

DUE PROCESS HEARING

Case Number D07-02

LEA: [REDACTED] County Schools
Local Education Agency/
Initiator

COUNSEL: [REDACTED] Esquire

PARENTS: [REDACTED]
Parents of Student

COUNSEL: [REDACTED] Esquire

STUDENT: [REDACTED]

DATE OF BIRTH: [REDACTED]

DATE OF REQUEST: November 20, 2006

DATE OF HEARING: December 18, 2006

PLACE OF HEARING: [REDACTED] County Board of Education
[REDACTED]

TRANSCRIPTION: Court Stenographer

STATUS OF HEARING: Open to Public

STUDENT PRESENT: No

POST HEARING
SUBMISSIONS: January 26, 2007 (Filed by counsel for parents of the student
and by counsel for LEA)

DECISION DATE: March 31, 2007

HEARING OFFICER: Raymond G. Frere, Esquire

WITNESSES FOR STUDENT/PARENTS:

[REDACTED]

LEA-Contracted Behavioral Specialist

[REDACTED]

Homebound Teacher A

[REDACTED]

Parent of the Student

WITNESSES FOR THE LOCAL
EDUCATION AUTHORITY:

[REDACTED]

Special Education Director

[REDACTED]

County Schools

[REDACTED]

Professional Personnel Director

DUE PROCESS HEARING

PROCEDURAL BACKGROUND

A request for a hearing in this matter was made by LEA and was received by the West Virginia Department of Education on the 20th day of November, 2006. By Memorandum from the Department of Education dated the 20th day of November, 2006, I was informed of my appointment as the Impartial Hearing Officer in this matter. In keeping with the 45-day rule, the decision in this matter was due by the 4th day of January, 2007.

A Telephonic Pre-Hearing Conference Call was conducted on the 28th day of November, 2006, between this Hearing Officer, counsel for the LEA, the Director of Special Education for the LEA, the parents of the student, and counsel for the student and his parents. Another Telephonic Pre-Hearing Conference Call was scheduled for the 5th day of December, 2006, with all parties in order for the LEA to give a more specific statement of the issues to be determined at the Due Process Hearing. The Due Process Hearing was scheduled for the 18th day of December, 2006, commencing at 9:00 a.m. in the [REDACTED] County Board of Education Conference Room, [REDACTED] West Virginia and the deadline for the decision in this matter was extended at the request of all parties from the 4th day of January, 2007, to the 2nd day of February, 2007. A Pre-Hearing Conference Order dated the 29th day of November, 2006, setting forth the matters discussed during the Telephonic Pre-Hearing Conference and scheduling matters, was prepared and forwarded to all parties.

The Due Process Hearing in this matter was held on the 18th day of December, 2006, at the [REDACTED] County Board of Education Conference Room, [REDACTED], West Virginia.

Based upon a joint motion of counsel for the LEA and counsel for the student and his parents, this Impartial Hearing Officer entered an order on the 8th day of January, 2007,

extending the deadline for post-hearing submissions or Memoranda of law from the 12th day of January, 2007 to the 26th day of January, 2007, and extending the deadline for the decision in this matter from the 2nd day of February, 2007, to the 23rd day of February, 2007.

This Impartial Hearing Officer entered an Interim Order dated the 10th day of January, 2007, ordering the LEA to immediately assign to the contracted Behavioral Specialist the primary responsibility for transitioning the student to the school classroom setting as soon as possible; that the Behavioral Specialist be given full authority to implement the student's transition plan and be provided by the LEA with any and all support and personnel he deems necessary to transition the student to the classroom as expeditiously as possible; and further that any and all necessary training for the student's teachers and aides be provided by the LEA based on the Behavioral Specialist's recommendations and the transition plan. (Copy of Interim Order attached)

Counsel for the LEA submitted updates on the student's educational progress by letters to this Hearing Officer and counsel for the parents of the student dated the 8th day of February, 2007, and the 7th day of March, 2007.

Counsel for the student and his parents requested another extension of the decision deadline in this matter by Telephonic Conference Call between this Impartial Hearing Officer, counsel for the LEA, and counsel for the student and his parents on the 6th day of February, 2007. By Order dated the 17th day of February, 2007, an extension was granted with the decision being due on the 16th day of March, 2007. A further extension of the due date for the decision was granted upon the joint motion of counsel for the parties, with the decision being due on the 31st day of March, 2007.

PRELIMINARY STATEMENT

FOLLOWING THE DUE PROCESS HEARING IN THIS MATTER, COUNSEL FOR BOTH PARTIES WERE INVITED TO SUBMIT MEMORANDA INCLUDING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF THEIR RESPECTIVE POSITIONS. ALL PROPOSED FINDINGS, CONCLUSIONS AND SUPPORTING ARGUMENTS SUBMITTED BY THE PARTIES HAVE BEEN CONSIDERED. TO THE EXTENT THAT THE PROPOSED FINDINGS, CONCLUSIONS, AND ARGUMENTS ADVANCED BY THE PARTIES ARE IN ACCORDANCE WITH THE FINDINGS, CONCLUSIONS AND VIEWS AS STATED HEREIN, THEY HAVE BEEN ACCEPTED, AND TO THE EXTENT THAT THEY ARE INCONSISTENT THEREWITH, THEY HAVE BEEN REJECTED. CERTAIN PROPOSED FINDINGS AND CONCLUSIONS HAVE BEEN OMITTED AS NOT RELEVANT OR NOT NECESSARY TO A PROPER DETERMINATION OF THE MATERIAL ISSUES AS PRESENTED. TO THE EXTENT THAT THE TESTIMONY OF VARIOUS WITNESSES IS NOT IN ACCORD WITH FINDINGS AS STATED HEREIN, IT IS NOT CREDITED.

ISSUES

1. Is the student being denied a FAPE because the parents of the student have not accepted the teaching staff provided by the LEA?
2. Is the student being denied a FAPE because the mother of the student is demanding that sensory integration evaluation and training be written into the student's IEP?
3. Is the student being denied a FAPE because of a lack of reasonable cooperation from the student's mother in amending the student's current IEP and Transition Plan?
4. Is the student being denied a FAPE because he is not being provided proper homebound services by the LEA?
5. Is the student being denied a FAPE because the LEA cannot move forward with the student's education without a "perfect" IEP and Transition Plan?

