

RHODE ISLAND DEPARTMENT OF EDUCATION
OFFICE OF STUDENT, COMMUNITY AND ACADEMIC SUPPORTS
ADMINISTRATIVE IMPARTIAL DUE PROCESS HEARING

J. Doe et al

vs.

Case No. 10-12

Coventry School District

DECISION

Held: A therapeutic residential school is the least restrictive environment for the Student having a severe behavior disorder that has impeded his academic progress. The LEA shall pay for such schooling.

The Parents are entitled to reimbursement for private school placement

May 29, 2011

LEXICON

For the purposes of the decision in the within hearing and to ensure confidentiality of the student, the following Lexicon shall be used in this decision:

Student

Mother

Father

Step Mother

Step Father

Fifth Grade Teacher Jennifer Beauchemin

Sixth Grade Teacher Jessica Capaldi Rainville

School Social Worker Felix Sarubbi

LEA's Director of Special
Education and Student
Services (Sp.Ed.Dir.) Susan Lyons

LEA Coventry School Department

LEA's Attorney Steven Adams, Esq.

Petitioner's Attorney Amy Tabor, Esq.

LEA School Psychologist Catherine Louise DeNardo

Hearing Officer Roderick A. J. Cavanagh

TRAVEL OF THE CASE

This Due Process Hearing was commenced by the filing of a Request for an Impartial Due Process Hearing dated June 14, 2010 with the Rhode Island Department of Education (Hearing Officer Exhibit C & H) in proper form. The Petition alleged failure to provide FAPE by the LEA. The Petition (Hearing Officer Exhibit C) alleges that the Student has had a history of "...complex of learning, attentional, emotional and behavioral problems which have undermined his ability to function effectively in school, in the community and at home...". The LEA responded in its Answer to the Petition (Hearing Officer Exhibit J). The Rhode Island Department of Education, pursuant to Section IX, 7.1.1 of the Regulations of the Board of Regents Governing Special Education of Children with Disabilities appointed this Hearing Officer by letter dated June 14, 2010 and received on June 19, 2010. (Hearing Officer Exhibit A). Notice of the Pre-Hearing meeting of July 14, 2010 was sent to the parties on June 28, 2010 (Hearing Officer Exhibit B). A request for a postponement of the Pre-Hearing was received on July 7, 2010 from Petitioner's attorney (Hearing Officer Exhibit D). Notice was sent to all parties of a new Pre-Hearing meeting for August 4, 2010 (Hearing Officers Exhibit F).

A Pre-Hearing Conference occurred on August 4, 2010 (Hearing Officer Exhibit G). At such meeting the Due Date was extended by stipulation to September 27, 2010 (Hearing Officer Exhibit K) and written notice was given to the parties of hearing dates of August 24, 2010, September 1, 2010; and September 2, 2010 (Hear Officer Exhibit L). The August 24, 2010 hearing date was thereafter cancelled due to a court appearance

conflict. (Hearing Officer Exhibit M). Thereafter a stipulation was entered by the parties canceling the August 24, 2010 and September 1, 2010 hearing dates (Hearing Officer Exhibit N) and attached letter (Hearing Officer Exhibit O). Proper notice was sent to all parties (Hearing Officer Exhibit P).

The first day of the Due Process Hearing commenced on September 2, 2010. The Due Process Hearings were held on September 2, 2010; October 5, 6, & 18, 2010; November 2 & 18, 2010; December 9 & 20, 2010; January 25, 2011 and February 7 & 18, 2011. On November 2, 2010, the parties conducted a hearing in the Conference Room of the Petitioner's attorney in Pawtucket of two witnesses who were in North Carolina. The witnesses were before a computer and camera in a "SKYPE" setting wherein the witnesses were sworn under oath by the court reporter in Rhode Island. The parties to this hearing stipulated to the this type of hearing. The witnesses were in the view of the Hearing Officer, the attorneys and the parties at all times during the questioning and answering. Such a procedure while novel, was efficient and very clear. All the testimony was recorded by the court reporter and is contained in the November 2, 2010 transcript.

The parties presented a total of twenty-two (22) witnesses and a total of one hundred eight (108) exhibits during the course of the hearings with 1,852 pages of transcripts. Both parties presented well-written briefs and reply briefs.

The petitioner's have requested that the Student's cost of private school tuitions be reimbursed for Stone Mountain School, F. K. Chamberlain School and SUWS Wilderness Camp, which camp was recommended by the Stone Mountain School.

ISSUES

The issues are two (2) in this case:

First, did the LEA provide FAPE?

Secondly, if the LEA did not provide FAPE, then are the Petitioners entitled to reimbursement for the private school placement of the Student at Stone Mountain School, SUWS Wilderness Camp and the F. L. Chamberlain School.

POSITION OF THE PARTIES

This case contains several complex situations. Pursuant to Rhode Island Constitution in Article XII, Section 1 – “The diffusion of knowledge...” to the people of the state is deemed “...essential...” to the citizens of the state “...to secure to the people the advantages and opportunities of education...”. Within the Regulations of the Rhode Island Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities (hereinafter called “Regs”), as amended, in Section 300.1 (a) and (d) is the announced purpose of the Regs, namely—

- (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; ...
- (d) To assess and ensure the effectiveness of efforts to educate children with disabilities. (emphasis added)

The Federal government has recognized the need for Federal Regulations in the field of education. It has enacted specific regulations under the Individuals with Disabilities Education Act (hereinafter called IDEA) 20 USC Sec. 1400 (a) which states as follows:--

- (1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

The legislation on both the federal and state level seek to ensure effective education and educational opportunities to aid children with disabilities to be able to live an effective, secure, economically self-sufficient independent existence as adults. To that effect Local Education Agencies (hereinafter LEA) and parents have worked cooperatively to aid and educate the children in their charge. In this case, the issue is whether despite all best efforts, has this been effective as it applies to this Student.

The Student in question has been determined to be one with disabilities so as to qualify for the educational benefits under the IDEA and the Regs. Accordingly, the least restrictive environment standard (Regs Section 300.114) and the continuum of special education placements and services (Regs Section 300.115) become of concern in this matter. The emphasis is always on the term “least” as opposed to “most”.

