

OCT 03 2013

CASE CLOSURE SUMMARY REPORT

**Dispute Resolution &
Administrative Services**

(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.)

County Public Schools
School Division

Name of Parents

Name of Child

02 October 2013
Date of Decision or Dismissal

John Cafferky
Counsel Representing LEA

Caitlin McAndrews
Counsel Representing Parent/Child

Due Process brought by Parents
Party Initiating Hearing

CPS
Prevailing Party

Hearing Officer's Determination of Issue(s):

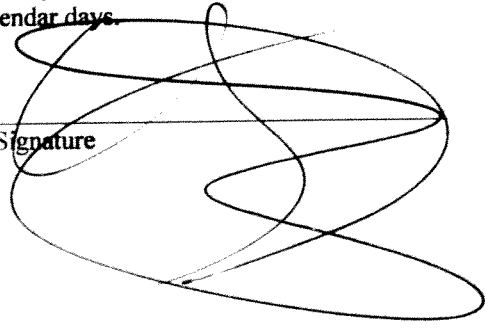
The primary issue in this matter involved the potential failure to provide FAPE.

1. Claim that CPS failed to provide a FAPE to the child
2. Claim for Compensatory Education for the child

Hearing Officer's Orders and Outcome of Hearing:

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, and if applicable, I have also advised the LEA of its responsibility to submit an implementation plan to the parents, the hearing officer, and the SEA within 45 calendar days.

W. James Dangoia
Printed Name of Hearing Officer

Signature 

Received

OCT 03 2013

**Dispute Resolution &
Administrative Services**

V I R G I N I A:

COUNTY PUBLIC SCHOOLS
SPECIAL EDUCATION APPEAL

and)
Petitioners,)
v.) In re:)
COUNTY PUBLIC SCHOOLS,) Case No. 14-005)
Respondent.)

DUE PROCESS HEARING DECISION

I. ABBREVIATIONS AND IDENTIFIERS USED IN THIS MATTER

- Father
- Mother
- Student
- Atrial Septal Defect - ASD
- Compensatory Education - Comp Ed
- Extended School Year - ESY
- County Public Schools - CPS
- County Public School Closing - CPS Close
- Free Appropriate Public Education - FAPE
- Individuals with Disabilities Education Act - IDEA
- Individual Education Program - IEP
- Learning Disability - LD
- Occupational Therapy - OT
- Other Health Impairment - OHI

Parents' Closing - P Close

Section 504 of the Rehabilitation Act of 1973 - 504

Speech Language Service - SL

Testimony from the Due Process Hearing - Test

II. ISSUES

This matter essentially consists of two separate issues:

A. The Parents believe that CPS denied their child a free appropriate public education (FAPE) throughout the child's kindergarten and first grade school years and was not being provided in proposed IEPs from June and August of 2013.

Specifically, the Parents contend the CPS failed to provide a FAPE in the following ways:

1. CPS provided "inappropriate instruction in reading, math, and written language." See P Close, Pg. 1.
2. CPS failed "to provide sufficient occupational therapy and speech and language services." *Id.* Pg. 3.
3. CPS failed "to provide extended school year services." *Id.* Pg. 4.
4. CPS failed "to provide an aide and other services." *Id.* Pg. 5.
5. CPS failed "to program appropriately for [the student's] safety within school." *Id.* Pg. 6.

Regardless of the above-referenced specificity, a denial of a FAPE rests on a showing that the child failed

to receive some educational benefit under the program set in place for the student by CPS.

B. That as a result of a denial of a FAPE, the student deserves to be provided with compensatory education under both the IDEA, 20 U.S.C. § 1400 *et seq.*, and under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, to enable the child to recover lost educational opportunities resulting from such denial of a FAPE. See P Close, Pg.1 and 6.

Concerning compensatory education, that issue is dependent on the outcome of the first issue; whether the child was denied a FAPE by the CPS.

"Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student."

