school program developed by Contracted ABA Supervisor as "consistent with my recommendations". She also recommended an ESY program for Student. (Ex. P-216; B-18; Testimony, Independent Psychologist A., Tr. 1/11/2012)

9. Contracted ABA Shadow A provided a report, dated June 2009, of Student's progress on IEP goals. She listed progress in social behavior in several kinds of situations and increasing independence. She worked with Student approximately two-thirds of his school week and provided his home and community program. (Ex. B-17)
10. The June 17, 2009, PPT meeting made the following recommendations:
 - Requalify as a special education student with a disability of Autism.
 - PPT meeting to be held by October 15, 2009, to add goals and objectives from [original contracted service provider] and to review program.
 - Reading services 2.5 hours/week in class.
 - [S/L] services 3 sessions per 10 day cycle @ 40 minutes each.
 - Conduct occupational therapy evaluation.
 - Scope and sequence of third grade curriculum to be sent to Parent.
 - In-school consult with [school] reading specialist.
 - Testing accommodations to include extended time, off-site for CMTs. Evaluate prior to assessments.
 - Team meetings held twice a month @ 45 minutes each – one to address transition, one for the school team.
 - Private ABA provider services to include: 30 hours per week ABA therapist in school, 20 hours per year ABA therapist to attend team meetings, 6 hours per month program supervision across environments, 4 hours per month transition planning and 10 hours per year for observations and reports.
 - Private ABA provider services to include 6 hours per week ABA therapy services in home and community environments, 135 ESY [Extended School Year] bank hours for summer services and other times, 20 hours per year for home ABA therapist to attend team meetings. (Ex. B-19)

11. Parents arranged for a communication re-evaluation by Independent S/L A, which was performed in March and April, 2009. The report of this evaluation was provided to the School District on June 12, 2009, and discussed at the June 17, 2009 PPT meeting. This evaluator listed Student's strengths:

- Pleasant, excellent work ethic, eager to please, cares about what he does.
- Curious and interested in a range of topics and subject areas.
- Makes good use of strategies, visual and graphic organizers that are provided.
- Excellent vocabulary knowledge given visual cues.
- Strong structural language skills and emerging non literal language skills.
- Emerging sense of narrative.
- Delightful sense of humor and capacity for playfulness and an increasing interest in playing with others.

Student's vulnerabilities:

- Difficulties with emotional modulation and regulation that can lead to less mature coping mechanisms and rigidity especially when he is feeling anxious and unsure as to what is happening, if there are changes in routines, or if he feels otherwise challenged and less competent.
- Issues with organization and executive functioning – initiating and taking a task through to completion in a planful manner.
- Prompt dependency – continues at times to be reliant on adults providing prompts and external supports to manage work, social, and daily living tasks.
- Weaker language skills when having to produce a logical, sequential, cohesive explanation or story which is evidenced in dysfluencies as he attempts to formulate his ideas. Similar patterns are seen in his oral reading.
- Word retrieval issues when formulating ideas.
- Variable in ability to use language and social skills depending on context, and his own state.
- Less adept in pragmatic skills when having to interpret and integrate multiple sources of information (contextual, social, linguistic).
- Immature social behaviors at times due to pragmatic issues.

On this occasion, [Student's] standard scores on structural aspects of verbal language, (comprehension and expression), fell in the high average and superior range. Narrative abilities, higher level language skills, and writing were in the average range although relatively lower, reflecting his vulnerabilities. Scales that assess pragmatic and social aspects of communication were less robust, with mild to moderate delays in many aspects of social functioning in less structured settings. While one to one with an adult [Student] did well, his negotiation of social engagement with peers was less secure.

This evaluator had observed Student in school. (Ex. B-14; B-19; P-80)

12. Independent S/L Evaluator A proposed four goals for Student's 2009-2010 IEP:

1. Word retrieval and specificity, develop word retrieval skills.
2. Develop receptive language
3. Develop expressive language
4. Pragmatic skills (Ex. B-14; P-80)

13. The prior written notice from the June 17, 2009, meeting included:
Determine that Student IS eligible for Special Education, based on educational performance and evaluation results. Evaluations/assessments cited were: adaptive [behavior], cognitive, developmental and social emotional behavior from independent evaluation in March, 2009, and independent communication evaluation in March, 2009 and teacher reports in June. The [PPT] received reports sharing information and concerns from Parents and outside behavior therapist, [citing the same assessments]. (Ex. B-19)
14. Actions refused by the June 17, 2009, PPT meeting were also listed:
[Based on the above assessments] District refused Parent request for a reading evaluation to be conducted by an outside provider. District offered consultation services by [Board's] reading specialist. Parent requested additional hrs. from outside agency for ESY services. District refused request due to [Student's] level of performance on evaluations and progress in second grade. (Ex. B-19)
15. Student's Mother had expressed concerns about his reading, based on observing his reading at home, including his difficulty with homework assignments. She also studied Student's reading scores, noting regression and raising technical issues in letters and at meetings. (Testimony, Mother, Tr. 1/17/2012; Tr. 2/13/2012; Tr. 2/13/2012)
16. Student's present levels of academic achievement and functional performance were reported at the June 17, 2009 PPT meeting:
Parent Concerns: Parent informed the team of the importance of photos, visual supports and pre-teaching for [Student]. The Parents also supplied the Team with a report (see attached) of [Student's] strengths and weaknesses.
Academic/Cognitive: Language Arts: Running record level N 95% accuracy, comprehension 10 of 11 correct, dictation 32/34, spelling 92/100, DRP 40 (goal 36).
Strengths: Eager to join reading group, sound symbol relationships, responds well to interventions, supports models and organizers, desire to complete work, literal comprehension, creative, ability to use graphic organizers.
Concerns/needs: fluency, higher level inferential comprehension, organization and expansion of written responses, implied meaning, understanding main idea, making connections of text.
Impact of disability on involvement and progress in the general education curriculum: [Student's] difficulty in reading requires accommodations and modification to the regular education curriculum.
Academic/cognitive: Math: Age Appropriate.
Other Academic/Nonacademic Areas:
Strengths: responds well to class supports, models, and interventions.
Concerns/Needs: metacognition, planning, prioritizing, organizing, and executive tasks, spontaneous language, recall, temporal concepts.
Impact: [Student's] difficulties impact his ability to succeed across the curriculum without accommodations and supports.

Behavioral/Social/Emotional:

Strengths: self advocacy, diligent, interested student, good citizen, eager to please.

Concerns/needs: inconsistent attention based on environmental input, anxiety with unknown or unexpected situations, rigidity, heightened sensitivity to new situations.

Impact: difficulties in social cognition require supports and accommodations across the curriculum.

Communication: PVT 109, EVT 114, CELF-4 111 Receptive 127 Expressive 108, TLC-Level 1 101, Test of Narrative Language 100, Written Language Scales 96, CCC-2 72.

Strengths: Receptive/Expressive language skills, vocabulary, seeks clarification, eager to communicate, improved use of verb tense, markers, and connected speech.

Concerns/needs: social cognition and perspective taking, verbal organization and expression, verbal specificity, pragmatic language, presupposition skills, verbal reasoning, grammar and clarity of longer sections of connected speech.

Impact: Weakness in verbal organization and pragmatic language requires specialized instruction for [Student] to fully access curriculum.

Vocational/Transition, Health and Development, including Vision and Hearing, Fine and Gross Motor and Activities of Daily Living were all rated as age appropriate. (Ex. B-19)

17. The June 17, 2009, IEP included six goals:

1. Within a small group classroom setting, [Student] will demonstrate proficiency in reading decoding [and] reading fluency. (three objectives)
2. [Student] will improve his reading and inferential skills across school, home and community environments as measured by the following benchmarked objectives. (six objectives)
3. [Student] will increase social pragmatic skills across school, home and community setting with peers and family members. (ten objectives)
4. [Student] will increase his learner skills and work behavior across school, home and community environments when working one-to-one or [in] small dyads with peers and siblings as measured by the following benchmarked objectives. (two objectives)
5. [Student] will improve his self-regulating skills across school, home and community environments when in structured and unstructured settings as measured by the following benchmarked objectives. (three objectives)
6. [Student] will demonstrate an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction. (ten objectives). (Ex. B-19; P-80)

18. Program accommodations and modifications listed for the June 17, 2009, IEP were:

Materials/Books/Equipment: personal spelling dictionary. Classroom.

