

3. The Student and Parents were not represented by counsel but had assistance from two advocates: Betty K. Farley with Missouri Protection and Advocacy Services and Georgia Mueller with Missouri Parents ACT.

4. Smithton was represented by Ernest G. Trakas, Mickes Goldman O’Toole, LLC., 555 Maryville University Drive, Suite 240, St. Louis, MO 63141.

5. The Hearing Officer for the expedited due process proceeding was Pamela S. Wright.

6. During all times relevant to this proceeding the following persons were employed by Smithton:

Amy Cox	K-8 Principal
Jocie Lucille Clary	Paraprofessional
Nita Apsher	Second grade classroom teacher
Steven Beck	Paraprofessional
Sheila Dunn	Special education teacher, grades K-3
Lisa Tatum	Second grade classroom teacher
Debbie Neil	Special education process coordinator

7. Heather Oelrichs is employed by West Central Co-op for Special Education Services located in Sedalia, MO as an autism/Behavior Specialist. (Tr. pg. 115).¹

Procedural Background

8. Smithton filed an expedited due process hearing complaint with the Department of Elementary and Secondary Education (“DESE”) on February 26, 2010 seeking an order placing Student at an Interim Alternate Education Setting (“IAES”) for forty-five (45) school days, to be determined by Student’s IEP team, as required by Section 1415 (k)(2) of the IDEA.

¹ The Hearing Transcript is cited as “(Tr. pg.____). “

DESE notified the Hearing Officer on the same date that she had been selected to serve as the Hearing Officer for the expedited due process complaint.

9. On March 10, 2010, Student filed a [Notice of] Insufficiency of Due Process Complaint. The Hearing Officer issued an Order on March 10, 2010 declaring the Complaint adequate.

10. On March 19, 2010, the matter was set for a one day hearing on March 25, 2010 beginning at 9:00 AM at the Smithton School District headquarters located at 505 S. Myrtle, Smithton, MO.

11. The hearing in this matter was held on March 25, 2010 at Smithton Elementary/ High School. Both parties appeared, with Smithton represented by counsel and parents pro se, with assistance from two advocates.

12. During the hearing, the following exhibits were identified and admitted as evidence in this proceeding: Petitioner's Exhibits 1-30 (pages 1-237) and Respondent's Exhibits A, B, C & D.

Time Line Information

13. Smithton filed an expedited due process hearing complaint with DESE on February 26, 2010. The deadline for holding the hearing was 20 school days after the filing date. The hearing was held on March 25, 2010, which satisfied the deadline.

14. The deadline for mailing this decision is 10 school days after the hearing. The opinion was sent to the attorneys for the parties and DESE by e-mail and US Mail on April 8, 2010, which meets this time line.

Issues

15. The following issues were presented to the Hearing Officer: (a) whether the Student is substantially likely to injure himself and/or others in his current placement and (b) if so, is the District proposal for determining IAES appropriate?

Background Facts

16. Student is an XXXXXX student who is currently enrolled in Smithton . He receives special education and related services pursuant to an IEP. (Ex P-20).²

17. Student has received a number of medical diagnoses, including: Oppositional Defiance Disorder; Interim Explosive Disorder and Adjustment Disorder with Disturbance of Conduct. (Ex. P-20).

18. Student's current educational diagnosis is Emotionally Disturbed. (Ex P-20).

19. Under Student's IEP developed by the IEP team on January 14, 2010 (and agreed to by the parents)³, he currently receives fifteen (15) minutes per week of special education services in the general education setting to monitor academic progress. He also receives the assistance of a paraprofessional for one thousand eight hundred and seventy-five (1,875) minutes per week in the general education setting. Under this IEP, he continues to have the same one goal: "[Student] will interact appropriately with teachers, adults and students in 8 out of 10 days with behaviors monitored on a chart."⁴ The Student's IEP calls for placement inside the regular education classroom at least eighty percent (80%) of the time. (Ex P-20). As a practical matter, Student is in the regular education classroom one hundred percent (100%) of the time. (Tr. pgs. 64-65).

