

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: GT
ODR #9512/08-09 AS

Date of Birth:
xx/xx/xx

Date of Hearing:
February 10, 2009

CLOSED HEARING

Parties to the Hearing:
Mr. and Mrs.

North Penn School District
401 E. Hancock Street
Lansdale, Pennsylvania 19446

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:
Frederick Stanczak, Esquire
179 North Broad Street
Doylestown, Pennsylvania 18901

Brian Ford, Esquire
Dischell, Bartle, Yanoff & Dooley
PO Box 107 1800 Pennbrook
Lansdale, Pennsylvania 19446

March 9, 2009

March 23, 2009

Linda M. Valentini, Psy.D.

Background

Student is an early teen aged eligible 7th grade student who is enrolled in the North Penn School District. Student has a severe seizure disorder and has daily seizures such that throughout the school day Student is provided with a one-to-one aide who is a nurse. The issue in this hearing involves afternoon transportation services. The District has offered Student school-to-home transportation on the small school bus (hereinafter small school bus) which Student rides to school in the morning. However, Student and Student's parents, Mr. and Mrs. (hereinafter Parents) want Student to ride home on the District's large school bus (hereinafter large school bus) instead of on the small school bus.

The hearing was convened for one session, with the intent to reconvene by teleconference at the convenience of Student's treating physician who was to testify for the Parents. The Parents ultimately decided not to call the physician as a witness, so the record was closed when Closing Arguments were received.

Prior to the hearing the District objected to the admission of one of the Parents' exhibits (P-4). Because Student's physician, the author of the document, was scheduled to testify the hearing officer admitted the document. Upon learning, well after the conclusion of the first hearing session, that this witness would not be available for examination and cross examination, the District renewed its objection to the document. This hearing officer must agree with the District, and therefore is removing the exhibit P-4 from the official record of this hearing. Had it remained as an admitted exhibit, this hearing officer would have been inclined to give it little weight as the physician was not available for examination or cross-examination as to Student's specific knowledge of the conditions on the large school bus and as to what if anything had changed since his correspondence of May 9, 2008 wherein he prescribed home schooling due to the frequency of Student's seizures.¹

¹ Additionally as it goes toward credibility, it is noted that this physician's office faxed physician's orders for the wrong dose of Diastat (too high a dosage) and that the physician failed to respond to a series of questions about allowed/not allowed physical activity that the school nurse faxed to his office three times. (NT 234-239)

Issue

Must the District allow Student to ride home on the District school bus (large school bus) as opposed to the transportation (small school bus) currently offered by the District?

Findings of Fact

1. Student is an early teen aged seventh grader in middle school. Student is classified as having an Other Health Impairment, due to Student's epilepsy. (NT 30; P-6)
2. Student had a fractured skull at age one and seizures started about a year later. Student had brain resection surgeries in 2003 and in 2006 to reduce the frequency of Student's seizures. (NT 30-31, 81-82)

3. Student's baseline neural activity is focal seizure activity. Student's face twitches "pretty much nonstop". (NT 90-91)
4. Student has many seizures daily in addition to the focal seizure activity baseline. Many of Student's seizures occur when Student is sleeping at night, in bed in the morning, or as soon as Student has something to eat in the morning. Student has major seizures every morning before Student gets out of bed. (NT 53-54, 56, 89, 90-91)
5. Depending on the frequency and severity of the morning seizures, Student's mother may medicate Student, drive Student to school herself rather than let Student be transported on the small school bus, or keep Student home from school. Student's morning seizures are good predictors on most days of how the rest of Student's day will be. (NT 32, 57, 86-89, 106)
6. Student misses a great deal of school because of Student's seizures. As of the date of the hearing Student had 36 absences in the 2008-2009 school year. From December 3, 2008 until the date of the

hearing February 10, 2009 Student was in school a total of 19 days, one week (presumably 5 days) of which was for an allergic reaction that was separate from Student's seizure disorder. (NT 31, 90, 208-209; S-5)

7. Student receives Phenobarbital, Diazepam, Trileptal, and Rufinamide (Banzel) on a daily basis. If Student has had three seizures in the morning Student's mother also medicates Student with Klonopin which does not make Student tired. (NT 59, 80, 86-87)
8. Diastat is a medication that is used as needed to treat more serious or major seizures, i.e., cluster seizures or seizures over five minutes. The liquid medication is administered via rectal insertion. (NT 49-50)
9. The morning seizures tend to be the more major seizures, tonic seizures or convulsion seizures. During a major seizure Student starts by making repetitive mouth movements/sounds, Student shakes, clenches on the right side and then Student's arm or leg may swing out or stiffen. These types of seizures can last a

