

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Trumbull Board of Education

Appearing on behalf of the Parent: Attorney Lawrence W. Berliner
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Appearing on behalf of the Board: Attorney Michelle C. Laubin
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Appearing before: Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Were the Individualized Education Program (IEP) and the placement offered by the Board at the May 29, 2003, Planning and Placement Team (PPT) meeting appropriate to Student's special education needs in the least restrictive environment?
2. Is the placement offered Student by the Board reasonably safe, in terms of indoor air quality, for Student?
3. If not, is placement at Villa Maria for the school year 2003-2004 appropriate?
4. Is the Board responsible for funding Student's placement at Villa Maria?
5. Is the Board responsible for reimbursement of assistive technology costs to the Parents during the 2002-2003 school year, per a prior settlement agreement, and for continuation of assistive technology services in 2003-2004?
6. Did Student require assistive technology in 2002-2003 and/or 2003-2004, in order to benefit from special education?
7. Must the Board produce additional information/documentation concerning Environmental Air Quality inspections?

8. Is Lindamood-Bell instruction, an educational methodology, necessary for Student?
9. Does a special education hearing officer have the authority to enforce a prior settlement agreement between the parties?
10. Has the Board offered Student a safe school environment, pursuant to Section 504 of the 1973 Rehabilitation Act?

PROCEDURAL HISTORY:

This hearing was requested by a letter dated August 7, 2003, and received at the State Department of Education on August 11, 2003. The undersigned was appointed as Hearing Officer on August 12, 2003. The Parents requested that the Hearing Officer hear this case with another case, concerning Student's sibling, since many of the facts and witnesses would be the same for both cases. The Hearing Officer agreed to this plan at the pre-hearing conference, which was held on August 21, 2003, cautioning the Parents that the outcomes for the two children might not be the same.

The hearing convened on September 22, and continued on September 30, October 1, 20 (half day), and 23, November 3, 11, 13 (half day), 14 and 19, December 12, 16 and 18, 2003, and January 21 (half day) and 27, and February 26, 2004. A hearing session scheduled for January 5, 2004, was postponed due to the illness of the Hearing Officer, and a hearing session scheduled for February 6 was cancelled because schools were closed after a snowstorm. The Hearing Officer received the Board's brief on March 13 and the Parents' brief on March 14, 2004, and the Hearing Officer accepted responses and closed the record on March 22, 2004.

At the opening of the hearing, the Parents' attorney moved that the deadline for mailing the final decision and order for this case be extended to thirty days after the final session of the hearing. There was no objection from the Board, and the Hearing Officer so ordered. (Tr. 9/22/03) However, to conform to the requirements of Sec. 10-76h-9(c), R.C.S.A., the Hearing Officer also granted specific extensions of the deadline from September 25, to October 25, November 24, and December 24, 2003; and January 23, February 22, March 23, 2004, and April 22, 2004, to accommodate the Parties' requests for additional hearing sessions and the filing of briefs and responses. As additional hearing dates were scheduled and the deadline was extended, these matters were entered on the record of the hearing.

The Board moved at the September 22, 2003, hearing session that the Hearing Officer lacked authority to enforce a prior settlement agreement between the Parties, and that therefore an issue concerning services arguably under the settlement agreement should be dismissed. The parties submitted briefs regarding this issue: the Parents' brief was dated September 25, 2003, and the Board's, September 26, 2003. (Exhibits HO-10 and HO-

10a) At the September 30, 2004, hearing session, the Hearing Officer ruled that she lacked authority to enforce a prior settlement agreement, and modified that issue to:
Did Student require assistive technology in 2002-2003 and/or 2003-2004, in order to benefit from special education?

The Parents moved on September 22, 2003, that the Board be ordered to provide indoor air quality test results from the elementary school proposed for Student. The Board responded that no further tests had been done and that the Board's experts had reported 1) there is no professionally recognized standard for safe indoor air quality and 2) that a child who is hypersensitive might have allergic symptoms in a room that tested well. The Board also commented that no indoor air quality test results had been provided for Villa Maria, the placement selected by the Parents. It was determined that no additional tests had been done and that all reports relating to the school Student had attended were part of the record of the hearing. The Hearing Officer deferred a decision on whether to order additional testing (Tr. 9/22/03).

The Parents moved on September 22, 2003, that the Board be ordered to reimburse the cost of Student's placement at Villa Maria as the "stay put" placement pending the outcome of the hearing. The Board argued that Villa Maria was not a "stay put" placement, since placement had been initiated by the Parents and there was no direct participation by the Board. The Hearing Officer deferred a decision on whether to order on-going reimbursement (Tr. 9/22/03).

The Board moved on September 22, 2003, that it be given access to any air quality test results from Villa Maria, testing done under the supervision of Student's Pediatric Allergist, and to that specialist's medical records of Student in advance of his testimony, scheduled for September 30. The Parents argued against this motion. The Hearing Officer responded by FAX dated September 24, ruling that while she had asked that all witnesses bring whatever records they had when they appeared, that did not mean that the Student's medical file would be automatically entered as evidence in the case. Specific documents in the medical file used by the witness in testimony are subject to inspection by opposing counsel at the time of the testimony, and any documents used in testimony could be offered in evidence subject to the usual requirements (Ex. HO-9; Tr. 9/22/03, 9/30/03).

After providing testimony on September 30, 2003, Student's Pediatric Allergist reported that he had suffered from symptoms of poor air quality in the hearing room, and asked that the hearing be re-located for his return on November 19, 2003. On November 7, 2003, the Parents' Attorney asked that all future hearing sessions be held at another location because of the air quality in the Board's conference room. Although no additional evidence concerning the air quality of the room was submitted by either party, the Hearing Officer requested that the Board find an alternative hearing room, citing 34 C.F.R. §300.511(d). Subsequent hearing sessions were held in a Board elementary school.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993)

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

SUMMARY:

Student has been identified as other health impaired (OHI) and in need of special education. Student suffered allergic reactions, allegedly to the Board's elementary school, and received homebound instruction at the request of his Pediatric Allergist. After testing and modifications to reduce molds that were discovered in the building, the Board requested that Student return to school. Student's Pediatric Allergist opposed this return, and the Parents requested a hearing concerning placement for the 2002-2003 school year. This dispute was settled, and Student enrolled at Villa Maria, a private school approved for special education placements by the State Department of Education. On May 29, 2003, the Board proposed a placement for 2003-2004 at a new elementary school; the Parents preferred that Student continue at Villa Maria at Board expense, and requested a hearing.

