Before the Division of Administrative Hearings
State of Colorado

Case No. **ED 2000-1 (S99:120)**

Decision Upon State Level Review

[Student], by and through her parent, **[Parent]**,
Petitioner,
v.

St. Vrain Valley School District,
Respondent.

I. Introductory Statement

The Colorado Department of Education received a request for hearing on August 25, 1999. The Impartial Heating Officer (IHO) heard this case on October 27, 1999. Jurisdiction is conferred by 20 U.S.C. §1415 (f)(1), 34 C.F.R. §300.507, and 1 CCR 301-8 §6.03(6). The Petitioner, the Student, appeared through her mother, the Parent, represented by Robert W. Johnson. Richard N. Lyons, represented the School District, Respondent. The parties entered into a Stipulation of Facts dated October 20, 1999, which was received in evidence at the hearing.

The Impartial Hearing Officer (IHO) entered Findings and Decision on January 5, 2000. The Petitioner and the School District have both appealed that decision.

This decision will not contain the name of the Student or the Parent other than on this first page. State Plan, Part II, VII, 4, e, (3), and Part II, VII, 9, f. In this decision [Student] will be referred to as the 'Student', [Parent], her mother, as the 'Parent', and St. Vrain Valley School District RE-1J as the 'District'. The Code of Federal Regulations will be referred to as "CFR". The Rules of the Colorado Department of Education will be cited by Section number. Those rules are published in 1 C.C.R. 301-8. The Individuals with Disability Education Act, 20 USC §§1401 *et seq.* may referred to as the "IDEA". An Individual Education Plan may be referred to as an "IEP". A "free appropriate public education" may be referred to as a "FAPE". A "significant identifiable emotional disability" may be referred to as a "SIED".

Neither party requested the opportunity to present additional evidence on state level review. No additional evidence was received. The record of the

proceedings below consisting of exhibits, the transcript of the hearing before the IHO and the IHO's Order have been received and considered. Briefs from both parties have also been received and considered.

II. Scope of Review

The decision of the Administrative Law Judge on state level review of the decision of an Impartial Hearing Officer is to be an independent decision. IDEA 20 U.S.C. § 1415(c) and (d); 34 CFR § 300.510; State Plan, Part II, A, VII, B, 9, b; and Section 6.03(11)(b)(v). The IDEA provides that court reviewing a state level decision shall render an independent decision. IDEA §1415(e). Cases construing this provision have held that in conducting such review courts must give "due weight" to the findings at the state level. *Board of Education of Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176 (1982); *Doe v. Board of Education of Tullahoma City Schools,* 9 F3rd 455, (6th Cir., 1993). The reviewing agency must, while according the hearing examiner's decision due weight, independently decide based on a preponderance of the evidence whether the District has satisfied the requirements of IDEA. *Sioux Falls School District v. Koupal,* 526 NW 2d 248 (S.D. 1994). It is appropriate to apply this standard by analogy in the state administrative review level.

III. IHO Decision

It was the decision of the IHO that the District violated the provisions of 34 CFR §302 during the 1998-1999 academic school year by not assuring that the Student's program at [Private School] was at no cost to the Parent. The IHO ordered the District to reimburse the Parent all the costs of the Student's education at [Private School], including non-medical care, room, and board. The IHO denied the Parent's request for reimbursement of any costs after June 3, 1999.

IV. Issues

After considering all evidence and legal argument, the ALJ has determined that the issue in this case is whether the Parent is entitled under the IDEA to the costs of the Student's placement in a private school. Resolution of this issue is dependent upon a determination of: (a) whether the District provided the required notice to the Parent; (b) whether the Parent notified the District before removing the Student from public school; (c) whether the District was providing a free appropriate education to the Student before the Student was removed from the public school, and; (d) whether the private school provided an appropriate education to the Student.

