IOWA DEPARTMENT OF EDUCATION

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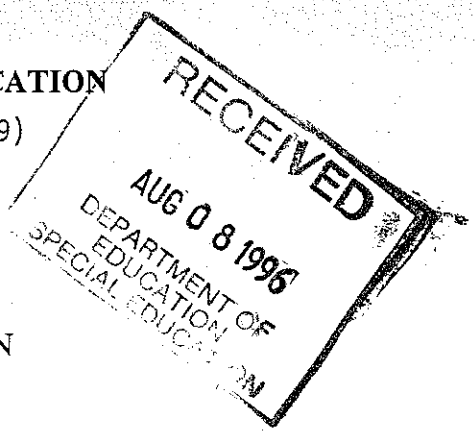

In re: Louis S.	)	
	)	
Mr. and Mrs Peter S.,	)	
Appellants,	)	
v.	)	DECISION
Iowa City Community School District	)	
and Grant Wood AEA 10,	)	
Appellees.	)	Admin. Doc SE-173

The above entitled matter was heard by Administrative Law Judge, Kathy Mace Skinner, on July 2-3, 1996 at the Administration Offices of the Grant Wood Area Education Agency (AEA) in Iowa City, Iowa. The hearing was filed on April 26, 1996 by the parents of Louis S. Proper notice was given to all parties. Due process procedures were pursuant to Iowa Code section 256B.6 (1995), Iowa Code ch. 281 (1995), the Rules of the Iowa Department of Education I.A.C. 281-41, and the U.S. Code and regulations of the United States Department of Education implementing the Individuals with Disabilities Education Act (IDEA), (formerly Education of All Handicapped Children Act) 20 U.S.C. sections 1400-1485; 34 C.F.R. section 300 (1995).

The Appellants, Peter and Hazel S. were represented by attorney Katherine M. Black, of Carbondale, Illinois. Grant Wood AEA was represented by attorney Matthew G. Novak of Cedar Rapids, Iowa and the Iowa City Community School District was represented by attorney Thomas W. Foley of Des Moines, Iowa. Mr. and Mrs. S. and Louis, Dr. Paula Vincent, Executive Director of Grant Wood AEA and Dr. Timothy Grieves, Associate Superintendent for the Iowa City Schools were present throughout the hearing.

The hearing was closed to the public at the request of the Appellants. The evidentiary hearing included sworn testimony from witnesses by phone and in person; review of educational records and of post-hearing briefs by all parties. Two pre-hearing continuances were granted at the request of the parties for the purposes of completing discovery. By agreement, the process was further continued to August 10, 1996 to allow time for briefs by the parties and the decision.

The issues alleged by the appellants are as follows:

1. The failure of the Iowa City School District to provide Louis with an IEP designed to meet his unique needs.
2. The failure of the Iowa City Schools to provide Louis with a special education placement for the 1994-95 and 1995-96 school years.

I. FINDINGS OF FACT

The Administrative Law Judge finds that she and the Iowa Department of Education have jurisdiction over the parties and subject matter of the hearing.

Louis, now age 17, has attended school for the 1994-95 and 1995-96 school years at the Brehm Preparatory School in Carbondale, Illinois, a boarding and residential school for students with learning disabilities and attention deficits. He plans to attend Brehm for the 1996-97 school year, where he will be considered an eleventh grader. This appeal, filed by his parents on April 26, 1996, is to determine whether the Iowa City Schools should pay for the program at Brehm for the 1994-95 and 1995-96 school years and for the upcoming 1996-97 school year, and for transportation costs for the three years.

In 1991, Louis and his parents moved to Iowa City, Iowa from Madison, Wisconsin where he attended grades 1-6. In Madison, Louis was in a Chapter One reading program, but was not referred to attend a special education program. A mild learning disability was noted, but since he was not served in any special education program, no Individual Education Program (IEP) was developed.

