

DECISION

[STUDENT], Student, by [FATHER] and [MOTHER], Parents,
Petitioner,

vs.

CHEYENNE MOUNTAIN SCHOOL DISTRICT #12, Respondent.

Hearing occurred herein pursuant to notice on 12/4/08 and 12/5/08.¹

Petitioner appeared *pro se* by the Student's Father. The Student's Mother voluntarily absented herself, per Father, due in part to her limited grasp of English. Although language for the hearing was discussed at the Pre-Hearing Conference and then Petitioner had agreed the hearing be conducted in English, at the start of the hearing the undersigned offered to obtain a Korean language interpreter as Korean is Mother's native language. On behalf of Petitioner, Father waived an interpreter and asked to proceed without Mother's presence. Mother had not been listed by either party as being a potential witness for the hearing.

Respondent appeared by Kelly Dude, Esq.

[STUDENT] is referenced in this Decision by the title Student. The title Petitioner herein is a reference collectively to the Student and his Parents. Reference to [FATHER], the Student's Father, is by using the title Father. Reference to [MOTHER], the Student's Mother, is by using the title Mother.

Joint exhibits A through P were admitted, along with Exhibits 1-15. After close of the hearing, Exhibit 16 was offered by Respondent and admitted without objection from Petitioner.

As noted in Procedural Order #6, after the hearing Petitioner submitted a document I treated, without objection from Respondent, as part of Petitioner's rebuttal closing argument. By email dated 12-9-08, Respondent submitted what I treated as sur-rebuttal to Petitioner's rebuttal closing argument.

Also on 12-9-08, Respondent submitted a proposed revision to Paragraph 10 of the

¹ It was recorded by Resling Reporting Service, 18 E. Fountain Blvd., Colorado Springs CO 80903-4127 (719-471-2966).

Student's Individual Education Plan.²

After hearing the testimony, reviewing the exhibits and being sufficiently advised, I make the following FINDINGS:

1. The Student resides within the Respondent's district and is entitled to receive his education from Respondent.
2. The Student was born in [YEAR] and, based on his date of birth, would be a [GRADE LEVEL] grader.
3. The Student has been properly identified by Respondent as being entitled to receive special education and related services due to severe autism and irritable bowel syndrome (hereinafter IBS).
4. Based only on his residential address as opposed to his actual educational needs, the Student would have been assigned to or at least offered assignment to a regular [GRADE LEVEL] grade program at [ELEMENTARY SCHOOL #1].
5. Due to the Student's disabilities, he is and has been assigned to a special program at [ELEMENTARY SCHOOL #2].
6. Both [ELEMENTARY SCHOOL #1] and [ELEMENTARY SCHOOL #2] are public schools operated by Respondent.
7. The Student was assigned to and attended [ELEMENTARY SCHOOL #2] for school year 2007-2008, where his educational services were to be provided via his Individual Education Program, herein after IEP.
8. He returned to [ELEMENTARY SCHOOL #2] for the 2008-2009 school year, during which his educational services were to be provided via a different IEP. Except as otherwise noted herein, references to the Student's IEP is to the IEP dated 9/18/08.
9. On or about 10-16-08, Petitioner-Parents refused to send the Student to school. He has not attended any school subsequently through and including the dates of the hearing.
10. On or about 11-14-08, Respondent informed the Student's parents that Respondent intended to take action against them under the Colorado mandatory school attendance law as the Student was AWOL.
 - A. The Student's parents responded that they intended to home-school the Student.

² Exhibit C contains two such plans, one dated 9/18/08 and the other, immediately prior plan, dated 9/18/07.

