

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Westport Board of Education

Appearing on behalf of the Parents: Attorney Jennifer D. Laviano, P.C.
632 Danbury Road
Ridgefield, Connecticut 06877

Appearing on behalf of the Board: Attorney Marsha Belman Moses
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, Connecticut 06460

Appearing before: Attorney Margaret D. Northrop, Hearing Officer

FINAL DECISION AND ORDER

ISSUES PRESENTED:

1. Whether the Board offered an appropriate program for the January- June 2000 partial school year?
2. Whether the Board offered an appropriate program for the 2000-01 school year?
3. If not, does the Connecticut Center for Child Development offer an appropriate program, such that the Board should fund the placement?

SUMMARY:

The student is a seven year old boy with autism, whose family moved to Connecticut in late December, 1999. On January 4, 2000, he was unilaterally placed at the Connecticut Center For Child Development (CCCD) by his parents and remains in this placement to date. The Parents have requested reimbursement for costs related to this placement, claiming that the Board has not offered the Student an appropriate program. The Parents requested a hearing on behalf of their child on June 14, 2000. A prehearing conference was held on June 22, 2000. The hearing was convened on July 25; additional days of hearing were held on September 6 and 11, October 3, 10, 23, 24, November 21 and 27, and December 1, 6, and 8, 2000, when the evidentiary

portion of the hearing was closed. Initial briefs were filed with the Hearing Officer on January 3, 2001; reply briefs were filed on January 12, 2001 and the record was closed. CCCD filed a motion to intervene on January 15, which was denied.

FINDINGS OF FACT:

1. The Student was born in 1993 in New York City. He resided there with his family until late December 1999, when the family moved to the town whose School Board is the respondent in this proceeding.
2. The Student was referred to the New York City Early Intervention Program in May, 1996, at the age of two years, seven months. After evaluation, it was determined that he presented as a child with global developmental delays, especially in the areas of communication, cognitive development and social/emotional development. He began to receive speech and language therapy occupational therapy and special education instruction through the Early Intervention Program (Exhibit B-9, pp. 313-314,301-304. In addition, he received at least 12 hours/week of ABA services provided by the New York Board of Education, and an additional 25-30 hours/week provided by the Parents. (Testimony of Mother).
3. The Student was first evaluated by Dr. Cecelia McCarton, a developmental pediatrician in October, 1996. She noted that the Student had over 300 words which he could combine in two and three word sentences, was able to follow one-step commands, recognized and could match primary colors, and counted 1 through 8. She also found him to be impulsive and having difficulty staying on task. She concluded that he manifested many of the characteristics of Pervasive Developmental Disorder (PDD-NOS). She recommended the continuation of ABA services, private and group speech and language therapy and occupational therapy. (Exhibit B-9, pp. 8-10; Testimony of Dr. McCarton). Evaluations done by other professionals in late 1996 emphasized the Student's sensory needs and tantruming behaviors. (Exhibit B-9, pp. 21, 1-2)
4. For the 1997-98 school year, the Student was placed by the New York City Board of Education at the Parkside School, a special education school for children with developmental problems. His class consisted of 6 students, with two teachers. He attended for five hours per day, five days a week, and received two 30 minute sessions per week both of speech and language therapy and of occupational therapy. In addition, he received 10-18 hours /week of ABA services in the home, provided by his parents. (Exhibit B-9, pp. 118-119; Testimony of Mother, Dr. McCarton). Dr. McCarton observed the Student at Parkside in mid-December, 1997 and issued a generally favorable report. She noted that the student was easily distracted, but that his teachers were reporting slow, steady progress, that Parkside was "an excellent school" and "the group experience is critical for (the Student) to generalize some of the

isolated skills he learns in ABA therapy.” Her “first impression” was that the Student return to Parkside for the following year, but she wanted to make an additional observation. (Exhibit B-9, pp. 253-254) Dr. McCarton testified at the hearing that she had some “concerns” about the Parkside program for the Student, which she shared with the Mother.

