

**COLORADO DEPARTMENT OF EDUCATION**

**SPECIAL EDUCATION SERVICES UNIT**

**Due Process Hearing L2007:118**

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**IMPARTIAL HEARING OFFICER'S FINDINGS AND DECISION**

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**In the Matter Of:**

**[STUDENT], by and through his parents [PARENT] and [PARENT],**

**Petitioner,**

**and**

**THOMPSON SCHOOL DISTRICT R2-J,**

**Respondent**

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**I. INTRODUCTION**

This matter is a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA) (20 USC §1415(f)(1)), its implementing regulations (34 CFR §300.507(a)), and the implementing regulations of the Colorado Exceptional Children's Educational Act (1 CCR 301-8, 2220-R-6.03(6)).<sup>1</sup> [STUDENT] (the Student), through his parents [PARENT] and [PARENT] (the Parents), requested a due process hearing on August 27, 2007.

The due process hearing in this case was initially scheduled for December 3, 10, 11 and 12, 2007. The hearing was continued on the motion of the Parents and in an order dated November 30, 2007 the Impartial Hearing Officer (IHO) continued the hearing date and granted an extension of time for issuing this decision until February 22, 2008. 34 CFR §300.515(c); 1 CCR 301-8, 2220-R-6.03(6)(b).

The IHO conducted this due process hearing on January 22, 23, 24 and 28, 2008 in Loveland, Colorado. Jack D. Robinson, Esq. represented the

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1. The ECAC regulations were amended effective December 30, 2007. Because the due process request in this matter was filed on August 27, 2007 all references to those regulations in this decision are to the regulations as they existed prior to the December 30 amendments.

Student. Thompson School District R2-J (the District) was represented by W. Stuart Stuller, Esq. and Alyssa C. Burghardt, Esq. The parties filed written post-hearing materials on February 4, 2008, at which time this matter was ready for the issuance of these Findings and Decision. The IHO issues these Findings and Decision pursuant to 1 CCR 301-8, 2220-R-6.03(6)(d).

## **II. ISSUES AND RELIEF REQUESTED**

The issue in this case involves the District's proposed transition of the Student from his current placement at [PRIVATE SCHOOL], a private school specializing in the education of children with autism, to [ELEMENTARY SCHOOL], the Student's neighborhood school in the District. The Student, through the Parents, challenges whether the District's proposed Individualized Education Program for the Student for the 2007-08 school year, which includes a proposed plan for the Student's transition from [PRIVATE SCHOOL] to [ELEMENTARY SCHOOL], provides the Student a free appropriate public education in the least restrictive environment.

The Parents request as relief that the Student's placement continue at [PRIVATE SCHOOL] until the District is able to propose an appropriate education in the least restrictive environment and the Student is able to successfully transition into that placement and program.

## **III. FINDINGS OF FACT**

Based on the evidence presented at the due process hearing the IHO makes the following Findings of Fact:

1. The Student is an [AGE] year old child with a date of birth of [DOB]. He is currently attending [PRIVATE SCHOOL], a private school in Denver, Colorado specializing in the education of children with autism. The District proposes to transition him to a placement at [ELEMENTARY SCHOOL], the Student's neighborhood school in the District.

### **The Student's Disabilities and Needs**

2. The Student is developmentally disabled. His primary diagnosis is autism. Specifically, the Student has been diagnosed with Asperger's Syndrome, a category of autism typically associated with children with above average intelligence and language development, impaired social skills, limited focus or interests and repetitive motions or behaviors.

3. The Student falls within the medium to high functioning range on the autism spectrum. He has good cognitive skills and is at the low end of the average range of intellectual functioning.

4. In addition to Asperger's Syndrome, the Student has attention deficit hyperactivity disorder and a traumatic brain injury of unknown origin. He also has an emerging diagnosis of bipolar disorder, a mood disorder. In the past he was also diagnosed with a sensory integration disorder, which impaired his ability to take in and process information.

5. Although the Student has adequate language skills, he has deficits in socialization. As a result of his disabilities he has problems reading and understanding emotions and has difficulty recognizing his own emotions and how those affect other people. The Student finds it hard to initiate, maintain or complete social interactions, has difficulty in interpreting social nuances such as body language and facial expressions, and difficulty understanding complex language such as figures of speech.

6. The Student also has executive function issues, which result in difficulty in planning, prioritizing and organizing information. He is therefore easily distracted by anything in his external environment. Additionally, the Student has a very short attention span (he has difficulty focusing, sustaining attention and staying on task) and he is impulsive (his impulsivity includes blurting out comments or interrupting others).

7. As a result of his disabilities the Student has difficulty coping with transition or change, which can be very stressful for him. He has difficulty managing emotions. On occasion he will engage in out of control behavior. His out of control behavior manifests itself in defiance, verbally provocative behavior, anger outbursts and being oppositional. Because of his mood disorder he may easily become enraged, and it is not predictable when that might occur. He has a history of physical assaults and threats of harm and has damaged property at his home.

8. The Student has serious behavioral problems at home, including physical aggression and violence. He functions much better at school due to the structure provided in his school environment. To deal with these behavior issues at school the Student needs a decent relationship with school staff, and someone he can go to help him identify and manage emotions. The Student seeks out and often prefers adult companionship; adults help him interpret his environment and decide how to act.

9. The Student's medical providers have attempted a number of trials of medications to deal with the Student's symptoms. These attempts were substantially unsuccessful. The medications either resulted in unacceptable side effects or were simply ineffective in addressing the Student's symptoms.

10. The Student has specific educational needs resulting from his developmental disabilities. His academic instruction must be delivered either one-on-one with a teacher or in very small groups. His educational environment must be highly structured and present minimal distractions (such as visual and

sound distractions); the Student needs a quiet environment with minimal background or competing noises, so that he can focus and not become over stimulated. His teaching strategies must include visual and verbal support, repetition, redirecting and frequent reinforcement of good behaviors. He needs direct social skills instruction and social skills practice throughout the day, both in educational settings and in non-educational settings such as lunch and recess. His social skills instruction needs to be delivered either one-on-one or in a small group.

11. The Student also needs frequent breaks due to his need to move around the room. His educational materials must be very structured to help him organize and plan. He requires a consistent environment and monitoring and cueing by teachers or other adults throughout the day so that he can better organize information and control his behaviors. The Student needs a consistent and predictable routine, within which he is given the ability to make choices so that he has a sense of control over his life.