The Student has had a history of being educated in several different educational districts within Rhode Island. The Student’s mother testified that as a result of observing the Student at the age of one year at St. Vincent’s Day Care, she sought help from two neurologists regarding the Student’s hyperactivity and disobedience. Medication was prescribed but was ineffective. The Student then went to a different day care facility (Growing Children in Providence). This facility requested that his time at the day care be reduced to part time due to his disruptive behavior. The Student exhibited oppositional behavior and hyperactivity. In early 1999, the Student’s parents sought help from a child psychiatrist (Dr. Jeffery Hunt). A different medication was prescribed; however, the

Student exhibited more hyperactivity and increased moodiness. By March, 1999, the Growing Child Day Care facility requested that the Student be removed. That facility referred the parents to the Student Out Reach Program in Warwick. Pursuant to such referral the Warwick Public Schools did an evaluation of the Student in 1999.

(Petitioner's Exhibit 5). Previously the Student had been diagnosed by Dr. Hunt and Dr. Roland Barrett as having ADHD. The evaluation of the Warwick School Department included an educational assessment (inattentive, disobedient, emotional and hyperactive), social history assessment and psychological assessment (significant delay). The conclusion was a referral to full day Pre K Program with resource for behavior issues. (Petitioner's Exhibit 5) at Child, Inc.

In June, 1999 there was an evaluation of the Student at Memorial Hospital of Rhode Island. (Petitioners Exhibit 6). The Student was 3 years and 10 months at the time of such evaluation. That report recounts behavioral control difficulties that the Student had had up to that point in time. A neurological and a neuropsychological evaluation were also done. The prior diagnosis of Attention-Deficit/Hyperactivity Disorder (ADHD) was confirmed. It was also noted the Student's behavioral difficulties at school. The Warwick School Department had previously set up a meeting to develop an IEP for the Student. An IEP of May 31, 2001 was developed for the Student while in the Warwick kindergarten (Petitioner's Exhibit #7). That IEP pointed out that the Student "...needs very small (3-4) groups or one-on-one instruction... is at times combative with peers...". A new IEP was generated by the current LEA on September 21, 2001 (see Petitioner's Exhibit 8) while the Student was in the First Grade. Notably

the IEP pointed out "...needs a behavior management plan... highly distractible..." The fourth page of that IEP is the same as that of the Kindergarten IEP in Petitioner's Exhibit 7.

During the First Grade at the present LEA, his mother described him as controlling and irritable with others; and, as a result, other children avoided him. This aggressive behavior toward others was noted in the IEP in Petitioner's Exhibit #8.

Petitioner's Exhibit #9 is the LEA's Psychological Report of November 2, 2001 in which the summary noted the Student is diagnosed with ADHD and Oppositional Defiant Disorder (ODD). The Student was tested on October 29 and 30, 2001 and further on November 1 and 2, 2001 for an educational evaluation by the current LEA. Upon questioning, the Student was unable to identify any friends or people that he liked. The summary noted that his demonstration of academic skills was "...greatly impacted by his behavior." The LEA's team summary (see Petitioner's Exhibit #11) noted that the Student had a high degree of "impulsivity" and "non-compliant behavior". A short form of the WPPSI-R was administered to the Student due to his hyperactivity and impulsivity and his inability "...to tolerate full administration of the WPPSI-R". The test revealed that the Student had "...an estimated Full Scale IQ of 83 that places his performance at the 13th percentile, within the low average range."

The LEA special services team summary (see Petitioner's Exhibit #11) notes that the Student's classroom skills "...is greatly impacted by his behavior." This was during the Student's first grade experience.

The IEP dated March 18, 2002 notes that the Student "...needs a highly structured, predictable, small group learning environment for academic and behavioral

success....encouragement for demonstration of appropriate behaviors....needs a positive behavior management system with more immediate rather than delayed rewards.” (See Petitioner’s Exhibit #12) Under all of the short term objectives listed under items 15 and 16, the provider, location and services lists “Sp. Ed. Teacher Self C. Class Small Group”.

Subsequently the Student transferred to the Gloucester Public School System for Grade Two. There a new IEP was prepared on March 7, 2003. The needs section of that document remained the same as that for the First Grade shown in Petitioner’s Exhibit #12. Same, too, was the provider, location and services listed for short term objectives. (See Petitioner’s Exhibit #13).

The IEP dated May 11, 2004 for the Student in Third Grade once again described the same needs regarding the Student’s behavior as in the two prior IEP’s. (See Petitioner’s Exhibit #15). In this IEP all the providers, location and services remain with a Special Education Teacher in a self-contained classroom with a small class except for language arts dealing with writing. Here the IEP directed the Student to have a Regular Education Third Grade Teacher in a small group and/or one to one instruction. Otherwise, the Student was to be in a self-contained classroom setting (See Petitioner’s Exhibit #14). This proved to be unsuccessful and the Student was not promoted from the Third to the Fourth Grade. (See Petitioner’s Exhibit #15).

The Student was referred to The Bradley Hospital Day School due to his “...unsafe behaviors...” by the Gloucester Public Schools for a 45 day placement. (See Petitioner’s Exhibit #16). The Bradley School Admission Note contained the following language—“His psychiatric diagnosis reportedly includes ADHD and Oppositional Defiant Disorder (hereinafter called ODD) but there have been questions raised as to

whether he also has a mood disorder.” This document notes that the Student has had outpatient therapy with Dr. Roland Bassett for several years. (See Petitioner’s Exhibit #17).

On August 23, 2005, the IEP Team’s Student Review record recommended that the Student remain at the Bradley School with a review date in November, 2005. (See Petitioner’s Exhibit #18).

The Bradley School Psychological Evaluation of May 23, 2006 concludes that the Student has ADHD and ODD with a low average to average scores on WISC-IV with a full scale score of low average. The report states “...performance on several subtests were invalidated by his poor effort, difficulty attending, and behavioral difficulties.” On the last page of the report the testers noted “...performance on this assessment was likely negatively impacted by these attentional and behavioral difficulties.”

The Bradley School Multidisciplinary Diagnosis Review of July 19, 2005 notes on Page 3 that the Student displays oppositional behavior and on page 4 of that report states the categorical diagnosis under the DSM-IV with an Axis V GAF=50. (See Petitioner’s Exhibit #21). Accordingly, an IEP was generated at the Bradley Hospital School on August 23, 2005. This IEP specifically states the Student’s “non-compliant behaviors”. All of the providers, location and services in this IEP called for a Special Education Teacher with a self contained classroom in the day school. (See Petitioner’s Exhibit #22). During the time that the Student was at the Bradley Hospital School, a therapist (Robert Poppa) came to the Student’s residence for thirty (30) sessions of family therapy and devising behavior management strategies. This was while the Student was in the Fourth Grade.

