IOWA DEPARTMENT OF EDUCATION
(Cite as 13 D.o.E. App. Dec.157)

In re Kratisha H.	)	
	)	
Brenda H. and Timothy H., Appellants	)	
	)	
v.	)	Decision
	)	
Cedar Rapids Community School District and Grant Wood AEA 10, Appellees	)	[Admin. Doc. SE-161]

The above entitled matter was heard by Administrative Law Judge Carl R. Smith on February 20, 1996, at the Grant Wood Area Education Agency in Cedar Rapids, Iowa. This hearing was held pursuant to Iowa Code Section 256B.6 (1993), the rules of the Iowa Department of Education I.A.C. 281-41-112 to 281-41-125, and the U.S. Code and regulations of the U.S. Department of Education implementing the Individuals with Disabilities Education Act 20 U.S.C. Sections 1400-1485; 34 C.F.R. 300 (1994). The parties to this matter agreed to a mixed evidentiary and stipulated record hearing as provided in I.A.C 281-41-118. The hearing was open to the public at the request of the Appellants.

The Appellants, Brenda J. and Timothy L. H. were present and represented by Attorney Curt Sytsma of Iowa Protection and Advocacy. The District was represented by Attorney Sue Seitz. The Area Education Agency was not represented by legal counsel but Dr. Paula Vincent, Director of Special Education was present throughout the hearing representing the Area Education Agency.

This appeal was first received by the Iowa Department of Education on November 7, 1995. A conference involving the parties and the Administrative Law Judge was held on December 5, 1995. The Attorney for the Appellants in this matter filed a Statement of the Issues on Appeal on December 12, 1996 and hearing was originally scheduled for January 4, 1996. A motion for continuance was granted with the hearing date reestablished for February 20, 1996. At the conclusion of the hearing the parties agreed to exchange briefs with the Appellant's brief due by March 5, 1996, the Appellee's Reply Brief by March 15, 1996 and the Appellant's Reply Brief by March 22, 1996. Subsequent Motions for Continuance amended the original agreed-upon brief due dates. The decision was to be rendered by the Administrative Law Judge by April 30, 1996.

In this appeal, the Appellant is challenging the District's refusal to provide their daughter, Kratisha H. with transportation to her special education program at Kennedy High School in Cedar Rapids, Iowa.

I.
Finding of Fact

The Administrative Law Judge finds that he and the Iowa Department of Education have jurisdiction over the parties and subject matter of the hearing. The parties involved in these proceedings submitted a number of Stipulations accepted at the initiation of the hearing.

Kratisha H. is a 17 year old student with multiple and severe disabilities, including cerebral palsy, spastic quadriplegia, multiple orthopedic problems and severe communication disabilities. As described in the Stipulations Kratisha is not able to ambulate on her own, has extremely limited communication abilities, and needs assistance with all daily living skills.

Kratisha H. was first enrolled in the Cedar Rapids Community School District during the 1991-92 school year. She first attended Taft Middle School and entered high school at the start of the 1994-95 school year. The 1994-95 IEP provided for Kratisha to attend a special class for students with severe and profound disabilities offered at Thomas Jefferson High School, located in her assigned attendance area. Consistent with earlier years, the 1994-95 IEP for Kratisha noted the need for special transportation along with other support services of physical therapy, occupational therapy and speech therapy. During the 1994-95 school year, Kratisha's mother visited the Jefferson program and had concerns regarding this program for her daughter. During this time she also visited a similar program at Kennedy High School and concluded that she would rather have Kratisha attend the Kennedy program. When asked during the hearing proceedings to describe the points of comparison that led her to prefer the Kennedy program Ms. H. described factors such as:

-Set-up of classroom. Ms. H. felt that the classroom setting at Jefferson High School did not resemble a classroom while the classroom at Kennedy did.
-Integration possibilities. Ms. H. felt that the integration possibilities at Kennedy were greater than those at Jefferson.
-The program at Kennedy High School had accessible restrooms where those at Jefferson did not. (It should be noted that subsequent testimony established that the Jefferson program had been going through renovation procedures which subsequently established accessibility.)

-Kennedy apparently had certain communication devices that Ms. H. did not believe were available at Jefferson. (Testimony of Ms. H..)

