IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAIRDAN M., by and through his parents and nearest friends, KERRY M. and LINDA M., Plaintiff,	:	
v.	:	**Civil No. 97-5864**
SOLANCO SCHOOL DISTRICT, Defendant.	:	

RAIRDAN M., by and through his parents and nearest friends, KERRY M. and LINDA M., Plaintiff,	:	
v.	:	**Civil No. 98-1672**
SOLANCO SCHOOL DISTRICT, Defendant.	:	

MEMORANDUM

Cahn, C.J. **July ___, 1998**

In these consolidated cases brought pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., Plaintiff seeks tuition reimbursement and transportation costs for the 1996-97 and 1997-98 school years, which Plaintiff spent at The Janus School. In a counterclaim in Case II (No. 98-1672), Defendant contends that the evidence does not justify awarding Plaintiff compensatory occupational therapy services. Currently before the court are Plaintiff's Motion for Judgment on the Record and Defendant's Motion for Disposition

on the Record. For the reasons that follow, the court will grant Plaintiff's Motion as to Case I (No. 97-5864) and remand Case II for further proceedings.

I. BACKGROUND

Rairdan M. ("Rairdan"), age eleven, suffers from: 1) specific learning disabilities in written expression, basic reading skills, and reading comprehension; 2) attention deficit disorder ("ADD"); 3) delayed fine-motor skills and deficits in the area of visual motor integration; and 4) motor apraxia.[1] These disabilities impact Rairdan's ability to learn like other children. Rairdan has difficulty with tasks including, but not limited to, understanding the relationship between signs and sounds; reading independently; staying on task; remembering visual information in sequence; and keeping his place on a page. The District identified Rairdan as learning disabled at the end of his first-grade year and subsequently provided Rairdan with an adapted curriculum.

Dissatisfied with the individualized education program ("IEP") proposed for Rairdan's fourth-grade year, the 1996-97 school year, Rairdan's parents hired Dr. Margaret Kay to conduct an independent psychoeducational evaluation of Rairdan. Dr. Kay administered a number of tests, including IQ tests that revealed a "progressive cognitive decline . . . due primarily to diminished test scores on measures of verbal learning, general knowledge, auditory attention/concentration and the ability to form sound-symbol relationships." (P-11 at 21.)[2] Dr. Kay also found that Rairdan's ADD interfered with his academic performance, and that Rairdan

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[1]In March, 1998, occupational therapist Karen Kangas diagnosed Rairdan with motor apraxia, which she described as the inability to analyze how to perform a task and how to develop automatic sequencing for that task.

[2]The court cites to the reproduced record filed by Rairdan. All cites to exhibits in Case II will be prefaced with "II." The court will abbreviate notes of testimony as "N.T."

had serious deficits in reading decoding, reading comprehension, written language and spelling.[3] Dr. Kay made recommendations, including one-on-one instruction by a trained specialist in a synthetic-phonetic approach for at least an hour a day, one period a day to improve spelling and writing, use of the Semple math program, coordination of the entire school day with direct instruction approaches, and a program to advance essential literacy skills.

Approximately two weeks after receiving Dr. Kay's report, Rairdan's parents unilaterally enrolled Rairdan at The Janus School ("Janus"), a non-approved private school licensed by the Pennsylvania Department of Education to provide services to learning-disabled students. Despite efforts to resolve their disagreement, Rairdan's parents and the District reached a stalemate, and Rairdan spent the entire 1996-97 school year at Janus.

A due process hearing was held at Rairdan's parents' request, and, on May 2, 1997, Special Education Hearing Officer Smith ("Hearing Officer Smith") issued a decision. Hearing Officer Smith found the District's proposed 1996-97 IEP and the 1996-97 Janus program inappropriate. Accordingly, Hearing Officer Smith denied Rairdan's parents' request for reimbursement for tuition and transportation costs and ordered the District to develop an IEP for Rairdan that would: 1) include specific types and amounts of instruction in reading, handwriting, composition, and spelling; and 2) communicate to Rairdan's parents how the proposed specialized instruction related to reading, handwriting, composition, and spelling.

