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DEPARTMENT OF EDUCATION
BUREAU OF SFSSBEFORE THE IOWA DEPARTMENT OF EDUCATION
(Cite as 28 D.o.E. App. Dec. 272)

In Re Student)	
)	
)	HEARING DECISION
)	
Mother,)	
Appellant)	
)	Docket No. SE-357
v.)	
)	
)	
School District and Area Education)	
Agency,)	
Appellee(s))	

Confidentiality Note: In an effort to maintain the confidentiality of persons, agencies, and places involved in this due process hearing, only official copies of this decision will be accompanied by a Confidentiality Index identifying the actual names of the persons, agencies and places involved in the due process hearing.

Introduction

The above entitled matter was heard by Administrative Law Judge (ALJ) Larry Bartlett on July 28, 29, and 30, 2010 in the School District administrative offices. The hearing was held pursuant to the authority of Section 256B.6, Code of Iowa, and Chapter 281-41, Divisions V, VII and XII Iowa Administrative Code. The Appellant was represented by attorney Curt L. Sytsma and the Appellees were represented by attorneys Ronald L. Peeler and Miriam Van Heukelem. The hearing was closed to the public at the request of the Mother.

At the close of the hearing on July 30, 2010, the Parties acknowledged that much additional planning for the Student's educational program and transition needed to be completed, whatever the result of this ruling. It was also recognized that the ALJ would be out of the state from August 3 to August 12, the Mother and son would be out of the state until August 15, and the Attorneys wished to waive oral closing arguments and instead submit simultaneous written briefs to be filed not later than the end of business on August 11, 2010. Briefs were received in a timely manner.

Due to the need for a timely resolution, the Parties agreed that the ALJ should render a preliminary initial ruling on or before August 16 to enable the Parties to timely schedule planning meetings as soon thereafter as possible. Students in the District were expected to begin school on August 24, 2010.

The Preliminary Decision was transmitted electronically and by United States mail to the Parties on August, 13, 2010. That Preliminary Decision was incorrectly dated "07/13/10". It is intended that this final decision will replace the Preliminary Decision in all respects, except timeliness.

Findings of Fact

The ALJ finds that he and the Iowa Department of Education have jurisdiction over the Parties and subject matter involved in this hearing.

The Student is a male child who will soon be 16 years of age. His parents are divorced and he is expected to divide his time between both homes while in high school. He has two younger sisters.

The Student has a number of educational and health challenges. He has been diagnosed with "...Autism, a developmental disorder characterized by communication and social interaction impairments. He also has a VP shunt placed following a benign brain tumor excision (a catheter from his brain to his abdomen to drain off excess cerebral spinal fluid) In addition, he has Diabetes Type I, a condition requiring a balance of insulin, food and exercise to manage blood sugar fluctuation. [The Student] needs assistance to check his blood sugar twice daily...as well as anytime he is symptomatic of low or high blood sugar levels. An RN [availability is needed] at school to provide staff instruction, emergency intervention and manage insulin pump functions. [The Student] takes oral medication before lunch daily.... [The Student's] disabilities currently make him dependent on a trained adult for his medical needs." (05/05/2010 IEP, p. 4 of 59; Supplemental Student Records, p. 2185). The boy's Mother testified that an insulin pump was implanted about one and a half years ago and that his blood sugar is checked four to eight times a day.

The Student had previously attended elementary school and junior high school in the District. At the end of his eighth grade year, the Student's IEP team determined that rather than his being transferred to a new building for ninth grade and then again be transferred to a different high school building for grades 10 through 12, as is done with other students in the District, that he should be appropriately served and retained in the Junior High building. He was served by the District in the Junior High School for grades 7, 8, and 9.

The Student's Mother is a licensed practicing physician. She is Board Certified in internal medicine and is "proficient" in endocrinology, including the detection and treatment of diabetes. She stated that 85% of her patients are diabetic and she serves as a consultant to other physicians regarding diabetes. She has had extensive training regarding autism spectrum disorders and the medical treatment of autism.

As will be discussed briefly later, the Student's Mother had consulted three professional experts who had worked with her son. She was asked by her Attorney, on direct, whether based on what the three experts had told her, did she believe that her son should be placed at the High School for his special education plan of study? Her response was, "He will not be at [the High School]. No!"(Trans. p. 110). She stated that his regression in acquired skills is "predictable," and his loss of academic, verbal and social skills are highly predictable given his prior history of transition between schools. She predicted that his physical aggression toward others will increase and he will attempt to "escape" from the building.

The Mother expressed a broad range of concerns that she had regarding the placement at the High School, including inappropriate increased dependence on his para-educator (teacher aid, teacher associate), his exhibited agitation and physical aggression in some situations, his becoming withdrawn in reaction to stressful situations, and the possibility that he might "bolt" from his environment and disappear as he once did in eighth grade. She stated that he can get lost even in familiar places. She expressed an especially strong concern that he would regress in skill areas, such as she believes he has previously experienced. In response to a question from her Attorney, the Mother responded an "absolute regression", possibly permanent, in skills would be predictable from a placement at the High School.

There is absolutely no question in this ALJ's mind that the Student's Mother's concerns for what might happen to her son as a result of an unsuccessful transition to the High School setting is sincerely and deeply felt. Her testimony, and the manner in which she gave it, were clear on those points.

However, the evidence presented throughout the hearing does not clearly substantiate the likelihood of the Mother's fears actually occurring. As will be discussed in detail later, on the basis of the record, there is no apparent relationship between his transitioning to new surroundings with new sensory input and his regression in skill areas. Her fears, as honest and heartfelt as they may be, are not confirmed by the testimony of numerous professional and experienced educators who know the Student well and have worked with him in many different educational capacities. The Student's Father is in complete disagreement with his former wife's perspective on how his son will react to the new

placement at the High School setting and the positive opportunities the new High School will make available to his son.

A friend of the Mother's testified that she had known the Student since fifth grade in elementary school. The Friend testified that she had assisted the Mother in making the video of the students passing in the halls of the High School in late May, 2010. She identified the location of the video as being taken in the wide hallway of the school which has a high ceiling. She stated that the area is known as the "Student Commons" area. Only the sophomores and juniors were present on the day the video was made, because the seniors had previously completed their school attendance requirements prior to graduation. On cross examination the Friend stated that the High School had hallways that were not as wide and had lower ceilings than the Commons area that is depicted in the video. The video contained a four to five minute visual presentation of numerous students changing classes in the student Commons area of the High School. The four-to-five minute video depicted a loud, noisy, and somewhat crowded and congested hallway.

The Student's Mother testified that in forming her opinions, she had consulted with three professionals. All three contributed evidence in this proceeding.

