

This is a redacted version of the original hearing officer decision. Select details may have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

HEARING OFFICER DECISION/ORDER
CHILD'S NAME: C.M.
NORWIN AREA SCHOOL DISTRICT (ODR FILE NO. 6499/05-06 LS)

Date of Birth: xx/xx/xx
Type of Hearing: Closed
Dates of Hearing: 7/28/06; 8/14/06

I. PARTIES TO THE HEARING

PARENT:
Ms.

DATE TRANSCRIPT RECEIVED:
August 19, 2006

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HEARING OFFICER:
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August 24, 2006
Date of Decision/Order

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HEARING OFFICER DECISION/ORDER
CHILD'S NAME: Student
NORWIN AREA SCHOOL DISTRICT (ODR FILE NO. 6499/05-06 LS)

II. BACKGROUND INFORMATION

Student was an xx (xx) year old, eligible student during the 2005-2006 school year. In April of 2006, Ms. (i.e., Student's mother) made a due process hearing request, opining that Student's attendance at [redacted] School, an Approved Private School (APS), did not provide Student with the opportunity to relate to neighborhood peers. Her mother argued that Student endured a lengthy bus ride to and from the APS due to its proximity, approximately 13 miles from the Norwin Area District (i.e., the District). Student's mother requested Student's placement at an "autism specific" school run by [redacted] Human Services (HS), contending that the HS School would be better able to meet Student's needs according to Student's most recent re-evaluation report (ER) and her Individualized Education Program (IEP).

III. FINDINGS OF FACT

- 1) Student, a resident of the District, was born xx/xx/xx (Parent's Exhibit 1, page 1: P1, page 1).
- 2) Student received the diagnosis of *Pervasive Developmental Disorder* at age 2 through the *Child Development Unit* at [redacted] Hospital (P1, page 2).
- 3) Student received special education services even before entering the District, as provided through [redacted] Intermediate Unit's early intervention services and [redacted] Preschool's early intervention program (P1, page 1).
- 4) Student began her District elementary school career in a regular education classroom setting with supports and services (e.g., developmental kindergarten and learning support), both within a regular school setting (P1, page 1).
- 5) Student received the diagnosis of *autism* and *Attention Deficit Hyperactivity Disorder, Not Otherwise Specified* (ADHD, NOS) (P1, page 2).
- 6) With high levels of structure, Student was able to function without medication to address her ADHD symptoms, including her high levels of distractibility and inattentiveness (P1, page 2).
- 7) Student's 2002-2003 IEP team, with her mother's agreement, determined that Student was exhibiting inappropriate behaviors that could best be addressed through the partial hospitalization program available at APS (P1, page 1-2; Notes of Transcript, pages 33-35: NT 33-35).
- 8) Student received the APS placement recommendation based on demonstration of inappropriate behaviors that could not be adequately addressed in a regular classroom setting, including self-stimulating touching (NT 66-67).
- 9) Student continued her APS placement through third, fourth, fifth and sixth grade, as she was making "adequate academic and behavioral progress" (P1, pages 1-5; NT 25-27).
- 10) APS is located on [redacted street] in [redacted town], a suburb of Pittsburgh, and is approximately twelve to fourteen miles away from Student's home (NT 31).
- 11) APS is an APS with approximately 160 students in attendance (NT 51, 66).
- 12) The students at APS have been diagnosed with various disabilities aside from autism, including but not limited to, children in need of emotional support services (NT 51, 66-68).
- 13) Other children in the APS program also have a diagnosis of ADHD. These children attend there, however, because of behavior issues and the therapeutic and counseling services that can be provided to address those issues (NT 51, 66-67).
- 14) Some of the children that attend APS receive emotional support services, however, Student's *Autistic Support Program* is a self-contained program (NT 66, 88).
- 15) Ms. M was Student's special education teacher for the older autistic support classroom at APS, during the 2005-2006 school year and for the past number of years (NT 116-117).
- 16) There were 12 students in Ms. M's classroom at the end of the 2005-2006 school year, including Student (NT 117).

