

In the Matter of:

Due Process Hearing L2000:127

**[Student], through [Parent] and [Parent],**  
Petitioners,

And

**Mountain BOCES, [SCHOOL DISTRICT],**  
Respondent.

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## IMPARTIAL HEARING OFFICER DECISION

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### 1. INTRODUCTORY STATEMENT

A Due Process Hearing was held for two days on December 11 and 12, 2000, at the [Middle School] in [City], Colorado, pursuant to the Individuals with Disabilities Education Act (“IDEA” or “Act”). 20 U.S.C. § 1400 *et seq.* Jurisdiction is conferred pursuant to 20 U.S.C. § 1415(b).

The Impartial Hearing Officer (IHO) is Christopher D. Randall, Esq. from Lakewood, CO. The IHO meets the impartiality requirements found in the Colorado ECEA at Rule 6.03(8) and at 34 C.F.R. § 300.507. Attorney Nancy Hampton of Stein & Schonfeld, from Garden City, N.Y., represented the Petitioners. Attorney Darryl Farrington of Semple, Miller & Mooney, from Denver, CO, represented the Respondents. The hearing was closed to the public, and the student did not attend the hearing.

The Colorado Department of Education received a request for a due process hearing pursuant to 20 U.S.C. § 1415 on September 18, 2000. The issue stated in the Petitioners’ Notice to the School District was the parents’ concern over the inadequacy of the student’s Individual Education Plan (IEP). (Exh. R) The parents also requested reimbursement for the student’s placement at a private out-of-state school. (Exh. R) The 45 day timeline for the due process hearing and the IHO’s written decision was extended by agreement of the parties and the IHO. 34 C.F.R. § 300.512.

The parties agree that the child (hereinafter “[Student]” or “Student”) in this case was a “child with a disability” as that term is used at 20 U.S.C. § 1401(a)(1).

## 2. BACKGROUND

This case is about whether the Student's public school IEP is appropriate. The IHO must consider the appropriateness of the School District's August 2000 IEP and whether the parents' private school placement was appropriate under the Act.

**Burden of Proof.** When the issue is whether the IEP is appropriate, the parents normally bear the burden of proving by a preponderance of the evidence that the IEP devised by the District is inappropriate. Doe v. Board of Education, 9 F.3d 455, 458 (6<sup>th</sup> Cir. 1993), *citing*, Cordrey v. Euckert, 917 F.2d 1460, 1469 (6<sup>th</sup> Cir. 1990). Likewise, the burden of proof rests with the party challenging the child's IEP. Johnson v. Independence School District, 921 F.2d 1022, 1026 (10<sup>th</sup> Cir. 1990). Here, the parents challenged the IEP and carried the burden of proof.

## 3. ISSUES

The issues are as follows:

- a. Is the School District's IEP appropriate?
- b. If the School District's IEP is inappropriate, is the parent's choice of private placement appropriate?
- c. If so, should the parents be reimbursed, and given equitable considerations, how much should the parents be reimbursed?

## 4. FINDINGS OF FACT

### A. General Findings

[Student] is a sixteen year old 11<sup>th</sup> grader currently enrolled in a private out-of-state school. The school is designed for students with disabilities. The parties agreed that [Student] qualifies for services under the Act.

Colorado regulations refer to her disability as a Perceptual or Communicative Disorder (PCD). Specifically as it relates to [Student], a PCD is a disorder in the psychological process that affects language and learning and consists of a significant discrepancy between her estimated intellectual potential (average) and her actual levels of performance (well below average). (Exh. 1, p. 21) The second PCD requirement, which was easily met, was that the disorder significantly impair [Student]'s achievement in reading skills. (Exh. 1, p. 21) The parties have stipulated to the PCD classification. Several witnesses and exhibits also referred to [Student]'s disability as "dyslexia" or generically as a Learning Disability (LD).

[Student] began public school special education services in the second grade. At the time, she was unable to read. She did not do well in reading for several years and has

continued to struggle. She continues to score well below grade level on grade equivalency tests for basic reading, spelling, and written expression.

[Student] attended [District] schools until the 1998-1999 school year. Because of their frustration and dissatisfaction with the public school curriculum, the parents decided not to re-enroll [Student] in public school in 1998. They enrolled [Student] in a special education out-of-state private school called the [Private School]. It is a residential placement. The Student has attended the private school for two school years, and she recently began her third year at the school.

The issues in the present case went to a two day Due Process hearing in December, 2000. Eight witnesses testified and the parties introduced 39 exhibits. Several related documents compose some exhibits. Some of the exhibits are duplicates, and some exhibits are contained within other exhibits. Two witnesses testified by telephone.

## B. Stipulations

Please see the *Joint Stipulation* entered into by the parties. It is attached as Appendix A. The *Stipulation* provides helpful background information about this case. Additionally, the parties stipulated at the hearing that [Student], in addition to PCD, suffers from Attention Deficit Hyperactivity Disorder (ADHD). [Student] has had this diagnosis since 1993. (Pages 10-11 of the hearing transcript) (Please note that throughout the remainder of the Decision that the IHO will cite only to the page of the transcript like this, “p. 10” or “pp. 10-11”.)

## C. Exhibits

### TESTING EXHIBITS

UNIVERSITY OF DENVER, 1995. The University of Denver, Department of Psychology tested [Student] in 1995. (Exh. B) [Student] received a full scale intelligence quotient (IQ) score of 93 – in the average range. (Exh. B) No evidence adduced at the due process hearing defined IQ, but the IHO takes notice that IQ is the ratio of tested mental age to chronological age, usually expressed as a quotient multiplied by 100.

Although [Student] was in the 5<sup>th</sup> grade at the time, she scored at the 1<sup>st</sup> to 2<sup>nd</sup> grade level in letter word identification, word attack, spelling, reading accuracy, and phoneme awareness. For one explanation of what “word attack” is, please see Exhibit I, page 2, and the testimony at pp. 312-313. Phonemes are the families of related speech sounds. (p. 312) [Student]’s tests indicated a pattern typical of reading disabled and dyslexic students. (Exh. B) The comparison of her IQ score with the low reading test scores indicated a significant discrepancy. (Exh. B)

The University also tested [Student] for attention deficits and reported mild ADHD. The University found that when [Student] was on a prescription medication, she tested in the normal range. When off medication, she was more distractible and impulsive. (Exh. B)

The University recommended a tutor in a reading program. (Exh. B) Teacher instructions to [Student] were to be kept short and simple, and complex tasks broken down into their components. Teachers were to provide structure for [Student] and monitor [Student]'s daily assignments. Distractions should be minimized. (Exh. B)