² The Hearing Exhibits are cited as "(Ex. P-___," or R-___", respectively).

³ Parents also requested that a behavior specialist be brought in by Smithton to observe and assess Student.

⁴ His Periodic Progress Report indicates "making progress toward annual goal." (Ex R-A). Smithton acknowledges by counsel that there has been some overall improvement in his behavior in this school year versus 2008-2009 school year. (Tr. pg. 87;90)

20. During the 2008-2009 school year, Ms. Jocie Clary was assigned as Student's paraprofessional. (Tr. pg. 26). In that capacity, Ms. Clary assisted Student with his classroom work, helped him move from the classroom to other locations when necessary, and assisted in keeping Student's behavior under control. (Tr. pg. 25). In addition, Ms. Clary was also responsible for recording observations about Student's behavior. (Tr. pg. 27; Ex. P-23).

21. During the 2008-2009 school year, Ms. Clary personally observed and recorded the following incidents:

- a.) On November 25, 2008 Student struck another student during recess. (Tr. pg. 28; Ex. P-23, pg. 133);
- b.) On December 4, 2008, Student pushed another student and hit Ms. Clary. (Tr. pg. 29-30; Ex. P-23, pg. 134);
- c.) On December 18, 2008, Student threw his lunch box at another staff member, pushed other students and scratched and kicked Ms. Clary. (Tr. pg. 30-31; Ex. P-23, pg. 138);
- d.) On January 15, 2009, Student pushed another student and slapped Ms. Clary two times. (Tr. pg. 30-31; Ex. P-23, pg. 145)
- e.) On January 21, 2009, Student threw objects across the lunch room, threw four different objects at Ms. Clary and broke her necklace. (Tr. pg. 31-32; Ex. P-23, pg. 146);
- f.) On February 2, 2009, Student physically assaulted Ms. Clary, and two other staff members, Mrs. Thompson, Mrs. Tatum, and Mrs. Jorgenson. (Tr. pg. 31-33; Ex. P-23, pg. 147 & 148);
- g.) On February 18, 2009, Student pinched and scratched Mrs. Jorgenson and threw an object at Ms. Clary. (Tr. pg. 33-34; Ex. P-23, pg. 154);
- h.) On March 31, 2009, Student hit Mrs. Jorgenson. (Tr. pg. 34; Ex. P-23, pg. 178);
- i.) On April 7, 2009, on two separate occasions Student hit Mrs. Jorgenson in the eye, face and mouth giving her a "fat lip." Student also scratched, kicked and slapped Ms. Clary. (Tr. pg. 34-36; Ex. P-23, pg. 182, 184, 185);
- k.) On May 7, 2009, Student dragged another student on the playground. (Tr. pg. 36; Ex. P-23, pg. 203).

22. Ms. Clary credibly testified that based on her experience with the Student throughout the 2008-2009 school year, if maintained in the same placement – at least 80% of time in the regular education classroom – the Student presents a substantial likelihood to injure himself or others. (Tr. pg. 39).⁵

23. During the 2009-2010 school year Mr. Stephen Beck was assigned as Student’s paraprofessional. In that capacity, Mr. Beck accompanies and assists the Student throughout Student’s entire school day. In addition, Mr. Beck is also responsible for recording observations about Student’s behavior. (Tr. pg. 98-99; Ex. P-23).

