

**ARKANSAS DEPARTMENT OF EDUCATION**  
**SPECIAL EDUCATION UNIT**

<b>PARIS SCHOOL DISTRICT</b>	)	<b>PETITIONER</b>
	)	
<b>vs.</b>	)	<b>CASE No. EH-2016-21</b>
	)	
*****	)	
<b>on behalf of ,</b>	)	
	)	
*****	)	<b>RESPONDENT</b>

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**FINAL ORDER**

**NOW**, on this November 24, 2015, at the Paris School District came on for hearing Petitioner's Request for an Expedited Due Process Hearing. Petitioner, **PARIS SCHOOL DISTRICT** represented by Jay Bequette, Esq., and Respondent, **\*\*\*\*\***, pro se. This cause was submitted upon the pleadings, the testimony of witnesses, argument of Petitioner and Respondent, and other matters and things from all of which the Hearing Officer finds and Orders. Based upon the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law:

**ISSUES FOR HEARING**

Student was a seventh grade student at Paris School District School District:

Issues:

- 1) In that the District is attempting to seek out the best educational setting to meet the student's unique needs;

- 2) In that the child not making progress in the school setting;
- 3) In that the District cannot ensure his safety or the safety of others due to the student's violent outbursts; and
- 4) That it is felt a residential placement would be the best setting for the student;

Seeking:

- 1) Order the Parent to give permission to release the student's records to a residential facility in an attempt to identify a suitable residential placement.

## **PROCEDURAL HISTORY**

On November 2<sup>nd</sup>, 2015, a Due Process Complaint Notice was received by the Arkansas Department of Education from the **PARIS SCHOOL DISTRICT**. The District requested the hearing because they believed that the Paris School District (hereinafter referred to as ("District")) had complied with the Individuals with Disabilities Education Act of 2004 (20 U.S.C. §§ 1400 - 1485, as amended) (IDEA) (also referred to as the "Act" and "Public Law 108-446") and the regulations set forth by the Department by providing the Student with appropriate services as noted above in the issues as stated.

On November 24<sup>th</sup>, 2015 the Parent had not responded to the Notice or the Pre-Hearing Order issued by the Hearing Officer.

Because the issues were not resolved, Pre-Hearing briefs were required on November 19<sup>th</sup>, 2015 from the parties. Again there was no response from the Parent. The Due Process Hearing was convened and held November 24<sup>th</sup>, 2015. Petitioner, **PARIS SCHOOL DISTRICT** was represented by Jay

Bequette, Esq., and Respondent, \*\*\*\*\*, appeared pro se.

## **FINDINGS OF FACT**

- a) In December 2006 student was diagnosed with Autism;
- b) Student entered the school district in August 2008;
- c) During the Kindergarten year, 2008, the first IEP was developed;
- d) During the 2013-2014 school year the student was placed in a self contained classroom in the Paris Middle School;
- e) During January 2015 IEP team decided student would attend school for a shortened day program due to continued escalation of his aggressive and violent behavior;
- f) In May, 2015, an annual review was conducted;
- g) In July 2015 district was notified that student was accepted into the Conway Human Development center as soon as space was available;
- h) An educational evaluation was conducted in August, 2015;
- i) On September 3rd, 2015 a meeting was held with parent to develop a plan to allow student to attend school on a shortened day for a trial period from September 8<sup>th</sup>, 2015 to September 11<sup>th</sup>, 2015;
- j) On September 8<sup>th</sup>, 2015 parent notified district that he thought the shortened day plan would not work and he was not interested in attempting it;
- k) On October 14<sup>th</sup>, 2015 a IEP team met and developed a plan to provide student with one hour per day homebound instruction to be carried out by a certified special education teacher and one paraprofessional;
- l) During the session the following day the student was continuously attempting to self

-harm, hit, bite and kick the district employees;

- m) Parent requested district employees leave and had no further contact with the district until he attended the Due Process Hearing.

