DEPARTMENT OF EDUCATION, SPECIAL EDUCATION
STATE OF COLORADO
Due Process Hearing No. 2010:105

DECISION

CHEYENNE MOUNTAIN SCHOOL DISTRICT #12

Petitioner,

vs.

STUDENT, STUDENT'S FATHER and STUDENT'S MOTHER

Respondent.

Hearing on Petitioner's Complaint commenced on 4/9/10. It continued on 4/10 and 4/11/10.[1] At the hearing, Petitioner was represented by Kelly Dude, Esq. The Student's Father proceeded *pro se*. The Student's Mother proceeded *pro se.*

Procedural Order #8, issued contemporaneously with this Decision, provides identifiable information as to the Student and a key to the abbreviations used but not explained herein. As noted in said Procedural Order, it and the information therein, are sealed in order to protect personally identifying information.

After hearing the evidence, reviewing the admitted exhibits, and considering the closing argument of Petitioner and of the Student's Father, I make the following findings and conclusions:[2]

1. The Student's Parents specifically moved years in the past to that part of

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[1] The record was preserved by Resling Reporting Service, 18 E. Fountain Blvd., Colorado Spring CO 80903-7085; 719-471-2966.

[2] The parties waived oral closing argument, electing instead to submit written closing argument. Petitioner submitted a written closing argument, which I carefully considered. I have received and carefully considered a document entitled "Respondent's Closing Arguments." It is signed only by the Student's Father. The Student's Father is not an attorney. The Student's parents are divorced from each other. They were cautioned during these proceedings that representation by one parent of the other would be the unauthorized practice of law and that each was responsible to present his or her own case. Thus, I have treated the document entitled "Respondent's Closing Argument" as if it was entitled "Student Father's Closing Argument," i.e., as being only the Student's Father's closing argument. The Student's Mother failed to make any closing argument. Failure of the Student's Mother to make a closing argument has deprived me of her insight into the case, but such failure was not "held against her" in reaching the determinations in this Decision.

Petitioner's school district that was the regular attendance area of School A. Their reason was their belief that School A offered a better regular school education than any of Petitioner's other schools that served the same age population.

2. The Student attended School A prior to but never after the onset of the Student's disability.

3. Post onset of disability, the Student attended Petitioner's School B. The Student was a special education student in a specific special education program there for about three school years following the onset of the Student's disability.[3]

4. During the years the Student attended School B, School B also housed at least one other special education program. The other special education program was specifically for students with an educational disability entirely different from Student's disability. Both parties agree and no doubt exists but that the other special education program was and is totally inappropriate for this Student, and as a result could not possibly offer this Student a Free Appropriate Public Education (hereinafter FAPE).

5. The Student was scheduled for major surgery for the Fall of 2009. It was a medical necessity that [Student] not attend any school for a period prior to and after that surgery to minimize the Student's exposure to germs and/or illness that might affect [Student's] surgery. The Student's IEP (hereinafter IEP; as needed, identification by date or exhibit number is added where the reference is to a specific IEP) thus was changed in the Fall of 2009 from a full special education program delivered at School B to a limited homebound program due to medical reasons that prevented the Student from attending any school. A series of IEPs for homebound services were developed and homebound services started that September.[4]

6. Starting in 1/10 and concluding 2/10, Petitioner worked on developing and eventually developed the IEP for the Student which was admitted as Ex. 9 and which is the subject of the dispute in this case. Immediately prior to the date of Ex. 9, the Child's IEP was for homebound services.[5]

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[3] Ex. 11 is the Student's Individual Education Program for the last year [Student] attended School B.

[4] Exs. 3, 5 and 7. The Student's Father occasionally opined that Petitioner failed to comply with those IEPs. That, however, is not an issue before me, *see* Procedural Order #6.

[5] Ex. 7. *See* also Exs. 3 and 5, earlier versions of Ex. 7.

