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PENNSYLVANIA

## Special Education Hearing Officer

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Child's Name: Student

Date of Birth: xx/xx/xx

File Number: 8105-07-08

Dates of Hearing: October 24, 2007; November 14, 1007; December 13, 2007

CLOSED HEARING

Parties to the Hearing:

Mr. and Mrs.

Pennsbury School District  
P.O. Box 338  
134 Yardley Avenue  
Fallsington, PA 19058-0338

Representative:

Claudia Huot, Esq.  
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Date Transcript Received:

January 2, 2008

Date of Decision:<sup>1</sup>

January 4, 2008

Hearing Officer Name:

Gregory J. Smith

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<sup>1</sup> The record was kept open until receipt of the transcript. Upon receipt of the transcript the record was closed. This decision was rendered within 2 days of receipt of the transcript and the closing of the record.

## **Background**

Student is a xx-year-old student whose legal residence is within the area served by the Pennsbury School District (District). Student was first diagnosed with Fragile X syndrome at the age of six and is eligible for special education and related services as a child with a disability under the categories of autism and multiple disabilities. Student was born in [country redacted] and moved to [city, state redacted], with his family in 1999. In [state] Student attended special education programs housed in regular public school buildings within the [city] public school system. By middle school Student's behavior became more severe, including increased levels of self-injurious behavior, aggression, cursing, refusing to eat, and impulsivity. In March 2006, upon the recommendation of Student's treating psychiatrist, the [city] public school system placed Student at [facility], a full-time residential facility located in [town redacted] Pennsylvania.

In the summer of 2006 Student's parents moved to [town redacted], Pennsylvania, in order to be closer to their son. [Town], Pennsylvania is located in the area served by the District. In August 2006 Student was enrolled in the District. Shortly after Student's enrollment, the District completed an initial evaluation and agreed to continue Student's program at [facility] for the 2006 – 2007 school year. In the summer of 2007 the District proposed changing Student's placement to a day program at [redacted] Academy, located in [township], Pennsylvania, with Student living at home. Student's parents rejected that proposal and requested the present special education due process hearing.

The single issue at the present hearing was the question of what is the appropriate placement for Student. Both parties agreed that the IEP that was in place at the time Student's parents requested the present hearing (Exhibit S-22) was appropriate and both parties agreed that the IEP that was developed shortly before the start of the present hearing (Exhibit S-62) was appropriate. What the parties disagreed on was whether or not Student should remain at the full-time residential program or may he be appropriately educated at the [redacted] Program while living at home.

## **Findings of Fact**

1. Student is a xx-year-old (d.o.b. xx/xx/xx) student whose legal residence is within the area served by the Pennsbury School District (District). (N.T. at 16; S-5)
2. Student was first diagnosed with Fragile X syndrome at the age of six. His underlying static encephalopathy, secondary to the Fragile X, has resulted in Student having a pervasive developmental disorder, social phobia, mood disorder, and trichotillomania. Student is socially anxious, has difficulty tolerating frustration, has difficult adjusting to changes in his routine, gets over aroused easily, has poor coping skills, and may respond with aggressive, destructive, or self-injurious behavior (SIB). Student has a cognitive deficit that places him in the mentally retarded range of cognitive functioning. He also has impaired language abilities. (N.T. at 36-37, 52-54; P-1, S-1, S-12, S-13)
3. Student is eligible for special education and related services as a child with a disability under the categories of autism and multiple disabilities. (S-12)
4. Student was born in [country] and moved to [city, state] with his family in 1999. (S-2, S-5)
5. In [state] Student attended special education programs housed in regular public school buildings within the [city] public school system. (N.T. at 37, 81-82; S-2)
6. In 2000 Student was evaluated at the Institute [redacted] in [town, state redacted]. The [Institute] referred Student to Dr. T, a psychiatrist who specializes in the treatment of individuals with mental retardation coupled

other mental health disorders. Dr. T treated Student from April 2000 through January 2006. He also saw Student in August 2007. (N.T. at 40, 85, 184-187; P-1)