FINDINGS OF FACT:

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

1. Student is now nine years of age (birthdate March 31, 1995). Because of his allergies and asthma, Student's Parents have provided emergency medications to be taken at school if necessary. Student also carries an epi-pen, emergency treatment for anaphylaxis. (Ex. B-2-3, B-39)
2. Student was referred to a Pediatric Allergist, who first saw him on June 2, 1997. This specialist has almost thirty years of experience in his field, is Board-certified in pediatrics and allergy and immunology. Under the care of his Pediatrician and Pediatric Allergist, Student received allergy injections starting in the spring of 2001 and a variety of medications to treat his allergic symptoms. Some of these medications also had side effects that may have impacted on his classroom performance. (Ex. P-15; Testimony, Pediatric Allergist, Tr. 9/30/03; Tr. 11/19/03)
3. An undated individualized health care plan listed Student's problems:
 - History: allergy – milk, corn, wheat, soy, eggs, peanuts
 - Potential problem/nursing diagnosis: potential for allergic and/or anaphylactic reaction to bee or insect stings; i.e., shortness of breath, wheeze, cough, chest tightness, dizziness, faintness, swelling of lips, mouth, tongue, throat, or itching of

- throat, mouth, lips. Difficulty swallowing, nausea, vomiting, cramps, diarrhea, hives, rash, weakness, apprehension. (Ex. B-2-8)
4. The Board had consulted AMC Technologies about indoor air quality questions raised at the elementary school attended by Student. On March 15, 2001, AMC inspected several areas of the building and conducted testing, including both air and carpet dust sampling, and submitted a report to the Board dated April 12, 2001. AMC recommended repair of any roof leaks, cleaning or removal of carpet, clean or replace all air filters, take steps to improve air circulation, and further investigation of the gym. The AMC report also listed several types of fungal spores found in the areas tested. (Ex. B-11)
 5. AMC did some follow-up sampling on May 15, 2001, focusing on specific species of molds. Their June 4, 2001, report noted that there are “no widely accepted protocols or regulations” for this type of sampling. AMC recommended replacing filters on air handling units (AHU) and cleaning air ducts regularly. The areas around AHUs should be kept clean and dry, and roof leaks should be repaired immediately. (Ex. B-15)
 6. Because Student’s allergies were aggravated during gym class, his Pediatric Allergist requested by letter dated February 13, 2001, that he not participate in gym for the remainder of the school year. (Ex. B-5)
 7. On March 1, 2001, Student’s Pediatric Allergist described his allergies as “severe”, reported that Student had had hives and asthma at school, and recommended that he receive homebound instruction. Similar requests, dated April 10 and April 12, 2001, were sent to the school. (Ex. B-7, B-9, B-10)
 8. At the beginning of Student’s first grade year, 2001-2002, his Pediatric Allergist recommended that he be excused from gym because of his allergies. The Pediatric Allergist also suggested that an air filter be installed in Student’s classroom; carpeting and underlayment be removed; and ceiling tiles affected by roof leakage be replaced. (Ex. B-19, B-20)
 9. A §504 plan was developed for Student on September 5, 2001. This plan notes that Student “tested negative for all allergies except molds and peanuts”. Breathing problems were listed, as well as concern that his medication affects his ability to attend and focus. Student was provided with Early Intervention support in reading. (Ex. B-21)
 10. Student was removed from school on or about September 11, 2001, and his Pediatric Allergist requested that homebound instruction be provided because his allergic symptoms appeared to be related to the school building. Instruction was provided at the Town Library. (Ex. B-23, B-24; Testimony, Parent, 9/22/03)
 11. Student was referred for special education on November 16, 2001. His Parent requested testing because of suspected learning disabilities. Other relevant information provided at this time was:

Severe allergies – can impact his breathing. Had great difficulty attending kindergarten. Medications (zyrtec/benedryl) appear to have affected his attention and focus. Patanol eye drops, Flonase nasal spray, saline (ocean drops), EpiPen when necessary.

His teacher reported that:

Although Student has difficulty focusing on independent tasks, he was always excited and enthusiastic about being in school. Student often asked for assistance before and during written/independent activities. Redirection was/is necessary many times throughout the day. (Ex. B-28, B-29)

12. A psychological evaluation was performed on December 19 and 21, 2001, and January 7, 2002. The summary from this evaluator:

Currently, [Student] is receiving homebound instruction and takes medication for his allergies. He has a history of difficulties with restlessness, distractibility, and impulsivity, and these behaviors were observed throughout the assessment. Therefore, test results should be viewed with caution, as they may not be an accurate reflection of [Student's] potential at this time. Current intellectual functioning is within the low average range. Strengths are noted in vocabulary and in his ability to attend to visual detail. Weaknesses are noted in [Student's] ability to process auditorily presented information, as well as with tasks requiring visual-motor coordination. Graphomotor skills also appear delayed.

A list of recommended classroom modifications was provided. (Ex. B-34)

13. A speech and language evaluation on January 8, 2002, found Student to be in the average to low average range. (Ex. B-35)

14. On December 11, 2001, the Board's Resource Teacher gave Student some standardized achievement tests and a curriculum based assessment. Her summary:

In overall mathematics and spelling skills, [Student] performed in the low end of the average range (standard scores 91 and 90, respectively). In overall reading skills, [Student] performed just below the average range (standard score 87). When we look at the curriculum-based assessment, we see that [Student] knows most of the letter names and sounds. He spells consonant-vowel-consonant words with short a and short o, but has not yet demonstrated an understanding of the other short vowels, either in reading or spelling. His acquisition of reading sight words and written skills are well below what one would expect of a student in the fourth month of first grade. [Student's] performance in reading cloze activities is inconsistent. It seems as though [Student] has acquired basic first-grade mathematical skills. (Ex. B-36)

15. The Planning and Placement Team (PPT) convened on January 16, 2002, to consider Student's evaluations. The PPT found Student eligible for special education as other health impaired (OHI) and developed goals in reading, spelling, and handwriting. Homebound instruction of ten hours a week would continue, and consultation between the resource teacher and Student's tutor would be provided. (Ex. B-39)

16. The PPT reconvened on January 22, 2002. Student's Pediatric Allergist had confirmed testing of the resource room showed lower mold spore counts, and a plan for Student's return to school was developed. He would have a partial day diagnostic placement with tutoring to continue, although a full day program was an option. The PPT asked for a second medical opinion and also a psychiatric evaluation. Parents would let the school know after a few days to think about options. (Ex. B-40)