On August 28, 2006, the Student was discharged from the Bradley Hospital School following his admission in May, 2005. Following this discharge the Student would be attending school at the LEA in a self contained program. This discharge noted as follows:

“With a consistently administered reinforcement-based behavior management plan, he slowly began to improve. By the time of discharged, [Student] was able to consistently meet behavioral and academic expectations in the classroom.”

The Student’s discharge diagnosis remained the same for Axis I but changed on Axis V to GAF=65. (See Petitioner’s Exhibit #23).

On November 3, 2006 the LEA Team met and formed a new IEP. This IEP placed the Student in the Fifth Grade at the age of 11 years, 2 months old. Noticeably the general need section on page one of the IEP does not address a need for a behavioral management program. However, Section 15 of the IEP notes that the provider, location and services for this Student were always with a Special Education Teacher in a self-contained classroom with one on one services. The IEP in Section 26 calls for behavioral services by student support or a school psychologist or social worker. (See Petitioner’s Exhibit #24). The Student’s Grade 5 Fall NECAP test results show a substantial lack of proficiency in reading, mathematics and writing. (See Petitioner’s Exhibit #25). During this time the Student’s mother testified that the Student was rude to teachers and did not have good interaction with his peers.

The LEA’s 5th grade teacher, who was a licensed elementary and special education teacher, taught the Student in a therapeutic, self-contained classroom which was comprised of six (6) students with behavioral supports for the students. (See Transcript 12/9/10, pages 7-8). She described the setting as a team of specialists, which

included a behavior specialist, a social worker, a psychologist and a nurse for any medical issues. (See Transcript 12/9/10, page 9-10). The Student's report card is in Respondent's Exhibit #8. It was her opinion that the Student was making academic progress and did not need a more restrictive environment. This teacher opined that the then current IEP placing the Student in a self-contained therapeutic program was an appropriate placement (See Transcript 12/9/10, page 31). She testified that the Student displayed inappropriate behavior in the classroom as did others in the classroom. She devised a three strikes and you're out behavioral system (See Respondent's Exhibit #9) for the students, which in effect is a point and penalty system for behavioral control. (See Transcript 12/9/10, pages 33-36). The NECAP Test results for the beginning of the 5th grade (Petitioner's Exhibit #25) and for the beginning of the 6th grade (Petitioner's Exhibit #26) both show the Student at the lowest level, i.e., "substantially below proficient."

The LEA's in house School Psychologist testified that she was a certified as a school psychologist by the Rhode Island Department of Education with a Master's Degree in psychology. In that capacity, she is the coach of the Positive Behavioral Interventions and Support Team of the LEA. (See Transcript 12/9/10, pages 77-79). She first observed the Student when he was in the 1st grade as a hyperactive and impulsive student. (See Transcript 12/9/10, page 81). Her next observation of the Student was in the 5th Grade in a self-contained therapeutic classroom in the LEA. Her only role was as a consultant to the 5th Grade teacher. She opined that the IEP for the 5th grade was appropriate (See Transcript 12/9/10, page 87). She did a psychological evaluation of the Student during the summer of 2010 after reviewing prior evaluations. (see Respondent's

Exhibit #10). Despite full accommodations, the Student was only able to complete four of ten testing protocols. His perceptual reasoning score was average and his verbal comprehension was borderline. The Student was described in this report as "...highly restless, impulsive and oppositional boy". She thereafter rendered an opinion based upon her testing observation of the Student on one day and review of the prior evaluations.

Her opinion was:

"My opinion is that he needs to be able to be in an environment with typically developing peers so that he is able to model appropriate behavior and interact and have the opportunity to interact with typically developing peers." (See Transcript 12/9/10, page 108.

On cross-examination she stated that she had no contact with the Student in the 6th grade. Her remembrances of the Student in the 5th grade were of "...'sneaky' interactions with students in the classroom." While this witness did not do any academic testing of the Student in the 5th grade, she relied totally on the Student's report card. (See Transcript 12/9/10, pages 111-113). It was her remembrance of the 6th grade reports that the Student was "...behavior was often noncompliant and he struggled with peer and adult interactions." (Respondent's Exhibit #10). She did acknowledge that the 6th grade records indicated that the Student's oppositional behavioral and difficulties with peer relationships escalated. (See Transcript 12/9/10, pages 118-119).

The Fall 2007 grade 6 NECAP while in the LEA's sixth grade demonstrated that the Student was still substantially below proficiency in reading and mathematics. (See Petitioner's Exhibit #26). During the sixth grade the mother and the sixth grade teacher maintained a home-school communication log. (See Petitioner's Exhibits 27A and 27b)

which demonstrates the strength and weakness of the Student on a daily basis. In addition, the LEA had specialized a program for students who experienced challenges to a successful school experience known as GYMhappy. (See Petitioner's Exhibit #28). The Student participated in this program under the school's social worker. Unfortunately this program did not work out for the Student. Indeed, at the request of the mother, the school social worker wrote a letter dated January 11, 2008 regarding the Student's school behavior during the 2007-2008 school year which states in pertinent part:--

“Over the course of the year, he demonstrated a consistent willingness to test limits and behave in a non-compliant, if not at times defiant manner. He displayed a remarkable unwillingness to submit to adult authority, and in several instances could only participate in a variety of programs with an involved system of support and communication with his parents.... As the year draws to a close, his oppositional behavior, and peer difficulties have seemed to escalate. (See Petitioner's Exhibit #32).

During the spring of 2008 the school social worker advised the mother to file a wayward petition against the Student (See Transcript 12/20/10, page 52). Despite this he testified that his opinion was the LEA's program provided social and emotional benefit for the Student in the context of a typically developing student in a socially normative environment.

Despite this IEP dated December 19, 2007 (See Petitioner's Exhibit #29) which had no goals for social/peer relationships, approximately one month prior to the school social worker's letter previously noted, the IEP has very little notation of behavior issues (see page 9 of Petitioner's Exhibit #29). The sixth grade teacher wrote a letter to the mother at the mother's request dated June 10, 2008 (See Petitioner's Exhibit #30). The mother clearly told this teacher that the Student would be attending Stone Mountain School in South Carolina. The sixth grade teacher sent the mother a response (see

