

COMMONWEALTH OF VIRGINIA - DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING



State Level Appeal \_\_\_\_\_

Local Hearing  X

HEARING OFFICER'S AMENDED DECISION  
AND  
CASE CLOSURE SUMMARY REPORT

School Division \_\_\_\_\_

Parents, Initiating Party \_\_\_\_\_

Division Superintendent  Ph.D.  \_\_\_\_\_

Student \_\_\_\_\_

Attorney for School  Esquire  \_\_\_\_\_

Attorney for Family  Esquire  \_\_\_\_\_

\_\_\_\_\_ Hearing Officer \_\_\_\_\_

This certifies that I have completed this Hearing in accordance with regulations and have advised the parties of their appeal right in writing. A true copy of my Amended Decision was mailed to Mr. & Mrs. \_\_\_\_\_, Virginia

\_\_\_\_\_, Esquire, \_\_\_\_\_, Virginia ;  
\_\_\_\_\_, Esquire, \_\_\_\_\_, Virginia ;

\_\_\_\_\_, PhD., Special Education Director, \_\_\_\_\_, Virginia  
and Judith A. Douglas, PhD, Department of Education, Post Office Box 2120, Richmond, Virginia 23218-2120.

/   
Date

\_\_\_\_\_  
Hearing Officer

**HEARING OFFICER'S DETERMINATION OF ISSUES:**

WHETHER THE PARENTS OF \_\_\_\_\_ WERE AFFORDED THE OPPORTUNITY TO ATTEND AND PARTICIPANT IN THE PREPARATION OF HER INDIVIDUAL EDUCATION PLAN.

WHETHER \_\_\_\_\_ IEP IS APPROPRIATE.

WHETHER \_\_\_\_\_ SCHOOLS MUST PROVIDE THIS STUDENT WITH AN AUGMENTATIVE COMMUNICATION DEVICE KNOWN AS THE DYNAVOX 3100.

WHETHER \_\_\_\_\_ PUBLIC SCHOOLS CAN PROVIDE THIS STUDENT A FREE AND APPROPRIATE EDUCATION.

WHETHER A HEARING OFFICER CAN AWARD ATTORNEY'S FEES.

WHETHER \_\_\_\_\_ PUBLIC SCHOOLS MUST PROVIDE THIS STUDENT THE BEST POSSIBLE EDUCATION.

**PRE-HEARING REPORTS:**

- Pre-Hearing Report #1 - (
- #2 -
- #3 -
- Addendum to Report 3
- Pre-Hearing Report #4

**HEARING DATES:**

- Pre-Hearing Conference -
- Pre-Hearing Conference -
- Due Process Hearing -
- Due Process Hearing -

**APPEARANCES:**

\_\_\_\_\_, Esquire \_\_\_\_\_, Esquire  
\_\_\_\_\_, Virginia \_\_\_\_\_, Virginia  
\_\_\_\_\_, Virginia

**WITNESSES IN THE ORDER OF THEIR APPEARANCES:**

1. \_\_\_\_\_, Mother of
2. \_\_\_\_\_, Father of
3. \_\_\_\_\_, Speech Therapist, \_\_\_\_\_ Public Schools

4. Speech and Language Specialist Schools
5. Director of Homebound Services
6. Asst. Dir., Dept. of Special and Gifted Services

**APPLICABLE LAWS & REGULATIONS:**

Individuals with Disabilities Education Act, 84 Stat. 175, as amended,  
 20 U.S.C. 1400 et seq. (1997)  
 Part B Regulations, (1997) 34 C.F.R., Parts 300 and 301

Code of Virginia, §§ 22.1-213 et seq., 1950, as amended,  
 Regulations Governing Special Education Programs for Children  
 with Disabilities in Virginia, effective

**LIST OF EXHIBITS:**

1. Parents' letter to Homebound Coordinator -
2. , M.D., Child Neurology - Medical Form/Homebound -
3. Notice re: IEP Meeting -
4. Notice of Intent of Change Student's Program -
5. Notes from Student's IEP Meeting -
6. Speech and Language Evaluation -
7. Physical Therapy Evaluation -
8. Occupational Therapy Evaluation -
9. Parents Request for Speech, OT & PT - Complaint -
10. Homebound Instructional Report -
11. Parents' Proposal for Related Homebound Special Education Instruction -
12. Parents' Complaint to Virginia Department of Education -
13. IEP - Meeting date
14. IEP - Program Description parents agreed

