Arkansas Department of Education
Special Education Unit

IN RE:

XXXXXXXXXXX
as Parents in behalf of
XXXXXXXXX, Student **PETITIONER**

VS. NO. H-11-17

Harrison School District **RESPONDENT**

HEARING OFFICER'S FINAL DECISION AND ORDER

Issues and Statement of the Case

Issues:

The Petitioner alleges that the Respondent denied the Student with a free and appropriate public education (FAPE) according to the Individuals with Disabilities Education Act (IDEA) by not:

1. Providing an appropriate individualized education program (IEP) and by not
2. Educating the Student in the least restrictive environment (LRE).

Procedural History:

On January 3, 2011, a request to initiate due process hearing procedures was received by the Arkansas Department of Education (hereinafter referred to as the "Department") from XXXXXXXXXX (hereinafter referred to as "Parents"), the parents and legal guardians of XXXXXXXXX (Petitioner) (hereinafter referred to as "Student"). The Parents requested the hearing because they believe that the Harrison School District (hereinafter referred to as "District") failed to comply 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 not providing the Student with appropriate special education services as noted above in the issues as stated.

The Department responded to the Parent's request by assigning the case to an impartial hearing officer and establishing the date of February 3, 2011, on which the hearing would

commence should the parties fail to reach a resolution prior to that time. An order setting preliminary timelines and instructions for compliance with the order was issued on January 3, 2011. The District notified the Hearing Officer via pre-hearing brief that a resolution conference was held on January 17, 2011, but that the parties were not able to reach a resolution.

On January 10, 2011, the Respondent requested a continuance of the case due to the non-availability of council for the District on February 3, 2011. An order was issued on January 12, 2011, granting the continuance, establishing the date of February 10, 2011, as the date on which the case would be heard. However, a second continuance by the Respondent was requested an granted on February 8, 2011, due to the inclement weather and closing of the schools within the District. An order was issued on February 8, 2011, setting the hearing to begin on February 28, 2011, with a second and final day scheduled for March 3, 2011.

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended, and Arkansas Code Annotated 6-41-202 through 6-41-223, Robert B. Doyle, Ph.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing. The Parents chose to represent themselves, with the Student's father assuming the role of council. The District was represented by Sharon Carden Streett, Attorney of Little Rock, Arkansas.

At the time the hearing was requested the Student was a nine-old male enrolled in a private out-of-state school. The Student has been the educational responsibility of the District since his kindergarten school year, 2005-06. Early intervention services were initiated by his Parents as early as May 2004 when he was found to have severe language deficits. In January 2005, at age three years, seven months, he was evaluated and diagnosed with a moderate level of autism.[1] He was enrolled in another school district's early childhood education program in April 2005 where an IEP was developed which included speech/language, occupational therapy, and behavior goals and objectives.[2] In May 2006 the other school district provided notice of conference and held a programming/placement conference at which an IEP was developed for

[1] Joint Binder, Tab 1B, Page 3-9

[2] Ibid, Tab 2A Page 1-22

his kindergarten year in their district for school year 2006-07.[3] He was enrolled in the District in October 2006 with the previous IEP being modified to include a paraprofessional in the classroom on a daily basis to assist in the educational programming for the Student.[4] The Parents stated in their initial complaint filed with the Department that "they were told" the Student had to attend an elementary school other than the one is which he was zoned to attend; however, because they "wanted what would be best" for the Student they agreed to the placement.[5]

In April 2007 an annual review conference was conducted at which time the IEP team had available to them the results of a comprehensive evaluation obtained by the Parents. The IEP developed at that meeting for the Student's first grade year included all of the previous related services with the addition of services to assist him with personal care during lunch, recess, and bathroom.[6] The IEP was to be implemented in the same elementary school within the District.

The Parents requested and were granted a separate programming conference in November 2007 to discuss the Student's instructional time with non-disabled, same-aged peers and the Student's need for specialized transportation. The IEP team agreed that the Student needed special transportation and that he would be provided additional instructional time with non-disabled, same-aged peers.[7] In their complaint for due process the Parents stated that the Student responded well the first few weeks of school during his first grade; however, "by the middle of December [2007], he was completely out of control both at school and home."[8] As noted in their complaint the Student's "behavior had come to the point where the people at school, as well as his mother, were frustrated with the running, scratching, pinching, and hitting"

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[3] Ibid, Tab2R, Page 49-68

[4] Ibid, Tab 2S, Page 80

[5] Hearing Officer Binder of Orders and Pleadings, Page 4

[6] Joint Binder, Tab 2T, Page 126

[7] Ibid, Tab 2U, Page 164

[8] Hearing Officer Binder of Orders and Pleadings, Page 3

that "it became obvious something wasn't working and a change had to be made;" therefore they elected to take the Student out of school.[9] According to the complaint they intended to provide the Student with schooling in the home and did not intend for him to return to the District.

The Parents provided instruction in the home for the remainder of his first grade as well as his second grade (school year 2008-09). In March 2008; however, they decided that the Student needed to be back in the public school system and they requested a separate programming conference which was held on March 12, 2008. Prior to developing an IEP the team decided they needed a physical therapy evaluation as well as a re-evaluation for occupational therapy.[10] The evaluation/programming conference was held on May 15, 2008, with the Parents electing not to attend, indicating that they were no longer interested in the Student receiving services.[11] According to the due process complaint the issue of disagreement for the Parents appeared to be placement for the receipt of services.[12] They continued to provide home schooling during his entire second grade year.