17. The Board consulted with an Industrial Hygienist, who inspected the elementary school building and conducted tests to measure indoor air quality. The Industrial Hygienist has a B.S. in biology with specialization in environmental studies and chemistry, and he is certified as an industrial hygienist by the American Board of Industrial Hygiene. He has over 25 years of experience in this field. His report was sent to parents of children at the school with a cover letter from the Principal and the Superintendent of Schools on February 1, 2002. The Industrial Hygienist reiterated that there are no federal or state standards for allergens in schools and that exposure to allergens could be minimized but not completely eliminated. (Ex. B-44, B-78; Testimony, Industrial Hygienist, Tr. 12/18/03)

18. The Industrial Hygienist recommended:

- Provide faculty, staff and parents with the results of the survey of the building.
- Keep at least two windows open in each classroom when the school is occupied and/or open windows periodically to bring in fresh outside air.
- Remove the carpets in classrooms that have been identified with high fungal, bacterial, or dust mite allergen levels.
- Continue working on implementing earlier recommendations (cleaning heater fins, cleaning dust under gym stage, etc).
- Implement a formal cleaning plan that lists the cleaning tasks that will be performed along with the frequency for completion.
- Implement a formal building maintenance program that identifies the things that need to be performed to keep the building in good condition along with the frequency of completion.
- Remove the soft porous building materials in the Reading Room that were repeatedly exposed to moisture from roof leaks.
- Evaluate the extent of soft porous building materials affected by previous roof leaks and remove microbially impacted materials.
- Have staff and parents of students contact the school nurse if symptoms are experienced that may be related to the air quality at the school.

He recommended performing a follow-up evaluation if these recommendations have been completed and symptoms continue to be reported. (Ex. B-44, B-78)

19. After environmental testing had been completed, a meeting was held on February 6, 2002, giving parents a chance to meet with and question the Industrial Hygienist who conducted the inspections and planned the clean-up for the building. Student's Parents attended this meeting. (Ex. B-44; Testimony, Parent, 9/22/03)

20. The PPT met on February 1, 2002, to review Student’s IEP and to plan for his transition back into school. A schedule was developed for a partial day with tutoring support. Student would receive instruction in a resource room that had been remediated and equipped with an air filter. (Ex. B-45)

21. Parents arranged for an independent evaluation of Student, which was performed on February 4, 2002. This consultant has experience as a language arts teacher and a school reading consultant. She has a B.S. in education, an M.S. in reading, and a sixth year degree in educational leadership. The Parents’ Educational Consultant made fifteen specific recommendations for Student’s IEP, including specific techniques and programs for reading, occupational therapy (OT), speech/language services (S/L), assistive technology (AT) and classroom modifications including extended time for assignments and tests. (Ex. B-46, HO-8; Testimony, Educational Consultant, Tr. 10/1/03)

22. Test scores obtained by the Parents’ Educational Consultant included:

<u>Woodcock Diagnostic Reading Battery</u>	Standard Score	Percentile Score
Clusters		
Broad Reading	63	1
Reading Skills	80	9
Oral Comp[rehension]	107	69
Subtests		
Letter-Word Ident[ification]	75	5
Word Attack	91	28
Passage Comprehension	66	1
Oral Vocab[ulary]	103	58
Listing Comprehension	112	78
Memory Sentences	64	1
Visual Matching	72*	109*

*Possibly scores were reversed in copying.

Weschler Individual Achievement Test (WIAT)

Subtests	Standard Score
Mathematics Reasoning	100
Numerical Operations	81
Spelling	80

Comprehensive Test of Phonological Processing (CTOPP)

Subtests	Standard Score	Percentile
Elision	8	25
Rapid Color Naming	0	0
Blending Words	8	25
Sound Matching	8	25
Rapid Object Naming	8	25
Memory for Digits	8	25
Nonword Repetition	6	9
Composites		
Phonological Awareness	87	19

Phonological Memory	82	12
Rapid Naming	64	4 (Ex. B-46)

23. Student returned to school on or about February 5, 2002. The School Nurse recorded the conditions for his return:

Classes to be in resource room for ½ day only. Spoke with Mother to review and update medications, medication orders, and allergy management plan, [and] individualized nursing care plan.

His individualized emergency care plan was revised and updated. (Ex. B-2-7, B-48)

24. A classroom teacher report dated February 12, 2002, after Student had been back in school for a week noted:

Math – chapter 5 test – 100%; Ch. 6 Quiz – unable to complete due to trouble focusing.

[Student] was easily distracted during his classroom time, particularly during activities involving reading.

[Student] has been handing in a good amount of classwork & homework. Often his tutor did the written component for him; in class, he often needed directions repeated/restated to stay on task.

[Student] continues to hand in a good amount of classwork & homework.

Recently this seems to be in a more timely fashion.

I have often received notes on assignments indicating [Student] needed more time to complete due to difficulty focusing.

[Student] could benefit from additional handwriting practice. He seems to do a more focused job when less writing is required.

[Student] was always enthusiastic about being in school when he attended the classroom. The other students are anxious for him to return!

Classroom modifications for [Student]: preferential seating, restating/repeating directions, check work in progress, modified work, extra time, additional 1 on 1 instruction, modified reading program. (Ex. B-50)

25. As Student’s family and his Pediatric Allergist worked to determine the cause(s) of his difficulties, modifications were made in his diet, the family moved a pet dog out of the house, and indoor air quality tests were performed in several places by the Parent under the supervision of the Pediatric Allergist. The family changed the church they attended, and stopped visiting homes that appeared to exacerbate Student’s symptoms. (Testimony, Parent, Tr. 9/22/03)

26. Testing of air samples at the Board’s school by Parent on January 16, 2002, with equipment provided by Student’s Pediatric Allergist, showed that two special education rooms with air purifiers had fewer than 1000 spores per cubic meter, but several other areas of the building had mold counts significantly higher. (Ex. B-53)

27. By letter dated February 19, 2002, Student’s Pediatric Allergist reported that Student seemed to be doing well, and that “current classroom locations should not be changed for the next 30 days”. (Ex. B-51)

28. The PPT convened on February 25, 2002, to review Student's diagnostic placement. Parents' Educational Consultant attended this meeting, with both Parents. Her evaluation report was not ready on this date. The Educational Consultant described Student in the testing situation as very inattentive and motorically active, answering impulsively. His test results were inconsistent with some of the scores obtained by the school. The PPT record listed six recommendations from the Educational Consultant. The PPT recommended evaluations in OT and AT, and administration of the BASC to look at attention issues. Parents consented to these evaluations. The PPT again requested a psychiatric evaluation, which the Parents would consider. (Ex. B-52)