24. During the 2009-2010 school year, Mr. Beck recorded the following incidents:

- a.) On October 6, 2009, Student hit another student in the neck with his lunch box. (Tr. pg. 110-111; Ex. P-23, pg. 213);
- b.) On October 15, 2009, Student kicked another student. (Tr. pg. 111-112; Ex. P-23, pg. 215);
- c.) On October 26, 2009, Student knocked over another student in the presence of other school personnel. (Tr. pg. 99-100; Ex. P-23, pg. 216);
- d.) On October 29, 2009, other students reported that the Student tried to urinate on them. (Tr. pg. 100-101; Ex. P-23, pg. 217);
- e.) On November 24, 2009, Student pushed a female student into a pole. (Tr. pg. 101-102; Ex. P-23, pg. 219);
- f.) On February 4, 2010, Student struck another student in the eye with his lunch box. (Tr. pg. 102-103; Ex. P-23, pg. 223).

25. Mr. Beck could not say whether Student’s behavior has improved or not, but he did confirm that Student’s {assaultive} behavior continues. (Tr. pg. 109-110).

26. Cindy Cox, Principal of Smithton Elementary School, testified that throughout the 2009-2010 school year she has been required to intervene in Student’s instructional settings due

⁵The current placement of at least 80% regular education class is the same as last school year when Ms. Clary served as his paraprofessional. (Tr. pg. 38-39). She stopped serving as his para because she “was tired of being hit by [Student].” (Tr. pg. 45)

to disturbances caused by Student's behavior. This behavior included assaulting other students, teachers and staff. (Tr. pg. 66-70). Ms. Cox further testified that because of the Student's behaviors she has had to discipline the Student. (Tr. pg. 70; Ex. P-24; Ex. P-28). Finally, Ms. Cox testified that if allowed to remain in his current placement Student is substantially likely to injure himself or others.⁶ (Tr. pg. 70).

27. On November 4, 2009, Student physically assaulted Ms. Nita Apsher, a second grade teacher at Smithton Elementary who was assisting with breakfast duty. Without prior warning or provocation, Student grabbed the index finger of Ms. Apsher's right hand and forcibly bent it back towards her wrist. Student's assault caused Ms. Apsher's hand and knuckle to bruise and swell. He received an out of school suspension. (Tr. pg. 46; 48-52; Ex. P-9; P-24; P-28).

28. The incident report by Ms. Cox for the November 4, 2009 illustrates extreme anger by Student towards the staff and himself:

The teacher on duty stopped him to ask if he had all that he needed for breakfast and he told her *'To shut up God dammit.'* The teacher asked [Student] to sit down in a chair so she could talk to him and he bent her finger back towards her wrist. *He then began to kick her repeatedly.* At this point, Mrs. Tatum and I arrived in the cafeteria. She and I tried to talk to [Student] and calm him down and he called Mrs. Tatum a *'fucking asshole.'* She then escorted him down to the office. He continued to scream and call Mr. Beck, Mrs. Tatum and Mrs. Cox stupid. . . . I gave [Student] about 15 minutes to cool down then I asked him to come to my office to discuss the incident. I gave him four choices after I thoroughly explained to him that he had used inappropriate language, had assaulted a teacher, and was disrespectful to four adults. I offered him the options of missing recess, eating lunch by himself, missing PE or calling home to have his parents come and get him. He took several minutes but chose to eat by himself. He then turned around in his chair. I asked him to turn back around and sit correctly in the chair so he would not get hurt and so I knew he could hear me and he refused. . . . *At that point, he kicked my desk and called me*

⁶ While Ms. Cox was generally a credible witness, she did exhibit a convenient memory lapse in not being able to respond to a straightforward question by the Parents as to the reason school officials favored the least restrictive placement in the January 2010 IEP in view of their son's negative behavior history. (Tr. pg. 80-82). This issue, however, does not mean that she should be removed from the IEP team.

stupid again, so I told him that I would make the choice for him and I called his father to come and get him. *At this point he came around my desk and began to hit me in the face and neck.* . . . [Student] asked me if I had called his parents to which I responded, 'yes.' [Student] then said. *'Just get me a knife, I have to kill myself.'* Mr. Beck and I attempted to calm him down but he continued screaming and began to pull his shirt and pop the buttons off. (emphasis added)

(Ex P-24).