Petitioner's Exhibit #31) that stated that the Student had a point system based structural behavior plan. (See Petitioner's Exhibits #63, 64 and 65). She noted "...[Student] is consistently in some type of trouble on a daily basis. He repeatedly does not listen/follow directions." She went on to state the following:- "His behavior continually gets in the way of his academic work....Because of his behavior he has missed some essential skills, which have set him back. When included in the regular academic setting, it is a challenge to keep him appropriately engaged." The sixth grade teacher testified that the letter in Petitioner's Exhibit #31 was written while events were still fresh in her mind. The sixth grade teacher testified that the Student had gone from a Behavior Therapeutic Self Contained Classroom in the fifth grade to her sixth grade class wherein the Student was mainstreamed for his elective subjects. By the end of the sixth grade the Student could work independently for a fifteen (15) minute period on academics. It should be noted, per the sixth grade teacher, that this class was seven (7) to eight (8) students with two teacher assistants in the classroom. The Student could work in a group setting approximately twenty-five (25%) percent of the time without prompting. Despite the letter in Petitioner's Exhibit #30, this teacher said the Student did well in the sixth grade and made social progress. Posted in this classroom was the behavior plan (see Petitioner's Exhibit #58). This teacher did refer the Student to the school Principal for detention and retentions (see Transcript 12/20/10, page 198). See also Petitioner's Exhibit #61 for the After School Program for the Student in addition to the participation in the GYMhappy program with the School Social Worker. Petitioner's Exhibits 27A & 27B show a number of incidents as stipulated by Petitioner's and LEA's counsels to show

twenty-eight (28) lunch detentions, fifty-five (55) warnings and ninety-five (95) days of behavioral problems.

It was the Mother's opinion that the Student's behavior in the sixth grade regressed. She testified that the LEA would not provide summer services for the Student. She further testified that as a result, she investigated a residential school placement for the Student. Upon obtaining information regarding four residential schools, she sent the information to Dr. Roland Barrett for his advice. Dr. Barrett had treated the Student for a number of years. Dr. Barrett testified that he was the Chief of Psychology at Bradley Hospital (See Petitioner's Exhibit #48 for his vitae). The Mother further testified that Dr. Barrett suggested that Stone Mountain School in North Carolina appeared to be an appropriate residential school setting. The Mother also spoke to Dr. Hunt and Robert Pappa, both clinicians who had dealt with the Student concerning the choice of residential schooling. Thereafter, the Mother and the Step Mother went to Stone Mountain School to observe same and the Student makeup and their behaviors. Thereafter the Mother notified the LEA (see Petitioner's Exhibit #1) by letter of June 17, 2008 hand delivered on June 18, 2008 to the LEA, of their removal of the Student to such private residential school. This letter clearly described the Parent's concerns for the Student and that such placement would be at public expense. The letter notes the Student's difficulties, lack of improvement, lack of goals in the IEP and lack of current evaluation. The LEA responded by letter dated June 24, 2008 (see Petitioner's Exhibit #2).

Testimony was elicited from the Mother that the Student enrolled in Stone Mountain School on July 8, 2008 (see Transcript 10/15/10, page 4). He remained in the school in North Carolina until September 17, 2009. While the Student was at that school,

his parents and step parents visited with him there. The Student also came home for the major holidays. A scheduled home visit in March, 2009 was lost as the Student was not following the rules at the school. He was able to have a home visit in May, 2009. (See Transcript 10/5/10, pages 15 & 16). During these holiday and home visits the parents utilized the school's prompting methodology in dealing with the behavior of the Student. The behavior issue continued. In mid-September upon the advice of Stone Mountain School, the Student withdrew from the school and upon its recommendation enrolled in an associated wilderness camping program – SUWS Wilderness Program, which was a eight (8) week program. (See Transcript 10/15/10, pages 19-22). The Student did not finish the wilderness program and returned to his home in Rhode Island three days before Thanksgiving of 2009. (See Transcript 10/15/10, pages 22-25). The Mother testified that the Student regressed after reaching a behavior plateau at Stone Mountain School. The SUWS Wilderness Program was also a failure. (See Transcript 10/15/10, pages 25, 26)

While the Student was at the Stone Mountain School, the school used a point system to reward for good behavior (See Transcript 10/15/10, page 34) and disciplined for bad behavior. It was noted that the LEA, while a day school, also utilized a point system.

This hearing included the testimony of Jim Johnston, a therapist (See Transcript 11/2/10, page 10) and Emily O'Neil, a special education teacher (See Transcript 11/2/10, page 67) at the Stone Mountain School by using a computer linkup known as a SKYPE hearing. The Court Reporter and the parties to the hearing swore both witnesses under oath. Mr. Johnston described the six stages of behavior modification that the successful students at the Stone Mountain School progress through. The Student only progressed

through the third stage (the seeker stage-a more introspective stage.) (See Transcript 11/2/10, page 19). Mr. Johnston described the oppositional behavior that the Student exhibited in social interaction with his peers at the school. The Student had some improvement in his behavior and acceptance of authority figures. The Student's progress was described as "... consistently inconsistent..." (See Transcript 11/2/10, page 24). Mr. Johnston noted that visits of his family were a strong motivator to the Student. (See Transcript 11/2/10, page 26.)

Mr. Johnston testified that in mid-September, 2009, the Student was removed from Stone Mountain School as he had "...gone for a long time on a regressive course. He was regressing and hadn't rebounded to make progress. What we recommended was a stronger behavior mode program." (See Transcript 11/2/10, page 28). He testified that the Student was transferred into the SUWS Wilderness Program to promote the Student to strengthen his commitment to return to the Stone Mountain School. The Student did not complete the SUWS Wilderness Program.

On cross-examination, the LEA submitted the Stone Mountain School's daily log of the Student's conduct from July 11, 2008 through May 15, 2009 together with academic and behavior records. (See Respondent's Exhibit #3). It is clear from such records and the testimony that the Student's behavior had an adverse effect upon his progress at that school. His behavior was described as dangerous. (See Transcript 11/2/10, page 47). The Student continued to struggle with his behavior. (See Transcript 11/2/10, pages 49-54). The use of physical restraint increased in the spring of 2009. (See Transcript 11/2/10, pages 54 & 55). Mr. Johnston's Master Treatment Plan for the Student is shown on pages 80 through 83 of Respondent's Exhibit #3.

While the Student was at Stone Mountain School there was a psycho educational evaluation done of the Student by Cara B. Reeves, PhD, a licensed psychologist in September, 2008. (See Respondent's Exhibit #4). The report notably shows as follows:

- “Axis I: 1. ADHD, combined type
 2. Reading Disorder
 3. Disorder of written expression
 4. Mathematics Disorder
 5. ODD
- Axis IV Moderate – social difficulties, longstanding academic problems, divorce, therapeutic residential placement and wilderness placement
- Axis V Current GAF: 51”

This report recommended “a highly structured residential program that specializes in children with significant attentional issues that impact their behavior and can provide smaller classroom and group settings to allow for immediate individualized response to behaviors.” (See Respondent's Exhibit #4, page 0135).

