

**BEFORE THE OFFICE OF INDIAN EDUCATION PROGRAMS
BUREAU OF INDIAN AFFAIRS
UNITED STATES
DEPARTMENT OF THE INTERIOR**

In re)	
)	
)	
Complainant)	Hearing
)	Decision
v.)	
)	
)	HO
Respondent)	
)	

Procedural Background

On September 12 and 13, 2005, the above entitled matter was heard before Hearing Officer (HO) at .

The Complainant was represented by Attorney _____ of the Protection and Advocacy Project; and the Respondent was represented by Attorney _____ of the _____ Law Firm.

The request for this due process hearing under the Individuals with Disabilities Education Act (IDEA) was originally filed on May 15, 2005, by _____, the Complainant's Mother. _____ turned _____ years-of-age in _____, _____, and the Parties mutually agreed to a substitution of _____ for _____ as the Complainant. The Parties were in further agreement that events occurring before July 1, 2005, the effective date of the 2004 IDEA Amendments would be governed by the law existing at that time, and events occurring on and after July 1, 2005, would be governed by the 2004 Amendments. The Parties agreed to focus the hearing evidence and decision on _____ secondary school educational experiences and limit earlier school experiences to general background information.

The HO made known in a prehearing conference that it was his understanding that he has no authority to award monetary damages and that the Court of Appeals for the _____ Circuit does not recognize monetary damages under the IDEA.

Most witnesses in the hearing were sequestered and admonished to not discuss testimony given or questions asked during hearing testimony with other witnesses until the conclusion of the hearing. _____ requested that the hearing be closed to the public pursuant to IDEA rules, both those currently in effect and those proposed by the United States Department of Education.

While it was determined that Section 504 of the Rehabilitation Act of 1973 may be relevant for purposes of early identification of _____ as a child with a disability, this proceeding was not considered to be held under any legal authority other than the IDEA.

The Parties mutually agreed that the hearing record would consist of relevant school records submitted by the school and numbered pages 1-199 and 401-408. Pages 8-19, notes of a mediation conference, were excluded by the HO as inappropriate for the purposes of this proceeding. The Complainant submitted exhibits, pages 201-376 and an unnumbered page of a parent response to a notice of graduation dated May 23, _____. Other documents could be submitted as additional exhibits, however, none were.

A Disagreement by the Parties over the legality of certain medically related documents was resolved before hearing by the Parties. It was agreed that portions of reports on pages 23, 102, 168, 174, 186, and 187 related to a certain diagnosis would be redacted in exchange for no change to a partially redacted version of pages 164-165, 177-180, and 405-406. The result was a general understanding to include medical history, not treatment of the diagnosis.

The Parties agreed to submit statements regarding their respective perspectives of the specific issues to be resolved in the hearing. This was necessary because the original request for due process hearing lacked specificity as to all the matters at issue: “. . . I feel the school is not following through on certain of its agreements and concerns I have regarding incidents that have happened at the school regarding _____.”

The Complainant identified the issues as follows:

1. Whether the school denied _____ (through _____ parents) procedural safeguards under the IDEA when _____ parents consulted with teachers and administrators regarding ADHD over the years.
2. Whether the school failed to identify _____ as a student with disabilities in need of special education.
3. Whether the school failed to evaluate _____ in all areas of suspect and disability in a timely manner.
4. Whether the school failed to complete the corrective action mandated by the BIA Complaint Investigator on October 15, 2004.
5. Whether the school failed to implement the mediation agreement of March 10, 2005.
6. Whether the school delivered FAPE to _____
7. Whether and what remedies are appropriate under the IDEA.

The Respondent did not strenuously object to listed items 4 through 7, but did object to items 1 through 3 as being outside the scope of the due process hearing request. The HO ruled that the general nature of the request for due process hearing, as explained in more detail later, would allow the introduction of evidence by the Complainant on issues numbered 1 through 3, as well as issues numbered 4 through 7.

At the conclusion of the hearing, the Parties agreed to waive oral closing arguments and to substitute written briefs of fact and law. They agreed to submit simultaneous briefs to be

postmarked no later than September 20. Both briefs were postmarked September 20. The Respondent's brief was received on September 26, and Complainant's brief was received on September 23.

Finding of Facts

The HO finds that he and the Office of Indian Education Programs have jurisdiction over the Parties and subject matter involved in this hearing.

1. is an year old , with several diagnosed disabilities, who resides with parents and younger brother in a rural area of the

2. Mother testified that she had frequently discussed academic and behavior problems over the years with teachers and administrators at the elementary and secondary schools. Often those issues were first raised by school teachers and administrators.

mistakenly and regularly told teachers from third through sixth grades that had complained regarding behavior that had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), by a physician. In actuality, the diagnosis had been Oppositional Defiant Disorder (ODD) with the possibility of ADHD. was prescribed Ritalin which was administered at home in the morning and by the elementary school third grade teacher at school at 11:30 a.m. on school days. The record contains a one page form entitled "The Taylor School Medication Effectiveness Report" for grade administration of Ritalin while at school between September 1995 and May 1996.

Behaviors complained of by elementary teachers included not sitting still, not completing school work, difficulty following directions, impulsivity, "demandingness," inattentiveness, and "motor restlessness." All are symptoms of ADHD.

As part of a formal complaint filed with the Bureau of Indian Affairs and the subsequent investigation created an 18 page reconstructed history (dated August 16, 2004) of medical and school events regarding . Her reconstruction was aided by medical records, school records and her own and other's recollection of events.

According to testimony and her August 16, 2004 reconstructed summary of events, discussed medical diagnosis with third, fourth, fifth, and sixth grade teachers. By the sixth grade, had also been diagnosed with "anxiety disorder."

In October, 1999, the junior high school contacted Mother about "difficulty at school in grade." As a result, she met with twelve teachers and told them that had been diagnosed with ADHD which she believed resulted in many

of the school's concerns. She offered to assist the teachers in any way she could. As a result, [redacted] met with the school counselor twice. After the second conference the counselor concluded that [redacted] was a [redacted] and that "if [redacted] wanted to, [redacted] could make the right decisions in [redacted] life." This was only one of many indications in the record that the educators, and others, believed that [redacted] actually exercised control over feelings and actions, and did not comprehend the possibility that disabilities they could not see with their own eyes might play a role in [redacted]'s behavior and actions while at school and elsewhere.

In May, 2000, [redacted] was struck on the head by a teacher for reaching in front of her in the dessert line in the school cafeteria. [redacted]'s Mother wrote a letter to the [redacted] Board, dated May 22, and explained in detail [redacted]'s diagnoses and the problems associated with his disabilities. She expressed her frustration in having a number of school teachers, counselors, and administrators being aware of [redacted]'s disability and not taking appropriate action. The letter discussed [redacted]'s diagnosis of both ADHD and Anxiety Disorder and that his teachers, including the one that struck [redacted], had been informed that [redacted] behavior problems were associated with disabilities. She reported that [redacted] was being prescribed Zoloft at that time and was seeing a physician to help [redacted] deal with [redacted] anxiety. That letter noted that at a meeting in March 2000, which included the assistant principal and teachers, a "behavior modification program called the 504 Plan" was discussed and would be implemented. When asked about it later by [redacted]'s Mother, the principal stated that he was not following up on it. He said that [redacted] had lost the form. The May 22 letter expressly referred to federal law: "I am told that federal law requires school systems to work with students such as my [redacted]," and concluded she was not satisfied with the school's efforts (pp. 402-403). She appeared at the August 1, 2000, School Board meeting and discussed her concerns with the Board. These events clearly should have created notice in [redacted] staff and officials to refer [redacted] for evaluation under the provisions of the IDEA.

In September, 2000, when [redacted] was in the [redacted] grade, the school called [redacted] to inform her that [redacted] was having difficulty concentrating and getting his work done. At a group meeting with ten of [redacted]'s teachers, his Mother informed them of [redacted]'s diagnosis of ADHD and her belief that his school behaviors were related to ADHD.

It was shortly following the September, 2000 meeting that [redacted]'s physician made clear to [redacted] Mother that [redacted] had also been diagnosed with ODD in addition to ADHD.

[redacted]'s Mother continued to talk with school staff, including the schools' special education coordinator, about help for [redacted], including the possibility of special education. She was advised that "[redacted]'s grades did not indicate a need for this service." [redacted] was instead provided information regarding support groups for parents of children with ADHD and medical resources. [redacted]'s Mother stated that the family could not afford the medical fees. [redacted]'s behavior deteriorated further during the

grade. There were numerous formal reports of misconducts, three in one day on September 12, 2000. He also had difficulty getting out of bed and going to school regularly.

At the beginning of grade, in August, 2001, met with two teachers who had expressed concern with behavior and school. She met with the school's principal "on a regular basis" during the school year in regard to behavior and numerous school conduct reports for such things as skipping class, truancy, "inappropriate behavior, insubordination, refusal to follow instructions, profane language, and disrespect."

At the beginning of grade year in August, 2002, his Mother met with five of teachers at parent-teacher conferences and discussed school work and behavior concerns. She met regularly with the school's assistant principal, the same administrator she had worked with since was in seventh grade. The assistant principal frequently talked to by Mother was at various times the assistant principal of the Junior High, High School, both, and principal of the Junior High.

Throughout grade year, had documented behavior problems, none in themselves were particularly serious, but the pattern of them became increasingly alarming. The specific problems documented involved leaving the school building by the wrong door and lying about where was going, eating lunch in an unauthorized area, disturbing class, talking to others without permission, not following directions, "mischief," tardy for class, disrespectful/discourteous, disrupting another class, when told couldn't leave a pep really walked right by the staff member and left, being in the locker room between classes, talking to another student after being directed to stop, wandering the halls without permission, not accepting "no" for an answer, making a threatening gesture with a pencil, leaving a classroom and not returning, insubordination, unauthorized hall pass (four times in one day), refusal to leave a classroom when asked, lying to staff, and skipping class. Most of these behaviors are commonly associated with ADHD and ODD.

