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OCT 12 2010

Dispute Resolution &  
Administrative Services

VIRGINIA DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES  
OFFICE DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

CASE CLOSURE SUMMARY REPORT

PUBLIC SCHOOLS

School Division

Name of Parent(s)

Name of Child

October 7, 2010

Date of Decision

JOHN CAFFERKY, ESQ.  
Counsel Representing LEA

MICHAEL EIG, ESQ.  
Counsel Representing Parent(s)/Child

LORIN A. COSTANZO  
Hearing Officer

Party Initiating Hearing

HEARING OFFICER DETERMINATION OF THE ISSUE(S):


- A. The proposed IEP of 2/17/2010 and placement provided therein is appropriate.  
The child's need for services could be met by the Public Schools at  
School.
- B. Additional Findings Required under the Virginia Regulations:
- a. The requirements of notice to the parents were satisfied.
  - b. The Child has a disability.
  - c. The Child needs special education and related services.
  - d. The proposed IEP offers a FAPE.

HEARING OFFICER'S ORDERS AND OUTCOME OF HEARING:

The prevailing party is: Public Schools.

This certifies that I have completed this matter in accordance with the regulations and have advised the parties of their appeal rights in writing.

October 7, 2010

  
Lorin A. Costanzo, Hearing Officer

OCT 12 2010

Dispute Resolution &  
Administrative Services

VIRGINIA DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES  
OFFICE DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

**DECISION**

\_\_\_\_\_  
PUBLIC SCHOOLS  
School Division ("LEA")

\_\_\_\_\_  
&  
Name of Parents

\_\_\_\_\_  
Name of Child

JOHN CAFFERKY, ESQ.  
Counsel Representing LEA

MICHAEL EIG, ESQ.  
Counsel Representing Parents/Child

LORIN A. COSTANZO  
Hearing Officer

\_\_\_\_\_  
Party Initiating Hearing

**PRELIMINARY MATTERS:**

Parents initially filed a complaint for due process dated and received by the Local Educational Agency ("LEA") on June 9, 2010. Undersigned was appointed hearing officer in this matter from a list supplied by the Supreme Court of the Commonwealth of Virginia.

On July 27, 2010, Parents moved, in writing, to amend the complaint for due process hearing and LEA consented, in writing, to the amendment. Parents, with consent of LEA, filed an amended the due process complaint in this cause on July 28th, 2010 and the applicable timeline for a due process hearing recommenced on July 28, 2010. This matter came to be heard upon the amended complaint for due process filed by the parents of MM on July 28, 2010.

On August 24, 2010 the parties acknowledged, in a writing signed by counsel for both parties, waiver of the 30 day resolution period and their agreement that the due process hearing would be held beginning on August 24, 2010.

The due process hearing was held over a three day period, *August 24, August 25, and August 26 of 2010*. At the request of the Parents, the due process hearing was closed to the public. As requested by counsel for each party, oral opening statements were made and written closing arguments were submitted.

*Stipulations:*

Parties, by counsel, stipulated in writing that:

- No substantive or procedural violation is alleged concerning the timing of the IEP, and no relief is requested based upon the timing of the IEP.
- For purposes of the Parents' claim for reimbursement of \_\_\_\_\_ School, the [LEA's] February 17, 2010 IEP and proposed placement should be regarded as applicable as of the beginning of the 2009-2010 school year.<sup>1</sup>

*Transcript:*

The transcript of the hearing consists of 799 consecutively numbered pages contained in three volumes. The transcript is referred to as "Tr. \_\_\_\_" the page number inserted at the "\_\_\_\_".

*Exhibits:*

The exhibits of the parties were admitted, by agreement, *en masse*. The exhibits of Parents consist of one binder containing Tabs numbered 1 through 97 with Tab 72A. The exhibits of the School consist of one binder containing Tabs numbered 1 through 41 with Tabs 7A, 10A, 19A, 39 A-M, and 40A included.

Parents' Exhibits are designated as "P. Ex. \_\_\_\_" with the exhibit number inserted at "\_\_\_\_". School's Exhibits are designated as "S. Ex. \_\_\_\_" with the exhibit number inserted at "\_\_\_\_".

**ISSUES and PROPOSED RESOLUTION:**

*A. Issues for determination at the due process hearing:*

1. Whether the proposed IEP and placement is appropriate and the child's need for services could be met by the LEA?
2. Whether FAPE requires a private day placement? And, if so,
  - a. Whether \_\_\_\_\_ School is a proper placement?
  - b. Whether the Local Educational Agency ("LEA") is required to place and fund MM at \_\_\_\_\_ School?

