

2.

001. has mild hearing loss at lower frequencies and sloping to a profound loss of hearing at the higher frequencies. (T-119: 16-24; 120: 24-25; 121: 1-15; 122: 21-22.)

3.

002 is one of 22 students in a general education classroom. (T-155: 11-13.) Although placed in a general education classroom, 001. receives additional instruction from a special education teacher and a teacher of the deaf and hard of hearing.¹ (T-35: 2-8.) The special education teacher works with 002. in a resource-based class along with 7 to 10 other students and provides individualized instruction in the regular education classroom under a collaborative instruction model. (T- 63: 10-16; 66:1-4.)

4.

Of the approximately 1,100 students that are receiving special education services in Walton County, fifteen students qualify and receive services in the Deaf or Hard of Hearing (hereinafter "D/HH") program. (T-35: 9-16.) 003. works one-on-one with the itinerant D/HH teacher for approximately one hour five times a week. Itinerant D/HH teachers travel among various neighborhood schools to provide services to eligible students. (T-91:24-25; 92: 1-25; 93: 2-5.)² At times the special education teacher has attempted to co-teach with the itinerant D/HH teacher, but these collaborations have not proven to be effective. (T-170: 11-23.)

¹ Defendant also provides services to 004. from an audiologist and a speech and language pathologist. (T-35:2-8.)

² There is a state-wide shortage of certified D/HH teachers and, consequently, Defendant has had a difficult time retaining and recruiting D/HH teachers. (T-49: 7; 69: 1-16; 144: 1-9.) Defendant has conducted extensive teacher searches, which has included recruiting in other states and at national conferences. (T-68: 1-9.) Two D/HH teachers who were hired after extensive searches were subsequently hired by other employers. (T-68: 24-25; 69: 12-16.) Defendant does not currently have a D/HH teacher on staff. (T-67: 19-22.)

5.

In his current educational placement, [REDACTED] has made minimal academic progress. (T-152: 2-5.) At the beginning of his fifth grade year (i.e., the 2008-2009 school year), [REDACTED]'s grade equivalency scores in reading and math were at the first grade level. (T-151: 12-24; 168: 5-23.) In the regular education environment, [REDACTED] has trouble following and understanding instruction. (T-155: 17-25.) The fifth grade math curriculum is above [REDACTED]'s level of understanding and, although his teacher has encouraged him to participate, [REDACTED] generally does not do so. (T-155: 7-25.)

6.

On October 6, 2008, [REDACTED]'s mother authorized Defendant to obtain an independent evaluation through Atlanta Area School for the Deaf (hereinafter "AASD"). The AASD evaluation was completed over a two-day period in November 2008. (T-59: 14-24, Ex. 30.)

7.

[REDACTED]'s IEP Team reviewed the AASD evaluation and developed an updated IEP for [REDACTED] on December 5, 2008. The December 2008 IEP provides that [REDACTED]'s level of services from a D/HH teacher would increase from 5 segments per week to 26 segments per week.³ (T-53: 22-25; 54: 1-20; Ex. 32.) Although [REDACTED] is only with his D/HH teacher for one segment per day, approximately 80 percent of his learning occurs with the D/HH teacher. (T-156: 11-25.) While studying with his D/HH teacher, [REDACTED] is more attentive. (T-155: 17-25; 156: 1-10; 167: 17-25.) He appears to understand what the D/HH teacher is saying and to be more comfortable with her. (T-155: 17-25; 156: 1-10.)

³ There are 6 segments of instruction in a typical school day, or 30 segments of instruction in a typical school week. One segment equates to approximately 50-60 minutes of instruction. (T-50: 9-22.)

8.

At the hearing, the parties stipulated that there is no dispute about the level of special education services to be provided under the December 5, 2008 IEP. (T-6: 23-25; 7: 8-25; 8: 6-17.)⁴ The only remaining issue is the location where [REDACTED] would receive these services. (T-7: 8-25; 8: 7-14.)

9.