Tests/Quizzes/Assessments: extra time-tests/projects/written work, re-phrase test questions/directions. All School Sites.

Grading: No accommodations

Organization: Linear Graphic Organizers, List Sequential Steps, Post Routines, Visual Schedules. Classroom, all year, include editing check list.

Environment: minimizing or structure transitions, provide visual supports. All School Sites.

Behavioral interventions and support: cue expected behavior, positive reinforcement. All School Sites.

Instructional Strategies: check work in progress, concrete examples, cueing/prompts, graphic organizers, pre-teach content, provide models, support auditory presentations with visuals, visuals to support instruction. All School Sites.

Other: use of visual supports (photos of [Student] doing a variety of activities in a variety of settings, staff and static individual photos of classmates), work sent home to work on mistakes, communication log, curriculum scope and sequence sent home for pre-teaching.

Frequency and duration of supports required for School Personnel to implement this IEP include: due to space limitation please see * sections within the recommendations page for details of additional supports. [One] time per month team meeting @ 45 minutes. [One] time per month transition team meeting @ 45 minutes. [Eight] hours per month [Board], BCBA consultation for transition planning and implementation. (Ex. B-19; P-80)

19. The June 17, 2009 PPT recommended special education services for Student's 2009-2010 school year:

Goals	Sp. Ed. Services	Frequency	Service Implementer	Service
2, 3, 4	ABA Services	30 hr/wk	Private 1:1 Shadow	Inclusion
1	Reading Instruction	2.50 hr/wk	Sp. Ed. Teacher	Inclusion
2, 3, 4	ABA Services	6 hr/wk	Cont. ABA Provider	Community
5	ABA Services	[As needed]	Cont. ABA Provider	Community
5	ABA Services	(Behavior)	Private 1:1 Shadow	Inclusion
6	S/L Pathology	30 hr/year	S/L Pathologist	Small group

(Ex. B-19)

20. The June 17, 2009 PPT offered an ESY program for the summer of 2009 described as:

Community-based ABA services to address goals 2, 3 and 4, 135.00 hr/Yearly, to be provided by Contracted ABA Provider from July 6, 2009 to August 14, 2009. (Ex. B-19)

21. Although the June 17, 2009, PPT agreed that Student's program would not be significantly changed for 2009-2010, he moved to a different school because the Board's elementary students are grouped K-2 and 3-5. He had a new teacher in third grade. Although the year started with the same Contracted ABA Shadows, both resigned during the school year. Both Independent Psychologist A and Independent S/L A had stressed in their evaluations that the 2008-2009 program should be changed as little as possible. It is true that his program was very similar to his program in 2008-2009, but the staffing changed. Parents objected to the staff

changes, stating that “consistent program” should include consistent staffing. (Ex. B-18; P-68; Testimony, Mother Tr. 2/13/2012; Testimony, Contracted ABA Shadow A Tr. 1/17/2012; Testimony, Contracted ABA Shadow B Tr. 2/28/2012)

22. Student’s third grade Classroom Teacher has a B.A. in psychology and education, a Master’s Degree in Literacy Instruction and is working toward an Ed. D. in Instructional Leadership. She has almost ten years of teaching experience. She described Student as friendly and wanting to do the right thing. He put forth his best effort and always worked hard. He had friends, some of whom had been with him the prior year. He was an expert in math and he used what he had learned in second grade in writing. He had trouble with reading fluency, but he did well in comprehension. He fit into the class well, and was well behaved. She stressed the importance of developing independence and encouraged her students to help each other. She instructed Student in reading, in a small group (six students) where he was comfortable with the other students. She noted that Student made progress in reading and writing in her class. She worried about his absences, coming in late in the morning and early dismissals. This teacher felt that it was important for the class to understand that she was in charge, as the teacher, and she directed the Contracted ABA Shadows to work only with the students to whom they were assigned. She thought that some role clarification meetings held during the year helped everyone understand their classroom roles better. She shared her lesson plans at the beginning of each ten day cycle with all the adults working in her classroom, so that they could collaborate. (Ex. B-151; Testimony, Third Grade Teacher. Tr. 5/15/2012)
23. Student’s Case Manager during his third grade year has sixteen years of teaching experience, a Master’s Degree in secondary education, Cross Endorsement in Special Education and a 6th year degree in Special Education Consultation and Collaboration. She was responsible for seeing that Student’s IEP was implemented, for collecting the paper work (evaluations, etc) and she also administered some educational assessments. She was also one of Student’s teachers during both his third and fourth grade school years. She described Student as enthusiastic, cooperative and a little bit disorganized. She considers his reading issues minor, primarily reading fluency. She had supported the need for an ESY program during the summer of 2010, and was disappointed when Parents did not agree. She was concerned about the amount of instructional time that Student missed because of late arrivals and early dismissals. She confirmed that Student’s Mother was an active participant in PPT meetings. (Ex. B-153; Testimony, Third Grade Case Manager, 4/26/2011)
24. The PPT met on September 14, 2009, with Board’s Special Services Assistant Director, Student’s Mother, S/L Pathologist, Special Education Teacher, Special Services Director and Student’s Case Manager present. The June 17, 2009, PPT recommendations were recorded again. The independent S/L evaluation report was discussed. The PPT reviewed the psychological evaluation conducted by Independent Psychologist A. The PPT had accepted test scores from this report, but commented that there had been no input from school staff and no school observation of Student. In the absence of expected IEP recommendations from the Contracted

ABA Supervisor, the PPT agreed to continue the current IEP goals. (Ex. B-14; B-18; B-23; P-86)

25. The Board's Contracted BCBA Consultant provided a progress report on some of Student's 2008-2009 IEP goals by email dated September 23, 2009:
1. [Student] will demonstrate age appropriate safety skills as measured by the attainment of the following benchmarked objectives. Goal and five objectives, satisfactory progress.
 2. [Student] will demonstrate age appropriate self-advocacy and self-regulation skills by the attainment of the following benchmarked objectives. Goal and six objectives, satisfactory progress. One objective, mastered.
 3. [Student] will improve his ability to plan and organize himself using classroom guidelines as measured by the objectives below. Goal and four objectives, satisfactory progress; two objectives mastered.
 4. [Student] will increase social pragmatic skills across home, school and community settings. Goal and eight objectives satisfactory progress. (Ex. B-24)
26. By letter dated October 8, 2009, Contracted ABA Supervisor notified the Board that his organization would be terminating their contract to provide services to Student in thirty days. The reason given was difficulties between contracted ABA staff and Board staff. (Ex. B-26)
27. Contracted ABA Supervisor provided draft goals for Student for 2009-2010 by email dated October 14, 2009. Goals listed were:
- [Student] will increase social pragmatic skills across home, school and community settings with peers and family members as measured by the following benchmarked objectives. [five objectives]
 - [Student] will increase his learner skills and work behavior across school, home and community environments while working one-to-one or small dyads with peers and siblings as measured by the benchmarked objectives. [one objective]
 - During structured and unstructured environmental situations, [Student] will increase his written and expressive language skills across school, home and community environments. [six objectives]
 - [Student] will increase his understanding of facial expressions as a means of providing/decoding information (i.e. reading expression in books, but has limited facial expression range) as measured by the following benchmarked objectives. [two objectives]
 - [Student] will improve his self regulation skills across school, home and community environments when in structured or unstructured settings as measured by the following benchmarked objectives. [three objectives]
 - Visual supports will help to improve [Student's] executive function self-organizational skills across structured and unstructured school, home and community environments. [three objectives]
 - [Student] will improve his reading and inferential skills across school, home and community environments as measured by the following benchmarked objectives. [seven objectives]

