

Local Hearing X

State Level Appeal



CASE CLOSURE SUMMARY REPORT

(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of the special education hearing and submitted to the Department of Education before [redacted])

[redacted] PUBLIC SCHOOLS
School Division

[redacted]
Name of Parents

[redacted]
Name of Child

[redacted]
Date of Decision

Pro se - [redacted] Ph.D.
Counsel Representing LEA

Pro se- [redacted]
Counsel Representing Parent/Child

[redacted] and [redacted]
in behalf of [redacted]
Party Initiating Hearing

[redacted] PUBLIC SCHOOLS
Prevailing Party

Hearing Officer's Determination of Issue(s):

The sole issue was the appropriate placement for [redacted] for the [redacted] school year. Hearing Officer, [redacted], Esquire, decided in favor of [redacted] PUBLIC SCHOOLS and that the appropriate placement is [redacted] School.

Hearing Officer's Orders and Outcome of Hearing:

That [redacted] School would provide [redacted] with the level of educational and clinical support that [redacted] requires and would provide [redacted] with a free and appropriate public education pursuant to IDEA, and that the conclusions of the IEP of [redacted] and the Administrative Review Committee of [redacted] is upheld, that [redacted] attend [redacted] School. This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

[redacted]
Printed Name of Hearing Officer

[redacted]
Signature

VIRGINIA:

PUBLIC SCHOOLS
(Due Process Proceeding)



In re:

[REDACTED]

FINAL ORDER OF HEARING OFFICER.

This Due Process Proceeding was conducted on [REDACTED] at the [REDACTED] Administrative Center, [REDACTED] Virginia. The sole issue is the appropriate placement of [REDACTED] for the forthcoming school year, commencing [REDACTED]

[REDACTED] Ph.D., in behalf of [REDACTED] Public Schools, provided the oral testimony of six witnesses, namely, [REDACTED] Ph.D., Psychologist at [REDACTED] School. [REDACTED] Assistant Principal and Program Manager at [REDACTED] School. [REDACTED] PS [REDACTED] Resource Specialist. [REDACTED] Psychologist at [REDACTED] School. [REDACTED] Psychologist with [REDACTED] PS, and [REDACTED] Ph.D., Special Education Evaluation Specialist.

[REDACTED] also offered into evidence 64 documents which were admitted as evidence in this proceeding.

The parents of [REDACTED] namely, [REDACTED] and [REDACTED] presented their case. Pro Se. and they were the only witnesses in behalf of their [REDACTED]. They offered into evidence medical reports from [REDACTED], M.D., [REDACTED] M.D., and [REDACTED] Ph.D., P.C. These documents were admitted into evidence.

The testimony of this Hearing consisted of 332 pages.

FINDINGS OF FACT

[REDACTED] was born [REDACTED]. [REDACTED] has lived alternately with each of [REDACTED] parents, who are separated. From the weight and preponderance of the evidence, I find that [REDACTED] is eligible for Special Education under the INDIVIDUALS WITH DISABILITIES ACT, (IDEA). [REDACTED] meets the criteria under the ACT as being [REDACTED] ([REDACTED]); [REDACTED] is of average or above average intelligence, and [REDACTED] does not meet the criteria of Learning Disability (LD). On [REDACTED] (two days prior to this Hearing) an Individualized Education Program (IEP) was held, which both of [REDACTED] parents attended with the IEP team, consisting of [REDACTED], the school psychologist, [REDACTED] PS [REDACTED] Resource Specialist, [REDACTED] Ph.D., Special Education Evaluation Specialist, and [REDACTED] General Education Teacher. I find that their determination, under IDEA criteria, that [REDACTED] qualified for Special Education with [REDACTED] and not a Learning Disability to be well founded and appropriate. It was determined that [REDACTED] requires an individualized, supportive/small group educational setting. Both parents indicated that they had an opportunity to participate in the development of the IEP, but did not agree with the contents thereof.

It appears from the record that it was first determined that [REDACTED] should be tested for Consideration for Special Education services by [REDACTED] Public School at [REDACTED] School on [REDACTED] (See Ex. 16). Since that time, nine IEPs have been conducted (Ex. 27, 28, 29, 30, 31, 32, 33 and 35).

