

AUG 05 2009

Dispute Resolution & Administrative Services

Local Hearing /

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.)

Public Schools
School Division

Name of Parents

Name of Child

8-3-2009
Date of Decision

John F. Cafferty, Esq.
Counsel Representing LEA

Pro Se
Counsel Representing Parent/Child

Parents
Party Initiating Hearing

LEA
Prevailing Party

Hearing Officer's Determination of Issue(s):

Did the 2009 proposed IEP offer FAPE?

Hearing Officer's Orders and Outcome of Hearing:

The parents failed to show that the IEP did not offer FAPE. The LEA demonstrated that the proposed IEP offered FAPE, the proposed placement was appropriate, the offered related services were appropriate and the transportation services offered were appropriate. The matter was dismissed by order of the Hearing Officer.

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.

Frank G. Aschmann
Printed Name of Hearing Officer

[Signature]
Signature

VIRGINIA DEPARTMENT OF EDUCATION
DUE PROCESS HEARING

&)
)
v.) In Re:
)
PUBLIC SCHOOLS)
)

DECISION

On June 12, 2009, the parents of filed a request for a due process hearing in regard to their daughter. The issue raised is whether the proposed Individualized Education Plan (hereafter IEP) is sufficient to provide a free appropriate public education (hereafter FAPE) for 's parents request increased speech therapy (hereafter ST), increased occupational therapy (hereafter OT), increased physical therapy (hereafter PT), a transfer to another school and for transportation by taxi cab with an aide to continue. No procedural issues were raised.

Findings of Fact

is a nineteen year old student in the Public Schools (hereafter PS). is severely mentally retarded and functions at approximately a 13-18 month old range. She has been found eligible for special education services in the category of Severe Disabilities. 's base school is School. has made significant progress while a student at PS. was unable to walk when she began as a student. She has learned to walk. Her gait is not normal but she is now able to move on her own without the assistance of a mechanical device. She is now able to sit and get up from a sitting position. She has learned to walk up steps. has not been able to learn to run or get up from the floor. These are skills that she continues to try to learn. has learned to sit and pay attention. She could not sit up and attend to an activity initially. When objects were placed in front of her she would push them away, crumple them or tear them up. She will now look at books and particularly enjoys books with pictures of animals in them. would always push away from a table or desk but now will attend an activity such that she no longer needs a special chair or non-slip mat. has learned to make choices with the help of assistive technology and can designate various foods and activities she would like rather than just what is put before her. has improved in her feeding skills and can, at times, feed herself. has become verbal. She can speak several words which have meaning and can, at times, use them appropriately. These changes have improved the quality of life for . attends the . This is a highly specialized school which provides educational services to students who function at levels that range from birth to three years. The students range from 5 to 22 years of age. Approximately 60% of the students are non-verbal and approximately 60% of the students are non-ambulatory. The is a newly renovated school which has state-of-the-art assistive technology. The school has a specialized design to

assist the students move throughout the facility with features such as railed walls and no steps. The school has experts on staff, in the building, at all times in the fields of OT, PT, ST. The [redacted] has small classes. [redacted]'s class has eight students, the primary teacher and two assistants. The school has a pool for its aquatics program and other specialized physical education equipment. The school conducts field trips where the students are taken out into the community for enjoyment and to help train them to function in public settings. Periodically, mainstream students visit the school and interact with the students.

[redacted] requires door to door transportation and assistance to get to school. [redacted] is currently transported to school by a private taxi cab. This arrangement was made when her school bus driver believed it was too difficult to turn a bus around on her street and his request not to make the pick up was granted by the route coordinator. The bus driver and route coordinator have since changed. There is another student living on her street approximately two doors down the street who goes to [redacted]. A bus picks him up. The current bus driver has been operating this route for approximately one year. [redacted] would be the second to last student picked up on the route with the student down the street being the last student picked up on the route. The other student is ambulatory. The bus driver on [redacted]'s route is trained by [redacted] PS and certified in CPR and first aid. He has been employed as a bus driver since 1999 and worked out of [redacted] since 2002. The bus also has an attendant who is trained by [redacted] PS and is certified in CPR and first aid. He has been employed as an attendant since 2007. [redacted] has at times been car sick. The bus equipped with a "spill kit" to deal with car sick passengers. The trip from [redacted]'s home to [redacted] is approximately 4.5 miles. She lives in a townhouse complex with a T intersection at the end of the street. The school buses used by [redacted] PS are manufactured to a high level of structural integrity and conform to federal safety regulations.

[redacted]'s 2008 IEP provided OT 2 hours per month as additional/related services. The 2009 IEP proposes OT 2 hours per month as additional/related services. The 2008 IEP provided ST 8 hours per month as additional/related services. The 2009 IEP proposes ST 8 hours per month as additional/related services. The 2008 IEP provided PT 4 hours per month as additional/related services. The 2009 IEP proposes PT 2 hours per month as additional related services. The 2008 IEP provided transportation to school via cab. The 2009 IEP proposes transportation to school via school bus. The 2008 IEP makes a placement at [redacted]. [redacted]'s parents have requested she be placed at [redacted] School if all services in place can be continued for the 2009 IEP.

Conclusions of Law

[redacted]'s parents have challenged the IEP, thus they have the burden of proof to show that the proposed program will deny her FAPE. Weast v. Schaffer, 546 US 49 (2005). Ms. [redacted] testified that she thought her daughter could be learning more and believed that additional related services in OT, PT, and ST could help her. Ms. [redacted] presented no educational credentials and was not qualified as an expert. Ms. [redacted] presented no other evidence on this issue.