5. For the 1998-99 school year, the Student, whose classification had been changed from “speech impaired” to “autistic”, was placed by the New York City Board of Education at the AHRC Elementary School (Central Park West), an “ABA school” for children on the autistic spectrum. It is not clear why the Student did not return to Parkside. According to the Mother, he was asked not to return, because the staff at Parkside couldn’t handle his behavioral issues. However, it should be noted that the lengthy and detailed year-end report from the school is positive in many respects and does not refer to any request that the Student not return. (Testimony of Mother; Exhibit B-9; pp. 67-96)
6. At AHRC, the Student was in a class with an 8:1:4 ratio and received three hours per day of 1:1 discrete trial instruction . He also received speech and occupational therapy. The Parents provided an additional 10 hours of ABA and an additional one hour of speech therapy in the home. (Exhibits B-1, B-2, B-4, Testimony of Mother). The reports reflect the Student’s progress there. He benefited from the occupational therapy and from the speech and language therapy, though he continued to show significant delay in that area. He could identify colors, some numbers and letters, his own name (inconsistently) and body parts with visual and verbal cues. Behaviorally, he was withdrawn from his peers, engaged in self-stimulating behaviors, although that behavior had decreased during the school year. He was toilet trained and verbally requested to go to the bathroom. It was agreed that the Student needed a highly structured program with a small teacher - student ratio. (Exhibits B-1, 2, 3).
7. During the 1998-99 school year, the Student demonstrated problematic behaviors at home, including frequent tantruming, and throwing himself against a wall. AHRC did not offer any home programming, or school psychological services. (Testimony of Mother).
8. The Student continued at AHRC from September - end of December, 1999, with a program including ABA therapy, one hour per week of both occupational therapy and speech and language on a 1:1 basis, and an additional 1/2 hour/week of speech with one other student.
9. In 1998 the Parents began applying to several “ABA” schools for the Student in the New York- New Jersey-Connecticut area, including The Connecticut Center for Children with Disabilities (CCCD) in Milford. The Mother testified to the effect that whichever school accepted the Student first was what they would have taken and would have moved to whatever area the school was located in. Their application to CCCD was dated October 27,

1998. The school was provided with a videotape of the Student and was interviewed in the spring of 1999. At that time, there was not a place for him, but the family was contacted in late summer and was told there would be a space for him in November. The family looked at several homes in the town whose Board is the respondent herein and one in a neighboring town. The parents choose this town because of its location between Milford and New York City, where the father is employed, and, thinking ahead to the education of their new baby daughter, because of the good reputation of the town's schools. On November 18, 1999, the Parents signed a contract with a substantial non-refundable deposit with CCCD for the Student to begin sometime between December 1 and January 3, 2000. In fact, the family closed on their house purchase, moved on December 22, and the Student began at CCCD on January 4, 2000. (Testimony of Mother; Exhibit B-71).

10. The first contact made by the Parents with the Board was from the Parents' counsel to the Board's counsel by letter dated November 15, 1999. That letter indicated that the Parents intended to move to the town within a month, that they were looking at CCCD but were willing to look at any programs for autistic children which the Board had available in-district, that they would like to observe any proposed program before the convening of a PPT. The Parents also offered to make available evaluative material and records on the Student. (B-6) By letter dated November 18, 1999, Board counsel responded to Parents' counsel to request information regarding residency, obtaining records, and the scheduling of an observation by Board staff. On November 30, counsel for the Parents gave notice of their future address within the town, notified the Board that the Student's last day in his existing placement would be December 22 and asked Board counsel to contact her to coordinate a release and observation by Board staff. Sometime between November 30 and December 7, 314 pages of documentation regarding the Student was delivered to counsel for the Board. Proof of the impending residency was also sent on December 7. On December 10, it was agreed that the staff's observation would take place on December 15 at the AHRC school. (Exhibits B-7, 8, 9, 10,11, 12, 13, 14, 15).
11. On December 15, 1999, two Board staff members (including a very experienced special education teacher, hereinafter referred to as "Ms. B." and one of the district's special education coordinators) made a three-hour observation of the Student and his program at AHRC in New York and met with his teachers and therapists there. Their detailed assessment of the Student's strengths and weaknesses and of the program then being given to him reflects their experience and professionalism. They concluded that the Student required intensive adult support, that his behavioral issues were significant and needed to be a primary focus in his educational program, that he had a greater potential for language and communication than he was demonstrating, and that he should be assessed to determine if the structured use of sensory stimuli might satisfy his need for oral-motor stimulation.