A letter from the Psychiatrist to the Mother's attorney, for use in this proceeding, is dated June 16, 2010. The letter indicated that he had viewed the brief video of students passing through the High School Commons area that had been made by the Student's Mother and the Friend. He noted that the Student had long struggled with "sensory issues" and concluded that the High School hallway environment "...will be an assault on his sensory issues, and cause him to regress." He also concluded that an attempt to teach the Student in the setting he viewed in the video "..., simply will not meet his needs and is not in the best interest of my patient." He further stated that it was his professional opinion that the Student "...will require a specially designed setting to prevent regression and to facilitate learning."

The Psychiatrist also testified, via deposition for the purposes of this hearing, that he had seen and treated the Student for three to four years. On cross examination in the deposition, the Psychiatrist stated that he had never visited the High School and that his impression of that environment was based solely on what he saw in the video that the Student's Mother had shared with him and on conversations with the Mother.

In summary, the Psychiatrist expressed concern in his deposition regarding the potential sensory impact of the High School Commons hallway on the Student, but acknowledged that he had no other information regarding the transition accommodation or support plans for the Student at the High School. He stated that the local schools had a history of meeting the needs of his student patients on the autism spectrum, and he favored

experiences for students on the autism spectrum in as typical education settings as were appropriate for them, with accommodations. The Psychiatrist stated that it should be the "...ultimate and grand goal to try to achieve as much integration into every day life for every one of [his]patients...it's fair to say the goal is to reach their full functional potential, and I believe, for what it's worth, that both parents have expressed that desire as well."

In the opinion of this ALJ, the Psychiatrist is the most credible of the three experts providing evidence on behalf of the Mother's position. In his deposition, he acknowledged that his letter was based on the Commons hallway stimulus issues he had observed on the video. He expressly stated that his letter did not speak to the totality of the learning environment in the High School.

On cross examination, the Psychiatrist admitted he had not been shown any plans regarding the Student's education or supports at the High School. He stated that in past conversations with the Student's parents, he had expressed his favorable impressions of the School District's ability in meeting the needs of its students with disabilities, and several times he stated that he thought the Student could get a good education in the District. He expressly stated on cross that a plan that would alleviate the concerns of the Student's sensory issues in the hallway situation he had observed on the video, might allow the Student to achieve the goal of obtaining a good education at the High School.

Several times during his deposition, the Psychiatrist stated that the Student needs to be in school in order to be "socialized," and he needs to be in real life setting and not in an isolated overly restrictive environment. He noted that it is desirable, when possible, to have students on the autism spectrum be able to function in stressful situations so that they can "function in adult life to the greatest extent possible for them."

A second professional engaged in consultation by the Mother was a Pediatric Neurologist from the East Coast, with extensive experience with children on the autism spectrum. She had first seen the Student a little over two years ago. She had previously reviewed copies of his IEPs, except the one dated May 5, 2010, and various medical records and evaluations and reports. Her participation in the hearing was solely through a letter dated July 2, 2010, and the Mother's testimony regarding her interactions with the Neurologist. The Neurologist's letter stated that the Student had "been seen neurologically by this examiner on several occasions." The letter stated that the Mother had shared the videotape of the High School's Commons hallway with her as well as the Mother's concerns regarding placement of her son at the High School.

The Neurologist was unequivocal regarding her position on the issue of the potential placement of the Student at the High School. Her letter stated, "If, in fact this is the

program and location in which the young man with [the Student's] neurological impairment is to be educated, it is this examiner's opinion that this would be totally inappropriate and, in fact, would be a recipe for disaster." She further opined that "...it is this examiner's opinion, and has been from the beginning, that this is a boy who requires a small self-contained program with peers where he can be part of the group, a language-based program with reasonably high expectations for it's students, ... The curriculum should be a 5 day a week, full day, full year program and should be taught by those having a depth of expertise with children on the autism spectrum." The Neurologist concluded strongly that if, in fact, the School District planned to place the Student "in the High School program that was demonstrated on this videotape, this examiner would consider this a totally inappropriate setting and frankly would border on malpractice. This is a totally inappropriate program for a young man on the autism spectrum and an alternative site needs to be found...."

The language of this letter, and the Mother's testimony surrounding its creation, resulted in two significant concerns in the mind of this ALJ regarding the credibility of the Pediatric Neurologist's opinion as expressed in the letter. First and foremost, the letter's author appeared to be of the philosophy that segregated education for children on the autism spectrum was the desirable manner of education for such children. She had recommended that the Student be placed in a segregated educational environment with small numbers of peers with autism, a segregated residential school, and even home instruction. This, of course, flies fully in the face of the least restrictive environment requirements of federal and state law, and is contrary to the expressed opinions of the educators who have been involved with the student over the years. It also conflicts with the desires of the Student's parents that he be integrated into as typical a lifestyle as would be appropriate for him.

Secondly, this clear and emphatic condemnation of the High School's likely, not as yet finalized, planned program for the Student was made based solely on a brief video showing the experience of students passing between classes in the High School's Commons hallway and conversations with the Student's Mother. No contact had been made by the Neurologist with the School District or AEA staff to learn of the Student's educational history, or the then current plans for educational programming, transition, accommodations, supports, or the District's ability to adjust these things as desirable under the actual experiences presented by events. She has no interactions with the Father regarding his position on his son's attendance at the High School.

Little credibility, was given by this ALJ to the positions expressed in the Neurologist's letter.

The third professional consulted by the Student's Mother was a psychologist (licensed) whose practice for the last ten years involved about 85 percent of her client case load being on the autism spectrum. She testified that she had been seeing the Student as a client for seven or eight years. In November, 2008, the Psychologist had observed the Student in the Junior High setting for two hours and wrote a report regarding his educational program. She stated that she had visited the High School setting many times in regard to other students.

The Psychologist testified that the High School presented many sensory concerns for the Student. She stated that the environment at the High School would be "extremely overwhelming" for the Student due to his "exquisite sensory system." The Psychologist stated that the Student would not likely seek help during times of stress, but would shut down emotionally and would not be able to learn. She stated that the Student would disengage as a coping mechanism from stressful situations and go inside himself to find a "safe place". She also indicated that consistency of programming would be very important in order for the Student to become familiar with new situations and environments at a new school.

The Psychologist stated that her sources of information included her experience with students on the autism spectrum, experience with the Student including a two hour observation of the Student in the Junior High building, conversations with the Mother and many previous visits to the High School setting. She had not discussed the Student's potential new school situation with the Father or the District or AEA staff, and had not reviewed any school records or current educational documents, including the proposed IEP or transition plans. She stated that her letter in the record was based solely on viewing the video, her own experience with the Student and her previous unrelated visits to the High School setting.