15. Letter from \_\_\_\_\_, Ed.D to \_\_\_\_\_, Complaint Spec. -
16. \_\_\_\_\_, M.D. - Medical Form/Homebound -
17. Contact Report -
18. Contact Report Letter to Parents -
19. Letter re: Substitute Homebound Teacher -
20. E-mail Letter from
21. Memo re: Compensatory Time
22. Letter to Parents re: Substitute Teacher -
23. Contact Report - thru and
24. Memo from to
25. Contact Report
26. Memo from
27. Memo from to
28. Memo from to
29. Letter to Virginia Dept. of Education from NPS -
30. Memo re: Student's missed time -
31. Memo from to
32. Agenda Board of Education Meeting - ( )
33. Letter from to Virginia Dept. of Education -
34. Letter from re: Student's Needs -
35. Update from to Virginia Dept. of Education -
36. Letter form to Parents

37. 10 page Correspondence from \_\_\_\_\_ Public Schools to VA Dept. of Ed. -
38. IEP Draft-
39. Memo from \_\_\_\_\_ ; to \_\_\_\_\_ Re: Dynavox -
40. Speech/Language Progress Report -
41. Chronology -
42. Medical Application from Homebound Instruction -
43. Letter to Parents from \_\_\_\_\_ -
44. Memo from \_\_\_\_\_ to \_\_\_\_\_
45. Complaint-Continuing from Parents to Virginia Dept. of Education -
46. Notice of Complaint from Dept. of Education to \_\_\_\_\_ Public Schools -
47. Notice of IEP Meeting -
48. Proposed IEP with Letter from the Schools to Parents -
49. Memo from \_\_\_\_\_ ; to \_\_\_\_\_
50. Notes from \_\_\_\_\_ , Homebound Teacher -
51. IEP - \_\_\_\_\_ ; Parent agreed
53. 5 page Letter from NPS to Virginia Education -  
~~52. Functional and Vocational Skills - 1~~
54. Complaint letter from Parents to Virginia Dept. of Education -
55. Memo from \_\_\_\_\_ to \_\_\_\_\_
56. Memo from \_\_\_\_\_ to \_\_\_\_\_
57. Memo from \_\_\_\_\_ to \_\_\_\_\_

58. Notes from -
59. Memo from tc
60. Memo from \_ to
61. Request for Mediation -
62. Letter from Public Schools to Parents -
63. Note re: Parents' refusal to communicate
64. Progress Report -
65. Letter re: Mediation to Parents
66. Memo from to
67. 10 page Letter of Findings-Dept. of Education to School and Parents -
68. Memo from to - Parents refusal to retrieve certified mail -
69. Parents Rebuttal to School's Response to Parents Complaint dated
70. School's Letter to Virginia Dept. of Education -
71. Cover letter to Parents: Letter of Findings -
72. Virginia Dept. of Education Letter re: Investigation File -
73. Letter to Virginia Dept. of Education from Attorney -
74. Letter to Virginia Dept. of Education from Parents -
75. Request from Extension to file Appeal from Parents -
76. Request for Appeal
77. Notice of Appeal Request
78. Notice of Appointment to Review Appeal of Findings

79. Notice of IEP Meeting - ----
80. Letter to Parents re: IEP Meeting - .....
81. Psychological Evaluation - .....
82. Letter to Parents re: Psychological Evaluation - .....
83. Complaint Appeal - Decision Affirmed - Letter of Findings -
84. Request for Corrective Action Plan and Status of Remanded Complaint -
85. FOIA Request - .....
86. Parents' Letter Continuance Request for IEP - .....
87. Speech Pathologist Update .....
88. Contact Report -
89. Letter to Parents to Schedule an IEP -
90. Notice of IEP Meeting
91. Transcript of Students IEP Meeting -
92. Contact Report -
93. Notes from IEP Meeting - .....
94. Letter to Virginia Dept. of Education from Public Schools -
95. Parents' Complaint to Virginia Dept. of Education .....
96. Letter to Parents re: Triennial review - .....
97. Letter to Public Schools- Status Request -
98. Dynavox Invoice -
99. Letter to Parents' Attorney re: Appeal Request -
100. Homebound Instruction Medical Application -