[DISTRICT] TESTING, 2000. In anticipation of the current school year, the [District] conducted testing in March and June of 2000. (Exh. 1, pp. 3-5, 12-15) [Student] was below average on letter word identification, word attack and dictation. Inherent in that deficiency, her overall basic reading skills were below average. Scores showed a grade equivalent of 5.1 for letter-word identification, 3.0 for word attack, 3.3 for dictation, and 4.1 for basic reading skills. (Exh. 1, p. 3) [Student] was in the 10<sup>th</sup> grade and five to seven years behind. (Exh.1, p. 1)

On another test, the San Diego Quick Assessment, which measured decoding skills, [Student] obtained an "independent" reading level of 4<sup>th</sup> grade. Phonetic decoding is explained at pp. 30-31 of the transcript. Her "instructional" level, or the level at which she could learn new information, was at the 5<sup>th</sup> grade level. She became frustrated reading 6<sup>th</sup> grade material. (Exh. 1, pp.3-4) [Student] was cooperative and comfortable during the test, (Exh. 1, p. 4), unlike the typical youngster with Attention Deficit Disorder (ADD). As in 1995, [Student] scored poorly with sound-symbol associations and decoding. (Exh. 1, p. 4)

The District school psychologist administered the Wechsler Intelligence Scale for Children III (WISC) in June 2000. (Exh. 1) [Student] had a full scale IQ of 106 (higher than the 1995 results). (Exh. 1, p. 12) This meant that she was in the average range of intellectual functioning. (Exh. 1, p. 14) Her WISC scores indicated that [Student] was a strong visual-motor learner. Her scores reflected attention difficulties; however, wood shop noise nearby during the tests did not seem to affect her WISC testing. (Exh. 1, p. 14)

[NEUROPSYCHOLOGY EVALUATION CENTER] – June, 2000. [Neuropsychology Evaluation Center], of [Other State], continued testing begun at the School District. By this time, [Student] had left Colorado and returned to the [Private School]. (Exh. N) The School District referred [Student] to the Service for supplementary testing in comprehension, writing, and reading. The professionals administered three of the subtests from the Woodcock-Johnson-Revised and the Burns/Roe Informal Reading Inventory. This particular group of test occurred in June 2000, and [Student] was in the 10<sup>th</sup> grade at [Private School] at the time of the tests. (Exh. N)

Similar to the [District] tests, [Student] scored low in letter-word identification, a phonetic decoding and word recognition test. She tested at a grade equivalency of 5.1, five grades below where she was currently. On the other hand, [Student] scored above grade level on comprehension and writing. [Neuropsychology Evaluation Center] concluded that the comprehension scores on this test were above grade level because [Student] could use contextual cues to compensate for her decoding deficiencies. (Exh. N) [Student] was better at reading a story than at deciphering individual words or sounds.

[Neuropsychology Evaluation Center] also administered the Burns/Roe Informal Reading Inventory. (Exh. N) This was also a phonetic decoding test. The test showed that [Student] was able to read at an independent level only at the third grade. (Exh. N) This would have put her seven (7) grade levels below her current grade level. Even though [Student]'s reading comprehension on the Woodcock-Johnson-Revised showed reading comprehension above grade level, her performance on the Burns/Roe indicated a reading ability significantly below grade level. (Exh. N)

Like previous testing, both tests established significant difficulties with phonetic decoding. (Exh. N) [Neuropsychology Evaluation Center] concluded that, "...[I]t is clear that [[Student]] needs to continue in intensive special education services focused on reading skills and phonetic decoding in particular. She also needs ongoing assistance in writing with spelling and punctuation skills." (Exh. N, p. 3)

[NEUROPSYCHOLOGY EVALUATION CENTER] – November, 2000. In November, 2000, [Student]'s parents referred her again to the [Neuropsychology Evaluation Center] to assess her current academic skills. (Exh. O) She was now in the 11<sup>th</sup> grade at [Private School], 16 years old, and into her third year at [Private School]. (Exh. O) The examiners were the same professionals that performed the June 2000 tests for the School District. (Exh. O)

The testers administered the Wechsler Individual Achievement Test (WIAT) and a portion of the Burns/Roe Informal Reading Inventory. (Exh. O) On her test scores and grade equivalents, [Student] scored above grade level in math, listening comprehension and expression. She scored below grade level in basic reading, spelling, reading comprehension, and written expression. (Exh. O) She scored especially poorly (2.1 grade equivalent) on written expression. (Exh. O) On her composite standard scores and grade equivalents, the 11<sup>th</sup> grader scored at the 5.3 grade equivalent in reading and the 4.1 grade equivalent in writing. (Exh. O) [Student] was six to seven grade levels behind the national average in November 2000.

The testers compared [Student]'s previous Full Scale IQ of 106 from the School District's testing with her current WIAT scores and confirmed the previous conviction that [Student] had a "Learning Disability." (Exh. O) Surprisingly, [Student] was evidencing a "negative direction" in her performance on everything except the math reasoning subtest. (Exh. O) The second Burns/Roe Informal Reading Inventory

confirmed similar testing by the [Neuropsychology Evaluation Center] five months earlier. (Exh. O)

The examiners concluded that [Student] was "...showing marked difficulties with reading and writing skills. Her abilities in basic reading, reading comprehension and written expression are significantly below her grade level. ...[S]he is demonstrating severe problems with phonetic decoding and word identification." (Exh. O, p. 3) The professionals recommended special services in reading and writing skills. "[[Student]] needs extensive tutoring and assistance in phonetic decoding, reading comprehension and writing skills. A specialized school placement focused on these verbal learning difficulties is strongly recommended." (Exh. O, p. 4)

### [PRIVATE SCHOOL] EXHIBITS

In the 1998-1999 school year at [Private School], [Student] took a reading tutorial, a language arts class, mathematics, oral expression, science, world geography, physical education, and art. (Exh. G) [Private School] addressed [Student]'s areas of needs and developed learning approaches and teaching methods specifically for her disabilities. (Exh. G) Staff noted that [Student] participated actively in class, showed good motivation, demonstrated personal organization, had excellent listening comprehension, was cooperative, diligent, would advocate when confused about assignments or concepts, met deadlines, accepted constructive criticism, took an active interest in her work, and asked thought provoking questions. (Exh. G)