[redacted] PS presented experts in each field, her classroom teacher, also an expert in special education, and the school principal, an expert in special education. All of the experts expressed the same opinion that the related services were more than sufficient to provide [redacted] with educational benefit [redacted] has, in fact, demonstrated progress and gained from her educational program. Each expert in PT, OT, and ST had requested a reduction in related services but some

were willing to compromise to keep [redacted]'s parents happy. This has been an issue in contention between [redacted]'s parents and the school staff for several years. The staff believes it is important to taper down the services so that [redacted] will be prepared for transition to Adult Community Services which she will have to work with when she ages out of her school program. The Community Services Board will not be providing the level of services that [redacted] receives in the [redacted] School and her quality of life will be affected by the level of independence she has attained at the time she leaves the school system. The staff expressed concern that providing too many services makes [redacted] dependant on them and actually holds her back from achieving the level of independence she could attain if forced to do more things for herself. [redacted]'s classroom teacher maintained that she would like [redacted] to remain in the class more and not go out to related service programs as it took away from her lessons to do so. Of note is that the proposed IEP only seeks to reduce related services in the one area of PT. [redacted]'s physical therapist points out that [redacted] has attained the goal which is related to educational benefit in her PT program. Accessing educational services is the point of PT not an end unto itself [redacted] has learned to walk, sit and attend to her studies. Physically she can participate in her programs. She does not need PT at all except to improve her physical skills as opposed to when she started where she needed PT to access her educational program.

Under Board of Education v. Rowley, 458 US 176 (1982) FCPS is obligated to provide [redacted] with an educational program which provides her with some educational benefit. The 2009 proposed IEP for [redacted] offers a highly appropriate program for her. The program at the [redacted] is specifically designed for students with disabilities of [redacted]'s type. She has gained significant benefit from the program in the past. The program is run by dedicated professionals who are experts in their fields. The school offers facilities which are unavailable in most settings.

The proposed reduction in PT hours of related services by [redacted] PS is done with a specific reason. Ms. [redacted] presented no evidence which showed that this reduction would cause [redacted] to be unable to get educational benefit from her IEP and thus be denied FAPE. Ms. [redacted] only argues that she believes her daughter could do better with more services. This is not the standard set forth in Rowley. The [redacted] PS witnesses were not in any way impeached. Their testimony was credible, logical and persuasive.

Ms. [redacted]'s request to transfer [redacted] to [redacted] School was unsupported by the evidence. Ms. [redacted] herself made this request conditional upon all services being continued. The [redacted] is a highly specialized school with facilities designed for severely disabled students. It is not practical for these features to be put in a mainstream high school. The low teacher to student ratio of the [redacted] is not practical in a mainstream high school. Ms. [redacted]'s desire for [redacted] to have examples of regular education students is in conformity with the principle of least restrictive environment but it is not practical in this instance. [redacted]'s low level of functioning requires a special educational environment. The educational programs at [redacted] School which are of benefit to the mainstream children there would be of no value to her. She would be in physical danger in the busy corridors of [redacted] School. Ms. [redacted] did not present any evidence which demonstrated that the program at [redacted] School was appropriate for [redacted].

Mr. [redacted] testified the issue which concerned him the most was the transportation of his daughter by taxi cab. Ms. [redacted], likewise, felt that [redacted] needed to be transported by taxi cab. Both indicated that it was difficult for her to use the steps up onto the bus. They felt she was in

danger of physical harm on the bus and likely to have car sickness. The road they live on also presents a challenge for a bus to turn around on. They felt the bus should not back up when carrying their child.

PS presented an expert on transportation and _____'s classroom teacher who had escorted her on field trips which were taken on a bus. The field trips were conducted to local shopping stores, an art exhibit and to a local park. Most of the trips were close to the school but the park trip was approximately five miles away. _____ experienced no problems on these trips and was capable of riding the bus. PS transportation expert described the school bus as a much safer vehicle than a cab because it was built to higher standards. The bus has a two man crew with the driver controlling the vehicle and the attendant caring for the safety of the passengers. The bus has a procedure to deal with car sickness and tries to identify causes to make accommodations as needed to alleviate the condition. The bus has had a change of driver who routinely navigates _____'s home street. The distance is no further than she has traveled in the past on field trips. The PS witnesses also testified that there was an educational purpose to having _____ ride the bus. They wanted her to acquire the skills to use a bus so that she could be successful accessing public transportation once she had left school. It is far more likely that the Community Services Board would expect her to use public buses rather than provide her with cabs. Being able to use public buses would allow _____ greater freedom and opportunity after her school career. The PT expert said that _____ had the skills to use the bus and it was another example of how she needed to be allowed to do things for herself to expand her skills.

_____ 's parents did not provide any evidence which showed she could not use the school bus to get to school, only that it might be difficult. PS provided evidence which showed legitimate reasons for the change in services in the IEP. PS is not obligated to provide transportation by cab for _____ if she is able to use a school bus to access her educational program. The evidence showed that this is the case. _____ has the physical skills to ride the bus, the bus can give her door to door service and the bus is a safe vehicle for transport. Additionally, learning to use the bus provides educational benefit to _____ which will assist her in the transition beyond her school career.

For the above stated reasons it is held that the 2009 proposed IEP offers _____ educational benefit sufficient to comply with the law and regulations and provide her with FAPE.

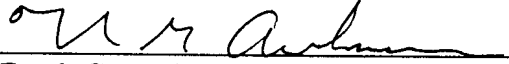
ORDER

The above styled matter is hereby dismissed.

Appeal Rights

This decision is final and binding unless either party appeals in a federal district court within 90 calendar days of the date of this decision, or in a state circuit court within 180 calendar days of the date of this decision.

8-3-09
Date


Frank G. Aschmann, Hearing Officer