03-020

August 28,

CASE CLOSURE AND SUMMARY REPORT

PUBLIC SCHOOLS
School Division

Parent

Name of Child

August 25,
Decision Date

Parent
Party Initiating Hearing

, Esquire

Esquire
Counsel for Child

Esquire
Counsel Representing the LEA

, Esquire
Hearing Officer

Parent
Initiating Party

Hearing Officer Determination of Issues:

Central Issue:
Was the initial evaluation IEP appropriate?
Sub Issues:
Was initial placement appropriate?
Does this child's IEP propose special education and related services to in the least restrictive environment/placement?
Was the parent entitled to compensatory education and related services?
Was the parent entitled to financial reimbursement for private placement and/or services privately provided?
Have the procedural requirements of IDEA been satisfied?
Did the school system improperly fail to consider 's school phobia/acute stress disorder, at the time of initial eligibility and IEP preparation?
Did the school system's failure to address 's psychological needs result in later academic difficulties and school nonattendance?
Is the child entitled to a second independent educational evaluation at public expense?
Has the school system properly addressed 's level of performance and strategies for in the proposed IEP's?
Is the BIP and transition plan proposed appropriate for ?
Did PS fail to address 's visual-perception problems at the time of original eligibility?
Did the failure to provide an assistive technology

evaluation until recently cause 's academic deficits? Has the Parent been afforded parental participation in the IEP process?

Hearing Officer's Order and Outcome of the Hearing:
The PS proposed placement and IEP's, past and present, now including behavioral intervention plan and a plan proposed to structure 's transition, do provide an appropriate placement for in the least restrictive environment:self-contained classes with regular education. ºS has not acted improperly. Parent has been afforded IDEA procedural rights. Parent has been afforded notice and parental participation in the IEP process. Parent is not entitled to a second independent educational evaluation at public expense.

Compensatory education for interim IEP homebound services granted to Parent, all other compensatory education and related services denied: financial reimbursement for private placement and/or private educational services denied.

This certifies that I have advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

Hearing Officer

Date: August 28,

VIRGINIA DEPARTMENT OF EDUCATION

PUBLIC SCHOOLS

August 25,

IN RE: , a minor, by parent and next friend,

D E C I S I O N

Introduction

The issue in this due process proceeding is whether or not this special education student has been offered a free and appropriate public education by Public Schools pursuant to the requirements of IDEA and regulations promulgated by the State of Virginia. Though there have been many peripheral issues, both parties would agree that the sufficiency of this child's IEP has provided the very matrix of this highly charged and often perplexing case.

This due process proceeeding was initiated on behalf of (" "), who was determined to be eligible by the local educational agency, Public Schools, (" PS"), as "Learning Disabled" now "Specific Learning Disability," on November 1, . (J-65) Eligibility qualified to receive special education and related services under the Individuals With Disabilities Education Act, 20 U.S.C. Sec. 1400, et seq., ("IDEA"), 34 C.F.R. Part 300; and the Code of Virginia, Sec. 22.1-213, et seq.

This hearing occurred on a succession of days as follows:

January 10, February 4, March 18, March 31, May 15, April 22, and on June 24, . The evidentiary record includes Joint Exhibits Nos. 1-124. There were three in-person pre-hearing conferences prior to the hearing. A motion for independent evaluation was withdrawn by Parent's counsel. Expert witness, , Psy.D., provided some testimony by telephone, Parent, , ("Parent") having consented individually to the taking of testimony via telephone, counsel for both parties having concurred in the motion.

Both parties were represented by counsel. , was represesented by , Esquire, and , Esquire. PS was represented by , Esquire, and , Esquire. Appearing for the school system, were , Director of Special Education, PS, and , Assistant Director of Special Education, PS.

Parent contends that s IEP prepared by PS has never properly nor accurately incorporated parental input into child's IEP, the consequence being that 's academic, medical, social, and psycological needs have never been met in school. Significantly, Parent asserts that 's psychological profile reflects medically identifiable symptoms of "acute stress disorder." Alternately, Parent defines 's apparent stressor to be school or "school phobia." It is interesting

to note a prominent attribute of 's school phobia: 's aversion to school is restricted exclusively to "public school" (Tr.I, p. 82, l. 23 -25; Tr. I, p.83, l. 1-10) personnel and students. 's fears do not extend to "private" or "home" school events and individuals, the latter having been described in bucolic terminology by . To , "public school" is defined as being "like a children's jail." (Tr.I - p. 74, l. 23-24).

Parent asserts that s school phobia is clearly autonomous and directly attributable to two school incidents which were repeated contemporaneously to Parent by as follows:

> Q. Okay. Now, when did you raise --- to the best of your recollection when did you raise the issue with the school about 's fears of going to school?
>
> A. After came home from school with me one day, and said to me, ['s second grade teacher] took a kid and shook so hard I thought neck was going to snap off. I, in fact, told --- I said, , what are you talking about? And said, Well, the little was helping put something in cubby that had dropped, and was helping pick it up because didn't know how to put something in, I guess, the school, and was pretty I guess the kid that knew everything in the classroom, so , in fact --- this went over, grabbed the little and shook That's what told me."