- [Student] will improve his independence across settings with familiar and unfamiliar tasks as measured by the following benchmarked objectives. [five objectives] (Ex. B-27)
28. By letter dated October 24, 2009, Contracted ABA Supervisor informed Student's Parents that his organization would cease providing services to Student after November 6, 2009. He wrote that the reason for this change was "... treatment of [his] staff and imposed limitation..." on Contracted ABA Shadows. (Ex. B-31)
29. Contracted ABA Supervisor submitted recommendations for Student's 2009-2010 program dated November 4, 2009. Of note:
- The team should consider the times at which [Student's] related services and/or special instruction [are] delivered.
 - ... summer program should [provide] a minimum of 25 hours per week of services and no less than six weeks ...
 - [need for arrangements to provide services when Student is ill]
 - [need for collaboration among staff concerning reading instruction]
 - [need for team meetings "at least 1 x every 3 weeks"]
 - [communication log between school and home] (Ex. B-35a)
30. The PPT met on November 6, 2009, with Special Services Director, Student's Mother, Regular and Special Education Teachers, Contracted ABA Supervisor A, Special Services Assistant Director, Contracted ABA Shadow A, Contracted BCBA Consultant, Principal and Assistant Principal present. (Ex. B-23)
31. PPT recommendations listed for the November 6, 2009 meeting were:
- Reading evaluation to be conducted by [Independent Evaluator E].
 - [O/T] re-evaluation to be conducted by [Board] staff.
 - Goals and objectives, as discussed at this meeting be included in IEP.
 - Reading instruction in the classroom 2.5 hours per week.
 - Writing instruction in the classroom 2.5 hours per week.
 - ABA services 32.5 hours weekly in school.
 - ABA services 6 hours weekly home and community.
 - [S/L] services 3 times per 10 day cycle @40 min each.
 - Social Skills group 0.5 hours per week.
 - Continue previous level of program supervision, team meetings, and consultations by ABA provider.
 - Testing accommodations to include extended time for curricular and district tests; standard administration for CMT.
 - Parent document dated November 6, 2009, Parent letter dated November 4, 2009 and proposed goals from [Contracted ABA Supervisor] presented at the Team meeting on November 4, 2009, will be attached to the IEP. (Ex. B-37 p.3)
32. There had been correspondence and discussion of reported problems in Student's third grade classroom at the November 6, 2009 PPT meeting. One of Student's two

Contracted ABA Shadows was described as intrusive, and the Classroom Teacher directed her not to interact with other students. Contracted ABA Shadow A had worked with Student since 2003 and had also provided services to him in his ESY program and in his home and the community. She was providing about two thirds of his support service. She worked with him on social interactions in addition to providing academic support. She also instituted Student's Home/School Communication log. She has Bachelor's and Master's Degrees in Special Education. She described working with Student and his classmates to practice conversation skills and social interactions. The Classroom Teacher had written a letter to the Building Principal dated October 28, 2009, questioning the Contracted ABA Shadows' role in the classroom and with other students. Student's Classroom Teacher questioned whether Contracted ABA Shadow A was qualified to pre-teach Student. When Contracted ABA Shadow A testified at the hearing, she denied causing any disruption in the classroom. It appears from the record that she may have been perceived as a paraprofessional assigned only to Student. Testimony, Contracted ABA Shadow A, Tr. 1/17/2012; Testimony, Mother, Tr. 2/13/2012)

33. Contracted ABA Shadow B is a Board Certified Associate Behavior Analyst (BCABA), who worked with Student about one-third of the week in school, starting in school year 2007-2008. He described his job with Student as the same as Contracted ABA Shadow A:
 - ... collecting data, provide support, provide positive reinforcement, to help shape his behavior, prompting, redirecting, restating things he may have missed, helping to facilitate social interactions ...The data he collected was considered by the Contracted ABA Supervisor and presented to the PPT, to evaluate Student's progress and to develop IEPs. He was aware that his job would be given to a School District Paraprofessional eventually. At the beginning of Student's third grade year, he was advised by the Classroom Teacher not to interact with other students in the class. Troubled by this limitation on his ability to assist Student in social interactions pursuant to the IEP, Contracted ABA Shadow B emailed Contracted ABA Supervisor with his concerns. (Ex. P-71; P- 210; Testimony, Contracted ABA Shadow B, Tr. 2/28/2012;
34. The Board's Special Services Director wrote Contracted ABA Supervisor on November 9, 2009, requesting that he re-consider his termination of ABA services to Student. Enclosed with this letter was the Board's job description for "Blind Shadow" Paraprofessionals. (Ex. B-39)
35. The PPT met on January 20, 2010, with the Board's Special Services Director, Student's Mother, Student's Father (by telephone), Regular and Special Education Teachers, S/L Pathologist, Special Services Assistant Director, Current Principal and Assistant Principal, Independent Psychologist A, Contracted ABA Supervisor A and Contracted BCBA Consultant present. The reasons given for this meeting were: review or revise IEP and plan evaluation/re-evaluation. The Independent Psychological Evaluation provided by Parents was reviewed. Student's reading was discussed, and the PPT agreed to fund a reading evaluation by Independent Evaluator

E. Mother signed consent for release of Student's school records for this evaluation. (Ex. B-57; P-99; P-114; Testimony, Mother, Tr. 2/13/2012)

36. The Prior Written Notice section of the January 20, 2010 PPT record shows the following actions and refused actions:
- The team recommended using "Reading Naturally" program to build fluency for Student. This action was supported by Student's achievement as measured on 10/01/2009; classroom observation on 1/20/2010; communication on 6/8/2009; and teacher reports on 1/20/2010.
 - Team recommended small group instruction to further support spelling program, 3 xs per week at 30 min. per session. Educational performance and evaluation results supported these actions.
 - Per parent request, school team agreed to remove psychological services from the IEP (i.e., social skills group).
 - The district agreed to continue to provide 6 hrs/wk [of] ABA services in the home and community. Educational performance and evaluation results support these actions.
 - Parents requested a classroom observation by [Independent Psychologist A]. District will agree to schedule this observation; funding by Parents.
 - Team re-recommended individual reading evaluation, by Independent Evaluator E. Parent had initiated evaluation, without returning consent form to [school] district. Parent signed forms giving permission to conduct individual evaluation and permission to share information. Educational performance and evaluation results support these actions.
 - Team re-recommended an [OT] re-evaluation to be conducted by [Board staff]. Parent signed permission to evaluate form. Educational performance supports this action: had been recommended at PPT meetings on 6/17/2009 and 11/6/2009.
 - Team recommended the following support services from outside [contracted] ABA Supervisor: program supervision, 6 hrs. per month and transition planning (including training to para [professional] 4 hrs per month. Educational performance and evaluation results support these actions.
 - Team recommended adding 4 hours (one time block) to current services for both Contracted ABA Supervisor and the Board's BCBA Consultant. The purpose of this time is to review and revise behavioral goals in a unified manner. Educational performance and evaluation results support these actions. (Ex. B-57; B-58; B-60)
37. A Board OT performed an OT evaluation of Student on March 17, 2010. The Summary and Recommendations that concluded the report of this evaluation:
- [Student's] assessment results indicate that overall, his visual motor integration skills, his ability to perceive a written form correctly and his fine motor coordination skills are all within the normal limits for a child of his age. In addition, his handwriting indicates he is able to form his letters with the correct directionality and use spacing within his written work appropriately if he is given verbal reminders. His sensory processing skills are appropriate within the context of the school environment. (Ex. B-70)

38. Student's scores on his third grade Connecticut Mastery Test (CMT) were at the Goal level in reading, mathematics and writing in March 2010. (Ex. B-76)

39. Independent Psychologist A observed Student at school on March 19, 2010. She observed his work in Read Naturally, his participation in a group discussion of poetry, a writing assignment, gym class, a lesson about Native Americans and a French lesson. Some of her impressions:

It was evident that [Student] is functioning within a class with a challenging curriculum in writing, content and foreign language ... What was striking about the morning was how hard [Student] worked on his assignments. He exhibited a very strong focus and attention to the work at hand. He appeared to need several breaks to help himself with self-regulation and focus. However, in the less structured setting with other children, [Student's] lack of social awareness, impulsivity and dysregulation was very apparent. While others may interpret this behavior as immaturity, given [Student's] history of social deficits, and the level of sophistication of his peers, [Student's] behaviors should not be interpreted lightly.