On cross examination, she acknowledged that her written report of the two hour observation of the Student that she conducted at the Junior High setting, did not contain any indication that he had seemed to be looking frightened or stressed. She added that the purpose of the report was an evaluation of his education program, and not to determine his anxiety level at the time.

In the opinion of the ALJ, the testimony of the Psychologist was the second most credible of the three experts providing input into the hearing. It, however, lacked important access to information regarding the student and his planned educational programming.

The Student's Father attended most of the due process hearing in this matter and testified as a witness on behalf of the Respondents. Many of his perspectives were contrary to those of his former spouse. The parents have been divorced for about four years, when

the Student was between sixth and seventh grades. That meant divorce issues for him occurred about the time the Student was transitioning between elementary school and the Junior High School. The divorce became final in August, 2006. The Father is a physician and an anesthesiologist, and he discussed the Student's health problems, in addition to autism, in some detail.

When the Student was about seven years of age and in elementary school he underwent brain surgery to remove a benign tumor. There were complications and the Student experienced an additional seven cranial surgeries in a few weeks time. As a result, a "VP shunt" was inserted in his brain to allow for the evacuation of excess fluid off the brain. This presents a potential life threatening situation should the shunt be disabled or blocked.

At about the age of eight years, the Student was diagnosed with Type I diabetes and is 100% insulin dependent. This results in his needing assistance in measuring his blood sugar levels and adjusting his insulin flow.

Contrary to his former wife's testimony, the Father stated he has been "thrilled" with the education programs his son has received thus far in the District. The Father stated that the District staff had exhibited a willingness to consider his opinions and the opinions of his former spouse regarding the education of their son. When asked to describe the District and AEA's efforts on behalf of his son, he replied, "First class." He then proceeded to list several staff members by name and explained why he thought highly of them and their work with his son.

The Father testified that he had early concerns about his son attending the High School due to its large size but these were changed when transition planning was begun. For instance, he approved when it was determined that the one-on-one para-educator who had worked with his son for three years in the Junior High would accompany him, for at least his first year, to the High School. He also stated that he was impressed that the District staff had discussed considering providing his son with a vocational-educational program beyond the typical graduation age of 18 years. He stated that discussion had taken a great weight from his mind.

When asked about his observing stress in his son's life, the Father stated that his son's stress levels in situations had been gradually reduced, such as he had previously experienced when in large groups of people. He underscored that his son is most stressed by uncertainty, "...not knowing what's coming tomorrow." The Father stated that he and others have noticed that his son has appeared more stressed than usual for the past year and a half. The Father related that there had been family discussions about his son moving with his Mother to the East Coast and maybe his attending a boarding school

there. Another option discussed was the Student staying in Iowa with this Father, and, maybe his two sisters moving to the East Coast with their Mother. He stated, "...it's been very, very, very stressful to [his son] to not know what's coming next. [His son] didn't used to ask, 'Where is Mom? Is Mom home? Am I staying at Mom's tonight? Is Mom in Rhode Island?' He never asked those questions 18 months ago."

The Father specifically testified regarding several situations that his son has been in, that his former wife had thought their son could not function in due to the possible increase in stress level. He discussed his son attending church with him regularly at a "mega church" with a sanctuary that is designed like a "gym" with 22 rows of seats rising like in a gymnasium, with high ceilings and 450 to 500 adults normally in attendance. He stated that on special occasions several hundred more would be present, with standing room only. Several hundred children are also in the building at the same time, but are located in other areas of the building. He described the general sensory impact of the church experience at a very high level with three large viewing screens in the front of the church with different video feeds into each, and a "huge" band with a choral group in front playing and singing "charismatic music." The entrance of the church has an atrium with a very high ceiling, a snack bar and liquid refreshments, with many people milling about. He stated that the sensory input in the church is about "eight times" what the hallway video had shown.

The Father stated that, even with the loud noise and the number of people around during church service, his son isn't stressed. He testified that his son adjusted to the busy church and large room environment in about three weeks time. When he needs to go to the restroom, the son leaves the row in which they are sitting, goes up the stairs by himself, maybe 15 rows, goes down other stairs and uses the restroom. All the while there are many people "milling back and forth" in the busy church hallways. He returns to his seat by himself and is "totally calm."

The Father testified regarding taking his son to a large department store in a very large shopping mall to shop for clothing for the Father without any incident that indicated stress in his son. He also testified about recent trips with his son and daughters to a busy barbecue restaurant where his son showed no signs of stress. He stated the lack of stress was possibly due to his son knowing what was going to happen next; they're going home. The Father was asked what he thought of the concern expressed by his former spouse and opinions of the professionals she had contacted regarding the High School Commons area hallway for the purpose of the hearing. He stated that he considered the matter a "non-issue," and believed from his experience that his son could handle transition between classes using the High School Commons hallway. He also stated that he had been told that his son's academic schedule could be adjusted, if needed, and there were alternatives

ways to get to classes should problems arise. Adjustments in programming could be considered and made when necessary.

The Father testified that he had never been asked to provide information or his opinions to the Psychiatrist, Pediatric Neurologist, or the Psychologist who provided their perspectives regarding the matter at issue in this due process hearing.

He also testified that it was his understanding that thus far, his son's academic schedule was tentative. He acknowledged that the District and AEA staffs had made a number of attempts to schedule another IEP meeting to finalize the tentative schedule and needed supports and preparations, but that no date had been agreeable to all the persons who needed to be present.

The Student's Father stated at the hearing that his primary goal for his son's education was that he would be able to function as independently as possible in life and be happy and safe. He agreed that in order for this to happen, his son needed to learn how to function in environments that he at first may find stressful. He stated that he didn't think that could happen if his son attended a specialized boarding school on the East Coast. He would not be able to associate with peers who went to public places, such as restaurants. When asked whether he thought the education program proposed by the School District, with appropriate modifications as necessary, would allow his son to make progress on his social skills, on his communication skills, his comprehension, his ability to follow directions, and reading and math skills, he replied the same way to each question, "Absolutely." He concluded his testimony under direct examination by emphasizing that the people who love his son want stress removed from his life by making his life as consistent as possible so that he knows what the future holds for him.

The testimony and documentation of the AEA and the District staff involved in the educational planning for the Student's future education in the District appears to be exemplary. It exhibits appropriate levels of experience, knowledge, and caring for the Student.

