

The E-Accountability Foundation  
Parentadvocates.org  
212-794-8902  
Betsy Combier, President and Editor  
[betsy@parentadvocates.org](mailto:betsy@parentadvocates.org)

SUMMATION AFTER IMPARTIAL HEARING  
REQUEST AND COMPLAINT FILED  
PURSUANT TO 34 CFR §300.507; 8 NYCRR §200.5(i) and §200.5(j)

Case: "T"  
File #  
Case No:  
Impartial Hearing Officer: Judith T. Kramer ("HO Kramer")  
Mother of T: "KM"  
Parent Advocate: Betsy Combier ("BC")  
(for purposes of simplicity, "KM" and "BC" are "Parent" in the discussion below)  
Ms. Janet Shepherd, NYC BOE representative, District 10

Documents submitted by the parent:

- A. IEP dated 7-25-07 (classification ED, 8:1; counseling 1x30x3, 1x30x1)
- B. MDR meeting date/decision
- C. Notes from the office of Student suspension
- D. Suspension
- E. Impartial Hearing June 8, 2007, HO Judith Kramer, Parent and advocate absent
- F. Amended Placement
- G. Occurrence Report
- H. Queens Integrated Service Notice
- I. Progress Report
- J. Special Education Suspension Plan
- K. Individual Student Attendance Report
- L. Behavior Intervention Plan
- M. Anecdotal
- N. T's notes on his daily schedule
- O. Transcript of Nov 19, 2007 suspension "hearing" without parent or parent advocate

The transcripts are submitted below with relevant pages in parentheses. i.e., (4-7)

INTRODUCTION

T is a charming but emotionally disturbed 15-year old African American boy who has been denied FAPE for at least the past several years by the New York City Board of Education. He has dramatic health issues that the school has neglected. Through educational neglect, incompetence, bureaucratic and political influence, sheer stupidity and deliberate and malicious harm by school personnel and NYC BOE staff, "T" has been left behind academically, socially, emotionally, and his success in the future has

been severely compromised. After examination of the evidence presented, and after four hearing dates, I, the parent advocate state for the record that we – the parent, T and I – have proven the above neglect and incompetence, that the MDR held on November 2, 2007 and the suspension hearing held November 19, 2007 (parent in absentia, but we assume from the transcript that the hearing took place) is null and void due to violations of law, and that the suspension process for children such as T is broken.

We request:

1. Placement in one of the 9<sup>th</sup> grades that T has already been accepted to for the Fall September 2008, with counseling 3x30x3 and 1x30x1
2. Extensive tutoring in math and reading after school 5 x week x 12 months at Sylvan or Huntington Learning Center, whichever is nearer to the family.
3. Immediate re-instatement to IS 225, with services (counseling and SETSS)
4. Graduation with his class in June, promoted to 9<sup>th</sup> grade with summer school help.
5. Summer intensive academics at Sylvan or Huntington Learning Center, whichever is nearer to the family.
6. Order declaring the November 2, 2007 MDR a nullity and any notations of the suspension due to the October 19, 2007 incident be expunged from all school records.

As the testimony shows in this case: the MDR for the suspension incident on October 19, 2007 is invalid and must be overturned; the SOS and school have not given FAPE and T needs to catch up, he has been neglected and he desperately needs a summer program with math, reading and counseling five days/week, then he wants to go to 9<sup>th</sup> grade in the fall and continue counseling and academic support five days per week as related services for academic support; T is not receiving SETSS, and the NYC BOE must compensate for what appears to be a deliberate attempt to push T into the school-to-prison-pipeline as quickly as possible.

Starting April 25, 2007, the system turned on T. He was suspended from 225 Q for something that he did not do. Parent was not able to overcome misinformation given to the suspension hearing officer, and T was sent to IS 47 until November 9, 2007, with an early review scheduled for June 25, 2007. Due to the fact that T was not getting any counseling at his suspension site 47, the MDR was done unfairly and at the wrong location, and he needed academic support (SETSS) which he also was not receiving, parent asked for an Impartial Hearing. District representative Ivy Lindner called BC many times to resolve the issues, and the MDR was decided as invalid by the district and parent. T was supposed to return to 225. Both BC and KM spoke with designated Hearing Officer for the June 8, 2007 Impartial Hearing, Judith T. Kramer, and told her that the issues had been resolved. On or about June 15 parent received a copy of the June 8 2007 impartial Hearing which had shockingly been held anyway, despite Ms. Kramer being informed that the parent would be rescinding her request. **Exhibit E 5**, the transcript of June 8, 2007, shows HO Kramer pretending to not know why the parent was not there, and simply invalidating the MDR, which was part of parent's request, but not all of it.

Immediately following the ruling made by Judith Kramer without the parent or parent advocate at the Hearing, the NYC BOE started forcing T out of the system forever and permanently. HO Kramer admits that she ruled in a prior Impartial that the parent did not attend (p.6 lines 15-21); BC complained to the state about HO Kramer (p. 9 lines 13-25); p. 10 (1-25) pp. 11-13 about retaliation against T for this decision, then HO Kramer would not allow the transcript from her previous Impartial Hearing without the parent into evidence p. 57 lines 2-4; nonetheless, the BC made a case for retaliation p. 60 (15-18); p. 62 (22-24); p. 66 (12-18) and the transcript was admitted.

The June 25, 2007 early re-instatement never took place, and T remained at 47, without any of his mandated services. On July 25, 2007, a sudden IEP review took place at which T was classified by Mr. Bernstein as “emotionally disturbed”. The parent was available by telephone, and agreed to the change from LD, but could not get an answer to her question about who made the new classification and why.

On September 4, 2007, T was transferred to 42, then to IS 53. No one contacted the parents to tell them why, whether or not he was receiving his services, or any information at all. At IS 53 T had three classes: math, English, and art. He was not given his counseling, and no SETSS. He sat with 14 other boys in an office-like room. Mondays through Thursdays he does not eat the frozen lunch brought to the room. Only on Friday does he eat lunch, when the children can give a staff member money and this person can go out and buy Chinese food if the child has “won” 10 points for good behavior. So, on most days, T does not get lunch. He has no science or social studies, no gym, music, foreign language, or after school program. His day ends at around 1:30 PM.

His “SETSS” teacher and his science teacher are the same, Mr. John Gasparino. A reading of Mr. G’s testimony (below) shows that Mr. G is not yet certified to teach anything, and is basically a suspension room monitor. His job is to watch the boys and make sure they stay in the room, reading or playing UNO. Mr. Gasparino has no idea what homework these kids do, as the home school is supposed to give the homework, but he doesn’t know how “they” – the unknown school Principals - get it to the kids. He testified that he took T out of the room to try to get him to read better, but he told the hearing officer that a different placement would be better for T.

Sometime at the end of September or beginning of October a boy who was involved in getting T suspended unfairly in April, 2007, entered IS 53. T’s parent filed a police complaint against this boy. T was afraid of this boy, and started acting up at the school he was attending, IS 53. As there was no one at IS 53 who knows anything or cares about IEPs, services, emotional disturbance, etc, no one gave T the support he needed.

On October 19 2007 he brought his wallet to school and T testified that he did not know that a small pocket knife was in it. He was seen by Mr. Steven Karp at the scanner, picking up his wallet with the small knife on the floor next to it. Mr. Karp immediately suspended him, and due to not knowing anything about T’s services, did not inquire

whether or not T had any place to go. T remained without a placement from Oct. 19 to Nov. 2.

On Nov 2 the MDR took place, with Mr. Bernstein from 225. Parent advocate BC was on the telephone with T, T's mom and Mr. Bernstein during the MDR, and, pursuant to New York State law, all telephone calls may have been taped without the knowledge and consent of Mr. Bernstein. Mr. Bernstein refused to ask T or T's mom any questions, did not consult anyone, and ruled that T's actions were NOT a manifestation of his disability before the meeting began. On November 19 a suspension hearing was held without the parent's knowledge, and the MDR was presented as a done deal. T received a year suspension. He was thrown into the Queens ALC in Far rockaway, where he sits in a room all day without any services. His IEP has been locked in a drawer somewhere and forgotten.

### ARGUMENT

We can prove that the following laws have been violated in this case, and these violations provide the evidence and foundation of our requests for remedies, (listed below):

20 U.S.C.A. §1415(k)(1)(E); 34 C.F.R. §300.530(e); 8 NYCRR § 201.4 require that the parent has to prove behavior was caused by or had a direct and substantial relationship to the disability; or, that conduct was the direct result of the school district's failure to implement the IEP. Parent has proven in the testimony (see below) that the MDR held November 2, 2007 was not in compliance with Federal and State Law. The MDR was not conducted in compliance with the standards set forth in 8 NYCRR 201.4(c)(1)(2). Parent has proven that T had emotional issues of impulsivity and poor judgment, and the week of 10/15, 10/16, 10/18 was very afraid of a boy placed in the same suspension center. (See testimony of the guidance counselor, below, and testimony on Mr. Gasparino's anecdotes, EX M.) . T got no help for his emotional responses to this boy, and his responses to situations like this are clearly detailed in his IEP. Impulsively, he brought his wallet to school, as he sometimes did, and he impulsively did not recognize the consequences his actions might have. He also did not know that Mr. Karp was aggressive with the children at the center (Mr. Karp was removed at the end of January for aggressive harassment of a child there, we were told) and would not give anyone his IEP nor did he – T - know that Mr. Karp, Mr. Bernstein, and everyone who worked at the SOS knew nothing about what federal guidelines were protecting him. Mr. Karp thought that 8:1 was a resource room staffing ratio and this number had nothing to do with T's class size. Ms. Alvarez, the suspension hearing officer, didn't know what these numbers meant at all. Mr. Gasparino is not certified to teach anything, and cannot be considered a proper teacher for T.

Thus, the NYC Department of Education has not demonstrated that T's behavior was not a manifestation of his disability (20 U.S.C. § 1415[k][6][B][i]; 34 CFR § 300.525 [b]; 8 NYCRR 201.11[a][3] by not considering all relevant information about T., not providing an appropriate placement, his services and behavior intervention plan, and discarding proof that T's classification of "ED" impaired his ability to control his behavior and

understand the impact and consequences of the behavior subject to disciplinary action. Therefore, the NYC BOE must have found, instead, using the criteria set up by the Federal and State guidelines, that indeed T's behavior was a manifestation of his disability pursuant to 34 CFR §300.523[d]; 8 NYCRR 201.4[d].

Pursuant to 20 U.S.C. § 1415 [k][4][A][ii], 34 CFR § 300.523[a][2]; 8 NYCRR 201.4[a], the NYC BOE also did not take into consideration any needs that T might have which may not have been identified (Waynesboro Area Sch. Dist., 34 IDELR 167 [SEA Pa. 2001], Richland School District v Thomas P., 32 IDELR 233 [W.D. Wis. 2000]).

