

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

IN THE MATTER OF)
)
S. S. , STUDENT) **CASE NO. 4332**
)
AND)
)
North Shore SCHOOL)
DISTRICT NO. 112)

DECISION AND ORDER

Ann Breen-Greco, Hearing Officer

This matter is before the undersigned Hearing Officer for a due process hearing concerning the Parents' assertion of lack of FAPE and request for compensatory education. The Hearing Officer has jurisdiction to hear and decide the matter under 105 ILCS 5/14-8.02a, 34 C.F.R. 300,506-509, and 23 Ill. Admin. Code 226 Subpart G. The parties were informed of their rights pursuant to these statutes.

PROCEDURAL BACKGROUND

On December 9, 2004, the Parents requested a due process hearing, which was received by the Illinois State Board of Education (ISBE) on December 17. On January 3, 2005, the Hearing Officer issued the pre-hearing notice letter setting the pre-hearing conference call for January 12. The District requested a continuance for the hearing which was documented. The pre-hearing conference report and notice of hearing were issued on January 12, setting a continued pre hearing for January 18 and the hearing for February 9 and 10. In the reconvened pre hearing Father stated that he had the right, as an attorney, to interview District witnesses. Accordingly, the Hearing Officer determined that Father is the attorney for the Parents for purposes of this proceeding, and this was documented in the Second pre-hearing conference report dated January 18, 2005.

A court reporter was not available February 9, so the hearing for that day was cancelled. By agreement of the parties, the hearing took place on February 10, March 9 and 24. The parties gave oral closing statements. The parties agreed that the decision would be due ten days after the receipt of the last transcript. The transcript was received on March 24 and accordingly the decision is due on April 4, 2005 and has been issued on that date.

ISSUE

Whether the Student's placement in the TDS constitutes the least restrictive environment (LRE).

WITNESSES

Mother; [REDACTED], school social worker; Tara Ann Loud (TAL), former school social worker; Kathryn Kachoris (KK), school social worker; Lauren Femen (LF), former teacher; Virginia Olszanowski (VO), teacher/case manager; Andy Piper (AP), school psychologist; Dr. Tim Scotellaro (Dr. S), program coordinator; Anita Gutof (AG), pupil personnel services supervisor; Dr. Sondra Scheinbaum.

In the decision, the North Shore Academy is referred to as the therapeutic day school (TDS) and Indian Trails is referred to as the District Elementary School.

SUMMARY

The Student began Kindergarten at five years old at the District elementary school. Almost immediately problems with behavior were noted. Additionally, he was not familiar with letters or numbers. The District utilized a teaching assistant but even with help the behaviors persisted. The District conducted an evaluation with consent of Parents. An IEP was convened in November 2002 to discuss the evaluation. The Student was identified as ED. A number of placements were considered but everyone, including the Parents, agreed to placement in TDS. The goals were to have him control his behavior which would make him available for learning. Little progress was made during Kindergarten. He was in school for the summer. The first half of the first year was a repeat of the kindergarten time. With the total structured environment by the second half of the first year the Student began to make progress. His services included time with a social worker and in group therapy with the school psychologist. Mother made statements in the first year about taking the Student out of the TDS but after discussion with staff she did not pursue that. In the second year, in October 2004, the Parents requested he transfer to a less restrictive environment. Although the District was not aware of it at that time, Parents planned to move and did not want their son in another public therapeutic school.

At Parents request, an IEP was held in November 2004 before the annual review to be done January 2005. Parents had retained a psychologist to do an evaluation. The District also wanted a neuropsychological but after initially agreeing Parents withdrew consent. The District still had concerns about some of the Student's behaviors that might warrant further testing. At the January 2005 IEP, the Team reviewed the Parents' private evaluator's report and discussed findings. There was agreement that the Student continued to be special ed eligible. However, Parents persisted in wanting him transferred to a less restrictive environment. The evaluator's report recommended a transition to such an environment. The IEP Team did not agree that the Student was ready for a transfer but in deference to the Parents wishes did agree to a detailed transition process. Nonetheless, Parents did not complete the IEP because they wanted a

date certain on when the Student would transfer to another school and the District could not agree to such a date. Parents filed for due process.

The Hearing Officer determines there was no basis for the due process hearing because Parents did not object to the IEP or assert denial of FAPE. Parents refused to accept the District's attempt to resolve the matter with a transition plan, although the District could not give a certain date for transfer. Parents assertions regarding LRE were based on their plan to move and their desire to transfer the Student to a public school in the new location but not to a therapeutic day setting. Nonetheless, to ensure that the matter is resolved, the Hearing Officer reviewed all the evidence which proved that there was no basis to assert that the Student was not in the LRE.

PRELIMINARY MATTER

At the completion of the Parents' case, the District made a Motion for Directed Verdict on the basis that there is no evidence the January 26, 2005, IPE is not appropriate. The Hearing Officer denied the District's Motion because she has no authority to grant such a Motion. Parents sought to introduce evidence regarding a proposed settlement. The Hearing Officer indicated she would take this under advisement. The Hearing Officer also denies the Parents request to submit evidence regarding the settlement. Parents offered no applicable legal authority for the Hearing Officer to review such evidence. Parties must have the assurance that when they engage in settlement discussion it is done in confidence and not for consideration as evidence in a hearing. Additionally, in the discussion about the settlement, it was clear that Father was confusing IEP transition with "guaranteed date of placement" For the sake of discussion, even if this Hearing Officer had found that the TDS was not the LRE, the Hearing Officer would have ordered that the District implement the transition plan developed by the District in deference to the Parents' wishes, without any date certain for transfer to another placement.

FINDINGS AND ANALYSIS

Pursuant to statute, the District has the burden of presenting evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. Illinois School Code, 105 ILCS 5/14-8.02a(g). The Hearing Officer finds that the District identified the needs/eligibility of the Student and provided appropriate services to address those needs in the TDS program.

(1) Parents make no assertion that the District has not provided FAPE. Parents make no contention that the IEP is deficient.

The record is replete with Parents' praise for the TDS, even stating it is the only placement in which their son could have made gains. Parents did not challenge the placement or request an IEP to change the placement until November 2004. Parents contend that their son is not in the least restrictive environment. Based on that contention, they argue that the District has not implemented the IEP with regard to the proposed transition to a less restrictive environment. There is no issue that the District has not

provided FAPE.

(2)Parents' contention regarding LRE is undermined by Mother's admissions in testimony.