Except for [REDACTED]'s mother, Ms. [REDACTED], the IEP team agreed that [REDACTED] should receive the recommended services by participating in the shared services program for D/HH students located at [REDACTED] Elementary School (hereinafter "CRES") in the Clarke County School District.⁵ Defendant currently participates in a shared services program for D/HH students through the Northeast Georgia Regional Educational Service Area (hereinafter "RESA"). (T- 68: 16-17.) The shared services program is a cooperative arrangement among 13 local school systems in a regional service area to share limited educational resources. (T-137: 11-16.) D/HH Students in the elementary schools who are not performing at or near grade level, who need a more intensive level of services than can be provided on an itinerant basis, or who want to be with a group of signing deaf children attend the D/HH magnet program located at CRES. (T-139: 9-25; 141: 17-23.) At this location, there are four D/HH teachers, a speech language pathologist who has dual certification, several sign language interpreters, and paraprofessionals with sign language ability. (T- 44: 16-25.) RESA also provides programs for middle school and high school DHH students. (T- 48: 20-22.)

⁴ While Ms. [REDACTED] agreed at the hearing that there was no dispute about the level of services, in post-hearing briefing she stated that while [REDACTED] needed increased services she did not understand that this would mean 26 segments per week with a D/HH teacher.

⁵ The IEP team also considered the Georgia School for the Deaf, and the Atlanta Area School for the Deaf as appropriate locations; however, the team dismissed these two options in an effort to be sensitive to Ms. [REDACTED]'s concerns about the need for [REDACTED] to be educated alongside his hearing peers. (T-248-249.)

10.

CRES is not a separate school for deaf and hard of hearing students. (T- 48: 4-23.) It is an elementary school attended by typical students in the Clarke County School District and also those students participating in the D/HH magnet program. (T- 48: 4-23; 97: 8-16.) Currently, there are 22 children who participate in the D/HH magnet program at CRES. (T-95: 6-20.) As students make progress, they are able to increase their participation in the regular education classroom with interpreter services. (T-98: 2-13.) The goal of the D/HH magnet program is to educate students and close any learning gaps so that they can return to their neighborhood schools. (T-107: 14-22.)

11.

Ms. [REDACTED] objects to sending [REDACTED] to CRES. While Ms. [REDACTED] maintains that Defendant has not provided adequate support to [REDACTED] during previous academic years, (T- 295: 18-19), she prefers he remain in the general education program at [REDACTED] Elementary School because he “lives in a hearing world.” (T-292: 7; 310: 13-14.) Ms. [REDACTED] identified [REDACTED]’s bowel problems, asthma problems, and panic attacks as the three reasons that he cannot travel out of the county to participate in the D/HH magnet program at CRES. (T-13: 11-24.)

12.

Notwithstanding Ms. [REDACTED]’s preference, the evidence at the hearing demonstrated that the higher level of D/HH services recommended in the December 2008 IEP cannot be provided in the regular education environment at [REDACTED] Elementary School. Given his cognitive abilities, [REDACTED] should be achieving academically at a much higher rate, but he has not developed the skills necessary to meet the requirements of a regular education curriculum. (T- 261: 3-25; 262: 1-3; 316: 11-13; Ex. 30.) [REDACTED] was not identified as hearing impaired and fit with hearing aides until he was approximately 4 years old. (T-128: 8-14.) As a result he lost four years of language foundation and

development; this loss has contributed to [REDACTED]'s need for a more intensive level of services from a D/HH teacher. (T-243: 17-25; 244: 1-11; 262: 1-24.)

13.

During his first and second grade years, [REDACTED]'s hearing status declined substantially at the higher frequencies. (T-132: 1-6.) At the end of his third grade year, [REDACTED]'s IEP Team recommended that he be retained because he did not pass the Criterion-Referenced Competency Test ("CRCT") in math and reading. (T-62: 1-25.) [REDACTED]'s IEP Team also recommended that he receive an increased level of instruction from a certified D/HH teacher. (T-62: 1-25.) The IEP Team encouraged [REDACTED]'s mother to consider enrolling him in the magnet program for D/HH students which is located at CRES in the Clarke County District. (T-62: 1-25.)

14.

Ms. [REDACTED] has been an active and involved parent, attending all of [REDACTED]'s IEP meetings and assisting his teachers as necessary. (T-295: 7.) While the school district has recommended [REDACTED] attend CRES since his third grade year, Ms. [REDACTED] has not wanted Defendant to retain [REDACTED] nor has she wanted to send [REDACTED] outside of the school district. She has maintained that [REDACTED] will catch up if he is provided additional support. In an effort to accommodate Ms. [REDACTED], past IEP Teams have agreed to provide a more intensive level of services to [REDACTED] at his neighborhood school, but unfortunately he has not made significant progress. (T-63: 9-22; Ex. 32.)

