

**STATE OF RHODE ISLAND and ADMINISTRATIVE IMPARTIAL DUE  
DEPARTMENT OF EDUCATION**

**PROCESS HEARING**

**IN RE: JANE DOE**

**CASE# 15-22**

**Vs.**

**CHARIHO REGIONAL SCHOOL DISTRICT**

POSITIONS OF THE PARTIES

PARENT: The School District failed to provide the Student with a free, appropriate public education by refusing an out of district placement for the Student at the Grove School or some other residential placement.

DISTRICT: The IEP proposed by the District on October 1, 2015 provided the Student with a free, appropriate public education.

DECISION

- 1) An out-of-District placement at the Grove School is not appropriate and is denied.
- 2) The IEP proposals of October 1, 2015 did not provide a free, appropriate public education for the Student.

TRAVEL OF THE CASE

On October 20, 2015, the Rhode Island Department of Education received a request for an Impartial Due Process Hearing dated October 16, 2015 from the Mother which was filed by her attorney.

The School District's attorney provided an answer to the complaint on or about October 30, 2015.

On November 18, 2015, the School District through the special education director, Jennifer Durkin, reported to the Department of Education that there was no resolution between the parties.

On November 19, 2015, the Hearing Officer was appointed to conduct an Impartial Due Process Hearing in accordance with 34CFR and sections 300.507-515 of the regulations.

On November 30, 2015, the Hearing Officer notified the parties of his appointment and offered the following dates of hearing:

December 10, 2015  
December 15, 2015  
December 16, 2015  
December 17, 2015

At the request of the parties, a pre-hearing conference was held on December 15, 2015 which was attended by the Student's Mother and Father.

The hearings were conducted on the following dates:

January 19, 2016  
January 26, 2016  
January 29, 2016  
February 04, 2016  
February 24, 2016  
March 15, 2016  
March 22, 2016  
April 7, 2016

The original decision due date was January 3, 2016. Extensions of the decision due date were provided by the parties.

The extension stipulations are as follows:

December 2, 2015 to February 10, 2016

February 8, 2015 to April 1, 2016

March 22, 2016 to May 31, 2016

May 12, 2016 to June 30, 2016

June 24, 2016 to August 15, 2016

August 15, 2016 to August 31, 2016

The hearing concluded on April 7, 2016 and briefing dates were agreed upon by the parties.

#### FACTS:

On February 29, 2016, the Student became sixteen years old. She resides with her Mother and older brother in [REDACTED]. Her parents were divorced in 2005 and in the same year, the Mother put both children into counseling. (Trans. I, 13) The Mother testified that the Student was seen by a psychiatrist at eight years old. (Trans. I, 13)

In the 2005 – 2006 school years at the Chariho School District, the Student was in kindergarten and she, for the most part, exceeded standards or was consistently meeting standards. ( $\pi$  Exh.1) In the 2009 – 2010 school years, in the Chariho School District, the Student again exceeded standards or was consistently meeting standards. ( $\pi$  Exh.1) In the 2010 – 2011 school year at the Chariho Middle School, the Student received four A's and three B's. She was absent eighteen days and tardy eleven times. ( $\pi$  Exh.1) From grade 3 to grade 6 (2009 to 2012), the Student was classified as proficient or proficient with distinction. ( $\pi$  Exh.2)

In February of 2011, the Student began “acting differently” and it was having an impact on her in school and at home. (Trans. I, p.24) The Mother put the Student back into counseling with Lori Duffy, a Social Worker. She provided individual treatment and parent consultation

from 2011 to 2012 because of the Student's decrease in school performance and increase in school avoidance. ( $\pi$  Exh. 3)

On February 1, 2012, a Family Court Petition (Truancy) was filed ( $\pi$  Exh.17) because of absences. Joe Sullivan, Mr. Augeri, Tara Reddington, and a police officer went to the Student's house to get her to school. (Trans.Vol. I, p.46 & 47)

On May 31, 2012, the School District recommended retaining the Student in the sixth grade because she had missed more than ten days of school but the School District withdrew the recommendation on June 14, 2012 ( $\pi$  Exh. 6, 9, & 10) after the Mother took an appeal from the decision of the School District.

The Student had a Psychological Evaluation by I. Randy Kulman, Ph.D on May 7, 2012, May 29, 2012, and on June 5, 2012. Several tests were administered. The diagnosis was Mood Disorder, NOS, Oppositional Defiant Disorder.

On June 8, 2012, Ms. Duffy reported that the Student was under psychological stress that was causing much of the problems she was experiencing at home and at school. ( $\pi$  Exh. 3)

On August 30, 2012, the Student was taken to South County Hospital at the recommendation of the School District, Tara Reddington, because the Student was sleeping all day and up all night. The School District also recommended the Alternative Learning Program. (ALP) ( $\pi$  Exh.11)

The Student went to Bradley Hospital on August 30, 2012 after leaving South County Hospital and remained at Bradley until September 11, 2012 when she was discharged. The hospital noted that the Student had a history of oppositionality and reactivity in addition to erratic sleeping behavior who presented with worsening symptoms of oppositionality, defiance, school avoidance, and expressing passive thoughts of being "better off dead." ( $\pi$  Exh.12)

On or about September 21, 2012, the Student was accepted into the RYSE Alternative Learning Program at the School District. It is a clinical day program and it is a comprehensive intergrated program for at-risk youth and their families which partners with community and School Support Services. (π Exh.14) The Student wrote an essay as part of the application to be admitted to the ALP. She said she would be less anxious about what people would think of her in such a program and that when she heard laughter or whispering she would think it was directed at her. (π Exh.13) The RYSE program has education services from 7:30 a.m. to 2:15 p.m. Monday through Friday and clinical services twenty-four hours daily for 365 days. (π Exh. 15)

On August 20, 2012, the Student began consultations with Susan E. Meyers, MS, LMFT who saw the Student several times ending on January 21, 2013. On November 5, 2012, Ms. Meyer noted that RYSE does not seem to be working. (π Exh.4) From August 29, 2012 to January 18, 2013, the Student was tardy 22 times, absent (reason unknown) 19 times, absent for illness 20 times, one early dismissal, and 3 excused absences. The Student was out of school 43 days. (Δ Exh.7) She was attending Chariho Middle School from August 29, 2012 until September 21, 2012 and the RYSE School from September 24, 2012 until January 25, 2013 when she went back to the Middle School

On or about September 19, 2012, the Student was examined by D. Jacob Abraham, a psychiatrist. His diagnosis was Mood Disorder, Anxiety Disorder, and Oppositional Defiant Disorder. (π Exh.5)

The Mother removed the Student from the RYSE program. The Mother testified that the Student was having difficulties at the Alternative Learning Program. She pulled her out of the program and transferred her back to the Middle School. (Trans.Vol. I, p.42)

On January 14, 2013, the Student was admitted to Bradley Hospital. The Student overdosed on 30 to 40 tablets of ibuprofen. The Student reported that she got into an argument with her Step-Father about going to school. The Student claimed to be having a tough time at school, the Alternative Learning Program. According to the Student, her Step-Father yelled at her and it reminded her of her Bio-Father. Bradley opined that the Student should be given a trial back in mainstream schooling program ( $\pi$  Exh.16). The Student was placed on medication. (Trans. Vol. I, p.44)

On February 5, 2013, Dr. Abraham prepared a report concerning the Student. As to her hospitalization, he stated that hospitalizations usually involve interpersonal stresses between the patient and the family and her peers. ( $\pi$  Exh.18) On the same day, Ms. Duffy gave a report recommending that a treatment plan for the Student should slowly intergrate the Student back into the school setting. ( $\pi$  Exh. 19)

On February 6, 2013, a report from Tara Reddington, School Psycholigist, stated that Ms. Carolyn Garlick, principal at RYSE, told her that the Student's avoidance of school was due to a display of oppositional behavior which was evident at times in the classroom. ( $\pi$  Exh.20) Tara Reddington was very involved with the Student's family. (Trans. Vol. I, p.53)

Ms. Reddington reported on February 7, 2013: "Whereas most suicide attempts are a culmination of depression and a feeling of hopeless and often pre-planned, the (Student's) behavior of over-dosing was atypical of a suicide attempt and more indicative of an impulsive, reactive response to a situation that the (Student) was upset about at home." ( $\pi$  Exh.22)

On February 12, 2013, the School District performed a case history evaluation concerning the Student. It was recommended by Ms. Reddington and the evaluation was done by a Ms. Amy Cafaro, LICSW. The evaluation stated that the Student was diagnosed with Mood

Disorder, NOS, Anxiety Disorder, NOS, and Oppositional Defiant Disorder. She was medicated with Prozac and Abilify. The Student's behavior resulted in her avoiding school or other uncomfortable activities thereby reinforcing the behavior as something that works for the Student. The evaluation concluded with eight specific recommendations:

1. Intensive Family therapy and home based support when needed
2. Student and family identify what supports are needed to make attendance easier, to set goals and to strive toward goals
3. Student would benefit from a schedule tailored to her needs, start with a partial day then increase
4. Seek individual and family counseling about being separated from Mother
5. It is imperative that the Student develop regular and constant sleep
6. Developing extremely clear and firm limits on the Student
7. Father's involvement in therapy's an important part of the Student's therapy
8. Both parents to participate in services in an effort to be "on the same page"

Tara Reddington's memorandum of February 12, 2013, referenced a report from Heather Kinsey, South County Community Action, who recommended home-based services. She advised that the key to the Student's success is home-based support for Mom to assist the Student getting to school. ( $\pi$  Exh.23)

As of February, 2013, the Student did not have and IEP or 504 Plan. (Trans. I, p. 58)

On February 14, 2013, a transition plan was prepared by Tara Reddington to get the Student to school. ( $\pi$  Exh.25) The Student refused to go to school in accordance with the transition plan. Ms. Reddington spoke to Dr. Abraham on February 15, 2013 concerning the Student's refusal. He said that the Student wants to be home-schooled and she would push until she gets what she wants. Dr. Abraham felt the School District was providing reasonable support for the Students. ( $\pi$  Exh.26) (Trans.Vol I. p.62) Dr.Abraham was very much in favor of truancy proceedings.