In addition, Ms. H. cited the positive attitude of the Kennedy staff as being a factor that led to her preference for that program. As cited in the Stipulations, "For purposes of this appeal, Mr. and Mrs. H. allege that they greatly prefer the special education program available at the John F. Kennedy High School--another school in the Cedar Rapids School District."

The Cedar Rapids Community School District has a procedure which allows parents to apply for attendance to school outside of assigned attendance areas. According to information presented by the District this program, as applied to students with disabilities, is described as:

> . . . disabled students, including disabled students with IEPs providing for transportation, may apply to attend a building other than their assigned school for a variety of reasons, including to finish out a year after a parental move, to attend school near a child care provider, and to participate in the District's desegregation program. Parents are responsible for transportation to and from the new school unless the student is seeking a transfer for child care reasons and is a disabled child requiring transportation, in which case the District provides the transportation to the new attendance center. (Appellees' Brief, p. 22)

Mr. Nelson Evans, Director of Instruction and Human Resources for the District, described this program and indicated that the need for facilitating child care was the primary reason parents requested this program. He also indicated that the District does not currently provide transportation for any of the students, regular or special education, involved in this program, except for students transferring as part of the minority desegregation program. Mr. & Ms. H. applied under this program in the 1994-95 year but were denied permission because the program into which they wished Kratisha to be enrolled was full. Mr. and Ms. H. applied again for the 1995-96 school year and were granted permission to participate in the program. In correspondence to Ms. H. on August 14, 1996 Mr. Duane Kramer, Director of Instruction and Human Resources stated:

> Ms. H., please be reminded, like all students on permit to attend a school outside of their residence attendance area, the Cedar Rapids School District does not provide transportation. The transportation responsibilities for permit students is assumed by the student's parents. (Joint Exhibit 6)

At this point it appears that Mr. and Ms. H. raised an objection related to their responsibility regarding the provision of such transportation and requested that the District provide such transportation. In a letter dated August 30, 1995, Thomas Micek, Associate Superintendent, cited the District's position across several matters that are at the core of this Appeal (Joint Exhibit 7).

> My review indicates that you applied through the District permit process on July 18, 1995, for Kratisha to attend Kennedy High School. On August 14, 1995, Duane Kramer notified you that the permit had been approved and that parents were responsible for transportation. District School Attendance Areas Regulation 602.4 states, "Parents who requested that a student attend a school in another attendance area, in accordance with the provisions of this regulation, shall be responsible for the student's transportation to and from school." Since an appropriate program is available at Jefferson High School, your resident area school, the transportation of Kratisha to Kennedy is your responsibility under the District attendance permit process.
>
> My review further indicates that an IEP meeting has been scheduled for May 26, 1995, to review if the program at Jefferson High School could meet the requirements of Kratisha's IEP. On May 26, 1995, you canceled the meeting. Another meeting was tentatively projected for late August.
>
> As a result of your permit application on July 18, 1995, and subsequent approval, plans for a meeting to determine is the Jefferson program could meet the IEP the (sic) requirements were dropped.
>
> Dr. Mueller has indicated that if you still wish to challenge the ability of Jefferson High School to provide an appropriate program for Kratisha, he will schedule a child study meeting. You will have the opportunity to raise your concerns about the appropriateness of the program at Jefferson to meet Kratisha's IEP requirements. The team, with you as a participant, must decide the issue of appropriateness.
>
> If the team should reach the conclusion that the program at Jefferson could not provide an appropriate program, the District will provide transportation as a related service to an appropriate program.

> If the team reaches the conclusion that an appropriate program is available at Jefferson and you still wish to attend Kennedy under the permit process, you will be expected to provide the transportation.

Mr. and Ms. H decided to proceed with Kratisha attending the Kennedy High School Program for the 1995-96 school year and have provided transportation themselves. According to the testimony of Ms. H., she and her husband have shared the responsibility for providing Kratisha's transportation since the beginning of the 1995-96 school year. This hearing is brought because of the parents' contention that such transportation should be provided by the District for Kratisha. As stated in the Appellants' Brief:

> . . . the District's no-transportation policy is not being challenged because it violates the equal protection rights of special education students generally, but, rather, because that policy specifically violates the IEP rights of children with severe mobility impairments. (p. 7)

