

**STATE OF OHIO
DEPARTMENT OF EDUCATION
OFFICE FOR EXCEPTIONAL CHILDREN**

PARENT,)	
parent of STUDENT, Petitioner)	
)	
-and-)	
)	
)	<u>IDENTIFYING INFORMATION</u>
)	SE-1732-2005
Maple Heights City School)	
District,)	
Respondent)	

Summary

Petitioners alleged that school district failed to provide appropriate transportation to Student, denied Parent meaningful participation in the process of changing Student's IEP, failed to provide Prior Written Notice of the IEP change, and failed to convene an appropriate IEP meeting. IHO found that School District effectively amended Student's IEP to discontinue transportation unilaterally, without a meeting, among other procedural violations, and denied Student a free, appropriate public education.

IDENTIFYING INFORMATION

1. Impartial Due Process Hearing on behalf of PARENT and STUDENT.

Address:

2. Parent: Ms. PARENT

Child: STUDENT

Child's address:

Petitioner's Attorneys: Aimee E. Gilman, Esq. and Anne T. Brigham, Esq., 27900 Euclid Ave., #210, Cleveland, Ohio 44132.

County: Cuyahoga.

3. School District's Attorneys: Inajo Davis Chappell, Esq. and Tanya Williams Sample, Esq., Ulmer and Berne LLP, Skylight Office Tower, 1660 West 2nd Street – Suite 1100, Cleveland, Ohio 44113-1448.

Hearing Initiated by: Ms. PARENT

5. Date of Written Request for Hearing Received: September 14, 2005

Date Final Decision Submitted: December 12, 2005.

6. Impartial Hearing Officer ("IHO"): Irene Hirata McMullen

Address: Post Office Box 183, Chesterland, Ohio 44026

7. Statement of Issue from Written Request for Hearing: The stated reasons for the request were that school district allegedly failed to provide appropriate transportation to Student, denied Parent meaningful participation, and failed to provide Prior Written Notice of the IEP change, and failed to convene an appropriate IEP meeting.

9. Respondent position from Respondent's Position Statement, filed November 7, 2005:

Respondent argues that Student has received a free, appropriate public education, and that transportation is not a related service required for Student, and that all applicable procedures relating to Student's IEP were followed.

10. Identification of witnesses and abbreviations:

Name	Identification in Final Decision
Deena Barrett	Ms. B
Cindy Caudill	Ms. C
Cuyahoga County Board of Mental Retardation and Developmental Disabilities	CCBMRDD
ETR	Evaluation Team Report (or MFE)
Free Appropriate Public Education	FAPE
Denise Hieronymus	Ms. H
Individualized Education Program	IEP
Maple Heights City School District	School District

Kimberly Monachino	Ms. M
Tina Perko	Ms. P
Petitioner	Pet.
Raymond Elementary School	RES
Respondent	Resp.
South Euclid-Lyndhurst City School District	SE School District
STUDENT PARENT	Student, or with Parent, Petitioners
PARENT	Mother, Parent or Petitioner
Melissa Smith	Ms. S
Hearing Transcript	Tr.
Megan Wellman	Ms. W

**STATE OF OHIO
DEPARTMENT OF EDUCATION
OFFICE FOR EXCEPTIONAL CHILDREN**

Student and Parent,)	
Petitioners)	
)	
-and-)	
)	<u>FINAL DECISION</u>
)	
Maple Heights City School)	SE-1732-2005
District,)	
Respondent)	

Procedural Background

On September 14, 2005, Petitioners filed a request for a due process hearing. On September 28, 2005, the Ohio Department of Education, Office for Exceptional Children designated Irene H. McMullen to serve as the Impartial Hearing Officer (“IHO”) in accord with the mutual agreement of the parties. On or about October 11, 2005, the parties attempted to come to a mediated resolution of the matter. Such attempt was unsuccessful. On October 25, 2005, Petitioner filed a Motion for Extension of Time until November 30, 2005. Also on October 25, 2005, Petitioners filed a Motion for Extension of Time until December 12, 2005. On October 25, 2005, IHO issued a Scheduling Order granting the Motion for Extension of Time until December 12, 2005, and set the matter for hearing on November 14, 15 and 16, 2005. Both parties agreed to the dates for the due process hearing.

A Disclosure Conference was held on November 7, 2005. The parties filed witness lists, positions statements, exhibit lists, requests for subpoenas and Petitioners filed a statement of issues. On November 8, 2005, IHO filed an Order regarding hearing issues and a Disclosure Conference memorandum. An Amended Exhibit List was filed by Petitioners on November 10, 2005. Respondent filed two motions on November 10, 2005, one to exclude the testimony of Expert Ms. B (which was effectively withdrawn during the course of the hearing), and a Motion in Limine regarding documents. Both motions were addressed at the due process hearing.

In the November 8, 2005 "Disclosure Conference Memorandum and Hearing Issues Order," IHO included the following hearing issues:

1. Whether the School District violated the procedural rights of Petitioner and provisions of IDEA when it considered and removed transportation from Student's IEP as a related service, including whether Petitioner received adequate notice of her procedural safeguards.
2. Whether Mother was allowed meaningful participation in the decision to remove transportation from Student's IEP.
3. Whether Student is eligible for transportation to and from school as a related service, and as a part of Student's IEP.
4. Whether Student has been denied a free, appropriate public education during the 2005-2006 school year.

IHO allowed the parties to object to the hearing issues until the commencement of the hearing. No such objections were made. The due process hearing was held at the Maple Heights Board of Education offices on November 14, 15 and 16, 2005. Petitioners filed a post-hearing brief on December 2, 2005. Respondents also filed a post-hearing brief on December 2, 2005.

Findings of Fact

Based on the evidence and testimony presented during the hearing, the Impartial Hearing Officer makes the following findings of fact:

Relating to Due Process:

1. School District waived the special requirements of a resolution session. Resp. Ex. MM. Petitioners elected to have a formal mediation in lieu of the IEP Team meeting resolution session. Resp. Ex. MM.
3. Both parties attended the Disclosure Conference and received written notice of when and where the due process hearing would be held. See Disclosure Conference transcript and IHO #2, Order of October 25, 2005.