[3]Although Dr. Kay found that Rairdan was performing below grade level in math reasoning and calculation skills, and in knowledge of science, social studies, art, music, and literature, Dr. Kay explained that the discrepancies between Rairdan's ability and achievement in these areas were not severe.

The Special Education Due Process Appeals Panel ("the Panel") affirmed Hearing Officer Smith's decision on June 23, 1997. The Panel reasoned that Janus was not an appropriate school because "[i]ts program did not specifically address Rairdan's individual needs, including much of what the parents had previously requested and what their own independent educational evaluator recommended for him . . . . Moreover, his test scores did not show progress." (Compl., Ex. A, at 6-7.) In a footnote, the panel listed problems with the Janus program: Rairdan would not receive "adaptive physical education, music class, access to a computer, testing with oral methods in a separate room, untimed testing, a Franklin speller, keyboarding instruction, or a calculator;" Janus did not use the Orton-Gillingham approach or the Semple math program; and Janus did not provide one hour of instruction each day in reading, or in spelling and writing. (Id. at 6 n.23.)

Rairdan, by and through his parents, filed a complaint in the nature of an appeal in this court (Case I). In the complaint, Rairdan requests that the court award reimbursement for tuition paid to Janus for the 1996-97 school year, plus transportation costs. The District did not appeal the Panel's decision that the District's proposed 1996-97 IEP was inappropriate.

The conflict between Rairdan's parents and the District continued into the 1997-98 school year. On July 29, 1997, in preparation for the 1997-98 school year, Rairdan's parents and the District participated in an IEP meeting and developed a draft IEP. Rairdan's parents subsequently rejected the draft IEP, and the District, in a letter dated August 28, 1997, agreed to alter certain portions of the draft IEP. Rairdan's parents and the District failed to reach a final agreement, and Rairdan continued to attend Janus.

The District requested and received a due process hearing, and, on January 19, 1998, Hearing Officer Smith issued a decision. Hearing Officer Smith found that the District's

proposed 1997-98 IEP was inappropriate, the 1997-98 Janus program was appropriate, and the equities favored reimbursement for tuition and transportation costs for the 1997-98 school year. In addition, because the District had delayed Rairdan's occupational-therapy ("OT") evaluation, and because the results of the evaluation finally provided were "nebulous," (Compl. II, Ex. B at 13), Hearing Officer Smith ordered the District to provide an independent OT assessment and hold an IEP meeting to discuss how the District would provide Rairdan with any recommended services.

The same panel that affirmed Hearing Officer Smith's May 2, 1997 decision reversed Hearing Officer Smith's January 19, 1998 award of tuition reimbursement and transportation costs. In its February 27, 1998 decision, the Panel held that Hearing Officer Smith erred in considering whether the District's IEP was appropriate under the IDEA because "as a technical matter of res judicata or as an equitable matter of reasonableness . . . [Hearing Officer Smith] already decided what was required for the District's proposal to pass muster; the threshold issue is merely whether the revised IEP met his specified standard." (Compl. II, Ex. A, at 4.) The Panel held that the District's proposed 1997-98 IEP complied with Hearing Officer Smith's May 2, 1997 order, and, therefore, did not reach the issue of whether to order reimbursement for tuition and transportation costs for the 1997-98 school year.

The Panel agreed with Hearing Officer Smith, however, that the District delayed Rairdan's OT evaluation. The Panel ordered that "if the independent [OT] evaluator determines that Rairdan is eligible for service, the District shall provide it on a compensatory basis from

5/1/97 [the date upon which the OT evaluation should have been available to the parties] until the date that the report is shared with both parties." (Id. at 7-8.)[4]

Rairdan appealed the Panel's February 27, 1998 decision to this court (Case II). Rairdan argues that the Panel erred in concluding that: 1) res judicata or reasonableness barred consideration of issues other than whether the District complied with Hearing Officer Smith's May 2, 1997 order; and 2) Rairdan was not entitled to reimbursement for tuition and transportation costs for the 1997-98 school year. The District filed a counterclaim, contending that the Panel erred in awarding compensatory OT services.