Special Education Teacher I had worked as the primary teacher for the Student at the Junior High School setting for the three years he attended there. She has previously worked with an estimated 20 students on the autism spectrum over the ten years she has been employed at the Junior High. Special Education Teacher I testified that several of the Student's IEP goals were considered for updating and change at the May 5, 2010, IEP meeting, but were put on hold as a result of the request of the Student's Mother. She requested the same goals be maintained until the Student's placement at the High School was completed. It was agreed by the team that, after the transition to the high school, the

Student's goals would be reviewed and adjusted as needed. Clearly the IEP team had considered the Mother's input into the IEP development process.

Teacher I was asked to review the Student's transition experience from elementary school to the Junior High School. She stated that even with no extraordinary transition planning, the Student did not regress or lose skills on his educational goal areas after he arrived at the Junior High School. She stated that he had no writing goals on his IEP when he arrived from the elementary school, and one was added with consultation of his Mother during his seventh grade year. Not knowing the Student's writing skill level, there had been no data on which to determine any change in writing skills occurring between elementary and junior high school.

In reading, Teacher I stated that the Student did not seem to be at the reading level indicated by his records from elementary school. She stated that he needed assistance in preparation of his reading time in order for reading to be meaningful to him. The Junior High staff contacted the Mother and Father with their reading concerns, and there was joint agreement that the assessment criteria would be changed from those used in the elementary school. The result was that any comparisons between his reading assessments at the elementary school and then at the Junior High would not be valid for comparison. Teacher I testified it was like "comparing apples and oranges." Teacher I testified that the Student can read at almost any level, but for good comprehension he needs advance preparation in understanding the context of the material. Teacher I, with three years experience with the Student, testified that his "independence with regard to reading longer passages improved over the last couple of years."

Teacher I was asked to discuss the Student's navigation of the hallways of the Junior High building independently. She stated that it took him about four months to learn. He occasionally got confused regarding where he was to be, but he was not "lost." She stated that his being in the "wrong place", but not "lost" had occurred several times in his three years at the Junior High building, but only once in his last year there. Once, when he found a door unexpectedly locked, he believed an emergency existed (as it may have been in his mind when he encountered something other than what he had expected) and he pulled the fire alarm. He was then taught the procedure of returning to his regular classroom when he encountered a locked door in the school. When he has subsequently encountered locked doors, he has not again pulled the fire alarm.

In the summer of 2009, the Student was provided extended year programming at a different Junior High building. Teacher I stated that he learned to navigate those school hallways independently in one or two days.

Special Education Teacher I testified that the Student has exhibited a great deal of stress in situations over the last year, at least partially as a result of uncertainty regarding his future academic planning and schedule. She stated that he asks many questions in order to get his schedule firmly in mind. She testified, that in her opinion, stress on the part of the Student in school did not distract from his educational performance in the classroom.

Teacher I testified that the Student had made academic progress during the past year, and that he had not exhibited "escape" behaviors by attempting to escape from the classroom or the Junior High building. She stated the Student had exhibited increased stress over the past year regarding "his life outside of school". Examples she provided included confusion regarding whose house he was going to after school, and whether he was riding the school bus or whether someone was picking him up. She stated that referring him to his printed daily schedule satisfied his concerns.

Teacher I was asked whether physical aggression toward others seemed to be stress related for the Student. She stated that she thought when it occurred, it was more likely an effort to gain attention from peers. She explained how she had worked with him to end the improper aggression. In response to a question regarding ending the Student's alleged muttering to himself and swearing when under stress, the teacher stated she had not observed him doing that during his entire ninth grade year at the Junior High. In response to a question about the Student navigating the hallways by walking close to the wall, the teacher stated he was taught to walk close to the wall as part of the appropriate traffic flow in the school hallways.

As an attendee at the May 5, 2010, IEP meeting, Teacher I testified that concerns about a transition to the High School were brought up regarding the size of the building and large student enrollment and whether the staff at the High School would be aware of the Student's needs in that environment. She stated that High School teachers and staff members were present at the meeting and participated in the discussion. More specifically, discussion included alternatives that could be implemented if passing between classes in crowded, noisy hallways became a problem. They included lessening the number of different classrooms in which the Student would take classes, a quieter place to eat lunch than the cafeteria, and very importantly, his one-on-one para-educator who had been with him and facilitated his education at the Junior High for three years would be with him all day in the High School setting to assist him when needed or desirable, at least during that first transition year.

Teacher I was asked if she had seen the video of the High School hallway taken while students were passing, and she had. She testified that what she observed on the video

was not significantly different than what the Student had experienced at the Junior High School. She testified that she believed the Student could learn to navigate the High School hallways, including the Commons areas, with adequate support from staff, and the staff would be able to identify alternatives, if necessary.

She was asked to review the tentative transition plan that had been developed, but not then completed due to the interruption resulting from this hearing and the busy schedules of the Student's parents (Supplemental Student Records, pp. 2848-49.) Teacher I testified that by the time of the hearing, the Student had visited the High School three times. She had accompanied the Student on two visits to the High School while students in all three grades were present. She described in detail her briefing the Student about the High School before hand, and what they experienced there on the first visit. The Student was introduced to his new high school special education teacher (Special Education Teacher II) and the three continued the tour of the building together. They visited Teacher II's classroom and met the school nurse who would assist the Student with his blood sugar readings. On the second floor, in the language area, the Student saw "German" posted and asked if he could take German at the High School. He was told that he could if he wanted to do so.

Teacher I testified that the Student made eye contact with the people he met on that first visit, was able to introduce himself, with prompts, and exhibited no signs of distress throughout the visit. He did briefly touch Teacher I's hand and elbow on occasion several times, which she interpreted as him seeking reassurance. He did not engage in "muttering" as he walked and had his head in a slightly downward position similar to the way he usually navigated the Junior High building.

On the second scheduled visit, Teacher I asked the Student questions about the first visit and asked him to lead the way to some of the rooms. When Teacher II joined them, the Student was asked, "Who is this?" He responded, "It's Mr.----, my teacher next year." The Student recognized that he went through the German language hallway and at one point recognized they were near the art classroom. When entering Teacher II's classroom, the Student was asked, "Where are we?" to which he responded, "My classroom for next year." He again shook hands with the people he met. He did not need as much prompting to interact, and answered questions asked of him in complete sentences. Teacher I stated she observed no signs of stress in the Student during the second visit to the High School.

Teacher I testified that the Student had not been as semi-independent or interactive with others when he first arrived at the Junior High as he exhibited on his second visit to the High School. She stated that she had considered the two visits to the High School as "very successful."

Teacher I testified that she believes the High School is an appropriate educational placement for the Student, and that he can make progress toward academic, social, and independence goals in that environment. She stated that the High School has a number of advantages over a smaller school. The school has clubs for students with similar interests and the possibility of a "Best Buddies" program, where general education students are paired with special education students for social activities, such as attendance at athletic events, dances, and parties.

