



faith effort to reach an accommodation on the location question. If the parties were unable to reach agreement, we would reopen the record and take additional testimony pertinent to the issue at a supplemental hearing on March 28, 2011.

## **II. Supplemental Evidence**

The parties informed me on March 24 that it appeared that an agreement would not be reached; this was confirmed at the beginning of our supplemental hearing on March 28. At that time we then proceeded to take testimony from Parent and Lee Webster pertinent to the location of services issue.

In her post-hearing brief Parent posed three possible locations for Student's educational placement:

(a) That SWRSD pay for Student to fly back and forth to New Stuyahok to attend high school there;

(b) That SWRSD pay for Student to move to and live in Anchorage and receive educational and related services there;

(c) That SWRSD provide high school services in Ekwok, at the Sonny Nelson K-8 school there; this would include provision of physical education and interaction with other high school aged peers.

In addition, in my March 9 Summary Decision I posed a fourth alternative: that SWRSD assist both Student and Parent to move to and live in New Stuyahok, Koliganek, or Russian Mission, where high school services are already available and Student could live with Parent, thus avoiding the separation problems posed by the failed boarding home placements during the 2009-2010 school year.

The parties presented stipulations on March 28 concerning two issues.

They stipulated that SWRSD can provide internet service to Parent's home in

Ekwok (this had not been confirmed until recently). They also stipulated to the cost and schedule of flights between Ekwok and New Stuyahok on Mulchatna Air. One-way tickets for the five minute flights cost \$45, and there is a daily flight from Ekwok to New Stuyahok leaving at roughly 10am, with the air carrier informing the parties that the latest the flight would arrive in New Stuyahok would be 10:30am each day. The daily return flight leaves between 4pm - 5pm each day. The air carrier stated that flights get weathered out on average 5 - 6 days per month, which presumably would include weekends.

Regarding the standard daily schedule at the school in New Stuyahok, Ms. Webster stated that the school day starts at 9am and ends at either 3:15pm or 3:30pm. Ms. Webster also testified that it is a 15 - 20 minute ride by truck or 4-wheeler from the airstrip in New Stuyahok to the high school.

Parent presented testimony on March 28 concerning each of her three scenarios listed above. Parent testified that she would be willing to move to Anchorage with Student, that she and Student lived there for a time when he was in elementary school, and that she has family there. She further testified that Anchorage would be a desirable location for services because there are so many more service providers there.

Parent emphatically stated that she was not willing to move to New Stuyahok. Parent testified, however, that Student has friends in New Stuyahok and that there is one person there who could possibly provide a boarding home for Student if he were to get weathered in there. Parent testified that persons can

travel between Ekwok and New Stuyahok by snow machine in winter and by boat in summer, but there is a period in the spring when neither method can be used, when river ice is breaking up. Parent further testified that although the flight schedule between Ekwok and New Stuyahok would mean that Student would be late for school on days when he flew in the morning, she did not believe that would be a significant problem, given that SWRSD has contemplated a shortened school day for Student anyway. Parent also testified that she thought the separation problems that Student encountered in the 2009-2010 school year when he was living in Russian Mission full-time could be avoided if Student flew back home on weekends and perhaps once or twice during the week.

Regarding the possibility of Student's education being provided in Ekwok, Student's home village, Parent testified that to the best of her knowledge there is one other high school age student currently living in Ekwok. Ms. Webster testified that this student is being home-schooled in Ekwok. Ms. Webster also testified that the Ekwok school has four classrooms, a library and a gym, and that although there are only ten students plus one pre-schooler attending school there, the classrooms are fully used.

During discussion of the various location of services scenarios discussed above, it was disclosed that Student has been entirely without any educational services since an indeterminate date in December 2010. The one-to-one aide hired by SWRSD to provide services to Student in Ekwok terminated the arrangement in December, and since that time the only educational activity that Student has

participated in was a four or five day “transition camp” that he attended in Dillingham. Apparently no effort was made to replace the one-to-one aide after December. This means that Student has received only very minimal educational services for this entire school year.