Rairdan filed a motion to submit additional evidence in Case I, and, on March 23, 1998, this court admitted the additional evidence to the extent that the evidence is relevant to whether the placement of Rairdan in The Janus School for the 1996-97 school year was appropriate.[5] In an order dated April 20, 1998, the court consolidated Case I and Case II. On June 23, 1998, the court held oral argument on the parties' motions for judgment on the record. The court will now discuss Case I, involving the 1996-97 school year, and Case II, involving the 1997-98 school year, seriatim.

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[4]In March, 1998, Karen Kangas conducted an independent occupational-therapy evaluation of Rairdan. She recommended, inter alia, that Rairdan "would benefit from occupational therapy as a regular consultation with his teachers and activities, in an observation/task analysis format, focusing on the development of tasks which would assist him in motor planning, particularly in the use of his kinesthetic/ proprioceptive skills." (P-22 at 13.) With respect to whether Rairdan should use a keyboard, a topic Ms. Kangas was asked to address, she did not recommend keyboarding.

[5]On April 8, 1998, Rairdan filed supplemental exhibits. If the court relies on information from these exhibits, the court will explain why the evidence is relevant and admissible.

II. DISCUSSION

A. Legal Framework

The IDEA requires states that receive federal funds under the Act to give eligible children with disabilities a free, appropriate public education. See 20 U.S.C.A. § 1412(1) (West 1990 & Supp. 1998).[6] An IEP is the vehicle by which a school district satisfies this requirement. See School Comm. of Burlington v. Department of Educ., 471 U.S. 359, 368 (1985). An IEP must conform with the IDEA's procedural requirements, and must be "reasonably calculated to enable the child to receive educational benefits." Board of Educ. v. Rowley, 458 U.S. 176, 207 (1982). The benefits must be more than trivial or de minimus. See Oberti v. Board of Educ., 995 F.2d 1204, 1213 (3d Cir. 1993).

The IDEA provides parents a number of procedural protections, including the right to challenge, at both administrative and judicial levels, whether the district's IEP offers the child a free, appropriate public education. See 20 U.S.C.A. §§ 1415(b)(2), (c), (e)(2) (West 1990). In Pennsylvania, there are two levels of administrative review. See Pa. Cons. Stat. § 14.64 (1996). The first level of administrative review is a due process hearing before an impartial hearing

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[6]In June, 1997, Congress amended and reauthorized the IDEA. See Individuals with Disabilities Education Act Amendments of 1997, P.L. No. 105-17, 111 Stat. 37 (to be codified at 20 U.S.C. §§ 1400-1487). Some parts of the new IDEA became effective on June 4, 1997, and other parts became effective on later dates. See id. § 201, 111 Stat. 37, 156. The events relevant to Case I occurred prior to the effective dates of all of the amendments. Therefore, the 1997 amendments do not apply to Case I. The 1997 amendments apply to Case II, however, with the exception of those amendments effective July 1, 1998 (none of the amendments effective October 1, 1997, are relevant to Case II). See id. The court will cite to the version of the IDEA in effect prior to the 1997 amendments because, as explained infra, the court will remand Case II to the Panel for a full decision on the merits. The court will note important differences between the pre-1997 IDEA and the 1997 IDEA amendments that are relevant to the court's analysis.

officer. See id. § 14.64(a). The second level is an appeal of the hearing officer's decision to a panel of three appellate hearing officers. See id. § 14.64(m). The IDEA allows a party dissatisfied with the panel's decision to appeal to an appropriate federal district or state court. See 20 U.S.C.A. § 1415(e)(2) (West 1990).

A district court reviewing an administrative decision "shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." Id. The Supreme Court has explained that a court reviewing a state administrative decision must give "due weight" to the administrative decision, rather than review the case de novo. See Rowley, 458 U.S. at 206. "The purpose of the 'due weight' obligation is to prevent the court from imposing its view of preferable educational methods on the states." Oberti, 995 F.2d at 1219 (citing Rowley, 458 U.S. at 207). The "due weight" should be given to the decision of the administrative appeals panel, rather than the decision of the hearing officer, although a hearing officer's "credibility-based findings deserve deference unless non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion." Carlisle Area Sch. Dist. v. Scott P., 62 F.3d 520, 528 (3d Cir. 1995). A district court may depart from an administrative decision, but should always explain the reasons for its departure. See id. at 527.