7. While in middle school Student's behavior became more severe. His mother was regularly called to the school to address behavioral issues or after Student had soiled himself. (N.T. at 38-40)

8. As Student got older and stronger he began to exhibit increased levels of SIB, aggressive behavior, cursing, refusing to eat, and impulsivity. (N.T. at 41-43; S-2)

9. In February 2005 Student was evaluated again at the [Institute]. Programmatic recommendations from that evaluation included speech, occupational, and oral motor therapy; a communication system, such as PECS; parental training to elicit communicative gestures; dance or music therapy; impulse control programming; use of a picture schedule; provision of a sensory diet; and a behavioral plan to extinguish Student's aggressive outbursts. (S-1)

10. In April 2005 Dr. T recommended that Student be placed in a residential facility. In the fall of 2005 applications were made to placements within [redacted] State, and then to out-of-state placements. On March 1, 2006 the [city] public school system placed Student at [residential facility] located in [town], Pennsylvania. (N.T. at 44-45, 106, 186-187, 321; S-2, S-6, S-12)

11. The program at Facility includes a full-time residential treatment program, with each child's treatment plan outlined in an Individual Service Plan (ISP); plus an academic program provided at an on-grounds school, with each child's educational plan outlined in an Individualized Education Plan (IEP). (N.T. at 318-320, 355, 359-360; S-62, S-65)

12. On March 26, 2006 an ISP was developed. That ISP contained three goals, decreasing tantrums, improving peer interaction, and improving compliance with requests. Each goal included target levels for upcoming reviews. (S-13)

13. After Student was enrolled at Facility, his parents would travel to Pennsylvania to take him home to [state] almost every weekend. (N.T. at 75-76, 325-326)

14. In the summer of 2006 Student's parents moved to [town], Pennsylvania to be closer to Student [Town], Pennsylvania is located in the area served by the District. (N.T. at 191-192; S-5, S-6)

15. On August 21, 2006 Student was enrolled by his parents in the District. The District was informed that Student was attending Facility on a full-time, residential basis. (N.T. at 100, 130-133; S-5, S-6)

16. The District completed an initial evaluation and issued an evaluation report (ER) on September 25, 2006. The recommendation in the ER included instruction in a full-time Approved Private School (APS) facility. On September 26, 2006 an IEP was developed that was designed to continue Student's program at Facility. On October 18, 2006 a Notice of Recommended Educational Placement (NOREP) was issued. The NOREP called for Student to continue in his program at Facility. That NOREP was agreed to by Student's parents. (N.T. at 100-105, 112, 134; S-10, S-12, S-13, S-15)

17. On September 26, 2006 a new ISP was developed. That ISP maintained the three goals identified in the March 26, 2006 ISP and noted improvement in all three goals. Student's baseline for tantrums, which included aggression, hitting, crying, SIB, and/or cursing, was an average of 17 incidents per month. Target goals for the reduction of tantrum behavior to less than 10 per month in 6 months and less than 5 per month in 12 months were set. Student's baseline for appropriate peer interaction was at 36% of the time. Target goals for improving peer interaction to 50% of the time in 3 months and 70% of the time in 6 months were set. Student's baseline

for appropriate compliance with requests was at 30% of the time. Target goals for improving compliance with requests to 50% of the time in 3 months and 70% of the time in 6 months were set. The conclusion of the ISP team was that Student was not ready for discharge from the Facility program at that time. (S-13)

18. The District funded Student's placement at Facility for the 2006 – 2007 school year. (S-6)

19. In November 2006 the District asked a school social worker, contracted through the Bucks County Intermediate Unit (B.C.I.U.), to work with Student's parents to help them become aware of available services, service providers, and community resources that may be helpful to Student's parents as they plan for Student's eventual transition from school based programs to adult life. The social worker provided information about Medical Assistance, programs through [redacted] Mental Health/Mental Retardation (B.C. MH/MR), and wraparound services provided by Medical Health Center. The social worker obtained records on behalf of the family and submitted applications and records on behalf of the family to the various agencies. (N.T. at 238-242, 245-249, 251-252; S-23, S-26, S-47, S-63, S-64)

