04-037

CASE CLOSURE SUMMARY REPORT

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

School Division

Name of Parents

Name of Child

Date of Decision or Dismissal

Counsel Representing LEA

Counsel Representing Parent/Child

Party Initiating Hearing

Prevailing Party

Hearing Officer's Determination of Issue(s): Proposed placement provides FAPE. See decision of / /

Hearing Officer's Orders and Outcome of Hearing: For

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

COMMONWEALTH OF VIRGINIA:

DUE PROCESS EDUCATIONAL APPEAL

Appellants	)
	) In re:
PUBLIC SCHOOLS	)
Respondent	)

DECISION

I. INTRODUCTION AND PROCEDURAL HISTORY

This due process hearing was initiated by and , parents of , on October , . They appealed the decision of the committee established by the Public Schools (PS) that proposed a placement within the school system at the Learning Center ( ) as part of its individualized education plan (IEP) for ( ).

The parents objected to the placement because it would not provide with the education or services needed. A hearing was scheduled to determine whether the placement was appropriate, and, if not, whether the placement of by the parents at the School ( ) in was appropriate and, if so,

whether and to what extent the parents would be entitled to reimbursement and payment for further costs.

I was appointed as the hearing officer from a list supplied by the Supreme Court of the Commonwealth of Virginia and certified by the Virginia Department of Education. , Esq. represented PS; , Esq. represented the parents. Eleven witnesses, one of whom was examined via the telephone, testified.

On October , , a pre-hearing teleconference was conducted. The order of witnesses, issues raised in the appeal, exploration of settlement, and procedures for the conduct of the hearing were among the matters discussed (See letter of October ,). Mr. stated that clients wanted the hearing to be public.

The parties jointly requested during the teleconference an extension of the forty-five day period for rendering a decision, as provided for in 34 C.F.R. §300.511, on the basis that to do so would be in the best interests of . I agreed and found that the motion should be granted on the grounds that they had established that they needed additional time to arrange for exchange of documents, resolve discovery disputes, and secure witnesses. Moreover, I concluded that the student's placement would not be adversely affected by a short delay. By agreement of the parties we scheduled a two-day hearing to begin on December , .

On December , , I received a letter from Mr. in which requested a second continuance based on the timing of the delivery of documents from Mr. and assertion of attorney-client privilege as

to other documents. He argued that he did not have enough time prior to the hearing for his review of the documents or for development of argument opposing exemption of other documents from production.

PS did not object to the motion. Based on the representation that an additional postponement of five weeks would not jeopardize the child's current placement and the finding that the discovery dispute was not the fault of the parents who were the parties requesting the continuance, I granted their motion as being in the best interest of (See letter of December ,).

The parties resolved their discovery dispute without my further involvement. The hearing began on January , at the , Conference Room , , , VA and concluded on January .

The Transcript of the hearing was delivered on January , , and the parties provided both pre-hearing and post-hearing submissions.

References in this Decision refer to the transcript for each day of the proceedings (TRI and TRII). The parents filed fifteen exhibits and PS filed seventy-six exhibits prior to the hearing, as well as exhibits during the hearing. References to those exhibits are identified as those from PS (.) and those from Mr. and Mrs. ( ).

II. FINDINGS OF FACT

The following represents findings of fact based upon a preponderance of evidence derived from the testimony of the witnesses and the documents admitted into evidence.

Additional findings will be found in other portions of this decision.

A. Factual Developments Prior to August , IEP

was born on , . began taking Japanese in the second grade. (TRI 86). As a fifth grade student at Elementary School, 's problems with organization and writing became apparent. Nevertheless, the eligibility committee found ineligible for special education services since did not appear to have a specific learning disability. (. 16-17). At that time, the school psychologist determined that based on the results of the Wechsler Intelligence Scale for Children (Wisc-III) test, was functioning in the high average range of cognitive ability, with verbal abilities within the superior range and nonverbal abilities in the average range. No significant emotional concerns were identified. (. 38).