20 U.S.C.A. § 1415(k); 34 C.F.R. § 300.530; 8 N.Y.C.R.R. Part 201: child can be removed to IAES for **45 school days** if a hearing officer believes that current placement is likely to result in injury to self or others; child is entitled to receive FAPE and all program and services required by the IEP; child is entitled to receive a functional behavior assessment, behavior intervention services and modifications to ensure behavior does not recur. Pendancy does not apply but child is entitled to an expedited due process hearing. T should not have been suspended for a year, but he, his parents, and his advocate were not allowed to participate in the process of throwing him out of his school. The MDR was done without any consideration of his needs and no discussion of his current status; the suspension hearing was held without the parent; no services were given to him at all in any alternative site that would in any way help him modify his behavior. Ms. Alvarez, the suspension Hearing officer at the November 19 2007 suspension hearing which the parent did not attend (EXHIBIT O) was told by Debbie Green (Dean 225 – not at IS 53) that the MDR was denied, and then asked no questions (the parent was not there at the hearing) and suspended T; another person who works there, Ms. Greenfield/Banfield (Early Resolution Counselor) suspended T for 1 year, violating Federal guidelines – because, Ms. Alvarez admitted, she did not know the Federal guidelines.(Transcript of Nov 19, p. 14, lines 4-5). Throughout the four days of hearings **it is clear that the IDEA and state guidelines were unknown to all the NYC staff who worked with T.** This is an incredible piece of information for researchers in the suspension process.

Ms. Kramer's holding of the Impartial Hearing on June 8, 2007 without the parent is a violation of federal regulations § 300.509(c) and § 300.511(d). Parent advocate sent a request to Ms. Kramer by fax to the Impartial Hearing office to ask that Ms. Kramer recuse herself in this case on January 28, 2008, 4:38PM

Ms. Kramer's continuous extension of time for the rendering of a decision despite the protest of parent and despite the statements made by Ms. Kramer at the Hearing that she wanted the case resolved quickly (see below) but then postponed any submission of closing arguments until April 25, 2008, is a violation of Federal Regulations §300.511 and State Regulations § 200.5(i)(4). Ms. Kramer is aware of the request from the parent to recuse her from this case due to her violation of Federal Regulations on June 8, 2008, but remained in the case anyway. Ms. Janet Shepherd would not give Ms. Combier any date for submission of her papers, nor would she tell Ms. Combier, as per HO Kramer's order, what day she – Ms. Shepherd – received the transcript. Ms. Combier spoke with

the Impartial Hearing Office about this on April 15, as she was prepared to send in the submissions 1 week after receiving the March 27<sup>th</sup> transcript, which she received on April 10. HO Kramer then gave a submission date of April 25, 2008, 1 month after the last day of the hearing, and more than two weeks after the transcript was received, a violation of her own previous ruling. (p. 852). T has been harmed by this violation of his 6<sup>th</sup> Amendment rights.

34 CFR section 300.613; 8 NYCRR §§ 200.2(b)(6) and 200.5(d)(6): under IDEA Part B, the parent has the right to inspect and review any education records relating to her child Particularly before any IEP or Impartial Hearing. T's parents were not told anything about his behavior, his homework, or his actions in the classroom of Mr. Gasparino before the Impartial Hearing documents were exchanged. The parents of T never received any documents or records before the Impartial Hearing of June 8, 2007 at which Ms. Judith Kramer presided as Hearing Officer.

34 CFR § 300.623: All persons collecting or using personally identifiable information on T, his behavior, his classification, and his IEP, were not trained or instructed in New York State's policies and procedures regarding confidentiality under Part B of IDEA and FERPA. No one at the Alternate Learning Center knew anything about Federal guidelines as they related to T's IEP, his classification, his staffing ration, his needs, and his services. (See testimonies below of Mr. Gasparino, Mr. Karp, Ms. Ackerman, Ms. Francois).

34 CFR SECTION 300.518; 8 NYCRR SECTION 200.5(M): T was given no placement whatsoever from October 19 to November 2, and consequently missed not only the services for his disability, but instruction time. Parent request that these missed days due to the NYC BOE incompetency be compensated, as well as all the other days T has missed, by HO Kramer ordering an extensive, 5 X week academic tutoring program to be implemented immediately.

34 CFR section 300.511; 8 NYCRR sections 200.1(x), 200.5(i) and (j): Ms. Judith Kramer should have recused herself due to parent complaint about her conducting an Impartial Hearing on June 8, 2007 without the parent present after speaking with both the parent and her advocate about adjourning the Hearing; then, Ms. Kramer postponed rendering a decision in this case despite parents' protest of waiting until a later date for summation, which became today, April 25, 2008 , **1 month** after the last hearing date of March 27, 2008. Ms. Kramer deliberately violated T's 6<sup>th</sup> Amendment rights, and the proper timelines for resolution of the issues brought by parent in the complaint.

34 CFR section 300.512; 8 NYCRR section 200.5(j): HO Judith Kramer refused to allow the parent to submit as evidence of the violations of law and regulations in T's case, the functional behavior plan, a vital part of the complaint; Ms. Kramer forbade the parent advocate from asking questions pertaining to the harassment behavior of Mr. Karp, and the hiding of the IEP in Mr. Bernstein's drawer. Ms. Kramer refused to acknowledge her mistake in allowing the hearing to go on for months despite the fact that she invalidated the previous MDR at a hearing in June, 2008, because the investigation was not done at

the school which T was attending...same as this current complaint. T's MDR was handled by Mr. Bernstein at 225, even though T was at IS 53. For this reason, Mr. Bernstein violated Federal rules for MDRs in the suspension process.

34 CFR section 300.530; 8 NYCRR sections 201.2-201.7: T was thrown out of his placement and not given any compensation or other placement from October 19, 2008 until November 3 2008; and, from November 24, 2008 to December 3 2008. See testimony of Mr. Karp, below, for the bizarre incompetencies involved in denying T his FAPE; the information on T was not reviewed by anyone at any time before the MDR; the decision by Mr. Bernstein to deny that T's actions were a manifestation of his disability was arbitrary, capricious, and deliberately malicious. On October 19, 2008, parent was not provided any information that could be construed as "procedural safeguards notice".

34 CFR section 300.536; 8 NYCRR section 201.2: T was subjected to a change of placement without due process and procedural safeguards. HO Kramer should realize that T is in the wrong placement at ALC Far Rockaway, yet kept him there, without lunch, no services, and no SETSS. EXHIBIT D 4 shows that T was supposed to go back to 225 on November 13, and was supposed to have an early re-instatement meeting on June 25, 2007 but this meeting was never held.

## BACKGROUND

### January 30, 2008, February 6, 2008, February 13, 2008, March 27, 2008 transcripts

p. 4 request of parent about invalid MDR (lines 9-10) and FAPE (lines 10-12) and services (13-14); HO says that District has the burden of proof (20-25); p. 5 (1-12)

HO admits that she ruled in a prior Impartial that the parent did not attend (p.6 lines 15-21); BC complained to the state about HO Kramer (p. 9 lines 13-25); p. 10 (1-25) pp. 11-13 about retaliation against T for this decision, then HO Kramer would not allow the transcript from her previous Impartial Hearing without the parent into evidence p. 57 lines 2-4); nonetheless, the BC made a case for retaliation p. 60 (15-18); p. 62 (22-24); p. 66 (12-18)

BC states that HO Kramer should have recused herself, due to her subsequent stalling of the case and the instant re-instatement review that took place on April 16 with no math curriculum, science, or any statements by the mom. HO stalled resolution by requiring written briefs rather than oral closing arguments, and giving a date of April 25, 1 month after the last hearing date.

p. 15 lines 17-19: HO "I am going to use today in any way I can to make this case go faster than it ordinarily would"; p. 28 "I don't want this case to go on and on. I don't think it's right. I think this child has wasted long enough for someone to pay attention to it..."lines 15-18; p. 36 lines 19-23; p. 72 (8-12) "placement is very distressful to him and his mother". Then, on p.130, lines 9-15: HO Kramer: " I just don't want to be – I don't

want to be considered late. Because I'm trying real hard to get done on time. And I'm trying to move things around to help everybody. So I hope – I hope we can get it done by the 13<sup>th</sup> and then I'll write a decision as soon as I can, you know."

HO Kramer would not admit the Functional Behavioral Plan into evidence, thus barring parent advocate BC from providing any proof of T's behavior as the basis for the suspension. (p. 201, lines 3-22). HO asked parent whether or not she knew of a FBA, but would not allow her to look at her Ex. B, because she, the HO, had excluded this document from evidence (p. 202, lines 2-25, p. 203 lines 1-10). KM told HO that despite the law – "that a functional behavioral assessment and a behavioral intervention plan must be completed or reviewed for all students removed to an alternative setting, an interim alternative educational setting", the mother KM saw none. HO Kramer would not allow KM to answer any questions about the anecdotes that she received at the October suspension hearing, about T's behavior a few days before his suspension 10/13-10/18. (p. 220-223. HO Kramer would not allow any testimony from T about the group he was in, and how he ended up in the group/class (p. 269, lines 5-25). HO Kramer became very annoyed that Ms. Combier was questioning the suspension hearing officer about T's IEP (p. 392, 396 lines 13-19) and attacked Ms. Combier when Ms. Combier asked for the attendance sheet for the MDR on November 2, 2007. P. 578, lines 8-17.

HO Kramer would not allow Ms. Combier to ask very relevant and important questions of Ms. Ackerman, and became belligerent against Ms. Combier during the hearing, and this upset the parent very much. (P. 582, lines 8-19), On p. 611 HO Kramer told Ms. Combier that her question about the suspension plan was "ridiculous". (11-13) and she also rules without comment from Ms. Combier, because nothing Ms. Combier says is of any value. P. 615: HO Kramer says to Ms. Combier "I don't know what you're trying to do with this witness" (line 4-5).

On p. 637 we see this:

Ms. Shepherd: "That was not part of the testimony. She [Ms. Combier] has to stay within direct." (23-24), acting like she – Ms. Shepherd – was the Hearing Officer. And then, on page 643, HO Kramer was sarcastic, when Ms. Combier said that she would like to bring in a woman who knew all about the Queens Middle School and the staff: HO Kramer: "Well that's fine then you can bring her in. What difference does it make if this witness spoke with her?" (p. 643, lines 14-16). HO Kramer would not allow Ms. Combier to ask any questions about whether or not Ms. JMB ever called the parent. (p. 644 lines 1-8), and would not allow Ms. Combier to ask any questions about what Ms. JMB knew about T's suspension. (p. 645, 1-15). HO Kramer deferred again to Ms. Shepherd about asking alleged teacher Mr. Gasparino anything (p. 738, 8-16).

On p. 706 HO Kramer asks for Ms. Shepherd's permission to continue with Ms. Combier's questions about Tremayne's fears at IS 53 (1-17). On p. 749 HO Kramer sustained an objection from Ms. Shepherd about the homework given by Mr. Gasparino. (p. 749 lines 13-16). This was key to T's academic program. On pp. 761-762 Ms.



Shepherd made a ruling about Ms. Combier asking questions about SETSS that T was not receiving.(4)

P. 657, lines 9-21 HO Kramer attacked Ms. Combier as if she – Ms. Combier – had implied that Ms. Kitchen was not telling the truth. The attack was improper.

p. 678 lines 1-25; p. 679 lines 1-19

HO Kramer was wrong in her assessment of what the parent of T was asking for, and rudely would not permit Ms. Combier to clarify that the parent never contested the classification, she only wanted to know how the determination of ED was made. Again, this shows a lack of respect for the parent and her advocate, and a bias against accurate information about this case.

The transcript reflects Ms. Shepherd making a ruling against Ms. Combier during the testimony of Mr. Gasparino about what he heard about T's suspension:

Ms. Shepherd: "I object. Relevance and it is going beyond the scope of testimony. I'm trying to be flexible but you're doing that a lot." (p.757, lines 13-16)

HO Kramer: "Sustained." (17)

On February 13, 2008 HO Kramer again admitted knowing about the case, but would not discuss her previous Impartial Hearing without the parent, and the NYC BOE was represented by an Attorney, Ms. Malika Bibbs, who should not have been present at all:

p. 439

Mr. Bernstein mentions that T previously left 225 due to a fight.