- B. As of the date of the hearing, no home school program formally approved by Respondent was in place.
11. Previously, the Student attended special education programs in schools in [OTHER COUNTRY], [OTHER STATE] and most recently prior to moving to Colorado, in [OTHER STATE].
 12. Some sort of dispute arose between the Student's parents and his school in [OTHER STATE]. They then stopped sending him to school and apparently provided him with some sort of schooling at home.
 13. For the 2007-2008 school year, and for the 2008-2009 school year until 10-16-08, the Student attended Respondent's Communication Social/Sensory Integration Program (hereafter CSSI program), physically located at [ELEMENTARY SCHOOL #2].
 14. Respondent's CSSI program was started several years ago. The impetus for its creation was Respondent's feeling that its then existing program for elementary school age children with autism needed improvement. As a result, Respondent hired [AUTISM SPECIALIST], who was selected in whole or in substantial part due to her extensive education, training and background in dealing with the educational needs of children with autism. She was primarily responsible for the design of and subsequent implementation of the CSSI program.
 15. The CSSI program was designed around the educational philosophy that elementary school aged children with severe autism typically require a program of intensive, multi-disciplinary integrated services which constantly address multiple educational deficiencies typically associated with autism throughout the school day. Examples of such typical educational age-appropriate deficiencies include general academics; receptive and expressive oral and written communication; behavior, including endangering one's self and others and extreme frustration when presented with educational challenges; concentration; motor skills; and sensory processing.
 16. Approximately 7-10 elementary school children with autism attend the CSSI program.
 17. Rather than offer multiple CSSI programs at different locations for elementary school children within Respondent's district who have severe autism, Respondent made a management decision to establish one program and to physically locate it at [ELEMENTARY SCHOOL #2]. The reasons for establishment of one program include fiscal constraints as well as the educational philosophy that isolating children with autism is inappropriate to educational growth in most instances.
 18. The physical plant for the CSSI program includes a special room, the CSSI Lab; adjoining rooms containing special equipment; and a Sensory Room.
 19. CSSI students, including the Student herein, have access to a regular [GRADE LEVEL] grade classroom and non-disabled students as they are able to tolerate and benefit from

same. Although the Student spent most of each school day in the CSSI Lab, he was mainstreamed for very short sessions on an “able to handle it” basis into what but for his disability would have been a “regular” [GRADE LEVEL] grade class for a limited amount of time daily. He was also mainstreamed a bit into other school activities. No evidence was presented that the Student had the ability to benefit from significantly less time in the CSSI Lab area and instead having significantly more time being mainstreamed.

20. The CSSI program has a staff/student ratio at or very close to 1:1. Staff includes a special education teacher plus several paraprofessionals, all carefully selected for a strong background, education and training and at least two years experience in working with children with autism. I especially find, particularly from the testimony of Respondent’s Special Education Director, that this highly trained staff is absolutely essential for the educational progress of the Student.
21. The CSSI paraprofessionals work under the direction and supervision of the special education teacher. Each typically has the assignment of and responsibility for only one CSSI student at any given time. Any given paraprofessional’s duty assignment to a specific CSSI student varies throughout the school day as opposed to each paraprofessional being assigned the same student throughout the school day or the school year.
22. The decision to have different CSSI paraprofessionals work with different students was based on a very specific educational philosophy.
 - A. Respondent does now view its job as ending with the close of the school day. Instead, Respondent has a much more global view of education in that Respondent believes the task of education is to prepare students for real life beyond school.
 - B. Thus, equipping students with the skills to achieve transference of what is taught in school into actual real life outside of school is a core belief. Respondent’s decision to alternate the CSSI paraprofessionals with CSSI students has as a specific goal teaching the CSSI students to adapt to others, much as the students will find in real life outside of school, as opposed to providing the CSSI students with a safe but artificial cocoon of not having to adapt to different adults.
 - C. Use of rotating staff avoids the Student becoming dependant upon one person which would result in serious problems whenever that person was absent due to illness, training, vacation, resignation, or reassignment to another school.
 - D. Respondent’s educational philosophy includes the belief that especially due to the nature of severe autism and the realities of the real world outside of any school, development of the skills needed to adapt to change are essential.

