DECISION

[Student], by and through Grandparent [Grandparent], and Parent [Parent]	IMPARTIAL HEARING OFFICER DECISION
	Impartial Due Process Hearing No. 2000:105
Petitioner,	Held On: Aug. 4, 9, and 11, and October 10 and 27, 2000
vs.	
Division of Youth Corrections,	Held At: [Location]Golden, CO.
Respondent.	

IMPARTIAL HEARING OFFICER: Clark S. Spalsbury, Jr.
P.O. Box 2008
Estes Park, CO 80517

I. ISSUES

Throughout this decision the student shall be referred to as the "Child". The Parent shall generally refer to both the natural mother and her mother, the Child's Grandmother. The Grandmother presented the case with the consent of the Mother. The Division of Youth Corrections shall be referred to as the "Division".

A. Parent's Declaration of Issues:

The impartial hearing officer determined the Parent raised the following issues in her initial request for due process hearing.

(1) The Parent complains against lack of meeting to develop an individual education plan ("IEP meetings") before January 4, 2000, during 3 years and 7 months of the Child's incarceration with the Division.

(2) The Parent requests explanation of transferred rights at age of majority.

(3) The Parent asks what is the age of majority, and has the Child been declared incompetent by any Court?

(4) The Parent requests copies of all school work done by the Child at [Youth Services Center] together with all other educational records.

(5) The Parent states the IEP received by the Parent about January 17, 2000, does not correctly reflect the IEP decisions reached at the January 5, 2000, IEP meeting.

(6) The Parent states the IEP was actually prepared in written form after the January 5, 2000, meeting and the date is therefore incorrect.

(7) The Parent states consideration of placement of the Child at Harmony Homes and/or Nostalgia Homes in the Spring of 2000, as opposed to two other unidentified locations, was not presented to and considered by the full IEP team.

(8) The Parent does not agree with proposed placement.

(9) The Parent wishes to know what exactly happened at January 10, 2000, meeting from which the Parent was excluded.

(10) The Parent questions placement in residential setting at

[State Hospital] and what will happen if the placement doesn't work out.

(11) The Parent questions meaning of "imposition of legal disability", and whether IEP participants understood what it means.

(12) The Parent doesn't want the Child to be made a ward of the State.

(13) The family wants to participate in all placements and not leave such matter solely to the State, in particular as discussed in the August, 1998 meeting, the family does not want the Child to be placed in adult prison such as the St. Carlos Unit at Pueblo.

(14) The Parent wants parole for the Child and assistance from Jefferson Mental Health Center.

(15) The Parent states the treatment file provided to parent in April, 1999, reflects abuse, neglect, and mistreatment of the Child while under the control of the Division.

(16) The Parent was not invited to IEP meetings in 1996, 1997, 1998, and 1999.

(17) The Parent wants to meet with representatives from D.P.S., Department of Human Services, and higher level representative of Department of Youth Services.

The Parent raised the following similar or related issues during the course of this proceeding.

(18) The Parent states she disputes the appropriateness of the IEP's beginning in 1996, and the alleged reduction in or lack of services during the Child's stay at [Youth Services Center].

(19) The Parent also disputes the services provided at [State Hospital], and the lack of information about those services, which were offered under the current IEP for a short period of time in early April, 2000, prior to the Child's twenty-first birthday on [Date].

(20) The Parent's greatest concern appears to be the Child's lack of academic progress, particularly with reading, writing, and mathematics.

(21) The Parent requested compensatory services or monetary compensation as relief for alleged violations which occurred before the Child turned age twenty-one.

B. Respondent's Declaration/Issues:

The Division did not file a formal response but generally asserted its actions were proper under IDEA.

II. FACT FINDINGS, LEGAL CONCLUSIONS, AND DECISION

The impartial hearing officer finds the following facts by a preponderance of the evidence from the testimony, exhibits, and any other evidence admitted in the due process hearing:

A. General Findings Regarding History of Proceedings:

The Child in this case received public education from Denver Public Schools and in Arvada, but at age 17, a court placed him in the custody of the Division of Youth Services as a result of a criminal matter. He had been identified and staffed in special education since entering kindergarten. The Division is unique, amongst public education agencies in the State, in that it must provide education under the "Individuals with Disabilities Education Act" ("IDEA" herein) like other public schools, but simultaneously it incarcerates convicted youth offenders. Thus the Division acts not only as a school, but also provides control over incarcerated youth similar to that of prisons.

The Division received the request for due process hearing on February 1, 2000. The Colorado Department of Education received the request on February 7, 2000, and after some apparent delay in the parties' selection of an impartial hearing officer, the undersigned received notification of selection on February 28, 2000. On March 3, after telephone contacts with the parties, the undersigned sent notice of the prehearing conference and procedural matters to the parties.

A face-to-face prehearing conference took place in [Youth Services Center] in [City] on March 7, 2000. The Mother and Grandmother appeared for the Child, and [SpEd Coordinator], who is the Division's Special Education Coordinator, appeared for the Division. Neither party had counsel at this time, but later the Division obtained counsel, Ms. Betty Wytias, from the Colorado Attorney General's Office. Setting of the hearing was delayed and a telephone conference scheduled for March 20, 2000, to review status so the issues and relief sought could be better defined, to allow further discovery of educational records by the Parent, to avoid other conflicts such as an upcoming probate hearing concerning the Child, and to set hearing.