4. Petitioners' attorney stipulated to the following, on behalf of Petitioner: that Petitioners received a list of free or low-cost legal services available in the area from the School District. Petitioners received, read and understood the letter from IHO to Petitioner listing Petitioners' rights regarding the hearing. They requested access to educational records, but the timeliness of such production was disputed by Petitioners. Disclosure Conference Tr. at 6-7; Tr. at 556-563. A copying fee did not prevent Petitioners from exercising their right to inspect and review records. They were aware of all documents to be presented, and the names of representatives and witnesses who would appear at the hearing at least five days prior to the hearing. Tr. At 555-562.
5. School District informed Petitioners' attorney of free or low-cost legal services available in the area, and provided Petitioners access to all of Student's educational records. Tr. at 556-563.
6. Petitioners' attorney requested that the hearing be closed to the public. Disclosure Conf. Tr. at 21.
7. Respondent's attorney, after questioning Ms. B regarding her qualifications, did not object to her testimony at the due process hearing. Tr. at 204.
8. Respondent's counsel sent a letter on September 23, 2005 indicating that Ms. C would be sending a copy of the "Who's IDEA is This?" booklet to Petitioner's counsel. Resp. Ex. MM. By the November 7, 2005, the date of the Disclosure Conference, Petitioner's counsel had received a copy of the booklet. Disclosure Conference Transcript at p. 27-29.
9. Each of the parties waived certified mailing of the Agenda and Procedures to witness. Disclosure Conference Tr. at 21.

Relating to the testimony and exhibits:

1. Student was born on [DATE]. Pet. Ex. 4. Student has been enrolled in the School District since August, 2005. Tr. at 20. She is 9 years old. Pet. Ex. N, Tr. at 342. Student attends RES. Tr. at 342. Student moved into the School District on June 25, 2005. Tr. at 342.
2. Her disability classification on the May 19, 2004 Evaluation Team Report (ETR) was cognitive disability, including an indication of subaverage general intellectual functioning. Pet. Ex. 4 at p. 4M. The ETR was compiled and developed by the SE School District. Pet. Ex. 4.

3. Student's ETR indicated that Student demonstrated difficulty in understanding verbal instructions and in communicating her ideas. She lost focus after a short amount of instruction. She exhibited a history of learning and attention problems. Resp. Ex. H.
4. The SE School District ETR did not specifically address the topic of transportation, nor was it brought up at the meeting to review the ETR. Tr. at 345.
5. The ETR dated May 19, 2004 noted that Student's Full Scale IQ on the Wechsler Intelligence Scale III for Children (WISC-III) was 68, within the Mild Mental Retardation range. Pet. Ex. 4 at p. 4E. This IQ places her in the 2nd percentile. Pet. Ex. 4 at 4G. WISC-III is a complex combination of general learning ability and the effects of prior learning experiences. Pet. Ex. 4 at 4H. On the Vineland Adaptive Behavior Scales, Student scored within the Mild Mental Retardation range in both home and school adaptive functioning. Pet. Ex. 4 at p. 4E.
6. Student's IEP dated May 23, 2005, effective May 24, 2005 to May 24, 2006, included speech therapy and "special transportation" as a "Special Education Service." Pet. Ex. 5 at 5A, 5L. Student, in the SE School District, was transported by bus before and after the time she had an IEP. Since beginning school, Student has always been provided with bus transportation, until the 2005-2006 school year. Tr. at 363-364.
7. Ms. C is the Director of Pupil Services at School District, and started working at School District on August 1, 2005. Tr. at 17-18.
8. When Student enrolled in the School District, Mother gave her IEP to the School District. The School District received her ETR directly from the SE School District. Tr. at 23. Ms. C felt that the presence of transportation on Student's IEP necessitated a review, as typically, Student would not qualify for transportation in School District. Tr. at 24. Ms. C called Ms. M at the SE School District, Mother and Student's grandmother before writing her letter on August 15, 2005. Tr. at 27.
9. On August 15, 2005, Ms. C sent Petitioner a letter stating that Student did not qualify for bus transportation because "the family lives within the two mile radius and [Student's] Evaluation Team Report does not indicate a need for transportation. Your daughter [] does not qualify. The family lives within the two mile radius and [Student's] Evaluation Team Report does not indicate a

need for transportation due to her cognitive disability.” Pet. Ex. 1. School District’s policy is that it does not provide transportation to students who live within two miles of their school, unless the special education department requests bus transportation. School District regularly provides transportation for students in kindergarten through eighth grade. Tr. at 518-520.

10. In addition to Ms. C’s letter to Mother indicating that Student did not qualify for transportation, Ms. C sent Mother a “Prior Written Notice to Parents” form, indicating that Student’s request for transportation was denied. The form also stated: “Student lives within a two mile radius of her home school and according to district policy is not eligible for transportation. In addition, [Student’s] current evaluation team report does not indicate a need for transportation due to her handicap.” Pet. Ex. 1 at 1B.

11. The August 15, 2005 indicated that a copy of Petitioner’s procedural safeguards were sent, but no such document was actually mailed to Petitioner with the letter. Tr. at 27-28, 45-46, 350-351. Ms. C did, however, send Petitioner instructions on how to fill out a Due Process Complaint Notice and the Due Process Complaint Notice and Request for a Due Process Hearing. Pet. Ex. 1 at 1C and 1D.

12. A review of Student’s SE School District IEP and ETR prompted Ms. C to explore the issue. Tr. at 107-108. Further, Mother and Student’s grandmother kept sharing information with Ms. C that was not in the ETR concerning Student and her ability to navigate the community. Tr. at 79. Ms. C called Ms. M, who wrote a letter on November 2, 2005 to Ms. C to document SE School District’s actions. Resp. Ex. BB. With respect to transportation, the letter states “The IEP team included special transportation as a related service.”

13. Petitioner had a couple of telephone conversations with Ms. C following her receipt of the August 15 letter. Tr. at 390. Ms. C scheduled an IEP meeting for August 23, 2005, the first day of school. Tr. at 55-56. Ms. C invited Petitioner to the meeting verbally. Tr. at 55. Mother was not told in advance who would be in attendance. Tr. at 356. Ms. C spoke to the principal, Ms. H before the meeting, and sent notes to Ms. S and Ms. N, requesting that they review the ETR. Tr. at 57, Resp. Ex. F and G.

14. School District did not arrange for Student to receive bus transportation on the first day of school, August 23, 2005, and Student did not receive school provided transportation that day. Tr. at 58, 362.

15. An IEP meeting (“IEP meeting #1”) was held on August 23, 2005. Tr. at 56. At the time of the meeting, Ms. S (regular education teacher), Ms. N (intervention specialist) and Ms. C had not met Student. Tr. at 58, 422. The participants of the meeting were Ms. H, Building Principal, Ms. S, Ms. C, Ms. N and Mother. Tr. at 56. Ms. Y, Student’s Speech Therapist, was not invited, nor did she attend the meeting. Tr. at 59. The meeting started out with Ms. C explaining why Student did not qualify for special transportation. Tr. at 358.