101. Message from to -
102. Message #2 from to -
103. Complaint Closure Letter -
104. Letter of Findings Addendum -
105. Memo from re: Student's Status -
106. Memo from to :-
107. Letter to School -
108. Due Process Request -
109. Hearing Officer's Appointment -
110. Public Schools Response re: Corrective Action -
111. Schools Motion to Dismiss
112. Letter to Parents from School re: Compensation Services
113. Progress Notes ·
- 113a Witness and Exhibit List -
- 113b. Index of Documents for Hearing -
- 113c. Supplemental List of Exhibits
114. Parents Objection to Motion to Dismiss -
115. Hearing Officer's Pre-Hearing Report -
116. Hearing Officer's Pre-Hearing Report #2 ·
117. Hearing Officer's Pre-Hearing Report #3
118. Extension Request ·
- 118a. Hearing Officer's Addendum to Pre-Hearing Report #3 -
119. Extension Request #2 -
120. Pre-Hearing Report #4 -

**FINDINGS OF FACT:** ..... 1-6

**SUMMARY:** ..... 6-7

**DECISION:** ..... 7-9

COMMONWEALTH OF VIRGINIA : DEPARTMENT OF EDUCATION

Special Education Due Process Hearing : HEARING OFFICER'S  
of : FINDINGS OF FACT  
and : and  
Public Schools : DECISION

This Special Education Due Process Hearing was held in the School Board Building for Public Schools, [Hereinafter the School or S.] The final day of Hearing was . The transcript and all of the exhibits were received from the court reporter on [Hereinafter "T" and "Exh." respectively.]

All witnesses examined are as listed on the attached witness list in the order of their appearances. Their testimonies embodied in one Volume marked Transcript of Proceedings.

Based on the testimony of the witnesses, exhibits; federal and state laws; regulations and case law, I make the following:

By letter to dated and received the Parents requested a Special Education Due Process Hearing. The Parents believed that, among other things, the Student should have been provided with an augmentative communication device - Dynavox model 3100. They believe that the Dynavox 3100 should provide their with the necessary tools to acquire an expanded functioning vocabulary with growth potential. (Exhs. 8 and 39) The Parents believe that the device may enable their child to move in the direction of becoming involved in a regular classroom setting. (Exh. 108, pg. 2) The request for this Hearing further state that by not providing this Dynavox model 3100, the School failed to provide the best possible education for this Student.

FINDINGS OF FACT

Birth - 6½ months

The Student was born on , in Virginia. (T. pg. 11) is the third child of three children who live in with parents. (T. pg. 6) This Student was delivered normally and developed normally up through 6½ of age. The baby's milestones re: smiling, rolling over, teething, sight and etc... were within norms. Following third set of DPT immunization shots, stopped moving as should. (T. pg. 13) According to parents, became ill following the third series of shots. It is believed the illness resulted from a spoiled batch of the DPT immunization serum. (Exh. 82, pg. 2 and T. pg. 7) From the age of 6½ months until approximately 2 years, there was very little physical development. (T. pg. 14)

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conducted many evaluations and examinations in the attempt to pin point this child's disability. The parents were never given a definitive diagnosis. The Hospital gave the family a some communication devices.

At approximately at 2½ years of age and soon after starting Pre-School, was diagnosed as having cerebral palsy. (T. pg. 16) is a (T. pg.15)

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Student attended the Pre-School Program at through the age of years. (T. pg. 15)

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Student attended a Special Education program at until the age of or . (T. pg. 17)

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provided Parents with two and four button augmentative communication devices. (T. pg. 27; Exh. 4) Student graduated from this school's Kindergarten Special Education Program. (T. pg. 18)

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Following graduation, was transferred to Middle School.(T. pg. 19) Student was taking Clonazepam for spastic movements. (T. pg. 20)

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parents "sought homebound instruction for our disabled daughter due to a traumatic experience and medical condition." (Exh. 1 and 9; T. pg. 21) Student started homebound instruction October The instructions did not include speech, physical and occupational therapy.