The school district bears the burden of proving the appropriateness of its proposed IEP. See id. at 533. Whether an IEP is reasonably calculated to afford a child educational benefits "can only be determined as of the time it is offered to the student, and not at some later date. . . . Neither the statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the

appropriateness of a child's placement." Furhmann v. East Hanover Bd. of Educ., 993 F.2d 1031, 1040 (3d Cir. 1993).

If a court finds a district's IEP inappropriate, then the burden shifts to the parents to prove that they have placed the child in a private school with an appropriate program. If the parents meet this burden, the court may, in its equitable discretion, award tuition reimbursement and transportation costs.[7] See Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 13 (1993) (approving reimbursement); Scott P., 62 F.3d at 533 (holding that parents bear the burden of proving the appropriateness of an alternative IEP). A court may award reimbursement even if the private school does not meet the IDEA's free-appropriate-public-education requirements.[8] See Carter, 510 U.S. at 13. In addition, the holding in Furhmann, that an IEP must be judged as of

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[7]The 1997 IDEA amendments allow an agency or court to reduce or deny the amount of reimbursement under certain circumstances, including if the parents fail to give the district written notice within ten business days of removing a child from public school, so long as an exception does not apply. See 11 Stat. 37, 63-64. No parallel provision existed under the IDEA prior to the amendments.

[8]The IDEA defines free, appropriate public education as:

> (18) The term 'free appropriate public education' means special education and related services that—
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> (A) have been provided at public expense, under public supervision and direction, and without charge,
> (B) meet the standards of the State educational agency,
> (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and
> (D) are provided in conformity with the individualized education program required under section 1415(a)(5) of this title.

20 U.S.C.A. § 1401(a)(18) (West 1990). The 1997 amendments do not materially change this definition. See 11 Stat. 34, 44.

the time the District offers it to the student, not in hindsight, applies with equal force to determine whether a private placement is appropriate. See discussion infra.

B. Case I

The issue in Case I is whether the court should award Rairdan's parents tuition reimbursement and transportation costs for the 1996-97 school year. The District does not challenge the Panel's decision that the District's proposed 1996-97 IEP was inappropriate.

Rairdan contends that the Panel's consideration of Rairdan's lack of progress on tests given at Janus in January, 1997,[9] amounts to impermissible hindsight review of the appropriateness of the 1996-97 Janus program. The District's position is that "evidence obtained a few months after the Janus placement which showed that the student was not making progress clearly is relevant to the issue of whether the program obtained by the plaintiffs was reasonably calculated to yield meaningful educational benefit." (6/30/98 Letter Br. at 4.) The District also makes the more fundamental argument that applying the Furhmann "no second guessing" rule in the private-placement context would eviscerate the admonition in Carter that parents who unilaterally place their child in a private school do so at their own financial risk. The District does not believe that it should have to reimburse parents who unilaterally place their child in a private school that does not comply with the IDEA's free-appropriate-public-education requirements and does not actually help a child make progress.

The court disagrees with the District. The Furhmann rule is based on the Supreme Court's command in Rowley that a district's IEP be "reasonably calculated to enable the child to

[9]These tests were the Slosson Oral Reading Test-R, the Diagnostic Achievement Battery-2, and the Developmental Test of Visual-Motor Integration-4R.

receive educational benefits." 458 U.S. at 207. The Rowley standard is also used to judge whether a private-school program is appropriate. See Rose v. Chester County Intermediate Unit, No. Civ. A. 95-239, 1996 WL 238699, at *8 (E.D. Pa. May 7, 1996) ("The statutory requirements of 1401(a)(18) do not apply to parental placement, and [the parents'] choice will be deemed proper for the purpose of tuition reimbursement if it is reasonably calculated to enable the child to receive educational benefit."), aff'd, 114 F.3d 1173 (3d Cir. 1997). Moreover, a court should not measure the appropriateness of a public-school or a private-school program by examining the student's progress or lack of progress in the program because factors other than the program itself can cause a student to succeed or fail in a placement. See Furhmann, 993 F.2d at 1041 (Mansmann, J., concurring) (positing that the student's progress at private school may have been due to the school's program, the student's maturation, or other factors).