16. Some IEP team members noted that there were no goals and objectives in the IEP suggesting that Student had problems traveling to and from school. Tr. at 121-122, 301-303. Ms. H noted the benchmark regarding signs, but no one present at the meeting know which signs those were. Tr. at 311-312. Mother spoke at the meeting, and indicated that she believed Student needed transportation because she didn’t feel Student could walk alone to school on a regular basis and was concerned about safety. Tr. at 318, 360. Mother was the only IEP team member present who felt transportation was still needed. Tr. at 300, 398-399.

17. Some of the signs that Student was to become knowledgeable about through her IEP objectives include the following: stop sign, yield sign, Do Not Enter sign. Resp. Ex. DD. Goal #1d of Student’s IEP states: “Using picture cards, [Student] will identify 20 safety signs with 80% accuracy.” Resp. Ex. I.

18. At this point in time, Ms. C was, apparently, mistakenly under the impression that Student had walked to school while a student at the SE School District, because Ms. M’s letter confirming their prior telephone conversation stated such. Tr. at 127, Resp. Ex. BB. The distance from Student’s home to school is about five blocks; less than the two mile requirement of the School District. Tr. at 415-416.

19. At IEP meeting #1, the participants considered the distance from her home to school, and the fact that there were other children walking the route when amending Student’s IEP. Tr. at 131-132, 311-312, 432-433.

20. On the date Ms. B followed Student to school, only three other students were seen at one point in the walk. Tr. at 212.

21. At IEP meeting #1, transportation was removed from Student's SE School District IEP, the IEP in effect. Tr. at 361. Mother did not sign agreeing to the change. Tr. at 361.

22. After IEP meeting #1, Mother requested that she be given a copy of her procedural safeguards. Tr. at 65-66. On August 23, 2005, Ms. C sent Mother a letter and included only the Addendum to the "Who's IDEA is This?" booklet. She did not send the actual procedural safeguards booklet. Pet. Ex. 2. The letter stated, in part: "Just to reiterate, to qualify for transportation the residence needs to be beyond the two mile radius of the neighborhood school. Your residence is within the two mile radius. Secondly, when the team reviewed the current Multifactor Team Report there was no data to support the handicap was significant to warrant transportation due to the disability." Pet. Ex. 2. Ms. C testified that she intended to send the procedural safeguards booklet, but did not. Tr. at 44-46. Mother had received a copy of the "Who's IDEA is This?" booklet from the SE School District in May, 2005, but did not receive one on August 23, 2005. Tr. at 388-392. Mother knew that she had a right to disagree with what happened at the IEP meeting. Tr. at 392. Mother did not understand what the Addendum to the "Who's IDEA is This?" booklet was, and did not know about the recent IDEA changes. Tr. at 368.

23. On August 30, 2005, a second IEP meeting took place at RES ("IEP meeting #2"). Mother went to school and spoke with Ms. Y. Ms. Y told Mother that wanted to amend the IEP to reduce Student's speech language services because of Ms. Y's busy schedule and her need to go to other schools. Mother agreed to the change, although she did not realize it was a reduction in service. Tr. at 370-373. Mother did not receive any prior notice, written or oral, regarding IEP meeting #2. Tr. at 370-371. Ms. H was not present at the meeting, but signed the IEP change at a later date. Tr. at 308-309.

24. Ms. Y memorialized the meeting on an "IEP Meeting Summary" form, indicating that only Mother and she were present, and indicating that she forgot to give Mother her procedural safeguards. Pet. Ex. 6 at 6A.

25. Because of Mother's continued concerns expressed to Ms. C regarding Student's capability to walk to school, Ms. C instructed Ms. W, the school psychologist to perform an adaptive behavior assessment scale ("ABAS"). Tr. at 78-80. Ms. W told Mother on September 14, 2005 that she was requesting the ABAS to find out Student's strengths and weaknesses, and "also to see if she continues to meet our qualification standards for a child with a cognitive disability." Tr. at 242-243. No notice of procedural safeguards was sent to Mother in connection with this evaluation. Tr. at 245. Mother consented to the evaluation on September 14, 2005. Tr. at 245. Ms. W was not asked to evaluate Student's need for transportation. Tr. at 255.

26. Ms. S and Ms. N together with the assistance of Ms. W, filled out one ABAS. Mother filled the ABAS form out also. Tr. at 282, 285, Resp. Ex. T and U. On October 31, 2005, Ms. W sent Mother a letter indicating that Student "continues to qualify for special education as a child with a disability." Tr. at 256, Resp. Ex. V. Ms. W noted in her testimony that this due process proceeding may have influenced the responses that the parties gave to the ABAS. Tr. at 262.

27. The ABAS revealed that Student is not able to recite her telephone number or address. Student's other weaknesses are starting conversations, and talking about realistic future educational or career goals. Tr. at 380, Resp. Ex. T.

28. Ms. P, the Transportation Director, testified at the hearing. Tr. at 517. There are no crossing guards on the route Student takes to school, other than right in front of the school building, where there is a student crossing guard. Tr. at 212, 526. Ms. P issued a report, indicated that there has only been one accident where a student was hit by a car at the business-area intersection of Warrensville Road, which occurred in the 1990's. Resp. Ex. Z. Ms. P was a credible witness regarding transportation, but was not knowledgeable regarding special education services. Ms. P indicated that it took her approximately 18 minutes for Ms. P to walk to RES from Student's home. Resp. Ex. Z at page 2.

29. Ms. M, the SE School District Director of Pupil Services testified at the hearing. She did not attend the IEP meeting where Student's IEP was developed. She reviewed the IEP and ETR prior to her testimony, but she incorrectly testified regarding its contents, recalling that the summary section stated that special transportation was provided "due to the fact that it was a

related service and she was going to a different elementary building.” Tr. at 570-571. Ms. M did not know whether Student was transported by the SE School District before she had an IEP, when she attended her neighborhood school. Tr. at 568. The IEP indicates “Speech and language services and special transportation.” Pet. Ex. 5 at 5L. Ms. M’s letter to Ms. C had incorrectly indicated that Student did not received transportation to her local neighborhood school. Ms. M was not a credible witness.

30. Ms. B performed an independent objective assessment of Student’s ability to navigate by walking to school independently and safely on a consistent basis. Tr. at 208. Ms. B is a Behavior/Curriculum Intervention Specialist with CCBMRDD. Resp. Ex. 9. She had been with CCBMRDD for 32 years in various capacities and for the past six years has been involved with behavior and curriculum development for students with a variety of cognitive and behavioral deficits. Tr. at 191-193. Ms. B testified at the hearing and was a poised and very credible witness.