On cross examination, Special Education Teacher I was asked about regression in the Student's familiarity with the Junior High between his seventh and eighth grade years. She stated that the Student did not have difficulty maneuvering the hallways, but that he did not remember the names of some of the adults in the building. She stated he did not again regain memory of the names of all those adults until the beginning his ninth grade year.

When asked on cross whether it was the team's fear of regression that was one of the major reasons the Student was not transferred to the ninth grade attendance center for one year, before being again transferred to the High School the next year. She stated she didn't believe that was part of the reason. She stated the decision was based primarily on the fact that his social programming available at the Junior High was not available at the ninth grade attendance center.

On redirect examination, Teacher I stated that transitions are difficult for the Student but that she had not ever observed any regression in his learning resulting from the stress of transitioning.

Special Education Teacher II testified via deposition. He will be the Student's primary teacher if and when the Student transitions to the High School as is currently planned. He has been employed at the High School for five years and teaches a level II special education program where his students are in his classroom the majority of the day but do attend some general education and elective courses elsewhere in the High School. Formally this type of class was called a "self-contained classroom with integration." There are two other special education teachers at the High School, but neither testified at this hearing. Teacher II stated that most special education students would attend core classes taught by all three of the special education teachers. He indicated that having three teachers allowed great flexibility in meeting the individual needs of students. He expressly stated that when an individual student needed fewer transitions between classes, adjustment in scheduling could be made.

Teacher II testified that he and the High Schools' AEA School Psychologist Consultant visited the Junior High School and observed the Student in May 2010. Regarding the first day of observation, May 11, 2010, Teacher II stated he had spent half the day observing the Student and one other student being planned for transition to the High School in the fall. He observed the Student's successful use of binders and folders for organization, successful interactions with adults, interactions with classmates, and transitions in hallways between classes. He did state that the currently planned program at the High School would require more hallway transitions because students usually had more classrooms to attend. It was clear from the record that considerable flexibility would be maintained in the Student's transition plan that would allow for changes, should the need arise.

In all, Teacher II observed the Student twice at the Junior High building and three times on the Student's visits to the High School. He stated that he considered the High School an appropriate location for the implementation of the Student's finalized program, which had not been completed at the time of his testimony. His testimony stressed the fact that there is much flexibility available at the High School in student passing times to classes in the hallways and in the structure of individual student programming at the High School. He listed several things that yet needed to be provided, such as refrigeration for the Student's diabetic supplies and snacks, should the Student be assigned to the High School. He stated that the acquisition of items on the list was in process. That list exhibited good preplanning in the accommodation of the Student's individual needs.

Teacher II was on the IEP team and reported to the team on the progress of the "seamless" transition so the Student would become familiar with the new building and staff. Pictures were taken of key individuals at the High School and shared with the Junior High staff in order for the Student to be familiarized with adults at the High School. Organization binders and folders similar to those used at the Junior High were created to ease his transition into his new school environment, and other supports have been readied for his arrival at the High School.

There had been five additional planned visits by the Student to the High School in August. Teacher II stated they had not yet been implemented due to the uncertainty presented by the due process hearing. He also stated no final class schedule for the fall had yet been established, and the team was awaiting additional input from the Father and Mother before finalization. Discussions, both on and off the record, indicated that another IEP Team meeting was in the planning process for August 16, or soon after a Preliminary Decision was issued.

Teacher II's discussion of the Student's visits to the High School agreed with the testimony of Teacher I. He testified that other than the Student's briefly reaching for and

taking the hand of the para-educator during a class change in the halls at one point of the tour of the High School, the Student did not engage in any activity that indicated stress on the part of the Student. The Student's functioning and communication was not disrupted by noticeable stress during the entire visit.

Teacher II testified that on the planned second visit to the High School, the Student entered holding the hand of the para-educator, but he functioned normally and did not exhibit any obvious signs of stress or anxiety. The Student remembered some, but not all the classrooms he had observed on his first visit to the High School, and he remembered Teacher II's name. During a time of hallway student passing, the Student again took the para-educators' hand, and he also later took Teacher II's hand. This ALJ took the latter action as the Student's exhibited confidence in, and comfort with, Teacher II.

On his second visit to the Junior High School, Teacher II was accompanied by the AEA School Psychologist Consultant. This visit was for a full day. They observed the Student's successful passing to classes, followed by the para-educator ten feet behind. The Student remembered Teacher II's name on that occasion.

On a third visit by the Student to the High School, the Student remembered Teacher II and many of the classrooms and places he had shown on his second visit. The Student met several High School administrators for the first time, including the one in charge of "clubs" in the school. The High School has 98 different student clubs, in order to meet the interests of students and to promote greater socialization among students in smaller school settings. The record discloses the possibility of the creation of a NASCAR club. The Student is highly motivated by, and interested in, NASCAR personalities and events.

On direct examination, Teacher II was asked about the District's Alternative High School. The Mother had indicated in her testimony that the Alternative High School should be considered as an appropriate placement for the Student because it is much smaller and less densely occupied by students than the High School. Teacher II testified that the District has only two high school settings available, the High School and the Alternative High School.

Teacher II was asked to discuss supports and accommodations that could be used with the Student at the High School in order to facilitate successful experiences there, if need be. Numerous examples were provided (Teacher II deposition, pp. 68-70).

The testimony of the AEA Challenging Behavior and Autism Consultant who worked with the Student at the Junior High is in the record in the form of a deposition. Considerable testimony of the Consultant regarded alternative possibilities in assisting the Student to navigate the High School building in various circumstances, encouraging

socially appropriate interactions with other students in various circumstances, individualizing the times and conditions for passing from one class to another, alternative settings and circumstances for lunch period, the school day activities, and arranging alternative instructional settings, if necessary.

The Consultant testified that acquainting the Student with the High School before the start of the school year was good planning. She stated that most students would be anxious at first about a new school setting. It is important for the Student, especially, to begin to feel the High School as a familiar and safe environment, and begin to become familiar with many of the new sensory stimuli, such as some wide hallways with high ceilings, and the generally crowded and noisy conditions found there when students passed between classes. When asked whether she thought a more restrictive educational environment than the High School would be appropriate for the Student, she responded in the negative. She stated that the planned supports for a successful transition for the Student at the High School were appropriate for the tasks. On cross examination, the Consultant was asked about the possibility that a child with "severe sensory issues" should not be placed in a large school. She said that is a possibility, but based on her experience with the Student, and the success he had at the Junior High, she recommended trying the least restrictive setting in the High School before trying a more restrictive setting.