The Court's admonition in Carter that parents who unilaterally place their child in a private school do so at their own financial risk in no way suggests that a private placement must yield actual progress to be appropriate. In addition, the court reminds the District of Carter's advice that: "public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can . . . give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting . . . . [S]chool officials who conform to [the IDEA] need not worry about reimbursement claims." Carter, 510 U.S. at 15. Even if the district fails to comply with the IDEA, the burden of proving the appropriateness of the private placement is on the child's parents, not the district.

The court also rejects the District's argument that, even if Furhmann applies, Rairdan's lack of progress at Janus can be considered in judging the appropriateness of the 1996-97 Janus

program. The court does not believe that this evidence can be used to judge the Janus program without violating Furhmann's "no second-guessing" rule. See Scott P., 62 F.3d at 534 (holding that the student's "failure to make progress in the 1991-92 IEP, a judgment made retrospectively, does not render . . . the 1991-92 IEP . . . inappropriate.").[10] In sum, the Panel erred by basing its conclusion that the 1996-97 Janus program was inappropriate, in part, on Rairdan's lack of progress at Janus.

The court also disagrees with the Panel's finding that the 1996-97 Janus program was inappropriate, in part, because the program did not follow Dr. Kay's recommendations. Dr. Kay testified unequivocally that the Janus program was appropriate for Rairdan. (See N.T. 367). Although the 1996-97 Janus program did not adopt each and every recommendation Dr. Kay made, the program substantially complied with Dr. Kay's recommendations.

Although the Panel criticized Janus for not conforming to Dr. Kay's recommendations that Rairdan receive a one-hour language tutorial, and a full period of instruction each day in spelling and functional written language, Dr. Kay explained that she made these recommendations with a public-school setting in mind. Assuming a different environment, a private school for learning-disabled students, Dr. Kay explained "[t]hen it's a different issue because now you're not percentaging the amount of time in specialized instruction, the whole day is reinforcing and part of the specialized instruction." (N.T. 415.) Thus, the fact that the 1996-97 Janus program offered only a thirty to forty minute tutorial and lacked a separate period of

[10]Rairdan's lack of progress on tests given at Janus in January 1997, however, is relevant to whether the Janus program for the 1997-98 school year is appropriate.

instruction each day to focus on spelling and functional written language is not detrimental.[11] In addition, Dr. Kay testified that the 1996-97 Janus program offered the right type of instruction for Rairdan, (see N.T. 367, 405), although Rairdan's "IEP"[12] did not specify the lengths of time of various types of instruction. (See id. 405.)

Another recommendation that Dr. Kay made was that "Rairdan's entire school day . . . be coordinated with the direct instruction approaches being utilized to upgrade essential literacy skills." (P-11 at 22.) The Panel did not mention that the 1996-97 Janus program met this recommendation. The 1996-97 Janus program offered direct instruction to Rairdan throughout the school day. (See P-13 at 3-6, 7, 10, 12.) Moreover, testimony established that Janus teachers, tutors, and the Director of Academics discuss, on almost a daily basis, the instructional techniques that they plan to use or are using with Rairdan. (See N.T. 504-05.)

The court acknowledges that the 1996-97 Janus program did not comply with some recommendations made by Dr. Kay and did not offer some items that Rairdan's parents had requested the District provide. Although the issue is a close one, given Rairdan's serious dyslexia, ADD, and motor-skill and visual-integration problems; the Panel's impermissible reliance on Rairdan's lack of progress at Janus to judge the appropriateness of the 1996-97 Janus

[11]Rairdan's language-arts class and his tutorial involved instruction in spelling and writing. (See P-13 at 3-8.)