In 1999-2000, [Student] took a language arts tutorial, a language arts class, pragmatics, algebra, biology, and world history. (Exh. L) She received all As and Bs. (Exh. 4) In her language arts tutorial, she required guidance in decoding skills, phonetics, word sounds, spelling, and syllables. The tutor noted no attention problems and found that [Student] took responsibility for her own advancement. She responded well to challenging material. (Exh. L) In language arts class her skill level was higher. The instructor noted problems with accepting constructive criticism and following directions. However, her class folder was exceptionally well organized and [Student] wrote down assignments without any verbal cues. (Exh. L) She scored in the average range or above in pragmatics, mathematics, science, and history. There were no attention problems noted for these classes. [Student] was highly motivated and had improved in her attention and participation in biology. She exhibited a positive attitude and took an active role in history. (Exh. L)

In her first quarter at [Private School] this school year (2000-2001), [Student] takes chemistry, a one-on-one language arts tutorial, reading, algebra, language arts, geometry, and photography. (Exh. S) [Private School] developed specific objectives for each class, some more so than others. (Exh. U) The language tutorial contained detailed objectives. (Exh. U, pp. 1-4) Class size ranges from one in her language tutorial to eight in chemistry. The rest of the classes average about seven students per class. (Exh. S)

Personnel at [Private School] stated that [Student] has made progress in her reading, spelling, vocabulary, and comprehension while at [Private School]. (Exh. H) This quarter (Fall 2000), she received all As and Bs on her report card. (Exh. T) Comments from staff described her as hard working, cooperative, prepared, on-time, engaged, inquisitive, respectful, a participant, a volunteer, adjusted, attentive, enthusiastic, positive, and able to meet expectations. One teacher stated that [Student] can at times engage in challenging behavior and talk too much to other students. (Exh. U)

### [SCHOOL DISTRICT] EXHIBITS

[Please note that Exhibits Q and 1 are the same exhibit: the August 2000 [School District] IEP for [Student]. The IHO will refer only to Exhibit 1 for simplicity. In its original form Exhibit 1 was not numbered sequentially. It has no sensible numbering system. The IHO has hand numbered his copy from page 1 to page 42 and will refer to Exhibit 1 by Exhibit and page number.]

In August 2000 the School District and the parents developed a proposed IEP for [Student]. (Exh. 1) This would have applied to [Student]'s 2000-2001 school year in public school.

The IEP stated how [Student] was doing in private school. This information came from evaluation results and observations. (Exh. 1, pp. 3-16) The section on [Student]'s present level of functioning, achievement, and performance included how [Student]'s disability affected her involvement and progress in the general curriculum. (Exh. 1, pp.17-18)

The District IEP contained [Student]'s annual goals. These goals were broken down into short-term objectives. The goals addressed decoding skills, reading fluency, spelling and language mechanics, vocabulary, homework strategies, test taking strategies, paragraph organization and convention, sentence fluency, editing, pre-SAT and ACT examinations, community activities, and social functioning. The IEP included strategies for [Student]'s distractibility issues. (Exh 1, pp. 23-36) The smaller objectives were very specific for decoding, reading, spelling, mechanics, and vocabulary. (Exh. 1, pp. 23-27; pp. 204-225) Each goal was measurable. The IEP outlined the criteria and evaluation procedures that school personnel were to use. (Exh., 1, pp. 23-36)

The August IEP listed the special education and related services that were to be provided to [Student]. (Exh. 1, p. 37) The supplementary aids and services consisted in part of a personal tutor or paraprofessional. The consensus was that a tutor was preferable. Furthermore, there was one class for remedial reading and study skills 3 times a week. Individual tutoring would occur 3 times a week. School staff would provide support in history and literature. The modifications to the program and/or supports for school personnel (such as training or professional development) required consultation with the school psychologist and additional training for [Student]'s teachers.

Teachers were also to be made aware of [Student]'s distractibility issues. (Exh. 1, p. 37) The special education teacher was to provide 3 hours of inside the general classroom services per week and 6 hours of outside general classroom services per week. The school psychologist was to provide one-half hour of contact a week. Exh. 1, p. 37)

The IEP explained the extent to which [Student] would not participate with "regular" students in the general class room . (Exh. 1, p. 39) This would include tutoring for 45 minutes 3 times a week, and a language theory class for 90 minutes 2 times a week and 45 minutes 1 time a week. As an adjunct, there would also be academic support in the learning center and team teaching within a general education class. (Exh. 1, p.39)

The IEP addressed the IDEA's concept of "least restrictive environment" (LRE). See 34 C.F.R. § 300.550. [Student] was to be in the general classroom, with support from special education, 21%-60% of the time. She was to be outside the general classroom 21%-60% of the time. (Exh. 1, p. 39) The "primary instructional setting" was to be a general education classroom at the high school.

[Student] was to receive achievement tests, and the IEP stated the modifications in the administration of these tests. The modifications consisted of study groups, a modified testing environment, and un-timed settings with a cassette recorder in the special education classroom for tests. (Exh. 1)

The IEP stated when services would begin, how often they would be provided, where they would be provided, and how long they would last. Services would have started in September 2000 with the beginning of the school year and were to be completed by June 2001, the end of the school year. (Exh. 1)

Since [Student] was 16 years old, the IEP stated the transition services needed to help her prepare for graduating from high school and enrolling in college. (Exh. 1)

Finally, the IEP stated how [Student]'s progress would be measured and how the parents would be informed of that progress. (Exh. 1, p. 37)

If [Student] had attended public school in [District], she would have taken geometry, physiology and anatomy, history, language theory, a reading tutorial, literature, history support class, and physical education classes. (Exh. 2) One class was very small (two students), one small (six students), and one was team taught. A tutor would have helped on a need-to-have basis. (For example, [Student] is strong in math and would not need a tutor. She might also not need a tutor in hands-on laboratory science or physical education classes.)

A special education teacher at the public school was certified in what is called the FAST reading program. Witnesses [Special Education Teacher] and [Educational Therapist] explained this program. See *infra*. Results from the FAST program at [Middle School] with ten (10) special education students indicated general improvement for most of the students. (Exh. 22) [Student] was to engage in the FAST program,



described below, if she had attended public school. All of the FAST students, except one, improved their reading grade levels. All FAST students improved their spelling. Eight of the FAST students improved their vocabulary and comprehension. (Exh. 22)

#### D. Witnesses

[PSYCHOLOGIST] AND [NEUROPSYCHOLOGY EXPERT]. [Psychologist] and [Neuropsychology Expert], of the [Neuropsychology Evaluation Center], testified separately by telephone to the assessments that they conducted on [Student]. Their written reports are found at Exhibits N and O, and within Exhibit 1. [Psychologist] is a licensed psychologist, and [Neuropsychology Expert] is an expert in neuropsychology and special education.