Furthermore, the Appellants' argue that this failure to provide transportation for Kratisha also falls under the auspices of Section 504 of the Rehabilitation Act of 1973 and state:

> As a recipient of federal funds, the Cedar Rapids Community School District cannot discriminate on the basis of disability "in providing any aid, benefit, or service to beneficiaries of the recipients program." 34 C.F.R. 104.4(b)(v). In this case, the recipients program is the Intra-District Transfer Program. (p. 13)

The Appellants in this matter also go on to assert that an extra burden is being placed on Kratisha and her parents in order for her to participate in the intra-district transfer program, that is that she must prove the inappropriateness of the Jefferson Program before transportation is provided to the Kennedy High School Program. As stated by the Appellants:

> Since the School District does not require regular education students to prove the inadequacy of the programs in their assigned area before securing an Intra-District Transfer Permit, it cannot discriminate against special education students by requiring them to prove such inadequacies before securing a Permit. (Appellants' Brief, P. 23)

The Appellants also contend that the cost of transportation would not place an undue burden on the District. As stated in the Appellants' Brief (p. 36), "In numerous cases prior to this one, school districts have sought to 'limit' access to various programs because the alleged cost of accommodating children with disabilities exceeded their means; in each of these cases, the argument was firmly rejected."

In response to these assertions, the Appellees do not contest the conclusion that Kratisha requires transportation. They assert:

> It is important to understand that the issue in this case is not whether Kratisha needs a related service of transportation, but rather whether the District has a continuing obligation to provide a service her parents elected to forego in order to fulfill their desire to have their child educated in a location other than the one appropriately offered by the District. (Appellees' Brief, p. 7)

In addressing the issue of potential costs to implement transportation arrangements for Kratisha to attend Kennedy High School, Ms. Margaret Hamond, Manager of Transportation for the District, estimated that the cost of implementing a transportation program for Kratisha could cost up to $24,000 a year if two new routes have to be added to accomodate such. She indicated that the exploration of less costly arrrangements had not been successful without looking to options such as a shortened school day for Kratisha.

The Appellees contend that the District has a responsibility to consider cost and duplication of services:

> The District may look at costs in order to make a choice between two programs offering FAPE. If the cost is excessive, it is for the District to determine that services will not be duplicated and that transportation will not be available at one of the buildings. The parents then have the right, which they have exercised, to determine that they will provide the transportation in order to attend Kennedy High School. (Appellees' Brief, p. 18)

In summarizing the position of the District regarding this overall hearing topic, the Appellees assert:

> The District need not duplicate the transportation services at Kennedy. It could have refused the voluntary permit request on the basis that all appropriate related services are not available at Kennedy High School. Instead, it elected to allow the transfer, even though it was for a reason not generally available to nondisabled student (teacher preference), conditioned only on the parents providing their own transportation. The District has met its legal obligation to offer a free appropriate public education to Kratisha, and it should not be penalized for allowing the parents to select a preferred placement. (Appellees' Brief, p. 21).

II.
Conclusion of Law

The parties in this matter have raised a series of concerns that cross over many dimensions of providing appropriate programs for students with disabilities. In each case the Appellants have raised and the Appellees have responded to significant issues that, depending on the interpretations of law, shed diverse conclusions as to the courses of action required.

The meaning of what constitutes the parameters, and perhaps minimal standards, for a free, appropriate, public education (FAPE) and the associated provisions of related services such as transportation have been argued. The means by which choice programs such as intra-district transfer programs are accessed by students with disabilities and their families and the extent to which such access to these programs varies from the conditions for students without disabilities is also at the core of these proceedings. This latter point led to an assertion by the Appellants in this matter that the issues related to Kratisha H.'s situation must be viewed from the perspective of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act in addition to the IDEA. The Appellees, on the other hand, believe that these proceedings can only be viewed under the context of IDEA provisions (Appellees' Brief, p. 21). This ALJ will be addressing the issues raised in these proceedings from the perspective of IDEA, Section 504, and the Americans with Disabilities Act.

A final area that seems relevant to these proceedings is the relative role of resource allocation and cost in a program location determination such as this and the extent to which parental preference may override the cost and administrative considerations being asserted by a local district.

