

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2003 MAY 15 P 4:00

HEARINGS OFFICE



OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of

_____ by and
through his Mother,

Petitioners,

vs.

DEPARTMENT OF EDUCATION,
STATE OF HAWAII,

Respondent.

DOE-2003-013

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION**

I. CHRONOLOGY OF CASE

On January 29, 2003, _____ requested an impartial hearing regarding her son
(hereinafter collectively referred to as "Petitioners").

On January 29, 2003, the Department of Education ("Respondent") transmitted
Petitioners' request for a due process hearing to the Office of Administrative Hearings,
Department of Commerce and Consumer Affairs.

On February 11, 2003, the pre-hearing conference in this matter was conducted by the
undersigned Hearings Officer. Petitioners were represented by their attorney _____
_____, and Respondent was represented by its attorney _____. During the
course of the pre-hearing conference, the parties requested that the hearing be rescheduled,
and that the parties have the opportunity to submit post-hearing memoranda after they
received their respective copies of the transcript of the hearing. Consequently, the parties

requested an extension of the forty-five day period specified by Hawaii Administrative Rules ("HAR") §8-56-77(a), from March 14, 2003, to May 15, 2003. Good cause appearing therefore, the Hearings Officer granted the parties' request.

On March 25, 2003, Stanley E. Levin, Esq., filed Petitioners' Opening Memorandum of Law.

On March 25, 2003, [REDACTED] Esq., filed Respondent's Opening Brief.

On March 25, 2003, the hearing was specially convened with the agreement of the parties, to take and preserve the testimony of [REDACTED], Ph.D. as part of the Petitioners' case. Petitioners were not present, but were represented by their attorney [REDACTED]

[REDACTED] Respondent was represented by its attorney [REDACTED]

On April 1, 2003, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer in Hawaii.

[REDACTED] were present as the Petitioners, and they were represented by their attorney [REDACTED] who was assisted by [REDACTED]

[REDACTED] was not present at the hearing. [REDACTED] appeared at the hearing as the designated representative for the Respondent, and Respondent was represented by its attorney [REDACTED]

[REDACTED] The hearing continued on April 2, 2003, and concluded on April 3, 2003, with all parties present and represented by their respective counsel.

On May 1, 2003, the parties filed their respective post-hearing briefs.

II. ISSUES PRESENTED

The issues to be decided in the present matter, as identified in Petitioners' request for impartial hearing dated January 23, 2003, are as follows:

1. Whether [REDACTED] was properly evaluated by Respondent to determine the nature and extent of his learning disabilities;
2. Whether [REDACTED] placement in a fully self-contained classroom ("FSC") pursuant to his Individualized Education Program ("IEP") was an appropriate placement;
3. Whether [REDACTED] IEP was procedurally and substantively flawed; and
4. Whether [REDACTED] should be provided with compensatory education to allow him to achieve his academic potential.

III. FINDINGS OF FACT

1. [redacted] was born on September 11, 1988, and in January 1990, [redacted] was referred to the [redacted] Program for evaluation. [redacted] was found to be functioning below his age level in all areas of development. [redacted] was subsequently enrolled in the [redacted] Program and received therapy 2 - 3 times per week.

2. On August 16, 1990, August 30, 1990, and September 13, 1990, M.D., adult and child psychiatrist, diagnosed [redacted] as having an adjustment disorder of childhood with mixed disturbance of conduct and emotions; and childhood onset of pervasive developmental disorder.

3. On or about December 18, 1990, [redacted] was given the Stanford-Binet Form L-M test which showed that he had a mental age of 2 years 5 months (prorated), and an IQ of 95. The test results indicated that as of the date of the testing, [redacted] had average cognitive functioning.

4. On or about June 24, 1991, [redacted] was determined to be eligible to receive special education services under the emotional handicapping category.

5. On or about February 14, 1992, [redacted] Ph.D., clinical psychologist, diagnosed [redacted] as having Pervasive Developmental Disorder, Not Otherwise Specified ("NOS").

6. On or about April 7, 1992, [redacted] M.D., psychiatrist, diagnosed [redacted] as having Atypical Pervasive Developmental Disorder.

7. On or about July 26, 1994, [redacted] Ph.D., psychologist, diagnosed [redacted] as having Oppositional Defiant Disorder; Attention Deficit Hyperactivity Disorder; Developmental Disorder, NOS; and Pervasive Developmental Disorder, NOS, in partial remission.

8. On or about August 30, 1994, Christopher was given the WPPSI-R test and received the following scores:

Verbal I.Q.	116
Performance I.Q.	86
Full Scale I.Q.	101

The test results indicated a statistically significant difference of 30 points between High Average verbal abilities and his Low Average visual perceptual skills. Petitioners' Exhibit 74 at 393.

9. On or about January 23, 1995, _____ Ph.D., psychologist, diagnosed _____ as having Attention Deficit Disorder, and Oppositional Defiant Disorder.

10. On or about December 15, 1995, _____ Psy.D., psychologist, diagnosed _____ as having Attention Deficit Hyperactivity Disorder, and Pervasive Developmental Disorder.

11. In September 1996, _____ was referred to _____ of the _____ Services for therapy, because the school had complained about _____ not doing his work, soiling his pants, having low self esteem, and having below grade-level functioning academics.

12. On July 11, 1997, _____ was given the Wechsler Intelligence Scale for Children - Third Edition ("WISC - III"). At the time of the test, _____ was at grade level 3.9. _____ received the following scores:

Verbal I.Q.	97
Performance I.Q.	106
Full Scale I.Q.	101

Petitioners' Exhibit 72. _____ scores on the July 11, 1997 WISC - III indicated that _____ overall level of intellectual functioning was within the average range.

13. On July 18, 1997, _____ was given the Wechsler Individual Achievement Test ("WIAT"). At the time of the test, _____ was at grade level 3.9. _____ received the following scores:

Reading composite	Grade 1.6	St. Score 82
Math composite	Grade 3.2	St. Score 100
Writing composite	Grade 1.2	St. Score 77

Petitioners' Exhibit 71.

14. On or about September 7, 1997, _____ Psy.D., performed a psychological evaluation of _____ as part of his triennial educational re-evaluation.

15. On or about March 4, 1999, _____ was admitted to the acute unit at _____ Center by _____ after _____ had been acting out at home.
16. On March 10, 1999, _____ was subsequently admitted to the Acute Unit at _____ because of increasingly aggressive behavior at home and in school.
17. On March 22, 1999, _____ was admitted to the _____ Unit at _____, where he remained until discharged in September 1999. While at the _____ Unit at _____ received treatment for: a) acting out behavior, b) family education, c) academic problems, and d) difficulty sitting still and paying attention.
18. On September 10, 1999, _____ was discharged from _____ In her Discharge Report dated September 10, 1999, _____ Educational Instructor at _____ made the following recommendations for

Recommendations:

I. Classroom Setting:

_____ is capable of completing most regular education classwork. A smaller classroom setting would be most ideal due to more individualized attention and focus on his emotional issues. He learns best in a small group setting. Seating _____ with younger peers [elicits] positive behavior from _____ as he tries to set a positive example for them. Continual encouragement from the instructor and small breaks helps keep _____ positive when working on more difficult assignments.

II. Support (Social/Emotional)

While in a classroom setting, _____ may need guidance to remain on task. He acknowledges the difficulty he has with this and is able to take immediate responsibility for this behavior by requesting assistance. Although _____ has made great progress expressing himself verbally, he has been observed to become more hyperactive and aggressive when homesick or experiencing stressful familial situations. Daily expectations inclusive of including sharing his feelings and mood with the instructor are advisable.

Petitioners' Exhibit 64 at 265.

19. By letter dated September 10, 1999, _____ M.D., attending psychiatrist at _____ made the following recommendations for _____
- After being _____ attending physician at _____ Residential Program, it is my recommendation that _____ be placed in a fully self-contained all day special education classroom situation.

This will be required initially in order to ensure his success. After he is able to settle in the school, consideration should be given to taper his special education schedule and gradually mainstream him.

Petitioners' Exhibit 64 at 266.

20. On December 14, 1999, [redacted] was placed into a therapeutic foster home and was designated as a crisis case.

21. According to [redacted] March 10, 2000 IEP, the IEP Team determined that [redacted] s Present Levels of Performance were as follows:

Present Levels of Educational Performance

I. Achievement Levels: Reading

According to the S.T.A.R. Reading Test, [redacted] is reading at nearly 7th grade level. He excels in reading and is able to answer literal comprehension questions, predicts outcomes and can identify major characters, plots and settings. Basic Reading 5.8. Comprehension 6.9 level.

Written Language:

[redacted] needs practice writing neatly. His skills are below grade level. Weaknesses were seen in the inconsistent use of capitalization and punctuation. His vocabulary skills are at grade level when he remains focused and completes his assignments. Spelling dictation 3.5 level.

Math:

[redacted] is performing below grade level (± 4 grade). His weakness[es] were seen in solving double digit divisions and 3 and 4 digit multiplications and divisions. Also his basic fraction understanding needs to be addressed. Also he has limited ability to analyze the correct operation to use in one/two step word problems. Telling time using the minute hand is still difficult for [redacted]

Speech:

Speech therapy was recommended, but discontinue[d] because of lack of motivation on [redacted] part. [redacted] ; appears to have a mild frontal lisp.