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-Homebound Instruction

Student never physically attended School. (T. pg. 21) The Special Education homebound instruction went fine the first year. (T. pg. 21)

Also, the second year of homebound instruction went fine. (T. pg. 22). It was discovered the Student suffered "starter-reflex which is brought on by various sudden loud noises or when someone is behind ." (Exh. 1)

There were no pre- IEPs presented at the Hearing. The current IEP was approved by : on

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-Homebound Instruction

Neurologist described medical disability as " extreme sensitivity to light, noise or any kind of activity, unable to function in school environment Stimulus induced myoclonus. (Exh. 2; T. pg. 193)

The School sent a notice to parents of an intent to change the IEP. (Exh. 3) Parents were provided inaccurate information that while receiving homebound instruction this Student would not be entitled to receive related services. (Exh. 4) As soon as the School discovered the error, they tried to correct the error. (Exh.15, pg. 4) The Student received speech, occupational and physical therapy when attended school. (Exh. 4; T. pg. 23). had the use of many types of augmentative communications devices at School. (T. pg. 23-24) At home communicated..."by gestures, eye gaze, moaning, by nodding...sometimes actually pointing a finger. 'That is how we communicated.' (T. pg. 25)

Parents want others to be able to communicate with Student (Exh.11, pg. 2).

When this Student began homebound instruction, the related services of speech, occupational and physical therapy were not utilized. (Exh. 5)

The parents and the School met pursuant to the parents request to restore related services. The school acknowledged it erred by not revising the Student's IEP in ' ' when first began homebound instruction.

The parents felt betrayed in the blindly relying on the School's "teachers, you know, to tell us, you know, about the services." (T. pg. 29; Exh. 37)

Communications between the parties were very stained in when the Parents discovered the school failed to revise their IEP once began homebound instruction.

The parents filed numerous complaints with the Virginia State Department of Education. (Exhs. 9; 12; 41; 45; 54; 76 and 95).

The School offered compensatory time to make up for missed time. (Exh. 5) During the meeting the School offered the family evaluations to be conducted at their home.

There were times Parents walked out and/or refused further discussion, (Exh. 94, pg. 1-4) refused to accept mail from the School, refused phone calls.....(T. p. 53; Exh. 18 and 50) Parents did not want a male instructor.

The Parents refused holiday, summer and weekend instructional periods. (Exhs. 15; 41; 43 and 49)

The parents moved without notifying the necessary school personnel. (Exh. 55)

The School had a difficult time getting qualified homebound teachers. (T. pg. 196; Exh. 49)

The parents changed their telephone number without notifying the School.

When a parent became ill lessons were suspended.

Speech and Language Evaluations were conducted jointly with the occupational therapist in Student's home. (Exh. 6)

During the hour and a half observation, Student used eye gaze, facial expression and head nods to communicate wants and needs.

appropriately used the words "more and cookie"... repeated "ice cream" clearly. Inconsistent when asked to touch photographs of self and family members and was unable to use eye gaze to identify the same pictures (Exhs. 6 and 10). The parents questioned the therapist assessment (Exh. 12). has a very supportive family who works with diligently on a daily basis" (Exh. 6).

Physical Therapy Evaluation was done and Physical Therapist opined that Student would benefit from physical therapist services to monitor positioning and to check for any pressure points on skin. (Exh. 7)

The parents refused to share with the School the name of the Student's private speech therapist when the School suggested a joint opportunity to work with all professionals in an effort to share information. Parents informed School of their desire to keep this information separate. (Exh. 5 pg. 2)

Occupational Therapy Evaluation was done. (Exh. 8)

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#### Homebound Instruction

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Student's doctor completed the medical application for homebound instruction diagnosing disability as myoclonus, cerebral palsy and quadriplegia, anxiety. (Exh. 42)

School's Notice of Meeting of IEP Committee (Exh. 47) sent to Parents with draft of IEP.