Based on testing and file review, [Psychologist] recommended small classes for [Student]. (p. 21) She had concerns about what professionals in special education call a “mainstream” environment. (p. 22-24) (A mainstream environment is described at pages 41-42.) Basically, mainstreaming means to place a special education student in a regular education class (with supports and services if necessary). Furthermore, if a class had a rigorous reading component, that would impact [Student]’s ability to function in that class. (p. 29) She could not say how a large class would impact [Student] due to the limitations on the information she had. (p. 21-22)

She testified that students with diagnoses of both LD and ADHD could attend public school, and an appropriate public school program probably could be devised, if it targeted the student’s specific learning needs. (pp. 25-26) However, she felt as though she had not evaluated [Student] enough or had enough information provided to comfortably comment on such a program for [Student]. (p. 26, 28)

[Psychologist] testified that [Student] needs one-on-one or small group help and individualized attention. (pp. 27-28) The witness believed that smaller groups were necessary mainly due to [Student]’s attention problems. (p. 21) [Student] also needed intensive and integrated special education services. (p. 20, 21, 25) Weekly one-on-one would be inadequate. (pp. 28)

[Neuropsychology Expert], [Psychologist]’s colleague, testified. She reiterated some of the same material contained in Exhibits N and O. She believed that the testing showed that [Student] was a visual thinker who would fail to see details. As a result, she possessed language delays. (p. 37)

[Student] would need a structured program that provided repetition in a small group environment, and teachers would have to be attuned to what [Student] was doing. (pp. 37-38) [Student] would have a harder time than a regular student learning difficult reading material. (p. 39) With challenging oral material, [Student] might also miss “language interplay.” (p. 39)

The witness understood that an M.D. prescribed a medication for [Student]'s attention difficulty. (p. 40; 152) The witness' understanding was that at times the medication helped, but at other times it did not. (p. 40)

To [Student]'s credit, when reading material out loud that was comfortable for her, [Student] could obtain 100% comprehension. When reading silently in a one-on-one situation, [Student]'s comprehension dropped to 60%. This level would drop even lower for an ADD student like [Student] who read silently in a classroom. (pp. 40-41) Silent classroom reading of overly-demanding material would not be the best practice for [Student].

The witness felt that [Student] would have a difficult time functioning in a regular classroom with 20 students because she is a "quiet kid" who would just "sit there" and presume she understood the material. (p. 42-43) Instructor comments in Exhibits G, L, and U and School District personnel's observations did not support this passive visualization of [Student]. Special education support would however make an "enormous difference," and not all children with ADD and reading disabilities need to be in a private school with small classes. (pp. 44-45)

Nonetheless, [Student]'s distractibility would make learning difficult for her in a regular classroom setting. (pp. 44-45) The dyslexia and the ADD together would be too much for [Student] in the regular classroom. (p. 46) The great majority of instructor comments in Exhibits G, L, and U and did not seem to support the behavior normally associated with ADD.

Neither [Psychologist] nor [Neuropsychology Expert] commented specifically on the District's IEP.

[STUDENT]'S MOTHER. Next, [Student]'s Mother testified about [Student]'s educational history. (pp. 51-72) Mother noticed reading problems in the second grade. (p. 51) She hired a tutor, but this did not seem to help. (p. 53) When [Student] was in the 5<sup>th</sup> grade, her Mother enrolled her in a reading program. (pp. 54-55) There was some progress (p. 55), so she presented the program to the School District. The School District did nothing with the information. (p. 56)

From the 6<sup>th</sup> to the 8<sup>th</sup> grade, reading improvement in the public school continued to be "almost nonexistent." (p. 57) Her grades were fine and accommodations were made, but she was not "getting anywhere" with her reading. (pp. 57-58)

The parents researched private schools and placed [Student] in the [Private School] School in [Other State] for the 1998-1999 school year. (pp. 58-59) [Student] is now entering her third year at [Private School]. (p. 60)

The parents and the District met in August 2000 to try to draft an appropriate IEP. (p. 62) The parents were concerned about large classes, and that [Student]'s ADHD was not adequately addressed in the IEP. (pp. 63-65) Therefore, the parents placed [Student]

back at the [Private School] School. Mother believed that [Student] has made progress at [Private School]. (p. 43, 66)

[PRIVATE SCHOOL ADMINISTRATOR]. Administrator [Private School Administrator] from [Private School] testified on behalf of the Petitioners. This person held a [Other State] certification in special education administration. (pp. 109-111)

He described the [Private School] and the classes that [Student] takes. (pp. 112-113) All of the teachers at [Private School] are either certified in or working towards their certifications in special education. (p. 115) [Student]'s classes are small and have seven to nine students in them. (pp. 113, 115; exh. S) One class is a one-on-one individualized reading tutorial everyday for 45 minutes. (p. 113) The reading tutorial strategies are also worked on in [Student]'s other classes. A required study session occurs five days a week after school. (p. 114)

There is no mainstreaming within the private school. There is no academic contact with regular education students. Students must leave the school for contact with non-disabled students. (pp. 116-117)

[Student] has made some progress at [Private School]. (pp. 120-121, 124; exh. H and I) However, she is well below grade level in reading. (p. 124) Her main issues are with vocabulary and decoding. (p. 125) (Phonetic decoding explained again at pp. 30-31, 39.) [Private School Administrator]'s final statement was that [Student]'s "... reading scares me." (p. 126)

[CASE MANAGER]. [Case Manager] of [Private School] School testified. (pp. 127-158) He is a special education reading teacher at [Private School], a teacher trainer, [Student]'s tutorial supervisor, and overseer for his student's academic programs. (pp. 128-129) He is [Student]'s academic case manager and reading teacher. (pp. 129-130) All of the teachers at [Private School] go through a training program that addresses remedial reading. (p. 155)

He described [Student] as having strengths in math, conscientiousness, and organizational abilities. (p. 131) He too believes that she has made progress at [Private School]. (p. 142, 145, 146) On the other hand, [Student] struggles with decoding, particularly multi-syllable words, vocabulary comprehension, basic grammar, and writing. (p. 131-132)

In her one-on-one tutorial, [Student] works on spelling and decoding. (p. 148) [Student] "advocates" for herself; that is, she seeks a large amount of feedback. (p. 132) She can at time be distractible. (p. 133-134; 156-158) [Student] is sometimes emotional and sensitive to criticism. (p. 139)

According to this witness, an appropriate education program for [Student] would consist of small classes, additional one-on-one attention (i.e., tutoring), structure, routine, and directional cues. (p. 135-136) Assignments and directions should be broken down.