15.

During his fourth grade year, [REDACTED] was assigned to a regular education teacher who happened to know sign language.⁶ (T-64: 4-23.) [REDACTED]'s fourth grade teacher was able to utilize signing to teach [REDACTED]. (T-64: 4-15.) Toward the end of [REDACTED]'s fourth grade year, his IEP Team met to develop

⁶ This teacher is no longer at [REDACTED] Elementary School. At the present time, there is no other regular education teacher in the Walton County School District that also knows sign language at this level. (T-64: 4-15.)

his IEP for the upcoming school year. The IEP Team again recommended that [REDACTED] receive a higher level of D/HH services through the shared services program located at CRES. (T-65: 2-9.)

16.

The evidence presented at the hearing demonstrated that in order to meet the goals of the December 2008 IEP placement at CRES, rather than [REDACTED] Elementary School, is appropriate. [REDACTED] displays a severe language gap of three years or more (T-102: 10-17; Ex. 30), and has a difficult time understanding multiple meaning words. (T-262: 10-24; 264: 13-25; 265: 1-17.) He needs specialized instruction that focuses on vocabulary concepts to strengthen his language foundation. (T- 265: 1-25.)

17.

To obtain educational benefit, [REDACTED] also needs simultaneous sign and speech instruction. (T-103: 23-25; 104: 1-15; 268: 1-23; 271: 8-25; Ex. 30.) At this point, however, he would not benefit from being in a regular education classroom with a sign language interpreter because of his limited sign language vocabulary. (T-104: 3-25.) His sign language vocabulary is approximately 5 years behind that of his same-aged deaf and hard of hearing peers. (T- 270: 5-25; Ex. 30.) As [REDACTED] learns more sign language, he possibly could return to the regular classroom with an interpreter. (T-219: 1-3.)

18.

In a sound booth with no background noise, [REDACTED]'s speech intelligibility index is about 35 to 40, which equates to an estimated 80 to 90 percent understanding ability. (T-123: 14-25; 124: 1-10.) [REDACTED] uses hearing aids and an FM amplification device to help him recover his usable hearing. (T-124: 11-25.)⁷

⁷ There was testimony at the hearing that as of late [REDACTED] has complained about wearing the FM device. It is not unusual for children, as they grow older, to reject use of these devices based on peer pressure. (T-126: 8-25.)

19.

In the regular education environment, [REDACTED]'s comprehension ability is diminished by background noises, visual distractions, his distance from the speaker, and the sounds made by other students. (T-124: 6-13.) Even with his hearing aides, [REDACTED] is missing much of the high-frequency sounds such as "f," "s," and "th." (T-122: 16-23; 127: 4-17.) He has difficulty hearing his teacher and communicating with his peers. (T-127: 18-25.)

20.

To implement his IEP at ~~666912334~~ Elementary, Defendant would need to place [REDACTED] in a pull-out setting with a D/HH teacher for 20 segments per week, or approximately 4 hours each day. (T-56: 6-19.) When he is receiving services from his D/HH instructor on a on a pull-out basis, [REDACTED] does not have an opportunity to increase his communication with his peers because he is one-on-one with the teacher and effectively alone in the class. (T-165: 1-10; 232: 24-25; 233: 1-9.)

21.

In addition to [REDACTED]'s academic needs, placement at CRES would also help [REDACTED] develop critical social skills. One of the goals in [REDACTED]'s December 2008 IEP is related to increasing his social communication. (Ex. 32.) In the regular education classroom, [REDACTED] does not interact very much with the other children. (T-153: 1-18; 169: 8-25.) [REDACTED]'s general education teacher opined that he "is a sweet young man, but he lacks the social skills that the other fifth graders have." (T-152: 11-12.) He requires a lot of direct instruction when it comes to social interactions. (T-169: 17-25.)

22.

[REDACTED] tries to communicate with his classmates using sign language, but the other children do not understand what he is try to tell them. (T-154: 1-14.) He does not initiate conversations with

However; when these children enter a regional program with other D/HH peers they usually tend to feel less self-conscious and "tend to be more confident" about using this device. (T-146: 13-18.)

his peers or engage in many reciprocal conversations. (T-169: 11-25; 230: 20-25.) When [REDACTED] does engage in conversations with his classmates, he is primarily responding to questions instead of offering additional information and/or asking questions in order to continue the conversation. (T-230: 1-18.)