G *ex rel. Rg v. Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir., 2003)

Simply put, absent a showing of a denial of a FAPE, there would be no basis upon which to award compensatory education.

III. DECISIONS

Regarding the foregoing issues, I find that:

1. The actions of CPS did not result in a denial of

a FAPE for the student in the student's kindergarten or first grade years nor do I find the proposed IEPs of June or August 2013 as failing to provide a FAPE since neither appears to have been finalized, much less implemented.

2. Based on my decision that CPS has not denied the student a FAPE, there is no basis upon which to award the student with compensatory education. Accordingly, I deny the award of compensatory education in this matter.

IV. FINDINGS OF FACTS AND CHRONOLOGY

1. The student in this matter was approximately seven and one half years old at the time that the request for this Due Process Hearing was filed.

2. The student had been diagnosed with Doose Syndrome, a seizure disorder, see P Exh. I, Atrial Septal Defect (ASD), a small hole in the child's heart, and ankyloglossia, a medical anomaly commonly referred to as "tongue tied," see P Exh. F.

3. The student was first referred for a determination of Special Education Eligibility on 28 October 2009, but was found ineligible at that time. See P Exh. H and CPS Exh. 1.

4. The student was again evaluated and on 19 May 2010, was found eligible for Special Education Service for

"Other Health Impairment." See CPS Exh. 2.

5. Utilizing an 18 June 2010 IEP, the student attended pre-kindergarten at the Elementary School in 2010. See P Exh. S.

6. For kindergarten, the student attended Elementary School, utilizing an initial IEP of 04 May 2011. See CPS Exh. 9.

7. That initial IEP was modified on 14 December 2011, to include "Adapted Physical Education." See CPS Exh. 10.

8. It was again modified on 10 February 2012, to add an "Articulation" component to the student's Communications work. See CPS Exh. 11.

9. On 01 May 2012, an IEP was developed for initial use by the student in the upcoming first grade. See CPS Exh. 12.

10. On 12 November 2012, the first grade IEP was modified to change the number of hours the student would spend in a Special Education setting for LD, OT and SL assistance. See CPS Exh. 13.

11. On 28 January 2013, the aforementioned IEP was again modified to increase the number of hours the student would spend in a Special Education setting for LD. See CPS Exh. 14.

12. All of the above-referenced IEPs and their associated modifications were done by the involved IEP Team, and, in every case, included the Parents' approval.

13. On 07 June 2013, the IEP Team met and proposed an IEP for the students use in grade two. See CPS Exh. 16. This IEP was never approved.

14. During the 07 June 2013 IEP meeting, the Parents asked for ESY for the student. As recalled by the Parent, their request was rejected. See Test., Pg. 1058, ln., 4 - 10, and 1156, ln., 9 - 16.

15. However, there is some conflict here. During her testimony, Ms. , when asked whether "the IEP team offered to have [the student] attend site-based summer school program at Elementary," responded, "Yes." See Test., Pg. 949, ln., 18- 22.

16. Ms. ' recollection is further supported by CPS Exh. 8, a 29 July 2013 letter from CPS to the Parents, in which the following statement was contained: "Additionally, while the IEP team agreed that [the student] does not qualify for ESY services, CPS members of the IEP team offered to have [the student] attend the site-based summer school program at Elementary School. You chose not to have [the student] attend."

17. The Parents also seek an aide to be assigned primarily to the Student. See Test., Pg. 1060, ln., 2 - 22.

18. The Parents also seek to have a full time nurse assigned to the school to provide the student with care should any significant medical needs arise. See Test., Pg. 1061, ln., 6 - 16.

19. On 16 July 2013, the Parents' filed their request for a Due Process Hearing.

18. On 09 August 2013, another IEP was proposed for the student. See CPS Exh.17. This proposed IEP has never been approved.

20. As of the close of the Hearing on 19 September 2013, the student had yet to be in attendance at Elementary School for the 2013 - 2014 school year.