V. Findings of Fact

1. The parties stipulated, and it is found:

a) The Student was born on [D.O.B.].

b) The Student is a child with a significant identifiable emotional disability ("S.I.E.D.") as defined by Colorado Department of Education Regulations, 1 CCR 301-8, Sec. 2.02(5).

c) In February 1998, the Student returned to the District after having spent approximately six months at the [Clinic].

d) Upon return to the District, the Student was placed directly back into the [Day Treatment Program] administered jointly by the Boulder County Mental Health Department, the District, and Boulder County Social Services. The Student was previously in [Day Treatment Program] before leaving for [Clinic]. [Day Treatment Program] is a separate facility and at a different location from [Middle School], which would be the site of the Student's regular education. [Day Treatment Program]'s program includes both academics as well as therapy (individual and group) and parent and family counseling.

e) On April 20, 1998, a triennial review of the Student's IEP was held. The new IEP continued with the same identified disability. The IEP's Service Delivery provided: "SIED placement with classroom support, direct instructional by a special education teacher, community based educational experiences, group, family, individual therapy" with 30 hours of such services provided on a weekly basis outside of the general classroom.

f) Based upon the IEP, the Student's placement continued to be at [Day Treatment Program] through the end of the school year in June, 1998.

g) In July, 1998, the Student traveled with the Parent to [City]. The Parent enrolled the Student at [Out of State School] in [City], [Other State].

h) Later in July, 1998, the Student returned from [City] to Longmont with the Parent because of displeasure with the school.

i) On August 25, 1998, the Parent met with District special education personnel to discuss placement per the April 20, 1998 IEP. The Parent indicated that she was exploring other out of state placements for the Student. District personnel suggested various alternatives for the Student including both day treatment and residential facilities in the Denver-Longmont metropolitan area.

j) On August 26, 1998, the Parent wrote a letter to the District's superintendent informing the District that she disagreed with the April 20, 1998 IEP and that the alternative placements suggested by the District at the August 25, 1998 meeting were unacceptable to her.

k) By letter dated September 18, 1998, the Parent informed the District that she had enrolled the Student at [Private School] in [State 3] on September 4, 1998, and requested a meeting with District personnel to discuss funding of such placement.

l) On September 4, 1998, the Parent met with [Director] and [Supervisor] of the District to discuss funding. Although the District objected to the placement, by Memo dated October 5, 1998, it agreed to pay $40 per day (on a six day per week basis) for the educational component of the $114 per day total cost of [Private School] based upon [Director]' conversations with [Staff] of [Private School]. Payment was conditioned upon [Private School]'s conformance with the current IEP and with [Private School] conducting an annual review in April 1999.

m) [Director] sent a contract to [Private School].

n) The Student remained at [Private School] through the 1998-99 school year.

o) [Private School] did not conduct an annual IEP review in April 1999.

p) [Private School] did not bill the District but rather billed the Parent for the educational component and other expenses as per the May 13, 1999 letter from [Private School].

q) By letter dated April 11, 1999, the Parent requested that the District pay 100% of the costs of [Private School].

r) By letter dated May 20, 1999, [Director] denied the request for payment of the total costs, but did authorize payment to the Parent of the amounts due to her as reimbursement for the educational component per the agreement of Sept./Oct. 1998.

s) A due process request was thereafter filed regarding the denial of payment of all of the costs.

2. The Student was hyperactive since she was very young. The Student has been enrolled in special education programs since the first grade.

3. The Student entered [Middle School] in Longmont Colorado as a sixth grade student in the fall of 1995. [Middle School] was her regular middle school in the District. The Student had special education services in the form of access to a resource room on an as-needed basis.

4. In the Student's seventh grade year in February of 1997 the Parent placed the Student at [Medical Center] in Boulder, Colorado, for approximately one month for medication review. When she returned to [Middle School] the Student basically shut down and was placed at the [Residential Program] for the rest of the 1996-97 academic year.

5. In August 1997 the Parent moved the Student to the [Clinic], a psychiatric hospital in [State 1]. She remained there until February, 1998, when she returned to Longmont. The Student was administratively assigned to the [Adolescent Treatment] program effective approximately February 25, 1998. That is a day treatment program. The Mental Health Center of Boulder County, the Department of Social Services and the District jointly administered the [Day Treatment Program] program. It offers therapy along with social services and education combined into one program. The Student lived at home while enrolled in this program in 1998.

6. The annual IEP meeting was delayed until April 20, 1998 due to the short period of time after her return to the District until the triennial staffing that was to be held by March 13, 1998.

