BEFORE THE OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO

CASE NO. ED 2005-0024

DECISION UPON STATE LEVEL REVIEW

IN THE MATTER OF:

MOUNTAIN BOCES, Eagle County School District RE-50J,

Appellant,

v.

[STUDENT], by and through his mother, [MOTHER],

Appellee.

This matter is before Administrative Law Judge (ALJ) Robert Spencer upon Appellant's appeal of a decision by an Impartial Hearing Officer (IHO), under the Individuals With Disabilities in Education Act (IDEA), 20 U.S.C. §§ 1400 *et seq*. IDEA §§ 1415(g) to (i); implementing federal regulations at 34 CFR § 300.510; and state regulations at 1 CCR 301-8, §§ 2220-R-6.03(9) to (12) govern the conduct of this state level review.

The Appellant (School District) is represented by Richard N. Lyons, Esq. and Adele L. Reester, Esq. Appellee and his mother are represented by William J. Higgins, Esq. For purposes of confidentiality, Appellee and his mother will be referred to by their initials, [STUDENT] and [MOTHER].

By agreement of the parties, no oral argument or new evidence was received as part of this review.

Issues

This case involves a request by [MOTHER] for transportation of her four-year-old son, [STUDENT], from the elementary school where he attends a preschool speech therapy program to his day care center. [STUDENT] has a speech and language disability, and is receiving preschool speech therapy services as part of an Individual Education Plan (IEP). The School District does not provide transportation for any preschool student, disabled or not, unless transportation is deemed necessary as a "related service."

The primary issue in this case is whether the requested transportation is a related service that must be provided by the School District to satisfy the requirements of the IDEA. [MOTHER] contends transportation is a related service because [STUDENT] cannot gain access to, and thus benefit from, the speech therapy services without it. The School District counters that the IDEA requires transportation only if it is necessary by reason of the child's disability. Because [STUDENT]'s disability does not impair his mobility, the School District believes transportation is not required and has declined to make it a part of [STUDENT]'s IEP. The IHO found in favor of [STUDENT] and [MOTHER], and ordered the School District to provide transportation to and from the preschool. The School District appeals that decision.

A secondary issue is whether the IHO improperly shifted the burden of persuasion to the School District when he commented that the School District "was unable to offer any criteria" for its decision to deny transportation in this case.

Scope of Review

The ALJ is to issue an "independent" decision. 20 U.S.C. Section 1415(g). In the context of a district court review of a state level decision, such independence has been construed to require that "due weight" be given to the administrative findings below. *Board of Education v. Rowley*, 458 U.S. 176, 206 (1982). In reviewing the decision of the IHO, the ALJ is in a position analogous to a district court reviewing a state level decision. Therefore, it is appropriate for the ALJ to give deference to the IHO's findings of fact and thus accord the IHO's decision due weight, while reaching an independent ultimate decision based on a preponderance of the evidence.

Burden of Persuasion

[MOTHER] is challenging the School District's decision, and therefore must bear the burden of persuasion. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

Procedural Background

On October 7, 2005, [MOTHER] requested a due process hearing to challenge the School District's refusal to provide the requested transportation services. The due process hearing was held November 16, 2005 in Edwards, Colorado before Myron A. Clark, Esq., the IHO. The IHO issued his decision November 21, 2005, and the School District filed its appeal December 20, 2005. The ALJ granted a request to extend the date for filing briefs, and both parties' filed their briefs January 30, 2006. A status conference with the parties was held February 15, 2006, at which time the ALJ determined the appeal was ripe for decision.

Findings of Fact

1. The ALJ adopts the IHO's findings of fact 1 through 17.

2. The ALJ adopts the Stipulated Facts and Supplemental Stipulated Facts.

3. The following facts, drawn from the IHO's findings of fact and the parties' stipulated facts, are particularly relevant to this decision:

a. Mountain BOCES (Board of Cooperative Educational Services), is a contracting agency administering the IDEA on behalf of the Eagle County School District. The School District follows Mountain BOCES' policies in administering the provisions of the IDEA.

b. [STUDENT] has a speech and language disability. He is four years old (d.o.b. [DOB]).

c. [STUDENT] has an IEP that provides for educational services in a preschool setting.