29. Student called Mrs. Lisa Tatum, Student's current teacher. Mrs. Tatum testified that she did not believe Student was a threat to her. However, Mrs. Tatum also stated that she did not have a problem with Student remaining in her classroom with a behavioral specialist overseeing him. (Tr. pg. 150).

30. Mrs. Tatum acknowledged that she has a personal relationship, and is on a first name basis with Parents, and that she has made non-school related visits to Parents home. (Tr. pg. 154-155).

31. Mrs. Tatum admitted that she is a probationary teacher whose contract will not be renewed by Smithton. (Tr. pg. 161-162).

32. On cross examination, despite her direct testimony that she did not believe Student presented a threat, Mrs. Tatum confirmed that during the course of the current school year, while Student was enrolled in her class the following occurred:

- a.) On October 6, 2009, Student assaulted another student by striking the student in the neck with his (Student's) lunch box. (Tr. pg. 156-157);
- b.) On November 4, 2009, Student physically assaulted Ms. Nita Apsher and Ms. Amy Cox. (Tr. pg. 159-160; Ex. P-28);
- c.) On December 7, 2009, Student assaulted Ms. Tatum and attempted to destroy school property. (Tr. pg. 160-161; Ex. P-28);
- d.) March 3, 2010, Student threw rocks at two female students. (Tr. pg. 161; Ex. P-28).

33. Another troubling incident occurred on February 16, 2010, which

resulted in a one day out of school suspension. (Ex P-24). The following is from the Incident Report:

[Student] was being non-compliant in class (Reading). He was allowed to read with high school principal. . . . The high school principal alerted the Special Education Process Coordinator that [Student] was there and he sensed there might be a problem. . . . He was yelling and collapsing on the para and Process coordinator. An aide came out to help. An aide had to carry his feet while the process coordinator carried his hands to get him to the office because he was yelling and making a scene in the hallway. In the Process Coordinator's Office he was released . *He started pushing and shoving chairs at the Process Coordinator.* . . . He refused all offers. *He called us 'assholes' and kicked the process coordinator on her leg many times.* The process coordinator held him to stop his aggressive behaviors. He said to let him go and he would quit. *He was released and went back to yelling, kicking and shoving chairs. He was held again where he spit on the process coordinator and tried to bite her.* The process coordinator asked the para or her administrative assistant to call Dad to pick up [Student] at this point. The high school principal was also present. [Student] was released and he lay on the floor now crying to give him another chance, not to call his dad, that we are supposed to call his mom (we have been instructed not to do this), that we are awful keeping a child from his family, *that he is different—he has ODD, don't you know that I have a behavior disorder, I'm going to get you fired, called the administrative assistant an 'asshole.'* (emphasis added)

(Ex P-25)

34. Ms. Heather Oelrichs, a behavior specialist with the West Central Cooperative for Special Education Services (“WCCoOP”) testified at the behest of the District. As a behavior specialist, Ms. Oelrichs routinely works with children and students with behavioral concerns. She trains school district personnel, including IEP team members, teachers and paraprofessionals in the implementation and delivery of behavior intervention strategies and techniques. (Tr. pg. 114-117).

35. Over the past four years in her work at the WCCoOP, Ms. Oelrichs has assisted public school districts in developing and implementing IEPs addressing behavior concerns of over 100 students. (Tr. pg. 118).

36. Prior to her work at WCCoOp, Ms. Oelrichs taught special education for six (6) years. In that capacity she either acted as case manager over a student's special education programming or provided direct instruction and services to the student and was a member of the student's IEP team. During that period, she was a case manager and/or IEP team member in over 120 instances, half of which involved developing and implementing IEPs for students with behavioral concerns. (Tr. pg. 119)

37. At the request of the District, Ms. Oelrichs reviewed Student's educational and disciplinary records and observed Student in the school setting. (Tr. Pg. 120).