7. The Student's triennial IEP meeting was held on April 20, 1998. Those at the meeting included the Parent, [Counselor], her counselor at [Day Treatment Program], and [Teacher], the Student's teacher for language arts and overseer for her education at [Day Treatment Program]. The team designated the Student's disability as SIED. The assessment data presented at the IEP meeting showed that the Student was above grade level in reading and below grade level in spelling. While the IEP states that the Student was at grade level in math, [Teacher] testified that she was a little below grade level in that subject area.

8. The parties arrived at a consensus at the meeting that the Student's placement in the least restrictive environment should be in a Public School Separate Facility such as [Day Treatment Program]. For Special Education and Related Services, the IEP determined that the Student should receive an SIED placement with classroom support, direct instruction by a special education teacher, community based educational experiences and group, family and individual therapy for 30 hours per week. The Student had goals and objectives both in the Social-Interpersonal as well as the educational areas. The Parent did not object to any aspect of the IEP meeting or the written IEP developed in April 1998.

9. The April 1998 IEP provided the Student with (1) access to specialized instructions and related services; (2) that are individually designed; (3) to provide educational benefits to the Student. The IEP provided for a free appropriate public education for the Student.

10. The therapy aspect of the Student's program proved far more problematic than her academics. During April the Student continued to refuse to talk to her therapist and meet with her youth advocate. She scratched the word "hore" on her arm and appeared depressed and moody much of the time. During May, 1998, the Student refused to go to an appointment with her psychiatrist at [Day Treatment Program], [Psychiatrist].

11. The Student was only minimally cooperative, but was making progress with her minimal cooperation in the private therapy sessions. The Student was opening up and building relationships with the staff and other students at [Day Treatment Program]. The Student's social/emotional and adaptive behavior was not interfering with her educational progress to such a degree that the Student needed residential placement.

12. Although the Student demonstrated passive defiant behavior at times, she was a workable student who, like many of the twelve SIED adolescent students at [Day Treatment Program], made slow progress academically. The Student, for the most part, did her school work. When the Student did her school work, she often did a "really good job, almost to the point of being overly concerned about her work." The Student progressed educationally at [Day Treatment Program], even if the therapeutic component of the IEP was not successful.

13. In June 1998 the Parent removed the Student from [Day Treatment Program] to go to [State 2] for about a month. The Parent did not give the District 10 days notice of intent to withdraw the Student from public school prior to withdrawing the Student from [Day Treatment Program].

14. Before the Student left the Parent was told that when she returned the Student would need to agree to participate more fully in the program, or they would need to look for a more suitable placement. The counselors at the [Day Treatment Program] made a good faith effort to assist the Student in making gains in the therapeutic component of the IEP.

15. In July 1998, the therapist discharged the Student from treatment at [Day Treatment Program]. She documented the Student's refusals to participate in therapy and other activities. She recorded the doubts of the staff members regarding the efficacy of the [Day Treatment Program] placement. It was recommended that the Student be evaluated for hospital or residential treatment.

16. In the summer of 1998 the Parent contacted [Director], Director of Student Services for the District, expressing concern over the Student's current status. [Director] set up a meeting late August 1998 with the staff at [Day Treatment Program]. [Supervisor], the District's Special Education Supervisor, the Parent, [Counselor] and [MHC Coordinator], Mental Health Center Coordinator of the [Adolescent Treatment Program], attended the meeting.

17. The participants in the meeting in late August 1998 agreed that the situation at [Day Treatment Program] was not working very well for the Student. The meeting presented the opportunity for all concerned to decide whether the Student should continue at [Day Treatment Program], or whether the circumstances warranted a different placement.

18. Other options for a free appropriate public education for the Student were discussed at the August 1998 meeting. The possibilities included continuation at [Day Treatment Program], educational day programming at Cleo Wallace, and education programming at Dakota Ridge in Boulder. All of these programs would have provided for an SIED placement with classroom support, direct instruction by a special education teacher, community based educational experiences and group, family and individual therapy for 30 hours per week, as required by the April 1998 IEP that was still in effect. The parties reached no conclusion as to the proper placement for the Student. The Parent related that she would take the Student on a tour of the out-of-state facilities and would be in touch with the District upon her return.

19. On September 14, 1998, the Parent returned to Longmont from investigating possible placements. The Parent advised [Director] by letter dated September 18, 1998, that she had enrolled the Student in [Private School] in [State 3] on September 4, 1998. [Private School] is a residential school for emotionally disabled children with a heavy emphasis on behavioral modification techniques. Schools such as [Private School] are often termed "Emotional Growth Schools."