HO Kramer: "So I've already heard the answer. I can't unring a bell" (14-15)

This statement refers to a previous Impartial Hearing with HO Kramer that was settled by T's mom, his advocate and the BOE a few days before the Hearing on June 8, 2007, but HO Kramer, the HO in that hearing, went forward without the parent present, and denied her the request for a new placement from 225 due to abuse by the staff and no services. This issue will be examined at a later time.

p. 17 JS misspells her witness' name: "K-A-R-T" (4); and "yes" (5); then JS states that he is the site supervisor for PS 53, knowingly omitting that he had been removed for abusive harassment of a child at the site (school told all the children and parents) lines 7-8. (p. 187-189) on or about the same day that the NYC BOE JS stated that he would be a witness against T. (p. 191, 1-18).

p. 18 JS not sure where her other witness, Ms. Brailsford, comes from (10-11); and p. 19 (2-4);

NYC BOE submission #7 does not match parents' original, numbered J-1. (p. 232, lines 1-25).

### **Testimony of "KM" (mother of T)**

p.75 KM: "T" has been in about 5 schools in the last two years – maybe six (8-9) PS 225 is his home school (13-16); trouble began when he was in 7<sup>th</sup> grade (24-25); he wasn't on a level as the same level as all the rest of the kids" (p. 76, 19-20); IEP was changed in July 2007 (p. 78, 22-25) from learning disability (p. 79 line 3) to emotional disturbance without any supporting documentation sent to the parents (p. 196 -197; p. 225-226). KM never received any written notice that an IEP review meeting was going to be held in July, 2007, and she simply received a telephone call one day, and the meeting was happening. (p. 226-227). KM agreed with the change to ED, but asked for who recommended it and what certification the person recommending it had. (p.237 -238, lines 1-7).

T was to receive SETSS and counseling (p. 79 lines 9-10); the services were inconsistent, he was not getting support and KM brought this to the school's attention (p. 79, 12-25) (p. 80, 1-10); KM asked for a review, was present by telephone (p. 81, 11-24); T's classification was changed from LD to ED (p. 81, lines 10-12); KM received the new IEP in the mail on August 10, 2007 (p. 82, line 1), asked why the IEP said ED (p. 82, lines 17-25); Mr. Bernstein changed the classification, but he doesn't know T (p. 85, lines 1-12; p. 86 lines 12-16); parent heard from Mr. Bernstein that T was a "bad boy" and other negative things (p. 88, lines 7-22), but parent states that he never really talked with her about T or with T.

KM received a letter in September saying that T would get SETSS and counseling at 225 (p. 90, lines 8-13); p. 91 lines 6-7. As there was no re-instatement review of T on June 25, 2007, KM brought T to 225 in September, where he was given a classroom and teacher. (p. 219, lines 13-16). Then another staff member at 225 told KM that T could not attend 225 (p. 219, lines 16-19).

But instead of 225, T was to go to M.S. 53 (p. 91, lines 9-20) without any transportation (lines 21-24)

T did not receive SETSS or his services at 53 (p. 92, lines 17-25).

MS 53 did not have a copy of T's IEP (p. 94, line 25);

Ms. Francois told KM she would get a current IEP but a week or so later, she told parent that she had T's old IEP without ED on it (p. 95, lines 14-23);

T told his mom that he was not getting SETSS or counseling (p. 97, lines 13-25; p. 98 lines 1-13) and she spoke with Mr. Karp about this several times (p. 98, lines 9-13).

At the October suspension hearing that did not take place (adjourned to November 19, 2007), KM was given anecdotes dated 10/13-10/18 that show uncontrolled behavior of T during class. See p. 220-222 of the transcript.

On October 19, 2007, T went through the scanner and Mr. Karp said he saw T take something out of his pocket and tried to put it on the floor. (p. 99-100), then was suspended. KM did not hear what school he was to attend until Nov. 2, (p. 104, lines 15-22).

On Nov. 2 T went with his mom to MS 231, far from home. Mr. Mea did the intake, told mom that he did not have T's IEP, and mom told him she had a copy of it, read from it, and gave him the IEP to copy for his records. (p. 105 line 25 – p. 106, lines 1-15).

KM adjourned the suspension hearing from October 30<sup>th</sup> until November 19 (p. 107, lines 14-23).

An MDR was done on Nov. 2 at 225 for the suspension from MS 53. (p. 108 lines 10-25). The anecdotes in parents' J-1 were never seen by parent before the suspension hearing on October 31.

Mr. Bernstein was standing outside the office waiting for KM to do the MDR. KM told Mr. Bernstein not to begin until BC was on the telephone, but Mr. Bernstein still kept asking T what happened (p. 109, lines 1-25);

Mr. Bernstein said to T: "...you carrying a knife to school? ...so before we called Ms. Betsy he said you know I really don't think this is part of – this is not related to his IEP. There's zero tolerance when a child brings a weapon to school. T should know better." (p. 110, lines 10-18).

Mr. Bernstein gave KM papers and told her that the meeting was over, the actions of T had nothing to do with T's IEP (p. 111, lines 1-12).

The MDR sheet dated November 2, 2007 had an "x" by the box that stated that there was no relation at all to T's IEP, and [Mr. Bernstein] gave KM the paper already checked, "He [Mr. Bernstein] did not fill it out in front of me." (p. 111 lines 13-24).

There was no discussion about the IEP. KM asked Mr. Bernstein if he had considered T's IEP, and KM said,

"No. He didn't – he didn't have a current IEP. He told me he knew that the IEP and the classification had changed. But he didn't have it right in front of him...He knew what the classification was, but it didn't matter because it is zero tolerance when a child brings a weapon to school. That's an automatic – there's just zero tolerance for that." There was no investigation discussed. (p. 112 lines 1-19; p. 150, lines 1-11; p. 150 line 25 – p. 151 lines 1-3; p. 151 lines 10-19). EX 7

KM asked Mr. Bernstein if he had read the IEP, Mr. Bernstein said that T's classification did not matter: "It doesn't matter if he [T] was classified...is what he did was zero tolerance. That's all we said about the IEP because he insisted that he didn't need it." (p. 112, lines 19-25; p.148, lines 4-5; p. 148 lines 15-25, p. 149, 1-25; p. 177, lines 2-8; p.

207 lines 18-25, p. 208 lines 1-25, p. 209 lines 1-8). The parent was not allowed to present any evidence, nor was she allowed to question any witnesses. (p. 206, lines 15-25).

At T's new placement, ALC 231, KM states that the Principal told her that it may be a couple of weeks before T would get any services (p. 115, lines 1-13).

On November 19, 2007, a suspension hearing was held without the parent or an advocate for T present. (p. 194-195, lines 1-7).

T did not receive any services at 231, and then was told to leave in order to go to his 1 year SOS at the end of November (p. 116, lines 12-25), around November 24 (p. 157, lines 19-24) the Principal said to KM that T was no longer on the roster of 231 (p. 158, lines 4-14). On December 21, 2007, KM found out that throughout this time T was on the roster at 225 (p. 162, lines 1-10) but a secretary said that T was no longer on their roster (p. 162, lines 19-24). EX G-11. On the attendance sheet from 225 there are many absences for T even though he was no longer attending the school (p. 166, lines 1-24). In fact, the mom KM did not know where T was on the roster, of any school (p. 169, lines 5-20).

T was sent to a 1 year suspension after a suspension hearing was held on November 19 without the parent or her advocate. KM was told that the suspension hearing would take place on November 19 with or without her, and she could not adjourn it. She could not make it that day. (p. 116 lines 14-25).

KM was very angry that she could not speak in T's defense at the hearing (p. 117 lines 10-19).

The NYC BOE sent KM the results of the MDR and the suspension hearing on the same day (p. 118, lines 12-16), EXHIBIT 7D, which was dated March 28, 2007, but actually was sent on Nov. 26, 2007. (p. 119, lines 9-17). The decision of the suspension hearing officer was that T must be suspended for 1 year.

The Principal at 231 told KM that T could not attend there anymore, so T stayed home from November 24 – December 3 (p. 122, lines 21-23; p. 160, lines 5-23).

KM sent a request for an Impartial Hearing on November 28, 2007.

Ms. Kitchen would not take T in her school (p.123, lines 5-22); (p. 124, lines 10-12) before Dec. 3, 2008. On and after October 19, 2008, KM was told not to bring T back to 225 or 53. (p. 212-214, line 1-16.)

Ms. Kitchen told KM that she had an old copy of T's IEP (p. 125, lines 16-20), and that she would get his new one, but never got back in touch with the parent. (p. 126, lines 17-20; p. 180, lines 2-14). KM was never informed of any services that were given to T (p. 127, lines 5-14).

An Early Resolution meeting was scheduled for December 21, 2008. EX 8/H. Mr. Bernstein did not place the name of the advocate, Betsy Combier, as present, even though Ms. Combier was a participant by telephone. Mr. Bernstein was supposed to fax the Resolution document to Ms. Combier, but never did.(p. 172-173, lines 24-20). Mr. Leo Maurillo was present at the meeting and had a copy of T's IEP, but none of the issues requested by KM for consideration by the Impartial Hearing Officer were discussed. (p. 176, lines 10-19; p. 177, lines 12-25,p. 178 lines 2-6). Mr. Bernstein said that the IEP had nothing to do with T's actions, and that there's zero tolerance for his actions, and Mr. Maurillo agreed. (p. 177, lines 1-8; p. 209 lines 1-21). Mr. Maurillo told KM that he would contact KM about testing T, but he never contacted KM again. No one did from the school. (p. 178, lines23-25; p. 179, lines 1-8; p. 209 lines 22-25, and p. 210 lines 1-20).

KM states that T never had any homework or workbooks until January 31, the day after the 1st hearing. (p. 181, 13-21; p. 182, lines 10-20). KM was never contacted by a SETSS teacher or counselor until after the Hearings started. (p. 210-212, lines 1-4). T got his resource room and counseling for the first time also on January 31, 2008 (p. 183, lines 2-8). T does not eat lunch because it is frozen, unless he gets someone to buy him some lunch on Fridays if he gets "10 points". (p. 184, lines 1-25). HO Kramer cut off discussion about the uneatable lunch, and the SOS kids going hungry every day but Friday. (p. 185 lines 1-10).

Two school days after the first hearing on January 30, 2008, suddenly KM received a call about T's homework and services, and that all of a sudden he now has a science teacher. (p. 186, lines 1-24).

### Testimony of T

T has three subjects, no lunch Monday-Thursday (p. 248, lines 11-16), no music, no gym, no science, no social studies, and no SETSS. He has some 1 to 3 counseling, on a random basis, but no 1 to 1, and he says that he started the counseling on February 1, 2008 (p. 245, lines 14-23). He started science after January 30, 2008, and the science teacher is actually an uncertified suspension officer who sits in the room with the 6-14 students in 7<sup>th</sup> and 8<sup>th</sup> grades, and watches them do whatever looks like reading. The science curriculum includes physics, chemistry, life science, biology, and grades 7 and 8. Homework, if there is any, is sent from the school of the suspended student. No homework or classroom work is done, discussed, or encouraged. (p. 262, lines 5-22). The ELA class sometimes has homework; T does not understand the math teacher at all, and the math subjects change on a daily basis(p. 240-251). At 231 in November, T received no counseling. (p. 254, lines 15-16). At IS 53 T received no counseling (p. 254, lines 18-22); and no counseling at IS 53 (p. 257, lines 10-14). At the SOS, T had two sessions of counseling (p. 261, lines 18-19).

