

VIRGINIA:

SPECIAL EDUCATION DUE PROCESS HEARING



mother, by and through

Complainant,

v.

PUBLIC SCHOOLS,

Respondent.

DECISION OF HEARING OFFICER

Statement of Proceedings

This special education proceeding was initiated on November , (School Exhibit 15) pursuant to request for a due process hearing to complain of the special education services that the Public School System was providing . At the beginning of the - school year, transferred into the Public School System from Public Schools in Nebraska. is a suburb of Omaha, Nebraska.

On August , Ms. filed a new student placement form with , Principal of Middle School. It provided that would be placed in self-contained EMD services classes when transferred into Middle School.

As of , the Public Schools Special Education Services in Nebraska, had formulated an individualized education program (IEP) for . This IEP transferred with to the Public School System. Pursuant to the new student placement consent, was evaluated for eligibility for special education services on a permanent basis by personnel with the Public School system. A child study team meeting occurred on , . Appropriate evaluations were

ordered pursuant to an agreement arising from the team which included _____'s mother, _____. The parties agreed that _____'s IEP from _____ School System would continue for thirty days.

The Hearing Officer in preliminary proceedings informed _____ and her advisor, Dr. _____, of their rights in the due process hearing including the right to mediation. The mother and her advisor acknowledged full explanation of all rights consistent with the regulations of the Virginia Department of Education.

Ms. _____ acknowledged receipt of the November _____, _____ letter from _____ of the _____ Public School System, wherein Ms. _____ explained Ms. _____ and _____'s rights, including the right to mediation. Ms. _____ also provided Ms. _____ a copy of the Procedural Safeguards/Parental Rights in Special Education brochure. The November _____, _____ letter from Ms. _____ to Ms. _____ is Hearing Officer Exhibit 1. Ms. _____ acknowledged receipt of the letter together with the enclosures. (Transcript, Pg. 4).

The parties agreed that there were no procedural violations raised through the mother's request for a due process hearing. (Transcript, Pgs. 4-9). The issue to be resolved is whether _____ was provided a free appropriate public education pursuant to the regulations governing special education programs for children with disabilities in Virginia and the Individuals with Disabilities Education Act (IDEA). The evidence and the position of the mother and her advisor, Dr. _____, focused on whether the _____ Public School System had followed the IEP which came with _____ from Nebraska. Furthermore, if the _____ School System had failed to follow this IEP, had this failure constituted a deprivation of a free appropriate public education for _____.

On Wednesday, November _____, _____, the Hearing Officer convened a hearing at which Ms. _____ presented evidence on the issue. This was joined with the advice and assistance of Dr. _____. The _____ School System presented evidence through documentation and cross-examination of school personnel that Ms. _____ called as her witnesses on the issue joined. Mr. _____, Senior Deputy City Attorney of the City of _____ represented the _____ Public School System. The hearing began at 8:00 a.m. and concluded at approximately 6:00 p.m. on November _____,

Without placing the burden of proof on the parent, the Hearing Officer decided that the

parent would have the burden of going forward first because the parent would be in the better position of narrowing the factual issues which were related to the general issue she raised in the request for a due process hearing. The pre-hearing conferences indicated that the parent had specific evidence relating to the omissions and commissions of the School System that the parent alleged constituted a failure to comply with the IEP from Nebraska and constituted a deprivation of a free appropriate public education for

During the hearing, the mother, , indicated that her primary complaint with the Public School System is related to the identification of 's need for "one to one and small group assistance and small group instruction with reading, math, and written language skills" found at page 3 of the . School System's Individualized Education Program for . She stressed the need for "individualized as well as small group" interaction. (Transcript, pg. 287).

Findings of Fact

1. was born on . At the time of matriculation into the Public School System, was thirteen years old.
2. 's primary caregiver is mother,
3. They live in
4. Pursuant to Ms. ' request, was admitted into the seventh grade instead of the eighth grade at Middle School in , in
5. 's mother and the school system, through the principal of Middle School, agreed that pending the school system's experts' studying 's learning needs and eligibility for placement in special education programs, would be placed in a self-contained instructional setting to receive educable mentally disabled (EMD) services from the Public School System.
6. The person responsible for 's education would be a special education teacher for EMD students.