*B. Proposed resolution of Parents:*

1. That the LEA's placement proposal of \_\_\_\_\_ School be found to be inappropriate for MM.
2. That \_\_\_\_\_ School be found to be a proper placement for MM.

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<sup>1</sup> S. Ex. 6

3. That the LEA shall be Ordered to place and fund MM a  
for the current school year.

School

### **FINDINGS OF FACT:**

Based the testimony of witnesses and the documents admitted into evidence, and by a preponderance of the evidence, the following findings of fact are made. Additional findings will be found in other portions of this decision.

01. MM is nearly      years of age (born on November 7,      ). MM is diagnosed with Pervasive Developmental Disorder - NOS characterized by co-occurring Mixed Receptive-Expressive Language Disorder, Attention-Deficit/Hyperactivity Disorder-Combined, Learning Disorder, and Developmental Coordination Disorder with Dysgraphia.<sup>2</sup>

02. MM has demonstrated significant speech and language delays and has impairments in cognitive functioning, attention, and processing skills.<sup>3</sup> Cognitively, MM's profile is varied. He demonstrates strength in verbal abstract reasoning skills, as measured by the Similarities subtest of the WISC-IV. He also demonstrated grossly normal performance on measures of immediate auditory memory for digits. His overall nonverbal cognitive skills and processing speed remain areas of significant weakness.<sup>4</sup>

03. MM is enrolled in Tae Kwon Doe (which is accommodated) by his parents. He enjoys swimming, bike riding, piano, reading, walking, and jumping on the trampoline. He has some interest in games, television.<sup>5</sup>

04. MM has participated in the track and field six-week module at      on an extracurricular basis with children from five other schools. These schools were a combination of special education, full-time special education, private, and the public schools.<sup>6</sup>

05. MM was first found eligible for special education services as a student with developmental delays in November 2002. At that time, the eligibility team noted delays in the areas of cognitive

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<sup>2</sup> Tr. 308-310, P. Ex.57.

<sup>3</sup> S. Ex. 22.

<sup>4</sup> P. Ex. 57.

<sup>5</sup> Tr. 110, 130; P. Ex.57.

<sup>6</sup> Tr. 524, 530.

ability, motor skills, social skills, and communication. Also, there were significant concerns in expressive language and social interactions.<sup>7</sup>

06. At age 3 MM attended the LEA's Key School preschool program receiving special education services.<sup>8</sup> For the 2004-2005 school MM attended preschool program at \_\_\_\_\_ School and was in a special education class there.

07. Parents began looking into private school placement for MM in February of 2005.<sup>9</sup> On April 5, 2005 MM's parents signed a contract for MM to attend school at \_\_\_\_\_ School. MM has attended \_\_\_\_\_ School for the last five school years (i.e. 2005-06, 2006-07, 2007-08, 2008-09, and 2009-2010).<sup>10</sup>

08. \_\_\_\_\_ School is a District of Columbia Department of Education certified private ungraded special education school. The School serves students between the ages of 5 and 18 with learning disabilities and attentional problems.<sup>11</sup> \_\_\_\_\_ School has approximately 200 students divided between its lower school, middle school, and upper school. School has approximately 45 students in the lower school and approximately 52 students in middle school.<sup>12</sup>

09. All students at \_\_\_\_\_ School are students with disabilities.<sup>13</sup> The lower and middle schools are ungraded with students between the ages of 5 and 13 years old. Lower school approximates kindergarten through fifth grade, ages five through 11. Middle school approximates grades six through eight and upper school approximates the ages and grade of a traditional high school (grades nine through twelve).<sup>14</sup>

10. \_\_\_\_\_ School is a fully self contained special education setting.<sup>15</sup> School provides, as an extracurricular activity, that students may participate in various sports

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<sup>7</sup> P. Ex. 83.

<sup>8</sup> P. Ex. 9.

<sup>9</sup> Tr. 46-47.

<sup>10</sup> S Ex. 36.

<sup>11</sup> Tr. 95; P. Ex. 96.

<sup>12</sup> Tr. 483.

<sup>13</sup> Tr. 482.

<sup>14</sup> Tr. 482.