[REDACTED] became eligible for Special Education as a student with [REDACTED] [REDACTED] on [REDACTED], suffering with depression and anxiety. [REDACTED] attended

school infrequently and was placed on homebound instruction as recommended by [REDACTED] own psychiatrist, who also prescribed drug medication. [REDACTED] declined to accept homebound instruction for [REDACTED] (Ex.31).

In [REDACTED], [REDACTED] was unilaterally enrolled by [REDACTED] parents in a private day school, namely, [REDACTED] where [REDACTED] attended more regularly (Ex. 33). The IEP team, however, recommended that [REDACTED] attend [REDACTED] School where special education and related services were to be provided. By letter dated [REDACTED], [REDACTED], Monitoring and Compliance Specialist for [REDACTED] Public Schools (Ex. 34) advised [REDACTED] that the Administrative Review Committee decided that [REDACTED] School was appropriate for [REDACTED] and would provide [REDACTED] with the level of educational and clinical support that [REDACTED] requires.

Although [REDACTED] School was recommended by the IEP teams for the past recent years the parents chose not to give the program a chance and instead enrolled [REDACTED] in a private day school similar to [REDACTED] School (Tr. 29, 30, 31, 32). The evidence showed that [REDACTED] School provides an educational and psychologically supportive environment for students, like [REDACTED] who have [REDACTED], with small (up to 10 students) classes and with all teachers having Special Education Certification and very importantly, access to its trained clinical staff (Tr. 20-72). The testimony of [REDACTED] was corroborated by the five other witnesses presented to testify by [REDACTED] Public Schools. These witnesses were cross-examined by [REDACTED] and [REDACTED] for a combined total of 161 pages.

In behalf of [REDACTED], [REDACTED] and [REDACTED] were the sole witnesses. None of [REDACTED] physicians, psychiatrists, psychologists or teachers was called to testify. No

representative of [REDACTED] was presented or subpoenaed to testify or to be cross-examined.

As stated, the parents testified in behalf of their [REDACTED] (tr. 359-402) and presented closing arguments. The major persuasive testimony of the said parents was that [REDACTED] liked attending [REDACTED] during the [REDACTED] school year (Tr. 364, et seq.). [REDACTED] attended classes more regularly, enjoyed the environment and earned good grades. Recently, [REDACTED] visited [REDACTED] School for a total of 45 minutes (Tr. 367, et seq.). I find that was not a sufficient test of the qualifications of the school. [REDACTED] although agreeing that this was not a sufficient test, testified that [REDACTED] "had an anxiety reaction to that school and wanted to get out of there as soon as possible (Tr. 370)." Unfortunately, we did not have the benefit of the testimony of the physicians, psychiatrists, or psychologists. We had only written reports which, of course, were not subject to cross-examination. It would have been most helpful to this Hearing Officer to have heard from them and examined and cross-examined them as to [REDACTED] [REDACTED] problems, their origin, their cause, medical reason, treatment and prognosis. I further find that the reasons expressed by [REDACTED] were self-serving and not supported by substantive, credible evidence.

CONCLUSIONS OF LAW

Based upon my said Findings of Fact, I hereby rule in favor of [REDACTED] Public Schools. The weight and preponderance of the evidence is too overwhelming to rule otherwise.

Accordingly, I uphold the conclusions of the final IEP team of [REDACTED] and the Administrative Review Committee of [REDACTED] that the proposed special

education placement of [REDACTED] School is appropriate for [REDACTED] and can provide [REDACTED] with the level of educational and clinical support that [REDACTED] requires and would provide [REDACTED] with a free and appropriate public education pursuant to law (INDIVIDUALS WITH DISABILITIES EDUCATION ACT).

If the parents desire to enroll [REDACTED] in [REDACTED] because they feel [REDACTED] will receive a more appropriate education at that institution, they must fund this program themselves.

APPEAL INFORMATION

This decision is final and binding upon all parties unless one or both parties appeal. Appeal must be made within thirty (30) administrative working days from the date of this decision. Any appeal must be addressed to the Virginia Department of Education, Richmond, Virginia.

Dated this [REDACTED] day of [REDACTED]

[REDACTED]

Hearing Officer

Copy to: Virginia Department of Education