(p. 135) Attention must be paid to how language is used in the classroom. (p. 135) It is the witness' belief that she could not survive in a "mainstream" class with 20 or more students due to her dyslexia and ADD. (p. 141-142)

This witness reviewed [Student]'s quarterly reports contained in exhibits G, L, and U. They are collaborative in nature and contain a subjective rating scale. (pp. 137-138; 152-153) The witness confirmed that [Student] is not educated with regular education students. (p. 154)

[Special Education Teacher]. [Student]'s potential special education teacher in the School District testified. (pp. 158-286) She holds a masters degree in special education, and taught special education in private and public schools for eight (8) years. (p. 159; 160) [Special Education Teacher] has training in several reading programs: the Linda Mood-Bell methodology, another reading/writing program, the six trait writing system, and the FAST reading program. (p. 160; 221; 249-250)

FAST stands for Foundations, Analysis, Synthesis, and Thoughtfulness. (p. 292) She has a few years of experience with the FAST program and is certified in it. (p. 161; 249-250) Certification entailed class work and observed hands-on tests. She has taught approximately 50 students with this method. (p. 162)

FAST is designed for older students that need reading remediation and for "bright dyslexics" like [Student]. (p. 162) It specifically seeks to improve spelling and decoding skills. Decoding is explained at pages 274 and 277. Twenty-five (25) steps or skills have to be learned to complete the program. (p. 161)

Typically there is reading improvement for each student who is in the FAST program. The witness believes that FAST generates at least two years' reading growth as a student progresses through the 25 steps. (p. 162) The witness expected at least a two year reading grade equivalency jump for [Student] in one academic school year. (p. 212)

The witness explained Exhibit 22. It summarized the progress over one academic year (1999-2000) for ten (10) special education high school students at the school [Student] would have attended. (pp. 162-163; 166; 179) FAST is designed to be completed in one school year, but some students complete it faster than that. (p. 181) The witness has not had any student take more than a year to complete the steps. (p. 184) She anticipated that had [Student] began the 2000-2001 school year in the district, that [Student] would have probably completed the 25 steps by January 2001. (p. 198)

Concerning the ten FAST students in [Special Education Teacher]'s language theory class, spelling ability improved. (pp. 165-166) Four of the students have diagnoses of ADHD (pp. 170-171), and three of them had verbal versus performance IQ discrepancies similar to [Student]'s. (p. 179) There was no documentation to substantiate these discrepancies for the other students. (p. 185) Some had word decoding scores similar to [Student]'s. (p. 181; Exh. 22)

Some of the students tested in Exhibit 22 were similarly situated to [Student] with regard to other test scores as well. (p. 169) That is, [Student] had a 4<sup>th</sup> grade reading level and some of the students in the FAST program began with 4<sup>th</sup> and 5<sup>th</sup> grade reading levels. (pp. 168-169; 171-175)

From her testing, [Special Education Teacher] adduced that [Student] had considerable weaknesses in decoding and spelling, a pattern typical for bright dyslexics. (p. 175) The witness then calculated Colorado special education eligibility for PCD. (p. 176; 239-240) She reviewed [Private School]'s records (Exhibits 4-21), her own testing, and Exhibit N. She then began to design an IEP that would address [Student]'s weakness - reading problems. (p. 176) Specific goals were based on letter/word sounds and the writing process. (p. 188-189) She anticipated that reading comprehension, vocabulary, and spelling would improve as decoding improved. (p. 213)

[Student]'s ADD would have manifested itself more in her area of weakness (i.e., reading), so the IEP team placed the emphasis on remediating reading, rather than math, where she is stronger. (p. 241-242) There were no problems noted by any witness in math or motor activities like physical education.

[Special Education Teacher] attended an IEP meeting in August 2000, and District staff, counsel, and the parents attended. (p. 189) All there discussed a draft IEP which was similar, though not identical, to Exhibits Q and I. (pp. 190-191) They considered [Student]'s distractibility, [Student]'s teacher's educational necessities, educational goals, class schedule, and special education accommodations. (p. 191-193; 225) [Student]'s learning disability and ADHD were considered. (p 237; 241; 242) The IEP was designed to be re-analyzed or modified on a monthly basis, as necessary. (p. 192)

[Special Education Teacher] testified that class room size was indeed an important issue for the parents. (p. 193; 232; 257) They were concerned that some of the classes had too many students.

[Student]'s class schedule was to be as follows: geometry, physiology and anatomy (plus tutor if necessary), history (plus complementary history support class), language theory (including FAST program), an individualized reading program, American literature (team taught with special education teacher), and physical education. (pp 194-200)

The "content" (e.g., history, geometry and literature) classes had approximately 22 students per class. (p. 195) Language theory had 5 or 6 students. (p. 196) The individualized reading program would have two students in it. (p. 197) Literature class would be supplemented by visuals like audio tapes and movies. (p. 200) [Special Education Teacher] would have taught [Student]'s language theory class and team taught the literature class with a regular education teacher.

Language theory was divided into two 45 minute periods per week. (p. 197) The first 45 minutes would be a remedial reading program using a multi-sensory mode with a board and manipulatives (the FAST program). (p. 197) The manipulatives consisted of a big white board with consonants, vowels, suffixes and prefixes. (p. 206) The second 45 minutes would be for homework assignments, teacher's aide assistance, or whatever was needed at the time. (p. 198)

The school would give [Student] a "time tracker." [Student]'s time tracker, like a Daytimer, (p. 282) would also be reviewed regularly in language theory. The witness testified that review of the time tracker is helpful for all students, but especially those with ADD. (p. 220) The special education teacher and school psychologist would have also worked on improving [Student]'s attending skills and would have attempted to reduce her self-distracting behaviors. (p. 225; 229) [Student]'s ADD was also addressed in other portions of the IEP as well. (pp. 234-236)

[Special Education Teacher] testified that with a program similar to that recommended for [Student], other students have been successful. Other students with similar learning profiles to [Student]'s are benefiting from the public school curriculum; they are completing classes with passing grades and moving up. (p. 243) These students are making improvements based on testing and graduation plans. (p. 244)

[Student]'s IEP strongly emphasized decoding skills. [Special Education Teacher]'s results with the FAST program and the tutorial were exceptional compared with other previous reading programs. (p. 245)

[LITERACY COORDINATOR]. What would be one of [Student]'s 11<sup>th</sup> grade history teachers testified. She is also the literacy coordinator at the school. (p. 73) She holds a master's degree with an emphasis in reading and is trained in four reading programs. (pp. 73-74) She is level one certified in the FAST reading program. (p. 88) She has some special education training, but does not have a special education certification. (p. 90)