29. By letter dated March 5, 2002, Student's Pediatric Allergist reported that a physical exam on March 4 showed the return of allergic symptoms. He described air quality testing performed at the school by Parent, under his supervision. He stated that Student needed a safe school environment, and that homebound tutoring should be re-instated. (Ex. B-53, B-54)

30. The PPT convened on March 13, 2002, to review the diagnostic placement. Parents' Educational Consultant attended this meeting, with Parent. Although it appeared to the Educational Consultant that her recommendations were rejected by the PPT, there was discussion of further testing of Student. Details for OT, AT and S/L evaluations were discussed, with evaluations to be performed at the library, where Student was receiving his homebound tutoring. Student was reported to be making good progress on his goals, and a behavior chart had been used successfully during his return to school. Parents would fill out a BASC rating sheet, to be reviewed with those completed in school. The PPT again requested consent for a psychiatric evaluation, which was deferred by Parent. PPT members questioned the content and conclusions of the independent evaluation. Questions also arose in testimony concerning the impact on Student's testing scores from all this testing being done on one day. Scores were compared with prior and subsequent testing, and the issue of "practice effect" was raised. The Board also raised the ethical issue of an evaluator who also sells the software she recommends. Parents requested homebound instruction. The PPT requested more clarification of Student's medical status. (Ex. B-46, B-58, HO-8; Testimony, Educational Consultant, Tr. 10/1/03; Testimony, School Psychologist, Tr. 11/11/03; Testimony, Elementary School Special Education Teacher, Tr. 1/27/04)

31. By letter dated March 14, 2002, Pediatric Allergist's partner reported on Student and requested "a minimum of 3-4 weeks or longer [of homebound instruction] until a suitable environment becomes available". (Ex. B-59)

32. The PPT convened on March 15, 2002, to continue discussion of Student's placement. Parents' Educational Consultant attended this meeting with Parent. Appointments had been made for evaluations. The PPT offered a placement in a different school building, but refused Parent's request for air quality testing of that building prior to Student's actual enrollment. The PPT offered several options for a return to school, and requested a second medical opinion from a mutually agreed

physician before agreeing to homebound instruction. (Ex. B-60; Testimony, Parent, Tr. 9/22/03; Testimony, Educational Consultant, Tr. 10/1/03)

33. At the March 15, 2002, PPT meeting, there was discussion of Student's "stay put" placement. Parents contended that it was homebound instruction; the PPT felt that it was placement in school. (Ex. B-60; Testimony, Educational Consultant, Tr. 10/1/03)

34. Comparisons of the BASC scales filled out by Parents and by two teachers showed that Parents scored Student higher than the teachers: Parents noted seven areas "at risk" of attention problems, while the teachers noted two. The report of BASC scores recommended that Parents reconsider their reluctance to have a psychiatric evaluation of Student. (Ex. B-61)

35. By letter dated March 26, 2002, another pediatric allergist reported a consultation concerning Student. This allergist was selected by Parents, who also provided Student's health history. This allergist stated that he could not conclusively state that "Student's problems stem from mold exposure in his school". He recommended additional testing of the school and placement in an alternative school. (Ex. B-63)

36. An OT evaluation performed on April 4, 2002, concluded with a summary. Student's visual motor integration and fine motor skills were just within the average range. His functional performance suggested that he has some upper limb speed and dexterity difficulties. His writing showed "an inefficient prehension pattern". OT consultation was recommended to help with handwriting, postural skills and ability to focus. (Ex. B-66)

37. Student's Pediatric Allergist provided several articles from professional journals that are relevant to this hearing.

Santilli, J. & Rockwell, W. (2003). Fungal contamination of elementary schools: a new environmental hazard, *Annals of Allergy, Asthma & Immunology* 90:203-208.

Rudich, R., Santilli, J. & Rockwell, W.J. (2003). Indoor Mold Spore Exposure: A Possible Factor in the Etiology of Multifocal Choroiditis, *American Journal of Ophthalmology*, 135:420-404.

Santilli, J. ((2002). Health Effects of Mold Exposure in Public Schools, *Current Allergy and Asthma Reports*, 2:460-467. (Ex. HO-2, HO-3, HO-5)

38. On April 11, 2002, Parents consented to a second medical evaluation. The Board provided this evaluator with relevant school records, and Parents provided medical records. (Ex. B-68, B-69; Testimony, Parent, Tr. 9/22/03)

39. The Board's evaluation of Student was performed by the Medical Director of the Occupational Medicine Department at Middlesex Hospital. In addition to an M.D. and a residency in family practice, this physician has an M.S. in administrative preventative medicine. He is board-certified in family practice and in occupational medicine. After taking a history from Student's Parents and reviewing medical records provided by

Student's Pediatric Allergist, this physician's report, dated May 18, 2002, summarized Student's physical condition and responded to specific questions raised by the Board.

1. [Student] has significant allergies to milk, house dust, cat and dog dander, soy and also to molds. Of interest is that the IgE levels to molds are either very low or nonexistent, whereas IgE levels to the other allergens mentioned are significantly high. This is important to two reasons. First, in determining the main contributor to this examinee's symptoms, while molds in the environment may be either a contributing factor or perhaps the factor that precipitates his symptoms in the school environment, the other allergens are very important in terms of both inciting symptoms and priming the examinee's immune reaction for episodic symptoms. Secondly, immunotherapy is less likely to be successful when IgE levels are not elevated; this becomes important in terms of any potential success of immunotherapy to molds having a contribution to the examinee's ultimate ability to tolerate molds in the environment.

2. The allergic reactions the examinee may experience upon exposure to the inciting agents can range from mild itching, eczema, runny eyes, runny nose, cough to severe life-threatening urticaria, angioedema and circulatory collapse. Indeed the episodes of angioedema documented by the mother are quite concerning and the child should have Epi pens available at all times in the school environment, the home environment and when traveling. Reactions to any one single allergen cannot be differentiated from reactions to the other allergens on his list.

3. This question is perhaps the most difficult of all to answer in this particular individual. There has been a presumption made that this examinee's allergic reactions in the school are solely related to the mold spores in the school. It is certainly quite possible that the mold spores in the school created the situation of the "straw that breaks the camel's back", whereas the exposure to molds in a primed atopic individual may tip him over into his symptoms.