21. While the student has yet to return to school, the parties agree that teachers at have sent home educational materials for the student to work with in the home. See Test. Pg. 1176, ln., 14 - 22.

V. IDENTIFICATION AND APPLICATION OF LAW

This matter was brought by the Parents on a claim that CPS failed to provide their child with a FAPE as required under the IDEA, "[a] free appropriate public education is

available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive”
20 C.F.R. § 1412(a)(1)(A).

In reviewing this portion of the claim, Parents’ counsel rightly points to the standard set forth over 30 years ago, which has remained essentially unchanged since then; that the “purpose of providing access to a ‘free appropriate public education’ is the requirement that the education to which access is provided be sufficient to confer *some* educational benefit upon the handicapped child (emphasis added).” Board of Educ. v. Rowley, 458 U.S. 176, 200 (1982).

Concerning this standard, the Court went on to say, “We therefore conclude that the ‘basic floor of opportunity’ provided by the Act consists of access to specialized instruction and related services which are individually designed to provide *educational benefit* to the handicapped child (emphasis added).” *Id.* at 201

While I am in full support of the Parents’ position that the “benefit must be ‘non-trivial,’ and evidence of *some* gains does not necessarily constitute benefit,” see Sumter County Sch. Dist. 17 v. Heffernan, 642 F.3d 478, 486

(4th Cir. 2011). However, in the case before us, the progress testified to, and the exhibits supportive thereof, do not speak of trivial gains.

As pleaded, it is difficult to determine if the Parents are concerned that the involved IEP is insufficient, or its implementation was improperly done.

Regarding its sufficiency, an IEP is

a written statement for each child with a disability that is developed, reviewed, and revised [by] a group of individuals composed of (i) the parents of a child ; (ii) not less than 1 regular education teacher of such child (*if the child is, or may be, participating in the regular education environment*); (iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child; (iv) a representative of the local education agency, who (I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (II) is knowledgeable about the general education curriculum; and (III) is knowledgeable about the availability of resources of the local education agency; (v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi); (vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (vii) whenever appropriate the child with a disability. (Emphasis added.)

20 U.S.C. § 1414(d)(1)(A) and (B).

Given that the IEP, in the current case, appears to have been developed in accord with the foregoing statutory provision, and that the Parents were involved in the IEP development process; that, from time to time, they requested changes and those changes were always considered and, with the exception of assigning an aide to the student, and a full time nurse to the school, appeared to have been implemented in one fashion or another in the IEP itself, the IEP's development is, from a procedural point of view, sufficient to provide the student with a FAPE, and an opportunity for educational progress.

Turning now to the involved IEPs implementation, here I must rely on the testimony provided by the witnesses, and the exhibits supplied by the parties.

First, regarding the witnesses; I was impressed with the demeanor of each and every witness; their honesty and forthrightness. Even under the glare of outstanding cross-examination, the witnesses remained open and honest, if not somewhat contrite, in their answers.

Next, counsel for the parties referred the witnesses to a number of exhibits throughout their questioning. Important among those exhibits were the IEPs and progress reports for the student (see Parents Exhibits - S, Z, QQ,

ZZ, CCC and WWWW, and CPS Exhibits 51, 53, 54, 57 and 60, some of which were duplicative).

It was through a review of these and other exhibits that the witnesses provided their opinions, lay and expert, concerning whether the student had made progress under the applicable IEPs.

In the testimony of _____, who was qualified as an expert in elementary education, while discussing the IEP proposed on 07 June 2013, and contained in CPS Exh. 16, when asked if he had an opinion on whether that IEP would provide the student with educational benefit in the least restrictive environment, he replied, "I think it's a very good plan. I think we can support [the student] very well at _____ Elementary and support [the student's] educational needs. See _____ Test at Pg. 49.

Through additional questioning by counsel for Parents, Mr. _____ acknowledged that while his opinion was based on his experience, he did heavily depend on the opinions of the other members of the IEP team. *Id.* at 53 - 55.