12. The evidence presented by expert witnesses was in conflict regarding the type of peer interaction the Student requires in his educational program. Educational, psychological and medical experts presented by the Parents were of the opinion that the Student needs to interact with a small and consistent group of children at a relatively similar developmental level so that he can learn how to interact socially by being with children to whom he can relate at the same level. The Parents presented expert evidence that an autistic child did not need to interact with typically developing peers because an autistic child would be behind such peers in social interaction abilities. According to this evidence the Student might find it stressful to interact with typically developing peers because he does not understand the social interactions of those children. Interaction between a developmentally disabled student and a typically developing peer can be positive if there is adult supervision, but without sufficient adult supervision such interactions can have a negative affect on a developmentally disabled child.

13. The Parents' experts believe that autistic children form better and more realistic relationships and friendships with other special needs students. Many successful programs for autistic children operate under this philosophy. The Parents' evidence was that consistent interaction with children at a relatively similar level of developmental disabilities was a critical element, if not the most important element, of the Student's educational needs.

14. The District presented expert evidence of research and experience that holds that children with autism, even those with additional mental health diagnoses, benefit from contact with typically developing peers. In this view typically developing peers model appropriate language, social skills and behavior for autistic children and autistic children have a better chance to learn these skills if they have access to typically developing peers. On the other hand, practicing

social skills with other developmentally disabled children may not be as effective because those children have the same social skills deficits, and the Student might actually learn inappropriate behaviors from such peers. According to these opinions, the Student would benefit from a more challenging environment in which he has the opportunity to interact with typically developing peers. Doing so with appropriate supports, such as adult supervision of interactions, would give him a better opportunity to function in the society at large, which is an important goal for the Student.

15. The District's evidence was that the Student's most important need was integration with typically developing peers, even if as a transitional move his first interaction in an academic setting at [ELEMENTARY SCHOOL] would be with developmentally similar children.

16. The divergent views of the parties regarding interaction with peers represents a difference in educational methodology. The evidence did not establish that the District's chosen method was inappropriate or was not designed to provide educational benefit.

17. The Student does in fact successfully interact with typically developing peers in social settings, such as Boy Scouts, in community outings from his current school placement at [PRIVATE SCHOOL], and at a neighbor's home. Most of these interactions require adult supervision of the Student.

### **The Student's Public School History**

18. The District identified the Student as a child with special needs and placed him in a special education program in pre-school. He then attended kindergarten for half days, at first with the support of an aide and later with support from a resource room teacher.

19. The Student was placed in a regular classroom at [ELEMENTARY SCHOOL] for the first and second grades, but he had difficulty coping and his behavior deteriorated at home. His behavior at school worsened in the second grade, including aggressive behavior on the playground.

20. An Individualized Education Program (IEP) team meeting was conducted at the end of the Student's second grade year, in the spring of 2005. As a result of that meeting the team decided that during the 2005-06 school year the Student would be educated part-time in the general classroom and part-time in the resource room, and that he would be provided with a full-time aide. However, at the start of that school year no aide was available.

21. Because no aide was available in the fall of 2005 the Student began his third grade year receiving almost all of his instruction in the resource room. His behavior deteriorated substantially. In September, 2005 the principal of [ELEMENTARY SCHOOL] notified the Parents that the Student was out of

control. He was disruptive, interrupted the learning of other children, was defiant and objected to his schooling, and physically threatened other children.

22. The Parents home schooled the Student for a period of time beginning in late September, 2005. In October, the District placed the Student in a one-on-one teaching situation. Despite this individualized instruction the Student continued to be off task and to respond to almost every sight, sound and movement in his environment. He would yell or talk at inappropriate times, engage in defiant behavior and get out of his seat frequently to gain attention and avoid academic tasks.

23. An IEP team meeting was then conducted on October 18, 2005. The IEP that resulted from this meeting provided for the Student to attend school on a modified schedule, for half days only. Pursuant to this IEP he received individual instruction in a room with no other students, he was seated away from doors and windows and the windows were covered to limit distractions.

24. On October 31, 2005 the Parents placed the Student in a day treatment psychiatric program at Children's Hospital in Denver. One goal of placing the Student in this program was to identify medications to deal with his mood disorder. By the middle of November the medications with which the Student was being treated at Children's Hospital resulted in serious side effects such as mania, bizarre behavior, an inability to sleep and occasional incoherence. Additional medications resulted in additional problems, to the extent that the Student had to be admitted to the hospital overnight on one occasion at the end of November. By this time he was having hallucinations and delusions and was unable to function.

25. By the end of November the Student could not function at the hospital, let alone at school. Doctors at Children's Hospital suggested [PRIVATE SCHOOL] and the District agreed to place the Student at that school at the District's expense. The Student began attending [PRIVATE SCHOOL] on December 12, 2005.

26. Neither the Parents nor the District intended the Student's placement at [PRIVATE SCHOOL] to be his permanent educational placement. Rather, the intent was that the Student would return to his neighborhood school when he was ready and an appropriate educational program was put in place within the District.

[PRIVATE SCHOOL]

27. [PRIVATE SCHOOL] is a small school designed to meet the needs of individual students. The school specializes in autism, but also serves children

with other developmental disabilities. The school currently serves 12 students, aged six to fourteen. None of these students are typically developing children.

28. The goal of [PRIVATE SCHOOL] is to return a student to a regular educational setting when the child is ready. Typically, children remain at [PRIVATE SCHOOL] for a period of one to three years.

29. The District presented evidence that [PRIVATE SCHOOL] was intended as a transitional placement until the Student's medication could be stabilized. However, the District did not obtain any subsequent information regarding the Student's medical status before proposing that he return to [ELEMENTARY SCHOOL]. In the view of [PRIVATE SCHOOL], expressed in its February 7, 2006 IEP, the reason for the placement at [PRIVATE SCHOOL] was that the Student had gone through all levels of intervention in the District and his disability required the services of [PRIVATE SCHOOL]. Although representatives of the District attended the February 7, 2006 IEP meeting, they deny having made or agreed to the statement that the Student had exhausted all levels of intervention in the District. Based upon all of the evidence the IHO finds that while the Student was initially placed at [PRIVATE SCHOOL] while he stabilized, at some point in time the District and the Parents agreed to continue the Student at [PRIVATE SCHOOL] until they could further assess and evaluate his circumstances and consider a plan for his transition back to the District.

30. [PRIVATE SCHOOL] is located in Denver and the Student lives in Berthoud, Colorado, thus requiring a one hour commute each way to and from school. The Student is driven by himself in a regular vehicle, not a school bus. He does very well with his commute and has no transportation issues.