School Psychologist II has been working with the Student closely during his ninth grade year at the Junior High. He testified that the Student had a very strong academic year as shown by the growth on all seven of his IEP goals. While he had a few small dips in progress on two of the goals, overall the Student had a good year of academic progress. Like Special Education Teacher I, he testified that the Student is a fluent reader but his challenge is taking meaning away from the reading.

School Psychologist II was asked to describe the hallways at the Junior High that the Student had been navigating successfully. He stated they are curved rather than straight, and loud and crowded when students are passing between classes. On one occasion, when Psychologist II was new to the building, the Student was able to show him where several locations were in the building. He has observed the Student be successful in navigating the Junior High halls, both with and without adult supervision. He described positive oral exchanges that he experienced with the Student while visiting with him in the hallway.

Psychologist II testified that following a decision at the May 5, 2010, IEP team meeting, he participated in the transition planning that would make the Student's transition to the High School as smooth as possible. He said it was part of the plan to have the Student visit the High School and to have High School staff observe the Student at the Junior High. Psychologist II testified that various concerns had been raised at the May 5 IEP

meeting, such as the larger size of the High School with more students than the Junior High. Strategies were discussed and considered by the team that would help the Student make a transition to the High School successful.

Psychologist II was asked about the initial reports of the implementation of the transition plan. He stated that the initial contacts of the Student with the High School staff and building had been reported with highly positive results.

Psychologist II testified that he had been responsible for observing and documenting the Student's active participation in educational activities (engagement). The engagement goal level on several goals had been 90%. He testified that the Student usually measured about 90% and had not once been observed below 80% on engagement. He testified that he has worked with the High School Psychologist I to keep her informed of what he had been doing because the engagement observations for the Student were more extensive than are typically done. On one of the High School Psychologist I's visits to observe the Student, they did an engagement rating together as a "cross-check" comparison. Part of the transition plan includes Psychologist II observing the Student at the High School in the fall to assure consistency in the engagement assessment on several of the IEP goals. The ALJ finds this to be an exemplary element of good transition planning.

Psychologist II stated that he had never experienced or been told of "escape" behaviors involving the Student's attempts to leave the classroom or building. He testified that he had occasionally observed the Student attempting to "escape" completing work by not focusing on the task at hand. He stated that "escape" does not necessarily mean physically leaving.

Psychologist II was asked to discuss the concept of a "school within a school," as it had related to potential transition planning for the Student. He stated that the terminology referred to the development of an educational program in a small area of a larger school building until the Student became accustomed to the new environment and is better able to then expand his independent ability to traverse the larger school environment. He stated that he had seen the video made by the Mother, and the IEP team had discussed strategies to deal with or eliminate the concerns expressed as a result of the video. A number of alternatives were discussed and it was determined that different strategies can be implemented in a flexible manner depending on the Student's level of need. He concluded that the proposed program, with appropriate supports, at the High School is an appropriate educational placement for the Student.

Under cross examination he stated that the written reports by the Psychiatrist and Pediatric Neurologist had not changed his opinion.

The AEA Assistant Director of Special Education (Assistant Director) testified regarding his involvement in the Student's educational planning for a little over a year. He stated that immediately prior to the May 5, 2010, IEP team meeting, he met briefly with selected High School staff to discuss the possibility that the Student might be assigned to their attendance center, and the staff members were there to serve as a resource to the IEP team regarding questions that might arise during the forthcoming IEP team meeting. He emphasized that attendance at the High School was not a "forgone conclusion" at that time.

The Assistant Director testified that all the regular IEP team members, not counting the High School staff who felt they did not know the Student well, except the Mother, agreed that the High School was the appropriate placement for the Student. Apparently, the Father agreed with the majority. Two guests of the Mother at the meeting did not comment one way or the other. The Assistant Director stated expressly that he believed the consensus of the Junior High staff on the team, based on their three year experience with the Student, was that the High School is the appropriate placement (and location) for implementing the Student's IEP. He indicated there was tacit acknowledgement among school team members that the High School staff had the experience with flexibility of programming and supports for students that would make the placement successful.

The Assistant Director discussed a June 18, 2010, resolution meeting, required under the IDEA. He stated that the Mother again expressed concern regarding the potential "sensory overload issues" related to the size and student population of the High School. She again expressed concern about potential regression resulting from a transition from the Junior High to the High School. The letters from the Psychologist and Pediatric Neurologist, nor any other reports of new information, had been shared with the District staff at that time. There had been an extended discussion regarding potential accommodation and supports that might be provided the Student to make the transition to the High School successful. The resolution meeting did not resolve the primary question of the fall educational placement for the Student, but the Mother agreed to raise specific questions regarding the potential placement at the High School with the School District Director of Special Education. A number of emails were exchanged regarding the Mother's questions, and they and the Director's responses are in the record.

The Assistant Director testified he had not seen the Psychiatrist's and the Pediatric Neurologist's letters that are in the record until July 21, 2010, a week prior to the hearing. He testified he was concerned about the "very broad concerns" that were expressed in the letter on "very limited information" provided the two professionals. He stated that neither of the experts had consulted with AEA or District staff and had not themselves visited the High School. He especially objected to the comment of the Pediatric Neurologist who said the High School would not be appropriate for any child on the

autism spectrum. He concluded that the views of the Pediatric Neurologist seemed contradictory to the legally required consideration of the least restrictive environment for students with disabilities.

A considerable portion of the Assistant Director's direct testimony and cross examination dealt with the alternative routes the Student could be taught to take to various courses in various parts of the High School building should some of the planned routes be determined later by experience to result in concerns of stress or anxiety for the Student. All such planning was highly speculative at the time of hearing because the specifics of the Student's initial academic program had not yet been finalized.

In the early cross examination of the Assistant Director, some of the general misconceptions of what appears to be the real issue in this due process hearing came to the forefront. The Assistant Director was asked whether the team decision regarding "placement" at the High School disregarded the preference of the Mother for her son's attendance in a "smaller school setting" (Trans. p. 548, lines 14 -16); "a specialized school or a special class in a smaller school" (Trans. p. 548, lines 18-19); "our contention was and has long been that a smaller setting is one of his needs" (Trans, p.554, lines 22-23). The Assistant Director attempted to explain that the team members, except the Mother, believed that an appropriate educational program, and needed supports, was the placement and that it could be provided at the location (place) of the High School.

The Assistant Director admitted on cross examination that there is "some risk" of regression resulting from the Student's placement in the High School, but he concluded, that would be for the IEP team to determine and to respond to changing conditions through flexibility in planning. On redirect examination, the Assistant Director made it clear that he believed that the risk of regression resulting from transition is always a possibility with any child. He stated clearly that it was his opinion that the IEP team would not have determined the Student's placement to be at the High School "if it thought there was a substantial risk or even a meaningful risk." He concluded that the District and AEA staff members who work on a daily basis with the Student do not believe there is a concern about regression. He concluded that those staff members care too much about the Student to endanger him and his education through an improper placement.