- minute to several minutes. When Student has a seizure such as this Student's mother holds Student. (NT 54-55, 93)
10. Other daily seizures Student has involve Student's just shaking for a minute with Student's head nodding; these seizures last a minute or two, do not turn into convulsions and Student is fine right afterwards. (NT 56, 94-96)
 11. Student experiences an aura before Student's seizures, and Student will say that Student has a headache (Student's term for when Student feels a seizure coming on) and then hug the person helping Student. The mother testified that the family doesn't "say 'seizure' in our house. We call them headaches". (NT 56, 91, 232)
 12. As per Student's IEP, to accommodate Student's morning seizures, Student's school day starts later than the rest of the students; the small school bus picks Student up at 9:30 am. (NT 31-32)
 13. As per Student's IEP Student has a one-to-one aide sitting right across from Student

- on the small school bus on the way to school, and during the entire school day up to and including when Student enters Student's mother's car for the ride home. The aide is a Licensed Practical Nurse who is Board-Certified. (NT 32, 82-83, 102, 129, 165-168, 182; S-2)
14. The small school bus ride from home to school is about 20 minutes long. Student is the only student on the small school bus in the morning. Student sits in a seat across from Student's aide. (NT 32-33)
15. Student has never had a seizure on the small school bus in the morning as Student's mother exercises the option of keeping Student home for the day or driving Student to school herself if Student's seizure activity is on the more severe end of the spectrum. (NT 33)
16. After an October 13, 2006 meeting the Parents gave the school permission in writing to "conduct one conference call with us and Student's surgeon's office" about four subjects, one of which was "Bus Protocol". (NT 46, 48; P-5)

17. The neurologist who has been treating Student since before Student's 2006 surgery wrote a letter on December 21, 2006. The neurologist was not Student's surgeon. The letter stated that there were no limitations on Student's general activity, with the exception of contact sports. The physician approved an "adaptation for field trips" that had been "outlined by Ms. Popp". Ms. Popp was the elementary school nurse. (NT 45; P-3)
18. The "bus protocol" for field trips that the District had devised and that the neurologist approved was that a nurse would accompany Student on the large school bus, with the mother following behind in a car² to provide privacy in the event that Student needed to be administered Diastat and to provide transportation home if Student needed to leave before the trip was over. (P-5)
19. Student took several trips to the District's high school planetarium in elementary school using the protocol, and

² On one occasion the mother rode the field trip bus with Student as she was designated a chaperone. (NT 52)

- one trip to the New Jersey Aquarium, and never had an incident related to Student's epilepsy on the field trip bus. (NT 50-51)
20. However, on May 9, 2008 the neurologist wrote of Student that "Due to the frequency of Student's seizures I am recommending that Student be home schooled until the end of this school year". Student was able to return to school in September 2008. (NT 64, 152; P-3)
21. Student's Health Care Plan provides that if Student has seizures of a certain severity ("several seizures, a seizure of any duration, or how Student says Student feels") and can not continue for that day in school Student's mother will pick Student up from school. It also provides that mother will pick Student up if Student has a seizure at 2 o'clock (or after). (NT 75, 94; S-4)
22. Student's mother has had to pick Student up from school "several" times. She hesitated to specify the number but said that this school year she has picked Student up ten times or fewer at lunchtime or early afternoon. The current nurse/aide recalls

that a parent has picked Student up after a seizure two or three times since she started on the case on December 3, 2008. (NT 73-74, 191)

23. On October 25, 2008 the Parents wrote giving the school permission to speak with “Student’s physicians (locally and from NYU)” regarding Student’s condition and “any information that is relevant to the provision of a safe and appropriate environment” in five specific areas, one of which was “bus protocol for field trips”. (NT 48; P-5)

24. According to a Seizure Observation Record and what appear to be Nurse’s Card notes³, Student had seizures in school on 9-3-08 (2 seizures), 9-9-08, 9-10-08 (mother reported 14 seizures in past 24 hours), 9-15-08, 9-17-08, 9-26-08 (with gagging and vomiting), 9-27-08, 10-2-08, 10-3-08, 10-16-08 (3 seizures), 12-3-08, 12-17-08, 1-13-09 (2 seizures). According to the nurse/aide Student has had seven seizures since she assumed her duties, indicating therefore that

³ This exhibit, S-6, was very difficult to decipher and is here referenced to the best of this hearing officer’s ability.