(Tr.I, P.159, l.22-25; Tr. I, P. 160, l. 1-11)

Parent recalls that it was at this distinct juncture in s early school experience that began to dread school as follows:

Q. The question was at what point did you make the school aware that had developed a fear of the school because of the incident?
A. Actually, it was right after the incident, about a week or so --- about a week after when -- it wasn't even a week really; it was more like two or three days when started feeling that didn't want to go to school. At first it was would get up in the morning, you know, and was all cheery, and we'd get ready to go out the door and would start feeling sick.

(Tr.I, P. 161, l.20-25; Tr. I, P. 162, l. 1-5)

After 's teacher was changed, Parent noted another major event during 's second grade year: 's new teacher, , "would bring in a stack of work, throw it down on desk, and say, You did not finish." (Tr. I, P. 179, l.20-22) Further, Parent lamented that would give a folder of work and require that finish the missed assignments or was precluded from treats such as movies, ice cream, special school events, and outside recess. (Tr. I, P.181, l. 17-24) Parent characterized the sum total of these punishments as "child abuse...It was no longer an educational environment. It was an abusive environment." (Tr. I, P. 182, l. 9-11)

Parent assserts that expressed concern regarding these two incidents which alleges form the basis for 's overwhelming fear of school. Testimony regarding Parent's reaction to these incidents was related as follows:

"And during this entire process that I tried to bring this to the attention of everyone in the school system from the principal to the

> administration because they knew what had actually occurred and what was occurring in the classroom was, in fact, abusive. They decided, from my perspective, they decided to cover up. To make it as a cover-up."

(Tr.I, 182, l.19-25)

Further, Parent noted that an IEP, to be acceptable to , should have addressed s inability to complete "missed assignments." In light of 's learning disability, Parent asserted, it took "two to three hours" for to complete one assignment "that would take the average child approximately ten to fifteen minutes" to complete. (Tr. I, P. 180, l. 19-21).

Soon after this sequence of events, Parent testified, began to realize that 's learning disabilities were now magnified by an additional problem: school phobia. (Tr. I, P. 181, L. 10-12).

The above seminal events in 's first two to three months of second grade year, Parent testified, caused to realize that had to insist upon psychological components at the time of 's initial evaluation and eligibility.

BACKGROUND

was born three months premature on January 2, . (Tr. I, P. 147, L. 23) At first, did not appear to experience any early childhood developmental delays after birth (Tr. I, P. 148, l. 4-6). 's learning problems did not begin until entered School, a public school, for kindergarten. (Tr. I, P. 146, l. 7-9)

attended first grade year at Primary School, located in , Virginia (Tr. I, P.148, l. 11-19) where was placed in a "developmental" class. Parent reported a positive, happy year (Tr. I, P. 151, l. 8-14) for 's first grade year. Parent reported that the school system had originally resisted effort to place in a developmental class (Tr. I, P. 148, 14-15) but had agreed to do so after Parent "... brought it to the attention of the principal at Primary" (Tr. I, P. 148, l. 13-14) after Parent realized that "... really wasn't on par." (Tr. I, P. 148, l. 18-19) The "Referral Checklist," (J-80) notes that attended about "nine weeks" of developmental first grade, then was homeschooled.

Parent reported that 's negative perceptions of public school occurred shortly after 's entry into new school, Primary, , Virginia. During testimony, Parent recalled that " nobody in the school greeted us. Not a single person when we walked in, and that gave me a cold feeling, but I did not mention that to ." (Tr. I, p. 152, l. 14)

Originally, Parent suggested to , the Primary, Principal, that required a referral to the child study team for IEP testing. (Tr. I, P. 154, l.10-11) Parent indicated, according to testimony, that had already begun a neurological developmental study

on by ."(Tr. I, P. 154, l. 12-15)

Parent explained to that was concerned about 's tendency to write backwards and "sometimes," could not remember letters of the alphabet. (Tr. I, P. 154, l. 16-21)

On September 25, , and , 's two second grade teachers, initiated referral of for special education services. (J-80) On the face of the referral form under the heading, "Factors Affecting Classroom Performance," the following notation was written:

"Tardies - almost daily general(sic) arrives 9-9:30 am. Leaves on Thursdays for appointment around 10:30 - for the day. According to parent - frequent tardies due to stress from previous teacher. (J-80)

Cited therein as the "Reason for Referral" are the following notes: "Beginning first grade reading level" and "Beginning first grade math skills." Under the "Program Adjustments" section, apparently written by a teacher, this note appears:

"I have arranged w/ to have receive 30 min. per day Reading Resource. Also, will only have 3 students in reading group in classroom. Work with independently for math drill and practice for basic facts." (J-80)

Apparently in another teacher's handwriting, in this section, the following notes appear: "Preferrial (sic) seating" and "Support will not be provided until RRT and parent met (sic)." (J-80) Although the referral form indicates that is a "very verbal - interesting" child with "good manners, the report card for this time period indicated unsatisfactory

progress in reading, math, and spelling. First grade reading and math levels are noted. Parental input for preparation of referral document is reflected: "Parent indicates exceptional vocabulary and high IQ." (J-80)