This evaluator summarized her observation:

[Student] impresses as a bright boy who expends a high level of effort and energy to stay engaged in the learning process. He was socially related to his teachers and chatted with the boy at the computer. He demonstrated good eye contact and knowledge of the day's schedule and what was expected. It is evident that [Student] has many strengths, but he can also be quite vulnerable in the learning setting.

It is evident that [Student] continues to be affected by difficulty with self-regulation and social communication. [Student] has clearly benefited from the support he has received within the school setting and the supplemental support provided in the home and the community. ... [Student] will also be exposed to higher order academic demands as the curriculum becomes more literary, narrative, and less rote, requiring more interpretation, generalization, and inferential thinking skills, all weaknesses for [Student]. [Student] continues to show vulnerability in reading and adjustments to his program will be needed once his reading evaluation is completed. (Ex. P-159, B-106)

40. The PPT met on March 24, 2010, with Principal, Student's Mother, Regular and Special Education Teachers, S/L Pathologist, an OT, the Board's Director and Assistant Director of Special Services, Parents' Advocate, Contracted ABA Supervisor and Board BCBA Consultant present. The meeting notice gave review of evaluation and extended school year as the reasons for this meeting. The PPT recommendations were:

- Administer home sensory profile as part of OT evaluation (consent provided).
- ESY services 1 hour per day/ 6 weeks- language arts instruction in decoding, reading fluency, comprehension and writing mechanics.

The prior written notice for the PPT meeting includes conduct a re-evaluation, OT sensory profile and Implement IEP. (Ex. B-74; B-75; P-127; Testimony, Mother, Tr. 2/13/2012)

41. Board's Reading Consultant has almost thirty years of experience as an elementary school teacher, reading specialist and resource teacher. She described the School District's reading program, Reader's Workshop, as based on the five pillars of literacy: phonemic awareness, phonics, comprehension, fluency and vocabulary. Teachers often ask her to screen children to help determine if they might need additional specialized help with reading. She was asked to screen Student at the beginning of his third grade year, 2009-2010. She described him as having a good foundation, and she observed him doing well working in a small reading group with his Classroom Teacher. She gave him a Dibels [reading test] to assess his oral reading fluency at the beginning of the school year, mid-year and at the end of the year. At the end of third grade, his reading rate was 67 words per minute. He did have an issue with fluency and rate of reading, which the Reading Consultant attributed in part to his self-monitoring and thinking about whatever he was reading. She did not think that he needed special help with phonics, and she thought he would do well in the regular reading curriculum, commenting that his classroom teacher was a very good reading teacher. The Reading Consultant saw that his Fountas and Pinnell (F&P) comprehension scores were good. She did not recommend any changes in his reading program, which was small group instruction. She did recommend Read Naturally, a computer program, to help improve his fluency. In early October 2009, Student's Mother inquired about Read Naturally and also asked Student's classroom teacher to provide his F&P scores. Classroom teacher responded that the scores were not allowed to leave the classroom, and that Read Naturally helps with fluency, comprehension and accuracy. (Ex. P-210; Testimony, Reading Consultant, Tr. 5/22/2012)
42. After fifteen hours of training, the Board Paraprofessional assigned to work with Student was given a Certificate of Completion of the Basics of Applied Behavior Analysis in Children with Autism and Related Disorders on May 31, 2010. (Ex. B-77)
43. The result of the OT's Home Sensory Profile, as completed by Student's Parents and reported by a Board OT on June 3, 2010, was identification of two Sections of Definite Difference: Auditory Processing and Modulation of Movement Affecting Emotional Responses and four Sections of Probable Difference: Multisensory Processing, Modulation of Visual Input Affecting Emotional Responses and Activity Level, Emotional/Social Responses and Behavioral Outcomes of Sensory Processing. Two Factors of Definite Difference found were: Sensory Seeking and Inattention and Distractibility. Two Factors of Probable Difference found were: Emotionally Reactive and Poor Registration. (Ex. B-82)
44. Contracted ABA Supervisor and Board's BCBA Consultant met to develop proposed goals and objectives for Student for 2010-2011 school year. They submitted these goals and objectives on June 3, 2010. (Ex. P-136)

45. The PPT met on June 9, 2010, with Principal, Student's Mother, Regular and Special Education Teachers, an OT, S/L Pathologist, the Board's Director and Assistant Director of Special Services, Parents' Advocate, the Contracted ABA Supervisor and the Board's BCBA Consultant present. This was an annual review meeting. Present Levels of Academic Achievement and Functional Performance were recorded.

Parent concerns: As the result of the termination of [Student's] home program and multiple staff changes this school year, [Student's] challenges brought about by ASD, overall language issues, dyslexia, the increased academic expectations for reading in his third grade classroom and at home, were compounded. Based on the information available to us at this time, it is our position that [Student] has struggled to access the LRE.

Academic/Cognitive: Language Arts: (6/2010) Fountas & Pinnell Instructional Level Q 55 wpm, 96% acc. 7/9 comp. Dibles 67 wpm (goal 107) Fry's Word Phrases Level 22 53.57 wpm 92% acc; Gates McGinitie Vocab GE 4.9, Comp 5.1 Total 4.9

Strengths: self-correcting, eager to learn and join the group, [good] comprehension of stories read to him, able to use graphic organizer, uses resources to add descriptive details, words, and similes to writing, with support and frameworks [Student] has strong initiation and stamina to complete the task.

Concerns/Needs: fluency, amount of self-correction, spelling in context, creating and adding supporting details in written work.

Impact of Student's Disability: [Student's] difficulties in reading fluency, spelling, and expanding written work require accommodations and modification to the regular education curriculum. This limits his ability to gain information from text across all areas of the curriculum.

Academic/Cognitive: Math: Age Appropriate.

Other Academic/Nonacademic Areas: WISC-IV VCI 110 PRI 123 WMI 110 PSI 103 FSIQ 117 ([Independent Psychologist A 2/2009) K-TEA-II Reading Comp SS 95, Math Comp 112, Written Lang Comp 89 Oral Lang Comp 112 ([Independent Psychologist A 2/2009)

Behavioral/Social/Emotional: Expanding age appropriate peer relationships. BASC-II parents form Behavior Symptom Index 69 adaptive Composite 35 (Independent Psychologist A 2/2009); repetitive behaviors or self-talk may be displayed when stressed.

Strengths: self advocacy, diligent, interested student; good citizen; eager to please, improvement in ability to follow classroom routines, increased participation in school and community activities, problem solving, active participant with peers, displays empathy and humor.

Concerns/Needs: inconsistent attention based on environmental and movement, anxiety in unknown or unexpected situations, heightened sensitivity to new situations, difficulty detecting and interpreting social cues.

Impact: Difficulties in social cognition require supports and accommodations across the curriculum.

Communication: PPVT 109, EVT 114, CELF-4 111 Receptive 127 Expressive 108, TLC-Level 1 101, Test of Narrative Language 100, Written Language Scales 96, CCC-2 72.

Strengths: Receptive/expressive language skills; vocabulary; seeks clarification; eager to communicate; improved use of verb tense markers.

Concerns/Needs: social cognition and perspective taking; verbal organization and expression; verbal specificity; pragmatic language; presuppositional skills; verbal reasoning; grammar and clarity in longer sections of connected speech, repertoire of topics and events in conversations.

Impact: Weakness in verbal organization and pragmatic language requires specialized instruction for [Student] to fully access curriculum.

