THE COURT: I'm going to make the following findings which will be incorporated into the order on this case:

Finding 1: The key issue in this case is whether Thomas meets listing 112.02.

Finding 2: The critical issue in this case is whether in one of the six domains -- that domain is interacting and relating to others -- the ALJ erred in finding him marked when he should have found Thomas extreme.

Finding 3: Thomas might also meet listing 11.02 if he is found to have marked impairment in two of the domains, and I find that two of the other domains, acquiring and using information and attending and completing tasks, are areas where the ALJ found less than marked conditions with respect to Thomas.

Finding 4: In reviewing the ALJ's opinion -- and I am looking specifically at pages 22, 23, 24, 25, 26 and 27 of the record -- the ALJ specifically discusses various exhibits, but he does not explicitly discuss Exhibits 7, 12 or 14.

Finding 5: Exhibits 7 and 14 are Southwestern Indiana Mental Health notes.

Finding 6: These notes are from a physician, three licensed social workers and a case manager, and they're found at the record at 271 to 275, 333 to 335, 352 to 353, 441, 469 and 530 and 532. The ALJ's opinion does not explicitly address these treatment records from Southwestern Mental

Health in 14 and 7. In looking at the regulations, I believe that the ALJ must evaluate and assign some level of weight to the opinions from acceptable medical sources. That's 20 CFR 404.1527(a) through (c). There is a physician here who is an acceptable medical source, and I believe licensed clinical social workers would be another source, "other source" as defined at 404.1513(d), and that the case manager would be a non-medical source; but a "non-medical source" under SSR 06-03p must be evaluated.

Finding 7: In this case the records not reviewed from Exhibits 7 and 14 are not short-term or infrequent records but are a true longitudinal picture of Thomas through an extensive period of time by a number of different people.

Finding 8: Some of the treatment notes are material to the ultimate decisions about whether interacting should go from marked to extreme or whether acquiring or using information or attending and completing tasks should be less than marked or marked. Specifically, there are some treatment notes from Dr. Alley at the record at 274 and 275 that describe violent behaviors and attitudes. There are some records from Brenda Meyer, the licensed clinical social worker, at 333 to 335 that evaluate the plaintiff as unable or unwilling to complete tasks, follow instructions or pay attention. There are other issues concerning his difficulty following directions, difficulty getting along with others,

limited social skills. There's a progress note from Kate Durham at page 352 which indicates consistent absence and tardiness from school. There are some progress notes from Tracey Kelley at 353 that indicated the plaintiff has been refusing to attend school. There are also records in that case from Tina Evans Robinson, M.D., and Tracey Kelley that suggest that his diagnosis has a GF of 49 and describes Thomas' history that his performance has been below ability.

Finding 9: It's my conclusion that because these are extensive records and that they are material to the very close call the ALJ was faced with, that the ALJ's failure to discuss those records leaves me unable to trace the path of his reasoning or to be sure that he has not ignored this entire line of evidence which includes the number of people assessing him and the length of time Thomas was assessed, so I think he has failed to deal with that, and that issue requires a remand, which I would believe as under sentence four.

Finding 10: On the issue of whether there is new and material evidence, I noticed that the material submitted that may be new material includes an arrest record of the plaintiff that indicates he was issued a notice to appear in Juvenile Court on October 24th, 2011, two weeks following the hearing and four weeks before the issuance of the decision, and I also find that the IEP was dated October 10th, 2011, the day before the ALJ's hearing. While that may technically be

in existence, it's not certain that that was in existence in a form that could have been presented to the ALJ in that regard.

Finding 11: The issue of whether a sentence six request has been waived in this case is a close call. I do recognize what *Eads* has to say. I do find that *Farrell*, though, does suggest that remand can be allowed, and my sense in reading the issues about failing to raise an issue in the first brief, the courts are concerned that much like the *Chenery* doctrine. Plaintiffs not be able to raise issues clearly outside the evidence here. But on the other hand, the issue of whether a remand was required here because Thomas' condition was before the court and the language that the appeals counsel used and is before the court at record two is ambiguous as to whether they truly considered the evidence before them and evaluated it as to whether it was new and material or whether they did not do so, I cannot tell from that language whether they did or did not do that.

Finding 12: In light of the fact that a sentence four remand is required in this case because of the need to evaluate the records here, I'm going to also issue an order that in the event the *Eads* doctrine would purportedly prohibit the court from doing this, that under *Farrell* there is new and material evidence presented to this court. It is new because the dates that I describe are contemporaneous or after the hearing before the ALJ and material in that one of the key

findings of the ALJ in this case was that the plaintiff had never been subjected to an IEP and he now was, and he was very close in time -- in fact, perhaps the day of the hearing -- so it could impact his decision as to whether an IEP was prepared for the child on the date of the hearing. And the arrest does call into question whether his interacting and relating to others because of yet another arrest or threat should be moved from the marked to the extreme level that would allow a finding at that point in time. So I do find that the evidence is new and material and would remand this case both on the basis of sentence four and sentence six.

It's a really close call. I am very mindful of how hard a job ALJs have, how many cases they have, how difficult it is, and the ALJ's opinion in this case was certainly not a poor effort; it was a good effort, but it was an good effort at a very close call. I simply think when there is that much evidence over that long a period of time from that many people who are dealing with critical issues such as attending and completing tasks and interacting with others, not explicitly mentioning that or telling me that, requires a remand for an explanation. Whether the ALJ will come to the conclusion that that changes his or her mind remains to be determined.

So for those reasons I'm going to order both a sentence four and sentence six remand.