Regarding "Procedural Safeguards" and as evidence of "Prior Written Notice and Consent" pursuant to the requirements of IDEA, the following components may be considered in eligibility assessments and, if offered, these evaluations will be at no no cost to the parent: educational, medical, sociocultural, psychological, developmental, speech and language. As cited on the face of this document, the rationale for the recommendation to assess was based strictly upon the following: ' exhibits reading & writing ad (sic) math difficulties." (J-80) As stated therein, the school system considered the following options before requiring formal evaluation of : "Evaluations provided by outservices, classroom placement, preferential seating, parent conference." Evidently, these options were considered insufficient for because of "Continued academic difficulties." (J-80) The sole component recommended for 's initial special education evaluation was "Classroom observation." Parent executed consent to this document on October 11, . At the bottom of this document Parent has executed the following note: "Have received parental rights 10/11/ ." (J-80)

Incorporated into the referral documentation mentioned

above is a document entitled, "Classroom Observation," dated October 13, and the information contained therein is referenced as follows: "Note Behaviors and the Relationships of Behaviors to Academic Performance:

1. demonstrated appropriate classroom behaviors.
2. followed directions.
3. Volunteered & answered some questions correctly.
4. was somewhat hesitant when was asked to recall or read information off of a chart.
5. worked cooperatively with the other students in small group activity.
6. Social interactions and communications with the other students were appropriate.
7. Attention skills during the large group activity were variable."

(J-80)

Classroom observation was conducted on October 13, by , School Psychologist, of a Social Studies class, in which the academic activities observed were group discussions and small "hands-on" group activities involving three students. This observation lasted for forty-five minutes. (J-80)

On September 27, , the child study team met. Parent participated in this meeting: Although "frequent tardies" were noted as a concern by the team, Parent attributed 's tardiness to "stress and anxiety while in 1st classroom setting" (J-80) One of the factors noted was 's "difficulty focusing and staying on task in a classroom setting." (J-80) As an interim strategy, the child received one reading session, thirty minutes in duration. (J-80) Preferential seating was suggested. Again, Parent's comments appear on the face of this document: "very verbal, exceptional vocabulary, high IQ. (Parent Report)" The

referral document marked Parent "present" for the child study team meeting.

During this meeting, Parent mentioned that had been evaluated by , M.D., Director of Developmental Disabilities, Children's Hospital of the Kings Daughters (CHKD). Also named by parent was , Ed.D., Reading Specialist and Educational Diagnostician, who had evaluated . Parent noted 's "visual perceptual" problems since kindergarten. At parent's insistence was placed into a "developmental" first grade . Minutes of this meeting reflect that was withdrawn from first grade class, according to Parent, because "Mother felt the environment was "too stimulating" and [Mother] had "concerns" about the teacher. According to the minutes, Parent stated that after withdrawal, "began homeschooling at ." Parent agreed to provide the school with the reports of and . In addition, would provide the "IEP that was being written by ", along with the evaluations which would also be shared with the Eligibility Committee. Parent alleged that , a Neurodevelopmental Specialist, had diagnosed visual/perception difficulties as a basis for 's poor academic performance.

Minutes reflect that Parent would provide the school with the evaluations by the week of October 2, . Parent scheduled an appointment with for October 4, . A child study meeting was to occur on September

27, . It should also be noted that the meeting notes indicate that the second grade classroom teacher, , had already been changed for by September 25, . By September 6, , the Reading Resource Teacher, , had already begun to work with one-on-one. , the school reading teacher, noted some inconsistencies and letter reversals. (J-80) The extent of parent participation in this document is evident: Even s outside interests are noted: Scouts, dance, and Taekwan-do are reported to be "very positive for ." (J-80)

On October 11, Parent provided medical evaluations. The eligibility team advised parent that all of the information provided would be reviewed and PS would determine whether or not all of the information then compiled was sufficient for an eligibility determination. Parent provided an outline for 's IEP which listed eighteen accommodations, the same having been proffered by Parent and drawn up by the parent along with upon consultation with Parent reported that yet another medical opinion be obtained for alleged "attention issues." (J-80)

's report of October 4, (J-79) recommends: "Self-esteem building activities" were deemed beneficial to the "treatment and management of 's learning disabilities." Reading difficulties were noted along with a general academic underachievement "secondary to visual perceptual deficits." (J-79) It is clear from this report

that s opinion specifies that an IEP be created in order to address s learning disabilities. report clarifies one aspect of the IEP to which refers: needs one-on-one reading interventions with a reading specialist. (J-79) It is significant to note that 's verbal cognitive skills are in the normal range according to . (J-79) 's report is somewhat inconsistent with 's report: also gave a battery of educational tests: describes a child of "normal intelligence with soundly developed expressive and receptive vocabularies." (J-77) Further, report of October 7, , opines as follows:

> was not found to have any "major learning differences" except for then emerging "visual perceptual skills." (J-77) Visual-motor skills were considered "good." " handwriting was well-controlled and neat although there were some reversal tendencies." (J-77) reported that " " had acquired almost no literary skills." (J-77) When did attempt to spell, however, was quite capable of sounding out the words. concludes as follows: "Some of 's literacy problems could have evolved from 's not having been provided with an on-going, organized, structured reading program." (J-77)

suggested different kinds of remedial reading programs for whom described as "virtually a non-reader." (J-77) Specifically, cited the techniques of the "Open Court" series as a successful reading

methodology. suggested that 's instruction be intense, through drill and reinforcement, until has mastered vocabulary, phonics, and reading concepts. (J-77) Instructions must be "very, very carefully-applied" and in the beginning, instruction must "move slowly, deliberately, and carefully." (J-77)