In the summer of , after had completed seventh grade at Middle School where had entered into its Japanese immersion program, the committee again reviewed situation but this time it found eligible under the category of "other health impaired," and an IEP was developed on June , . The team accepted the medical diagnosis of attention deficit hyperactivity disorder (ADHD), recognizing organizational difficulties and susceptibility to distraction. (F. 19, 31).

The next year, on May , ., the IEP committee prepared another IEP. The team concluded needed special education support to access the general education curriculum and provided for two hours of counseling per

month. (. 32). became a freshman at High School in September of . was not 's base school; was pupil placed there because it also had a Japanese immersion program. (TRII 391-392).

Under the May IEP, took a one-period basic skills class and the remainder of classes were in the mainstream general curriculum. According to , the special education department chair at , the special education services that was receiving were fairly minimal. Basic Skills classes focused on organizational deficiencies, test-taking strategies, and IEP goals. In addition, staff assisted with behavioral problems. (TRII 391-394).

For the following year, on March , , the IEP team expanded the special education services to forty-five minutes per week of organization assistance and up to two hours a month for social-emotional counseling. 's impulsive behavior and difficulty with working in group situations continued to be concerns. (. 33; TRII 395-396).

On March , engaged in serious sexual misconduct at high school. As of the date of the incident, had been performing quite well as a student. achievements on the Stanford Achievement Test and the Standard of Learning assessments were outstanding and grade point average through the third quarter of the school year was above a "B" average. (.4; TRI 45-60) Though work habits demonstrated inconsistency and disorganization and could be disruptive and impulsive, teachers recognized as very intelligent and talented. (.4).

As a result of the misconduct, on April , , the principal of , , suspended and recommended expulsion. (. 5-6). The decision was appealed to , hearing officer for the Superintendent of PS who, after conducting an administrative hearing, concluded on April , that the behavior merited expulsion. decision was considered interim since a manifestation determination review (MDR), at which the IEP team would determine whether the conduct was related to the disability, was required under federal law. (.8).

On April , , the IEP team decided it was unrelated (.34). Mr. filed a request for a due process hearing to contest the result of the MDR on May , . (. 22). That request was withdrawn on June , . (. 23). The MDR decision is not before me in this appeal.

Based on the MDR, Mr. superseded the interim decision with a final decision on April , . (.9). On April , , the IEP team reconvened and recommended home-based instruction pending resolution of the disciplinary issues. The parents objected to the proposal, and was permitted to return to until the end of the school year, but only to attend regular classes under close supervision. (.9, 37; TRI 148).

Mr. appealed the expulsion to a committee of the school board who held a hearing on May , . (. 10-13). After listening to testimony and reviewing documentary evidence, the committee decided to uphold Mr. 's decision and expel from PS. The board members stipulated that could attend an alternative educational program not located within a

regular school setting in accordance with the IEP process. (. 14).

The committee permitted to finish the school year at , but required that he continue to be monitored by a school system employee for the remainder of the year. The committee also stated that was not precluded from eventually returning to a regular high school program other than at , but only upon the approval of the superintendent or his designee. (. 14)

Mr. testified he would have the responsibility to determine if had made sufficient progress to return to a regular high school setting. The school system's goal, as with all students in the alternative educational setting, would be to return to a regular high school program. (. 141-143, 157, 176).

B. August , IEP

On June , , PS sent the parents a letter confirming an IEP meeting for July , (. 24). A new IEP became necessary in light of the expulsion ruling of the school board. The team developed similar goals and objectives as it had for the March IEP (. 33, 37; TRII 411-414). In addition, the members discussed the appropriateness of and other schools. (TRI 85-86, 284-285, 288-289, 291; TRII 415, 442). The team decided not to make a placement decision that day because the parents had not yet had an opportunity to visit programs at private schools. (TRI 71-73, 288-289; TRII 443-444).

Mr. testified that he visited and other schools. Based on the visits, he concluded that was best suited for . (TRI 72-74, 78-80). On July ,

, Mr. and Mrs. were sent an acceptance letter from . (. 73).