Vocational/Transition: Health and Development – including Vision and Hearing; Fine and Gross Motor; and Activities of Daily Living were all marked Age Appropriate. (Ex. B-84)

46. June 9, 2010, PPT recommendations for 2010-2011 school year were:

- Phonics instruction 2.5 hours per week small group.
- Reading instruction 5.0 hours per week in class by special education teacher.
- Writing instruction 2.5 hours per week in class by special education teacher.
- Read Naturally 2.5 hours per week supported by paraprofessional.
- Behavioral support 32.5 hours per week by [Board] paraprofessional.
- Behavioral supervision by BCBA 8 hours per month to include 45 min per week direct instruction after school.
- After school academic support by certified teacher 3 days per week at 45 minutes each.
- 35.5 hour school week.
- [S/L] 45/40 minute sessions.
- Testing accommodations – district/start in class, extended time as needed, reader, CMT/off-site, extended time, reader for directions and math. (Ex. B-84; P-139)

47. June 9, 2010, goals for the 2010-2011 year were:

1. Within a small group classroom setting, [Student] will demonstrate proficiency in reading decoding and fluency. (Five objectives)
2. [Student] will demonstrate an improvement in comprehension skills necessary to read for information and understanding. (Three objectives)
3. [Student] will demonstrate an improvement in the mechanics of written language such as spelling, capitalization and punctuation necessary to write for information, understanding and written expression. (Three objectives)
4. [Student] will demonstrate an improvement in written language skills necessary to write for information, understanding and written expression. (Six objectives)
5. [Student] will increase social pragmatic skills across home, school and community settings. (Eight objectives)
6. Student will improve his ability to plan and organize himself using classroom guidelines as measured by the objectives below. (Five objectives)
7. [Student] will demonstrate age appropriate self-advocacy and self-regulation skills as measures by the attainment of the following benchmarked objectives.

(Seven objectives)

8. [Student] will demonstrate age appropriate safety skills as measured by the attainment of the following benchmarked objectives. (Five objectives)

9. [Student] will demonstrate an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction.

(Nine objectives)

Mother questioned the need for work on social skills. (Ex. B-84; Testimony, Mother, 2/13/2012)

48. Program accommodations and modifications for Student's program for the next year included:

Materials/Books/Equipment: Personal Spelling Dictionary in the classroom.

Tests/Quizzes/Assessments: Orally Read tests/Directions, rephrase Test Questions/Directions. All School Sites

[No modifications for grading]

Organization: Linear Graphic Organizers, List Sequential Steps, Rephrase Test Questions/Directions. Classroom all year, include editing check list.

Environment: Minimizing or Structure Transitions, Provide Visual Supports. All School Sites.

Behavioral Interventions and Supports: Cue expected behavior, Positive Reinforcement. All School Sites.

Instructional Strategies: Check Work in Progress, Concrete Examples, Cueing/Prompts, Graphic organizers, Pre-teach Content, Provide Models, Support Auditory Presentations with visuals, Visuals to Support Instruction. All School Sites.

Other: Use of visual supports (photo's of [Student] doing a variety of activities in a variety of settings, staff and static individual photos of classmates), work sent home to work on mistakes, communication log, curriculum scope and sequence sent home for pre-teaching. Across all areas.

Frequency and Duration of Supports: One to one [School District] paraprofessional throughout school day, behavioral supervision 8 hrs/month to include one 45 min. session per week after school direct instruction, 3 days per week after school homework support by [School District] certified teacher. (Ex. B-84)

49. The June 9, 2010 PPT recommended special education services for Student's 2010-2011 school year:

Goals	Sp. Ed. Services	Frequency	Service Implementer	Service
5-8	Behavioral Support	32.5 hr/wk	Paraprofessional	Inclusion/gen ed
5-8	Social Skills Instruc	0.75 hr/wk	Behavior Supervisor	Individual instruction
1-4	Academic Support	2.25 hr/wk	Gen, Sp Ed teachers	Individual instruction
1	Reading Instruction	2.50 hr/wk	Sp Ed Teacher	Small group/individual
1,2	Reading Instruction	5.00 hr/wk	Gen, Sp Ed teachers	Inclusion/gen ed
1	Reading Instruction	2.50 hr/wk	Paraprofessional	Inclusion/gen ed
3,4	Writing instruction	2.50 hr/wk	Sp Ed Teacher	Inclusion/gen ed
9	S/L	30 hr/yearly	S/L Pathologist	Small group

This page also noted Language Arts instruction one hour a day in a small group for an ESY program. (Ex. B-84)

50. School staff sent a communication sheet/log home with Student every school day, recording day to day events, what happened in class and how Student performed in class. (Ex. P-183; Testimony, Case Manager B, Tr. 12/1/2010)
51. Student's 2009-2010 Grade 3 Progress Report shows ratings in November 2009, March 2010 and June 2010. Student's grades were not modified. The June ratings:

Subject	Exceeds Expectations	Meets Expectations	Beginning to meet Expectations
Reading	5	7	1
Spelling		1	2
Handwriting		3	
Information Technology		4	
Writing	5	3	1
Science	7		
Social Studies	3	2	
Math Content	13	5	
Math Process	5	2	
Social Skills		8	
Work Habits		16	
Library		5	
Art		6	1
Physical Education	6		
Music	2	5	

(Ex. B-95)

52. Contracted ABA Supervisor provided an IEP report for Student's school year 2009-2010. He reported progress on ABA-related goals graphically. His summary noted: [Student's] year has been a year of progress despite the variety of program distractions, questions and complication with team dynamics... He has made some nice progress, but still has his ongoing needs and deficit areas that will need to be continually addressed ...
Data collection and work samples for 2009-2010, totaling 198 pages, were submitted for the record. (Ex. B-85, B-100)
53. The PPT offered an ESY program of three hours a day, from July 6, 2010 to August 13, 2010 but Parents refused that service. (Ex. B-103)
54. After school services for homework support three days a week for 45 minutes each had been offered at the June 9, 2010 PPT meeting, but were refused by Parents. (Ex. B-84; B-112)
55. The Special Education Teacher who worked with Student during his fourth grade year has twenty-nine years of teaching experience. She holds a Masters Degree with

emphasis on learning disabilities. She has extensive experience with teaching reading, including training in several reading programs. She worked with Student within his classroom every day and described him as always willing to volunteer, and very well-rounded. She noted his problems with getting started and organization, "but not much different from other fourth grade boys". In her view, he had difficulty with fluency in reading that did not affect his comprehension. He fit into a reading group in his classroom. He was frequently late in the morning, and she would help him catch up with reading which was scheduled at 8 a.m. She also helped him with writing in the afternoon every day, and his frequent early dismissals were a problem. She stated that Student responded very well to the reading program, and made appropriate progress through the school year. He had an incredible vocabulary, and used it in writing. She disagreed with the Independent Literacy Evaluation because she knew that many of the suggestions given by the Evaluator were already in place. (Ex. B-154; Testimony, Special Education Teacher, Tr. 5/22/2012)

56. Student's fourth grade Case Manager has fifteen years of teaching experience. She has a Master's Degree in psychology and Intermediate Administration Certification. She collaborates with Student's various teachers to develop a draft IEP for the PPT to consider. She attended Student's PPT meetings from June, 2010, through the 2010-2011 school year. She stated that Student's Mother was an active participant in all PPT meetings. (Ex. B-157; Testimony, Fourth Grade Case Manager B., Tr. 12/1/2011)

57. The PPT met on September 7, 2010 with Principal, Student's Mother, Regular and Special Education Teachers, S/L Pathologist, Director and Assistant Director of Special Services, Parent Advocate and [Contracted BCBA Consultant] present. The Parent had requested this meeting. The prior written notice for this meeting includes:

Actions Proposed: continue current IEP; assistive technology evaluation, consent received.

Actions Refused: removal of transition plan; reinstatement of 11/2008 IEP with prior contracted service providers; independent reevaluation; outside provider for writing instruction; reimbursement for parent-provided Orton-Gillingham [reading] instruction; and funding of several independent evaluations.