FINDINGS OF FACT

1. The student is a male child, now [REDACTED] years of age, who has been determined to be an eligible disabled student who meets the criteria for autism under Policy 2419, Regulations for the Education of Exceptional Students (CSR 126-16-4.1) and who by reason thereof, is eligible to receive special education and related services.
2. The Director of Special Education (Director) has worked for the LEA for [REDACTED] years and has been Director of Special Education for [REDACTED] years. (Tr. pp. 13 & 14)
3. The Director has known the student in his elementary school setting and his parents for the past five years. (Tr. pp. 14-16)
4. The student's parents enrolled the student in an elementary school outside the school district in which he lives for the 2004-2005 school year because the program it offered for autistic students was more self-contained and gradually would work the student into the regular student population. That school had a highly-qualified, certified teacher for autism and autism mentors. (Tr. pp. 16 & 17)
5. The student's parents removed him from this school in January of 2005. They were concerned that he had been injured at school, which was not proven by an investigation. (Tr. pp. 17 & 18)
6. In March of 2005, the LEA began providing the student with homebound services. His then homebound teacher (HBA) was working on an autism certification. The student received occupational and speech therapy and also received extended school year (ESY) services in the summer of 2005 at a middle school. (Tr. pp. 18-20)

7. The student's middle school teacher suggested that he should be enrolled at the middle school for the 2005-2006 year. The school had an autistic program and his teacher was fully certified except for completion of her practicum. (Tr. pp. 20 & 21)
8. The student received a functional behavior assessment by a psychologist, while he was enrolled in the 2005 summer extended school year and in middle school. As a result, a crisis intervention and behavioral plan was prepared for him. One recommendation was that the student be wrapped in a blanket and lay on a couch to protect him from self-injury or injury to others, but the student's mother did not want him restrained in any way. (Tr. pp. 21-23)
9. The student spent about two months of the 2005-2006 school year at the middle school when his parents became very concerned about some of his behaviors and wanted him back in the homebound program. The IEP committee determined in December, 2005, that the student should be provided home-bound services. (Tr. pp. 23-25)
10. The Director attempted to find a fully-certified teacher to provide the student with homebound services for the remainder of the year. No teacher certified in autism was interested in doing home-bound services which is an afternoon voluntary program. (Tr. pp. 24 & 25)
11. A teacher certified in learning disabilities, mental impairment and behavior disorders, although not working toward a permit in autism, taught the student at home for the remainder of the 2005-2006 school year including ESY. The student's parents seem satisfied with the teacher but have concerns that she is not certified in autism. (Tr. pp. 25-27)

12. The student's IEP committee was convened for his annual review on May 3, 2006 to develop an IEP for him for the year 2006-2007. His parents were present at this meeting. No IEP was developed at this meeting. The IEP committee met on June 15, 2006, with the student's parents present. An incomplete IEP was considered on that date which called for a gradual transition of the student with the intent that the committee and staff try to have him back in school by the beginning of the 2006-2007 school year. No specific transition plan was adopted. The committee was to meet again to adopt a specific transition plan. (Tr. pp. 28-32) (LEA Exhibit No. 1)
13. A positive support behavior plan introduced by the behavioral specialist was adopted by the IEP committee. (Tr. pp. 33 & 34) (LEA Exhibit No. 2)
14. The behavioral specialist is familiar with the behaviors of autistic students. The student's mother and the Director thought it would be good to have the same person working in both the home and school with the student. The behavioral specialist worked with the student's parents in the home placement for several months through a contract with the LEA to work with the student at home and in school to help with his positive behavior support and transition plan. The behavioral specialist participated in three of the student's IEP meetings. (Tr. pp. 34-36)
15. Four or five of the IEP committee members and the student's mother met to discuss a specific transition plan for the student. The behavioral specialist presented a draft transition plan at a June 15, 2006 meeting, but it was not adopted because the committee needed more time to review it and discuss it with the occupational therapist and speech therapist. It was an ideal draft plan. (Tr. pp. 36-38, 171-173)

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16. The Director reviewed the transition plan and re-arranged it to make it easier for her to understand to present to the IEP committee in sequential order. She did not make significant changes. She gave a copy to the mother of the student to review at another meeting but the mother commented it was a waste of her time. (Tr. pp. 38, 39, 109, 113)
 17. The LEA's Assistant Superintendent contracted with a neutral facilitator to try to complete the student's transition plan and come to a resolution. A fourth IEP meeting was conducted by the facilitator on August 23, 2006, without the Director or the behavioral specialist present. (Tr. pp. 39-41)
 18. The facilitator and the committee were sent the behavioral specialist's draft ideal transition plan which was adopted by the committee, without revision, along with the revised IEP dated August 23, 2006. (Tr. 41-46) (LEA Exhibits No. 3 & No. 4)
 19. According to the student's transition plan, a regular teacher at the middle school working toward full certification was to first work with the student's first homebound aide (HBA), who would eventually be phased out. The student did not bond with the second homebound teacher (HBB) and it did not work to have both teachers with the student in the home. (Tr. p. 48)
 20. The Director identified four basic problems she found with the student's transition plan. The rest of the student's transition plan is practical. (Tr. pp. 49-51, 54 & 55)
 21. The Director received a letter dated October 31, 2006, regarding a complaint filed by the mother of the student with the State Board of Education against the LEA. This matter is on hold until after this due process hearing. The Director believes the student's mother has filed about ten written formal complaints and all have been investigated. The State did not find any major issues on the part of the LEA. (Tr. pp. 55-60) (LEA Exhibit No. 5)

22. The October 2006 compliance complaint by the mother of the student listed twenty-seven issues and the Director addressed each in detail. (Tr. pp. 61-85)
23. The Due Process complaint was filed against the parents of the student because nothing was getting accomplished to get the student back in school. (Tr. pp. 85 & 86)
24. The student's occupational therapist, after reviewing the [REDACTED] OT evaluation (COTI), incorporated parts that she felt were beneficial to the student into the IEP, but it was not attached to the IEP report. The coordinator of the LEA's occupational and physical therapy ordered the recommended materials for the student, except for a swing, on May 12, 2006. A copy of a letter indicating the items were ordered was sent to the mother of the student. (Tr. pp. 89-93) (Parents' Exhibit Nos. 27 & 31)
25. The Director said the LEA would incorporate therapeutic listening into the student's plan if it's needed. Everything that was recommended for the sensory integration is ready to be put in place. Everything has been ordered that was recommended for the home. (Tr. pp. 97 & 98)
26. The Director has been trying to contract since two weeks after school started for sensory integration training. Although the Director does not believe another sensory integration evaluation is necessary for the student, the LEA is willing to provide another one. (Tr. pp. 98-100)
27. The Director believes that the recommendations of the COTI evaluation and subsequently recommended by the occupational therapist are being implemented. (Tr. p. 100)
28. Searches for a speech therapist for the student were conducted by the Director with no success. (Tr. pp. 101 & 102)

29. Homebound programs are implemented for short periods of time for a child who has been hospitalized. (Tr. pp. 102-104)
30. There can be four students in a classroom if they are self-contained autistic. If the student were transitioned back into school in the near future, he would be in a classroom with probably one or two autistic students and four students with other disabilities. (Tr. pp. 105-107)
31. The Director wrote to the behavioral specialist and told him that a copy of his plan would be incorporated into and be a part of the transition plan; she did not mean that the draft was the final result. (Tr. pp. 107 & 108, 112)
32. The behavioral specialist left the LEA's employ except for the immediate work he was doing with the student. (Tr. p. 113)
33. Homebound teacher B (HBB) is no longer working with the student because she felt uncomfortable. She was to write a letter to the Director explaining why, but has not done so. (Tr. pp. 113-115)
34. The behavioral specialist has presently been contracted with by the LEA to provide assistance to autistic students with behavior problems. (Tr. pp. 123 & 124)
- 7 35. The LEA has certified autism teachers but only two are working with autistic students. (Tr. pp. 126 & 127)
36. If the student were to go back to school, the LEA would follow the positive behavioral support plan and the transition plan to get things in order for the student. (Tr. p. 128)
37. The Director of Professional Personnel and Certification (DPPC) has worked for the LEA since July of 2005. (Tr. p. 130)