For school year 2009-10, the Student's third grade year, the Parents requested and were granted a separate programming conference to discuss re-enrollment in the District and for the development of an IEP. According to the notice of decision on September 18, 2008, the Parents requested to tour the elementary campus they requested as well as the campus the District proposed for delivery of his special education services. The Student's mother testified on direct examination that they were wanting the Student to receive services in the same local school where his younger brother would be starting kindergarten, but that they agreed to visit both campuses before a decision was to be made regarding placement for services.[13] The IEP team decided the more appropriate placement was to provide services in their life skills program at the school the Parents did not prefer. They then requested to be allowed to consider their

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[9] Ibid

[10] Joint Binder, Tab 2V, Page 169

[11] Ibid, Page 181

[12] Hearing Officer Binder of Orders and Pleadings, Page 3

[13] Transcript, Vol II, Page 47

options.[14] Subsequently an IEP was developed for the Student to receive special education services in the District's life skills program and for him to receive related services in speech/language, occupational therapy, and specialized bus transportation. The Parents attended the conference but did not sign the IEP, indicating that they still needed more time to think about the proposed placement.[15] They eventually agreed with the placement on September 21, 2009, when the Student began again receiving special education and related services from the District. His school day was shortened to four and a half hours with the stated purpose of allowing him time to reintegrate into the school setting. On November 30, 2009, a separate programming conference was held for the purpose of discussing extending the Student's school day to a full day, discuss provision of special transportation, as well as revising his behavior intervention plan. According to the records provided by both the Parents and District, the Student's behavior problems had increased in the home and school and now included incidents where staff persons were being injured to the degree that required physician attention.[16] The teaching staff also expressed concern for the Student's behavior of "staring off" and not being immediately responsive to them, followed by what the District personnel described as overly aggressive behaviors after each "staring off" event.

Findings of Fact:

Did the District fail to provide an appropriate IEP?

The Student's IEP team met on April 16, 2010, in an annual review conference to develop his IEP for school year 2010-11 and determine if he needed extended school year services (ESY). Both Parents participated as members of the team. The record reflects that the IEP team determined that the Student needed ESY services.[17] Parental acknowledgment of the conference was dated the day of the conference, whereas the notice was dated as being sent on

[14] Joint Binder, Tab 2AA, Page 213

[15] Ibid, Tab 2CC, Page 249

[16] Joint Binder, Tab 7T, Page 3 - 7V, Page 34

[17] Ibid, Tab 2E, Page 312-344

April 9, 2010.[18] The IEP developed by the team indicates that the Student would continue to need placement for all of his educational activities in a self-contained classroom with no academic services being provided in the general education setting.[19] The IEP reflected his need for related services of occupational therapy, speech-language therapy, and transportation to and from school. Parental participation at this meeting was pre-written on the forms by the District, but there were no indications of objections by the Parents as was stated that they "attend all conferences including phone conferences almost on a daily basis.... They are included in every aspect of his programming and is [sic] able to give us their concerns and we our concerns...they participate in the discussion and development of the IEP...they provide information about [the Student's] functioning at home...we often speak on the telephone and every day when [the Student] is brought to school."[20] Goals and objectives in all of his fourth grade courses including learning strategies, life skills, math, reading, social skills, and written expression were developed with the expectation that they would be provided in a self-contained special education classroom. The record stated that the IEP team determined that his placement in the District's Life Skills classroom was the least restrictive environment due to his special needs such as the need for a special behavior plan, special equipment, interactive materials, classroom space, safety devices, and sensory program, because of his lack of self control and his unique educational needs.[21] There was no recording on the record that the Parents objected to or had any difficulties with the IEP for his fourth grade at the time it was developed in April 2010.

Prior to the development of this IEP and during his third grade year and following that date until the end of school year 2009-10, the records provided indicate various incident reports where the Student's behavior resulted in injuries to the teaching staff requiring treatment in a physician's office.[22] However, during his ESY services there were no incidents reported that

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[18] Ibid, Page 343

[19] Ibid, Page 312

[20] Ibid, Page 313

[21] Ibid, Page 332

[22] Joint Binder, Tab 7U, Page 11-21

required medical attention. His mother testified that he "very much enjoyed summer school...we had the school bus picking him and dropping him off at the house, which I think was the first time we have done that...we had him riding the school bus home during the school year, and he really enjoys the school bus...and he seemed to enjoy just being at summer school."[23]

The Student's third grade special education teacher who also had worked with him in kindergarten and the first half of his first grade before being home-schooled, decided to retire at the end of school year 2009-10. She agreed however, to stay with the District as a paraprofessional to train the Student's summer teachers and to work with the Student in his fourth grade year.[24] It was her responsibility to train the other teachers and paraprofessionals in the methodology she had been using with the Student that had been shown to be successful from her perspective in the current year under contest; however, the Student was in the school for only eight days before he was withdrawn by the Parents.

As a fourth grade student it was never clear in the two days of testimony, nor from the evidence presented, as why the Student's educational placement for his fourth grade would be at the District's middle school rather than at one of their elementary schools. The only non-disabled students at the middle school were older students and the only same-aged peers were, if any, the other students in his self-contained classroom. The middle school's life skills teacher notified the Parents by conversation that the teacher who was to be the Student's special education teacher responsible for implementing his IEP had resigned a week before the 2010-11 school year started and that she had been asked to take on that responsibility.[25] She testified that she had no previous experience as a teacher of life skills; the class to which the Student was programmed to attend at the middle school.[26]

As the middle school's life skills teacher she issued a notice of conference to the Parents on August 26, 2010, for a programming and placement IEP team meeting to be held on Tuesday,

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[23] Transcript, Vol II, Page 41

[24] Ibid, Vol I, Page 91-93

[25] Transcript, Vol I, Page 268

[26] Ibid, Page 269

September 7, 2010.[27] The purpose of the meeting as noted on the form was to initiate or change an "evaluation of your child (reevaluation) and student progress." The action being proposed was noted as "it is necessary for the committee to conduct a reevaluation data review conference as it has been three years since [the Student's] most current evaluation...the committee will review existing evaluation data, and determine on the basis of that review, if obtaining additional evaluation data is necessary." The statement regarding the description of other possible options to be considered or rejected was that "there are no other options for consideration since it has been three years since [the Student's] most recent evaluation."[28] The notice was signed and dated August 26, 2010.[29] A copy of this notice was placed into evidence by the Parents. Another notice, with the same date of signature, with no noticeable difference in the signature, but a noticeable difference in the writing of the date of August 26, 2010, was introduced as evidence by the District.[30] The notice introduced by the District to the Parents was for the separate programming conference to be held on September 2, 2010, rather than September 7, 2010. The purpose for the conference had been changed to read: "An individualized education program (IEP) for your child; discipline; student progress; and the educational placement of the child."[31] The explanation of why the actions were being proposed now read: "The review of [the Student's] behavior plan is to determine if another placement would be more suitable for [him] at this time due to some recent behavior issues."[32] The description of any other options to be considered now read: "There are no other options for consideration since an appropriate interim alternate setting must be determined by [the Student's] IEP team."