7. Twenty-six percent of time would be spent in the regular program of instruction at the school.
8. In August, , consented to an anticipated review date of 's disability and eligibility of , .
9. had been schooled in Nebraska until moved to in , .
10. The Public Schools Special Education Services evaluated 's academic, curricular, and instructional needs. The evaluation report is dated , .
11. 's Woodcock Johnson Test of Achievement - III for basic reading skills resulted in a score of 66 with a mean of 100. Woodcock Johnson Test of Achievement for reading comprehension resulted in a score of 46, indicating a 26 point discrepancy. 's mathematics reasoning under the Woodcock Johnson Test of Achievement was 69. mathematics calculation under the Woodcock Johnson Test of Achievement was 58. written expression was scored 59 under the Woodcock Johnson Test of Achievement. The testing was performed on February , in Nebraska.
12. Under the Wechsler Intelligence Scale for Children - III Edition (WISC-III), 's verbal score was 71, performance was 82, and full scale score was 75.
13. is friendly and cooperative. gets along well with peers, and participates in class discussions. will comply with teachers' requests, and generally wants to learn and try best.
14. needs remediation in all academic areas. reading and math skills at the time of testing in in Nebraska was K-first grade level. was easily frustrated and could become a behavior problem (talking out, being disruptive, non-compliant) when was overwhelmed by academic challenges.
16. needs very small group and/or one to one help with reading, writing, and math skills.
17. 's Individualized Education Program identified the following needs,

program modifications and accommodations for _____ :

_____ needs individual help and support in all academic areas. _____ will need the following modifications:

1. One to one and small group assistance and instruction with reading, math, and written language skills
 2. Concrete examples and directions broken down into small increments
 3. Repeated opportunities for practice and repetition of previously learned material
 4. Checks for understanding
 5. Assignments modified in length, and the amount of information be mastered at one time
 6. Review prerequisite skills, previous lessons, or activate prior knowledge before teaching a new concept
 7. Tests and quizzes read orally
 8. Adjustments made for district assessments
18. _____'s IEP identified _____ disability as mildly mentally disabled.
19. As of October _____, _____ needed additional help for reading assignments. _____ used manipulatives during math. In writing, _____ needed reminders to put in punctuation and to make a logical sentence. _____ also needed to have _____ teacher edit writing.
20. As of October _____, _____ was in a special education program. A behavior modification plan that _____ teacher implemented appeared to be successful.
21. From the beginning of the school year in _____; _____, until the end of _____, Ms. _____ was _____'s special education teacher. She found that during her period of instruction of _____ made educational progress.
22. At the end of _____, Ms. _____ became _____'s special education teacher. _____ also was assigned a special reading teacher who instructed _____ in the _____ School of Reading Remediation. This teacher was trained in reading remediation. Her name is _____

23. Ms. _____ observed educational progress during the time she instructed _____ beginning at the end of _____.
24. Ms. _____ identified educational progress in reading during the time she instructed _____ in the _____ method of reading remediation.
25. The _____ School System has qualified _____ for special education services.
26. _____, Senior Coordinator of Special and Gifted Education for the _____ Public School System, is of the opinion that the instruction _____ is receiving constitutes one to one and small group assistance and instruction with reading, math, and written language skills.
27. _____ has achieved educational benefit and progress in the areas of reading, math, and written language skills while attending _____ Public Schools and receiving special education services at _____ Middle School.
28. Based on cognitive ability of _____ and _____ academic achievement scores, _____ continues to function within the mentally deficient range.
29. According to the Woodcock Johnson III test of cognitive abilities, (W-J III Cog.), _____'s overall intellectual ability fell within the very low range (GIAss63). _____ GIA is at the first percentile indicating that _____ performed as well as or better than one out of one hundred children in the standardization sample. _____ verbal ability is in the second percentile and _____ cognitive efficiency is also in the second percentile. _____'s thinking ability is in the fifth percentile. These are the results of testing by _____ Ms. _____ is the school psychologist employed by the _____ Public School System.
30. _____ has a very supportive family which works with _____ with school work. _____ has excellent social skills and is not a discipline problem with the school system in _____.
31. _____ has a very positive, concerned family supporting _____.
32. _____ qualifies for special education services as an individual who is educable mentally disabled.