d. For the 2005-2006 school year, [STUDENT] attends the preschool at Edwards Elementary School two half-days a week, in the morning from 8:00 to 12:00. Following preschool, he goes to a day care center in Minturn, Colorado.

e. [STUDENT] receives educational benefit from the services provided by the School District at Edwards Elementary School.

f. The School District does not currently provide regular transportation to preschool children, disabled or non-disabled. Special transportation is provided if required as a related service by a child's IEP.

g. [STUDENT]'s IEP did not include transportation, and prior to the fall of 2005, [MOTHER] had not requested it.

h. [MOTHER] was previously able to arrange transportation for [STUDENT] with a friend. However, after November 18, 2005, the friend was no longer able to provide transportation for [STUDENT].

i. Both [STUDENT]'s parents work, and cannot transport [STUDENT] during the workday. The parties have stipulated to this as fact.

j. The School District's continued care hours end during the parents' workday, therefore [STUDENT] cannot remain at school until his parents can pick him up.

k. On August 24, 2005, [MOTHER] informally requested transportation services. An IEP team meeting was convened on October 3, 2005 to discuss that request, but the IEP team did not approve the request.

4. The following additional findings of fact, relevant to the first issue, are drawn from the evidence presented at the due process hearing.

a. [STUDENT] is a child with special needs entitled to a free appropriate public education.

b. The distance from Edwards Elementary School to [STUDENT]'s day care is more than ten miles. The distance is too far for [STUDENT] to walk or bike.

c. At the IEP meeting, [MOTHER] suggested that, as an alternative to transportation, the School District provide the necessary educational services at [STUDENT]'s day care center. The School District rejected this suggestion.

d. At the IEP meeting, the parties also discussed the alternative of allowing [STUDENT] to ride in a car seat on the regular school bus that services the general (non-preschool) population. The School District ultimately rejected this idea.

5. The IHO made the following Conclusions of Law that are relevant to the second issue:

a. The IHO stated in paragraph 28 that, "While it is correct that the transportation decision is made on a case-by-case basis, the District was unable to offer any criteria on which that decision was made in this case. Only one other disabled pre-school child in the District receives transportation services and the witnesses declined, for privacy reasons, to disclose what qualified that child for the service."

b. In paragraph 18, the IHO stated, "The IHO, concludes that the burden of persuasion lies with petitioner [[STUDENT] and [MOTHER]], and as will be evident below, Petitioner has met this burden."

Discussion and Conclusions of Law

The Applicable Law

The answer to the first issue is not well settled, and requires examination of the IDEA, its implementing regulations, and the relevant case law.

IDEA

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). A school district satisfies the requirement for a free appropriate public education (FAPE) when it provides personalized instruction with sufficient support services to permit the child with a disability to benefit educationally from that instruction. *Rowley*, 458 U.S. at 203. The "basic floor of opportunity" required by the IDEA is access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. *Rowley*, 458 U.S. at 201. Transportation is a "related service" if the transportation is necessary for the disabled child to benefit from special education. Section 1401(22).

Federal Regulations

The IDEA's definition of related services is repeated in the U.S. Department of Education's implementing regulations. 34 CFR § 300.24(a) states, in relevant part,

> As used in this part, the term related services means transportation ... and other supportive services as are required to assist a child with a disability to benefit from special education.

34 CFR § 300.24(b)(15) states that transportation includes travel "to and from school and between schools."

Guidance on the application of the IDEA to the preschool setting is found in a question and answer format at Appendix A to the regulation:

> [Question] 33. Must a public agency include transportation in a child's IEP as a related service?
>
> [Answer] As with other related services, a public agency must provide transportation as a related service if it is required to assist the disabled child to benefit from special education. *(This includes transporting a preschool-aged child to the site at which the public agency provides special education and related services to the child, if that site is different from the site at which the child receives other preschool or day care services.)*

(*Italics* added).

Notably, neither the IDEA nor the regulation specifically requires that the need for transportation be directly linked to the nature of the child's disability for transportation to be a considered a related service. Rather, transportation to and from school, and preschool, is a related service if "required to assist the disabled child to benefit from special education." The question remains, however, whether this mandate implicitly includes a requirement that the transportation be directly linked to the child's specific disability. For that answer, we turn to the case law.