The February 27, 2013 memorandum from Ms. Reddington was very positive about the Student's attendance for two days. However, from the beginning of the school year, the Student missed approximately eighty days of the 2012-2013 school year. ( $\pi$  Exh.27)

On March 7, 2013, the Team evaluated the Student to determine Special Education eligibility. The Team found that her performance was impacted by lack of attendance. She met or exceeded expectations for the past few years on NECAPS. ( $\pi$  Exh.28) The team meeting resulted in the Team deciding that the Student was not eligible for special education. The decision was based on outside providers' opinions and that of school personnel. ( $\pi$  Exh.29)

On March 10, 2013, Dr. Abraham provided the following: The Student's refusal to go to school is due to anxiety, mood problems, and a wish to be home schooled. Truancy proceedings could occur simultaneously with treatment. The goal is improvement not perfection. The Court could monitor her progress. Group home treatment is one of the outcomes if there is consistent non participation. A group home is not necessarily the sole or best outcome. ( $\pi$  Exh.31)

On March 14, 2013, the Student was admitted to the South County Hospital for cutting herself with a razor. She had an altercation with kids from school the night she cut herself. The other girls called her fat and ugly. The Student had very superficial cutting marks on her forearm. ( $\pi$  Exh.118)

Washington-Kent Family Care Community Partnership (FCCP) provided a Family Service Plan for the Student. Between April 24, 2013 and June 18, 2013, the Student was staying with her Father and getting to school more regularly. The Father took the Student off medication and she was not seeing the therapist regularly. ( $\pi$  Exh.33)

As of June 21, 2013, the Student's report card for the 2012-2013 school year shows that the Student was absent from school for 65 days and tardy 41 days. ( $\pi$  Exh.35) (Trans. Vol. I.,

p.68) The School District's Daily Attendance Report from August 29, 2012 to June 19, 2013 reported that the Student was absent from school 68 days. (Δ Exh.7) In the fall of 2013, at the beginning of grade 8, NECAP Scores showed: In reading, the student was proficient with distinction, in math, she was below proficient, and in writing, she was proficient.

(π Exh.112)

The Student attended summer school in 2013. She had a portfolio grade of 93% and attended every day and was not tardy. (Trans. Vol. I, p.68) (π Exh. 37)

Wendy Miller, a social worker, consulted with the Student from March 18, 2014 to March 4, 2015. Ms. Miller had twenty-five sessions with the Student. The session involved the Student's emotional state, physical condition, school attendance, relationships, and experiences.

(π Exh.39)

As of January, 2014, the Student was attending Curtis Corner Middle School in South Kingstown. She failed most courses except language arts, science, world language, and art.

(π Exh.40) The change in the School District was agreed upon by the Mother and Father. The truancy petition was ended on November 25, 2013. (Trans.Vol. I, p.73) (Δ Exh.7)

On or about January 16, 2014, the Student overdosed on Tylenol. She was discharged on January 23, 2014. (π Exh.41) The Student was living with her Father at this time. The Student had been acting out in school. The Mother took her home and the Father took her to the hospital. The Student was taken to the Providence Center for an initial treatment plan. (π Exh.42) It was a referral by the hospital.

The Student was re-enrolled in the Chariho School District on February 3, 2014, because, according to the Mother, it was not working out at Curtis Corner. The Student was at Curtis Corner for 2 ½ months. (π Exh.43) The School District conditioned re-enrollment upon the

Student and family following eleven team recommendations, one of which was that the Student attend school every day. (π Exh.44)

On March 6, 2014, the Student was admitted to Butler Hospital. It was reported that the Student was found in a fetal position sobbing and banging her head on the floor because her Father did not text her for her birthday. He had not contacted her since her overdose. (π Exh.45) The Mother stated that the Student had to be hospitalized because she had to go back to school. (Trans. Vol. I., p.87)

A Student Support Program was provided by the School District. A social worker by the name of Brenda Medina was assigned to the Student. In April, the Student's attendance was not great. (Trans.Vol. I. p.90) (π Exh.46) According to the Mother, the Student did not like Ms. Medina. (Trans.Vol. I. p.90) The Middle School Support program provided the following: a social worker is assigned to the Student to work with the Student to help in the classroom, transition plan for reintergration into the classroom, supervised study, teaching strategies and problem solving skills, and periodic reviews.

Also, in March (March 20, 2014), another resource was made available to the Student (The Rhode Island Family Intervention System). (π Exh.47) Sharon Dixon from R.I.F.I.S. was assigned to the Student to visit her at home. It is reported that the Student felt stressed and overwhelmed about the family situation. While living with the Dad, there were no attendance problems. (π Exh.47, p.2) The Family Service Plan provided that the Student will meet with Wendy Miller, Social worker, on a weekly basis. It reported that the Student had excellent reading and writing skills. (π Exh.48)

On May 9, 2014, Dr. Abraham requested increased supports at school for the Student.

(π Exh.49) His request was a result of the Students psychiatric problems which resulted in poor school functioning. Her time out of school due to missed days caused her to fall behind resulting in poor academic functioning. According to Dr. Abrams the Student was overwhelmed by the make up work.

On May 19<sup>th</sup> and May 28<sup>th</sup>, 2014, the school warned the Student that she was in trouble academically and that she had accumulated twelve absences. (π Exh.50 & 51) The NECAP scores showed the Student on the achievement level to be partially proficient. (π Exh.113)

The Student was again admitted to Butler Hospital on May 30, 2014. She asked her Mother to take her to the hospital because she knew she would try to kill herself. She was unable to function. The Student was discharged on June 6, 2014. (π Exh.53)

Butler Hospital recommended that Gateway Healthcare, Inc. provide preliminary treatment plan for the Student. It provided help every day for two weeks. (π Exh. 53)

On June 12, 2014, the School District made a referral for section 504 protection. (π Exh.54 & 55)

Mother called the School District to tell them that the Student was getting worse. The School District then offered a 504 protection plan. (Trans.Vol. I, p.97)

On June 23, 2014, the School District found the Student to be eligible for a 504 plan. The team determined that the Student had an impairment that substantially limits major life activities such as learning. The plan provided accommodations in several areas. (π Exh. 56 & 57)

The June 23, 2014 report card showed that the Student was absent 42 times. However, the marks were surprisingly good. (π Exh.58) The Daily Attendance Report from October 7, 2013 to June 24, 2015 reported the following: 157 absences for illness, 9 early dismissals, 46

absences (reason unknown), and 17 tardy days. The total absences were 212 days. The Student was attending Chariho Middle School during the period of time from October 7, 2013 to November 26, 2014 and RYSE School thereafter to June 22, 2015.

On September 11, 2014, the Student was admitted to Butler Hospital. The Student reported that she was suicidal and definitely not safe. A week earlier she cut herself coincidentally with the start of school. It was reported that the Student can't attend school (high school) because of overwhelming anxiety. The Student was discharged on September 23, 2014. (π Exh.65)

Gateway Healthcare, Inc. prepared a preliminary treatment plan for the Student which provided goals: increase coping skills, emotion regulation, distress tolerance and anger management. (π Exh.66)

The School District had a team meeting on September 17, 2014. The purpose was for a sixty days diagnostic placement which was recommended by the team. (π Exh. 60) The assessment plan of September 18, 2014 was for a clinical review and observation by Dr. Vergnani. (π Exh.61) On September 18, 2014, a RYSE Alternate Educational Setting Evaluation form was prepared and accepted by the Mother. (π Exh. 64) At this time (September, 2014), the Student was still taking Prozac and Abilify. (Trans. Vol. I, p.106)

In October, 2014, the Mother received sole custody of the Student with respect to health issues otherwise the Mother and Father had joint custody. (π Exh.67)

On October 16 and 17, 2014, Brett Leimkuhler, Ph.D., conducted a Neuropsychological Evaluation. The Student was still on the 504 plan and she was being evaluated for the RYSE program at the School District High School. Dr. Leimkuhler found:

Major Depressive Disorder, Severe  
Anxiety Disorder  
Disruptive Stress Disorder  
Learning Disorder

## Attention Deficit Hyperactivity Disorder

He pointed out that the diagnosis of Oppositional Defiant Disorder contributed to the view that the Student's problem was "behavioral" rather than manifestations of a serious underlying psychiatric issues.

In his opinion, the Student demonstrated that she cannot tolerate the public school environment. He stated: "It is clear from her academic record that (the Student) is not only fearful of attending school but has been unable to learn or to receive a meaningful education in this setting." It was his opinion that the Student was too fragile and unstable to cope with being in a classroom with other Students.... Among his recommendations was to see a psychiatrist and to be placed in a therapeutic school setting such as Bradley School which should be facilitated as soon as possible. ( $\pi$  Exh.68)

On October 20, 2014, the Mother executed authorizations for Brett Leimkuhler, PhD., to release protected health information to Bradley Hospital, Hasbro Children's Hospital, Jennifer Durkin, Special Ed. Director, Jane Cronin, Wendy Miller, Attorney Clapham and Dr. McGee-Coughlin.

The evaluation done by Dr. Leimkuhler (The Center for Neuropsychology & Learning Disorders) was very extensive. ( $\pi$  Exh.121) His conclusion was that the Student could not attend school for the remainder of the 2014-2015 school year.