23.

Given this lack of peer interaction, [REDACTED] has become dependent on teachers and other adults. (T-216: 2-20.) During recess he tends to stand with his regular education teacher. (T-153: 1-18.) He usually plays by himself or with an adult. (T-212: 1-13.)

24.

If [REDACTED] is pulled out of the general education environment to work with just one D/HH teacher for a majority of the school day, he will be unable to develop appropriate social and or emotional skills. (T-103: 2-10; 217: 21-24.) His opportunities to learn language and academic content from his peers would be limited. (T-144: 11-15; 247: 1-14.)

25.

Ms. [REDACTED] agrees that [REDACTED] should not be one-on-one with a teacher for so many hours each week, but also feels that the peer interactions at CRES will not be appropriate. (T-307: 1-15; 309: 21-25; 310: 1-5; 299: 1-10.) She expressed concern that [REDACTED] would “lose” his speech if he attended CRES with D/HH peers. However, it is unlikely [REDACTED] would stop speaking if he were to attend a school with other D/HH students. (T-219: 8-25.) To the contrary, students who are in a signing environment tend to learn more sign language and, as they do so, their vocabulary development increases. (T-219: 8-25.) [REDACTED] would greatly benefit from being educated with other D/HH students because it would provide him with an opportunity to interact with students who communicate in a similar manner. (T-235: 19-25; 236: 1-25; 237: 1-14.)

26.

RESA currently employs six itinerant D/HH teachers who travel among various neighborhood schools to provide services to eligible students within the RESA service area. (T- 91:24-25; 92: 1-25; 93: 2-5). Students who receive services on an itinerant basis are typically performing at or within 6 months of grade level, and usually require no more than one segment per day of service from a D/HH certified teacher. (T- 92: 20-25; 140:20-25; 141: 6-21.)

27.

Efforts to provide D/HH instruction to ~~Q~~ in the regular education classroom and in the small group setting have not been effective. (T- 158: 11-24; 170: 19-25; 171: 1-15.) He has had a difficult time shifting his focus between the teacher providing the instruction and his D/HH teacher. (T- 158: 11-24; 170: 19-25; 171: 1-15.)

28.

At CRES, ~~Q~~ would receive instruction from a D/HH teacher in a small class setting with other deaf and hard of hearing students. (T-105: 5-18.) Most of the D/HH students at CRES use speech to communicate to some extent. (T-145: 2-5.) ~~Q~~ would not have to be alone, one-on-one, with a D/HH teacher. (T-105: 5-18.) He would have access to simultaneous sign and speech instruction and an opportunity to communicate with peers using sign language and speech. (T-105: 1-25; 106: 1-6; 109: 20-25; 110: 1-11.) Typically, adding sign language improves oral language abilities. (T-145: 15-18.)

29.

If ~~Q~~ does not receive an increased level of services from a D/HH teacher, he will make only minimal progress this school year. At best, he might advance to a second grade level by the end

of his fifth grade year. (T-169: 1-7.) It is also possible that he will not advance above the first grade reading level. (T-102: 10-22.) Without increased D/HH instruction, [REDACTED] is at risk of dropping out of school. (T-102: 10-22.)

30.

[REDACTED]'s bowels did not develop properly as a child. As a result, he has suffered bowel obstructions which require Ms. Reed to use an instrument to manually remove the fecal mass. (T-293: 6-11; 309: 6-11.)

31.

On September 22, 2008, [REDACTED]'s mother informed Defendant that [REDACTED] needed to be home by 4:00 p.m. because he had a bowel problem. (T-288: 21-25; 289: 1-12.) [REDACTED]'s mother stated that [REDACTED] had been trained to go to the bathroom every day at 4:00 p.m. with her assistance. (T-288: 21-25; 289: 1-12.) During prior years [REDACTED]'s mother had completed forms for his transportation, but had not provided Defendants with any information regarding [REDACTED]'s bowel problems. (T-289: 13-15; 72: 19-25; 73: 14-25; Ex. 13; Ex. 17; Ex. 21.)

32.