- there were 3 more seizures between 1-14-09 and one of these three, the one most recent in time to the date of the due process hearing, was in gym class and was the most severe the current nurse/aide witnessed. (NT 197-201, 204-205; S-6)
25. Since the nurse/aide has been working with Student (December 3, 2008) Student has had two major seizures in school, the recent one in the gym and one before that in history class which meets after lunch, around 12:30 or 1:00 pm. (NT 183)
26. In gym Student was very red in the face indicating that Student was overheated. Overheating is something that “absolutely” can trigger a seizure for Student. (NT 96-97)
27. Student experiences more seizures when Student is tired or when Student is stressed. (NT 97)
28. Student’s seizures in school tend to occur at or around lunchtime or after (between 11:00 and 2:00). Of about seven seizures since December 3rd, three have

- been in the cafeteria. These seizures have lasted about a minute to a minute and a half. Student's seizures can start out as one kind of seizure and then go into another type. (NT 97-98, 154, 173, 184, 187, 190, 192-193)
29. When Student has a seizure in school Student is already sitting, or is "sat on the ground or laid down", Student's arms are rubbed, Student is spoken to quietly and watched until Student comes out of it. Seizures are timed and Student's condition is assessed post-seizure. (NT 92, 110, 169-170; S-6)
30. Post-seizure behavior can range from falling asleep to reorienting quickly. (NT 170-171)
31. If Student rode the large school bus, Student would board the bus on the side of the school where the large school buses line up. If Student rode the small school bus Student would board the bus on the side of the school where the students who walk home and the students who are picked up in private cars exit the school. The boarding

area for the small school bus is the same area where Student is dropped off in the morning and from where Student's mother picks Student up in the afternoon. (NT 83-84, 149-150)

32. The nurse/aide believes that the District's offer of the small school bus is appropriate. There is "a lot of room" on the small school bus, with wider walkways in the aisles, wider seats and fewer riders. The nurse/aide believes that if Student were to have a seizure on the small school bus it would be much easier for her to handle it. It would not be difficult to administer the Diastat because there are many fewer students, there are empty seats and there is room in the back of the bus if needed. (NT 176, 178)

33. The school nurse, who was the "bus nurse" for ESY believes that the small school bus is appropriate for Student because the seats are wider, the seats are higher in the back, there is a bigger aisle, and there are fewer seats in the back with a space for a wheelchair. The small school bus allows for a wider area if Student should

be flailing. The small bus would be more easily pulled over for safety reasons if the nurse gets out of her seat to assist Student because someone cannot be in the aisle while the bus is moving. (NT 244-245)

34. The District is concerned about Student's safety on the large school bus in terms of the distance of the large school bus route compared to the small school bus route, the student numbers (55-60 and upwards to 70 students) contributing to the noise factor, the space factor and the heat factor at certain times of the year on the large school bus, the narrower aisles on the large school bus, and the lack of air-conditioning on the large school bus. (NT 118, 124-127, 148, 154, 162)

35. The District is also concerned about the safety of Student and the other students on the large school bus. If Student should have a severe seizure on the bus and/or if Student needed to receive a rectal dose of Diastat, the bus would likely have to be pulled over. The bus would be pulled over in case Student started to move around a lot, or flail, or stand. Since the current

nurse/aide has been working with Student there have been a few seizures when Student was moving Student's arms about. The nurse/aide would likely be standing trying to treat Student. It would be much easier for the small school bus to find an appropriate place to pull over safely than for the large school bus to find a safe place to pull over. (NT 133, 154, 158-159, 176-177, 206, 210-212, 242)

36. In order for the nurse/aide to assist with Student's less severe seizures on the bus she would have to be seated in the same seat next to Student. (NT 161)

37. The nurse/aide believes that the large school bus preferred by Student and the Parents is not appropriate because the number of students, their backpacks, the loud noise and other things going on would make Student's seizures very difficult to treat. If the bus were moving the nurse/aide could fall or Student could fall. Additionally if Student needed Diastat it would be very difficult to administer it in the large school bus. (NT 177-178)