T does not feel safe at any suspension site (p.266, lines 1-25).

T did not know there was a knife in his wallet, but he brought his wallet to school on the 19<sup>th</sup> of October because he needed his metro card. (p. 281, lines 8-23). Boys were messing with T on October 18 (p. 283, lines 13-21). T felt scared, but did not know what to do (p. 288, lines 19-25; p. 289, lines 9-21), nor did he know who to talk with at the school (p. 290, lines 15-22).

**Sabine Bouchotte, suspension office receptionist**

The original date for the suspension hearing was October 31, 2007, more than the mandatory 10 days from the date of the suspension. (p.294, lines17- 21). The school and the mom adjourned the suspension hearing until Nov. 8, then the mom said she could not do it on the 8<sup>th</sup>. The date was left open.

Witness says that she called mom on November 14 and left a message about a new date, November 19, but she never spoke to the parents. (p. 296, lines 7-24). There is no proof of any mailing to the parents that a date was set for November 19 (p.304, lines 1-21; p. 305, lines 3-23).Ms. Bouchotte called T's mom on Nov. 19 to tell her that "a hearing is being held in absentia" or without anyone for T. (p. 297, lines 2-11). Witness could not verify that KM was ever notified in writing of the new hearing date of November 19. (pp. 302-307) and the only "proof" of a call made to the parent at any time is witness' statement that she made a call and that she made a notation in the suspension folder, and there is no copy of an adjournment sheet. (p. 307, lines 19-23; p. 324, lines 20-25 – p. 325, lines 1-24).

Ms. Bouchotte testified that her Supervisor is Emil Micha and that he made the decision to hold the suspension hearing of T on November 19, 2007, without anyone attending for T, or "in absentia". (p. 309, lines 16-19). Her proof of his approval was that the hearing happened "in absentia", so he must have approved it.

Ms. Bouchotte testified that she called KM at or around 10:15AM on November 19, to tell KM that a hearing would take place without her. (p. 309, lines 20-25; p. 315, lines 2-25; p. 339 lines 7-20). Witness says that there is no proof of an approval by Mr. Micha for a hearing in absentia, but "obviously" it was approved because, Ms. Bouchotte said, "I know it was approved because the hearing was, obviously, held in absentia" (p. 317 lines 5-7) and there was a notation "saying the hearing was held with the date and the hearing officer's initial on the folder". (p. 318, lines 22-24). EX 8. Witness admitted that there is no proof that the parent of T was ever notified of the new date for the suspension hearing on November 19. (p. 327, lines 1-17; p. 340, lines 4-25 and p. 341, 1-25; p. 342, lines 1-25). Witness told HO that out of about 100 cases brought to the suspension hearing office in Queens per week, about three are held in absentia (p. 336, lines 13-15) and Ms. Bouchotte added, "But we know, looking at a folder if we can even go to the supervisor and ask him can this hearing be held in absentia?" (p. 337, lines 2-6). There are no forms to give any staff at the suspension hearing office any guidelines on how to deal with the hearing process and notifying parents. (p. 336, lines 16-p. 337 lines 1-8).

And, there is no procedure for notifying parents that they may have a copy of the transcript after the suspension hearing. (p. 334, lines 1-25).

Ms. Bouchotte did not have anything to do with the MDR (p. 345, lines 23-25) and did not see the IEP of T in the suspension folder, (p. 346, lines 14-18).

**Christine Alvarez, Hearing Officer, Queens Suspension Hearing Office**

Ms. Alvarez, the hearing officer in the case of T, admitted that the hearing took place without anyone representing the child's side (p.351, lines 4-12).

Ms. Alvarez testified that one of her duties is to also write an MDR outcome, "or result letter, then I attach to that my decision letter which I write" (p. 352, lines 17-21). [*the MDR decision had already been written on November 2!!!!!!!!!!!!*]

After the hearing, Ms. Alvarez makes a decision writes a decision letter. (p. 353, lines 19-20). At T's hearing the Dean, Ms. Debbie Green, came in and testified as far as the investigation that occurred. Then the "school's witness came in, Steven Karp, and testified as to his observations in terms of the charge which was possession of a ..." (p. 354, lines 1-3).

EXHIBIT NYC BOE G-5: Ms. Alvarez: "Okay. This is the decision letter that I wrote. The first page of it is the result of the MDR, the Manifestation Determination Review. That is a form letter when we put information regarding what the results were regarding the MDR, what the psychologist found and then turned over to us. It was found that the conduct was not a manifestation. Then the?" (p. 355, lines 15-23). The date on G-5 of March 28, 2007 is wrong, the letter from Ms. Alvarez was written on November 26, 2007 (p. 356, lines 18-25). Ms. Alvarez states, "These are template letters and what we, basically, do is I as a hearing officer input information in there. The March 28, 2007 date is a clerical error on my part."

Ms. Alvarez continues: "Page two of the letter is the beginning of my decision letter. Again, this is a template letter where I, as a hearing officer, would then input information regarding this student T's information." (p. 357, lines 4-9).

Ms. Alvarez testified that the dates October 19 and October 25 were correct, as listed in the suspension decision; however, the dates September 24, October 1 and October 5 are incorrect (p. 357, lines 14-25). Witness said that the decision letter is a template letter, and she simply put information into a pre-set form, and she did not input the right information.

Ms. Alvarez testified that all procedural issues were followed correctly and that "the school officials were found to have complied with the Chancellor's regulations. The next portion is the disposition, which is the final outcome of the hearing. That is where I indicate how long the student is being suspended at that point. That information is accurate as well." (p. 359, lines 1-6)

EXHIBIT G-9 is “to inform the parent of the decision. Whether the parent was there or not, we do this, customarily. It informs the parent of the decision and also informs the parent in written form as to what occurred in the hearing.” (p. 360, lines 4-9).

Ms. Alvarez never signs her decisions (p.361, lines 11-16).

Ms. Combier: “Why don’t you sign your decisions?”

Ms. Alvarez: “That is not part of my duties as...I have never been required to. We do not sign our signatures.”

G-9 shows that Ms. Alvarez’ office wrote the parent on October 24, 2008, telling her that T’s suspension was effective October 25. Here is the exchange on p. 362, line 5 – p. 365 line 6:

“Ms. Alvarez: Correct. The letter is dated the 24<sup>th</sup>, but the suspension began the 25<sup>th</sup>. I do not choose those dates, those are the dates in the letter.

Ms. Combier: So does that mean that you suspend a child before their hearing?

Ms. Alvarez: I do not suspend a child. But a child is suspended before their hearing. Yes.

Ms. Combier: Do you know on what basis?

...Ms. Combier: On what basis was T suspended on October 25?

Ms. Alvarez: I do not decide that.

Ms. Combier: Who does?

Ms. Alvarez: The superintendent at the time would have decided that.

Ms. Combier: Who is the superintendent?

Ms. Alvarez: At the...well, you do not have the last page of the letter, but it is Elena Coznan she would be representing the superintendent. Her title is chief executive officer.

Ms. Combier: So if we had the last page, which we were not given, her signature would be on that as?

Ms. Alvarez: Well, what represents her signature would be on there.

Ms. Combier: What represents her signature?

Ms. Alvarez: Correct, her name.

Ms. Combier: Do you know what information she would have had to cause T to be suspended... Three weeks before his hearing?



...Ms. Alvarez: I do not know. I do not decide that. I do not have privy to that information.”

p. 368:

“...Ms. Alvarez: I made the clerical errors. (17-18)...so there are portions of the letter, in terms of the dates, that I failed to edit.” (24-25)

p. 369:

“Ms. Combier: You failed to edit? (1)

Ms. Alvarez: We are working...as I testified earlier I am working from a template letter. (2-4)

Ms. Combier: It is on your computer? (5)

Ms. Alvarez: There is template information. Correct. (6-7)...It is the template letter of this result manifestation determination right here. (14-16)

Ms. Combier: So that date is just on the MDR form?

Ms. Alvarez: Correct. (19). ...We are supposed to change it on the computer to indicate when the MDR for this case occurred. (22-24)

Ms. Combier: You are supposed to white it out before you send it out? (20-21)

Ms. Alvarez: No. We are supposed to change it on the computer to indicate when the MDR for this case occurred. (22-24)

Ms. Combier: Oh, and you forgot to do (p. 369, line 25) (p. 370 line 1) that?

Ms. Alvarez: Correct. (2)

...Ms Combier: It says on September 24, 2007, what document were you looking at that would give you that date?

Ms. Alvarez: Again, that was the date that was on the template letter. Again, I failed to edit that date to reflect the folder.

Ms. Combier: Are you saying that the template letter has dates in there?

Ms. Alvarez: Yes.”

p. 371-372 explains again that Ms. Alvarez did not change the dates that were already on her computer when she wrote her decision on T's suspension.

Hearing Officer Kramer: Well, what is the offer of proof that she did not look at the file and she just wrote all these incorrect dates and then her decision, therefore does not make sense?" (p. 372, lines 18-22)

Ms. Combier: "Exactly" (23)

Hearing Officer Kramer: "That is the point. I get it. (24-25)

Ms. Alvarez made no mention of T's IEP in her decision. Ms. Combier asked her if she saw the IEP, and Ms. Alvarez said yes, that Ms. Green from 225 presented the IEP as part of T's academic record, and Alvarez said: "I did not review it. I was handed the IEP but I do not review the IEPs. That is not part of my position as a hearing officer". (p. 376, lines 3-6)

Ms. Alvarez: "Where it says results of the Manifestation Determination Review?" (p. 376, lines 16-17)

Ms. Combier: "Okay. You mean the 8:1:1?" (18)

Ms. Alvarez: "Correct." (19)

Ms. Combier: "What does that mean?" (20)

Ms. Alvarez: "I do not know. I do not have a license in special education." (21-22)

...Ms. Combier: "You do not know what 8:1:1 is?" (24-25)

Ms. Alvarez: "No". (p. 377, line 1)

Ms. Combier: "Okay. Do you recall seeing the IEP E.D.?" (2-3)

Ms. Alvarez: "No" (4)

Ms. Combier: "No?" (5)

Ms. Alvarez: "I did not review the IEP." (6)... "That is not part of my position as a hearing officer." (10-11)

Ms. Combier: "You just said you did review the IEP." (12-13)

Ms. Alvarez: "I looked at that one portion because I need it for the information that is there, program. So I need to look for what program is, 8:1:1. I input that information." (14-18)

Ms. Combier: "So your knowledge of 8:1:1 is simply to fill in the line on this form?" (19-20).