(Exhibit B-16; Testimony of Ms. B.)

12. On December 21, Board counsel notified the Parents' counsel that it had sufficient information to plan a program, that it would prefer to also have speech and language, occupational therapy, and physical therapy evaluations done, though that issue could be discussed at the PPT, that the Parents should contact the Director of Pupil Personnel Services regarding making arrangements to observe any programs offered by the Board, and that the support staff of the two attorneys should coordinate the date for a PPT. Counsel for the Parents' response, dated December 23, the final day before the holiday break, was that the Board should notify them which program might meet the Student's needs so an observation by the Parents could be arranged, and indicated that it seemed that a PPT would not be held until around January 26, because that was the first mutually-available date for both counsel. It further informed the Board that the Parents had scheduled for the Student to begin at CCCD on January 4, "although of course we are willing to consider whatever (the Board) has available". (Exhibits B-17, B-18) After considerably more correspondence between counsel for both parties, the PPT meeting was set for January 21, 2000. (Exhibits B-19, 20, 22, 23,24, 25, 26, 28, 29)
13. The Mother made a one-hour observation of the Board's program in early January. She met with "Ms. B." who would be the Student's teacher and Case Manager and who had done the observation at AHRC and together they observed a music class involving the six children who would compose the Student's class. Four of these children are on the autistic spectrum and two are multiply-disabled. The Mother stated that the other students were much better behaviorally than her son and the he would not be able to sit through or benefit from the class. Ms. B. explained that five of these children had come into her program with serious behavioral issues and their behavior had improved after significant work. Ms. B. indicated that in her opinion the Student could also participate in and benefit from this class. (Testimony of Mother and Ms. B).
14. Based on the observation of the Student and the extensive file on him provided by the Parents, the Board's staff felt that the student required a direct teaching model, a stronger language-based program, opportunities for generalization, occupational therapy, a sensory diet, and an augmentative communication system. Prior to the convening of the PPT, the Board members of the team met to develop draft goals and objectives for a program for the Student. Although the staff felt they could have implemented the Student's then-current IEP from New York, they believed that that IEP could be greatly improved upon: i.e. that it was not sufficiently specific, that the behavior plan was weak, that the goals and objectives were not measurable, and that a transdisciplinary model, which they viewed as being important for this Student was not in place. (Testimony, Ms. B; Exhibits B-5, B-30, pp. 8-34)
15. The PPT convened on January 21, 2000, with both Parents, their counsel,

Board personnel (the special education coordinator, Ms. B., a regular education teacher, the school psychologist, the school social worker, an occupational therapist, the school principal) and counsel for the Board. The draft goals and objectives were presented, as was a proposed Behavior Management Plan that had been developed by Ms. B. Once the Student began the Board program, the Board would undertake a functional behavioral analysis, getting input from the Parents, and taking data. It was anticipated that it would take up to six weeks to formalize the plan. (Exhibit B-30, pp. 8-34, 39-40).

16. The Board members of the PPT recommended a program for the Student which would be delivered at one of the Board's elementary schools, in a self-contained classroom, consisting of 33 hours/45 minutes per week, which included:
- 3 hours per day of discrete trial training, including one-half hour per day of generalization;
 - 2 hours per week of direct occupational therapy;
 - 2.5 hours per week of direct speech and language therapy;
 - a full time 1:1 paraprofessional;
 - one hour per week of adaptive physical education.

In addition, one-half hour per week of social work services for the Parents, weekly meetings of the team, including the Parents, and weekly visitations of the program by the Parents, (to begin after the first month of school) were recommended. The concept of developing a home program, depending on the needs of the Student and his family and Parents was also discussed, but no specifics of such a program were outlined.