In the 1991-92 school year, Louis participated in the regular class for seventh grade at Northwest Junior High in Iowa City. He had academic difficulties the first semester, and in December 1991 came to the attention of the Student Review Team. The team noted that a private tutor was working with Louis and decided to wait and see the effectiveness of this since they believed Louis was capable of doing the work assigned. The AEA psychologist was asked to contact the parents for their input. The private tutor ended in December of 1991 and further tutoring at school expense was offered and accepted by the parents. The Student Review Team again reviewed Louis's status on January 22, 1992. The team wrote Louis "may need to be tested at a later date", but for now the school would continue the tutoring. As of April 1992, Louis continued to do poorly in school, and except for an A in typing and a B in physical education, received D's and N's (no credit), prompting a referral for an evaluation by the school psychologist. Louis's mother signed the evaluation consent form, certified that she understood her rights as listed on the back of the referral form, and received a copy of parents' rights. Through the month of April, 1992, the school psychologist observed Louis in class, met with his parents, and conducted formalized testing. Her report of April 24, 1992 noted cognitive ability in the Superior-Very Superior range, and significant split between his verbal and nonverbal skills, significant written language, sequencing, organization, and short-term memory difficulties. Recommendations were made in a detailed written report dated June 8, 1992. On May 27, 1992 the school psychologist reviewed the results of her testing with the Student Review Team and with Louis's parents on May 29, 1992. An IEP was developed focusing on written language and study skills. The plan was developed and approved by Louis's parents and the other conference participants. The team recommend Louis receive regular education with the resource room support for the 1992-93 school year. This would provide Louis with daily specialized

remediation in the least restrictive environment. The school psychologist signed that she had explained parent rights to the parents; the parents also signed the form indicating they understood their rights as explained and as listed on the back of the form. They also initialed the form noting their agreement with the IEP. Louis finished the seventh grade in summer school.

In the summer in July, 1992, Louis's parents took him to the Division of Developmental Disabilities at University of Iowa Hospitals and Clinics for a "comprehensive interdisciplinary evaluation". Dr. Carrie Norton conducted the educational component of the evaluation and also concluded that a mild learning disability was impeding Louis's' academic performance. No Attention Deficit was identified by any of the evaluators. A copy of the final report of the Hospital School was given to the school and the recommendations were considered and, to the extent possible, incorporated into Louis's instructional plan.

Dr. Norton also observed that Louis would benefit from counseling about his learning disability and stated that he "still does not appear to have a solid understanding of his learning characteristics..." Louis began seeing Robert Jackson, M.S.W, L.S.W. on a weekly basis beginning in August, 1992 and continued to receive counseling from Jackson through June, 1994. His focus was to reduce the stress that existed within the family and to assist the family in getting Louis to take more ownership of his behavior and any consequences that might result from his behavior. Jackson stated that "[E]veryone around him, (Louis), his parents, teachers, special education consultants, and a range of mental health professionals were all working to create a workable environment for Louis to succeed. Louis was doing very little". After many months, Mr. Jackson concluded that little progress was made in the two focus areas.

Pursuant to the IEP, Louis's eighth grade program, in the 1992-93 school year was at Northwest Junior High in the regular class with one hour each day in the resource room. The resource room teacher, Ms. Yoder, worked with Louis to develop strategies and techniques to improve his learning ability. She communicated on a regular basis with Louis and monitored his academic performance. She sent forms to his teachers each week whereupon the teachers noted whether Louis completed his assignments for the week and when the next test would occur. The weekly reports show that the first two weeks of September went well but that Louis's performance and willingness to complete homework declined. Yoder testified she tried various modifications and strategies that, if utilized, would have permitted Louis to complete most of his assignments. She encouraged Louis to use a tape recorder; to complete classroom and homework assignments; to dictate homework to either of his parents, a teacher or to Ms. Yoder who would then act as a scribe and write what he dictated; to create assignment books for each class to improve organizational skills; to allow her to explain homework in writing and verbally; to use a computer for work assignments and stated a computer would be available to him; to create written contracts with his teachers to clarify expectations and performance. Despite these modifications, by December, Louis was failing his academic courses. School personnel attributed part of this to Louis's failure to cooperate, and at hearing stated the problems were at least 50% his fault and that he was a reluctant learner. Louis's mother told school personnel that Louis's counselor, Mr. Jackson, recommended Louis receive the consequences of

certain behaviors such as his failure to turn in homework. The school tried homework detentions with limited success. The school also noted that Louis did not wish to work for positive reinforcement and refused help in resource room. All concerned agree that Louis did not do well and did not obtain passing grades. His mother reported absences from school because he "chose not to attend". There were many conversations between teachers and parents, now at near-crisis level. In February 1993, in continued searching for some success, the parents asked Dr Carrie Norton, from the University of Iowa Hospital School to meet with school personnel, Louis and his parents. The purpose was to "work together to see what we can do to help you do your best work at school." Dr Norton's follow-up letter was sent directly to Louis, stating further recommendations for Louis and his teachers, including the use of contracts, daily assignment sheets and a tape recorder. Dr. Norton concluded that, "[T]here are a number of people in your corner, Louis, genuinely hoping for your success and wanting to offer encouragement, help and support where they can."