7. As of early 2/10, the Student was cleared medically to attend school.[6] The Student's Parents do not seriously dispute that the Student is and has been since then medically capable of attending a school and that the prior medical need for homebound services then ended. For example, the Student's Parents asserted the position on 3/30/10 that the Ex. 9 IEP would offer the Student FAPE if the proposal therein to have the Student attend School C was changed to the Student attending School A.[7] Ex. 9 does not include homebound services. I specifically find that the Student had no medical necessity for homebound services after early 2/10. The reason the Student has not been attending school instead of homebound is the decision of the Student's Parents not to allow [Student's] to attend school because the "school" was School C.

8. Age and progress considerations aside, neither of which is relevant to the issues before me, Ex. 9 (with implied additions fully understood by all parties, as later discussed in this Decision) provided for services substantially similar to those that had been provided to the Student prior to the medical need to switch the educational location via the Ex. 11 IEP from an actual school building as had been the situation just prior to Fall 2009 to homebound.

9. The Ex. 9 IEP had a herein alleged to be relevant change from the pre-homebound IEP in past years in that the delivery of services location proposed in Ex. 9 was School C, instead of at Ex. 11's location of School B.

10. The last time that the Student attended School B was at the end of school year 2008-2009.

11. That was also School B's last use by any student as a school. No students have attended School B since the Student last attended there. What had been School B ceased to exist as a school, for reasons unrelated to any particular student. Apparently, the physical plant that Petitioner previously used as School B is used now as an administrative facility.

12. School C was extensively, expansively, and very expensively remodeled over the summer of 2009 to be the new physical school location, as of the start of school year 2009-2010, for the special education program the Student previously attended at School B. The entire special education student population that included the Student moved to School C. School C had many non-special education students prior to the start of school year 2009-2010. No evidence was offered that changed, i.e., School C still has many non-special education students.

13. The other special education student population that had previously been at

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[6] Exs. 16 and 17; testimony of [Special Education Director].

[7] *See* Procedural Order #6.

School B, which population properly never included the Student, was relocated to a school that is not School A, B, C, or D.

14. Part of the remodel of School C included creation of a special room specifically to meet the Student's unique privacy needs. Such needs exist due to the Student's disability.

15. In the normal course of events, even if the physical plant that had been School B in the past had been used this school year (2009-2010) as a school, all its students of like age to the Student would be moving due to age/promotion out of School B to an entirely different school for school year 2010-2011 and into the future. For most if not all of those students, that location would be School D. Likewise, special education students of the same age as the Student who are now attending School C who are promoted at least one grade at the end of the current school year will be attending School D for school year 2010-2011 and presumably into the future.

16. The Ex. 9 IEP proposed many substantial changes from the Student's then stay-put IEP, which was for homebound services. The reason is because the Ex. 9 IEP is to be delivered in a public school building rather than as a homebound program.[8]

17. The Student's Father refused to send the Child to any public school after the Fall of 2009. The Student's Mother concurred with that behavior. The Student has not attended any public school since the Fall of 2009.

18. Petitioner instituted the Complaint herein for an order determining the IEP in Ex. 9 afforded the Child a FAPE. It was Petitioner's goal, should Ex. 9 be upheld, that the Student would return to a public school for the Student's education as Petitioner believed and still believes homebound services could not provide FAPE once the Student became medically capable of attending a school. Petitioner also intended and pre-advised the Student's Parents, that should Ex. 9 be upheld and should the Student's Parents continue to withhold the Student from school, Petitioner would institute truancy proceedings against the Student's Parents.

19. The position of the Student's Parents was that Ex. 9 failed to afford the Student a FAPE for
the following reasons of inclusions and omissions, and no others:[9]

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[8] As homebound services were the stay-put IEP, per same the Student has not been attending any public school since the date of [Student's] medical release to attend public school.