23. Petitioner failed to offer any evidence contrary to Respondent's evidence that, for the reasons above noted, the "rotating paraprofessional/student" methodology is inappropriate or is otherwise not needed in order for the CSSI students in general or the Student herein in particular to receive a free appropriate public education (herein after FAPE).
24. To the contrary, I find from the testimony in general and particularly from that of [AUTISM SPECIALIST] and the Student's special education teacher that the "rotating paraprofessional/student" methodology is needed in order that the Student be afforded FAPE.
25. The annual salary of one special education teacher and one paraprofessional with expertise in educating elementary school autistic children is about \$60,000 to \$80,000.
26. In addition to the specially trained special education teacher and paraprofessionals, CSSI students have access to other professionals. The Student receives services from a Speech Therapist and from an Occupational Therapist. I find from the testimony of the Speech Therapist that provision of her services to the Student more or less the first thing in the morning is necessary for the Student to have substantial benefit from same. Although the specific professionals in these fields who provide services to the Student have special expertise in working with children with autism, I find from the testimony in general and that of Respondent's Special Education Director in particular that special expertise with children with autism is less important for these professionals than the corresponding expertise in working with children with autism required by the CSSI special education teacher and the CSSI paraprofessionals.
27. One component of the CSSI program is a Sensory Room, accurately described in some detail in Exhibits 1, K and 14. It has its own door which lacks a lock, and a viewing window. Within or immediately adjacent to it is extensive equipment, including a special sensory swing, special toys, a stationary bike, and a trampoline. Use herein of the term Sensory Room includes the physical plant itself plus all of the sensory equipment, including those pieces of sensory equipment that are physically outside of the Sensory Room's walls.
28. The Sensory Room has at least three major functions:
 - A. A tactile learning function, in that CSSI students can use the specialized equipment to address their various tactile deficiencies. The Sensory Room was used by the Student for this purpose when he attended [ELEMENTARY SCHOOL #2].
 - B. A fun function, in that time in the Sensory Room may be and frequently is selected by CSSI students as reward for an educational achievement or good behavior or the like, somewhat akin to recess. The Student did, in fact, self-select the Sensory Room on many occasions when he attended [ELEMENTARY

SCHOOL #2] and was given a “reward choice.”

- C. A calming function, in that time in the Room is used by staff to help a student overcome a behavioral crisis or other overstimulation that interferes with learning. The Sensory Room was used by the Student for this purpose when he attended [ELEMENTARY SCHOOL #2].
29. In addition to severe academic limitations directly related to autism, the Student has severe behavioral problems directly related to autism. These include physical assaults on staff and other students; pinching himself to the degree that he has visible bruises; actions which might well be viewed as sexually inappropriate behaviors; and running inside the school and on the outside playground, which occasionally has resulted in minor injuries.
30. Such misbehavior has occurred whether or not the Student was in “touching distance” of staff. For example, the Speech Therapist testified to an incident in which she was sitting more or less shoulder to shoulder at a desk with the Student while providing him with Speech Therapy. Suddenly and without any warning, the Student reached over the desk and assaulted another student.
31. The Student’s assaultive and sexually inappropriate behaviors are such that they could well be the basis in some districts for suspension and eventual placement in an isolating educational environment. Rather remarkably, Respondent’s staff appear to take being assaulted and the Student’s other acting out more or less in stride.
32. Generally, when the Student is getting out of control, a variety of techniques are used to try to obtain behavior compliance.
- A. For example, when the misbehavior is grabbing or hitting or pulling down another student’s pants, the Student might be instructed “good hands.” That is the Student’s cue to stop whatever he is doing with his hands and instead place them on the outline of hands on a paper kept on his desk that has the outline of hands drawn on it.
 - B. As the Student’s misbehavior might be related to cramping or similar manifestations of his IBS, often he is given Gas-X or a similar over the counter medication to try to relieve what might be IBS symptoms.
 - C. A heating pad and taking the Student for a walk are also used as behavior calming methods.
 - D. Another calming method used is “time out,” in which the Student’s participation in whatever activity had been occurring stops for a few minutes during which time the Student is told to stand quietly wherever he might have been when the problem was noted, such as standing next to his desk.
33. However, if other methods fail or if the out of control behavior is presenting a serious,

probable imminent threat of bodily harm to the Student and/or others and persists, the Student is typically placed alone in the Sensory Room.