On October 12, , Parent was sent a letter by PS in which the school expressed concern for the number of tardies (13 out of 25 days) and absences (4 out of 25 days) had accummulated. 's attendance record for the year 20 -20 reflects that of 75 days on the roll, was absent 33 days. (J-4) As early as September 28, , Parent received correspondence regarding 's absences in which , Assistant Principal, notified Parent that Virginia law does not permit a parent the option of a combination of home school and public school. Thus, Parent was formally notified that 's "Thursday" (homeschool days) absences and tardies could not be excused. (J-2)

It is significant to keep in mind the chronology of events during s first few months of second grade for this consideration is critical to determination of this matter. Parent asserts that PS did not properly consider a psychological component to the original IEP. The crux of this case is this: Parent alleges that all of 's problems began with the foregoing omission. Thus, it is necessary to consider the cautionary letter to Parent from PS,

not as a separate event, but in the context of all events that occurred during this timeframe: 's child study team was meeting to determine eligibility.

was undergoing batteries of educational testing and observations at school, CHKD, doctor's offices, and at the offices of other professionals. On Thursdays, the child was being removed, was conspicuously late, or didn't appear at all. knew that was behind in school work. In light of the focus that must have sensed, it is quite reasonable to assume that may have internalized negative thoughts at the mere mention of school. Children are very sensitive to the attention of their peers at any age. Children abhor the attention that "being singled out" causes. 's move from 's to 's class, in a new school, from one class to another may very well have embarrassed terribly.

On November 2, , after much discussion with Parent, review of various evaluations by medical and academic experts, review of classroom observations by teachers and the school psychologist, was made eligible to receive special education and PS began the IEP process with apparent participation by the Parent. was originally determined to be "learning disabled," according to one of the first, unsigned IEP's (J-3).-3). There are test scores signifying 's current levels of performance from the WRAT-3 as

follows: (J-3)

SUBJECT/DOMAIN	STANDARD SCORE	GRADE/AGE
Reading	77	mid first grade level
Spelling	80	mid first grade level
Math	70	beginning first grade level

The above scores depict "weaknesses in all academic areas," though strengths are described in "behavior, social, and expressive and receptive language skills." Writing skills are also noted to be a problem as well. (J-3)

Originally, the following allotted hours were to be incorporated into 's weekly special education schedule: (J-3)

Service	Time per week	Completion	Location
Language Arts	1200 minutes	6/14/01	LD class
Mathematics	600 minutes	6/14/01	LD class
Social Studies &	300 minutes	6/14/01	LD class
Science	300 minutes	6/14/01	LD class

Regular classroom activities were as follows:

Physical Education/30. minutes 2x week
Computer/30 minutes per week
Library/30 minutes per week
Art/60 minutes 2x week
Music/30 minutes per week
Recess/15 minutes per day
Guidance/30 minutes per month Total: 500 minutes per week

was to receive the accommodations as follows: Tests were to be read, instructions were to be paraphrased, was to be seated near the teacher, the teacher assigned to improve 's reading skills was to consult with the reading teacher regarding strategies and, finally, would be required to keep an "agenda" notebook. (J-3)

's "goals and objectives" for second grade year

appear to be structured appropriately from levels of performance and the same appear to assist 's eventual mastery of each of documented academic deficiencies. (J-3)

Each element of the original IEP document presented to the Parent reflects the tenor and instructive language of the and evaluations which, though inconsistent with each other, had addressed careful strategies for to achieve academic success. It appears that PS made a sincere effort to include many of the suggested elements extrapolated from the two then existing independent assessment tools: one-on-one instruction by the reading teacher, small group and whole group discussions, individually tuned reading materials (J-6).

, Special Educator, in a "Conference Summary" note records highlights of a detailed conversation with Parent and concerning the form of curriculum would receive. Parent inquired about the reading program to be used (Scott Foresman, a reading program adopted by 'S, the approved reading curriculum). PS appears to have appropriately and respectfully dealt with parent's suggestions that school system consider certain other reading curriculum, the "Open Court" series, suggested by Parent questioned the class size, student numbers, reading curriculum, computer used, goals and objectives. These elements

appear to have been discussed extensively with the parent. Further, the degree to which parental participation is evident in all phases of IEP preparation is quite remarkable. Toward the conclusion of this conference summary note,

wrote: "It was also stressed that the IEP was a JOINT project, to be written in conjunction with the concerns/ideas of parent, special ed. administrator, NOT ONLY parent or vice versa. (J-6)

Examination of record in this matter reveals the following "Conference Summary" note recording a conversation that occurred between the Parent, , and , on November 15, : Parent "requested that the following issues be discussed: 1. 's fear of school. 2. needs to feel safer in school. 3. 's feelings about being isolated in the classroom. 4. 's desire to be treated with respect." (J-10)

Shortly after Parent had discussed these issues, , School Principal, related the problem to , School Psychologist, and to , 's teacher. related 's frame of mind at that time: (J-10)