[9] *See* Procedural Order #6, which specifically identified the issues herein. At the hearing, the Student's Parents modified their position as noted in Procedural Order #6 as to location for delivery of the services to as noted in ¶19(A) of this Decision.

A. FAPE requires that instead of the IEP being delivered at School C, it must be delivered:

1. 50% at School A and 50% homebound, or in the alternative
2. 100% homebound.

B. Ex. 9 fails to afford FAPE because Ex. 9 intends that a device for the Student, referenced by both parties as "the mat bed," be used as part of the IEP program.[10] Instead, in order for Ex. 9 to afford FAPE, the mat bed must be replaced by use of a hospital bed which hospital bed the Student's Mother would provide to Petitioner for the Student's exclusive use.

C. Ex. 9 fails to afford FAPE because it fails to require use by the Student at school of a medical device known as a stander. FAPE requires that such a device, to be provided by the Student's Father, be used for a presently unspecified amount of time with the Student while the Student is at school.[11]

D. Ex. 9 fails to afford FAPE because it does not include the following, related requirements: that any vehicle used by Petitioner to transport the Student be equipped with one or more cameras sufficient to video the Student at all times while the Student is being transported; that the Student be videoed at all such times; and that the video or a duplicate thereof be provided to Respondents upon request. At the hearing, Student's Father "clarified" that this also included the following additional requirements: the cameras broadcast to a remote monitor screen while the Student was aboard; a person whose sole duties when the Student was aboard would be to watch the monitor; the purpose of so watching the monitor would be to discover if/when the Student had a

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[10] Ex. 9 makes no specific reference to the "mat bed." On its face, Ex. 9 therefore appears to be incomplete and thus substantively deficient, *see Sytsema v. Academy School District No. 20*, 109 LPR 72426 (D. Colo. 2009). However, there is no doubt here whatsoever but that all parties herein fully understood and intended that use of the mat bed or some similar device was part and parcel of the Child's proposed IEP as if that had been written somewhere in Ex. 9. All parties also agree that use of the mat bed or some similar device is required for FAPE. Here, on this point, the issue is identification of the device itself, i.e. whether the device should be the mat bed or a hospital bed. Failure of Ex. 9 to comply with *Sytsema* appears to be more a matter in this case of form over substance and is thus a *de mitimus* error at best. This Decision thus treats Ex. 9 as if use of the mat bed or some similar device had actually been specified in Ex. 9.

[11] This device was erroneously noted in Procedural Order #6 as being a "Standard."

seizures and, should the monitor observe any seizures, contact the bus driver and/or the Student's Father and/or call 911, all per a set protocol.

E. That Ex. 9 fails to afford FAPE because it fails to provide that a person licensed as a Certified Nurses Assistant or having at least the qualifications of a C.N.A. be assigned to provide one-on-one services to the Student and be restricted from providing any services to any other student, at all times when the Student is receiving other than homebound services and including whenever the Student is being transported by Petitioner.

20. Per Ex. 9, Petitioner will transport the Student between home and School C, door-to-door. The vehicle, per the undisputed testimony, is a van-sized school bus; i.e., not a 40 passenger "regular" school bus.

21. School A is 0.21 miles from the Student's home; School B was 1.81 miles from the Student's home.[12]

21. School C is 2.4 miles from the Student's home.[13]

22. School D is 1.8 miles from the Student's home.[14]

23. The primary basis for the Student's Parents' assertion that FAPE cannot be provided at any program located in School B is that the ride in the school bus might trigger "startle responses" in the Student which might, in turn, trigger a "seizure."[15]

24. The Student does experience what was been variously described at the hearing as "startle responses." These are triggered by sudden loud noises, such as a door slamming or a horn honking, but do not occur every time there is a sudden loud noise. They may also be triggered by sudden jostling of the Student, such as when the Student is riding in a vehicle that hits a pothole or goes over an unusually rough section of a road. It is unclear from the evidence whether other occurrences do or might trigger a startle response. The occurrence of a startle response typically results in the Student's foot popping up or similar, visible clues.