17. The ABA/discrete trial instruction program would be delivered initially by the Board's ABA supervisor and then a trained paraprofessional, experienced in delivering such a program. Some consultation services would be provided by the Eden Institute, which provides services to students with autism and specializes in discrete trial training, and applied behavioral analysis by Ruth Eren, Eden's then-representative in Connecticut, and by Marianne Kennedy, a speech and language pathologist, with specialization in augmentative communication. (Exhibit B-30; Testimony of Ms. B. and Director of Pupil Services).
18. The Parents rejected the program proposed by the Board, indicating that they had tried an "eclectic" program before for the Student and it had not been successful. They did not ask the Board to provide any additional services or to change any of the services offered, but did request that the Board fund the program at CCCD which had begun on January 4. It was agreed that the Board would undertake evaluations of the Student, including a physical therapy evaluation, since he was due for a triennial, and also that members of the team could observe the Student in his program at CCCD. (Testimony of Mother; Exhibit B-30, pp. 2-3).

19. The Board performed three evaluations in the Student's home: a Developmental History, an Educational Evaluation, including a speech and language evaluation, and an Occupational Therapy Evaluation. In addition, a Physical Therapy Evaluation was conducted at the Board's school, and Ms. B. and the special education coordinator observed the Student at CCCD. These reports were discussed at the next PPT meeting, held on June 12, 2000. The educational evaluation indicated that the Student was performing overall developmentally at the 26 month level. The occupational therapist reported his deficits in sensory processing "particularly in the areas of sensory defensiveness, modulation and processing of vestibular and proprioceptive information. Attention, postural control, visual and fine motor skills, along with motor planning abilities are also areas of concern". Occupational therapy services, along with the implementation of strategies for "a sensory diet to allow for better attention and encourage optimal performance throughout his school day" were recommended. The physical therapist reviewed her evaluation which reflected the student's deficits in the gross motor area. (Exhibits B-35, 39, 41, 44, 42). The Parents agreed that the evaluations generally accurately described their son. (Exhibit B-53, p.3; Testimony of Mother).
20. The draft goals and objectives were very similar to those previously presented at the January PPT, with additional ones developed by the speech and language pathologist, occupational therapist, and physical therapist (Exhibit B-52). The program offered by the Board at the June 12 PPT meeting for the 2000-2001 school year is also substantially similar to that offered at the January PPT, (see Finding of Fact # 14), with an additional half-hour of Parent counseling, one hour per week of physical therapy and one hour per month of physical therapy consultation services. (Exhibit B-53). The previously-developed Behavior Management Plan would be implemented, if agreed to by the Parents. (Exhibit B-30, pp. 39-40). In addition, the new IEP provided for an Extended School Year consisting of four hours a day, five days per week, for six weeks. The Student would be assigned a 1:1 paraprofessional, would receive two hours/day of discrete trial instruction, 1 and 1/2 hours per week of speech and language therapy, one hour per week of occupational therapy and 1/2 per week of direct physical therapy, with one hour/week of PT consultation.
21. The Parents, who were accompanied by a legal representative at the June 12 PPT meeting, did not make any requests regarding the programming or services offered by the Board for the Student either for the summer or the 2000-01 school year. They did ask for the Board to pay for the Student to attend CCCD. (Exhibit B-53; Testimony of Mother and of Ms. B). They had signed a "Letter of Agreement for Privately Funded Placement" with CCCD for the 2000-01 School year on June 6, 2000. (Exhibit B-70)
22. The program offered by the Board was to be delivered in a self-contained classroom at one of the Board's elementary schools, in a wing with

kindergarten and first graders. The teacher would have been Ms. B., who has completed all course work toward a Doctorate in Education, including having completed an independent study on research on autism, and has extensive training and experience working with children with serious behavioral problems, including children on the autistic spectrum. There are four teaching assistants in the class. Like other members of the Board's special education staff, Ms. B. has had training from the Eden Institute on "Behavioral Teaching Strategies", with a focus on Applied Behavioral Analysis. As of the time of the hearing, there were five children in Ms. B.'s class, ranging in age from 5-10 years, including children on the autistic spectrum and multiplidisabled children. Some had begun by spending all their time in the self-contained program, but now all spend at least some time in a mainstream situation - i.e. recess, lunch, "morning meeting", art or computer class. Ms. B. has the flexibility to gradually introduce the students to interaction with typical peers, when they are ready. She emphasizes a transdisciplinary model, with a great emphasis on language development, and many opportunities for generalization. (Exhibit B-57; Testimony of Ms. B and of Speech Pathologist).