In the 2003-2004 school year grade, continued to receive documented disciplinary referrals on a regular basis. The incidents were becoming worse in degree; fighting, calling people vulgar names, refusing to follow direct orders. Several detentions and suspensions from school resulted.

Mother testified that did not sleep or eat well. She drove to school on her way to work and would often refuse to get out of the car. On at least one occasion, the assistant principal came to the car and successfully attempted to persuade to come into the building. That year made the basketball team but later quit the team.

In February 2004, Mother met with eight of teachers and discussed poor record of school attendance and poor behavior again advised the staff of medical diagnoses and her belief that behavior was related to this

diagnosis. It is not clear whether one or all of the existing diagnoses were discussed; ADHD, anxiety disorder, and ODD. As a result of this meeting, it was mutually decided to allow [redacted] to drop [redacted] first class of the day, Geometry, as [redacted] was not expected to be able to pass by the end of the school year, and begin the school day at 9:00 a.m. rather than 8:00 a.m. The teachers of [redacted] other classes agreed that if [redacted] did not miss any more school, [redacted] could still receive a passing grade in their classes.

The record indicated that school officials worked with [redacted] Mother to have referred to Juvenile Court Services to address [redacted] escalating attendance problems in the [redacted] grade. In February, 2004 [redacted] was arrested and charged with a minor in consumption of alcohol and resisting arrest.

In early March 2004, [redacted] Mother, the high school assistant principal, and the school social worker met with a Juvenile Court judge to discuss [redacted] poor school attendance and the criminal charges. It was revealed that [redacted] while under the influence of alcohol, had conducted [redacted] self in an unspecified embarrassing manner while observed by a number of students from the school. Because many students at school learned of the incident and taunted [redacted] about the incident, [redacted] was very reluctant to return to school. The Judge asked [redacted] if [redacted] would return to school, and [redacted] agreed to go back to school. [redacted] started attending school again, but with decreasing regularity. [redacted] was later charged by law enforcement authorities, in June 2004, for resisting arrest.

At the Juvenile Judge's urgings, the assistant principal agreed to consider [redacted] placement in the alternative school for [redacted] year, even though [redacted] had declined a previous parent request. The alternative school would allow greater time flexibility and more independent and individualized academic studies under the supervision of two school staff members. [redacted] began attending the alternative school program on March 26, 2004.

[redacted] Mother believed that [redacted] did not satisfactorily complete eleventh grade courses and the school grade record verifies that belief. She began to consider placement of [redacted] at a residential educational center outside their area of residence.

None of the meetings with school staff were considered "intervention team" meetings (e.g., child assistance teams or teacher assistant teams) for help to [redacted] in [redacted] regular class environment. Intervention teams appear to have been initiated after the summer of 2004 and are related to the school hiring a licensed director of special education.

On May 21, 2004, [redacted] Mother met with [redacted] Education Specialist with the BIA Center for School Improvement, and described [redacted] situation. [redacted] was in the area involved with a BIA monitoring visit. He indicated that the school could have perhaps done more to assist [redacted]. As a result of the meeting with [redacted] filed a formal complaint with the Office of Indian Education, which included the aforementioned 18 page summary of reconstructed medical and educational events regarding [redacted] and included a number of attachments. As a result of the discussion

with _____, the BIA directed that an evaluation be conducted by _____, and on or about May 24, 2004, _____ was provided IDEA parent safeguards for the first time and was asked for consent for an educational evaluation of _____. The record indicates that parent safeguards were not explained to _____. At that time, only that she received a booklet about them. She testified that she is still trying to understand her rights.

_____ school attendance in elementary school was sporadic at best. Between second and the end of sixth grade _____ missed an average of about 25 days each school year.

_____ missed days of school improved at first in junior high school, but gradually became much worse, with the eleventh and twelfth grades being the worst of all:

Seventh grade	6 absences
Eighth grade	14 absences
Ninth grade	19 absences
Tenth grade	23 absences
Eleventh grade	49 absences
Twelfth grade	Nearly 50 between December 6, 2004 and May 2005 (Part of that grade was spent at the _____)

3. As a result of _____ filing a formal complaint against the _____ an investigation was conducted in the fall of 2004 by _____, Contract Complaint Investigator, BIA Office of Indian Education and a report was issued dated October 15, 2004. The investigation included review of 18 documents and record sets, including various medical, school and other records, and interviews with 10 persons from the school, and _____ and _____ Mother.

The primary issues addressed and answered in the investigation and report dated October 15, 2004, were whether _____ had been denied a Free Appropriate Public Education (FAPE) under Part B of the Individuals with Disability Education Act; and whether such denial of FAPE resulted in limiting _____ acquisition of academic skills and development of coping skills essential for successful transition into adulthood.

The Report expressly found that the school had violated federal law found at 34 C.F.R. 300.121-122; .503; .500-.529; and .530-.536. Presumably these references were to the 2004 edition of the Code of Federal Regulations.

The conclusions of the October 15, 2004, Complaint Investigation and Report can be summarized as follows: _____ was denied FAPE as a result of the school's not acknowledging that _____ may have a disability and may need special education and related services and not proactively attempting to determine whether _____ was eligible under the IDEA. Once parental safeguards were provided _____ Mother on May 24, 2004, an evaluation was conducted. It was not a full and fair appropriate evaluation and all areas of suspected disability were not evaluated. Appropriate mental and psychological health records were not requested or accessed by the school. The extent of the impact of denial of FAPE impacting academic skills and the development of coping skills for adulthood could not be determined at that time with great accuracy, but the Report stated that denial

of appropriate services for a time extending from junior high through junior year in high school likely resulted in a limitation of acquisition of those important skills.

Corrective action, as outlined in the Report of the Complaint Investigation included completion of all evaluations, as outlined in the May 24, 2004, assessment plan, within 15 days of receipt of the Report., the contracting with a clinical psychologist or psychiatrist to complete a comprehensive social, emotional and psychological assessment to determine social emotional functionality; and completion of a comprehensive transition assessment by an outside agency including career interests, aptitude, self-direction, work maturity, and related services needs related to transition needs for the purpose of planning appropriate transition plan. It concluded that “financial compensation” should be provided to assist transition through post secondary education.

, the Complaint Report investigator and author, testified at the due process hearing by way of telephonic communication. The HO was favorably impressed with both the Complaint Report and her testimony. Although the HO was unable to observe her as a witness, he found her testimony to be highly credible. This was based on her voice inflections, tone, and especially her reflection on questions asked and her accurate responses based on over thirty years of experience as a special educator. She exhibited an excellent understanding of the law of special education, both prior to and after the 2004 Amendments to the IDEA, as evidenced by the HO’s nearly thirty years in the field of special education law.

Under direct and cross examination, Ms. maintained her conviction that schools have a legal duty to assist parents that bring concerns to them regarding their child’s lack of educational progress (in the broad sense to include behavior and social skills), especially when parents express frequent and consistent concerns. She stated, from her over thirty years of experience in special education, that it’s not the parents’ responsibility to always know what to request of schools. When there is any doubt which should arise in the mind of educators about a child’s educational progress or problems, the school has a responsibility to consider evaluation. It must inform the parents of their rights under law to request an evaluation. It must assure that parent rights are provided and children are provided access to an appropriate education. She believes that parents need to be led by educators to understand their rights, including the right to have their child evaluated.

Ms. stood fast in her position that repeated contacts between the school and parents, where indications of potential disabilities are brought up, even in the absence of knowledge of medical reports on the part of educators, a duty exists on the part of school staff to follow-up and make further inquiries, if not referral for special education evaluation. The mere successful passing of a student from grade to grade does not mean that a student does not have one or more disabilities that establish an entitlement to special education and services. From interviews with teachers and administrators during

her investigation, she learned that they were aware of [redacted] behavior and attendance concerns, but did not follow through as they should have. They only looked to what they saw, not the potential for disabilities, and not [redacted] potential.

Ms. [redacted] expressed concerns regarding evaluations conducted by the school as not being conducted in a timely, comprehensive, and appropriate manner. She indicated, for instance, that the school had behavior interventions completed by [redacted] Mother, and maybe teachers, but no analysis was made regarding the meaning of the results. Ms.

[redacted] expressed particular concern that the transition assessment that she directed as a “corrective action” be much more than educators filling out “checklists.” She was insistent that [redacted] capabilities, interests, skills, and abilities all be measured fully, accurately and objectively so that [redacted] needs could be identified for the provision of appropriate services. She emphasized her belief that an outside agency was needed to assure that [redacted] transition assessment would be conducted by experienced and objective persons who didn’t have a stake in the outcomes. She noted that appropriate transition planning and implementation require a good assessment. She emphasized that the evaluation needed to be conducted by persons trained in vocational skills evaluation and assessment of specialized and individualized needs. Her concerns were realized when the school ignored the clearly stated corrective action in the Complaint Report and haphazardly carried through on the assessment with its own staff.

The Respondent’s Attorney attempted to get Ms. [redacted] to recant her conclusions that [redacted] Mother had provided school staff with enough information to trigger their appropriate response to provide [redacted] Mother with parent rights information, including evaluation for [redacted] expressed diagnosis of ADHD. Attempting to get Ms. [redacted] to acknowledge that ADHD was not one of the 13 expressly named and defined disabilities under federal law did not work to [redacted] benefit. She accurately corrected the attorney’s misdirection by explaining that ADHD is recognized in the law under the definition of “other health impaired.”

When Respondent’s Attorney questioned on cross the importance of [redacted] Mother’s overlooking the sharing of existing medical records with school staff in order to secure help under the IDEA, Ms. [redacted] had a clear response. She stated that [redacted] Mother did not at the time know of a need to share medical records, and in talking with her, [redacted] Mother expressed confusion regarding confidentiality of medical records.

The HO would note that after being advised by [redacted] and the beginning of an evaluation in May, 2004, [redacted] did not hesitate in providing medical records with the school, even though she and an advocate “whited out” a portion of one report that she thought was inaccurate and misleading.