Mother testified that in the Student's first grade year she told the staff that the Student needed to be removed from the TDS because the "older kids are retarded." She also told staff that she and her husband were getting ready to file a lawsuit (to get him out of the school) and that they did not know about "administrative review" at that time. (Tr. 207-8). However, she testified that she later told staff that after reviewing the situation with staff and talking to the Student who said he was not ready to switch, she then felt it no longer necessary to remove him. (Tr. 209).

Mother then testified that in the fall of 2004, (the Student's second grade year) she told staff the Parents wanted to transition him out because she did not feel the level system applied to him and the Parents "just wanted to just get him out of there...." Tr. 209. Although the school is acceptable for younger children, she testified he no longer belongs in that school "and the older kids in that class have serious organic issues." Tr. 210. She informed staff that the family would not allow him to attend the older classroom. She then testified, "We're moving, too...." In response to a question on cross examination as to whether it "would be bad for (the Student) to enter a new school with an IEP that puts him in special education," Mother responded, "absolutely.** When asked if she would like the Student "to have a fresh start in a new area without any IEP at all", she responded, "absolutely, but you can't do that without having a hearing to change the placement, is what I believe." Tr. 210-211. After viewing a property in another area Mother determined that it would be located in a different cooperative than the one which encompasses the TDS he is attending. Mother further testified that "when we were going to move we had to stay so that (the Student) had to go to the (TDC)."

The evidence reflects that Parents utilized the due process hearing system, not because the child should be in a less restrictive environment, but primarily because of their plan to move. Nonetheless, the Parents acknowledged that they like the TDS and when they move to a different location he would be placed in a different therapeutic day setting than the one he is currently in.

In this matter, the District made every effort to accommodate the Parents request by agreeing to a transition plan to a less restrictive environment. Nonetheless, the Parents would not agree to a transition without a date certain for transfer. Their actions further undermine their arguments and are indicative of their desire to move their son to a setting without an IEP for a therapeutic day setting, rather than any concern that their son was not in the LRE.

The Parents have not only utilized the due process system inappropriately, they have involved the Student, telling him that he would be transferred to another school. KK, the social worker, testified that he said he could not talk with her because of the hearing.

The above admissions undermine their assertions about their son not being in the LRE

and reflect that this matter should not have gone to hearing. Additionally, once the Parents stated their desire to transition their son to a different setting, the District convened an IEP in November 2004 and January 2005 to consider their requests and review their evaluator's report. During that 2005 IEP, in an attempt to ensure Parents' wishes were considered and to avoid going to hearing, the District developed a transition plan, despite the fact that no District staff agreed that the Student should be moved to a less restrictive environment. The Parents terminated the discussion because there was no date certain set for his change to a new school setting. The District did everything possible to try and resolve the matter to the Parents satisfaction without going to hearing.

White this Hearing Officer is convinced there is no basis for a hearing, based on Parents plan to move and their desire not to have their son with a special education IEP in a new setting, nonetheless this Hearing Officer will review the evidence regarding LRE so that the record is clear and complete on this issue.

(3)Parents in the due process attempt to assert that the initial testing was not valid because the Student was not compliant with the testing. However, District personnel testified as to the completeness of the testing and the Student's participation, in addition to the fact that his inability to participate in some testing was part of his disability. The Hearing Officer notes that Parents assertion is also undermined by the fact that Parents did not challenge the placement or the IEPs and on the contrary praised the District for the work done with the Student. Nonetheless, the Hearing Officer here reviews the initial testing and basis for placement.

BM, the District social worker, testified regarding meeting the Student, her work with him, and the testing and placement. In 2002 she met the Student in Kindergarten after he began attending the District elementary school on 11/28/02. She heard immediately from the teacher that the Student was having difficulty and the teacher wanted suggestions. The District assigned a teacher assistant to work with him. BM also started to work with him after she was called in to discuss behavioral issues when the Student was having difficulty functioning. BM learned that the Student was in a disruptive family situation for a five year old. BM found him not available for learning, although he had the capacity. His behavior was a concern. He was uncooperative a large percent of the time. He had a short attention span, squirmed, lay on the floor, displayed aggressive behavior, hit and kicked a teaching assistant, and was oppositional. Staff knew he was bright but most times he was not available. The focus was to help him adjust to school. In BM's observation, the Student is not compliant and it interferes with his progress. When he is interested he has the ability to engage.

A case study evaluation was initiated on September 19, 2002. BM completed a social developmental study. BM met with Mother and had previous information from Father and Grandmother. The Student had been back and forth between Parents and Grandparents. In the summary of BM's report (D 3, p. 37) she indicated he was non compliant, verbally disrespectful, physically aggressive to adults, not responsive to interventions, had not made attachments, lacked adequate parental supervision, and there was a possible hereditary factor related to substance abuse. She felt the Student would thrive best in a quieter environment with fewer students and less stimulation. BM testified that this was a more thorough evaluation than done for most students because of

behavioral concerns. A case study was conducted by a school psychologist who did observations but limited testing. D 3 (pp.42-47). During the evaluation, the Student participated in some testing. The Student was found to be overwhelmed by the stimulation in class and he could not function without support. The Student had difficulty complying in all areas.

Test results showed that the District could not meet his behavioral and emotional needs in class. D 2, 3 (IEP). An IEP was conducted after completion of the evaluation. BM presented the results at the IEP meeting. BM stated in the IEP meeting that the Student was not available for learning. At the IEP Parents did not question the validity of findings. D 3, p. 14. The Student was determined to have emotional/behavioral disability but not qualified as having speech/language disability, although he needed speech/language and social work services. BM agreed with the ED diagnosis. No one at the IEP disagreed that he was special ed eligible.

BM testified that the basis for the ED determination was the Student's behavior in classroom, difficulty learning and complying with requests, and on evaluations. Difficulty of complying with testing was part of the disability. Goals were developed. Although the Team discussed alternatives besides the therapeutic day school (TDS), the placement decided on was the TDS because the Student could not manage in a less restrictive environment, even with an aide to work with him. There would be no adaptive Physical Education (PE), which had been recommended. Parents consented to the TDS placement and did not object to the Student being taken out of the District school. On November 1, 2002, Parents signed the Consent for Initial Placement.

(4)The Parents' private evaluator's report is deficient and unpersuasive, as was her testimony.