In response to questions of the ALJ for clarification, the Assistant Director again emphasized that a "kind of a framework for the IEP..." was in place with the goals and the general type of instruction to be provided, but many details remained to be explored and agreed upon. He expressed the need to obtain a ruling in this hearing in the few days remaining before school was to start so the IEP team, including the Mother and Father, could work on those details.

Confusion regarding the High School as a "placement" and the "place" where the IEP would be carried out arose again in the subsequent cross examination (Trans. p. 591-592).

The District Director of Special Education testified that she had become highly involved with the Student's educational programming beginning when he was in the seventh grade at the Junior High School. She was in regular attendance at IEP meetings, frequently attended the staff bimonthly meetings discussing the Student, and had attended previous due process and mediation sessions involving the Student. She stated that previous evaluation reports regarding the Student's sensory concerns and other issues, including previous reports from the Pediatric Neurologist had been reviewed and discussed and "all given pretty intensive consideration," at the times they were shared with the District staff. The Director discussed generally how the District had provided educational programming and accommodations previously at the High School for students on the autism spectrum. She stated that those options would be available to the Student.

The Director also discussed the District's only other high school, the Alternative High School. She stated that its enrollment is much smaller than the High School, about 200 Students. It is housed in a former church renovated to accommodate high school students. Generally, the Alternative High School is designed for students at-risk of not completing high school. Courses at the school are designed like a self-study or independent study and students need to be self-motivated in order to be successful.

The District Director was asked whether the Alternative High School had been considered by the IEP team a good placement for the Student. She stated that the team had not discussed the Alternative High School as an alternative location for the Student's educational programming. She stated that she did not personally believe it would be an appropriate location for providing the Student's educational program.

The District Director outlined a number of outstanding programming issues regarding the Student that had not yet been resolved for the next school year and which needed to be addressed as soon as possible. The tasks to be completed included finalizing his class schedule, the type and location of physical education he would receive, the addition of a social skills instruction, the elimination of an elective class, where the Student would enter the building, what his transportation needs were, conditions surrounding lunch time, and continued implementation of his transition plan. She also discussed her unsuccessful efforts to reconvene the IEP team, including the parents, to discuss and decide on the resolution of outstanding details of the IEP to be implemented at the High School. The Director also stated that several previously planned transition visits of the Student to the High School had been delayed due to the insertion of this hearing into the planning

calendar and the Mother's announced plan to be out of the state with the Student the first two weeks of August.

In her testimony, the Director reiterated that the Student's current planned IEP spells out his educational programming, specialized instruction and his behavior plan, but that the team determination of the entire IEP to be implemented at the High School was on hold pending the outcome of this due process hearing.

On cross examination, the Director testified that the Student had a successful extended school year experience at another junior high attendance center between his eighth and ninth grade years. This led into a series of questions and answers regarding the appropriateness of the smaller Alternative High School setting for the Student, allegedly similar to what the Student had experienced in his extended school year program. The Director expressed the concern that the number of at-risk students in the Alternative High School setting would be much higher than previously experienced during the extended school year program. It has an "open campus" with students coming to and leaving the facility at various times and for various reasons. She expressly stated her concern for much greater disruption among students in the hallway at the Alternative High School, including fights and gang activity. She said she would be especially concerned about the "peer component" of placement at the Alternative High School. She stated that the IEP team had not expressly discussed the Alternative High School as a response to the Mother's request, but they had discussed and considered smaller school settings in a contiguous School District. Later, on redirect examination, the Director testified that the majority of the students at the Alternative High School were at-risk of not finishing High School for a great variety of reasons. She was asked whether she was of the opinion that the Alternative High School would be an appropriate setting for the Student, and she replied in the negative.

Also, when asked on cross examination, the Director stated that she believed the Mother's concern regarding her son's potential academic regression resulting from placement at the High School is sincere.

On redirect examination, the Director was asked whether she thought the letter in evidence from the Pediatric Neurologist was meant to recommend the Student be placed in a self-contained school environment. She responded in the affirmative.

In rebuttal testimony, the Mother was asked regarding the Pediatric Neurologist's overall assessment of her son. The Mother stated that the Neurologist had told her there was potential for a relatively independent life, some level of employment, his taking public transportation, and his possibly driving a car. The Mother's assessment of the Pediatric Neurologist's expressed vision of an ideal education program was a specialized school

with a staff familiar with autism, maybe a special residential school. The Pediatric Neurologist had also suggested the Mother consider home schooling, but the Mother stated that she had objected to that on the basis of lack of socialization opportunities. The Mother testified that the Pediatric Neurologist, after seeing the brief hallway video, expressed concern about the potential for her son's regression in development resulting from being in such an inappropriate school environment. Such was the Pediatric Neurologist's understanding of the High School environment from viewing the video.

The Mother was asked whether any IEP team member had ever acknowledged that past transition and past experiences have resulted in serious regression in her son. She responded that the closest was at the beginning of seventh grade. The Special Education Teacher I had advised the Mother and Father that their son did not have the skill level in reading that the elementary school had documented him having when he left elementary school. To a question of whether any part of the IEP team had ever attempted to identify the causes of regression in her son, she responded in the negative. She testified that his social skills, had deteriorated since fourth grade, and his writing skills and reading comprehension had declined since sixth grade. She testified that she attributed those items of regression to his being transitioned into new school situations with sensory overload. She stated that her own experience with her son experiencing sensory overload, such as in airports and grocery stores, indicates that it takes him about an hour to relax, to begin to communicate and, to be "teachable."

The Mother testified that she believes it is predictable that placement at the High School will result in her son's educational regression, perhaps permanently.

Conclusion on the Facts

Through out this due process hearing, it has been the position of the Mother that the placement of her son in the High School environment for his educational programming will result in regression of his learned skills and that regression may become permanent. Her argument is based on her beliefs regarding the history of the her son's previous experiences in new educational environments. Yet, on the record, it appears that there is no clear substantiation of her fears in that specific regard. They certainly are not the understanding of the Student's Father, or of the educators who have been involved in the son's education in the past. or those educators involved in his educational planning for the future.

The Mother had noted in her testimony that her son has regressed in his social skills since fourth grade, but evidence of that actually occurring as the result of any one particular event is absent from the record. She stated that her son's writing skills had deteriorated

since sixth grade, but Teacher I testified there was no writing skill goal and real measurement until November of the seventh grade year. The Mother stated that her son's reading comprehension had declined since sixth grade, but the testimony of Teacher I stated that reading measurements and rubrics changed at the beginning of the seventh grade year, and there was no way to correlate the data between sixth and seventh grades.