The Supreme Court's Tatro Decision

The U.S. Supreme Court decision in *Irving Indep. Sch. Dist. v. Tatro,* 468 U.S. 883 (1984) is helpful in deciding this issue. In *Tatro,* the Supreme Court held that the school district was required to provide catheterization of a child with spina bifida because the student could not remain in school without it. In so holding, the Court focused on whether the service was needed for the child to be in school, but did not focus upon the specific link between the service and the disability. In fact, the Court's comment that the IDEA "makes specific provision for services, like transportation ... that do no more than enable a child to be physically present in class," though dicta, illustrates the Court's perception that transportation is a related service even if it does "no more than enable a child to be physically present." 468 U.S. at 891.

The Court also clarified that a school district is not required to provide services that, though closely linked to the disability, are not necessary for the child to attend school. The Court offered the example of a medication that can appropriately be administered to a handicapped child other than during the school day. Because the medication is not required for the child to remain in school, the school district is not

obligated to provide nursing services to administer it. 468 U.S. at 894. This discussion is helpful because it centers the inquiry upon whether the child needs the service to be in school, rather than upon the nature of the link between the disability and the service.

The Federal Courts – Donald B.

The lingering question of whether there must be a direct relationship between the need for transportation and the child's disability was squarely answered by the 11th Circuit in *Donald B. v. Board of Sch. Commissioners of Mobile County, Alabama*, 117 F.3d 1371 (11th Cir. 1997). In *Donald B.*, the parents of a hearing impaired child asked for transportation between the child's private school and the public school where he received speech therapy. The court specifically rejected the contention that there must be a direct link between the need for transportation and the child's particular disability in order to be a related service. "We conclude that, read in context, the IDEA requires transportation if that service is necessary for a disabled child 'to benefit from special education' ... *even if that child has no ambulatory impairment that directly causes a 'unique need' for some form of specialized transport*." 117 F.3d at 1374 (*italics* added).

Rather than fix upon the specifics of the child's disability, the 11th Circuit looked instead to whether transportation was *necessary* for the disabled child to receive FAPE. Based upon the evidence, the 11th Circuit concluded that district-provided transportation was not necessary for the six-year-old child to negotiate the three blocks between his private and public school. The court therefore found that "on the facts of this case, the related service of transportation is not *necessary* for Donald B. to benefit from special education." 117 F.3d at 1375 (*italics* added.)

Donald B.'s rejection of the need for a direct link between the transportation and the disability conflicts with the view of at least one other federal circuit. In *McNair v. Oak Hills Local School Dist.*, 872 F.2d 153 (6th Cir. 1989), the court held that a deaf student was not entitled to transportation because it was not designed "to meet the unique needs of the child caused by the handicap." 872 F.2d at 156. In reaching this position, the court misinterpreted the IDEA's admonition that a disabled child should receive related services "designed to meet their unique needs." Section 1400(d)(1)(A).[1] Although the court interpreted the reference to "unique needs" as a reference to the child's specific disability, neither the IDEA nor the implementing regulations make this connection. Had the drafters of IDEA wanted to link the need for related services to the child's specific disability, they could have easily said "unique disability" rather than "unique needs." "Unique needs" is a broader term that incorporates all the child's circumstances that, without the benefit of a related service, could interfere with access to FAPE. The *Donald B.* court specifically considered *McNair*, but rejected its interpretation as inconsistent with the Supreme Court's guidance in *Tatro.* 117 F.3d at 1374. For these reasons, the ALJ believes that *Donald B.* is the better reasoned and more persuasive analysis.

[1] The court interpreted a predecessor statute, the Education of the Handicapped Act, which contained identical wording.

Malehorn v. Hill City Sch. Dist., 987 F. Supp. 772 (D.S.D. 1997) is another case that follows the *Donald B.* rationale. In *Malehorn*, the question was whether special door-to-door transportation of a mentally impaired 8-year-old child was required as a related service, or whether dropping her off at a bus stop along with regular education students was sufficient. Although the court decided that special transportation was not required, it adopted *Donald B.'s* reasoning that transportation was to be provided free of charge if "necessary" to access special education, regardless of the presence of any direct link between the child's disability and the need for transportation. Based upon the evidence presented at the hearing, the court found that it was safe for the child to be dropped off at the bus stop as other children were, and therefore door-to-door transport was not necessary.[2]

The implication of these cases is that, in order to be a "related" service, transportation does not need to be directly related to the child's disability. The relevant relationship is that between the need for transportation and the child's access to special education. If transportation is necessary for the child to receive FAPE, then it is a related service.