Oral Language Skills:

These are all age appropriate.

II. Behavioral Data:

[redacted] is diagnosed with AHD [Attention Hyperactivity Disorder] and O.D.D. [Oppositional Defiant Disorder]. [redacted] ; can get easily distracted and tends to daydream a lot. He has displayed few signs of aggressive behavior in the classroom. [redacted] needs a lot of positive reinforcement and feedback when he has completed a task. He was

admitted to the [redacted] Unit on 3/22/99 till 9/10/99 (See [redacted] report)

Learning Style:
[redacted] works best when doing hands on activities. He is perceptive and a quick learner.

Petitioners' Exhibit 50 at 167. According to the March 10, 2000 IEP, [redacted] was to have received Special Education Services 11 hours per week from March 10, 2000, and then increased to 25 hours per week after April 13, 2000. [redacted] was also to have received 140 minutes of Mental Health Services per week. The March 10, 2000 IEP also provided,

[redacted] will participate in reg. ed education classroom for Science, Social Studies. . . all school related activities, lunch, recess, field trips. [redacted] will be placed in all Sped classes as of 4/13/2000.

Petitioners' Exhibit 50 at 168. According to the Conference Information and Notes for the March 10, 2000 IEP meeting, [redacted] disagreed with the Present Levels of Performance and requested a new academic re-evaluation and a mental health re-evaluation.

22. On April 7, 2000, [redacted] CCC-SP, conducted a Speech/Language/Hearing Evaluation of [redacted]. After reviewing the results of the evaluation, Ms. [redacted] noted that [redacted] hearing, voice, and fluency were within normal limits, however, [redacted] had a mild frontal lisp that should be evaluated by the school-based speech pathologist to determine if remediation was warranted. Ms. [redacted] further noted that although there was a significant difference between [redacted] s listening comprehension and oral expression scores, she felt that the difference may have been partly influenced by motivational issues during the testing. Overall, Ms. [redacted] felt that [redacted] skills in the areas tested appeared to be adequate for him to perform at grade placement level.

23. On April 21, 2000, [redacted] Ph.D., conducted a Psychological Assessment of [redacted] for the Respondent, as part of [redacted] triennial comprehensive re-evaluation process to assess [redacted] s socioemotional functioning and determine appropriate educational needs and services.

24. On April 25, 2000, [redacted] M.Ed., conducted an Education Evaluation of [redacted], who was at grade 6.8 at the time of the evaluation. In her April 25, 2000 Education Evaluation report, Ms. [redacted] noted that [redacted] s test and

personal/social behaviors were consistently exemplary. [redacted] scores on the Woodcock-Johnson Psycho-Educational Battery – Revised Tests of Achievement were: a) average in Broad Reading, b) low average in Broad Written Language, and c) low in Broad Mathematics. [redacted] s concluded that [redacted] would find: age-level tasks for Broad Reading to be manageable; age-level tasks for Broad Written Language to be difficult; and age-level tasks for Broad Mathematics to be very difficult to extremely difficult. [redacted] s summarized [redacted] performance as:

[redacted] earned a Grade Equivalent score of 5.8 for basic reading, or word identification skills, while reading comprehension tested higher at the 6.9 grade level. Abilities in math computation were gauged at Grade Equivalent 2.2 but [redacted] performance on the Applied Problems test was much stronger at Grade Equivalent 5.4. A Grade Equivalent of 3.5 was achieved on the spelling dictation test, while writing content, or pure written expression, was significantly stronger at the 7.0 grade level.

Petitioners' Exhibit 60 at 247, 248.

25. On or about May 25, 2000, a reevaluation meeting was conducted at [redacted] Intermediate School regarding [redacted] continued eligibility for special education services. Respondent determined that [redacted] was eligible for special education services based upon a determination of an emotional impairment. Respondent's Exhibit 15. At the time the eligibility determination was made by Respondent, [redacted] receiving school was [redacted] Intermediate School.

26. On June 19, 21, and 22, 2000, [redacted] Psy.D., A.B.P.N., conducted a Neuropsychological Evaluation of [redacted] upon the referral by the Department of Health ("DOH"). [redacted] was administered the WISC-III test and received the following scores:

Verbal I.Q.	76
Performance I.Q.	79
Full Scale I.Q.	76

These scores placed [redacted] in the borderline range at the fifth percentile of standardization. On the Wide Range Achievement Test – III, [redacted] 's reading was at the 6th grade level; spelling was at the 3rd grade level; and arithmetic was at the 2nd grade level. The neuropsychological testing indicated that [redacted] was 2 standard deviations

below the mean for attention/executive and language; 3 standard deviations below the mean for sensorimotor; within normal limits for visuospatial; and 0.5 standard deviation below the mean for memory.

27. On June 23, 2000, _____ M.D., conducted a psychiatric evaluation of _____. In his Psychiatric Evaluation, Dr. _____ noted that _____ presented a diagnostic challenge, and diagnosed _____ as having Bipolar Disorder, Not Otherwise Specified, and Attention Deficit Hyperactivity Disorder, Predominantly Hyperactive-Impulsive Type.

28. In November 2000, _____ was hospitalized at _____

29. From November 16, 2000, through November 27, 2000, _____ was hospitalized at _____

30. On January 24, 2001, _____ had a behavior incident at _____ High and Intermediate School, which required the school staff to follow _____ Crisis Plan and Behavior Management Plan to deal with the situation. Petitioners' Exhibit 37.

31. On or about February 5, 2001, _____ Sc.D., C.R.C., Vocational Rehabilitation Counselor, submitted his Assistive Technology Evaluation for _____ to _____ of _____ High and Intermediate Schools.

32. According to _____ s February 12, 2001 IEP, the IEP Team determined that _____'s Present Levels of Educational Performance were as follows:

Present Levels of Educational Performance
-- 2/12/01

Strengths:

_____ can be a pleasant young man, when motivated towards a reward. He demonstrates a somewhat sincere desire to get along with peers in a structured environment and enjoys assisting the teacher. He demonstrates a potential for good writing abilities, if basic skills are improved. He can add to the positive social environment of a classroom, give a consistent structured environment (Visual spatial information achieves best results with this mode).

Needs:

(Refer to the current psychological evaluation for additional information)

_____ needs a very small, highly structured closed environment with a low teacher to student ratio, due to self-harm. _____ has recently demonstrated escalating behaviors, which include assaultive behaviors towards others, and therefore requires constant, full-time

1:1 supervision in order to function in a school environment. [redacted] has the tendency to run away from those adults responsible for his supervision on an almost daily basis. He has thrown rocks at both adults and peers. His peer relations are poor as he verbally threatens others, destroys property and appears to act out plans for physical harm towards others. His excessive assaultive tendencies make others at risk. His impulsive behaviors deter himself and others from learning on a consistent basis. According to a DOH Specialist who conducted a series of observations, [redacted] has some significant mental health and behavioral needs. He demonstrates inappropriate behaviors, which range from attention getting to impulsive and to intentional behaviors, which may cause harm to himself or others. In addition, his inappropriate behaviors escalate until [redacted] gets the desired response from adults in his environment. [redacted] is currently taking three types of medication; clonidine, neurontin, and zyprexa. The team is in agreement that the medication issue needs further assessment as this combination does not appear to be working very effectively. [redacted] is often sleepy in the morning and then by 10:00 a.m. has very little behavioral control. (Add bi-polar diagnosis to PLEP) per Mom.

Current Reading Levels:

[redacted] was administered the WRAT-III in June of 2000. According to that assessment, he is reading at approximately the 6th grade level. Spelling is at the 3rd grade level. Due to recent suspensions and hospitalizations, the school has been unable to assess his current reading level using the Stanford Diagnostic Reading Test.

Impact Statement:

[redacted] is diagnosed Oppositional Defiant Disorder and ADHD, which impacts his ability to participate appropriately in a regular education setting.

Parental Concern:

[redacted] mother has expressed concerns with the ability of a regular public school setting in meeting her son's unique needs.

Petitioners' Exhibit 36 at 117.

33. Although the IEP Team determined that [redacted] required an Alternative Placement, the February 12, 2001 IEP did not provide a specific placement. However, the February 12, 2001 IEP did provide a Crisis Plan for

February 6, 2001.

Crisis Plan for [redacted]

When _____ begins to demonstrate off-task behaviors, not completing class assignments, disregarding classroom rules, failing to comply with teacher and/or assistant instructions, and using inappropriate language the following interventions will occur:

1. The teacher or educational assistant will redirect _____ to the appropriate behavior/task in a calm quiet voice. Should the inappropriate behavior continue- THEN
2. _____ will be given the option to comply with the appropriate behavior/task or he will be sent to the time-out area. Should the inappropriate behavior continue- THEN
3. _____ will be escorted to the time-out area and supervised until he is ready to return to the class and behave appropriately. Should _____ behavior continue to escalate- THEN
4. A referral will be made to administration and parents are informed of behavior infractions (via communication book). Consequences for behavior infractions will include: *[no entries listed]*
5. Should _____ demonstrate any behaviors that are a risk to the health and safety of himself or others, (e.g., running into the street, acting physically aggressive with others, refusal to stay in the time-out area) the police will be notified for assistance. Parents will be informed of school action via a telephone call.

Petitioners' Exhibit 36 at 130.