On October 28, 2014, the School District had an educational evaluation to determine continued special education services for the Student. Behavioral observations reported that the Student had the ability to listen, take notes, compose written responses, and engage in class discussion. She repeatedly employed task avoidance by going to the nurse, the bathroom and calling home. In reading, she could comprehend grade appropriate text and in writing she could

respond with clarity and insight; in Math, she showed little conceptual understanding in most aspect of grade level expectations. On NECAP scores she was an average student. ( $\pi$  Exh.69)

Sometime between October 17, 2014 and October 27, 2014, Dr. Vergnani, a licensed psychologist, prepared a clinical observation report for the School District. The Student was in the RYSE program for three and a half days. Her providers reported that her mood was highly variable and the Student was concerned about her appearance, had difficulty sleeping and felt unsafe. ( $\pi$  Exh.70)

On October 27, 2014, the Student was admitted to the Arbour-Fuller Hospital in Massachusetts and discharged on November 11, 2014. The Mother had previously contacted Arbour-Fuller for medication management. The Student again became suicidal. The Mother was told by Arbour-Fuller to take her right in. (Trans.Vol. I, p.111)

Arbour-Fuller recommended the following: individual therapy, family therapy, regular sessions with social worker or school psychiatrist, a safe place at school where the Student can retreat when overwhelmed, one-one aide, reduced homework, staff member to whom the Student can go, and extended time on tests. ( $\pi$  Exh.72)

On November 25, 2014, the School District's team reviewed the evaluation of November 11, 2014 and determined a serious emotional disturbance. ( $\pi$  Exh.73) The team concluded that the Student was eligible for special education. ( $\pi$  Exh.74) Dr. Leimkuhler's evaluation was mainly used by the team. (Trans.Vol. I, p. 114)

On November 25, 2014, the School District held a team meeting to develop an IEP. Transitional Assessments were not available because the Student had not been attending school because of medical reasons. The Team would gather information while the Student is being home tutored. When assessments were completed, the IEP Team would reconvene.

The Team noted in the present levels of academic achievement that the Student is highly capable of completing work and does a good job when she is attending class. It provided that the Student would be in a regular class 40% of the time. Placement was described as home or hospitalized. ( $\pi$  Exh.77) As to the plan the Mother said: "They basically were privy to like a slow reintegration, but there was never a set plan." (Trans.Vol. I. p.117)

On November 28, 2014, the Student attempted to take the Mother's bottle of Motrin to sleep. The Student also cut herself. She was taken to South County Hospital. The cuts were superficial and she returned home the same day. ( $\pi$  Exh.118)

On November 30, 2014, Dr. Leimkuhler provided an opinion concerning the Student. He again suggested a therapeutic school away from the public school environment with psychological and psychiatric care available in house. Further, the Student could not attend school through the end of the current school semester. ( $\pi$  Exh.75)

After discharge from Arbour-Fuller, the hospital referred the Student to the Providence Center for a partial day program. Implementing the partial day program was delayed because of insurance questions. On October 27, 2016, the Mother stated to Jane Cronin she was willing to try RYSE school clinical services which were immediately available. ( $\Delta$  Exh. 3)

Jane Cronin had attended meetings concerning the Student and the School District and made regular contact with the Student and Mother between September 9, 2014 and December 30, 2014. ( $\Delta$  Exh. 3)

On November 25, 2014, Jennifer Durkin, Special Education Director, notified various teachers that the Student would need tutoring and gave them an opportunity to be the tutor. Education Inc. and/or Academic Advantage were hired to do the tutoring which began on December 30, 2014. There was tutoring in Math, Algebra I, History, English and Science. In

May, 2015, Jane Daly sent an email to Academic Advantage that the Student should be getting six hours per week of tutoring but for her to catch up she needed 12 hours per week. Some sessions were cancelled by the Parent or the Student refused to participate. The tutoring was for home and/or the hospital.

Records introduced show that tutoring was available monthly from October, 2014 to May, 2015. ( $\pi$  Exh.116 & 117)

On January 7, 2015, the Student was taken to Butler Hospital. The Student reported worsening depression and suicidal ideation since an alleged rape. The alleged rape according to the Mother took place on New Years Eve of 2014. (Trans. Vol.1 p.120) According to the Mother, the anniversary of the alleged rape caused the Student to become more depressed. It was reported that the Student was being belligerent at home, yelling, screaming, and saying she wanted to die. The Student used substance (THC) daily to weekly. Maladaptive patterns of behavior with unhealthy coping skills lead to functional impairment in the school and home environments. ( $\pi$  Exh.79) The Student was discharged on January 20, 2015.

On January 8, 2015, Dr. Brett Leimkuhler reported that the Student confided in Wendy Miller that the Student was sexually assaulted on New Year's Eve. He stated that the Student needs aggressive therapeutic interventions with highly skilled professionals who can communicate with each other providing consistent long-term treatment.

The Student was not responding to current treatment interventions. His opinion was that the Student could not return to the RYSE Program because the alleged perpetrator of the rape was a student in RYSE; the Student needed a therapeutic school like Bradley. ( $\pi$  Exh.78)

On January 20, 2015, the Student went from Butler Hospital to St. Mary's Home for Children which is an acute residential treatment service (ARTS). She was discharged on January 23, 2015. The Student no longer met ARTS criteria. ( $\pi$  Exh.80)

On March 2, 2015, Wendy Miller wrote to the School District concerning Dialectical Behavioral Therapy. The strategies are broken down to mindfulness, emotional regulation, relationship issues, and safety. A behavioral component was essential to the Student's success. ( $\pi$  Exh.81)

On March 4, 2015, an IEP Team met to review the IEP of November 25, 2014. They spoke about the alleged rape and how the Student and alleged perpetrator would be separated. At this time, tutoring was sporadic. The School District believed that it could provide FAPE for the Student.

Team recommendations were:

1. Written plan outlining RYSE to parent's attorney.
2. Dr. Feldman to assess Student's status.
3. IEP will remain the same for three weeks. ( $\pi$  Exh. 82)

An IEP was developed for the period from November 25, 2014 to November 24, 2015. Present Levels of Functional Performance and of Academic Achievement was the same as the prior IEP as was the Measurable Annual Academic or Functional Goals.

The Measurable Short Term Goals had target dates changed from January 23, 2015 to June 22, 2015, September, 2015, and November, 2015. During June and September, the Student would receive DBT therapy. ( $\pi$  Exh.89)

On March 30, 2015, a summary of parental concerns was prepared by the Mother and her attorney. It was shared with the School District. (Trans. Vol. I, p.132) The goals provided that the Student develop social and emotional skills to remain safe in school, to tolerate the school day, and to make reasonable progress in the general educational curriculum. The remainder of

the document covered Support Services, Academic Support Services, Accommodations, and Safety. (π Exh.84)

At the joint request of the Parent and School District, Dr. Steven Feldman, M.D. met with the Student and Mother on March 28<sup>th</sup> and March 30<sup>th</sup>, 2015.

On March 31, 2015, Dr. Feldman presented a report of his meetings with the Student on March 28, 2015 and on March 30, 2015.

Attorney Anderson and Attorney Robinson had specific questions for the Doctor. Mr. Anderson wanted to know if the Student would be triggered or retraumatized if she saw or had contact with the person who allegedly raped her and Mr. Robinson wanted the Doctor to review the psychological and psychiatric information in the record to clarify diagnosis, formulation and treatment plans.

As to Mr. Anderson's question, Dr. Feldman's opinion was that: "with a reasonable degree of medical certainty that the delivery of a free and appropriate public education on the (School District) campus is not contraindicated at this time as long as the risk of contact between the (Student) and the alleged rapist is minimized and there is a safety plan in place should an encounter occur by chance."

As to Mr. Robinson's question, Dr. Feldman's opinion was that: "with a reasonable degree of medical certainty that the primary responsibility for reducing this burden rests with those in the mental health system and that the school has the obligation not to make things worse." He further stated that: "... an evidence based psychotherapy (DBT) coupled with a change in the medication may help to reduce the intensity, frequency, and duration of the target symptoms... . If successful, treatment may allow the least restrictive setting to be the Chariho High School." (School District) (π Exh.85)

On April 1, 2015, there was a team meeting at which the only signed-in participants were Attorney Jon Anderson and Jennifer C. Durkin. Although her Parent's attorney did not sign the minutes, it appears from the minutes that the Parent's attorney was present and did ask about the safety of the Student. The School District's attorney offered the RYSE program and DBT therapy either outside the district or within RYSE. The team was to reconvene after receiving information from RI – CBT. ( $\pi$  Exh.86)

On April 15, 2015, the School district proposed a reintegration plan for the RYSE program.

The RYSE IEP for April 15, 2015:

1. Student to begin DBT with RICBT.
2. May 4<sup>th</sup> begin tutoring at school.
3. May 18<sup>th</sup> begin attending school 7:30 a.m. – 9:30 a.m.
4. June 1<sup>st</sup> attend school 7:30 a.m. to 11:30 a.m.
5. July 7<sup>th</sup> begin ESY.
6. August 31<sup>st</sup> full time student

The RYSE IEP for May 1, 2015:

1. Same
2. May 18<sup>th</sup> tutoring at 2:15 p.m. Monday through Wednesday, 4 hours content homework.
3. June 1<sup>st</sup> attend school daily 7:30 a.m. to 9:30 a.m.
4. June 15<sup>th</sup> increase attendance to 11:30 a.m.
5. July 7<sup>th</sup> begin ESY Tuesday and Thursday 8:15 a.m. to 11:45 a.m., Wednesday 8:15 a.m. to 12:45 a.m.
6. August, student will be full time.

Community and School Support Service, CSSS, staff would be available to support transportation and be available to the Student for any difficulties. ( $\pi$  Exh. 87)

A report card dated April 17, 2015 for the 2014-2015 school year (1<sup>st</sup> and 2<sup>nd</sup> quarters) showed that the Student was absent 121 days. ( $\pi$  Exh.88)

On April 3, 2015, another IEP Meeting reviewed the IEP of 11-25-14 and changed the running date from 11-25-14 to 1-23-15 to 11-25-14 to 11-24-15. Measurable Annual Academic Functional Goals (Area of Need) remained basically the same. Short term objective dates were advanced to May and June, 2015. It covered the Student's math weakness and had a date of achievement of May, 2015. Emotional Distress Tolerance was listed as a need with the Student developing an understanding of the elements of DBT by November, 2015. The Consideration section was basically unchanged, ESY services remained the same. The Supplemental Aids and Services section was extensively amended as was the section on Educational Environments. It stated:

“The student requires a highly structured, therapeutic classroom and school environment to address her social needs as well as her safety” (π Exh.98). On August 27, 2015, Attorney Robinson requested a residential placement. (π Exh.99) On September 3, 2015, the School District held a team meeting for a review of the IEP. The Mother participated. Information from Butler and Newport Academy was to be obtained. The School District attorney asked for a social history. (π Exh.100)

On April 17, 2015, the Student was evaluated by Jared Minkel, Ph.D. His initial plan was CBT/DBT treatment. The treatment goals: get back to school, improve relationship with Mother, improve stress tolerance, and prevent suicidal behavior. Dr. Minkel communicated with the School District through Kim Hastings to coordinate the case. He had sessions with the Student weekly from April, 2015 to October, 2015. Dr. Minkel as of November 13, 2015 no longer worked for RICBT (Cognitive Behavioral Therapy and Coaching). (π Exh.120) Dr. Minkel attended the IEP meeting of October 1, 2015, the last meeting of the parties.