<sup>15</sup> Tr. 47.

programs. belongs to small sports leagues where its students participate in various sports activities and games, with children in other schools within the area.<sup>16</sup>

11. School does not have a cafeteria. Students in the lower school level eat in their room. However, at the middle and upper school level, there is an optional lunch service where students can buy their lunch, and then eat in the "sun room" where the school sets up tables. Classes at middle school level are combined for lunch.<sup>17</sup>

12. MM was in the lower school at School for the 2009-2010. For the 2010-2011 school year he would be in the lower school also.<sup>18</sup> For the 2009-2010 school year MM was in a class at School consisting of 9 students (six boys and three girls) with a lead teacher and an assistant teacher.<sup>19</sup>

13. School's Individualized Service Plan ("ISP"), date of ISP Meeting: 6/08/09, for MM noted "Strengths" and "Impact of Disability" for MM including:

<i>strength:</i>	MM enjoys reading. He has good skills in the area of decoding ...
<i>impact of disability:</i>	MM is impacted by challenges in short term memory and language recall.
<i>strength:</i>	MM enjoys reading a variety of texts. He often volunteers to summarize stories to his class and enjoys self-selecting books for D.E.A.R.
<i>impact of disability:</i>	MM is impacted by challenges in short term memory, sequencing events, and language recall.
<i>strength:</i>	MM works hard in math. His strengths are number recognition to 100, single digit addition and telling time to the hour.
<i>impact of disability:</i>	MM is impacted by challenges in short term memory, multi-step processing and language recall.
<i>strength:</i>	MM has a good imagination and fun personal stories to share.
<i>impact of disability:</i>	MM is impacted by challenges in short term memory and language recall.
<i>strength:</i>	MM takes great responsibility in the classroom and often tries his best.
<i>impact of disability:</i>	MM's challenges in processing and sequencing requests can impact full participation in the classroom.
<i>strength:</i>	MM engaged in therapy actives; improving vocabulary.
<i>impact of disability:</i>	MM's deficits in receptive and expressive language affect his ability to follow directions effectively and access the classroom curriculum.
<i>strength:</i>	MM is eager to participate in therapy sessions and is initiating play and conversation interaction with peers more frequently.

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<sup>16</sup> Tr. 448.

<sup>17</sup> Tr. 530.

<sup>18</sup> Tr. 443-444.

<sup>19</sup> P. Ex. 71.

*impact of disability:* MM's deficits in pragmatic language, affect his ability to communicate effectively in the classroom setting, follow instruction and access the academic curriculum.

*strength:* MM's ability to follow multi-step directions and scan visual information in an organized manner.

*impact of disability:* Poor visual perceptual skills and constructional praxis.<sup>20</sup>

14. School is a public school that serves students pre-K through fifth grade. School is MM's neighborhood school and has approximately 600 students.<sup>21</sup>

15. School has several different pre-K programs, regular education classes, and special education classes. In addition to the pre-K programs and regular education programs, School has a multi-intervention program for autism ("MIPA") and special education services in the pre-K to fifth grade classes.<sup>22</sup>

16. School has two special education classrooms. Under the proposed IEP of 2/17/10 MM would be in a classroom that is staffed by a highly qualified special education teacher and, depending on the size of the class and/or the learning needs of the students, there would be an assistant teacher.<sup>23</sup>

17. Membership in a special education class at School would not remain static during the course of the day as students are grouped on what is required for their educational support.<sup>24</sup> The Special Education class size at would range from three students to the highest being nine students.<sup>25</sup> Last school year there were two students in the classroom MM would be in who had all their core academics in the special education self-contained classroom.<sup>26</sup>

18. MM would be in a School classroom with students in third, fourth, and fifth grade throughout the course of the day. The students are instructed on their instructional level and the teacher is a highly qualified special education teacher. The special

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<sup>20</sup> P. Ex. 50.

<sup>21</sup> Tr. 199, 200.

<sup>22</sup> Tr. 199-200.

<sup>23</sup> Tr. 203-206.

<sup>24</sup> Tr. 209.

<sup>25</sup> Tr. 205.