31. At [PRIVATE SCHOOL] the Student is in a class with three other boys who are at about his same level developmentally and socially. The small class size minimizes sounds and distractions. The class members differ somewhat academically and these differences are individually addressed in academic instruction. There is one lead teacher in the class along with one or two co-teachers and much of the instruction is one-to-one with a teacher (although other people are in the room during the one-to-one instruction, so that the Student learns to deal with some distractions).

32. During the day the Student works either one-on-one with a teacher, on guided independent projects, or in small groups of two to four students. Lunch and recess are taken with all of the students at the school. Lunch and recess are part of the curriculum; during these periods the Student practices social skills and the staff collects data and teaches.

33. The Student works with several teachers and staff during the day, so that he can develop the ability to generalize skills he has learned from one adult to other individuals.

34. The Student has done very well at [PRIVATE SCHOOL]. He enjoys the school and has made friends there; he has made reasonable progress towards his goals and objectives; and he has shown a consistent ability to meet the academic and behavioral demands of that school.

### **The 2006-2007 School Year**

35. The District anticipated that the Student would return to his neighborhood school by the fall of 2006 and hired a behavioral specialist to work with the Student over that summer so that he would be ready to return to his regular school in the fall. In late July, 2006 the Parents and the District discussed convening a transition team to plan the Student's return to the District when he was ready. The Parents even suggested the possibility of using [PRIVATE SCHOOL] as a model for the Student's future placement. However, the Parents did not think that the Student was ready to return to the District at that time and they reported these concerns to the behavioral consultant. In early August the Parents reported to the behavioral specialist that the Student's behavior at home was deteriorating to the point that they feared he might have to be hospitalized.

36. Despite his deteriorating behavior at home in the summer of 2006 the Student continued to do well in the structured environment of [PRIVATE SCHOOL].

37. On August 14, 2006, as a result of a contractual dispute between the District and [PRIVATE SCHOOL], the District gave [PRIVATE SCHOOL] 30 days written notice that the District was terminating its contract for the Student's placement. This letter was the first notice to [PRIVATE SCHOOL] that the District contemplated termination of this placement. At this time no IEP was in place, or IEP team meeting scheduled, to deal with the Student's transition from [PRIVATE SCHOOL], though the notice did state that an IEP meeting was necessary for this purpose.

38. The District's unexpected attempt to cancel its contract with [PRIVATE SCHOOL], with no transition plan in place, caused the Parents to question whether the District had the Student's best interests in mind and generated a certain level of distrust in the District. Nevertheless, the Parents were willing to work with the District toward developing a transition plan.

39. Viewing the evidence as a whole, the District's attempt to cancel its contract with [PRIVATE SCHOOL] does not support an inference that the District would not act in good faith to plan and implement an IEP in the Student's best interests.

40. The IEP team met on September 20, 2006 to gather and review data regarding the Student's present levels and assess where the Student was at



that time. [DIRECTOR], the director of [PRIVATE SCHOOL], and [TEACHER], the Student's lead teacher from that school, were present at this meeting, along with the Parents and representatives of the District. The participants at the September 20 meeting concluded that they did not have sufficient information about whether the Student was ready to transition out of [PRIVATE SCHOOL]. They decided that it was necessary for the Student to come to [ELEMENTARY SCHOOL] to update his formalized testing in order to complete his triennial review, to determine the Student's current academic levels, and to assess whether the Student was ready to transition and, if so, into what setting.

41. The District administered a set of academic tests to the Student at [ELEMENTARY SCHOOL] on September 29, 2006. The Student took the tests in the school's resource room and exhibited no behavior issues during the testing or during a break in the playground. Although school was in session, the Student did not interact with any other students at [ELEMENTARY SCHOOL] that day.

42. The IEP team next met on November 20, 2006 and reviewed the Student's data. The team identified a number of possible settings within the District but determined that it needed more information regarding the Student's potential transition. The IEP team therefore decided that the Student would remain at [PRIVATE SCHOOL] for the rest of the school year. The District would then propose a plan for the Student's transition back to the District for the 2007-2008 school year.

### **The May 15, 2007 IEP and Transition Plan**

43. The IEP team's next meeting took place on May 15, 2007. Prior to this date representatives of the District had observed the Student at [PRIVATE SCHOOL] on two occasions in the summer of 2006 and in April, 2007 and had participated in progress meetings at [PRIVATE SCHOOL], in addition to taking part in the development of the Student's IEP at [PRIVATE SCHOOL] in February, 2006. By May of 2007 the District had determined that the Student was ready to return to [ELEMENTARY SCHOOL]. The District based this conclusion on the observations of the Student at [PRIVATE SCHOOL] and at [ELEMENTARY SCHOOL] during his testing, his progress meetings at [PRIVATE SCHOOL], the assessment data and conferences with the Parents.

44. At the May 15 meeting the IEP team, including the Parents, [DIRECTOR] and [TEACHER], reviewed a proposed IEP that included a transition plan for the Student to return to [ELEMENTARY SCHOOL] in the fall of 2007. The Parents had not been involved in the development of the proposed plan. The proposed IEP, including the transition plan, contained the following elements, among others:<sup>2</sup>

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2. The following description of the proposed IEP and transition plan consists of both the written description of the plan contained in the IEP plus additional findings of the manner in which the District intended to implement the plan.

A. The Student's initial schedule at [ELEMENTARY SCHOOL] would be the same as his schedule at [PRIVATE SCHOOL], in order to provide consistency during the transition. A consistent schedule that lets the Student know what is coming next will assist him in making this transition. His daily schedule could be modified over time based on the Student's individual needs and how well he is doing at [ELEMENTARY SCHOOL].

B. The goals and objectives in the IEP are the same as at [PRIVATE SCHOOL].

C. The Student would receive services and support from a variety of individuals, including the resource teacher, the school psychologist, a counselor, a paraprofessional and a behavioral specialist. The IEP also provided for the Student to receive the services of an occupational therapist and a speech/language pathologist.

D. The Student's initial educational setting would be in a separate classroom, with one-on-one instruction, with integration of peers for small group instruction variable, based on the Student's needs and progress. The Student's educational environment would be highly structured and would present minimal distractions. The IEP contemplates visual and verbal directions and feedback, repetition and frequent reinforcement.

E. The District planned initially to introduce a developmentally similar peer into the Student's program, with the goal of eventually teaming the Student with from one to three other students to work with him consistently in his academic instruction and for lunch and recess. The District would adjust this setting in terms of the number and developmental levels of peers according to the Student's progress. The District would prepare the Student for peer interactions with techniques such as pre-teaching, modeling, role playing and practice.