The behavior incident which triggered this proposed change in placement was an event

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[27] Joint Binder, Tab 10, Page 4

[28] Ibid

[29] Ibid, Page 5

[30] Ibid, Tab 2G, Page 357

[31] Ibid, Page 356

[32] Ibid

that occurred on Monday, August 30, 2010, eight days into the Student's school year, for which he was suspended for four days by the school's principal. The middle school's life skills teacher acknowledged under examination that she did in fact send two notices, but did not state why she dated both of them as being developed and sent on August 26, 2010. She further acknowledged that the Department requires a district to give parents a seven day notice of a separate programming conference and that for an evaluation conference a fourteen day notice. The Parents; however, testified that they did not receive the second notice, obviously sent to the them after August 30, 2010, for an IEP team meeting to beheld three days later. They did receive correspondence form the middle school principal dated August 31, 2010, explaining to them that the Student had been suspended for four days and would be permitted to return to school on Friday, September 3, 2010.[33] In direct examination the District's special education coordinator testified that it was she who called the Parents to ask them to move the programming conference from September 7 to September 2, 2011, but apparently no explanation was provided as to how the purpose of the meeting would be changed.[34]

At the meeting on September 2, 2010, the Parents were provided with a copy of the manifestation determination review conducted by the District as well as a copy of District's proposed decision.[35] It is understandable that the Parents coming to the meeting with the understanding that the purpose was to look at the Student's progress and to consider the need for a reevaluation and then to be faced with discussing an alternative placement, would not be adequately prepared to participate. The Student's life skills teacher further testified that in her opinion that the eight days of school attendance by the Student was "probably not" enough time for him to adjust to a new school setting, thus not enough time to provide an accurate assessment to justify a change in placement.[36] On questioning by the District the Student's father stated that "we went into an IEP [meeting on] a notice of conference [and] we were blind

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[33] Ibid, Tab 10, Page 17

[34] Transcript, Vol I, Page 320-321

[35] Joint Binder, Tab 10, Page 19-21

[36] Transcript, Vol I, Page 278

sided...we had no idea we were going there to talk about home placement or any of the other things...we had gotten a letter from the principal saying we could come back to school on the third, and he was kicked out on the second."[37] The conference decision on September 2, 2011, was to provide homebound services until a new evaluation was completed and data gathered in order determine educational placement.[38] The lack of sufficient and appropriate notice to the Parents is inexcusable and a definite violation of due process procedural rights for the Parents..

It would appear from the testimony that everyone was in agreement that the only individual in the District who was best suited to work successfully with the Student was the very person injured by his behavior on August 30, 2010. The District anticipated her being the teacher who would be providing homebound instruction each day for one hour. It is also understandable as to why the Parents would not wish for her to be the homebound instructor given that if she were injured again in their home that they might be held liable for her injuries. Rather than being totally concerned about the education of the Student it would appear that the life skills teacher was at least somewhat correct in testifying for the District that "it was in our best interests at that time to put him on homebound" even though it may not have been "something that we intended to do long-term." Although there is no evidence that the District acted with any malicious intent towards the Parents in dealing with the Student's aggressive behavior and in addressing their concerns for the safety of their personnel as well as the safety of other students, there was however, an apparent failure in explaining this to the satisfaction of the Parents.[39]

Contributing to the District's decision to remove the Student from the school setting and to provide his education and related services in his home also hinged on their questioning of the possibility of his having a seizure disorder since, according to the District's special education coordinator, his more aggressive behaviors tended to follow episodes observed by the staff that

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[37] Ibid, Page 295-296

[38] Joint Binder, Tab 2G, Page 49

[39] See the testimony by the District's special education coordinator at Vol I, Page 306-307 of the transcript.

they referred to as "staring off."[40] It is completely understandable that the District would want to have someone with sufficient knowledge to assess the Student and provide them with an evaluation to determine if there was or was not another disorder, such as seizures, that may or may not have an adverse affect on the Student's behavior issues. At the same time the incidents to which they drew this conclusion from occurred, according to their evidence, was between April 21, 1010 and May 18, 2010, some three months earlier.[41] Although, obviously such a possibility was a concern to the Parents; evan though they doubtfully questioned what the District personnel were observing. The Parents testified and provided medical documentation that the Student had already been evaluated for possible seizures several times in the past. The record show that they did, however, agree to request a referral for yet another evaluation on September 9, 2010.[42] The evidence does not reflect any recorded episodes of "starring off" immediately preceding the events of August 2010 which led to the behavior which resulted in his suspension.

The IEP developed by the Student's IEP team in April 2010, for his fourth grade year would appear to be appropriate in providing him with an educational opportunity consistent with the expectations of the IDEA. However, that IEP appears to have been planned for implementation at the Student's elementary school where he had attended third grade, rather than the middle school with older children in a setting to which he was not familiar. Why this change in placement was made was never testified to by either witnesses for the Petitioner or the Respondent. The Petitioner's major and primary objection as to the appropriateness of the IEP was for it to be implemented with through homebound services. The District's understanding after the IEP team meeting on September 2, 2010, was that the Parents would be cooperating in obtaining a comprehensive evaluation and would be getting back to the District on when they could begin to provide homebound services. According to minutes taken at the meeting the Parents were told that if the Student is out of school for ten days without services being provided

[40] Transcript, Vol I, Page 315-320

[41] Joint Binder, Tab 7V, Page 35

[42] See Joint Binder, Exhibit Addendum A, Page 71

that he would be considered as no longer being enrolled as a student within the District.[43] Email correspondence beginning the day of the meeting and going through September 15, 2010, reflects the District having made two contacts with agencies that appeared, in the correspondence at least, to offer the possibility of providing an evaluation.[44]

On September 29, 2010, the District requested via email correspondence information from the Parents as to whether or not they were considering the District's offer of providing homebound services or whether or not they would be once again providing home schooling. Apparently another reason for the email was to provide the District with the Parents intention in order to know how to "code [the Student's] attendance/enrollment status."[45]