The Parental Preference Cases

The School District argues that [STUDENT] is not entitled to transportation because his parents' inability to transport [STUDENT] from school to day care is dictated by their own personal convenience. The School District cites as authority the cases of *Timothy H. v. Cedar Rapids Com. Sch. Dist.*, 178 F.3d 968 (8th Cir. 1999) and *Fick v. Sioux Falls S.D.*, 337 F.3d 968 (8th Cir. 2003). The argument is facially compelling, but on reflection, not persuasive.

In *Timothy H.,* the disabled child was receiving FAPE at her neighborhood school, for which transportation was provided. Her parents, however, preferred to place her in a different school and requested transportation to and from that school. The school district had a policy generally permitting any child to attend a school of preference, though transportation would only be provided to the home school. The parents agreed their child was receiving FAPE at her home school, but simply preferred the special education program at the more distant school. The 8th Circuit held that because the transportation policy was neutral and applied to all students regardless of disability, and the child was already receiving FAPE at her home school, the district was not required to accommodate the parents' personal preference by providing transportation to a different school. 178 F.3d at 970.

Timothy H. does not support an argument that transportation may be denied whenever there is a neutral policy that denies transportation to all children. Rather, it means that special transportation is not required simply because a parent chooses to receive FAPE at a location other than the one to which transportation is already being

[2] The court also considered the parents' availability to provide transportation as one factor to consider in determining whether school district transportation was required. 987 F. Supp. at 782-83. Significantly, the Malehorns did not prove they were unable to pick their child up at the bus stop.

provided. In the court's words, "establishment of a special bus route for a single student who admittedly receives a free appropriate public education at her neighborhood school, but who wants to go to another school for reasons of parental preference, is an undue burden on the school district." 178 F.3d at 973.

In *Fick*, the child's IEP required a nurse-accompanied taxi ride to and from school. The school district's transportation policy required the child's pick up and drop off sites to be within the boundaries of the school to which the child was assigned. The child's home was within the boundary and transportation was provided to that home. The problem arose when the child's parent requested the district to change the drop off site to a day care center outside the boundary. That request was denied. Relying upon *Timothy H.*, the 8th Circuit upheld the school district's decision because the district's policy was facially neutral and the parent's request was not based upon the child's educational need. Like *Timothy H.*, there was no proof of any need for the special transportation other than the parent's personal convenience or preference.

The common theme of both these cases is that a need for transportation that is created solely by parental preference or convenience, and not by the child's educational needs, is not a related service. In both cases, the child was receiving FAPE with the transportation already being provided. Transportation was not denied because of the relationship (or lack thereof) between the requested transportation and the child's specific disability. Rather, it was denied because, as in *Donald B.,* it was not *necessary* to provide the child with access to FAPE.

Several other cases further illustrate this point. In *Ms. S. v. Scarborough School Committee*, 366 F.Supp. 2d 98 (D. Maine 2005), the disabled child rode a regular school bus home but could not be left alone at the drop off site. Her mother therefore requested that the bus driver drop the child off at an alternate site if no adult was present at the first site. The school district declined this request, but did offer to provide this service on its special education bus. The mother declined that offer. The district court found the mother's demands for accommodation on the regular bus were based upon personal preference and not the educational needs of the child, therefore the request was beyond the reach of the IDEA. The court also found that the special education bus was a reasonable method for the school district to meet the transportation need, and the mother was therefore not entitled to her preference for a change in the regular bus schedule.

In *North Allegheny Sch. Dist. v. Gregory P.*, 687 A.2d 37 (Penn. 1996), the child's separated parents wanted the school district to transport their hearing impaired child to their respective residences on alternating weeks to accommodate their custody schedule. The father's residence was outside the school district boundaries, and the mother had primary legal custody. The court recognized that although transportation of the child between home and school was required by IDEA, it was not necessary to accommodate the convenience of the parents by *also* transporting him to another residence outside the district because such transportation was not needed to address his educational needs. "These acts (IDEA and Pennsylvania law) require that the district provide each exceptional student with an appropriate education, transportation

between his residence and his school, and additional transportation or other related services *where needed to address his educational needs.*" 687 A.2d at 40 *(italics* in original). Once again, the requested transportation was not necessary for the child to receive FAPE, but was only for the parents' convenience.