[Literacy Coordinator] was to direct [Student]'s support services at the school and would personally provide (with a part-time aide) reading support for [Student]'s 11<sup>th</sup> grade history class. (p. 74-76) Ten to fifteen students are in the class with reading comprehension grade equivalents of from 5<sup>th</sup> grade to 11<sup>th</sup> grade. (p. 76; 92) In her class the regular history class would be re-taught and broken down into smaller pieces or "chunked." (p. 75) This chunking was what other witnesses and exhibits recommended. [Literacy Coordinator] would address reading issues and emphasize the decoding of unfamiliar words. (p. 76-77)

One student in the history support class has a verbal versus full scale IQ discrepancy greater than [Student]'s. (p. 94) About a third of the students in the history support class have IEP's and are special education students. (p. 95)

Two students with ADHD and LD are in the class. They are doing well in both the support and the regular history class. (p. 77-78) Over the past four years the results have been good with the regular class/support class combination. (p. 79) ADD/ADHD students are targeted for special treatment and teaching methods. (pp. 79-87) Student's with word attack and spelling shortcomings are identified and assisted. (87-89) Word attack is explained at page 276.

[EDUCATIONAL THERAPIST]. [Educational Therapist] is a special education evaluator and educational therapist. (pp. 286-353) The witness holds a bachelor's in elementary education and a master's in special education. (p. 297) This witness has been a teacher, tutor, and administrator. She has started two schools for learning disabled students, one of which had a population of PCD students. (p. 287-288; 297) Her specialty is reading and dyslexia. (p. 291) She was qualified as an expert in the education of students with learning disabilities and in the FAST reading program. (p. 297) She has testified many times before and testifies mainly for parents.

The witness evaluates approximately 50 to 65 students per year. (p. 290) Seventy-five percent of those evaluated have learning disabilities and fifty-percent of that group had PCDs. (p. 291) She has evaluated over 1,000 persons with disabilities similar to [Student]'s. (292)

[Educational Therapist] reviewed the August IEP, the documents used to draft the IEP, the School District testing, the June 2000 [Neuropsychology Evaluation Center] testing, and [Private School] documents. (p. 289) These documents were sufficient for [Educational Therapist] to form an opinion about [Student]'s educational needs. (p. 348)

[Educational Therapist] helped develop the FAST program in part because of frustrations with other reading programs. (p. 287; 294) [Educational Therapist] and another reading educator perfected the program in 1996 and copyrighted the program in 1997. (p. 331; 333) [Educational Therapist] reiterated [Special Education Teacher]'s testimony that the FAST program is designed for older students with PCD and specifically spelling problems. (p. 292) The program also works well for students with attention deficits and learning disabilities. (pp. 315-316)

The FAST program is short, concise, and consistent. (p. 317) Students usually make two years worth of growth by the time the student finishes the 25 steps. (p. 320) Up to five years of growth is possible. (p. 321) The steps can be completed in two weeks to four months if presented intensively. (p. 320)

FAST is a multi-modality reading curriculum that uses visuals and manipulatives (p. 316) to teach reading and reading comprehension. (p. 293) The focus is on decoding and word attack. As a result, spelling and comprehension are improved. (p. 296) The right side of the brain pulls in the visual representations for letters and sounds from a big board with color codes and a "galaxy" of letters and sounds on it. (pp. 294-295)

[Educational Therapist] has rejected more than a dozen other reading programs, for which she has training or certification, because of weaknesses in these programs. (p. 295) Many of the other programs are too slow or are too language based. (p. 295) With the FAST program, the students make spelling and reading progress faster than with any other program. (p. 295)

The FAST program was designed for someone like [Student]. (p. 318) Students with [Student]'s co-morbidity (literally "diseases together") of ADHD and learning disability "...have made consistent strong, repeatable gains...." with this program. (p. 319-320)

[Educational Therapist] reviewed and understood the August IEP and the educational program that was offered to [Student]. (pp. 298-315) There was sufficient documentation and personal [Middle School] public school observation time to allow her to form an opinion about the kind of program that [Student] required. (pp. 300-302) She believed that she understood [Student]'s weaknesses and needs. (pp. 301-302; 310-311; 319)

She personally observed and favorably noted the School District's history support teacher and the FAST program teacher's methodology. (p. 303-308) The District's proposed IEP aptly dealt with word attack and decoding skills. (pp. 314-315) (Decoding and word attack are further described at pp. 311-313.) The school also appropriately addressed [Student]'s ADD. (pp. 308-310; 319) The IEP was satisfactory (p. 309; 322), and [Student] could receive an appropriate education in the public school setting as a result. (p. 321-322) Private school and residential placements would be unnecessary. (p. 322-323) Likewise, [Student] did not have to be in a small-group setting like [Private School]. (p. 323) Support services (e.g., a tutor) for the larger content classes would be necessary however. (p. 324)

[Educational Therapist] did voice concerns. The weakness of the public school setting is that the regular classroom teacher could not provide direct instruction with [Student] on word attack and decoding. (p. 324-325) Furthermore, it would be difficult for a student with ADD to attend for the regular 90 minute class at the public high school. (p. 335) However, various class room management techniques listed in [Student]'s IEP could be used in the regular education classes. (pp. 336-341) Furthermore, [Educational Therapist] did not observe any teacher at the school straight lecture for a full 90 minutes. Breaks and other strategies were taken during the period. (p. 348)

[Educational Therapist] is familiar with [Private School] and has had professional contact with some of its employees. [Private School] is a good school that is beneficial for [Student], and [Student] has made progress there, but the FAST reading program at [Middle School] would be more beneficial for [Student] than the reading program at [Private School]. (pp. 326-327; 345) Based on the written materials, [Private School] was not addressing decoding skills in all of [Student]'s classes. (p. 342) [Educational Therapist] however had not observed [Student] at [Private School]. (p. 329)



## 5. CONCLUSIONS OF LAW

### A. Statutory and Case Law Framework

The IDEA provides federal funds to state and local agencies for the education of children with disabilities to ensure that they are given a “free appropriate public education” (FAPE). 20 U.S.C. § 1401(a)(18). FAPE means special education and services that are free to the parent, are under public school supervision, meet State standards, are appropriate for the student, and comply with the child’s IEP. 20 U.S.C. § 1401(a)(18); 20 U.S.C. § 1400(c)

The Act conditions federal funding on compliance with certain goals and procedures. 20 U.S.C. § 1412. The statute’s primary purpose of providing a FAPE is achieved through the development of an IEP, tailored for each child with a disability. 20 U.S.C. § 1401(a)(18)(D); 20 U.S.C. § 1414(a)(5).