On November 2, 2010, at the request of the Parents the District sent them a notice of conference for a separate programming conference to be held on November 9, 2010. The purpose of the conference as stated in the notice was to develop an initial IEP and determine the educational placement to implement the IEP.[46] The IEP team met on that date and the decision was made to accept the Parents proposal of taking the Student to the Rivendale Institute in Springfield, Missouri for an evaluation at the District's expense and for the IEP team to conduct a meeting following receipt of the evaluation and consider the results.[47] Those results were received by the District and on November 16, 2010, a notice was sent to the Parents for a programming conference to be held on November 23, 2010.[48]

The meeting attendees reviewed the results of the evaluation from the Rivendale Institute. As a placement for services however, the institute was determined to not be eligible under the Department's regulation's as an agency registered to receive payment for delivery of special education services by students in the state. There were no results available at the time of

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[43] Joint Binder, Tab 2G, Page 353

[44] Joint Binder, Tab 8W, Page 1-4

[45] Ibid, Page 5

[46] Ibid, Tab 2H, Page 364

[47] Ibid, Page 358

[48] Ibid, Tab 2I, Page 375-376

the meeting for consideration of his behaviors being associated with a neurological disorder such as seizures. The official record of the meeting resulted in a statement that the Parents declined homebound services and were going to pursue "day treatment at an out-of-state facility."[49] However, minutes taken at the meeting reflect that other options besides homebound services were discussed. In particular his former life skills teacher who was employed as a paraprofessional following her retirement and who was to train his classroom teacher and her aides, testified that one offer was for him to attend the school on a shortened day.[50] This was also a recommendation by his occupational therapist who noticed in her work with him in the third grade that he did much better, with fewer acting out behaviors, when his sessions were kept short.[51] Thus when the Parents decided to reject the proposed placement for services they were not only rejecting the proposal for homebound services, but also for a shortened school day in the school setting.

In lieu of agreeing for the District to provide homebound services or the shortened school day the Parents sent an email to the District on December 2, 2010, stating they had elected to reject the Student's "current IEP" with their intention to unilaterally place the Student at Rivendale Institute in Springfield, Missouri.[52] Since the IEP being rejected was developed in April 2010 while he was in the third grade, the more accurate intention was the rejection of the District's proposal to provide the Student with homebound instruction as noted on September 2, 2010, and for either homebound instruction or a shortened school day on November 23, 2010. The Parents further informed the District in the same correspondence that they intended to seek reimbursement from the District for the cost of tuition and all related services provided by the private school. Thus the record reflects that the District knew on November 23, 2010 and were reminded by the Parents on December 2, 2010, that they did not intend for the Student to return to the District and that they would be seeking tuition and reimbursement for transportation and

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[49] Ibid, Page 366

[50] Transcript, Vol I, Page 88-89

[51] Ibid, Page 221-222

[52] Ibid, Page 6

his related services that would be provided at the private school in Missouri.

The Student's mother expressed their parental displeasure with the District's proposal for homebound services as well as their frustration in attempting to obtain the requested evaluation. She stated that in her opinion the Student was becoming withdrawn and depressed when he observed his younger sibling going to school while he was having to stay at home. She testified "that's when we realized, that's when we started looking for some alternative for [him], and that's when we found Rivendale, is because we knew we had to get him back into a school setting."[53]

Even though the scenarios of the various interactions between the District and the Parents, as described above in both the background and finding of facts, were difficult for both parties to contend with, the question to be answered iso whether or not the IEP as developed for the Student's education can or cannot be judged as being appropriate. The facts as presented in both evidence and testimony warrants an opinion of the District having provided and offered an appropriate IEP for the Student for school year 2010-11. The dispute as to the placement for receipt of services and implementation of the IEP is also an understandable conflict in looking at the concerns expressed by both parties; however, there is not sufficient evidence to support the contention that the District failed to offer the student with FAPE as a result of an inappropriate IEP.

Did the District fail to educate the Student in the least restrictive environment?

According to the Department's regulations implementing the IDEA, an IEP team's decision of implementing an IEP for each student identified with a disability under the IDEA has to include considerations for providing those services in the least restrictive environment. The starting point for every identified student is for that implementation to take place in his or her regular education classroom. As noted from the history and background for this Student, he has always received his educational instruction in a self-contained environment with limited access to his same-aged and non-disabled peers. Each and every IEP, including the current IEP under challenge, has recommended that he receive some or no instruction in a regular classroom

[53] Transcript, Vol II, Page 44

setting.[54] The reason stated in the current IEP was that his IEP team determined that his placement in the life skills classroom was the least restrictive environment "due to his special needs such as the need of special behavior plan, special equipment, interactive materials, classroom space, safety devices, and sensory program" which were deemed as needed "due to his lack of self control and his unique educational needs."[55] There is nothing in the evidence or testimony that in April 2010, when this IEP was developed, that the Parents objected to the proposed placement for services for his fourth grade school year. His mother, however, testified that she had "always been concerned about the least restrictive environment" dating back to "when he initially started kindergarten" and when she "saw the room, it was a very small room he was put in initially...[with] quite a few other children in the room, and that's one of the first things I said, you know is [that] we need to look at finding ways to get him out of this life skills room to where he can actually be with other peers...[and that] even in the life skills room I wanted him involved in activities with other, you know, children in the life skills room that would promote socialization."[56] An IEP team meeting held on November 1, 2007, reflected their concerns and the IEP was altered to include physical education outside the classroom to the degree that the Student could handle it without being overly stimulated.[57] However, one month later the Parents decided to provide him with home schooling, obviously a much more restrictive environment.