The telephone conference actually took place on March 22, 2000. Because the Child was not only a student entitled to services under IDEA, but because he also was incarcerated, the hearing officer expressed the concern that some matters being raised by the Parent fell within the category of incarceration issues rather than education issues properly raised under IDEA, and that such issues might therefore be outside the jurisdiction of an impartial hearing officer in this proceeding.

By the March 24, 2000, order, the hearing was set for April 27-28, 2000, at the [Youth Services Center]. The Parent elected to keep the hearing closed and the Child did not attend. On April 10, 2000, the parties conducted another telephone conference. The April 27-28 hearing date was vacated and a discovery dispute concerning records held by [Psychologist] was raised by the Parent.

By order dated April 21, the hearing was reset to take place on May 16, 18, and 19, 2000, by agreement of the parties. The Division was ordered to give the Parent access to all records in the custody, possession, or control of the Division which pertained to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child. See generally 20 U.S.C. ? 1415(b)(1); 34 C.F.R. § 300.501. In addition, the Division was directed to give the Parent access to all educational records as defined under the Family Educational and Privacy Rights Act ("FERPA"), 20 U.S.C. § 1232g. The order noted that to the extent records might be privately held by an individual staff members and were outside the scope of educational records held by the Division, the Division was directed only to make a good faith effort to encourage such records be produced for the Parent.

On May 8, 2000, the undersigned entered an order that the Division must pay for a written transcription by court reporter of the entire proceeding as requested by the Parent. While the Division correctly pointed out that Colorado regulations make a party requesting a transcript responsible for its cost, 1 C.C.R. 301-8, 2220-R-6.03(6)(c)(V), Federal statute, 20 U.S.C. § 1415(h)(3), gives the parent the right to a written verbatim record of the hearing. The statute doesn't explicitly address who must bear costs of transcription although other portions of IDEA suggest a preference that special educations services be provided at no cost to the parents. Federal regulations enacted after the 1997 IDEA amendments go even further, however, and require that the record be provided at no cost to the parents. 34 C.F.R. § 300.509(c)(2). The undersigned concluded the Colorado regulation conflicts with the Federal regulation, that the Federal regulation should control, and that under his authority to control proceedings a hearing officer may require the use of a court reporter to take testimony and prepare written

transcripts at the expense of the Division.

By telephone conference on May 19, 2000, the parties vacated the hearing and agreed to conduct further evaluation of the Child because of his lack of progress with reading. The possibility of dyslexia was an express concern. An order vacating the hearing and directing further evaluation entered and set a telephone status conference for May 31.

On June 14, 2000, the Parent contacted the undersigned and requested the hearing, which by agreement had been vacated to allow time for further testing, be set. The Child had been recently hospitalized, and it had become unclear whether or not adequate testing could even take place given his condition.

On July 10, 2000, the hearing was rescheduled for August 4, 9, and 11.

Because the hearing was not completed as hoped, the additional dates of October 10, 11, and 13, 2000, were ordered on August 17, 2000. By this time the Child had apparently been incarcerated outside the Division and was facing potentially life-threatening health problems.

The Parent asserted that the Division's attorney had a conflict of interest in this matter, apparently because she also represented the Department of Human Service with respect to probate matters involving the Child. By order of October 5, 2000, the hearing officer ruled that the allegations were insufficient to allege a "conflict of interest", meaning a divergence of positions of two clients as that term is applied to attorneys, see The Colorado Rules of Professional Conduct, Rule 1.7, that the two governmental agencies represented by the Attorney General's office had not complained or suggested any conflict thereby throwing doubt on the Parent's standing to raise the issue, and that there did not appear to be any real or perceived conflict in the positions of the two governmental "clients".

Hearing continued on October 10, 2000, and additional hearing dates of October 27 and 30, 2000, were set by order dated October 12, 2000. During the course of the hearing the Child's position was presented by his Grandmother. The Grandmother called the following witnesses:

[Principal], Principal of [School] operating the [Youth Services Center] for the Division of Youth Corrections

[Psychologist], Licensed Clinical Psychologist working for the Division of Youth Corrections

[Teacher], currently teacher with the Division of Youth Corrections

[SpEd Coordinator], Special Education Coordinator for the Division of Youth Corrections the Child's Grandmother

The Division was initially represented by its Special Education coordinator, but prior to hearing the Colorado Attorney General's office entered an appearance on its behalf. The Division called the following witnesses:

[SpEd Coordinator], Special Education Coordinator for the Division of Youth Corrections

[Contract Teacher], contract teacher employed through Metropolitan State College

[LA Teacher], [Youth Services Center] language arts teacher

[SpEd Teacher], [Youth Services Center] special education teacher

[Client Manager], Client Manager and Parole Officer Supervisor for the Division of Youth Corrections

[Psychologist 2], Psychologist at Mount View assessment center for the Division before May 1, and currently Psychologist at [Regional Center]

[Child Psychiatrist], M.D., Child Psychiatrist working for the Division of Youth Corrections under contract between the Division and the University of Colorado Health Sciences Center

[Food Service Manager], Food Service Manager for the Division of Youth Corrections

By agreement, the parties scheduled closing arguments as follows. The Division submitted its closing brief by mail by November 20, 2000. The Parent gave oral closing argument on December 19, 2000. The Division had the option of replying orally on December 19 or filing a written reply by December 29, 2000, but it did not reply.