Thus, though facially neutral transportation policies are exempt from IDEA when deviation is requested for parental convenience or preference alone, the rule remains that special transportation may not be denied when it is necessary for the child to get to the school where FAPE is provided. The very recent case of *District of Columbia v. Ramirez*, 377 F. Supp. 2d 63 (D.D.C. 2005) further illustrates this view. In *Ramirez*, the court held that a special aide was required to transport the disabled child from his bus to the door of his apartment. Key to this determination was a finding by the administrative hearing officer, adopted by the court, that the child's parents could not get him outside to the bus, and as a result, the child was not attending school. Because the aide's help was necessary for the child to get to school, it was a related service. *See also Alamo Heights Independent Sch. Dist. v. State Bd. of Educ.*, 790 F.2d 1153 (5th Cir. 1986), where the court held that transportation of a disabled child to a day care provider outside the district boundaries was required because, without the transportation, his working mother would not be able to keep the child in school.

Other Authority – Letter to Hamilton

The School District offers as further authority an inquiry response letter from the Director of the Office of Special Education Programs, *Letter to Hamilton*, 25 IDELR 520 (OSEP 1996). In that letter, the Director responds to an inquiry whether a school district must provide transportation to a disabled child who lives beyond walking distance, and the district does not otherwise provide transport for any child. Without addressing the specific situation involved, the Director replies that if the school district "determines that a disabled student needs transportation to benefit from special education, it must be specified in the student's IEP as a related service and provided at no cost to the student and his or her parents." The Director also comments that the determination "must be based upon the relationship between the child's disabilities and need for the particular related service." The Director goes on to say, "If a child's disabilities create unique needs that make it especially problematic to get the child to school in the same manner that a nondisabled child would get to school in the same circumstances, then transportation may be an appropriate related service. However, if the disabled student is capable of using the same transportation services as nondisabled students, then it would be consistent with Part B for the student's IEP team to find that transportation is not required as a related service."

The School District seizes upon the Director's statement that transportation may be a related service if "a child's disabilities create unique needs" as support for its position. Although the School District's argument has merit, the Director's comment also refers to the rule that a disabled child is expected to use "the same transportation services" provided to all students, and is entitled to special transportation only if the child's disability prevents the child from riding the regular bus. It is not clear that the

Director intended his comment to apply to the situation where no transportation is provided, yet the disabled student needs transportation to get to a school he would not need to attend but for his disability. In any event, the ALJ does not find *Letter to Hamilton* to be compelling authority to reject the *Donald B.* analysis.

Summary of the Applicable Law

The IDEA, its implementing regulations, and the weight of the case law interpreting it, require that transportation be provided as a related service if necessary to give the child access to FAPE, regardless of the specific nature of the child's disability.[3]

The Law Applied to This Case

The First Issue

If transportation is not provided to the general student body, then "the issue of transportation for students with disabilities must be decided on a case-by-case basis." *Letter to Smith*, 23 IDELR 344 (OSEP 1995). In this case, the School District is not providing transportation to the general preschool student body; therefore, the issue must be determined by reference to the unique facts of the case. Applying the rule of *Donald B.* and *Malehorn,* the focus of this inquiry is whether transportation was necessary for [STUDENT] to receive FAPE, not whether the need for transportation was directly related to [STUDENT]'s particular disability. If special transportation was not necessary for [STUDENT] to receive FAPE, but was only a matter of parental preference or convenience, then pursuant to *Timothy H.* and *Fick* the request lies outside the IDEA and may be denied.