38. Ms. Oelrichs is prepared and able to assist Student's IEP team in developing a specialized comprehensive behavior modification program and curriculum designed to address and modify Student's behavior, including the appropriate setting to deliver such services, in order for him to be successful once returned to his regular education setting. (Tr. pg. 120-125)

39. Based on her observation of Student and review of his records, Ms. Oelrichs believes that Student's behavior concerns cannot be adequately addressed in his current placement in the regular education classroom at least 80 % of the time. (Tr. pg. 124-125)

40. Based on her review of Student's records and observation of Student in his current placement, Ms. Oelrichs believes that if left in his current placement Student will exhibit similar behaviors that he has in the past, including assaulting other students and staff. (Tr. pg. 126). Ms. Oelrichs was a very credible witness.

41. Sheila Dunn, special education teacher K-3, was called to testify by the Parents. She stated the following regarding the IEP meeting in January 2010: (a) that the reporting of his behavior was reduced from monthly to quarterly because there had been fewer incidents and (b)

Student's mother requested that an outside behavioral specialist be brought to help assess Student. (Tr. pg. 141; 144).

42. Parents also called as their witness, Debbie Neil, Special Education Process Coordinator for Smithton. She admitted that Student's Mother had requested at the IEP meeting in January 2010 that a behavior specialist be brought in to help with Student. (Tr. pg. 165). Ms. Neill had rejected the idea because she did not think a specialist was necessary at that time because the District had done a full functional behavior analysis. The District had taken all the steps to develop a behavior plan. (Tr. pg. 166). She also stated that reporting of Student's behavior was changed from monthly to quarterly because there were fewer incidents. (Tr. p. 169). On cross-examination, she conceded that Student has not been incident-free this school year and in fact, had assaulted other students and staff, with the most recent occurrence on March 3, 2010. (Tr. pg. 171).

CONCLUSIONS OF LAW

1. Student is an individual with a disability within the purview of the IDEA. 20 U.S.C. § 1400 et sec. The IDEA insures that all children with disabilities receive a Free Appropriate Public Education ("FAPE") that includes special education and related services that are designed to meet their unique need, prepare them for further education, employment and independent living. *Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 US 176, 203 (1982). In this matter, neither Student's eligibility under the IDEA nor his entitlement to a FAPE is in dispute.

2. The IDEA authorizes an LEA to request an expedited due process hearing when the LEA "believes that maintaining the current placement of a child is substantially likely to result in injury to the child or to others." 20 U.S.C. § 1415(k)(1)(G)(3); 34 C.F.R. § 300.532(a);

(b) & (c). In Missouri, the hearing authorized by Section 162.961, RSMo., and conducted in this cause on March 25, 2010, is intended to be the expedited hearing mandated by the IDEA.

3. Under IDEA, the burden of proof falls on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U. S. 49 (2005).

4. Smithton has met its burden of proof under 20 U.S.C. § 1415(k)(2) that the Student is substantially likely to injure himself or others. 34 C. F. R. Section 300.352(b). See also 20 U. S. C. Section 1415(k)(3).

5. Smithton has also met its burden of proof under 20 U.S.C. § 1415(k)(2) that Heather Oelrichs is a highly qualified behavior specialist who should be retained by Smithton as an IEP team member to assist the District in developing an IAES and amending Student's IEP accordingly.

DECISION

In seeking the removal of Student from his current placement and transferring him to an IAES for 45 days, Smithton's position is that Student's behavior presents a significant risk of injury to Student and others. Smithton also believes that removal to an IAES will provide the important and necessary services of further evaluating and addressing Student's problematic behaviors.