In the testimony of _____, who also qualified as an expert in elementary education, when asked whether the 07 June 2013 IEP "would provide an appropriate program

for [the student] for second grade," she responded, "[] I do think that it's appropriate this was perfect because the IEP is obviously just for [the student], so it incorporates [the student's] goals, as well as what [the student] would be learning in second grade from the second grade standard. So I do believe that this is appropriate"

Test at Pgs. 118 - 119.

On cross-examination, when asked if the student made the "expected level of progress," she replied, ". . . [the student] did not make *expected* progress. But [the student] *did make* progress. (Emphasis added.) *Id.* at 149 - 150.

In the testimony of _____, an expert in physical education, when asked whether the student made progress under the first grade IEP, Mr. _____ stated, "[the student] made progress." See _____ Test at Pgs. 191 - 192.

_____ testified that she worked with the student as a Special Education Instructional Assistant. She was asked about providing assistance to the student:

Q. You said that you assisted [the student] in prompting and those sorts of things. Did [the student] benefit from your assistance?

A. [The student] did benefit from some assistance for focus, staying on task, not chatting with . . . friends.

Q. Did [the student] need that full-time?

A. No.

Q. Why do you say that?

A. Because I was able to circulate the room and work with the other inclusion children, and not have to focus on [the student].

Q. But I'm not talking about the other students. Did [this student] need you there?

A. No. Not at all times.

Test. Pg. 197.

When asked on cross-examination, "when would you think a child would need a one-on-one aide?" Ms. responded:

If they were severely disabled. If they had maybe wheelchair use, but they couldn't manipulate around by themselves all the time. If they were intellectually disabled, and they definitely needed someone there to guide them through even the basic needs of the day, going to the bathroom.

Q. And that's the criterion in which you believe a one-on-one aide should be provided?

A. I believe so.

Id. at 203.

This testimony went unrebutted.

Based on the foregoing testimony, and other witnesses general testimony concerning the overall demeanor of the student, and the lack of any demonstrative evidence that

the student has a need for a full time aide, I do not find the refusal by CPS to provide such an aide, especially since the student seems to already have teachers and assistances nearby on a routine basis, as a basis for a finding of a denial of a FAPE.

, testifying as an expert in speech and language pathology, when asked if the current amount of time allotted for the student's speech and language work was sufficient for the student to make progress, she responded, "[y]es." Test., Pg. 306.

With specific regard to the students' speech and language needs, Ms. noted that "[a]ll Kindergarten children are screened for their speech and language skills within their first 60 days of Kindergarten." And here the student was so screened.

Test. Pg. 217.

In October 20[11], as a result of the screening, Ms. "had a conversation with [the Parent] about the possibility of referring [the student] for a speech-language evaluation to look at the related service of speech language."

Id.

This was done because during the screening Ms. "did observe articulation or speech sound errors, and that [the student] also had some difficulty relating an experience for me [s]o the team felt that we had enough evidence to go forward with a speech-language evaluation to see if he would meet the qualifications of related services of speech and

language.

Id. at 218 - 219.

We met again at "the February IEP meeting, where we decided that [the student] met the qualification of speech-language."

Id. at 219.

In January 2012, Ms. "performed a full speech-language evaluation, which consisted of an articulation test, which looked at [the student's] speech sound production and what errors [the student] might produce. [She] also administered a speech mechanism examination that looked at his oral structures and the functioning of all the muscles in the mouth and of [the student's] breathing."

Id. at 220.

Ms. "also did an informal voice evaluation, listening for voice parameters such as nasality of speech, use of loudness, whether [the student's] pitch is within a normal range, fluency evaluation to see if [the student] stutters, and two oral language tests.

One, the Clinical Evaluation of Language Fundamentals, Fourth Edition. That's a full Battery looking at receptive and expressive language. And then the Peabody Picture Vocabulary Test, which looks at receptive vocabulary.