Other scenarios must be considered as well. For instance, given the examinee's severe allergies to cat and dog dander, as well as milk and to a lesser degree soy, exposure to any of these offending agents in an uncontrolled environment could be enough to tip him over into the severe reactions seen. Exposure to these offending agents must be eliminated in order to have a degree of high certainty that the molds, in and of themselves, are the primary offending agents for his symptoms. For example, seemingly innocuous exposure such as cat or dog dander on a friend's clothing or ingestion of a food or candy with milk products in it (which would include casein and whey) could also contribute to the severe reactions. Clearly, there are concerns about environmental exposure in this individual, and environmental controls should include not only mold spores in the air but controlling potential behaviors and exposures which could result in severe allergic reactions.

Based on the various reports you site[sic], it would appear based on the information that mold levels are significantly high enough in this particular school

setting to be a potential problem for the examinee. I believe that once the remediation is completed, retesting should be performed by a certified industrial hygienist, and I would also recommend that the same certified industrial hygienist, who is presumably neutral in this case, oversee all other testing to make sure adequate controls are in place.

Regarding the amount of allergens necessary to trigger allergic reactions, no one clearly knows how much exposure is necessary. Figures such as 1,000 spores per cubic meter are guidelines and some individuals will react to counts lower than that level, and some individuals may be able to tolerate levels higher than that count. I believe that getting mold counts below 1,000 spores per cubic meter is a reasonable target, and I would recommend that the school attempt to achieve this target prior to allowing the examinee back into the environment.

4. Based on what I see in the individual health care plan for treatment of an allergic reaction, which includes Epi pen and antihistamines, I believe that these are appropriate as written and note that the examinee's pediatrician has signed off on them.

5. I believe that, because of the severity of this examinee's reaction to the environment at the school, allowing him to enter the environment prior to reduction of the mold counts referenced above is inadvisable. Theoretically immunotherapy, if successful, could possibly allow him to come back to an environment in the presence of mold spores, but in the absence of IgE response, I would not be hopeful that immunotherapy would be successful in this case.

6. This situation, i.e. allergies, could continue indefinitely or could go into remission. No one is capable of predicting this examinee's future response, except for the fact that the severe urticaria and angioedema are a concern and portends potential severe responses in the future.

Regarding the heating system, if the heating system is cleaned and filtered, it most likely is not the problem. Rather, it is the absence of fresh air coming into a closed system that allows mold spores to increase. Indoor air quality is directly related to the rate of influx of fresh outside air, as well as the presence of offending agents within the structure of the building.

7. There is no legitimate medical reason that I can ascertain that would preclude the examinee from attending another public elementary school within the school district, as long as the indoor air contains acceptable levels of mold spores.

8. I have no further recommendations for remediation as recommended by AMC and [industrial hygienist] at this time. If the remediation efforts do not significantly reduce the molds, then consideration should be given to look more intently at the building structure itself to determine if perhaps additional sources have yet to be discovered.

This report concluded:

I hope this opinion helps you in dealing with what is a rather complex matter. There is no question that specific individuals are susceptible to indoor air quality that may not affect the general population. It would appear that this examinee is one of those individuals. In addition, he also has very significant allergies to other substances in the environment, most notable food substances and animal dander. To the extent that his diet is controlled, and either exposure to dander or immunotherapy is undertaken for the animal dander allergens, it may be possible that he may be less likely to react to the mold spores. (Ex. B-73; Testimony, Occupational Physician, Tr. 12/16/03)

40. The Occupational Physician remarked on the lack of a scientifically established standard for mold spore counts. He also questioned the appropriateness of a physician without formal training performing indoor air quality testing. He recommended using a certified industrial hygienist for air testing. (Testimony, Occupational Physician, Tr. 12/16/03)

41. The Occupational Physician provided several articles from professional journals that are relevant to this hearing:

Rogers, C.A. (2003). Indoor fungal exposure, *Immunology and Allergy Clinics of North America*, 23.

Bush, R.K. & Portnoy, J.M. (2001). The role and abatement of fungal allergens in allergic disease, *Journal of Allergy and Clinical Immunology*, 107:S430-S440.

Etzel, R.A. (2001). Indoor air pollutants in homes and schools, *Pediatric Clinics of North America*, 48:1153-1165.

Hardin, B.D., Kelman, B.J., & Saxon, A. (2002). Evidence based statements, adverse human health effects associated with molds in the indoor environment, American College of Occupational and Environmental Medicine, www.acoem.org.

(Ex. HO-26, HO-27, HO-28, HO-29; Testimony, Occupational Physician, Tr. 12/16/03)

42. The Board hired a consultant to perform an AT evaluation. This Consultant has a B.A. in secondary school English and an M.A. in special education. She works with school districts, including this Board, to develop supportive technology in the classroom and to train school staff members. The report of her April 25, 2002, evaluation recommended that because of his age, Student continue to work on handwriting with a pencil grip, raised line paper and individualized handwriting worksheets made with *Start Write*. When he has "writing assignments", he should have access to a computer and WriteOutLoud or IntelliTalk with CoWriter 4000. She also recommended *MathPad* and color filters and highlighters. (Ex. B-71; Testimony, Technology Consultant, Tr. 1/21/04)

43. The Technology Consultant did not agree with Parents' Educational Consultant's recommendation of Books on Tape, since Student is still learning to read and needs to build reading skills. She also rejected the use of voice recognition software for Student, finding it unnecessary at this time. (Ex. B-71)

44. A S/L evaluation dated April 9 and 26, 2002, provided the following summary and recommendations:

[Student's] overall phonological awareness skills are below the average range. Main areas of difficulty include sound deletion and substitution at the auditory level, sound-symbol identification and decoding of long and short vowels, consonant and vowel digraphs, r-controlled vowels, diphthongs and CVC + silent e. The findings above do not support the identification of word-retrieval difficulty at this time. However, [Student's] expressive language should be monitored in conversational settings. (Ex. B-72)

45. The PPT convened on June 7, 2002, to review the additional assessments. Parents' Educational Consultant attended this meeting, with both Parents. The PPT added OT consultation to Student's program. Homebound tutoring had progressed and Student had mastered some of his goals. A summer program at the Town Library was proposed for reading. Support for phonological awareness would be provided through a regular education reading program. After discussing the results of the BASC, the PPT commented that more "at risk" behaviors were observed at home, and again requested a psychiatric evaluation, which was rejected by Parents. Parents asked for post-remediation testing of the school, placement in another elementary school after environmental testing, or an out-of-district placement. Parents did accept the summer program. (Ex. B-74)