38. The DPPC posted a position for the LEA middle school for a multi-categorical teacher with autism certification for the student, at the request of the Director, from June 21 through June 27, 2006. The most highly qualified teacher was hired. (Tr. pp. 131 & 132)
39. The DPPC posted a position for a highly qualified teacher for the student at the LEA middle school on July 13 through July 19, 2006. The most highly qualified applicant for the position was hired. Both teachers are still at the middle school. (Tr. pp. 135 & 136, 144)
40. If the student is transitioned into middle school, he would be in one of these teachers class, but the teacher would not be required to teach him in the home. Both teachers would be at the middle school and could work with the student. (Tr. pp. 138 & 139, 141, 150, 151, 152, 154)
41. The DPPC wrote a letter dated November 8, 2006 to the Director summarizing her efforts to find a certified teacher for the student. (Tr. pp. 142 & 143) (Parents' Exhibit No. 36)
42. The behavioral specialist has worked at an autism services center in Huntington, West Virginia for nineteen years. He just signed a contract with the LEA. (Tr. p. 156)
43. The behavioral specialist knew the parents of the student through the Autism Society. He began working with the family in their home, typically once or twice a week -November 2005 through June of 2006 through REM – a behavioral health center. (Tr. pp. 156 & 157)
44. The behavioral specialist wrote the student's transition plan and positive behavior support plan. (Tr. pp. 157 & 158) (LEA Exhibits Nos. 2 and 3)
45. The transition and behavior support plan center on keeping the student's anxiety level down and prepare not just the student, but the people who would be implementing the plans. One of the first things the behavioral specialist did when working with the student

was to bring his anxiety level down. When he's upset, he has the potential to be aggressive. His aggressiveness had decreased by the time the behavioral specialist stopped working with the student. (Tr. 158 & 159)

46. The behavioral specialist helped the student to communicate more. (Tr. p. 160)
47. The behavioral specialist said the student's HBA does a nice job, interacts well with the student, and is receptive to being trained to learn his program. Although the transition plan suggests an autism certified teacher, this is not necessary; it is the ideal plan. (Tr. pp. 161 & 162)
48. The behavioral specialist does not know how long the transition period will be. The transition plan takes small steps building up to transitioning the student so that he has more familiarity and experience with what he will be doing and with whom. This is the basis of the plan. He suggests that each week the exposure be increased a bit more. If a teacher can only be in the home for a certain period of time, other types of transition outside the house should be looked at. Taking the student by the school and talking about school; the next time go to the school and meet the teacher and look in a classroom. The key to dealing with autism is to keep the student's anxiety level down and to be consistent. (Tr. pp.162-166)
49. Another method of helping the student to transition is through social stories so the student understands what is happening. (Tr. p. 166)
50. The behavioral specialist spent a great deal of time the first few months working with the mother of the student in collecting data and observing him. He always found the student's parents to be devoted to seeing his program work. Data collection was crucial in the

development of the plans because it figured out the function of the behaviors. (Tr. pp. 167 & 168)

51. The behavioral specialist suggested sensory integration because when the student began to have stress indicators, engaging in a sensory activity lowered his anxiety. The behavioral specialist's behavior plan also addresses sound sensitivity because the student reacts to sounds. If the student were in the school environment crowded halls and bells ringing would have to be taken into consideration and planned for. The student might wear headphones in a school setting. (Tr. pp. 169-171)
52. If a fully certified teacher were not available for the student, it is key to have a teacher who is willing to be trained and to follow a structured program. The student's HBA is meeting the student's needs at home and could do this. (Tr. pp. 174)
53. The behavioral specialist has contracted to work for the LEA with some students and is willing to work with the student and help transition him back to school. He would need to catch up on what's going on with the student and observe him to see if anything needs changed as far as his behavior support plan. There are activities that must occur to get the student back in school as quickly as possible. He believes a date needs to be set to get the student in the school as quickly as possible. Both the home and school must work together. (Tr. 176-178)
54. In the student's behavior support plan the behavioral specialist recommended restraints as a last resort-a standing basket hold- to keep the student from harming someone or himself. If that did not work, it is not written in the plan but the behavioral specialist would recommend a more intervening step to have the student in a full prone position for thirty seconds where his stomach is on the floor. Then the student is redirected. This is a last

- resort but the people implementing his plan would need to be trained and understand the goal is to never have to use restraints. (Tr. pp. 179-181)
55. HBA teaches special education at one of the LEA's elementary schools. She's been the student's teacher for about a year. She started out spending four hours each week with him and was there two days a week but currently two hours a week on Wednesdays because of her personal responsibilities. (Tr. pp. 183 & 184, 199-201)
56. HBA has a wonderful relationship with the student. She plans three to five activities with him for the two hours and writes them down. The student chooses the activities he prefers. They work on math, reading, some language skills and writing. (Tr. p. 184)
57. HBA has seen improvement in the student's behaviors over the past year. At first, he didn't talk a lot and now he has a wonderful vocabulary. (Tr. p. 185)
58. HBA met with the behavioral specialist three times before working with the student and went over the student's positive behavior support plan. She met him once at the LEA's office. She studied the plan and asked the behavioral specialist to tell her what to do and what not to do. He observed her twice. (Tr. pp. 185 & 186, 194 & 195, 201)
59. HBA always documents her lesson plan when she's with the student in his home but did not play a big role in data collection. She used the best practices for the student that work. She continues to use the ideas that the behavioral specialist gave her. She writes what the student wants to say and he is prompted to finish sentences. (Tr. pp. 187-190)
60. HBA introduced the student to the homebound teacher B (HBB), who came at the beginning of the school year. The student was a bit more excitable and HBB was a little apprehensive. HBB was only in the student's home for approximately six weeks. (Tr. pp. 190 & 192)

61. HBA discussed going back to school with the student and he put when school would start in his calendar; he seemed excited about going back to school. (Tr. p. 191)
62. According to HBA, it is important that the student have a teacher to transition him to school who is very consistent and can work with him throughout middle school. (Tr. pp. 197 & 198)
63. HBA does not know how to get the student to not be afraid of sounds, such as trains, but he's learning what he can do when he hears the train. The HBA said the student needs to be in school with friends and not just be at home. She believes it will require three months to transition him with some visits to the school. (Tr. 203-205)
64. HBA would like to stay with the student no more than a month to help transition him. He needs to get used to another person. (Tr. p. 206)
65. The student was diagnosed with PDD and OS when he was about two and a half years old. He was diagnosed with Tourettes Disorder in February of 2005. At the time the mother of the student removed him from school, he had been having multiple motor tics for almost a year. (Tr. pp. 208 & 209)
66. The student's mother has attended autism mentor training. (Tr. pp. 209 & 210)
67. The student has sleep problems and normally wakes up between 2:00 a.m. and 5:00 a.m. every day. He is on a MRDD Waiver which provides him with a monthly home visit from a service coordinator. The student's mother now takes the student to [REDACTED] every other week for speech, OT and music therapy. (Tr. p. 212)
68. The student's mother has accessed some respite care within the last year for the student with two different staff people. Transportation is accessed through the Waiver program.