Defendant has provided adapted transportation services to [REDACTED] since he was in preschool, and would provide these services if he were to attend CRES. (T-186: 2-9; 187: 15-19; 192, 7-25; 193: 1-19.) At various points in time, [REDACTED] has traveled on the bus for up to an hour without incident. (T-187: 15-19; 192, 7-25; 193: 1-19.) During fourth grade, [REDACTED] rode the bus for approximately 40 minutes to get to and from school. (T-189: 1-25.) During this time, while [REDACTED] was on adaptive transportation and while he was in class, district employees have not observed bowel problems, asthma problems, or a panic attacks. (T-190: 3-6.)

33.

Defendants would provide adapted transportation services for [REDACTED] and, if necessary, develop a medical care plan to respond to any health related issues. (T-72:4-22.) The approximate travel time between [REDACTED]'s home and CRES is between 34 and 39 minutes. (T-286: 4-17.) CRES dismisses in the afternoon at 2:10 p.m. and [REDACTED] would arrive home at approximately 2:44 p.m., well before 4:00 p.m. (T-286: 4-13; 289: 16-20.)

34.

When providing adapted transportation to students such as [REDACTED], Defendant provides specialized training to school bus drivers and monitors based on the needs of the children on their route. (T-70: 5-16.) Defendants are also willing to allow [REDACTED]'s mother to ride the bus with him to and from CRES. (T-78: 14-18.)

CONCLUSIONS OF LAW

1.

Plaintiff bears the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. DOE Rule 160-4-7-.01 (1)(a); OSAH Rule 616-1-2-.07. The standard of proof on all issues is a preponderance of the evidence. OSAH Rule 616-1-2-.21 (4).

2.

[REDACTED] is a hearing impaired student, identified and qualified under the IDEA as disabled. In this action, the only issue is the appropriateness of a December 2008 IEP which requires [REDACTED] to attend CRES in order to receive the services outlined in that IEP.

3.

Under both federal and state law, students with disabilities have the right to a free appropriate public education (“FAPE”). 20 U.S.C. § 1412 (a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. DOE Rule 160-4-7-.01 (1)(a). “The purpose of the IDEA generally is ‘to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.’” C.P. v. Leon County Sch. Bd., 483 F.3d 1151, 1152 (11th Cir. 2007), quoting 20 U.S.C. § 1400 (d)(1)(A). The Supreme Court has developed a two-part inquiry to determine whether a school district has provided FAPE. A court must first determine if a State has complied with the procedures set forth in the IDEA. The court must next examine whether an IEP is reasonably calculated to enable the child to receive “educational benefit.” Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 (1982). “This standard...has become known as the Rowley ‘basic floor of opportunity’ standard.” C.P. v. Leon County Sch. Bd., 483 F.3d 1151, 1152 (11th Cir. 2007).

4.

The primary purpose of the Individuals with Disabilities Education Act (“IDEA”) is to ensure that children with disabilities receive a FAPE. 20 U.S.C. § 1412 (a)(1)(A). To fulfill this purpose, school districts must develop, review, and revise an Individualized Education Program (“IEP”) for each child with a disability. 34 C.F.R. § 300.320. In determining the educational placement of a child with a disability, a school district must ensure that the placement decision is made in conformity with the least restrictive environment (“LRE”) requirements put forth in 34 C.F.R. §§ 300.114 through 300.118. 34 C.F.R. § 300.116 (a)(2). Under the LRE provisions, school districts

must ensure that, “to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled.” 34 C.F.R. § 300.114 (2).

5.

Pursuant to federal law, disabled children and their parents have the right to present complaints regarding educational placement of children. 20 U.S.C. § 1415 (b)(6). In this action, there is no dispute that [REDACTED] requires increased services from a D/HH teacher. However, [REDACTED]’s mother argues that it would not be appropriate to provide these additional services at CRES because [REDACTED] has bowel problems, asthma problems, and panic attacks, and travel to CRES might prove difficult under these circumstances.

6.

Generally, educational placement as used in the IDEA means educational program – not the particular institution where that program is implemented. Sherri A.D. v. Kirby, 975 F.2d 193, 206 (5th Circ. 1992) (educational placement not a place but a program of services). Even assuming that parental input into educational placement is mandated, in this case Ms. [REDACTED] had ample opportunity to offer input. However, the right to provide meaningful input does not give a parent the right to dictate an outcome as long as an IEP is reasonably calculated to provide some educational benefit. See Bradley v. Ark. Dept. of Educ., 443 F.3d 965 (8th Cir. 2006).

7.