The Mother's primary example of regression was the regression the Student is alleged to have experienced when he left the elementary school to attend the Junior High School. Yet, the record is clear that while the Mother considers that regression occurred resulting from that experience, the educators have not drawn the same conclusion. There is no actual evidence in the record that attributes regression resulting from his transition to the Junior High School from elementary school, or any other change in his educational environments.

There was evidence in the record that the Student had regressed by eighth grade in some of the things he had learned in his seventh grade year at the Junior High, such as the names of some adults and his navigation abilities through the Junior High building. But, these occurred over the summer between the seventh and eighth grades when there was no change in education environments. Also, the record indicates that the Student relearned what had been lost and had generally successful educational experiences in the eighth and ninth grades.

One can not forget that the boy's entire life has not consisted solely of his educational experiences. His is a very complex existence with many physical, medical, and personal issues, which may at least be partially attributable to episodes of regression. The reality on the record is that there is no evidence of a cause and effect relationship associating the Student's transition to new school environments and educational regression

Obviously, the input of all three experts providing evidence supporting the Mother in this proceeding was limited in their own knowledge and experience with regard to the current educational status of the Student and the planning currently being finalized by the IEP team, including the parents. The record as a whole clearly indicates to this ALJ that the current educational plan, including the plan for the Student's transition, is appropriate. This ALJ is encouraged in his finding by the level of flexibility available to the IEP team to allow for adjustment, and the expressed willingness to make adjustments if and when it becomes desirable to do so.

The Mother had raised the possibility of her son attending the Alternative High School because it has a lower enrollment and is a smaller facility than the High School. The District's Director testified to the reasons she felt the Alternative high School was not appropriate for the Student's educational placement. While the ALJ has never visited the

As a whole, this ALJ believes the planning and alternatives chosen, and especially the recognition of the desirability of flexibility in the implementation of the plan, were made in a highly reasonable and professional manner. No amount of planning can guarantee a foolproof and perfect transition for any student, but the record of this proceeding is a testament to the efforts of professional educators made with that goal in mind.

Conclusions of Law

The Due Process Complaint document in this matter was filed with the Department on May 25, 2010. The sole issue identified in that document for resolution in this proceeding is whether the “placement” of the Student, proposed and planned by the District and AEA, is appropriate to meet the Student’s educational needs. The document states that the last time the Student was placed in a large and heavily student populated site, the Junior High School, “he suffered serious and long-term regression” and the newly proposed placement at the High School “is both larger and more heavily student populated than the previous school attended.”

Several times in his examination of witnesses, the Attorney for the Complainant (Appellant) expressly highlighted the point that the request for due process hearing was filed immediately after his client had learned the specific location of where her son’s educational program was to be implemented. Relatively little of the focus of this proceeding dealt with the various specific elements contained in the proposed, and as yet not finalized, new IEP. Although it should be noted that much of the most recent IEP’s goals and content are likely going to be maintained until an October annual review, much of the IEP preparation to date has focused on the Student’s transition to the High School location, supports and accommodations at the new school, course work and schedules, and other details which are likely to allow for a successful transition.

This request for due process hearing appears to be more about the location of the IEP implementation as it is about the IEP’s educational content. In the law, the term “placement” is not entirely clear in meaning. There does not appear to be a closed and concise definition of “placement” under the Individuals with Disabilities Education Act. With some degree of certainty, it means a setting in which it is possible to meet the goals and provide the services contained in the IEP, and in which the student can learn and make educational progress.

We know that placement must be with children who are not disabled “[t]o the maximum extent appropriate”. Segregation from non-disabled students may occur only when “the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, can not be achieved satisfactorily” (34 C F R .300.114

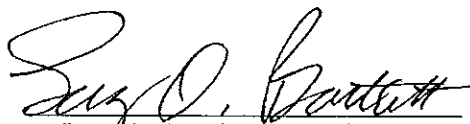
(a) (21)). There is to be a continuum of alternative placements, including instruction in regular classes and special classes with the provision of supplementary aids and services or related services (34 C F R .300.115 (b)). The placement is to be based on the child's IEP, provided "as close as possible to the child's home," and unless the IEP requires some other arrangement, "the child is educated in the school that he or she would attend if nondisabled" (34 C F R 300.116 (b), (c)). The school must see that "each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child" (34 C F R .300.117).

The relationship of "placement" to "location" is not stated as clearly in the law. In fact, a number of court decisions have ruled that placement is not a "place", but it is an overall setting where the student's IEP terms can be appropriately implemented. Thus, the mere change of physical location of providing the IEP program does not necessarily constitute a "change in placement", so long as the provision of the IEP terms and services are not changed as a result of program relocation. In this type of situation, "placement" refers to the education program setting for implementation, not the particular site where the IEP program is implemented. *E.g.* Hale v. Poplar Bluff R-1 Sch. Dist., 280 F.3d 381 (8th Cir. 2002); L.M. v. Pinellas County Schs., 54 IDELR 227 (M.D. Fla. 2010, Veasy v. Ascension Parish School Board, 42 IDELR 140, 121 Fed. Appx. 552 (5th Cir. 2005) (per Curiam); Christopher P. v. Marcus, 915 F 2d 794, 796 n.1 (2nd Cir.1990); Hunt v Bartman, 873 F. Supp 229 (W. D. Mo. 1994).

The record has established, that at the time of hearing, the District had largely completed an IEP that provided for an appropriate educational program for the Student, and the proposed location of its implementation at the High School was wholly appropriate. We know that the Student, while at the High School will be educated with children who are not disabled "to the maximum extent appropriate;" he will have available a continuum of alternative educational placements, including regular and special education classes, with the provision of appropriate supplementary aids and services, or related services; his education will be provided as close to his home as possible in the school he would attend if not disabled; and he will have the opportunity to participate with nondisabled students in extracurricular services and activities to the maximum extent appropriate to his needs.

The undersigned ALJ hereby finds that, even though the then current IEP (05/05/2010) was not fully completed and "placement" was not fully implemented at the time of hearing, in its then current form, that IEP represented an appropriate planned IEP to be implemented in the High School setting. As a matter of clarification, he further finds, that the planned location for the implementation of the IEP at the High School was an appropriated decision. As a result, he finds in favor of the Respondents (Appellees) on

the issue(s) of the appropriateness of both the IEP terms, as then constituted, and the planned location of the implementation of the IEP at the High School.



Larry D. Bartlett, J.D., Ph.D.
Administrative Law Judge

September 1, 2010

Date