34. On or about May 14, 2001, a Manifestation Determination Review was conducted at _____ School, regarding an incident involving _____. The IEP/MP Team determined that:

- _____ disability impaired his ability to understand the impact and consequences of the misconduct;
- _____ disability impaired his ability to control the misconduct; and
- _____ behavior was a manifestation of his disability.

Petitioners' Exhibit 34.

35. On or about June 5, 2001, _____ (a Board Certified Behavior Analyst, MR/DD Behavior Specialist with the Child and Adolescent Mental Health Division of the DOH) prepared a draft Behavioral Assessment and Behavior Support Plan for _____
Petitioners' Exhibit 57.

36. By Memorandum dated November 8, 2001, _____, D.O., (Child and Adolescent Psychiatry Fellow) provided the DOH with a synopsis of care that had been provided to _____ at _____ as of November 8, 2001. _____ had been admitted to the acute unit at _____ and subsequently transferred to the residential unit at _____. Dr. _____ noted that Dr. _____ of _____ had previously recognized that _____ suffered with mood symptoms on a cyclic basis. Dr. _____ also noted that _____ had been very involved in _____ care, and that Mrs. _____ had visited many times and had met with Dr. _____ on the weekends for family therapy sessions. Dr. _____ recommendations included:

Psychological:

1. Patient should continue to develop insight into his thoughts and emotions in individual therapy. He has maintained excellent rapport with this therapist and has invested his time and faith in therapy since attaining biological control of symptoms.
2. Patient benefits from individualized behavioral plans, especially when engaged in new situations. After a short time on an IBP here at _____, he has attained behavioral control on par with his peer group.
3. Patient benefits from self esteem building exercises.
4. Patient benefits from good nutrition and plenty of physical exercise. He should be encouraged to continue good self-care.

Social:

1. Patient has benefited from family therapy sessions with Mother. These should continue regularly. Placement back in the home should be a goal as soon as possible to prevent psychiatric sequelae from social factors. If services can be matched to _____ needs, this should be a treatment priority. Patient may need to be evaluated and followed on an outpatient basis for a time before a home placement or a placement on the _____ can be ensured as safe. This is understandable to ensure safety but should not be used as an alternative to meeting the patient's needs in the best environment possible which this therapist and the staff at _____ residential unit feel is definitely in close proximity to his family.
2. Patient has participated with new maturity and insight in group therapy. His interactions with peers have improved dramatically and, especially over the past month, he has been considered a leader among his peers at _____ according to staff.

Petitioners' Exhibit 56 at 216, 217.

37. By Meeting Announcement dated January 30, 2002, Principal of K School, informed Mr. and Mrs. that an IEP meeting was going to be conducted at School on February 5, 2002.

38. On February 5, 2002, the IEP Team met with the following participants: Vice Principal of School; Special Education Teacher; Mrs. EA, Regular Education Teacher; Care Coordinator; Behavior Specialist; and Coordinated Services Mentor. The Meeting Notes from the February 5, 2002 IEP meeting state:

cannot be suspended for any behavior related to his disability. SBBH will be provided as needed at school. will have one to one support during instructional as well as unstructured time with subtle supervision and timely intervention.

is in residential placement. See ISPED Placement Module (LRE).

Petitioners' Exhibit 33.

39. According to the February 5, 2002 IEP, Present Levels of Educational Performance ("PLEP") up to June 17, 2002, were:

Reading Assessment Used: SDRT 4th Ed. - Purple Level (Gr 4.5-6.5)

Assessment date: 05/09/2001 **Grade Equivalent:** 5.5 **Scaled Score:** 661

Strengths: Caregiver. Aware of rules and expectations. Likes to please others. Athletic. Loves outdoor activities-good skateboarders. Assertive. Can be very respectful and polite. Loyal. Good friend. Compassionate. **Weaknesses:** Can be impulsive at times. Can be oppositional / defiant. Selective hearing. Slow pace of work. Difficulty with dexterity. Can be prideful. Lacks the ability to attend for long periods. **Impact Statement:** requires specific strategies to access his education.

6/6/02 Needs: family support, which includes individual support to the student to assist with transition.

6/14/02 Needs: Med Mngmt / SBBH therapy / structure, [indecipherable] peer relationships. Indiv. Therapy. One on one home, school, community. Need to refer to D.D. for services of life skills. Transportation is a need. BCRC "FBA" (Behavioral Counseling and Research Center).

6/17/02 Needs: Verbal encouragement, take responsibility for choices, spoken with not at, treated or seen as one of the gang, he needs to identify stressful and triggering situations.

Impact Statement: disability negatively impacts his ability to learn in a regular education classroom setting. needs small group setting . . .

Petitioners' Exhibit 32 at 98.

40. The February 5, 2002 IEP noted that [redacted] met the standard for extended school year ("ESY") because [redacted] meets the standard for mental health and academic services." Petitioners' Exhibit 32 at 111. Additionally, the February 5, 2002 IEP indicated that [redacted] would be receiving the following services:

21. SERVICES: Special Education and Related Services:	Projected Beginning Date	Projected Ending Date	Frequency (Min/Times/Period)	Location	ESY Yes/No
Other-Behavior Consultation	02/05/2002	02/05/2003	600m/1x/mth		Yes
Special Education	02/05/2002	02/05/2003	1440m/1x/wk	Special Ed.	Yes
SBBH-Individual Counseling	02/05/2002	02/05/2003	50m/1x/wk		Yes
Transportation	02/05/2002	02/05/2003	300m/1x/wk		Yes
SBBH - MD Med-Management	02/05/2002	02/05/2003	30m/1x/mth		Yes
Residential Placement	02/05/2002	02/05/2003			Yes

Supplementary Aids and Services, Program Modifications and Supports for School Personnel:	Projected Beginning Date	Projected Ending Date	Frequency (Min/Times/Period)	Location
Lap Top Computer, 1 to 1 support, extended time, visual cues, alternative assessment	02/05/2002	02/05/2003	1440m/1x/wk	Gen. Ed. / SPED
Alternative assessment for skill acquisition	02/05/2002	02/05/2003	1440m/1x/wk	Gen. Ed. / SPED

23. Explain the extent, if any, that the student will not participate with students without disabilities in the general education class, extracurricular activities and other non-academic activities:

[redacted] will be in special education classes for all classes.

Petitioners' Exhibit 32 at 112.

41. By Prior Written Notice dated February 5, 2002, Ms [redacted] informed Mr. and Mrs. [redacted] that the IEP Team determined that [redacted] would be receiving special education on a regular school campus and would be in all special education classes for all periods except physical education ("P. E.") because P. E. was not offered as a special education class. The Prior Written Notice also noted that [redacted] would be receiving

related services including medication management, school-based behavioral health ("SBBH"), Behavior Consultation, and transportation. The Prior Written Notice indicated that [redacted] required special strategies to access his education and that the regular education setting would not provide the individualized education program that [redacted] needed. The Prior Written Notice also reflected that, "Parent is very concerned for [redacted] success in school." Respondent's Exhibit 13.

42. On June 3, 2002, the IEP Team met with the following participants: [redacted], Principal of [redacted] School; [redacted], Student Services Coordinator, [redacted], Special Education Teacher; [redacted], DOH; [redacted], DOH; [redacted], Regular Education Teacher; and Mrs. [redacted]. The Meeting Notes from the June 3, 2002 IEP meeting state:

Meeting was held to review current placement and program. Mother released [redacted] from [redacted] and has him at home on the [redacted]. Mother would like to keep him at home and have IEP not reflect residential placement. Team will reconvene on Thursday, June 6, 2002 to determine placement and program. Questions that will be answered [are] geographical exception, ESY, and data that will either support continued residential placement or return to home.

Petitioners' Exhibit 31.

43. [redacted] received passing grades in all of his classes at [redacted] School for the 2001-2002 school year and was promoted to Grade 9.

44. On June 6, 2002, the IEP Team met with the following participants: [redacted], Principal of [redacted] School; [redacted], Student Services Coordinator, [redacted], Special Education Teacher; [redacted], Regular Education Teacher; [redacted], Resource Teacher; [redacted], Care Coordinator; and Mrs. [redacted]. The Meeting Notes from the June 6, 2002 IEP meeting state:

[redacted] will lotus notes [redacted] High School that [redacted] is promoted to grade 9 and can be registered. [redacted] will no longer be in a residential treatment facility and will live at home. [redacted] will receive his education on a regular school campus. Intensive-in-home therapy will be provided to support [redacted] in his transition home. [redacted] needs 1:1 family support which includes individual support to assist or aid with transition. [redacted] will continue to have 1:1 instructional support at school. OT [referral] will be faxed to [redacted] and evaluation will be conducted. Laptop computer will be mailed back to [redacted] School.

Petitioners' Exhibit 30.

45. By Prior Written Notice dated June 6, 2002, I _____, Principal of _____ High and Intermediate School, informed Mr. and Mrs. _____ that:

1. **Description of the proposed or refused action:** _____ will receive special education on a regular school campus and will be in all special education classes. _____ will no longer be in a residential treatment facility and will be living at home with family. _____ will receive intensive-in-home therapy to help with transition home. _____s will receive family support which includes individual support to assist or aid with transition. _____ will continue to have 1:1 instructional support at school. _____ will receive 50 minutes a week of SBBH at school. _____ will receive curb-to-curb transportation to school.
2. **Explanation of why the action is proposed or refused:** _____ will be living on the _____ and will be at home with family and needs support to transition.
3. **Description of other options considered:** Continue with residential facility placement.
4. **Reasons these options were rejected:** IEP team determined that _____ can live at home with support for transition.
5. **Description of the evaluation procedures, tests, records, or reports used as a basis for the proposed/refused action:** Current data; previous reports; all school records.
6. **Other relevant factors:** Parent concern for _____ successful transition home.

