BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS
STATE OF COLORADO

CASE NO. ED 2001002 **S2000:105**

DECISION UPON STATE LEVEL REVIEW

[Student], by and through his grandparent, [Grandparent] and his parent, [Parent],

Appellant,

v.

THE DIVISION OF YOUTH CORRECTIONS

Appellee.

This matter is a state level review of a decision of an impartial hearing officer pursuant to the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. Sections 1400 *et seq*. and the Rules of the Colorado State Board of Education found at Sections 2220-R-6.03 *et seq*., 1 CCR 301-8.

A hearing was held before an impartial hearing officer ("IHO"), Clark S. Spalsbury, Jr., in accordance with the IDEA n August 4, 9, and 11 and October 10 and 27, 2000. The IHO issued his decision on January 12, 2001. [Student], through his grandmother [Grandmother], filed an appeal February 9, 2001.

Oral argument was held April 26, 2001 before Administrative Law Judge ("ALJ") Matthew E. Norwood in the offices of the Division of Administrative Hearings. The Respondent submitted written argument. [Grandmother], who is not an attorney, represented [Student]. In this opinion [Student] will be referred to as "Appellant." Betty J. Wytias, Assistant Attorney General, represented the Respondent, Division of Youth Corrections ("DYC"). The Appellant offered exhibits at the oral argument. It was unclear at the time whether these documents had been admitted previously. All but four of these exhibits were admitted. Excluded from evidence were exhibits 71, 106, 107 and 108. No new testimony was offered or received.

SCOPE OF REVIEW

The ALJ, on state level review, is to issue an "independent" decision. 20 U.S.C. Section 1415(c); 34 C.F.R. Section 300.510 and 2220-R-6.03(11)(b)(v), 1 CCR 301-8. In the context of court reviews of state level decisions, 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). It is appropriate to apply this standard by analogy at the state administrative review level. Thus, in this proceeding it is sensible for the ALJ to give deference to the IHO's

findings of fact and to accord the IHO's decision "due weight," while reaching an independent decision based on a preponderance of the evidence.

IMPARTIAL HEARING OFFICER DECISION

In his decision, the IHO identified 21 issues. The IHO made findings as to all 21 of these issues, but made no ultimate findings. None of the findings made supported a conclusion that DYC had failed to provide Appellant a free appropriate public education or that there was any violation of the IDEA.

FINDINGS OF FACT

Based on the record below, the ALJ enters the following findings of fact, giving due deference to the findings of the IHO:

1. Appellant was committed to DYC's [Youth Services Center] in June of 1996. In July of 1997, he was transferred from the [Unit1] to the [Unit 2]. From time to time, while in the custody of DYC, Appellant sojourned to the [Mental Health Services] for mental health evaluation and treatment.

2. Appellant is disabled for purposes of the IDEA. Appellant suffers from diabetes, an atypical auto-immune hepatitis and Dysthymia. He is mildly mentally retarded and learning disabled.

3. In accordance with the IDEA at 20 U.S.C. Section 1414(d), individualized education program ("IEP") meetings were held in 1996, 1997, and 1998. No meeting was held in 1999, but a triennial IEP meeting was held January 5, 2000. The 1998 meeting was held December 15, 1998.

4. At the January 5, 2000 IEP meeting, DYC provided to Appellant's grandmother and mother a partially completed IEP form. Exhibit 2. Thereupon, DYC had the Appellant, his grandmother and his mother sign a signature page. This signature page was later attached to a typed version of the IEP form. Exhibit 1.

5. Exhibit 1 and Exhibit 2 contain a section titled "Summary of Transition Services." This section is filled out on Exhibit 1 but not Exhibit 2. Two parts of this section are significant. First, under the portion marked "Adult Living," Exhibit 1 contains the notation: [Appellant] has been referred to Harmony Homes and Nostalgia Homes." This notation is missing from Exhibit 2. Second, Exhibits 1 and 2 contain the statement: "If the student will turn twenty (20) during this IEP period, student and parent have been informed of the transfer of rights at age of majority." On exhibit 1, the "yes" box is checked; on Exhibit 2 it is not.

6. On March 13, 2000 Special Education Coordinator, [Coordinator] of DYC wrote a letter to Appellant's grandmother. The letter (Exhibit 10) provided:

> When we discussed the Age of Majority at the Triennial meeting on January 5, 2000, I explained that the age of majority for special education in the State of Colorado is 21. At the age of majority a student has the right to sign his/her own IEP. However, since special education services are terminated at 21 years of age, the age of majority has no implication in Colorado.

7. 20 U.S.C. Section 1415(m)(1) provides:

> A State that receives amounts from a grant under this subchapter may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)-
>
> (A) the public agency shall provide any notice required by this section to both the individual and the parents.
>
> (B) all other rights accorded to parents under this subchapter transfer to the child;
>
> (C) the agency shall notify the individual and the parents of the transfer of rights; and
>
> (D) all rights accorded to parents under this subchapter transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

8. No evidence was presented that Colorado has chosen to subject itself to the requirements of this law. *See Paul Y. By and Through Kathy Y. v. Singletary*, 979 F.Supp. 1422 (S.D. Fla. 1997) where similar evidence was lacking regarding the applicability of this provision in the state of Florida.

9. DYC failed to inform Appellant, his grandmother and mother of the referral to Harmony Homes and Nostalgia homes at the January 5, 2000 IEP meeting. However, as memorialized in [Coordinator]'s March 13, 2000 letter, DYC did inform Appellant, his grandmother and his mother of the transfer of rights at age of majority.