20. During the 2006 – 2007 school year Facility regularly updated Student's ISP and IEP. (S-19, S-21, S-22, S-24, S-29, S-30, S-31, S-34, S-35, S-43, S-44, S-48)

21. On April 30, 2007 a new ISP was developed. That ISP maintained the three goals originally identified in the March 26, 2006 ISP and noted improvement in all three goals. Student's number of tantrums had decreased to an average of 10.33 per month. The ISP also began to chart Student's physical aggression, noting an average of 6 episodes per month over the prior 2 months. A baseline for tantrums was set as an average of 9.5 incidents per month. Target goals for the reduction of tantrum behavior to less than 7 per month in 6 months and less than 5 per month in 12 months were set. Student's baseline for appropriate peer interaction was at 38.5% of the time. Target goals for improving peer interaction to 60% of the time in 3 months and 80% of the time in 6 months were set. Student's baseline for appropriate compliance with requests was at 53% of the time. Target goals for improving compliance with requests to 70% of the time in 3 months and 90% of the time in 6 months were set. The conclusion of the ISP team was that Student was not ready for discharge from the Facility program at that time. (N.T. at 326-327; S-35)

22. While attending ISP and IEP meetings during the spring of 2007, District staff were informed by Facility staff that Student may be ready to transition to a non-residential program. (N.T. at 330)

23. In the spring of 2007 the District made referrals to a number in-state day programs, and one out-of-state day program. One of those referrals was to the Academy Program, located in [township], Pennsylvania. The Academy Program is an APS designed to meet the needs of students with both mental retardation and mental health issues, including behavioral issues. Students served by the Academy Program typically have a diagnosis of mental retardation and one other disorder such as autism, Down Syndrome, neurological impairment, or other developmental disability. The school day at the Academy Program runs from 9:00 a.m. to 2:45 p.m. with students arriving as early as 8:45 am. and departing as late as 3:15 p.m. There is no afterschool program available at the Academy Program. (N.T. at 119, 145-146, 152, 164-165, 210-211, 227-228, 275 291-292; S-36, S-37)

24. After a review of Student's academic records and an interview with Student's parents, on April 25, 2007 the Academy Program sent a letter of provisional acceptance to Student's parents. One of the conditions of his acceptance was that the District must agree to provide a one-to-one assistant to address Student's behavioral needs during the school day. The District agreed to that condition. (N.T. at 80, 150-151, 146, 165, 280-281; S-38, S-40, S-41)

25. The District proposed transporting Student to the Academy Program on a daily basis in a van contracted through the B.C.I.U. The Academy Program is located approximately 25 miles from Student's home. Travel time between Student's home and the Academy Program is between 30 and 45 minutes. (N.T. at 52, 214, 297)
26. Student would be provided with a one-to-one assistant to address behavioral concerns during travel between his home and the Academy Program. (N.T. at 215)
27. Student remained at Facility for the summer of 2007 at District expense and received extended school year programming there. (N.T. at 148, 207; S-33, S-39)
28. Following the District's decision to transition Student to a day program, the school social worker who had previously been working with Student's parents, continued to work with them to attempt to secure services through B.C. MH/MR. In particular, the social worker was attempting to obtain wraparound services consisting of the direct services of a therapeutic support person and the support services of a case manager and a behavior therapist. At the time of the social worker's last contact with Student's parents, provision of those services had not been approved. (N.T. at 241-242, 246, 251-254; S-47, S-63, S-64)
29. On June 22, 2007 Student was offered admission to the Academy Program. On June 27, 2007 the District issued a NOREP calling for Student to be placed in the autistic support program at the Academy Program. In July 2007 Student's parents indicated that they did not approve that recommendation. (S-39, S-49, S-54)
30. On July 12, 2007 the District issued another NOREP calling for Student to be placed in the autistic support program at the Academy Program. In August 2007 Student's parents rejected that NOREP and requested a pre-hearing conference. (S-54, S-55)
31. On August 17, 2007 the District issued another NOREP calling for Student to be placed in the autistic support program at the Academy Program. On August 17, 2007 Student's parents rejected that NOREP and requested the present hearing. (S-58)
32. On September 28, 2007 an IEP team meeting was held at Facility and a new IEP was developed. That IEP included both functional academic and vocational goals, as well as goals addressing behavior, peer interaction, compliance, and tying his shoes. (N.T. at 355, 364-365; S-62)
33. The parties have agreed that the September 28, 2007 IEP (Exhibit S-62) is appropriate for Student (N.T. at 177-178)
34. While at Facility Student's academic program has been provided in an autistic, multi-disabilities classroom with a total of 5 students, ages 15 through 19. Student's academic program has focused on the same behaviors as his ISP, functional academics, and vocational skills. He has received individual speech therapy, physical therapy, and occupational therapy, although those services have recently been discontinued. He has also participated in music, art, and physical education classes. (N.T. at 355-356, 362-365; S-62)
35. While at Facility Student has made progress on both his functional academic goals and his vocational goals. Student has also made steady progress on his behavioral goals. (N.T. at 48-51, 359-365)
36. On September 28, 2007 a new ISP was developed. That ISP maintained the three goals originally identified in the March 26, 2006 ISP, noting improvement in two of those goals, and added a fourth goal, that of Student tying his shoes. Student's number of tantrums had increased slightly from the prior six month period average of 10.33 to an average of 12.5 per month. His number of acts of physical aggression had also increased from an average of 6 per month to an average of 10.5 per month. A baseline for tantrums was set as an average