Following their experience with home schooling his mother testified that "while we were making progress at home with him academically, we were very concerned about socialization and, you know, being around other kids, his peers, you know, with disabilities or without, you know, of special needs or not."[58] The Parents noted in testimony that the Student returned to school at their request for his third grade year and that he initially began with a half day schedule

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[54] Joint Binder, Tab 2E, Page 332

[55] Ibid

[56] Transcript, Vol II, Page 12

[57] Joint Binder, Tab2U, Page 162

[58] Transcript, Vol II, Page 16

which was increased to a full day after the middle of the year. It was their understanding, from the IEP that was developed for that school year, that the Student would be able to interact with his same-age and non-disable peers. However, from testimony by his mother the Parents doubted how many and how much time the Student was involved in activities outside his self-contained classroom.[59] She also acknowledged on cross examination that she understood the District's concern for the safety of the Student as well as others as to why they preferred the more restrictive environment of the self-contained classroom over the regular education classroom.[60]

The evidence and testimony as presented with regard to whether or not the District educated the Student in the least restrictive environment for school year 2009-10 shows that the Student's teachers made every effort to afford him the opportunity to be in the least restrictive environment, not simply based on the time designated on his IEP, but according to his daily need as manifested by his disability of autism and its manifested acting out behaviors. Although the continuance of his education for his fourth grade year was shortened to eight days before being removed from the school by the Parents following his four day suspension, there is no substantive evidence to reflect that the more restrictive environment being proposed for homebound instruction was not warranted. Since an IEP was never developed, even after the meeting in November 2010, there is no way to show that the more restrictive environment in the home or in the life skills classroom with a shortened school day would or would not have been more or less conducive to being able to accomplish the Student's educational goals and objectives. The Parents did not afford the District the opportunity to provide direct educational services to the Student after August 30, 2010. Therefore it cannot be judged that the IEP would have been inappropriate in changing the placement for services in the more restrictive environment. The proposed placement for services was obviously more restrictive. Could the special education services have been provided in a lesser restrictive environment if the Student had been returned to the District for a shortened school day is a question that cannot be

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[59] Ibid, Page 17-18

[60] Ibid, Page 51-52

answered. What can be answered however, is the fact that the offer was presented by the District and rejected by the Parents, because they believed that the environment being proposed was also not the least restrictive.

What complicates the findings of fact in addressing this question is that the Parents unilaterally elected for the Student to be educated at the Rivendale Institute, which from the testimony by the administrator of the institute is a much more restrictive environment, other than homebound instruction, than what the District has provided and has proposed. She testified that the Student has been in her program for twenty-nine days and that the only access to non-disabled peers has been at recess, lunch, and circle time with pre-school-aged children, and that he is yet to have any interaction with them.[61] She further testified that the Student is in a smaller, less stimulating environment, where he can be with other students, under supervision, but is not in a general population where it's loud and lots of people moving.[62] She also testified that as of the date of the hearing the Student had not yet received his related services of occupational and speech/language therapy as considered necessary in his IEP of April 2010.[63] She also testified on direct examination by the Parents that if the District could "provide the proper supports" that the appropriate placement would be within the District.[64]

Other Issues

The hearing produced two other issues, one of which was not included in the original complaint filed with the Department by the Parents and the other introduced by the District in their pre- and post-hearing briefs.

Methodology of Instruction

Although not include in their original complaint, the Parents asked all witnesses involved in the education of the Student as to what methods of instruction they were trained to

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[61] Transcript, Vol I, Page 129

[62] Ibid, Page 123

[63] Ibid, Page 126

[64] Ibid, Page 109

provide autistic children and which were deemed appropriate for the Student. They also inquired from testimony as to how well or how much training his instructors possessed at the time services were rendered and how well trained they might be in such methodologies in any future encounters with the Student. Apparently anticipating this challenge, the District introduced documents of staff training for school year 2009-10.[65] The Student's paraprofessional who had been his life skills teacher during kindergarten, half of first grade, and all of the third grade was praised by the Parents as the one person who knew the Student best.[66] Following her retirement after the Student's third grade year, she was employed by the District to provide training for the Student's teachers and paraprofessionals during his extended school year services, with plans to provide training for his fourth grade year teachers and other paraprofessionals. She testified under cross examination that she had all kinds of tools that she's been trained to use and approached developing a program of instruction for the Student as one would construct a building. She testified that she's had training in TEACCH, PECS, STAR, MANDT, and "all kinds of behavior training."[67]

The director of the program in Missouri where the Parents elected to enroll the Student testified, when questioned by the Hearing Officer, that in her professional opinion in order for the District to provide an appropriate program for the Student that they would need "a board certified behavior analyst be on staff, not contracted but actually be an employee that could be there on a daily basis or weekly as needed."[68] Earlier, however, on cross examination she testified that in her program in Missouri that they only "have a board certified behavior analyst on staff [who is] there two full days a week."[69] The District's special education coordinator when questioned on direct examination about a behavior specialist providing additional and appropriate staff training as to whether such training was and would continue to be beneficial to

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[65] Joint Binder, Tab 5

[66] Transcript, Vol I, Page 18

[67] Ibid, Page 94-95

[68] Ibid, Page 123

[69] Ibid, Page 115-116

the Student, responded that the whole time he has been in the school setting he "has had benefit of behavior specialists....[and that] the more help we can get, of course, we will welcome that."[70]

The testimony and evidence leaves little doubt as to whether or not the District's personnel are qualified to provide the services as indicated by the unique needs of the Student, even though the Parents might have been led to believe that the qualifications and implementation of methodology of the private school might somehow be better suited for the Student.

Unilateral Transfer to a Private School

The District in their pre- and post-hearing briefs raise and challenge the actions of the Parents as to their decision to remove the Student from the District and to receive his education in a private school with respect to the potential financial liability to the District. In their post-hearing brief the District believes that the Parents failed to inform the District of their decision within the guidelines of the ACT and the Department's regulations. Since the relief sought by the Parents in both their initial complaint as well as indicated in their post-hearing brief includes reimbursement for expenses they have already incurred in their decision to enroll the Student in the Rivendale Institute. The issue has to be addressed in this decision.

As noted above in the findings of facts regarding the least restrictive environment the Parents provided the District with notice of their intent to withdraw the Student from the District for the purpose of enrolling him in a private school at the IEP team meeting on November 23, 2010 and again via email correspondence on December 2, 2010. Thus the advance notice to the District had been provided; however, at the same IEP meeting on November 23, 2010, the District notified the Parents of their continued need for a neuropsychological assessment.[71] Even taking into consideration the frustration expressed by the Parents in the amount of time that had elapsed as well as the expected delay in obtaining such an evaluation, they did not provide the District an opportunity to implement the proposed IEP in the school setting on a shortened school day or to implement the proposed IEP through homebound services. They should have been given this opportunity prior to the decision to remove him for private school

[70] Ibid, Page 304-305

[71] Joint Binder, Tab 2I, Page 370

placement.