Emily O'Neil, a special education teacher at The Stone Mountain School, testified that she had tested the Student in October, 2008 and April, 2009. In the October testing, the Student was in the 4th percentile in his reading score (See Transcript 11/2/10, pages 73 &74). She taught reading to the Student one on one using the Orton-Gillingham language instruction method. She assessed the Student again in April, 2009 which showed a “...an 8-month gain in word reading and a little over, about 3 and a half in reading comprehension. Then reading composite does not give a grade equivalent, but in percentile rank he did have a significant gain there as well.” (See Transcript 11/2/10, page 79). She commented that his distractibility and behavior was unpredictable and resulting inattentiveness was “...more severe than most of the students that I ever worked

with.” (See Transcript 11/2/10, pages 90 & 91). It was her opinion that the Student’s behavior would significantly impact his ability to make meaningful academic progress in a non-residential school setting. (See Transcript 11/2/10, page 97-100). Counsel for the LEA correctly brought out that this witness does not have experience as a duly licensed teacher in a public school setting. In fact, her teaching experience was only at Stone Mountain School.

The Petitioners presented the testimony of Bonnie Glickman, an independent educational consultant who is a certified counselor with the National Board of Certified Counselors and had worked as a special education teacher and administrator in Montreal, Canada for eight (8) years. (See Petitioner’s Exhibit #40). She also worked at a Vermont public school as a guidance counselor and also in the Western Massachusetts school system. She explained that some of her practice involved out of district placements. (See Transcript 10/18/10, pages 31 – 32). I found that this witness is an expert in counseling dealing with individuals of special needs including special education and behavioral disorders. I further found that this expert witness has focused on assessment, explaining assessments and counseling students and parents with the needs of this particular Student. She also deals with placement in and out of district for the particular child. (See Transcript 10/18/10, pages 411 – 44). She had observed the Student at the F. L. Chamberlain School in two classrooms and a group therapy session at that school on October 5, 2010. Her opinion was that the Student “...was at an extreme end of the behavior and lack of compliance.” She stated that his behavior was unrelenting. (See Transcript 10/18/10, page 46 to 47). Both classes were of six students each. See Petitioner’s Exhibit #41. It was her opinion that the F. L. Chamberlain School was “...

an excellent match for [Student]'s educational, social and emotional needs. See Petitioner's Exhibit #41 on page 3.

Ms. Glickman testified a second time as to the cost of three similar residential treatment schools that she was familiar regarding the yearly costs, namely:

Kolburn School in Massachusetts	\$141,500.00 per year
Weidko School in New Hampshire	\$124,100.00 per year
Franklin Perkins School in Massachusetts	\$178,900.00 per year

(See Transcript 11/18/10, pages 5 – 7)

The Petitioner presented the testimony of the stepfather as to the costs that the two respective couples have paid or committed to pay for the tuition costs of the Student:

1. Petitioner's Exhibit #42 for F. L. Chamberlain School payments through October 27, 2010 of \$101,491.13;
2. Petitioner's Exhibit #43 for Stone Mountain School payments in the sum of \$91,190.60;
3. Petitioner's Exhibit #44 for travel costs to and from Stone Mountain School in the sum of \$8,078.95;
4. Petitioner's Exhibit #45 for SUWS Wilderness Program tuition in the sum of \$9,233.06 and
5. evaluation by Dr. Cara Reeves in the sum of \$1,300.00.
6. Petitioner's Exhibit #46 for travel costs for Parent's workshops and home stay in the sum of \$10,084.68 and

7. airline tickets for home stays in the sum of \$2,365.40. The Petitioner also presented Petitioner's Exhibit #47 for the interest payments attributed to above costs.

The Petitioners presented Dr. Rowland Barrett as an expert witness on November 18, 2010 at the Emma Pendleton Bradley Hospital. Dr. Barrett's vitae speaks strongly of a well-known and outstanding expert in the field of child psychology. (See Petitioner's Exhibit #48). In brief, Dr. Barrett is the Chief Psychologist for Bradley Hospital, Director of the Center for Autism and Developmental Disabilities and Associate Professor of Psychiatry at Brown University Medical School. Given his background, experience, publications and various positions, he is qualified as an Expert Witness in the field of Child Psychology dealing with children and adolescents. He testified that the Emma Pendleton Bradley Hospital is the world's first freestanding children's psychiatric hospital (See Transcript 11/18/10, page 59) having forty (40) psychologists on staff. Dr. Barrett first started dealing with the Student in late 1999 when the Student was four years old. At that time the Student was referred to Bradley Hospital for a diagnostic evaluation for ADHD.

Dr. Barrett found at the time of referral that the Student had oppositional defiant behavior, with tantrums of lengthy duration and with involuntary behavior difficulties and a question of bipolar disorder. Dr. Barrett frequently saw the Student on a weekly, sometimes bi-weekly and other times monthly basis. He also referred him to Dr. Hunt for treatment. The meetings with the Student also included his mother and father. Then later meetings also included the Stepmother. Dr. Barrett wrote an opinion letter of October 26, 2010 (Petitioner's Exhibit #49) which states several key factors in dealing

with the difficulties that the Student encounters, namely, the absence of direct family contact impacted his motivation. Dr. Barrett states as follows in the last paragraph of his opinion:-

“In conclusion, [Student’s] behavior has always greatly exceeded the challenges presented by the vast majority of children with ADHD and ODD. There were elements of labile mood, poor self regulation of affect, and a lack of empathy that went well beyond the attentional and motivational deficits, oppositional and disruptive behavior, poor social conduct normally associated with disorders such as ADHD and ODD. [Student’s] psychiatric presentation was unique, not necessarily in terms of its profile and characteristics, but rather in its intensity and recalcitrance....Therefore, it is abundantly clear that [Student] requires a unique special education setting, such as the F. L. Chamberlain School. Placement at a residential school that geographically allows frequent direct family contact and incorporates an intense behavioral health component (including 24 hr/day milieu therapy), will allow him to make the behavioral gains necessary to ensure reasonable academic progress. (See also Transcript 11/18/10, pages 82-87)

The testimony of the Mother noted that while frequent and constant access with the Student was difficult at Stone Mountain School there is a weekly access of both parents on every weekend with the Student while he is enrolled at the F. L. Chamberlain School. The LEA’s counsel, during examination of Stone Mountain School witnesses, also brought out the need for frequent contact for the Student with his family.