(Ex. B-109; P-161)

58. Student's 2010-2011 CMT accommodations included reading of directions and test items, except for the reading portion of the test, which would have reading of directions only. (Ex. B-19; Testimony, Case Manager, Tr. 12/1/2011)

59. The Board gave Student an Assistive Technology (AT) evaluation during October and November, 2010. The evaluator has a Master's Degree in S/L and a sixth year degree in special education with a specialty in Assistive Technology. She had worked with Student as an S/L Pathologist prior to the AT evaluation. Her Recommendations:

1. [Student] should have direct weekly instruction in keyboarding to build familiarity with letter placement on the keyboard.

2. [Student] should be taught features of Read and Write Gold that would include word prediction, reading feature, spell check and homophone check.
3. Worksheets can be scanned into the computer as needed and Read and Write Gold can be used to read directions to him. This provides for greater independence and helps insure accuracy when reading and completing worksheets.
4. Additional features of Read and Write Gold need to be added as requirements increase in the curriculum. These could include using the outline/graphic organizer (either Draft Builder or Read and Write Gold as needed) as well as the highlighting features in order to collect facts.
5. Features should be demonstrated to and practiced by [Student] one at a time so that he builds fluency with using each part. Decisions can be made as to what features are working for [Student] for various tasks as he continues to develop skills in reading and writing and use of technology.
6. A copy of Read and Write Gold will be provided to the family for use at home.
(Ex. B-113; B-155; Testimony, AT Evaluator/S/L Pathologist, Tr. 4/26/2012)

60. As Student's S/L Pathologist, she had observed his improvement in organization of language, ability to sequence sentences and ideas, and to maintain a topic across multiple turns. She reported that he had improved his social, pragmatic and communication skills and was an effective advocate for himself. (Testimony, S/L Pathologist/AT Evaluator, Tr. 4/26/2012)

61. Student's Case Manager B sent Parents an IEP progress report dated November 19, 2010. Goals marked "*" added after June 17, 2010 PPT meeting, with consent from Parents:

Goal 1: [Student] will demonstrate an improvement in comprehension skills necessary to read for information and understanding; four objectives, Satisfactory Progress

Goal 2: [Student] will demonstrate an improvement in the mechanics of written language such as spelling, capitalization and punctuation necessary to write for information, understanding and written expression. three objectives, Satisfactory progress

Goal 3: [Student] will demonstrate an improvement in written language skills necessary to write for information, understanding and written expression. Five objectives, satisfactory progress; one objective, not introduced

Goal 4: Within a small group classroom setting, [Student] will demonstrate proficiency in reading decoding and fluency. Five objectives, satisfactory progress

Goal [5]: [Student] will demonstrate an improvement in language skills necessary to speak and listen for information, understanding, expression and social interaction. Three objectives mastered, six objectives, satisfactory progress.

Goal [6]: [Student] will demonstrate age appropriate safety skills as measured by the attainment of the following benchmarked objectives. Five objectives, satisfactory progress.

Goal [7]: [Student] will demonstrate age appropriate self-advocacy and self-regulation skills as measures by the attainment of the following benchmarked objectives. Five objectives, satisfactory progress.

*Goal [8]: When confronted with a difficult situation across environments, [Student] will independently verbalize and act on realistic expectations for himself. One objective, satisfactory progress.

Goal [9]: Student will improve his ability to plan and organize himself using classroom guidelines as measured by the objectives below. Five objectives, satisfactory progress.

Goal [10]: Student] will increase social pragmatic skills across home, school and community settings. Five objectives, satisfactory progress.

*Goal [11]: When engaged in indoor or outdoor games, [Student] will demonstrate an understanding of the game and its rules, and the ability to abide by the established rules. Two objectives, satisfactory progress. (B-116)

62. A Literacy Evaluation of Student was performed by Independent Evaluator F. in January, 2011, at the Soifer Center. The report of this evaluation, dated March 11, 2011, was received by the Board on June 13, 2011. The evaluator is identified as an Educational Therapist and a Wilson Certified Instructor, with a Masters Degree in education.

- Student's scores on the Gray Oral Reading Test-4 (GORT-4) Form A were average for comprehension and poor for rate, accuracy and fluency.
- On the Test of Written Language-3 (TOWL-3) Form A he scored average in vocabulary and sentence combining; below average in style, logical sentences, contextual conventions, contextual language, story construction, contrived writing and overall writing; and poor in spelling and spontaneous writing.
- On the Woodcock-Johnson III Tests of Achievement, Form A, he scored above his then-current grade placement in oral language, broad math, broad written language, basic reading, reading comprehension, math calculation, written expression, academic skills and academic applications. He was close to his then-current grade placement in oral expression and below his grade placement in broad reading and academic fluency.
- In subtests of the Woodcock-Johnson, he scored above his then-current grade placement in story recall, calculation, spelling, applied problems, writing samples, story recall-delay and reading vocabulary. He was close to his then-current grade placement in letter-word identification, writing fluency and passage comprehension. He was below his then-current grade placement in reading fluency, understanding directions, math fluency and picture vocabulary.
- On the Gray Diagnostic Reading Tests – Second Edition Form A (GORT), he scored in the average range in letter/word recognition, phonetic analysis, reading vocabulary, listening vocabulary, phonological awareness, decoding, comprehension and general reading. He scored below average in meaningful reading and rapid naming.
- He scored below average on the Test of Silent Word Reading Fluency Form B (TOSWRF). (Ex. P-178)

63. The March 2011 Literacy evaluator made recommendations, many of which had already been implemented by the PPT. (Ex. P-178)
64. Student's scores on the March, 2011, CMT were: proficient in reading, at goal in writing and advanced in math. (B-120)
65. The PPT met on March 21, 2011, with Director and Assistant Director of Special Services, Student's Mother, Principal, Regular and Special Education Teachers, S/L Pathologist, Contracted BCBA Consultant and Parents' Advocate present. The meeting had been called to review the AT evaluation. The prior written notice from this meeting included:
- Team agreed to implement use of software noted in the [AT] Evaluation dated Oct/Nov 2010 in order to support [Student] academically. These additional supports are noted on the Accommodations page of the IEP.
- Team agreed that [Student] will participate in a typing/keyboarding group 1x per week for 30 minutes. This change is reflected on page 11 of the IEP, as well as the addition of goal #10:
- [Student] will demonstrate improvement in keyboarding skills.
- (Ex. B-122)
66. The PPT met on June 9, 2011, to review outside evaluations arranged by Parents. Present at this meeting were Principal, Student's Mother, Regular and Special Education Teachers, S/L Pathologist, Contracted Behavior Supervisor, Assistant Director of Special Services, Case Manager, Parents' Advocate and Independent Evaluator E. The discussion of the Literacy Evaluation was limited because the School had not received a copy of the evaluation, which was dated March 11, 2011, prior to the meeting. The Team agreed to continue this discussion at the annual review PPT, scheduled for June 15, 2011, when a Board School Psychologist would be present. (Ex. B-127; P-177; P-178)
67. The PPT convened for Student's annual review on June 15, 2011. Present were Director and Assistant Director of Special Services, Student's Mother, Regular and Special Education Teachers, School Psychologist, S/L Pathologist, Contracted BCBA Consultant, Principal, Parents' Advocate and Independent Psychologist D. The prior written notice for this meeting:
- District refused payment for compensatory services. District refuses Parent request for compensation for Orton Gillingham [reading] instruction. District notes [that it] has provided the appropriate services and IEP to meet [Student's] needs. [District] also continues to recommend after school support for 2.25 hours a week.
 - District refused payment of [evaluations] by [Independent Psychologist A, Independent Psychologist D and Independent Evaluator A]. District had previously offered to fund [evaluations] from a mutually agreed upon evaluator but did not agree to fund these evaluations. District did agree to fund [Independent S/L Evaluator A's evaluation].