of 9.5 incidents per month. Target goals for the reduction of tantrum behavior to less than 7 per month in 6 months and less than 5 per month in 12 months were set. Student's baseline for appropriate peer interaction was at 78.8% of the time. Target goals for improving peer interaction to 85% of the time in 3 months and 95% of the time in 6 months were set. Student's baseline for appropriate compliance with requests was at 90.8% of the time. Target goals for improving compliance with requests to 95% of the time in 3 months and 100% of the time in 6 months were set. Target levels for the new goal of tying his shoes were set for 30% of the time in 3 months and 60% of the time in 6 months. The conclusion of the ISP team was that Student was not ready for discharge from the Facility program at that time. (N.T. at 336-337; S-35)

37. According to the program director at the Academy Program, all components of the September 28, 2007 IEP (Exhibit S-62), including the goals and objectives and the transition services, can be implemented at the Academy Program. (N.T. at 294-295)

38. Student's parents continue to take him home every Friday and return him to Facility either on Sunday evening or early in the week, typically on Monday or Tuesday. On occasion Student has been home for longer weekends and week-long visits. (N.T. at 46-47, 58, 76, 222-224)

39. Student's mother is able to manage Student's behavior when he is home for visits. (N.T. at 58-60, 76-77, 222-224)

40. The single issue at the present hearing was the question of what is the appropriate placement for Student. Both parties agreed that the IEP that was in place at the time Student's parents requested the present hearing (Exhibit S-22) was appropriate and both parties agreed that the IEP that was developed shortly before the start of the present hearing (Exhibit S-62) was appropriate. What the parties disagreed on was whether or not Student should remain at the Facility full-time residential program or may he be appropriately educated at the Academy Program while living at home. (N.T. at 72-74, 177-178; S-22, S-62)

### **Issue**

What is the appropriate placement for Student?

### **Discussion**

The present hearing was requested to address the sole issue of whether the placement proposed by the Pennsbury School District (District) is appropriate. [Fact 40] Since March 1, 2006 Student has attended a full-time residential program at Facility in [town], Pennsylvania. [Fact 10] Since the fall of 2006 Student's enrollment at Facility has been paid for by the District. [Facts 16, 18] In July 2007 and August 2007 the District proposed changing Student's placement to an autistic support day program located at the Academy Program in [township], Pennsylvania. [Facts 29, 30, 31] On August 17, 2007 Student's parents rejected the proposed change in placement and requested the present due process hearing. [Fact 31]

