

VIRGINIA DEPARTMENT OF EDUCATION
CASE CLOSURE SUMMARY REPORT



School Division _____

Name of Parents _____

Name of Child _____

August 25, _____
Date of Decision

Counsel Representing LEA _____

N/A _____
Counsel Representing Parent/Child

Parents _____
Party Initiating Hearing

Parents _____
Prevailing Party

Hearing Officer's Determination of Issue(s):

Whether the child would continue to be eligible for Special Education.

Whether the School Board needed to go through the requirements of 8 VAC 20-80-58.

Hearing Officer's Orders and Outcome of Hearing:

That the child was no longer eligible for Special Education because _____ had reached the statutory age of 9, making _____ no longer eligible for the Developmentally Delayed category.

This certifies that I have completed this hearing in accordance with regulations and the written decision from this hearing is attached.

Aug 25
Signature

cc: _____, Esq.

Dr. Judy Douglas

VIRGINIA
DEPARTMENT OF EDUCATION
SPECIAL EDUCATION HEARING
DUE PROCESS



Parents

v.

Public Schools

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)
)
)
)

In re:

FINAL DECISION

INTRODUCTION

This case came on to be heard based on the parents' due process appeal to (1) remove their child from the Special Education curriculum and (2) have their refusal to consent to a formal reevaluation of their child be upheld. A motion was made by Counsel for the County that the hearing be postponed until the child could be reevaluated and retested for triennial assessment. Based upon the reasons shown below, this motion was denied and the hearing proceeded. The School Board was represented by _____ Esq. and the parents represented themselves.

FINDINGS OF FACT

1. _____ was born on August 30, _____ * and has finished 2nd grade. *This fact is of major significance in determining the outcome of this case.
2. The child was identified as being developmentally delayed in social/adaptive behavior on July 20, _____. (Exhibit 4G)

"Developmental Delay means a disability affecting a child ages two through eight

- (1) _____ Who is experiencing developmental delays as measured by

appropriate diagnostic instruments and procedures in one or more of the following areas: physical development, cognitive development, communications development, social or emotional development or adaptive development, and

(2) Who by reason thereof, needs special education and related services.” Regulations Governing Special Education Programs for Children with Disabilities 8 VAC 20-80-10 Definitions Pg. 9

3. It appears from the record that the category of Development Delay Social/Adaptive Behavior for [redacted] has significantly abated. “[redacted]’s (sic) social skills have significantly improved over the past three years.” (Exhibit 4b)
4. [redacted] shows some weakness in math and English. (Exhibit 4b)
5. Exhibit 2, the PALS 1-3 test, which was submitted to the evaluation committee subsequent to their May 27th meeting, showed that [redacted] was making significant progress in reading comprehension despite the DRP report in the May 27th exhibit 4b.
6. The School Board proffered compensatory education to make up for the loss of math education for [redacted] in the past school year. Transcript pg. 9.
7. The parents want the child removed from Special Education and want the child enrolled in a regular education program.
8. There is nothing in the record that would show that if a full reevaluation were made the child would be labeled other than “Developmentally Delayed.”
9. The category, Developmentally Delayed, may only be applied to a child that is under 9 years old. (8 VAC 20-80-56 F.1)
10. The child has been recommended for 3rd grade.
11. The parents were afforded Due Process.

Discussion and Conclusions of Law

The reasons for denying School Counsel's request for a continuance of the hearing are: (1) there was no indication in the exhibits that if the child were found to be eligible for Special Ed it would be no other than Developmental Delay, (2) on August 30, the child will no longer be eligible to be categorized as being Developmentally Delayed, and (3) it was hoped that the testimony of the witnesses to be called by the School Board would offer testimony that indicated any other category that might place the child in Special Education.

So, therefore, the hearing proceeded.

The testimony provided by the witnesses for the School System showed that all procedures were followed for the reevaluation, short of getting the parents permission for additional testing.

8 VAC 20-80-54F Reevaluation

1. "A reevaluation shall be conducted
 - c. At least once every three years.
2. Review of existing evaluation data as part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team and other qualified professionals as appropriate:
 - a. Reviews the reason for the reevaluation request if applicable and existing evaluation on the child including:
 - (1) Evaluations and information provided by the parent or parents of the child.
 - (2) Current classroom based assessments and observations.
 - (3) Observations by teachers and related service providers; and
 - b. Identifies on the basis of the above review and input from the child's parents what additional data, if any, are needed to determine:
 - (1) Whether the child continues to have a particular disability or has any additional disabilities.
 - (2) The present level of performance and educational needs of the child.