Respondent's Exhibit 2.

46. A Prior Written Notice dated June 6, 2002, which was identical to the June 6, 2002 Prior Written Notice issued by _____ was also sent to Mr. and Mrs. _____ by Ms. _____

47. On June 17, 2002, _____ Student Services Coordinator ("SSC") for _____ High and Intermediate School, submitted a Request for Evaluation to Respondent for _____ to receive a psychiatric diagnostic evaluation because _____ was changing physicians.

48. On June 18, 2002, Mrs. _____ signed the Consent for Assessment as Part of a Reevaluation, authorizing the psychiatric diagnostic evaluation for _____

49. By Prior Written Notice dated June 17, 2002, Ms. [redacted] informed Mr. and Mrs. [redacted] that the IEP Team proposed to continue [redacted] medication management services. However, the Prior Written Notice also noted that [redacted] was in the process of changing physicians and therefore a psychiatric diagnostic evaluation needed to be conducted to determine [redacted] medication needs.

50. By Prior Written Notice dated June 17, 2002, Ms. [redacted] informed Mr. and Mrs. [redacted] that [redacted] would be attending the ESY session at [redacted] High and Intermediate School, and that [redacted] would be receiving SBBH services as well as one-on-one assistance. The Prior Written Notice indicated that [redacted] disability required mental health and ESY services.

51. On June 27, 2002, Ms. [redacted] submitted a Request for Evaluation to Respondent for [redacted] to receive an OT assessment.

52. By Prior Written Notice dated June 27, 2002, Ms. [redacted] informed Mr. and Mrs. [redacted] that the IEP Team agreed to reconvene in August 2002 to review the goals and objectives of [redacted] IEP. The IEP Team also agreed that [redacted] would have an OT assessment, and that the DOH would provide 13101 services (intensive in-home family therapy).

53. On July 25, 2002, C. [redacted], M.D., conducted a psychiatric evaluation of [redacted]. In his Psychiatric Evaluation, Dr. [redacted] noted:

Formulation: [redacted] is a 13 year old [redacted] male. He is a special education student in the 9th grade at [redacted] Intermediate & High School. [redacted] has a long-standing history of behavioral, social, emotional and academic difficulties.

[redacted] has a long-standing history of mood lability with aggressive outbursts. He has episodes of being physically violent and destroying property. [redacted] admits to having racing thoughts, decreased need to sleep and pressured speech. [redacted] family has significant history for Bipolar Disorder, as well as Attention Deficit Hyperactivity Disorder, which puts him at risk for his Bipolar Disorder. [redacted] does meet the criteria for Bipolar Disorder.

[redacted] endorsed being hyperactive, impulsive and inattentive. He takes longer than average to complete his work. He fidgets, is constantly "on the go", and has problems with sustained concentration. [redacted] is oppositional and defiant, is easily angered, vindictive and challenges rules. Furthermore,

[s] Full Scale I.Q. is 101, but he is doing poorly in his core classes. does meet the criteria for Attention Deficit Hyperactivity Disorder, Combined Type, Oppositional Defiant Disorder and a Learning Disorder, NOS [Not Otherwise Specified]. However, with the right interventions, prognosis seems to be good.

Recommendations:

1. I will continue on his current medication regimen, Neurotonin 300 mg 4 tablets at night, Clonidine 0.1 mg twice a day, Wellbutrin SR 150 mg 1 tablet in the morning and Risperdal 1 mg in the morning and 2 mg at night.
2. Continue special education classes with a slow transition into school are highly recommended.
3. Intensive in-home services are highly recommended.
4. TA services or social skills groups are highly recommended to help develop social skills.
5. Individual therapy is highly recommended.

Petitioners' Exhibit 55 at 211, 212.

54. By Prior Written Notice dated August 5, 2002, Ms. informed Mr. and Mrs. that the IEP Team proposed to find that continued to be eligible for special education services. The Prior Written Notice also indicated that a psychiatric assessment was requested to determine medication needs.

55. By Prior Written Notice dated August 5, 2002, Ms. informed Mr. and Mrs. that the IEP Team proposed to find that continued to be eligible for special education services. The Prior Written Notice also indicated that an occupational therapy ("OT") assessment was requested to determine appropriate OT services for

56. On or about August 5, 2002, Ms. of The Institute For Family Enrichment ("TIFFE"), began providing time-limited, intensive, home-based family therapy for Mr. and Mrs. and , pursuant to () s IEP.

57. On August 27, 2002, the IEP Team met to develop s IEP. The members of the August 27, 2002 IEP Team were: , Care Coordinator, Mrs. , Admin; Special Education Resource Teacher; and , Special Education Teacher. According the IEP Meeting Information and Notes for the August 27, 2002 IEP meeting, "The IEP Team met to confirm

that FSC is appropriate for [redacted] for the 2002-2003 School Year. New goals were developed to reflect instruction appropriate to the placement.” Petitioners’ Exhibit 25.

58. According to the August 27, 2002 IEP, [redacted] s PLEP as of June 27, 2002 were:

Reading Assessment Used: SDRT 4th Ed. – Brown Level (Gr 6.5-8.9)

Assessment date: 04/05/2002 **Grade Equivalent:** 5.5 **Scaled Score:** 661

Strengths: Caregiver. Aware of rules and expectations. Likes to please others. Athletic. Loves outdoor activities-good skateboarders. Assertive. Can be very respectful and polite. Loyal. Good friend. Compassionate. **Weaknesses:** Can be impulsive at times. Can be oppositional / defiant. Selective hearing. Slow pace of work. Difficulty with dexterity. Can be prideful. Lacks the ability to attend for long periods. 6/6/2002: Needs 1:1 family support which includes individual support to assist or aid with transition. **Impact Statement:** requires specific strategies to access his education. Psychiatric diagnostic was requested to determine medication needs. Student was currently taking medication but due to a change in physician, a new assessment was requested to address student’s current needs. Evaluation was not available for review at this time. 6/27/02: Reading is easier for [redacted] tha[n] Math. **A structured point system is useful in controlling behavior. Reminders of the point system will sometimes help avoid tantrums. **For specific details refer to the behavioral support plan. **NOTE:** Behavior improves with a good teacher/student match.

Petitioners’ Exhibit 24 at 64.

59. The August 27, 2002 IEP noted that [redacted] met the standard for ESY because [redacted] meets the standard for mental health and academic services.” Petitioners’ Exhibit 24 at 75. Additionally, the August 27, 2002 IEP indicated that [redacted] would be receiving the following services:

21. SERVICES:	Projected Beginning Date	Projected Ending Date	Frequency (Min/Times/Period)	Location	ESY Yes/No
Special Education and Related Services:					
Transportation	06/27/2002	06/27/2003	Daily	Special Ed.	Yes
Special Education	06/27/2002	06/27/2003	52m/24x/wk	Special Ed.	Yes
Other – Med-Management /	06/27/2002	06/27/2003	60m/1x/mth		Yes
SBBH-Individual Counseling	02/05/2002	02/05/2003	50m/1x/wk		Yes
Other - Transportation per IEP	08/22/2002	06/27/2003	Daily	Special Ed.	Yes
Supplementary Aids and Services, Program Modifications and Supports for School Personnel:	Projected Beginning Date	Projected Ending Date	Frequency (Min/Times/Period)	Location	

Lap Top Computer, 1 to 1 support, extended time, visual cues, alternative assessment	06/27/2002	06/27/2003	52m/24x/wk	Special Ed.
1:1 Instructional Support	06/06/2002	06/27/2003	52m/24x/wk	
BCRC SERVICE—	06/27/2002	06/27/2003	TO BE DETERMINED	

23. Explain the extent, if any, that the student will not participate with students without disabilities in the general education class, extracurricular activities and other non-academic activities:

_____ will be in special education classes for all classes.

Petitioners' Exhibit 24 at 75.

60. By Prior Written Notice dated August 27, 2002, Ms. _____ informed Mr. _____ and Mrs. _____ that:

- Description of the proposed or refused action:** Team met to discuss placement for _____ Team agreed to place _____ in a fully Self Contained classroom focusing on Academic remediation and job training.
- Explanation of why the action is proposed or refused:** _____ requires strong behavioral supports, and this FSC was determined as best able to meet _____ needs.
- Description of other options considered:** Class to Class schedule.
- Reasons these options were rejected:** _____ needs more support to ensure school success, and may have behavioral problems with an Academic class to class schedule.
- Description of the evaluation procedures, tests, records, or reports used as a basis for the proposed/refused action:** parent input, school reports, teacher input student input
- Other relevant factors:** None.

Respondent's Exhibit 2.

61. On November 27, 2002, the IEP Team met to discuss recent problems that _____ had been having. The IEP Team members were: _____, Special Education Teacher; Mr. _____, SSC/Admin; _____ Family Therapist; and _____, Family Guidance Center. The Meeting Notes from the November 27, 2002 IEP meeting state:

IEP Team met to discuss recent problems _____ has been having. _____ broke his right arm, and cannot write or participate in

Job Training exercises. Parent report that [redacted] has [severe] hygiene problems, and cannot wash himself properly. Additionally, Parents requested extra hours for [redacted] and his TA to help [redacted] cope with problems at home. Mother is currently working full-time in

School Based Staff agreed to implement a hygiene program at school and encourage [redacted] to use his behavioral reinforcement points for hygiene based items (haircuts, [clothes], hairbrush).