While Ms. [redacted] could not establish for certain that the failure of the school to identify [redacted] as eligible for special education earlier than it did had a negative impact on [redacted] education, she continues to hold the belief that it did.

4. As a result of the school's receipt of the Complaint Report, the school proceeded in December 2004 to complete its evaluation for consideration of eligibility for special education programs and services which the school had begun in May, 2004. school enrollment and attendance at had been disrupted by placement in the in June, 2004. The December evaluation did secure and included medical records. The school did not comply with the previously underlined portions of the corrective action to be taken as a result of the complaint investigation.

In a meeting of the evaluation and eligibility team on January 11, 2005, it was determined that was eligible for special education programs and services to be provided through the school. The evaluation report shows that vocational interests and skills were not assessed as directed as part of the Complaint Report corrective action but were judged to be within the "average" range based on evaluations completed and/or the review of existing information. It noted that ranked "high" in science and "protective" field vocational fields.

It was documented on the following day, January 12, 2005, that was eligible for special education programs and services and met the criteria for the disability label of "Emotional Disturbance" (ED). Nothing was mentioned regarding ADHD. Presumably anxiety disorder, depression, and ODD could have resulted in the ED label but the record is not clear on that point. The IEP documentation of the January 12 meeting noted that was continuing to take medication for ADHD and depression, and was continuing to see physicians.

The individualized education program (IEP) form filled out by the Team on January 12, 2005, indicated a planned duration of services as January 12, 2006 and that the next evaluation summary report was expected on or before January 10, 2008. This was very interesting because the IEP also stated an expected graduation of on May 25, 2005, long before either of those dates.

In seeking the student's view of future (vision) attended the IEP meeting and indicated that would like to attend college and obtain employment as a "doctor or veterinarian." expressed a desire to live independently in a dorm, apartment, or house without support.

For transition planning, the IEP indicated that needed to complete twelve courses of academic study. A comprehensive list of transition activities/strategies and staff responsibility was developed over two pages and covered seven different domains. A major problem with the list is that while it appears to be comprehensive, it does not appear to be individualized to meet the needs of determined by a true assessment of transition needs. It is not clear, as will be discussed later, that all of the comprehensive list was actually intended to be accomplished successfully with The transition teacher testified that in the 50 minutes per week transition period allotted he directed most of his attention to only two of the seven domains, employment and post-adult living skills. The teacher stated, and testimony verified, that

most of his interaction time with [redacted] was used in developing a rapport with [redacted]. It appears from the record that very little, if any, of the transition period time was actually involved in direct teacher instruction. Most of the transition class time of 50 minutes per week was spent by [redacted] filling out work sheets or using computer software with programmed learning content, mostly on the two domains focused for study. The structure of the transition class environment, methodology, lack of peers for interaction, and teacher preparation could not have adequately assisted [redacted] with transition needs, even if [redacted] school attendance and time on task were exemplary.

The IEP documented a projected graduation date for [redacted] of May 25, 2005, that a discussion of the transfer of parental rights to [redacted] age 18 years (age of majority) took place, and that [redacted] other received written materials and viewed a video on parent rights under the IDEA. The IEP document also indicated that staff from Vocational Rehabilitation would meet with [redacted] and discuss [redacted] program eligibility and assist [redacted] in planning. No one from Vocational Rehabilitation attended the meeting nor is there any evidence in the record that representatives from outside agencies were invited to the meeting. The omission of persons required to be invited to IEP meetings under the IDEA is especially disturbing in light of BIA monitoring reports which had previously identified this type of omission by [redacted] and had directed corrective action. While the teacher responsible for [redacted] 50 minutes of transition class per week testified that [redacted] and [redacted] Mother had cancelled an appointment with Vocational Rehabilitation staff in [redacted], he believed that a meeting had occurred in July 2005. Vocational Rehabilitation Services for [redacted] had not been provided by the time of the due process hearing.

The January 12 IEP contained only three educational goals related to “an increased awareness of [redacted] positive attributes from a level of doubt to a level of demonstrated assurance with 80% consistency with adults and peers” (self-esteem and self-confidence), demonstrated “appropriate task-related skills in order to function more independently at home and school,” and attendance at school “consistently, arrive and leave school on time in order to receive and complete [redacted] assignments 100% of the time in order to function better in school.” The benchmarks under the last of the three, school attendance, was an 85% school attendance rate.

These goal statements are ambiguous and confusing. They don't meet critical characteristics of well written IEP goals. Well written goals should be meaningful, measurable, able to be monitored and enhance team decision making. They do not pass the “stranger” standard, which raises the question, could a “stranger” to the IEP process understand the goal, its administration, and its evaluation?

Interestingly, these weak goal statements were drafted after BIA monitoring reviews in 2004 had identified IEP goal writing by staff in the [redacted] as inadequate in identifying measurable goals. [redacted] has provided assurances of corrective action. Staff apparently did not take drafting of IEPs seriously.

Assessment of progress toward the three annual goals were documented as occurring on exactly the same dates for all three goals and exactly the same assessment result was recorded for all three goals on each of five specific monitoring dates (pp. 117-119). On all three goals on the first four assessment dates was marked with a number 3 which meant "progress had been made toward the goal, but the goal may not be met by the end of the year." The fourth assessment date for all three goals was documented as April 22, 2005. On all three goals, on the fifth and last date of assessment, May 23, 2005, all three goals, including 85% attendance, were remarkably marked with a number 1 which signified that "this goal has been met." There is nothing in the record which identified how these judgments were made, or who was responsible for the assessments. Clearly the assessments were not accurate. did not attend school and classes 85% of the time in the Spring Semester of 2005. Just as clearly, did not demonstrate good self-esteem and self-confidence with "80% consistency." 100% completion of assignments was facilitated by being assigned to the alternative school setting instead of regular academic classes and being placed on homebound the last eleven days of school.

Much of the IEP, including annual goals, benchmarks and regular monitoring and assessment of progress on the goals, was clearly a sham and a hoax. So too was the IEP Present Levels of Performance statement that "participates with nondisabled peers in all academic classes." The IEP form concluded that would have a modified school day, about 8:00 to 1:45 and would do academic school work in an alternative school setting using individualized study and computerized programmed learning as the primary methodology.

Even though much of the October 15, 2004 Complaint Report corrective action focused on transition assessment and planning, no transition goals were identified in the IEP.

The IEP provided that would receive 30 minutes of direct instruction per day by a special education teacher. The IEP and record did not indicate the topic of the direct instruction. The record indicates that it occurred, but that is all. The IEP form indicated unspecified services of the school social worker for 20 minutes a week. The record does not disclose any evidence that time with the social worker was ever scheduled or provided. The modified school day later ended at about 12:30. As part of transition program, worked a few hours on school day afternoons as an assistant to the elementary school custodian for minimum wage. Specific modification and accommodations in the IEP included "small group instruction," "extended time for assignment completion," "frequent breaks," "quiet areas," and "one to one" instruction. Mother provided written consent for placement in the special education program provided for in the January 12, 2004, IEP.

While did achieve remarkable success in the "documentation" of achievement on three goals and individual academic studies, attendance remained as bad or worse than it had been, nearly 50 days absence since January 4, 2005. now acknowledged disabilities did not appear to have improved in any significant way.

maintained many of old habits, not eating regularly, not sleeping at night, not getting up easily in the morning, and staying around the home during absences from school. The school's documentation of success on IEP goals were inflated beyond and without the benefit of reality. The record is not clear on how uncompleted credits in academic courses from previous years, especially the junior year where failed all academic subjects, were made up by so could graduate with class. The record only discloses that by May, 2005, had completed enough credits to graduate.

On April 14, 2005, IEP Team convened for the purpose of reviewing progress on IEP. It was documented that had completed the alternative school program, but needed to complete unfinished course work in a few classes. When course work was completed, would receive a modified school day to work an unspecified amount of time on work study and transition. Work study, which consisted as supported employment as an assistant to the school custodian, was to continue through the summer of 2005. The IEP Team was to meet again prior to graduation to again review progress.

On May 11, 2005, IEP Team met to review progress. The meeting report was in the form of an amendment to January IEP. It was reported that had "fulfilled all education requirements with the exception of a number of assignments in Current Issues." It was determined and documented on a form entitled "Written Notice Prior to Graduation," that would be "homebound for the last ten days of school May 11-24th to complete assignments." In a documented note to Mother, dated May 11, 2005, the school formally notified her that as a result of the IEP Team meeting on that date, the Team determined to "dismiss your child from services through the Exceptional Education Program." The note reminded Mother that needed to complete all class assignments in Current Issues and Tribal Government in order to graduate and that was placed on homebound status for the last ten days of school to complete assignments.

The school staff believed that and Mother wanted a graduation from high school with a diploma.

In a document entitled "Exceptional Education Request for a Due Process Hearing" dated two days later, May 13, 2005, requested a due process hearing regarding her's education at . The attachment to the form sent to the BIA mentioned her previous formal complaint and the Complaint Report of October 14, 2004. She cited the federal regulations determined to be violated in the Report. She mentioned mediation occurring on March 9, 2005, and the resulting Memorandum of Understanding. She concluded her "description of the problem," in part, as follows:

I am requesting Due Process as I feel the school is not following through on certain agreements and concerns that I have regarding incidents that have happened at the school regarding my

Her written statement on the form about how the problems can be resolved states as follows:

1. The needs to abide by the Memorandum of Understanding agreed upon at Mediation;
2. Provide my compensation for failing to provide with an adequate education for (10) ten years.
3. Provide myself with compensation for the many trips to the school, counselors, doctors, therapists, etc. trying to help my

Mother's request for due process hearing clearly included issues of the appropriateness of educational program at as well as issues of school compliance with the March 10, 2004, Memorandum of Understanding.