Contracts between Louis and his teachers were then written and documented clarifying expectations and performance. Follow-up by the resource teacher was consistently made, and many teaching strategies were tried, all with little success. There was communication between Dr. Norton and Louis's counselor and between Dr. Norton and the school personnel and parents. Dr. Norton stated his lack of progress was an "enigma"; "[T]he situation looked like all the pieces were there for Louis to benefit and make progress. No one could figure out what was missing. Louis had broad based support from parents and teachers, but he was stuck and the resources did not help. It is common that professionals must try many things with learning disabilities. If one approach does not work, one must try others". At this time the Attention Deficit Disorder, (ADD) diagnosis had not been made, and Louis was not receiving medication. The ADD diagnosis which would be made one year later, in January, 1994 was never shared with Dr. Norton nor with Louis's public school teachers. After the school year ended in May or June 1993 there was no further contact between the parents and the Iowa City junior high school personnel.

In May 1993, the Junior High principal and resource teacher met with Louis's parents to inform them that he was failing and it appeared he would have to repeat the eighth grade. Louis's parents asked about private schools and the principal named several in the area, including the parochial school, Regina. The principal did not recommend that Louis transfer to this or any other school, and did not indicate that the Iowa City Schools could not serve Louis. The parents testified they could not imagine Louis finding success in the same environment for the next school year.

A new IEP was developed in May of 1993 for the 1993-94 school year. The team noted a rather negative present level of performance as:

> Louis does not ask for teacher assistance in regular classes or the resource room. He will not write down assignments and despite opportunities to do so, does not tape assignments. He does not hand in homework on a regular basis. Louis has difficulty with spelling, punctuation, and the consistent use of capitalization. He writes using complete sentences and at times uses

compound and complex sentences. He writes a minimal amount, and only what he selects to write. His two goals were: Goal 1: Louis will show improvement in study skills by fulfilling the following short-term objectives. Objective 1. Louis will use an assignment notebook on a regular basis 2. Louis will complete homework 70% of the time in all content area classes. Goal 2: Louis will show improvement in written language by fulfilling the following short-term objectives; Objective 1: Louis will edit his own written compositions using a computerized spell-check.

The following persons initialed the IEP to document their participation in the IEP conferences: resource room teacher, AEA consultant, both parents. The following persons initialed the IEP to indicate their agreement: resource room teacher, consultant, principal, school social worker psychologist, counselor, both parents. The form documents that Denise Yoder told the parents of their due process and other rights. The parents were given a written copy of the form with their rights listed on the back. This IEP team planned that Louis would repeat the eighth grade at Northwest Junior High with resource room assistance up to one hour per day for the 1993-94 school year. However, this 1993-94 IEP was never implemented.

In August 1993, the school received word from the parochial school, Regina, that Louis would attend there. The parents testified that the Regina principal stated that no special education program was available for Louis at Regina. Louis began the regular program for one semester but dropped out because of academic difficulties. Regina records show, among other things, that he did not complete homework. The withdrawal date at Regina is listed as Feb. 7, 1994, with the stated reason that Louis planned to attend CEC.

Louis's parents contacted the Community Education Center (CEC), an alternative school in the Iowa City public schools. The principal, Ted Halm, correctly believed Louis was coming from Regina, and did not know, and was not told by Louis's parents, that Louis had been diagnosed with a learning disability in the Iowa City public schools. Mr. Halm encouraged Louis to attend the alternative school since it was more flexible than others and might suit him. Louis began the program in early February, 1994, but stopped going after only four and one-half days. One teacher noted that he started out doing well, seemed interested in the topics, was given freedom to incorporate his interests, but then seemed to realize CEC was still school and stopped coming. The principal wrote to the parents stating his concern that Louis was not attending school, and encouraged them to call. In his second letter, he referenced the home school contact person and encouraged them to call. Reference was also made that the County Attorney would be sent a copy of the letter for truancy purposes. Louis stayed home and did not attend any school that Spring and his parents did not explain his absence.