This proceeding obviously continued over a very lengthy period of time for a special education due process matter. Due to various reasons, hearing dates were repeatedly set and vacated

at the request of one or both parties, and without objection, and on occasion the hearing was shortened to meet the needs of the parties or witnesses. One or both of the parties requested or consented to the each delay, and in the unique circumstances of this case, the impartial hearing officer repeatedly concluded the delays would not be detrimental to the interests of the Child. Hearing actually commenced on August 4, 2000, and concluded on October 27, 2000. While many details have been omitted, the more significant orders and events are noted above.

Some reasons for delay, or reasons delay was appropriate when requested, included the following: The child turned age twenty-one on [Date], 2000, thus even an immediate hearing would have provided at most approximately a month of services before the Child became ineligible under IDEA. Given his disabilities, his health, and his lack of progress over many years of public education, a month of additional services would clearly be of minimal value or significance. The parties avoided certain dates so one or the other could attend probate proceedings involving the Child. The Child's health took an apparent turn for the worse, with the possibility of [health concern], during the late Spring of 2000. The parties needed time to prepare for hearing and ensure witness attendance. Witness scheduling during the hearing was at times problematic due to correctional facility needs. The Child had been dismissed from the Division's control and had been incarcerated elsewhere as an adult by the Summer of 2000.

B. Specific Findings/Conclusions:

1. The Child is disabled and qualifies for services under IDEA.

2. The Child is a resident of the district served by Denver Public Schools.

3. The Division provides education to incarcerated youth including the Child and must comply with IDEA requirements.

4. The Parent timely requested this due process hearing as discussed above.

5. The due process hearing was held on the dates noted above at the Division's [Youth Services Center] in [City], Colorado, with the exception of the Parent's oral closing argument, which took place in Denver at the Attorney General's office.

6. The hearing was closed.

7. The Child did not attend.

8. The primary language of the Parent and Child is English, but both English and Spanish are spoken in the Child's home.

9. The exhibits identified with a mark under the "Rec." column on the attached list were admitted.

10. The Parent timely and repeatedly requested all records pertaining to the Child.

11. At least some records, namely time sheets for the Child's vocational education in Central Dining, were not timely provided by the Division.

12. The Child was born [D.O.B.], and arrived at the Division in roughly mid-1996, at age 17.

13. The Child had been staffed in special education since kindergarten. By early 2000, his special education disability category was multiple disabilities including significant limited intellectual capacity and significant identifiable emotional disability.

14. At the time of his entry into the Division's [Youth Services Center], the Child's level of performance was well below the nominal level for his age. The Child was essentially a non-reader with other English language usage deficiencies. He performed at about third grade level with mathematics skills. His measured IQ consistently hovered in the vicinity of 70 plus or minus 5 throughout his stay at [Youth Services Center]. Although medications could affect performance during intelligence tests, consistent results and general performance suggest the Child is at least close to the mildly retarded category. He had poor social skills, was often oppositional, and generally non-verbal. His prognosis for greatly improved academic performance was poor.

15. The Child was ordered held by the Division after sentencing as an aggravated juvenile offender as a result of a attempted [criminal offense] incident.

16. The Child's conduct disorder includes theft before and while in the custody of the Division.

17. The Child, as is typical for a youth ordered held by the Division, was first held at the Mount View detention site for assessment in Denver.

18. After assessment, the Child was transferred to and incarcerated in the [Youth Services Center], run

by the Respondent Division of Youth Corrections, in [City].

19. The [Youth Services Center] contains a number of "residential" centers to which incarcerated youth can be assigned depending on their needs.

20. The Child was initially assigned to the [Unit 1], but later was placed in the [Unit 2] because it provided more mental health services and better medical care. The [Unit 2] provides housing for up to twenty-four youth who have the greatest need for psychological, psychiatric, and/or medical services and surveillance.

21. By early 2000, several months before his twenty-first birthday, the Child had shown very slight improvement in reading but remained at only a second grade level, and in math he had shown very slight improvement and was at a roughly fourth grade level of performance.

22. The Child's placement during his stay at [Youth Services Center] specified he be in the general academic classroom, with special education support, greater than 60% of the time.

23. During his stay at [Youth Services Center], the Child's attendance in the general academic classrooms was often severely limited due to restrictions imposed as a result of his misbehavior, due to choice by the Child, due to his health problems, and also due to absence from [Youth Services Center] for medical and mental health reasons. He often did not meet the 60% attendance anticipated in the IEPs.

24. Although some witnesses and documents stated or implied the Child choose not to fully participate and benefit from the educational programs offered at [Youth Services Center], his mental and physical health problems were major, and perhaps controlling, factors in the Child's unwillingness or inability to attend, focus on school, and fully participate.

25. The Child was placed at the [Regional Center] by the Denver Probate Court by an order dated March 16, 2000. He was physically moved to that placement in early April, 2000, a few days before he turned age twenty-one.

26. The Child suffered apparent minor physical injuries as a result of physical control or restraint applied by corrections officials on at least two occasions, but neither appears to be relevant or significant to the Child's education or rights under IDEA.

27. Force and/or restraints were used by corrections officials on the Child on multiple occasions involving time out or seclusion, but these events do not appear to be significant in

relation to the Child's education or rights under IDEA.

28. The Division provided substantial psychological, psychiatric, and medical and related services to address the Child's serious physical and mental health needs.