> ' talked with to see if was afraid to come to school. seemed relaxed and happy as discussed evening and morning routine with . As the close of the school day was approaching, asked to meet in the morning at 7:55 to continue with their talk. appeared to be in agreement with this suggestion." (J-10)

On the same date, November 15, , excerpts from the following "Conference Summary" note, written by , 's second grade classroom teacher, appear as follows: (J-11)

"As I lined up the children after lunch and brought them through the hallway, approached me with I greeted them and asked if had a chance to eat lunch. I told while I had there that I would be sending more missed work home with , however, I still have not received any back for three weeks. I asked if had been receiving the work I've been sending home. said yes had received it but wanted to know why I was harassing in school and stressing out. said hated coming to school and I was a bad influence on . stated that I isolate and make work all day. When I told I needed to get my class upstairs and we could discuss this at a later date, continued to argue and followed me up the stairs. (This outburst began and continued in front of all the students and parents that came to eat lunch."

I asked her why was coming up to the class and if had permission. said she didn't need any and wanted to observe and make sure s not isolated. I explained to we had a parent here to read therefore we were not doing anything for to observe. pulled up a chair and refused to move. After settling the children I came down to the office to get . We found at the counter in the office. indicated she wanted to see .

We all walked into 's office where demanded our attention to 'concerns.' let know we were here to address behavior in our school to our teachers, in front of the students, parents, and other staff members. let her know it was unacceptable and had to have permission to be in the classroom. excused me so I could get back to my class. As I walked to the door, began to raise voice and tell that was being isolated, harassed and treated badly in the classroom. I turned and asked if I could set the record straight so couldn't make up any more stories.

I began by first asking to listen to what I had to say and please not interrupt me like had done in the hallway. told me to go ahead. I began to assure that was not being harassed or isolated in our classroom and was treated like each of the other nineteen other children... I have a 'We missed you' folder waiting in their seat filled with all the work they missed while they were gone. When they return they are to take the work home complete it and return it to me so they won't receive a zero. I explained that has only been in schooL for five days out of the last three and a half weeks! Out of those five days came to school between 9:00-11:35 so they were really half days. denies this and I told we would be happy to show

our attendance sheets.) I continued to explained (sic) that I have been sending home packets of missed work for three weeks now and have not received anything back from . I've sent several notes home and have also tried to contact by phone. Because of this, the past two times has come to school (at 11:35) I have sat at my back table with packet of work and explained to that since is not completing it at home will need to complete it at school. will not be able to participate in any incentives or games that the rest of the class has earned until work was completed.

. I simply told , I can't teach a child that is not in school... When decides wants to come to school at 11:35, I am not going to interrupt our activity to privately re-teach all the lessons has missed. needs to be at school every day on time like every other child. I'm not making special accommodations and special procedures for ... I also told that if my teacher assistant [is] in the room when walks in the door will sit with and help explain some things and give any make-up tests that 's missed. Again I explained I could not leave nineteen children when walks in the door and give private lessons on what has missed. I will treat like any other child that has missed work. Until they make it up they will not participate in any extra activities." (J-11)

Regarding the numerous notes sent home to Parent by with the request to "Please sign and return," indicated to teacher that had seen the notes but that "doesn't want to sign them." (J-11) It should be noted that at the time of the above encounter between Parent and , had become eligible for special education services, however, though discussions were ongoing, Parent had not yet consented to the IEP.

The record recites numerous instances thereafter wherein Parent was apprised of alleged failure to comply with Virginia State regulations regarding compulsory attendance. (letter sent to Parent on September 28, J-2 , letter sent to parent on December 8, J-20, school social

worker, , home visits by on November 20, and November 27, , J-16) Eventually, PS referred the entire matter to the City of Department of Social Services for attention (J-18). On January 3, , correspondence to Parent (J-24) informed Parent that has been withdrawn from Primary School because " has been absent fifteen consecutive days for no reason. Absences were recorded as follows: December 4, -January 3, . " has been absent 33 days and tardy 31 days from September 6, to January 2, ." It should be noted that Parent's dispute with PS did not suspend Parent's duty to send to school. Eventually, referral was made, by CHINS petition, to the Juvenile and Domestic Relations District Court, In the Matter of , a Minor, , a temporary disposition was entered pursuant to Virginia Code, Section 16.1-278.5. (J-37) Significant to this examiner is parent's attitude of defiance, as evidenced by signature upon the face of this court order: Parent has written the word "disagree" under the Judge's endorsement of the order. Apparently, was subjected to the full drama of this proceeding: On the left hand side of the disposition page of the order, the adolescent, yet concise handwriting of a child appears and the signature, " ," is written in the space for "child." This CHINS proceeding, however, appears to have been the natural progression of the truancy matter: letters were sent home, the school psychologist and school social worker intervened, however,

these conciliatory measures simply did not resolve the school absence problem. Final disposition of the CHINS matter occurred in the above matter on August 26, . Finding of the court cited Parent's objection to the IEP, medical reports of a therapist [ ] who stated that the child was not ready to attend school .... transferred/transition to public school per school, awaiting home schooling verif. [verification] (J-66)

Notwithstanding Parent's explanation for absences, was not present in school during a significant portion of second grade year. Subsequently, was formally withdrawn by Primary School, on January 3, (J-24) for consecutive, unexcused absences. The record reflects that there were instances when Parent was advised that Virginia law does not recognize a combination of home school and public school. The record suggests that parent would not accept this prohibition to be binding upon .

