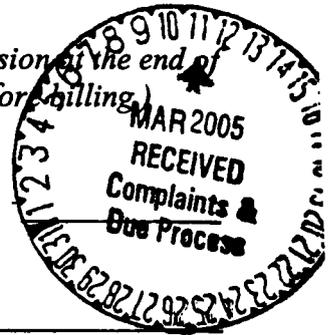


CASE CLOSURE SUMMARY REPORT

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



<p>School Division <u>Public Schools</u></p> <p>Name of Child _____</p> <p><u>Kathleen S. Mehfoud</u> Counsel Representing LEA</p> <p><u>Parent</u> Party Initiating Hearing</p>	<p><u>Ms.</u> Name of Parents</p> <p><u>January 27, 2005</u> Date of Decision</p> <p><u>None</u> Counsel Representing Parent/Child</p> <p><u>LEA</u> Prevailing Party</p>
--	---

Hearing Officer's Determination of Issue(s):

The parent contended that the LEA had failed to comply with applicable law and has denied the child a free appropriate public education ("FAPE") by repeatedly refusing or failing to provide the child with an independent educational evaluation ("IEE") requested by the parent in several areas, including a functional behavioral assessment. The parent also contended that the child was being denied a FAPE because the child was not being provided by the LEA with appropriate related services necessary to afford the child the necessary quantum of educational benefit required under applicable law and because the LEA had not allowed the child to participate in SOL testing for 2 years.

Hearing Officer's Orders and Outcome of Hearing:

On January 17, 2005, the LEA, by counsel, filed a motion to dismiss arguing firstly that "[t]he issues raised by the parent in the present request for a due process hearing are an attempt to relitigate matters that have been fully resolved by a [different] hearing officer decision made on December 8, 2004 (the "Decision")." The LEA also argued that to the extent that the parent's request for a due process hearing actually raises any new issues, these new issues are premature for a due process hearing. The hearing officer granted the LEA's motion to dismiss the proceeding in its entirety. The hearing officer agreed with the LEA that the parent's claims concerning the child's participation in the SOL are either premature or barred by the doctrine of *res judicata*. The hearing officer decided that if he were to allow the parties to begin relitigating the parent's claims concerning related services and other components of the June 17, 2004 IEP before the child enters the private day school program contemplated by the June 17, 2004 IEP, the administrative record would become a mess and any decisions rendered by this hearing officer would constitute an unjustified and impermissible collateral attack upon and affront to the Decision. The parent must appeal the Decision to an appropriate court in the event she wants to challenge it rather than engage in a parallel administrative proceeding to attack it collaterally. Concerning the IEE requested by the parent in November 2002, any cause of action relating thereto would be barred by the applicable statute of limitations. Manning v. Fairfax Co. Sch.

Bd., 176 F.3d 235 (4th Cir. 1999); Va. Code § 8.01-248. The only other request of the LEA concerning which the parent brought a claim in this proceeding was a request for an "independent functional behavioral assessment" made in the Spring of 2004. However, a request for a functional behavioral assessment ("FBA") or an "independent FBA" does not constitute a request for an IEE. Nowhere in the federal or state special education relations is a FBA equated to an evaluation. A FBA developed by the child's IEP team is a problem-solving process used to develop or revise positive behavioral intervention plans and supports to help students advance academically and behaviorally.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties to 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.

John V. Robinson
Printed Name of Hearing Officer

John V. Robinson
Signature