F. Social skills instruction would be delivered either one-on-one or in a small group, depending on the Student's ability to tolerate peer interaction. Lunch, recess and academic instruction would all be looked at as opportunities for social skills coaching and for the Student to practice social skills (this practice may not be available with peers immediately, but the IEP is designed to introduce social skills practice with peers at the earliest opportunity).

G. The Student would begin the 2007-2008 school year attending [ELEMENTARY SCHOOL] one day each week, with his other school days spent at [PRIVATE SCHOOL]. The transition plan anticipates that the Student's attendance at [ELEMENTARY SCHOOL] would increase by one day a week each month, with full attendance at [ELEMENTARY SCHOOL] to occur after five months. However, the actual rate of transition will be based on the

Student's needs and readiness. The District would collaborate with [PRIVATE SCHOOL] during this transition.

H. Because the Parents expressed concern with how the Student might react to attending a larger school (there are over 300 students at [ELEMENTARY SCHOOL]) the timing of his arrival and leaving school would be set to avoid contact with large groups of students. The Student would be escorted to and from the classroom by a paraprofessional.

I. The Student would initially eat lunch by himself in the room where he receives instruction, with a teacher, counselor or paraprofessional. As he is able to handle increased social time without becoming over stimulated he would eventually be joined by one or more peers, in the lunchroom or some other setting.

J. To avoid over stimulation by exposure to large numbers of other children the Student would at first have recess apart from the general school population, with a teacher, paraprofessional or counselor. He would eventually be joined by peers as the data suggests he is able to tolerate increased social time. The Student might at first be joined by one other student in limited amounts of time with increases in the number of peers as the student progresses.

K. Initially, a behavioral consultant would be present with the Student for almost all of his instruction and activities during the school day. The behavioral consultant would support other [ELEMENTARY SCHOOL] staff to ensure consistency in behavioral expectations and interventions during the transition period. In addition, the District offered the services of this consultant to the Parents to help them deal with the Student's behaviors at home. The provision of this service to ensure consistency in behavioral expectations and interventions is similar to the structure provided to the Student at [PRIVATE SCHOOL].

45. The intent of the District's transition plan was that the Student would progress in his transition as quickly as he was able. For example, he might transition from individual academic or social skills instruction to small group instruction or to lunch and recess with peers as soon as his second week at [ELEMENTARY SCHOOL], if the indications from his first day at that school along with data from [PRIVATE SCHOOL] the rest of the week reflected that he was ready to accept peers into his environment. Ultimately, the District has the following goals for the Student: he will be in a small class for academic instruction similar to his current placement at [PRIVATE SCHOOL], with one-on-one instruction as needed to address specific needs; he eventually might spend part of the day in the general classroom; typically developing peers would be introduced into his program at lunch and recess; and the Student would engage in specials such as art and music along with typically developing peers.

46. In order to be flexible in the Student's transition the May 15, 2007 IEP called for another IEP team meeting to be held on September 20, 2007, one month after the Student's planned return to [ELEMENTARY SCHOOL], to make any necessary adjustments. The District could also modify the transition plan prior to September 20, in response to the Student's needs and readiness, in consultation with the Parents. Because the May 15 IEP has not yet been implemented the September 20 IEP team meeting was not held.

47. The transition plan contemplated that the peers initially introduced into the Student's program would be students with needs similar to his, in order to be consistent with the Student's experience at [PRIVATE SCHOOL]. However, the District intended under this plan that the Student would have access to typically developing peers where possible.

48. In developing this transition plan the District also considered that the Student would be attending middle school the following year. In the District's view it was better for the Student to transition in stages (from [PRIVATE SCHOOL] to [ELEMENTARY SCHOOL] to middle school), rather than to move directly from [PRIVATE SCHOOL] to a middle school. The Student was already familiar with the building and some of the staff at [ELEMENTARY SCHOOL]. Also, a staged transition would give the Student the opportunity to develop relationships with peers with whom he could move on to middle school, rather than to go directly from [PRIVATE SCHOOL] to an unfamiliar middle school where he knew no one. The Parents believe, however, that it would be better for the Student to have one change of schools rather than two.

49. The District considered continuing the Student's placement at [PRIVATE SCHOOL] but concluded that this placement was not appropriate, primarily for two reasons: the long commute to and from school, and the inability to interact with typically developing peers at [PRIVATE SCHOOL].

50. The Parents did not agree with the proposed transition plan presented at the May 15, 2007 meeting. They did not feel that the Student was ready to make a transition from [PRIVATE SCHOOL] to any other placement at this time. In addition, in their view the IEP was not a comprehensive plan designed to meet all of the Student's needs, and was in essence an experiment with the Student's education.

51. The Parents believed that if the Student was ready to interact with peers the District would have him do so initially, not start him in an isolated setting. Additionally, while the transition plan anticipated the Student's eventual interaction with peers, the introduction of peers was not guaranteed by the plan, while such interaction was a known aspect of his program at [PRIVATE SCHOOL].

52. The Parents also were concerned that the size of the school and of the student body at [ELEMENTARY SCHOOL] would over stimulate the Student and that his bad behavior at home would escalate accordingly. Because of these concerns the District included in the transition plan the provision that the Student would arrive at and leave school when no other children were present. However, the Parents objected to removing this opportunity for socialization from the Student's schedule.

53. The Parents were also concerned about the isolation of the Student in a self-contained classroom and at lunch and recess. They wanted the Student to interact with his peers. While they did not want the Student to be isolated at recess they did want to avoid large crowds and excessive noise.

54. The Parents also objected to the May 15 transition plan because it seemed identical to the Student's educational setting in the fall of 2005, and the Student was not successful in that setting.

55. The Parents believed that the District could develop an appropriate program for the Student, but that this IEP did not do so. The Parents wanted the Student to be placed in a proven program where it has been established that children like the Student can be successful. The program envisioned by the Parents would involve the following: teaching and learning would occur every moment and in all settings; the Student would be in a small setting with minimal distractions and a small, consistent set of peers; staff coordination; and good communication between home and school. The Parents have not identified any other placement in the District that they believe would meet these requirements.