- 17) Student's 2005-2006 *APS* classroom entailed the services of five adults, including Ms. M, special education teacher; Ms. S, milieu therapist; Ms. P, classroom assistant; and two paraprofessionals assigned to two children receiving individual aides (NT 117).
- 18) Student's instruction in Ms. M's classroom focused on a core curriculum, including reading, math, language arts, science and social studies provided on Mondays through Fridays. Student also received "specials" (NT 118).
- 19) Student received all of her academic services, including her specials (e.g., art, music, physical education and computer science), with other students in her autistic support class (NT118).
- 20) Student had opportunities at *APS* to interact with children who are not autistic during lunch, while changing classes, occasionally during recess, and while arriving to and leaving school (NT 118-120).
- 21) Student's *APS* curriculum is a mix of functional academics, daily living skills, behavioral expectations, language, and social skills training (P 3; NT 118).
- 22) *APS* staff kept data on Student's individualized behavioral responses through an ongoing *Behavioral Treatment Plan Review Summary* (P 4, P5, P6, P7, P8; NT 119-120).
- 23) During Student's first year at *APS*, Student's mother reported that Student had been subject to a series of physical aggression by other students (NT 244-247).
- 24) The *APS* staff had several discussions about Student and how Student dealt with the beginnings of puberty, her behavior and social skills, and her problem-solving abilities (P3; NT 120).
- 25) In May of 2005, Student's mother reported to *APS* staff an increase of physical aggression at home (NT 231-245, 246-247).
- 26) Student exhibited some physically aggressive behaviors at school around May of 2005, over the Summer 2005, and during the Fall of the 2005-06 school year. These behaviors generally took the form of pushing, with some instances of hitting and kicking (NT 92-93, 244-246).
- 27) Ms. S, the mental health therapist from *APS*, provided mental health therapy services to Student for the past two years (NT 71-73).
- 28) Ms. S and other *APS* staff suggested to Student's mother how to address Student's increased aggression through the use of the "*I Feel Card*" system, school-wide behavioral management, individualized mental health therapy, and occupational therapy exercises with prompting and verbalizations (NT 96-97, 120-121, 122-123).
- 29) *APS* staff provided individualized classroom interventions (e.g., visual aides consisting of a 5 point scale; comic strip conversations) to help Student recognize and deal with degrees of anger and behaviors associated with the different degrees (P1, page 5).
- 30) *APS* staff individualized Student's behavioral support, and an individualized crises intervention plan, targeting specific intervention strategies (P1, page 5; P3, pages 13, 16-18; SD 3, pages 1-16; NT 106-107).
- 31) *APS* staff noted that while Student had started to experience problems with the aggressive behavior around the Summer 2005 and during the Fall of the 2005-2006 school term, those behaviors addressed through her behavioral interventions, began to diminish in a relatively short period of time (NT 74-82, 92).
- 32) Student's aggressive behaviors began to diminish significantly as of January 2006 and were essentially abated during the second semester of the 2005-2006 school year (NT 92-93).
- 33) Student began to de-escalate quicker when she was upset and positively responded to written communications (NT 92, 96-97).
- 34) *APS* staff kept ongoing behavioral progress data on Student's on-task behaviors, impulse control, positive social interactions, positive family and community interactions, and social skills (P4; P5, pages 1-2; P6, pages 1-2; P7, pages 1-10; P8, pages 1-2; NT 91, 96).
- 35) *APS* staff held monthly review meetings with Student's mother in which Student's progress was discussed and monitored (P 4, P5, P6, P7, P8; NT 244).
- 36) Data progress reporting strategies that *APS* staff used were effective in documented goals, as per Student's IEP (SD 3; NT 97-102).
- 37) On October 4, 2005, the District offered, and Student's mother approved through a *Notice Of Recommended Educational Placement* (i.e., a NOREP), Student's continued educational program and placement in a "*Full Time Autistic Support in an Approved Private School at APS*" (SD 1, pages 1-2).