## **ABSTRACT OF WITNESS TESTIMONY**

### **WITNESS: Melissa Haney:**

Ms. Haney is the Special education supervisor for the Paris School District for and has been employed there for 12 years.<sup>1</sup> Ms. Haney testified the student is 12 years of age with a diagnosis of autism, and is a Paris School District student who has attended school in the District since his kindergarten enrollment in August 2008.<sup>2</sup>

Ms. Haney testified the District filed the request for a due process hearing attempting to seek out the best educational setting to meet the student's unique needs, that the child not making progress in the school setting, and they cannot ensure his safety or the safety of others due to the student's violent outbursts, and it is felt a residential placement would be the best setting for the student. so is asking for permission to release the student's records to facilities in an attempt to identify a suitable residential facility.<sup>3</sup> The student has been on a wait list for a residential facility in Conway, the Conway Human Development Center for three to four months, but the District has no way of knowing how soon a bed might be available.<sup>4</sup>

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<sup>1</sup> 8 22-25

<sup>2</sup> 9 3-9

<sup>3</sup> 9 13-23

<sup>4</sup> 9 24-25  
10 1-5

Because they do not know when Conway Human Development Center might accept the student, and there were no facilities in the State of Arkansas for an aggressive, mostly non-verbal autistic student, the District has called St. Louis, Oklahoma City, and Atlanta, Georgia which seems to be the best fit for the student's needs.<sup>5</sup> The understanding of Ms. Haney is that the student's parent has indicated a willingness to have the child admitted to the Conway facility, but not any facility outside the State of Arkansas.<sup>6</sup>

The student was first diagnosed with autism when the District had an early childhood transition conference in March 2008 with the student's early childhood providers at the Logan County Day Service Center, so the District received the records then and developed a plan for the student to begin school in August.<sup>7</sup>

Starting with the student's enrollment in kindergarten during the 2008-2009 school year, the student was very aggressive, having flailing fits and would throw himself on the floor, he would not follow verbal commands and was very non-compliant. Staff had to watch the student at all times so he would not escape the classroom or location, and they immediately hired a one-on-one paraprofessional to be with the student at all times, and also implemented a CIRCUIT referral for assistance from the Department of Education for a behavior specialist.<sup>8</sup>

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<sup>5</sup> 10 6-14

<sup>6</sup> 10 15-18

<sup>7</sup> 10 19-25  
11 1

<sup>8</sup> 11 2-16

Ms. Haney testified all recommended interventions and supports and related services were provided, that she went to STAR training at the recommendations of the interventionist, and several staff members, including the occupational therapist, the speech therapist and a teacher all did a 2 or 3 day training to learn to properly implement the STAR program, which is a scientifically research-based program specific to children with autism which develops expressive and receptive language abilities.<sup>9</sup>

Throughout the student's enrollment in the District, the student has consistently been a danger to himself and others. He would bang his head on the wall or floor, any hard surface, he would lash out at other children or adults, and at one time they had a helmet they had the student wear in an effort to protect his brain. The student head-butted Ms. Haneys knee and knocked it sideways, requiring surgical intervention in December 2010.<sup>10</sup>

The student transitioned to middle school for fifth grade during the 2013-2014 school year, and his teacher, Ms. Trusty, who Ms. Haney describes as having a very unique gift for working with children with disabilities, began working with the student. This was in the Special Ed self-contained classroom.<sup>11</sup>

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<sup>9</sup> 11 17-25  
12 1-4

<sup>10</sup> 12 5-23

<sup>11</sup> 12 24-25  
13 1-9

As to the student's behavior in the fifth grade, the student still struggled to be compliant, and continued to lash out at the teachers and paraprofessionals and to hurt himself. Eventually, a decision was made to put the student on a shortened day, hoping that would be better tolerated, from 10 a.m. to the end of the day.<sup>12</sup>

The student had very limited academic progress. Ms. Trusty was able to establish the student working on an iPad for a time, but there were many days that, if the student was angered, he would attack her. There were also two paraprofessionals in the classroom in addition to Ms. Trusty, but she was the only one who could physically handle the student's behavior, and there are many photos and videos of the student hurting her.<sup>13</sup> Ms. Haney testified she believed the student views Ms. Trusty as a person he cared a great deal about, so did not like sharing her attention, and if she was working with other students, this student would become angry and go after her or the other students to have her attention back.<sup>14</sup> During this time, the fifth and sixth grade years, the student was growing, getting heavier and taller, so it was very challenging to manage him.<sup>15</sup>

Looking at the student's most recent IEP, written for the 2015-2016 school year at the annual review conference in May of 2015, Ms. Haney testified the student was in a completely self-contained classroom setting, and PE was with non-disabled peers. Over the years, the student had

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<sup>12</sup> 13 10-16

<sup>13</sup> 13 19-25  
14 1-6

<sup>14</sup> 14 8-12

<sup>15</sup> 14 13-20

received speech and occupational therapy, but was dismissed due to lack of progress in both areas, so this IEP reflects a shortened day established in May, which was amended October 14, 2015 to establish homebound services.<sup>16</sup>