29. The Child had severe medical problems while incarcerated with the Division, which could be life-threatening absent proper care, including the following: [List of severe medical problems]

30. The Child's mental health problems included chronic depression, generalized anxiety disorder, stress from his physical health problems, hallucinations, panic attacks giving rise to physical symptoms, irritability, frustration, forgetfulness, suicide thoughts or attempts, argumentative behavior and shortness with staff, shortened attention span, and difficulties with impulsivity. His diabetes, giving rise to rapid changes in blood sugar and high blood sugar, could cause psychological problems and lack of clear thinking, inattention, and fatigue.

31. The Child also exhibited balance and motor problems, global difficulty with short and long term memory, impaired verbal memory, speech difficulties although he spoke English and some Spanish.

32. A primary educational goal for the Child was improved written language skills, particularly the ability to read, but other deficiencies such as mathematics skills and writing were also to be addressed.

33. The Child's overall physical health problems were probably the most complicated of any youth in the [Unit 2] during the last several years, and his mental health problems placed him among the ten most complicated and difficult youth to ever enter the [Unit 2].

34. Due to the Child's health problems, he was placed on a

special diet which included consistent meals and snacks to reduce [heath concern] causing factors and to control his diabetes. He received multiple medications which had to be selected and balanced so as to not interfere with each other or cause further harm. Treatment included various trials of psychotropic, antidepressant, and antipsychotic medications, and cognitive behavioral therapy.

35. While under the care of the Division, the Child received numerous medical checks or consultations both within and outside the [Youth Services Center] to deal with his serious medical and mental health problems including treatment by private physicians and health care professionals, nine stays at the [Mental Health Service] at [City 2], and three stays at [Mental Health Service] at [City 3], which lasted up to several weeks in duration each.

36. One aspect of the Child's care included education and psychological education to help him become more independent, regular, and safe with his self-injected insulin and eating, both to control his diabetes, and with his taking of medications for his other mental and physical health difficulties.

37. The Child's physical and mental health difficulties did at times adversely affect the Child's education due to physical discomfort and absence from schooling offered at [Youth Services Center].

38. The Parent was given proper advance written notice of the annual review and triennial meetings to consider the Child's individual education plan ("IEP").

39. The Parent attended and participated in IEP annual IEP meetings and the triennial review on January 4, 2000.

40. Division representatives did not timely provide more legible copies of "Discrete Case Plan Review" documents to the Parent as requested. The Parent had, however, previously received copies of most or all of such documents. Although such documents may have been prepared as part of the criminal justice system case, although the distinction is not clear to the undersigned, they included education and transition components. Because those documents are produced and kept within the Division, and because the Division in this case is an educational agency in addition to serving other functions, the records are records kept by the educational agency and should have been promptly provided to a Parent on request.

C. Further Findings, Conclusions, Discussion, and Decision:

(1) Preliminary Matters: Several issues were considered

and decided in addition to the specific issues identified by the Parent. The following additional findings and conclusions support the decisions enumerated below.

(a) Standing of Parent to Act For 20-Year Old Child: Could the Child's Parent (natural mother) request a due process hearing since, at the time of filing her request, the Child was over age eighteen and within a few months of reaching age twenty-one. See generally 20 U.S.C. § 1415(m); 34 C.F.R. § 300.517 (providing for transfer of rights to student at age of majority). In Colorado a person is generally considered a minor, with certain specific statutory exceptions not relevant here, until his twenty-first birthday. C.R.S. § 2-4-401(6) (2000). Thus, under the Federal statute, it appears the Parent could properly initiate this proceeding. Furthermore, while Colorado regulations provide that a competent child with disability over eighteen years of age may request a hearing, they do not preclude a parent from requesting the hearing. See 1 CCR 301-8, § 603(5).

The Child in this case was simultaneously involved in ongoing legal proceedings, which apparently resulted in a court-ordered appointment of a guardian ad litem and the imposition of legal disability in March during the pendency of this proceeding. The parties did not deem it necessary to provide the impartial hearing officer with a full record concerning the ongoing probate proceedings concerning the Child, thus the hearing officer cannot determine that another person, such as a court appointed guardian ad litem or the like, might have been the only proper person to initiate this proceeding. Likewise, the hearing officer makes no determination as to whether or not the Child was competent during this proceeding. Absent an objection or proof that the Parent could not bring this proceeding, the hearing officer need not independently raise or consider the issue. Cf. C.R.C.P. 9(a)(1) (capacity not a necessary averment in court proceedings).

(b) Participation and Control of Proceeding By Grandmother: The Child's maternal Grandmother handled this proceeding on behalf of the Mother and Child. In fact, the Mother did not appear during the hearing or closing arguments due to other responsibilities. While the Division initially questioned whether the Grandmother could proceed, it ultimately did not object. The impartial hearing officer permitted the Grandmother to proceed since the Mother had orally agreed to let the Grandmother handle the matter during the initial prehearing conference, and subsequently requested the Grandmother be allowed to act by written notice dated April 19, 2000. See generally C.R.S. § 15-14-104 (1999)(parental appointment of temporary guardian).

(c) Incarceration Questions: By order dated March 30, 2000, the impartial hearing officer ruled matters concerning

incarceration of the child are solely within the province of courts and other state juvenile or criminal law, but which were unrelated to the type of special education issues which may be brought before a "special education" impartial hearing officer, would not be considered. Special education issues generally include the identification, evaluation, educational placement, and provision of a free appropriate public education. See 20 U.S.C. § 1415(b)(6).