20. This District took no action in June, July, August, or September to notify the Parent of her rights under the IDEA, to hold a due process hearing, or to change the IEP or the educational program of the Student.

21. The Parent requested an appointment to discuss District funding for the [Private School] placement in September 1998. She met with [Director] and [Supervisor] on September 24, 1998, and discussed District financing of the residential placement in [State 3]. By that meeting [Director] was aware of the questions raised by the Parent and some [Day Treatment Program] staff regarding the viability of the Student's program at [Day Treatment Program]. [Director] reasoned that she probably would have to support the Student's educational program at another site outside the District in any event, so she

proposed to pay only the instructional costs of the Student's placement at [Private School]. The Parent seemed pleased with that proposal.

22. [Director] contacted [Staff] at [Private School] who informed [Director] on October 8, 1998, that the instructional portion of the costs at [Private School] amounted to $40 per day, six days per week. [Director] then contacted the Parent and informed her that the District would pay $40 per day, six days per week, towards the cost of the Student 's program at [Private School], and that the District would execute a contract with [Private School] to memorialize this arrangement. The Parent voiced no objection in October 1998 to the District's plan to pay only the instructional costs of the program.

23. On behalf of the District [Director] transmitted a contract on October 14, 1998 to a billing executive of [Private School]. She faxed the transmittal letter and contract to the Parent on the same date. However, [Director] never requested the Parent to execute the contract or to agree formally to the contract or the arrangements provided for in the contract. The contract stated that [Private School] would bill the District in the amounts previously mentioned. [Private School] assured that the Student's educational program would meet the requirements of all applicable federal and state statutes and regulations. The contract extended from September 4, 1998, to June 3, 1999. The billing executive executed the contract and returned it to the District on October 20, 1998.

24. The Parent's communications to the District in August and September 1998 constitute a request for a significant change of placement. The District refused to change the Student’s placement from [Day Treatment Program]. The District did not convene an IEP team meeting to determine the appropriateness of the Student’s placement. The District also did not notify the Parent of her procedural rights under the IDEA to challenge any refusal by the District to change the Student's placement to [Private School].

25. The Student has been enrolled at [Private School] continuously from September 1998, to the date of the hearing. The Parent believes that the Student is doing well there, and that [Private School] has the type of behavior program that the Student needs.

26. In April 1999, the Parent informed [Director] that she was seeking more financial support for the Student's placement at [Private School]. [Director] then learned that [Private School] had failed to bill the District as required by the contract. [Director] met with the Parent on April 23, 1999. [Director] informed the Parent that the District would make an exception to its general policy and reimburse her directly the amounts the District had agreed to pay towards the Student's education at [Private School] because the Parent had been paying those costs in full. [Director] refused to pay the full costs of educating the Student in the residential placement at [Private School].

27. The total costs of the Student's education, as itemized by [Private School], are $120.00 per day, including $40 for "schooling," $65 for "room and board," $5 for "group therapy" and $10 for "individual therapy." In May, 1999, the District reimbursed the Parent for the "schooling" portion of those costs for the period of the contract with [Private School] to June 3, 1999, in the amount of $9,200.

28. The District did not agree that it had failed to provide a free appropriate public education for the Student, that placement at [Private School] was appropriate, or that it was liable under the IDEA for the costs of the Student's attendance at [Private School].

29. On May 20, 1999, [Director] informed the Parent that the District had not been informed of the annual IEP conference that [Private School] had to complete by April 20, 1999. She informed the Parent that the District would assume no further educational costs if [Private School] failed to adhere to IDEA regulations. [Private School] did not conduct an annual IEP review in April 1999.

30. On May 20, 1999, [Director] supplied the Parent with a copy of the District's pamphlet entitled "Educational Rights of the Students and Parents" dated August 1998. That pamphlet informed the Parent of her procedural rights under IDEA.

31. On September 24, 1999, [Private School] Academic Coordinator outlined in writing the ways in which the Student's educational program conformed to her April 1998 IEP. However, that document does not meet the standards of an annual review of the IEP. [Private School] did not conduct that annual review at any time in 1999. The letter does show that the Student did progress academically at [Private School]. The Student's teachers and counselors at [Private School] made a good faith effort to assist the Student in meeting her IEP goals.