To receive the agreed upon level of D/HH services in his neighborhood school, Defendant would need to place [REDACTED] in a separate class with his D/HH teacher for at least four hours per day. Because there are no other deaf and hard of hearing students in his neighborhood school, [REDACTED] would be the only student in the class, and would not interact with his peers or other teachers. This would

be a highly restrictive placement and inappropriate for a student with a stated IEP goal of increasing communication skills with teachers and peers.

8.

In the case of a child who is deaf or hard of hearing, the IEP Team must “consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode.” 34 C.F.R. § 300.324 (2)(iv). In selecting the LRE, school districts must also give consideration to any potential harmful effect on the child or on the quality of services that he will receive. 34 C.F.R. § 300.116 (d).

9.

Almost every witness at the hearing testified that providing D/HH services to [REDACTED] in his neighborhood school would not be appropriate or otherwise enable him to achieve educational benefits. The evidence demonstrated that [REDACTED] does not have the necessary academic skills to make progress in a general education environment. In a one-on-one environment without any other students, [REDACTED] would have minimal opportunities to develop necessary social skills and communicate with his peers. Such a placement would continue to foster his dependence on adults and further isolate him from his peers. Due to his need for specialized instruction to strengthen his language foundation, it is not reasonable to expect [REDACTED] to participate in the regular education environment and understand grade level content instruction. Without the recommended level of D/HH instruction, [REDACTED] may not advance above a first grade reading level. He is also at risk of becoming further isolated and withdrawn, perhaps dropping out of school entirely.

10.

Placement at CRES will afford [REDACTED] opportunities to interact with his hearing peers, and other students who are deaf and hard of hearing. [REDACTED] needs the emotional and behavioral support which comes from peer interactions. In his neighborhood school, he will not be able to receive the necessary level of D/HH instruction and develop the necessary communication skills necessary to improve his peer interactions. In a one-on-one environment, [REDACTED] will not be able to make adequate progress toward mastering his social communication goals in his IEP.

11.

When selecting the location to provide services, school districts are directed to assign students to their neighborhood schools “unless the IEP of the child with a disability requires some other arrangement.” 34 C.F.R. § 300.116 (c); see also White v. Ascension Parish Sch. Bd., 343 F.3d 373 (5th Cir. 2003). Although IDEA expresses a preference for educating children “as close as possible” to the child’s home, school districts are given discretion to assign a students to non-neighborhood schools in order to fully implement the student’s IEP. 34 C.F.R. § 300.116 (b)(3). Here, it is not possible for [REDACTED] to be placed in his neighborhood school because that school cannot provide the services he requires under the December 2008 IEP.

12.

Georgia Department of Education regulations expressly authorize participation in shared services programs operated by Regional Educational Service Agencies. Ga. DOE Rule 160-5-1-.13 (2008). Given the limited resources available to school districts, the shared services program allows school districts to improve the effectiveness of educational programs and the allocating of finite resources. Although the D/HH magnet program is located outside of the Walton County School

District, it is centrally located within the larger regional service area. Moreover, the inter-district travel time of 40 minutes is equal to or less than C.H.'s previous intra-district travel times.


13.

Although [REDACTED]'s mother maintains that [REDACTED]'s bowel problems, asthma problems, and panic attacks prevent him from traveling to CRES, the evidence establishes otherwise. [REDACTED] has traveled to and from school in the Walton County School District without any type of bowel problem or medical emergency since he was in preschool. The only evidence offered by in support of Ms. [REDACTED] claim that [REDACTED] has "bowel problems" was testimony by [REDACTED] mother that she must assist [REDACTED] in the removal of bowel blockage, and that [REDACTED] must use the bathroom each day at 4:00 p.m. There was no evidence offered at the hearing that any necessary bowel procedure needed to be performed before that time or that an extended bus ride would contribute to [REDACTED] bowel problem. There is no evidence that [REDACTED] bowel problems, asthma problems, and panic attacks could not be accommodated through adapted transportation.

DECISION

For the reasons stated above, this Court finds that the [REDACTED]'s December 5, 2008 IEP is reasonably calculated to provide him with a free and appropriate public education under IDEA and that CRES is the least restrictive environment for [REDACTED]. Plaintiff's request that [REDACTED] continue to receive services at his neighborhood school is hereby **DENIED**.

SO ORDERED THIS 18th day of February, 2009.



RONIT WALKER
Administrative Law Judge