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) 20 U.S.C. §1400 *et seq.*, is the Federal Statute designed to ensure that "all children with disabilities have available to them a free appropriate public education," (FAPE) §1400(d)(1)(A). The implementing Regulations for the IDEA can be found at 34 CFR §300 *et seq.* Under the IDEA, school districts must create an individualized education program (IEP) for each child with a disability. 20 U.S.C. §1414(d). An appropriate program is one that is provided at no cost to the parents, is provided under the authority of the local education agency, is individualized to meet the educational needs of the child, is reasonably calculated to yield meaningful educational benefit, and conforms to applicable Federal requirements. *Rowley v. Hendrick Hudson Board of Education*, 458 U.S. 176 (1982) The

Third Circuit Court has interpreted *Rowley* as requiring school districts to offer children with disabilities individualized education programs that provide more than a trivial or *de minimus* educational benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). Specifically, the Third Circuit defined a satisfactory IEP as one that provides “significant learning” and confers “meaningful benefit.” *Id* at 182-184. see also *East Windsor Regional Sch. Dist. v. Diamond*, 808 F.2d 987 (3rd Cir. 1986); *J.C. v. Central Regional Sch. Dist.*, 81 F.3d 389 (3rd Cir. 1996), *cert. denied*, 519 U.S. 866

In the present matter, Student’s parents have challenged the appropriateness of the proposed change in placement and have sought an order requiring the District to maintain Student’s current placement at Facility. [Facts 31, 40] The Supreme Court has held that the “burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief... the rule applies with equal effect to school districts: If they seek to challenge the IEP, they will in turn bear the burden of persuasion.” *Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005) In so doing the Court found no reason to depart from “the ordinary default rule that plaintiffs bear the risk of failing to prove their claims.” *Id* at 534 That same principle must apply with equal effect to a challenge, as in the current matter, focused on the placement of services rather than on the program itself.

The *Schaffer* decision by the Supreme Court effectively settled a split, present in the Circuit Courts, in assigning the burden of proof. As noted in *M.S. v. Ramsey Bd. of Educ*, 435 F.3d 384 (3rd Cir. 2006) the Third Circuit Court had previously placed the burden of proof on the school district. However, in *M.S. v. Ramsey* the Third Circuit Court found *Schaffer* controlling and extended the reach of *Schaffer* writing “It would be unreasonable for us to limit that holding to a single aspect of an IEP, where the question framed by the Court, and the answer it provided, do not so constrict the reach of its decision.” at 5

Shortly after the Third Circuit issued its decision in *M.S. v. Ramsey*, the Eastern District Court of Pennsylvania issued a decision in *Greenwood v. Wissahickon*, 2006 U.S. Dist. LEXIS 4274 (E.D. Pa. 2006) concluding that “the burden of persuasion at the administrative level in Pennsylvania is now on the party contesting the IEP.” at 7

It should be noted that in their analyses the above referenced courts have limited themselves to the burden of persuasion and have not considered the burden of production. As noted by the Supreme Court, the burden of persuasion addresses “which party loses if the evidence is closely balanced.” *Schaffer* at 533-534

Because it is Student’s parents who have challenged the appropriateness of the proposed change in placement and have sought to have Student remain in his current residential placement, it is Student’s parents who carry the burden of persuasion in this matter.

It must be noted that there was no dispute over Student’s academic program. Both parties agreed that the IEP that was in place at the time Student’s parents requested the present hearing (Exhibit S-22) was appropriate and both parties agreed that the IEP that was developed shortly before the start of the present hearing (Exhibit S-62) was appropriate. [Facts 33, 40] What the parties disagreed on was whether or not Student should remain at the Facility full-time residential program or may he be appropriately educated at the Academy Program while living at home. [Fact 40]

The question of a residential placement at public expense is addressed in 34 CFR §300.104, which states:

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

More than two decades ago, the Third Circuit Court addressed the issue of residential placement at public expense in *Kruelle v. New Castle County School District*, 642 F.2d 687 (3rd Cir. 1981), concluding that when

social, emotional, and educational problems are so intertwined as to make them un-severable, the services needed to address those problems are essential prerequisites to learning and must be provided by the school district. see also *North v. Dist. of Columbia*, 471 F. Supp. 136 (D.D.C. 1979); *J.B. v. Killingly Borad of Education*, 990 F. Supp. 57 (D. Ct. 1997); *Abrahamson v. Hershman*, 701 F.2d 223 (1st Cir. 1983); *Ciresoli v. M.A.S.D. No. 22*, 901 F.Supp. 378 (D. Me. 1995); *In Re the Educational Assignment of J.K.*, Spec. Educ. Op. 1150 (2001)

