

STATE OF OHIO
DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION

AUG 20 2008

In the Matter of: : CASE NO. SLR-1995-2007

Impartial Due Process Hearing :
Between [PARENTS], on Behalf of :
[STUDENT], : ROBERT L. MUES, ESQ.
 : STATE LEVEL REVIEW OFFICER

 Petitioners, :
and :
PARMA CITY SCHOOL DISTRICT : **DECISION OF STATE LEVEL**
 Respondent. : **REVIEW OFFICER**

I. PROCEDURAL HISTORY

This matter came on for due process hearing on October 8, 9, 17, 18, 19, 29 and 30 and November 5, 6, 20 and 28, 2007. On August 14, 2007, Petitioners submitted to Parma City School District a request for a due process hearing. Petitioners' request set forth six issues along with numerous factual assertions clarifying each issue. The issues are as follows:

1. The School denied the Parents their procedural safeguard/parental rights under the IDEIA and thereby denied a FAPE to the Student.
2. The School denied a FAPE to the Student because the IEP did not include the services that were found necessary in the IEE.
3. The School failed to provide a FAPE to the Student by denying ESY services for the 2007 summer.

4. The School denied a FAPE to the Student by developing an IEP for the Student for the 2007-2008 school year without permitting meaningful input from the Parents.
5. The School denied the Student a FAPE by denying the Parents' request to conduct an IEP meeting prior to August 28, 2007.
6. The School denied a FAPE to the Student because the IEP for the 2007-2008 school year did not address all his needs and did not place him in the LRE.

Impartial Hearing Officer Ronald E. Alexander was appointed to hear the matter. Numerous pre-hearing Motions were submitted and ruled upon and the hearing was held over 11 days, commencing on October 8 and ending on November 28, 2007. Post-hearing briefs were submitted by December 17, 2007 and a decision and order was issued on March 7, 2008.

The IHO issued a 210 page decision, including 151 pages of findings of facts and 43 pages of conclusions of law. Based upon these findings of facts and conclusions of law, the IHO issued the following decision.

DECISION

The Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by a denial of the Parent's procedural safeguard/parental rights.

The Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by failing to include in the IEP the services that were found necessary in the IEP.

The Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by denying ESY services to the Student for the 2007 summer.

The Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by developing an IEP for the Student for the 2007 - 2008 school year without permitting meaningful input from the Parents.

The Parents did not prove by a preponderance of the evidence that the School denied FAPE to the Student by denying the Parents' request to conduct an IEP meeting prior to August 28, 2007.

The Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student because the IEP did not place the Student in the LRE. The Parents did not prove by a preponderance of the evidence that the School failed to address all the Student's needs, with the following exception.

The Parents did prove by a preponderance of the evidence that the IEP did not provide transition services for the Student's transition needs and thereby denied FAPE to the Student for the 2007-2008 school year.

The Parents enrolled the Student in the Monarch School in compliance with the requirements of the above-cited § 1412 the IDEIA and may thus receive reimbursement for the cost of that private school enrollment. The Parent's testimony established that the cost to enroll the Student at Monarch for this current school year was \$68,500. The Parents' prayer for tuition for the Monarch for the 2007-2008 school year is hereby granted in the amount of \$68,500.

It is hereby **ordered** that the School shall reimburse the Parents in the amount of \$68,500.

The Parents' prayer for tuition costs and/or and related expenses and transportation costs for the Student's education at Monarch for the 2007 summer session is hereby **denied**.

transport the Student to Monarch for the 2007 - 2008 school year. Those prayers are also hereby denied. (sic)

The Parent's request for attorneys' fees and compensatory education are hereby **denied**.

A Notice of Appeal was submitted by School District on April 18, 2008. School District raised the following Assignments of Error:

1. The IHO erred when he concluded the District failed to offer a FAPE because the June 5, 2007 IEP did not include transition services or a "transition plan".
2. The IHO erred when he concluded the District failed to offer a FAPE because it did not have a qualified aide in place to implement transition services on the first day of school.