31. Ms. B and Mother followed Student to school on November 4, 2005. Student was asked to be the “leader” on the walk to school. Resp. Ex. 9.

32. On the date Ms. B observed Student, Student crossed the road in the middle of the block twice, rather than waiting to cross at the corner. She did not stop and look for cars. Tr. at 482. She was unsure and unaware of when to go at one intersection, and looked to her Mother and Ms. B for guidance. At Camden Road, Student became distracted by three kids walking diagonally across the street and stepped into the street without stopping to look for cars. Tr. at 217. When Student got to the driveway of the school, she crossed the driveway without stopping to look for cars, and did not wait for the student crossing guard to tell her when to cross. Resp. Ex. 9 at p. 3, Tr. at 212. Student did not exhibit behaviors that would be necessary to assure her safety walking to school independently. Tr. at 512.

33. Student’s behavioral performance characteristics based on her skills and abilities put her at high risk for consistently walking to school safely and independently. Resp. Ex. 9 at p. 5.

34. Student has made adequate progress in her academic subjects and speech therapy goals during the 2005-2006 school year. Tr. at 455-456, Resp. Ex. FF, GG, HH. Student has missed

seven days of school since the beginning of the year. Resp. Ex. JJ. Student has not walked to school on her own this year. Her Mother has walked with her to school, or has driven her with a borrowed car. There have been times when Student has had to wait at the school because Mother picked her up after dismissal. Tr. at 365-366. Student does not walk anywhere, even across the street, independently. Mother does not believe Student can walk to school by herself, but could learn to do so. Tr. at 364.

35. Ms. S, Student's regular education 3rd grade teacher testified at the hearing. She has a bachelor's degree in curriculum and instruction and has worked in the School District for five years. Tr. at 420-421. She was an attentive witness. Ms. S reviewed Student's ETR for about an hour prior to IEP meeting #1. Tr. at 423, 430.

36. Mother testified at the hearing. She seemed quite sincere and credible in her concerns regarding Student, and exhibited a somewhat limited understanding of the complexities of the IDEA and her procedural rights. Tr. at 368.

37. Ms. W testified at the hearing. She is a School Psychologist with the Educational Services Center, and is placed at School District. She has been at the School District since August, 2004, when she was licensed. Tr. at 236-237.

38. Ms. H testified at the hearing. The current school year is her second year with School District as Principal of RES. Tr. at 290. She has a master's degree in administration. Tr. at 290-291.

DISCUSSION OF ISSUES

For each of the issues discussed below, Petitioners have the burden of proof since they are the party seeking relief and alleging the denial of a free, appropriate public education.

Cordrey v. Euckert, 917 F.2d 1460, 1469 (6th Cir. 1990), *cert. denied*, 499 U.S. 938 (1991); *Schaffer v. Weast*, 126 S. Ct. 528, 44 IDELR 150(2005).

Document Production

School District provided Petitioners with all educational records prior to the hearing, with the exception of a few documents which surfaced during the due process hearing. Tr. at 21-22,

555-556. Such tardy document production did not substantially impact Petitioners' ability to prepare for and pursue their case.

Law and Rationale relating to the Issues

- 1. Whether the School District violated the procedural rights of Petitioner and provisions of IDEA when it considered and removed transportation from Student's IEP as a related service, including whether Petitioner received adequate notice of her procedural safeguards.**

The issues identified for review through this due process hearing must be assessed in light of existing federal and state laws enacted for the specific purpose of insuring the provision of education and related services to a special needs child. With respect to federal law, the availability of education and related services vis-à-vis a special needs child is governed by the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Section 1401 et seq, and its implementing regulations, 34 C.F.R. Section 300 et seq. In enacting IDEA, Congress stated (20 U.S.C. Sect. 1400(c)): "It is the purpose of this Chapter to assure that all children with disabilities have available to them a free, appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist states and localities to provide for the education of all children with disabilities and to assess and assure the effectiveness of efforts to educate children with disabilities."

This broad-ranging purpose was similarly enunciated by the Ohio legislature in its enactment of Ohio Revised Code Chapter 3323.

In order for a School District to provide a student a free and appropriate public education or FAPE, a district must offer a student with a disability an individualized program of special education, designed to meet the student's unique needs, that is provided in accordance with a properly developed IEP. *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).

A FAPE is defined as:

Special education and related services that
(A) have been provided at public expense, under public supervision and direction and without charge;
(B) meet the standards of the State educational agency;
(C) include an appropriate preschool, elementary, or secondary education in the State involved; and
(D) are provided in conformity with the individualized education program required under Section 1414(a)(5) of this title.

20 U.S. C. § 1401(8).

“Special education” is defined as specially designated instruction at no cost to parents or guardians to meet the unique needs of a child with a disability including instruction conducted in a classroom, in a home, in hospitals and institutions and in other settings, and instruction in physical education. 20 U.S.C. §1401. “Related services” are defined as “transportation and such development, corrective and other supportive services as may be required to assist a child with a disability to benefit from education and includes the early identification and assessment of disabling conditions in children.” 34 C.F.R. §300.24. Transportation services must be provided based on the unique needs of each child, and in accordance with Ohio Administrative Code Section §3301-51-10.

IDEA requires a basic floor of opportunity consisting of access to specialized instruction and related services that are individually designed to provide educational benefit to the disabled child. *Board of Educ. of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 201 (1982).

Central to a district’s response to a child’s disability is the development of an individualized education program (“IEP”) for every disabled student, for each school year. The Act requires an IEP to include the following:

- (A) A statement of present educational levels;
- (B) A statement of annual goals;
- (C) A statement of educational services (including the extent to which the child will participate in regular educational programs);
- (D) The initiation date and duration of these services; and
- (E) Appropriate objective criteria for determining whether instructional objectives are being met.

20 U.S.C. §1414(d)(1)(A).

The responsibility for choosing the educational methods most suitable to a child's needs was left by the Act to state and local educational agencies in cooperation with parents. *Rowley*, 458 U.S. at 207.

When a student transfers into a school district within the state of Ohio, Section 614(d)(2)(C) of the IDEA addresses her situation.

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same state, the district must provide such child with FAPE, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as it adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with federal and state law. Section 614(d)(2)(C)(i)(I).

Student's IPE and ETR were developed by the SE School District. During August, 2005, Petitioners moved into the School District and registered Student for school. Therefore, until Student's new IEP team at RES met, Student's applicable IEP was her SE School District IEP.