A team meeting was held on May 12, 2015. The purpose was to develop an IEP and discuss re-entry to RYSE. The integration options were discussed with Dr. Minkel and after the Student's appointment with Dr. Minkel the options would be reviewed. The Doctor would contact the Director (Ms.Garlick) to coordinate re-integration before May 19<sup>th</sup>. (π Exh.90)

Between May 21<sup>st</sup> and May 26<sup>th</sup>, 2015 the attorneys wrote to each other about the Student's status. The Parents attorney made a request for a placement in a residential facility. (π Exh.91 and 92)

On May 22, 2015, the Student was taken by ambulance to Emma Pendelton Bradley Hospital because of out of control behavior directed at her Mother. The Student was reported to have flipped over a recliner and threw kitchen pots. She was belligerent toward her Mother. The Student required inpatient psychiatric admission. The report referenced a recent arrest for biting a peer in her neighborhood. The report stated that the Student's behavior was very stressful for the Mother and she is exploring residential placement for the Student. She was discharged on June 2, 2015 and went home. There was no opening at the Newport Academy. (π Exh.93)

The June 24, 2015 report card for the 2014-2015 school years (1<sup>st</sup> through 4<sup>th</sup> quarter) had a total of 154 absences and that the Student was failing. (π Exh.96)

On August 26, 2015, the Student was admitted to Butler Hospital. It is reported that she cut herself that morning. She had images of her car crashing and everyone in her family being brutally killed. She was terrified of being home alone. She smoked marijuana on weekends which her Mother knew. The Student was discharged to the care of her Mother on September 2, 2015 to be admitted to Newport Academy. (π Exh.102) The Mother believed that the start of school triggered the Student's hospitalization. (Trans. Vol. II, p.5) This episode was nothing like the Mother had seen. (Trans. Vol. II, p.6) The Mother selected Newport Academy and she

discussed it with social worker at Butler Hospital. (Trans. Vol. II, p.7) On September 2, 2015, the Student went from Butler Hospital to the Newport Academy. It prepared a report of the Students stay at Newport Academy. She was discharged on November 10, 2015. There were several therapies involving the Student. (π Exh.109)

While at Newport Academy, the Student had online coursework. (π Exh.110) The Student had 24 – hour supervision seven days a week and at times for safety reasons, the Student had one-on-one supervision. Again, Newport Academy recommended a therapeutic boarding school to sustain her gains. (π Exh.111) Newport Academy recommended the Grove School in Connecticut for the Student. At the end of November, 2015, the Mother went to the Grove School and according to the Mother, the Student did get accepted to that school. (Trans.Vol. II, p.17)

After leaving Newport Academy, the Student was at home with her Mother. The Mother stated: “the only way that I can oversee my daughter ... is if I took her with me. So she would do her school work in my conference room at my office.” (Trans.Vol. II, p.22) The Student continued to do school work from the computer program.

The Student’s transcript of grades was provided. It appears that the Student did not receive any credits for the 2014 – 2015 year. (π Exh. 103)

On October 1, 2015, the School district reviewed the IEP. The anticipated date the Student would graduate was June 13, 2019. The needs for post – school employment and independent living were changed from the last IEP review. The Student needed to utilize coping skills to complete a full day of school, to find employment, and to sustain employment. The Measurable Annual Academic or Functional Goals were modified by adding additional information about the Student. It provided that the Student would attend school daily and on

time having only a doctor's excuse for absences. The target date for objectives was November 15, 2015. The IEP provided that the Student needed a clinical day program, small structure setting, and specially designed instruction for math. Under supplemental needs, upon a third consecutive absence, tutoring will be put into place in core academic areas. ( $\pi$  Exh. p.104 A)

At the October 1, 2015 IEP Meeting, the Mother and her attorneys attended as did the School District attorney. The Mother's position was that the school program did not work and the School District's position was that the school program would work if the Student attended school. Attorney Anderson pointed out that the Student attended school when the Student lived with the Father. Arguments continued and Mr. Robinson advised the Mother to leave the meeting. ( $\pi$  Exh.106) The Mother testified that when Mr. Anderson said no to the Grove School they packed up and left. (Trans.Vol. II, p.12)

On October 1, 2015, Ava Diamond, social worker, provided a report from the Newport Academy stating that returning to school would not be recommended due to a traumatic incident of recent past. It reported that there are significant emotional triggers at school. ( $\pi$  Exh.109) However, there was no evidence that Newport knew anything specific about the alleged rape or the whereabouts of the alleged perpetrator.

The Mother testified that the Student had a couple of incidents at the Newport Academy. The Student ran away and she had a very depressive episode where she was picking at her skin. (Trans.Vol. II, p. 10)

On December 31, 2015, the Student was hospitalized at the Butler Hospital. The Student was a walk-in with her Mother. She expressed suicidal ideation with a plan to overdose on her Mother's pills. She complained of worsening intrusive suicidal thoughts. She showed signs of

paranoia. She was sleeping most of the day. It was reported that the Student enrolled in online classes but was not following through or doing the work.

The Student was discharged from Butler on January 15, 2016. She was diagnosed with unspecified depressive disorder, unspecified anxiety disorder, cannabis use disorder, mild, and post traumatic stress disorder. (Δ Exh.9)

On April 17, 2015, the Student was evaluated by Jared Minkel, Ph.D. His initial plan was CBT/DBT treatment. The treatment goals: get back to school, improve relationship with Mother, improve stress tolerance, and prevent suicidal behavior. Dr. Minkel communicated with the School District through Kim Hastings to coordinate case. He had sessions with the Student weekly from April, 2015 to October, 2015. Dr. Minkel as of November 13, 2015 no longer worked for RICBT (Cognitive Behavioral Therapy and Coaching). (π Exh.120) Dr. Minkel attended the IEP meeting of October 1, 2015, the last meeting of the parties.

**The Mother Testified on January 9<sup>th</sup> and 26<sup>th</sup>, 2016, February 4<sup>th</sup> and 24<sup>th</sup>, 2016**

The Mother testified that she wanted placement at the Grove School because it had a small number of students. It was an hour away from her house and the services are available. (Trans.Vol. II, p.43)

During cross examination, the Mother testified about DBT therapy. She agreed that DBT treatment would reduce suicidal behavior, self injury, and psychiatric hospitalization, treatment drop out, depression and anger. (Trans.Vol. II, p.104-111) (Δ Exh.6) She was asked about an email from Attorney Bejma to Mr. Anderson, Esq. dated October 13, 2015 concerning the request by Mr. Anderson for another social history. It included an email of October 9, 2015 from

Mr. Anderson, Esq. He wanted a social history to include the Student's father. (Δ Exh.4) (Vol. IV, p.57-58) The Mother refused.

The Mother agreed to the content of the School District's Exhibit 6 (The Linehan Institute, DBT). (Trans. Vol. IV, p.67) The Mother testified that the Student being home as opposed to somewhere else is a trigger. (Trans.Vol. IV, p.60) The Mother also agreed that the Father had the authority to authorize evaluations for the Student. (Trans.Vol. V, p.29)

**Dr. Bett Leimkuhler Testified On January 29, 2016**

On January 29, 2016, Dr. Brett Leimkuhler testified for the Parent. He is an expert in the field of neuropsychology and learning disorders. He had been working in that field for 36 years. (Trans.Vol. III, p.5)

His diagnoses were: major depressive disorder ( severe) recurrent without psychotic features; anxiety disorder with features of generalized anxiety; school anxiety and social anxiety; disruptive mood dysregulation disorder; pediatric bipolar disorder; nonspecific learning disability because of the Student's problems with math and nonverbal processing which are suspected but not confirmed; post traumatic stress disorder and attention deficit hyperactivity disorder. (Vol. III, p.8) He also stated that the label of oppositional defiant disorder does not have any etiological value. (Trans.Vol. III, p.16)

The Doctor stated that mood disorder and ADHD gives the person oppositional defiant disorder. (Vol. III, p.11) The Doctor stated that the Student is a high suicide risk. (Vol. III, p.12) He testified as follows: going back to the place where the trauma occurred is enough to set off PTSD reaction and the Student said her (Father) made her feel fat and ugly which combination is complex PTSD: the Student was displaying complex PTSD syndrome possibly with multiple

etiologies (Vol. III, p. 17), the mental breakdown that the Student was experiencing at the beginning of school semester is not just school anxiety or school phobia. (Vol. III, p.18) It should be noted that the alleged attack did not take place at the Chariho School.

As to the School District proposal (Alternate Educational Plan) (π Exh.132 and Δ Exh.1) the Doctor stated that her illnesses are not going to permit her to participate in that program and the level of mental health interventions are anywhere near what are required; the school district plan is a good phase II or phase III for the Student. (Vol. III, p.25)

The Doctor responded to questions concerning DBT program,... “DBT is intended to be administered as part of either an inpatient program or after people have improved to some extent at a day hospital program in the initial stages; the group component of it is important; it is very hard to do DBT with an actively mentally unstable and suicidal person individually on an outpatient basis on a weekly basis.”