56. [DIRECTOR] and [TEACHER] also objected to the May 15 plan. They believed that the Student needs a consistent set of 3 or 4 peers in a small school environment and that he was not ready to return to [ELEMENTARY SCHOOL]. In their opinion, if the Student was truly ready to make a transition he would interact with peers from day one at [ELEMENTARY SCHOOL]. [DIRECTOR] and [TEACHER] also believed that [PRIVATE SCHOOL] was a less restrictive environment because the proposed IEP isolated the Student from peers, while he interacted with peers continually at [PRIVATE SCHOOL]. Even introducing peers at variable times would not, in their view, meet the Student's need for a consistent set of peers.

57. [DIRECTOR] acknowledged at the due process hearing that the proposed IEP incorporated many aspects of [PRIVATE SCHOOL] program, but testified that this IEP did not constitute a comprehensive and cohesive plan (that is, that all people working with the Student are trained, know his program, know what the Student is doing at all times and know how to deal with the Student appropriately). He does not believe the District has the ability to successfully implement this plan. In particular, [DIRECTOR] and [TEACHER] both believe that the lack of a consistent group of peers and daily social skills group and

practice are important elements missing from the proposed IEP. [DIRECTOR] also believes that the plan lacks sufficient provisions for role playing with peers and interaction with multiple staff working together during the day.

58. Between May 15, 2007 and August 1, 2007 neither the Parents nor [PRIVATE SCHOOL] provided specific suggestions for modifications or alternatives to the proposed IEP and transition plan discussed at the May 15 IEP team meeting. The Parents were willing to work with the District to develop what they considered to be an appropriate plan placing the Student in the District, but they objected to the May 15, 2007 proposal for the reasons described above.

59. The evidence did not establish that the proposed IEP and transition plan would be any more stressful for the Student than alternatives within the District that might be more acceptable to the Parents. Similarly, the evidence did not establish that a gradual transition to [ELEMENTARY SCHOOL] would be any more stressful than an abrupt change from one setting to another.

60. On August 1, 2007 the District sent the Parents a letter informing them that the May 15 IEP proposal would be implemented at [ELEMENTARY SCHOOL] beginning in August, 2007. In this letter the District described the nature of the transition plan and the reasons for its implementation, including the following information:

A. The Student will be in a self-contained setting, initially one day per week at [ELEMENTARY SCHOOL].

B. [PRIVATE SCHOOL] setting is not appropriate because: the interventions at [PRIVATE SCHOOL] are not unique and can be replicated in a public school; the Student can not interact with typically developing peers at [PRIVATE SCHOOL]; the District has a traumatic brain injury team and [PRIVATE SCHOOL] has no similar resource; and attendance at [PRIVATE SCHOOL] requires a two hour commute each day.

C. Data from various sources, including [PRIVATE SCHOOL] staff input, observations of the Student at [PRIVATE SCHOOL], progress reports and triennial assessment data indicated that while the Student continued to demonstrate inappropriate behaviors at home his behavior was acceptable in the school setting and he was making slow academic progress.

D. Access to typically developing peers at [ELEMENTARY SCHOOL] makes placement at that school a less restrictive environment than [PRIVATE SCHOOL].

E. The District would replicate the Student's program at [PRIVATE SCHOOL], which was an idea suggested by the Parents.

F. Transitioning the Student in the 2007-08 school year allows him to move on to middle school with his peer group from [ELEMENTARY SCHOOL] rather than requiring a jump directly to an unfamiliar middle school, which could create additional stress and anxiety.

61. The Parents filed a request for a due process hearing after receiving the District's August 1, 2007 letter. The Student has remained at [PRIVATE SCHOOL] pending the resolution of this due process proceeding, pursuant to the stay-put provisions of the IDEA.

62. The evidence presented differing expert opinions regarding whether the Student's program at [PRIVATE SCHOOL] was more appropriate than the proposed IEP of May 15, 2007. However, no evidence was presented that if the May 15 IEP were implemented there would be a likelihood that the Student would regress from the progress he was making at [PRIVATE SCHOOL].

### **Special Education Services in the District**

63. The District serves 1,850 special education students, including approximately 60 students with autism, 40 students with traumatic brain injuries and many students with multiple disabilities. Like the Student, many of the autistic children have mental health issues and other problematic factors.

64. The autistic students in the District require levels of service ranging from minimal special education support to significant support. Compared to the universe of autistic children served by the District the Student is moderately impaired. The Student's educational needs are not uncommon compared to the needs of other special education students served by the District.

65. The District maintains a multi-disciplinary autism team that consults with special education teachers throughout the District. The District also has a multi-disciplinary behavior support team and a traumatic brain injury team, both of which provide support and consultation throughout the District. Schools also have social workers to support the special education teams. In addition, the District has contracted with a behavioral consultant to work with the Student and, if they wish to do so, the Parents.

66. The District has the staff and programs that can provide the Student with the same instruction, curriculum and interventions provided to him at [PRIVATE SCHOOL].

67. The IHO finds, from a consideration of all of the evidence, that the District has available trained and adequate staff and appropriate facilities and programs such that the District is able to provide the Student with an appropriate

education at [ELEMENTARY SCHOOL].<sup>3</sup> No evidence was presented regarding the availability of other programs within the District that would be more appropriate for the Student than the [ELEMENTARY SCHOOL] placement described in the May 15, 2007 IEP.

#### IV. DISCUSSION AND CONCLUSIONS

##### A. Requirement of a Free Appropriate Public Education

1. The IDEA requires that disabled students receive a free appropriate public education (FAPE). 20 USC §1412 (a)(1)(A). In *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) (*Rowley*) the United States Supreme Court held that the IDEA's minimum requirement is that the state provide a disabled student with (1) access to specialized instruction and related services; (2) which are individually designed; (3) to provide educational benefit to the student. *Rowley* at 201. The IDEA is designed to enable children with disabilities to have access to a FAPE designed to meet their particular needs. *O'Toole v. Olathe District Schools Unified District No. 233*, 144 F.3d 692, 698 (10th Cir. 1998); *Murray v. Montrose County School District RE1-J*, 51 F.3d 921, 925 (10th Cir. 1995).

The IDEA requires that a student receive some educational benefit in order to obtain a FAPE. The law does not require a school district to provide services needed to maximize a student's educational potential. *Rowley* at 198-200; *Johnson v. Independent School District No. 4 of Bixby*, 921 F. 2d 1022, 1028-29 (10th Cir. 1990); *Urban v. Jefferson County School District R-1*, 870 F. Supp. 1558, 1562 (D. Colo. 1994). A school district provides the required educational benefit when the student is making progress toward his educational goals. See *O'Toole v. Olathe District Schools Unified District No. 233*, *supra* at 707 n. 20. *Rowley* established that if a state educational agency complies with the procedures of the IDEA, and if the individualized education program developed pursuant to those procedures is reasonably calculated to enable the student to receive educational benefit, the state has complied with the IDEA. *Rowley* at 206-07; *O'Toole v. Olathe District Schools Unified District No. 233*, *supra* at 701; *Johnson v. Independent School District No. 4 of Bixby*, *supra* at 1025-26.