- 38) Student attended the [redacted] Program through *Human Services*, an after-school social skills program for children with autism (NT 121).
- 39) In November 2005, Student's mother began exploring alternate educational placements for Student when Ms. [redacted] met with Ms. G, Director of the *HS School* (NT50-51, 206-207).
- 40) The *HS School*, located in [redacted town], PA is approximately eight to ten miles from Student's home (NT 31).
- 41) The *HS School* is a licensed private school that has been in operation for one year, exclusively serving children with autism and Aspergers Syndrome (NT184-185).
- 42) During the 2005-2006 school year, its first year of operations, the *HS School* had an enrollment of 15 children, with an anticipated enrollment of at least 27 children during the 2006-2007 school year (NT 200-201).
- 43) All of the children at the *HS School* during the 2005-2006 school year ranged in age from 5 to 17, although children may attend until age 21 (NT 185).
- 44) The class in which Student would be placed if she were to attend the *HS School* would have an estimated seven children, including Student, ranging in age from 12 to 17 (NT 186).
- 45) The *HS School* did not provide educational service to non-disabled children during the 2005-2006 school year (NT 184-186).
- 46) While there is a partial hospitalization component to the *APS* program, with on-site personnel who meet regularly with Student's teacher and therapists (NT 90), at the *HS School* the mental health professional is called when needed (NT 203, 208-209).
- 47) Ms. [redacted] was impressed with the *HS School* as it focused exclusively on students with autism (NT207).
- 48) Ms G testified that the *HS School* could easily administer Student's proposed IEP, including Student's social skill goals and behavioral plan (P2; NT 190-192).
- 49) Ms. [redacted] was pleased that the *HS School* was closer to her house than the *APS* (NT 248).
- 50) *Laidlaw Transit* is the busing company that transports students who reside within the District, including those children who attend private and parochial schools and children who attend special programs for students with disabilities (NT 235).
- 51) Mr. S, *Laidlaw Transit* dispatcher, calculated an estimation of the travel time to both the *APS* and the *HS School* from Student's home (NT 235).
- 52) Mr. S's estimations were based on the actual routes that would be run for Student, including stops made for other children that would be on the same vehicle (NT 235).
- 53) Mr. S estimated that the travel time to the *APS* would be approximately forty-five (45) minutes and the travel time to the *HS School* would be approximately thirty-five (35) minutes. Mr. S's estimations accounted for student stops, road congestion and road conditions, and wait time per student pick-up (NT 235-238).
- 54) During the 2005-2006 school year, two other District students attended the *HS School* (NT 198, 234).
- 55) Only one of the two students rode the bus to the *HS School* during the 2005-2006 school year (NT 57-58, 201).
- 56) Both students are significantly younger than Student. One of the children was in first grade and the other in second grade during the 2005-2006 school year (NT 200-203).
- 57) Ms. [redacted] and Student did not know the second grade District student who lived several blocks from them and had attended the *HS School* during the 2005-2006 school year (NT 57-58, 252-253).
- 58) Student never had any interaction with either child (NT 253).
- 59) Pursuant to a March 21, 2006 Mediation Agreement, the District conducted a re-evaluation, issuing a report, dated June 7, 2006 (P1, pages 1, 8).
- 60) On or about April 18, 2006, Student's mother made a *Request for Due Process* concerning Student's school placement, proximity of the *APS* to Student's home, and behavioral issues (Hearing Officer Exhibit 5: HO 5, page 5).
- 61) The *Request for Due Process* set forth in an attachment the reasons why Ms. [redacted] believed that Student's school placement should be changed (HO 5, page 1).
- 62) On April 25, 2006, a *Notice of Hearing* from the *Office for Dispute Resolution* (i.e., ODR) identified the Hearing Officer and named May 22, 2006 as Student's hearing initiation date (HO1, pages 1-2).