3. The IHO erred when he concluded the Parents were entitled to the tuition associated with Student's private school enrollment.
4. The IHO erred when he concluded the District committed procedural errors under IDEIA.

A Notice of Cross-Appeal was submitted by Parents on April 21, 2008. Parents raised the following Assignments of Error:

1. The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by a denial of the Parent's procedural safeguard/parental rights.
2. The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by failing to include in the IEP the services that were found necessary in the IEP.
3. The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by denying ESY services to the Student for the 2007 summer.
4. The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by developing an IEP for the Student for the 2007-2008 school year without permitting meaningful input from the Parents.
5. The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied FAPE to the Student by denying the Parents' request to conduct an IEP meeting prior to August 28, 2007.

- 6A. The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student because the IEP did not place the Student in the LRE.
- 6B. The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School failed to address all the Student's needs.
7. The IHO erred when making his final determination denying the Parents' prayer for tuition costs and/or and related expenses and transportation costs for the Student's education at Monarch for the 2007 summer session.
8. The IHO erred when making his final determination denying the Parents provided evidence to establish transportation costs to transport the Student to Monarch for the 2007-2008 school year.
9. The IHO erred when making his final determination denying Parent's request for attorneys' fees.
10. The IHO erred in his review of the evidence and testimony in light of the applicable laws. The IHO erred with his final determination that the Parma witnesses had expert knowledge, specialized knowledge of the child, and knowledge of the Student's disability.

This State Level Officer was appointed on April 23, 2008, to review the record and decision of the Impartial Hearing Officer. A telephone Scheduling Conference was held on April 30, 2008, with counsel for both parties. Counsel for both parties moved to file briefs on or before June 9, 2008 and written responses on or before June 30, 2008. Upon motion of both parties, the decision deadline was set for July 31, 2008. Upon motions of both parties, these

deadlines were extended twice, and it was ultimately agreed that briefs would be submitted by June 23, 2008, reply briefs would be submitted by July 21, 2008 and a decision would be issued by August 21, 2008.

Subsequently, Petitioners submitted a Motion to Present Additional Evidence/Request for Oral Argument and Respondent submitted a Motion to Strike Additional Evidence. Respondent's Motion was granted and Petitioners' Motion was denied. Both parties submitted appeal briefs and reply briefs on a timely basis.

II. DECISION

This SLRO will first address School District's Assignments of Error and then address Parents' Assignments of Error.

School District's Assignment of Error #1

1. The IHO erred when he concluded the District failed to offer a FAPE because the June 5, 2007 IEP did not include transition services or a "transition plan".

School District first argues that, under IDEIA, it is not obligated to provide transition services as they are not required components of an IEP. Second, School District contends that it was prepared to offer transition services for the beginning of the 2007-2008 school year, that transition services were discussed and that School District should not be penalized for Parents' alleged failure to cooperate in developing a transition plan.

This SLRO agrees with Parents' counsel that even if IDEIA does not require transition services for all IEPs, that does not mean that transition services are never required in order to provide a Student with FAPE. Parents' child is autistic with specific and unique needs. Numerous witnesses, including Ms. Madison, Ms. Sulik, Ms. Hopkins, Ms. Serendsky and Ms. Tiersky as well as Drs. Levinsohn, Shane and McNamara concurred that Student would need transition services to properly move to a new setting without negative repercussions. This SLRO

believes that Student clearly needed transition services from Monarch to a public school to receive a FAPE.

This SLRO also agrees that School District has failed to offer evidence that they were prepared to offer transition services or that the August 7, 2007 meeting was prepared to put together a transition plan. Based upon the participants at the meeting, or, more specifically the lack of participants at the meeting, it is highly questionable whether the intent was to discuss a transition plan and clearly the appropriate individuals necessary to develop a plan were not present.

School District's Assignment of Error #1 is rejected.