The initial ADD diagnosis was made by Dr. James Beeghly, an adolescent psychiatrist who saw Louis from December 20, 1993 until July 1994. He placed Louis on the medications Cylert then Ritalin and monitored the effects. His notes reflect the difficulties of finding answers for Louis during this time. In March 1994, he noted "despairing parents"- stubborn youth" and

referred him to Dr. John Hartson.

Dr. John Hartson, a pediatric psychologist, in March 1994, confirmed Dr. Beeghly's diagnosis of ADD. Dr. Beeghly's referral letter stated that he had discouraged the parents from seeking a specialized (and very expensive) learning disorder school simply because "Louis is so poorly motivated". It is difficult to separate attitude from disability. Hartson stated it is difficult to recognize his type of ADD and that it is often not recognized until late elementary, junior high and high school, if at all. Once Louis's cooperation and attention began to improve because of the medication, Dr. Hartson encouraged Louis to return to Regina and believed he could be successful there. He did not recommend the Northwest Junior High program since Louis had not been involved in that educational program for quite some time. He believed the medication would make a major difference in Louis's success in school. In his opinion, Louis could not be successful in any program without the medication. This was important new information, but it never got back to the district or AEA.

Until the diagnosis of ADD, all of the information from the counselor, the University of Iowa, parents, and others suggested attitude or motivational problems. Hartson explained that many patients with learning disabilities/ADD are appropriately served in the Iowa City School District. He did not recommend preparatory school or any other specialized school for Louis. Dr. Hartson saw Louis again in June 1996 and believed his demeanor was more relaxed, more outgoing, less defensive and based upon Louis's commentary, the improvement was because of his success at Brehm.

In the Spring and Summer of 1994, Louis's parents made the decision to place Louis in the Brehm Preparatory School. Their first contact with the Director of Brehm was in the Spring, their decision was in the Summer. Their last contact with the public school system was in June, 1994, when they contacted Marian Coleman, the 504 director and summer school director. The parties differ on the purpose of this meeting. The parents state they did so to complain about the district's program. The district states they did so to determine the number of credits Louis had and to discuss summer school. Ms. Coleman states, and the notes Louis's mother took, support the discussion centered on summer school. They did agree with Ms. Coleman's suggestion that since Louis was not in school, they should try to do something for him immediately. Ms. Coleman arranged for four days of individual assessment in language arts to determine what he needed and to enroll him in the proper summer program. Louis did participate in this assessment period, but chose not to attend summer school. Ms. Coleman received a letter from Louis's mother, dated June 22, 1994, thanking her for sorting out eighth grade requirements, thanking her for the effort to provide a summer school session for Louis, and stating that "in the end, I expect he could not overcome the problems associated with the Northwest building." Still the parents did not request a hearing and did not ask for reimbursement for a private placement.

Mrs. S. testified that at that time they didn't know if the Brehm program would work, but were at a loss and decided to try it in the Fall of 1994. Louis's parents made no attempt to enroll him in Iowa City schools in 1994-95 or 1995-96. The district and the AEA assert they can and

will provide an appropriate program for Louis. Dr. Paula Vincent, Executive Director of Grant Wood AEA stated that knowing what they knew in 1993-94 school year, the AEA would not have recommended a residential school for Louis. The planned 1993-94 program was not inappropriate at the time. There were many options within the district yet to discuss. Louis left the public school program for Regina, attended CEC for four days, then was enrolled in the Brehm Preparatory School. The Iowa City School District and Grant Wood AEA did not hear from Louis or his parents from the summer of 1994 until April, 1996 when the appeal was filed.