- 63) On May 1, 2006, the Hearing Officer sent a letter to the parties naming responsibilities of the District and Parent when a party requests a due-process hearing under the *Individuals with Disabilities Education Act* (IDEA) (HO1).
- 64) On May 2, 2006, the Hearing Officer directed the parties to complete certain steps that must be taken before a hearing can be held, including participation in a Resolution Meeting; completion of a written waiver of the Resolution Meeting; filing of a request for mediation; and/or evidence of an agreement signed by both sides. The parties were to participate in a pre-hearing telephone conference with the Hearing Officer (HO1, pages 1-3).
- 65) On May 7, 2006, Student received the District's re-evaluation referral (P1, page 1).
- 66) On May 11, 2006, the District answered the Parent's *Request for Due Process* (HO 5, pages 2-3).
- 67) On May 15, 2006, the parties held the pre-hearing telephone conference call with the Hearing Officer at which time the District stated it was continuing to re-evaluate Student pursuant to the March 21, 2006 Mediation Agreement. The District anticipated that Student's re-evaluation would be completed by the end of May 2006 (HO 2, page 1).
- 68) Once the District completed Student's re-evaluation, the District agreed to notify the Hearing Officer within 5 days of the re-evaluation's receipt so that a new initiation date would be set for Student's due process hearing (HO 2, page 1).
- 69) On May 15, 2006, Student's mother stated she was seeking the services of an attorney and would inform the Hearing Officer so that contact with the mother's attorney was made prior to rescheduling of Student's hearing initiation (HO 2, page 1).
- 70) On May 15, 2006, the Hearing Officer cancelled the May 22, 2006 hearing and suspended the five-day notice requirements pending the due process rescheduling (HO 2, pages 1-5).
- 71) On June 22, 2006, the IEP team met and considered Student's re-evaluation report (P1; SD 2).
- 72) The information contained in the June 7, 2006 re-evaluation report established that Student was progressing through her educational program and would benefit from a continuation of the program with which she is so familiar (P1, SD 4; NT 89-90).
- 73) On June 22, 2006, Student's mother agreed with the proposed IEP, reporting to Ms. B, the District's certified school psychologist, the mother's belief that Student's proposed IEP goals and specially designed instruction were appropriate (SD 4; NT 258-260).
- 74) It was the June 22, 2006 IEP team's recommendation that Student continue in and not be discharged from *APS*. However, if Student were to be discharged from *APS* for some reason, Student's IEP team recommended that she continue in a "*Full-Time Autistic Support*" program (P1; NT 89-90).
- 75) Ms. [redacted] held the position that Student should no longer attend *APS*, but be placed at the *HS School* (SD 4; NT 45-47).
- 76) Because Ms. [redacted] had previously submitted a *Request for Due Process*, a NOREP was never signed as a result of the June 22, 2006 IEP meeting (HO 5, pages 1-3; P 2; NT 262)
- 77) On June 13, 2006, the Hearing Officer rescheduled Student's hearing for June 26, 2006, after receiving confirmation that the District had completed Student's re-evaluation (HO 3, page 9).
- 78) On June 22, 2006, due to witness availability and the lack of a five-day notice from the Parent, the District requested another continuance (HO 3, page 3-9).
- 79) On June 22, 2006, the Hearing Officer cancelled the June 26, 2006 hearing (HO 3, page 6).
- 80) On July 7, 2006, the Hearing Officer rescheduled Student's hearing for July 28, 2006, after receiving confirmation that Student's mother had obtained services of an attorney (HO 3, page 1).
- 81) On July 18, 2006 the District raised the matter of witness availability and the potential need for another hearing session, in addition to the hearing already scheduled for July 28, 2006 (HO 4, pages 1-2).
- 82) On July 28, 2006, Student's hearing initiated (NT 1).
- 83) Based on her authority (34 C.F.R. §300.511(c)), the Hearing Officer granted continuances at the parties' request, including the Hearing Officer's July 31, 2006 grant of Student's hearing to the agreed upon date of August 14, 2006 (HO 3, HO 6; NT12- 14, 116).
- 84) On August 14, 2006, after both sides had rested, Student's due process hearing adjourned (NT264).

IV. ISSUES

The parties agreed to the hearing issues on the record (NT 19-20):

- Is Student's placement at *APS* given its proximity to her home, not appropriate based on her needs?
- Is Student's placement at the *Human Services School (HS School)*, an appropriate placement that is less restrictive than her current *APS* placement?