23. The ABA portion of the Student's program, as of September 2000, would have been implemented by the Board's ABA supervisor. She would have delivered the discrete trial instruction directly to the student, with the paraprofessional observing, until the paraprofessional was sufficiently ready to deliver the instruction. The ABA supervisor would continue to have responsibility for overseeing his ABA program, including working with Eden consultants, who visit the school approximately once a month for several hours. This Student would have been the only student in his age group receiving discrete trial instruction; however, there are several younger children receiving it. (Testimony of ABA Supervisor).
24. Since moving to Connecticut, the Student has continued to manifest complex, difficult behavioral issues at school and in the home, with some periods of deterioration and some periods of perceived improvement. (Testimony of Mother, CCCD Principal, CCCD Assistant Director of Special Education, and CCCD Behavior Analyst; Exhibit B-42).

CONCLUSIONS OF LAW AND DISCUSSION:

1. Both sides agree that this child with severe autism has significant needs. He is qualified to receive a free appropriate public education ("FAPE") as a student who is eligible for special education and related services under the provisions of Connecticut General Statutes sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401 et seq.
2. In determining whether a Board has provided FAPE, the Supreme Court has ruled that a twofold inquiry is required: 1) have procedural requirements

been met and 2) is the student's individualized educational program developed through the IDEA procedures reasonably calculated to provide educational benefit? Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 206-207 (1982). See also Mr. and Mrs. J.S. v. Norwalk Bd. of Educ., Civ. No. 97CV01445 (EBB) (D. Conn. 1999) which confirms that the two-pronged approach of Rowley is still the rule. Since Rowley, Courts have held that individualized educational programs offered to children with disabilities must provide more than a trivial or de minimis educational benefit. See Mrs. B. v. Milford Board of Education, 103 F. 3d 1114, 1121 (2nd Cir. 1997), where the Court cites language from Hall v. Vance County Board of Education, 774 F. 2d 629, 636 (4th Cir. 1985) ("Clearly, Congress did not intend that a school system could discharge its duty under the (IDEA) by providing a program that produces some minimal academic advancement, no matter how trivial", and adds, "Of course, a child's academic progress must be viewed in light of the limitations imposed by the child's disability".) However, in Connecticut, there is no requirement under IDEA that the appropriate education must be one that maximizes the potential of the disabled child. Walczak v. Florida Free Sch. Dist., 142 F.3d 119, 130 (2d Cir. 1998), quoting Rowley, supra, at 197, n. The statute guarantees an appropriate education, not "one that provides everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 (2d. Cir, 1989). In Blackmon v. Springfield R-XII Sch. Dist., 31 IDELR 132 (8th Cir. 1999), the Court recently noted that although the IDEA mandates individualized appropriate education for disabled children, it does not require a school district to provide a child with the specific educational placement that her parents prefer. See also Steinmetz v. Richmond Community School Corporation, 33 IDELR 155 (D. Ind., 2000).

3. In addition, the law expresses a strong preference for providing education in the least restrictive environment for each child. See, e.g., 34 C.F.R. 300.550 (b) which provides:
"Each public agency shall ensure - (1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are non-disabled; and (2) That special classes, separate or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."
4. Burlington School Committee v. Massachusetts Department As set forth in of Education, 105 S. Ct. 1996 (U.S. 1985), in order for the parents to be reimbursed for a unilateral placement, the program offered by the LEA must be found to be inappropriate to the student's special education needs, and the private school program must be found appropriate. A private school selected

by parents may be appropriate for an individual unilateral placement, even if it does not meet the standards for state approval for special education placements by public school districts. Florence County School District Four v. Carter, 114 S. Ct. 361 (U.S. 1993). These principles have been incorporated into 34 C.F.R. Section 300.403(c).