The Doctor testified that the Student made educational and emotional progress while at Newport Academy (Vol. III, p.29); that the Student needs a residential placement and that he was familiar with the Grove School. (Vol. III, p.32)

As to the Grove School, the Doctor testified: “the Grove School is a good choice because it provides ...a consistent environment with a group of professionals who are highly trained, highly skilled, consistent. (Vol. III, p.33)”

Doctor Leimkuhler never provided any DBT counseling (Vol. III, p.44) and he did not know specifically what mental health services were provided at the Newport Academy. (Vol. III, p.47) He was familiar with the Grove School and that it provided DBT and CBT. (Vol. III, p.50)

The Doctor did not interview any school district employees (Trans. Vol. III, p.62) except, he did speak with Jane Cronin. (Vol. III, p.65) He did not review any educational records, any transcripts or work samples from the Newport Academy. (Vol. III, p. 67) When the Doctor used the word “therapeutic school environment,” he meant residential placement. (Vol. III, p.73) The Doctor did not talk to Doctor Vergnani before he wrote his report. (Vol. III, p.77) He never spoke to the Director of the RYSE program with regard to the Student. (Vol. III, p.85)

The Doctor stated that the Student would have to be in a residential placement for not less than six months before it can be determined that the Student is on a different trajectory than she was. (Vol. III, p.103)

The Doctor agreed that the recommendations made by medical professionals for a residential placement were making that recommendation for medical reasons and psychiatric reasons. (Vol. III, p.114) As to Dr. Feldman’s report, Dr. Leimkuhler found Dr. Feldman’s report to be insufficient because he failed to take into account all the history of the Student. (Vol. III, p.118)

As to the alleged rape, Dr. Leimkuhler testified that the Student’s school phobia, school avoidance and school anxiety was a severe level before the alleged rape (Vol. III, p.136); the presents of the alleged perpetrator would add to her condition. (Vol. III, p.137)

#### **Dr. Steven Feldman Testified On April 7, 2016**

Doctor Steven Feldman testified. He is a licensed physician in Rhode Island and Massachusetts and he graduated from Medical School in 1968. Dr. Feldman testified that he is not a special educator but he has experience in trying to explain the medical, neurological and mental health

aspects that can be affecting students in special education ... so that they [School District] will be better able to deliver appropriate special education services. (Trans. Vol. VIII, p.28)

The Doctor was requested by the attorney for the School District and by the attorney for the Parent to give his recommendations and opinion concerning the Student. (Trans. Vol. VIII, p.34) Doctor Feldman explained the difference between a psychiatrist and a neurologist. (Trans. Vol. VIII, p.36) A psychiatrist invokes a bio, psycho, socio approach. (Trans. Vol. VIII, p. 37)

Dr. Feldman contradicted several conclusions made by Dr. Leimkuhler in his report and testimony including the use of the term “bipolar disorder” (Trans. Vol. VIII, p.41); the term “disruptive mood dysregulation disorder” being characterized by suicide attempts (Trans. VIII, p. 45); the use of the term “school anxiety” (Trans Vol. III, p.47); diagnosing the Student with PTSD before the alleged sexual assault (Vol. VIII, p.50); getting the Student into a residential placement as quickly as possible (Trans. Vol. III, p.61); the manner in which “borderline personality” is treated using DPT (Vol. VIII, p.65); and whether or not borderline personality disorder is a medical issue or an educational issue. (Vol. VIII, p.77)

As to a residential placement, Dr. Feldman testified that unless the placement is tied strongly to the family and the community that any gains made will wash out. (Vol. VIII, p. 88) He further testified that the School District’s plan (Alternative Education Plan [Δ Exh. 1]) was a good plan. There may be periods of time when safety would predominate and the Student might need to be in a hospital or require one-to-one in some therapeutic environment. (Vol.VIII, p.90) As to the Grove School, the Doctor stated with a reasonable degree of medical certainty that if it is not a DBT program, it is not the right program. (Vol.VIII, p.92) Further, he stated with a reasonable degree of medical certainty that gains made if any (at Grove) will not be sustained, that the DBT program as described offer her (Student) the best chance to make meaningful

progress that can be sustained, that the Student will make meaningful social progress, and that the Student can make educational progress. All of the above opinions were based on the following: that the Student is on a proper medication regimen, she faithfully attends her DBT training at Rhode Island CBT, and she has an experienced DBT therapist who has specific experience dealing with borderline personality disorder. (Vol.VIII, p.92, 93, 94)

The Doctor addressed the Alternative Education Plan during his examination.

The Doctor's opinion was that if the Student is on a proper medication regimen, faithfully attends the Mindful Teen program at Bradley Hospital and her family participates in weekly family therapy component, the Student, with a reasonable degree of medical certainty, would make meaningful emotional progress (Vol.VIII, p.95), social progress that can be sustained, and any factors related to borderline personality disorder that adversely affect education will be remediated such that she will be able to make academic progress that can be sustained. (Vol.VIII, p.96)

#### **Peter Chorney Testified On February 4, 2016**

Peter Chorney, executive director of the Grove School, testified. The school has a sophisticated clinical program. Every student is seen twice a week for individual therapy. According to Mr. Chorney the population is made up of very bright kids, college bound, who just need a great deal of support. They have a regular high school. (Vol. IV, p.5) The school is licensed by the Department of Children and Families in Connecticut and by Connecticut State Education Department. The Grove School is accredited by NEASC. (Vol. IV, p.7)

Mr. Chorney described their therapeutic boarding school: it is a residential program for students who need support both in and out of classes (Vol. IV, p.7); its program is for kids with

mood instability, anxiety issues, attention issues, OCD, low esteem issues, poor coping strategies (Vol. IV, p.7); it includes kids who have been in an out of hospitals, other programs, and kids who have family dysfunction and family struggles. (Vol. VI, p.8)

It was further described as having a vigorous education program on top of the clinical program and they would not take a kid who had an active substance abuse, physically dangerous or aggressive, who is psychotic or who has a clear conduct disorder. (Vol. IV, p.10) The average stay at Grove is two years. (Vol. IV, p.11)

The School District raised questions about law suits against the Grove School (Vol. IV, p.17) (Vol. IV, p.18) which were dropped.

As to a DBT program at the Grove School, a Mr. McAvoy of the school in an email to Jennifer Durkin on December 15, 2015 reported that the school is not a DBT program. (Δ Exh. 5) Mr. Chorney testified that they utilize DBT therapy but they are not a licensed DBT program. (Vol. IV, p.30) They do not define themselves as a DBT program nor as a CBT program. (Vol. IV, p.31)

Mr. Chorney was aware that Butler Hospital is a psychiatric hospital and Grove School is not. (Vol. IV, p.38, 39) Mr. Chorney did not know about the Student's hospitalization of 12-31-15. (Vol. IV, p.41) Grove School does not have a suicide prevention program and if a student should overdose he/she would likely go to the hospital. (Vol. IV, p.42)

As to whether the Student was still a candidate for the Grove School, Mr. Chorney testified that the Student was still a candidate but given all the new information they would have to take another look .... (Vol. IV, p.49)

In answering a question from the Hearing Officer concerning whether or not the Student is a person that would be taken into the Grove School, Mr. Chorney answered that "currently he

was not sure.” There is new data they would have to look at, and they would want to bring the Student in if they were going to potentially reconsider her. They are at a point where it is maybe or maybe not. (Vol. IV, p.50) He further stated that if the Student was stabilized they would definitely help her to be there. (Vol. IV, p.52)

### **Jane Cronin Testified On March 15, 2016**

Jane Cronin, a behavioral health clinician, testified. She worked for the Community School Support Services at the RYSE clinical day program [CSSS]. (Vol. IV, p.9) She was charged with providing support treatment services and in the case of a 60 day evaluation, she had to gather information from families, students and other outside providers. The Student was on a 60 day evaluation and placed in the clinical day program at RYSE. (Vol. IV, p.10) The evaluation, was to assess the Student’s educational and clinical treatment needs.

(Vol. IV, p.17) Ms. Cronin contacted Dr. Leimkuhler on October 23, 2014 to provide him with information about the clinical day program. She denied saying to him that the Student ...was not ready to attend the RYSE program. (Vol. VI, p.13)

Throughout her seven years with CSSS there were numerous instances of school refusal. (Vol. VI, p.17)

She described the clinical day program at RYSE: ... there is hopefully an engagement of Parents with the school in supporting student’s success and the clinical day program has staff who are especially trained, teacher assistants, and teachers to support and monitor and supervise a safe environment to keep students safe. The clinical side of the program collaborates with the educational side and provides outreach and community service to family and student. (Vol. VI, p.18)

The owner of CSSS is Dr. Vergnani, a clinical psychologist. (Vol. VI, p.30)

The witness testified that the Mother's approach to school refusal issues was inconsistent. (Vol. VI, p.32)

On cross examination the witness was questioned about "goals of treatment" which did not specifically list the need for the Mother to adopt a consistent approach to school refusal. (π Exh.114, Δ Exh.9) (Vol.VI, p.33) Ms. Cronin responded that the goal of "adherence to treatment plan" implies consistent compliance (Vol.VI, p.33) and further, that it meant that all parties concerned, educational side and family side, would have a consistent approach to treatment. (Vol.VI, p.34)

**Kim Hastings Testified On March 15, 2016**

Kim Hastings, a mental health clinician testified. She was an employee of the Community School Support Services (CSSS) and provided clinical services to the School District's RYSE program. (Vol.VI, p.35) She provided wraparound services which are services available not just within the school and not just during the school day but the services are available 24/7 in the school, in the home, and in the community. (Vol.VI, p.36)

She replaced Jane Cronin because the witness believed that the Student did not have a good relationship with Ms. Cronin. (Vol.VI, p.38) She was involved with the coordination of the case. She was communicating regularly with Dr. Minkel at least weekly. (Vol.VI, p.40)

The Student was to be back to school in May, 2015. (Vol.VI, p.50) (π Exh.114, 5-18-15) The witness would take the Student to and from school. (π Exh.114, 5-18-15) The witness did not know how many days the Student attended school between May, 2015 to June, 2015 or how many days she attended summer school. (Vol.VI p.55) Dr. Minkel and Ms. Hastings were talking as late as August 26, 2015. (π Exh.120) ( Vol.VI, p.56) The purpose of the conversation

was that he was informed by the Student's family that the Student engaged in cutting. (Vol. VI, p.57) The Doctor reached out to Ms. Hastings because it was not "his role." (Vol. VI, p.57)

**Jennifer Durkin Testified On March 15<sup>th</sup> and 22<sup>nd</sup>, 2016**

Ms. Durkin is the special education director of the School District which is a position she held for four years.