- The student's mother does activities every day with the student involving the program set up by the behavioral specialist. (Tr. pp. 212 & 213)
69. The student's mother stated that she has learned a lot from the behavioral specialist. He has been more helpful than anyone. (Tr. p. 213)
70. The student's mother tracks the student's behavior daily. She uses emotions programs every day to help the student identify emotions and communicate those to others. (Tr. p. 214)
71. Once the transition plan was discussed in June of 2006, the student's mother and father began to talk to him about school. He knew he was to start in October. The student's mother wrote the social story for the student about going back to school and told him that the new teacher (HBB) would be his teacher and would be working with HBA for a while in the home. She did not tell the student HBA would be leaving because that would cause him some stress. (Tr. pp. 215 & 216)
72. The student was pulled out of school in October 2004 for a week because of an eye rolling tic. The student's mother believed it was from anxiety and agreed with the principal of the school to take him out for a week. The student's behavior had deteriorated; at this point in time he was in a regular ed room full-time. At first, the student's father asked that he be pulled out of the classroom the last two hours of the day and put in a special ed room, which was done. He would still come home and tell his mother that music hurt his ears; and he would kick and bite her. (Tr. pp. 217-219)
73. During the month of December, the student got worse. The student's mother asked his teacher to track the student's behavior. It was hard for the student's mother to understand how he was coming home after school and exploding and no one was picking this up at

school. She filed her first complaint in December of 2004 because she felt he needed to be pulled out of regular ed. (Tr. p. 219 & 220)

74. The student's mother asked for IEP meetings and the school called them conferences because according to the IEP, there was time for conferences between the student's teacher and his mother. The student's mother wanted the student's IEP changed to reflect what was happening with him, but that did not occur. (Tr. 220)
75. The student was injured on January 28, 2005. His mother was called to pick him up from a field trip. He was very upset and she calmed him down. Later in the day, the student's mother noticed some problems with the student's thumb and bruising on his arm. The student named a teacher who he said hurt his thumb. The student's mother called CPS and filed an investigation. The student's mother and father met with his teacher who became very angry and accused the student's mother of lying. (Tr. pp. 220 & 221)
76. There was an additional meeting in February and one in March of 2005 to get the student out of a school environment because his mother knew he could not go into a school setting in his condition. (Tr. p. 221)
77. The student's mother asked the student recently if he wanted to go back to school and he said no. He is very fearful. The student's mother is his primary care giver and she believes he'd be back in school if she had received more support. (Tr. p. 222)
78. Child Protective Services conducted an investigation of the January 28, 2005 incident but found no maltreatment. (Tr. pp. 222 & 223, 241-244)
79. The student was in an extended school year program in the summer of 2005 at another elementary school and got worse. He was exposed to a cafeteria with fans and air conditioners which bothered his ears. The student went to a middle school in September of

2005-2006 and was there eight weeks in a full-time special ed setting, where he was restrained twice, two days in a row. The student's parents took him to see a psychiatrist and decided to remove him from school. The student's mother helped the team at this school write a crisis intervention plan for the student. (Tr. pp. 223 & 224, 244-246)

80. The staff at the middle school was given a positive behavior support (PBS) plan for the student prepared by a supervised psychologist, which recommended that the staff at the school be trained in the PBS plan. The supervised psychologist was never contacted to train the staff. (r. p. 225)
81. An IEP was not written for the student until December of 2005 with services not starting for the student until the end of January and related services not starting until the middle of March. Three months later the student's mother asked for a comp plan. According to the student's mother, it takes two or three meetings to get the Special Education Director to write a comp plan for the instruction the student has missed and then it's time for an extended school year. (Tr. pp. 225 & 226)
82. The student was to receive six hours per week of services in the summer; he received one and a half (1 ½) hour. It was sometimes two weeks in a row before he received any instruction. The student's mother said there have been delays of services throughout the whole time the student has been on homebound instruction. That's what prompted her complaint. (Tr. p. 226)
83. The student is on two different types of medication, which along with his positive behavioral support plan have helped him. (Tr. p. 227)
84. The student's mother could not get the LEA to tell her how many service hours her son missed, so she wrote that. It took several meetings before the LEA even acknowledged

that the student was owed comp time. That's why she filed the complaint – to get the comp time made up; to get the service hours the student deserves and was agreed on to help him transition. She thinks he could probably then be able to transition back in the school. (Tr. p. 228)

85. The student's mother thinks his positive behavioral support plan is workable. She believes he needs instruction in the morning. He cannot handle being with more than ten children in a classroom. He needs to have a story written and be told exactly what he will be doing. The student's mother agrees that the student can make it in a classroom that is not fully certified in autism but also stated that the student needs a fully certified, experienced autism teacher. (Tr. p. 231) (LEA Exhibit No. 2)
86. The student's aggression toward others and property destruction has decreased significantly because the behavioral specialist helped his mother understand this through data collection. Data collection is the only way to measure the student's progress and is a requirement of the student's IEP. (Tr. pp. 232-234)
87. The Director agreed to pay for COTI in January of last year. The student still does not have the equipment. Some of the sensory integration is not being done. This is a big issue for the student; how to process the sound coming into his ears. (Tr. p. 235-237)
88. The student's mother is concerned about his safety and that of other children in a school setting. (Tr pp. 237 & 238)
89. The student's mother is very comfortable with the behavioral specialist's plan. She agrees there are times he has to be restrained but is worried that if used it will trigger some fear in him. The Director knows about the mother's concerns. (Tr. pp. 238 & 239)

90. The student has been withdrawn from two different public schools in the LEA in the past and he has received homebound services. (Tr. p. 240)
91. The student had a teacher certified in autism and an autism mentor at the elementary school he attended in 2004-2005. (Tr. pp. 240 & 241)
92. The student's mother has participated in all of his IEP meetings. She and her husband provided input to the behavioral specialist when he drafted the transition plan. (Tr. p. 247)
93. The student's mother outright dismissed the revised transition plan prepared by the Director and presented at the meeting for the first time. It was a cut, copied, and pasted version of the behavioral specialist's plan. The mother of the student thought that it was very unprofessional of the Director to present her version on the same day the behavioral specialist presented his plan. She went over it and listed items that were taken out of the behavioral specialist's plan. (Tr. p. 248)
94. At the August 23 meeting of the IEP committee, the team insisted that the behavioral specialist's draft transition plan be adopted. (Tr. p. 249)
95. The first time the student's mother knew that a job was posted for teaching her son was when the student's HBA and HBB were in her home. They talked about the classroom and that it might not be the appropriate setting for the student and his teacher. (Tr. p. 250)
96. The student's mother thought the LEA was making an effort at that point when they posted the two jobs. (Tr. p. 250)
97. The student's mother was in a meeting when the DPPC referenced they could not find a teacher. The student's mother asked them to hire a behaviorist if they could not find a certified teacher; she opined that someone needed to oversee the student's plan. (Tr. pp. 251 & 252)