At least once in the last two years Ms. Haney and Ms. Trusty had a conversation with the student's parent about long-term plans for placement of the student in a suitable facility, and both Ms. Haney and Ms. Trusty offered to view the facility in Conway with the parent, and at this point the child was not even able to leave home except to come to school. The parent himself conceded the student was increasingly unable to be controlled due to his increasing size and the volatility of his behavior.<sup>17</sup>

Over the summer of 2015 the District learned a suspected Child Abuse/Neglect case was developed based on a hotline call from a physician and, Ms. Haney believes, the DDS (the Division of Developmental Services) caseworker, so there was an open investigation.<sup>18</sup> As Ms. Haney understands it, it was a founded case for medical neglect, DDS was assisting the parent in application for a placement at Conway Human Development Center, and the case manager, Julie Oraha, contacted Ms. Haney sometime in July 2015, needing records to assist in that application.<sup>19</sup>

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<sup>16</sup> 14 21-25  
15 1-16

<sup>17</sup> 15 20-25  
16 1-17

<sup>18</sup> 16 18-25  
17 1-3

<sup>19</sup> 17 5-10  
18 11-12



Ms. Haney testified Ms. Oraha spoke as though placement at Conway would be imminent, particularly in light of the findings, so the District sent records to DDS in July 2015.<sup>20</sup> The District discovered a bit later in the process that DDS needed a more current evaluation, so the District facilitated that.<sup>21</sup>

In early August of 2015 Ms. Trusty called Ms. Haney and said she had just learned she was pregnant, and Ms. Trusty's first concern at that point was concern for the student and what could be done about him; she did not want him to be at home, and she knew that two years before that the Superintendent and Ms. Haney had told her she did not have to be hurt by a student every day, that when she said she had enough, they would support her decision.<sup>22</sup> At that point Ms. Haney told the teacher it was out of the teacher's hands, and Ms. Haney contacted the student's parent and they held a conference August 10, 2015 to review programming and placement for the student.<sup>23</sup> Ms. Haney identified photos of daily injuries to Ms. Trusty by the student, bruises, abrasions, scratches and other marks throughout the 2014-2015 school year.<sup>24</sup>

Ms. Haney then identified some Facebook posts by the parent, who uses social media in connection with the student, apparently to help find a cure for the student and various fund-raising efforts.

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<sup>20</sup> 17 12-23

<sup>21</sup> 18 14-17

<sup>22</sup> 18 14-25  
19 1

<sup>23</sup> 19 1-7

<sup>24</sup> 19 18-25

posting freely on Facebook that the school is not doing their job.<sup>25</sup> Also within those posts by the parent are videos of the parent driving down the road with the student, and the student having a meltdown, and the parent is videoing that and hitting the student, knocking him back.<sup>26</sup>

To the understanding of Ms. Haney, social media videos posted by the parent were used as some of the evidence by DDS, and Ms. Haney testified Ms. Orahah told Ms. Haney she made a hotline call herself after she saw the video, feeling shoe-hitting of the student was abuse.<sup>27</sup>

There was concern for the student's teacher, who was pregnant, and her potential exposure to a student who was dangerous. At the August 2015 IEP meeting they did not know any timing for a placement at Conway for the student, and the parent seemed to be unaware that a placement was being considered. At that meeting the school offered to provide homebound services, which the parent declined, so arrangements were made so that on August 17, 2015, the first day of school, the student was evaluated by the District's licensed educational examiner.<sup>28</sup>

Summarizing the findings of the psycho educational re-evaluation, Ms. Haney testified the examiner attempted to perform the standard battery of cognition, achievement, adaptive behavior; she used previous evaluation data to look at motor and spatial abilities, and the visual motor

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<sup>25</sup> 20 2-10

<sup>26</sup> 20 11-17

<sup>27</sup> 21 18-23

<sup>28</sup> 22 4-17

integration, standard score 55, which is below average. Auditory discrimination skills were severely delayed, expressive and receptive language skills are below average, adaptive behavior, all adaptive behaviors were scored on a one, except for a 3 on self-direction and a 2 on work; all the scores are well below the average 7-13. On the intellectual assessment, the evaluator used a nonverbal test, and got an IQ of 30. Her notes say she believed the student's ability level to be slightly higher than testing indicates, that the test results may not be an accurate depiction of the student's true ability level due to the difficulty following directions and attending to tasks. The achievement portion, the student had a standard score of 40 on oral language, and the summary says the committee may wish to continue to consider autism as the disabling condition.<sup>29</sup> The evaluation was shared with DDS, and in August and September 2015 Ms. Haney was in regular contact with Ms. Orah until she took a leave of absence.<sup>30</sup>