Conclusions of Law and Discussion

Part B of the Individuals with Disabilities Education Act (IDEA) requires states to provide a free, appropriate public education (FAPE) for all children with disabilities between the ages of 3 and 21.[72] The IDEA establishes that the term "child with a disability" means a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who by reason of their disability, need special education and related services.[73] The term "special education" means specially designed instruction.[74] "Specially designed instruction" means adapting, as appropriate, to the needs of an eligible child under this part, the content, methodology, or delivery of instruction.[75] As noted in this case the Student presented as an eligible child in need of special education having been diagnosed autism.

The Department has addressed the responsibilities of each local education agency with regard to addressing the needs of all children with disabilities such as the Student in it's regulations at Section 2.00 of Special Education and Related Services: Procedural Requirements and Program Standards , Arkansas Department of Education, 2008.

In 1982, the Supreme Court was asked and in so doing provided courts and hearing officers with their interpretation of Congress' intent and meaning in using the term "free appropriate public education." Given that this is the crux of the Parent's contention in this case it is critical to understand in making a decision about the Parents allegations of the District's failure to provide FAPE. The Court noted that the following twofold analysis must be made by a court or hearing officer:

(1). Whether the State (or local educational agency (i.e., the District)) has

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[72] 20 U.S.C. § 1412(a) and 34 C.F.R. § 300.300(a)

[73] 20 U.S.C. § 1401(3)(A)

[74] 20 U.S.C. § 1402(29)

[75] 34 CFR § 300.26(b)(3)

complied with the procedures set forth in the Act (IDEA)? and

(2). Whether the individualized educational program developed through the Act's procedures is reasonably calculated to enable the student to receive educational benefits?[76]

Six years later the Supreme Court addressed FAPE again by emphasizing the importance of addressing the unique needs of a child with disabilities in an educational setting by addressing the importance of a district's responsibility in developing and implementing specifically designed instruction and related services to enable a disabled child to meet his or her educational goals and objectives.[77]

As pointed out by both parties in their post hearing briefs, there is no disagreement that the courts have consistently agreed that FAPE must be based on the child's unique needs and not on the child's disability.[78] Too often this hearing officer has found that parents, school administrators and attorneys representing them, agree on the basis but do not make this distinction in their arguments on the complaints or the differences they've encountered. The charge to education professionals is to concentrate on the unique needs of the child rather than a specific disability such as in this case, the Student's diagnosis of autism. In reviewing the elicited testimony and the evidence. There are ample comments by witnesses, and even the testimony from the external professional educator whose company is currently providing the Student's education, where the focus was not always on the unique needs of the Student. The focus was primarily on where the providers could best deliver his special education services based on their own biases as to appropriate placement.

Although the testimony involving placement as far as the Parents were concerned, did focus on methodology, there was little to no argument among the professionals as to what could or should be provided to the Student. Even though methodology was not included as one of the complaints in their request for a due process hearing, it became evident that the Parents had

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[76] *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207 (1982)

[77] *Honig v. Doe,* 484 U.S. 305 (1988)

[78] 20 U.S.C. § 1400(d)(1)(A); § 1401(14); and 34 C.F.R. § 300.300(a)(3)

concerns as to what methods were used by the educators as well as how well they were trained to provide specialized methods of service. While this was expressed as a concern and was addressed in the findings of fact, the IDEA has been consistent in stating that courts and hearing officers cannot impose their personal or preferential views on educational methods. "The primary responsibility for . . . choosing the educational method most suitable to the child's needs was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child."[79] In commenting on this, the Rowley case as cited, the Seventh Circuit stated that "Rowley leaves no doubt that parents, no matter how well motivated, do not have a right under the Act to compel a school district to provide a specific program or employ a specific methodology."[80] The Eighth Circuit has followed suit by quoting the Rowley case in noting that the Supreme Court's opinion was that lower courts such as they must not impose educational methods, but rather must defer that judgment to the educational experts who design and review a child's IEP. The only imposed standard accordingly by the Court was that the IEP, and what ever methodology was chosen to be used in it's implementation, must allow the child to receive some educational benefit and that he or she be educated as much as possible alongside his or her non-disabled classmates.[81]

At the same time in addressing the amendments to the IDEA of 2004, the courts found that "case law recognizes that instructional methodology can be an important consideration in the context of what constitutes an appropriate education for a child with a disability" but "at the same time, these courts have indicated that they will not substitute a parentally preferred methodology for sound educational programs developed by school personnel in accordance with the procedural requirements of the IDEA."[82] Further the ACT recognizes the importance of discussing the proposed methodologies to be used in providing individualized instruction: ". . .

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[79] Ibid.

[80] *Lachman v. Illinois State Bd. Of Educ.*, 441 IDELR 156 (EHLR 441:156) (7th Cir. 1988)

[81] *E.S. v. Independent School District, No. 196,* 135F.3d 566, 569 (8th Cir. 1998)*; Gill v. Columbia 93 School District,* 217 F.3d, 1027, 1038 (8th Cir. 2000); and *T.F. v. Special School District St. Louis* County, 449 F.3d, 818 (2004)

[82] *64 Fed. Reg.* 12552 (3-12-99)

it is clear that in developing an individualized education there are circumstance in which the particular teaching methodology that will be used is an integral part of what is 'individualized' about a student's education and, in those circumstances, will need to be discussed at the IEP meeting and incorporated into the student's IEP."[83] However, it all comes down to the IEP team, "in all cases, whether methodology would be addressed in an IEP would be an IEP team decision."[84]

In requiring that a child with a disability be provided his or her education in the least restrictive environment the Act simply means that he or she must be educated alongside his or her non-disabled classmates to the maximum extent appropriate.[85] One of the seminal court cases used in emphasizing the importance of the least restrictive environment requirements of the Act is the Roncker versus Walter case in the Sixth Circuit.[86] The Eighth Circuit has adopted the results of the Roncker case in determining the least restrictive environment, but went further in a recent case noting that a child should be separated from his or her peers only if the services that make a segregated placement superior cannot be provided in a non-segregated setting. For some disabled children the superior services may or may not be appropriate in a non-segregated setting when his or her unique disabilities are taken into account. Thus to say that all children with a specific disability such as autism should be educated in a regular education classroom simply because the services can be provided is a failure to account for each child's unique presentation of that disability.[87]