- A. Having the Student alone in the Sensory Room has multiple purposes, including protection of others from the Student, providing the Student with safety and comfort and support in times of stress, positive behavior support, and self-regulated, constructive de-escalation of his out of control behavior.
 - B. Having the Student in the Sensory Room gives him access to a familiar and friendly setting in which to regain self-control in a location where, when the Student is enjoying good behavior, the Student is known to select to go as a special reward.
 - C. Having the Student alone helps the Student regain self-control by freeing him from the distractions of other students and their activities.
 - D. When the Student is alone in the Sensory Room, having staff present needlessly exposes them to assault.
 - E. When the Student is alone in the Sensory Room, a paraprofessional usually sits or stands in the open doorway to the Sensory Room and constantly monitors the Student.
 - F. At other times, the door is closed to limit distractions that might interfere with the Student's ability to obtain self-control and then the Student is constantly monitored through the Sensory Room's observation window.
 - G. The Student is not physically or mechanically restrained from leaving the Sensory Room and as the door is either open or unlocked, the Student has the ability to exit at his own volition.
 - H. No evidence was offered that the Student has ever attempted to depart the Sensory Room on his own volition when he has been alone in the Sensory Room for safety, behavior, or calming reasons. However, the presence of a paraprofessional sitting or standing in the open doorway likely is an effective deferent to the Student deciding he'd like to leave the Sensory Room.
 - I. No evidence exists that placement in the Sensory Room is or ever has been used by Respondent as a form of discipline of the Student, or as a threat to the Student in an attempt to control or gain compliance of the Student's behavior.
34. Although Petitioner argues that the Student being alone in the Sensory Room for reasons as noted in the immediately preceding paragraph triggers some of the Student's misbehavior, I find no credible evidence that supports that belief.
- A. There was simply no evidence, or at least no credible evidence, that the Student

views being alone in the Sensory Room as any kind of punishment or “bad” event. To the contrary, when the Student is alone in the Sensory Room for reasons as noted in the immediately preceding paragraph he has already been out of control.

- B. Although there was some evidence that the Student usually behaves better at home than at school, I find no link between that on the one hand and the Student occasionally spending time alone in the Sensory Room on the other.
 - C. I do find a link between the Student’s misbehavior at school and his educational program at school.
 - 1. The evidence in general and from the Speech Therapist, the special education teacher, and [AUTISM SPECIALIST] in particular was that educational challenges presented at school do sometimes lead to the Student being frustrated and his frustration does manifest itself in bad behavior.
 - 2. No credible evidence exists that the Student has any specifically designed educational challenges at home. To the contrary, the evidence is that Mother has her own communication limitations and no evidence exists that Mother has any teaching skills. Father works outside the home and no evidence exists that he is providing the Student at home with any formal educational opportunities. The lack of any regular challenges at home could well be one reason the Student appears to behave better at home than at school.
 - 3. Leaving the Student at baseline, i.e., never challenging him with new material or activities at school, might well result in a reduction of the Student’s bad behaviors. It would also deny the Student the opportunity to achieve any substantial educational growth, i.e., it would deny him the opportunity for a FAPE.
 - 4. Although school challenges have the undesirable side-effect of some misbehavior, the educational challenges are essential for the Student to have the opportunity to receive a FAPE.
35. I find from the testimony in general and from that of the Speech Therapist, the special education teacher, and [AUTISM SPECIALIST] in particular, that especially when the Student is engaging in behavior dangerous to himself or others, the Student being in the Sensory Room alone is often necessary in order to assist the Student in de-escalating, getting control of himself, and being able to return to his studies.
36. I find from the testimony in general and that of the Student’s special education teacher, his Speech Therapist, and the testifying paraprofessional in particular, that regular access to the existing Sensory Room or some very similar room and equipment while alone is

essential in order for the Student to have access to a FAPE.

37. Assuming space was available, the estimated cost to duplicate the Sensory Room in another school is \$58,000 for construction, plus \$14,000 for equipment.
38. For reasons not related to this case or to any specific student, for school year 2009-2010, [ELEMENTARY SCHOOL #2] will not be operated by Respondent as an elementary school *per se*. As a result, starting with the 2009-2010 school year, Respondent will move the CSSI program more or less lock, stock, barrel and personnel. A new Sensory Room will need to be physically constructed in the new location, as nothing quite like it presently exists in any of Respondent's schools other than at [ELEMENTARY SCHOOL #2]. The anticipated location for the CSSI program next school year is at [ELEMENTARY SCHOOL #1].
39. While a student in Respondent's district, the Student has made both academic and behavioral progress. Such progress was established, *inter alia*, by credible testimony from the Student's Speech Therapist, special education teacher, and [AUTISM SPECIALIST], and, *inter alia*, from Exhibit B, especially starting on page 5, and Exhibit C, page 4 (the 2007-2008 school year version). Such progress is far from insignificant.
40. No credible evidence was presented that the Student could receive a FAPE if transferred to [ELEMENTARY SCHOOL #1], even if he was provided there with a special education teacher and a paraprofessional having skills identical to those of the staff now serving him, as well as with a Sensory Room identical to the one now at [ELEMENTARY SCHOOL #2].
 - A. Such a program delivered at [ELEMENTARY SCHOOL #1] would have the Student in a CSSI program consisting of only one student, himself.
 - B. As a result, the Student would be denied the opportunity of substantial interaction with his peers, as there are no peers at [ELEMENTARY SCHOOL #1].
 - C. Such a program would be a far more restrictive environment than the one existing in the CSSI program at [ELEMENTARY SCHOOL #2].
41. No credible evidence was presented that the Student could receive a FAPE if provided four hours of homebound services, even were Respondent to provide at the Student's home a special education teacher and a paraprofessional having skills identical to those of the staff now serving him, as well as a Sensory Room identical to the one now at [ELEMENTARY SCHOOL #2].
 - A. The comments above as to the isolation of the Student being served at [ELEMENTARY SCHOOL #1] are applicable.
 - B. Homebound services would isolate the Student even more than he would be isolated were he placed at [ELEMENTARY SCHOOL #1] as he would have no