46. Because of the on-going dispute concerning the safety of the elementary school for Student, Parents requested a hearing concerning Student's school placement for 2002-2003. This dispute was resolved in a settlement agreement. Student was enrolled by his Parents at Villa Maria, a private school approved for special education by the Connecticut State Department of Education, for the 2002-2003 school year. The Executive Director of Villa Maria confirmed that the contract for Student's placement was between Villa Maria and Student's Parents, and that the Board was not involved in the placement. (Testimony of Parent, Tr. 9/22/03; Testimony, Executive Director, Tr. 10/23/03)

47. Student's Parent used equipment provided by the Pediatric Allergist to test the indoor air quality at Villa Maria. Despite several requests, no written report of that testing was offered in evidence at this hearing. (Testimony, Parent, 9/22/03, 10/20/03; Testimony, Executive Director, Tr. 10/23/03)

48. The PPT convened on August 16, 2002, to review air quality and AT reports and to plan for 2002-2003. The Parents' Educational Consultant and Attorney both attended this meeting with Parents: the Board was also represented by their Attorney. The PPT recommended a full-day placement at the elementary school Student had previously attended: this school had had extensive remediation work that the Board believed had solved the mold problem. The PPT noted that air conditioning had been installed in the two resource rooms, and the carpet had been removed. The Parents expressed concern about the art room: the PPT stated that the art room would be tested, and if the indoor air quality was not appropriate, air conditioning would also be installed in that room.

Student's math and reading skills were reported as "improving dramatically". Parents' Educational Consultant stressed the need for training on software to be ordered. Goals were discussed: Student would be in a small group for phonological awareness. Several of the Parents' Educational Consultant's suggestions were incorporated into Student's IEP. (Ex. B-79)

49. The Executive Director of Villa Maria has a B.A. in education and an M.A. in special education, and is certified as a special education teacher and as a school administrator by the Connecticut State Department of Education. The Executive Director testified that Villa Maria's "aseptic environment" was the result of an aggressive cleaning program. No special precautions are taken concerning dog or cat hair or dander brought into the school on children's clothing. The Executive Director described Parent testing the air quality in several parts of the school prior to Student's enrollment, although no indoor air quality test results were entered on the record of this hearing for Villa Maria. The Executive Director believed that the software recommended by Parents' Educational Consultant was used by Student at home, and not in school. (Testimony, Executive Director, Tr. 10/23/03)

50. Student received no services from either a S/L pathologist or an occupational therapist at Villa Maria. There is only a part-time school nurse at Villa Maria, and no health office log entries from Villa Maria were provided for Student. (Testimony, Executive Director, Tr. 10/23/03)

51. Villa Maria provided test results dated April 28, 2003, when Student was age 8 and in second grade.

Tests	Percentile	Standard Score
<u>Woodcock Reading Mastery</u>		
Word Identification	39	96
Word Attack	73	109
Word Comprehension	37	95
Passage Comprehension	44	98
Basic Skills Cluster	50	100
Reading Comprehension Cluster	41	97
Total Reading Cluster	47	99
<u>Key Math Diagnostic Inventory</u>		
Basic Concepts	53	101
Numeration	N/A	
Rational Numbers	N/A	
Geometry	25	
Operations	75	110
Addition	90	
Subtraction	75	
Multiplication	90	
Division	75	
Mental Computation	75	
Applications	66	106

Measurement	84	
Time and Money	50	
Estimation	75	
Interpreting Data	75	
Problem Solving	84	
Total Test	68	107

(Ex. P-21-7, B-82)

52. Student's scores on the Comprehensive Test of Phonological Processing (CTOPP) at Villa Maria, May, 2003, showed:

<u>Core</u>	Percentile	Standard Score
Elision	25	8
Blending Words	63	11
Memory for Digits	5	5
Rapid Digit Naming	37	9
Nonword Repetition	9	6
Rapid Letter Naming	25	8
<u>Supplemental</u>		
Rapid Color Naming	5	5
Phoneme Reversal	25	8
Rapid Object Naming	5	5
Blending Nonwords	63	11
Segmenting Words	50	10
Segmenting Nonwords	9	6
<u>Composites</u>		
Phonological Awareness	42	19
Phonological Memory	3	11
Rapid Naming	27	17
Alternate Phonological Awareness	27	17
Alternate Rapid Naming	2	10

(Ex. B-84)

53. Student's placement at Villa Maria was continued by his Parents for the 2003-2004 school year. He is currently enrolled in the third grade. (Testimony of Parent, Tr. 9/22/03)

54. Student's attendance at Villa Maria has been very good: he was absent three days in 2002-2003, and had no absences between September 2 and October 17, 2003.

55. The Board's School Psychologist and Special Education Teacher observed Student at Villa Maria on March 28, 2004. In reading, Student was attentive to the lesson and participated well. At the end of the reading class, students were told to read silently: Student pulled out a book, but reportedly did not read. In language arts class, Student was observed to be using an awkward pencil grasp and was increasingly distracted. He did well in math class, although he was frequently distracted. (Ex. B-81; Testimony, School Psychologist, Tr. 11/11/03; Testimony, Special Education Teacher, 11/19/03)

56. Villa Maria reported Student's progress on their goals:

Using the Lindamood-Bell Phoneme Sequencing Program, [Student] will progress in his ability to decode and comprehend material presented in the curriculum.

Satisfactory Progress – Likely to achieve goal for goal and two objectives; one objective mastered at the end of the year.

[Student] will be able to recall parts of a story by visualizing and verbalizing following the Lindamood-Bell Sequencing Program.

Goal and three objectives mastered at the end of the year.

[Student] will increase skills at the Second Grade level by developing a greater competency in oral and written language.

Goal and three objectives mastered at the end of the year.

[Student] will apply proper mechanics to form letters in the manuscript type of handwriting.

Goal and three objectives mastered at the end of the year.

[Student] will demonstrate a knowledge of mathematical concepts, reasoning and computation skills necessary for problem solving at the second grade level.

Goal and three objectives mastered at the end of the year.

To develop age appropriate behavior skills essential for successful classroom performance and to foster competencies needed for social interactions.