5. In this case, there is no dispute that the procedural requirements of the Act were met. When the Board was notified of the Student's impending move to the district, it took timely and reasonable steps to review the voluminous evaluative materials on the Student provided by the Parents, and to conduct an observation of the Student at his existing placement in New York. If the Student had begun the Board's program on January 4, 2000, instead of CCCD's, the Board could have implemented the IEP that was then in place for him on a temporary basis, while the Board personnel prepared their own draft goals and objectives and developed their own proposed program. The fact that the PPT meeting at which the new proposed IEP was presented was not held until January 21 was due in part to scheduling issues of counsel, including the Parent's counsel.
6. The Board did offer an appropriate program for January-June, 2000 and for the 2000-2001 school years. The Report of the Connecticut Task Force on Issues for the Education of Children with Autism (1996 and 1998) recommends the following components for "best practice" programs for children with autism:
 1. Earliest intervention (not at issue in this case; the Student was six when his family moved to the district and had already been receiving services, including ABA therapy, for several years)
 2. Parent involvement
 3. A focus on social interaction and communication
 4. Intensive programming
 5. Direct teaching within a structured setting
 6. Programming for generalization
 7. Specifically-trained personnel
 8. Planned integration with typical peers

The Board's program more than meets these criteria. The Board witnesses who would have been working with this Student demonstrated their professionalism. They are clearly well-trained and experienced and appeared to have a genuine understanding of the needs of this child, based on their direct observations of him in various settings and on his voluminous file. They are cognizant of his severe behavioral issues and need for constant one/one supervision and structure, but they also perceive potential strengths that have not yet been sufficiently developed. In addition to the Special Education teacher, the ABA Supervisor, and the 1:1 paraprofessional, the Student would have been working with experienced occupational, physical, and speech and language

therapists. There was persuasive evidence that he could benefit from such services, including from reports from professionals who had previously worked with him, and testimony from some of the witnesses presented by the Parents (Dr. McCarton and Ms. Sinclair). Social work and psychological services would also have been available, as would consultation services of outside ABA and speech and language experts. The evidence showed that the proposed program would have been intensive, with a strong emphasis on communication and the opportunities for social interaction. (However, as ordered below, at least two more weeks of summer services should be added.) The Board clearly has a commitment to the value of discrete trial instruction as one of the methodologies to be used with children with autism and this Student's IEP provided for 2 and 1/2 hours per day of such instruction, plus one-half hour of generalization. Other opportunities for direct teaching and for generalization would have occurred throughout the day. There would also have been opportunities for very gradual interaction with and the potential for some integration with typical peers as well as the opportunity to interact with and learn from other disabled children who have different strengths and weaknesses. There would be systems in place for parental involvement and communication between the parents and the school. As ordered below, if the student is placed in the Board's program, the PPT should re-convene to plan a more specific home program, based on the requests of the Parents and the needs of the student.

In reaching the conclusion that the Board offered FAPE in the least restrictive environment, due weight was given to the testimony of Dr. McCarton who, in preparation for her testimony at this hearing, observed the student at CCCD in August 2000 and observed the Board program in September. Dr. McCarton was in favor of the placement at CCCD. However, she noted that during her observation of the Student at CCCD, she witnessed behavioral "meltdowns" on his part. She was of the opinion that these behavioral issues are more a function of the disorder itself than of the therapies used or the location where services are delivered. (The witnesses from CCCD did not agree with this opinion). With regard to the Board's program, despite her preference for the CCCD program for this student, Dr. McCarton was favorably impressed by Ms. B. and the Board's ABA supervisor, the set-up of the classroom, the program that she observed, and agreed that the Student would benefit from speech and language and occupational therapy. However, she expressed her concerns about an incident between an aide and a special needs student that she observed during her visit and her concerns as to whether there would be enough structure and supervision for this Student. The Hearing Officer is satisfied that the Board's witnesses sufficiently responded to these concerns during their testimony.

7. It was clear to the Hearing Officer that when the Parents notified the Board of their impending move to the District, they already planned to send their child to CCCD as soon as possible. The Mother was candid in her

testimony that the Parents were not prepared to accept any Board program that did not provide 1:1 ABA therapy to him, all day, every day. They chose the town because of its geographical location and the future educational needs of their infant daughter. They knew that they had to have a PPT meeting in order to have the town pay for the placement at CCCD. They also had some interest in knowing what kind of program the Board offered, because if the town did have a program that would work for him in the future, he could go to it at a later time.