5. was seen over the years by numerous physicians who prescribed numerous medications with varying degrees of effectiveness and often with undesirable side effects. The record contains twenty-six documented visits to physicians and medical reports mention others. testified that numerous visits (not documented) were made to emergency room sites. The emergency room visits occurred when experienced nausea, vomiting, and stomach pains. Many of these incidents were believed by Mother to be side effects of the various prescribed medications. The record discloses at least eleven different medications had been prescribed for related to diagnosed disabilities.

earliest relevant medically related visit was to a psychologist upon the referral of second grade teacher in another school and Mother in October of . was described in the visit report as having numerous behavior and attention problems, in school and at home, and "smart" and functioning at grade level in most subjects. The psychologist report stated the following:

This child definitely has an oppositional defiant behavior pattern. There is a question of ADHD. The current behavior questionnaires completed by the school suggest strong ADHD features. (p. 298)

When and Mother returned for a follow-up visit two weeks later, the psychologist made several recommendations to parents, including the following:

- 1) Contact the school to ask for a specific behavior plan; the possibility of special education or school psychologist.
- 2) Educate yourselves on ODD and ADHA. (Material was provided Mother regarding ODD and ADHD.)
- 3) Consider a medication intervention.
- 4) parents should obtain assistance in "compliance training" (p. 297).

About six weeks later, Mother took to a physician and reluctantly requested consideration of medication. As a result, was prescribed Ritalin twice a day, morning and noon.

At this time [redacted] had been attending a private elementary school. The next year [redacted] began third grade at [redacted]. [redacted] other testified that she had not known what ODD was and largely ignored mention of ODD in discussions with teachers and administrator. She incorrectly believed that [redacted] had formally been diagnosed with ADHD. The medical records indicate that possibility of ADHD, but no formal diagnosis was made until later.

From a follow-up visit to the physician six weeks later, the medical report noted “ADHD improved on medication.” Subsequent medical reports note that [redacted] was being seen for ADHD.

While [redacted] was a third grade student in the [redacted] schools, the school teacher administered the Ritalin noon dosage to [redacted] at school. An end of year report on a school form evaluated the effectiveness of the Ritalin while at school (p. 235).

In July of 1999 [redacted] and [redacted] Mother complained of possible side effects of medication to the original diagnosing psychologist. [redacted] Mother reported that [redacted] had the flu the previous March, vomited and had experienced continued nausea and “likely anticipatory anxiety since that time.” [redacted] had lost weight, avoided certain foods and had become prone to car sickness. [redacted] had refused to take his medication for several months out of concern that it caused [redacted] being sick to [redacted] stomach and prevented [redacted] from sleeping well at night. The psychologist’s report of diagnosis resulting from that visit was “anxiety disorder” and ADHD. It stated that [redacted] had “anticipatory anxiety” as a consequence of over sensitization to internal cues of potential illness.

After seeing [redacted] and [redacted] Mother in September of 1999, the psychologist’s report emphasized the importance of regular contact between home and school regarding ADHD. His diagnostic impression at that time was “anxiety disorder NOS” and “suspected panic attack” (p. 160). [redacted] was subsequently prescribed Zoloft.

Reports of subsequent visits to physicians added “Depression disorder, not otherwise specified” to the existing Anxiety Disorder, ODD, and ADHD diagnoses.

Although [redacted] Mother discussed [redacted] diagnoses freely and regularly with teachers, administrators and school board members, no one from the school requested to see any of the medical reports prior to the summer of 2004.

[redacted] Mother testified that she repeatedly asked school staff for help and regularly told staff that [redacted] behavior issues at school were related to diagnosed disabilities, she did not know that she should share [redacted] medical records with school staff. She stated that she had received no requests or information that indicated she should share medical records with school staff. Prior to the summer of 2004, there had been no parent training and information programs conducted by the school. Sharing of medical reports

did not occur until May, 2004 as part of the school's evaluation of [redacted] for consideration of eligibility for special education instigated by BIA officials.

On September 30, 2004, [redacted] was first seen by Dr. [redacted] an adult and child psychiatrist in [redacted], while enrolled at the [redacted]. According to [redacted] testimony, a good rapport developed between the two. [redacted] stated that [redacted] felt Dr. [redacted] was interested in [redacted] and asked [redacted] good questions.

Dr. [redacted], who testified by telephone, stated that [redacted] was diagnosed with ADHD, combined; social anxiety; and ODD by history. On January 24, 2005, Dr. [redacted] added depressive disorder, not otherwise specified.

Dr. [redacted] testified that [redacted], as a student with ADHD, would exhibit characteristics that would involve inattentiveness, trouble concentrating, trouble focusing, forgetfulness, not following directions, hyper activeness, fidgety, and blurting out statements. Dr. [redacted] testified that [redacted] has a moderate case of ADHD with a predominance of inattentive symptoms. He stated that [redacted] would mean [redacted] would have difficulty attending to what was going on at school.

Dr. [redacted] testified that the diagnosis of social anxiety or social phobia for high school students means a feeling of discomfort in social situations around persons who might pass judgment or ridicule the student. Students with social anxiety have difficulty in social settings, especially with peers. They experience an internal sense of anxiety, upset stomach, feel uncomfortable, nauseous, and they worry about what people think of them.

Dr. [redacted] testified that [redacted] depression, not otherwise specified, indicates some symptoms of depression, but does not include the full symptoms of depressive disorder.

Dr. [redacted] declined to express an opinion regarding all of the diagnoses' impacts on learning. He justified his refusal as a lack of knowledge and experience with the educational environment. The HO has over thirty years of experience in K-12 education and he has no doubt that each and every one of the disorders identified and described as being present in [redacted] can, and often does, have significant impact on a student's ability to learn and function as a student. Most of the concerns expressed by educators about [redacted] behavior and academic problems are precisely the types of behavior exhibited by persons with the disorders diagnosed in [redacted]

Dr. [redacted] testified that [redacted] had revealed to him that [redacted] had used marijuana since seventh grade and usage had increased gradually until eleventh grade. [redacted] had reported to Dr. [redacted] that [redacted] used marijuana "because it made [redacted] feel relaxed, calm, and helped [redacted] to feel good." Dr. [redacted]'s consultation report of September 30, 2004 (pp. 177-180) used by Dr. [redacted] in hearing examination and cross examination also discussed [redacted] admitted weekly use of alcohol beginning in the summer of 2004, and drinking to the point of intoxication. [redacted] had reported to Dr. [redacted] that the "use of alcohol helped [redacted] to feel calm and relaxed and helped [redacted] in social situations." Dr. [redacted]

stated that such use is consistent with disorders found in _____ circumstances, especially anxiety. He considered such experiences as an attempt to “self-medicate.”

The HO found Dr. _____’s testimony, partially on the basis of testimony from _____ and partially on Dr. _____’s responses to questioning, to be a reliable source of information. Where Dr. _____’s testimony and report conflicted with other medical reports in the record, the HO gave more weight to the observations and opinions of Dr. _____.

6. _____ is a tall, nice looking young _____. At times _____ was very articulate and expressed _____ self well. Much of the time _____ stared at the table in front of _____ and spoke in a low monotone voice. A few times _____ exhibited frustration with the questioning and once or twice exhibited what appeared to be anger, but _____ did not expressly display anger.

Overall, this HO did not receive the impression that _____ fully understood the proceeding in which _____ was involved, special education, or much about disabilities, especially _____ own. _____ did not appear to be someone ready and confident to present _____ self to the world and to be able to take advantage of opportunities and to solve problems. _____ appeared to have the potential ability to do so in the future, especially if develops a stronger self concept, self-advocacy understanding, and better problem solving, coping and communication skills.

_____ stated that there were academic subjects that _____ liked, especially science, history and current affairs. _____ said that _____ liked mathematics, but found it difficult. _____ stated that _____ liked learning at a slower individualized pace with fewer other students present (for personal teacher attention) such as _____ experienced in the Alternative School setting and at the _____. _____ thought school work completed while at home was “easier” than that completed while at school.

_____ expressed an understanding of _____ social anxiety, at least in how _____ felt in social situations. _____ stated that _____ did not want to “stand out” in social situations, _____ was concerned that _____ might do something wrong or appear to be stupid. _____ did not like to be embarrassed. _____ stated that _____ knew when _____ became anxious because _____ heart would seem to beat faster, _____ hands “would go numb,” _____ breathing would become harder and _____ would breathe through _____ mouth, and _____ often felt nauseous. _____ had tried out for and made the basketball team, but quit because _____ did not want to be in front of all the people in the stands “and all that.”

_____ stated that _____ embarrassment and anxiety were greater when around females rather than “guys.” _____ stated that in February, 2004 _____ had done some “stupid stuff” (while intoxicated) at a boat dock apparently involving statements made to girls who were present. _____ said _____ doesn’t remember what _____ did or said, but other students present at the time regularly remind _____ of the incident. _____ stated that _____ feels “stupid” and embarrassed about the incident _____ doesn’t remember in detail. _____ had been arrested and charged with consumption by a minor and resisting arrest by police as part of the incident

by the boat dock. received probation and a fine in Juvenile Court. The Judge told that we all make mistakes and should get over his embarrassment and get back to school.

When asked about irregular school attendance junior and senior years stated that is "shy" and "cares about what people think" of . does not want to be thought of as a "weirdo." does not like being reminded of the boat dock incident. While does not know what other students think of students with disabilities, does not want to be considered as a person with a disability. stated, when questioned about excessive absences, that had discussed alternatives to regular class attendance with the assistant principal. offered to come to school regularly if could sit in the school hallway outside the principal's office to do course work. The principal's response was in the negative and told to "just get over it." suggested home schooling, but that was also declined. stated that does like the former assistant principal.

was asked whether wanted to go to IEP meetings with Mother and teachers, and replied in the negative. stated that was embarrassed by such situations. When asked about the importance of IEP meetings, said had not been told why such meetings are important.

was asked a number of questions regarding use of marijuana. said that had been curious about it, and was given some at school where smoked it for the first time. testified that was at first scared to try it, but that it had a "calming" effect on . stated had maintained use of marijuana on a regular basis because it is "fun," and makes "feel better" and "relaxed."