access to non-disabled age-appropriate students and instead would be denied that access, and also would have no access to physical education, art, or music as he does in his present program at [ELEMENTARY SCHOOL #2].

42. The Student's Mother and, to a lesser degree, his Father, have had interactions with school personnel. I find from substantially uncontroverted evidence that Mother is unable or unwilling to conform her behavior to basic school rules or, likely due to language and/or perhaps cultural barriers, fails to understand how to follow basic school rules. Regardless of causation, Mother has been disruptive at school.
 - A. Although the Student has access to school bus transportation, Mother has been known to bring him to school. When she does, she usually or perhaps always fails to follow school protocol regarding signing him in and leaving him with staff at the school check-in desk. Instead, Mother typically brings the Student to his CSSI Lab room. Not infrequently, her so coming into the room disrupts the teacher, paraprofessionals and the education of other students.
 - B. Not infrequently, when Mother is at school she interrupts the teacher, paraprofessionals and the education of the Student and that of other students by talking to staff while they are attempting to teach or otherwise provide educational services. The purpose of those interruptions typically is either for Mother to teach the staff how best to educate the Student or to have the staff teach Mother how to better assist the Student at home. Other times, the interruption merely is to say "hello" or "goodbye" or the like.
 - C. Mother's presence in the classroom has the potential of confusing the Student and other students as to identification of the person "in charge" at school; i.e., Mother or the staff.
43. Respondent has a procedure for classroom visitations by any parents of CSSI students. It requests 24 hour notice and a visit at a pre-approved, scheduled time. The purpose of this procedure includes trying to avoid multiple parents of the students showing up and demanding attention from staff at the same time, interruption of previously scheduled meetings, disruption of established routine, classroom distractions and the like. This procedure has been rather loosely enforced in the past. Overall, I find that procedure not to be unreasonable.

The general issue presented by this case is whether the Student's current IEP offers services that constitute a free appropriate public education per the Individuals With Disabilities Education Improvement Act of 2004 (hereinafter IDEA) and the Colorado Exceptional Children's Educational Act (ECEA). Per Procedural Orders #1 and #4, Petitioner submitted a specific request for relief. From it and the Complaint which commenced this case, and comments of the Petitioner, the specific issues presented here for resolution are:

1. Whether, in order to receive FAPE, the Student requires reassignment for a trial

period of one semester to [ELEMENTARY SCHOOL #1], with most of his educational services being delivered in that school's special education resource room. Should this occur and should both Petitioner and Respondent fail to agree that the Student's behavior showed improvement to their satisfaction, then the Student would be assigned for the remainder of the 2008-2009 school year for provision of four hours daily of homebound services to include his current speech and occupational therapy services as well as at least 30 minutes daily of math, reading, writing, and other communication skills.