98. The student's mother objects to him being unduly restrained. She has restrained him. The behavioral specialist lists questions in the student's plan that must be completed if he's restrained. She believes if that list is completed, she will have faith in the teacher, the team, the school, and the plan. (Tr. pp. 255-257)
99. The student's mother accessed the Waiver plan for him because she felt the IEP plan was not consistently and sufficiently conducting the speech, OT and music therapy. She wanted to get support for the student everywhere she could. Mileage expenses are covered under his waiver. She pays \$25/session for his music therapy because the waiver won't cover it. (Tr. pp. 259 & 260)
100. The student's mother is satisfied with the student's developed IEP. She can tolerate it. She thinks the behavior support plan is great the way it is. (Tr. pp. 260 & 261)
101. The student's mother said the LEA dedicating some consistent time with her son will get him back in school. A desensitizing plan for the student would play a significant part in getting him transitioned. The student's mother says he needs to be evaluated on academics. She wants him back in school. (Tr. pp. 261-263, 265)
102. The student's mother does not feel he has ever had a full-fledged comprehensive evaluation done by the LEA. That's why she requested Judevine evaluate him after the behavioral specialist left. The Director was to sign a contract with Judevine and they would evaluate the student. The woman from Judevine saw the behavioral specialist's plan and liked it. She said she would oversee it. (Tr. pp. 264 & 265)
103. There has not been any adequate training of personnel working with the student. (Tr. p. 265)

104. The student's mother has not heard from the LEA concerning a mentor for her son. (Tr. p. 265)
105. The Director testified that an aide has been hired for the student and has been employed for a couple of weeks. The most qualified person that bid on the job was hired. (Tr. p. 267)
106. The behavioral specialist has been hired to work with all of the students in the LEA. The Director does not know how much time he can give to this student. The student can be added to his list. (Tr. pp. 270 & 271)
107. Judevine is a possibility but they do what a behavioral specialist does. (Tr. p. 271)
108. The Director will have to find another teacher to conduct homebound instruction with the student. The behavioral specialist will have to work and train all of the staff on his plan as he did before – the OT, the speech therapist, and the homebound teacher. Something can be worked out to train the regular teacher at the school. (Tr. pp. 272 & 273)
109. The Director said the Autism Center in Huntington has provided training on PBS. (Tr. p. 274)
110. HBB will more than likely be the student's teacher in school. She's the one who stopped doing homebound services for the student at home because of issues. (Tr. p. 276)

CONCLUSIONS OF LAW

1. The student is a disabled child within the meaning of 20 U.S.C., Section 1400 et seq. of the Individuals with Disabilities Education Act (IDEA) and W.V. Policy 2419 - Regulations for the Education of Exceptional Students. 126 CSR 16 et seq.

2. The purpose of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C., Section 1400, et. seq., is to make available a Free Appropriate Public Education (FAPE) for every disabled child regardless of the severity of the child's disability. Timothy W. v. Rochester, New Hampshire School District, EHLR 441:393 (CA-1 1989); 20 U.S.C., Section 1400, et. seq., W.V. Policy 2419-126 CSR-16-1 et seq.

3. "Free Appropriate Public Education" (FAPE) means, among other things, special education and related services that are provided in accordance with the Individualized Education Program (IEP). 20 U.S.C., Section 1400 et seq., W.V. Policy 2419-126 CSR 16.

4. The provision of an IEP is a procedural requirement set forth in the IDEA. 20 U.S.C., Section 1400 et. seq., W.V. Policy 2419-126 CSR 16.

5. The importance of the IEP cannot be understated because it is the decision making document and primary vehicle for implementing the Congressional goals and the centerpiece of the statute's educational delivery system for exceptional students. Honig v. John Doe and Jack Smith, 108 S.Ct. 592 (1988).

6. In order for the student's IEP to be valid, it must contain, among other things, a "statement of the specific educational services to be provided to such child", and "appropriate objective criteria for determining, at least on an annual basis, whether instructional objectives are being achieved". 20 U.S.C., Section 1400 et. seq., WV Policy 2419-126 CSR 16.

7. Failure to meet the Act's procedural requirements for an IEP are adequate grounds, by themselves, for holding that the school has failed to provide a FAPE. Board of Education of the Hendrick Hudson Central District, et al. v. Rowley, et al., 458 U.S. 176 (1982); Hall v. Vance, 774 F.2d 629 (4th Cir. 1985); Jackson v. Franklin County School Board, 806 F.2d 623 (5th Cir. 1986).

8. The School District has the burden of proving the appropriateness of a recommended placement by substantial evidence. Case No. 11966 (SEA N.Y. 1988) EHLR 509:271; Sylvio v. Commonwealth of Pennsylvania, (SEA PA 1982) EHLR 553:557. Board of Educ. of Co. of Kanawha v. Michael M., 95 F. Supp. 2d 600 (S.D. W.Va. 2000) (Goodwin, J.). It must demonstrate that it has adhered to required procedural steps to guarantee the appropriateness of its placement. In Re Jefferson Local School District, (SEA OH 1979) EHLR 501:394.

9. The IDEA requires that disabled children, to the maximum extent appropriate, shall be educated with children who are not disabled, i.e., they should be mainstreamed. Each public agency shall ensure that a continuum of alternative placements is available. 20 U.S.C., Section 1400 et. seq., WV Policy 2419-126 CSR 16.

10. The IDEA provides that "the educational benefit must be provided to a disabled child in the least restrictive and appropriate environment, with the child participating, to the extent possible, in the same activities as non-disabled children. 20 U.S.C. §1412(a)(5)(A)." Id. at 526. The term inclusion refers to the IDEA's legal mandate which requires that students with disabilities receive their education in the regular education environment to the maximum extent appropriate. A school board's obligation to educate students with disabilities in the least

restrictive environment ("LRE") is set out in 34 C.F.R. Section. 300.554. The actual LRE requirement is:

(b) Each public agency shall ensure –

(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are non-disabled; and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or the severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. § 300.550(b) (emphasis supplied).

11. The Federal mandate to mainstream students to the maximum extent possible is to be balanced with the primary objective of providing handicapped children with an appropriate education. Wilson v. Marana Unified School District of Pine County, 735 F.2d 1178 (9th Cir. 1984).

12. WV Policy 2419 – 126 CSR 5.1.5(g)(E) – under Individualized Education Program Team Responsibilities defines a Special Education Out of School Environment placement option for a disabled student as specially designed instruction and related services temporarily delivered in:

(a) a non-school environment, such as a public library, group home or mental health center;

(b) a medical treatment facility/hospital; or

(c) the home.