<sup>26</sup> Tr. 257.

education teacher in the classroom MM would be assigned to has training in the areas of reading, mathematics, and differentiation of instruction.<sup>27</sup>

19. In July, 2009 by Dr. Vincent P. Culotta, Ph.D. ABPN, conducted testing of MM. On the Weschsler Intelligence Scale for Children - Fourth Edition (WISC-IV), he attained a full scale IQ Standard Score of 62, Verbal Comprehension Standard Score of 77, perceptual reasoning Standard Score of 61, Working Memory Standard Score of 80, and Processing Speed Standard Score of 59. On the Comprehensive Test of Nonverbal Intelligence (CTONI), his Nonverbal IQ Standard Score was 78. Pictorial Nonverbal IQ Standard Score was 85, and Geometric Nonverbal IG Standard Score was 74.<sup>28</sup>

20. In December of 2009 MM received an 82 on the Weschsler nonverbal scale of ability administered by \_\_\_\_\_, MA, Nationally Certified School Psychologist.<sup>29</sup>

21. In July of 209 Ms. \_\_\_\_\_, Speech Language Pathlogist administered the Comprehensive Assessment of Spoken Language (CASL) to MM. His core composite Standard Score was 66, Pragmatic Judgment Standard Score was 69, Non Literal Language Standard Score was 68. Paragraph Comprehension Standard Score was 88, Syntax Construction Standard Score was 59, and Antonyms Standard Score was 73.<sup>30</sup>

22. MM has a very variable cognitive profile with performance that varies on cognitive tests depending upon the measure employed. He has significant impairment in language and academic challenges in all areas, particularly in the area of mathematics.<sup>31</sup>

23. In May of 2009 Parents of MM contacted the Local Educational Agency ("LEA") concerning services from the LEA, to begin a new special education referral, and to schedule a meeting concerning new evaluations.<sup>32</sup>

24. A child study meeting was held June 10, 2009 to review needed evaluations.<sup>33</sup> Parents requested a referral to special education to discuss updated testing. Parents received written

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<sup>27</sup> Tr. 203.

<sup>28</sup> P. Ex. 57.

<sup>29</sup> P. Ex. 71.

<sup>30</sup> P. Ex. 72.

<sup>31</sup> P. Ex. 72A.

<sup>32</sup> S. Ex. 2 & 3.

<sup>33</sup> S. Ex. 5.



information regarding the requested evaluations. The committee recommended referral for evaluation.<sup>34</sup>

25. On June 16, 2009, Parents gave consent for the LEA to complete the following components to assess MM: Educational, Speech and Language, Sociocultural, Occupational Therapy, Observation, Medical, Psychological, and Other: teacher narrative.<sup>35</sup>

26. On July 6, 2009 Parent informed LEA school psychologist that a private full psychoeducational evaluation had been scheduled for MM on July 14, 2009. Parent also indicated she did not desire to schedule the LEA psychological or educational testing until after the private psychoeducational testing had been completed. Parent stated she would not consent for LEA testing of MM until after completion of the private evaluation. Parent cancelled the scheduled LEA's educational evaluation set for July 13, 2010.<sup>36</sup>

27. On July 14th and July 31st of 2009 a private Neuropsychological Evaluation of MM was conducted by Vincent P. Culotta, Ph.D. ABPN, upon the request of his Parents.<sup>37</sup>

28. On September 18, 2009, after the 2009-2010 school year had begun, the LEA received a copy of Parents' private Neuropsychological Evaluation done by Vincent P. Culotta, Ph. D. ABPN.<sup>38</sup>

29. On September 24, 2009 the LEA indicated to Parents their desire conduct supplemental educational testing, supplemental psychological testing, and to conduct classroom observations of MM.<sup>39</sup>

30. On December 7, 2009 Ms. \_\_\_\_\_, MA, Nationally Certified School Psychologist, conducted a Psychological Re-Evaluation of MM.<sup>40</sup> She observed MM in December of 2009 and conducted an evaluation of MM at \_\_\_\_\_ in December of 2009<sup>41</sup> In her evaluation of MM, \_\_\_\_\_ used the following evaluative measures; *Behavior*

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<sup>34</sup> S. Ex. 5.

<sup>35</sup> S. Ex. 5.

<sup>36</sup> S. Ex 7A.

<sup>37</sup> P. Ex. 57.

<sup>38</sup> S. Ex. 9.

<sup>39</sup> S. Ex. 10.

<sup>40</sup> P. Ex. 67.

<sup>41</sup> Tr. 610.