- District refused Parent request to revise IEP noting the [evaluations] from [Independent Psychologist A and Independent S/L Evaluator A] as the 2009 triennial of record. District noted that it had agreed to an evaluation that was not completed by [Independent Evaluator A].
- District refused Parent's request for 1:1 Orton Gillingham instruction and re-evaluation by [Independent Evaluator A and Independent Psychologist A]. [District] is recommending a program that provides reading and writing support appropriate to meet [Student's] needs.
- District refused Parent request to revise IEP to reinstate previous ABA program. District notes that it continues to recommend and provide an appropriate program that meets [Student's] educational needs.
- District refused Parent request to remove Contracted Behavior Specialist from [Student's] educational program. District notes that a provider from the same agency will be providing the services as outlined in the IEP per PPT recommendations.
- District refused Parent request to contract with outside provider for supervision of language arts and [S/L] program. District is providing an appropriate [District] program that meets [Student's] educational needs and that he is making progress in these areas.
- District refused Parent request for 1:1 [S/L] therapy services [for Student]. District notes progress made in small group format. District further notes need for [Student] to apply these skills with peers in a structured SLP setting; services delivered by [District] staff. (Ex. B-130; P-180)

68. Student's 4th grade progress report showed June, 2011 grades. Student's grades were not modified.

Subject		Exceeds Expectations	Meets Expectations	Beginning to meet Expectations
Reading	B+	1	7	3
Writing	B	1	6	2
Spelling	B-		2	1
Math Content	A-	7	11	
Math Process		1	6	
Handwriting			1	1
Social Studies	A-		6	
Science	A	3	4	
Information Tech.			4	
Work Habits			13	3
Social Skills			8	
Library	A		5	
World Language		2	3	
Art	A	2	5	
Physical Education	A		6	
Music	A	5	2	(Ex. B-134, P-192)

69. Student's fourth grade Classroom Teacher has Master's Degrees in special Education and in Technology/School Library Media. She has more than ten years of teaching experience. She described Student as enthusiastic, helpful and well-behaved. He made progress during his fourth grade year, both academically and socially. She observed Student's ABA Shadow supporting him and encouraging his independence. She has worked with Student to improve his reading fluency, and reports progress through the school year. He has had assistance with phonics and with fluency. With more than two hours a day devoted to reading and writing and the assistance of a special education teacher, it is possible to provide an appropriate reading program for Student. His frequent lateness to school in the morning and early dismissals were a problem because he missed instructional time. (Ex. B-152; Testimony, Fourth Grade Teacher, Tr. 5/15/2012)

70. Independent Psychologist D observed Student in school on June 8, 2010 and September 27, 2010, during his snack, math class, math test, science class, lunch and indoor recess and writing class. This evaluator's recommendations reflected a lack of awareness of Student's current program and support staff.

- There is a BCBA Coordinator supervising his program.
- Parents have rejected a social skills program for Student.
- ESY services have been provided in the past and were offered in 2011.
- Team Meetings have been held approximately twice a month for several years (see Findings of Fact 2 and 76).
- Data collection continues. (Ex. P-193, P-94, P-184, P-247, P-248, P-217)

71. Student's attendance was a concern to school staff members. Concerns focused on illnesses, being late to school in the morning, and early dismissal at Parent request.

	Absent	Late arrival	Early dismissal
2009-2010	31	19	4
2010-2011	23	26	18

The reported results were Student's missing morning routine and schoolwork, morning organizational time, missing writing, and missing phonics. (Ex. B-148)

72. The Board's Director of Special Services has a Master's Degree and a Ph.D. (ABD) in Counseling Psychology. She has Connecticut certification in School Psychology and Administration and more than thirty years of experience as a school psychologist and an administrator. Based on what staff members have told her as well as her observations, Student is well liked by his classmates and teachers. He has Autism, which she considers mild and moderate learning disabilities that affect his reading. He is a full participant in his regular education classroom, and requires no modification of the curriculum. She attended many PPT meetings for Student, and stated that Student's Mother was an active participant in PPT discussions. (Ex. B-160; Testimony, Director of Special Services, Tr. 5/7/2012)

73. The Board's Assistant Special Services Director has more than thirty years of experience as a teacher and school administrator. She has a Master of Science degree and Intermediate Administrator and Supervisor Certification. She reported that there

had been times when the school asked Parents to approve a minor change in Student's IEP without holding a PPT meeting. When Parents did not agree, the school did not implement the change. She stated that she had no knowledge of any staff member discriminating against Student, and that from what she had observed, all the staff members who worked with Student were dedicated to working with him and his parents. She is qualified to supervise teachers and other service providers, and she has observed those who work with Student and believes that they are well qualified and dedicated to his program. (Ex. B-159; Testimony, Assistant Special Services Director, Tr. 3/12/2012)

74. From time to time, the Board contacted Parents requesting agreement to minor changes in Student's IEP without calling a PPT meeting. Those requests included in the record of the hearing demonstrate cooperation:

<u>Date</u>	<u>Exhibit number</u>	<u>Proposed change</u>	<u>Disposition</u>
9/14/2009	B-23, P-85	Amendment	No signature
2/24/2010	B-65, P-121	CMT accommodations	Parent Signed
9/7/2010	B-119	CMT Accommodations	Parent Signed
11/18/2010	B-115, P-168	Amendment	No signature
2/18/2011	B-119, P-168	CMT Accommodations	Parent signed.

75. Many times, Parents emailed letters to school staff members immediately prior to a scheduled PPT, with questions and suggested discussion topics. Since these requests required a specific school staff member to be present at the PPT meeting after reviewing the request and preparing a response, it was often impossible to address Parental questions and concerns immediately. In most cases, the meeting notice included reason(s) for the meeting and the PPT Chair had introduced an agenda at the beginning of the meeting.

<u>PPT date</u>	<u>Date, number of pages of Parent letter</u>
11/6/2009	11/4/2009; 7 pages (Ex. P-93, B-36, B-37)
1/20/2010	1/19/2010; 6 pages (Ex. B-56, B-57; P-113, P-114)
3/24/2010	3/24/2010; 3 pages (Ex. B-73, B-74; P-124, P-125, P-126, P-127)
6/9/2010	6/8/2010; 9 pages (Ex. B-83, B-84; P-134, P-135, P-138)
9/7/2010	9/3/2010; 9 pages (Ex. B-108, B-109; P-161)
6/9/2011	6/2/2011; 2 pages (B-127)
6/15/2011	6/13, 6/15/2011; 5 pages (Ex. B-129, B-131)

76. Agendas and Notes from some of the Team Meetings held twice a month for Board staff members working with Student, with Mother invited to attend, were entered on the record of the hearing. (P-71 (15 pages); P-184 (2 pages); P-247 (67 pages); P-248 (8 pages))
77. Classroom/Communication logs and data collection were entered on the record of the hearing. (Ex. B-144 (166 pages); B-99 (194 pages); B-100 (198 pages); P-144 (33 pages); P-209 (10 pages); and P-248 (8 pages))

78. Student work samples were entered on the record of the hearing. (P-153 (39 pages); P-154 (50 pages); P-186 (16 pages); P-187 (43 pages); P-188 (20 pages); P-189 (19 pages); P-208 (12 pages); B-96 (8 pages); B-101 (74 pages); B-143 (52 pages); and B-146 (172 pages))
79. Although Parents have signed consent for AT and OT evaluations and for release of Student's records to outside evaluators selected by themselves, they have not consented to the triennial evaluation due to be performed by the Board during 2009.

CONCLUSIONS OF LAW:

1. Section 10-76h, Connecticut General Statutes (C.G.S.), and related regulations at Section 10-76h, Regulations of Connecticut State Agencies, authorize 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 Sections 4-181a of the C.G.S. Section 20 U.S.C. § 1415(f) and related regulations at 34 C.F.R. § 300.511 through § 300.520 also authorize special education hearings.

2. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (U.S. 1982) established a two prong test for determining whether a special education program is appropriate for a specific student in need of special education. First, has the school district followed the procedural rules of the IDEA, and second, is the special education program offered appropriate to the student's individual needs. In this case, Parents' allegations of procedural errors are without substance. The special education program and placement offered to the Student has been reasonably calculated to address his special education needs. PPT recommendations of after school homework support and ESY have been refused by Parents.