13. A child is receiving an appropriate education if the IEP is reasonably calculated to enable the child to receive educational benefit. Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

14. The educational benefit must be more than trivial. Polk v. Central Susquehanna Intermediate Unit, 853 F.2d 171 (3rd Cir. 1988). Carter v. Florence County School District Four, 950 F.2d 156, 160 (4th Cir. 1991) aff'd 510 U.S. 7; 114 S. Ct. 361; 126 L.Ed.2d 284 (1993) citing Hall ex rel. Hall v. Vance County Board of Education, 774 F.2d 629, 636 (4th Cir. 1985). But the District is not required to provide every service or accommodation which might bring a child with disabilities an educational benefit. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 199; 102 S.Ct. 3034, 3047; 73 S.Ed.2d 690 (1982).

15. The IDEA does not require that a school district provide a disabled child with the best possible education and once a FAPE is offered, the school district need not offer additional educational services. MM v. School Dist. of Greenville Co., 303 F.3d 523, 526 (4th Cir. 2002) (citing Board of Education v. Rowley, 458 U.S. 176, 192 (1982) ("Rowley") and citing Matthews v. Davis, 742 F.2d 825, 830 (4th Cir. 1984).

16. WV Policy 2419-126 CSR 16-10.42 defines Free Appropriate Public Education (FAPE) as:

special education and related services which: a) are provided at public expense, under public supervision and direction, and without charge to the parent; b) meet the standards of the state education agency, including the requirements of these regulations; c) include pre-school, elementary school or secondary school education in the State; and d) are provided in conformity with an Individualized Education Program. See also 34 C.F.R. §300.13.

17. WV Policy 2419-126 CSR 16-10.113 defines Special Education as:

specially designed instruction, at no cost to parents, to meet the unique educational needs of an eligible exceptional student, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other

settings; and instruction in physical education. The term includes speech-language pathology services, or any other related service, if the service consists of specially-designed instruction, at no cost to the parents, to meet the unique needs of a student with an exceptionality, and is considered special education rather than a related service under State standards. The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a student with an exceptionality. See also 34 C.F.R. §300.26.

18. WV Policy 2419-126 CSR 16-10.99 defines Related Services as:

transportation and such developmental, corrective and other supportive services as are required to assist an eligible exceptional student to benefit from special education. The term includes, but is not limited to, assistive technology, audiology, speech and language pathology, psychological services, physical and occupational therapy, clean intermittent catheterization (CIC), recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, orientation and mobility services, social work services in schools, school health services, early identification and evaluation of disabling conditions in students, medical services for diagnostic or evaluative purposes only, and parent counseling and training. See also 34 C.F.R. §300.24.

19. WV Policy 2419-126 CSR 16-10.119 defines Supplementary Aids as:

any material/curricular resource or assistance, beyond what is normally afforded non-exceptional students, provided to support an exceptional student's placement. Supplementary aids may include, but are not limited to, large print books, assistive technology devices, auditory trainers, curriculum adaptations and classroom modifications or aids, services and other supports that are provided in regular education classes or other education related settings to enable students with exceptionalities to be educated with non-exceptional students to the maximum extent appropriate. See also 34 C.F.R. §300.28.

20. WV Policy 2419-126 CSR 16-10:120 defines Supplementary Services as:

any human resource or assistance, beyond what is normally afforded non-exceptional students, provided to support an exceptional student's placement, such as direct instruction, peer tutoring, interpreting, and note taking.

21. WV Policy 2419-126 CSR 16-10:93 defines Qualified Personnel as:

a person who has met state educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

22. WV Policy 2419-126 CSR-10:51 defines Independent Educational Evaluation as:
an evaluation conducted by a qualified evaluator who is not employed by the public agency responsible for the education of the student in question, and who is selected by the party seeking the independent evaluation.

23. The student was not provided a Free Appropriate Public Education (FAPE) by the local educational agency (LEA) within the meaning of 20 U.S.C. Section 1400 et. seq.; 34 C.F.R. Section 300.1 et. seq.; and W. V. Policy 2419 - Regulations for the Education of Exceptional Students, 126 CSR-16-1 et seq.

DISCUSSION

This Due Process hearing was the result of the LEA requesting due process by complaint filed with the West Virginia Department of Education Office of Federal Programs and Accountability to address all the issues specified in a State Compliance Complaint that was filed by the mother of the student on October 19, 2006; and to develop an appropriate IEP for the student. By Amended Complaint dated the 4th day of December, 2006, the LEA revised its list of issues to be decided at the Due Process hearing, which were issues dealing with the student's mother not agreeing to the student's teaching staff and disagreements concerning the student's IEP and transition plan. (LEA Exhibit No. 5)

It was the consensus of the attorney for the LEA and the student's attorney that they wanted the student back in school, and literally dumped a number of exhibits and some testimony on this due process hearing officer and decided to leave it up to me. All parties to this hearing were primarily interested in returning the student to the school environment. As of the date of this decision, the student has been on homebound services for two years, with approximately two hours per week of instruction from the LEA. The student was ten years old when homebound services were started for him and he is now twelve years old. If the student is to have any chance of success, it is imperative that he receive an appropriate education immediately. The student will soon enter puberty, and as opined by the OT from Cincinnati Occupational Therapy Institute (COTI) in her January 7, 2006 consultation report, the need for therapy will increase to deal with this developmental phase. (Parent's Exhibit No. 3)

The student has not received the OT services or speech therapy as set forth in his IEP and further has not received his documented educational services as a homebound student. (FOF 28) It is unbelievable that the student has been out of the school setting for two years with

minimal educational instruction provided by the LEA. However, it should be noted that the mother of the student is very involved with the student's program and spends a significant amount of time interacting with the student. The school district portrays the mother of the student as demanding and uncooperative. In reviewing the parent's exhibits admitted into evidence, the mother in all of her correspondence with the LEA was polite but very specific as to what she thought was best for her son. The student's mother was also congenial during her sworn testimony, but there is no question that she wants what is best for her son.

The LEA, on the other hand, was so caught up into having a "proper IEP" and transitional plan with all "i's" dotted and "t's" crossed that nothing got accomplished. It was always another meeting and another month ad infinitum and here we are two years later and the student has received virtually no educational programming which is meaningful. The window of opportunity to provide the student with the skills necessary for independent living, as he gets older, is disappearing rapidly. The student is a complex child with multiple issues and it is going to take a concerted effort by all to transition the student to the classroom. The program for the student must be consistent for all participants who are properly trained in the student's program.

There is obviously a personality conflict between the Director of Special Education for the LEA and the mother of the student, and the Director even admitted so. The mother of the student wants what is best for her child and the Director of Special Education, overtrained in the law of IDEA and WV Policy 2419, wants to assure that the IEP and transition plan are "perfect" before proper services are delivered to the student, as the clock keeps ticking to the detriment of the student.