While Parents argue that their son should be in a less restrictive environment based on their personal observation and the fact that he is engaged in a number of sports and can ride a motorbike, and they disagree with the some incident reports, the only evidence with respect to LRE is the conclusion and recommendation made by their private consultant, Dr. Scheinbaum, who recommends the Student be placed in a less restrictive environment. Dr. Scheinbaum was asked to do an evaluation because Parents did not want a neuropsychological, which would involve addressing whether the Student should be on medication. Although Parents initially agreed to a neuropsychological they withdrew consent,

Dr. Scheinbaum's. report, however, with its recommendation that he should be in a less restrictive environment is not only unpersuasive, it is deficient with respect to background information, testing and observation. D 10, pp 209-213. The background information did not include a complete set of IEP reports on the Student. In fact, when cross examined by the District's attorney, Dr. Scheinbaum attempted to claim that four pages of the January 26, 2005, IEP, regarding goals on which the date of 11/04 was written, were in fact the 11/04 IEP. The report therefore is not based on appropriate knowledge regarding the Student's placement. The background is based heavily on interviews with the Mother. Next, the testing is cognitive testing, which was unnecessary and had already been done by the school. AP, the school psychologist, testified that Dr.

Scheinbaum's report in part was consistent with what AP found. Dr. Scheinbaum's tests reflected data in the school, looking at cognitive functioning, academic achievement.

Dr. Scheinbaum's report is also based on extremely limited observation. The observation was made after the regular school day and limited to approximately one half an hour. Dr. S., the TDS program coordinator, testified that Dr. Scheinbaum wanted to come in at 2:30 p.m., which is the end of the academic day and beginning recreation in the home room. Dr. Scheinbaum knew the schedule. Dr. Scheinbaum observed the Student in this setting for 15 minutes. After her observation, Dr. Scheinbaum met with KK and Dr. S.

(5) District staff agreed to a transition only in deference to Parents wishes and not based on any data or belief that the Student was ready to transfer. Accordingly, Parents' line of question regarding whether staff "still" believed a transition is "necessary and appropriate" is misleading, as is the line of questioning about whether the Student met the criteria for the less structured environment to which Parents wished to transfer Student.

During the January 2005 IEP the District, in an attempt to ensure Parents' views were considered, decided to agree to a transition plan as recommended by Dr. Scheinbaum for a less restrictive environment, despite the fact that no District personnel believed that the Student should be moved or transitioned and that his record of major incidents in fact confirmed that he continued to need the highly structured environment of the TDS. At the IEP the District did not have the complete information regarding the background and circumstances of Dr. Scheinbaum's report. The transition plan was included in the IPE, indicating a transition was necessary and appropriate.

Father then proceeded to question witnesses on the basis of this statement, attempting to elicit from them whether they "still" agreed that the transition was "necessary and appropriate." This line of questioning, however, is misleading, because the necessity for transition was based not on the District' personnel assessment that the Student should transition but was based on the fact that if the Student did transfer to another setting, then a transition would be necessary and appropriate. The record is devoid of any evidence that any District person ever recommended, based on the Student's performance, that he should be transferred to a less restrictive setting. This whole line of question was meant to provide some basis for an assertion that the District had agreed that the Student should transfer to another setting, while in fact that never occurred.

Father, in questioning, also sought to have the District personnel acknowledge that the Student was qualified for the less restrictive environment in SAS by asking whether he met the basic criteria outlined in the SAS brochure. This line of questioning was also misleading because it sought to make a record that the District was denying the Student a placement for which he was qualified. This is not an approach to special education. The general criteria listed in a booklet are not indicative of the kind of setting a child with special needs should be in. That is the function of the IEP, which each child in special education must have and in which the Parents participated for their son. An IEP does not merely list general criteria. The IEP is the individualized plan for each student with specific goals. (The special education services and placement that constitute FAPE for a particular child shall be identified based on the child's unique needs and not on the child's

disability. 23 Ill. Admin. Code § 226.50d.)

It was also troubling that Father, when questioning witnesses, did not understand the difference between "related services" which the Student also receives, and the fact that the Student is in a full time special education setting. Father's questioning revealed he did not know that the "related services" were additional services that the Student was receiving in addition to the full day of education in the special education setting. AG testified that the special education minutes are minutes a student receives instruction and related services minutes are beyond the school day. The Student's IEP goals deal with math, language arts, reading, which are all special ed minutes. AG testified that if the Student were to transition to SAS he will need much more than 50% special ed. The IEP recommended full time special ed. In asking questions regarding the amount of time in related services, Father sought to build a case that these minutes did not constitute a full day and therefore the Student could be in a less restrictive environment. His effort in this regard is unavailing.

All District personnel testified as to the gains that the Student has made, albeit slowly, since kindergarten, with regard to making academic progress, as he has learned to control behavior stemming from his ED. He is now in second grade. All staff attributed the gains the Student made to the structured environment in which he has mastered some ability to control his behavior which makes him available for learning.

(6) Parents assert that since the initial testing and placement the Student has progressed to the point where his special education designation is minimal or non existent. Mother attempts to make the case that: (1) It was family problems and in particular her alcohol consumption which caused the Student's problems resulting in being special education eligible; (2) Now that Mother has worked on her own issues, is attending school, is involved in the Student's school life and homework, and the Student no longer has to live with his grandparents, the District is to conclude he has made sufficient progress in his ED to be moved to a less restrictive environment. Her assertion is not supported by the evidence and also reflects a lack of understanding of the serious nature of the child's special education designation and the length of time needed to provide sufficient support for him to master his behavior.

Mother testified that she started drinking after the loss of the family business and she was not caring for the children. Family members were worried about the children. There was no structure in the home. The Student moved in with his paternal grandparents. Mother does not speak to her in laws.

Mother has had two years of intensive therapy. Since kindergarten, Mother had two relapses. She testified that Father almost died. She was arrested some time in January 2004 and spent seven days in jail. Mother rented an apartment and initially was not in the home during probation although she was there during the day. She is still on probation. Mother was in the home during the day. The Student was aware of why Mother had an apartment.

Mother testified there has been a change in home life. Mother objected to homework. But

through therapy she became involved in his homework. The Student now does homework and is proud of his work. The Student "adores" the teacher and staff. He is now reading 91 words, with one or less errors. This goal has been met. He is also not involving himself in situations that do not pertain to him 85% of the time. The Student has been at grade level since November 2004. The progress reports show above average in responsibility, respect for others. P 5. His overall grade average is 92.