As stated at the hearing and in their post-hearing filings, Student's Parents oppose the proposed removal to an IAES unless it is to a home placement.⁷ Parents believe that Smithton has exaggerated Student's behaviors and failed to accurately and/or completely record Student's progress in managing his in-school behavior. They also contend that (a) Smithton erred when the IEP team rejected the Parents' suggestion last January that an outside behavior specialist be

⁷ I heard **no** evidence to suggest that a home placement would be appropriate for this Student.

brought in to assess and work with Student⁸; (b) Smithton staff members do not know how to handle Student's behavior (in contrast with the parents because they allegedly have no similar problems with their son at home)⁹; (c) his behavior has improved from last school year to this year; (d) there have been no incidents since Smithton filed for expedited due process so this negates any sense of urgency for removal to an IAES; and (e) Heather Oelrichs is not the appropriate behavior specialist for their son.

I agree with Smithton that the Student should be removed from his current placement inside the regular education classroom at least eighty (80%) percent of the time and placed in an IAES as determined by his IEP team. I have intentionally included in nearly full detail the Incident Reports in Findings of Fact ("FF") # 28 & 33 for the November 4, 2009 and February 16, 2010 incidents, respectively, because they reveal a very troubled second grader who exhibits episodes of aggressive behavior involving very obscene language, hitting, kicking, spitting and a biting attempt, all directed at Smithton staff. As a second grader, Student has hit teachers and other staff with sufficient force to leave marks on these larger individuals. (FF# 28); (EX P-9). Also very problematic for Student is his threat to harm himself as revealed in FF#28 as well as Student's use of his behavior disorder as an excuse for his misconduct as shown in FF# 33. Student has also been very aggressive towards his fellow students: pushed & dragged others at recess (Ex P-5 pgs. 34, 79); kicking (ex P-5, pg 57); throwing things (FF#21; 32); assaulting another student with his lunchbox (FF#32)(Ex P-24); pushing another student into a bar causing an injury to the other student's head (Ex P-24). He has also attempted to destroy school property on several occasions, including urinating on the wall. (Ex P-24).

⁸ In hindsight, the Parents may have been correct in advocating for an outside specialist to be brought into the picture. Similarly in hindsight, Smithton may have been correct in advocating for a self-contained special education classroom or private separate day school for Student in October 2008. The Parents would only agree to placement in the regular education class at least 80% of the day. (Ex R-D; Respondent's post-hearing filings).

⁹ I find this allegation of no or minimal behavioral issues at home to be totally incredible.

Smithton presented the testimony of Amy Cox, Principal of Smithton Elementary School; Jocie Clary and Stephen Beck, paraprofessionals assigned to work with Student during the 2008-09 and 2009-10 school years, respectively; and Nita Apsher, a teacher at Smithton Elementary School. In doing so, Smithton provided credible, extensive, un-rebutted, first-hand testimony of Student's aggressive, antisocial behavior in his current placement. The behavior incidents reported by these witnesses, and reflected in school records introduced into evidence, prove unequivocally that between October 2008 through March 2010, Student has been dangerous to, and presented a significant risk of injury to others, as well as himself. Student's antisocial and aggressive behavior continues despite Smithton's successful implementation of Student's IEP. *See Findings of Facts above.*

Student called Sheila Dunn, a special education teacher with the District; Lisa Tatum, Student's current general education teacher; and Debbie Neil, the District's Director of Special Education. Ms. Dunn and Ms. Neil seemed to be called for the purpose of establishing that Student had made progress under his IEP and that the number of behavioral incidents had decreased, a point to which the District has stipulated. (Tr. pg. 10, 12, 87-90, 169-170, 172). Despite this testimony, Ms. Neil confirmed that Student continues to have incidents related to his behavior, including assaults on other students and staff as recently as March 3, 2010. (FF#42)

Credible testimony and reports from Smithton staff concerning Student's behavior in his current placement are persuasive and substantiate that, in his current placement Student's problematic and anti-social behavior continues. The records substantiate that Student continues to use profanity in his current setting. Jocie Clary testified that because of concern for personal safety she refused to continue to act as Student's paraprofessional during the 2009-2010 school year. (FF#22). Reports of anti-social behavior in Student's current placement, observed and

recorded, as recently as March 3, 2010 are instructive because they demonstrate that Student's antisocial behavior has not and cannot be sufficiently addressed in the his current placement.