On August , , the IEP team reconvened to finalize the IEP. The parents requested that be allowed to attend High School so that could continue studying Japanese and take advanced placement courses. The school team members correctly rejected this option since it would have violated the mandate of the school board. (. 14, 27, 37; TRII 404, 463-464). The school officials ultimately agreed that placement at would be appropriate. Mr. and Mrs. disagreed and filed for a due process hearing.

Numerous team members offered testimony during the hearing regarding their reasons for recommending . is a contract specialist with contract services, the division which handles placement with outside contractors where PS cannot meet the student's needs. She testified that she did not recommend a private day school for because appeared to be doing well academically though not receiving a great deal of special education support. She expressed concern about the appropriateness of because it was not a special education school, though she conceded that could draw educational benefit from . She believed that could provide with the special education services needed, whereas did not need the level of services provided by a private day school such as . (TRI 289-290, 296-297, 304-305, 311-314).

Mr. , the principal at , testified that the program offered there could fulfill the requirements in the IEP. It would enable to progress in the general curriculum and to receive special

education benefits from the basic skills class. (TRI 236-238).

Ms. , a pyramid resource specialist for . is responsible for coordinating special education services, supporting staff, and developing IEPs. She stated that she believed that has a program which would meet 's academic needs and enable to take courses to meet the graduation requirements. For more academically challenging courses, she noted that the on-line campus was available. She thought provided a small, structured environment where there is considerable staff support and a commitment on returning a student to the regular high school. (TRII 438, 449-451).

Two other participants at the IEP meetings were , who is the special education chair at , 's middle school, and , the Special Education department chair at . Both testified that they did not believe was too high functioning for and opined that the program would enable to progress under the IEP. (TRII 414- 418, 465, 477-478).

In contrast, took the position that the placement at was not appropriate for two main reasons. First, did not have honors courses and, secondly, it did not provide the opportunity for social interaction with peers. While provided a challenging academic environment, did not. (TRI 58).

Mr. gave the team a copy of a June , letter from , Ph.D., who had been providing psychotherapy and medication to since April , . He concluded that had begun developing appropriate alternative ways to deal with improper

behaviors. He further wrote that needed ongoing academic stimulation and that "{p}lacement in a non-mainstream environment will severely limit cognitive and academic development." (.4).

C. Program Offered by the Learning Center

Mr. testified regarding the nature of the program and the services which could have been provided to . The provides secondary level courses in a highly structured environment in which the students are closely monitored at all time. All of its students, who are in grades six through ten, have committed major disciplinary infractions and have been expelled or the expulsion is held in abeyance. The number of students generally ranges from thirty to thirty-five, including eight or nine tenth graders this year. (. 76; TRI 198-200, 207-211, 222-225, 276).

Approximately one-third of all students participate in special education, of which two or three per year have ADHD. For these students there is a basic skills class taught by a certified special education teacher. The also has a full time counselor and a part time social worker on staff. The special education students meet with them on a weekly and an as-needed basis. (TRI 209, 211-214, 254-255).

The offers the basic courses necessary to obtain a regular diploma, such as science, mathematics, English and social studies. The curriculum is designed so that the student can meet the standard of learning requirements of the state as well as own curriculum, known as the Program of Studies. (TRI 214, 217-218; TRII 347).

Parents sign a contract promising to promote their child's success in the program, attend monthly meetings, and review weekly assessment reports. (. 76; TRI 218-219, 234-235). 's objective is to enable the student to transition back to the base school or another general education school once has demonstrated proper behavioral and social skills and has fulfilled the requirements of the school board and the program. has a comprehensive program to assist students in the transition. (. 76; TRI 156-157, 200, 230-234, 259).

Mr. also testified that has had bright students at 's academic level who had succeeded there. On cross-examination, Mr. conceded that offered very limited extracurricular activities. With regard to likely courses would have wanted to take had been enrolled at , he conceded that the program did not offer chemistry or Algebra II. However, these courses could be taken through online services. has a computer lab where a teacher could monitor . (TRI 226-229, 239, 248, 251-252, 256, 264-265).

, the administrator of the PS Online Campus, explained in greater detail its features. The program provides additional choices to students to take courses in an on-line format and is designed for students with scheduling conflicts, special medical needs and other circumstances where attending classes in a regular setting is not feasible. There are currently 332 students, of which twenty-one are special education students. (. 63; TRII 342, 351, 377).