38. The school nurse also believes that the large school bus preferred by Student and the Parents is inappropriate because seventh, eighth and ninth graders who are not in Student's class are all on the large school bus, many of the students would not know Student, middle school students can be "horrendously cruel" and loud and noisy and it would be difficult for the driver to control the bus if the students were making inappropriate remarks about Student's seizures, Student's aide's responses, or a Diastat treatment. (NT 246-247)
39. The school nurse noted that even if Student were in the large school bus, having Student's nurse/aide sitting right beside Student would preclude peer interaction, and if she were not sitting right near Student she would either not hear Student if Student were in distress or would have difficulty climbing over backpacks, sports gear, and instruments that would be in the aisle to reach Student. (NT 247)
40. The school nurse is concerned about Student's space needs as Student grows bigger and about Student's dignity if Student

had to receive Diastat. She is of the strong opinion that even if the large school bus were air-conditioned, if the seats were wider, if it were not overcrowded, hot and noisy it still would not be appropriate because there isn't as much room available to provide privacy and dignity. (NT 251)

41. The school nurse is of the opinion that at age [redacted] Student's opinion about what might be best for Student, and that it wouldn't matter if Student received Diastat on the bus is not necessarily what is best for Student. She testified that in her experience with middle schoolers it would only take one uncouth youth who may not be in Student's grade and is not Student's peer making statements about it to cause a huge source of embarrassment to Student. (NT 252)

42. The school nurse noted that in school if Student needed Diastat it would be possible to clear out a whole area and put the other students elsewhere, but it would be unsafe to clear the whole bus of students. If a seizure lasted four minutes it would be time to prepare to administer the Diastat and remove the other students from the area so

that at the five minute mark it could be privately and safely administered. (NT 253, 256-257)

43. In IEP meetings on March 1, 2007 and on August 27, 2008 the District offered to transport Student home on the small school bus, but the Parents emphatically rejected this offer. (NT 38-39, 42-44)
44. Mother testified the Parents rejected the District's offer because Student "...has enough trouble. Student has a problem. I wasn't having Student walk out there in front of all the kids and get in the special education bus. Student was extremely upset about that." The mother maintains that Student would be embarrassed to ride the small school bus home in the afternoon because "Student feels normal. Student thinks riding the special education bus makes Student different". (NT 39, 105, 108-109)
45. The mother told Student that she would drive Student home every day instead of Student's taking the small school bus. The mother has driven Student home every day

- this school year. Student asks every day if Student can ride the large school bus. Student wants to ride the large school bus with Student's friends. (NT 39, 41, 107, 150)
46. Student's Parents maintain that Student is very comfortable about Student's seizure disorder and has spoken to Student's class about it in elementary school and in middle school. (NT 85)
47. Student does not complain to Student's nurse/aide about riding the small school bus in the morning going to school and has never expressed to Student's nurse/aide any embarrassment about taking the small school bus. (NT 167-168)
48. Student went to the Epilepsy Center's summer camp last summer; Student's parents drove Student to and from camp. (NT 58)
49. Diastat has not had to be administered in school to date. (NT 60, 183-184)

50. The Parents offered the school a “privacy sheet” to hold in front of Student if Diastat needs to be administered. (NT 61)
51. Although it is rectally administered, the Parents believe that the privacy sheet is “not for Student’s sake because Student doesn’t mind” but was offered “if the school is worried that someone else might see”. (NT 61)
52. The Parents maintain that “in [Student’s] eyes there is no difference of Student getting Diastat on the bus in front of the kids versus in gym or in the cafeteria in front of the other kids”. (NT 109)
53. Student has not yet reached puberty. (NT 110)

Discussion and Conclusions of Law

In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of

persuasion for cases brought under the IDEA is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D. Pa. October 26, 2006). As the Parents asked for this hearing, the Parents bear the burden of persuasion. However, application of the burden of persuasion does not enter into play unless the evidence is in equipoise, that is, unless the evidence is equally balanced so as to create a 50/50 ratio. Although in this case the evidence was not in equipoise, as the facts overwhelmingly supported the District's position, this hearing officer nevertheless found the case to be quite difficult because of her admiration of the Parents' enduring efforts to care for their child and of Student's grace in dealing with Student's disability.

Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA” or “IDEA 2004” or “IDEA”), which took effect on July 1, 2005, and amends the Individuals with Disabilities Education Act (“IDEA”). 20 U.S.C. § 1400 *et seq.* (as amended, 2004).