FAPE/Related Services

A primary source for ascertaining the meaning of the requirement that students with disabilities receive a "free, appropriate public education" is contained in the U.S. Supreme Court decision of Board of Education v. Rowley, 458 U. S. 176 (1982). Within this decision several elements which were cited by the Court as critical to the FAPE determination appear relevant to these proceedings including:

-a "free, appropriate public education" consists of educational instruction specifically designed to meet the unique needs of the [child with a disability] supported by such services as are necessary to permit the child "to benefit" from instruction. (188-189)
-Such instruction and services must "be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's general education structure and be based on a student's individualized educational program (IEP). (189)

In summarizing the federal requirement to provide a student with disabilities a "free appropriate public education" the schools are expected to provide, " . . . personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." (Rowley, 458 U.S. at 203).

It is clearly established that within the range of the above mentioned "support services" is the notion of transportation services required for a student to benefit from special education. Within the Individual with Disabilities Act such services are defined as meaning, ". . . transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education . . ." (C.F.R., 300.16, 1993), while such services are defined within the Iowa Rules of Special Education (1995) as, ". . . such developmental, corrective and other services as are required to assist an individual with a disability to benefit from special education." (281-41.5).

The actual definitions of FAPE and related services are not the primary issue in these proceedings. Rather, there is a significant disagreement between these parties on the conditions surrounding the provision of FAPE such as the extent to which a school district has satisfied its obligations within this realm of special education once they have provided an appropriate option, including transportation as a related service, when the parents assert their preference for another program within the same district. That is, to what extent is a district

required to provide the full array of components needed for an individual student with disabilities when the parents are asserting their right to take advantage of an intra-district school choice program and in order to meet the full array of these needs according to the program specifications delineated through the staffing team process considerable additional costs for the District may result? In order to address these questions we need to examine the issues surrounding the requirements within choice programs, including the weight given to parental preference, the issues surrounding resource allocation questions and the issue of differential standards applied to students from general education and students requiring special education.

Choice Programs/Parental Preference

The application of choice in the selection of the physical setting in which students with disabilities will receive their program has taken on several dimensions which need to be considered. These interact across the dimensions of the presumption that students are served when possible in their neighborhood school, the rights of parents to select other instructional settings for their children (school choice), the situation when parents make unilateral placements of their child and the point at which any conditions placed on the parents of a student with disabilities participating in a choice program discriminate against such parents. While none of these dimensions are directly analogous to the situation being considered in these proceedings, aspects of each would seem relevant and have been argued by the attorney's representing the parties involved.

The Individual with Disabilities Education Act (IDEA) does appear to establish a presumption in favor of the neighborhood school in educating students with disabilities. In applying criteria on a case-by-case basis the provisions state that:

(a) Each disabled child's educational placement:
    (1) Is determined at least annually,
    (2) Is based on his or her IEP, and
    (3) Is as close as possible to the child's home;
(b) The various alternative placements included [in the regulation's continuum of alternative placements provision] in 300.551 are available to the extent necessary to implement the individualized education program for each child with disabilities;
(c) Unless a disabled child's [IEP] requires some other arrangement, the child is educated in the school which he or she would attend if not disabled; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs. (34 C.F.R. 300.552)

If one literally applied such a standard in isolation to this case then it would appear that Kratisha should be receiving her education within the Jefferson High School, her normal neighborhood attendance center, rather than Kennedy High School. However, a number of other considerations must be considered prior to answering this question.

For example, there does appear to be a basis for determining that a placement does not need to be closest to home if it meets a student's needs. In a policy interpretation letter from the Office of Special Education Programs in 1994 (Letter to Anonymous, 21 IDELR 674) , Thomas Hehir, Director of the Office of Special Education Programs stated:

> The fact that an IEP and placement team identified a particular program of special education and related services and determined that a particular education setting was an appropriate placement for a child in one school year does not require continuation of that specific program or placement in a succeeding year. However, it would not be inconsistent with 34 CFR 300.552(a)(3) for your local school district to continue your child's placement at the transfer school, rather than the home school, if it believed that the transfer school was the appropriate placement to implement your child's IEP (emphasis added) (p.675).

Thus it would seem that although there is a stated preference to use the neighborhood school when possible, that OSEP has allowed that there are circumstances in which a school other than the home school could be rightfully considered the appropriate option for a given student. In these proceedings we are having to consider the necessary elements related to the implementation of such alternative placement decisions, the rights of parents in such decisions and the rights and responsibilities of school districts in such matters.