Id. at 221.

Ms. "also did an observation in the classroom and wrote up observations. [The student's] teacher performed or completed a teacher narrative looking at classroom language skills

Id. at 222

When asked if this was "a comprehensive evaluation of [the student's] speech-language functioning, Ms. responded, "[a]bsolutely."

Id.

As a result of the evaluation, Ms. noted that the student's "fluency was good. [The student] did not stutter. [The student] sometimes had some word finding difficulties, but not to the extent that we would call [the student] a stutterer.

"[The student] had many strengths in oral language. In fact, the only two areas that were identified as needs for oral language were following directions

"[The student's] other area of weakness in oral language was sentence structures, being able to give complete sentences without errors. That was a little low.

"But overall, [the student's] expressive language was well within the average range. [The student's] receptive language, . . . understanding of language, because of that following directions difficulty, was below average.

"Language content, that would be the vocabulary that [the student] uses, was borderline average. And overall [the student's] language structures, both understanding language structures and using language structures were within the average."

Id. 224 - 225.

When asked, "what were the areas that [the student] was weak in?" Ms. responded, ". . . [O]ral language, it was basically sentence structures and following directions.

"And then in articulation, [the student] had a standard score of 69, which is well below average. [The student] had multiple sound errors"

Id. 225 -226.

When goals were discussed for the student's IEP in the speech-language area, it was noted by Ms. that the student "already had a communication area of need with oral language goals, we left that in place. And added articulation. . . ."

Id. at 228.

Based on her evaluation, Ms. "recommended four hours [of service] a month, which would be an hour a week in the speech-language therapy setting."

Id. at 229.

In May of 2012, during the development of a new IEP for the student, the IEP Team "increased his speech-language amount of time. [Ms.] felt like [the student] had enough articulation or speech sound errors that we needed to give [the student] a little additional time on that, as well as working, devoting a little more time to [the student's] oral language, to the storytelling, to the concept development, to make sure those were firm. So we increased from four hours a month to six hours a month."

Id. at 231 - 232.

When asked if, "based on [her] professional judgment, that was an appropriate recommendation for an amount of services and type of services at that time?" She responded, "[f]our hours a month was probably an appropriate amount of service. Six hours definitely would meet [the student's] needs, in fact, probably over and above [the student's] need."

Id.

Finally, in developing the November 2012 IEP, the student's speech-language was modified to having "all of his speech therapy pull-out sessions into the speech room. . . ."

Id. at 241.

Given the level of involvement and dedication shown by Ms. [redacted] in the development of the speech-language component on the student's IEPs, and from the testimony that the student was demonstrating progress in the speech-language area, I find no insufficiency in this area of the student's IEP that would, in any way, be considered as being a violation of a FAPE.

Granted, on cross-examination, Ms. [redacted] was not able to provide specific response to some policy and procedural questions, but I heard nothing that would indicate she had failed in her obligation to provide a FAPE to the student.

[redacted], testifying as an expert in special education, when asked if the student's IEPs, for kindergarten and first grade, were appropriate for the student, she replied, "[v]ery much appropriate, yes. It was based on [the student's] needs." See [redacted] Test. Pgs. 323 - 324.

When asked, "[i]s it surprising that a child . . . who has a disability and is receiving special education services, may not progress at the same rate as a student who is not disabled?" She responded, "[y]es, that's true."

There followed:

Q. Is it surprising to you that [the student] would not progress at that same rate?

A. No, it's not surprising. Children with learning disabilities, or any type of disabilities like that, do progress at a slower rate, and that's why they have an IEP, so we can work with them and try to keep them up with their peers.

Q. And you said even though [the student] progressed at a slower rate, [the student] was still making progress?

A. Yes. Yes, [the student] did.

Test. *Id.* at 367 - 368.