3. Pursuant to 34 C.F.R. §300.300 (a) and (c), parental consent is required for an initial evaluation for consideration of eligibility for special education and for the required subsequent triennial re-evaluations of students in need of special education. Parents have not consented for the school to perform a triennial evaluation.

4. Pursuant to 34 C.F.R. §300.502, parents may secure and pay for independent evaluations of children who are eligible for special education. The reports of such evaluations must be considered by the PPT if they are shared with the school, but the PPT is not required to accept recommendations from independent evaluations obtained by Parents, or to fund such evaluations.

5. Pursuant to 34 C.F.R. §300.502 (b), if the Board has performed an evaluation of a child in need of special education with which the parent disagrees, the parent may request an independent evaluation at public expense. If the PPT refuses to fund such an evaluation, the Board is required to request a special education hearing to determine whether the Board's evaluation was appropriate.

6. Pursuant to Section 10-76h(d)(1), C.G.S., a special education hearing officer may order an evaluation or reevaluation of a student receiving special education when parents have refused consent to evaluate.

7. Pursuant to Section 10-220 (a), C.G.S., a local Board of Education has the authority to hire and to dismiss teachers and other school staff members. A special education hearing officer may issue an order to hire or assign a specifically qualified professional. Parents may suggest their choices of staff, but may not control assignment of particular school staff or contracted staff to provide educational services to their child.

8. Pursuant to 34 C.F.R. §§300.507 (a) (2) and 300.511 (e), claims for relief in due process hearings are limited to events that occurred within the past two years.

9. Pursuant to 34 C.F.R. §300.515 (d), special education hearings must be::
...conducted at a time and place that is reasonably convenient to the parents...

10. As a matter of ethical professional practice, some standardized educational and psychological tests may not be repeated within a specified time period, because scores on the second (or more) administration may be unreliable. When a parent arranges for an independent evaluation, one result may be that the PPT is limited in the range of standardized tests that may be administered to that student subsequently.

11. The case of *Ridley School District v. M.R.* 58 IDELR 271 (3rd Cir. 2012) addresses, among other issues, the selection of a reading program preferred by parents and the lack of specificity in the IEP concerning a reading program. The court wrote:

We can discern two key principles ... although schools should strive to base a student's specially designed instruction on peer-reviewed research to the maximum extent possible, the student's IEP team retains flexibility to devise an appropriate program, in the light of the available research.

12. No formal determination has been made by the PPT that Student had a learning disability that would require IEP services. The Reading Specialist identified Student's problems and recommended that his current reading program continue with the addition of Read Naturally.

13. The case of *Lachman v. Illinois State Board of Education*, 852 F. 2d 290, 1988-1989 EHLR Dec. 441:156 (7th Cir. 1988) addresses the issue of methodology:

... Where parental preference for one particular methodology conflicts with district's proposed placement, court will not attempt to resolve question of whether one educational methodology is better than another.

DISCUSSION

While the Student has been evaluated many times by many professionals, he has not had a triennial evaluation, which was due in 2009. A comprehensive evaluation is needed to

determine whether to make changes in the IEP. The PPT must review the Student's records, including the various independent evaluations provided by Parents, and then develop an appropriate triennial evaluation plan for Student. The PPT may determine what tests are needed and who should perform them. Given issues raised in this hearing, it is suggested that in addition to Student's primary disability of Autism, which is not in dispute, the possibility of learning disabilities should be considered. A reading evaluation should also be considered. After the triennial has been completed, the PPT will consider whether Student's IEP needs modification.

Reading instruction is given to all elementary school students. Some children have problems learning to read, and they are screened by a reading specialist in this school district. Support can be provided, tailored to the individual student's needs, whether the student has been identified as in need of special education or not. "Screening" available to all students is not generally considered to trigger IDEA procedures. Parent was notified when Read Naturally was recommended to address the Student's fluency problem. (See *M.C., individually and on behalf of N.C., a child with a disability, Plaintiffs, v. Katonah/Lewisboro Union Free School District, Defendant*, 58 IDELR 196 (U.S. District Court, Southern District of New York, 2012))

Student's absences, late arrival at school on some days and early dismissals from school at Parent request have reduced his educational opportunities. It is also noted that Parents rejected after school homework support and ESY services that were offered to minimize Student's regression over summer vacation. Education is not a science and it is impossible to identify causes and effects of progress or lack of progress by individual students. However, experienced teachers' suggestions concerning individual students are worthy of consideration.

The PPT has used data provided by Independent Psychologist A in lieu of other testing, for which Parents withheld consent, as well as data from other independent evaluators. PPT consideration of evaluations presented to the PPT by parents does not mean adoption of all recommendations of the evaluator nor does it mean funding by the Board. Board funding for independent evaluations is limited to a specific situation: when a Board evaluation is challenged by parents, who request an independent evaluation at Board expense.

The Board of Education's legal authority to select and deploy members of the teaching staff and paraprofessionals as well as contracted service providers is clear. The Board is also responsible for supervising and providing specialized training when necessary to ensure that Student's IEP is properly implemented. Parental suggestions and complaints should be considered by school administrators, but staffing decisions remain the prerogative of the Board.

The Board has responded to Parental concerns in several areas and has made reasonable accommodations for Student. It is well established that Hearing Officers do not meddle with PPT decisions regarding educational methodologies. (*Ridley School District v. M.R.; J.R., Parent of Minor Child E.R. v. Janet Cenname*, 58 IDELR 271 (3rd Cir. 2012);

Lachman v. Illinois State Board of Education, 1988-1989 EHLR Dec. 441:156 (7th Cir. 1988;

Each of the Board employees who had provided educational services to the Student and testified in this hearing expressed affection for him and pleasure in his educational progress. No credible evidence of acts of discrimination or retaliation was offered.

When Student moved from second to third grade in the fall of 2009, he also moved to a different school. The problem of how the Contracted ABA Shadows would function within the third grade classroom could have been avoided by having the Classroom Teacher meet with the contracted ABA Shadows prior to the opening of school. An IEP goal involving social skills may include some form of interaction with peers.

Parents frequently sent emails about matters they wished to have discussed at PPT meetings immediately prior to scheduled meetings. This practice made it difficult for Board staff to review Parental concerns and questions prior to the meetings.

The record includes copies of several forms sent to Parents, requesting permission to make IEP modifications without calling a PPT meeting. Parents consented in some cases, and refused consent in others, as is their right. Without such consent, the IEP remained unchanged.

FINAL DECISION AND ORDER:

1. The Board provided a free appropriate public education (FAPE) in the least restrictive environment to the Student in the 2009-2010 school year.
2. The Board provided FAPE in the least restrictive environment to the Student in the 2010-2011 school year.
3. No credible evidence was produced to support the Parents' claims that Student's IEP had been changed outside the PPT process. Consent forms document changes approved by Parents.
4. The Board was unable to complete a triennial evaluation due to Parents' denial of consent. Therefore, a triennial evaluation is ORDERED as outlined above.
5. No credible evidence was produced to support Parents' claims that the Board and school staff members discriminated or retaliated against the Parents and/or the Student.

**COMMENTS ON THE CONDUCT OF THE HEARING, PURSUANT TO
SECTION 10-76h-16 (b)**

This has been a long hearing, both in the number of days of hearing (twelve) and the times between hearing sessions. Hearing dates have been scheduled at the convenience of the Parents, and there have been significant intervals between hearing sessions to accommodate the Parents. Those hearing dates that were postponed for good reasons were postponed with the consent of both Parties and the Hearing Officer.

An extraordinary amount of documentary evidence was offered in this hearing. Most of the first two days of hearing was spent on determining which documents would be admitted. The Hearing Officer's classification of documents to be admitted and those to be excluded is attached as Appendix A to this decision. Documents excluded were preserved with the record and are listed in Appendix B.

The Board's copying on both sides of each page is appreciated.

The Hearing Officer requested, in the September 29, 2011, pre-hearing conference memorandum, that all witnesses appearing as professionals provide a resume. Several witnesses were not instructed about this, and therefore it was difficult to accurately identify their professional roles, academic preparation and professional experience.