- (3) Whether the child continues to need special education and related services.
- (4) Whether any modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate as appropriate in the General Curriculum.”

The parents participated in these meetings but refused to consent to any gathering of additional data and wanted their child removed from Special Education.

The majority of the panel still felt that the child was developmentally delayed and submitted it to the Special Education Review Committee for mediation. (School Exhibit 2)

“If the parent or parents refuse to consent for an evaluation or reevaluation, the local education agency may continue to pursue those evaluations by using due process or mediation procedures.” 80 VAC 20-80-54 G.2.b

The Special Education Review Committee offered the parents options for being allowed to evaluate their child, but the parents refused these options and continued to want their child out of special education. Transcript pg. 144. The child’s original identification as Developmentally Delayed was for behavior problems. It was the consensus of the witnesses for the School System that these problems have been significantly abated, but should still be classified as Developmentally Delayed because of weaknesses in math and English.

“A child may not be determined to be eligible under this chapter if the determining factor is lack of instruction in reading or math or limited English proficiency and the child does not otherwise meet the eligibility criteria.” 8 VAC 20-80-56 C.3

“In order to be classified as a child with a disability under Federal Regulations 34CFR300, a child must, not only have a specific physical or mental condition, but such condition must adversely impact upon the child’s performance to the extent that he or she requires special education and/or related services.”

Board of Education of the City School District of the City of New York 32 IDELR
28.

“The term Developmentally Delayed is a statutory term that is included in both Parts B & C of the Act” Federal Register Vol 64 No 18 Friday, March 12, 1999 Rules and Regulations, pg. 12541.

In as much as the child will be 9 years old on August 30, _____ will no longer be eligible to be classified as Developmentally Delayed. The rule in 8 VAC 20-80-58 will no longer apply. The child is not being removed from Special Education; _____ is no longer eligible.

“The evaluation described in paragraph (c)(1) of this section is not required before the termination of a student’s eligibility under Part B of the Act due to graduation with a regular high school diploma or age eligibility for FAPE under State Law.” DOE reg 300.534(c)(2)

Also,

“A child may not be determined to be eligible under this part if (1) the determination factor for that eligibility determination is lack of instruction in reading or math or Limited English Proficiency and the child does not otherwise meet the eligibility criteria under 300.7a.” DOE Regulation 300.534(2)(b)(1)&(2).

Decision & Findings

1. As a matter of law, _____ as of August 30, _____ will no longer be eligible for Special Education & Related Services under the designation of “Developmentally Delayed” and is entitled to regular education.
2. The Special Education Review Committee is relieved of any further duties in this matter.
3. The parents refusal to consent to further testing is moot.
4. The child is entitled to compensatory education in math as proffered by the School

System.

5. There is no indication at this time that the child would be placed in any other category of Special Education so as of August 30, the "Stay Put" provision will not apply.
6. The child shall be placed in a Regular Education setting.

It is hereby ordered:

Order

1. That as of August 30, the child shall no longer be entitled to receive Special Education and related services under the category of Developmentally Delayed.
2. That the parents enroll the child in Regular Education for the school year 2003-2004.
3. That the School and the parents meet to make arrangements for the child to receive the mathematics instruction as proffered by the School System.
4. No Stay Put provision will be imposed.
5. Within 45 days of this decision the School Board will file an implementation plan with copies to the parties, the Virginia Department of Education and this Hearing Officer.

This decision may be appealed by either party in a state circuit court within one year of the issuance of this decision or in a federal district court.

25 Aug.
Date

Hearing Officer

cc: _____ Esq.

Dr. Judy Douglas

Attorney and Counselor at Law

Fax:

Tel:

October 17,

Mr. /Ms.

Esq.

RE: Decision of August 25,
Correction of Citations

Dear Mr. /Ms. /Ms.

On page 5 of my decision dated 25 August concerning , there are 2 citation errors.

The first one and the most important error is:

The citation "Board of Education of the City School District of the City of New York 32 IDELR 28" should be changed to read "Board of Education of the City School District of Rochester, New York 31 IDELR 78."

This was caused by my mistake. I had intended to use both citations, but in editing my decision I dropped the New York City quote but failed to drop the citation and use the proper one which is the Rochester citation.

Within the Rochester citation, there is a reference to 34 CFF 300. This should be changed to 34 CFR 300.7(a)(1).

The references to DOE regs 300.534 on page 5 should be changed to 34 CFR 300.534.

I hope you have not been caused any inconvenience by my errors.

Sincerely,

cc:

Department of Education
Dispute Resolution and Admin. Services
P.O. Box 2120
Richmond, VA 23218-2120