School District's Assignment of Error #2

2. The IHO erred when he concluded the District failed to offer a FAPE because it did not have a qualified aide in place to implement transition services on the first day of school.

Ms. Nolan testified that the aide's responsibility would be to assist the Student "in his academics, during lunch, during his school day." Transcript at p. 442-443. This SLRO does not have a problem with School District's plan to assign a temporary aide to assist Student until a permanent one is found to be necessary or could be hired. However, the temporary aide must be qualified. School District's counsel characterizes Ms. Kress as "ideally suited to serve as [STUDENT'S] temporary one-on-one assistant." School District appellate brief p. 48. However, nothing could be further from the truth. Ms. Kress honestly testified that she had not seen Student's IEP, did not know the characteristics of autism, had received no training or guidance in assisting Student, wasn't told anything on how she was going to provide social skills reinforcement and practice and was not prepared to be his aide. Transcript at pp.1667 – 1669. Clearly, the plan to provide Student with an aide totally unprepared to carry out her duties under

Student's IEP deprived Student of FAPE. School District's Second Assignment of Error is rejected.

School District Assignment of Error #3

3. The IHO erred when he concluded the Parents were entitled to reimbursement for tuition associated with Student's private school enrollment.

School District argues that, aside from the issue of whether it offered a FAPE, under 20 USC § 1412 (a)(10)(C)(iii)(III), reimbursement should be denied due to the unreasonable actions of the Parents. Specifically, School District argues that Parents failed to cooperate in allowing School District to observe Student at Monarch School, failed to provide requested information on a timely basis and obstructed IEP meetings.

The record reflects contention between the parties for some time. IEP meetings produced less than ideal results due to dissension between Parents and School District and, probably, some lack of trust by Parents in School District. Parents could have and should have been more cooperative with School District in trying to develop an appropriate IEP. However, ultimately this SLRO does not believe that Parents' actions were the direct result of School District failing to develop a transition plan and having an unprepared aide in line to offer one-on-one services. After Parent left the June 5 IEP meeting, School District continued to meet to develop a plan. School District failed, with or without Parents' input, to develop or implement the necessary plan to provide transition services and ultimately a FAPE.

School District's Third Assignment of Error is rejected.

School District Assignment of Error #4

4. The IHO erred when he concluded the District committed procedural errors under IDEIA.

A. School District argues that it was not obligated to offer or consider ESY services for Student in the Summer of 2007 because he was a student at Monarch School for the school year 2006-2007. Based upon 34 CFR § 300.137(a), OAC § 3301-51-07(G)(3)(b) and a written opinion letter from the Ohio Department of Education, School District asserts that a child with a disability who is unilaterally placed by parents in a private school does not have an entitlement to ESY. This SLRO agrees with this reasoning and finds that no procedural error was committed.

B. School District argues that it did not fail to give Parents proper notice of their procedural rights. Parents claim they did not receive a copy of “Whose Idea is This?” prior to the May 31, 2007 meeting. They received a copy at the meeting without the April 2007 amendments. They were aware that the pamphlet had been updated. They received a current copy on June 5, 2007. IDEIA, per 34 CFR 300.504(a), requires that School District provide a copy of the procedural safeguards to Parents at least once a year and/or on request. This was done. No procedural error was committed.

C. School District argues that no procedural error was committed when the addition of the Parents’ vision statement on the IEP was delayed. School District argues that a vision statement is not a required component of an IEP under IDEIA. However, Ohio’s operating standards, in describing the sequential process for developing an IEP states the following initial step:

“(G) IEP Sequential Process:

(1) The IEP meeting participants shall develop the IEP by implementing six sequential steps:

(a) Discussing the child’s future. The IEP team shall ensure that family and Student preferences and interests are an essential part of

the planning process. The IEP team will document planning information in the IEP. (OAC § 3301-51-07(G)(1)(a)).”