As noted in *Kruelle*, the determination that must be made is:

whether full-time placement may be considered necessary for educational purposes, or whether the residential placement is a response to medical, social or emotional problems that are segregable from the leaning process. at 693

In the present matter, it is the conclusion of this hearing officer that the components of the residential program and placement cannot be segregated from Student's learning process and that without the structure and consistency provided by the residential component of his program, Student will not receive the meaningful educational benefit required under *Rowley*, 458 U.S. 176 (1982), and its' progeny. This conclusion was reached after a careful review of the entire record and a specific consideration of three factors: staff from Student's current program recently concluded that Student was not ready to return home; all of the goals currently being addressed in the residential component of Student's program are also currently being addressed in the educational component of Student's program; and the structure, consistency, and support needed in Student's residential environment that allow him to make meaningful educational progress are not currently available in his home setting.

In Student's current program he has made progress in most aspects of both the residential and the educational sides of his program. [Facts 17, 21, 35, 36] But those programs cannot be segregated from each other and the progress that has been made is not sufficient to enable Student to return home and to attend school at a day program. Most notably, the progress initially seen in his tantrum behavior has begun to reverse [Fact 36] and there has been a noted increase in aggressive behaviors. [Fact 36] Although his behaviors have shown improvement in the educational setting, [Fact 35] that does not equate to Student being ready to or able to return home on a full-time basis at the present time. Student's ISP teams have repeatedly concluded that he is not ready to be discharged from the Facility program. [Facts 17, 21] They reached the same conclusion as recently as September 28, 2007. [Fact 36]

The specific goals of Student's residential and academic programs cannot be segregated. The goals that are currently being worked on in Student's residential program, including the reduction of tantrums, improving appropriate peer interaction, improving compliance, and tying his shoes, [Fact 36] are all clearly educational goals, as is evidenced by the fact that they are all also addressed in his educational program. [Fact 32] These goals clearly fall under the broad definition of special education and related services found at 34 CFR §300.34 and 34 CFR §300.39. It is the conclusion of this hearing officer that the consistency that is provided through addressing the same goals through the ISP in the residential program and the IEP in the educational program is necessary for Student to make educational progress, thus making the two programs un-severable under a *Kruelle* analysis.

In November 2006 a District school social worker began to work with Student's parents to help them become aware of available services, service providers, and community resources that may be helpful to Student's parents as they plan for Student's eventual transition form school based programs to adult life. [Fact 19] That efforts by the District and its' social worker and the efforts that ensued after the District made the decision to transition Student to a day program can only be described as extraordinary and the District should be commended for those efforts. The social worker provided information about Medical Assistance, programs available through B.C. MH/MR, and wraparound services provided by [mental



health center]. [Fact 19] The social worker obtained records on behalf of the family and submitted applications and records on behalf of the family to the various agencies. [Fact 19]

Following the District's decision to transition Student to a day program, the school social worker, who had previously been working with Student's parents, continued to work with them to attempt to secure services through B.C. MH/MR. [Fact 28] In particular, the social worker was attempting to obtain wraparound services consisting of the direct services of a therapeutic support person and the support services of a case manager and a behavior therapist. [Fact 28] Those are the exact types of services that both the program specialist at Facility and the special education teacher at Facility testified were necessary if Student was to move from a full-time residential program to a day program with him living at home. see N.T. at 330-331, 336-338, 367-368 Unfortunately, at the time of the social worker's last contact with Student's parents, the provision of those services had not been approved. [Fact 28] As the District correctly pointed out, the staff at Facility did tell the District that Student was ready to transition to a home environment, [Fact 22] and staff at Facility did testify at the hearing that Student was ready to transition to a home environment, (see N.T. at 336-338) but those statements and that testimony came with the important qualifier that the home environment include the wraparound services that, to date, have not been made available to Student in his home. Those statements were also contradicted by the more recently documented decision by Facility, noted above, that Student was not ready for discharge. [Fact 36]

