

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 of the end of the special education hearing and submitted to the Department of Education before billing.)*

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

\_\_\_\_\_  
Name of Parents

\_\_\_\_\_  
Name of Child

\_\_\_\_\_  
Date of Decision

\_\_\_\_\_  
Counsel Representing LEA

\_\_\_\_\_  
Counsel Representing Parent/Child

\_\_\_\_\_  
Parent

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

\_\_\_\_\_  
Party Initiating Hearing

\_\_\_\_\_  
Prevailing Party

Hearing Officer's Determination of Issue(s):

Should the School Division have offered extended school year services in the summer of \_\_\_\_\_ ?

Hearing Officer's Orders and Outcome of Hearing:

Extended school year services denied.

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.

\_\_\_\_\_  
Printed Name of Hearing Officer

\_\_\_\_\_  
Signature

A handwritten signature in black ink, consisting of a large, stylized loop.



Re:

HEARING OFFICER'S OPINION

This hearing officer was appointed by letter dated \_\_\_\_\_, to hear the request by \_\_\_\_\_ for extended school year services during the summer of \_\_\_\_\_ for \_\_\_\_\_, a special education student finishing \_\_\_\_\_ grade at \_\_\_\_\_ School.

Officials of the \_\_\_\_\_ Public Schools had denied this request. \_\_\_\_\_ mother had rejected mediation.

The due process hearing was set for \_\_\_\_\_. At a pre-hearing conference by telephone between \_\_\_\_\_, the School Board's attorney, and the hearing officer, the matter was continued until \_\_\_\_\_ so another individualized education program (IEP) could be completed. On \_\_\_\_\_ and again during another telephone conference on \_\_\_\_\_, the parent requested a further continuance, but the hearing officer ruled that, considering time restraints, that would not be in the best interests of the child.

The hearing was held between 9:15 a.m. and 12:15 p.m., \_\_\_\_\_, at the office of the School Board. At the conclusion of the hearing, the hearing officer ruled that an Algebra I course, for credit, during the summer of \_\_\_\_\_ was not required to provide with a free appropriate public education (FAPE), but that \_\_\_\_\_ would be required to offer \_\_\_\_\_ enrollment in the scheduled summer remediation program for students who had not passed the Algebra I Standard of Learning test.

\_\_\_\_\_ did not attend the hearing. \_\_\_\_\_ mother was \_\_\_\_\_ only witness. \_\_\_\_\_ called as witnesses \_\_\_\_\_ mathematics teacher during the spring

semester of the school year; special education teacher, and  
; Ph. D., ; school psychologist, who examined one week  
before the hearing. introduced 37 exhibits (designated by number) and the  
parent introduced 8 (designated by letter).

School personnel had warned that was not ready for Algebra I, and that  
such a placement would be inviting failure (Ex. 17, February 3 statements of  
; guidance counselor  
; school psychologist , and special education teacher  
).

The testimony of , and Dr. was to the  
same effect.

Dr. said that lack of an extended school year in the summer of would  
not cause significant regression in 's progress, except to the extent that all students,  
not just special education students, will regress to some extent between the beginning and  
the end of summer vacation, requiring some review to take them back to where they left  
off. did not speak specifically in opposition to this opinion, although  
testimony and some of the exhibits might be characterized as implying felt that way.

On this state of the evidence, I find lack of the extended school year sought by the  
parent will not significantly impede or jeopardize progress.

Thus I conclude that lack of the extended school year in does not deprive  
of a free appropriate public education.

Ruling case law requires this conclusion.

Two recent opinions by the United States Court of Appeals for the Fourth Circuit govern application to this case of the Individuals With Disabilities Education Act, 20 U.S.C., Section 1400 and following. The federal courts are the final authority on interpretation of federal law, and United States district courts in Virginia and elsewhere in the Fourth Circuit's territory must follow its decisions. State courts theoretically are not so bound, but I am confident that, since interpretation of federal law and regulations is involved in every IDEA case, the Supreme Court of Virginia and Virginia circuit courts, on the subject of extended school year, would follow the Fourth Circuit cases discussed below.

For background, we look to the general principles, binding on all courts and hearing officers, set forth by the United States Supreme Court in Rowley v. Board of Education, 458 U. S. 176 (1982), where it was said that a school system, in providing a FAPE for a child with a disability, must provide services reasonably calculated to confer some education benefit, but is not required to provide the best possible education, and does not have to furnish every special service necessary to maximize a handicapped child's potential.