When at first asked what kind of help wanted from the (in the future, replied "I don't know." When asked what was stopping from going to college full-time, responded "I don't have any way to do that." was asked what would be the first thing would do about going to a college, who would you call, what would you do? response was, "have Mom do it." expressed no idea about how or where to start.

When asked about being sent to the in the summer of 2004 (June 18) indicated that it resulted from a second incident with police. stated that was talking with a friend when approached by police who inquired as to the whereabouts of another friend. replied that didn't know and not wanting to talk with the law enforcement officers had started to walk away. was told to stop, but didn't and eventually ran from the scene and was arrested. This HO wondered, during testimony, what training and background law enforcement officers receive regarding persons with ODD, and other disabilities not visible by the human eye.

was enrolled by parents at beginning on June 18, 2004. This was a few weeks ahead of a scheduled juvenile court appearance at the end of June. The record is

conflicting as to whether the placement was a result of a court order or not. stay at was to begin June 18, 2004 and end in November 2004. But, in October, went home for a weekend visit, refused to return and was "staffed out" of due to being absent without leave. The record indicated that progress at had been up and down from a behavior and especially marijuana usage standpoint, but that overall behavior was improving, and was getting academic work completed.

At hearing was asked why refused to go back to in October. stated that in October behavior and academic progress at had resulted in promotion to a level three which meant more freedom and responsibility and a change from a twelve person sleeping room to a semi-private room with one other student. stated that a staff member "did not get along with" assigned to a room with a student who was considered by students and staff, and more importantly by , to be a homosexual and had previously had the room with bunk beds to self. stated that complained to the staff about not wanting to room with a homosexual, but they refused to assign to a different room. As a result / refused to return to from a home visit, even though the advancement to level 3 was recognition of improved behavior at .

Numerous questions were asked by the Respondent's Attorney regarding the settlement agreement in March 2005 and the formal request for this due process hearing originally filed by his Mother. It was very clear that while had a vague understanding of the two proceedings, that Mother was the initiator of the two proceedings and was much more knowledgeable regarding the issues. This situation seemed to be very consistent with other testimony that established that had not received benefit from school transition program that should have spent much more time working with in understanding self, disabilities, needs, rights, and the skills necessary to advocate for self.

The Respondent's Attorney asked why did not participate in the planned 2005 summer "work experience" as a paid custodian's helper at the Junior High School. responded that had left three times when had arrived for eight to five employment and no one was there to supervise . On one occasion Mother telephoned the supervising custodian, and told her to send right over. As arrived at the work site observed the supervising custodian driving away in his vehicle. Having previously had what considered an unfavorable experience with the custodian, presumed the man did not want to work with and did not return. There may have been confusion on several persons' part about the time work started. The contracted time for work was 9:00 a.m. to 5:00 p.m. daily. The transition teacher reported seeing leave the Junior High site on the one occasion at 8:05 a.m. and not return. The only thing that stands out clearly from this incident is that obviously did not exhibit good self-esteem, problem-solving skills, and communication skills commonly developed in appropriate school transition programs.

Another example of [redacted] lack of readiness for adult life is how [redacted] lost his previous "work experience" job as a custodian's assistant at the elementary school. [redacted] had experienced a reasonably good work experience record from January 25, 2005 through April 11, 2005. [redacted] testified that [redacted] quit because [redacted] had not been paid for several weeks. [redacted] was told [redacted] needed to sign [redacted] work time cards in order to be paid. [redacted] declined for some unexpressed reason to sign the time cards and didn't go back to work. The HO asked [redacted] if [redacted] knew why it was necessary and expected that [redacted] sign [redacted] time cards. [redacted] stated that [redacted] did not know why.

[redacted] was asked by both Attorneys what types of services [redacted] wants the [redacted] to help with in the future. [redacted] replied that [redacted] was not ready to go to college and wanted to catch up on the things [redacted] did not do well in high school. [redacted] desired services that would help [redacted] succeed in college. [redacted] stated in clear and expressive terms that [redacted] did not want to return to

[redacted] was asked why [redacted] missed most of the twenty scheduled 50 minute weekly transition class sessions. [redacted] replied that [redacted] was not expected to do much but fill out worksheets to be kept in a three-ring-notebook and read assignments on a computer and respond to computerized quizzes. When a passing score on a computer assignment was achieved, the computer brought up the next assignment. There were no other students in [redacted] transition class, and [redacted] transition room teacher interacted with [redacted] for only brief periods of time each class session. This HO took [redacted] explanation as one of boredom and lack of challenge and interest. There were no motivation strategies or behavior change plans noted in the record, even though many persons had noticed school attendance was nowhere near close to that stated in his IEP goals. Of course, the IEP did document [redacted] successfully completing [redacted] 85% IEP attendance goal.

The teacher in the transition room testified that [redacted] spent most of his time with attempting to develop a rapport with [redacted]. [redacted] stated that [redacted] liked the transition teacher. The HO believes that [redacted] was bored with the transition class and school activities in general. The transition class did not include preparation for adult work, except through worksheets, computerized readings, and brief discussions with the teacher. There was no job shadowing, no discussion of how to find housing or food as an adult and matters of transportation were not discussed. [redacted] does not have a driver's license. There was little, if any, discussion of [redacted] disabilities and accommodations needed (and the transition teacher may not have been qualified to discuss them). There was no self-advocacy training, no training in disability law or rights. There was clearly no training in good decision making skills, or skills needed to assess whether made decisions were good or bad and how to improve decision making in the future. The transition class or its purpose were not discussed with [redacted]. [redacted] had no part in transition planning or implementation except [redacted] participation in programmed learning activities. The transition program provided [redacted] was devoid of most of the content that would have been beneficial for [redacted]. The appropriate content that was available to [redacted] was taught through inadequate and inappropriate methodology.

earned enough credits last semester of school to graduate. This HO is greatly concerned with the quality of the teaching and learning that took place. had a shortened school day, roughly 8:00 to 12:30, had no textbooks or readings, other than worksheets and computerized program learning. In the alternative school, did interact socially with two or three other students, but there was no interaction related to school work. stated that school work was easy. had IEP amended in May of senior year in order for to complete 9 assignments in Current Affairs. was to read and report on newspaper articles. The HO did observe looking through a newspaper during a hearing break. was provided an educational program that was much below capabilities in an environment that had little mentor stimulation or academic interaction.

stated that is currently attending College, a tribal college in is apparently receiving individualized instruction and tutoring from an individual staff member who "understands" disabilities from her own experiences. is not attending regular classes. Mother helped identify and report individual needs to be accommodated to the school. actual status at College is far from clear on the record.

says would like to be at a bigger college, such as State University or St. Johns in New York. testified that application to St. Johns was turned down, but St. Johns said it would reconsider application if successfully completed a semester elsewhere.

does not have the skills and knowledges that appropriate transition assessment and multiyear transition planning program and proper support should have provided. Yet, it is the opinion of this HO that is quite capable of acquiring those skills and knowledges given an appropriate assessment and a good transition program.

7. had no identified transition school work prior to January 12, 2005. Although it is considered educationally appropriate to provide transition activities in early grades, and to students without disabilities, none appear in the record.

On November 8, 2004, contacted the Director of Special Education and indicated that would not return to the but would like to return to High School. They agreed that evaluation process begun the previous May should be completed. On or about November 9, received the report of the BIA complaint investigator. Corrective action required in that report included a "comprehensive transition assessment" conducted by an outside agency leading to "an appropriate transition plan." The evaluation team reconvened on December 1 and an evaluation plan was completed on December 4. It does not appear that an "outside agency" was involved in the evaluation. An evaluation report of testing was compiled by a special education teacher. The transition portion of the report was completed by the transition teacher other than the one who actually taught transition program. The Director also

cosigned the assessment report dated December 10, 2004. A private psychologist had been previously contracted to complete an intellectual assessment. The assessment was completed on May 26, 2004. The overall assessment report was an acknowledgment of medical diagnoses of ADHD, Social Phobia, and ODD. alternative school teacher had completed a social/emotional survey. This is somewhat perplexing because had not attended in the alternative program for very long period in the spring of 2004. The special education teacher conducted the Woodcock Johnson III Tests of Achievement. Under examination by the ALJ, the Special Education Director acknowledged that the Woodcock-Johnson is designed to be administered by an educator familiar with the individual student's style of learning. The record does not disclose any previous school contact between and the test administrator. The majority of the assessments appear to have been conducted by the special education teacher. Some of the important assessment components appear to have been conducted and assessed using computer software programs. There is no indication in the record that an "outside agency conducted the assessments," except for the contracted psychologists' assessment of intellectual functioning. There was no "comprehensive transition assessment which includes areas of interest, aptitude, self-direction, work maturity and related service needs relative to transition . . . completed by an outside agency."

The assessments conducted were reported to indicate that scores in the areas of disruptive behaviors, hyperactivity, poor social skills, problems in study skills, and hostility were elevated to above normal levels. There was no analysis of report findings or recommendations of specific prudent programs and services to be provided .

The assessment report recommendations included a modified school program including the Alternative School Program and Special Education Services with a diagnosis of emotional disturbance (ED). The report indicated that might benefit from visiting a health counselor, school counselor or school social worker to assist with stress-management and social skills. Although the school counselor and social worker were later provided for on the IEP form, no services by them appear to have been provided. The record does not establish that ever received direct instruction from a licensed special education teacher as provided in the January 12, 2005 IEP.

The recommendations of the report concerning responsibility for the success of education program shows a clear burden being placed on and family, and no similar clear responsibility being placed on school staff. For example: success in school will depend to a large degree on willingness to use the academic interventions that the school has to offer. The parents in collaboration with the teachers should continue to consult with a psychologist for the development of a behavioral intervention program to make entire activities contingent upon display of adequate efforts towards attendance and school work. (emphasis added)

There is no evidence of the actual creation of a "behavioral intervention plan" in the record, although one was clearly called for and appropriate. No functional behavioral

assessments which normally proceed development of behavioral plans appear in the record.