2. Whether, in order to receive FAPE, the Student requires assignment to him of a paraprofessional aid skilled in working with autistic elementary school children who is not assigned to assist any other student, who attends each of the Student's occupational therapy and speech therapy sessions, and who, except for illness or similar non-work days, is the same person every day.
3. Whether, in order to receive FAPE, if the Student attends [ELEMENTARY SCHOOL #2], the Student requires his paraprofessional to be within arm's length of the Student any time the Student is in the Sensory Room.
4. Whether, in order to receive FAPE, the Student requires that Respondent allow either of his parents to observe him on an unscheduled basis, twice weekly for one hour each time at school or while receiving homebound educational services, without that parent having any interaction with the Student, any other student, or the Student's teacher, paraprofessional, occupational therapist and/or speech therapist.
5. Whether, in order to receive FAPE, the Student requires that Respondent allow either of his parents to have interaction of at least one hour per week either at one time or over several visits with the Student and the Student's teacher, paraprofessional, occupational therapist and/or speech therapist while the Student is actually receiving services, for the purpose of having the professionals teach the parents and having the the parents instruct the professionals how to best educate the Student.

The Supreme Court set a substantially low bar in the *Rowley* case for determination of the presence or lack thereof of FAPE.³ As relevant here, basically *Rowley* holds that determination of whether an IEP offers a FAPE turns on whether the IEP offers personalized instruction and support services sufficient that will permit a student to benefit educationally from same. Schools have, per *Rowley*, no obligation to offer a program to maximize the potential of a student. Instead, the general test is whether the program provides the opportunity for a student to gain some slight educational benefit. Congress has had over 25 years in which to pass legislation which, in effect, overturns *Rowley's* minimal benefits test and has failed to do so. Thus, by its inaction, Congress has accepted *Rowley's* limitations.

³ *Board of Education Of The Hendrick Hudson Central School Board v. Rowley*, 458 U.S. 176 (1982).

Here, the above Findings establish that the Student's IEP as actually delivered by Respondent easily exceeds the *Rowley* test.⁴ Overall, the program offered the Student is outstanding and, as such, wisely and to the benefit of the Student, far exceeds *Rowley's* unfortunately minimal requirements.

Petitioners appear to argue that delivery of the Student's IEP at [ELEMENTARY SCHOOL #2] instead of at [ELEMENTARY SCHOOL #1] is a *per se* violation of the least restrictive environment requirement of the law. That argument was decided adversely to Petitioners' position here in the *Murray* case.⁵

Some essential components of the Student's IEP as actually delivered are missing from the written IEP. They are identified in Findings 20, 21 and 26 above. Respondent appears to argue that "we know these are essential elements" and thus they need not be in the IEP. No authority is presented in support of that argument. That argument is rejected as being inconsistent with the law. The IEP needs to be amended as set forth in the Order below so that all the essential elements of the Student's program are found within the four corners of that document.

The existing IEP with the amendments ordered below offer the Student a FAPE. Thus, none of the IEP changes desired by Petitioner are required as a matter of law.

This typically would conclude a Decision as it requires all the above issues/requests for relief by Petitioners to be answered in the negative. However, given Petitioners' efforts in this case, I address each issue/request for relief separately in some detail.

1. Whether, in order to receive FAPE, the Student requires reassignment for a trial period of one semester to [ELEMENTARY SCHOOL #1], with most of his educational services being delivered in that school's special education resource room. Should this occur and should both Petitioner and Respondent fail to agree that the Student's behavior showed improvement to their satisfaction, then the Student would be assigned for the remainder of the 2008-2009 school year for provision of four hours daily of homebound services to include his current speech and occupational therapy services as well as at least 30 minutes daily of math, reading, writing, and other communication skills.

Everything else notwithstanding, Finding 40 above requires this be issue be resolved in the negative even were the CSSI program be recreated at [ELEMENTARY SCHOOL #1] just for this Student. Reassignment of the Student to [ELEMENTARY SCHOOL #1] would have the Student in an unnecessary and inappropriately restrictive educational environment, with no

⁴ The IEP under consideration is the IEP in Exhibit C that is dated 9/18/08, as actually delivered until the Student's parents had him cease attending school.

⁵ *Murray v. Montrose County School District Re-1J*, 51 F.3d 921 (10th Cir. 1995).

corresponding educational benefit.

It is clear that Petitioners' primary reason for seeking the move to [ELEMENTARY SCHOOL #1] is to end the Student being alone in the Sensory Room. Per Finding 33 the Student being alone in the Sensory Room is an essential element of the Student being afforded a FAPE. Thus, with a move to [ELEMENTARY SCHOOL #1], Respondent would need to create a Sensory Room at [ELEMENTARY SCHOOL #1] and the Student would be alone in the Sensory Room now and then at [ELEMENTARY SCHOOL #1].