V. DISCUSSION AND CONCLUSIONS OF LAW

The burden of proof rests with the petitioner, in this case Student's mother, who raised her due process claims on or about April 18, 2006 (HO 5, pages 1-5). See *Schaffer v. Weast, _S.Ct._*, 2005 WL 3028015 (November 14, 2005). In the *Schaffer* case, the United States Supreme Court rejected the parents' argument that an assumption must be made that every IEP is invalid until the school district demonstrates that it is not. The *Schaffer* Court concluded that the IDEA itself did not support such a conclusion. See also, *L.E. v. Ramsey Board of Education, 435 F.3d 384 (3rd Cir., 2006)* in which the Third Circuit Court of Appeals adopted the *Schaffer* rationale in finding that the parents in that case failed to meet the burden of persuasion when challenging a proposed placement by the IEP team.

In the instant matter, Student's parent held the burden of producing evidence and of proving by a preponderance of evidence that her relief sought is appropriate. Based on this Hearing Officer's authority to assess the credibility of witnesses and weigh evidence (See *Carlisle Area School District v. Scott P.*, 62 F.3d 520,524 (3rd Cir. 1995), cert. denied, 517 U.S. 1135 (1996)), Student's mother failed to meet her burdens.

IS STUDENT'S PLACEMENT AT APS, GIVEN ITS PROXIMITY TO HER HOME, NOT APPROPRIATE BASED ON HER NEEDS?

The IDEA defines "*transportation*" as a related service that may be required to help the child with a disability benefit from special education. Related services entail, "*transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.*" 20 U.S.C. 1401(22); 34 C.F.R. 300.24(a). The following are relevant in Student's due process hearing, as based on the factual evidence of record:

- ***In spite of signing agreement to Student's October 4, 2005 NOREP, Student's mother sought a change in placement from Student's long term participation at APS to the HS School.*** With the IEP Team recommendation and her mother's approval, Student began receiving her placement and educational program at the *APS* during the 2002-2003 school year (P1, pages 1-2). Student's 2002-2003 IEP team determined that Student's functional academics, social skills, communication, therapy needs, and inappropriate behaviors could be addressed appropriately through the *APS* and the partial hospitalization program available there (P1, pages 1-2). The October 4, 2005 NOREP for the 2005-2006 school year that

Student's mother approved, provided for a program of *Full-Time Autistic Support* at the *APS* that would offer Student continued opportunities to receive specialized *APS* services (SD 1). Midway through the 2005-2006 school year, however, Student's mother expressed interest in the program at the *HS School*, a private program that only recently organized to provide educational services exclusively to students with autism and/or Aspergers Syndrome. Student's mother contended that the *HS School* would be better able to allow Student to relate to her neighborhood peers, be convenient to Ms.[redacted] , and be best able to help Student reach her IEP goals (HO 5, pages 1-3; NT 50-51, 258-260, 261). However, Student's mother provided no evidence of record that Student would receive increased socialization benefits from her younger, District neighborhood peer(s) attending the *HS School* (NT 200-203, 252-253). Further, Student's mother did not provide convincing evidence that Student's placement at *APS*, given its proximity to her home, is not appropriate based on her needs.

- **Student's mother sought a change in placement from the *APS* to the *HS School*, based on an unconvincing "transportation travel time" differential.** After receiving a request from the District's Dr. H (SD 2), the *Laidlaw Transit* dispatcher, Mr. S, provided credible testimony when calculating an estimation of the transportation travel time to both the *APS* and the *HS School* (SD 2; NT 235). Mr. S estimated that the travel time to the *APS* would be approximately forty-five (45) minutes and the travel time to the *HS School* would be approximately thirty-five (35) minutes (NT 235-238). Mr. S calculated Student's travel time, giving consideration to the number of other District students receiving transportation to each site; transportation pick-up time at Student's home; local road variables, such as number of stop signs, traffic lights or potentially congested areas; and mileage from Student's home to each school location (NT 235-238). Ms. [redacted] did not present convincing evidence of the effects of Student's transportation duration on Student's needs. While the total travel time to *APS* may be more inconvenient to Student's mother than the travel time to the *HS School*, (NT 261), her mother did not demonstrate that a ten-minute differential in transportation travel time between the *APS* and the *HS School* rendered the *APS* inappropriate to Student's transportation needs, pursuant to the requirements at 20 U.S.C. 1401(22); 34 C.F.R. 300.24(a).