Ms. Alvarez: "Correct" (21)

p. 378

Ms. Combier: "So...the reason that you do not mention the IEP in this document before me, with your name on it, is?" (14-16)

Ms. Alvarez: " Because it is never part of our decisions as hearing officers. The hearing officers do not review IEPs (17-19)...So it is not only that I did not do it, it is not part of any hearing officer's position."

p. 379:

Ms. Alvarez talked with no one who is listed as receiving a copy of her MDR decision letter, "We never have conversations with them". (p. 380, lines 11-12).

p. 382:

Ms. Combier: "What consideration did you take of T's special needs?" (3-4)

Ms. Alvarez: "I do not do that..." (5)...my position does not include for me to review IEP's or take (p. 383, lines 24-25) consideration of an MDR. I just do the fact-finding portion of a hearing. So all my position requires...(p.384, lines 1-3) is determining whether substantial and competent evidence was admitted to sustain a charge or charges."(6-9)

Ms. Combier: "So why do you sign a document called Results of Manifestation Determination Review when you title is a suspension hearing officer? Why is that even mushed together?" (p. 384, 10-14)

Ms. Alvarez: "That is what we are required to do." (15-16)

Ms. Combier: "You do not even attend the MDR?" (17-18)

Ms. Alvarez: "No" (22)

p. 385:

Hearing Officer Kramer: "But you do not participate in the MDR at all?" (4-5)

Ms. Alvarez: "No. I do not arrange it. I do..." (6-7)

Hearing Officer Kramer: "You do not know what evidence is presented at the MDR?" (8-10)

Ms. Alvarez: "No" (11)

Hearing Officer Kramer: "You do not know anything about the child's disability?"

Ms. Alvarez: "No" (14)

p. 386

Hearing Officer Kramer: "...She does not know anything about the MDR, that is what she just testified to. She is just asked to sign these letters. They, obviously, come from a template. All she did was plug in PS 225 8:1:1 and that is the extent of her knowledge about this child with regard to the MDR, am I right?" (1-7)

Ms. Alvarez: "Correct." (8)

p. 387

Hearing Officer Kramer: "What is relevant is relevant and what is not relevant is not relevant. I get it. She signed this letter. She knows nothing about the content. The date of the MDR is incorrect. Some other information may or may not be incorrect. I do not know. She does not know the people to whom she sent the letter. They did not participate in the MDR. I get it. Let us go." (13-21)... "She is doing a suspension hearing. She has already testified that she does not know what the IEP said. The suspension hearing has nothing to do with the MDR" (p. 390, lines 4-8).

p. 391

Ms. Alvarez: "I decided that there was enough evidence, based on the testimony to sustain the charge." (13-15)

p. 391-2

Ms. Combier: "You suspended him for a year?" (line 25-line 1)

Ms. Alvarez: "I do not make that decision." (2-3)

Ms. Combier: "Who made that decision?" (4)

Ms. Alvarez: "An early resolution counselor makes that decision (5-6)...we do not know [who this person is] until after the hearing, basically." (p. 392, 15-16)

HO established that the ERC was Monique Banfield, and that Ms. Alvarez spoke with Ms. Banfield for a few minutes after the Nov. 19 hearing for T. (p. 393, lines 3-16). Ms. Alvarez made the decision to suspend T and Ms. Banfield decided how long – a year.

p. 405

HO: "So when your letter says that the child and the parent failed to appear on October 5, that was an error as well?" (12-15)

Ms. Alvarez: "Correct" (16)

HO: "There is no procedural history with regard to this child outlined in this decision. Is that correct?" (20-24)

Ms. Alvarez: "Correct" (25)

p. 406

Hearing Officer Kramer: "So when Ms. Bouchotte testified that she assumed that the hearing was going forward in absentia because everybody knew that this mother was not going to show up, were you so sure about that?" (1-5)

Ms. Alvarez: "I do not make that decision. I pick up a case once it has been approved by my supervisor as a hearing in absentia." (6-9)

HO Kramer: "You do not ask any questions" (10-11)

Ms. Alvarez: "He determines what communication there was, what attempt at communication and whether that was sufficient or not." (12-15)

HO Kramer: "But this decision does not list any of those attempts." (16-17)

Ms. Alvarez: "Correct" (18)...I forgot to write about it." (25, p. 407 line 1).

p. 411

HO Kramer: "So you are responsible for sending out the result of the MDR as well as the result of the suspension hearing at the same time?" (1-4)

Ms. Alvarez: "yes." (5)

p. 412

HO Kramer: "Just so I am clear, you do not take any steps, personally, to determine whether or not the parent has been adequately notified about the occurrence of a suspension hearing?" (14-18)

Ms. Alvarez: "Correct" (19)

p. 416

HO Kramer established that if a student has been without services for 10 consecutive days the school has to initiate an MDR; in this case the school initiated an MDR meeting first, before the suspension, and then a request for a suspension. T was on suspension from October 25 2007, and already was missing his services.

### **Feb 13, 2008**

#### **Jesse Bernstein, PS 225 School Psychologist**

p. 428

T's notes on his day at the SOS and his program schedule were introduced as Ex. N

p. 439

Mr. Bernstein mentions that T previously left 225 due to a fight.  
HO Kramer: "So I've already heard the answer. I can't unring a bell" (14-15)

This statement refers to a previous Impartial Hearing with HO Kramer that was settled by T's mom, his advocate and the BOE a few days before the Hearing on June 8, 2007, but HO Kramer, the HO in that hearing, went forward without the parent present, and denied her the request for a new placement from 225 due to abuse by the staff and no services. This issue will be examined at a later time.

**Ms. Shepard asked Mr. Bernstein about the MDR at 225 on November 2, 2007, two weeks after T was thrown out of IS 53 and his mom kept him home, because the school and the NYC BOE refused to give him a placement. There was no suspension hearing.**

**Advocate Betsy Combier was present by telephone at this MDR, and taped the meeting. She states that Mr. Bernstein would not listen to anything the mom said, insulted the advocate and would not speak with her, and wrote on the MDR decision that T's action had nothing to do with the IEP...before the meeting began.**

Mr. Bernstein said that Ms. Ackerman, the guidance counselor, was present, (p. 440, line 1), but she was not there.

p. 440

Mr. Bernstein: "We reviewed the IEP. We looked through the IEP. We looked at the classification. We looked at the...that were, you know, placed for T and that's the information we reviewed (9-13)... We determined that it is not due to his disability. Despite being classified as, you know, having an emotional disturbance, there was no discussion anywhere in the records of things such as, you know, poor impulse control, poor decision making, aggressive tendencies anything like that. So we decided that... (16-23)... Well the IEP does not discuss anything regarding poor impulse control, poor decision making, poor judgment, any aggressive tendencies, anything like that that would warrant, you know, a reason for a student to be...at the school." (p. 441, lines 3-8)

DOE EXHIBIT 7, parent's exhibit J, was changed by Mr. Bernstein on Nov 2 by whiting out clerical information at the top, and he added counseling due to increased behavioral issues (p. 442, lines 11-15).

Mr. Bernstein testified that KM called advocate BC AFTER the MDR was ended. He said that he had seen T's IEP in August (p. 447, lines 10-11) and he reviewed the IEP for the November 2 MDR meeting in August (lines 14-15).

BC: "You just testified that there were no mention of any kind of impulsive actions by T, poor judgment or anything of the sort is that correct?" (p. 448, lines 6-9)

Mr. Bernstein: "correct" (10)

BC: "I draw your attention Mr. Bernstein to page 6-3 of T's IEP. What is the first line? Could you read that first line please?" (11-14)

Mr. Bernstein: "T will demonstrate better self-control, less impulsivity and social class interactions."

**pp. 447-476 of the February 13 transcript with the testimony of Mr. Bernstein shows that he did not read or know any of T's IEP, and did not consider the IEP at the MDR meeting on November 2, because he justifies the overturning of the MDR decision in his testimony. See attached pages from the transcript.**

**Mr. Bernstein also made sure that the "ED" was on T's IEP, but this classification has nothing to do with impulsivity or poor judgment, even though he states on the record there were increased behavioral issues (left up to the imagination what those might be).**

**As the school psychologist at PS 225, he recommended that T receive SETSS 5 x per week, but it is not his responsibility to see that T gets his services:**

**p. 477**

**Ms. Combier: "Page seven is the school environment and service recommendation. It is written that there will be special education teacher support services five periods per week. Do you see that?" (2-6)**

**Mr. Bernstein: "Yeah, I do." (7)**

**Mr. Bernstein: "I have no idea. It's not my job." (14-15) "...I'm not the person to answer that question. I don't guarantee services within the school things like that. I don't do that." (p. 477, line 25 – p. 478 lines 1-3)**

**Ms. Combier: "So you don't know." (4)**

**Mr. Bernstein: "I guess not if he was receiving his SETSS; special education teacher support services. Is that what you're asking?" (5-7)**

**Ms. Combier: "yes"(8)**

**Hearing Officer Kramer: "What is your title at the school?" (9-10)**

**Ms. Combier: "School psychologist" (11)**

**HO Kramer: "Whose responsibility is...The SETSS teacher?" (12-13...15-16)**

**Mr. Bernstein: "Correct. I make the recommendation. I don't service the child." (17-18)**

Mr. Bernstein says that he never heard from KM that T was not getting SETSS 5 periods per week, and he doesn't know if T got his testing accommodation listed on p. 9 of his IEP, special location not to exceed ten to one. (p.480, line 16), or whether or not T took his mandated tests at all. (p. 484, line 7); Mr. Bernstein does not know whether or not T got his counseling:

"...I'm not in charge of his counseling. I don't do the counseling with him. I'm not the mandated counselor so I don't know." (p. 485, lines 9-12)

Mr. Bernstein says that a week before an MDR, his family assistant Ms. Denard sends out a letter telling all parties about the MDR meeting, so he assumed that Ms. Ackerman got a copy. (p.486, lines 21-25- p. 487, lines1-12)

Exhibit G-9 was sent by Mr. Bernstein to the parent, the charges are "somewhere else", he doesn't know where. (p. 488 lines 21-25).

In fact, Mr. Bernstein never received the suspension charges, and was emailed them during the MDR meeting (i.e., he did not have the charges at the beginning of the MDR meeting) (p. 489 lines 9-10; lines 11- p. 491 line 14).

EXHIBIT G-9, the MDR decision, was handed to the parent at the MDR meeting, but Mr. Bernstein never shows this paper to parents (p. 493 lines 22-25, p. 494, line 1).

Mr. Bernstein talked with the parent about 'the decision' (p.495, lines 1-2), but never asked the parent any questions (p. 495 lines 3-23). He asked the Dean to participate, but she said no; the incident happened at another school, IS 53 (p. 501 lines 14-19), and Mr. Bernstein had only the charges and no other information:

Ms. Combier: "You were just emailed the charges [at the MDR]" (p. 502, lines 3-4)

Mr. Bernstein: "That's what I go by" (5)

Ms. Combier: "That is the only information that you had about the incident?" (6-7)

Mr. Bernstein: "Correct"(8)

Ms. Combier: "Who did you speak to at IS 53? (21-22)

Mr. Bernstein: "I just said I didn't speak to anyone" (23-24) ...At the meeting I went by the charges which is what I'm supposed to go by (p. 503, 4-6)...I went by the charges . That's what...those are the charges, those are what's given to me, that's what I base my decision on (17-21)...The way I hold MDRs is, you know, a lot of the time the student is in our school so we have the classroom teacher; we have other people present. At this case T hadn't been to our school for a while. I went according to what we had. That was the IEP, the charges and that's really it." (p. 504, lines 4-10).

p. 505



Ms. Combier: "Did you speak with Mr. Karp?"(3)

Mr. Bernstein: "I don't know. I don't remember." (5-6)

p. 506

Ms. Combier: "What information did you have before the MDR, Mr. Bernstein, on the incident that you were holding an MDR about?" (10-12)

Mr. Bernstein: "I had what happened. I had that T had brought a knife to school." (19-20)...I got to work in the morning. Okay, I have an MDR great. I get the stuff together. I realize I don't have the charges. I had them sent to me. I knew what had happened. I just didn't have it officially documented until the meeting." (p. 506, lines24-24; p. 507 lines 1-4).