Louis and his parents believe he is doing very well at Brehm and intend to continue this placement for the 1996-97 school year. Brehm uses a 24 hour control, holistic academic, social emotional, daily structured program with a tier system for privileges and levels of responsibility. It is a standard high school accredited program featuring small classes, computers, recreation opportunities, and social skill development for $26,500-27,500 per year. The Brehm Executive Director prefers to use the term "boarding school" rather than "residential school" because it is intended the students will transition back to their homes at some point. He believes Louis now shows less resistance, more self esteem, is not withdrawn and depressed, and is progressing academically and socially. Some problems continue, including homework. Louis's goals for the 1995-96 school year were to: Improve ability to express feelings appropriately, improve knowledge of LD issues and strategies that impact their learning, improve math reasoning abilities, develop strategies to prove memorization and recall skills, improve organizational skills; improve reading comprehension skills, improve spelling and reading abilities, improve written language abilities. Louis's mother believes this program is successful because he is moving in a direction that will allow him to graduate from high school.

At the hearing the parents requested: 1 Reimbursement for 1994-95 and 1995-96 school years at Brehm; 2) Reimbursement for counseling by Mr. Jackson; and 3) Reimbursement for transportation costs for Louis and his parents to go to and from Brehm.

II. CONCLUSIONS OF LAW

The AEA urges the ALJ to dismiss the case because of the statute of limitations addressed in Iowa Code Chapter 17A, or based upon the doctrines of laches and estoppel. Further, the AEA asserts, equitable considerations and the mandates of IDEA to annually develop an education program, lead to the conclusion that the appeal is not timely. The AEA urges that if the one year annual review requirements are not considered as a bar to an appeal, then certainly the two year limitation under Iowa Code 614.1(2) (injuries to the person or reputation, based on either contract or tort) should be considered the outside time to appeal. There may be merit to the argument that after the annual review of an IEP, one cannot go back to revisit the program, especially when the parents were properly involved. But the parents here are requesting reimbursement for two years when the child was not in the district and during which the parents had not exercised their due process rights. A reviewing Court may determine that the informed parents who sit on their rights lose the opportunity for review of the program and that the upcoming 1996-97 school year is the only live issue. A reviewing court is authorized by 20

USCS 1415(e)(2) to grant such relief as the court determines is appropriate using equitable considerations and broad discretion. Nonetheless, at the administrative hearing level, I specifically decline to dismiss this case based upon the delay of time from the request for a hearing and the change in placement. Cutting off the parents right of appeal at this level is inconsistent with the equitable provisions of the IDEA.

The Individuals with Disabilities Education Act (IDEA) (20 U.S.C.1400 *et seq.*) requires districts to provide children with disabilities with a "free appropriate public education," which is defined in 20 U.S.C. 1415, special education and related services that are provided in conformity with an individualized education program (IEP). Under the IDEA, parents who unilaterally change their child's placement from public to private during the pendency of review proceedings, without the consent of the state or local school officials, do so at their own financial risk. 34 C.F.R. 300.403(a).

The Supreme Court has addressed private placements by parents in *Florence County v. Carter,* 510 U.S.___, 126 L.Ed.2d 284, 114 S.Ct. 361, (1993), and in *Burlington School Community v. Massachusetts Dept. of Education,* 471 U.S. 359, 85 L.Ed.2d 385, 105 S.Ct. 1996 (1985). In both cases, the parents moved the child to a private placement after requesting a due process hearing. In the instant case, the student was out of the district for two years and eight months and in the private placement for nearly two school years before the request for a hearing. The information available to the IEP team in June 1993, was that the parents approved of the proposed placement in the public schools.

Even though the facts differ, the analysis of the Supreme Court cases is proper in this matter. Parents are entitled to reimbursement for the private placement, even a unilateral placement, if the hearing officer or court concludes both that 1) the public placement violated the IDEA, and 2) the private school placement was proper under the IDEA. Public schools who want to avoid reimbursing parents for the private education of a child can do one of two things, 1) provide the student with a free appropriate public education in a public setting or, 2) place the student in an appropriate private setting of the district's choice.

The inquiry in the instant case is whether the implemented IEP for 1992-93 and the proposed IEP of May 1993 for the 1993-94 school year were appropriate. If they were appropriate, the second inquiry of the appropriateness of the private placement is unnecessary. If the public placement was not appropriate, the two part inquiry of the Supreme Court is required in determining whether the district is required to pay for the private placement.

The touchstone for determining whether a free appropriate public education is provided is the *Rowley* standard. *Hendrick Hudson District Board of Education v. Rowley,* 458 U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1982). 1) Were all the relevant procedures followed for Louis and 2) was the IEP reasonably calculated to enable Louis to receive educational benefits. After a detailed review of both the procedures and the IEP, I conclude the answer to both of these questions is "yes". Even though Louis was failing his academic subjects, there were extenuating

circumstances which tip the balance in favor of the district/AEA.