As set forth on the "Notice of Intent to Provide Home Home Instruction" (J-84), required documentation for parents who intend to provide home school, the statutory guidelines of Section 22.1-254.1 of the Code of Virginia, 1950, as amended, are clearly defined: A parent must mark a space to indicate the home school provider and plan on the form.

On this, the record of this hearing is quite clear: Parent has checked off the spaces that depict situation as follows: "I have the qualifications prescribed by the Virginia Board of Education as a teacher. I have attached to this notice a program of study for the coming year which includes the state

Standards of Learning objectives for language arts and mathematics for each child. Also, I have attached a statement which states why I am able to provide adequate education for my child(ren)." (J-84)

Testimony revealed that Parent does not personally have the qualifications prescribed by the VDOE. (Tr. III, March 18, , P. 28, l. 19 - P.40, l. 9) Parent did attempt to justify thoughts about the application for home school approval. At the hearing, Parent alluded to qualifications of , 's maternal grandmother. The grandmother testified that "although she saw . "quite often," Parent is the primary provider. Testimony at the hearing occurred as follows:

> Q. The mother [ ] does the instruction?
> A. Yes, I help when is with me., but does most of the providing of curriculum.

(Transcript IV, P. 273, l.9-13)

, who described function as "supervisory," (Tr. IV, P. 273, l.12-14) depicted an academic schedule for in increments of "three to fifteen minutes per subject" (Tr. IV, l. 12-15). 's regular home school schedule lasts "three to four hours," according to . Parent requested that testify at the hearing: calmly testified that "regular day" is comprised of various time increments lasting fifteen, thirty and sixty minutes, referred to by Parent as "block" time beginning at 10:00 A.M. until some indefinite time after lunch (Tr.I, P. 99, l. 7-25; P.100, 1-13; P.104, l.14-25; P.105, l.1-6).

During Parent's testimony, had mentioned a tutor, . Regarding the tutor's active participation in the home school education of , Parent offered this enigmatic statement: "... they state very clearly in the Code of Virginia for home schooling that any adult that allows - is prescribed to home school that person."(Tr. III, P. 29, l. 7-10). Further, this explanation of Parent's "home school" curriculum follows:

"I also checked off [the VDOE Intent To Home School form] on the same thing that I have attached a notice of program for study. So you can have one or both areas. I checked them both, and the reason I checked both of those off is because I knew at times would have a tutor, and I also knew at times that other people would be tutoring . And that fits very perfectly within the guidelines for the State."
(Tr. III, P. 10-16)(J-84)

And further: (Tr. III, P. 31, l. 10-20)

Q. Well, how about the second part? [VDOE home school form] Can you attach, or did you attach a copy of the teaching certificate or statement that you were qualified to teach issued to you by the Virginia Department of Education?
A. Yes, I actually did attach a copy of the teaching certificate or a statement to this effect from the Virginia Department of Education, and a copy at which the school -- which the Board of Education accepted was a copy of both my mother's certificate of education and also her tutor's certificate of education. Both had master's degrees.
(Tr. III, P. 31, l. 10-20)

It is significant to note that Parent did not elicit testimony of any tutor or of ; Parent did not produce any documentation regarding educational certification or credentials, own or of witnesses.

In the past, VDOE, apparently, has approved Parent's requests to home school child, contingently upon the accuracy of representations to VDOE. If Parent's responses

had been more finely scrutinized, it is not known whether or not Parent would have been permitted to homeschool. It is clear to this hearing officer, however, that this form must carry some weight. For it seems that "any adult" may not necessarily be qualified to teach "any person" "any" unilaterally selected course of study. Evidently, VDOE does have a correspondence course for those who desire to home school and may not neatly fit into one of the VDOE categories for homeschoolers. 's home school education, however, did not appear to fit into any of the categories prescribed by the VDOE.

Parent asserted the benefits of the Oak Tree Program at Oak Tree School. Though the Oak Tree Program (J-67) appears to be soundly structured, and according to the school policy statement, "child-focused," is not enrolled in the Oak Tree School. (J-89) Current Director of Oak Tree School, , informed PS of this fact on on January 10, (J-89). Reimbursement for prior expenses of this program does not appear to be an issue in this case.

Finally, one must consider the testimony of , Psy.D., who has counseled privately since 's second grade year in school. , a Certified School Psychologist, has provided a battery of educational testing relied upon for revisions to 's IEP: Wechsler, Woodcock Johnson, Developmental Test of Visual Motor Integration (VMI), Child Behavior Checklist, student interview, and record review. (Ex. 74)

scored in the average range of intelligence on the Wechsler (37th percentile). noted a weakness in math calculation, written language, and psycho-motor copying speed. Strengths were noted in 's grasp of verbal concept formation and visual alertness to detail. Although made note of 's "anxiety regarding school," and an "acute stress disorder," stated only that the same "may be related to events which experienced when last attended a public school setting." (J-74) Finally, recommended a "well structured academic program to assist in remediating the deficiencies which experiences particularly in mathematics and written language skills." (J-74) 's diminished self esteem and inferiority feelings "may be associated with perception of academic skills." (J-74)