‘Special education’ is defined as specially designed instruction...to meet the unique needs of a child with a disability. ‘Specially designed instruction’ means adapting, as appropriate to the needs of an eligible child ...the content, methodology, or delivery of instruction to meet the unique needs of the child that result from the child’s disability and to ensure access of the child to the general curriculum so that Student or she can meet the educational standards within the jurisdiction of the public agency that apply to all children. C.F.R. §300.26

The FAPE requirement under Section 504, unlike under the IDEA, is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met, and focuses on the "design" of a child's “educational program”. Mark H. v. Paul Lemahieu, 513 F.3d 922, 933. As defined by the

regulations, a Section 504 FAPE requires education and services "designed to meet individual educational needs of handicapped persons as adequately as the needs of non handicapped persons are met." 34 C.F.R. §104.33(b)(1). (Emphasis added)

This case revolves around the question of whether or not the transportation offered to Student by the District is appropriate and delivered in the least restrictive environment that is appropriate for Student's situation. A District's obligation to provide FAPE includes transportation services in some cases, but not in all cases. FAPE is defined as "special education and related services" provided according to the IEP. 20 U.S.C. §1401(9); 34 C.F.R. §300.17. The term "related services" is further defined at 34 C.F.R. §300.34(a):

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education ...

The United States Supreme Court has made it clear that districts are required to provide only those services that are necessary to enable the child to benefit from education. In Irving Independent School District v. Tatro, 468 U.S. 883, 104 S.Ct. 3371, 82 L.Ed. 2d 664 (1984), the Court stated that “only those services necessary to aid a handicapped child to benefit from special education must be provided ...” Thus, a child with a disability is entitled to transportation only if transportation is required to help that child benefit from Student’s or her special education as set forth in the IEP. In the instant matter Student’s IEP team has deemed transportation services necessary and has incorporated them into the IEP.

Concluding the regulations were unclear as to whether the IDEA's LRE mandate applied to transportation, in Ms. S. ex rel. L.S. v. Scarborough Sch. Committee, 42 IDELR 117 (D. Me. 2004) the U.S. District Court, District of Maine held that transportation on a regular education bus was the particular student’s least restrictive environment but that mode of transportation did not then require a special “handing off” arrangement which was available

on the special education bus. However, in its opinion, not binding in this circuit but nevertheless instructive, the court noted that “it is not at all clear that the ‘least restrictive environment’ requirement of the IDEA applies to transportation. It requires that, ‘to the maximum extent appropriate,’ disabled children be ‘educated with’ children who are not disabled and that they be ‘removed ... from the regular educational environment ... only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.’ 20 U.S.C. § 1412(a)(5)(A) (emphasis omitted). There is no sense in which a school bus may be considered to be a ‘regular class,’ nor is education the purpose of daily trips on the school bus”. Quoting *Shawnee Mission Unified Sch. Dist. No. 512*, 102 LRP 2903 (Kansas State Educ. Agency, Mar. 29, 2000), at 2 the Maine court noted “There is, therefore, of necessity, a distinction between related services [in this case, transportation] and those services specifically designed to meet a child's needs as expressed through the goals stated in an IEP.”.

Assuming nevertheless the strictest interpretation of an LRE requirement regarding transportation, in deciding whether a student is offered FAPE, the least restrictive environment is but one factor to consider. Although under the former two-tier due process system an appeals panel wrote that “FAPE is not necessarily accomplished through strict adherence to least restrictive environment principles” [In Re H.M., Spec. Ed. Opinion 1559 (2005)] this hearing officer holds that examining least restrictive environment principles is necessary in all cases, but that the principles must be understood to mean that a student is entitled to the least restrictive environment that is *appropriate* for the child. As such, this hearing officer is in agreement with the District, as stated in its closing argument, that “[w]hen proper LRE analysis is applied, school districts are obliged to offer the least restrictive of those appropriate placements. That analysis, however, contemplates several placement options that are otherwise appropriate. In this case, the Parents begin with the implicit assumption that the competing transportation options are equal or, minimally, that the demanded transportation is appropriate. This assumption is false. The transportation offered by the District is

appropriate, but the transportation demanded by the Parents is not”.