The Hearing Officer invited counsel for both sides to brief the issue as to whether there was an implied good-faith obligation on the Parent's part to at least try out the Board's placement before rejecting it and asking for reimbursement for their unilateral placement. After considering the arguments made by both sides, and her own research, the Hearing Officer concludes that there was no such obligation. The Parents did cooperate in making available existing files on their son, and giving the Board the opportunity to observe him and conduct their own evaluations, in order for the Board to plan its program. It would have been helpful but not mandatory if the Parents had given more input as to how they thought the Board's program could be improved, especially since there was apparently no disagreement as to the appropriateness of the goals and objectives.

As discussed in paragraph 6 above, the Board's program on its face was "reasonably calculated" to provide educational benefits to him. Although the Task Force Report does not carry the force of law, it does reflect the consensus of many experienced experts in the field. As the authors note at p. 45: "...there is no single method that guarantees success in the education of children with autism. In fact, the diverse needs of this population often dictate a more eclectic approach to educational programming. One is cautioned, however that the term eclectic is not meant to sanction haphazard, watered-down methodology. It is intended to underscore the need to tailor programming to the individual needs of the child by selecting techniques from different approaches that have known effectiveness for children with autism." The Parents and the educators from CCCD who testified are apparently not in agreement with this view, at least insofar as this Student is concerned, and want continuous intensive ABA programming for him. However, as the Court in Tucker v. Calloway, 27 IDLER 599, 603 (6th. Cir. 1998) noted, quoting from Rowley, supra, 458 U.S. at 208 : "(O)nce a court determines that the requirements of the Act have been met, questions of (educational) methodology are for resolution by the States" . It then held at 604: "(The Parents) are not entitled to dictate educational methodology or to compel a school district to supply a specific program for their disabled child."

Had the Student been placed in the Board's program, how he actually fared in the program would have been an indication of whether the program, as implemented, was appropriate for him and whether it would lead to progress that was more than de minimis, recognizing the nature of his disability. The

Hearing Officer can certainly understand that concerned parents with a child with substantial needs may choose not to place their child in a program in which they do not believe and stand by and wait to see how he does in that program. However, by not affording an opportunity for the Student to participate in the Board's program, they risk making it easier for the Board to meet its burden of proving the appropriateness of its program. This burden was more than satisfied in this case where the Board offers a well-researched, thoughtful, intensive, transdisciplinary program that was specifically designed to meet the needs of this child, incorporating discrete trial instruction, a strong emphasis on communication and social interaction, necessary related services, cooperation between home and school, and opportunities for generalization and contact with peers, all to be implemented by a well-trained staff.

FINAL DECISION AND ORDER:

1. The Board offered an appropriate program and placement to the student for the January-June partial school year.
2. The Board offered an appropriate program and placement to the Student for the 2000-2001 school year.
3. If the Student is placed in the Board's program for the remainder of this school year, or in the course of developing future IEPs, the PPT shall re-convene to develop a more specific home program for the Student and shall include in the IEP a provision for at least eight weeks of extended year programming. This portion of the Order does not mean that the previous IEPs were defective.
4. Having found that the Board offered FAPE in the least restrictive environment to this Student for January - June 2000 and the 2000-2001 school years, the Hearing Officer makes no findings as to whether CCCD offers an appropriate program.
5. The Parents are not entitled to reimbursement for costs associated with their unilateral placement of the Student at CCCD during the January - June 2000 partial school year, or the 2000-01 school year.

COMMENT ON THE CONDUCT OF THE HEARING:

Towards the close of the evidentiary portion of the hearing, during a discussion of the briefing schedule, Counsel for the Parent asked whether specific transcript citations should /could be included in the briefs. The Hearing Officer responded that she herself did not have a copy of the transcript, but would be relying on her detailed notes of testimony taken throughout the proceedings. She indicated that therefore it would not be helpful to her and unnecessarily time-consuming for counsel to include

specific citations in the initial briefs. However, the Hearing Officer stated that in the reply briefs, if counsel took specific issue with testimony referred to by opposing counsel, they could include copies of relevant portions of the transcript, so long as the context was clear and all the testimony of a particular witness on the disputed issue was included. Neither counsel submitted any excerpts from the citations and both submitted excellent initial and reply briefs.