The determination as to whether a child requires transportation, a related service, must be made by the student's IEP team. *See Letter to Anonymous*, 23 IDELR 832 (OSEP 1995). When student enrolled in the School District, however, Ms. C, acting alone, made the decision that School District was not going to transport Student. Ms. C wrote a clear letter to Mother on August 15, 2005 stating that the decision to discontinue transportation had been made, and Mother interpreted the letter as notification of such decision. Even if that decision had been appropriate, the procedure was not. The decision had the effect of unilaterally changing Student's IEP, and leaving the other members of the IEP team without an opportunity to voice their opinions before a decision was made.

There is nothing in Ms. C's August 15, 2005 letter to Mother that indicated that the matter was still under consideration. Ms. C even included information regarding how the decision could be appealed through due process with her notification letter. There was no testimony that Ms. C attempted and failed to ensure Mother's presence at an IEP meeting before making this decision. No bus came to pick Student up on the first day of school, before Student's first IEP meeting within the School District. This unilateral action is a clear violation of the procedural requirements of IDEA regarding amendment of an IEP.

In order to amend Student's IEP, School District was required to convene an IEP meeting prior to making the change. 34 CFR §300.340(a) defines an IEP as a written statement that "is developed, reviewed and revised in a meeting...." Student's IEP was, in essence, revised unilaterally by Ms. C. School District, by not arranging for transportation for Student, and sending the August 15, 2005 letter to Mother, made it clear that School District had made the decision that it was not going to implement the transportation portion of Student's IEP.

The actions of the School District might, arguably be characterized as a reevaluation, which will be discussed, *infra*, in Hearing Issue #3.

Further, School District violated Student's procedural rights when it did not provide Student with a prior written notice and notice of procedural safeguards, as required by OAC §3301-51-05(C)(b)(i) (prior notification required to change the identification, evaluation or educational placement or provision of FAPE) and §3301-51-05(D)(1)(b)(procedural safeguards notice to be given to parents upon notification of an IEP meeting). Then, when School District determined it would hold an IEP meeting to discuss the matter, Mother did not received written notice of the IEP meeting. Tr. at 356. The inadequate oral notice she received violated OAC §3301-51-07(F)(2)(notice must indicate purpose for the meeting, inform parent that she may invite other individuals who have knowledge or special expertise about Student). Mother did not received notice of the purpose of the meeting and who would be in attendance, or of her right to invite other participants. Because she did not receive this notice which may have alerted her to the possibility of bringing others to assist her, she was precluded from effectively participating in the meeting.

In reviewing School District's Prior Written Notice to Parents, (Resp. Ex. D, Pet. Ex. 1B), dated August 16, 2005 (but included with the August 15, 2005 letter), Ms. C left out any description of other options the school district considered, there was no description of evaluations used as a basis for the action, and there were no procedural safeguards included. There were no sources for parent to contact to obtain assistance in understanding the notice.

The IDEA and its regulations require that, prior to changing the placement of a child or a provision of FAPE, proper notice of the action be given to the parents. 20 U.S.C. § 1415(b)(3); 34

C.F.R. § 503(a)(1)(i). The prescribed "prior notice" must contain seven distinct provisions, including a description of the action, the rationale for the action, other options considered, and a description of the reasons underlying the decision. In the case of *Community Consolidated School v. John F.*, 33 IDELR 210 (N.D. Ill 2000), reiterated that prior written notice is required prior to the implementation of the placement. The district failed to inform the parents of their due process rights and confused them as to the purpose of the non-IDEA hearing. That rendered the parents' consent to child's placement meaningless.

Petitioner was also deprived of her right to receive prior written notice following the IEP meeting #1. Mother should have received a notification of why and how the action was taken, and what her options were, and who to contact to help explain her rights in accordance with OAC §3301-51-05(C)(4)(required notification when parent disagrees). She did not understand what the Addendum was, and did not know about the recent changes to the IDEA.

These procedural violations, when viewed as a whole, acted to deprive Student of her substantive right to a free, appropriate public education when the related service of transportation was discontinued by School District. It is important to note that at the time Ms. C made her decision, she had not had the opportunity to observe Student for any length of time, and had not even spoken to Mother at all. This set of circumstances made an IEP meeting even more crucial. Mother, who had just recently moved into the School District was confused about her rights, and the safety of her child, and was not given even the minimum notifications regarding her rights. The change in services (eliminating special transportation) was made by Ms. C based on erroneous information provided to Ms. C by Ms. M, a SE School District employee who was not at Student's IEP meeting. Making a unilateral decision such as this, coupled with the procedural violations regarding notice and safeguards clearly violated both the spirit and letter of IDEA and its scheme of partnership between parents and schools.

IEP Meeting #2

The second IEP meeting, held on August 30, 2005 was more problematic than the first. Not only was there no advance notice, but many necessary members were not even notified of

the meeting. Only Ms. Y and Mother attended. Student's speech therapy services were reduced at the meeting. Again, no procedural safeguards notice was given to Mother.

However, 20 U.S.C.A. §1414(c)(D) states:

In making changes to a child's IEP after the annual IEP meeting for the school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

So, if School District had opted not to hold an IEP meeting, it might have complied with applicable law by simply having Mother agree to amend the IEP in writing and not convene an IEP meeting. This is not the course of action School District chose. It held an improperly constituted and noticed IEP meeting instead.

Petitioner, however, is only entitled to relief upon a showing on substantive harm as well as procedural violations. In *Berger v. Medina County School District*, 348 F. 3d 513, 520 (6th Cir. 2003), as noted by Respondent,

A procedural violation will constitute a denial of FAPE only if it causes substantive harm to the child or his parents'; such as seriously infringing on the parents' opportunity to participate in the IEP process, depriving an eligible student of an IEP, or causing loss of educational opportunity.

Student's Progress Monitoring Log, Resp. Ex. FF, showed that Student was making adequate progress on her objectives relating to speech and language therapy. Further, hearing testimony also indicated Student was making progress in school.¹

Therefore, Petitioners are not entitled to relief based upon procedural errors relating to IEP meeting #2 and the reduction of speech therapy services.

2. Whether Mother was allowed meaningful participation in the decision to remove transportation from Student's IEP.

Any determination of the existence of a FAPE for a child must necessarily begin with a review of her individualized education program (IEP) which is an educational plan developed specifically for the child by the district, the child's teachers, the parents or guardians and, when

¹ While it is troubling to see such disregard for the procedures that are such an important part of IDEA on the part of School District, in the particular circumstances presented regarding IEP meeting #2, Petitioners did not show that there was a loss of educational opportunity to Student.

appropriate, the child. 20 U.S.C. § 1414(d)(1)(B); *Edwin K. v. Jackson*, 37 IDELR 63 (N.D. Ill. 2002). The IEP is “in brief a comprehensive statement of the education needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” *School Committee of Burlington, MA v. Dept. of Educ.*, 471 U.S. 359, at 368 (1985).