Homebound services would be an even more restrictive environment. And, zero evidence exists that Petitioners are capable of educating, much less actually providing the Student with the opportunity for a FAPE via home-schooling. To the contrary, Petitioners' idea of home-schooling this Student appears staggeringly inappropriate given the parents' lack of any formal special education training, Father's absence from the home to go to work, Mother's language and perhaps cultural barriers, this Student's multiple needs, and the rather outstanding program now in place for the Student in the CSSI program.

It appears that one of Petitioners' goals in seeking homebound services is to reduce the educational stress on the Student that contributes to some of his bad behavior. However, were Respondent to provide homebound services, such services would include the kind of educational challenges that occasionally trigger some of the Student's misbehavior. Thus, homebound services would not achieve that goal.

2. Whether, in order to receive FAPE, the Student requires assignment to him of a paraprofessional aid skilled in working with autistic elementary school children who is not assigned to assist any other student, who attends each of the Student's occupational therapy and speech therapy sessions, and who, except for illness or similar non-work days, is the same person every day.

Per Finding 24, the "rotating" paraprofessional staff protocol now in effect is necessary for the Student to be provided the opportunity for a FAPE. The "sole" assignment proposal unnecessarily and unwisely limits the Student's educational opportunities.

3. Whether, in order to receive FAPE, if the Student attends [ELEMENTARY SCHOOL #2], the Student requires his paraprofessional to be within arm's length of the Student any time the Student is in the Sensory Room.

No evidence was presented which might support an affirmative response to this issue.

If the Petitioners' purpose is to limit the Student's misbehavior, the evidence establishes as noted in Finding 30 that having staff sitting shoulder-to-shoulder with the Student has failed to prevent the Student from assaulting another Student.

And, having staff constantly hovering sends the wrong message to the Student and is contra to the goal of providing educational services in the least restrictive environment. In real life, the Student will not have someone hovering about him 24/7. The Student needs to learn and

exercise self control. That can only be accomplished when the Student has the opportunity to fail and to learn from his failures as opposed to being artificially controlled.

4. Whether, in order to receive FAPE, the Student requires that Respondent allow either of his parents to observe him on an unscheduled basis, twice weekly for one hour each time at school or while receiving homebound educational services, without that parent having any interaction with the Student, any other student, or the Student's teacher, paraprofessional, occupational therapist and/or speech therapist.

No credible evidence establishes that the above procedure would offer any benefit or opportunity for benefit to the Student. To the contrary, having a parent at school or during delivery of homebound services on such a schedule would be disruptive to the Student. If done at school, the evidence establishes it would also be disruptive to other students.

5. Whether, in order to receive FAPE, the Student requires that Respondent allow either of his parents to have interaction of at least one hour per week either at one time or over several visits with the Student and the Student's teacher, paraprofessional, occupational therapist and/or speech therapist while the Student is actually receiving services, for the purpose of having the professionals teach the parents and having the the parents instruct the professionals how to best educate the Student.

Provision of parental counseling to enable parents to enhance school opportunities at home is a related service.⁶ However, as noted in Finding 42, such activities would be unduly disturbing to the Student, the staff, and the other students. The goal apparently sought, that of parental counseling, could be achieved by a plan for parental counseling that would not result in unnecessary disruptions. Petitioners are free to seek development of a formal parental counseling plan via another IEP meeting.

Therefore, it is ORDERED that Respondent is to forthwith amend the Student's current IEP to include that special education staff regularly working with the Student in the CSSI Lab have a strong background, education and training and at least two full school years of experience in working with children with autism in particular and elementary school aged children with autism in particular, and to include that Speech Therapy services be provided as early as possible in the morning.

It is FURTHER ORDERED that to the extent Petitioners sought or herein seek any other or different relief, such request be and hereby is DENIED.

Dated: 12-17-08

_____/s/_____
Bruce C. Bernstein

⁶ 34 C.F.R. §300.34(8)(i).

Bruce C. Bernstein, Impartial Hearing Officer
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Certificate of Service

A true copy of the within was served upon the following, along with the relevant appeals procedures attached hereto, on 12-17-08:

[FATHER] and [MOTHER] [\[EMAIL ADDRESS\]](#)
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/s/ Susan Hoppman