The above educational report followed correspondence from in which had notified the school of 's ongoing treatment since October, . exhibits "symptoms of an acute stress disorder, suggesting "exposure to a traumatizing event." At the conclusion of this letter, recommended "homebound tutoring services for the remainder of the academic year." (J-75)

Upon examination during the hearing, referred to 's acute stress disorder alternately as "school phobia" for which the treatment is as follows: (T.IV, P. 210, 1.22-25) "..generally the way school phobia is treated

is ..phobias are certainly unrealistic irrational fears. There's nothing that started that happened at the school, or--- or there may be something relatively minimal that has occurred, but in the child's mind it really becomes a separation anxiety almost than anything." Further, offered, "... the best thing to do is to have the child attend the school. Certainly, you are rewarding the behavior by keeping them out of school." (Tr. IV, P. 211, l. 15-17)

Parent's re-enrollment of on May 20, ,(J-47) was followed by eligibility determination beginning on May 29, (J-48). On June 6, , Parent and PS met to create the IEP. (J-50) Conference summary notes indicate that on July 1, (J-51) more arrangements were made. On July 3, , Parent called PS to cancel arrangements for the IEP meeting on the basis that had had no input and wanted additional time to discuss the draft IEP with doctors. (J-52)

Additonal IEP's were proposed to Parent on numerous occasions - February 14, , (J-31), December 19, , (J-81), undated draft, (J-117) and an additional IEP has been completed in order to accommodate 's academic needs. The Parent has executed consent to the Interim IEP in which PS agreed to provide an assistive technology evaluation and Parent agreed to receive homebound instruction for for five hours weekly from January 2, until further order of this hearing officer, by resolution, or by decision. became eligible for Assistive Technology on January 8, . (J-82) Now Parent "agrees to implement" an IEP but "disagrees to

placement: (J-124)

POSITION OF THE PARENT

Parent asserts that the initial IEP eligibility effort was flawed because Parent had informed PS of 's "school phobia" or "acute stress disorder." fears were not adequately addressed by PS during initial evaluation. It is Parent's position that 's disorder has prevented from achieving academic success because fear overwhelms . Parent asserts that actions of the school personnel caused 's fear and therefore is entitled to financial reimbursement for the Oak Tree Program and compensatory educational services. Parent contends that 's academic deficits escalated during 's absence from school. has withheld consent to the IEP because it has not addressed all of 's deficits: assistive technology was not offered, there was no BIP, no transition plan was created, there was no parental input, psychological services were not adequate, the self-contained program was too restrictive, and because was simply too afraid to come to school.

The most current conference summary notes, August 15, , are ambiguous regarding consent. Parent "agrees to an IEP being implemented but "disagree[s] to placement." Parent cites these issues: the strengths of the student have not been considered, the leas[t] restrictive environment [has not been considered, effective transition plan has not been developed to bring to public school, 's fear of attending public school, that "strategies" have not been

developed, and that independent [educational] evaluation was denied.

LEA POSITION

PS asserts that an appropriate IEP has always been available to , from the time of initial evaluation and eligibility until the present time. Parent did inform PS of concerns for 's mental welfare at school, however, the school personnel reported that was not fearful. On March 22, , upon receipt of 's written diagnosis of "acute stress disorder," PS immediately began IEP revisions.

PS contends that this Parent has caused unreasonable delay in the IEP process. PS contends that Parent has contributed to 's academic deficits by allowing to miss school. Implementation of the IEP is the best way to evaluate s academic needs.

FINDINGS OF FACT

1. The special education file for . is complete, all parties having been properly notified of IEP actions. Parent was properly notified of procedural safeguards pursuant to IDEA . From November 1, , the date of initial eligibility determination, Parent has received verbal and written rationale for any PS refusals to conduct additional tests, include components, to consider independent educational and psychological testing, to evaluate this child for assistive technology, to provide transition plan or behavior assessment and intervention plan, or any other actions requested by Parent but not then indicated by currently available special education data, and no procedural violations have resulted in a denial of FAPE to this child.

2. If any minor omissions have occurred, these minor omissions have not resulted in any material violation of IDEA.

3. PS has provided innumerably many IEP's sufficient to meet this child's current academic needs.

4. Parent's dispute with PS concerning initial evaluation and preparation of original IEP is unwarranted. IEP's have occurred with an optimal level of parental notification and participation in the IEP process in conformity with IDEA.

5. Classroom observation, teacher reports, actions of the school psychologist, and s school demeanor, did not not indicate to school personnel that had a fear of school or increased anxiety level at the time of initial evaluation and eligibility determination.

6. Other factors, Parent's removal of from prior first grade class, 's inability to achieve a routine, structured learning environment specifically designed to meet 's academic needs in a properly supervised, consistent academic setting, school nonattendance and an inability to get to school at an appropriate hour, all indicative of "missed work," most likely, have caused this child's fear of school and increased anxiety level.

7. Parent has routinely been provided a copy of the "Procedural Safeguard Packet" to ensure compliance with IDEA. Parent has noted receipt of the same upon the initial IEP documentation and on many occasions thereafter. Parent is keenly cognizant of compliance with IDEA. Parent could have initiated due process at any time after refusal to sign the initial IEP.