Several policy interpretations and OCR letters of findings have dealt with the concept of inter-district transfer of students in order to attend educational programs in an adjacent program to their district of residence. In Conejo Valley (CA) Unifed School District (21 IDELR 1010) the parents of a student with learning disabilities alleged that a potential receiving school district discriminated against their daughter because they refused to accept her as a transfer student. In this case the receiving district demonstrated that the desired program was full and

that they were applying the same criteria that were being used with regular education students. On the basis of this, OCR did not find a basis for discrimination. In a contrasting situation however, OCR received a complaint in 1990 (Fallbrook (CA) Union Elementary School District, 16 EHLR 754)in which a potential receiving district denied the application for transfer of all students who had been determined to need special education or related services. OCR held for the complainant in this matter and the district subsequently lifted such a ban.

The Office of Special Education and Rehabilitative Services (OSERS) has also been asked similar types of questions (Lutjeharms, 16 EHLR 554). In this case a number of questions were posed by the Nebraska Commissioner of Education regarding the responsibilities of sending and receiving districts who are involved with a school choice program. One particular question, which has been cited by the Appellants in this matter, is the responsibility for the provision of transportation in such matters. In this case OSERS concluded that in an inter-district choice program the district which is allocated the responsibility to provide FAPE is also the district which must provide transportation as a related service. Specifically, OSERS concluded that, "It is the Department's position that, under inter-district choice programs, States must ensure that the rights guaranteed to children with [disabilities] and their parents . . . are not diminished by virtue of the child's participation in the program." The Appellants in this matter cite this particular policy interpretation (Appellants Brief, p. 28-30) as a significant basis for suggesting that Kratisha H. is being discriminated against in her desire to participate in the Cedar Rapids choice program by virtue of the district's refusal to provide the same transportation services she was and would be receiving had she remained in her neighborhood school.

It is this ALJ's opinion, however, that we need to be cautious in applying policy interpretations of inter-district transfer programs to these proceedings. It would seem that the historical procedures for providing needed transportation across district lines for students with disabilities has been a well established practice. It also appears that the provisions for inter-district transfers are more specifically mandated through state statutes and provide more specific structures against which to judge equity issues. Consequently, in these proceedings it is also critical to examine cases in which intra-district transfer programs have been addressed.

In the case of Fayette County (KY) School District (EHLR 353:279) parents of severely/moderately disabled elementary students brought a complaint to OCR because their children were denied access to an after school program because of their disabilities. The

specific regulation from Section 504 cited in this case is found in 34 CFR Section 104.4 (a)(1)(i), (V) and (VII) states:

> a. General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
>
> b. Discriminatory actions prohibited. (1) A recipient, in providing an aid, benefit, or service, many not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
>
> (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
>
> . . .
>
> (v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to any agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program . . .
>
> (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

In this particular case the district asserted that an open admissions policy was in effect although a specific criteria that the students had to be able to function in a 15 to 1 student-teacher ratio was in place. OCR found that a student-teacher ratio policy of this nature did discriminate against students which disabilities and the district had to submit a plan to remediate the situation. In a similar type of situation in 1990 (San Francisco (CA) Unified School District, 16 EHLR 824) a parent of a 15 year old student with learning disabilities alleged that the district failed to provide her son FAPE by not offering special education services at its alternative high school. In this particular case the student wished to attend a school described as "traditional college preparatory" requiring an "Optional Enrollment Request" process by which applicant were randomly selected for enrollment. Once accepted, parents had to sign a form indicating that because of the highly structured nature of the program, no provision would be made at the school for special services such as Remedial or Special Education classes. In reviewing this situation OCR concluded:

> The District policy of not providing special education services at [ ] effectively foreclosed the possibility of certain groups of handicapped students attending this

> alternative educational program, or of subjecting them to discrimination by denying them the services needed to effective participate. This policy constituted a violation of section 504 . . . (824).

A final OCR case involving intra-district optional programs dealt with access to two magnet programs, one which specialized in arts and science an the other in liberal arts (Chattanooga (TN) Public School District, 20 IDELR 999). In this case OCR found that the district's admissions criteria for two of its magnet programs, which limited enrollment to students who could function without special education services other than speech, hearing, and vision services, denied and limited the opportunity of qualified students with disabilities to participate in these programs in violation of Section 504 regulations.