The Supreme Court defined a FAPE in the Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982). The Court held that the state is to provide each child with a disability with specially designed instruction and supportive services as may be required to assist the student to benefit from special education. Rowley, 102 S.Ct. at 3048. This “...”basic floor of opportunity”... consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” Rowley, 102 S.Ct. at 3048. If the child attends classes with non-handicapped students, the IEP should be reasonably calculated to enable the student to achieve passing grades and advance from one grade to the next. Rowley, 102 S.Ct. at 3049.

The purpose of the Act is to open the door of public education to disabled children, not to educate a disabled child to her highest potential. Board of Education of School District 21 v. Illinois State Board of Education, 938 F.2d 712, 715 (7<sup>th</sup> Cir. 1991), cert. denied, 112 S.Ct. 957 (1993), citing, Rowley, 458 U.S. at 192. Courts must be careful to avoid imposing their view of preferable educational methods upon the State. Rowley, 458 U.S. at 207, 102 S.Ct. at 3051.

The IEP is to be in writing and pertinent school district personnel, special educators, teachers, parents and, whenever appropriate, the student are to jointly write the plan. An IEP is written and approved by a consensus of the persons involved. The plan must include the student’s present levels of educational performance, annual goals, short-term objectives, services, the extent the student will be participate in regular education, and transition services for post-school activities. The document must tell everyone when the services will start and how long they will last. So that progress can be tracked, the IEP must include objective criteria and evaluation procedures and schedules for determining whether instructional objectives are being achieved. 20 U.S.C. § 1401(a)(20); 34 CFR § 300.346.

In Rowley, 458 U.S. at 188-189, the Supreme Court established a two-part test to determine whether the student has been provided with a FAPE:

- (1) Whether the state complied with the procedures set forth in the act; and
- (2) Whether the IEP developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefit.

Issue number one having to do with the procedural aspects of FAPE was not relevant in this case and no party contested it. Rather, the issue in this case had to do with the second prong; that is, was [Student]'s IEP reasonably calculated to enable her to receive some educational benefit. This is a question of substantive compliance with the Act.

In addition to a FAPE, the school must provide education and related services in the least restrictive environment (LRE). The statutes, regulations, and cases embody the principle that disabled children should be in regular education classes as much as is educationally possible. 20 U.S.C. § 1412(5)(B); 1414(a)(1)(C)(iv); 34 C.F.R. § 300.550(b). Separate schooling should only occur when the severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. 34 C.F.R. § 300.550(b)(2). The child is to be placed as close to home as possible and educated in the school that she would attend if non-disabled. 34 C.F.R. § 300.552.

Rowley's "educational benefit" is to be construed broadly. The IDEA does not require that a placement maximize the potential of the student. The placement need only provide a program that is "reasonably calculated to enable the child to receive educational benefits." Kerkam v. Superintendent, D.C. Public Schools, 931 F.2d 84, 86 (D.C. Cir. 1991), *citing*, Rowley, 458 U.S. at 207. Although a laudable aspiration, the student's best interest is not the touchstone. Even if it is successfully argued that the student will make less progress under the school district's program, Rowley prohibits that analysis so long as the district's plan confers some educational benefit. *See Rowley*, 458 U.S. at 200-201; Kerkam, 931 F.2d at 87. Nonetheless, the educational benefit a school district proposes must be more than *de minimis* in order to be appropriate. Oberti v. Board of Educ., 995 F.2d 1204 (1213 (3<sup>rd</sup> Cir. 1993); Doe By and Through Doe v. Smith, 879 F.2d 1340, 1341 (6<sup>th</sup> Cir. 1989).

The IDEA authorizes reimbursement of unilateral parental placements in private schools. School Comm. of Burlington v. Department of Educ. of Mass., 471 U.S. 359, 369, 105 S.Ct. 1996, 2002 (1985); 20 U.S.C. § 1415(e)(2). Burlington held that the IDEA allows a court to order reimbursement if the court determines that such private placement is proper under the Act. Burlington, 105 S.Ct at 2002. The first issue is whether the school district's IEP provided the disabled student some education benefit. If so, the inquiry stops. If not, the court determines whether the private placement was appropriate. Cypress-Fairbanks I.S.D. v. Michael F., 118 F.3d 245, 248 (5<sup>th</sup> Cir. 1997), *cert. denied*, 118 S.Ct. 690 (1998)

In *Cypress-Fairbanks I.S.D.*, 118 F.3d at 253, the court outlined four factors that, if met, would determine if an IEP was reasonably calculated to provide a meaningful educational benefit under the IDEA. First, is the IEP individualized based on the student's assessment and performance. Second, is the student in the LRE. Third, are the services provided in a coordinated and collaborative manner by the key "stakeholders." Fourth, can the school demonstrate positive academic and non-academic benefits. These factors are derived from 34 C.F.R. §§ 300.343-345, 300.346(a), 300.346(a)(5), and 300.500, 300.531-2.

## B. Conclusions

[Student] has difficulties with reading and writing skills even though she has a full scale IQ of 106. She is significantly below grade level in several areas and this is after more than two years at a private special education out-of-state school. She continues to demonstrate severe problems with phonetic decoding and word identification. The FAST program can address these problems. The language theory class and reading tutorial at the School District will address additional deficits in grammar, punctuation, and sentence structure.

Due to these language-oriented learning disabilities, [Student] will need special education in reading and writing skills. Five years ago the University of Denver Psychology Department recommended tutoring in reading. She certainly needs tutoring and assistance in reading and writing skills, but not geometry, physical education, or a laboratory-based hands-on science class. Special educator [Special Education Teacher] and reading literacy specialist [Literacy Coordinator] can provide the necessary reading support. The IHO agrees with [Neuropsychology Evaluation Center] when it stated that [Student] needs specialized school placement, if "specialized" means a sophisticated agenda focused on [Student]'s learning disability. The IHO disagrees with [Neuropsychology Evaluation Center] if a specialized school placement means only the [Private School].

The IHO agrees with [Psychologist] that a student with a dual diagnoses of LD and ADHD could attend public school if the school targeted that student's specific learning needs. The Exhibit 1 IEP does just that, particularly at pages 17 through 19 and 23 through 37. [Literacy Coordinator] and [Special Education Teacher] (in detail) described how they would direct [Student]'s specific learning needs. [Educational Therapist] agrees that this particular student can attend public school using the August 2000 IEP. Fine tuning will naturally have to occur on a monthly basis.

The IHO agrees with [Psychologist] that small group help and individualized attention are necessary for [Student]. But the IHO disagrees if this witness meant that intensity of services in all classes all of the time. Small groups and individualized attention are necessary where it counts. The IHO agrees with [Psychologist] that not all children with ADD and PCD need to be in private school with small classes. Some do and some do not.