On September 3, 2015, Ms. Haney arranged a meeting with the student's parent to discuss the status and services, and they again discussed the difficulty in knowing when the student might be offered a place at Conway, and again offered homebound services. The parent rejected that, saying he did not have wi-fi and the student would only work if he had access to his media that is run by wi-fi. As a concession, a plan was made to bring the student to school on Tuesday following Labor Day from 9 a.m. to 10 a.m., an hour each day, until Friday at 10 a.m., when the committee would reconvene, see the week's results and plan for the next week. They were going to have a paraprofessional work

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<sup>29</sup> 22 21-25  
23 1-21

<sup>30</sup> 23 24-25  
24 1-5

with the student for that hour under Ms. Trusty's supervision in a conference room inside the middle school office. That decision was based on safety, not going too far into the building where the student might have a meltdown and not be able to get him back to the office or a safe place.<sup>31</sup> That plan was never implemented, as the parent texted Ms. Trusty that he did not think it was going to work and he was not going to do it and he was going to call someone and get something else done.<sup>32</sup>

October 14, 2015, another IEP meeting was held to review status. Ms. Orah and John Taylor from DDS were present. The school was told there was no update on the Conway wait list, and they discussed the need to continue to try to provide appropriate services. The parent again spoke about the need for wi-fi and rejected homebound services, thinking maybe they could try the one-hour thing again. The committee discussed the issue about the student not having been in that setting for so long at that point that it was not advisable. A decision was made to provide homebound education services, and Ms. Haney, being a certified Special Ed teacher with lots of experience, made arrangements to become the student's homebound teacher. She arrived the next morning at the student's home, taking with her a paraprofessional, Ms. Maness, and took materials with which the student was familiar, having used them with Ms. Trusty, and implemented the system that Ms. Trusty had used. The student frequently became frustrated and banged his head on the wall, on the table, and tried to grab and squeeze Ms. Haney or the paraprofessional, tried to hit, scratch or bite.

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<sup>31</sup> 24 7-25  
25 1-23

<sup>32</sup> 25 25  
26 1-8

in more of a rage, grabbing. The student also repeatedly left the work table and went to his father, who would bring the student back and place him in his chair. After about 25 minutes, the parent asked them to leave, that it was not working.<sup>33</sup>

October 16, 2015, Ms. Haney sent a letter to the parent by certified mail, as they had at the meeting on October 14, 2015 agreed to reconvene against on October 30<sup>th</sup> to see how the homebound service was going (on the day of the homebound instruction, later in the afternoon, the parent texted this witness and instructed her not to return to his home and to communicate with him only by registered mail).<sup>34</sup>

The parent did not attend the October 30<sup>th</sup> meeting. The committee there consisted of Ms. Haney, John Taylor with DDS, Carrie Brewton, the Director of the School Wellness Center, Ms. Trusty, the teacher, and Mr. Nichols, the principal. They discussed options that would be best for the student in the long term. They discussed treatment facilities and determined, based on the information gathered, Laurel Heights in Atlanta, Georgia, would be an appropriate facility to investigate further. However, they could not obtain specific information without a consent from the student's parent.<sup>35</sup>

The District in this proceeding is requesting that the parent consent to provide those records and to a placement at the Laurel Heights facility in Atlanta if that is deemed suitable, or some other

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<sup>33</sup>	26	10-25
	27	1-21
<sup>34</sup>	27	23-25
	28	1-12
<sup>35</sup>	28	13-25
	29	1-3

residential facility.<sup>36</sup>

Ms. Haney identified a series of documents showing behavior of this student occurring during the 2014-2015 school year, along with notes documenting each classroom incident, provided by Ms. Trusty, confirming the danger by the student to himself and others, including many occasions where the student harmed himself and his head having knots that never go away, some squishy under the scalp.<sup>37</sup> The District filed for an expedited hearing on November 2, 2015, due to significant concern about the student's safety and well-being.<sup>38</sup>

On cross-examination, Ms. Haney agreed with the parent that the child's medication had not worked and was not working.<sup>39</sup> Discussing the training of the paraprofessional who went with Ms. Haney to the student's home, Ms. Haney testified the para is currently working with a behavior interventionist to use ABA methods, Applied Behavior Analysis, she has had the special education paraprofessional series, and has been trained in all areas respective to special needs students, and is also a CPI-trained staff member and was trained by the District facilitator for the Crisis Prevention Intervention Program.<sup>40</sup>