Mother testified that she communicates with the school all the time, more so in the last year. She received monthly progress reports from school. D 11-21. Mother admitted that the Student has had disciplinary problems at school—i.e., on one occasion, the Student went bowling with IDS and "punished" others with inappropriate behavior. There were nine major reports in November 2002 (D 41-53), five for December 2002 (D 54-59). (The Hearing Officer notes that the Student's incident reports for January 2003 through January 2005 are contained in D 60-110). He had new teachers for the following school year. The Student liked his previous teachers but "these new ones are just as good if not better", according to Mother. She testified that for his January 2004 annual review (D 7, p. 82), Mother was drunk but her husband was present. The Student's Functional Analysis reflects that he has difficulty interacting respectfully with peers and can hit, swear, and insult when frustrated, three to four times a day. D 7, p. 99.

There have been sleep-overs with students from TDS and Mother testified that the Student has friends who are "normal" (non special education). She asserts that she has no problem with small contact with special education students. But extensive contact, according to Mother, is damaging.

Mother also testified that she did not want the neuropsychological testing done as requested by the District because the District wanted the Student tested to see if he needed medication. She objects to such medication. That is when Parents withdrew the consent for the testing. Additionally, she testified that the Student's pediatrician mentioned a diagnosis of Oppositional Defiance Disorder and she is reading a book about it. She also testified that a family acquaintance informally evaluated the Student but no report was done or any information on this given to the District. The Hearing Officer also notes that the issue of testing for possible medication was in a draft letter for neuropsychological testing that the District shared with the Parents and the Parents had the opportunity to change the draft letter. D 113, pp. 443-5.

Nothing in Mother's testimony constitutes evidence that the Student can be transferred out of the TDS. It is not the function of this Hearing Officer to assess the Mother's situation with regard to her issues, although it is noteworthy that Mother admits she had a relapse and still needs therapy, while still asserting that the environment that caused the Student's problems no longer exists. Nonetheless, the Hearing Officer recognizes that Mother has faced significant and difficult challenges. However, this case is about the Student, not the Mother, and this Hearing Officer must confine herself to reviewing the evidence and making a decision regarding the Student.

(7) District personnel agreed on the Student's need to remain in the TDS, while acknowledging that they also agreed to the transition based on the desire to ensure Parents inclusion in the IEP process. The Parents left the IEP because the District

could not give a date certain when the Student would be transferred.

AG, the District's pupil personnel services supervisor, testified that the proposal for transition to a less restrictive environment was in deference to Parents' request. The Team supported continued placement at TDS. The transition would initially require that the Student remain at the TDS while the exploration on the less restrictive environment occurs. The Parents want the Student transferred to the SAS program, where the targeted population is K through 5th. The Student currently is at grade level.

Student has related services of adaptive PE 200 minutes per week (mpw); individual therapy, 60 mpw; group counseling 80 mpw; and speech/language services 60 mpw. D 10, p. 201, 1/05 IEP. The Student needs adaptive PE because it supports the program. Adaptive PE deals with the social emotional behavioral component. Student is not totally successful in adaptive PE in a small setting. The Team was concerned about his ability to function in a larger setting and PE in public schools is in larger settings. Typically they are 18 to 22, Currently there are 8 to 10 in the TDS typical class, adaptive PE. The Hearing Officer notes that Parents also demonstrated their lack of understanding about the nature of adaptive PE by asserting that because the Student engages in sports activities outside the school setting he does not need adaptive PE.

AG further testified that transition would occur while the Student is a student at TDS until another IEP is held when he no longer requires TDS services. AH of his instruction is in a small group setting with two or more adults. That will not be the same at the SAS program. To transition from TDS the District follows a set of steps that has proven successful, including discussion between staffs and visits by students. During the TRP Parents left although the plan was to begin transition process immediately.

Additionally, AG testified that entrance criteria for SAS are general for children coming from general school population and not necessarily from more restrictive settings. The SAS targeted population is from NSSSED where students are functioning in a general population, including children who are not residents of the District. To transition from TDS, a child must have needed skills and internal resources, as a transition plan asks what would be needed for a specific child. IEP meetings address children from more restrictive environment, with specific goals, etc. AG is not aware of any District students who transitioned from TDS but some transition back to home school. AG's testimony refutes Parents' argument that the District is denying their son placement in a setting for which he has met the general criteria. Currently, AG testified, there is no plan for transition at this moment. No steps are being taken because of the due process, hearing,

AP, TDS school psychologist, testified that he is a certified trainer of Crisis Prevention Institute, training people in non violent crisis management. The purpose is to teach staff how to handle behavior issues. CPI philosophy is that a last resort would be using a restraint technique. Staff is trained when first coming into the program and there are annual refreshers. Mother contended in testimony that the Student was "attacked" by District personnel. There is no evidence on record to support this. Given the Mother's interaction with school personnel, there would have been a record if she had made a complaint about such behavior. In fact her high praise of school personnel compromises her assertion as does AP's testimony about personnel training on crisis management.

AP testified that in larger groups, the Student was less attentive, needed more redirection, and when frustrated he acts out verbally and physically. AP continued working with the Student in first grade. In the second half of the first grade year there was more progress, but the Student still had difficulty staying on task in group. He is not good at managing peer conflict. At the end of first grade, the Student still had difficulty but verbal skills had developed, although he does not always use those skills in the best way. Some academic abilities developed but he still needed reminders and time out during group.

The Student continued group therapy in second grade. He has not mastered self regulation of behavior but has improved. To ensure his success in an environment with less support, the Student needs to learn to remain on task for longer periods of time without adult assistance and to follow directions pretty quickly the first time. Working toward independence is key because it leads to success, whether academic or social skills.

The Student can physically tense up when frustrated. AP testified that the day before AP's testimony the Student was frustrated during reading and banged his hand on his desk, an indication he needed help. He has had multiple time outs during group sessions.

AP has been involved with transfers from IDS to a less restrictive environment but never without a transition. Students need to have their environment much more closely reflect the environment they will be moving to. Sometimes the process has gone too quickly for some students and they have to be brought back. These students came to TDS because of difficulties and to experience that twice is problematic.

At the January 20.Q5 IEP, AP agreed the Student still qualified as ED. He presented Dr. Scheinbaum's report because she was not there. D 10, pp. 209-13. AP reviewed her recommendations. She recommended placement in a mainstream second grade classroom but AP disagreed. If the Student were to be transitioned, AP agrees that the process should entail gradual integration and a structured behavior management program. For Dr. Scheinbaum's recommendation No. 2, regarding maximizing potential for successful transition with short assignments, AP agrees with this for any transition. Regarding recommendation No. 3, AP wonders what data she had access to regarding social work and learning disabilities services. AP agrees with recommendation No. 4 (for higher level reading material) for anyone and the same for No. 5 (coordinating behavior management program with parents for home follow-up). The Hearing Officer also determines that the Scheinbaum recommendations are non specific and more importantly reflect a lack of knowledge of the full-time special education program and related services that the Student receives in TDS..