(d) Duration of Services: The Child would not be entitled to further services under IDEA after turning age twenty-one on [Date], 2000, with the possible exception of compensation or relief for violations which occurred before the Child turned age twenty-one. See generally 20 U.S.C. § 1412(a)(1) (entitling children "between the ages of 3 and 21, inclusive" to services except when state law does not provide services for children under 6 and over 18 years of age); C.R.S. § 22-33-103 (1999) (free Colorado public education available for child over 5 and not more than 20 years of age); C.R.S. § 22-1-115 (1999) (school age generally from age 6 to 21st birthday); C.R.S. § 22-20-103(1.5) (1999)(definition of child with disabilities under "Exceptional Children's Educational Act" as between ages 3 and 21).

(e) § 504 Claims: The Parent asserted claims were being raised under both IDEA and § 504, and that even if the Child lost eligibility for services under IDEA at age 21, the claims could proceed under § 504. The March 30, 2000, order, determined that to the extent the Parent raised any separate and distinct § 504 claim under the Rehabilitation Act of 1973, such a claim was outside the jurisdiction conferred by IDEA in this case. The Division did not request the impartial hearing officer hear a separate § 504 claim. To the extent any claim fell within both IDEA and § 504, however, the IDEA aspects of the claim could be pursued.

(f) Dismissal for Mootness: This proceeding commenced prior to the Child's twenty-first birthday, but actually went to hearing after he turned twenty-one. As a result, the child was no longer entitled to ongoing special education services at the time or hearing or decision. Under limited circumstances, however, Courts have allowed an adult over age twenty-one to seek relief for violations which occurred when he was a student under age twenty-one. Because the Parent sought whatever relief might be available including compensatory education or monetary relief, the matter is not moot and may be decided on the merits.

(2) Specific Issues Raised by the Parties: The undersigned makes the following additional findings, conclusions, and decisions on issues raised by the parties.

(a) Lack of IEP Meetings Before January 4, 2000 (Issue 1): The parent acknowledged that she attended meetings in prior years but that she did not necessarily sign all the IEP's prepared for those years. Furthermore, the testimony and admitted exhibits demonstrated meetings took place approximately annually as required.

(b) Parent Request for Explanation of Rights Transferred at the Age of Majority (Issue 2): The Division contended, and the parent did not dispute, that the age of majority for special education rights in Colorado is when a child turns age 21. That date was [Date], 2000, for this Child. At that age, all educational rights would transfer to the Child under Federal law, but rights under IDEA would simultaneously terminate.

(c) Age of Majority; Declaration of Incompetence (Issue 3): The Division advised the Parent at the March 7, 2000, prehearing conference that no court order had entered on the Child's competency at that point, but the Denver Probate Court subsequently entered an order of imposition of legal disability on March 16, 2000. That order allowed authorities and those providing treatment to determine the Child's placement upon leaving [Youth Services Center].

The Child reached the general age of majority under Colorado law on [Date], 2000, when he turned age twenty-one.

(d) Production of Educational Records (Issue 4): A parent is entitled to see and copy the educational records pertaining to a minor child, thus the Parent was entitled to see and copy the Child's records until [Date], 2000. See 20 U.S.C. § 1415(b)(1); 20 U.S.C. § 1232g (Family Educational Rights and Privacy Act); see also 34 C.F.R. § 99.10; 34 C.F.R. § 300.501. Furthermore, to avoid rendering this proceeding unfair by preventing parental access to records to the case, the undersigned concludes the Parent had the right to review such records, at least those created prior to [Date], 2000, and those pertaining to the Child's circumstances before, [Date], 2000, throughout the course of this proceeding. While one violation was proven as discussed below, the Division ultimately provided records to a reasonable degree and tried to facilitate getting private records from staff.

(e) Inaccuracy of January 17, 2000, IEP Document (Issue 5): Although the undersigned gave the Parent an opportunity to specify in writing exactly what inaccuracies existed, none was received. The Parent did, however, identify with evidence and argue at least a major dispute.

The Parent strenuously disagreed with the consideration of various potential transitional placement locations, to serve the Child primarily after he turned age twenty-one, and the eventual placement of the Child in early April, 2000, at the [Regional Center]. The Parent indicated she had not been given timely information about each of the placements under consideration, and that she disagreed with the one ultimately selected at least partially because it did not provide direct educational services. Two questions arise, one procedural and one substantive.

First, did the Division violate procedural rights under IDEA by considering placement without involvement of the Parent. This question is by inference, if not by admissions or evidence, related to the question of the January 10, 2000, meeting from which the Parent was excluded. Under IDEA, a Parent is entitled to participate in the development of an IEP. See, e.g., 20 U.S.C. § 1414(d)(1)(B). For a child over fourteen years of age, such the Child in this case, the IEP must consider certain transitional services and placement. See, e.g., 20 U.S.C. § 1414(d)(1)(A)(vii). Therefore, to the extent the educational agency conducted or participated in a meeting to consider such matters, the Parent was entitled to advance written notice and had a right to participate in the meeting.

The evidence, however, is inconclusive in this case. The meeting included the Division's attorney and appears to have included other persons involved in determining subsequent placement of the child, but the exact purpose of the meeting, the identities of the participants, and what occurred are not shown with sufficient credible evidence to justify any conclusion. The undersigned recognizes that the Parent, who was excluded, had no real opportunity in this type proceeding to determine the answers to such questions or to obtain the evidence necessary to support a decision.