The ALJ finds [MOTHER] has met her burden of persuasion that special transportation is necessary for [STUDENT] to receive FAPE. [MOTHER] and her husband are not available to pick [STUDENT] up from school, and there are no reasonable alternatives. [STUDENT] is four years old and his day care center is more than 10 miles from school; thus it is too far for him to walk or bike. Although private transportation by a friend was available for a while, that assistance was no longer available after November 18, 2005. The school's continued care hours are not sufficient for [STUDENT] to remain at school until his parents can pick him up. [MOTHER] explored other alternatives with the School District, such as providing the educational services at [STUDENT]'s day care center, or using the regular school bus used by the non-preschool body, but these were rejected by the School District. [STUDENT]'s attendance at preschool is necessary because of his disability, yet without special transportation provided by the School District from his preschool to his day care center,

[3] Both parties rely upon ALJ decisions as additional authority for their positions. The School District relies primarily upon *Palmyra Boro Township Bd. of Educ. v. New Jersey State Educational Agency,* 40 IDELR 197 (N.J. 2004). [STUDENT] relies upon a host of decisions from a wide variety of jurisdictions. Inasmuch as these decisions are not binding authority, are fact specific, and have not (to the ALJ's knowledge) been reviewed by an appellate court, the ALJ has not found any of them sufficiently compelling to alter the analysis discussed above.

[STUDENT] can not receive the educational services required by his IEP. If [STUDENT] cannot receive educational services without the School District's transportation help, he will be denied FAPE.

Although the ALJ agrees with the IHO that transportation *from* school to day care is required by IDEA, the ALJ does not agree that the School District must provide transportation *to* school. [MOTHER]'s entire case is based upon the fact that [STUDENT] needs transportation from preschool to his day care center. No evidence was presented that [STUDENT] needs the School District's help getting to school from home. In the absence of such evidence, and in view of the School District's facially neutral transportation policy, it need not provide transportation to school.

The School District argues that this decision will create "a new rule unique to Colorado" burdening school districts with "a scheduling nightmare to accommodate the work schedules of all working parents of all children with disabilities." Appellants Brief, p. 19. The ALJ does not agree, for several reasons.

First, in order to demand special transportation as a related service, parents must prove that special transportation is "necessary" for the child to access FAPE. *Donald B.; Malehorn.* The transportation needs of disabled students, however, are generally met by the transportation provided to the general student body. It is presumed that the disabled child will use that transportation and special transportation will not be necessary. *Letter to Hamilton.* The problem in this case arose only because the School District provided no transportation to preschool age children, yet [STUDENT] needed to be at preschool to receive the speech therapy classes required by his IEP.

Second, the parents must prove that the need for unique transportation is not the result of their personal convenience or preference. As the *Timothy H., Fick, Scarborough and North Allegheny* cases demonstrate, this is a significant hurdle. It is overcome in this case only because the parties stipulated that the parents could not transport [STUDENT] in the middle of the workday, and [MOTHER] was able to prove there were no reasonable alternatives to transportation provided by the School District.

In summary, where transportation is not generally provided, requests for special transportation will continue to be considered on a case-by-case basis and required as a related service only where the parents bear their burden of proof.

The Second Issue

The School District is correct that the burden of persuasion lies with [MOTHER], but the IHO did not impermissibly shift this burden by his comment in paragraph 28 of his decision. The IHO clearly recognized the proper assignment of the burden of persuasion in his conclusion of law in paragraph 18, and his comment in paragraph 28 was not intended to alter that assignment. Even if the IHO's comment could be construed as an improper assignment of the burden of proof, such assignment is not binding upon the ALJ and has not influenced the ALJ's decision. Although the ALJ has given due deference to the IHO's findings of fact, the ALJ has applied the law and the

burden of proof according to the ALJ's understanding, independently of the IHO's determination. Therefore, any error by the IHO in this regard is harmless.

DECISION

The ALJ affirms the IHO's decision that the School District must provide transportation to [STUDENT] from Edwards Elementary School to his day care center on the days designated for delivery of [STUDENT]'s educational services. The ALJ reverses the IHO's decision to the extent that it requires the School District to provide transportation to [STUDENT] from his home to Edwards Elementary School.

This Decision Upon State Level Review is the final decision on state level review except that any party has the right to bring a civil action in an appropriate court of law, either federal or state.

DONE AND SIGNED
February 24, 2006

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ROBERT N. SPENCER
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the above **DECISION UPON STATE LEVEL REVIEW** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

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on this ___ day of February, 2006.

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Technician IV