Therefore, based on a review of the entire record, Student's placement at the *APS* is appropriate based on Student's needs, even given the location of the *APS* in relation to her home.

IS STUDENTS PLACEMENT AT THE HUMAN SERVICES SCHOOL (HS SCHOOL), AN APPROPRIATE PLACEMENT THAT IS LESS RESTRICTIVE THAN HER CURRENT APS SCHOOL PLACEMENT?

One of the basic principles of the IDEA is known as the "*least restrictive environment*" (LRE) requirement on how a placement decision is to be selected by the IEP team. Underscoring Student's placement decision is the IDEA's implementing regulations requirement that her education must be in the LRE, appropriate to meet her needs. 34 C.F.R. 300-550 (b). Placement decision are governed by 34 C.F.R Section 300.552 that states:

"In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that--

(a) The placement decision--

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

- (2) *Is made in conformity with the LRE provisions of this subpart, including §§300.550 - 330.554.*
- (b) *The child's placement--*
- (1) *Is determined at least annually;*
- (2) *Is based on the child's IEP; and*
- (3) *Is as close as possible to the child's home.*
- (c) *Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;*
- (d) *In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and*
- (e) *A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.”*

The following are relevant in Student’s due process hearing, as based on the factual evidence of record:

- **Student’s mother questioned Students’ educational placement decision, necessitating a procedural and substantive review of her pendent and proposed IEP.** See *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1034 (3d Cir. 1993). Student’s mother did not make a claim with respect to the procedural aspects of Student’s IEP. Student’s mother contended that the District had not complied with the substantive requirements of the IDEA. The IDEA’s substantive component requires that eligible children be provided with a “*free appropriate public education,*” one which “*consists of educational instruction specifically designed to meet the unique needs of the child, supported by such services as are necessary to permit the child ‘to benefit’ from the instruction.*” 20 U.S.C. § 1412(1). An IEP satisfies the state’s duty to provide a FAPE only if it is “*reasonably calculated*” to enable the child to receive educational benefits. Although the IEP must be designed to produce educational benefits, it need not provide the child with a “*potential-maximizing*” education. See, *Hendrick Hudson District Bd. of Ed. v. Rowley*, 458 U.S. 176, 207, 188-89 (1982).
- **During her APS attendance, the APS staff directly and explicitly addressed Student’s inappropriate behaviors** (P1, pages 1-5; NT 120-124). Around May of 2005 and during the Fall term of the 2005-2006 school year, when APS staff became aware of Student’s physically aggressive behaviors (e.g., hitting and kicking), APS staff implemented and documented successful behavioral strategies that assisted Student in de-escalating problem behaviors (SD 3; P3). APS staff relied on data monitoring strategies employed on Student’s behalf to judge her behavioral needs (P1, page 5; P3, pages 13, 16-18; SD 3, pages 1-16; NT 97-102, 106-107). Staff shared input into and results of the behavioral strategies with Student’s mother (P4-P8; NT 244). APS staff held monthly review meetings, attended by Student’s mother, to monitor and analyze Student’s responses to strategies employed in offered therapy sessions and in classroom experiences (P4-P8). Such strategies provided Student with individualized praise, structure, prompting, use of wait time, modeling, directive statements, planned ignoring, redirection, hurdle help, time away, gestures, proximity, active listening, time and space, physical restraint as warranted, social stories, visual reminders, deep breathing, and sensory integration techniques (P1, page 5; P3, pages 13, 16-18; SD 3, pages 1-16). Student’s mother provided no credible evidence that Student’s implemented strategies were ineffective or that Student’s behaviors were caused by aggressive behavior by other students.