Student has, by Student’s mother’s description, a severe seizure disorder that manifests on a daily basis (FF 4, 5, 9, 10) despite a medication regimen that includes four daily medications and two other medications prn (FF 7, 8). The condition has required special accommodations including a late start time to Student’s school day (FF 12), a one-to-one nurse/aide accompanying Student at all times both in school and on the small school bus in the morning (FF 13), breaks in the school day when Student is tired (S-6), leaving school when Student requests to leave or leaving school because of certain types/frequencies of seizure activity (FF 22), and many excused absences (FF 6). Student’s seizure activity was so frequent that in May 2008 Student’s neurologist ordered home schooling for the remainder of the school year (FF 20).

On days when Student’s mother does not transport Student in the morning, the District transports Student to school accompanied by a nurse/aide via a small school bus. The District

has offered the same transportation option to Student for Student's afternoon transport on days that Student can remain in school until the normal end of the school day. As opposed to the large school bus, the small school bus in the afternoon affords Student fewer student riders, a shorter ride time, wider seats with higher backs, more inner maneuvering space, air-conditioning and easier maneuvering in traffic (FF 32, 33) This transportation arrangement is judged by this hearing officer to be appropriate.

The large school bus presents with between 55 and 70 students along with their backpacks, their sports equipment and their musical instruments, a longer ride, narrower seats with lower backs, little if any inner maneuvering space, no air-conditioning and more difficulty maneuvering in traffic (FF 34, 35, 37, 38). This transportation arrangement is judged by this hearing officer to be inappropriate.

This hearing officer reaches her conclusions regarding appropriateness of the District's offered transportation and inappropriateness of the Parents' requested transportation on the facts presented, common sense, and the witnesses' credibility. Addressing this last

factor, it is noted that hearing officers are empowered to judge the credibility of witnesses, weigh evidence and, accordingly, render a decision incorporating findings of fact, discussion and conclusions of law. Thus, part of the responsibility of the hearing officer is to assign weight to the testimony and documentary evidence concerning a child's special education experience. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". Blount v. Lancaster-Lebanon Intermediate Unit, 2003 LEXIS 21639 at *28 (2003).

Although Student's mother testified that her son is very comfortable with Student's disorder (FF 46), she also testified that Student is embarrassed to ride the small school bus (FF 44) and she has supported Student in this to the point of transporting Student home herself every day (FF 45), leaving from the same place in school from which the small school bus departs (FF 31). Similarly it presents a riddle to this hearing officer to contemplate that a [redacted]-year-old Student reportedly would not mind having a medication inserted into Student's rectum in the presence of Student's peers, with

or without a privacy blanket, but would not feel normal riding the small school bus (FF 51, 52). This hearing officer found the District nurses who testified very credible. First of all the nurse/aide who is actually with Student all day in school treating Student's seizures and who also rides with Student on the small school bus presented a convincing picture of the difficulty she would encounter treating Student on the large school bus as opposed to the small school bus (FF 32, 37). Moreover, in her morning conversations with Student during the 20-minute bus ride to school Student has never expressed discomfort with riding the small school bus (FF 14, 47).

The school nurse's testimony was likewise credible, particularly as she had been the ESY bus nurse and had a first hand knowledge of what happens on ordinary school buses (FF 33). Her testimony about the unfortunate cruelty arising from the immaturity of some middle school students was down-to-earth and realistic, and this hearing officer appreciated her candor in this regard (FF 38, 40, 41). The District has plans to provide Student privacy in school should a major seizure of four minutes' duration necessitate preparation for administration of

Diastat to Student (FF 42). It is important to note that Student has not reached puberty with its attendant physical and psychological changes (FF 53). The Parents are encouraged to consider seriously the implications of pubertal changes, and to recognize that teenagers, even friends, can be highly inappropriate particularly regarding bodily functions, and that one incident that triggers ridicule, even in jest, could follow Student throughout the rest of Student's public school career. In an ideal world these would perhaps not be necessary considerations, but in this real world Student deserves to be protected and Student's dignity preserved, even against Student's stated wishes. It is also suggested that Student's peers likewise need to be protected against being in a situation where in their immaturity and desire to show off they may make inappropriate comments for which they then would suffer consequences, however richly deserved.

Order

It is hereby ordered that:

The small school bus transportation offered to Student by the North Penn School District is appropriate and represents the least restrictive environment for Student.

March 23, 2009
Valentini, Psy.D.
Date
Valentini, Psy.D.

Linda M.

Linda M.

Hearing

Officer