Procedurally, Louis and his parents received of the proper process due to him under IDEA. The IEP team met and determined the program should be in the regular class with one hour per day of resource room intervention. The team took into consideration the recommendations of outside professionals. The team involved parents in the process and even obtained their initials to document approval of the proposed IEP. The district documented that the teacher verbally explained the parents' rights of appeal, and the parents were provided a copy of the appeal rights.

Substantively, the major concern of all of the parties was that, despite the process used, Louis was failing his academic subjects. The facts show that no one knew what to do to improve the situation for Louis, not the professionals and not his parents. The district tried various approaches; the parents sought help from numerous professionals. The logical question is, how can an IEP be considered appropriate if a student is failing. The *Rowley* court and others have addressed this concern. The grading and advancement system are an important factor in determining educational benefit. 458 U.S. at 203. But above all, the basic floor of opportunity provided by the Act consists of access to specialized instruction and related services which are individually designed to proved educational benefit the handicapped child. 458 U.S. at 201. If the child is being educated in the regular classroom, the IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade". 458 U.S. at 204.

It is tempting for the parties, now engaging in hindsight, to believe the 1992-93 implemented IEP and the 1993-94 proposed IEP could have been written differently or the proposed implementation could have been better. These IEPs were legally sufficient and appropriate at the time. The IDEA does not require that an agency, teacher or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives. The IEP is not a performance contract. It is easy now, to say that more and different special education would have been the answer for Louis's academic problems.

Some decisions have found inadequate education. In *Capistrano Unified School District v. Wartenberg*, 22 IDELR 804 (9thCir. 1995), a learning disabled/ADD student who was failing was found to have a program insufficient to meet the student's needs due to lack of structure, individualized attention, behavior management, and failure to provide enough special education time. But in Louis's case, more or different special education would not necessarily have enabled him to succeed. Dr. Hartson believes that he could not have succeeded in any program without the medication. No expert evidence was presented that the 1992-93 IEP or the proposed 1993-94 IEP for Louis were inappropriate. The medical diagnosis of ADD was never shared with the district or AEA and the district and AEA did not have the opportunity to serve Louis after this diagnosis.

The district and AEA were cognizant that the regulations under IDEA state that inherent in a free appropriate education is the policy of providing that education in the least restrictive

environment. 34 C.F.R. 300.550-300.556. IDEA states a clear preference for mainstreaming whenever possible. Students are to be educated "with children who are not handicapped, and special classes, separate schooling, or other removal of handicapped children from the regular education environment is for children whose nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Of the records presented, none indicated Louis's disability is severe, but rather is mild or moderate. The Director of Special Education testified that based upon the information presented when Louis was enrolled in the district, a separate residential facility would not have met the least restrictive environment requirement, and would not have met the IDEA mainstreaming preference. She testified that were Louis to enroll in the district now, an appropriate program could be designed for him and that a separate residential placement is normally not recommended for a student with Louis's level of disability. The undersigned ALJ reaches the same conclusion. It is questionable as to whether a residential program meets the least restrictive environment for a student with Louis's disability. The district should have the opportunity and to an extent has the duty to try less restrictive alternatives before recommending a residential placement. *Evans v. District No. 17 of Douglas County, Neb.*, 841 F.2d 824, 832 (8th Cir. 1988).

Although the parents voiced their dissatisfaction with Louis's progress they did not voice their dissatisfaction with the efforts of the school personnel and their attempts to serve him. Once he was diagnosed as having an ADD, the parents enrolled him in an out of state residential school. The district and AEA were not given an opportunity to serve him with the benefit of the new diagnosis and medication. Parents should not have to resort to placing their child unilaterally without contact and support from the school. But if the parents truly believed the district/AEA could have done more, they may have let the school off the hook too easily. They did not exercise their due process rights, even though they knew them. The parents had been very involved in the planning of Louis's program and even though they now believe differently, at the time they believed the ideas any of the professionals had for Louis were being attempted. The parents and school personnel agreed on the recommendation for a resource room because the parents, the professionals at the University Hospital School, Counselor Jackson, the AEA consultant and school psychologist and the junior high staff believed it was the proper program at the time. If there was any disagreement, no one stated it orally or on the IEP form. In fact, the form notes the approval of all involved. Had the parents or other persons on the staffing team disagreed with the IEP results, special education rules would have required the Director of Special Education to intervene and resolve the disagreement. The decision in *Evans v. District No. 17 of Douglas County, Neb*, 841 F.2d 824, 831 (8th Cir. 1988) includes the proposition that school districts should be on notice of disagreements and given an opportunity to make a voluntary decision to change or alter the educational placement of a handicapped child. The one way to bring all of the rights of the parents to bear, requesting a hearing or even stating dissatisfaction, was not exercised by the parents.