Dr. Barrett, based upon his education and experience and his knowledge of the Student, testified to a dire forecast for the Student were the Student not in a therapeutic residential setting such as the F. L. Chamberlain School. (See Transcript 11/18/10, pages 88-89). Dr. Barrett reconfirmed his opinion after both direct and cross-examination and when questioned by this Hearing Officer. (See Transcript 11/18/10, page 129). He further explained what he saw as the future need of the Student and reasoned that this Student needed “...a full court press, 24 hours a day and, you know, lets take it for a

couple of years and see if we can't get him back into the public school system at that point in time."

On December 31, 2009, the Mother hand delivered a letter dated December 30, 2009, to the LEA's office of Special Education (Petitioner's Exhibit #3) notifying the LEA that the Student was no longer enrolled in Stone Mountain School. This letter notifies the LEA that the Student was going to be enrolled in "...a therapeutic residential school in New England." The parents further put the LEA on notice more than ten (10) days before said enrollment, that while they were paying for it initially, that "...our intention, however, that this placement be at public expense and funded by the public school district." The parents reaffirmed their rejection of the IEP and placement in the LEA school district. This letter clearly notified the LEA that the Student was home and no longer in the residential school in North Carolina.

The Student was enrolled in the F. L. Chamberlain School on February 17, 2010. (See Petitioners' Exhibit #36, page 2).

The Director of Special Education for the LEA immediately replied to the Parents' letter of December 30, 2009, by her letter of December 31, 2009 (Petitioner's Exhibit #4). This letter refers to an IEP of December 19, 2007 (Petitioners' Exhibit #29). Despite desire to reconvene the team to rewrite an IEP, the evidence discloses that the LEA did not do so, nor did Ms. Gateman of the LEA contact the Parents. The F. L. Chamberlain School formulated an IEP on April 26, 2010 (Petitioner's Exhibit #36) together with a treatment plan on the same date (Petitioner's Exhibit #39). This is the current controlling IEP.

On October 6, 2010, this Due Process Hearing went to Middleborough, Massachusetts to hear testimony from witnesses at the F. L. Chamberlain School, namely John Mendonca, the Admissions Director; Debbie Winston, the lead special education teacher, and Jill Sayward, a licensed independent clinical social worker at said school.

Mr. Mendonca described the F. L. Chamberlain School as a private non-profit Chapter 766 Massachusetts school for children from ages 11 to 18 during the Junior/Senior high school grades who have a wide variety of emotional and learning difficulties and social/emotional issues. The school is a residential facility with a 365-day program having 81 residential students and 5 day students. (See Transcript 10/6/10 pages 6-7). The staff of approximately 150 members includes approximately 35 academic employees of which the teachers are comprised equally of special education certified teachers and content certified teachers. (See Transcript 10/6/10, pages 13 & 14). Class size is from eight to twelve students with one certified teacher and an associate teacher in each class. The school has two contracted licensed psychiatrists who cover a 40 hour work week. (See Transcript 10/6/10 pages 18-20). There are three full time nurses on staff. Such staff includes eight (8) licensed clinicians. (See Transcript 10/6/10, pages 22-25). The resident staff comes in at 3:00 p.m. each day. This staff includes a residential director, three residential supervisors and two overnight awake supervisors. There are nine dormitories—all same sexed. The dormitories vary in size from five (5) to eighteen (18) students with each dormitory having a house manager and residential staff (See Transcript 10/6/10, Pages 25-26). The residential staff oversee "...daily living skills, appropriate peer relationships and social pragmatics, overseeing the hygiene,

meals, sleeping pad...oversee homework and socialization and social activities...also dispense medications at night.” (See Transcript 10/6/10 page 26).

Mr. Mendonca described the daily routine of the school. Each dorm manager prepares nightly computer notes regarding the behavior of each student. The treatment team dealing with each particular student reads the notes daily. Thereafter, there is a directors meeting daily at 9:00 a.m. reviewing the prior night and the upcoming day. (See Transcript 10/6/10 Pages 27-29). He described the procedure then taken to have the individual clinician look into any problem that occurred. Thereafter, there is a 3:00 p.m. daily meeting which includes the Residential Supervisor, all the dormitory house managers, a representative from each one of the class rooms, all of the clinicians, one of the two psychiatrists and a nurse. At such meeting each of the behavioral notes sent in that day would be read aloud. This includes the classroom teacher’s notes for each student each day. (See Transcript 10/6/10, pages 31-32). Following that meeting if a child has a significant issue then the teacher, dorm manager and clinician stay and they treat the child immediately. (See Transcript 10/6/10, page 33).

Mr. Mendonca explained that the school works on a daily point and phase system that incorporates a level of independence which “...works well for kids who need very clear expectations. So, its used a lot more with, its used for all of our campus, it has a real benefit to our younger kids or to kids who are a little bit impulsive, because it’s a clear way to show them where they’re at and how we’re viewing them so to speak.” (See Transcript 10/6/10, pages 35-36). He then went on to describe how a student could earn points and progress through the various levels of independence. This is done on a daily basis. The clinician assigned to the individual student is charged with communicating

with the parents on a weekly basis. A student's communications with parents is available to them outside of the academic day (Monday through Friday 8:00 a.m. to 3:00 p.m.). See Transcript 10/6/10, pages 41-42). This school does up an IEP for the individual student after the initial six (6) week stay. (See Transcript 10/6/10, page 44). See also Petitioner's Exhibit #36.

Mr. Mendonca stated that the room, board and tuition fee for an out of state student is approximately \$129,359.65 a year. (See Transcript 10/6/10, page 52). Mr. Mendonca compared the F. L. Chamberlain School to Stone Mountain School, namely:

1. Closeness of school to parents allowing for more frequent visitation. In this case the evidence shows the Student was visited every weekend. The testimony was that this acted as a motivator for the Student (See Transcript 10/6/10, page 49).
2. The academic range of courses offered is broader at F. L. Chamberlain School. (See Transcript 10/6/10, page 48-50).

He characterized that they provide the students as follows:

...when I think moderate, mild and severe...I would say moderate among the clinical and the emotional sect, I would say moderate to severe in that area....Most of our students have not been able to be successful in a more traditional public school program or even a therapeutic day school program.”