[12]Janus considers the October 1996 diagnostic evaluation summary, along with the October 1996 initial reports, (see P-13), the private-school equivalent of an IEP for Rairdan. Janus used the time between the end of August and October to diagnose Rairdan through testing and by observing how Rairdan responded to instruction. (See N.T. 503, 548.)

program; and Dr. Kay's endorsement of the Janus program, the court finds that the 1996-97 Janus program was reasonably calculated to afford Rairdan educational benefits.[13]

Having found the 1996-97 Janus program appropriate, the court must decide whether to award tuition reimbursement and transportation costs. Equitable factors are relevant to this analysis, and the court "must consider all relevant factors, including the appropriate level of reimbursement that should be required." Carter, 510 U.S. at 16. Rairdan's parents enrolled Rairdan at Janus on July 31, 1996, and informed the District of the enrollment and requested a due process hearing during the first week of August, 1996. Compare Bernardsville Bd. of Educ. v. J.H., 42 F.3d 149, 156-58 (3d Cir. 1994) (denying tuition reimbursement for two school years because parents waited two years to request a due process hearing). Rairdan's parents also cooperated with the District to formulate an appropriate program for Rairdan[14] and shared independent evaluations of Rairdan and Rairdan's Janus progress reports with the District. Rairdan's tuition at Janus for the 1996-97 school year was $17,500 (excluding the $50

[13]To the extent that the District argues that Janus is not the least restrictive environment, this argument is misplaced. See Rose, 1996 WL 238699, at *9 ("The 'least restrictive environment requirement' . . . does not make sense in the context of parental placement . . . . [A] private school which provides specialized services for children with disabilities is likely to be a disabled-only school."), aff'd, 114 F.3d 1173 (3d Cir. 1997). Even if the least-restrictive environment requirement applies, there is no basis in the record to conclude that Janus is not the least restrictive private-school placement.

[14]No evidence confirms Rairdan's mother's testimony that she and her husband, through their attorney, Ms. Narehood, responded to the District's August 19, 1996 letter, which agreed to Ms. Narehood's request for a CER/IEP meeting and offered to make specific additions to the 1996-97 IEP. As Hearing Officer Smith found, Rairdan's parents believe that they rejected the District's offer through Ms. Narehood. In light of the parents' cooperative attitude on the whole, and in light of the District's failure to share disturbing Wechsler Individual Achievement Test results with Rairdan's parents at a pre-hearing conference in March 1996, this apparent lapse does not tip the equities against full reimbursement.

application fee). The court does not find this amount excessive and will award full reimbursement, plus transportation costs.

C. Case II

The ultimate issues in Case II are: 1) whether the District's proposed 1997-98 IEP was reasonably calculated to enable Rairdan to receive educational benefits; 2) if not, whether Rairdan's parents are entitled to tuition reimbursement and related costs for the 1997-98 school year; and 3) whether the Panel erred in awarding compensatory OT services.

Rairdan argues that the Panel erred in its scope of review in Case II. As mentioned supra, the Panel reviewed only whether the District's 1997-98 IEP complied with Hearing Officer Smith's May 2, 1997 order on the theory that res judicata and principles of reasonableness barred broader review. The District's position is that, because Hearing Officer Smith issued his opinion in Case I on May 2, 1997, and because the Panel issued its opinion on June 23, 1997, reviewing whether the District's 1997-98 IEP denied Rairdan a free, appropriate public education would be relitigating Case I.

It is well-settled that res judicata, now known as claim preclusion, applies to administrative proceedings. See Facchiano v. United States Dep't of Labor, 859 F.2d 1163, 1167 (3d Cir. 1988). Claim preclusion means that "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981).

The Panel erred when it applied res judicata to limit its review to whether the District's 1997-98 IEP complied with the May 2, 1997 order. Case I and Case II do not involve the same claims. Case I involved, inter alia, what program was appropriate for Rairdan for the 1996-97

school year, whereas Case II involved what program was appropriate for Rairdan for the 1997-98 school year. Rairdan argues persuasively that applying claim preclusion would prevent him from litigating whether the District's 1997-98 IEP complied with the IDEA's procedural and substantive requirements. Under the Panel's decision, the District could have offered a 1997-98 IEP that, for example, compromised Rairdan's education by leaving out entire sections that the IDEA mandates that a district include in an IEP. Whether the District's 1997-98 IEP offered Rairdan a free, appropriate public education was not litigated, and could not have been litigated, in Case I. See Special Educ. Op. No. 631, 21 IDELR 878, 878, 880 (1994) (explaining that a final administrative decision reached in the summer of 1994 regarding whether the District's 1993-94 IEP was appropriate would have no res judicata effect regarding the appropriateness of the District's proffered IEP for the 1994-95 school year).