*Assessment System for Children, Second Edition (BASC-2), Parent and Teacher Forms, Behavioral Observation, Kaufman Test of Educational Achievement, Second Edition (DTEA-II), and the Weschsler Nonverbal Scale of Ability (WNV).*

31. Ms. \_\_\_\_\_ determined in her December 2009 Re-Evaluation that MM's nonverbal cognitive functioning was assessed within the Low Average range overall (SS=82), based on his performance on the WNV and this was consistent with prior private neuropsychological evaluation data.<sup>42</sup>

32. Ms. \_\_\_\_\_ administered the K-TEA II to MM. His performance was well below Average in all areas assessed. MM's Reading composite standard scores fall within the Borderline range. Letter and Word Recognition subtest scores fall within the Low Average Range. His Borderline reading Composite performance compares with Borderline performance assessed by the Broad Reading Cluster of the Woodcock-Johnson III within MM's July 2009 private neuropsychological evaluation. Math composite is consistent with prior evaluation by Broad Math Cluster of the WJ-III. His standard scores, when scored both by age and grade fall below the 1st percentile.<sup>43</sup>

33. Ms. \_\_\_\_\_ recommended that MM will likely continue to benefit from:

A structured setting with a structured teaching format as well.

An individualized behavior management system, which utilizes a positive reinforcement approach .....

Specific training to continue to develop social interaction skills and to ease with transitions - role playing or a social stories approach may be appropriate.

Training to continue to assist MM in understanding the nature of reciprocal relationships. MM will also likely continue to need assistance in learning to recognize the affect expressed by others as well as appropriate expressing his own emotions.

Ms. \_\_\_\_\_ additionally provided specific accommodations to address MM's attentional concerns.<sup>44</sup>

34. On January 28, 2010 an eligibility meeting was convened and MM was determined to be eligible for special education services as a "child with a disability". Recommended related services were speech and Language and Occupational Therapy. The eligibility committee had difficulty in determining the educational disability most applicable and discussed Autism, Specific

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<sup>42</sup> P. Ex. 67.

<sup>43</sup> P. Ex. 67.

<sup>44</sup> P. Ex. 67.

Learning Disability, Other Health Impairment, Speech or Language Impairment, Pervasive Developmental Delay. The Committee noted MM to be "a complex student who exhibits characteristics of each disability discussed".<sup>45</sup>

35. On February 17, 2010 the IEP team met to develop MM's Individualized Education Program ("IEP") for the current school year. The IEP team included MM's Parents.<sup>46</sup>

36. Neither the Parents nor their independent experts disagreed with the IEP's goals and objectives stated in the IEP. Parents agreed with/to the accommodations, modifications, and supports also. There was no significant problem with related services.<sup>47</sup>

37. At the 2/17/10 IEP meeting MM's Parents expressed concern that MM's current private school placement at \_\_\_\_\_ was the most appropriate placement. LEA committee members expressed concern that a public day school setting would provide the most appropriate least restrictive setting for MM.<sup>48</sup>

38. Over Parents concerns and objections, the placement continuum option chosen by the IEP team which met on February 17, 2010 was "Public Day School". Furthermore, MM was recommended for placement at \_\_\_\_\_ School.<sup>49</sup>

39. \_\_\_\_\_ is a pre-K through the fifth grade public school. \_\_\_\_\_ School is MM's neighborhood school.<sup>50</sup>

40. Parents agreed with 2/17/10 IEP's goals and objectives, accommodations, modifications, and the kinds of support. Parents had no significant problems with related services.<sup>51</sup>

41. Parents did not agree with the IEP's team decision to place MM at a Public Day School - at \_\_\_\_\_ School. Parents desired continued placement for MM at \_\_\_\_\_ School. Parents feel the proposed program at \_\_\_\_\_ School would not help MM

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<sup>45</sup> S. Ex. 17.

<sup>46</sup> P. Ex. 77.

<sup>47</sup> Tr. 63-64, 450-451.

<sup>48</sup> S. Ex. 22 pg.61, 62 & 66.

<sup>49</sup> S. Ex. 22 pg.61, 62 & 66.

<sup>50</sup> Tr. 199.