For the above reasons, I find that permitting Student to remain in his current placement will not sufficiently address Student's behavior problem, and is likely to result in injury to himself or others. Therefore, Student should be removed to an appropriate IAES for forty-five (45) school days.

Having so found, I turn now to the determination of an IAES for Student. In developing the IAES, it is essential that such a setting provide ongoing opportunities to evaluate Student and address the causes of his problematic behaviors. Heather Oelrichs, a specialist in addressing problematic behavior in children, testified that she has served special education students with behavior issues like Student. Ms. Oelrichs is qualified and able to assist the District in developing the appropriate IAES setting for Student's forty-five (45) day IAES placement. (FF # 35-40). Parents provided no evidence to rebut Ms. Oelrichs' qualifications.

Ms. Oelrichs is eminently qualified to assist the District, as a member of Student's IEP team, in developing a structured educational environment in which Student's behavior will be monitored, assessed and modified over the course of the forty-five (45) day placement. It is reasonable to conclude that through removal to an IAES more appropriate interventions and strategies will be utilized for effectively addressing Student's behavior.

I am not persuaded by Parents' argument that Student's current placement of inside the regular education classroom at least 80% of the time remains an appropriate setting for Student. To begin with, Student receives only fifteen (15) minutes per week of special education services. (Ex. P-20). This is not remotely equivalent to the comprehensive structured setting described by Heather Oelrichs, which Student clearly needs and in which his behaviors will be targeted,

assessed and modified. Student's current placement does not provide sufficient opportunity to adequately address Student's behavioral issues. The IAES will continue to provide opportunities for Student to interact with other students socially or academically. The current placement is not an appropriate setting for purposes of providing Student with academic programming while at the same time, addressing his significant behavior difficulties.

ORDER

For the reasons set forth above the Hearing Officer issues the following Order:

1. Student is ordered removed from his current placement to an appropriate Interim Alternative Education Setting for a period of forty-five (45) school days;
2. The IAES shall be Student's stay put placement pursuant to 20 U.S.C. § 1415(k)(4)(A);
3. Smithton is ordered to retain Heather Oelrichs as an IEP team member to assist the District in developing an appropriate IAES and amending Student's IEP accordingly;
4. Smithton is further ordered to convene Student's IEP team within two (2) school days of the date of the filing of this Decision with DESE for the purpose of establishing the appropriate IAES setting for Student as required by Paragraph (3) above;
5. Parents are ordered to fully and completely cooperate in this process, attending the IEP meeting required by Paragraph (3) and cooperating in the determination of the IAES as required; and
6. Student is to be placed in the IAES as determined by his IEP team consistent with Paragraph (4) above, within three (3) school days of the filing of this Decision with the Missouri Department of Elementary and Secondary Education.

Finally, based on the evidence adduced at hearing and in the record, and as guidance for Student's IEP team, but not as an order to do so, the Hearing Officer suggests that the IAES determined by the IEP team should require that Student be inside the regular education classroom no more than forty (40%) percent of the time.

APPEAL PROCEDURE

Please take notice that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary & Secondary Education in this matter. A party has the right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Sections 536.010 et seq., RSMO. A party also has the right to challenge this decision by filing a petition in a state or federal court of competent jurisdiction within forty-five (45) days after the receipt of this final decision. The right to appeal is described in detail in the IDEA in 20 U.S.C. Section 1415 (i) and in the Regulations to the IDEA in 34 C.F.R. Sections 300.512.

SO ORDERED this 8th day of April, 2010.

Pamela S. Wright, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served via electronic and certified mail, this 8th day of April, 2010; upon:

Mr. & Mrs. XXXXXX
YYYYYYYYYYYYYYY
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