The parties agree that the Student is eligible for special education services and the Parents do not contend in this due process hearing that the District failed to comply with the procedures of the IDEA. The only issue in this case is whether the IEP proposed for the Student provides him with a free appropriate public education in the least restrictive environment. For the reasons discussed

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3. Regardless of whether a representative of the District stated at the February 7, 2006 IEP team meeting that at that time the District had exhausted all levels of intervention (see Findings of Fact, Paragraph 29), the evidence establishes that as of August, 2007 the District was capable of providing appropriate services to the Student.



below the IHO concludes that the proposed May 15, 2007 IEP and transition plan provide the Student with a free appropriate public education.

2. The fact that the Student's placement will change under the May 15 IEP proposal, with the stress and inconsistency that of necessity will result from any transition, is not a sufficient reason to find the proposed IEP and transition plan to be inadequate. Any change in placement will necessarily result in challenges that could be avoided if the Student stayed at [PRIVATE SCHOOL]. However, neither the Parents nor the District intended [PRIVATE SCHOOL] to be a permanent placement for the Student, and the Parents do not object to a transition from [PRIVATE SCHOOL] to some other setting within the District; they only disagree with the proposed placement at [ELEMENTARY SCHOOL]. As found above, the evidence did not establish that the May 15 proposal would be more stressful for the Student than other alternatives within the District that might be more acceptable to the Parents (see Findings of Fact, Paragraph 59).<sup>4</sup>

3. The Parents object to several aspects of the May 15, 2007 IEP and transition plan. These objections reflect a general concern with the Student's transition, a difference of opinion regarding educational methodology, and satisfaction with and trust in the Student's program at [PRIVATE SCHOOL] (as opposed to their lack of trust in the District's ability to provide a FAPE).<sup>5</sup> Nevertheless, a consideration of these objections, either individually or collectively, does not result in the May 15 plan denying the Student a free appropriate public education.

The Parents' major concern, as expressed in the evidence at the hearing, is that the Student will interact with typically developing peers at [ELEMENTARY SCHOOL], rather than with the developmentally disabled children with whom he is being educated at [PRIVATE SCHOOL]. However, even the evidence presented by the Parents acknowledged that interaction with typically developing peers could have a positive effect if accomplished with adequate adult supervision, and the proposed IEP and transition plan provide for consistent adult supervision for the Student.

In addition, the divergent views of the parties regarding interaction with peers represent a difference in educational methodology. The IHO can not use the due process hearing as a forum for deciding between competing educational

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4. The Parents argued at the hearing that the District failed to consider other placements within the District that are smaller, quieter and that more closely replicate the environment at [PRIVATE SCHOOL]. However, no evidence was presented regarding any placement within the District other than at [ELEMENTARY SCHOOL]. The IHO therefore cannot consider the existence of other possible alternative placements within the District in deciding whether the May 15, 2007 IEP and transition plan afforded the Student a free appropriate public education.

5. The District's attempt to cancel its contract with [PRIVATE SCHOOL] in August, 2006, without a transition plan in place, understandably eroded the Parents' confidence in the District. Nevertheless, that evidence did not establish that as of August 2007 the District would not attempt to implement the proposed IEP and transition plan in good faith.

methodologies; the IDEA does not permit an IHO to substitute his notions of sound educational policy for those of school administrators. See *Rowley* at 206-08; *Systema v. Academy School District No. 20*, 46 IDELR 71, 106 LRP 46357 (D. Colo. June 7, 2006). District Judge Matsch, in his opinion in the *Systema* case, quoted *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988) as follows: “parents, no matter how well-motivated, do not have a right . . . to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child”.<sup>6</sup> Judge Matsch also noted that experts in autism hold differing opinions about what type of program is best and that the courts must defer to the judgment of education experts who design an IEP as long as the child receives some educational benefit and is educated alongside non-disabled classmates to the maximum extent possible (citing *Gill v. Columbia 93 School District*, 217 F.3d 1027, 1038 (8<sup>th</sup> Cir. 2000)).

Therefore, the District has not denied the Student a FAPE simply because it has chosen a methodology that exposes the Student to typically developing peers. In any event, the evidence did not establish that the District’s chosen method was educationally inadequate or was not designed to provide educational benefit.

4. The Parents also argue that the May 15 proposed plan is in essence the same as that provided by the October 18, 2005 IEP. The Parents assert that the Student did not do well under that earlier plan and that he will be similarly unsuccessful if the District implements the currently proposed plan. However, the circumstances as of August 1, 2007 differed significantly from those at the time of the October, 2005 IEP. The earlier IEP contemplated the Student being completely isolated from other students, while the May 15, 2007 proposal anticipates his integration with peers, both typical and developmentally disabled depending on the context, as quickly as the Student is able to accept that interaction. In addition, the Student has progressed significantly in his behavior and ability to be successful in school between October, 2005 and May, 2007. The relevant consideration is the Student’s level of functioning in school as of the summer of 2007, not his level in the fall of 2005. Considering these facts, the Student’s failure to succeed under the October, 2005 IEP is not a predictor that he will also fail under the May, 2007 proposal.

5. The Parents note that the proposed IEP and transition plan contain many variables, such as the rate of integration with peers, whether the Student will interact with peers developmentally similar to the Student or with typically developing peers, and the rate of the complete transition out of [PRIVATE SCHOOL]. The Parents claim that the plan is in essence an experiment with the Student’s education and socialization. However, as noted above the Parents are not adverse to any change in placement. Any move from [PRIVATE SCHOOL] could cause stress and inconsistency in the Student’s life, and in that sense any

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6. To the same effect, see *Tucker v. Calloway County Board of Education*, 136 F.3d 495, 506 (6<sup>th</sup> Cir. 1998).

change is an “experiment”. That fact alone does not render the transition plan inappropriate.

The transition plan is designed to allow the District to assess the Student’s progress at [ELEMENTARY SCHOOL] and to adjust his program in a manner that will afford him the best opportunity to achieve educational benefit. The plan’s flexibility, rather than being an experiment, is designed to benefit the Student by bringing him along in his transition at a rate that is neither too fast nor too slow. The flexibility of this plan does not render it inappropriate.<sup>7</sup>

6. The Parents are also concerned with the lack of a consistent set of peers at [ELEMENTARY SCHOOL]. However, as found, the IEP contemplates eventually teaming the Student with from one to three peers to work with him consistently in his academic instruction and at lunch and recess.