The parents of a child with a disability are expected to be equal participants along with school personnel in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child. IDEA established procedural safeguards that “guarantee the parents and the child an opportunity for meaningful input into all decisions affecting the child’s education.” *Austintown Local School Dist. Bd. Of Educ. V. Mahoning Cty. Bd. Of Mental Retardation and Dev. Disabilities*, 131 Ohio App. 3d 711 (1998).

A School District must take steps to ensure that parent(s) are present at each IEP meeting, or are afforded the opportunity to participate, by providing adequate notice and scheduling meetings at a mutually agreed upon time and place. 34 C.F.R. §300.345(a). Petitioner received oral notice of the August 23 meeting, but did not received notice of who would be in attendance, or that she could invite others. Because of the previously discussed procedural violations regarding Ms. C’s August 15, 2005 letter, she was without important information regarding her rights, and how she might prepare for IEP meeting #1.

Petitioners argue that the IEP team meeting on August 23, 2005 was a mere “rubber stamp” to Ms. C’s decision to remove transportation from the IEP. A review of the testimony regarding the meeting shows that the IEP team focused on the existing documents, each of which were drafted in a school district that had always provided bus transportation to Student and did not focus on the specialized transportation. The only participant from prior IEP meetings regarding Student was Mother. No analysis was done to determine which safety signs referred to in Student’s IEP were a part of her objectives, or why the safety signs were an objective at all. The fact that Student had never walked to school was not seriously considered. No observation of

Student was conducted. Additionally, no written notice and procedural safeguards was given to Mother following the IEP meeting. Because Mother was not even notified before Ms. C discontinued Student's transportation, and then, when an IEP meeting was held, Mother did not receive her procedural rights in a timely manner, Student substantive rights suffered. She did not have the tools available to her to effectively advocate for Student. Mother played no part in the decision to discontinue the services she was informed about in Ms. C's August 15, 2005 letter. Her only participation was speaking with Ms. C prior to Ms. C's unilateral decision. This is not adequate parental participation in the IEP process. Essentially, Mother provided the transportation service that School District was obligated to provide. Mother walked or drove Student to school each day without the assistance of the School District. Thus, it was not a related service that was "free" to Student, and it was not provided under public supervision and direction. Mother was denied meaningful participation in this IEP amendment process.

3. Whether Student is eligible for transportation to and from school as a related service, and as a part of Student's IEP.

Within the School District, the general policy is that all students walk to school if they are within two miles of their school building. Transportation is only provided when, as is the case here, student's disability precludes student from walking to school independently. Ms. B testified and issued a report indicating that Student was a high risk for a safety incident if she walked to school on her own.

The School District has misinterpreted the ETR and IEP in making its decision to remove transportation. Just because there is little information in the ETR justifying transportation does not mean that it may be deleted.

Whether transportation goals and objectives are needed in a student's IEP depends on the purpose of the transportation. If such transportation is provided solely to enable a student attend school, no goals and objectives are needed. However, if there is also an educational component to the service, and student received instruction during the provision of the related service, then goals and objectives must be provided. See *Letter to Smith*, 23 IDELR 344 (OSEP 1995).

Ms. C's August 23, 2005 letter, written after IEP meeting #1 stated, in part: "Just to reiterate, to qualify for transportation the residence needs to be beyond the two mile radius of the neighborhood school. Your residence is within the two mile radius. Secondly, when the team reviewed the current Multifactor Team Report there was no data to support the handicap was significant to warrant transportation due to the disability." Pet. Ex. 2.

Thus, Ms. C erred when her analysis as to whether Student was eligible for transportation rested on the contents of the ETR alone. Further, the evidence presented at the due process hearing indicates that Student is in need of specialized transportation as a related service.

Where, as the case here, the school district that wrote the IEP provided transportation, and did not indicate a goal or objective to have Student walk to school independently, then no goals or objectives in the IEP were needed.

In determining whether, based on the testimony and exhibits presented at the due process hearing, Student's educational needs mandate transportation as a related service, some case law is relevant. *Donald B. by and Through Christine F. vs. Board of School Commissioners of Mobile County*, 117 F.3d 1371, 1374(11th Cir.1997) involved the issue at bar. It stated that:

IDEA requires transportation if that service is necessary for a disabled child "to benefit from special education," 20 U.S.C. 1401(a)(17), even if that child has no ambulatory impairment that directly causes a "unique need" for some form of specialized transport.... We still must determine whether transportation is necessary for Donald B. to benefit from the special education to which he is entitled. To answer this question, we look both to the Supreme Court's construction of the IDEA and the Department of Education's regulations implementing the Act.

The Court has emphasized that "only those services necessary to aid a handicapped child to benefit from special education must be provided, regardless [of] how easily a school [official] could furnish them."*Irving Indep. Sch. Dist.*, 468 U.S. at 894, 104 S.Ct. at 3378. We cannot rely, therefore, as Donald B. suggests, on the inference that the school easily could send a teacher or aide to accompany Donald B. on foot or to carry him by automobile between St. Paul's and Austin. Instead, we must focus on the meaning of the word "necessary" in this context. We conclude that, based on the implementing regulations for the IDEA, transportation may be "necessary," under these or similar circumstances, if in its absence a disabled child in private school would be denied "a genuine opportunity for equitable participation in [a special education program]," 34 C.F.R. Section(s) 76.651(a)(1), or special education program benefits "comparable in quality, scope, and opportunity for participation . . . [to those provided for] students enrolled in public schools," 34 C.F.R. Section(s) 76.654(a).⁴

The Board has offered Donald B. speech therapy pursuant to an IEP, just as it provides for other students at Austin. The only obstacle to Donald B.'s full participation in the special education program at Austin is literally three blocks. In our view, the factors relevant in determining whether a child in this situation needs transportation as a related service include at least: (1) his or her age; (2) the distance he or she must travel; (3) the nature of the area through which the child must pass; (4) his or her access to private assistance in making the trip; and (5) the availability of other forms of public assistance in route, such as crossing guards or public transit.

In applying a similar analysis to this matter, Student is nine years old. This fact must be viewed in tandem with her cognitive disability and incumbent deficits², including understanding verbal instructions and losing focus. While the distance traveled is not beyond Student's capabilities, she does travel through a busy intersection where there is no crossing guard. Ms. B testified extensively regarding behaviors exhibited by Student that might put her safety in jeopardy if she walked alone. Mother testified regarding her competing scheduling demands, her concerns regarding the neighborhood and Student's safety, and the fact that she does not own a car. The public bus route does not stop at her home, making door-to-door transport by public bus an infeasible option. Therefore, IHO finds that transportation is necessary for Student to benefit from her educational placement.