A wide range of advanced placement and other challenging courses are offered, including Spanish, chemistry and

Algebra II. In particular, the Algebra II curriculum, which was developed in-house and has been sold to a vendor for nationwide distribution, is taught by a high school mathematics chairperson who helped write the course. All on-line teachers are required to take a special professional studies course on technology and attend ongoing technology meetings. (. 63; TRII 348, 355-356).

Mr. illustrated how chemistry, Spanish and algebra classes are taught online. Web pages are created to deliver instruction, with immediate feedback, close monitoring of the student's work, and communication by e-mail and phone calls. For chemistry instruction, there are lab packs for home use and animated labs; for Spanish, videos and audios are delivered electronically and students speak into a microphone for transmission to the teacher. Instructors generally provide parents copies of communications to students and send progress reports to them. (. 63, 64; TRII 357-375). In Mr. 's opinion, would be a "perfect candidate" to take the chemistry, algebra II, or Spanish class through the online center. (TRII 376-377).

D. Program Offered by the School

The is located in the area of . It is designed to serve bright, nontraditional learners and offers a comprehensive college preparatory curriculum with extensive outside activities, teams, and community service opportunities. (F. 72; TrI 98-99). According to its director, , fifty-seven students, twelve to fifteen per grade, of which 30-35% have ADHD, are enrolled. It offers a wide range of advanced placement courses and is authorized to administer advanced

placement examinations for college credit. One hundred percent go to college after graduation. (TRI 100, 113, 117-118).

is now taking a junior level course, algebra II/trigonometry, as well as Spanish I, World Literature II, World Civics and Geography II, Chemistry and Theatre. had all "A"s for the first quarter. (F. 77; TRI 103-104).

does not offer Japanese, although could have taken it at a local college but elected not to because of transportation complications. (TRI 77, 87-88). starred in the school play and was chosen as the sophomore representative for the school government. (TRI 52, 108).

The school is not accredited or certified as a special education facility and does not offer a basic skills class as such. However, it has comparable programs to assist ADHD students. All students meet with a faculty advisor for twenty minutes each day in groups of eight-ten students to discuss academic progress, with follow up meetings with teachers as necessary. All students are issued a laptop computer and homework is e-mailed to the students and their parents each day. Once a week the teachers provide a status report to the parents. (F. 72; TRI 104-108, 110).

III. BASIC LEGAL FRAMEWORK

The Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.* (IDEA) requires states, as a condition of acceptance of federal financial assistance, to ensure a "free appropriate public education" (FAPE) to all children with disabilities. 20 U.S.C. §1400(d), §1412(a)(1).

Virginia has agreed to participate in this program and has required local education agencies to provide FAPE to all children with disabilities residing within its jurisdiction. Va. Code Ann., §22.1-214-215.

The Act imposes extensive substantive and procedural requirements on states to ensure that children receive a FAPE. 20 U.S.C. §1415. *See also Board of Education v. Rowley*, 458 U.S. 176 (1982). The safeguards guarantee "...both parents an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decision they think inappropriate". *Honig v. Doe*, 484 U.S. 311-312 (1987).

The primary safeguard to protect the child's rights is the IEP. The educational program offered by the state must be tailored to the unique needs of the handicapped child by means of the IEP. 20 U.S.C. §1414. IDEA directs that local school districts, in consultation with parents, the child, and teachers, develop an IEP for each handicapped child. 20 U.S.C. §1414(d)(1)(B). Should there be any complaints regarding the content of a child's IEP, the parents have the right to an "impartial due process hearing" 20 U.S.C. §1415(f); *See also Barnett v. Fairfax County School Board*, 927 F.2d 146, 150 (4th Cir. 1991).

An IEP satisfies IDEA's requirement of FAPE as long as it "consists of education instruction specially designed to meet the unique needs of the handicapped child ...supported by such services as are necessary to permit the child to 'benefit' from the instruction." *Rowley, supra*, at 188-189. Each year the IEP sets out a curriculum to address the child's disabilities, with appropriate objective criteria and evaluating procedures and schedules for determining

whether the instructional objectives are being achieved. 20 U.S.C. §1414(d).