Parents also asked staff to utilize time previously used for job training to challenge [redacted] academically. Staff will increase [redacted] reading duties and spelling words to use time more effectiv[e]ly. [redacted] will remain in a Fully Self-Contained Special Ed Class for the 02-03 school year.

Petitioners' Exhibit 23.

62. By Prior Written Notice dated November 27, 2002, Ms. [redacted] informed Mr. and Mrs. [redacted] that:

- 7. **Description of the proposed or refused action:** Team met to discuss problems [redacted] is experiencing after school, and parent states more help is needed for Family Support Staff.
- 8. **Explanation of why the action is proposed or refused:** Family Guidance Center agreed to increase family support hours to 80 hours per month. This allotment of time will begin in December 2002, and evaluated by FGC on a monthly basis
- 9. **Description of other options considered:** Keeping family support hours the same, or reducing hours.
- 10. **Reasons these options were rejected:** Team determined that an increase in hours on a monthly basis is valid given safety and behavioral problems [redacted] has.
- 11. **Description of the evaluation procedures, tests, records, or reports used as a basis for the proposed/refused action:** Parent input, therapist input behavioral data.
- 12. **Other relevant factors:** None.

Respondent's Exhibit 2.

63. On December 21, 2002, [redacted] was hospitalized at [redacted] and diagnosed as having Bipolar Disorder, Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, and Post Traumatic Distress Disorder.

64. In or around the latter part of December 2002, the family therapy services for Mr. and Mrs. [redacted] and [redacted] ended. At that time, everyone agreed that the time-

limited, intensive, home-based family therapy was not appropriate for Mr. and Mrs. [redacted] and [redacted] Ms. [redacted] testified at the hearing that Mr. and Mrs. [redacted] felt that because they had been receiving family therapy for a number of years and had learned the various techniques and strategies, they felt that further family therapy, and particularly time-limited, intensive, home-based family therapy, was not going to be helpful. Consequently, Mr. and Mrs. [redacted] declined further family therapy.

65. On or about January 13, 2003, a phone conference was held by the IEP Team consisting of: [redacted], Special Education Teacher and Care Coordinator; [redacted] Principal; Mr. and Mrs. [redacted], and [redacted] Family Therapist. The Meeting Notes from the January 13, 2003 IEP meeting state:

Phone Conference was held to inform and update IEP team on the status of [redacted]; was admitted to [redacted] on December 23, 2002, by his parents. The stated reason was [redacted] had become a danger to himself and others. The phone conference was held to reflect [redacted] current placement, and to discuss possible stepdown strategies for [redacted] to return to the [redacted] and return to School at [redacted] High and Intermediate. Parents were not open to foster placement, and issued a statement to the team that [redacted] will remain at [redacted] until the end of January. During this time their lawyer will issue a statement detailing the parents' concern and wishes for [redacted] s care. [redacted] then ended the meeting, stating the team can make no decision until the lawyers contact them.

Petitioners' Exhibit 22.

66. On January 13, 2003, [redacted]; IEP Team met to discuss [redacted] s hospitalization at [redacted] and further plans for his treatment. The IEP Team was informed that Mr. and Mrs. [redacted] had contacted an attorney to assist with [redacted] care, and that Mr. and Mrs. [redacted] had decided to keep [redacted] at [redacted] pending further discussions with their attorney. Based upon the information presented at the January 13, 2003 IEP meeting, the IEP Team decided to wait to finalize [redacted] transition plans until the end of January 2003. At the January 13, 2003 IEP meeting, the IEP Team also considered the options of returning [redacted] to [redacted] and placing him in either foster care, or in his home. However, Mr. and Mrs. [redacted] did not agree to [redacted] s placement in foster placement or home placement due to safety concerns and a lack of comprehensive services. Respondent's Exhibit 2.

67. By Prior Written Notice dated January 13, 2003, Ms. [redacted] informed Mr. [redacted] and Mrs. [redacted] of the determination of [redacted] IEP Team based on the January 13, 2003 IEP meeting.

68. On January 16, 2003, [redacted] was discharged from [redacted]. According to the Psychiatric Discharge Summary prepared by [redacted] M.D., [redacted] had been previously diagnosed as having:

- Pervasive developmental disorder;
- Attention deficit hyperactivity disorder;
- Oppositional defiant disorder;
- Reactive attachment disorder;
- Post traumatic stress disorder; and
- Learning disorder.

Dr. [redacted] also noted that there had been a reported history of a sexual assault on [redacted] by one of his case workers. Dr. [redacted] also noted that Mrs. [redacted] had expressed an interest in having [redacted] continue with another residential treatment program, but Dr. [redacted] told Mrs. [redacted] that it would not be recommended. Dr. [redacted] encouraged Mrs. [redacted] to follow-up with whatever services were available from the DOH, and that foster home placement would be recommended in the near future if [redacted] continued to have significant acting out behaviors in the community. Dr. [redacted] noted that the DOH was recommending a foster placement because of the lack of success with services both in the home and in school. Dr. [redacted] indicated that [redacted] was being discharged in stable condition, and that [redacted] was physically and emotionally stable. [redacted] denied any suicidality or homicidality. Dr. [redacted]'s prognosis for [redacted] was limited as of the date of discharge because of the lack of ability to avoid acting out behaviors in the community in spite of extended services that were available. Petitioners' Exhibit 53.

69. On February 3, 2003, an IEP meeting was held at [redacted] High and Intermediate School. The February 3, 2003 IEP meeting participants were: [redacted] SSC; [redacted], Resource Teacher; [redacted], Family Guidance Center; [redacted], Family Guidance Center; [redacted], Family Guidance Center; [redacted], Mrs. [redacted]

and J, Special Education Teacher. The Meeting Notes from the February 3, 2003 IEP meeting state:

Team met to conduct annual IEP and develop a new plan. Current IEP expires 2/5/03, and IEP could not be completed due to miscommunication between parent and school staff. Therefore, the current IEP will be extended to 2/12/03, at which time the new IEP goals & objectives will be reviewed with parent.

Medication monitoring is not occurring at this time. Mother states she has been having difficulty making an appt. w/ physician. She is in the process of setting a new appointment.

Petitioners' Exhibit 21.

70. On February 12, 2003, an IEP meeting was held at [redacted] High and Intermediate School. The February 12, 2003 IEP meeting participants were: [redacted] Special Education Teacher; [redacted] SSC; [redacted] Resource Teacher; [redacted], Vice Principal; [redacted] Family Guidance Center; and Mrs. J [redacted] via telephone. The Meeting Notes from the February 12, 2003 IEP meeting state:

Team met to review and develop an annual IEP. The IEP was completed. [redacted] mother stated she does not have enough information to decide whether [redacted] should be on Diploma Track or Certificate Track. [redacted] mother also requested Family Guidance Center to send a list of Dept. of Health's options regarding Services available for [redacted]. FGC stated [this] list will be sent to mother by the end of the week. Team agreed to reconvene the IEP team on 2/20/2003 to present DOH options.

Respondent's Exhibit 1.

71. According to the February 12, 2003 IEP, [redacted] PLEP were:

Reading Assessment Used: Informal Reading Inventory

Assessment date: 02/07/03 Grade Equivalent: 7.1 Scaled Score: ____

[redacted] is a 9th grade student currently enrolled in a fully self contained Special Education Classroom. He was placed in this class to ensure high structure to improve [redacted] behavior and school performance. [redacted] reads at the 7.0 grade level. [redacted] enjoys reading articles on current events, the newspaper, and has enjoyed reading two science fiction books. [redacted] uses a combination of strong p[h]onetic decoding strategies and contextual cues to increase [h]is comprehension. He can demonstrate understanding of material thru a question/answer format, and will often offer his opinion and interpretation of the material he has read. When engaged and motivated [redacted] is a confident reader. [redacted] ability to write is not as strong as his reading ability. His letter formation and basic sentence structure are weak.