(Vol.VI, p.58) She has a certificate of elementary education, teaching certificate for special education and a certification as a special education administrator. (Vol.VI, p.60) After a voir dire examination by the Parent's attorney, the witness was found to be an expert in the field of special education and special education administration based on her over 20 years of experience working in this field, her bachelor and graduate - level educational credentials and the certificates that have been issued to her as recognition by the Rhode Island Department of Education.

Ms. Durkin testified that the person who allegedly raped the Student was not a student at the RYSE School for the current school year. (Trans.VI, p.68) The witness testified that she agreed with the recommendations of Dr. Steven Feldman. (π Exh.85) (Trans.VII, p.5)

As a result of the April 1, 2015 review meeting, there was an identification of a DBT provider and the funding for the service. (Trans.VII, p.6) The School District would pay for the service if the Parent's insurance was not available. (Trans.VII, p.7)

The last IEP prior to the resolution process was held on October 1, 2015. (Trans. VII, P.11) (π Exh.104A) The witness believed the Student was at Newport Academy for medical reasons and the Student was at Butler Hospital before going to Newport Academy. (Trans. VII, p.12) According to Ms. Durkin, it was the consensus of the team that: the Student is highly capable of completing work and does a good job when she attends classes; the Student is able to

take care of herself in the area of daily living skills;...the Student demonstrates average to above average skills in the area of reading and written language; the Student needs to utilize coping skills to successfully complete a full day of school and academic work in order to earn credits toward graduation; the Student by learning and utilizing these skills will assist her in finding and sustaining employment; the Student needs to utilize coping skills to sustain employment and to attend to everyday situations that arise that may cause her stress and anxiety. Recent testing (Dr. Leimkuhler) indicated specially-designed instruction is required in the area of mathematic problem solving. The witness continued: the Student will require specially – designed instruction in a small group setting to address gaps and the Student needs to explore her future educational and/or vocational areas of interest to develop her post-school goals. (Trans.VII, p.12, 13, 14, 15, and 16)

In further addressing the October 1, 2015 meeting, Ms. Durkin confirmed that the Student's attendance was sporadic and a short term objective was that the Student will attend school daily and on time. (Trans.VII, p.17) (π Exh.104A) She continued discussing the Team Meeting. The Team included a short term goal that the Student would develop and understand mindfulness, distress tolerance, and interpersonal relationships as measured by participation in clinical services. (Trans.VII, p.18) The Student had been working with Doctor Minkel on DBT. (Trans.VII, p.18) The School District offered an extended school year (ESY) with DBT services because it was part of the IEP. (Trans.VII, p.19) The placement in the IEP was the clinical day program, the RYSE Program. (Trans. VII, p.20) Dr. Leimkuhler's recommendations were also included: p.m. check in to assist the Student with organization, time management of homework in all academic areas, access after school math assistance, use of a calculator in math classes, and

extra time on classroom and statewide assessments. (Trans.VII, p.23) The Team considered parents concerns in developing the IEP. (Trans.VII, p.24) ( π Exh. 84)

Because of the Parent's concern with the safety of the Student, the IEP provided that the Student was to be escorted to the RYSE building for arrival and dismissal. (Trans. VII, p.25) Ms. Durkin testified that the person who allegedly assaulted the Student had not attended the RYSE School since October 1, 2015. (Trans.VII, p.26)

Ms. Durkin and Ms. Garlick prepared an Alternative Education Plan after the October 1<sup>st</sup> meeting. (Trans.VII, p.32) They proposed that the Student begin the day with her going to the Kindred Spirits Farm, a therapeutic horse farm, as a motivator. (Trans.VII, p.34) They would provide tutoring in core content areas. (Trans.VII, p.38) Another part of the plan would be the Mindful Teen Program through the Bradley Hospital's six-month program which is grounded in DBT therapy. It included family therapy. (Trans.VII, p.39) The program was recommended by Dr. Feldman. (Trans.VII, p.40)

Ms. Durkin visited the Grove School and she specifically asked if the Grove School utilized DBT therapy and was told that it does not use it. (Trans.VII, p.48) She testified specifically about the IEP of October 1, 2015. Her opinion was that it provided the Student with a free, appropriate public education. (Trans.VII, p.50)

During the School District's 60 day evaluationn the Student was only attending RYSE sporadically. (Trans.VII, p.53)

Ms. Durkin testified that the Mother was requesting that the Student be sent to a residential placement in the fall of 2015 (Trans.VII, p.61) but the School District disagreed. (Trans.VII, p.62)

Ms. Durkin was cross-examined about the Alternative Education Plan and where in the plan was it stated that a clinician would go with the Student to the Kindred Spirits Farm for support. The witness said the plan did not specifically indicate that support. (Trans.VII, p.72)

While the Student was at ESY, she attended about three days while she was being supported by Kim Hastings. (Trans.VII, p. 76)

Ms. Durkin explained that Edgenuity was an online academic program that is aligned to the common core standards (Trans. Vol. VII, p.78) and she was not certain if the benchmark for September, 2015 had been met. (Trans. VII, p.83)

As to some information in the October 1, 2015, IEP being the same as previous IEP meetings, Ms. Durkin testified that the October 1, 2015 IEP was the only IEP meeting that the team went through the entire document. At prior IEP meetings the team never even reviewed the document in front of them due to both parties requesting further information. (Trans.VII, P.85)

At the IEP of October 1, 2015, there was no specific discussion about a plan for the situation where the Student refused to go to school. (Trans. VII, p.98)

When asked if there was a plan to address what happens if the Student refuses to go to tutoring or Kindred Spirits Farm, Ms. Durkin testified that the team didn't have the opportunity to discuss this plan as a team but that could have been a potential conversation ... .(Trans.VII, p.100)

On Redirect, the witness read the last sentence of School District's exhibit 1 which provided that if the Student cannot leave home to attend Mindful Teen Program, a CSSS clinician will go to the home and call the Bradley Hospital clinician for DBT coaching on the spot. (Trans. VII, p.103) The witness testified that the School District will provide DBT therapy through Mindful Teen programs at Bradley Hospital. (Trans.VII, p.113)

The Student was not attending school on October 1, 2015 because her Mother had placed her in the Newport Academy. (Trans.VII, p.113)

As to students at RYSE School in the Independent Study Program, Ms. Durkin Testified many of them don't do anything independently based on their disabilities so they are supported throughout the day. (Trans.VII, p.115)

#### DECISION

As of February 27, 2013, the Student had missed eighty days of the 2012-2013 school year.

On March 7, 2013, the Team met to determine the Student's eligibility for Special Education. Prior to this date, the Student had been admitted to Bradley Hospital for anxiety, not sleeping, and reluctance to go to school (8-30-12 to 9-11-12). On January 14, 2013, she was again admitted to Bradley following an overdose on ibuprofen tablets.

The Team reviewed the opinions Dr. Abraham, social worker from Bradley Hospital, the School Psychologist, Ms. Garlick, the Alternative Learning Director, Sue Meyer, an outside therapist, and Amanda Pelletier, a social worker.

They decided that the Student did not qualify for special education at that time. Dr. Abrahams felt that the school was providing reasonable support at that time. Ms. Duffy, social worker, who treated the Student for a year, advised that the Student be integrated back into school. Based on the information the Team received, I find that their decision was appropriate.

Eighteen months later (9-17-14), the Team again met to determine if a sixty day evaluation of the Student should be done to decide if the Student was eligible for special education. The sixty day evaluation was approved and the team planned to convene when the assessments were complete. From March 7, 2013 to September 17, 2014, the Student was hospitalized four times and was in the hospital during the Team Meeting. During that time period, the Student was out of school for forty-two days. The Student had various supports during those eighteen months: the Student was under the care of Dr. Abraham, there was a Family Service Plan for the Student, she had a treatment plan from the Providence Center, a student support plan was provided by the School District, a social worker was assigned to the Student for the classroom, the Rhode Island Family Intervention System was made a resource, Sharon Dixon from R.I.F.I.S. was assigned to the Student to visit her at home, the Family Service Plan provided a social worker, Wendy Miller, to meet weekly with the Student, and a 504 Plan was approved by the School District. The District

provided accommodations for school work: extra time to complete assignments due to absences, assignments broken into sections, quiet work space and structured access to support.

I find that the School District and certainly the family acted responsibly confronting the extremely difficult situation presented by the Student's medical condition.

In October (16<sup>th</sup> & 17<sup>th</sup>), Dr. Brett Leimkuhler conducted a neuropsychological examination. The results were shared with the School District (Jennifer Durkin and Jane Cronin) as well as other healthcare providers. Dr. Leimkuhler's opinion was that the Student was too fragile and unstable to be in a classroom with other Students. He recommended a therapeutic school setting such as Bradley School. The School District had Dr. Vergnani, a psychologist, prepare a clinical observation report for the School District.

An educational evaluation was completed by the School District in October, 2014. Behavioral observations reported that the Student had the ability to listen, take notes, compose written responses and engage in class discussion. However, she did employ class avoidance by going to the nurse, the bathroom, and calling home.

On November 25, 2014, the Team met to discuss a sixty day evaluation to determine special education eligibility. The Team found that the Student did qualify for Special Education.

The Team reviewed academic assessments and found the Student to be a bright young lady. Academics were not her issue. She was not medically stable. The Student was not attending school and was at home waiting for services. The Team reviewed all information and discussed the level of support that was needed. It was decided that the Student needed home tutoring to supplement her program. The Team wanted to draft an IEP and share the same with the attorneys. The IEP was to run from November 25, 2014 to January 23, 2015. The Student's placement was described as home or hospital.

On October 27, 2014, the Student was admitted to Arbour-Fuller because the Student was suicidal. Arbour-Fuller recommended that the Student be in the School District with the following: individual therapy, family therapy, regular sessions with a social worker or school psychiatrist, a safe place in school, one-on-one aide, reduced home work, staff member to whom the Student can go, and extended time on tests.

I find that IEP to be a preliminary IEP with few specifics due to the need for further assessments and review.