IDEA does not require the school system to provide the best possible education or to achieve outstanding results. *Rowley, supra,* at 187-192, 198. An appropriate education is one that allows the child to make educational progress. *Martin v. School Board,* 3 Va. App. 197, 210, 348 S.E.2d 857, 863 (1986). The goal is "more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside." *Rowley, supra,* at 192.

With regard to the extent of the responsibility of school systems to students who have been expelled for reasons unrelated to their disability, there was conflict among the various jurisdictions prior to 1997. For children in school districts within the Fourth Circuit Court of Appeals, they were not entitled to any special education services. *Commonwealth of Virginia v. Riley,* 106 F.3d 559 (4th Cir. 1997). (en banc).

In 1997, Congress passed an amendment to ameliorate the harshness found in the reasoning of *Riley*. Recognizing that expelling students with disabilities without furnishing educational services would only increase the probability that they would not succeed as adults, Congress struck a compromise so that if the misbehavior was not caused by their disability, they could be disciplined in the same manner as non-disabled students. *See* 20 U.S.C. §1415(k)(5)(A). However, the students would still be entitled to receive services. *See* 20 U.S.C. §1412(a)(1)(A); 34 C.F.R. §300.121(d). "Continued provision of education services, including behavior intervention, offers the best

chance for improving the long-term prospects for these children." (Letter to Graham, 34 IDELR 180, Office of Special Education Programs, December 20, 2000).

For expelled students whose misconduct is not caused by their disability, such as 34 C.F.R. §300.121(d)(2)(i)(B) requires the district to provide "services to the extent necessary to enable the child to appropriately advance in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP." In comments to the Code of Federal Regulations, The Department of Education noted that 34 C.F.R. §300.121(d) does not require schools to "replicate every aspect of the services that a child would receive if in his or her normal classroom…." 64 Fed. Reg. 12,406, 12,623 (March 12, 1999) The objective is to restrain school authorities from arbitrarily expelling disabled students with serious behavioral problems and depriving them of any educational services.

Virginia has promulgated regulations that basically mirror the federal statute and regulations. The definition of a FAPE is the same under both 20 U.S.C. §1401(8) and VAC 20-80-10. Pursuant to 8 VAC 20-80-40 and 8 VAC 20-80-60, children with disabilities who have been suspended are also entitled to a FAPE. (Compare to 34 C.F.R. §300.121). School districts must ensure that students with disabilities are provided an equal opportunity to participate in nonacademic and extracurricular activities as those without disabilities. 8 VAC 20-80-60(G)(1). (Compare to 34 C.F.R. §300.306 and C.F.R. §300.553). Once the IEP team decides that misconduct is not a manifestation of the disability, then it determines the extent of services necessary for the

student to progress in the general curriculum toward IEP objectives. 8 VAC 20-80-68(C)(5)(f)(2). (Compare to 34 C.F.R. §300.121(d)(2)(i)(B)).

Hearing officers ordinarily engage in a two step inquiry to decide whether FAPE has been provided under IDEA. First, they determine whether school officials have complied with the procedures contained in the Act and, secondly, whether the IEP is reasonably calculated to enable the child to receive educational benefits. *Arlington County School Board v. Smith,* 230 F. Supp.2d 704, 711-712 (E.D. Va. 2002); *Rowley, supra,* at 181.

Turning to the question of procedure, there does not appear to be any dispute as to whether the school district followed the procedures set forth in IDEA. The parents do not allege any violations. In any event, technical violations that do not obstruct the student's participation in the process do not make a proposed program inadequate. *Burke County Board of Education v. Denton,* 895 F.2d 973, 982 (4th Cir. 1990). In this case, the record demonstrates that Mr. and Mrs. had a full opportunity to participate in a meaningful way in the decision making process that resulted in the proposed placement. *See Rowley, supra,* at 205-206.