This SLRO believes the record reflects that this was not done in the proper sequence. Therefore, a procedural error was committed. However, this SLRO also agrees with the IHO that no substantial harm resulted from this and no denial of a FAPE resulted from the procedural error.

Next, this SLRO will address the Parents’ Assignments of Error.

Parents’ Assignment of Error #1

The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by a denial of the Parents’ procedural safeguard/parental rights.

Parents did not specifically address this Assignment in their brief other than in their discussion of procedural errors. However, the SLRO reviewed the record independently as well as the IHO’s decision. The IHO addressed in detail the following issues related to Parents’ procedural safeguard/parental rights.

1. Providing a copy of “Whose Idea is This?”
2. Prior notice of the IEP meetings.
3. Dr. Burgess’ attendance at the IEP meetings.
4. Parents’ opportunity to provide input at IEP meetings.
5. A regular education teacher as a member of the IEP team.
6. Sequential steps for developing the IEP.
7. Developing the IEP within thirty days after receipt of the IEE.

The SLRO has already addressed the issue of sequential steps and found that a procedural error was committed. However, the SLRO agreed that the error did not result in substantial

harm. With respect to the other procedural issues stated above, these issues are discussed in greater detail in the following Assignments of Error. Ultimately, the SLRO agrees with the IHO's reasoning and finds that the record supports the conclusions of the IHO that no procedural error was committed.

Parents' Assignment of Error #2

The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by failing to include in the IEP the services that were found necessary in the IEE.

In Parents' "Statement of Facts and Issue" in their request for a due process hearing, they clarified this issue as follows:

- a. The School agreed with Dr. Barry's evaluation finding on May 31, 2007.
- b. The School failed to develop and implement an IEP within thirty days after receipt of Dr. Barry's evaluation.

As the IHO indicated, Dr. Barry completed the IEE on May 4, 2007. It was received by School District on May 21, 2007 and an IEP was completed on June 5, 2007, within the 30 days contemplated in Ohio's Operating Standards.

Counsel for Parents spent significant time in his brief addressing an alleged predetermination of placement by School District as well as a failure to develop meaningful and measurable goals in the IEP. This SLRO is not sure what assignments of error these arguments fall under in that they, as well as Parents' brief, do not directly correlate to or follow their assignments of error. This SLRO believes that these arguments may be in support of Parents' Assignment #2, but it is not clear from the brief.

Parents argue that School District agreed with Dr. Barry's report because "the IEP team did not have any questions or disagreement with Dr. Barry's report." Parents' brief p.5. The

ultimate determination of whether School District agreed with Dr. Barry's recommendation is whether they are included in the IEP and the more important question is whether the IEP provided FAPE. Dr. Barry made recommendations including scientifically-based methods of instruction for reading and math. The School District utilized non-multisensory reading programs and also had two multisensory reading programs, although not those recommended by Dr. Barry. The IHO correctly indicated that there is no requirement in IDEIA for the use of any particular program or exclusively "research" or "scientifically" based programs. Although School District may not have chosen to follow a particular methodology, Parents have failed to show that any failure to incorporate recommendations by Dr. Barry denied Student a FAPE. Parents' Assignment of Error #2 is rejected.

Parents' Assignment of Error #3

The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by denying ESY services to the Student for the 2007 summer.

Parents fail to provide persuasive legal authority in support of this argument. First, Parents argue that Student needed ESY in order to prevent regression. This does not address the issue of who is responsible for providing the services. Then, in passing, they attempt to tie ESY to transition services which they argue should have been provided in the summer. "If he needed appropriate transition services to start school in Parma on August 29th, then the services would have had to be provided during the summer of 2007. The denial of ESY and denial of transition services thus go hand in hand as a denial of FAPE." Parents' brief p. 58. This SLRO disagrees. First, this SLRO agrees with the IHO that Parents failed to demonstrate through the testimony of Dr. Shane, Dr. Barry, Ms. Hess-Hopkins or Ms. Tiersky that this particular student, without ESY, would experience significant regression which could not be recouped within a reasonable