Recent reports from Dr. Leimkuhler and from the Arbour-Fuller Hospital presented conflicting conclusions. Dr. Leimkuhler did not recommend a return to the School District. Arbour-Fuller recommended a return to the class room with various supports. The Team had to take time to analyze these conflicting positions.

From September 17, 2014 to November 25, 2014, including both dates, the Student was absent from school for forty days.

The next Team Meeting was on March 4, 2015. The meeting was for the purpose of reviewing the November 25, 2014 IEP.

Just over three months had passed. At the end of November, the Student attempted to take the Mother's bottle of Motrin and she cut herself. The School District began tutoring on December 30, 2014. On or about December 31, 2014, the Student claimed she was raped and the alleged perpetrator was attending the RYSE program, the same program the District proposed for the Student. On January 8, 2015, Dr. Leimkuhler gave a report following the Student's hospitalization at Butler Hospital the day before. Again, he recommended aggressive therapeutic interventions at Bradley Hospital and the Student should not be in the same school as the alleged perpetrator. The Student's availability for tutoring at home was sporadic.

The Team concluded that a plan outlining the RYSE program would be available to the parent's attorney, the tutoring would resume, and Dr. Feldman would assess the Student's status.

In my opinion, at the conclusion of the March 4, 2015 meeting the School District did not have an IEP plan that would deliver FAPE to the Student. There was no progress being made by the Student in attending school on a regular basis.

Again, because of the extremely complicated nature of the Student's medical condition the parties needed time to gather more evaluations in order to form an IEP that would deliver FAPE. The Team was still developing the IEP of November 25, 2014.

By the next Team Meeting of April 1, 2015, Dr. Feldman had met with the Student and provided a report. It is important to note that Dr. Feldman was selected by both the parent's attorney and by the School District's attorney. Dr. Feldman's opinion was that the Student needed DBT psychotherapy with a change in medication.

In April, 2015, the Team reviewed the November 25, 2014 IEP and extended the review date to November 24, 2015. It incorporated Dr. Feldman's recommendation that the Student be treated with DBT therapy (Dialectical Behavior Therapy).

It is clear from the facts that by the time of this IEP review, the Student was not making any progress in attending school regularly.

On May 12, 2015 there was another IEP Meeting. Again, the purpose was discussing re-entry to the RYSE program. The meeting reported that the Student was responding well to the DBT services and that she had weekly appointments with Dr. Minkel, the therapist providing the DBT therapy. The School District and other participants were hopeful that reintegration to the RYSE program was possible.

On August 21, 2015, the Team developed another IEP. The resulting IEP was basically the same as the previous one except that it included that the Student would be escorted to and from the school bus.

The Student's medical problems continued. She was admitted to Emma Pendelton Bradley Hospital on August 26, 2015 because of out of control behavior. This was an episode like none the Mother had witnessed.

On September 2, 2015, the Student went from Bulter Hospital to a residential placement at the Newport Academy where she stayed until November 10, 2015. The Mother requested an IEP Meeting which was held on September 3, 2015.

The results of that Team Meeting was that the School District needed reports from Butler Hospital and the Newport Academy. Newport Academy recommended the Grove School to the Mother.

On October 1, 2015, there was another Team Meeting to review the IEP dated 11-25-14. The Student was interviewed. The Team concluded that the Student was a highly capable student but needed coping skills to participate fully in learning.

According to the Team the educational environment should be the Clinical Day Program inside the regular class less than 40% of the time.

The IEP of October 1, 2015 was the last proposed IEP. The School District added an Alternative Educational Plan for the Student. The Student did not receive any credit for the 2014-2015 school year.

ISSUE: Did the IEP of October 1, 2015 and the addition of the Alternative Educational Plan which was offered on January 12, 2016 provide FAPE for the Student?

Before addressing the issue of FAPE it is noted that there were no procedural issues raised in the Parent's complaint.

A Free Appropriate Public Education is defined as follows:

“A free appropriate public education consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from instruction. Board of Education of Hendrick County et al v. Rowley 458 U.S. 188 & 189.”

At the hearings, the parties presented voluminous exhibits.

The Parent presented 133 exhibits many consisting of multiple pages and the School District presented 10 exhibits of which some consisted of multiple pages. The transcripts of the eight days of hearings consists of 881 pages.

The gravamen of this case is the Student's refusal or inability to attend school regularly. Dr. Abraham addressed this on February 3, 2013.

He said:

“Tutoring should not be a replacement for being in school, so that it (IEP) is contingent on the (Student) being in school for some time.”

Dr. Vergnani was at the October 1, 2015 IEP meeting. In a response to the Parent's attorney's inquiry concerning the Clinical Day Program which was being offered, Dr. Vergnani said that the plan would work if the Student attended school.

Dr. Minkel treated the Student for rapid mood changes and emotional instability with CBT/DBT therapy from April 17, 2015 to October 1, 2015. His first few sessions had as the first

treatment goal: “get back to school.” From April 30, 2015 on, the first treatment goal was “prevent suicidal behavior, hospitalizations and self injury.

Dr. Minkel also attended the October, IEP meeting. His report of October 1, 2015 meeting reflected his impression of the position of the parties.

“The IEP that is in place requires that (the Student) get to school every day. then they will provide services to educate her. They (School District) do not believe they are required to ensure she can get to school.”

Dr. Brett Leimkuhler evaluated the Student in October of 2014. His diagnosis was as follows:

Major Depressive Disorder  
Anxiety Disorder  
Disruptive Mood Dysregulation Disorder  
Posttraumatic Stress Disorder  
Learning Disorder  
Attention Deficit Hyperactivity Disorder

His area of expertise is in Neuropsychology and Learning Disorders. He was qualified as an expert in his field and had 36 years of experience. He concluded that the Student cannot tolerate the school environment. He recommended that the Student see a psychiatrist, and that she required a therapeutic setting.

Dr. Leimkuhler’s testimony explained why he diagnosed PTSD which has to do with going back to where the trauma occurred. The Student’s school anxiety was getting worse. The Student showed signs of severe mental health breakdown at the prospect of just going to school. On direct examination he recommended a day hospital until she could be placed in a residential setting.

As to the school’s alternate education plan, the Doctor testified that it was an excellent plan but it was a good phase II or phase III plan because her mental health, her illnesses will not

permit her to participate. The use of DBT was address and Dr. Leimkuhler testified that the Student was starting to respond but DBT was intended as part of an inpatient program or after people improved. However, a weekly base DBT is not intensive enough. He testified that the Student made educational and emotional progress while at the Newport Academy.

However, he never spoke to an educator at Newport nor did he review any records from them. He did speak to one clinician and he did review the Newport discharge summary. Educational progress according to Dr. Leimkuhler was that the student showed an enthusiasm for learning and attended classes.

Dr. Leimkuhler's experience and knowledge of use of DBT was not as extensive as the knowledge and experience of Dr. Feldman. Marsha Lineham's (discover, founder, and developer of DBT therapy) report about DBT contradicted Dr. Leimkuhler's opinion that DBT therapy given weekly is not intensive enough. She reported that BDT therapy classes run weekly for 2.5 hours. During examination by the School District attorney, Dr. Leimkuhler later agreed with the report.

Dr. Steven Feldman evaluated the Student and testified at the hearing. He was qualified as an expert in child and adolescent psychiatry and as a school physician. From the voir dire and from his testimony, I find Dr. Feldman's experience for over forty years in those areas to be exceptional and outstanding.

The School District's attorney and the Parent's attorney requested an evaluation of the Student by Dr. Feldman which is somewhat unusual but it is evidence that they had confidence in Dr. Feldman's capabilities. Each attorney had specific questions for Dr. Feldman.

As to the School District's question, can the Student receive FAPE at the School District since a student who allegedly raped the Student is on campus? His opinion was as follows:

“with a reasonable degree of medical certainty that the delivery of a free and appropriate public education on the (School District) campus is not contraindicated at this time as long as risk of contact between the Student and the alleged rapist is minimized and there is a safe place should an encounter occur by chance.”

As to the Parent’s request for Dr. Feldman to review the Student’s record to clarify diagnosis, psychological, and psychiatric information in the record to determine what psychological services the Student might need. He found that mood and anxiety was the focus of the treatment but he found that attention deficit hyperactivity disorder (ADHD) that was reported by both of the Student’s psychologists was not treated.

To address this medical problem, he said:

“It is critical that the therapist providing the DBT service be experienced in delivering such services.”

He concluded that he hoped that psychotherapy (DBT) coupled with a change in medication may help to reduce the intensity, frequency, and duration of the target symptoms which are interfering the Student’ ability to obtain a free appropriate public education.

It is important to note that Dr. Feldman’s conclusion was: if treatment is successful, it may allow the Student to be educated in the least restricted setting at the Chariho High School.

During his testimony, Dr. Feldman contradicted Dr. Leimkuhler in many of his statements given during Dr. Leimkuhler’s testimony.

Those contradictions were in the following areas:

1. Dr. Leimkuhler’s opinion concerning bipolar in children.

2. Dr. Leimkuhler's opinion that oppositional defiant disorder is not really a diagnosis.
3. Dr. Leimkuhler's opinion that disruptive mood dysregulation disorder is characterized by suicide.
  4. Dr. Leimkuhler's opinion that the label of having disruptive mood dysregulation disorder applies to the clinical history of the Student.
  5. Dr. Leimkuhler using school anxiety as a diagnostic term.
  6. Dr. Leimkuhler's opinion that DBT is intended to be part of an inpatient program.

Dr. Feldman testified that borderline personality disorder is a significant medical psychiatric disorder that is treated medically. Based on this and other testimony by Dr. Feldman, a psychiatrist's opinion is very helpful to this Hearing Officer.

The Parent argues that the Student's placement should be at the Grove School or similar residential placement.

I find from the evidence presented and from testimony that DBT and CBT therapy are medically necessary for the Student to achieve coping skills necessary to attend school.

It is clear from the testimony of Mr. Chorney, director of the Grove School, that they do not provide DBT and CBT therapy. He said that they are not a licensed DBT program. Although, Mr. McAvoy from the Grove School did indicated that they utilized skills taught in DBT.