This case is distinguishable from *In re: Student with a Disability* case, 40 IDELR 172 (2003) cited by Respondent. The student in that case had a learning disability (not a cognitive disability) and was in 6th grade. Importantly, that student had walked and ridden his bike and walked downtown by himself safely. In this matter, Student has never walked to school by herself, and was transported by bus until she moved to School District.

It is appropriate, however, for School District to reevaluate Student's continued need for transportation if it feels such reevaluation is warranted.

Although a reevaluation under 34 CFR 300.536 is not defined in IDEA or the regulations, it is understood to be a comprehensive evaluation analogous to a preplacement evaluation under 34

² The child in the *Donald B. by and Through Christine F.* had a learning disability that did not impact his cognitive abilities. In this matter, it is important to consider student's cognitive abilities as they affect this issue.

CFR 300.532 , conducted for students who already have undergone preplacement evaluations and been found eligible for services. *Letter to Tinsley, 16 IDELR 1076* (OSEP 1990).

A reevaluation under IDEA should address the following four issues which relate to initial evaluations (34 CFR 300.533 (a)(2)):

1. Whether the child continues to have a particular disability.
2. Ascertainment of the child's present levels of performance and educational needs.
3. Whether the child continues to need special education and related services.
4. Whether any additions or modifications to the special education and related services called for in the IEP are needed to enable the child to meet the measurable annual goals set out therein or to participate, to the extent appropriate, in the general curriculum.

If what School District was trying to complete was a reevaluation, it fell far short in the areas of collecting information and performing the analysis associated with reevaluations. While Ms. W could arguably have been attempting to determine if Student was still cognitively disabled, by administering the ABAS, the more likely explanation of Ms. C's direction to administer the ABAS was to informally gain more information to determine whether her initial decision was correct. Ms. C indicated that Mother's raising consistent concerns to her led Ms. C to seek additional information. The sheer volume of procedural violations by School District in this matter makes it difficult to neatly classify their actions. While Ms. W appears to have been attempting a reevaluation, it is not clear that Ms. C's intention was to perform a formal reevaluation of Student using the ABAS rather than informal information gathering. Thus, no additional authorization or disclosures were required.

4. Whether Student has been denied a free, appropriate public education during the 2005-2006 school year.

Yes, Student has been denied a free, appropriate public education. Because Parent was required to take over the School District's IEP obligation to ensure that Student made it to school, either by driving her privately, or escorting her to and from school, School District did not provide FAPE. A School District cannot be said to have fulfilled its obligations if it is relying on Mother to pay for and fulfill part of what should be in the IEP. Further, Mother did not receive sufficient

information from School District regarding her procedural safeguards to enable her to have meaningful participation in the IEP process. These violations are more fully discussed in the sections relating to Hearing Issues 1 through 3, above.

CONCLUSIONS OF LAW

Based on the evidence and testimony presented and the subsequent Findings of Fact, the Impartial Hearing Officer has made the following conclusions of law:

Relating to Due Process Procedures:

Petitioners were adequately represented by counsel. Respondent was also adequately represented by counsel. Both parties were afforded due process in conformity with the requirements of IDEA.

Relating to facts and findings:

1. Petitioners have the burden of proof since they are the party seeking the change in placement and denial of a free, appropriate public education. *Cordrey v. Euckert*, 917 F.2d 1460, 1469 (6th Cir. 1990), *cert. denied*, 499 U.S. 938 (1991); *Schaffer v. Weast*, 126 S. Ct. 528 (2005).
2. The applicable procedural requirements of the IDEA as set forth at 20 U.S.C. 1415 et seq. and the Individuals with Disabilities Improvement Act of 2004 (IDEIA) were satisfied after the parent's filing of the due process request and throughout the course of preparation for the due process hearing.
3. Student is a "child with a disability" as that term is defined in 34 C.F.R. § 300.7(a), based on the determination that Student has a cognitive disability as defined in Ohio Administrative Code §3301-51-01(F)(3) (b):

"Cognitive disability" (mental retardation) means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(i) "Significantly subaverage general intellectual functioning" refers to an intelligence quotient of seventy or below as determined through a measure of cognitive functioning administered by a school psychologist or a qualified psychologist using a test designed for individual administration. Based on a standard error of measurement and clinical judgment, a child may be determined to have significant subaverage general intellectual functioning with an intelligence quotient not to exceed seventy-five.

4. The School District is a "local educational agency" as that term is defined in 34 C.F.R. §300.18.
5. As a Student with a disability, Student is entitled to a free appropriate public education, meaning special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, (c) include preschool, elementary school, or secondary school in the state, and (d) are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. §§ 300.340-300.350.
6. Student's IEP for the 2005-2006 school year was developed by the SE School District. Mother's assent to the IEP is noted on the signature page of the document as executed by the Mother on May 23, 2005. The contents of the document are substantially consistent with the requirements of the IDEA. 20 U.S.C. 1414(d) et seq; 34 C.F.R. § 300.347(a).
7. The 2005-2006 IEPs contained a statement of present educational levels; a statement of annual goals; a statement of educational services (including the extent to which the child will participate in regular educational programs); the initiation date and duration of these services; and appropriate objective criteria for determining whether instructional objectives are being met in accordance with 20 U.S.C. §1414(d)(1)(A).
8. IDEA mandates a meaningful benefit which implies progress or improvement. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 180-185 (3d Cir. 1988). Student is making progress on all IEP goals and objectives addressed to date.
9. Petitioner was not accorded her procedural rights under IDEA when Ms. C. unilaterally decided not to provide bus transportation, effectively amending Student's IEP. A revision of an IEP must be accomplished in accordance with 34 CFR §300.346. The IEP team did not consider the matter before Ms. C's decision, in violation of that section.
10. Petitioner's procedural rights were violated in that she did not receive adequate prior written notice to allow her to participate in a meaningful way in IEP meeting #1, as defined in 34 C.F.R. §300.345 and §300.501. The decision to discontinue transportation services was made unilaterally by Ms. C, in violation of 34 CFR §300.345.

11. Regarding the 2005-2006 IEP meeting #1, Mother was not provided an opportunity to equally participate as a team members in the decision to discontinue transportation, as required in accordance with 34 C.F.R. § 300.345. Such participation requires the other team members to afford the parents an opportunity to share information and voice concerns regarding the development of the child's IEP. While Mother was able to attend IEP meeting #1, and spoke at the meeting, her lack of adequate notice and information, coupled with Ms. C's prior decision to discontinue transportation, acted to deny her a meaningful opportunity to participate.