Date of IEP Meeting, Mrs. : approved it

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Homebound Instruction

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Psychological Evaluation conducted. has limited hand grasp and usage because of hand deformities. parents indicated has an attention span of 5-10 minutes. For example, the homebound instructor can read a book to and will stare at the reader for the entire reading. can follow the directions of "look at daddy" and "touch your head". is generally a happy child (Exh. 81, pg. 2).

Speech Therapy Update reveals that the Student continues to be an excellent candidate for augmentative communication due to limited oral skills and need for a efficient non-verbal system with growth potential. (Exh. 87)

IEP Meeting scheduled Notice to Parents sent via certified mail. Parents neither appeared nor called. (Exh. 88)

In response to the Parents complaint regarding the type of device desired for their : The Virginia Department of Education provided the following definition for an augmentative and alternative communication (ACC). *The definition is from the American Speech-Language and Hearing Association.... "An AAC system is defined as an integrated group of components, including the symbols, aids, strategies and techniques used by individuals to enhance communication. The system serves to supplement any gesture, spoken, and/or written communication abilities.... Symbol-avisual, auditory and/or tactile representation of convention concepts (e.g., gestures, photographs, manual sign sets/systems, picto-ideographs, printed words, objects, spoken words, Braille); Aid -a physical object or device used to transmit or receive messages (e.g., a communication book, board, chart, mechanical or electronic or computer)." (Exh. 103, pg. 4)*

Virginia Department of Education, Division of Instructional Support Services, Office of Due Process and Complaints found that Public Schools provided this Student with appropriate services when a communication board was used in her instruction during the school year.

Also, the school loaned the family several other augmentative communication devices.

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Homebound Instruction

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Medical Application for Homebound Instruction completed. (Exh. 100)

Parents had a difficult time agreeing to some schedule for the instructors. (Exh. 101; 105; 106)

This Student demonstrates communication intent. Nonverbally, she responds through facial gestures, head shaking and pointing with her right hand. It is felt her verbal vocabulary can be expanded to respond to functional needs (Exh. 113)

### SUMMARY

This 7 year old Student is multiple disabled. She has cerebral palsy; stimulus induced myoclonus; tachycardia and is quadriplegia. She has never walked and requires a wheelchair and a lift.

The latest agreed upon Individual Education Program is dated 10/1/88 and mother consented

Beginning at the age of 2½ years, this Student attended classes in Public Schools until the age of 13 in which is when she began receiving homebound instructions. Her annual IEP was not updated when the change in placement occurred.

Her mother expressed having no problems with her special education homebound instruction during the first two years. She received the related services of speech, occupational and physical therapy while attending school.

In 1988 the School notified the Parents of an intent to change their IEP. The School proposed to delete the therapy components. The Parents felt betrayed when they discovered that their daughter was entitled to receive the therapies.

From that time in 1988 until the present, the parents and the School have had a very difficult time communicating, agreeing and providing instruction to this Student. In spite of the numerous difficulties, the Student continues to benefit from instructions and services provided by both her parents and the School. The Student has had available for instructions and communication many different types of augmentative communication devices.

The parents feel that a Dynavox 3100 will allow their daughter to expand communicative abilities while providing the growth potential. The school has provided the Dynavox 3100; however, at the time of this Hearing the instructional support services for the parents were not being provided by the School.

## DECISION

### WHETHER THE PARENTS OF \_\_\_\_\_ WERE AFFORDED THE OPPORTUNITY TO ATTEND AND PARTICIPATE IN THE PREPARATION OF HER INDIVIDUAL EDUCATION PLAN.

By letter dated \_\_\_\_\_, the \_\_\_\_\_, Public Schools notified the parents of this student of a scheduled meeting for the preparation of \_\_\_\_\_ IEP. The Notice included a copy of *Parental Rights and Procedural Safeguards*.

Additionally, by letter dated \_\_\_\_\_, Notice was mailed requesting their attendance and participation in the development of the \_\_\_\_\_ EP and to review the triennial.

I FIND that the parents were given the required Notices to participate and attend the preparation of \_\_\_\_\_ Individual Education Plan.