AP testified that the transition plan outlined at the IEP (D 10, p. 161) meets the outlines of Dr. Scheinbaum's report. AP was concerned because of the amount of adult time needed for the Student to stay on task and wondered if it would be available at the necessary level to continue his success. AP understood Parents' statement on transition—he heard them talk about liking the beginning part of transition, involving having SAS people get to know the Student and the steps that involved. However, Parents wanted a guarantee that the next step would be added—that is, a guaranteed start date at SAS. Parents said they wanted to think about what the District offered and what transition

meant. The District could not give a guaranteed date for starting because if the Student struggled or had a difficult time or began to go backwards it would make no sense to have a date. Transition could cause anxiety and poor behavior.

AP testified that the transition process would have initial steps of contacting the SAS program, beginning to have that staff be familiar with the Student, prepare the Student for expectations if he would transition, spend time leading up to the next meeting, and define criteria if he were ready for less or different support. The District agreed to begin a transition program. Before formal attendance at another place transition would require visits at the other site and preparation of the Student. The IEP Team discussed steps that needed to occur and a meeting would be held prior to March 26. The Team must identify specifics. Staff from the other site needed to expect the best transition and best results. Then the Student would have to go other site and this might create enormous anxiety. He might need additional supporting therapy.

Dr. S, the program coordinator for TDS, also testified about the TDS system and attempts to reach an agreement with Parents regarding transition. Academic, therapeutic, and behavior are three components of TDS which works on a level system. D 120, p. 470. Written feedback is given to students and to parents and progress reports are completed. A student is not required to reach level 5 to graduate. Generally the level system, when a child is at Level 4 or 5, is an indicator to consider transition. But some students are not ready.

Report cards and progress reports (D 11-41) are done for all students. The school documents major behavior infractions with incident reports, which involve a student putting himself in danger or risk of danger or putting someone else in that position. D 121, p. 508. Reports are written by the person who witnessed the event. Dr. S. reviewed the relationship between major incident reports vs. time out. Time out is a strategy to help a student separate himself from a situation. Even if a child has no majors, a child can exhibit less severe behaviors that preclude their being in a less restrictive environment. Once at a level, no child is dropped down. The Student was moved to the next level in the second week of November 2004, which is consistent with his incidents occurring on these dates and there is nothing that would preclude him from moving up the time he did. D 42,p. 300.

Dr. S. testified that the IEP of 1/07/04, D 7, reflected that the Student's behaviors are still an impediment to learning. The Father was present but not the Mother. There was no disagreement regarding goals. Subsequently, the Parents requested an IEP, prior to the annual review, because they wanted to discuss transition. The IEP was held on 11/10/04. D 9. Dr. S knew before the IEP that Parents had engaged a private evaluator, Dr. Scheinbaum, The District asked that a neuropsychological be done in response to the Student's repetitive behaviors-smelling fingers, chewing on his shirt, delayed response when spoken to.. At the IEP the Parents agreed to a neuropsychological. The District shared draft questions for such a test and then the Parents withdrew consent. D 113, p. 443-5. The District also wanted the opportunity to receive the private psychological and review all data. It was determined that the Team would meet again. Dr. S. did not think there was disagreement. The District would get Dr. Scheinbaum's report and at the annual review all the data would be discussed. Subsequently, Dr. S. received notice of the

request for hearing, prior to receiving Dr. Scheinbaum's report.

The 1/26/05 IEP was held to discuss the Scheinbaum report and possible transition. D 10, Dr. S. agreed that the Student still had emotional disorder. He still exhibited needs at levels of intensity, frequency, and duration that require special ed services. The Father wanted the Student transferred to the SAS program.

The transitioning was discussed at the IEP. Mother asked why the transition back to a home school was slower than one from the home school to therapeutic day. Dr. S. explained that it is important to get services right away for a child coming in to therapeutic day but transition back requires planning and acclimation. All the steps are necessary. AG discussed placement options. The Team recommended continued placement at TDS and Mother objected. Dr. Scheinbaum had recommended a gradual transition to a less restrictive setting. In deference to Parents wishes, the Team agreed to support transition because parental involvement is important for success of the TDS program.

Dr. S. explained continued placement and beginning transition to SAS program. Once the transition is 100% successful, then the Student is in the new placement. Dr. S. felt the Parents, understood and the District made a proposal for the transition process: the two sites would exchange information, personnel from both sites would exchange visits, SAS staff would observe the Student at TDS to determine how SAS could individualize the Student's program, and then have the Student visit SAS. Mother said the Student was excited but KK said the Student expressed anxiety in therapy about change. Dr. S. indicated that the timeframe was to try and get everything done before spring break. Dr. S. felt transition activities could be accomplished in February and March. Father suggested he and Mother would benefit from ending the meeting and have time on their own. The family wanted a date selected in advance for placement before commencing transition. Dr. S. stated there could be no guaranteed date of first regular school attendance. That would be a discussion at a future meeting. The SAS staff would not have the ability to observe and the District would need to prepare transfer of strategies successful for the Student. Children with emotional and social issues might be unpredictable and the District might have to slow down or speed up the process. The data for the Student did not support recommendation for a less restrictive environment. It could not be determined if SAS would be appropriate because the transition had not yet occurred.

Dr. S. testified that, after hearing (Mother's) testimony, he believes that the current disagreement is because the family wants the Student out of this school so that when the family moves he won't be in another public therapeutic day school.

(8) Student's social workers and teachers all confirmed that the Student has made progress in the TDS and that he should remain in this placement.

TAL, school social worker at TDS from November 2002 to 2003, when the Student was in Kindergarten, testified as to his behaviors and the fact that he did not know the alphabet, How to count to 20, and could not write his name. The Student picked his nose, chewed his sleeve, and had accidents—he was not potty trained. He was still in play

mode. The Student frequently discussed his home life with the social worker. He shared with many people that Mother and grandmother did not get along, his dad has been up all night, "my mother used to drink but not any more," and that Mother had a DUI. He had a lot of worries because he had lived with his grandparents and when he was brought to grandparents on week ends he would worry that he would stay with grandparents "forever." He required a great deal of one on one and intervention. By the end of the school year his behavior was still aggressive but he knew there were choices, even if he did not necessarily make them.