The District also cited the facts that Student has been able to visit home for weekends, and occasionally longer, and that his mother has been able to control him during those visits as evidence that he was ready to return to his home on a full-time basis. Those facts were not disputed by the parents. [Facts 13, 38, 39] However, Student's ability to visit home for short periods is not the same as his ability to live at home and still be able to make educational progress. When asked whether Student required a residential placement in order to make educational progress, the special education teacher from Facility responded:

I think he needs a strong structured home environment, whether it's going to be coming from the parents or from a residential institution. The important thing is that it's consistent and structured.  
N.T. at 368

Without the wraparound services available in the home to help develop and provide the required structure, it is the conclusion of this hearing officer that Student will not be able to make meaningful educational progress.

Because Student will not be able to make meaningful education progress without the structure and support of wraparound services in the home, because the goals of Student's current residential program and educational programs address several of the same educational goals, and because as recently as September 28, 2007 Facility had concluded that Student should not be discharged from his residential placement, it is the conclusion of this hearing officer that the residential component of Student's current program cannot be segregated from the educational component under a *Kruelle* analysis. Therefore, it is the conclusion of this hearing officer that the appropriate placement for Student continues to be a full-time residential placement.

\* \* \*

Before closing this discussion this hearing officer must address two arguments made at the present hearing, one made by each party, that were not persuasive nor substantially supported by the evidence at the present hearing.

The District argued that the issue of placement must, at least in part, be considered in light of the often cited mandate that education be provided in the least restrictive environment. While that is certainly true, the least

restrictive environment for a severely disabled child may well be a full-time residential placement. *M.C. ex rel. J.C. v. Central Regional Sch. Dist.*, 81 F.3d 389 (3rd Cir. 1996); *East Windsor Regional Sch. Dist. v. Diamond*, 808 F.2d 987 (3rd Cir. 1986) In the present matter, the evidence on the record supports the conclusion that a full-time residential placement is currently the least restrictive environment for Student

At the present hearing Student's parents argued that the time it would take for Student to travel to the Academy Program should invalidate the District's proposal. What the District proposed was transporting Student to the Academy Program on a daily basis in a van contracted through the B.C.I.U. [Fact 25] Student would be provided with a one-to-one assistant to address behavioral concerns during travel to and from school. [Fact 26] Although Student's mother testified that the travel time was about 45 minutes and others testified that the travel time ranged from 30 to 45 minutes, [Fact 25] there was no evidence presented regarding what the impact of any length of travel time would be on Student. In fact, after Student was first placed at Facility his parents regularly traveled from [city] to pick him up and bring him home for weekends. [Fact 13] After they moved closer to Facility they continued to pick Student up for regular visits home. [Fact 38] Student's mother presented no evidence regarding those trips, Student's ability to tolerate those trips, or any other evidence relative to Student's ability to tolerate travel for either short or extended periods of time. Because Student's mother failed to present evidence establishing that Student could not handle a daily commute to school or that the commuting over any length of time would interfere with his ability to benefit from his educational program, this argument was not a contributor to this hearing officer's decision that Student continued to require a full-time residential placement. In fact, the record supports the fact that the most recently agreed to IEP could be provided at the Academy Program [Fact 37] and, if not for the conclusion that Student continues to require a full-time residential placement, the Academy Program may well be appropriate for Student

Although this decision was not in favor of the District, the District's efforts to coordinate and/or access services for the family, [Facts 19, 28] discussed above, and its' careful consideration of and willingness to provide the supports needed in its' proposed placement at the Academy Program, [Facts 24, 26] are commendable. The District is advised that if, at some future point in time, a transition out of a full-time residential placement appears to be appropriate for Student, greater use of inter-agency coordination may be warranted.

Accordingly we make the following:

## **ORDER**

The appropriate placement for Student is a full-time residential placement.

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Signature of Hearing Officer