10. In fact, Appellant never was transferred to Harmony Homes and Nostalgia Homes.

11. On January 10, 2000, DYC personnel met to discuss Appellant's future placement. The meeting was held because of a court order that DYC find appropriate placement for Appellant upon the end of his commitment with DYC. [Coordinator] attended the meeting but did not discuss special education matters. Appellant, his grandmother and mother were excluded from this meeting. At the meeting, DYC personnel determined to transfer Appellant to

[Regional Center]. The IHO concluded that the evidence was insufficient to show that the meeting concerned educational matters. The ALJ agrees.

12. The [Regional Center] does not have an educational program but does coordinate the completion of educational services with R-1 school district for all individuals under 21. Appellant was not eligible for educational services through the school district due to his age.

13. On March 16, 2000, the Denver Probate Court entered an order of legal disability against Appellant pursuant to Section 27-10.5-110, C.R.S. and ordered him transferred to the [Regional Center]. The transfer occurred April 5, 2000.

14. On , [Date], 2000, Appellant turned 21 years old.

15. The IHO characterized the Appellant's educational progress as "minimal," "slow" and "limited." Appellant appears to have made some improvement in reading and math. Appellant's attendance in class was erratic, in part due to medical and health problems, in part due to his own refusal to attend. The ALJ agrees with the IHO that Appellant has not shown that that DYC failed to provide a free appropriate public education. It is unclear whether another education program would have significantly altered the Appellant's functional outcome. More importantly, no evidence was presented that the IEP's in this case were other than reasonably calculated to enable Appellant to receive educational benefits.

16. As found by the IHO, the Appellant's grandmother has been provided all copies of Appellant's schoolwork. The one exception was exhibit 30, time sheets for Appellant's participation in a vocational experience. This exhibit was ultimately provided.

CONCLUSIONS OF LAW

1. At oral argument, Appellant's grandmother stated that she had no concerns regarding attendance at meetings or the plans themselves as to the three IEP's of 1996, 1997 and 1998.

2. 34 C.F.R. Section 300.343(c)(i) requires that IEP's be performed no less than annually. DYC failed to comply with this requirement for the 1999 IEP; it missed the deadline by one month.

3. Not informing Appellant, his grandmother and his mother of the referral to Harmony Homes and Nostalgia Homes fails to comply with 34 C.F.R. Section 300.343. That section requires that parents be given an opportunity to participate in IEP planning. Failure to provide information regarding transition services as required by 34 C.F.R. 300.347 deprived the grandmother and mother of an opportunity to participate.

4. At the July 5, 2000, meeting, DYC personnel informed Appellant, his grandmother and mother of the transfer of rights at majority. In any case, there is no evidence that DYC was required to provide this information.

5. The exclusion of Appellant's grandmother and mother at the January 10, 2001 meeting was not a violation of the IDEA. 34 C.F.R. Section 300.501(c) requires that a public agency shall ensure that the parents of a child with a disability are members of any group that makes decision regarding the educational placement of a child. There is no evidence that the January 10 meeting concerned educational placement.

6. DYC was not required to provide a free appropriate public education after Appellant turned 21. 20 U.S.C. Section 1412(a)(1)(A) provides that such services are to be provided to children between the ages of 3 and 21, inclusive. Appellant's argument that services are to be provided until he turns 22 is incorrect.

7. There is no other evidence the DYC failed to provide a free appropriate public education. Appellant made very little educational progress while he was with DYC. However, there was no evidence that this was the result of a deficiency in the educational plan. Under the IDEA, an agency must: 1) follow the procedures set forth in the Act; and 2) develop an IEP through procedures reasonably calculated to enable the child to receive educational benefits. Once an agency has done this, no more can be required. *Patricia P. v. Board of Education of Oak Park*, 203 F.3d 462, 467 (7th Cir. 2000); *Board of Education v. Rowley*, 458 U.S. 176, 206-7 (1982).

8. The ALJ finds no other IDEA violations in the matters raised by Appellant.

REMEDIES

DYC has violated the IDEA in the case of Appellant in two particulars. First, the 1999 IEP was not timely performed. Second, DYC failed to inform Appellant, his grandmother and mother of the referral to Harmony Homes and Nostalgia Homes at the January 5, 2000 IEP meeting. These particular violations are minor. As to the first, the delay in the 1999 IEP was only by one month. The failure to inform Appellant's mother and grandmother of the referral to Harmony Homes and Nostalgia Homes is also minor. As it turned out, Appellant was not transferred to these facilities but was instead transferred to the [Regional Center].

In *Urban v. Jefferson County School District R-1*, 89 F.3d 720, 727 (10th Cir. 1996), the court found that a school district's failure to comply with statutory IEP content did not amount to a substantive deprivation. That is also the case here. As in *Urban*, no sanction shall be imposed for these violations of the IDEA.

DECISION

Appellant has not shown that DYC has failed in a substantive manner to provide him a free appropriate public education. The opinion of the IHO is upheld to the extent it does not conflict with this Decision Upon State Level Review. This Decision Upon State Level Review is the final decision on state level review except that any party has the right to bring a timely civil action in an appropriate court of law, either federal or state.

DONE AND SIGNED

June 15, 2001

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MATTHEW E. NORWOOD
Administrative Law Judge