Counsel for the LEA brought out on cross examination that while some of the students at the school do not have an IEP, those students do have “psychological, emotional or other behavioral challenges. (See Transcript 10/6/10, page 65)

The Petitioners then presented Debbie Winston, the lead special education teacher at the F. L. Chamberlain School. She is a licensed special education teacher in Massachusetts with a Master's Degree in 1986 and a CAGS (Certificate of Advanced Graduate Studies) in 2007. She stated she constantly got professional development points in accordance with State licensing requirements. (See Transcript 10/6/10, pages 67-68). As such she was qualified as an expert in Special Education. See Petitioner's Exhibit #35. She is the reading and study skills teacher for the Student. She described the Student as having "...significant behavioral issues. There are social and emotional issues, as well." (See Transcript 10/18/10, Page 72) She described his disruptive destructive behavior and improper language. (See Transcript 10/6/10, page 73-76). She described the Student as "...a very challenging student. He's one of our most challenging students. I mean, we're able to handle him, but he takes a lot of effort." (See Transcript 10/6/10, page 77).

Ms. Winston testified that there has been academic growth in referring to the testing results of 2010 versus testing results in 2008 of the Woodcock Diagnostics Reading Battery going from the 6th percentile to the 17th percentile (See Transcript 10/6/10, Page 89-82). The Student's grades from February 17, 2010 through the end of the semester in June are contained in Respondent's Exhibit #1. Ms. Watson explained the behavioral point system as it was divided equally between the academic day (45 points) and residential day (45 points).

The next witness presented was Jill Sayward, a clinician at the school. She testified that she was a licensed independent clinical social worker as of 2009. (See Petitioner's Exhibit #37) She is the Student's individual therapist. Based upon her

licensure, experience and education, the witness was found to be an expert in the field of clinical social work. (See Transcript 10/6/10, pages 103-106). Ms. Sayward testified that she meets with the Student twice per week and also for crisis intervention. She also meets with his teachers and residential staff and communicates with the parents weekly. It is her opinion that the Student, in addition to having an impairment in academic, social and residential environments, exhibits oppositional, disruptive and defiant behavior. He also has a significant anxiety disorder. See Petitioner's Exhibit #38. This exhibit dated May 5, 2010 lists the current work DSM-IV-TR diagnosis which includes "...Axis V current 45. Such diagnosis is very serious and significant requiring intensive services but not hospitalization. (See Transcript 10/6/10, pages 126,127). Both Ms. Sayward and Ms. Winston noted that when the Student works alone with them on a one on one basis and a drastic reduction of outside stimuli, the Student can focus better with a reduction of behavioral disobedience. Ms. Sayward noted that she can usually meet with the Student within one hour of any needed crisis intervention. This is in addition to regularly scheduled visits. It was her opinion that there has been some improvement in the Student's social interaction with a group of his peers compared to the time of enrollment. The clinician stated that the Student's behavior in the residence has improved. (See Transcript 10/6/10, page 140).

Ms. Sayward gave the following opinion:

"I would say I would have significant, significant concern if [Student] were in a less restrictive setting. I think he needs, not only kind of the continuity of the 24-hour eyes on him, people communicating, being

aware of kind of everything that's going on with him, and also kind of consistent, tight, tight structure.” (See Transcript 10/6/10, Page 142).

She went on to say the following:

“I think from what I've observed, any kind of loosening of the structure or discrepancy that may come up, he starts to kind of unravel a little bit...I would think in a less restrictive setting, could result in not only harm to himself, but could also get him in a lot of trouble.” (See Transcript 10/6/10, Pages 142-143.

The LEA presented Dr. Steven Feldman, M.D. as an expert witness. Dr. Feldman is board certified in psychiatry, child psychiatry and pediatrics. His vitae was accepted as Respondent's Exhibit #23. Dr. Feldman was accepted as an expert witness in child psychiatry and as a pediatrician. He testified that the primary part of his practice is the review of records. (See Transcript 2/7/11, pages 13, 14, 20-24, 30, 37, 39). He testified that he reviewed the records of the Gloucester School Department, the records of the LEA, the records of the Warwick School Department, the Emma Pendleton Bradley Hospital records, the Stone Mountain School, and the F. L. Chamberlain School records as they pertain to the Student. He testified that he met with the Student, the Mother and the Step Mother in the first week of August, 2010. His testing of the Student was very limited. He described the same as follows:

“Next thing I remember the week before [Student's] birthday, it was on a Friday, you know, I came down to Coventry and [Student] and I think Mom and Step Mom were there, we talked. I did some very basic, you know, silly things, which are really part of a neurodevelopmental

screening. I would ask him days of the week, months of the year, these things should be automatic. He should know them. I think I gave him a tap when I say the letter A to see if he could concentrate. I would ask him silly things, ...” (See Transcript 2/7/11, page 42.)

Later when asked about observation of the Student, Dr. Feldman testified that he had never seen the Student in a public school setting, had not seen the Student interacting with other children, had not administered a formal psychiatric evaluation of the Student, had not observed the Student in any academic classes at the F. L. Chamberlain School, and had not observed any of the teachers interacting with the Student in class. While Dr. Feldman is respected in his field, I find his review of records to be insufficient to render an opinion with his actual knowledge of the Student without such observation and testing.

Dr. Feldman went on to describe several systems of behavior management. He favored a collaborative method as opposed to the point and level method (See Transcript of 2/7/11, pages 110-111). It should be noted that the LEA in both the 5th grade and 6th grade used a point and consequence system which, according to Dr. Feldman, is not effective. It was his opinion that the Student could be properly treated in a public school setting by special educators with consultation with a school social worker and school psychologist. This opinion is rejected by this Hearing Officer. The LEA tried this in the 1st, 5th and 6th grades unsuccessfully. The preponderance of the testimony has been that the Student’s Behavior continued to get worse utilizing such methodology. The evidence is clear and convincing that a therapeutic residential placement where the Student has a continuing contact with his parents to abate his anxiety issue is necessary and to allow him to attend to his peer relationship and his academic progress. Indeed, it was his 6th

grade teacher who opined that the Student's behavior had impeded his academic progress. Dr. Reeves who evaluated the Student at Stone Mountain School also confirmed this. Dr. Rowland Barrett concurred with this position in his opinion.

The LEA presented its Director of Special Education. It is clear to this Hearing Officer that this individual is a true professional who expresses true concern for students in her charge (See Transcript 1/25/11, page 23). She did acknowledge that there were no behavioral goals written into the IEP of 12/19/07 (See Petitioner's Exhibit 29). A draft of a proposed IEP of November 15, 2010 was prepared (See Respondent's Exhibit #19). There is reference to the Student's 6th grade setting but this is not toward a setting for an adolescent (See Respondent's Exhibit #19, page 4 of 23). However, this document is only a draft and therefore not a controlling document. Mrs. Lyons testified as to the academic help as listed in the current IEP of 4/26/10 (Petitioner's Exhibit #39) that the LEA could provide. However, the LEA did not provide for it in the IEP of 12/19/07 (Petitioner's Exhibit #29). The LEA does not provide for psychopharmacology. But the LEA does work with physicians and parents utilizing the school nurses for delivery of such medications (See Transcript 1/25/11, pages 64-65). The LEA does not provide for the residential aspect as the Student would be at home with his parents. (See Transcript 1/25/11, page 65). However, it is clear from the testimony of the psychologists and their reports that the residential aspect was necessary in the behavioral modification plan.