Even if the evidence were sufficient, the meeting might have involved decisions and matters under the sole authority of correctional officials. Without a more detailed record, the undersigned cannot determine the extent to which the meeting was educational, or to which it involved rights mandated by IDEA, as opposed to purely correctional or probate matters. Under such circumstances caution should be exercised.

Second, the substantive question of whether or not the meeting resulted in an actual placement violation, if any, is *de minimis*. First, the Denver Probate Court ordered the eventual April placement of the Child by its March 16, 2000, order. An impartial hearing officer appointed to conduct a due process hearing under IDEA has no authority or jurisdiction to interfere

with probate court proceedings or orders. To the extent the Parent disagreed with the placement resulting in the probate proceeding, her relief lies with the judiciary and not with an impartial hearing officer.

The placement outside the Division occurred in early April, 2000, within a few days before the Child's twenty-first birthday. To the extent, if any, the placement would not meet the IDEA procedural or substantive requirements, the effect was minimal or non-existent. On reaching age twenty-one, an incarcerated youth is no longer entitled to IDEA services and placement by correctional officials is controlled by Colorado law. The undersigned finds no substantive educational or transitional rights could have been or were significantly impaired by any violation.

(f) Preparation of Final IEP Document After IEP Meeting (Issue 6): The Division presented an incomplete IEP form at the January 5, 2000, IEP meeting. The final IEP document was prepared after the meeting and sent to the Parent about January 17, 2000. The impartial hearing officer finds no violation in presenting an incomplete IEP form for consideration and completion through the IEP process. Doing so provides organization and helps the parties consider many relevant matters. In fact, unless the document is prepared during the course of the meeting, it might be improper to present a completed IEP at the start of an IEP meeting. Nothing extraordinary or improper occurred through the process used.

Insofar as alleged inaccuracies in the final IEP are concerned, none of significance were specifically identified and proven. The Parent and Grandparent received and appear to have signed the final document without objection as to its content. While there was disagreement concerning transitional placement at the time the Child turned age twenty-one, that placement was ultimately order by the Denver Probate Court and had no significance to the Child's education prior to his twenty-first birthday. The Parent indicated she had questions about statements in the IEP and alleged minor discrepancies, but none would be significant to this decision and none were shown to have caused improper assessment, placement, or services to the Child.

(g) Placement in Harmony Homes/Nostalgia Homes Not Considered by IEP Team (Issue 7): The Harmony and Nostalgia Homes placements are specifically mentioned as being under consideration on the 2000 triennial review IEP which was signed by the Parent. In fact, however, neither ultimately occurred. The Denver Probate Court ordered an alternative placement in [Regional Center] pursuant to C.R.S. § 27-10.5-110 (1999), by order dated March 16, 2000. Actual physical placement occurred in early April, 2000, a few days before services under

IDEA would have otherwise terminated.

During the prehearing stage, the impartial hearing officer discussed at some length his view that he had no jurisdiction to rule upon any "youth corrections" placement decisions or those arising from court decisions, but that he could rule upon the appropriateness of educational placement within the "youth corrections" setting.

Given the fact a probate court made the decision for placement of the Child at about age twenty-one, the question is outside the jurisdiction of this proceeding and appears moot since the Child was apparently removed from that placement and imprisoned during the course of this proceeding.

(h) Parental Disagreement With Proposed Placement (Issue 8): See discussion under Part G (Issue 7) above.

(i) Parent Request for Information Concerning January 10, 2000, Meeting from Which Parent Excluded (Issue 9): The Parent was greatly concerned about the January 10 meeting from which she was excluded. That meeting may have considered education matters, at least peripherally, correctional placement matters, litigation strategy for the pending probate case, or other matters divulged. While the question raises a legitimate concern of non-compliance with the Parent's procedural right to participate in educational decisions, since it did affect services provided for a few days before the Child turned age 21 and may have also involved transitional matters, see generally 20 U.S.C. § 1415(b)(1) (parent has right to "participate in meetings with respect to the identification, evaluation, and educational placement of the child"), the evidence is insufficient to show what occurred or that it fell within the scope of educational matters.

More important, whatever occurred, there is no suggestion it altered services provided under the January 5 IEP other than during the last few days the Child was age 20. Whatever services were affected during those few days, they were insignificant. See also discussion under Parts E and G (Issues 5 and 7) above.

(j) Parent Questions re Appropriateness of Residential Placement Following [Youth Services Center] Incarceration (Issue 10): See discussion under Part G (issue 7) above.

(k) Meaning of "Imposition of Legal Disability" (Issue 11): Imposition of legal disability is a probate concept outside the jurisdiction of an impartial hearing officer. A probate court order issued March 16, 2000, concerning this question, and the parties are referred to that probate proceeding for more information.

(l) Making Child Ward of the State (Issue 12): The issue is outside the jurisdiction of this proceeding and is a probate or mental health matter before the appropriate court. See discussion under Part K (Issue 11) above.

(m) Placement Decisions Concerning Prison After Child Leaves [Youth Services Center] (Issue 13): Such matters are outside the jurisdiction of the hearing officer.

(n) Parole for the Child and Mental Health Assistance (Issue 14): The Parent seeks parole for the Child and assistance from the Jefferson County Mental Health Center. Insofar as parole is an issue, it is a matter for determination by the appropriate court and is outside the limited jurisdiction of an impartial hearing officer.