When required to write answers regarding written material, [redacted] will demonstrate compreh[en]sion, but often only with two to three words answers, when complete sentences are required. He is not motivated to craft writing that approaches his ability, and a laptop [redacted] has been provided to assist him in remediation of his writing skills. This [redacted] has not been very successful, due to [redacted] lack of motivation combined with poor key boarding skills. However, [redacted] [redacted] has shown an ability and int[er]est in utilizing the laptop for researc[h]ing information on the internet, this has helped in terms of motivating [redacted] to learn new information, and gather the information to present in an organized manner. In terms of Math [redacted] can add/subtract two and three digit numbers independently. He has the ability to multiply and divide two and three digit problems. [redacted] has difficulty adding, subtracting fraction with common and uncommon denominators. Higher level Math skills are difficult to teach [redacted] because he is extremely unmotivated by math work. [redacted] as participated part of the year in pre-employment job shadowing activities off-campus. This year, [redacted] has volunte[er]ed at a hotel working as a bell boy/ front desk attendant. [redacted] has also started volunteering at a retail discount store in the Assembly Dept. In particular, [redacted] has shown a strength in assembling bicycles. He follows the dress code, remains in his assigned area, and has shown strong interpersonal skills in getting along with peers, co-[workers], and customers. [redacted] is still unsure what his preferred work or career choice would be. Behaviorally, [redacted] has performed appropriately in the classroom. Although he is sometimes unmotivated to work on academics. [redacted] follows classroom rules, follows teacher directions the first time, and interacts with other students without conflict. [redacted] parents expressed concern over [redacted] hygiene skills, and a program was implemented to tie in [redacted] coming to school clean and appropriately dressed with the classroom point system. Classroom staff have noticed improvements in [redacted] daily hygienes [sic], and this program should be continued. [redacted] experienced one serious behavior problem off-campus, w[h]en he was apprehended for shoplifting. Charges were pressed and parents were called. The consequences for this behavior were handled [through] classroom behavior point system, parental consequences, and use of detention. This incident occurred one day before Winter Break. During the break, [redacted] was admitted to [redacted] to evaluate his medications and also due to safety concerns at home, [redacted] remained at [redacted] until January, and returned to [redacted] School on Jan. 21, 2003. [redacted] had one other incident in mid October, when he fell from a tree at home and broke his right arm. He returned to school on November 14 2002, [but] could not write or perform his duties in our job shadowing program. [redacted] continues to take medication. Currently the medication he is taking is: Respirdal 1mg a.m. and 2mg p.m. at h.s.; Wellbutrin SR 150 mg.; Neurontin 300 mg. morning, 1200 mg at h.s.; Clonidine 5 mg in morning and at lunch. [redacted]'s behavior and need for structural support preclude him from participating in the regular education curriculum. The primary concern expressed by [redacted] mother is in the area of Mental Health. She feels [redacted] was discharged from Family Guidance

Center prematurely, and services should have been put on hold and resumed when he returns. She also stated she questions placement, as she is unsure that can be maintained in School on the

Respondent's Exhibit 1.

72. The February 12, 2003 IEP contained the following Annual Goals:

<p>16. STANDARD(S) Mathematics – Number and Operation Understand numbers; ways of representing numbers; relationships among numbers; and number systems</p>
<p>17. MEASURABLE ANNUAL GOAL will improve his basic computational skills by one grade level.</p>
<p>18. How will progress toward the annual goal be measured? Teacher-made tests, Observation; records, Daily work.</p>
<p>19. BENCHMARKS/SHORT-TERM OBJECTIVES</p> <ol style="list-style-type: none"> 1. will be able to solve whole number problems involving addition, subtraction, multiplication, and division with 90% accuracy. 2. will be able to solve problems involving the addition, subtraction, multiplication, and division of fractions with 80% accuracy. 3. will be able to convert fractions to decimals, and solve decimal problems involving addition, subtraction, multiplication, and division with 80% accuracy. 4. will be able to compute perimeter, area, and estimate various lengths with 80% accuracy.

<p>16. STANDARD(S) Career and Life Skills Develop self-knowledge; explore different educational; career; and life options available; and design and implement educational; career; and life plans.</p>
<p>17. MEASURABLE ANNUAL GOAL will demonstrate behaviors value [sic] in the work place with 100% accuracy and expand his knowledge of career choices.</p>
<p>18. How will progress toward the annual goal be measured? Observation; records, Daily work.</p>
<p>19. BENCHMARKS/SHORT-TERM OBJECTIVES While engaging in off-campus job shadowing activities, will demonstrate the [following] behaviors:</p> <ol style="list-style-type: none"> (1) Arrive at worksite on time. (2) Exhibit care with supplies and equipment. (3) Persistence in work habits to complete tasks. (4) Receive average or above marks on work evaluations. <p> will develop an up to date resume of his work experience and abilities. will be given opportunities to observe workers in occupations of his choice to</p>

[further] his knowledge of career options.

16. STANDARD(S) Language Arts – Reading and Literature
Apply knowledge of the conventions of language and texts to construct meaning.

17. MEASURABLE ANNUAL GOAL
will apply letter knowledge, spelling, sound-word recognition strategies and meaning based word recognition strategies to decode unknown words in text with 80% accuracy.

18. How will progress toward the annual goal be measured? Observation; records, Daily work

19. BENCHMARKS/SHORT-TERM OBJECTIVES
Given a reading passage at his grade level, will demonstrate fluent reading ability and apply strategies to increase his reading level.
; will read 10 books per semester at his grade level, and demonstrate comprehension thru book reports, Story maps, and discussions.
Using a laptop computer, will access the internet and choose new stories to read, and demonstrate understanding of material thru discussion and answering comprehension questions.

16. STANDARD(S) Language Arts – Writing
Apply knowledge and understanding of the conventions of language and research when writing.

17. MEASURABLE ANNUAL GOAL
will follow standard conventions in spelling common words, using simple punctuation, and constructing basic sentences w/ 90% accuracy.

18. How will progress toward the annual goal be measured? Observation; records, Daily work, work samples

19. BENCHMARKS/SHORT-TERM OBJECTIVES
When given a writing assignment at his level, will follow standard conventions in spelling words, using simple punctuation, and constructing basic sentences.
When completing a writing assignment, will read his own writing to check for meaning and rewrite, add or delete words to clarify writing.
Given a journal topic, will write daily entries using correct sentence structure in response to teacher entries.
will spend one hour per week learning keyboarding skills on a laptop computer.

16. STANDARD(S) Language Arts – Writing
Apply knowledge and understanding of the conventions of language and research when writing.

17. MEASURABLE ANNUAL GOAL
will follow standard conventions in spelling common words, using simple

punctuation, and construction basic sentences w/ 90% accuracy.

18. How will progress toward the annual goal be measured? Observation; records, Daily work, work samples

19. BENCHMARKS/SHORT-TERM OBJECTIVES
Given weekly spelling words, will correctly spell each word to increase vocabulary.

16. STANDARD(S) Career and Life Skills
Develop skills and attributes that are critical to a person's ability to successfully navigate the world in and out of school; at work; and at home[.] Thinking and reasoning skills; personal qualities; skills for managing resources; interpersonal skills

17. MEASURABLE ANNUAL GOAL
1. Demonstrate marked improvement in impulse control as evidenced by a significant reduction in aggressive, disruptive, and negative attention-seeking behaviors.
2. Terminate temper tantrums and replace them with calm, respectful compliance with adults.

18. How will progress toward the annual goal be measured? Observation; records

19. BENCHMARKS/SHORT-TERM OBJECTIVES
1. Decrease the frequency and intensity of hostile, negativistic, and defiant interactions with parents and other adults by 90%.
2. Identify angry feelings, the object of the anger, and the reasons for it 90% of the time.

Respondent's Exhibit 1.

73. The February 12, 2003 IEP indicated that Transition Services Needs for his post-high school goal was "[Competitive] Employment, Possible post secondary education." The Transition Service Needs section of the February 12, 2003 IEP indicated that needed to be registered with the Department of Vocational Rehabilitation.

74. The February 12, 2003 IEP also reflected that met the standard for ESY because needs [ESY] to retain new information and benefit from education support." Respondent's Exhibit 1. Additionally, the February 12, 2003 IEP indicated that would be receiving the following services:

21. SERVICES:	Projected Beginning Date	Projected Ending Date	Frequency (Min/Times/Period)	Location	ESY Yes/No
Special Education and Related Services:					
Transportation	02/12/2003	02/12/2004	Daily	Special Ed.	Yes
Special Education	02/12/2003	02/12/2004	60m/30x/wk	Special Ed.	Yes

Other - Med-Management	02/12/2003	02/12/2004	60m/1x/mth		Yes
SBBH-Individual Counseling	02/12/2003	02/12/2004	50m/wk		Yes
Transportation	02/12/2003	02/12/2004	3x/wk	Special Ed.	No

Supplementary Aids and Services, Program Modifications and Supports for School Personnel:	Projected Beginning Date	Projected Ending Date	Frequency (Min/Times/Period)	Location
Lap Top Computer	02/12/2003	02/12/2004	52m/24x/wk	Special Ed.
1:1 Instructional Support	02/12/2003	02/12/2004	52m/24x/wk	Special Ed.

23. Explain the extent, if any, that the student will not participate with students without disabilities in the general education class, extracurricular activities and other non-academic activities:

Due to [] need for High structure and need for individual support[,] he will remain in FSC and not participate in general curriculum.

Respondent's Exhibit 1.

75. By Prior Written Notice dated February 12, 2003, Ms. [] informed Mr. [] and Mrs. [] of the determination of [] IEP Team based on the February 12, 2003 IEP meeting:

- Description of the proposed or refused action:** Team met to complete an annual IEP for [] Team completed IEP, with [] remaining in a fully self-contained setting and goals were developed.
- Explanation of why the action is proposed or refused:** [] s [h]as experienced success in this setting and team confirmed that this is [currently the] most appropriate setting for him.
- Description of other options considered:** Class to class schedule, residential school.
- Reasons these options were rejected:** Team felt that [] was not capable [of] being successful on a class to class schedule, and residential placement is not necessary.
- Description of the evaluation procedures, tests, records, or reports used as a basis for the proposed/refused action:** Input from IEP, behavioral data, psychiatric reports.
- Other relevant factors:** none.

Respondent's Exhibit 1.