It is necessary, therefore for this hearing officer to look only at the facts in this case as to whether or not the District in cooperation with the Parents developed an IEP which concentrated on the unique needs of the Student and not specifically at his disability and that the IEP team considered his unique needs in deciding on a placement which was most appropriate to

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[83] *Fed. Reg.* 12552 (3-12-99)

[84] Ibid

[85] 20 U.S.C. § 1421(a)(5)

[86] *Roncker v. Walter,* 700 F.2d (6th Cir. 1983)

[87] See *Pachl v. Seagren,* 453 F.3d (8th Cir. 2006)

implement his education program. The testimony elicited in the course of the hearing in general includes both personal and professional preferences for dealing with the disabilities of this child as to where his education might best be implemented with consideration given to the safety of the Student and others. Although the Parents participated actively in all of the IEP team discussions and expressed their desires and opinions about placement in the least restrictive environment, the challenge presented here in reaching a decision is whether or not the IEP and it's proposed implementation by the District denied the Student FAPE by not being appropriate and by not being provided in the least restrictive environment.

In more specifically defining what is meant by FAPE, the Court held that an educational agency has provided FAPE when it has provided personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. The Court noted that instruction and services are considered "adequate" if:

(1). They are provided at public expense and under public supervision and without charge;

(2). They meet the State's educational standards;

(3). They approximate the grade levels used in the State's regular education; and

(4). They comport with the student's IEP.[88]

The definition of children covered under IDEA; however, is seen as being doubly circular in that a child with disabilities must be so disabled as to require special education and related services. Again, as noted above, special education and related services are those that meet the unique needs of a child with disabilities. Moreover, related services are those that assist a child to benefit from special education, which can only be received by a child with disabilities.

The issues addressed in this case have been presented by the Parents as being such egregious violations of procedural requirements of the Act that they have denied the Student with FAPE. Keeping in mind, as noted above, FAPE is defined as special education and related services that are provided at public expense, under public supervision and direction, and

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[88] *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207 (1982)

without charge, which meet the standards set forth by the Department. Thus the question boils down to: (1) looking at each individual issue to determine whether or not the District has been in compliance with that definition, and (2) whether or not any single violation, or the accumulation of violations, is severe enough to constitute a denial of FAPE.

The Court of Appeals for the Eight Circuit in *Zumwalt v Clynes*[89] agreed with the Supreme Court's decision in *Rowley* in stating that the IDEA requires that a disabled child be provided with access to a free appropriate public education and that parents who believe that their child's education falls short of the federal standard may obtain a state administrative due process hearing.[90] Further, Rowley recognized that FAPE must be tailored to the individual child's capabilities. The Court of Appeals for the Eighth Circuit has also outlined the procedural process by which a parent and student may pursue their rights under the IDEA:

> "Under the IDEA, parents are entitled to notice of proposed changes in their child's educational program and, where disagreements arise, to an 'impartial due process hearing.' [20 U.S.C. § 1415(b)(2).] Once the available avenues of administrative review have been exhausted, aggrieved parties to the dispute may file a civil action in state or federal court. Id. § 1415(e)(2)."[91]

The Eighth Circuit Court of Appeals has addressed the issue of the adequacy of an IEP in meeting the standards established in IDEA in order to provide FAPE. In *Fort Zumwalt School District v. Clynes*, the majority is quoted as stating that the IDEA does not require the best possible education or superior results. The court further states that the statutory goal is to make sure that every affected student receive a publicly funded education that benefits the student.[92] In their decision the court relied on the previously cited Rowley case by quoting Rowley at 203 (grades and advancement from grade to grade "an important factor[s] in determining educational

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[89] *Zumwalt v Clynes,* (96-2503/2504, U.S. Court of Appeals, Eight Circuit, July 10, 1997)

[90] *Board of Education v. Rowley,* (458 U.S. 176-203, 1982)

[91] *Light v. Parkway C-2 School District*, 41 F.3d 1223, 1227 (8th Cir. 1994), cert. denied, 515 U.S. 1132 (1995)

[92] *Fort Zumult School Dist. v. Clynes*, 96-2503,2504, (8th Cir. 1997)

benefit").[93]

It was the intent of the IDEA to encourage parental participation in the development of a disabled student's IEP. The value of parental participation in the development of an IEP has been consistently emphasized in the IDEA.[94] As the Supreme Court stated in the previously cited Rowley case "It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard."[95] The previously cited Eighth Circuit case regarding the necessity of there needing to be serious procedural violations in order to declare a violation of FAPE, on the other hand, takes a strong opinion in the other direction when it comes to the requirement of parental participation: "An IEP should be set aside only if 'procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits.'"[96] In this case there is no doubt that the Parents participated in the development of the Student's IEP, even though they did not agree with the decision on placement. Testimony by the Student's mother reflected a history of active involvement by both Parents in the Student's health and welfare which can only be admired by those of us without such challenges as those that they meet daily.

Also as noted earlier the courts have agreed that an IEP must be designed to provide the possibility for a student to obtain an educational benefit from the proposed instruction. What constitutes an educational benefit or meaningful benefit has also been the discussion of multiple court decisions. Again, going back to the Rowley standard, progress according to the courts should be measured in terms of educational needs of the disabled child and should be more than

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[93] Ibid, at 26 IDELR 172

[94] 20 U.S.C. §§ 1400(c); 1401(20); 1412(7); 1415(b)(1)(A), (C)-(E); 1415(b)(2)

[95] *Bd. of Educ. of Henrick Hudson Cent. Sch. Dist. v. Rowley*,458 U.S. 176, 189, 205 (1982)

[96] *Independent School District No. 283 v. S.D. by J.D.*, 88 F.3d 556 (8th Cir. 1996) and *J.P. v. Enid Public School*, No. CIV-08-0937-HE (W.D. Okla. 9-23-2009)

"trivial" or "de minimis."[97] In evaluating whether FAPE was furnished the courts have demanded an individual inquiry into a child's potential and educational needs. In this case the Student's educational progress was addressed and shown that under the previous instruction and placement prior to his fourth grade IEP that he had made significant improvement in all areas with the exception of his behaviors. The Parents may not have agreed with the District's reports and their assessment of his progress. However, they too provided some of his behavior training as well as his educational program in the home. He may not have been advancing academically and socially as quickly as wished for by the Parents, but records provided by the District do indicate that he had made progress under the previous IEPs. There is insufficient evidence presented by the Parents to negate those findings or that he might not have made progress under the proposed IEP which was rejected by them for implementation through homebound instruction and/or in the school setting.