The IHO concludes, based on the evidence and the applicable law, the following:

[Student]'s August 2000 IEP was individualized on the basis of her assessments and performance. Even a passing review of Exhibit 1 indicates adequate assessments. This child received three batteries of reading tests from March to November 2000. No one disagreed with the fact that [Student] needed special education assistance specifically in decoding, word attack, written expression, and reading comprehension, and generally in reading and writing skills. The August 2000 IEP accurately focused on several areas of concern. The IEP addressed [Student]'s ADD and PCD. Explicit directions were to be directed to [Student]'s regular class room teachers. [Student]'s needs were chronicled *in seriatum*. [Student]'s IEP was certainly more than a mere exercise in public relations.

[Student]'s program would have been administered in the Least Restrictive Environment. She would have been educated in a public high school with children who are non-disabled in geometry, physiology, history, literature, and physical education. Supplementary aids and services consisting of a tutor, two-on-one services focusing specifically on her disability, two history classes (one designed for [Student] in a small group), and team teaching in a content class, would have allowed [Student] to participate in regular classes. [Student] would have been educated close to her home. She would be educated in the school that she would attend if non-disabled.

The District's services to [Student] would be provided in a coordinated and collaborative manner by the key stakeholders. [Literacy Coordinator] and [Special Education Teacher] would have coordinated services. One special educator trained in a reading program targeted for [Student], a reading literacy teacher, and the school psychologist would have joined forces to make sure [Student]'s IEP was put into operation and modified as needed. Overseeing this would be [Student]'s concerned and involved, but appropriately skeptical parents. Reading services were coordinated between the language theory class, the individualized reading tutorial, and in U.S. history support.

The District demonstrated the potential for positive academic and non-academic benefits. The FAST program had produced results for other special education students and was targeted for bright dyslexics. [Special Education Teacher] had good results with this program at her current school and other schools where she taught. [Literacy Coordinator] has had success with history and other reading based classes using her support group. [Educational Therapist], the expert in reading education, found the IEP sufficient. She believed and the IHO agrees that [Student] can receive an appropriate education in the public school setting with the August 2000 IEP. A private school, even a first-class private school, is unnecessary. Likewise, a small group setting is nice, but not mandatory for [Student] to make progress. [Educational Therapist] testified that the FAST reading program would be more beneficial to [Student] than anything currently available at [Private School]. As long as support services, for example, a tutor, are in place for classes with a considerable reading component, [Student] will obtain some

meaningful educational benefit from the proposed School District program. [Student] is not so severely disabled or so different from her potential classmates that she too cannot obtain positive results.

The IHO is mindful of the poor progress that [Student] has made in the [District] public school system in the past. The IHO agrees with the Petitioners that past IEPs may not have been all that suitable. But we are not here today to redress those by-gones. The IHO reminds the parents and warns the School District that only two months ago the [Neuropsychology Evaluation Center] re-tested [Student] and concluded that [Student] was making negative progress in some areas and still far behind in written expression. The School District must appreciate that it has a heroic responsibility to provide an appropriate education for a promising young student.

Therefore, the IHO concludes that August 2000 IEP is "...likely to produce progress, not regression or trivial educational advancement." Board of Educ. of East Windsor Regional Sch. Dist. V. Diamond, 808 F.2d 987, 991 (3<sup>rd</sup> Cir. 1986). That is all that we can legally require. Although the parents showed that [Private School] provided a good environment for [Student], they failed to demonstrate that the School District's alternative was not appropriate. The parents have failed to show that [Student]'s IEP was not reasonably calculated to provide [Student] with a meaningful educational benefit. Therefore, the issue of whether the [Private School] placement was appropriate is moot and need not be decided.

The IHO agrees with the University of Denver assessment that [Student] has *mild* ADHD. The [Private School] teacher comments in Exhibits G, L, and U do not describe someone who is sloppy, unable to follow through, inattentive, disorganized, irresponsible, forgetful, or hyperactive. If anything, [Student] may occasionally argue with adults (teachers) and talk when she should be working. Unlike the typical student with ADHD, [Student] is able to engage in tasks that require sustained mental effort (such as schoolwork). [Student] does not fidget, get out of her seat, or run about. [Special Education Teacher]'s testimony and the school psychologist's comments in Exhibit 1 also belie severe attention problems. The evidence suggested that medication could diminish [Student]'s ADD. At any rate, the IEP and testimony is replete with accommodations for [Student]'s ADD.

Although the parents showed that [Private School] provided a good environment for [Student], they failed to demonstrate that the School District alternative was not appropriate. The School District can provide a free and appropriate public education to [Student] if she were placed at the high school in [District].

## 6. DECISION

Great deference must be paid the educators who developed the IEP. Todd D. v. Andrews, 933 F.2d 1576, 1581 (11<sup>th</sup> Cir. 1991). The Court cannot substitute its own notion of sound educational policy for those of the school authorities. Thomas v.

Cincinnati Board of Education, 918 F.2d 618, 624 (6<sup>th</sup> Cir. 1990), citing, Rowley, 102 S.Ct. at 3034.

The FAPE described in the student's IEP need not be the best possible plan, and it need not maximize the student's educational potential. Cypress-Fairbanks L.S.D. v. Michael F., 118 F.3d 245, 247 (5<sup>th</sup> Cir. 1997). There can be more than one appropriate choice for the student. The appropriate education plan does not have to be the parents' choice or even the best choice among two. G.D. v. Westmoreland School Dist., 930 F.2d 942, 948 (1<sup>st</sup> Cir. 1991). Rather, a FAPE need only consist of an education that is specifically designed to meet the child's unique needs, supported by services that will permit her to benefit from the instruction. Sylvie M. v. Bd. Education Dripping Springs School, 48 F.Supp.681, 693 (W.D. Tex. 1999).

The parents have laudably provided their child with a program intended to maximize her progress, but the Act does not require the District to reimburse them. If the parents would like [Student] to continue to attend [Private School], then they will need to pay for [Student]'s education themselves. If the parents would like [Student] to attend high school in [District], the School District will pay for [Student]'s education. Accordingly, the Petitioners' request for relief is hereby DENIED.

## 7. APPELLATE RIGHTS

Appellate procedures are found at ECEA Rules 6.03(10) through 6.03(12). Any party has 30 days after the receipt of the Decision to file a Notice of Appeal and Designation of the Transcript with the Division of Administrative Hearings and the Department of Education.

**DATED** this 26th day of January 2001.

INDEPENDENT HEARING OFFICER:

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Christopher D. Randall, Esq.