Applying these principles in the context of an extended school year, the Fourth Circuit Court of Appeals in MM v. School District of Greenville County, South Carolina, 303 F. 3<sup>rd</sup> 523 (2002), held that the United States District Court properly ruled that the school district was not required to reimburse MM's parents for the expense of providing private school services, plus at-home training, during the summer of 1995. (Many other issues were also involved).

The court said: "ESY Services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months. ..ESY Services are required under the IDEA only when such regression will substantially thwart the goal of 'meaningful progress.'"

The MM case was followed by the Fourth Circuit this year in JH v. Henrico County School Board, 326 F. 3<sup>rd</sup> 560, where it was agreed that ESY Services were required for an autistic child but the parents and school district disagreed about what services should be provided.

The IEP approved by Henrico would have put JH in a regular 10-week summer school program and he would also receive 10 to 20 hours per week of special education service plus consultation, instructional assistant, speech/language therapy and occupational therapy. The parents wanted these therapies to be provided at a higher level: that provided at the just-ended kindergarten year.

Henrico contended that the services provided in the summer 2001 IEP would meet the goal of maintaining the progress JH had made during his kindergarten year.

The parents said that in addition to maintaining such progress, ESY Services should be provided that would help the child to master the unmet goals provided in the kindergarten IEP.

The hearing officer in large measure sided with the parents. But after he ruled, the MM case was decided. The Fourth Circuit in JH remanded the case so that the hearing officer could complete the record by making specific findings on whether the

ESY Services offered, under the MM case standard, were adequate to prevent the gains JH made "during his regular kindergarten year from being significantly jeopardized...."

Following this test, [redacted], special education teacher in [redacted] and Dr. [redacted], the psychologist, were asked if [redacted] gains would be jeopardized if [redacted] did not have the summer Algebra I course [redacted] mother sought, and they said they would not. No witness said there would be such jeopardy.

In view of this, I must find that, under the test described in the federal cases cited above, denial of ESY Services this summer does not deny [redacted] an FAPE.

At the conclusion of the hearing [redacted], I stated orally that I would order [redacted] to give [redacted] access to the planned remediation class for students who have just failed the Algebra I SOL tests. Upon further study of the record—particularly educators' fear that revisiting Algebra I now without more preparation would be setting [redacted] up for failure with little likelihood of benefit (e.g., Ex. 16), I now withdraw that suggestion. Psychologist [redacted] statement that [redacted] first should take basic arithmetic in a learning disabled self-contained class appears more reasonable.

I withdraw that suggestion because (1) under the rule of the MM and JH cases mentioned above, on this record I have no authority to order any ESY Services and (2) probably [redacted] teachers are correct in thinking a summer remediation program designed for students who have narrowly missed passing the SOL's in Algebra I would not be helpful.

[redacted] asks for paraprofessional help for [redacted]. There is no specific requirement for this service, as far as I can tell. Sections 300.382 (b) and 300.136 (f) of the federal regulations simply say a state may allow paraprofessionals and assistants who

are appropriately trained and supervised to take part in the teaching process, and the evidence was that [redacted] Had a teaching assistant in pre-algebra.

Probably this will be provided if indicated under the proposed IEP for the school year (Ex. 37).

#### FINDINGS OF FACT

1. [redacted] is a [redacted]-year old who has just finished [redacted] grade at [redacted] School.
2. At all relevant times [redacted] has been rated as learning disabled and entitled to special education services.
3. [redacted] has been rated as of low average intelligence, with particular problems in mathematics and, to a lesser extent, in English.
4. [redacted] failed pre-algebra in the fall of [redacted] and Algebra I in the Spring of [redacted].
5. Lack of extended school year services in the summer of [redacted] will not cause significant regression in [redacted] skills or progress.
6. Another attempt at [redacted], without more preparation in lower-level mathematics would not provide [redacted] with a reasonable chance of success or substantial educational benefit.

#### CONCLUSIONS OF LAW

1. [redacted] is not entitled to extended school year services in the summer of [redacted].
2. [redacted] has not been denied a free appropriate public education.
3. [redacted] and [redacted] parents may appeal this decision to state or federal court within one year from the date of this opinion.

Respectfully submitted,

---

Hearing Officer

Virginia