Mr. Bernstein testified that he is at 225, and T is at IS 53, so he assumed that someone had sent his IEP over there.

Mr. Bernstein: "[The IEP was sent] After the MDR, before the MDR I mean I don't know. He was at 53 for a while before this happened so I would assume they had a copy of it." (p. 509, lines 4-7)

HO Kramer: "Why would you assume that?" (8-9)

Mr. Bernstein: "Good question" (10)...The case was done over the summer. They, you know, they should send it out to the appropriate places. Now when a student gets suspended and arrives at a suspension site I would think that somehow the IEP, you know, should go with him. It makes sense." (13-19)

HO Kramer: "And if they didn't? What would you conclude from that?" (20-21)

Mr. Bernstein: "It's an interesting system we work in, but if somebody had called me to ask for it I would have, you know, put it over no problem. I was never contacted...I was contacted for it I believe I just don't know when." (p. 509 lines 22-25, p. 510 lines 1-2).

Ms. Combier: "When a child is sent from your school and his IEP is in your file in your office, it is not your responsibility to make sure that the IEP follows the child to his new location?" (8-12)

Mr. Bernstein: "I'm really not sure about that. I think due to the suspension if that's the why the child is suspended that they, the hearing officers whoever it is, when the information that I do at the MDR is sent to them that they are the ones who discharge the information to the school. I don't know what suspension site he's going to. I don't know what school he's going to. I don't know any of that." (13-21)

Mr. Bernstein testified that rarely is an MDR meeting held before a suspension hearing, and all he knows is that he sends the suspension/MDR information to a person named Patricia Calderon (p. 513, line 15) at the ISE who is in charge of suspensions..."all the

information gets faxed to her. I don't know who she is. I don't know where she is. I fax her all the information and I don't know what school the child is going to end up in. I don't know any of that so I would assume that they send it out." (p. 511 lines 22-25, p.512 lines 1-3).

p. 519-523: Mr. Bernstein testified that he did not know who had a copy of T's IEP.

p. 523-524 Mr. Bernstein testified that he never saw the anecdotal (parent's ex. M&N) dated 10/15, 10/16, 10/18 (before the MDR).

Ms. Combier: "Did you make a search for any documents that might be relevant to the MDR?" (p. 525, lines 1-2)

Mr. Bernstein: "No" (3)

Ms. Combier: "Do you consider anecdotal about a child relevant to an MDR?" (4-5)

Mr. Bernstein: "Yes" (6)

Mr. Bernstein: "...I don't even, to be honest, understand why did the MDR but, you know, that's what I was assigned to do so that's that but he wasn't in my school." (p. 525, lines 13-16)

Ms. Combier: "So no one offered to give you any information?" (17-18)

Mr. Bernstein: "Not at all" (19)

Ms. Combier: "And you made no phone call to get any?" (20-21)

Mr. Bernstein: "Correct" (22)

Ms. Combier: " And that is why you say you didn't know why you were doing this?" (23-24)

Mr. Bernstein: "No. that's not what I'm saying. I'm saying that just because it would make sense to me that whatever school the student is at where the incident occurs that's the school that should be responsible for the MDR. That has nothing to do with meeting costs or anything." (p. 526, lines 1-5)

The suspension office told Mr. Bernstein to do the MDR (p. 526, lines 6-17) in an email, saying "'...an MDR is due by this date get it done and send it to me". (p. 527, 24-25)

Mr. Bernstein never saw EX 18. (p. 529, 9-12)

pp. 531-536

Mr Bernstein testified that he never saw any of the anecdotes about T's behavior before the MDR, and even if he had, it would not change his decision to deny the MDR as related to T's IEP. He would have still, despite the additional information, stated that T's disabilities had nothing to do with the reason for his suspension because "...bringing a knife to school is on a different level" (p.533, 21-22).

**See attached pp. 531-536 from the February 13, 2008 transcript, Mr. Bernstein's testimony**

Mr. Bernstein did not review any information about T before the IEP review meeting in July 2007. (p. 537, 1-8; p. 538 6-11). He was dragged into this meeting, and did not want to attend (p. 540 lines 1-5)

**HO Kramer asked Mr. Bernstein if, after he wrote the second suspension plan with the additional 30 minutes/week of counseling, whether or not he received these services (p. 540 lines 6-p. 542 line 6), he said that he did not follow up to find out and that**

**"I did the paperwork up to the suspension officer. He's supposed to send it over to the site. When the student's on suspension that suspension plan becomes their IEP. Yes." (p. 540, lines 15-19; p. 552, lines 22-25, p. 553, lines 1-17)**

HO Kramer: "Are you certain that you had his IEP at the MDR?" (p. 543, 20-21)

Mr. Bernstein: "Am I certain that I had his IEP at the MDR? No." (22-23)

**Dawn Ackerman, PS225 Guidance Counselor**

p. 555

Ms. Ackerman: "I hold a license in counselor education..." \*\* (8-9)

**\*\*On the New York State Education Teacher Inquiry Search page, there is a listing of only one Dawn Ackerman, and the listing says that there is certification in Pre-K, K and Grades 1-6 Permanent Certificate. No other Dawn Ackerman was listed.**

Ms. Shepherd: Did you participate in the MDR?

Ms. Ackerman: Yes, I did.

But she said that Ms. Comber did not attend. Ms. Ackerman read that T is easily frustrated (p. 4 of his IEP) EX A and Ms. Comber asked what that means.

Ms. Ackerman: "T being easily frustrated would mean that he can be frustrated by his task whether it be simple or not that he gets easily frustrated based on whatever given task might be before him at a given time." (p. 558, 9-14)

Ms. Ackerman testified that T's IEP is not in the office with Mr. Bernstein, as Mr. Bernstein said it was.

Ms. Ackerman made no telephone calls to anyone at IS 53 before the MDR to find out what happened to suspend him (p.561, lines 19-25, p.562 1-4).

Ms. Ackerman had never seen the anecdotes (p. 562, 24-25) and does not remember speaking with Mr. Gasperino.

p. 566

Ms. Ackerman: "...And based on that information that was told to us that is how the determination was made; not to say that he is impulsive and not to go into anything else." (lines 7-10)"...it was not an impulsive action" (p. 567, line 11)

The Ms. Ackerman said that the charges were on the table when the meeting began, then said that the charges were not there. (p. 568, 17-24, p. 569, 9-12)

Ms. Combier: "Did you ever have any conversation about T before the MDR?" (p. 571, 6-7)

Ms. Ackerman: "No" (8)

Ms. Combier: "Why didn't you speak to anybody before the meeting about T?" (p. 572, lines 4-5)

Ms. Ackerman: "I was not advised to" (6)

Ms. Ackerman: "It is not my job to double check our information." (p. 573, 9-10)... There's other staff that are in charge of making these determinations and making sure that everything is intact for the MDR. That's not my area where I need to get all the information." (12-16)

Ms. Combier: "So in this case for this MDR you were not asked?" (19-20)

Ms. Ackerman: "To prepare any information? No, I was not beforehand." (21-22)

There was no attendance sheet from the MDR meeting. HO Kramer attacked Ms. Combier for not asking for it. (p.578, lines 8-17)

Ms. Ackerman did not speak with Mr. Karp, and made the decision to deny the MDR despite that fact that she had had no contact with T in 6-8 months (p. 587, line 25 –p. 588, lines 1-14)

Ms. Ackerman testified that she heard Mr. Bernstein say to the mom that bringing a knife to school was a zero tolerance offense...(p. 589 lines 14-16) and that probably nothing would have changed her decision. (p. 590, lines 9-11).

Ms. Ackerman testified that she may have changed her opinion if she had seen the anecdotes about T's behavior on 10/15, 10/16, 10/18. (p. 592 lines 15-25, p. 593 line 1).

Ms. Ackerman had no idea about the length of time T was suspended after her decision (p. 595, lines 11-22).

**Ms. Monique Greenfield, Resolution Counselor, Queens Suspension Office**

Ms. Greenfield makes disposition decisions, but does not hear cases. (p. 598 lines 13-18)

Ms. Greenfield testified that she did not write any comments on T's suspension folder, and Ms. Bouchotte wrote all the comments. In the folder was the MDR and school records (p. 603, lines 5-6). Ms. Greenfield made the decision to ask for an SOS to the SOS designee, Lois Herrera, who decided to suspend T for one year. If the incident was a manifestation of T's disability, then none of these people would have done anything, and T would have been placed back into school immediately.

**Ms. Greenfield: "...the decision formula for that is if the student has certain priors then you would move to the next level because he hasn't shown any improvement continuing to do the same type of behaviors. So 90...the next step after 90 is a year suspension." (p. 609 lines 12-18). But in June, 2007, HO Kramer overturned the MDR decision, and made a ruling that the MDR was wrong...this was never recorded, only T's suspension. Thus, T's suspension on October 19 and the MDR on Nov 2, due to HO Kramer's decision to go ahead without the parent, meant that the ruling at the MDR stayed, and the NYC BOE went ahead and retaliated against T by making the punishment harsher.**

Ms. Greenfield: "If an MDR is found to be positive that means the student is protected and will therefore be reinstated to school. That only rolls into effect if the child...it's not a manifestation and then the child is viewed as a general education student. He can receive the same type of suspension time as any other general education student. So I wouldn't even be looking at it like that." (p. 610, 16-25)

Ms. Greenfield sent Ms. Herrera a request form with the MDR, the MDR decision, the prior suspensions, academic history. Sending the IEP is not mandatory, just the results of the MDR. Ms. Greenfield made the decision for an SOS based upon the MDR decision and the prior suspensions. She never saw the EX M, the anecdotes (p. 606, line22-23).

p. 620

HO Kramer: "...in this particular case you relied solely on the (p. 619, 25) MDR? You didn't ask for another one? You didn't look into it yourself? ... You didn't review the MDR, the circumstances under which that MDR was made?" (lines 1-5)

Ms. Greenfield: "No".(6)

HO Kramer: "Now when you make that request [for an SOS for 1 year] do you attempt to ensure or guarantee that the school to which they will be sent will have the appropriate special education services that this child needs even though the particular offense was found not to be a manifestation of his disability?" (p. 621, lines 10-16).

Ms. Greenfield: "Well, I don't ensure that but it is supposed to be provided." (p. 621, lines 17-18)...I don't know personally [what services are provided at the SOS] (p. 622 lines 18-19).

**Ms. Jackie Morrison-Brownfeld, ("Ms. JMB") AP, Queens Middle School one-year suspension**

Ms. JMB: T has 9 periods per day, resource room every day, five days per week; he had a social studies teacher until February 4<sup>th</sup>, and now he has a science teacher. (p. 634, lines 22-24).

Ms. JMB: "I haven't contacted the mother." (p. 652, lines 24-25).

**Corinne Kitchen, Queens Middle School, Guidance Counselor (no teacher record was found for her on the New York State teacher certification inquiry website)**

**Alert:** The NYS Teacher Certification Inquiry system has no listing for "Corinne Kitchen" (see attached).

Ms. Combier: "Did you ever call the parent about T?" (p. 662, lines 8-9).