Insofar as mental health assistance is concerned, no credible evidence demonstrated that the extensive services by psychiatrists, psychologists, teachers, nurses, and other staff provided at [Youth Services Center] were inadequate to serve the Child's serious mental health needs. In addition to services through staff, the Child also received additional mental health services as necessary through [Mental Health Service] and [Mental Health Service] stays.

To the extent the Parent seeks mental health services while the Child is on parole, the request falls outside the jurisdiction of an impartial hearing officer and is either premature or moot since the Child was not placed on parole and is now past age twenty-one.

(o) Abuse, Neglect, and Mistreatment of the Child (Issue 15): The Child was subjected to some physical restraint and force, resulting in minor injuries, while incarcerated in the [Youth Services Center]. The facts and circumstances were not detailed with sufficient credible evidence to determine exactly what happened, why, and whether or not the events were relevant to the Child's education or his IEP. While the undersigned realizes the Parent may not be privy to such information, a decision cannot be based on speculation. Furthermore, part of the Child's plan included behavioral management issues and legitimate correctional facility concerns may have been involved.

To the extent such matters arise from circumstances of incarceration within the youth corrections system and are unrelated to education rights under IDEA, they appear outside the scope of an impartial hearing officer's jurisdiction. To the extent the are relevant to or directly concern educational placement and least restrictive environment for the child's education, insufficient evidence exists from which to reach any conclusion that an IDEA violation occurred.

(p) Lack of Notice to Parent of IEP Meetings (Issue 16): The record demonstrates the Parent was sent written notice of annual reviews and the triennial in late 1999. In fact, the Parent participated in most IEP meetings and actively advocated for the Child before and during his incarceration in [Youth Services Center]. Any technical failure to give proper notice would therefore appear inconsequential.

(q) Parent Request for Meeting with Third Parties (Issue 17): The Parent requested a meeting with representatives from Denver Public Schools, the Colorado Department of Human Services, and higher level representative of Department of Youth Services. Given this decision, such a meeting is unnecessary. Furthermore, while the Division could have attempted to arrange such a meeting, it has no authority over other agencies nor does this impartial hearing officer have jurisdiction to enter orders requiring action by non-parties.

In addition to these initial requests by the Parent, she raised the following issues during the course of this proceeding.

(r) Appropriateness of IEPs Since 1996 (Issue 18): The central concern of the Parent was the Child's lack of academic improvement while he was incarcerated at [Youth Services Center]. As discussed in this decision, the Child's progress was minimal. But given the Child's mental and physical health problems, his needs and behaviors, and his circumstances, the evidence was insufficient to show the IEPs failed to meet the minimum requirements under IDEA. A Child is not entitled to the best program, but is entitled to one which meets his individual needs and allows him to benefit from education. Given the slow progress of the Child in many years prior to reaching [Youth Services Center], and his circumstances while there, the limited academic progress standing alone is insufficient to prove any violation or that the IEPs were inappropriate.

(s) Services Provided Beginning April, 2000 (Issue 19): Whether or not the services provided once the Child left [Youth Services Center] were in compliance with the existing IEP or otherwise appropriate, is inconsequential. The Child remained at [Youth Services Center] until a few days before his twenty-first birthday. Any deficiency after he left [Youth Services Center] had no real impact on his education until he turned age twenty-one, and to the extent the Parent is concerned about the Child's services after he turned age twenty-one, no entitlement existed.

(t) Parent Concern About Lack of Child's Educational Progress (Issue 20): Perhaps the most central real concern of the Parent in this proceeding is the lack of educational progress by the Child with reading, writing, and mathematics while

incarcerated at [Youth Services Center]. At the prehearing conference, the impartial hearing officer cautioned all concerned that lack of academic progress may be relevant, but that further information showing that the lack of progress was due to inappropriate or insufficient services, as opposed to other causes, might be very significant in resolving this issue. The undersigned cannot conclude that lack of progress in this case arose from a significant deficiency in the Child's IEPs or services provided.

The Child's IEPs did contemplate placement in the regular educational setting at least 60% of the time, yet that didn't occur during much of the Child's incarceration at [Youth Services Center]. His attendance was erratic, in part due to medical and health problems, and in part due to his own decision or decisions by correctional staff. More time in regular class would have benefitted the Child and presumably resulted in greater academic gains. On the other hand, the Child showed slight gains in reading and mathematics despite attendance lapses.

Based on the overall tenor of the evidence submitted, and giving consideration to the fact the Child performed at a first grade reading level and close to a fourth grade level with mathematics after attending public schools from kindergarten until about age seventeen, the undersigned cannot speculate that a more appropriate program, if any, would have significantly altered the Child's functional outcome. The Child may in fact be more capable than suggested by intelligence tests and past school performance, but with his serious physical and mental health problems and behavior adversely affecting his attendance and regular class participation, it wasn't proven. The undersigned cannot conclude a more appropriate placement existed, or that the placement failed to allow the Child to benefit from education.

Furthermore, the undersigned concludes that raising the issue of IEPs from 1996 on within three months of the Child becoming ineligible for services because of his age, militates against attempting to accomplish, through further services, that which could not be accomplished in roughly 16 years of regular special education services.

Providing further educational services, while perhaps allowed as compensatory education in an appropriate case, would present another difficult question in this case since the child remains incarcerated and under the control of correctional authorities. An impartial hearing officer has no jurisdiction over imprisonment or the provision of services to an adult while in prison.