Goal and three objectives mastered at the end of the year. (Ex. B-86)

57. The PPT convened on May 29, 2003, to develop an IEP for the 2003-2004 school year. The Parents' Educational Consultant and their attorney attended the meeting with Parent. The Board was also represented by an attorney. Student was reported to be on grade level for reading and math, although decoding was still a weakness. Villa Maria also reported that his attention and focus were fine in smaller classes in the morning, but less good in larger classes later in the day. The PPT proposed a placement in a new elementary school, with resource reading, five hours per week; S/L therapy one and a half hour per week; re-evaluations in AT, OT, and writing; S/L pathologist and Resource Teacher to consult on goals; and OT consult. Parent requested Lindamood-Bell reading program, which has been successful at Villa Maria. Parent rejected the program because it offered less individualized service than Student was currently receiving and rejected the placement because the Board refused to test air quality in a new building. (Ex. B-85)

58. The present levels of educational performance reported to the May 29, 2003, PPT meeting were:

Health & Development: Receives allergy shots every other week. Takes Zyrtec. Parents report he is much healthier at this point.

Academic/Cognitive: Reading is on grade level. Benefits from Lindamood-Bell, math is on grade level. Social Studies is hands-on – does well. Writing has come a long way. Doing better with inventive spelling. Sight word vocabulary – 375 words. Can spell correctly approx. 100 of those.

Social/Emotional/Behavioral: Age/grade appropriate. [Student] does very well. He socializes with 3rd and 4th graders. Sensitive child – looks out for peers. Attn

and focus are fine when classes are small. Father reports that [Student] plays sports.

Motor: Fine motor is very weak. Does better w/ cursive writing.

Communication: Age appropriate. Able to recall in a story, use structure words related to Lindamood-Bell.

Strengths were listed: Grade level for reading and math. Able to communicate what is going on in a text.

Concern/needs were listed: forgets rules (decoding), decoding.

His disability was given: [Student] has significant allergies. (Ex. B-85)

59. The IEP proposed for 2003-2004 by the Board included:

[Student] will improve reading comprehension, as measured by meeting the following objectives:

From a story he has read, will recall parts of a story by identifying the main character, the kick-off point, and the setting.

[Student] will retell a story he has heard and read with a beginning, middle and end.

[Student] will respond to structuring questioning to describe a paragraph he has read.

[Student] will progress in his ability to decode words.

[Student] will increase recognition of 375 sight words to 700.

[Student] will segment, blend, and read words containing 3 to 4 syllables (including open, closed, silent e, vowel-r, vowel team syllables).

[Student] will identify and classify all vowels, consonants, and blends.

[Student] will maintain mastery of the following skills.

[Student] will read, write, and compare numbers 0 to 999, and understand ones, tens, hundreds place values.

[Student] will add and subtract two digit numbers with regrouping.

[Student] will create and solve double-digit addition and subtraction problems.

[Student] will apply proper mechanics in handwriting by placing appropriate spacing between words, demonstrating correct posture, position of paper and pencil and writing his letters within the confine of the line.

[Student] will capitalize days of the week, months of the year and initials, and will use appropriate punctuation at the end of a sentence.

[Student] will define and recognize the following parts of speech: nouns, verbs, and adjectives.

After listening to a story, [Student] will retell the story verbally.

Given structured questioning, [Student] will describe a picture. (Ex. B-85)

60. With the narrative reports for 2002-2003 and the standardized test scores, Villa Maria included draft goals and objectives for 2003-2004, with a list of specific materials and programs to be used. (Ex. P-22, B-85)

CONCLUSIONS OF LAW AND DISCUSSION:

1. There is no dispute that Student is eligible for special education and is properly classified as other health impaired, pursuant to 34 C.F.R. § 300.7(c)(9).
2. The standard for review of special education programs and placements was established by *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, EHLR 553:656 (U.S. 1982). This Supreme Court decision requires that the school district 1) meet the procedural requirements of the statute (IDEA) and 2) provide an educational program (IEP) and placement calculated to enable the student to achieve educational benefit.
3. The evaluations and progress reports confirm that Student had made reasonable progress in the Board's schools. He has continued to progress in the placement at Villa Maria initiated by his Parents.
4. The May 29, 2003, IEP and placement at the Board's new elementary school were appropriate for Student for the school year 2003-2004. In addition to using the Board's record of Student's progress, the IEP reflects some of the Parents' Educational Consultant's recommendations as well as information gathered from Villa Maria. The PPT also demonstrated willingness to further accommodate Student, if necessary, after his enrollment.
5. Underlying the issue of whether placement at the new elementary school will be safe for Student is the larger issue of whether such a determination can be made in advance of Student's actual enrollment. Student's Pediatric Allergist is enthusiastic about a testing device he has used, and is working for the establishment of a test standard of 1000 spores per cubic meter of air. Scientific articles by Santilli & Rockwell, Rudich, Santilli & Rockwell, and Santilli discuss measurement issues, and appear to favor measurement of spore counts as the definitive method of determining the safety of a specific environment. However, the Occupational Physician and the Industrial Hygienist, with both professional training in this area and significant experience, stated that no standard for indoor air quality has been adopted by state or federal government agencies, or by professional organizations. Both these specialists testified that there is no scientifically-based standard for indoor air quality. These experts explained that the concentration of airborne mold spores varies greatly, both in time and in space. The Industrial Hygienist's focus is on the presence of water, usually from leaks, that fosters the growth of mold. The Industrial Hygienist cited complaints of related health problems by school staff members and students and the evidence of water leaks and inadequate cleanup after the repair of such leaks as significant indicators of indoor air quality problems in schools.
6. Several of the technical articles submitted confirmed the limitations of air quality testing. Etzel comments:
 - In general, it is not necessary to measure the quantity of mold spores in the air of a home or school. If mold is found, the occupants should start by determining the

source of the water problem and fixing it. Mold cannot grow without a source of water.

Etzel considers a mold spore count of 1000/cubic meter “high”.

Bush & Portnoy consider a count of 1000 or higher evidence of contamination, but their comments acknowledge the importance of observation of mold and dampness:

The presence of fungal growth in the home or office implies a problem with excessive dampness in the environment. Measures to decrease the infiltration of fungal spores from the outdoor environment, control indoor moisture problems, and clean or remove contaminated materials may improve the health of individuals with fungal-induced allergic diseases.

Rogers stresses the complexity of the problem of setting standards:

In the United States, no regulations exist for an unacceptable level of airborne fungi or their agents. Obstacles that prevent such a determination are the variation in human susceptibility to disease agents, lack of standardized protocols in measurement, and lack of data in relation to health effects.