Ms Kitchen: "No"(10)

Ms. Kitch: [T]...he's not able to handle certain issues because of things that are happening internally with him. It means he's not capable of handling things due to his emotions or things due to his emotions or things that are going on with himself."(p.663, lines 19-23)

HO Kramer: "Does he get a one-on-one session with you?" (p. 671, lineees 5-6)

Ms. Kichen: "He has another social worker. We have social workers that provide that." (7-9)

HO Kramer: "And what is her name or his name?" (10-11)

Ms. Kitchen: "I'm not sure which one Mr. Ribiero or Ms. Smith. I'm not sure which one (12-14).

HO Kramer: "But he does get it?" (15-16)

Ms. Kitchen: "Yes" (17)

HO Kramer: "Once a week?" (18)

Ms. Kitchen: "Yes" (19)

HO Kramer: "And that person has an MSW?" (20-21)

Ms. Kitchen: "Yes" (22)

HO Kramer: "And he has been getting that since his intake?" (23-24)

Ms. Kitchen: "He should be, but I don't know exactly"(p. 671, 25 – p. 672, 1)

HO Kramer: "Say you don't know. You don't have his attendance sheet for that session?" (2-4)

Ms. Kitchen: "No" (5)

Ms. Combier: "Do you ever speak to his counselor or whoever it is; the one-to-one? (11-12)...How many times have you met on issues?"(20-21)

Ms. Kitchen: "Not on T, no" (22)

Ms. Combier: "So you haven't met the one-to-one counselor?" (23-24)

Ms. Kitchen: "Not on T, no" (25)

### **March 27, 2008 transcript**

#### **Sheila Gauthier Francois, "SGF", Alleged Guidance Counselor at ALC**

SGF: "I hold permanent certification as a teacher and a permanent certification as a school counselor" (p. 690, lines 6-8)...common branch [not special ed or anything like that] (p. 721, lines 19-22)...[knew T] from September 4, 2007 to October 19, 2007 (p. 691, 6-7)...At the time we had a student that walked in to where T felt he was a threat to him [T]..." (7-9)

Ms. Combier asked why Exhibit G10 did not show counseling.

Ms. Combier: "Did you ever speak with Mr. Bernstein about T?"(p. 702, lines 11-12).

SGF: "No. I've never called him." (13-14)

Ms. Combier: "Did you ever speak with Debbie Green about T?" (15-16)

SGF: “No”. (p. 703, line 1)

Ms. Combier: “You said that T felt threatened by a student?” (5-6)

SGF: “Yes”. (10)

Ms. Combier: “Was he there in October?” (14)

SGF: “I believe so, yes.” (15-16)

SGF testified that T felt threatened by another student who was on site in October (p. 704, lines 5-25, p.705 1-25, p. 706 1-25, p. 723, lines 7-22; p. 726, p. 707 1-25). She spoke with the mom once (p. 710, line 19), and Mr. Karp (p. 709, 1-6) but never spoke with the principal about it (p. 710, lines 1-3). ASGF has no information that the Principal was ever told anything (p. 710, lines 13-16).

SGF testified that T’s day went from 7:30AM to 1:30PM, then it was shortened. (p. 711, 17-24). SGF did not see any of Mr. Gasparino’s anecdotes , EX M.

Ms. Combier: “Did anybody ask you any questions about T?”(p. 719, lines 23-24)

SGF: “No”. (p. 720, line 3)

Ms. Combier: “Did you ever get any information about an MDR about T?” (p. 720, 7-8)

SGF: “No.” (12)

SGF testified that T’s acting out, and his desire – “compulsion” that he had to have this reputation was not part of his disability...then, she testified that his acting out in class every day WAS part of his disability (p. 728, lines 18-24). She stated that she discussed T’s behavior with him, and she stated that she believed he knew right from wrong, but he kept doing “wrong” things (p. 731, lines 9-17).

### **John Gasparino, “Mr G” provisional teacher**

Mr. G: “I taught him science in the school and I worked with him as a resource room special ed (p. 735 lines 9-11)...every day also” (17)...in the classrooms in the school.” (20-21)

Mr. G: “I have a transitional B certificate (p. 737, lines 18-19)...I’m a teaching fellow, second year(24-25)...The previous school was MS 105 (p. 739, lines16-17)...I was in the suspension room(p. 740 9-10)... We sat with the students who were under suspension both locally and from principal’s suspensions from other schools and we supervised the children in that classroom. (15-18).



Ms. Combier: “okay. Did you teach them anything while you were in the suspension room?”(p. 742, lines 6-7)

Mr. G: “No. The suspension room at that time was set up so that they took work from whatever school they came from or whatever classroom they were in and they did that work and that work was brought back to the teachers to make sure they were doing it. There was no teaching involved directly. We had students of various grade levels in the room.” (p. 742, lines 8-15)

Ms. Combier: Okay. So how did the work get back to the teachers from the other schools.” (16-17)

Mr. G: “It was sent back.” (18)

Ms. Combier: “By whom?” (19)

Mr. G: “administration” (20)

Ms. Sheperd: “Object” (21)

HO Kramer: “Sustained.”(22)

Ms. Combier: “Okay. So you [Mr. Gasparino] – you served as a suspension person there [at IS 53] as well? (p. 743, lines 10-11)

Mr. G: “Yes, I did.” (12)

Ms. Combier: “Okay. Did you have an actual science class?” (13-14)

Mr. G: “No”(line 19)...”At IS 53 I’m teaching science, yes (p. 744, 1)...Seventh and eighth grade (4-5)...Earth Science and yeah (8)...It’s biology, it’s...it’s biology it’s physics, it’s a spectrum of subjects (15-17)...Biology, physics, all of the subjects. All of the scientific subjects. They’re in the book. You teach the text.”(20-22)

Ms. Combier: “Which text?” (744, 23)

Mr. G: “I don’t know the name of the book”. (24-25)

Mr. G testified that there are no seventh grade tests, only eighth grade, and 14 students are in T’s class right now, but the number varies between 10-14. (p. 746)

Mr. G testified that he never spoke with the parent about the anecdotes he wrote about T 10/15, 10/16/, 10/18.

Ms. Combier: “Did you ever speak with the parent?(p. 750, line 1-2)

Mr. G: “no, I don’t believe, no.” (3)...There was nothing...what was already on the IEP (8-9)...I think at this time the assistant principal was calling the parents on this” (p. 750, lines 14-16)

Ms. Combier: “You think?” (17)

Mr G: “That’s my understanding of it, yes.” (18-19)...this conduct again was consistent with the IEP. I don’t think there was anything that was not already listed on the IEP.” (P. 752, 15-18)...a lot of these behaviors are consistent with what’s on the IEP.” (23-24)

Mr. G testified that he spoke with T about his behavior, but he continued anyway. “I mean that’s part of the conduct he has already exhibited...(23-25)

Ms. Combier: “So nobody asked you to contribute to an MDR?” (p. 755 lines 18-19)

Ms. Gasparino: “No” (20)

Ms. Combier: “Do you know when the MDR took place?” (21-22)

Ms. G: “I do not” (23)

Ms. Combier asked Mr. Gasparino whether or not T should be suspended, he said:

Mr. G: “It’s automatic. It’s in the guidelines.” (p. 758, 23-24)

Ms. Combier: “Were you in touch with his science teacher where he is at now?”(p. 759, 10-11)

Mr. G: “I have not spoken to his science teacher, no” (12-13)

Ms. Combier asked questions about SETSS, Mr G. testified that he took T into the science room where he read the book “Holes” (p. 761, 1-25; p. 762 1-23)

Ms. Combier: “Did you write down your sessions with him? Did you record it in any (24-25) way? (p. 763, 1)

Mr. G: T brought a notebook which he subsequently lost or didn’t bring. If we were doing any kind of words he’s put them on a sheet of paper with him. That was it.” (2-6)

Ms. Combier: “But you never wrote down...” (7)

Mr. G: “The pacing of the lesson or anything? No, I didn’t” (8-9)

Ms. Combier: “But you also did not write down any of your impressions of his progress or of how he was doing or anything?” (p. 763 lines 10-12)

Mr G: "No" (13)

Ms. Combier: "But did you ever discuss your time with T with anybody?" (16-17)

Mr. G: "No, other than for this, you know."(18-19)

Ms. Combier: "When did you speak with Ms. Shepherd?" (20-21)

Mr. G testified that he had spoken with Ms. Shepherd several days ago, and that there was a new Assistant Principal at IS 53, a Mr. Thomas. (p. 766, 19-20)

Mr. G: "...I'm the resource room. I'm the one who dealt with him on that study period (p. 768, 1-3)...It's the last period of the day...approximatively from - 1:30 so it's approximately 12:30 to 1:30 (23-24).

HO Kramer: "Does the child have a learning disability? (p. 770, lines 8-10).

Mr. G: "yes" (11)

HO Kramer: "In addition to his emotional disturbance?" (12-13)

Mr. G: "yes" (14)

HO Kramer: "Are you able, in your present situation, able to teach him things like phonics and word recognition?" (15-17)

Mr. G: "I tried to teach him those things...(21) ...I think he would benefit tremendously from an emergent program in some kind of literacy (p. 771, 3-5)

### **Steven Karp, Site Supervisor for ALC in Flushing**

SK testified that T was attending his (Mr. Karp's) former site in Far Rockaway for approximately three months (T was there 1 month). He testified that T received counseling and resource room. (p. 774, 12-14)

SK testified that T's behavior was "erratic" (p. 775, 12)... "belligerent" (13, p. 776, 2)...acting out (23).

P.776-779 Mr. Karp would not say why he had been removed from IS 53 (due to an incident with a boy there).

Ms. Combier: "Did you ever speak with Mr. Gasparino about T? (p. 782, lines 8-9)

Mr. Karp: "All the time (8-9)...More than once a week. (22)...Virtually every day we have a briefing after school (p. 783, 13-14)

Ms. Combier: "And you discussed all the children(15-16)...including T(18)

Mr. Karp: "including T" (19)

Ms. Combier: "Mr. Gasparino attended these meetings? (20-21)

Mr. Karp: "Yes, he did" (22)

Ms. Combier: "...did you ask [Mr. Gasparino] about T's behavior? (24-25)

Mr. Karp: "Always" (p.784, 1)

Mr. Karp: "[T] had good periods and bad periods...a lot of what we saw in T had a lot to do with who else was around him. (p. 784, 9-10)

Mr. Karp said that Mr. Gasparino followed the standard curriculum, and a Mr. Kean visited the ALC to make sure (13-23)

Mr. Karp would not say what book was used for science (p. 786, 4-7), and testified that T was classified as LD..."It wasn't ED (p. 788, 14).

Ms. Combier: "Did you attend an IEP meeting in July..." (19-20)

Mr. Karp: "No, I did not"(21)

Ms. Combier: "Did you interact with anybody that did attend this IEP meeting?" (22-23)

Mr. Karp: "No" (24)

Ms. Combier: How often did you speak to Ms. Francois?"(p. 790, 2-3)

Mr. Karp: "When I was at 53 I used to speak with her every day" (4-5)

Ms. Combier: "Did she give you a copy of his IEP?" (6-7)

Mr. Karp: "She can't give me a copy of his IEP. She keeps that locked up. We looked at it." (8-10)

Ms. Combier: "In Mr. Gasparino's class there are eight students?" (p. 792, 13-14)

Mr. Karp: "There could be more. There could be less. It's a suspension site. It goes up and down. **But you're not reading that IEP correctly. It's an eight to one for resource, not for every single class.**" (15-19)

Ms. Combier:"Have you seen his anecdotals?" (p. 793, 4-5)...The 19<sup>th</sup> of October?" (18)

Mr. Karp: "Yes" (19)

Mr. Karp testified that he called his boss, Marilyn Johnson, Principal of ALC in Queens (p. 801, 1-2), who told him to make an OORS and contact the home school (10-12).