The second area of analysis concerns whether the proposed IEP is calculated to enable the child to receive educational benefits under *Rowley*. The issue is not whether offers a better educational program than that proposed by PS in the August IEP, but, rather, whether the offered program was appropriate. By enrolling in without obtaining permission of the school system, the parents did so at their own financial risk. If it is

ultimately determined that the proposed placement was appropriate, the parents are barred from receiving tuition reimbursement. *Burlington School Committee v. Department of Education,* 471 U.S. 359, 372-374 (1985).

Once a FAPE is offered by the public school system, further enhancements to the program are not required. *Matthews by Matthews v. Davis,* 742 F.2d 825 (4th Cir. 1984). Nor is the school system under an obligation to consider the program proposed by the parents. *See Hessler v. State Board of Education of Maryland,* 700 F.2d 134, 138 (4th Cir. 1983).

Applying the *Rowley* legal standard of some educational benefit to the facts in this appeal is not an easy task and requires focus on the unique needs of . There is no one test for determining the adequacy of educational benefit conferred upon all children covered by the Act. *Rowley, supra,* at 202.

Benefit that is only *de minimis* does not appear sufficient. *M.C. v. Central Regional School District,* 81 F.3d 389, 393 (3rd Cir.) *cert. denied, 519* U.S. 866 (1996). As this Circuit has held, a school district cannot discharge its duty under the Act by proposing a program that produces minimal academic advantage, no matter how trivial. *Hall by Hall v. Vance County Board of Education,* 774 F.2d 629, 636 (4th Cir. 1985).

The defined purpose of the Act is to provide handicapped children full educational opportunity 20 U.S.C. §1412(a)(2). It is necessary to determine how much "benefit is sufficient to be meaningful" *See Rowley, supra,* at 192. Is the placement offered in the August 2003 IEP reasonably calculated to enable to receive educational

benefits under the *Rowley* standard? Is the placement reasonably calculated to enable to appropriately progress in the general curriculum and advance toward achieving the goals set forth in the IEP?

IV. LEGAL ANALYSIS

Mr. testified that he objected to the placement because it lacked honors and advanced classes and because it would not enable to interact with peers. (TRI 58). As counsel argued, the proposed academic setting would not meet 's needs in light of strong academic abilities. (Parents' opening brief, p.3).

There is no direct evidence in the record showing that would be deprived of interaction with other bright students in classes. Nevertheless, it is reasonable to assume that close monitoring of movements and lack of extracurricular activities would serve to limit opportunity for meaningful relationships with other students. However, the legitimate needs of the school and the nature of disciplinary infraction justify such restrictions. In any event, there is no requirement under federal or state law that significant peer interactions be provided for an expelled student.

With regard to the complaint that did not offer sufficient intellectual stimulation, school officials have testified that other bright students have flourished at . The courses available to would enable to advance in the general curriculum and progress toward graduation, as required under IDEA and state law. The program is well designed to assist students in

transitioning back to a regular high school. As set forth above, six school district witnesses have testified that they believe he could derive educational benefits from the program and succeed in it. Apart from the testimony of Mr. who had never visited the program, there was no other testimony that the program would not be appropriate.

Counsel for PS has cited a number of cases in which hearing officers have approved limitations on the extent of services an expelled student is entitled to under IDEA. In *Troy City Board of Education,* 27 IDELR 555 (SEA Ala. 1998), the hearing officer found that homebound instruction without many regular courses for an expelled student offered a FAPE because the student was deriving substantial educational benefits. In a Virginia administrative decision, *S. v. Fairfax County Public Schools,* (SEA Ill. 2001), the hearing officer found that an alternative learning center was able to provide sufficient services for an expelled student to progress in the general curriculum and advance toward achieving his IEP goals despite lacking team sports. See also *Vestavia Hills City Board of Education* 36 IDELR 174 (SEA Ala. 2002); *Boston Public Schools,* 34 IDELR 102 (SEA Mass. 2001); and *Poteet Independent School District,* 29 IDELR 423 (SEA Tx. 1998).