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[12] Exs. 18A and 18B.

[13] Ex. 18D.

[14] Ex. 18C.

[15] No specific medical testimony was offered by a physician. However, there is no doubt but both parties agree the use of these terms as herein used is appropriate regarding this Student.

25. It is undisputed that a "startle response" may lead to the Student having what has been described as a "seizure." The visible clue that the Student is having a seizure is that the Student's eye(s) roll back into the Student's head.

26. For medical reasons, when being transported by a vehicle, the Student's body is covered with a blanket and the Student's eyes are covered by sun glasses.

27. It is quite difficult to determine whether the Student is having either a startle response or a seizure when the Student is being transported by vehicle, unless the event is a startle response that causes the blanket to move or that causes one or more of the Student's extremities to move out from under the blanket.

28. The Student's Father transports the Student in a "conversion van," i.e., a "regular" passenger van that has been converted for use by the Student after consideration of the Student's physical limitations. Such transportation includes both around town trips as well as trips of a few hundred miles.

29. The Student has had both startle responses and resulting seizures when being transported in the Student's Father's conversion van.

30. Page 2 of Ex. 10 is the Student's health intervention protocol. It is somewhat outdated as Student's Father declined to update it. Ex. 10 is the "health care plan" referenced on page 3 of Ex. 9 and thus Ex. 10 is part of the Student's IEP.

31. All parties concurred as to the existence of a three year old and presently existing standing protocol that should the Student have a seizure lasting two minutes the Student's Father is to be called, and a seizure lasting five minutes mandates a 911 call.

32. Since school year 2006-2007, the Student has had a very limited number of observed seizures at school lasting significantly in excess of one minute. In the first three years of the above standing protocol, there were a limited number of calls from Petitioner to the Student's Father and only two from Petitioner to 911.

33. The Student's Parents' primary expressed basis for asserting that FAPE requires Ex. 9 to be provided at School A is to spare the Student the 2.4 mile bus ride between the Student's home and School C. The expressed reason they believe FAPE requires the Student being spared that bus ride is the Student's Parents' heartfelt belief that the 2.4 mile bus ride exposes the Student to an unreasonable risk of startle responses and thus of seizures of measurable duration.

34. The undisputed evidence was and I so find that the Student has ridden a school bus at least some 800 times in the three years since attending School B after the onset of the Student's disability. Once, upon arrival at school, the

Student was noted to have or be having a seizure that lasted over five minutes. A 911 call was made. It is reasonable to suspect or perhaps even to assume that the seizure started during the bus ride. In those three years, there was a second instance of a 911 call, i.e., a seizure lasting at least five minutes, but the evidence was confusing whether that happened during or just after a bus ride. Giving the Student's Parents the benefit of all doubts, the evidence thus establishes two seizures of five or more minutes during or immediately following a school van ride and at least 798 instances of no such event.

35. While the Student's Parents' concerns are understandable, they failed to present any actual evidence of any medically unacceptable risk to the Student with the 2.4 mile bus ride or any other *bona fide* reason why the delivery of Ex. 9 at School C would deny the Student access to FAPE.

36. Student's Parents also failed to offer any evidence other than their own best feelings that riding a school bus creates any appreciable risk to the Student of more startle responses or seizures than would be present were the Student to be transported to School A. Student's Parents proposed that were the Student to attend School A, except in inclement weather that transportation would be by that pushing the Student in the Student's wheelchair along a sidewalk. Instead of offering any real facts as to the alleged medical risks of school bus transportation, the Student's Father merely offered argument. The Student's Mother offered no evidence of her own. At the very best, giving them the total and absolute benefit of many, many doubts would result merely in a finding that attending School A via wheel chair most days instead of attending School C via school bus might be unquantifiably "better" for the Student. However, "better" is not the test for FAPE.[16]