Ms. _____ essentially repeated her belief when asked, "[a]t the conclusion of the year, had [the student] made the expected level of progress you had, based upon your experience, as at the start of the year?" Her response, "[The student] had made tremendous progress, I thought, at the end of the year. So [the student] did make progress. and I was very pleased with it." *Id.* at 372.

In the testimony of _____, the student's Kindergarten teacher, who was called by the Parents, she stated as follows;

Q. Ms. _____, were you relying on the special education teacher who participated in all the IEP meetings that you were involved to have the measurement of [the student's] educational levels?

A. Yes.

Q. And from your vantage point as [the students] teacher, do you think [the student] made progress towards the areas of need that are listed in the IEPs?

A. Yes. Definitely.

Test. Pg. 415.

, testifying as an expert in Occupational Therapy, when asked, "[i]n terms of the areas that you worked with [the student] on over the course of the, well, two-year period that you have, did he benefit from [that work] as part of [the student's] educational program?" She responded simply, "Yes." Test. Pg. 458.

Further in her testimony she was asked, ". . . would you define [the student's] progress through kindergarten, and then again through first grade?" Whereupon she replied, "I think he made very nice progress both years." *Id.* at Pgs. 503 - 504.

, testifying as an expert in Special Education teaching, responded to a series questions concerning any regression the student may have experienced as follows:

Q. Did you ever notice any regression in any of the work that [the student] did?

A. Yes. Throughout the year. I mean, we recouped

it quickly. I mean, not quickly, but we were able to get back to where we were. But every time [the student] was out, [the student] would go back a little bit

Test. At Pg. 1005.

Q. But my question is more along the line of: Were you able to look at where [the student] was at the end of kindergarten and when you took [the student] over the first part of first year, did you notice any regression from where -- did you have that information?

A. I had some information from [the student's] previous teacher of where [the student's] performance was. We always talk at the beginning of each year, and we share, we pass down our folders to each other, our working folders. So there was some information in there about [the student] --

Q. Was there anything that indicated any regression?

A. Not significant enough to the point where [the student] wouldn't recoup it.

Id. at Pgs. 1006 - 1007.

Regarding regression for lack of Extended School Year services, based on Ms. . . . ' testimony, and the records of progress for the student, I find no denial of the provision of a FAPE springing here from.

Regarding the concerns expressed for the student's safety, due to the student's medical history, Doose Syndrome and ASD, there is real concern for how the student is treated.

In reviewing this matter, I turn to the testimony of

who testified as an expert in school health nursing.

Here the questioning began with her being asked that, having reviewed the "clinic notes and the health notes that were done by the prior nurse, were,

you able to formulate an opinion about whether [the student] needs to have a nurse assigned either to [the student] or to the school, specifically there, in order to provide for seizure protection or other medical needs?

A. Based on my experience with many children with health conditions, including seizures, in many schools, I would say that a nurse is not necessary for the child to be safe in school.

Q. Explain why?

A. Well, because seizures in general, although they can come in many shapes and sizes, generally speaking, seizures in and of themselves are not necessarily life-threatening. They are -- though, they could be in the event that the seizure were to last longer than a normal time for a seizure, such that we have protocols in place, just in our standard care of the school health care emergency guidelines that all school personnel have access to, but particularly the school health aides, there is a standard care.

Test. Pg. 666

While a requirement for an in-school nurse for a child might be placed before an IEP Team for a FAPE decision, based on the foregoing testimony, and the lack of any probative evidence that the student, in this case, needs to

have a nurse assigned to _____ to afford the student a FAPE, I find that the absents of such a nurse does not result in a denial of a FAPE for the subject student.

That said, I now suggest, and only suggest, that the Parents, who best know the medical needs of their child, begin the process of obtaining an evaluation by the Medical Services Review Team that would identify the specific school medical needs of their child.

Q. Is there, _____ some process in place for, if you need to, a committee process for consideration of the need, immediate need for a nurse?