The Department has provided due process procedures for the reimbursement to parents of students with disabilities who have unilaterally placed their child in a private school, where the student previously received special education and related services from a school district.[98] The Department has placed the burden on a school district to provide prior notice before the parents remove a child from a public school of their intent to evaluate the child and the procedural requirements a parent must follow if they disagree.[99] The parental requirement at this section of the regulations states that the parents must notify the public school at either the most recent IEP team meeting or in writing at least ten business days prior to the removal of the child from the public school. There are no indications in the record that the District met the requirement of notification; however, the Parents did notify the District of their intentions at the last IEP team conference in November 2010. The additional burden the regulations place on the

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[97] *Polk v. Central Susquehanna Intermed. Unit 16*, 853 F.2d 171 (3rd Cir. 1988); *Ridgewood B. of Educ. v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); and *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000)

[98] Section 14.15.3, Special Education and Related Services: Procedural Requirements and Program Standards , Arkansas Department of Education, 2008.

[99] Ibid, Section 14.15.4.2 and 34 CFR 300.503(a)(1) and § 9.04.1.1

Parents is that must make the Student available for the evaluation as requested by the District. The record does not contain any record of this notification to the Parents. There is also no evidence or testimony in the record that suggested that the Parents did not made the Student available to the District. At the same time, the evidence and testimony also revealed that it was the District who had initiated contact with the various agencies who could provide a neuropsychological evaluation. Nonetheless, the District did not have the opportunity to obtain additional evaluative information on which to made a more informed decision on the Student's IEP.

It is not a mandate of the IDEA that a parent, anymore than a district, be able to forecast with ultimate certainty of the adequacy of a particular IEP. The IDEA, as noted above, must however, be developed in such a manner as to allow a student the opportunities to achieve an educational benefit from the educational program. From the documents entered as evidence and the testimony of the educational professionals this would appear to have been the case for this Student in previous school years leaving little doubt that what was proposed for his fourth grade would not also provide the same benefit. The Parents did not provide any evidence that the private school program of instruction has, in the twenty-nine days of instruction, or that it will in the future, provide any greater educational advancement than that which has been proposed by the District.

The Supreme Court supported Congress' emphasis on the importance of procedural compliance; however the accusation that a student has been denied FAPE has not been supported by the court when the alleged violation has been based solely on procedural violations.[100] From all appearances the only major procedural violation that was upsetting to the Parents was their being blind sided at the September 2, 2010, IEP conference where they

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[100] *Board of Education of the Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176, 206-207 (1982). See also *Evans v. District No. 17 of Douglas Cou*nty, 841 F.2d 824 (8th Cir.1988). (See also *Independent School District No. 283 v. S.D. by J.D.*, 88 F.3d 556 (8th Cir. 1996). More recently see: *Hiller v. Board of Education*, (16 IDELR 1246) (N.D. N.Y. 1990); *Bangor School Department* (36 IDELR 192) (SEA ME 2002); *Jefferson Country Board of Education*, (28 IDELR 951) (SEA AL 1998); *Adam J. v. Keller Independent School District*, 328 F.3d 804 (5th Cir. 2003); *School Board of Collier County v. K.C..*, 285 F. 3d 977 (11th Cir. 2002), 36 IDELR 122, *aff'g* 34 IDELR 89 (M.D. Fla. 2001); and *Costello v. Mitchell Public School District 79,* 35 IDELR 159 (8th Cir. 2001).

came expecting one thing and were hit with another. For this failure to have led the Parents to ask for a due process hearing is not supported by either their initial complaint nor the contest during the hearing. Following this mistake the evidence does show that the District allowed the Parents ample time and opportunity to participate in making a decision as to obtaining additional evaluation information and a temporary placement for continuing to provide the Student with his educational program, as well as receipt of the programmed related services.

The position of the Parents throughout the hearing was evident in that they were not willing to accept anything less than what they believed to be in the best interest of their son. Even though the District may not have in fact notified the Parents of their regulatory requirements before unilaterally placing the Student at Rivendale, the District did attempt to provide the services as designated on his IEP in the least restrictive environment as determined by the information they had at the time the IEP was developed. Thus, it is the decision of the hearing officer, as noted in the discussion of the facts as presented above, that there does not exist in the testimony or evidence sufficient grounds on which to declare that the District denied the Student with FAPE. Neither does the testimony and evidence support the allegation that the District breached their due process procedural responsibility to the degree that would constitute a denial of FAPE.

Order

In that the Parents have provided insufficient evidence and testimony to warrant support of the allegations of a denial of FAPE their request for the relief as requested is hereby denied.

The District will however, immediately upon receipt of this order, continue to pursue obtaining a neuropsychological evaluation, in cooperation with the Parents by providing them with the necessary transportation and funds to obtain the evaluation prior to April 22, 2011.

The District will immediately upon receipt of the results of the evaluation, but no later than May 13, 2011, prepare for and notify the Parents of an IEP conference in which the results of the neuropsychological evaluation will be presented and at which time the IEP team will decide as to where and how the Student's unique needs can be met through the provision of services as deemed appropriate from the results of the evaluation as well as through consultation with experts as determined qualified by the District, including his

need for related services.

Should the Parents elect not to participate in making the Student available for the evaluation, or elect not to attend the IEP conference, the District will proceed as best it can to develop an IEP for the remainder of school year 2010-2011, and conduct an annual review in anticipation of providing services for school year 2011-12, to meet the unique needs of the Student.

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.

Robert B. Doyle, Ph.D.
Hearing Officer

March 28, 2011
Date