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<sup>36</sup>	29	4-9
<sup>37</sup>	29	10-25
	30	1-7
<sup>38</sup>	30	8-12
<sup>39</sup>	31	24-25
	32	1-2
<sup>40</sup>	32	6-9, 11-25
	33	1-3

Assuming Laurel Heights in Atlanta agreed to accept the student, the District would pay for the placement, whatever Medicaid did not pay, and the parent would be out nothing. This could be as much as \$20,000 per month.<sup>41</sup>

## **CONCLUSIONS OF LAW and DISCUSSION**

Pursuant to Part B of the IDEA, States are required to provide FAPE for all children with disabilities between the ages of three (3) and twenty one (21).<sup>42</sup> In 1982, in *Hendrick Hudson Dist. Bd. Of Educ. v. Rowley*, the U.S. Supreme Court addressed the meaning of FAPE and set forth a two part analysis that must be made by Courts and Hearing Officers in determining whether or not a school district has failed to provide FAPE as required by Federal law.<sup>43</sup> Pursuant to *Rowley*, the first inquiry a Court or Hearing Officer must make is that whether the State, i.e., the local educational agency or district, has complied with the procedures and regulations as set out in the IDEA. Therefore, it must determine whether the IEP developed pursuant to the IDEA procedures was reasonably calculated to enable the student to receive educational benefits.<sup>44</sup> From the initial contact with the district, there has always been an IEP in place for the student. From students initial enrollment there was an IEP created as required by the IDEA. The parents had been involved in the IEP team and had approved the IEP in place for the 2013-14 and 2014-15 school years including changes.

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<sup>41</sup> 36 14-25  
37 1-25  
38 1-10

<sup>42</sup> 20 U.S.C. 1412(a); 34 C.F.R. 300.300A(a)

<sup>43</sup> 458 U.S. 176, 206-07 (1982)

<sup>44</sup> Id

Hearing Officer hereby finds that the District did not deny FAPE to the student on account of any violation of any procedural issues.

Having analyzed the first prong of the FAPE analysis, it is now necessary to consider whether or not the District substantively denied FAPE to the student *i.e.*, whether the district failed to provide an IEP that was reasonably calculated to enable the student to receive educational benefits.<sup>45</sup> Pursuant to *Rowley*, the goal of the IDEA is “more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.”<sup>46</sup> Essentially, an IEP is not required to be designed to “maximize the student’s potential commensurate with the opportunity provided to other children” thus making the standard that the District must meet very minimal.<sup>47</sup> However, what constitutes educational benefit when dealing with a disabled student must be determined on a case by case basis. Specifically, “the IDEA requires Public School Districts to educate ‘a wide spectrum of handicapped children,’ and the benefits obtained by children at different ends of the spectrum will ‘differ dramatically.’”<sup>48</sup>

After hearing the witness and evaluating her credibility and reviewing the evidence presented in the transcript of the Due Process Hearing, the hearing officer finds the following.

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<sup>45</sup> 34 C.F.R. 300.511(d); 20 U.S.C. 1415(f)(3)(B)

<sup>46</sup> *Rowley*, 458 U.S. 176, 206-07 (1982)

<sup>47</sup> *CJN v. Minneapolis Public Sch.*, 323 F.3rd 630, 63-68 (8<sup>th</sup> Cir.), cert denied, 540 U.S. 984 2003

<sup>48</sup> *C.B. by and through his parents, B.B. and C.V. v. Special School District No. 1, Minneapolis MN.*, 262 F. 3<sup>rd</sup> 981 (8<sup>th</sup> Cir. 2011) (quoting *Rowley*, 458 U.S. 176, at 202 (1982)



Having determined that the District did provide FAPE to the student 2013-14 and 2014-15 school year, the issue now becomes whether or not to Order the Parent to agree to disclose school information to a third party, the proposed Residential Treatment facility. This Hearing Officer has no authority to order the parent of a student to allow information disclosure to non mandated sources.

## **ORDER**

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that all relief sought by Petitioner is **DENIED** however the District is urged to continue to assist the parent in any manner once given parental consent.

## **FINALITY OF ORDER AND RIGHT TO APPEAL**

The decision of this Hearing Officer is final and shall be implemented unless a party aggrieved by it shall file a civil action in either Federal District Court or a State Court of competent jurisdiction pursuant to the Individuals with Disabilities Education Act within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education. Pursuant to Section 10.01.36.5, *Special Education and Related Services: Procedural Requirements and Program Standards*, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing.

**It is so Ordered.**

*Michael McCauley*

Michael McCauley  
Due Process Hearing Officer

December 3, 2015