time. However, this SLRO disagrees with the IHO that, if necessary, School District would be responsible for providing ESY. This SLRO would follow the reasoning offered by the written decision by the Ohio Department of Education and apply it as a practical matter. If a Student is unilaterally placed by Parents in a private school, where the child may return the following school year, it is unreasonable and may be impossible to expect the School District to provide ESY during the summer. The technicality of child not being enrolled in private school during the summer shouldn't shift that responsibility on School District. Absent legal authority otherwise, this SLRO finds that if child is unilaterally placed in private school, then School District is not legally responsible for providing ESY services. Parents' Assignment of Error #3 is rejected.

Parents' Assignment of Error #4

The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by developing an IEP for the 2007-2008 school year without permitting meaningful input from the Parents.

Parents assert the following claims in support of their assignment:

1. The Parents were not involved in the IEP team's decision on June 5, 2007 regarding the Student's placement.
2. The School allowed Dr. Burgess to attend the June 5 IEP meeting without prior notice to the Parents.
3. The information requested by the Parents during and subsequent to the June 5 meeting was not provided to the Parents.
4. The June 5 meeting was not rescheduled as requested by the Parents.
5. The Parents did not have meaningful input into the Student's 2007-2008 IEP.
6. The June 5 IEP meeting continued after the Parent left the meeting.

At the May 31, 2007 IEP meeting, at which Parents objected to Dr. Burgess' presence, they were verbally notified that Dr. Burgess would attend the June 5 IEP meeting. They were also notified in writing although they acknowledge that they did not notice that Dr. Burgess' name had been added to the invitation. They refused to continue the meeting without receiving copies of Dr. Burgess' contract with the school and the school's criminal background check. They asked to reschedule the meeting until after receiving those documents. Ms. Nolan refused. An issue arose regarding an opinion received by School District from the Ohio Department of Education indicating that Student was not entitled to ESY. Parent indicated that she was leaving and she left with the Monarch staff. School District continued the meeting without Parent.

The IHO agreed that with Dr. Burgess' general knowledge and experience regarding children with autism, it was within the school's discretion to add him to its IEP team. This SLRO agrees. Dr. Burgess arguably has knowledge or special experience through her review of Student's records and tests along with her background that would make her an appropriate team member. The IHO also found that Parent unilaterally chose to leave the IEP meeting and that School District could choose to continue the meeting without Parent's presence. Under 34 CFR 300.322(d) and OAC § 3301-51-07(F)(4) this SLRO agrees. Neither Parent nor Monarch School members were compelled to leave the June 5, 2008 meeting and no one was denied input at the meeting. The School District was proper in continuing to develop the IEP at the meeting with the input available to it. Parents' Assignment of Error #4 is rejected.

Parents' Assignment of Error #5

The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School denied a FAPE to the Student by denying the Parents' request to conduct an IEP meeting prior to August 28, 2007.

Parents claim that the August 28, 2007 IEP meeting did not allow the Parents enough time to either share current information regarding the Student's regressions or to prepare for the Student's first day of school at the school

Parents requested an IEP meeting prior to the scheduled August 28 meeting date. Ms. Nolan sent Parent a letter on July 19 indicating that she was attempting to schedule a meeting prior to August 28. She subsequently sent Parent a letter on July 24 attempting to schedule an IEP meeting on July 31 or August 1. She received an e-mail from Parent on July 25 that Parent was not available either of those dates. Ms. Nolan e-mailed Parent on July 31 stating that an IEP meeting could not be scheduled before August 28 because of August summer break conflicts with some of the IEP members. Ms. Nolan agreed to meet with Parent to discuss transportation issues and a meeting was held on August 7. The IHO found that School District did not fail to respond to Parent's request for an IEP meeting prior to August 28, offering dates of July 31 and August 1, which Parent declined. An IEP meeting could not be scheduled after that date because of unavailability of IEP members. Therefore, the IHO found that School District did not violate any requirement of IDEIA. This SLRO agrees. Parents' Assignment #5 is rejected.