33. _____ is receiving special education services from the _____ School System consistent with _____ individualized education program.

34. _____ has substantially benefitted educationally from the special education services that the _____ Public School System has provided _____. Special education instructor _____ had _____ in a class the size of eleven and worked with an assistant. Ms. _____ had a class size of ten and also had a teaching assistant. Since November _____, _____ has had the benefit of Ms. _____ as a reading remediation teacher who is especially schooled in the _____ School of Reading Remediation.

35. _____'s individualized education program was written to identify objectives, goals, and benchmarks to be achieved over the course of an academic year.

36. The multidisciplinary team report of _____ Public Schools Special Education Services identified April _____, _____ as the recommended reassessment date for _____. The duration of the IEP ends on April _____, _____.

37. _____ was making progress towards all of the objectives, goals, and benchmarks identified in the individualized education program for _____ written on April _____, _____.

Conclusions of Law

1. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq. requires the _____ Public School System to provide _____, _____, a free appropriate public education during _____ - _____ school year at _____ Middle School.

2. The IDEA requires a school district to provide an individualized education program (IEP), for each disabled child. An appropriate IEP must contain statements concerning a disabled child's level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child's progress.

3. The IDEA defines an IEP as a written statement for a disabled child, developed in accordance with the statute, that includes, inter alia:

1. A statement of the child's present levels of educational performance;
 2. A statement of measurable annual goals, including benchmarks or short term objectives;
 3. A statement of the special education related services and supplementary aids and services to be provided to the child;
 4. An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in activities described in 3 above; and
 5. A statement of how the child's progress towards the annual goals described in 2 above will be measured. (20 U.S.C. Sec. 1414 (d) (1)(A).
4. An appropriate education is one that provides a child with educational benefit.
 5. More than minimal educational benefit is necessary to comply with IDEA. Congress did not intend that a school district could discharge its duty under the IDEA by providing a program that produces some minimal academic advancement, no matter how trivial. Carter v. Florence County School District 4, 950 F.2d 156, 160 (4th Cir. 1991).
 6. _____, has received a free appropriate public education from the _____ Public School System during _____ period of instruction at _____ Middle School beginning in _____.

Discussion of the Law and Facts

The Individuals with Disabilities Education Act (IDEA) requires that children with disabilities be offered a free appropriate public education (FAPE). The school system satisfies the requirements of the IDEA to provide a free appropriate education to a child when appropriate procedures under the act are followed and the specially designed education program for the child with special needs provides the child with an education that achieves educational benefit for the child of more than a minimal nature.

The parent did not identify in the request for a due process hearing or in preliminary procedures any procedural violations on the part of the _____ Public School System.

According to the expert testimony from _____'s teachers and special education personnel of the _____ Public School System, _____ has made educational progress while attending _____ Middle School. According to expert testimony, _____ has received one on one and small group instruction in reading, math, and writing skills. All of the individuals of the _____ Public School System involved in the education of _____ demonstrated sincere interest in _____'s welfare and _____ educational advancement and demonstrated the application of their expertise and skills to facilitate _____'s academic progress since _____ has attended _____ Public Schools.

Decision

_____, has received a free appropriate public education from the _____ Public School System since _____ attended _____ Middle School beginning in _____.

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 a party within one year of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under Sec. 1415 of the Individuals with Disabilities Education Act (20 USC Sec. 1400 et seq.) without regard to the amount in controversy.

Date

Hearing Officer