The last statement in the report was that [redacted] will receive transition services with the Ed (sic) teacher.” The report provides that the only transition provided [redacted] was in the 50 minute transition class with a teacher not trained in transition programs.

Based on the highly questionable assessment process, not in compliance with the complaint investigation corrective action, and without recommendations or analysis by an outside transition assessment agency, an IEP for [redacted] was completed on January 12, 2005. The three goals identified were related to increasing positive self-esteem and self-confidence. There were no transition goals in the IEP.

The transition portion of [redacted] IEP (form 21, pages A, B, and C, pp. 105-107) provides on pages B and C the identification of eight generic transition domains. Each of those domains is broken down into several generic “activities/strategies” and identification of staff responsibility for each. Few of the listed “activities/strategies” has a direct reference or relation to the individual needs of [redacted]. They appear to have been taken from a model transition form or a textbook list of possible activities/strategies to use with transitioning students.

[redacted] has two transition teachers. [redacted] requested that one, the previous special education coordinator in whom she had no confidence, but who has completed the transition assessment, not work with [redacted]. That person was the one [redacted] had talked to about [redacted] ADHD diagnosis in January 2004 that referred her to outside resources rather than initiate a referral for special education evaluation. The transition teacher that actually worked with [redacted] graduated from College in December 2004 with degrees and licensure in academic subjects. He had no training in special education or transitioning when he began employment with the school on January 18, 2005, as [redacted] transition teacher.

The transition teacher was scheduled to work with [redacted] on [redacted] transition program only fifty minutes per week. He testified that fifty minutes per week was inadequate time to work on [redacted] transition needs. While [redacted] and the teacher did talk occasionally for a few minutes about professional basketball and other things, most of [redacted] time in the transition class was spent on filling out worksheets about interests, self-assessment of skills, personal budgeting, or working on computerized programmed learning readings and quizzes over the material. For instance, as part of a Life Skills packet, [redacted] was to complete a 200 item questionnaire. There is nothing in the record to indicate that any meaningful instruction, conversation or learning resulted from [redacted]; completion of the questionnaire. Little or no conversation was ever had regarding [redacted] transition plan items or transition needs. The teacher stated that he occasionally tried to talk with [redacted] about career interests, but there were no clear goals or solid plans in [redacted] IEP. Other students with which to interact with were seldom present during transition.

Of the eight domains on the statement of needed transition services in [redacted] IEP, the transition teacher testified that he worked primarily on the two areas of "Employment" and "Post-School Living Skills." He stated that he had not measured [redacted] aptitudes and was not aware of the results of any assessment.

The transition teacher did make arrangements for [redacted] to obtain work experience as an assistant to the custodians of the elementary school and later the junior high school. This was not consistent with [redacted] documented interest in science professions and wanting to attend college (form 21 A, p. 105).

The transition teacher supervised [redacted], taking of the ACT exam in private as preparation for college. [redacted] composite ACT score was 17, and [redacted] highest area score was 19 in science. The transition teacher was unaware of [redacted]'s ACT test results when questioned about them. The taking of the ACT in private had been part of a Memorandum of Understanding resulting from a formal mediation on March 10, 2005 (Item #1).

The transition teacher testified that he unsuccessfully helped [redacted] with job experience in the summer of 2005, but was available to provide transition services, if called upon, through August 5, 2005, in compliance with item # 2 of the March 10, mediation agreement. The mediation assurance that [redacted] could meet with a specific psychologist in the event the psychologist visited the school (#3) did not come to fruition because the school did not provide funding for the psychologist to visit the school. The transition teacher testified that he has been and will continue to be available for up to one year after [redacted] then planned graduation on May 29, 2005, in order to provide weekly mentoring as a transition specialist for [redacted] in compliance with the mediation agreement Item #4. That is, unless until [redacted] decides it is not necessary or [redacted] refuses those services.

The transition teacher testified that he was familiar with college Disclosure of Disability forms, and would have assisted [redacted] in filing one out in compliance with the mediation agreement (Item # 5) had [redacted] asked for assistance. The school would have also provided assistance in choosing courses and locating support and housing had [redacted] asked. [redacted] testified that [redacted] Mother filed the necessary Disclosure of Disability form and assisted in choosing courses.

It is obvious from the record that items numbered one through five of the March 10 Memorandum of Understanding were or will be carried out as agreed.

There is much more to the point than whether the school has or will comply with the mediation agreement terms, and that remains a significant issue: Why didn't the school teach [redacted] the skills needed to complete Items 1, 2, and 5 as part of [redacted] transition program? Commonly, standard transition plans for students considering attendance at post-secondary institutions teach the students, as a self-determination goal, to become

very knowledgeable of themselves, especially their disabilities and their educational needs so they can be advocates for themselves. [redacted] should learn about [redacted] self, disabilities, and educational needs so that [redacted] can fill out the appropriate forms and engage in self-advocacy at post-secondary institutions, find employment, and secure accommodations on standardized tests. It is quite worrisome to this HO that the [redacted] has discovered [redacted]'s disability so late in [redacted] school life, provided such a miserable transition program for a semester based on a poor transition assessment, and then agreed as a result of mediation to provide [redacted] such a small modicum of meaningless support for [redacted] after high school has ended.

The transition teacher was asked by the HO whether he was familiar with, had read articles about, and knew what "Self-Determination" meant. The teacher guessed at a definition and was completely wrong. He said he had not read about or read articles on "Self-Determination." The same question had been asked the other transition teacher and the director of special education, and they did not know the meaning of "self-determination," one of the most important and most written about components of transition planning and programming provided in transition programming under the IDEA.

8. [redacted] Mother, as a follow-up to a meeting with [redacted] in May, described the [redacted] in a letter to the BIA on August 16, 2004, as a "private, nonprofit, experimental education center providing 24 hours/7 days a week educational group living program to accommodate the needs of young people at high risk with educational, behavioral, deprived, unruly or delinquent problems." It was "designed by professional staff to meet the needs of young people who require intensive education and counseling programs rather than the institutional role of traditional incarceration."

On June 18, 2004, [redacted] was admitted to the [redacted] in [redacted] was referred to [redacted] after being charged with disorderly conduct and because [redacted] had "hung out with peers who abused drugs." [redacted] had been scheduled to appear in juvenile court at the end of June, but someone, probably [redacted] parents, determined it was best that [redacted] enroll voluntarily in [redacted] anticipated date of discharge was November 23, 2004. [redacted] actual date of discharge was October 27, 2004, and was based on refusal to return to [redacted] from a home visit.

The three specific problems [redacted] focused on were [redacted] difficulty following the rules and directions of authority figures; his disruption of school, difficulty paying attention, not showing respect for peers or teachers, and not completing academic assignments on time; and [redacted] problem related to abusing alcohol and drugs and associating with peers who abused alcohol and drugs. While working on those three identified problem areas, [redacted] was expected to attend individual and group counseling and academic classes where [redacted] was expected to complete and pass all assignments. Home visits were allowed when [redacted] became eligible.

Successful progression toward completion of program and goals was measured by a point system. Points were awarded based on the student's success. Advancement to Level II required a point achievement of 111 points and advancement to Level III required a point score of 131. For discharge, students were expected to successfully complete all their goals and remain on Level III for four consecutive weeks.

earned Level II status, but was restarted at Level I after smoking marijuana on a home visit. subsequently regained Level II status and attained Level III status on October 14, 2004, which kept until discharge. was discharged after refusing to return from a home visit scheduled for October 22-24, 2004. was considered AWOL and discharged on October 27.

had successes and failures while at . participated in group therapy and individual counseling. worked on academic subjects in small classes of two to three students and received individual teacher attention. was able to earn academic credits which were later counted by towards total credits needed for graduation. was discharged from without reaching any of the goals in the previously identified areas of concern. At the time of discharge, was taking four prescribed medications.

explained refusal to return to testified that upon reaching Level III status, a staff member who didn't like assigned to move into a semi-private room with another student generally believed to be a homosexual. stated that complained to other staff at to no avail. In the end, refused to return to to complete program. reports indicate that staff believed that had often attempted to manipulate the system through feigned good behavior, but regularly expressed threats that Mother would come to remove from . It was stated in some reports some members of the staff considered to attempt to "play" the system.

9. January 12, 2005 IEP noted that expected graduation would be May 25, 2005, even though the "anticipated duration of services" was documented as January 12, 2006 and the annual IEP next review date was listed as January 11, 2006. In a notice dated May 11, 2005, the notified of planned graduation and being removed from special education as a result of graduation. Two days later, on May 13, 2005, requested a due process regarding "concerns that I have regarding incidents that have happened at the school regarding my ." The request was filed with the BIA on May 13 by facsimile communication.

In a letter dated May 23, 2005, advised the school superintendent, with a copy to the chairperson of the School Board, that she did not consider the school's responsibility to her at an end. The letter stated:

This is to advise you that even though my _____ class will be graduating this month from high school, I am still holding the _____ responsible for not providing my _____ with an appropriate education as defined by the Individuals with Disabilities Education Act (IDEA) and Office of Indian Education complaint findings since third grade.

The _____ commencement exercises took place on May 29, 2005. _____ was listed on the program as part of the Class of 2005, but noted he was graduating "In Absentia." A standard high school diploma was later given or mailed to _____'s family. At hearing _____ stated that _____ declined to accept the diploma.

10. In the Spring of 2005, _____ requested mediation to resolve differences with the school regarding _____'s education. She was accompanied to the mediation on March 9, 2005, by a close personal friend for support. She had no persons with special knowledge of the law or special education accompanying or advising her.

As a result of mediation, an agreement was reached on seven items and were documented in a Memorandum of Understanding (Mediation Agreement) dated March 10, 2005.

