

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**In the Matter of PARENTS, on Behalf of STUDENT,**

**v.**

**Case No. DPH 0910-25**

**ALBUQUERQUE PUBLIC SCHOOLS,**

**ABSTRACT OF DECISION OF THE DUE PROCESS HEARING OFFICER**

**Jane B. Yohalem, DPHO; July 30, 2010**

This decision focuses on whether appropriate educational services in the least restrictive environment were provided during Student's preschool and kindergarten years. Student is eligible for special education based on autism. Parents sought both compensatory education and reimbursement for private school tuition.

The hearing officer held that the District satisfied both the procedural and substantive requirements established by *Rowley* for a free, appropriate public education. The hearing officer held that the admonition in the IDEA to base special education on peer-reviewed research "to the extent practicable" does not supercede the Acts' requirement that services be individually designed to provide meaningful educational benefit. Judgments must be made about the applicability of the research to the particular needs of the student. Parents here did not meet their burden of establishing that 25 hours of services a week, although recommended in some of the research for children with autism was appropriate to meet Student's needs.

Parents claimed that the least restrictive environment for Student (LRE) during preschool was in a regular preschool with 100% typically developing peers, and sought reimbursement for private preschool on this basis as well. The hearing officer held that, although the District must consider a regular preschool placement whether or not that service is available in a public school, the mainstream private preschool was not the LRE for this Student. Weighing the academic and non-academic advantages and disadvantages of a mainstream classroom and the District's developmental preschool, the hearing officer found that the academic and social benefits of the developmental preschool were significantly greater for Student. Student's inclusion in the mainstream class depended entirely on substantial accommodations made by his one-on-one therapist and on near-constant verbal and physical prompting by her. These interventions were not able to be phased out as the year went on. Under these circumstances, the smaller group setting of the developmental preschool with its high student-teacher ratio, speech and language, OT and PT therapists present in the classroom, and 50% normally developing peers, better met Student's academic and social needs.

Since Student was at all times offered a FAPE in the LRE, the hearing officer denied the Parents request for reimbursement of private school tuition.

Parents also sought reimbursement for services they purchased to allow Student to participate in a summer program held on school grounds, but funded by grant money. The hearing officer concluded that she lacked jurisdiction over Parents' claim because it arose under Section 504 of the Rehabilitation Act, rather than the IDEA. Finally, the hearing officer denied Parent's claim for Extended School Year Services because Parent's failed to establish that the benefits accrued during the school year would be significantly jeopardized without this service.