37. The Student's Father did present his opinion that "fewer" startle responses and seizures occur when the Student is riding in the Student Father's conversion

[16] *Board Of Education Of The Hendrick Hudson Cental School District v. Rowley*, 458 U.S. 176 (1982). The Tenth Circuit has clarified that within the Tenth Circuit the *Rowley* test is whether the IEP is individually designed to afford the specific student at least "some educational benefit," i.e., more than just a *de minimus* benefit but not necessarily even a "meaningful benefit," *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008) [this *Sytsema* decision is a decision after appeal of a District Court's decision. The parties here are the same parties as in the case noted in Footnotes 10 and 20. The case cited at Footnotes 10 and 20 is the District Court decision after this remand by the Tenth Circuit of the District Court's earlier decision]. Although many in the field criticized the *Rowley* decision as being unduly restrictive, including this Hearing Officer, Congress has had almost thirty years to pass "correcting" legislation. Congress failed to so act. Unquestioningly, *Rowley* is the law of the land and *Sytsema* is the law in the Tenth Circuit. I must follow them.

van than when riding in the school van. Given the limited number of known "school van" instances, such opinion lacks much credibility. The Student has never been transported between home and School C via the Student's conversion van. I cannot find from the evidence any appreciable difference between transporting the Student between home and School C via school bus versus via the Student's Father's conversion van. In any event, nothing in Ex. 9 prohibits the Student's Father from providing round trip transportation of the Student between home and School C.

38. Respondents failed to establish any real evidence, much less a preponderance of the evidence, that delivery of Ex. 9 at School A for all or part of a school day is required to afford the Student FAPE for any reason related to the school bus or conversion van ride.

39. To deliver the services as required by Ex. 9 at School A instead of delivering them at School C will cost Petitioner well in excess of $220,000. School A would need to be physically remodeled. The needed construction would take about 10 weeks. As the construction would start "now," students now attending School A would have to deal with construction noise and "mess." Students now attending School A within the building itself would need to be moved out of the building and schooled in a modular unit. Petitioner has no such modular unit and thus one need to be purchased or leased just for that purpose. Hiring the staff needed to provide Ex. 9 to the Student at School A will take at least 3 weeks, as the staff that now exists at School C for other special education students would need to remain at School C to serve those other special education students. Thus, even giving the Student's Parents the greatest benefit of virtually every doubt, replacing School C in Ex. 9 with School A for all or part of the school day would deny the Student FAPE, as the school year would be well over before School A could have the physical plant and staff needed to deliver Ex. 9's services to the Student. And, in any event, as above noted, the Student will not be attending either School A or School C when the 2010-2011 school years begins.

40. Delivery of the Ex. 9 services at School A would isolate the Student far more than were those services to be delivered at School C. Many Ex. 9 services and goals for the Student deal with stimulation in a vibrant school atmosphere. Per Ex. 9, at best the Student would be in general education classes no more than 79% of the time and in special education classes at least 21% of the time. School C has a population of special education students, some or perhaps all of whom are well known to the Student and vice-versa. School A would have a special education population of one: the within Student. Thus, at School A, the Student would be totally isolated from [Student's] peers far more than at School C.

41. Respondent's primary alternative "delivery of services" location is not even School A; it is School A for only 50% of the time and homebound the other 50%

of the time. Neither of the Student's Parents offered any real evidence as to why, if Ex. 9 was to be delivered at School A, FAPE required the Student to be limited to attending School A only 50% of the time.

42. School A is simply not, on the evidence before me, the Student's least restrictive educational environment, regardless of whether the Student was to attend either full time or half time.

43. Respondent's other alternative "delivery of services" location is 100% homebound. Neither of Student's Parents offered any real evidence as to why homebound was required for FAPE instead of School C.

44. Homebound is simply not, on the evidence before me, the Student's least restrictive educational environment, either full or half time.