Ms. Combier: Did you discuss the IEP?" (p. 802, 1)

Mr. Karp: "No (2)...[The MDR] is not my responsibility."(p. 803, 1)

Ms. Combier: "But whose responsibility is it?" (2)

Mr. Karp: "I don't know"(3)...my responsibility was to report the incident and to ask them to arrange for the suspension" (6-8)

Ms. Combier: "do you go to MDRs?" (9-10)

Mr. Karp: "No" (13)...Never"(15)... "I'm not aware of anybody ever going to an MDR." (21-22)

Ms. Combier: "So when an incident takes place it's your responsibility to get somebody from the home school to take over, is that (23-25) correct?" (p. 804, 1)

Mr. Karp: "Then there is a matter of coordination as far as documentation, paperwork, et cetera (15-17)... "I spoke to (25) Deborah Green. I believe the school psychologist called Ms. Francois but I'm not involved in that." (p. 805, 1-2)

Ms. Combier: "So in terms of coordinating the information what did you do to coordinate the information in T's case?" (20-22)

Mr. Karp: "Specifically I don't recall what was asked of me. Whatever I was asked I did. If there were anecdotal that they wanted maybe (23-25) we sent those over. I don't know. I don't recall if I sent over the anecdotal. I thought I just gave them to Debbie Green." (p. 806, 1-4)...I didn't have to do a lot. There wasn't that much to do." (8-9)

Ms. Combier: "...what guidelines are you aware of that need to be followed when a child has an IEP?" (p. 809, 6-8)

Mr. Karp: "I'm not aware of any guidelines" (9-10)

**Ms. Combier: "When you got your position as site supervisor, were you ever given any information that any actions that are taken with children with IEPs may be governed by some other rules, regulations and laws? Were you ever given any information about that?" (11-16)**

**Mr. Karp: "None that comes to mind"(17)...I don't remember any conversations specifically about his MDR, no."(p. 812, 24-25)**

**Ms. Combiar: "So you do not know when it took place or who was there?" (p. 813, 1-2)**

**Mr. Karp: "No, I do not" (3)**

**Ms. Combiar: "Did you assume that Ms. Green was taking care of that?"(4-5)**

**Mr. Karp: "I have no reason to assume one way or the other."(6-7)**

On p. 816 Mr. Karp testified that he had numerous conversations after T was suspended in October and before he, Mr. Karp, was removed from IS 53, about T...and, with Mr. Gasparino, who testified that he never spoke with Mr. Karp about T. Mr. Karp testified that he was at the suspension hearing on November 19, and he knew that T was suspended for a year a few days later, via email.

**Ms. Combiar: "At the suspension hearing was the previous suspension discussed?" (p. 819, 21-23)**

**Mr. Karp: "No" (24)**

Impartial Hearing Officer Exhibit I = Transcript of Nov. 19 suspension hearing.

Mr. Karp may have been contacted by Debbie Green that morning to attend the suspension hearing.

**Ms. Combiar: "Did you tell the mother that T had to be removed from the site immediately?"(p. 832, 15-17)**

**Mr. Karp: "I might have, yes." (18)**

p. 833

**Mr. Karp: "It – we – the situation was essentially this. Nobody knew how to do it correctly as far as where he should go the next day so I think there was a time when – when – when there was a little bit of confusion as to where he was supposed to go for a couple of days to get it straightened out. (6-12)**

**Ms. Combiar: "For a couple of days. And did you straighten it out?" (13-14).**

**Mr. Karp: "Did I personally straighten it out? I worked on getting it straightened out. I don't know if I personally straightened it out.(15-17)...It was a Friday. October the 19<sup>th</sup> was a Friday.(21-22)...So I mean the weekend was there. It was very hard to get anybody. I spoke with Ms. Green.(p.834) I don't know what happened after that but it was kind of in limbo for a couple of days as to where he was supposed to go. We were told that we were supposed to put through the suspension but we were unable to do it. We just couldn't do it because the center**

was new and we...before where we had to suspend a student ourselves and it turned out we didn't. It turned out it was still the school's responsibility. So we were misinformed.(1-10)

p.834, 13-25) ...In other words, essentially what happened after T – after the incident was that there was no real procedure in place for exactly – we didn't know the exact procedure as to where a student who was suspended was supposed to go immediately – if he was suspended from a suspension site. So I talked to my boss about it and she told me I had to put it through. I tried putting it through. I tried putting it through. I couldn't put it through. We wound up having to wait until Monday. On Monday we tried again and it took a few days to get it straightened out and it turned out that in the end it was the home school that had to (p. 835) process the suspension.”

Ms. Combier: “And where did T end up?” Where did he go?” (2-3)

Ms. Shepherd: “objection. Relevance” (4)

HO Kramer: “Yeah, I'm going to sustain the objection. He's not going to know that.”(5-6)

Ms. Combier: “I beg to differ with that because...”(8-9)

HO Kramer: “Objection is sustained.”(10-11)

Ms. Combier: “Did KM call you up on October 25?” (12-13)

Mr. Karp: “I believe she did.(14)...I don't think I told her where he was going because I wouldn't have known.”(18-19)

Ms. Combier: “Did you ask where T was?” (p. 836, 20-21)

Mr. Karp: “I might have. I don't know. I might have asked her. I don't know” (22-23)

Ms. Combier: “Whose responsibility was it to make sure that T was in school (24-25) somewhere?” (p. 837, 1)

Mr. Karp: “Essentially – ultimately it's the parent's responsibility to make sure they're in school (2-4)...Then it would be the IOC that would make the ultimate ...”(7-8) Well, the Supervisor is Mr. Seth Rosenkrantz so I guess ultimately it would be his placement.” (12-14)

Ms. Combier: “But it's not your responsibility to make sure that if you remove a child from your site that the child is in another place?” (15-18)

Mr. Karp: “I would say no”(19) ...It wouldn't be my responsibility. (21-22)

**p. 838**

**Ms. Combier: "But is it Mr. Rosenkrantz's duty to make sure that when you remove a student from your site that that student is somewhere else?"(14-17)**

**Mr. Karp: "I don't know how to answer that question" (18-19)**

**Ms. Combier: "Is it your understanding that it's Mr. Rosenkrantz' responsibility to place a child that you removed from your site?" (20-22)**

**Mr. Karp: "Right. There is one layer in between there that would be the Principal who is Ms. Johnson." (24-25)**

**p. 839**

**Ms. Combier: "So is it Ms. Johnson who is responsible for finding a site placement for a child that you have told the parent must be removed immediately?" (1-4)**

**Mr. Karp: "I would say it would be somewhere in between Ms. Johnson and Mr. Rosenkrantz. I couldn't tell you exactly which one would have the ball at the moment but one of those two would be responsible for finding a placement, yes." (5-10)**

**Ms. Combier: "But you wouldn't be." (11)**

**Mr. Karp: "No" (12)**

**Ms. Combier: "So did Ms. Johnson tell you to remove T from the site immediately?" (13-14)**

**Mr. Karp: "She told me to have him taken home, yes." (15-16)**

**Ms. Combier: "And did she not give you any other site to send him to?" (17-18)**

**Mr. Karp: "She did not give me another site." (19-20)**

**p. 840**

**Ms. Combier: "And were you aware that T sat at home from October 19<sup>th</sup> to November 2?" (18-20)**

**Mr. Karp: "I was not aware that he sat at home. I was not aware of where he was, but I was not aware that he sat at home." (21-23)**

**P. 842**

**HO Kramer: "Do you have any recollection of what his behavior was the week of October 19<sup>th</sup> and the week before that?" (15-17)**



Mr. Karp: "The only thing I remember specifically...Mr. Gasparino was having trouble with him. I don't recall what." (18-25)

p. 843

HO Kramer: "What is the significance of the child being in eight to one?" (11-12)

Mr. Karp:"Well, the eight to one meant that he needed a special resource class. So I remember having to make the program so that he had a resource class at the end of the day. (13-16) ... Well, that's what his IEP said that he needed the eight to one setting which is a resource class. In other words he was not – you know it was not like a fifteen to one or twelve to one to one where he needed a para. (p. 844) What I remember was an eight to one and an eight to one indicate he gets – that he has regular classes, regular full classes and a special resource room five periods a week to you know – for – to help him with his skills. At least that was my interpretation. I also, you know...his resource...teacher was Ms. Gasparino." (1-11)

p. 845

HO Kramer: "You also testified that it was you who told the people at the home school, that is 225, when you contacted them regarding the suspension that they would have to do an MDR." (18-22)

Mr. Karp: "I didn't say that." (23) ...(p. 846) "Oh, maybe – yes. Yes. Okay. I'm taking it back. I'm taking it back. I might have said yes. Okay. You're right. I had to them. –no, I did. I said to them yes, you have to do the MDR." (4-8)...But I was only telling them as a reminder not as a – not as if this is what they have to do. That's what I sort of meant." (19-22)

HO Kramer: "And then you have nothing further to do with the MDR?" (23-24)

Mr. Karp: "No" (25)

p. 847

HO Kramer: "But you knew that he needed an MDR" (1-2)

Mr. Karp: "Because I knew he had an IEP" (3)

HO Kramer: "And you said you weren't aware of any regulations that governed suspensions for children with IEPs but you knew that much, that he needed an MDR?"(7-10)

Mr. Karp: "Okay. So that's one. That's one I am aware of" (11-12) ...you never attended an MDR for this child or any other child?" (15-16)

Mr. Karp: "I don't think I ever did." (22)

HO Kramer: "So you received the anecdotal from – Mr. Gasparino's anecdotal for the purposes of the suspension You don't have (p. 847, 23-25) any information as to whether or not those anecdotal were used at the MDR, correct?" (1-2)

Mr. Karp: "I-I" (3)

HO Kramer: "Would it surprise you to learn that Mr. Bernstein never saw them when he was doing the MDR and he didn't have them?" (8-11)

Mr. Karp: "oh." (12)

p. 849

**Mr. Karp talked with Ms. Janet Shepherd off the record. Then they returned.**

HO Kramer: "What is the question you wanted to ask Ms. Shepherd?" (6-7)

Ms. Shepherd: "I object" (8)

Mr. Karp: "My question that I wanted to ask Ms. Shepherd was is it worthwhile to talk about anything else or would that just be opening a can of worms." (10-13)

**Mr. Karp: "She said it would probably be opening up a can of worms but it's up to me." (16-17) ... (p. 850) Meaning – meaning if there was something that – that may be needed – that may be – you know something wasn't exactly one hundred percent right do you clarify it if it's – and then the cans of worms means that we'd just be going on and on and on forever over nothing. (1-6) ... (p. 851) I really didn't remember that [the suspension] hearing was a hearing in absentia." (2-3)**

p. 852

**HO Kramer: "Back on the record. The testimony and evidence is all completed. So now we've been discussing when the final submissions will be made by the parties. I believe they are going to be in writing although the parent's representative wished to make an oral statement today the district did not – was not ready. They wanted to do it in writing. So I believe now they both agree they're going to submit in writing simultaneous submissions. The submissions will be made one week after the parties receive the transcript. They will be in communication with each other when they receive the transcript to make sure everybody has it on or about the same day...(2-16)**

**HO Kramer: email address [judithtkramer@aol.com](mailto:judithtkramer@aol.com).**

**Copies sent to:  
NY State Education Department  
Richard Condon**