Counsel for the parents does not attempt to distinguish these cases for purposes of interpretation of the federal law under IDEA. He does argue, however, that only the S case took place in Virginia, and that decision did not consider his argument that Virginia regulations impose greater state obligations for expelled students than

federal law does. (Parents' submission of January , , pp. 1-2).

In Section III, I compared the federal and state regulations covering the rights of disabled students who had been expelled. From that comparison, I do not find any basis to support the argument that the state regulations differ in any pertinent respect from the federal regulations. The parties cited no cases supporting the parents' position, and I was unable to find any. Accordingly, I find that Virginia does not mandate a different FAPE standard for expelled students than that set forth by IDEA.

I recognize that from a purely academic standpoint it appears would be better off at either or High School where could take Japanese, algebra II and chemistry. Those options, however, are foreclosed by the decision of the school board in the expulsion hearing. In any event, IDEA does not require PS to provide the best possible education for , or the placement the parents would prefer, *See MM v. School District of Greenville County*, 303 F.3d 523 (4th Cir. 2002). As long as the IEP provides a "basic floor of opportunity" that enables to access special education and related services, the requirements of the IDEA are met. *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990), citing *Rowley, supra*, at 201.

Based on the consistent testimony of the expert witnesses from PS and the documentary evidence, I find that is an appropriate alternative educational setting that would enable to continue to receive the necessary services and benefits to meet the goals of IEP and that

would enable to progress in the general curriculum. Thus, he would derive educational benefits under the *Rowley* standard. I also conclude that the school district would not have to offer advanced classes from its on-line campus in order to satisfy the minimal requirements to provide a FAPE. That such a program is available for expelled, as well as other, students is certainly a laudatory improvement in its curriculum.

Although not necessary for my decision, I note that the parents have marshaled considerable evidence in support of their claim that the unilateral placement at would be a better placement than the program. Based on this evidence, I find that , at least in terms of providing a more challenging academic program and the opportunity for much greater participation in extracurricular activities, as outlined in the exhibits and the persuasive testimony of both Mr. and Ms. , (See, generally, TRI 52, 103-104,108), appears superior in meeting the educational needs of . I further determine that the counseling program at is at least equal to the basic skills program offered by PS.

I also conclude that the placement is appropriate. The parents have established that would derive considerable educational benefit from and, in fact, is thriving there. Were the sole issue the appropriateness of , then the parents would be entitled to reimbursement for the current school year. Based on the testimony of Mr. and Ms. , that would be $16,900. (TRI 54, 91; see also F. 72). I only make this finding, however, for purposes of development of the record

should further review result in reversal of my finding that is an appropriate placement.

V. ISSUES

1. Whether the school district offered a FAPE where it proposed placement of the student in the Learning Center in its public school system.

2. Assuming the student was not provided a FAPE by the school district, whether the unilateral placement of the student in a private school is appropriate, and if so, whether and to what extent the parent is entitled to tuition reimbursement and future expenses.

VI. CONCLUSIONS OF LAW AND FINAL ORDER

1. is a student who qualifies for special education and related services due to having an other health impairment, i.e., attention deficit hyperactivity disorder, which is a qualifying disability under 34 C.F.R. §300.7(c)(9).

2. Mr and Mrs. have been afforded all procedural and notice protections required by IDEA and an opportunity to fully participate in the IEP process.

3. The Public Schools provided a FAPE to under IDEA in that the proposed August , IEP was appropriate and the proposed placement at the ALC program was reasonably calculated to enable to progress in the general curriculum and provide the level of educational benefit required under IDEA.

4. Since PS offered FAPE, the parents are not entitled to tuition reimbursement for the unilateral placement at Community School even though that placement was appropriate.

5. This decision is final and binding unless a party appeals within one year to a circuit court of the Commonwealth of Virginia or a federal district court.

Date: _____

_____
, Esq.
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that I have, this day of , , caused this Decision to be sent via first-class mail, postage prepaid, to Mr. & Ms. , , , Esq. , , , Esq. , , VA , Judy A. Douglas, Director Va. Dpt. of Education, P.O. Box 2120 Richmond, VA 23218, and , Coordinator PS, Dpt. of Special Services, , .

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