7. The Parents assert that the educational setting for the Student at [ELEMENTARY SCHOOL] will not be a natural environment because he will initially be taught in a segregated setting. However, that setting is designed to be temporary. The transition plan provides that the Student will eventually be interacting with peers and many adults and will have the ability to practice social skills throughout the day.

8. The IHO has considered of all of the evidence and the arguments of the Parents presented at this hearing. Having done so the IHO concludes that the proposed IEP of May 15, 2007, including the transition plan, was reasonably calculated to enable the Student to receive educational benefit. The plan provided the Student with access to specialized instruction and related services which were individually designed to provide him with educational benefit. In reaching this conclusion the IHO has considered the following matters, among others:

A. The IEP, including the transition plan, was individually designed with the Student’s particular educational needs in mind. The IEP meets the Student’s needs for one-on-one or small group instruction and for an educational environment that is highly structured and presents minimal distractions. The IEP also provides for direct social skills instruction, coaching and practice throughout the day, in both educational settings and non-educational settings such as lunch and recess (this practice may not be available with peers immediately, but the IEP is designed to introduce social skills practice

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7. Flexibility in a transition plan was considered in *A.K. v. Alexandria City School Board*, 409 F. Supp. 2d 689 (E.D. Va. 2005), *rev’d on other grounds*, 484 F.3d 672 (4<sup>th</sup> Cir. 2007), *cert. den.* \_\_\_ U.S. \_\_\_ (January 22, 2008). In that case the district court agreed with a hearing officer’s conclusion that a flexible approach to transition services was an appropriate means to address the stress or confusion that may result from a student’s placement in a new educational environment. 409 F. Supp. 2d at 694.

with peers at the earliest opportunity). The IEP provides for visual and verbal feedback, repetition and frequent reinforcement.

B. The IEP provides for necessary related services such as occupational therapy, speech/language services and a resource room teacher.<sup>8</sup>

C. The IEP was designed in many respects to replicate the Student's successful program at [PRIVATE SCHOOL]. His schedule at [ELEMENTARY SCHOOL] would be the same as at [PRIVATE SCHOOL]. The IEP's goals and objectives are the same as at [PRIVATE SCHOOL], as is the method of delivering instruction (one-on-one or small group teaching).

D. Even though [PRIVATE SCHOOL] experience was of necessity different from the proposed placement at [ELEMENTARY SCHOOL], those differences do not render the proposed IEP inappropriate. First, while the larger environment of the [ELEMENTARY SCHOOL] presents challenges in easing the Student's transition and avoiding over stimulation, that fact does not render [ELEMENTARY SCHOOL] an inappropriate placement. The District has included steps in the transition plan to reduce the initial impact of a larger school and to gradually increase the Student's exposure to the larger environment. In addition, the fact that the IEP contemplates exposure to typically developing peers rather than the developmentally disabled peers at [PRIVATE SCHOOL] reflects a difference of opinion in methodology in educating autistic children; the evidence did not establish that the District's chosen method was inappropriate or not designed to provide educational benefit. Finally, even though the Student is doing well at [PRIVATE SCHOOL], the fact that a child does well in one setting does not automatically lead to the conclusion that an alternative placement or IEP is inappropriate. *O'Toole v. Olathe District Schools Unified District No. 233, supra* at 708 (an IEP is not inadequate simply because the child makes better progress in a different program).

E. The District has the trained staff capable of delivering an educational program to a child with the Student's diagnoses and needs. The Student would interact with several adults during the day, including a resource room teacher, school counselor, school psychologist and a behavioral specialist.<sup>9</sup>

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8. At the hearing the Parents raised questions regarding the sufficiency of the related services identified in the May 15, 2007 IEP. The due process complaint alleges only that the Student's placement and program denied him a FAPE in the least restrictive environment. The complaint makes no mention of an inadequacy of related services and alleges no facts regarding such a claim. The 2004 amendments to the IDEA prohibit the IHO from considering any claim regarding related services in this proceeding because that claim was not specified in the request for a due process hearing. 20 USC § 1415 (b)(7)(A)(ii)(III), (f)(3)(B); 34 CFR §300.511(d).

9. The District denies that it agreed in the February, 2006 IEP meeting at [PRIVATE SCHOOL] that it had tried all levels of intervention for the Student. Even if this statement were true in February, 2006, it does not follow that eighteen months later the District is incapable of

F. The plan provides for the services of a behavioral consultant who initially would be with the Student throughout the day and would support other [ELEMENTARY SCHOOL] staff. The provision of this service to ensure consistency in behavioral expectations and interventions is similar to the structure provided to the Student at [PRIVATE SCHOOL].

G. The Parents do not object to all transitions for the Student out of [PRIVATE SCHOOL], but do contest the appropriateness of the May 15, 2007 transition plan. Any new placement will involve changes in transportation, classmates and physical environment that may be stressful for the Student. As discussed above, the evidence did not establish that the proposed IEP and transition plan would be any more stressful for the Student than alternative placements within the District that would be more acceptable to the Parents. Similarly, the evidence did not establish that, despite the initial inconsistency in the Student's days, a gradual transition to [ELEMENTARY SCHOOL] would be any more stressful than an abrupt change from one setting to another.

H. [DIRECTOR] acknowledged at the hearing that the IEP incorporated many aspects of [PRIVATE SCHOOL] program. His concern was that the proposed IEP was not a comprehensive and cohesive plan, with all of the people who would work with the Student being trained, knowledgeable about his program, and aware of what the Student is doing at all times and how to deal with him appropriately. However, the evidence established that all of these aspects of a plan that [DIRECTOR] felt were missing in fact existed in the proposed IEP and transition plan.

I. As the IHO has found, no evidence was presented that if the May 15 IEP were implemented there would be a likelihood that the Student would regress from the progress he was making at [PRIVATE SCHOOL].

9. The conclusion reached above is consistent with other hearing officer decisions under the IDEA. For example, in *Department of Education, State of Hawaii*, 49 IDELR 28, 107 LRP 59595 (SEA HI 2007) a 5 year old student with significant developmental delays was initially placed in home based special education with related services. After the student made progress in learning pre-school skills at home the student was slowly transitioned into pre-school, starting with a few hours a week. The time in school was gradually increased every week while the remainder of the student's educational program was delivered at home. The IHO concluded that this transition provided a FAPE. As in the present case the transition plan was based on the student's individual needs and provided a slow transition to the new setting. The classroom, students, teachers, support and related services all were appropriate to the

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serving the Student, considering the progress the Student has made in the interim at [PRIVATE SCHOOL]. See footnote 3.

student's unique needs and the school setting provided a greater opportunity to generalize the skills learned.