### **III. Order**

The question of which party has the burden of persuasion on the issue of location of services was discussed at the close of the March 28 supplemental hearing. SWRSD’s counsel argued that Parent had the burden on this issue, since she requested the hearing and is seeking a placement that differs from that offered by the district. Parent’s counsel argued that this is not your standard, run-of-the-mill placement case, because the placements offered by SWRSD have failed so miserably. I agree that this placement dispute presents very extreme facts, in that the placements offered by SWRSD over the past two years can only be characterized as utter failures. Nonetheless, I find that these facts do not take this issue outside of the parameters of 4 AAC 52.550(i)(11), which provides that Parent has the burden of proving all of her claims in this matter by a preponderance of the evidence.

I find that Parent has not met her burden regarding locating services in Anchorage. Requiring SWRSD to place Student in Anchorage and coordinate his education with the Anchorage School District, while at the same time moving both Student and Parent to Anchorage and housing them there, would be a very extreme measure. Parent has not persuaded me that Student cannot be educated within the

boundaries of SWRSD.<sup>1</sup>

I also find that Parent has not met her burden regarding locating services in Ekwok. Apart from unresolved questions regarding whether the physical space at the Ekwok school would be adequate, my primary concern here is that in Ekwok Student would have minimal exposure to similar aged peers. Parent's counsel has not explained how an Ekwok location could meet "least restrictive environment" requirements of the law.

Parent, however, has met her burden regarding locating services in New Stuyahok. If Student attends school there he will be educated in an environment with a much greater degree of exposure to similar aged peers. Such a placement will have a decent chance of success if Student is able to travel between Ekwok and New Stuyahok an average of three times per week, so that Student in essence will be back home with Parent in Ekwok on weekends and one night during the week.

SWRSD is therefore ordered to immediately do the following:

(1) Plan for and begin implementation of the stay-put IEP in New Stuyahok; if this means hiring additional staff in order to be able to fully implement all services under the IEP, SWRSD shall do so.

(2) Make arrangements for Student's travel between Ekwok and the high school in New Stuyahok on a schedule where he flies to New Stuyahok on a

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<sup>1</sup> A failure of SWRSD's implementation of Student's stay-put IEP as ordered herein would likely set the stage for the more extreme measure of ordering that Student be educated in Anchorage.

Monday morning, can fly home to Ekwok on Tuesday or Wednesday evening, returns to New Stuyahok the next morning, then flies home to Ekwok on Friday evening for the weekend. This is a suggested schedule only; I leave it to Parent's discretion to determine if a different schedule would make more sense and better serve Student's needs. Under this schedule Student would only be making two round-trips between the two villages per week; SWRSD should however be prepared to fund three round-trips per week if Parent believes it is necessary for Student to be successful in his educational program. SWRSD is also responsible for ensuring that Student is transported from the New Stuyahok airstrip to the high school in a timely fashion.

(3) Facilitate on an expedited basis a boarding home placement in New Stuyahok where Student can stay on any nights when he does not return home to Ekwok either due to his regular schedule or due to being weathered in.

(4) Place Student in the 10<sup>th</sup> grade by granting him credits for the curriculum that was attempted in Russian Mission and Koliganek during the 2009-2010 school year.

SWRSD is reminded that the directives in the March 9 Summary Decision regarding ESY for summer 2011 remain in effect.

I cannot overemphasize the importance of starting this process immediately. Student has essentially been without any substantial educational services at all for the current school year, and last year the services he received were scattered and largely unsuccessful. Any further delays in delivery of services

will only exacerbate the regression of Student's skills and could result in further costly litigation between the parties, to the continuing detriment of Student's education.

#### **IV. Decision Deadline**

The deadline for the final decision in this matter was previously extended to March 29 per my order of March 18, 2011. In recognition of the complex and difficult issues posed by the location of services question and the need to take additional evidence on the issue after the parties were unable to reach an agreement, on March 28 the parties jointly moved to extend the final decision deadline by two weeks, to April 12, 2011. I find that good cause exists for the extension. Full findings of fact and conclusions of law in support of and incorporating both the March 9 Summary Decision and this Supplemental Summary Decision shall be issued in a Final Decision no later than that date.

DATED at Anchorage, Alaska, this 29<sup>th</sup> day of March, 2011.

*s/Andrew M. Lebo*

Andrew M. Lebo, Alaska Bar #9011106  
Independent Hearing Officer

#### **Certificate of Service**

The undersigned certifies that on the 29<sup>th</sup> day of March, 2011S, a true and correct copy of the foregoing Supplemental Summary Decision was served by email on Lea Filippi, Sonja Kerr and Parent.

*s/A. Lebo*

Andrew M. Lebo