45. Attending school full time is the Student's least restrictive educational environment.

46. FAPE does not require that the Ex. 9 services be delivered other than at School C as therein proposed. While School C might not be the "best" or "most ideal" location, a decision I do not address here, no doubt exists but that delivery of the Ex. 9 services at School C certainly does not deny the Student FAPE.

47. The Student's Parents did not offer any real evidence in support of their position that FAPE requires the hospital bed they desire be used instead of the mat bed. They argue, but offer no actual evidence, that since the hospital bed is a piece of professionally manufactured medical equipment it "must" be "better" or "safer" or is otherwise required. That argument is weak and unpersuasive. Granted, the mat bed was constructed "in house" by Petitioner. However, it was specifically made for the Student's sole and exclusive use and has been altered as the Student's needs have changed. There was simply no evidence that use of the mat bed deprives the Student of FAPE or even that the hospital bed is "better" even if "better" was the legal test. The hospital bed may well be better or safer, but neither proposition was established by a preponderance of the evidence. And, even if the hospital bed is better or safer, these are not the test for FAPE for this Student.

48. A stander is a medical device that looks like a wooden stretcher or gurney.[17] The user is placed on it face up, much like lying on a narrow bed, stretcher or gurney. The user is attached by straps around the chest, waist, and legs, and the board is erected so that the user is standing upright, strapped to the device.

[17] Ex. X is a picture of such a device. The actual stander involved in this case is similar, but not identical. Respondents elected to use Ex. X in lieu of a photo of the actual stander they wish be used for the Student. No reason exists to believe if Ex. X was substituted for *the* actual stander that any different decision would enter herein.

49. Respondents offered no evidence that the stander was needed for FAPE. To the contrary, although the Student's doctor has expressed at one time that a stander might be of some benefit for the Student, the doctor's initial opinion regarding the stander did not even hint that use of the stander is needed in order to educate the Student.[18] Upon clarification, the doctor specifically opined that the stander is not required for the Student's education.[19]

50. The Student's Parent's own behavior indicates the stander is, at best, a luxury rather than a necessity. Although the Student's Father has had a stander for quite some time, he never uses it. Granted, to use it requires him to purchase a lift to transfer the Student onto and off of the stander. Neither Parent offered evidence as to the cost of the lift or that they cannot afford it. There is no evidence that the Student's Mother has a stander or has ever used one. Thus, at best it appears that the Student's Father has determined use of the stander to be a luxury rather than a necessity and it appears that the Student's Mother has no basis for reaching any decision on this issue.

51. Respondents failed to offer any evidence that their desire for cameras in any school vehicle being used to transport the Student were necessary for any purpose whatsoever, much less were needed for FAPE. As presented at the hearing itself, the cameras would relay images to a televison or television like monitor screen at the applicable school. When the Student was being transported by bus, the Student's Parents' proposal was that an employee would be assigned to sit and watch the monitor at the school. Any other duties for such person or persons would be prohibited when watching the camera images of the Student. Were that monitor to observe the Student having a seizure lasting over two minutes, the Student's Parent's proposal would include that the monitor would call the Student's Father who, in turn, if in town and otherwise capable of so doing, would go directly to either the school or the bus if the bus had not arrived at the school. Were the monitor to observe the Student having a seizure lasting five or more minutes, the monitor would call the school bus driver and instruct him/her to immediately pull over and call 911 (or perhaps the monitor would call 911; that was not clear).

52. The purpose of the cameras/monitor system was unclear beyond the above. For example, all in a position to know agreed that it is quite difficult for a person staring right at the Student to know if [Student] is having a seizure when the Student is riding in a vehicle due to the Student's blanket and sunglasses.

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[18] Ex. Z.

[19] Ex. 36. Totally lacking in Exs. Z and 36 are that their author has any qualifications whatsoever to express opinions on educational needs. However, they are the "best" evidence in the record as to any educational need for use of the stander.