Similarly, in *Matter of Student with Disability, Connecticut State Educational Agency*, 33 IDELR 263, 33 LRP 6543 (Nov. 13, 2000) the student was making a transition from a private setting to a school district placement closer to the student's home. While the parents in that case did not object to the goals and objectives in the IEP they were concerned with the student's ability to adjust to change. The IEP team considered the parents' concerns. The hearing officer concluded that, as in the present case, the school district provided a FAPE because the student's unique needs were considered, the program could be implemented by the staff at the district's school, and the IEP was calculated to afford more than reasonable educational benefit. Similar to the Tenth Circuit's conclusion in *O'Toole v. Olathe District Schools Unified District No. 233, supra* at 708, the hearing officer noted that if the school district could provide FAPE at its proposed placement it did not matter that another school could also provide an appropriate or even better placement.

These hearing officer decisions are illustrative of the conclusions reached in this case. They recognize that where, as here, an IEP and transition plan take into consideration a student's unique needs and can be implemented by a school district, a change in placement, even one with a gradual transition, does not deny a student a FAPE, regardless of concerns about the impact of change on that student.

## **B. Least Restrictive Environment**

The IHO also concludes that the Student's proposed placement at [ELEMENTARY SCHOOL] is in the least restrictive environment (LRE). The Parents argue that [ELEMENTARY SCHOOL] is not the Student's LRE due to the provisions of the transition plan that would initially place the Student in a self-contained classroom, with no other students and only his instructor present. According to the Parents, [PRIVATE SCHOOL] is less restrictive because the Student already interacts with all of the students at that school in class, at lunch and at recess.

1. The IDEA requires that children be educated in regular classrooms to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5)(A). Colorado regulations in effect in August, 2007 defined the least restrictive environment as an environment in which a child with disabilities is educated with children who do not have disabilities, unless (1) the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, or (2) when provided with supplementary aids and services, the nature or severity of the disability is so disruptive that the education of other children in such classes would be significantly impaired. See prior regulations at 1 CCR § 301-8, 2220-R-5.02. Educating children in the least

restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements. *Murray v. Montrose County School District RE1-J*, *supra* at 926.

The Tenth Circuit Court of Appeals addressed the LRE requirement in *L.B. v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004). In that case the court applied the two-part test adopted in *Daniel R.R. v. Board of Education*, 874 F.2d 1036, 1048 (5th Cir. 1989). Under that test it must be determined whether: (1) education in a regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily; and (2) if not, if the school district has mainstreamed the child to the maximum extent appropriate. *L.B. v. Nebo School District*, *supra* at 976.

2. The above authorities reflect the IDEA's preference for a student to be educated with typically developing peers to the maximum extent appropriate. Applying these principles the IHO concludes that the Student's placement at [ELEMENTARY SCHOOL] provides him with an education in the least restrictive environment when compared to [PRIVATE SCHOOL]. Continued placement at [PRIVATE SCHOOL] eliminates any possibility that the Student will be educated in a regular classroom or with children who are not disabled. The placement at [ELEMENTARY SCHOOL] provides the opportunity for the Student eventually to interact with typically developing peers at lunch and recess and possibly to spend part of his day in a regular classroom or in specials with typically developing peers.

3. The Parents' argument that [PRIVATE SCHOOL] provides the Student with the least restrictive environment assumes that he will never leave the self contained classroom in which he will initially be placed under the transition plan, never come and go to school at the same time as his peers, and never eat lunch or have recess with other children at [ELEMENTARY SCHOOL]. However, contrary to this assumption, the goal of the plan is to move the Student out of his self-contained environment and to have him interact with peers as soon as possible, which could be as early as his second week at [ELEMENTARY SCHOOL]. To conclude that he will remain in an isolated setting throughout his public school experience would require impermissible speculation. The expectation of the transition plan is to the contrary.

4. The court in *Nebo* noted that the substantive provisions of the IDEA require both that a school district must provide a child with a FAPE *and* that the FAPE be provided to the maximum extent appropriate in the least restrictive environment. *L.B. v. Nebo School District*, *supra* at 975, n. 13. The Parents therefore argue [PRIVATE SCHOOL] is the Student's LRE because the District is unable to provide a FAPE at [ELEMENTARY SCHOOL]. However, the IHO has concluded that the District can provide a FAPE at [ELEMENTARY SCHOOL]. When two appropriate environments are available, the District must place the

child in the environment that is the least restrictive. In this case, that LRE is at [ELEMENTARY SCHOOL].

## V. DECISION

A. Based upon the above findings and conclusions, it is the decision of the Impartial Hearing Officer that the District's proposed IEP for the Student for the 2007-08 school year, which includes a plan for the Student's transition from [PRIVATE SCHOOL] to [ELEMENTARY SCHOOL], provides the Student a free appropriate public education in the least restrictive environment. The Parents' request for relief is denied and dismissed.

B. The proposed IEP and transition plan of May 15, 2007 was designed to go into effect in August, 2007 with the transition to [ELEMENTARY SCHOOL] to be complete by January, 2008. However, as a result of this due process proceeding the IEP and transition plan have not yet been implemented. Because the focus of this due process hearing was the appropriateness of the IEP at the time it was developed the evidence did not consider whether there have been changes in the Student's circumstances in the interim that would warrant a modification to the IEP and transition plan. At a minimum, the IEP team must consider the impact of the passage of the past six months on the content and implementation of the transition plan. The District is therefore ordered to convene an IEP team meeting within 30 days of the date of this decision to consider any appropriate modifications to the IEP or the transition plan.

## VI. APPEAL RIGHTS

A copy of the parties' appeal rights is enclosed with this decision. 1 CCR 301-8, 2220-R-6.02(7)(j) through (m).

DATED: February \_\_\_\_\_, 2008

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MARSHALL A. SNIDER  
Impartial Hearing Officer



## CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this **IMPARTIAL HEARING OFFICER'S FINDINGS AND DECISION** on the parties by certified mail, postage prepaid, on February \_\_\_\_\_, 2008, properly addressed to the following:

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An additional copy has also been mailed to:

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Marshall A. Snider