While the record shows numerous conversations between the resource teacher and the parents, and between the parents and other professionals, communication could have been

improved. It is recommended the district/AEA improve communication in three areas: assisting the parochial staff to understand the special education programs and services available and continuing to make programs and services available to parochial students; immediately determining at the alternative school, CEC, when a student seeks to enroll, whether there was an identified handicap; contacting the staffing team when a student with an identified handicap seeks to enroll in summer school or requests a 504 plan. The parents also share the burden of communication in these three areas. Louis attended the parochial school for one semester, CEC for four and one-half days, and summer school for four days. The information shared by the parents about Louis was incomplete and the time allowed for the schools to provide meaningful intervention was far too short.

The record shows that Louis was entitled to enroll in the public school but did not enroll in the 1993-94, 1994-95, and 1995-96 school years. [1] When Louis was enrolled the district implemented an IEP in good faith, with parent involvement, and carried it out to the best of their ability and understanding at the time. One cannot conclude from the evidence that the public school failed to provide appropriate intervention in the 1991-1992 school year, that it failed to provide an appropriate IEP in the 1992-93 school year nor that it would have failed to provide an appropriate program for the 1993-94, 1994-95 and 1995-96 school years.

There are many reasons parents choose a residential school, and these parents believe Brehm is the best school for Louis. The IDEA does not guarantee the best possible school. It does guarantee access to specialized instruction and related services which are individually designed to proved education benefit. *Rowley,* 458 U.S. at 201, 73 L.Ed.2d at 708, 102 S.Ct. at 3048. This is not to say that parents do not have a right to place their child in a private facility and seek reimbursement. But, as the Supreme Court stated in *Town of Burlington,* 471 U.S. at 374, 85 L.Ed.2d. at 397, 105 S.Ct. at 2005, "parents who unilaterally change their child's placement during the pendency of review proceedings without the consent of state or local school officials, do so at their own financial risk." This certainly holds true for parents who unilaterally change their child's placement before those proceedings have begun. *Evans*, 841 F.2d at 832.

The Director of Special Education noted that some parents may believe that the private school offers an overall better education and the parents have the option to privately fund this private placement. She respects the right of a parent to chose this option, but reasserts the district and AEA can and will provide an appropriate program for Louis.

Having found the first inquiry, that of appropriateness of the public placement in favor of the district/AEA, the second inquiry, that of appropriateness of the private placement, is unnecessary. But as noted above, it is questionable whether a residential facility meets the least restrictive environment requirement for a student with the diagnosis declared in this case. The reasoning of the Eighth Circuit Court of Appeals in *Evans,* 841 F.2d at 832 is highly applicable

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[1] The four and one half days at CEC are not considered here, since the parents did not inform CEC of the existence of the learning disability or of the ADD diagnosis.

on this issue.

All other objections not previously ruled on are hereby overruled.

III. DECISION

The appellees (District/AEA) prevail on the issues in this hearing. The evidence shows that the appellees met the procedural and substantive requirements of the IDEA, even though Louis did not find academic success in his program. For the reasons stated above, the relief sought by Mr. and Mrs. S. is denied. Louis is entitled to enroll in the Iowa City Schools for the 1996-97 school year. If he does enroll, the Iowa City Schools and the Grant Wood Area Education Agency must develop an appropriate IEP for him and implement it without delay. If Louis and his parents do not believe the IEP is appropriate, they must exercise their rights of due process.

August 5, 1996
Date

Kathy Mace Skinner
Kathy Mace Skinner, J.D.
Administrative Law Judge