Within the context of these proceedings it is not possible to directly apply rulings or interpretations related to intra-district transfers. From the intra-district perspective the situations cited above allude to circumstances in which certain programs, open to all students in a district, were being denied to students with disabilities because of certain qualifications being placed on participants that precluded the involvement of students with disabilities. In these proceedings the Cedar Rapids Community Schools provided, and were not challenged on, what appears to be an appropriate program for Kratisha at Jefferson High School. The full array of instructional and support services needed by her were provided at this site (see Appellees' Brief, page 2). The parents have asserted their right to request enrollment in another school and were informed of the conditions surrounding the exercise of such an option (Joint Exhibit 7). Even under these conditions, the Appellants in this matter assert (see Appellants' Brief, page 37) that the District cannot condition the participation of Kratisha in this transfer program on their agreement to forfeit District provided transportation as a related service. They assert that such a condition could be applied to students with disabilities without mobility related disabilities but that if a student has such mobility related needs that denial of needed transportation needs constitutes violations under IDEA and Section 504 of the Rehabilitation Act (Appellants' Brief, page 13).

While this ALJ appreciates this position, he cannot accept the comparisons of this matter to the OCR cases cited above. In this case Kratisha was determined to be receiving an appropriate program at Jefferson High School. The program at Kennedy High School, while preferable to the parents, would be considered a comparable program and would not, according to the evidence presented in these proceedings, be offering needed program elements not available at the Jefferson program. Thus it would seem that the position taken

by the Appellants, that Kratisha has had unfair conditions placed on her that serve as a barrier to receiving and appropriate program, are not substantiated.

The balancing of the rights of parents and a district providing the special education program was addressed by a U.S. District Court in Colorado in 1994 (Urban v. Jefferson County School District, 21 IDELR 985) which dealt with the parents of a 19 year old student with severe disabilities asserting their "right" to a specific program. In commenting on the issue of parental preference the court stated:

> The logical consequence of the parents dictating where the child will receive educational and transitional services is obvious and manifold--school districts would no longer be able to convene IEP staffings or develop programs with any control over the utilization or allocation of resources. They would instead have to react to parental demand concerning location, and presumably also the content of their educational or related services. Such consequences would result in financial constraints which would totally frustrate the underlying purposes of the IDEA. (991)

In speaking to the issue of how we balance the requirements of IDEA and the American with Disabilities Act, the Court went on to state:

> While the Court is cognizant of the ADA and its special significance as a comprehensive anti-discrimination law for the disabled, it is not convinced that the ADA was either designed to lead or has otherwise led to any result which alters the preexisting (and more specific) framework of the IDEA. (991)

The above conclusion regarding the role of parental preference was also drawn recently by a Hearing Officer in Virginia (Fairfax County Public Schools, 22 IDELR 80) who stated:

> An appropriate education does not mean the best possible education that a school could provide if given access to unlimited funds... Because IDEA requires the state to establish pririties for providing FAPE to all children with disabilities, Congress intended the states to balance the competing interests of economic necessity, on the one hand, and the special needs of the child, on the other, when making placement decision. (p. 82)

The United States Supreme Court (Florence County School District Four v. Carter, 20 IDELR 532) seems to provide a fairly stringent test of when an LEA is responsible for certain costs. In reviewing a situation dealing with the unilateral placement of a student with disabilities in a private school setting the Court concluded:

> . . . public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State's choice. This is IDEA's mandate, and school officials who conform to it need not worry about reimbursement claims (534).

Applying these criteria to the present proceedings would suggest that the Cedar Rapids Community Schools has met its obligations regarding the provision of an appropriate program which as not been challenged on the basis of appropriateness. The sole reason presented in these proceedings as warranting a transfer appears to be parental preference.