12. Petitioner's procedural rights were violated in that she did not receive her procedural safeguards following IEP meeting #1, in accord with 34 CFR §300.503. Those rights were also violated when the August 15, 2005 letter from Ms. C did not include the appropriate notice in accordance with 34 CFR §300.503.

13. Bus transportation is a related service for Student, as defined in 34 C.F.R. §300.24. The facts presented at the due process hearing establish that Student is not able, at present, to safely navigate from her home to school independently and thus, requires transportation as a related service.

14. The complete IEP requirements are set forth at 34 C.F.R. §300.340 *et.seq.* The SE School District IEP, without the amendment made by School District regarding transportation on August 15 and 23, 2005 is sufficient to provide the Student with a "free appropriate public education" in the least restrictive environment within the meaning of the IDEA. The existing placement (adding transportation) and IEP have been reasonably calculated to confer "educational benefits" to Student.

15. The procedural violations of School District outlined above, when viewed as a whole, acted to deprived Student of FAPE. The IDEA defines "free appropriate education" as "special education and related services that---(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program ["IEP"] required under section 1414(d) of this title." 20 U.S.C. § 1401(8).

16. A hearing officer is not authorized to award attorney fees in a due process hearing under the IDEA. Accordingly, the request of the petitioners for legal fees and costs is preserved for determination of prevailing party status and fee award, if any, by a reviewing court of appropriate jurisdiction, in the event the within matter is appealed. 20 U.S.C. §1415(i)(3)(B); *Zipperer v. School Bd. of Seminole Cty. Florida*, 111 F3d 847, 851 (11th Cir., 1997).

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby decided:

While School District violated the procedural requirements of IDEA relating to its decision to change Student's IEP and reduce speech hours based on the School District's scheduling needs, no educational, substantive harm came to Student during actual class time. Mother's rights to participate in the IEP process and receive procedural rights were compromised. Because Student cannot safely navigate to and from school on her own, Mother fulfilled School District's obligation to provide transportation by either driving Student or walking with her to and from school. This set of circumstances operated to deny Student a free, appropriate public education, as transportation to and from school is an integral part of her educational need.

IT IS HEREBY ORDERED THAT:

School District shall provide appropriate door-to-door transportation to and from Student's home and assigned school for a time period equal to the number of school days that have passed from August 23, 2005 to the date of the Final Decision ("Period of Bus Transportation"). Such transportation from Student's home to Student's school must commence not later than five (5) school days following the issuance of this Final Decision.

Not later than fifteen (15) school days following the issuance of this Final Decision, an appropriately constituted IEP meeting regarding Student must be held, with advance written notice to Petitioner, to determine whether it is appropriate to amend Student's IEP to include transportation, travel training, as specified in 34 CFR 300.26(a)(2)(ii), or other supports to allow her to gain the knowledge and experience needed to safely and independently navigate to and

from school on a daily basis following the Period of Bus Transportation contained in this Final Decision.

Nothing in this Order should be construed as obligating School District to discontinue bus transportation to Student following the Period of Bus Transportation specified in this Order.

IT IS SO ORDERED.

Impartial Hearing Officer
Date: December 12, 2005

EXHIBITS (sent to Ohio Department of Education only)

Transcript of Proceedings, November 7, 14, 15 and 16, 2005

Petitioner's Exhibits

Respondent School District Exhibits

IHO #1 – IHO Correspondence File

IHO #2 – IHO Pleadings File

IHO #3 – IHO Correspondence File received after 11/6/2005

IHO #4 – IHO Pleadings received after 11/6/2005

Petitioner's Post-Hearing Brief

Respondent's Post-Hearing Brief

Files of correspondence and pleadings received after the due process hearing

NOTICE OF OPPORTUNITY FOR APPEAL AND RIGHTS FOLLOWING THE HEARING

1. You can request a verbatim transcript of the hearing. Such transcript has already been provided to Petitioners.
2. **Appeal Rights:** If you are not satisfied with the findings and decision of the impartial hearing officer, you may appeal such a decision to the Ohio Department of Education within forty-five (45) days of the notice of decision to the Ohio Department of Education. Pursuant to the *Operating Standards for Ohio's School's Serving Children with Disabilities* 3301-51-08 (H) (1) (a) and (b): The notice of appeal shall set forth the order appealed and the grounds of the party's appeal; and a party filing an appeal shall notify the other party of the filing of their appeal. If an appeal is filed, the Office for Exceptional Children, on behalf of the Ohio Department of Education, will appoint a State Level Review Officer to review the decision and issue a final order. The address for appeal is:

Ohio Department of Education
Office for Exceptional Children
25 South Front Street, Mail Stop #202
Columbus, Ohio 43215-4183
Office: (614) 466-2650

3. **Appeal of Rights after a State Level Review:** If you are not satisfied with the final order of the state level review officer (SLRO), you may appeal such order within forty-five (45) days of receipt of notice of the order to the Court of Common Pleas of the county in which the child's school district of residence is located, under Chapter 119 of the Ohio Revised Code. The notice of appeal must set forth the order being appealed from and the grounds of the appeal. In the event that you do appeal, you must file your Notice of Appeal with the Ohio Department of Education. A copy of your Notice of Appeal must also be filed with the Court of Common Pleas of the county in which the child's school district of residence is located."

CERTIFICATE OF SERVICE

A copy of the foregoing Identifying Information, Final Decision and Notice of Opportunity for Appeal was served on the following individuals by certified, U.S. mail, postage prepaid this 12th day of December

to:

Mr. Charles Keenan, certified no. 7004 2510 0000 2963 5406
Superintendent
Maple Heights City School District
14605 Granger Road
Maple Heights, OH 44137

Ms.PARENTPARENT, certified no. 7004 2510 0000 2963 5390

and by regular U.S. mail to:

Ms. Aimee Gilman, Esq.
Ms. Anne Brigham, Esq.
27900 Euclid Avenue
Suite 210
Cleveland, Ohio 44132

Ms. Inajo Davis Chappell, Esq.
Ms. Tanya Williams Sample, Esq.
Ulmer and Berne LLP
Skylight Office Tower
1660 West 2nd Street – Suite 1100
Cleveland, Ohio 44113-1448

Irene H. McMullen

cc: Arron Gregory

Mr. Charles Keenan
Superintendent
Maple Heights City School District
14605 Granger Road
Maple Heights, OH 44137