His mother was open to being part of the team. She wanted information on how to parent and sought a lot of advice and support on how to work with the Student and his brother. She wanted to know how to do homework with him. She was being taught parenting skills and setting boundaries at home. Mother did a lot of growing and really got involved.

TAL was present at the 30 day IEP (D 4, pp Sfc-77, IEP 12/16/02). The Team recommended that the TDS was the LRE (D 4, p. 71), although the Team did consider a less restrictive environment where he would be in a restrictive class 50% of the time and also considered a private day school. Everyone including Parents was in agreement with the placement and the IEP. The social worker believed the Student made some growth academically by the end of year and with some relationships but remained aggressive, impulsive, and it was still difficult to stay on task. He still continued to need the TDS structure, one on one, and frequent redirection.

LF, the Student's teacher from the time he came to TDS in November 2002 to the end of the school year 2003, testified that there were nine students, K-3, and two assistants. The Student was extremely hyper. It was difficult to understand his speech. His language included swearing.

LF reviewed a major incident report, D 43, p. 381 11/10/02 when the Student threw a chair and used profanity. These reports document the most severe behavior. Like the social worker, the teacher found that he discussed home life and did not have boundaries with what to share or not. His home life was constantly changing and the Student was upset a lot. At the 30 day IEP, the Team reviewed the summary of overall performance, which T,F drafted, I-F and the social worker drafted the IEP goals. The teacher agreed with the recommendation that the Student stay at TDS because the Student needs structure and staff attention and small staff to student ratio helps. No one at the IEP objected. His progress was slow. By the end of the school year it was minimal.

VO, another of the Student's teachers, started working with the Student the summer after his K year, 2003, and has been his teacher since. He is now in the second year. She testified that there is a classroom staff of four and eight children. In his first year, the Student was in speech and language and had social work and group therapy with the school psychologist. Consistency is important for the Student. He is more successful when structured. He struggles when things are out of order for him.

VO also reviewed the first grade major incident reports—hitting, kicking, punching, inappropriate language, turning over furniture - a total of 14 major incident reports.

Student struggled with using words appropriately and was very profane, in day to day language, i.e., "Can I have my "f ___ing pencil." The Student made a lot of progress, struggling through the middle of the year, and he was more engaged in academics, in his first year. He made progress but was still below grade level.

At the annual review 1/7/04, VO reviewed the summary of her update (D7, p. 86), which showed the Student was working below grade level. He was still working on interaction with peers. She drafted the IEP goals for the Student The behavior goal was drafted with the social worker, KK, because he was following direction 68% of time and needed to increase to 80% of time, so he could engage in following directions for learning. The goal was to increase on-task behaviors to 80% of time, The Team recommended that the Student remain at TDS. His teacher felt this appropriate because the Student was just beginning to engage in academics and show some success with behaviors. No member of the Team, including Parents, disagreed with goals or placement.

The Student is now in second grade and in the class group with psychologist and with a speech pathologist. A continuum of discipline is used, with positive reinforcers. The Student constantly interrupts and this disrupts flow of information not only to him but to his class.

At the 11/04 meeting Parents wanted to discuss transitioning the Student from TDS to a less restrictive setting. The Staff discussed getting more information and reconvening. VO did not feel then the Student was ready to transition because he was not participating 100% in academics due to time out and he was struggling with peer relationships, unstructured behavior, having time out during academic time and not as involved as he should be. She agreed with the decision to gather more data. She was willing to engage in transition because Parents wanted him to and she believes parents are an important part of the team. VO agrees with the transition plan. The Student needs to be acclimated to where he is going to be. He talks about it. There is a risk of transitioning the Student too fast. He could suffer if he is not successful in transition.

In January 2005 he was below grade level in reading and is slowly catching up. The Student has made good academic progress. He is very aware that he would like to get his time outs lower and that is something he wants to work on. But the week during which VO was testifying he said he did not care about it.

KK, the TDS social worker, testified that she worked with the Student in his second year and previously in summer school. The Student has counseling 60 minutes per week, throughout the week.

Starting with her work with the Student she received and processed major incident reports with him. In response to his behaviors, she would review them with him and discuss how he was feeling and what he would do differently in similar situations. In first grade, the Student, with KK prompting, could reflect on what happened. But it remained difficult for him to process. Besides the majors, there were lesser incidents which were also processed, such as following directions, staying on task, relationship with peers. Therapeutic interventions were also used for these behaviors. Those skills would need to be mastered, even before starting a transition plan.

In the 2003 school year, Mother wanted to know about the Student reaching level 2. There were times when Mother was more available than not. KK had communication with Mother throughout the school year. Mother would sometimes call because she did not understand something that happened at school. The Student asks KK why he has to see her again. When he is in her office, he relates what is happening in his life, has a difficult time sitting still and keeping his hands to himself. His play is marked with aggressive themes, revenge, violent attacks, protecting himself and his home.

In January this year KK started involving the Student in a pragmatics group, with three peers who have some difficulty in speech and language area. The Student is exhibiting less- severe behaviors and he must gain mastery of them to consider an environment with less support. The Student has made progress on using profanity. That goal was dropped in November 2004. Areas that remain are staying on task, peer relationships, and refraining from involving himself with things that do not pertain to him.

Mother requested to be notified of the Student's major incidents at school. But the request was made in the summer or at the beginning of the school year. All majors were discussed with Mother throughout the school year. When it was explained that the impediment to reaching Level 3 was based on the number of incidents, Mother challenged one. This was the time Parents planned to file a lawsuit against the school and Mother began talking about moving the Student to the next level. Mother said she wanted the Student removed from IDS. She claimed the school was "picking on" the Student in an attempt to keep him at TDS. Mother claimed that TDS is "ok" for younger students, not older, and under no circumstances would the Student be at TDS the next year.

KK made a report for the 11/10/04 IEP (D 10, p. 119). She expressed concerns regarding regression after transition; for instance, after summer or winter break, there is a regression in overall points. The school data chart on unsafe behaviors (D 9, p. 129) reflects that the Student exhibited unsafe behaviors in unstructured settings—i.e., breaks, PE, special activities. There is concern about inconsistencies in another placement without TDS support.