76. On February 20, 2003, an IEP meeting was held at [] High and Intermediate School. The February 20, 2003 IEP meeting participants were:

Special Education Teacher; [redacted], Vice Principal; Mrs. [redacted] via telephone; [redacted], DOE, via telephone; and [redacted], Family Guidance Center, via telephone. The Meeting Notes from the February 20, 2003 IEP meeting state:

Team was scheduled to meet to have Family Guidance Center present a list of options from Dept. of Health available for Mrs. [redacted]. Mrs. [redacted] stated that she never received the information from FGC. FGC stated that the information was faxed to Mrs. [redacted] on 2/14/03. Therefore, since Mrs. [redacted] did not receive the needed information, the meeting was terminated. Mrs. E [redacted] stated in phone conversation with teacher that she is not interested in participating in any more meetings on this matter. She stated that she believes her efforts to attain services or benefits from Dept. of Health are fruitless.

Respondent's Exhibit 1.

77. By Prior Written Notice dated February 20, 2003, Ms. [redacted] informed Mr. [redacted] and Mrs. [redacted] of the determination of [redacted] IEP Team based on the February 20, 2003 IEP meeting:

1. **Description of the proposed or refused action:** Team was to meet and have Family Guidance Center present a list of services options available for Ms. [redacted] terminated the meeting because she never received a requested copy of DOH services.
2. **Explanation of why the action is proposed or refused:** No action was pursued due to miscommunication between parent and Family Guidance Center regarding service options of DOH.
3. **Description of other options considered:** Meeting was explicitly called to discuss DOH service options.
4. **Reasons these options were rejected:** Needed information was not relayed to parents due to miscommunication.
5. **Description of the evaluation procedures, tests, records, or reports used as a basis for the proposed/refused action:** Input from parent, Family Guidance Center.
6. **Other relevant factors:** none.

Respondent's Exhibit 1.

78. On February 28, 2003, [redacted] Ph.D., a clinical psychologist, performed a psycho-educational assessment of [redacted] at the request of [redacted] As part of her assessment of [redacted] Dr. [redacted] administered the following tests to [redacted] a) WISC-III Wechsler IQ test; b) WIAT; c) Analytic Learning Disability

Assessment; and d) Kinetic House-Tree-Person drawing. Dr. [redacted] also reviewed approximately 35 to 40 prior assessments and evaluations that had been done on [redacted]. Lastly, Dr. [redacted] conducted a clinical interview with [redacted] and Mr. and Mrs. [redacted].

79. Dr. Carpenter determined that on the WISC-III test, [redacted] had:

Verbal I.Q.	73	Borderline
Performance I.Q.	86	Low Average
Full Scale I.Q.	77	Borderline

Dr. Carpenter noted that:

On the current testing of cognitive skills, [redacted] Verbal Index scores are 13 points lower than his Performance Index scores. This is one of the characteristics and criteria utilized to identify traditional learning disabilities. It is the impression of the undersigned, however, that for [redacted] this discrepancy is more likely a reflection of educational deficits than a true learning disability.

Petitioners' Exhibit 87 at 426.

80. Dr. [redacted] also determined [redacted] s scores on the WIAT as follows:

Subject	Standard Score	Grade Equivalency
Basic Reading	93	7.0
Reading Comprehension	82	4.5
Spelling	82	5.4
Mathematics Reasoning	65	2.9
Listening Comprehension	87	4.9
Oral Expression	110	11.5

Dr. Carpenter concluded that:

[redacted] scores on the WIAT suggest that he has received very little benefit from his education. Given the amount of special education services he has received, he could be expected to be functioning much above the level indicated by this test.

At the time of this evaluation he was in grade 9-9 (6th month of 9th grade). However, his Grade Equivalency scores indicate that his actual functional ability ranges from the late 2nd grade in Math Reasoning (understanding and being able to utilize basic mathematic

functions) to a 7th grade level in basic reading (being able to look at a word, out of context, and simply read it.)

Only one area is actually above his chronological level and that was in Oral Expression (the ability to state his thoughts in an organized fashion.) This particular strength could easily lead adults who did not understand or know him well to have unrealistically high expectations in terms of all other academic areas and even behavior. The fact that these expectations were not met would lead to disappointment at best, and frustration or anger at worst.

Petitioners' Exhibit 87 at 426.

81. Based on the results of her testing and evaluation of \

Dr.

had the following recommendations:

reatment team should be made up of persons who are trained and skilled in providing educational experiences to children with developmental and emotional needs which are impacting their behaviors and learning ability, as well as persons with training, understanding, and experience in dealing directly with those developmental and emotional problems.

His classroom setting should be one which provides structure, security, and consistency – and which can provide this boy with the many learning experiences he has missed. The goals should be to allow him to reach grade level in his academics and at least provide the opportunity for him to surpass his grade level – as his original cognitive scores showed to be his potential.

In addition, his classroom setting should provide the emotional and behavioral support and encouragement to develop self-awareness and learn new coping skills. At this point in his life it is likely that this area needs to be intrinsically bound to his academic experiences. Things have reached the point, for him, when he cannot learn academics for 4, 5, or 6 hours a day and then spend 1 hour a day (or worse, 1 hour a week) on mental health issues. Each area needs to be in the mind of all those who instruct him.

peer interactions appear to be quite inappropriate for him. He is not a child with (now) significant developmental delays, and he is a child with average cognitive potential (though this is masked by his history). Consequently, he should have much more interaction with others of his own age who are typically developing youngsters. A classroom with developmentally delayed and autistic children is entirely inappropriate and unacceptable for him. However, because of the needs noted in the previous 2 paragraphs, his classroom setting must be very carefully chosen.

Petitioners' Exhibit 87 at 428, 429.

82. At the hearing convened on March 25, 2003, Dr. _____ was duly qualified as an expert in educational psychology, including testing, evaluation, and interpretation of those testing results. _____ results on the Wechsler Individual Achievement Test administered by Dr. _____ showed that _____ was at the following educational levels:

- Seventh grade level in reading;
- Mid fourth grade level in reading comprehension,;
- Fifth grade level in spelling;
- At the end of second grade level in math reasoning;
- At the end of the fourth grade level in listening comprehension; and
- Eleventh grade level in oral expression.

83. Dr. _____ testified credibly, that after reviewing the previous evaluations and assessments, as well as the results of the tests that she administered to _____ in Dr. _____ expert opinion, _____ had not been making educational progress based upon his IQ testing and his achievement tests.¹ Dr. _____ also noted that _____ had some visual processing deficits, some auditory processing deficits, some motor processing deficits, some deficits in terms of blending these types of processing functions. Dr. _____ was also of the opinion that _____ placement in a fully self-contained classroom with intellectually challenged classmates was not an appropriate placement for _____ Dr. _____ testified:

He should be in a classroom with, as much as possible, typically developing peers, so that his role models are socially appropriate and cognitively appropriate for him. He should be in a very small classroom with a great deal of structure. His program should be extremely individualized because he's a boy with average potential. He used to have above average potential, so he has -- I would like to see his classroom program so individualized for him that they are able to take this boy from way behind grade equivalency and bring him up to at least grade equivalency where it appears that he can be without any difficulty, and at one time he could have been beyond grade equivalency, so I would like him to have that opportunity as well.

However, he has mental health challenges and behavioral challenges from probably a variety of reasons, and those appear to be, in my

¹ However, Dr. _____ had spoken to _____ s teachers or any school staff, regarding _____ classroom conditions. Instead, Dr. _____ relied on the documents she reviewed and the information provided by C_____ and Mr. and Mrs. _____

mind, what is impacting him in terms of his academics. Because of that, he needs to be in a situation where everybody who's working with him really understands his mental health and his emotional needs and has the training to be able to work with him.

It sounds like what -- from what he said and from what his stepfather said in the description of the class, he's not being challenged so that there are no behavioral problems, and when he is challenged, there are behavioral problems. If he were in an appropriate classroom, there would, therefore, then be some behavioral problems, and rather than sending him out of the classroom, the people who are there need to know how to deal with that and keep him in the classroom.

March 25, 2003 Hearing Transcript at 26, 27. Lastly, Dr. [redacted] was of the opinion that [redacted] would benefit from being placed in a residential treatment center on the Mainland.

84. At the hearing, [redacted] special education teacher testified that [redacted] was making great progress in Mr. [redacted] class, and [redacted] has received satisfactory marks in all of his subjects. [redacted] has one-to-one support provided by an Educational Aide, and although the February 12, 2003 IEP provides for SBBH services of 50 minutes per week, [redacted] had not been receiving SBBH services for a while because [redacted] had not developed a therapeutic relationship with his new therapist. [redacted] also uses a laptop computer and is taking keyboarding classes to improve his keyboarding skills. Mr. [redacted] testified at the hearing that he was impressed with [redacted] ability to control his behavior in Mr. [redacted] classroom.

85. As of the date of the hearing, Mr. [redacted] had nine students in his classroom, including [redacted], and there were two Educational Aides, but one of the EAs was assigned to [redacted] full-time. [redacted] is the only student of average intelligence in Mr. [redacted] class. As part of [redacted] job shadowing program, [redacted] spends two days per week working at the Naniloa Hotel as a bell boy, and one day a week working at Wal-Mart assembling bicycles.

86. At the hearing, Ms. [redacted], [redacted] s, Vice Principal of [redacted] High and Intermediate School, [redacted] Care Coordinator; [redacted] and Mr. [redacted] testified that [redacted] was making progress in handling his emotional and behavioral problems.