### WHETHER \_\_\_\_\_ ANNUAL IEP IS APPROPRIATE.

\_\_\_\_\_ IEP includes the following components as required by 8 VAC 20-80-62 :

- 1) A statement of her present level of educational performance.
- 2) Measurable Annual Goals
- 3) Special Education and Related Services
- 4) Date for beginning of services and modifications
- 5) Needed transition services
- 6) Measurement of \_\_\_\_\_ progress toward annual goals and how parents will be regularly informed.

\_\_\_\_\_ current annual IEP which was developed for the school year is designed to offer \_\_\_\_\_ educational benefit from \_\_\_\_\_ instructions and related services.

I FIND that the \_\_\_\_\_ IEP is appropriate because all the necessary components are provided in full detail with identifiable and measurable goals.

### WHETHER \_\_\_\_\_ PUBLIC SCHOOLS MUST PROVIDE THIS STUDENT WITH AN AUGMENTATIVE COMMUNICATION DEVICE KNOWN AS THE DYNAVOX 3100.

The Code of Virginia requires that the School provide supportive services to assist a disabled child to benefit from special education. The record is crystal clear that there are numerous types of augmentative communication devices available. The IEP does not require any specific model. It was not shown that Dynavox 3100 was the only device that will assist this Student to benefit from special education. Since the School has provided this device then this issue is moot.

*"Related Services" as defined in the Code of Virginia, §§22.1-213. et seq, 1950 as amended,....transportation and such developmental, corrective and other supportive services as are required to assist a disabled child to benefit from special education, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools and parent counseling and training.*

I FIND that since \_\_\_\_\_ Public Schools have provided the Parents with a Dynavox 3100, then the School must provide them with the instructional training needed on the use of the Dynavox 3100.

**WHETHER A HEARING OFFICER CAN AWARD ATTORNEY'S FEES.**

Neither the Code of Virginia nor the accompanying Regulations permit the award of attorney's fees.

**WHETHER \_\_\_\_\_ PUBLIC SCHOOLS CAN PROVIDE THIS STUDENT \_\_\_\_\_ A FREE AND APPROPRIATE EDUCATION.**

Free and appropriate education is defined "*as providing disabled children with a basis floor of educational opportunity,....[which] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.*" Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al. 458 US, 200-01, 102 S. Ct. 3034, IDELR 553:656 (1982).

When \_\_\_\_\_ began homebound instruction \_\_\_\_\_ had no speech, occupational and physical therapy provided by the School. The record is exploding with a numerous battles between the parents and the School. Instead of finding a way of communicating directly with the School over the Student's educational plan, the parents choose to bitterly find fault with everything the School attempted to do to rectify the error of not updating the IEP to reflect the change in placement. The parents exacerbated the error by limiting instruction time, refusing male instructors, making themselves unavailable on numerous times and etc... Additionally, the School has promised to continue to provide educational services to this Student through the age of 23 years.

There has been an unreasonable failure to communicate between the parents and the School which has resulted in the absence of a \_\_\_\_\_ IEP; therefore,

I ORDER that a current IEP be prepared on or before \_\_\_\_\_, which is 45 days from the date of this original Order. The IEP shall include a triennial review, compensatory time, speech, occupational and physical therapy. The IEP must continue to include all other statutory, regulatory and agreed upon services.

The current IEP coupled with the testimony and evidence received during this Due Process Hearing, demonstrate that \_\_\_\_\_ is being provided access to specialized instruction and related services that are individually designed to provide her educational benefit.

I FIND that \_\_\_\_\_ Public Schools can provide a Free and Appropriate Education to \_\_\_\_\_

**WHETHER \_\_\_\_\_ PUBLIC SCHOOLS MUST PROVIDE THIS STUDENT THE BEST POSSIBLE EDUCATION.**

In the Request for Due Process Hearing, the parents indicated that this student was "kept from obtaining the best possible education."

\_\_\_\_\_ Public Schools are not required to provide the best possible education to any of its students; therefore, I FIND that \_\_\_\_\_ Public Schools are not required to provide \_\_\_\_\_ the best possible education.

Both parties have the right of appeal in the State Circuit Court or in a Federal District Court within one year of this Decision.