KK testified that the Student continues to regress. The Student still has ED. No IEP Team member stated he is not ED, including Parents. KK agrees the Student needs TDS. More students and less staff would be difficult for him. He needs help in staying on task and regulating his behavior. She does not think that would be available to him in another setting. KK does not believe it appropriate to transition him to a less restrictive environment. At the time of the meeting, so as to maintain a working, collaborative relationship with Parents, the Team was willing to explore a transition but with no guarantee he would start on a certain date. They could start exploring the process which has many steps. KK supported the transition process in deference to the Parents. After the description of the transition process, the Parents requested time to think about the recommendation, because the Parents wanted a specific date the Student would start actual attendance in a different program than IDS and the Team could not give a date.

Mother made a reference to family members who were also of the opinion that the Student should not attend IDS next year and if necessary there would be a lawsuit and Father said that the Student would just be dropped off at his home school, rather than

attend TDS.

KK testified that recently in treatment with the Student, when she picked him up, he said he would not talk. He said that KK and VO were trying to keep him at TDS and he felt he could not say anything or he would "get in trouble." Since this due process became an issue, he has had a hard time understanding it, based on conversations at home as to whether TDS is appropriate. He made recent comments that the school is for "stupid people" and that he has no problems now and does not need to be at the school. KK testified that the Student has in some way been made aware of the hearing. KK has discussed boundaries in the past with Mother on different issues. She also testified that TDS has a waiting list. There is no institutional reason to keep the Student there.

(9)Parents attempted to get a result from the Hearing Officer which the District could not give them because it would not accord with the District's legal responsibility to provide a FAPE. The District did everything it could to resolve the matter with the Parents. Nonetheless, because Parents could not obtain a date certain for transfer they filed for due process. AH evidence leads to a finding that, despite the efforts of the Parents to persuade otherwise, the Student is in the LRE. The Hearing Officer affirms the District's placement.

The Hearing Officer finds that at the January 2005 IEP the District made every attempt to address Parents' desires with respect to moving their son to a less restrictive environment. However, their desires did not accord with the District staff's knowledge of the Student's needs. All staff found the Student still needed to be in the TDS. Nonetheless, in an attempt to continue a working relationship with the Parents, the District sought to resolve the matter and agreed to the transition. The District to some degree relied on a deficient report from Dr. Scheinbaum. Additionally, the District was not aware that the Parents in fact planned to move and they wanted their son removed from the TDS, so he would not be placed in another public therapeutic day school in the new location. Despite the District agreeing to the transition, Parents did not finalize the IEP. From testimony, it was clear that they refused to do so because the District could not commit to a date certain when their son would be transferred. Parents continued to want the transfer despite concerns that the Student could regress if the transition were not appropriate for him at this time. The District did everything to resolve this matter and it should not have gone to hearing. A family's plan to move and desire to have a different IEP for their son so he could be moved to a different placement is not a basis for a due process hearing and it is in fact a misuse of the system. Parents have even exacerbated matters by informing their son he would be moving to a different location. Their desire to make the change for which their son was not ready could even, according to testimony, cause him to suffer and regress. Not able to achieve their result through the District, the Parents attempted to get the result through what they defined in the IEP (correspondence) as a judge's order (meaning an order of a Hearing Officer) to ensure a date certain. Their attempt must fail.

The Hearing Officer is not unmindful of the emotional nature of the family's experiences. Nonetheless, the Father is a licensed attorney and as such has responsibilities with respect to legal processes. Father asserted his right to question witnesses and yet when

the Hearing Officer deemed he would be the attorney representing the family he claimed he had been denied the right to speak on behalf of his son. Father is familiar with legal procedures and his incorrect claim is a distortion of what occurred. In fact, the District stated it would not have objected had Father expressed the desire to testify.

This Hearing Officer can make decisions based only on evidence, not on assertions, deficient reports, attempts to mislead through baseless lines of questioning, and misuse of the due process system. The Hearing Officer determines that the evidence supports a finding that the Student is in the LRE. Assuming *arguendo* that this Hearing Officer had found that the TDS was not the LRE, the Hearing Officer would have ordered that the District implement the transition plan developed by the District in deference to the Parents' wishes, without any date certain for transfer to another placement.

Pursuant to statute, the District has the burden of presenting evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. Illinois School Code, 105 ILCS 5/14-8.02a(g). The Hearing Officer in the instant case makes a finding that the District identified the needs/eligibility of the Student and provided appropriate services to address those needs in the TDS program. The District need not implement the transition program in the 1/26/05 IEP.

LEGAL ANALYSIS - LEAST RESTRICTIVE ENVIRONMENT

The 7th Circuit has noted that Congress has created a strong preference in favor of mainstreaming with the provision that states must establish "procedures to assure that, to the maximum extent appropriate, handicapped children...are educated with children who are not handicapped." 20 U.S.C.A. Section 1412(5)(b). *Lachman v. ISBE*, 852 F.2d 290, 295 (7th Cir. 1988). Nonetheless, the 7th Circuit found that whether a challenged placement meets the statutory preference for mainstreaming, that "laudable policy objective (mainstreaming) must be weighed in tandem with the Act's principal goal of ensuring that the public schools provide handicapped children with a free appropriate public education." *Lachman* at 299. In the instant matter, there was no issue of whether the District provided a FAPE. Nor did the Parents cite any issue with regard to the IEP

While a number of witnesses testified in this matter that no staff believed the Student should be transferred to a less restrictive environment, they agreed to a transition program because Parents wanted him transferred and the District staff wanted to ensure Parents' participation in the IEP team. While affirming that parents are a part of the Team, the 7th Circuit determined that it is not necessary that the parents be the deciding factor in IEP decisions.. The 7th Circuit has upheld the role of the districts in determining education programs. In *Beth B. v. Van Clay*, 282 F.3d 493 (7th Cir. 2002), the parents appealed the district's decision to place their child in a special education classroom, contending that it violated the IDEA. The Court agreed with the district's recommendation to remove her from the regular education setting where she was receiving little benefit to an ELS classroom in a neighboring district. *Beth* at 498, 499. The Court stated that, although it respected the input of the child's parents, it is educators who "have the power to provide handicapped children with an education they consider

more appropriate than that proposed by the parents", quoting *Lachman*.

The 5th Circuit has developed a test for determining whether a placement is the LRE. In *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989) the school district proposed a change for a 6-year-old Down syndrome child to special education classes from regular education, half-day, pre kindergarten where he could not participate without constant, individual attention from the teacher or her aide and failed to master the skills being taught. The 5th Circuit upheld the school district.