Ex. 9 does provide at least a trial period of having a person on the school bus in addition to the driver for primary the purpose of observing the bus passengers for any sign of "trouble" to see if such a service is needed for FAPE.

53. No evidence was offered that the camera/monitor system would prevent or limit seizures and I find that such system would not do so.

54. Given the dearth of evidence here, I am unable to find that the camera/monitor system would even be "better" than the current system, and there is zero evidence it is needed for FAPE.

55. The staffing for the Student's room for delivery of the Ex. 9 IEP is one teacher plus four classroom paraprofessionals. One of the paraprofessionals is a CNA and the other three have

substantially equivalent training. The student population of the classroom is four full time students plus a student who attends half of a typical school day. With the Student, the student population increases by one.[20]

56. The Student's Parents' offered essentially zero evidence that having a CNA or CNA skilled person assigned by Petitioner 100% of the time to the Student to the 100% exclusion of all other students is needed for FAPE. Here, as with the camera/monitor, to the extent if at all there was any actual evidence on point, that evidence does not even rise to a "better" level.

57. I conclude that Ex. 9 offers the Student a FAPE.[21] Therefore, no additions or deletions to Ex. 9 as sought by Respondents are required to offer the Student a FAPE.

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[20] These findings are based on undisputed testimony. Ex. 9 fails to disclose the staffing pattern or the student population to be served by same and thus appears to fall below the standard for the contents of a written IEP per *Sytsema*, *supra* note 10. Here, the issue is not whether Ex. 9 should be read as including this staffing pattern by implication; as discussed in Footnote 10 regarding the mat bed, the parties here have no dispute but that this is, in fact, the staffing patten intended by Ex. 9 and that Ex. 9 should be read as if this staffing patten had been written somewhere in Ex. 9. Instead, the issue here is whether one of the four paraprofessionals should be assigned exclusively to the within Student or whether a fifth paraprofessional should be added to be assigned exclusively to the within Student. As is the situation with the mat bed, failure of Ex. 9 to comply with *Sytsema*, *supra* note 10 regarding the staffing pattern appears to thus be a d*e mitimus* error regarding the staffing pattern.

[21] As used in ¶s 57 and following, Ex. 9 is "shorthand" for Ex. 9 itself plus all of the following: the health care plan in Ex. 10; use of the mat bed as discussed in ¶19B; the seizure protocol as noted in ¶31; the additional person on the bus to try to monitor seizures as discussed in ¶52; and the classroom staffing pattern as discussed in ¶55.

58. Petitioner is ORDERED to provide the IEP per Ex. 9 if and when the Student reports to take advantage of such educational opportunity.

59. Separately, the Student's Father and the Student's Mother are EACH ORDERED to advise Petitioner in writing by 10:30 a.m. on 4-20-10 whether each will allow the Student to attend school for the educational services per Ex. 9 starting 4-21-10 and through the remainder of the current school year.[22] Should either or both respond in the negative, his/her separate response shall inform Petitioner exactly how he/she will comply on and after 4-21-10 with §22-22-104, C.R.S., the Colorado Compulsory School Attendance Act as of and following 4-20-10.

60. If the Student returns to school, within 7 school days of the Student's return, Petitioner is

ORDERED to convene a supplemental IEP meeting to determine the Student's eligibility for Extended School Year Services.

Dated: 4-19-10

/s/ Bruce C. Bernstein
Bruce C. Bernstein, Impartial Hearing Officer

[22] As used here, "school" means per Ex. 9 as used herein starting with ¶57. in The Student's pre- Ex. 9 IEP provided for Extended School Year Services, *see* Ex. 11. Section 11 of Ex. 9 projected a determination being made on ESY by 4-15-10. That did not occur because the Student's Parents' withheld [Student] from attending school other than homebound since 2/10. This is, of course, subject to any new or modified IEP approved by all parties prior to the close of this school year. This Order is the stay-put IEP for the future until any such subsequently, mutually approved IEP.