32. On June 29, 1999, the Parent, through her attorney, filed an appeal of the amount of financial assistance offered by the District. By August 24, 1999, the District understood that appeal to be a request for due process hearing and so informed the Colorado Department of Education, which received the request on August 25, 1999.

VI. Discussion and Conclusions of Law

1. A school district must provide prior written notice to a parent a reasonable time before the school proposes or refuses to initiate or change the educational program of a child or the provision of a free appropriate public education to a child. Section 602(1). A school district must conduct a due

process hearing when there is disagreement regarding placement of a child into an educational program or the provision of a free appropriate public education.

2. There is a continuum of special education services. The continuum runs from regular education with supports or modifications to residential facilities, hospitals, or institutional settings. Section 503(3)(a), 1 CCR 301-8. [Day Treatment Program] was a special program off campus. Section 503(3)(d)(i). [Private School] is a residential facility. Section 503(3)(d)(ii). When the Parent suggested a change to [Private School] in [State 3] she was proposing a change in the continuum of special education services.

3. A change on the continuum of alternative placements is a significant change in placement. Section 5.04(2)(a)(iii). A significant change in placement shall be made upon consideration of reassessment. Such change shall be made only by an IEP team with the additions of the persons conducting the assessment. Section 5.04(2)(b). Written notice must be provided by the District to the Parent before the District proposes or refuses to initiate or change the educational program for the provision of a free appropriate public education.

4. The Parent withdrew the Student from the [Day Treatment Program] program in June 1998. The Parent discussed with the District her dissatisfaction with the [Day Treatment Program] program and expressed her belief that a residential treatment facility was required in August 1998. In September 1998 the Parent stated that the Student would be enrolled at [Private School], an out of state residential treatment facility. The District did not change the IEP and did not change the educational program of the Student despite the significant change in placement.

5. The District did not provide the notice required to be given to the Parent under Section 6.02(1)(a). The notice to the Parent must include notice of all the procedures available to assure that the Student received a free appropriate public education. Section 1415 of the IDEA. The District did not provide this notice until the brochure was given to the Parent in May 1999 – nine months after there was a significant change in the Student's placement.

6. The evidence establishes that the District violated the IDEA and the Colorado Regulations when it refused to change the educational program of the Student and the provision of a free appropriate public education of the Student. The District failed to provide the Parent with timely notice or a due process hearing.

7. The IDEA places great emphasis on procedural safeguards to ensure that a free appropriate public education is provided. *District v. Rowley,* 458 U.S. 176 (1982). The District has failed to follow all of the procedural safeguards of the IDEA and the regulations. As soon as possible the School District should provide notice and a hearing regarding the substantive change in

placement and an annual IEP, if it has not already done so. Sections 4.02(1)(c), 5.04(2), 6.02, and 6.03. However, the Parent has not requested that such relief be granted and therefore no such relief will be ordered.

8. The Parent seeks reimbursement for private school placement. Reimbursement for private school placement is governed by 34 CFR Section 400.403 that provides:

> Placement of children by parents if FAPE is at issue:
>
> (a) General. This part does not require an LEA (local education agency) to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with Secs. 300.450-300.462.
>
> (b) Disagreements about FAPE. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Secs. 300.500-300.517.
>
> (c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the … LEAs.
>
> (d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—(1) If—(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the

parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if—

(1) The parent is illiterate and cannot write in English;

(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

The District may be required to reimburse the Parent under that regulation if (A) the District had not made a free appropriate public education available to the Student in a timely manner prior to the enrollment at [Private School], and (B) the placement at [Private School] was appropriate.

9. The Individuals with Disability Education Act (IDEA) requires the District to provide each child with a disability with a free appropriate public education (FAPE), tailored to the unique needs of the child through the establishment of an Individualized Education Program (IEP) for the child. 20 USC §1401(20).

10. The IDEA defines FAPE as “special education and related services” that are provided at public expense and under public supervision, meet state standards, and comply with the child’s IEP.” 20 USC §1401(18). “Special education” means “specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability,” including instructions in classrooms and other settings. 20 USC §1401(16).

11. The FAPE is to be provided in the least restrictive environment. Section 5.01. The least restrictive environment is one in which a child with disabilities is educated with children who do not have disabilities. Section 5.02.