Parents' Assignment of Error #6A

The IHO erred when making his final determination that the Parents did not prove by a preponderance of the evidence that the School District denied a FAPE to the Student because the 2007-2008 school year did not address all his needs and did not place him in the LRE.

Specifically, in their "Statement of Facts and Issues", Parents had claimed the following:

1. The Student's 2007-2008 IEP did not include an accurate statement of the Student's present levels of educational performance or baseline data.

2. The IEP did not address how the Student would make progress in the general educational setting.
3. The IEP did not include appropriate goals and objectives.

Parents claim that School District predetermined that methods that were proven successful with Student would not be made available because School District's programs don't offer them. Basically, Parents argue that the methodology offered by School District was predetermined and that a scientifically-based methodology should have been offered because it had been successful. Parents also argue that School District predetermined that no ESY or transition services would be offered. In support of these claims, Parents argue that no determination was made whether Student needed a therapeutic setting, no staff from Green Valley attended the meeting and School District relied upon an opinion of the Ohio Department of Education in failing to offer ESY. This SLRO finds the reasons offered to Parents are not sufficient to justify their conclusion that any predetermination was made. As previously discussed, IDEIA does not require any one methodology, and the failure of School District to offer a scientifically based methodology does not mean that a predetermination was made or that a FAPE was not offered.

Parents also argue that School District did not offer adequate goals and objectives. As the IHO described, Parents' arguments are based largely on Ms. Arons' report. As the IHO stated, Ms. Arons is an "educational consultant." She is not an occupational therapist, speech/language pathologist, nor a school psychologist. She had performed no testing of Student but had reviewed many of the documents available by the IEP team. The IEP disagreed with a number of her recommendations. Dr. Levinsohn, Ms. Wotowiec and Ms. Bohrer strongly

disagreed with some of her recommendations. School District's failure to incorporate all of Ms. Arons' goals and recommendations does not make the IEP deficient.

Student's social skills are addressed in goals #1 and #11. Goals #2 and #3 address reading skills. Math skills are addressed in goal # 5. Language skills are addressed in goals #1, #5 and #6. Both non-multisensory and multisensory reading programs were available for Student. Direct speech/language services would address speech and language needs. Occupational therapy services would address social skills. The IEP also provided for adapted art, music and PE.

With respect to LRE, Parents argue that a self-contained classroom is not the least restrictive environment and that Student should be in an inclusion classroom. Ms. Hess-Hopkins, Student's teacher at Monarch School, testified that Student could not transition into a regular classroom and needed a quiet classroom with a small number of students. Ms. Bohrer concurred with this concern because of the difficulty in providing the sensory diet and sensory integration activity that he requires in a regular classroom. Green Valley could not provide the self-contained classrooms available at Pleasant Valley. This SLRO believes that School District was correct in relying upon Monarch staff members' indications that Student needed intensive services provided one-on-one and with minimal distraction and thus determining that a regular classroom was not appropriate. Parents' Assignment is rejected.

Parents' Assignment of Error #6B

Parents' Assignment of Error #6B concerning whether School District addressed Student's needs in the IEP is addressed in the discussion above in #6A in which the Assignment was rejected.

Parents' Assignment of Error #7

The IHO erred when making his final determination denying the Parents' prayer for tuition costs and/or related expenses and transportation costs for the Student's education at Monarch for the 2007 summer session.

Any claim for reimbursement for expenses for the 2007 summer session must be predicated on the assumption that School District is required by IDEIA to provide ESY for Student for the 2007 summer. As stated above, this SLRO believes that not only was the IHO correct in determining that Student was not entitled to ESY due to a failure to demonstrate that he would incur regression so severe that he would not be able to catch up during the following year, but also that Student is not entitled to ESY because he was unilaterally placed in a private school in a different school district for the 2006-2007 school year. For those reasons, Parents cannot be entitled to reimbursement for tuition and related costs and expenses for the summer session for 2007.