The student's parents are satisfied with the student's present IEP for the 2006-2007 school year dated June 15, 2006, and the addendum to the IEP dated August 23, 2006 (LEA

Exhibits Nos. 1 and 4, respectively). The Director of Special Education still feels that the IEP needs revision. All parties seem to agree that the Positive Behavior Support Plan developed by the contracted behavioral specialist is excellent and meets the needs of the student. (LEA Exhibit No. 2)

The other educational plan for the student is the transition plan for transitioning the student from homebound services to the school setting. (LEA Exhibit No. 3) The student's mother feels that the transition plan once again developed by the behavioral specialist is appropriate for the student. The Director of Special Education disagrees with the plan because it is a Draft plan and calls for the ideal conditions for the student's transition to the school setting. The transition plan gives the qualifications for the student's teachers as fully certified and experienced, and available to work with the student for the extended school year (ESY) services.

The testimony received and post-hearing updates from the LEA indicate that the LEA is making an effort to hire the most qualified teachers and aides that they are able to find. No testimony was provided to show that the teacher and aides proposed to implement the student's IEP and transition plan were not qualified to perform the services required to transition the student.

The law requires that the student be provided a FAPE by the LEA and the LEA has the burden of proving the appropriateness of a recommended placement. (COL 2, 3 & 8)

In order for a student to receive an appropriate education, the student's IEP must provide educational benefit which must be more than trivial, but does not require the LEA to provide every service or accommodation which would be an educational benefit to the student. The IDEA does not require the LEA to provide the student with the best or ideal education. (COL 13, 14 & 15)

The student's mother has objected to the choice of teachers and aides assigned to provide the student with an education because the transition plan calls for full autism certification and experience working with children with autism, and further provides that they be available for the ESY program.

The mother's expectations for the "most qualified and certified" personnel to work with the student and that they be available year round are personnel issues not for scrutiny by the student's parents, since parents do not have the right to pick and choose which teachers will be assigned to students. There was insufficient evidence presented to establish whether or not the teachers to be assigned to the student meet Regulation requirements and therefore, it is an issue that cannot be addressed at this time. WV Policy 2419-126 CSR 16-16.1.3 requires the LEA to provide qualified personnel with training and skills necessary to implement a student's IEP. The Director of Special Education testified that the student's teachers are qualified.

The Director of Special Education presented a copy of the behavioral specialist's transition plan at an IEP meeting on June 15, 2006, which was a cut, copied and pasted version of the behavioral specialist's plan that she had re-arranged to make it easier for her to understand (FOF 16 & 93). The behavioral specialist's original plan had not been presented to the IEP team at that time and the student's mother outright dismissed the Director's revised plan. This was a miscalculation by the Director of Special Education and lead to the mother's filing of a state compliance complaint which the LEA has turned into this Due Process Hearing (FOF 21, 22 & 23) (Parent's Exhibits Nos. 14, 16,17, 18 & 19). There has been a significant feeling of mistrust and confrontation between the mother of the student and the Director of Special Education since that occurred.

The revised IEP dated August 23, 2006, and the draft ideal transition plan, as originally presented by the behavioral specialist, were adopted by the IEP committee at their August 23, 2006 meeting (FOF 18) (LEA Exhibits Nos. 3 & 4). The Director at this time believes that the transition plan is unworkable and needs revision, and the parents of the student believe the IEP, revised IEP, behavioral plan and transition plan, as adopted by the IEP committee are workable. The Director did testify, however, that the LEA would follow the behavior and transition plans to get things in order for the student (FOF 36).

To not go forward with the student's education because plans need revision is unacceptable. The reasons the student is receiving homebound services are numerous and involved and mostly decided by the student's mother with some professional expertise to support her decisions. It is quite evident that the student's mother is the primary driving force behind the student's educational program. To her credit, she attended autism mentor training, has educated herself on the IDEA and WV Policy 2419, has taken her son to speech, occupational therapy, and music therapy some 50 miles distance from home every other week, and even quit her job to stay with her son while he was homebound (FOF 66, 67, 68 & 70).

There are questions about services provided to the student while he was homebound. It came up numerous times during the hearing that the student did not receive the services set out in his August 23, 2006 IEP which required four hours per week direct instruction, an autism mentor for eight hours per week, occupational therapy, speech therapy, and sensory integration. There was insufficient testimony or other evidence to calculate exactly what was or was not provided, but according to the student's mother, the student received no more than two hours per week of direct instruction and no OT or speech therapy, and was not provided an autism mentor. The IDEA and WV Policy 2419 state that homebound services are to be provided for a temporary

period and are not intended to supplant an in-school multi-disciplinary education (FOF 29) (COL 12).

There was no formal claim made by the student's parents for compensatory education for the lost services and accompanying costs prior to the hearing. The LEA must, however, at the this time, put all its resources together to transfer the student back to the school setting and provide him with a FAPE to set him on a path to success.

The tantamount issue as seen through this hearing officer is the fact that the right to a FAPE is a right the student has by federal and state law. A FAPE is not a privilege but a right of a disabled student and it is not the duty of a parent to provide it; rather it is the obligation of the LEA. For that main reason, the student has been denied a FAPE by the LEA. (WV Policy 2419-126 CSR 16-1.7 - Right to a FAPE; 34 C.F.R. §300.1.

The Director of Special Education wants to do things right and as a consequence, meeting after meeting and month after month slip by and the student loses out on his educational needs. The student's mother is his best advocate but has some headstrong tendencies and an impasse has lead the LEA to rightfully request due process, and in fact, should have done so long ago.

In answering the issues set forth prior to this hearing, it is the conclusion of this hearing officer that the parent of a student can not deny a student a FAPE since there is no legal obligation for a parent to provide a FAPE. Secondly, the LEA denied the student a FAPE by failing to properly implement the student's homebound special education and related services program, and by not timely transitioning the student back to the school environment.

The student has very complex issues that need to be dealt with immediately and it is going to take the full cooperation of all involved, especially the Director of Special Education

and the mother of the student. It is time for them to concentrate their energies on the arduous task at hand.

It was stated in the student's transition plan that the student has been observed in the past to reject those that place demands on him and as a consequence, the student doesn't want to be with them or go to school. Demands on the student will be significant in the transition to the school setting and it is very important that the student receive a consistent message by both parents and school personnel in the transition to school process. (LEA Exhibit No. 3)

If there was anything that all parties at the hearing agreed upon, it was that the behavioral specialist was a competent, hard-working, and caring individual, and he is liked by all and everyone has the utmost confidence in him.

The LEA had previously agreed to contract with The Judevine Center to evaluate the student, but never did. (FOF 102) (Parent's Exhibit No. 28) I have enormous confidence in the behavioral specialist and requiring the LEA to contract with Judevine is in no way to be construed that he is not capable of providing any and all services to transition the student to school. However, according to the Director of Special Education, the contract behavioral specialist will not be available to devote full-time to the student because he was hired to work with all students in the LEA and the student will be added to his list (FOF 106). Since the behavioral specialist is so trusted by the student and his parents, it should be the LEA's top priority for the behavioral specialist to devote as much time as possible to the student and his transition to the school setting.