<sup>51</sup> Tr. 63-64.

socially, with his ability to interact in pragmatic situations, in communications with his peers. Parents do not feel their son is ready for a program like

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43. Parent signed the 2/17/10 IEP indicating she did not give permission to implement this February 17, 2010 IEP and the placement decision.<sup>53</sup>

43. Chronology of events includes, but is not limited to the following:

Sept. 2004-June 2005	MM in preschool program at
April 5, 2005	Parents enroll MM at School for 2005-2006 school year (S. Ex. 36)
June 15, 2005	IEP meeting and IEP proposed by LEA for 2005-2006 school year (S. Ex. 18)
September 2005	MM begins attendance at School;
August 27, 2007	IEP meeting and IEP proposed by LEA for 2007-2008 school year (S. Ex. 19A)
December 3, 2007	Decision in prior due process hearing (S. Ex. 1)
April 27, 2009	Letter from parents' counsel to counsel for LEA reinitiating special ed. process (S. Ex. 2)
May 19, 2009	Letter from John F. Cafferky to Michael J. Eig forwarding request for consideration of services to LEA (S. Ex. 3)
June 10, 2009	LEA child study committee meeting for MM (S. Ex. 5)
July 2, 2009	LEA social history for MM (P. Ex. 55)
July 8, 2009	LEA Speech/Language testing of MM by (P. Ex. 56)
July 6-13, 2009	Initial scheduling of LEA educational & psychological evaluations, cancelled at Parent request pending completion of private psychological testing (S. Ex. 7A)
July 31, 2009	Psychological testing of MM by Dr. Vince Culotta (P. Ex. 57)
August 5, 2009	LEA observation of MM at (S. Ex. 26)
September 8, 2009	First day of 2009-2010 school year
September 17, 2009	Letter from Michael Eig to LEA providing report of Dr. Culotta (S. Ex. 9)
Sept. 24-Dec. 15, 2009	Correspondence concerning evaluations, observations, availability, scheduling and related matters (S. Exs. 7A, 10-16; P. Exs. 60-66)
December 7, 2009	LEA Psycho educational evaluation by Ms. Mountain (P. Ex. 67)
December 9, 2009	LEA observation of MM at School (P. Ex. 68)
January 8, 2010	Occupational therapy evaluation of MM by Ms (S. Ex. 28)
January 28, 2010	LEA eligibility committee meeting. MM found eligible for special education as student with a disability (S. Ex. 17)
February 17, 2010	IEP (S. Ex. 22)
February 24, 2010	LEA notice letter for IEP (S. Ex. 23)
March 30, 2010	Parents, by counsel, request due process hearing concerning 2/17/10 IEP and 2009-10 school year placement (P. Ex. 80)
April 9, 2010	LEA answer to request for due process hearing (S. Ex. 37)
April 14, 2010	Resolution meeting for due process hearing (P. Ex. 84)
April, 2010	Observation of by Parents, Dr. Culotta, and Dr.
May 25, 2010	Due process Hearing withdrawn by consent, and hearing dismissed. (P. Ex. 92)
June 9, 2010	Due Process Hearing re-filed concerning 2/17/10 IEP and 2009-10 school year (P. Ex. 1)
July 28, 2010	Amended Request for Due Process Hearing filed. <sup>54</sup>

### **BURDEN OF PROOF:**

<sup>52</sup> Tr. 86, 122; P. Ex. 77.

<sup>53</sup> S. Ex. 22.

<sup>54</sup> Agreed Chronology of Parties.

In *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed.2d 387 (2005) the United States Supreme Court held that the burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. *Id.* 537. Accordingly, the burden of proof is on the Parents at this due process hearing.

### **DISCUSSION:**

IDEA was enacted, in part, "to ensure that all children with disabilities have available to them a free and appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. § 1400(d)(1)(A).

The IDEA provides for a party to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to such child and which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint.<sup>55</sup>

Parents raise issues concerning the provision of FAPE and the educational placement of their child. They contend that the 2/17/10 IEP's proposed placement of MM at

School, a public day school, is not appropriate and their child's need for services cannot be met by the LEA. They also contend that FAPE requires their son be placed in a private day placement, specifically School.

#### **1. MM.**

MM is nearly years of age (born 11/7/ ) and is a child with very complex disabling conditions. He also has some motor deficits and has ADHD. He has multiple domains of development impacted and is described, at a very basic level, as having a chronic lifelong static brain disorder characterized as an autism spectrum disorder. In terms of severity, it falls in the moderate to severe range because it impacts his cognition, motor skills, language skills, social skills, and his ability to navigate his social world.<sup>56</sup> He is diagnosed with pervasive developmental disorder. His full scale IQ is 62 and his processing speed is very slow.<sup>57</sup> He has deficits in communication skills, including receptive and expressive language.

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<sup>55</sup> 20 U.S.C. § 1415 (b)(6)(A) and 20 U.S.C. § 1415 (b)(6)(B).

<sup>56</sup> Tr. 309.

<sup>57</sup> Tr. 312.