The LEA did not seek to do a new IEP until after the Due Process Hearing had commenced. No report from Dr. Feldman was proffered.

The Petitioners offered three rebuttal witnesses; namely, Jill Sayward the clinician from F. L. Chamberlain School; Anita Offly, the house manager for the dorm in which the Student was currently living; and the Mother.

Ms. Sayward, who had testified earlier, stated that contrary to what Dr. Feldman had assumed to be a point and level program at F. L. Chamberlain School to reward or punish various levels of behavior, the School used a variety of behavior control. She testified that as part of the behavior modification program the School utilized Family System (Family Therapy), individual therapy, dialectical cognitive behavioral therapy, collaborative problem solving, therapeutic groups, role modeling, team building and peer mentoring. (See Transcript 2/18/11 pages 12-14). She further testified that a student does not have to earn any points to have their family visit them at the school. (See Transcript 2/18/11, page 18). She testified that the point and level system at the F. L. Chamberlain School is individualized for each child. (See Transcript 2/18/11, pages 25-26). While she testified that the Student had made progress there were also times of regression. (See Transcript 2/18/11, pages 26-28). The Student's report card through the first trimester of the 2010-2011 school year and progress report is contained in Petitioner's Exhibit #68.

The next rebuttal witness was Anita Offley who is the House Manager at the dorm in which the Student resides. She stated that the Student in July, 2010 instigated conflict between peers. However, since October, 2010 he has learned to connect with others and has acquired better social skills. Counsel for the LEA after presentation of Respondent's Exhibits 26 and 27 had the witness describe the inappropriate behavior of the Student in

September, October, November and December, 2010 and three instances in January, 2011.

The Mother next testified in rebuttal that while the Student was in the LEA's 5th grade noted nine (9) time outs between March 1, 2007 and May 24, 2007, which contradicts the two (2) time outs shown in the Respondent's Exhibit #9.

FINDINGS OF FACT

I find the following findings of fact:

1. The Student has as a result of his diagnosis of ADHD and ODD, a severe behavioral disorder that severely and negatively impacts his classroom skills, his social skills, and his ability to interact with teachers and adults and his peers.
2. The Student has experienced severe and negative behavioral disorders from Kindergarten through the present time. This is confirmed by his evaluations and by the difficulties he and his teachers have had throughout his academic career to date.
3. The evaluations of the Student by Dr. Cara B. Reeves and Dr. Rowland Barrett are the most accurate evaluations of the Student in light of the probative evidence.
4. The Student's progress toward control of his behavior progresses and regresses for yet unanswered reasons.
5. The Student needs continuing access to open communication with his parents and stepparents to help overcome his anxiety issues.

6. The Student's severe behavioral disorder does severely and negatively impact his academic progress; and, further, such behavior disorder was unrelenting both during his classroom hours and his non-classroom hours.
7. The LEA, while evidencing a true effort to aid the Student in a public school setting, has been unable to cope with the needs of the Student in a public school setting; and, as a result, failed to provide FAPE.
8. The IEP of 12/19/07 in Petitioner's Exhibit #29 fails to provide for FAPE for the Student due to the absence of clearly delineated behavior goals and clearly delineated behavior modification methods for the Student in light of his lengthy history of behavior disorder and its negative impact upon his potential for academic progress.
9. The least restrictive private institution for the education of the Student in this case meeting the requirements of the Regs, Section 300.114 is a twenty-four (24) hour per day therapeutic residential school, which in this case is the F. L. Chamberlain School as it satisfies the requirement of Regs. Section 300.115(5). See *Mr. I ex rel. LI v. Maine School District No. 55*, 480 F2d 1 (1st Cir. 2007); IDEA, 20 USC Sec. 1400(d)(1)(A).
10. The Stone Mountain School and the SUWS Wilderness Program, while exhibiting great efforts to aid the Student with his disabilities and academic progress, were not effective.
11. The Parents of the Student gave proper and timely notice to the LEA of their rejection of the placement for failure to provide FAPE at the LEA's public school and the IEP and their intention to enroll the Student at public

expense in a private school, both as to the Stone Mountain School and at the F. L. Chamberlain School.. See Regs. Section 306.148(d).

12. While the LEA did give notice to the Parents that it intended to reconvene an IEP for the Student following the notice received by letter of December 30, 2009 and its reply of December 31, 2009, the LEA did not reconvene an IEP Team for the Student prior to the enrollment of the Student on February 17, 2010 at the F. L. Chamberlain School. The Parents at no time refused to make the Student available for evaluations. See Reg. 306.148(d)(2). The actions taken by the parents were reasonable on behalf of the Student.
13. The enrollment of the Student at the F. L. Chamberlain School was necessary for educational reasons, was reasonable and in the best interest of the Student which, in light of his disabilities, was reasonable calculated to provide the Student with a proper behavior modification program to allow him to make academic progress in the least restrictive environment for him.

DECISION

1. The enrollment of the Student at the F. L. Chamberlain School shall continue as it is the least restrictive environment for the Student.
2. The LEA failed to provide FAPE to the Student in a timely manner prior to the enrollment of the Student at the F. L. Chamberlain School.

3. The LEA shall provide for the room, board, tuition and associated costs of the Student at the F. L. Chamberlain School. See Regs. 306.148© forthwith.
4. The Parents of the Student are found to have given proper and timely notice of rejection of the placement of the Student in its LEA public day school for failure to provide FAPE and have given timely notice that such child would be enrolled in a private institution at public expense.
5. The LEA shall reimburse the Parents for all costs of the room, board, tuition and all associated fees paid by the Parents of the Student at the F. L. Chamberlain School.

Roderick A. J. Cavanagh, Hearing Officer

I hereby certify that I mailed a copy of the within Decision to Attorney Amy R. Tabor, Hardy, Tabor & Chudacoff, 24 Spring Street, Pawtucket, Rhode Island 02860 and Attorney Stephen Adams, Taylor, Duane, Barton & Gilman, LLP, 10 Dorrance Street, Providence, Rhode Island 02903 on the 31st day of May, 2011.