The education need not be provided in the least restrictive environment if the disability is that that education cannot be achieved in regular classes with supplementary services or the education of other children in such classes would be significantly impaired. Section 5.02. The rationale for providing services outside the regular classroom shall be based on student needs and shall be documented on the IEP. Section 5.02(5).

12. Neither [Day Treatment Program] nor [Private School] provide for education in a least restrictive environment. Placement of the Student outside a regular classroom was based upon the Student's needs and was documented in the April 1999 IEP.

13. The IDEA provides each child with a disability a basic floor of educational opportunity. *Board of Education of Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176 (1982); *Monticello School District No. 25 v. Illinois State Board of Education,* 910 F.Supp. 446 (C.D. Illinois, 1995). A school provides this basic floor of opportunity and satisfies the minimum requirements of the IDEA by providing a child with a disability with (1) access to specialized instructions and related services; (2) that are individually designed; (3) to provide educational benefits to the Student. *Rowley, supra.* The District is not required to maximize educational opportunities or provide the best possible education. *Rowley, supra.* The District has supplied a FAPE when instruction is given with sufficient support services to permit the Student to benefit educationally. *Sioux Falls School District v. Koupal,* 526 N.W. 2d 248 (S.D. 1994).

14. The District argues that the Parent's acceptance of the offer of $40.00 per day was a settlement and waiver of the Parent's right to seek additional funding. The ALJ disagrees. The Parent did not give the District the 10 days notice of intent to withdraw the Student from public school as is required by 34 CFR § 400.403(d)(1)(ii). However, a parent is not required to notify the public school if the parent had not received the required notice. 34 CFR § 400.403(e)(3). The Parent did not receive the required notice prior to removing the Student from public school. Therefore, the Parent is not barred by 34 CFR § 400.403(d)(1)(ii) from seeking reimbursement of all of the costs of the private school.

15. The Parent may be reimbursed for the costs of the private school if the District was not providing a free appropriate public education. 34 CFR § 400.403(c). The Student progressed educationally at [Day Treatment Program], even if the therapeutic component of the IEP did not show successful progression. The IDEA does not require that a school be held accountable if a child does not meet the annual goals and objectives. 30 CFR §300.350. The appropriate education required by the IDEA is not one that is guaranteed to maximize the child's potential. *Urgan v. Jefferson County School District*, 89 F.3d 720 (10th Cir. 1996). The IDEA does require a school and a child's teachers to make a good faith effort to assist the child in achieving the goals and objectives

listed in the IEP. 30 CFR § 300.500. The Student progressed educationally at [Day Treatment Program], and the counselors made a good faith effort to assist the Student. Further, other placements in the District were available that could have meet the requirement for a free appropriate public education. The April 1998 IEP and the placement at [Day Treatment Program] provided the Student with a free appropriate public education. The District did not deny the Student a free appropriate public education prior to the Student's removal from [Day Treatment Program].

16. Similarly, the Student did progress academically at [Private School]. Her teachers and counselors there made a good faith effort to assist her in meeting her IEP goals. The Student's private placement at [Private School] was appropriate.

17. Even though the placement at [Private School] was appropriate, the Parent is not entitled under the IDEA to reimbursement for the costs of the Student's placement at [Private School]. In order for the District to be liable under the IDEA to the Parent for the Student's private placement it must be shown that the Student was denied a free appropriate public education with the District, and that the Student's private placement was appropriate. 34 CFR Section 400.403(c). It has been shown that the private placement was appropriate. However, the District did not deny the Student a free appropriate public education. Therefore, the District is not liable under the IDEA to the Parent for the costs of the Student's private placement at [Private School].

18. The District may be liable to the Parent for the $40.00 per day in instructional costs and other costs on the basis of contract law or laws other than the IDEA. Such liability is beyond the subject matter jurisdiction of an Administrative Law Judge.

VII. Decision

Based upon the above findings and conclusions, it is the decision of the Administrative Law Judge that the District is not liable under the IDEA to the Parent for reimbursement of the costs of the Student's placement at [Private School], a private school.

This decision made upon a state level review is final except that either party has the right to bring civil action in an appropriate court of law, either federal or state. Section 6.03(12).

Dated: September 26, 2000.

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Bruce C. Friend
Administrative Law Judge
Division of Administrative Hearings