A. Yes. There is a process in _____ County. If a physician and the parent feel that a child is in need of nursing services and requires a nurse, the process goes through a committee. It's called MSRT, which is Medical Services Review Team.

And the process for that, once the request is made, when it's felt that this child requires nursing services, it involves an assessment by the public health nurse. And then a physician needs to write a statement as to why nursing services are needed, and what the risk of not having nursing services could be.

And then that goes up to the Medical Services Review Team. And the people that sit on that team are a health department physician, and then other school personnel, transportation. It's a team of people that look at what the child's needs are, and whether the nursing services are felt to be appropriate for the child's health and well-being in the school.

If the Medical Services Review Team finds that in fact, yes, this is something we need to do, then

the Health Department actually picks up the tab for the nursing services during the time that the child is in school.

Often those students are students who may already have nursing services at home, because there is a reason for the child to need nursing assessment or treatments or something along those lines. So they already have nursing at home because of their needs.

So that kind of helps a little bit in terms of determining, although not always. Sometimes they still will go ahead and agree to have a nurse in place in the school setting.

Id. at 672 -673

Concerning Parents' counsel's position on the employment of additional expert witnesses, though Parents' counsel provided a brilliant cross-examination of CPS expert witnesses, counsel was simply unable to bring any of those witnesses into the Parents' camp by having any of them recant their own testimony, or rebut the testimony of any of the other witnesses, with regard to whether the child had sufficiently progressed under the IEPs that had already been used.

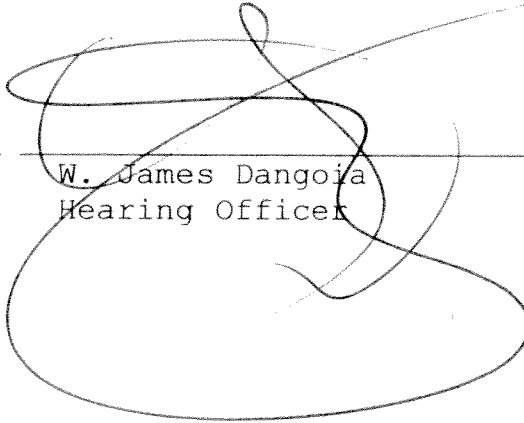
As Counsel argues in their closing, "[t]he IDEA does not . . . require testimony by outside experts hired by parents" P Close., Pg.8, see *Arlington Central School Dist. Bd. Of Ed. V. Murphy*, 548 U.S. 291, 297 (2006). While counsel is certainly correct, offering

virtually no witnesses, other than the parent, to unabashedly support the Parents' own position makes it extremely difficult to sustain their position. Especially in light of the progress reports and testimony offered as evidence in support of the CPS position that " CPS . . . provided an appropriate education to [the student] during kindergarten and first grade" CPS Close, Pg. 8

VI. APPEAL INFORMATION

This decision is final and binding unless either party appeals in a Federal District Court within 90 calendar days of the date of this Final Order, or in a Virginia Circuit Court within 180 calendar days of the date of this Final Order.

DATE: 02 October 2013



W. James Dangoia
Hearing Officer

Certificate of Service

I hereby certify that a true copy of the foregoing Pre-Hearing Report was mailed, first class postage prepaid, this 02nd day of October 2013, to Caitlin E. McAndrews, and, Heidi Konkler-Goldsmith, Counsel for Child, McAndrews Law Offices, 1350 Connecticut Ave. NW, Suite 850, Washington, DC 20036, John F. Cafferky, and Patricia A. Minson, Counsel for CPS, Blankingship and Keith, 4020 University Drive, Suite #300, Fairfax, Virginia 22030, Brian Miller, Hearing Officer Observer, 2119 W. Main Street, Richmond, Virginia 23220, and Patricia Haymes, Director, Dispute Resolution and Administrative Services, VDOE, P.O. Box 2120, Richmond, Virginia 23216-2120.



W. James Dangola
Hearing Officer