FLYNN, C. J., dissenting. I respectfully dissent from the majority opinion. I agree with the defendant, Joanne Feinberg, that her then current parenting abilities were the proper measure of whether she should continue to have physical custody of her son in Canton. *O'Neill* v. *O'Neill*, 13 Conn. App. 300, 303–304, 536 A.2d 978, cert. denied, 207 Conn. 806, 540 A.2d 374 (1988). In custody decisions, the trial court is bound to consider the child's present best interests and not what would have been in the child's best interests at some previous time. *Blake* v. *Blake*, 207 Conn. 217, 224, 541 A.2d 1201 (1988), citing *In re Juvenile Appeal* (*Anonymous*), 177 Conn. 648, 664, 420 A.2d 875 (1979). Although in determining what is in the child's best interests the court may take into account a parent's past behavior, and here did so, the court in this case improperly failed to focus on the defendant's then present situation and present parenting abilities and how these affected the child's current best interests.

The present controversy between the parties over the physical custody of their minor son began with the plaintiff Michael Feinberg's postjudgment motion for modification of custody filed June 25, 2004. The plaintiff claimed that the defendant had failed to comply with the parties' August 8, 2002 stipulated parenting plan in nineteen separate ways, including allowing unexcused tardiness in the son's school attendance in the Canton public schools. The court held hearings on the plaintiff's motion and on the defendant's subsequent motion to modify custody and child support beginning on February 3, 2005, and concluding on May 9, 2005. On August 25, 2005, almost four months later, the court issued a brief order stating that the child's residence and schooling would be switched to Simsbury, with the plaintiff.

On September 2, 2005, the court issued a memorandum of decision in which it observed that the parties' complete inability to agree negatively affected the child. The court further stated: "Until the plaintiff filed [his motion to modify custody and support], the defendant failed in a number of respects in her parenting responsibility. Until this academic year, Steven was late to school and other appointments a number of times as a result of the defendant's failure to ensure his being on time. Above all else, Steven needs to be in an environment that is conducive to his development as a well adjusted child. The court finds that the change to the Simsbury school system would be in the child's best interest. He will enjoy a more stable home environment and be close to his grandmother." The defendant's motion to reargue was denied by the court on September 15, 2005.

The defendant filed a motion for articulation on Feb-

ruary 21, 2006, asking that the court specify how she had failed in her parental responsibilities. The defendant sought an articulation of "the actual factual findings underlying the [c]ourt's statement about [the defendant's] alleged failing(s) as a parent; what adverse consequences if any were caused to the minor child which need rectification; and what is the basis for the [c]ourt's evident belief that the situation will be improved by transferring the child to the Simsbury school system?" The request for articulation was not answered until almost fifteen months later, after this court, on May 10, 2007, ordered the court to do so pursuant to Practice Book § 66-7. Our order directed the court to articulate only "what it meant by its September 2, 2005 order that the defendant shall pay to the plaintiff child support in accordance with the Connecticut child support guidelines." Thereafter, appellate briefing of the case continued and oral argument was heard in this court on February 4, 2009.

I agree with the defendant that the evidence demonstrated that the child's tardiness at school due to the defendant's illnesses had occurred in the prior school year and had been ameliorated in the then current school year by the time of the court's hearings. During the school year in which the court's hearings were held, the child was absent only once and tardy but two times. The record does not appear to include any evidence of other missed appointments. It was the defendant's *present* parenting ability that was at issue. See *O'Neill* v. *O'Neill*, supra, 13 Conn. App. 303–304 (court improperly relied on thirteen month old family relations custody report rather than evidence of party's current caretaking abilities in determining custody of child).

A finding of the court that a custodial parent has failed in her parenting responsibility which focuses improperly on past school attendance rather than the child's current good attendance in determining the present best interest of the child leaves the parent subject to a stigma that is not warranted by the law or the record in this case. The defendant should be able to vindicate her rights on appeal.

I would hold that the court's reliance on outdated information regarding the child's school attendance was improper and that its finding about other missed appointments was unsupported and, therefore, clearly erroneous. I would reverse the decision and remand the case for a new hearing at which the present parenting abilities of each parent would be the focus. Because of the law's delay and the years that have passed in which the child has been schooled in Simsbury, I would adopt the suggestion of the defendant and maintain the present custody and schooling order pending the outcome of the new hearing, rather than reverting to the status quo ante.