_____ Mother disputes the school's compliance with the mediation agreement. Most items in the agreement did not spell out specific duties on the part of the Parties or used language greatly open to interpretation. In the previous portion of this decision, it was noted that the first five items of the agreement have been carried out by the school, or will be carried out if requested by _____. The two remaining items in dispute are as follows:

6. The School will publish summaries of the following reports in the _____
 - a. _____ Spring 2004, Investigation Report by the Center for School Improvement.
 - b. The CSI Improvement Plan based on the 2004 Investigation Report.
 - c. THE CSI Progress Report, based on the School's progress in implementing the Improvement Plan.
7. _____ and the School will continue to discuss possible financial settlement terms.

The school claims that item number 6 has been completed. A May 25, 2005 paid notice published an "overview" of the listed Monitoring Reports. In addition, the School advertised and held a public meeting on July 9, 2005 for the community to be provided with details of the findings through use of a power point presentation and to ask questions. _____ Mother was the only nonschool staff person to attend the meeting.

_____ Mother testified that the newspaper article did not provide enough detail. They continue to disagree on whether item number 6 was handled properly by the school.

On April 14, 2005 the School Board met in executive session with Mother to discuss the mediation agreement #7. The minutes of that meeting show that the Board voted favorably to have the school administration schedule a meeting between and the school's attorney. The school alleges that has not yet provided adequate documentation to substantiate her financial claims. states that an adequate claim for damages was provided, of the BIA. The Parties continue to disagree on whether item #7 has been fulfilled properly.

11. There was little testimony regarding BIA monitoring reports and improvement plans resulting from those reports. However, publication of "summaries" of the reports was one of the issues of dispute in the March 9, 2005 mediation (#7).

On April 1 & 2, 2004, the BIA conducted a monitoring validation review for determining compliance with the requirements of the IDEA, No Child Left Behind, and other federal programs. The review was conducted at Agency by the BIA Center for School Improvement. The Report of the monitoring review dated April 29, 2004, sent to concluded that the had "some serious issues that need to be addressed" through a plan for improvement to be submitted to the Center for School Improvement. Among the deficiencies in special education needing improvement were: evaluation of students in all areas of suspected disability in order to gather relevant, functional, and developmental information; regular education and special education counseling services needed to be clarified on IEPs; and lack of comprehensiveness of IEPs. Specific issues were cited as needing improvement, including: IEPs must contain measurable annual goals, not merely generic goals; there must be consideration of behavioral intervention needs in the IEPs; and invitation of representatives from other agencies to transition IEP meetings. The HO takes note that all three of those last specific issues remained problematic with 's IEP eight months after the had been directed to correct them.

On November 16-17, 2004, a team of educators from BIA conducted a follow-up review which reviewed identified school strategies to correct previously identified deficiencies. Most deficiencies were identified as having been corrected. One that remained was the need for to establish measurable annual IEP goals for students.

In February and March, 2005 a "Special Education Second Tier Monitoring Report" review took place. The report was forwarded to the with a cover letter dated May 2, 2005. None of the cited deficiencies in that report are directly related to this proceeding, except perhaps need for professional development for staff regarding the IDEA. The school's special education director assured the HO that professional development activities have begun and would continue to be conducted, perhaps using for part of those sessions, the important educational video entitled "How Difficult Can This Be?" The video presents an excellent simulation, using adults, of school problems often experienced by students with disabilities that can not be seen, such as ADHD and specific learning disabilities.

Conclusions of Law

- A. The [redacted] violated its duty under IDEA Child Find requirements to timely refer [redacted] for evaluation for potential disabilities which were negatively impacting [redacted] learning. Child Find requires that [redacted] through IDEA requirements placed upon the BIA and BIA practices to:
- Have in effect policies and procedures to ensure that--all children with disabilities . . . regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; . . . The requirements . . . of this section apply to . . . children who are suspected of being a child with a disability . . . and in need of special education, even though they are advancing from grade to grade. (emphasis added) (34 C.F.R. § 300.125 (2004); Proposed regulations § 300.111).
- [redacted] has been enrolled as a student in the [redacted] since beginning third grade. Mother regularly and repeatedly advised [redacted] staff, often in response to staff complaints of [redacted] behavior and academic work, that [redacted] had been diagnosed with ADHD, and later with other diagnoses. That knowledge should have resulted in their realization that [redacted] Mother should be informed of her right to request that [redacted] provide a “full and individual” evaluation of [redacted] learning needs. See Department of Education v. Cari Rae S., 158 F. Supp. 2d 1190 (D.C.H.I., 2001).
- That duty clearly arose no later than the summer of 2000, before [redacted] grade year. [redacted] staff and School Board members received clear and convincing evidence of their duty to consider the evaluation process for [redacted] in the form of a letter to the Board from [redacted] Mother and a meeting with the Board that summer.
- No one should doubt that the May 22 letter and August 1 meeting of the School Board gave rise to knowledge on the part of [redacted] professional staff, and officials, that established an obligation to begin the process of referral for evaluation and eligibility determination for [redacted] That obligation may have actually arisen earlier in [redacted] education, but by August 1, 2000, no doubt should have remained.
- B. Federal law requires that “children with disabilities and their parents must be afforded the procedural safeguards . . .” available under law. (34 C.F.R. § 300.129 (2004); Proposed regulations 34 C.F.R. § 300.121). The federal regulations promulgated under the 1997 Amendments to the IDEA found at 34 C.F.R. 300.7(c)(9) (64 Fed. Reg. 12,406, 12,422, March 12, 1999) clearly establish ADHD as a disability under the category of “other health impairment.” Other health impairment:
- means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, . . .

That same definition is found in the current Code of Federal Regulations and in the proposed regulations under the 2004 Amendments to the IDEA at 34 C.F.R. § 300.8(c)(9). Clearly ADHD was identified in federal regulations as part of the 13 identified disabilities subject to IDEA provisions as “other health impairment.”

The [redacted] violated its duty under the IDEA to provide [redacted] Mother with notice and explanation of her procedural safeguard rights as she was seeking help for [redacted] from school staff. That duty arose (the summer of 2000) for [redacted] staff and officials no later than receipt of the May 22, 2000 letter to the School Board and the School Board meeting of August 1, 2000.

- C. The [redacted] failed to identify [redacted] timely manner as a child with a disability who by reason thereof needs special education and related services. The school, by its own long list of staff concerns expressed over the years, by records of poor school attendance, by numerous disciplinary actions, and by repeated efforts by [redacted] Mother to seek the help of the [redacted] to aid her [redacted] should have had an awareness of the need to provide an evaluation and a free appropriate public education (FAPE) to [redacted], but failed to do so. The continuing failure to refer [redacted] for evaluation lasted until at least May, 2004. The record is not clear that [redacted] as yet addressed educational needs as a student with ADHD, Anxiety Disorder, Depression, and ODD. [redacted] was instead identified as a student with emotional disturbance (ED) in January, 2005. However, the IEP developed and implemented did not provide [redacted] goals, programs or services to expressly deal with ED or any of the previously diagnosed disabilities.
- D. The [redacted] failed to provide [redacted] with FAPE before (since at least as early as August, 2000) and after the development of the January 12, 2005 IEP, and as it was later amended. That January IEP had so many omissions and errors on its face and in its implementation that it was little more than a sham IEP. It certainly was not designed to provide [redacted] with meaningful educational benefit.
- E. [redacted] was deprived of [redacted] right under the IDEA to an appropriate transition assessment, an appropriate transition plan, and [redacted] was not provided appropriate implementation of a transition plan. The law has required transition planning and services, including those of invited outside agencies, for the entire time [redacted]. [redacted] has been enrolled in [redacted] (See 34 C.F.R. Part 300 (1993), yet [redacted] was not prepared or was not willing to provide an appropriate transition program to [redacted]

Added to that transition responsibility under the IDEA by Congress in 2004 are “appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate independent living skills” and “the transition services (including courses of study) needed to assist the child in reaching those goals; . . .” 20 U.S.C. § 1414(d)(1)(A)(II). Congress has added to schools’ responsibility in the area of transition to adult life.

Missing from transition assessment, transition plan, and transition implementation were consideration and delivery of common but crucial transition program elements. It was obvious that the testimony at hearing that is unprepared to be own best advocate. has relinquished that role to Mother.

“Self-advocacy” has been determined by many educational experts to be an important component of “self-determination.” It includes an understanding of one’s self, including one’s disabilities and related educational needs, a knowledge of the rights afforded under law to persons with disabilities, communication skills to properly exercise rights under law and to advocate for one’s self. It includes development of persuasion, negotiation and listening skills, and an understanding of working in groups making decisions, such as IEP teams. These abilities are usually achieved through direct instruction by a qualified teacher, simulation and role play activities with others, and actually accepting leader roles, such as running their own IEP meetings and approaching teachers and professors to explain their disabilities and educational needs. Self-advocacy is not new to education. Test et al. (2005) conducted a meta-analysis of research on the strategies for the teaching of self-advocacy and found 25 studies conducted on the success of self-advocacy interventions between 1984 and 2004. They determined that all 25 studies found a positive impact resulting from the various intervention strategies used in the development of self-advocacy skills in persons with disabilities.

“Self-determination,” while it incorporates self-advocacy, includes much more in the form of other components. Its primary focus is to provide knowledge, skills and attitudes that allow persons with disabilities the ability to take control of their lives and futures as adults. It includes such other components as problem solving, goal setting, making choices, evaluating choices made, self-knowledge and understanding, safety and health, and maintaining internal self-control.

Self-determination for students with disabilities is not new to special education. Test et al. (2000) identified over sixty curricula that have been developed and used to promote self-determination skills in students with disabilities and explained how to assess the appropriate program for specific students.

There was nothing in the transition plan or implemented transition program which was remotely related to self-determination or self-advocacy. need for both was evident during his hearing testimony.