If the student does not get transitioned back into the school and other settings, there is little chance that he will receive a FAPE and be successful. Hiding out in the safety of home is

not in the best interests of the student, and he needs to be transitioned now, or other placement should be considered that will provide a FAPE and a chance for success.

CREDIBILITY OF THE WITNESSES, TESTIMONY AND EXHIBITS

The hearing officer is satisfied that the witnesses testified credibly. After considering the demeanor of the witnesses, any inconsistencies, conflict or any motive on their behalf, the hearing officer is satisfied that any inconsistencies were not a result of deliberate untruthfulness. Rather, any inconsistencies in the testimony were a result of a difference of opinion or a lack of knowledge or miscomprehension. The expert witnesses testified to the best of their abilities and the credentials of those witnesses was unquestioned. The hearing officer is satisfied that all records and documents entered as exhibits by the LEA at the time of hearing are authentic and valid and that they were entered with the proper evidentiary foundation; all records and documents entered by the parents of the student as exhibits at the time of hearing are authentic and valid and they were entered with proper evidentiary foundation.

DECISION

1. That the LEA has not provided the student with a FAPE as required by IDEA or WV Policy 2419.

2. That the Interim Order entered by this Hearing Officer on the 10th day of January, 2007, shall remain as part of this Order. (Copy attached)

3. That the LEA as previously Ordered assign to the contracted behavioral specialist the primary responsibility for transitioning the student to the school and other settings.

4. That the LEA, within five days of the date of this Order, contract with [REDACTED] Center to evaluate the student, and if [REDACTED] Center deems it necessary, to develop a program for the student, train school personnel for the student, and provide any and all other services to transition the student to the school setting. [REDACTED] Center shall work in conjunction with the LEA-contracted behavioral specialist.

5. That the behavioral specialist and [REDACTED] Center be given full authority to implement the student's transition plan and be provided by the LEA with any and all support and personnel they deem beneficial or necessary to transition the student to the classroom as expeditiously as possible.

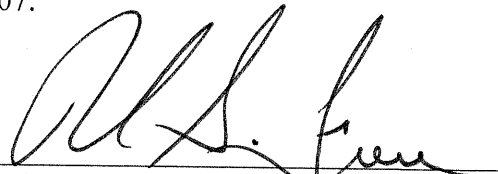
6. That any and all necessary training for the student's teachers and aides shall be provided by the LEA based upon the recommendations of the behavioral specialist and [REDACTED] Center. If the behavioral specialist and [REDACTED] Center are of the opinion, either jointly or separately, that the student needs any evaluations or special services, the LEA shall provide such evaluations or special services or pay for the acquisition of the same from other than the LEA.

7. That the LEA shall provide the student with extensive and summer-long ESY services, which extended and extensive services are to be provided to the student as compensatory education. The services shall be provided to the student in the morning hours, when he learns easier, and shall be provided for eight school weeks and for at least four hours per day. Transitioning to the school setting and other settings shall be the primary focus of the ESY, so the student can start the 2007/2008 school year in the school setting.

8. That the student be provided with a full-time one-on-one aide or autism mentor to assist the student in the home, in the school setting, and ESY. The one-on-one aide or autism mentor should have extensive training in Positive Behavior Support (PBS), Sensory Integration, and any other training or techniques recommended by the LEA's behavioral specialist and/or [REDACTED] Center. The one-on-one aide or autism mentor shall assist the student with his transitioning and educational program as determined by the behavioral specialist or [REDACTED] Center.

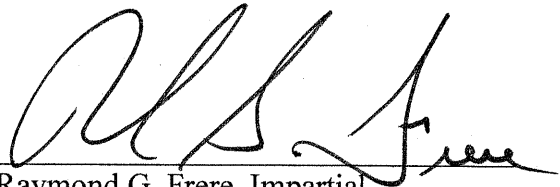
9. That the student shall attend the County middle school for the 2007-2008 school year and the LEA shall provide the student with all sensory integration space and equipment, OT services, and any and all other services or requirement as set forth in his IEP, or recommended by the behavioral specialist or [REDACTED] Center.

SO ORDERED, this the 29th day of March, 2007.


Raymond G. Frere, Impartial
Due Process Hearing Officer

APPEAL RIGHTS

A decision made in a hearing is final unless a party to the hearing appeals the decision through civil action. Any party aggrieved by the findings and decision made in a hearing has the right to bring a civil action in any state court of competent jurisdiction within 120 days of the date of the issuance of the hearing officer's written decision or in a district court of the United States.

By: 
Raymond G. Frere, Impartial
Due Process Hearing Officer

Date: 3/29/07

ATTACHMENT A

INTERIM ORDER OF HEARING OFFICER

JANUARY 10, 2007

**WEST VIRGINIA DEPARTMENT OF EDUCATION
OFFICE OF FEDERAL PROGRAMS AND ACCOUNTABILITY**

Due Process Hearing No. D0702

INTERM ORDER

The Due Process Hearing in this matter was held on the 18th day of December, 2006, commencing at 9:00 o'clock a.m. in the County Board of Education Conference [REDACTED]

[REDACTED] West Virginia

At said hearing, it was ascertained that a behavioral specialist employed by the autism services center in [REDACTED] County is now under contract with the LEA. The behavioral specialist worked with the student until June of 2006, and wrote the "draft" transition plan (LEA Exhibit No. 3) for the student to return to the classroom. He also wrote the student's positive behavior support plan (LEA Exhibit No. 2). The behavioral specialist specified in the "draft" transition plan the "ideal" conditions for the student to re-enter school in the LEA.

The LEA presently has sufficient personnel with sufficient training to provide the student with services. The behavioral specialist is currently working for the LEA and is available to help the student be transitioned back to the classroom. The student has been out of the school setting and has been receiving home-bound services for almost two years. All participants in this hearing believe the student should be transitioned back into the classroom. The "draft" transition plan is now almost ten months old and needs to be updated to meet the student's present needs, but in essence, the "draft" plan shall be the accepted basic transition plan for the student.

Based on the testimony adduced and exhibits entered into evidence at said Due Process Hearing, this Hearing Officer believes the student is being denied a FAPE by the LEA and should be transitioned back into the classroom setting commencing upon receipt of this Order.

IT IS, THEREFORE ORDERED, that the LEA immediately assign to the behavioral specialist the primary responsibility for transitioning the student to the school classroom setting as soon as possible.

IT IS FURTHER ORDERED that the behavioral specialist be given full authority to implement the transition plan and be provided by the LEA with any and all support and personnel he deems necessary to transition the student to the classroom as expeditiously as possible.

IT IS FURTHER ORDERED that any and all necessary training for the student's teachers and aides shall be provided by the LEA based upon the behavioral specialist's recommendations and the transition plan. If the behavioral specialist is of the opinion that the student needs any evaluations or special services, the LEA shall provide such evaluations or special services or pay for the acquisition of the same from other than the LEA.

IT IS FURTHER ORDERED that this Interim Order shall not be amended except by consent of all parties, unless the Court shall modify the same to prevent manifest injustice, and such modification may be made on application of counsel.

ENTER:


RAYMOND G. FRERE
Impartial Hearing Officer