To the extent further services might benefit the Child, such services may be available through other means or other benefit programs serving adults. For example, the Division of Vocational

Rehabilitation provides disabled persons with appropriate assistance so they can become gainfully employed.

(u) Parent Request For Compensation or Compensatory Services (Issue 21): For the reasons explained previously, no compensatory education or monetary compensation is awarded.

The Parent, however, was required to resort to subpoena to acquire Exhibit 30. That Exhibit contained time sheets for the Child's participation in a vocational experience encouraged under the IEP. The time sheets are a Division record produced by the school Principal. Failure to produce these documents in response to the "all records" request of the Parent was an oversight and not the result of any intentional concealment by the Division. Nevertheless, as a matter of fairness, the Parent should be awarded a reasonable amount for her expense for service of the subpoena on, and the witness fee paid to, Principal] for his appearance on October 27, 2000. The undersigned assumes this amount will be in the range of roughly $35.00 to $50.00 and is awarded as costs and not compensation.

The Parent should submit documents and a statement showing the cost incurred to subpoena the Principal within five days of receipt of this decision. After consideration of any objection by the Division, the undersigned will enter an appropriate order concerning this cost element.

III. APPEAL RIGHTS

Either party may appeal this decision by requesting state level review by an administrative law judge. Copies of the State Plan provisions concerning review of a decision from a due process hearing are enclosed with this decision. A copy of the notice of appeal should be sent to the undersigned impartial hearing officer so the transcripts and exhibits may be forwarded to the administrative law judge.

Either party may also bring a civil action in a court of appropriate jurisdiction if unsatisfied with the final order of the administrative law judge on behalf of the Colorado Department of Education as set forth in the enclosed copy of regulations.

Dated: January 12, 2001.

Clark S. Spalsbury, Jr.
Impartial Hearing Officer
P.O. Box 2008
Estes Park, CO 80517

List of Exhibits Re: 2000:105

No.	Description	Off.	Obj.	Rec.	Ref.	Ltd. Rec.	Rul. Res.
A	Mountview assessment			x			
B	IEP pre-staffing input			x			
C	Notice of educational meeting to DPS			x			
D	Notice of educational meeting to Jeffco			x			
E	Diabetes information transmittal			x			
F	9-17-96 Initial IEP			x			

G					
H	12-12-97 Notice to Parent			x	
I	12-12-97 Notice to DPS			x	
J	12-23-97 annual IEP review			x	
K	[Mental Health Service] report			x	
L	1998 MSCD pre-staffing input			x	
M	12-15-98 annual IEP review			x	
N	Summer reading program certificate			x	

No.	Description	Ltd. Off.	Obj.	Rec.	Ref.	Rul. Rec.	Res.
O	Participation letter and information			x			
P							
Q							
R	1999 MSCD pre-staffing input			x			
R-1	1998 prestaffing input document			x			
S	Notice to Parent			x			
T	Notice to DPS			x			

U	Record of Parent contacts			x		
V	Letter re 1999 triennial review meeting			x		
W	Dec. 14, 1999 letter to Parent			x		
X	Permission for reevaluation			x		
Y	1999 Woodcock-Johnson worksheet			x		
Z	2000 Vineland Adaptive Behav. forms			x		
AA	1999 Notice to DPS			x		
	1999 Notice to Parent			x		

BB							
CC	1-5-2000 triennial IEP			x			
DD	1-5-2000 notice of graduation			x			
EE	Memo from [food service manager]			x			

	Ltd.	Rul.					
No.	Description	Off.	Obj.	Rec.	Ref.	Rec.	Res.
FF	MSCD fax (incomplete)			x			
GG	Student report cards			x			
HH	[Mental Health Service] mental health records			x			

II	Placement status record			x		
JJ	Record re medical appointments			x		
KK	1997 initial writing sample (conditional)			x		
LL	Math work sample			x		
MM	Reading samples pp. 227,233, 237,241-242,248,251-253,275-276			x		
NN						
OO						
PP	Attendance/grade worksheets			x		

No.	Description	Off.	Obj.	Rec.	Ref.	Rec.	Res.
QQ	Grade reports			x			
RR	Discrete case plan review papers (not p. 358)			x			

Ltd. Rul.

No.	Description	Off.	Obj.	Rec.	Ref.	Rec.	Res.
0	Letter			x			

1	2000 IEP papers (not hand written notes)			x		
2	Partially completed IEP form			x		
3						
4	[School] report (except handwritten notes)			x		
5	Letters from school to Parent			x		
6	Letter to parent			x		
7						
	[Youth Services Center] special management			x		

8	program request					
9	1998 progress report			x		
10	Letters re mid-2000 placement			x		
11	Motion for release of file			x		
12	Parent's discrete plan case review papers (also see RR)			x		
13	Letters re newspaper article			x		
14	Letter from [Client Manager]			x		
15						

No.	Description	Off.	Obj.	Ltd. Rec.	Ref.	Rec.	Rul. Res.
16							
17	Probate court order of March 16, 2000			x			
18							
19							
20							
21	Letter from [Child Psychiatrist]			x			
22	Letter from parent to [Child Psychiatrist]			x			

23						
24	Partial medical notes record			x		
25	Table regarding incident reports concerning the Child			x		
26						
27	Pointer psychological exam.			x		
28	Social Security Admin. docs. re developmental disability			x		
29	Samples of Child's work from prior to incarceration			x		
30	Time and other records regarding vocational training			x		

31	[Teacher] licensure			x		
199	[Mental Health Service] admission record			x		