7. The testimony of several people contributed to the Hearing Officer’s understanding of air quality issues, including the need for a pragmatic approach. Student’s Pediatric Allergist recounted the elimination of possible irritants and testing that led him to suspect the school environment was contributing to Student’s allergy problems. He also noted that allergy medications probably contributed to Student’s attention and learning problems. The Industrial Hygienist described his “walkthrough” of one school building and noted the importance of monitoring complaints. The Occupational Physician discussed the differences between the general population, people with allergies, and the rare individual who is extremely sensitive. From these people and from the scientific articles provided by Student’s Pediatric Allergist and the Occupational Physician, I have concluded that Student is, or is at risk of becoming, an extremely sensitive person. He has had excellent attendance at Villa Maria and has required little or no medication there. The combination of thorough, systematic cleaning and maintenance, and monitoring of possible problem areas and complaints should provide a school environment in the Board’s new elementary school as clean as that of Villa Maria.

8. When Parents withdrew Student from school a second time, in early March, 2002, they requested homebound instruction at several PPT meetings and provided several letters from Student’s Pediatric Allergist supporting this request. Section 10-76d-15(b), R.C.S.A., sets forth necessary conditions for homebound instruction. Subsection (1) applies to the facts of this case:

A physician has certified in writing that the child is unable to attend school for medical reasons and has stated the expected date the child will be able to return to the school.

The Parents and Student’s Pediatric Allergist satisfied these conditions. The Board requested a second medical opinion. Initially, Parents provided a letter documenting a consultation with another pediatric allergist, selected and funded by Parents. The Parents consented to a second medical evaluation on April 11, 2002, and this evaluator’s report was dated May 18, 2002. The Board received a second medical opinion from a well-qualified consultant: this opinion supports the caution of Student’s own Pediatric

Allergist. Meanwhile, Student did not receive formal homebound instruction for several weeks. While the PPT may have been sincere in their belief that it was safe for Student to return to the elementary school, disregarding a physician's requests for homebound was neither correct nor appropriate.

9. While there is no doubt that Student benefited from the small class sizes and systematic instruction in reading at Villa Maria, the IEP proposed by the Board was appropriate to his special education needs in the least restrictive environment. The Board's Reading Consultant uses many programs, including Lindamood-Bell, selecting the programs that from her professional experience will address the specific difficulties of each student referred for reading support. A line of cases from *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 441 IDELR 156 (7th Cir. 1988), confirms that the school has the right to select methodologies based on students' individual needs. Parents may make suggestions at a PPT meeting, but a hearing officer has no authority to override the professional judgment of appropriately trained and certified school staff members.

10. The Parents ask the Hearing Officer to fund the purchase of computer software recommended by their Educational Consultant. The PPT considered these recommendations and offered some of the software in the program proposed in their school. They rejected purchase of the Kurweil 3000, but planned to discuss that with the Technology Consultant, who had classified that software as "optional" in her report. The Parents claimed that software purchases were part of the 2002 settlement agreement with the Board, and asked this Hearing Officer to enforce that settlement agreement. While this Hearing Officer happened to preside over the hearing that was settled, she lacks the authority to address a settlement agreement, which is essentially a contract between Parents and the Board. Furthermore, the Board is not obligated to fund any equipment recommended in their IEP for Student when Student was placed unilaterally by her parents in a private school. No contract exists between the Board and Villa Maria, neither a general contract or a contract specifying purchase of equipment. Cases cited concerning settlement agreements (*Mr. J. v. Board of Education*, 98 F. Supp.2d 226 (D. Conn. 2000) and Connecticut hearing decision #01-179) are not directly on point with the facts of this case.

11. The Connecticut State Department of Education 1999 Guidelines for Assistive Technology discuss a continuum of devices:

If a low-tech device meets the child's particular needs, then the school is not obligated to purchase the high-tech device which may also solve the same problem.

This confirms the position of the Board's AT Consultant, that technology support should be minimal unless a child requires more intrusive devices.

12. The "stay put" placement, pursuant to Section 10-76h-17, R.C.S.A., at the time this hearing was requested was either homebound instruction or enrollment in one of the Board's schools. Therefore, the Board was never obligated to fund the Parents' unilateral placement of Student at Villa Maria for the 2003-2004 school year.

13. Throughout this hearing, there was discussion of Student's right to a school environment that is safe for her. Sometimes, this right was characterized as flowing from Section 504 of the 1973 Rehabilitation Act. Student has a history of severe reactions requiring rapid medical intervention. While it is arguable whether Section 504 applies to this specific problem, in other cases eligibility has been denied if medication, or eyeglasses or hearing aids, could enable the person with a disability to participate. Decisions concerning medication, however, are a matter for Parents and the treating physicians. During future discussions of placements for Student, her sensitivity to poor indoor air quality must continue to be an issue.

14. The Parents' Educational Consultant was an active advocate as well as an evaluator. While some of the questions raised by Board staff members were valid issues about her evaluations and her dual role as evaluator and salesperson, many of her suggestions were addressed by the PPT.

FINAL DECISION AND ORDER:

1. The IEP and the placement offered by the Board at the May 29, 2003, PPT meeting, for the 2003-2004 school year, were appropriate to Student's special education needs in the least restrictive environment.
2. Placement at the new elementary school designated by the Board is appropriate to Student's special education needs in the least restrictive environment, and appears to be reasonably safe, in terms of indoor air quality, for Student.
3. Because the Board's placement is appropriate, it is not necessary to consider placement at Villa Maria for the school year 2003-2004.
4. The Board is not responsible for funding Student's placement at Villa Maria.
5. Some of the software recommended by the Educational Consultant was offered by the PPT in conjunction with the proposed placement in the Board's school. The Board is not obligated to fund purchase of such software for use in the Parent's unilateral placement, even if the use is confined to Student's home.
6. The Board has produced all the documentation it has concerning indoor air quality inspections.
7. The Board's AT evaluation confirms that some supports would help Student to benefit from special education. The Board has properly included such support in its IEPs proposed for 2002-2003 and 2003-2004. However, the Board is not obligated to fund AT devices or training in a unilateral placement made by Parents.

8. A special education hearing officer lacks the authority to order specific educational methodologies.

9. A special education hearing officer lacks the authority to enforce a prior settlement agreement between the parties.

10. The Board's PPT shall convene within 30 days of this decision to review Student's current status and to plan for his transition back into the Board's school. If additional evaluations are needed at this time they shall be performed as soon as possible, with the PPT re-convening to consider any subsequent IEP changes.

COMMENT ON THE CONDUCT OF THE HEARING

This hearing was undoubtedly longer than it could have been, but if separate hearings for the two siblings had been held, with many of the same witnesses covering much of the same material, the total of the two hearings might have been even longer.