In *Daniel R.R.* the Court examined the measures which need to be taken in order to determine whether or not a child must be integrated with non-handicapped, age appropriate peers and developed a test for this purpose:

This test requires first a determination of whether satisfactory education in the regular education classroom can be achieved by the student with the use of supplementary aids and services. Factors to be considered are (i) the steps the school district has taken to accommodate the child in the regular education classroom; (ii) whether the child will receive an educational benefit from regular education; (iii) the child's overall educational experience in regular education versus a special education program; and (iv) the effect the disabled child's presence has on the regular education classroom.

Daniel R.R., 874 F.2d 1048-50.

If it is decided that the child cannot be educated in the regular classroom, the next determination is whether the school district has mainstreamed the child to the maximum extent possible. *Daniel R. R.* at 1050. It is noted that in *Daniel R.R.*, the 5th Circuit declined to follow the 6th Circuit's *Roncker* analysis of whether the services which make the more restrictive placement superior could be provided in the regular education classroom setting (*Roncker v. Walter* 700 F.2d 1058 (6th Cir.), cert. denied, 464 U.S. 864 S.Ct. 196, 78 L.Ed.2d 171 (1983)). The 5th Circuit deemed that analysis too intrusive an inquiry into the educational policy choices that Congress deliberately left to state and local school officials. The 5th Circuit affirmed the *Daniel R.R.* test in *Ethan Brillon v. Klein Independent School District*, 104 LRP 28141, (5th Cir. 2004). The 9th Circuit defined a similar test which it has also affirmed:

We have adopted a four-factor balancing test to determine whether a school district has complied with the IDEA's mainstreaming requirement. The court must consider "(1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect [the student] had on the teacher and children in the regular class; and (4) the costs of mainstreaming [the student]." *Sacramento City Unified Sch. Dist., Bd. of Educ. v. Rachel H, ex rel. Holland*, 14 F.3d 1398, 1404 (9th Cir. 1994).

ML v. Federal Way School, 341 F.3d 1052, 9th Cir. 2003.

Test

In applying the *Daniel R.R.* test to this case, the Hearing Officer determines that the District has met the test criteria.

(i) The steps the school district has taken to accommodate the child in the regular education classroom.

Initially, the Student attended the District elementary school. It quickly became apparent that he was having difficulty in this setting. The District assigned a teacher assistant to work with him. The social worker also started to work with him after she was called in to discuss behavioral issues when the Student was having difficulty functioning. His behavior was also disruptive and he hit and kicked others in the class, making it difficult for teachers, and for students to learn. The difficulties continued. The Student was found to be able to learn but not available to learn because of his ED. While a number of less restrictive options were considered, the District, through evaluation, determined that the Student's ED required a therapeutic day school setting. Parents agreed and expressed satisfaction with his progress over the years.

While the Student made progress both academically and in monitoring his behavior, his behaviors have continued and he has incurred major incident reports, particularly in less restrictive settings, such as PE, reflecting that the Student had not made sufficient progress to warrant transfer to a less restrictive environment. What is critical here is the specific designation of ED for the Student, which recognizes that although he has the ability to learn his behaviors make him unavailable for learning. The District has proven that the Student needs to remain in the LRE, because he has not sufficiently mastered the behavioral issues, despite Parents' demand for a transfer to a less restrictive environment.

(ii) Will Child receive any educational benefit from regular education?

The court in *Daniel R. R.* explains that this inquiry must focus on the student's ability to grasp the essential elements of the curriculum material, consider the nature and severity of a student's handicap, and examine whether there is a benefit in the integration process itself. The evidence reflects no benefit to the Student in the regular education classes. The premise of IDEA is that a child will receive a benefit from exposure to non-disabled peers. In the instant matter, no evidence is presented that the Student would benefit at this time from being in a less restrictive setting. To the contrary, in less structured activities the Student experiences the most behavior problems and some witnesses testified that it might be detrimental and traumatic for him to be placed in a less structured environment and then have to return.

(iii) Child's overall educational experience in regular education versus a special education program.

The *Daniel R.R.* court determined that the benefits of regular and special education for each student must be balanced. If a student does not absorb much material but benefits from being exposed to the experience that non-handicapped peers provide, then the benefits of mainstreaming may tip the balance. However, if the regular education

experience is detrimental to the child, mainstreaming would not provide an education attuned to the student's unique needs and would not be required. It would in fact violate the Act's mandate for a FAPE. As discussed above, the evidence supports a determination that the Student is not available for learning in a regular education setting and therefore there is no benefit in the regular education class. Time is a factor in education and the Student needs to spend time in a special education setting to work on his goals, rather than in classrooms with no benefit to him.

(iv) The effect Child's presence has on the regular classroom.

There is a two-fold test here: whether the student's behavior is disruptive in the class; and whether the instructor is required to spend so much time with the student that it is to the detriment of the other students' needs. Testimony supports a determination that the Student in the instant matter has a disruptive effect on a classroom. Even if an instructor spent an inordinate amount of time with him, the Student would not be available for learning because of his behaviors.

The District has met the criteria for determining the appropriateness of the TDS placement for the Student and it is the LRE.

CONCLUSIONS OF LAW

Based on the evidence, the Hearing Officer makes the following conclusions of law:

I. The Hearing Officer may consider only those issues identified for this hearing pursuant to Sec. 14-8.02a of The School Code. 105 ILCS 5/14. Parents have not claimed that the District did not provide a FAPE nor did they claim that the IEP was deficient. In the absence of Parents having raised other issues in a timely manner, prior to the hearing, as required by 105 ILCS 5/14-8.02a., the Hearing Officer determined that there is one issue in this case: whether the Student was in the Least Restrictive Environment.

II. The District's TDS program meets the criteria for the Least Restrictive Environment for the Student.

III. The District has met its burden of presenting evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. Illinois School Code, 105 ILCS 5/14-8.02a(g).

ORDER

The District is in compliance and need take no further action. The District shall not implement the transition program in the 1/26/05 IEP.

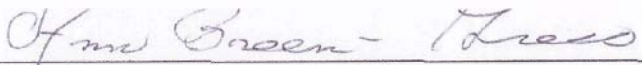
The District shall submit proof of compliance with this order, where applicable, to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777, within 30 days of this order.

RIGHT TO REQUEST CLARIFICATION: Either Party may request clarification of this decision by submitting a written request for such clarification to the Hearing Officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, A copy of the request shall be mailed to the other parties and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

FINALITY OF DECISION: This decision shall be binding upon the parties unless a civil action is commenced.

RIGHT TO FILE CIVIL ACTION: Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(i) that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to the party.

This Decision and Order entered this 4th day of April 2005.



Ann Breen-Greco, Impartial Hearing Officer