- F. The : did not properly complete the corrective action required in the BIA Complaint Report dated October 15, 2004. In doing so, the school continued to deprive of an appropriate evaluation and provision of FAPE. failed to complete valid and fair evaluations, including the Woodcock-Johnson Education Battery (did not meet W-J protocol), Part II, Reading Skills, Math Skills, and Written Expression. ; did not contract with a clinical psychologist or psychiatrist to complete a comprehensive social, emotional, and psychological assessment. That assessment was to determine social/emotional functioning taking into account ADHD and other diagnosed

disabilities which may have limited ability to progress successfully through the regular curriculum and transition into independence as an adult. obviously did not provide a "comprehensive transition assessment which includes career interest, aptitude, self-direction, work maturity, and related service needs relative to transition . . . by an outside agency" to allow an objective assessment leading to an "appropriate transition plan." Neither did implement anything close to an appropriate transition plan or program for

That proper assessment is vital to an appropriate transition program is no secret. The Council for Exceptional Children Division on Career Development and Transition developed for publication an important book in 1996 entitled Assess for Success: Handbook on Transition Assessment (Sitlington et al., 1996). That publication stressed the point that proper assessment is crucial in the development and implementation of successful transition plans which in turn have ramifications for the rest of the child's life. was not adequately evaluated by experienced and qualified persons familiar with good transitioning of students with disabilities into their lives as adults, much less by an outside agency. Three staff members key to s IEP and transition program, including the persons most responsible for completing the transition assessment and implementing the transition program, were unable to define or explain "self-determination."

- G. has, to date, completed, or stands ready to complete all seven of the Memorandum of Understanding (March 10, 2005) itemized agreements. The wording of most of the seven was not specific or detailed enough to identify what specific compliance would entail.

Although item number 6, the publication of summaries of BIA Center for School Improvement Monitoring and Progress Reports has been completed. Mother claims that the published summaries did not provide adequate detail of the problems identified in those reports and was published only once. This HO finds that the word "summaries" has a broad understanding, and while he agrees the published summaries did not provide great detail, he cannot conclude that did not meet the letter of item number 6.

other argues that item number 7 of the March 10 Memorandum of Understanding, that she and the school will continue to discuss possible financial settlement terms is not being fulfilled. School Board minutes of April 14, 2005, show approval of a scheduled meeting between Attorney and Mother, presumably to continue discussion of a financial settlement. The school claims that a detailed claim for financial reimbursement has not been provided to the school.

Mother states that a claim had been presented earlier to the BIA. Clearly they are continuing to discuss "possible" financial settlement terms. Again, this was a problem of wording that could have been resolved with better choice of words.

H. The Respondent argues that education was not adversely affected by disability, but that educational performance would have been better if attended classes regularly, applied self, refrained from using drugs and alcohol, and behaved more appropriately at home.

This argument is symbolic of the underlying problem involved in this hearing. Symptoms related to disabilities which cannot be seen and thus not readily identifiable or understood by the observer are problematic. The person with the unseen disability is always at fault. It is as if they choose to act the way they do all of the time. This argument is fallacious when it purports to make the disabled person at fault.

Looking merely to the symptoms will not get us anywhere. Identifying the underlying causes of the symptoms and addressing them through education, medication, supports, and related services will. Don't waste time and energy pointing fingers and finding fault where it does not exist.

I. The Respondent argues that graduated on May 29, 2005, and received a regular diploma from the school in the mail and did not subsequently return it. The school alleges, although the record does not establish that as fact one way or the other, that has used the diploma to attempt to obtain admittance to St. Johns and College. claims as a result of "graduation," it has no further responsibility to provide with special education and related services.

The legal authority for the school's position is based in the law found at 34 C.F.R. § 300.122(a)(3)(2004) and in the proposed regulations at 34 C.F.R. § 300.102(a)(3). Those provisions also note that graduation from high school with a regular diploma "constitutes a change in placement, requiring a prior written notice in accordance with" the IDEA's procedural safeguards. That notice was provided in a "written notice prior to graduation" dated May 11, 2005. The notice stated in part "we plan to dismiss your child from services through the Exceptional Child Program." Two days later, on May 13, 2005, Mother filed her request for this due process hearing.

The school's argument forgets that a parental request for due process hearing was 17 years-of-age at the time) automatically prevents any proposed change in educational placement from taking place, pending the outcome of "any administrative or judicial proceeding" (34 C.F.R. § 300.514 (2004); proposed rules, 34 C.F.R. § 300.518). This is more commonly known as the "stay put" or "status quo" provision of the law. The only exception to a school's maintaining the "status quo" of the student's then current educational placement is when the school and parents agree otherwise. Both and Mother have declined to agree that as graduated from the High School. Thus, both have declined to agree to the school's change in placement (removing from special education) was brought about through graduation.

As a matter of law, the filing of a request for due process hearing prevented from changing then current educational placement by ending its legal responsibility

under the IDEA through graduation. has not graduated from the High School.

J. For the first time in nearly thirty years of experience in administrative hearings, this HO has heard threats made. The Respondent's statement during hearing is also found in its brief. The Respondent's Final Argument Brief at page 33 states that a ruling contrary to the position that has graduated and no longer entitled to special education and related services under the IDEA will compel the to either "1) notify both College and St. Johns University of the validity of graduation from its high school; or 2) pursue an appeal to the judicial system, seeking to overturn this administrative proceeding. It was suggested as a proposed alternative to determining that has not graduated, that a great deal of time and expense could be saved if the HO merely directed that the Memorandum of Understanding provision offering 50 minutes a week of combined transition mentoring be carried out.

As to the first threat, notification to others that graduation is not valid, should first be based in fact, not merely the belief, that graduation was a requirement for admission. Proof of graduation is not a requirement for admission at many postsecondary institutions of higher education, including the University at which this HO holds the status of Professor.

Before taking such action, the Respondent should thoroughly review the "retaliation" provisions of the three federal laws directly relating to special education, other federal civil rights laws, and state civil rights laws.

As to the second implied threat, other than surprise that it was stated it has no consequence. This undersigned HO usually concludes his decisions with a reminder to the Parties that they have a right to seek court review of the decision.

Decision

remains a student eligible for special education and related services in the The is reluctant to provide those services to a student it considers to have graduated. The reality is that has never done well by . It should be pointed out from the record that it cannot be said that has acted toward and Mother with improper intent or motive. The staff's inept handling of 's educational needs are more likely due to lack of knowledge and experience with some disabilities such as ADHD, anxiety disorder, and ODD, and a significant lack of knowledge and understanding of transitioning. The staff's noncompliance with the "corrective action" statements in the Complaint investigator's were not appropriately explained or justified, nor could they be. This HO does not believe that at the time of hearing, staff members had any acknowledgement or understanding of what needed or how to provide for educational needs. Thus, any remedy must take into account lack of knowledge, experience, and general indifference to providing appropriate programming.

is a student in the and will remain such until agrees to graduate with a regular diploma, completes new valid IEP goals, or turns 21 years-of-age. was not evaluated and identified as a person eligible for special education in a timely manner and at no time was provided FAPE did not receive meaningful educational benefit from special education and related services. The , must provide with FAPE during that entire time remains enrolled at student as , whether or not the determines to seek court review of this decision. must begin immediately to rectify its inaction and inadequate actions regarding education. Time is of the essence. If this prescribed process is not formally begun and operational within 30 days of the date of this decision, each day of delay after 30 days will be added to ending date of responsibility. Time is of the essence.

A newly constituted IEP team will include persons identified by the school for at least one year, one or two representatives from the Protection and Advocacy Project, at least one representative from transition services providers, such as Vocational Rehabilitation, at least one representative from any training institution, community college, college or university in which enrolls or seeks to enroll, and at least two outside district consultants recognized as knowledgeable and experienced in transition assessment, transition planning and transition plan implementation. The outside consultants can be obtained from sources such as the Department of Education, colleges, universities, trade and professional schools, Mountain Plains Regional Resource Center, the BIA, and other Native American School systems. The selection of outside consultants shall be reviewed as meeting the above consultant criteria by the Education Line Officer for the BIA District that includes All decisions of the newly constituted IEP team will be by consensus. Any decision not achieving consensus, when the disagreement involves any two or more of the following groups, shall be resolved by the Education Line Officer in a timely fashion: representatives, and representatives, and the consultants. Lack of consensus within any one or more groups does not trigger the need for an outside decision maker. Adjustments to the IEP Team configuration or process may be made by the Team, so long as all three groups and the Education Line Officer are in agreement. Meetings may be conducted electronically by video or teleconferencing for the convenience of the Team members.

All services provided will be at no cost to or to family, including tuition and fee costs at a postsecondary training or other educational institution. Incidental costs, such as textbooks and living expenses are not included. Tuition and fee costs to be covered are not to exceed normal costs for similar training and educational institutions in the state of Failure to identify educational needs in a timely manner and to adequately provide for them, have put far behind in learning.

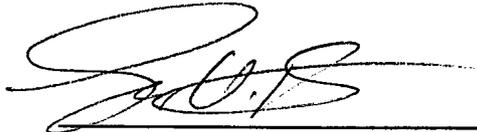
The provision of the above transition planning Team and outside conflict resolution is necessary because the record discloses that the cannot be trusted on its own to carry out the law without assistance and oversight.

The Team should give adequate consideration matching and a postsecondary institution which has an established history of working well with students with disabilities. The Team must

give strong consideration to providing _____ with a self-determination program that adequately meets _____ needs. _____ should not be expected to return to _____ facilities for programming unless _____ agrees to do so.

In the alternative, in the event that it is later determined that _____ has graduated from _____ and is no longer entitled to special education and related services as before, the undersigned Hearing Officer hereby directs that _____ be provided, as compensatory education, three years of _____ provided programs and services as determined by the above described newly constituted IEP team.

Parties to this hearing are hereby reminded that the 2004 Amendments to the IDEA have established a statutory limitation on the time for requesting court review of this decision. As of July 1, 2005, requests for reviews of IDEA hearing decisions in state and federal courts must be filed within 90 days from the date of the decision, unless the state has an "explicit time limitation for bringing such actions" (20 U.S.C. 1415(i)(2)(B)).



J.D., Ph.D.

Hearing Officer

Sept. 30, 2005

Date

The University of

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