The court must remand Case II so that the Panel can decide whether the District's 1997-98 IEP was reasonably calculated to enable Rairdan to receive educational benefits and, if it was not so calculated, whether to award Rairdan's parents tuition reimbursement and transportation costs for the 1997-98 school year. Rowley and Scott P. require this court to give "due weight" to the decision of the administrative appeals panel, with the exception of certain credibility-based findings made by the hearing officer. This court is not in a position to give the Panel's decision the required deference because the Panel limited its review to whether the District's 1997-98 IEP complied with the May 2, 1997 order. See Kroot v. District of Columbia, 800 F. Supp. 976, 983 (D.D.C. 1992) (remanding case to hearing officer who improperly shifted the burden of proof and considered evidence after suggesting it was excluded, commenting that "[i]f further review of [the hearing officer's] determination is necessary, the Court will have the benefit of the hearing

officer's expertise in education matters and will afford his determination the appropriate level of deference.").

The court will retain jurisdiction over Case II and reserve the issue of whether the District should provide Rairdan compensatory OT services until the Panel completes further proceedings. This approach will avoid deciding Case II in a piecemeal fashion.

III. CONCLUSION

The court regrets that the dispute between Rairdan's parents and the District has not ended. Although the court has determined that the District shall reimburse Rairdan for tuition and transportation costs for the 1996-97 school year, the Panel must consider whether the District's 1997-98 IEP provided Rairdan with a free, appropriate public education. The court notes that the parties have not, to date, reached an agreement regarding Rairdan's program for the 1998-99 school year. Perhaps the court will play a role in the 1998-99 dispute in the future. In closing, the court wishes to emphasize its agreement with Rairdan's parents that Rairdan should return to the District as soon as possible.

An appropriate order follows.

BY THE COURT:

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Edward N. Cahn, C.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAIRDAN M., by and through his parents and nearest friends, KERRY M. and LINDA M., Plaintiffs,	:	
	:	**Civil No. 97-5864**
v.	:	
SOLANCO SCHOOL DISTRICT, Defendant.	:	

RAIRDAN M., by and through his parents and nearest friends, KERRY M. and LINDA M., Plaintiffs,	:	
v.	:	**Civil No. 98-1672**
SOLANCO SCHOOL DISTRICT, Defendant.	:	

ORDER

AND NOW, this ____ day of July, 1998, upon consideration of Plaintiff's Motion for Judgment on the Record; Defendant's response thereto; Defendant's Motion for Disposition on the Record; Plaintiff's response thereto; and Defendant's letter brief dated June 30, 1998, and after oral argument, it is hereby ORDERED as follows:

1. Plaintiff's Motion for Judgment on the Record is GRANTED as to Case I (No. 97-5864). Defendant shall reimburse Plaintiff for tuition at The Janus School for the 1996-97 school year,

and for related transportation costs. Plaintiff shall submit to Defendant documentation of Plaintiff's transportation costs for the 1996-97 school year.

2. Case II (No. 98-1672) is REMANDED to the Panel for consideration of whether the District's 1997-98 IEP offered Rairdan a free, appropriate public education for the 1997-98 school year and, whether, if it did not, Rairdan is entitled to reimbursement of tuition and transportation costs for the 1997-98 school year. Plaintiff's Motion for Judgment on the Record as to Case II shall be HELD IN ABEYANCE until the Panel decides the foregoing issues.

3. Defendant's Motion for Disposition on the Record shall also be HELD IN ABEYANCE until the Panel decides these issues.

BY THE COURT:

_____

Edward N. Cahn, C.J.