8. PS, having provided an appropriate IEP for , was not required to initiate a due process proceeding.

9. In preparation of the initial IEP with requested revisions, the IEP has correctly addressed 's strengths and current levels of performance have been considered.

10. In light of the pervasive nature of 's academic deficits, will require an intensive educational placement. The proposed plan, special education with individual instruction by LD teacher and regular classroom for the remaining courses, is appropriate and represents the least restrictive environment/ placement for 's current educational needs.

11. PS has enumerated all accommodations currently necessary to meet 's academic and psychological needs for successful re-entry into PS. If any additional "strategies" are necessary to meet 's needs, IEP implementation will reveal these needs.

12. The Parent bears the burden of proving by a preponderance of the evidence that could not derive educational benefit from the proposed IEP's. Parent has not met this burden.

13. Requirements of notice to the Parent have been fully satisfied in accordance with IDEA.

14. is disabled: Specific Learning Disability. does require special education and related services.

15. PS has offered an appropriate IEP to , self-contained placement being the least restrictive placement for , since November 1, .

16. Parent is not entitled to reimbursement because there has been no clear showing of expenses incurred or necessary to be incurred by for private placement; PS has offered an appropriate IEP to in which could receive FAPE.

ANALYSIS

Parent's evidence does not support request for compensatory services and reimbursement. The evidentiary record does not reflect a denial of Parent's IDEA procedural safeguards or substantive rights.

The issues for determination by this hearing officer were:

1. Did PS comply with statutory procedural requirements of

IDEA in the initial eligibility determination and preparation of IEP's offered to ?

2. Were the IEP's offered to reasonably calculated to enable to receive educational benefit?

Parent's assertion, s school phobia was caused by school events, has not been proven by a preponderance of the evidence. There was ample evidence in the record to support the PS theory that 's increased anxiety level has been directly caused by other factors.

For reasons known best to , Parent has instilled revulsion for public school in this child. Public school has been depicted as a "bad" place where individuals are "untrustworthy." In order for to eradicate these impressions, must now be gently transitioned back into the public school system where will receive the FAPE deserves. Unless this happens soon, it is this Hearing Officer's fear that will never acquire basic academic skills. If the PS initial IEP had been implemented upon initial eligibility, even if later data resulted in revision, it is likley that would not now be so far behind peers academically.

When the school system has provided an appropriate educational program, a parent is not entitled to reimbursement merely because the parent advocates an alternative educational theory. Simply because the parent contends that a particular program is preferable to another does not mean that the other program is "more" appropriate.

's procedural safeguards pursuant to IDEA not having been violated, have the proposed IEP's been reasonably calculated to confer educational benefit on in accordance with IDEA? In Hendrick Hudson District Board of Education v. Rowley, 458 U.S. 176, 73 L.Ed.2nd 690, 102 S.Ct. 3034 (1984), the United States Supreme Court responded: "... a State is required to provide a handicapped child with a 'free and appropriate education,' we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." (73 L. Ed. 2nd at 710)

The Rowley case sets the standard for determination: A "free and appropriate education" does not mean "a potential maximizing education" but only one that is reasonably calculated "to confer some educational benefit upon the handicapped child."

The vast number of drafts provided and revisions made to to this IEP are astonishing. Long ago, the Rowley test was satisfied. Parent has unreasonably withheld consent to implement the IEP and consent to placement. Parent has unreasonably caused delay to the implementation of the many appropriate IEP's offered to child.

Parent's histrionic antics and swashbuckling style in the management of 's special education needs must stop immediately. These behaviors, most likely, have impeded 's academic progress.

is a creative, intelligent, charming young child. If is given the chance to study in a consistent,

structured learning environment, in which there are reasonable distractions, will thrive. Implementation of the current IEP affords the FAPE to which is entitled.

An "appropriate education" is not necessarily "an ideal education." "Even the best public schools lack the resources to enable every child to reach his full potential." Rowley v. Board of Education, 483 F. Supp. 528, 534 (S.D.N.Y. 1980)

FINAL RULING

1. The most recent version of the IEP, with psychological and behavioral components to address 's anxiety, providing assistive technology, should be implemented.

2. The IEP, with behavior modification plan and transition plan attached, will not negatively refer to either party.

3. will continue to receive school counseling services from a school counselor on an "as needed" basis for the 2003-2004 school year until transition is complete.

4. Parent will receive any additional hours of homebound instruction to which parent is entitled by the interim IEP.

5. Parent is not entitled to any other compensatory education or services, or financial reimbursement.

6. The IEP is appropriate, placement being in the least restrictive environment, all of this child's special education needs having been properly considered.

7. A second independent educational evaluation request is hereby denied, complete independent educational evaluation having already been afforded, and deemed adequate, to assess this child's special education needs.

RESPECTFULLY SUBMITTED,

Hearing Officer

Date of Decision: August 25,

NOTICE OF RIGHT OF APPEAL

A decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless the decision is appealed by you in a state circuit court within one (1) year of the issuance of the decision or in a federal district court. The appeal may be filed in either a state circuit court or in a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under Section 1415 of the Individuals With Disabilities Education Act (20 USC Section 1400 et seq.) without regard to the amount in controversy.