Another Office of Civil Rights decision examined the extent to which a district is required to provide transportation to and from a support service such as speech and language (Hinds County (MS) School District, 20 IDELR 1175). In this particular case the parent of a private school student with a disability alleged that the district denied the student FAPE by failing to provide him with speech therapy and transportation to and from the services. In this case OCR rejected the parents contention and held for the district. A particular potion of the decision that seems pertinent to these proceedings concludes:

> OCR's investigation revealed that the SCSD has made speech therapy available to the complainants' son at the Gary Roads School. However, the complainants have unilaterally enrolled him in a private Christian school. If the parents had chosen to enroll their son in his home school, speech services and transportation would be available to him. The SCSD offered the speech therapy to the student at the public school and the parents rejected that offer because they wanted the services provided at the private school or at their home. The SCSD policy of not proving speech services at the private school or at the student's home and of not providing transportation to the student is not a violation of Section 504 or its implementing regulation. The regulation requires the SCSD to pay for transportation when the SCSD places or refers a student to a program not operated by the SCSD. The Section 504 implementing

> regulation does not require that the school district provide transportation to the student in this instance (1176).

This would seem to support the contention of the Cedar Rapids Community Schools that they had met their obligation in the original program with Kratisha and should not be held liable for the more expensive transportation option pursued by the parents. This conclusion seems to be further supported in re Child with Disabilities (21 IDELR 682) in which a state hearing officer in Michigan concluded that the choice of a placement, building and/or teacher was not the prerogative of the parent but rather the responsibility of the LEA.

The suggestion of possible descrimination by the District in the hearing also needs to be discussed. A matter similar to this was addressed by OCR (Snohomish (WA) School District No. 201, 23 IDELR 97) where a district was held accountable to apply the same standards for students with disabilities as they held to students without disabilities but were not held to a higher standard than such. OCR stated specifically that:

> Because the evidence does not show that the district provides transportation for students participating in after school recreational activities within or outside district boundaries, OCR cannot find that the district's denial of transportation services for Sno-Wheels participants to after school bowling is discriminatory based on disability. Therefore, the district is in compliance with Section 504 and Title II with respect to this issue (106).

The Appellants in this matter have strongly argued that the failure of the LEA to provide transportation to Kratisha is a violation of both Section 504 and IDEA provisions (see Appellants Brief, page 6). The Appellants have also seemed to suggest that the denial of transportation to Kratisha is a part of a pattern of behavior potentially impacting other students with disabilities. It appears that in those cases where OCR has examined LEAs in which complaints have been lodged regarding such discrimination (Conejo Valley (CA) Unifed School District, 21 IDELR 1010, Fallbrush (CA) Union Elementary School District, 16 EHLR 754) provide mixed results to such a question. The case most similar, in this ALJ's opinion, to the present proceedings (Richland (WA) School District No. 400, 22 IDELR 992) did not seem to impose responsibility on the involved LEA such as asserted by the Appellants. The specifics of the policy being examined by OCR in this case were described as follows:

> The District has a "School Choice" policy that allows for parents to have their children attend a school outside their geographic attendance area. The policy states that parents will be responsible for the student's transportation to and from school if a transfer is granted. The policy further states that in cases of administrative transfer, the District will be responsible for the student's transportation to and from the alternate school site. (p. 994)

After reviewing this situation OCR concluded:

> With regard to transportation services, the evidence does not support a finding that the student had a disability-related need to attend a school outside his geographic attendance area or to be provided with special transportation to any school. (Emphasis added.) (995)

In the present proceedings the Appellants, in the ALJ's opinion, have not established a need beyond parental preference leading to the provision of services at a school other than her neighborhood school setting. To open up the door to the committment of what appears to be unnecessary expenditures of substantial district resources to solely respond to parental preference would seem to place an unfair burden on local districts.

Several motions were received following the hearing related to the reply briefs, reopening the record and motions to strike prejudicial references. Upon review of these motions, this ALJ does not find reason to support. All motions and objections are therefore overruled.

III. Decision

Appellants' claims regarding the requirement that transportation be provided for Kratisha to and from Kennedy High School is denied. Appellees have prevailed on this substantive issue in this proceeding.

Nothing within this decision should be interpreted as preventing the parties from convening a meeting involving the parents, Grant Wood Area Education Agency, and Cedar Rapids Community School District to consider transportation alternative that could be provided for Kratisha. Included within this consideration would be the discussion of the AEA

transportation arrangement alluded to within the Appellants' Exhibit #1. This proposal, which would result in a shortened school day, would have to be weighed by the staffing team regarding appropriateness.

Carl R. Smith, Ph.D.
Administrative Law Judge

4-25-96
Date