Parents' Assignment of Error #8

The IHO erred when making his final determination denying the Parents provided evidence to establish transportation costs to transport the Student to Monarch for the 2007-2008 school year.

While Parents acknowledge in their brief that they may have been remiss in failing to specify the number of days for which they sought reimbursement, they claim that this omission does not justify a blanket denial of reimbursement. They are incorrect. The burden of evidence is on Parents to present evidence in support of their claim for damages. The purpose of the five day rule is to put the other party on notice as to what evidence is to be presented. Parents were in possession of the necessary information to present their evidence to the IHO. The purpose of the appeal to the SLRO is not to present a party a second chance to present evidence that should have been presented to the IHO. Having provided no evidence to the IHO to establish

transportation costs to Monarch for the 2007-2008 school year, he properly denied reimbursement. Parents' assignment is denied.

Parents' Assignment of Error #9

The IHO erred when making his final determination denying the Parents' request for attorneys' fees.

This SLRO agrees with Parents' counsel that an administrative officer has no jurisdiction to determine attorneys' fees, which is reserved for the federal courts. To the extent that the IHO's denial of attorneys' fees could be construed as a denial based upon the merits of the case, Parents' assignment is affirmed and the IHO's denial of attorneys' fees is vacated.

Parents' Assignment of Error #10

The IHO erred in his review of the evidence and testimony in light of the applicable laws. The IHO erred with his final determination that the Parma witnesses had expert knowledge, specialized knowledge of the child, and knowledge of the Student's disability.

Parents fail to specifically address this broad assignment of error in their brief. With respect to findings of facts, the law requires the SLRO to defer to the IHO unless they are clearly erroneous. *Palazza v. Delmage, et al.*, 200 U.S. App. LEXIS 27276 (11/1/2000). The SLRO also must defer to the IHO on the credibility of witnesses unless clearly erroneous. Parents' assignment #10 does not refer to the IHO's decision on pages 206 and 207. To the extent that it relates to the IHO's findings of fact, the IHO properly characterized the witnesses and their testimony. Parents do not specify which witnesses they are referring to in their assignment. Without greater specificity, Parents' assignment has no relevance and must be rejected.

III. CONCLUSION

For the reasons stated above, the IHO's decision, as stated on pages 206 and 207 of the IHO's decision, is affirmed in its entirety, except that the reference to attorneys' fees being

denied on 207 is stricken. As previously stated, an IHO has no authority to grant or deny a request for attorneys' fees, which rests within the jurisdiction of the district courts.

ROBERT L. MUES, #0017449
STATE LEVEL REVIEW OFFICER
1105 Wilmington Avenue
Dayton, Ohio 45420
(937) 293-2141

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served on the _____ day of August, 2008 by Certified Mail Return Receipt Requested upon the following:

[PETITIONERS]

Sarah C. Zatik, Superintendent
Parma City School District
6726 Ridge Road
Parma, Ohio 44129

and by regular U.S. mail upon:

Andrew K. Cuddy
5888 Main Street, 3rd Floor
Williamsville, New York 14221
and
Michael Whitehead
19809 E. Kerry Place
Strongsville, Ohio 44149

Attorneys for Parents

Scott C. Peters
Krista K. Keim
Kathryn I. Perrico
BRITTON, SMITH, PETERS & KALAIL CO., L.P.A.
3 Summit Park Drive, Suite 400
Cleveland, Ohio 44131
and
Christina Henagen Peer
SQUIRE, SANDERS & DEMPSEY, L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114

Attorneys for School District

Christine Cline
Educational Consultant
Office for Exceptional Children
Ohio Department of Education
25 S. Front Street
Mail Stop 202
Columbus, Ohio 43215-4183

Ronald E. Alexander
44 Munroe Falls Avenue
Munroe Falls, Ohio 44262

ROBERT L. MUES
STATE LEVEL REVIEW OFFICER