87. At the hearing, [redacted], M.D., a child and adult psychiatrist, testified on behalf of the Petitioners. Dr. [redacted] was duly qualified as an expert in child and adolescent psychiatry. Dr. [redacted] was of the opinion that [redacted] needed consistency and structure, in particular, [redacted] needed a placement that will address his educational, psychiatric, social and emotional behavior. Dr. [redacted] felt that [redacted] was not having all of those needs met in his current placement in [redacted] High School, in a fully self-contained classroom. Dr. [redacted] felt that [redacted] needed neurobehavioral psychiatric treatment. Dr. [redacted] felt that the therapy options that had been provided to [redacted] were not adequate because [redacted] was still having significant problems. Additionally, Dr. [redacted] believed that the drop in [redacted] IQ reflected that either [redacted] was not receiving appropriate education, or that there was a neurological condition that was affecting [redacted]. Dr. [redacted] testified credibly that in his opinion based upon his experience and knowledge, that there was no appropriate treatment facility in Hawai'i for [redacted].

88. At the hearing, [redacted] the Program Director of the [redacted], testified on behalf of Petitioners. The Meridell Achievement Center is a residential treatment center for children and adolescents, specializing in the psychiatric treatment of children and adolescents. Ms. [redacted] testified that after reviewing [redacted] records that had been provided to her, she believed that [redacted] would fit right in at the [redacted] Center and that [redacted] could start attending as soon as the financial arrangements were completed. Ms. [redacted] only concern was regarding [redacted] loss of IQ and whether that had been medically evaluated. Ms. [redacted] testified that the [redacted] has a neurobehavioral department, and would be able to provide [redacted] with both the treatment and education that he requires. Ms. [redacted] also testified that there were not many institutions that were capable of providing both the treatment and education that [redacted] required.

89. At the hearing, [redacted], Ph.D. and J.D., testified on behalf of Petitioners and was duly qualified as an expert in special education in the areas of standards of care. Dr. [redacted] testimony was highly credible and persuasive.

IV. CONCLUSIONS OF LAW

As stated previously, the issues to be decided in the present matter, as identified in Petitioners' request for impartial hearing dated January 23, 2003, are as follows:

1. Whether [redacted] was properly evaluated by Respondent to determine the nature and extent of his learning disabilities;
2. Whether [redacted]'s placement in a FSC pursuant to his IEP was an appropriate placement;
3. Whether [redacted]'s IEP was procedurally and substantively flawed; and
4. Whether [redacted] should be provided with compensatory education to allow him to achieve his academic potential.

A. Adequacy of Evaluations

The following is a summary of the cognitive testing that [redacted] was given from 1990 to 2003:

Date	Test	IQ	Verbal IQ	Performance IQ	Full Scale IQ
1990	Stanford-Binet	95			
1992	McCarthy Scales	97			
1994	WPPSI-R		116	86	101
1997	WISC-III		97	106	101
2000	WISC-III*		76	79	76
2003	WISC-III**		73	86	77

* Administered by Robert Chamberlain, Psy.D., in June 2000.

**Administered by Georgia Carpenter, Ph.D., on February 28, 2003.

As the above data reflects, since 1997, [redacted] has experienced significant and substantial decreases in Verbal, Performance, and Full Scale IQ scores on the WISC-III test.

As of the date of the hearing, there were no definitive medical or psychological explanations provided by Respondent for this loss of IQ.

Although [redacted] has had a panoply of evaluations and assessments, the Hearings Officer must find and conclude that the preponderance of the evidence did not establish that [redacted] had been properly evaluated by Respondent to determine the cause of his loss of IQ, and the means to remediate or restore his cognitive abilities.

B. Placement

The evidence introduced at the hearing established that Mrs. [redacted] agreed to place [redacted] in Mr. [redacted] FSC, because Mrs. [redacted] and [redacted] were familiar with Mr. [redacted] and because [redacted] brother was in Mr. [redacted] FSC.

However, the evidence also suggests that placing [redacted] in a FSC with developmentally disabled peers did not help develop [redacted] cognitive functions. More importantly, it appears that the more compelling reason for the IEP Team's determination of placement in Mr. [redacted] FSC, was to address and minimize [redacted] behavioral and emotional problems.

The evidence established that Mr. [redacted] did his best to provide meaningful academic and other activities for [redacted], including the work shadowing program and Special Olympics.

On the other hand, based upon the testimony of Dr. [redacted], Dr. [redacted], and Dr. [redacted], the Hearings Officer finds and concludes that [redacted] placement in a FSC with developmentally disabled peers, in the context of [redacted]'s development, was not appropriate.

C. The Provision of FAPE and the IEP

Under the Individuals with Disabilities Education Act, ("IDEA"), and HAR § 8-56-3, the Respondent is required to provide [redacted] with a Free and Appropriate Public Education ("FAPE").

HAR § 8-56-1 defines FAPE as:

"Free appropriate public education" means special education and related services that are provided at public expense in the least restrictive environment, under public supervision and direction and at no cost to a parent, except for incidental fees which are normally charged to a student without a disability or the parent as a part of the regular education program; meet the standards of the department; include preschool, elementary, or secondary school education; and are provided in conformity with an individualized education program.

1. Educational Progress

The evidence clearly reflects that from the time [redacted] began to receive achievement tests, he was below grade level in most subjects. Looking at the results of the most recent WIAT administered by Dr. [redacted] the following scores demonstrate the specific areas that [redacted] as a 9th grader, was below grade level:

Subject	Standard Score	Grade Equivalency
Basic Reading	93	7.0
Reading Comprehension	82	4.5
Spelling	82	5.4
Mathematics Reasoning	65	2.9
Listening Comprehension	87	4.9
Oral Expression	110	11.5

Looking at _____ scores on the WIAT test administered by Dr. _____, as well as the other achievement tests introduced into evidence, the Hearings Officer must conclude that _____ has made some educational progress. In terms of his Oral Expression, _____ significantly exceeds his grade level.

On the other hand, it does not appear that _____ has made meaningful educational progress in Mathematics Reasoning, and to a lesser extent in Reading Comprehension, Listening Comprehension, and Spelling.

Given _____ IQ which reflects that he has average cognitive abilities, the significant disparity between (_____), WIAT scores and his actual grade level should have been addressed more directly in _____ IEP.

Once again, the Hearings Officer finds the testimony of Dr. _____, Dr. _____ and Dr. _____ to be persuasive, and accordingly, the Hearings Officer concludes that the preponderance of the evidence established that _____ has not made meaningful educational progress specifically in Mathematics Reasoning, and to a lesser extent in Reading Comprehension, Listening Comprehension, and Spelling.

2. The IEP Process

The preponderance of the evidence established that for practical reasons and for expediency, (_____) placement determination was made before the IEP process had been completed, in order to address _____ return to the community after his hospitalization.

There appeared to be no other placement options considered by the February 12, 2003 IEP Team, and the IEP Team did not have any substantive discussions regarding the possibility of placing _____ in an appropriate setting on the _____

Consequently, the Hearings Officer finds and concludes that placement determination was not in accordance with the requirements of the IDEA and HAR Title 8 Chapter 56, which require that placement be determined after the other portions of the IEP process are completed.

3. The IEP

The Hearings Officer finds and concludes that in addition to deficiencies regarding placement and educational progress as discussed above, the IEP does not adequately address unique needs in regards to his emotional and behavioral problems.

More specifically, although the February 12, 2003 IEP provides for SBBH, the evidence presented at the hearing indicated that was not receiving mental health services on a consistent basis. Additionally, there does not appear to be any significant focus on long-term placement and educational development, other than trying to address his emotional and behavioral problems.

Consequently, the Hearings Officer concludes that the February 12, 2003 IEP does not address unique needs.

D. Compensatory Education

Petitioners introduced compelling evidence that the would be an appropriate placement for , and should be provided to as part of his compensatory education.

However, at this juncture the Hearings Officer is unable to determine whether placement at the ; is in best interest, particularly in light of Dr. testimony regarding ; reactions to being separated from his mother and his family, and the absence of any information regarding the duration of ; stay at the

V. DECISION

For the reasons set forth above, the Hearings Officer finds and concludes that Respondent did not provide FAPE to Petitioners. Accordingly,

IT IS HEREBY ORDERED THAT:

1. Respondent immediately convene ; IEP team at the first mutually convenient date to authorize appropriate psychological, psychiatric, or

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May-18-2003 11:48am From=DCCA/OAH/MCCP

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- neurological testing to determine the nature and extent of learning disabilities;
2. That based upon the results of the testing, IEP Team shall develop a current PLEP, and thereafter determine appropriate goals and objectives that will allow _____ to obtain meaningful educational benefit from his FAPE; and
 3. After the PLEP, goals, and objectives have been developed, the IEP Team shall determine appropriate placement in compliance with the IDEA and HAR Title 8 Chapter 56, and if no suitable Hawai'i placement is found, then the IEP Team shall arrange for _____ placement at an appropriate facility or institution outside the State of Hawai'i.

VI. RIGHT TO APPEAL.

The parties have the right to appeal to a court of competent jurisdiction within thirty (30) days of receipt of this Decision.

DATED: Honolulu, Hawai'i, May 15, 2003



RODNEY A. MAILE
Senior Hearings Officer
Department of Commerce
and Consumer Affairs