- ***Student made educational progress that was more than de minimis.*** *APS* staff offered and employed effective academic, communication, social skills, therapy, and behavioral strategies as implemented per Student's October 4, 2005 pendent IEP (P3) and as designated within Student's June 7, 2006 District re-evaluation report (P1). Aside from Student's behaviors, Student's mother did not present any evidence that Student was failing to meet the academic goals set forth in her October 4, 2005 IEP, or that Student was failing any of her courses (P3). A review of Student's grades as reported on the June 7, 2006 District Re-evaluation report showed that Student performed very well in all of her course work (P1, pages 2-5). Student was performing satisfactory in social areas as to courteous behavior, avoiding negative behavior, conflict resolution, hallway transition, adapting to new and changing situations and getting along well with others (P1, pages 4-5). She also demonstrated progress in following directions and appropriate expressions of emotion (P1, pages 5-7). Student's Parent offered no evidence to contradict the information and conclusions contained in the re-evaluation report and pendent IEP. Importantly, Student made progress and her District/*APS* staff confirmed that progress. That is, Student's mental health therapist, Ms. S; Student's school psychologist, Ms. B; and Student's special education teacher, Ms. M provided credible testimony that Student was progressing through her educational program as provided for on the October 4, 2005 pendent IEP at *APS*, that that the proposed IEP for the upcoming school year is appropriate (P2), and that Student would benefit from a continuation of the *APS* program with which she is so familiar (P1, SD 4; NT 89-90). Student's IEP, provided at the *APS*, offered Student more than a mere trivial or de minimis educational benefit. See also, *Oberti v. Board of Education*, 995 F.2d 1204, 1213 (3d Cir. 1993).
- **While Student's placement should be as close as possible to her home (34 C.F.R. 300.552 (b) (3)), this requirement does not automatically translate into a mandate for Student's placement in a school closer to her neighborhood location** (See *Timothy H. v. Cedar Rapids Cnty. Sch. Dist.*, 178 F. 3d 968 (8th Cir. 1999)). In the *Timothy H.*, case, the Court found that the parent's preference for a school outside of the local area was insufficient to change an IEP where the local school was providing a FAPE. Student received a FAPE at the *APS* location.
- **Despite her mother's contention that the *HS School* may offer an "equally appropriate education program...existing closer to her home," the evidence does not support the argument that the *HS School* is able to offer an "equally appropriate education program."** The regulations underscore that when making Student's program and placement decisions, consideration must be given to any potentially harmful effect on the child, or on the quality of services that she needs. 34 C.F.R. 300.552 (d). Case law provides that the "LRE" mandate of the IDEA requires that school districts ensure that a child's placement "[i]s as close as possible to the child's home." 34 C.F.R. § 300.552(b)(3); see also *Todd d. v. Andrews*, 933 F.2d 1576, 1582 n. 6 (11th Cir. 1991) concluding that "*when an equally appropriate education program ... exist[s] closer to home... that program is considered the least restrictive.*" Student's mother presented no credible evidence to establish that the program at the *HS School* is a lesser restrictive environment than the *APS*. At this point in time, it is only speculative as to whether removing Student from her pendent placement at the *APS* (i.e., in which she is making demonstrated progress) to a newly organized program at the *HS School* might not, in fact, contribute to unknown effects or on the quality of services that she needs. In fact, a number of the *HS School* benefits are, at best, speculative currently (e.g., the actual class size and adult-to-student ratio in Student's potential classroom; the unpredictable behavioral or communication responses of Student's *HS School* peers to Student's behavioral, communication, and social needs; the immediate availability of mental health therapy services if provided by the *HS School* on an "*as needed*" basis; the implementation of a functional academic, developmental, social, and behavioral curriculum that might meet Student's needs (NT 183-230). In essence, Student's mother provided no track record of the *HS School* and how/why it would be able to provide an "*equally appropriate education program*" that is less restrictive and can meet Student's needs.

Therefore, based on a review of the entire record, Student's mother did not produce convincing evidence in support of her contention that the program at the *HS School* is an appropriate placement that is less restrictive than the *APS* placement.

HEARING OFFICER DECISION/ORDER

CHILD'S NAME: Student

(FILE # 6499/05-06 LS)

AND NOW, this 24th day of August 2006, this Hearing Officer orders the School District to take the following action:

- 1) No action by the School District. Ms. [redacted], Student 's mother, failed to meet her burden that her requested relief is appropriate.

Dorothy J. O'Shea, Ph.D.
Hearing Officer

DECISION DATE: _____

MAILING DATE: _____