I find that DBT and CBT programs as defined by Dr. Feldman and as provided by Dr. Minkel are necessary for the Student to achieve coping skills necessary to attend school. Dr. Feldman stated with a degree of medical certainty that if the Grove School is not a DBT program it is not the right program. Because of the Student's hospitalization at Butler Hospital on December 31, 2014 for suicidal ideation, Mr. Chorney testified that they would have to review her as an applicant. At that time it was either "maybe" or "may be not." The program is a two

year program. There was no evidence that the Student would ever be returned to a mainstream environment in the public school. Based on the above testimony and evidence I find: the Grove School has not accepted the Student, the Grove School Does not provide DBT/CBT therapy required by the Student, the Grove School does not have the connections with the family, community, or the school necessary for the Student to achieve coping skills all as enumerated by Dr. Feldman. I find that the Grove School is not an appropriate placement for the Student.

As to a similar therapeutic placement, this Hearing Officer is not in a position to make such a determination without specific facts and evidence upon which to make such a placement decision.

The Parent points to Newport Academy as an example of the benefit the Student would derive from such a residential placement. However, after discharge on November 10, 2015, the Student was again hospitalized on December 31, 2015 expressing suicidal ideation. The stay at Newport did not improve the Student's school attendance. The Mother testified that while at Newport Academy the Student ran away, had a very depressive episode, and was picking at her skin. The hospitalization after leaving Newport confirmed Dr. Feldman's position concerning residential placement.

Although Dr. Leimkuhler testified that the Student made educational progress at the Newport Academy, I do not find any evidence that supports the fact that the Student made educational progress. Attending classes and showing enthusiasm for learning does not prove that the Student made educational progress.

This Hearing Officer has to decide whether or not the last IEP offered to the Parent provided FAPE to the Student.

I find that the last IEP offered to the Parent was dated October 1, 2015. There was a Team Meeting consisting of the attorneys for the parties, doctors, school personnel, and the Parent. Those participants are in keeping with the requirements as found in Rowley.

The resolution process took place on November 19, 2015 with no resolution. On January 12, 2016, the School district offered an Alternative Education Plan for the Student.

I do not find from the facts that the Alternative Education Plan was offered at the resolution process. It was presented more than two months after the resolution process expired.

An IEP meeting has to at least have a qualified representative of the educational agency, the child's parents or guardian, and where appropriate the child. Hendrick Hudson Dist. Bd. Of Ed. v. Rowley 458 U.S. 176 at p. 182. I do not find that the Alternative Education Plan was a result of an IEP Meeting or the result of the resolution process. The School district argues that the Parent amended the complaint by specifically requesting the Grove School and therefore under the regulations section 300.508 (d) another resolution meeting was instituted allowing the District to propose the Alternative Education Plan as a resolution offer.

The parents complaint requested, as a proposed resolution, a residential placement at the Newport Academy or other residential placement. Basically they asked for a residential placement which certainly defines the Grove School. I do not find that placing the name of Grove School before the hearing officer as the residential placement is an amendment to the complaint. Further, the regulations provides a process to amend a complaint. (300.508 (d)(3) That process was not followed in this matter.

It should be noted that both Dr. Leimkuhler and Dr. Feldman found the Alternative Education Plan to be "a good plan." Dr. Feldman said: "Well, first of all, let me say it is an excellent plan." (Vol. VIII p.89)

However, the Hearing Officer is bound to look at the last proposed IEP of October 1, 2015 and the information the Team had before them at that time in order to determine FAPE. The measure and adequacy of the IEP can only be determined as of the date it is offered to the Student, not at some later date. Rowley, 458 U.S. at 206-07, 102 S. Ct. 3034

Did the October 1, 2015 IEP provide FAPE?

The Student did not receive any credit for the 2014-2015 school year due to non-attendance.

On April 3, 2015, the IEP added to the previous IEP emotional distress tolerance with the Student to developing an understanding of DBT. Supplemental aids and services were extensively amended as was the educational environment which required a therapeutic classroom.

From that date on, the School district had similar supports to assist the Student to improve attendance and to re-intergrate the Student into the RYSE program. The services (wrap around services) of the Community and School Services (CSSS) were made available to the Student with Ms. Cronin and Ms. Hasting, employees of CSSS, to assist the Student with her attendance problem. The School District's supports proposed for the Student on of October 1, 2015 were the same but they did not get the Student back to school in the past.

The facts clearly establish that from 11-25-14 to 10-1-15 the Student's attendance and the Student's educational progress did not improve and in fact, became worse.

I find that the evidence as found in direct testimony, in exhibits, in the language of the IEPs, and in the written Team Meetings minutes confirm that if the Student attended school she was capable of achieving an educational benefit from the School Program. However, the School District's position is that it is not the School District's responsibility to get the Student to school

but that of the Parents. It is clear from State of Rhode Island law that it is the prime responsibility of the child's parents or guardian to make sure the child attends school. (16-19-1 R.I.G.L.) However, the School District still has a responsibility to address that issue.

Although the suicide attempts in 2013 and 2014 and suicide ideation thereafter were very serious concerns on March 30, 2015, the Parent wanted the Student to be in school. This can be seen in the Parent's "concerns and input" document presented to the District. The Parent presented the following goals:

1. To develop the social and emotional skills necessary to remain safe in the school environment.
2. To develop the social and emotional skills necessary to initiate and/or tolerate the school day.
3. To make reasonable progress in the general educational curriculum and be ready for post-secondary education as evidenced by passing grades in her school subjects.
4. That the (Student) improve her math problem skills. ( $\pi$  Exh. 84)

In the Team Meeting for the October 1, IEP, the attorney for the Parent reviewed the March 30, 2015 Parent's concerns and input document. However, the final request by the Parent was for a residential placement. That meeting, according to testimony of school personnel, was the first time the team reviewed the entire prior IEP document due to both parties requesting further information in past meetings. The October 1, 2015 meeting ended when the Parent walked out of the meeting because the School District did not agree to a residential placement.

The most persuasive testimony came from Dr. Feldman. The Parent relies on the opinion of Dr. Leimkuhler, a neuropsychologist, that the Student needed a residential placement. Dr.

Feldman testified that generally neuropsychologists are not typically the individuals trained to make level of care decisions to someone needing inpatient, outpatient, residential, or hospitalization. The ultimate decision rests with the psychiatrist.

On cross examination, Dr. Feldman testified specifically about the Grove School and why it was not appropriate for the Student. However, taking his testimony in its entirety he did not approve of a residential placement for someone with the diagnoses that the Student had as of October 1, 2015. He clarified his position by stating that there is a place for residential placement if an adolescent has significant schizophrenia who is on high doses of very dangerous medications and has to be monitored 24/7 or if the adolescent has manic phase bipolar when one is really psychotic. Such a placement would not be appropriate for a diagnosis of borderline personality disorder which is made worse by such a placement.

The October 1, 2015 IEP was the culmination of all prior IEP meetings. According to Ms. Durkin, the team never fully reviewed the prior IEP because the Team and Parent were still gathering information which was available at the October 1, 2015 Team Meeting. It was the only Team Meeting that they went through the entire document according to Ms. Durkin.

As to the IEP of October 1, 2015, it basically provided the same program that was in existence prior to October 1, 2015.

Ms. Durkin testified that there was no specific discussion about what would happen if the Student refused to go to school. Getting the Student to attend school should have been the main topic of discussion at that IEP meeting. The short term objective that the Student will attend school daily and on time by November, 2015 was totally unrealistic based on the Student's history up to October 1, 2015 as was the short term objective that the Student will develop an

understanding of mindfulness, distress tolerance and interpersonal relationships as measured by participation in clinical services which was to take effect by November, 2015.

For the Student to achieve some benefit from the proposed IEP, there has to be sufficient supports for the Student to enable her at some point to attend school. The supports provided in the October IEP were no different than those that preceded that IEP meeting and they did not work.

It was obvious that the Team did not expect the Student to attend school because the IEP listed as the Student's educational environment to be inside a classroom less than 40% of the time and still there was no new specific plan to address issue of attendance.

I find that the October 1, 2015 proposed IEP is a work in progress but it did not address the problem of attendance. That it was a work in progress is evident by the School District's Alternative Educational Plan proposal which did address the need to motivate the Student to leave her home.

The Parent walked out of the Team Meeting at a crucial time. By that action the Parent demonstrated that it was a residential placement or nothing which I find to have been unreasonable. That meeting had several professionals that could have further explored the attendance issue and specifically provide a different support plan to address that issue.

I find that the last proposed IEP of October 1, 2015, did not adequately address the short term objectives and did not specifically address a plan to address the attendance issue. It had to be obvious to those at that Team Meeting that the support services (wrap around services with CSS) was not getting the Student to school as required by the previous IEP.

The Student would not achieve any meaningful educational benefit under that IEP. Therefore, I find that the last offered IEP did not provide a free appropriate public education.

For the Student to achieve some meaningful benefit from the proposed IEP, there has to be sufficient supports for the Student to enable her at some point to attend school. The supports provided in the October IEP were no different than those that preceded that IEP meeting and they did not work.

The Student would not achieve any meaningful educational benefit under that IEP. Therefore, I find that the last offered IEP did not provide a free appropriate public education.

The School District points to the Alternative Education Plan that does have a different program and support services from the October IEP proposals but this Hearing Officer is bound to review only the last valid IEP proposals and the information available to the Team at that time.

There was ample evidence from school personnel and from Dr. Leimkuhler and Dr. Feldman that the Alternative Education Plan was a very good plan for the Student.

Dr. Leimkuhler identified the Alternative Education Plan as the school's latest proposal for an educational plan. (Vol. III p.25)

Dr. Feldman testified that it was a very good plan and he confirmed with a degree of medical certainty that the Student would make meaningful progress, meaningful social progress, meaningful social progress, and academic progress.

I hereby direct that a Team Meeting be convened to review the Alternative Education Plan in conjunction with the proposals of the last IEP so that the Parent can meaningfully participate in reviewing said proposals as required under the regulations.

DATED: \_\_\_\_\_

HEARING OFFICER

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