MM has a more generalized weakness in his non verbal cognition. He has the ability to memorize digital information accurately. He has a digit span score at the 25th percentile. He has strong word attack skills. However, integrating that information and doing it quickly are limiting steps for MM.<sup>58</sup>

MM's father indicated that MM is very good at keeping a routine but if the routine is disturbed MM feels very upset. He gets up, he'll make his bed, and wash but if it's not a routine it's a bit of a challenge getting MM focused.<sup>59</sup> His father feels that MM is more and more aware of his social isolation, because he has the direct contrast of his brother.<sup>60</sup>

MM's father indicated that MM tends to persevere on certain subjects that he understands, and he uses that as a form of communication. He loves cars and will talk endlessly about the same cars. His father believes this is MM's way of trying to find a context of having a dialogue.<sup>61</sup>

MM is also described by his father as having an intuitive aspect. When his father gets upset with MM's brother, MM would say "don't be mad at him" and sort of mediate.<sup>62</sup>

Parent also notes MM likes swimming and he was in a summer program at this summer and his father believes MM loved the social aspects.<sup>63</sup> He is enrolled in Tae Kwon Doe, enjoys bike riding, walking, and jumping on the trampoline. He has some interest in games, television and is also reported to like piano.<sup>64</sup>

MM's teachers at School, where he has been enrolled for the last 5 school years, indicate, as a strength of MM, that he:

- enjoys reading and that he has good skills in the area of decoding
- enjoys reading a variety of texts
- often volunteers to summarize stories to his class
- enjoys self-selecting books for D.E.A.R.
- works hard in math
- has number recognition to 100
- has strength in single digit addition and telling time to the hour
- has a good imagination and fun personal stories to share
- takes great responsibility in the classroom and often tries his best.
- engaged in therapy activities; improving vocabulary
- is eager to participate in therapy sessions is initiating play and conversation interaction with peers more frequently

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<sup>58</sup> Tr. 313.

<sup>59</sup> Tr. 128-129

<sup>60</sup> Tr. 129.

<sup>61</sup> Tr. 131.

<sup>62</sup> Tr. 129, 130.

<sup>63</sup> Tr. 130.

<sup>64</sup> Tr. 376.

- has an ability to follow multi-step directions and scan visual information in an organized manner.<sup>65</sup>

## 2. Eligibility

On January 28, 2010 the LEA eligibility committee reconvened and determined MM continued to be eligible for special education services as a *child with a disability*. The committee noted MM to be a very complex student who exhibited characteristics of Autism, Specific Learning Disability, Other Health Impaired due to attentional challenges, Speech or language Impairment, and Pervasive Developmental Disorder. The committee discussed these and noted that they had some difficulty in determining the educational disability that was most applicable as MM exhibited characteristics of each of the above disability. The team ultimately recommended that he remain eligible for special education services as a Child with a Disability.

In its deliberations the eligibility committee indicated:

[MM] is currently a grade student at the School where he has been in attendance since kindergarten. Associate Director participated by phone. Private school teacher narrative was reviewed. Instructional levels: Math 2nd, Reading, Social Studies and Science 3rd. Strengths and weaknesses are outlined below. [MM] is reported to be an enthusiastic student and learner. Does better with highly structured settings. [MM] receives occupational therapy and speech therapy at WNV Full Scale IQ within the low average range. Coding and Picture Arrangement average. Matrices and Spatial Span are within the borderline and low average ranges respectively. Nonverbal IQ 78 based on CTONI in July 2009 private evaluation. K-TEA-II academic achievement testing: well below average in all areas assessed. Reading Composite within the borderline range. Letter & Word Recognition low average. Math Composite is also an area of considerable difficulty. Overall Written Language Composite was below the 1st percentile. Results are similar to private evaluation WJIII Broad Reading, Math and Written Language Clusters. [MM] is reported by parents to be reading at a beginning 3rd grade level. Further current {LEA} psychological results: BASC-2 parent response did not result in any clinically significant concerns. At-risk concern was noted in the areas of anxiety and withdrawal. Teacher and self-reports not clinically significant. Private diagnoses Pervasive Developmental Disorder, Mixed Receptive-Expressive Language Disorder, Attention-Deficit/Hyperactivity Disorder, Learning Disorder-NOS and Developmental Coordination Disorder with Dysgraphia. Speech Language Evaluation: [MM] scored below average on the CASL subtests, except for Paragraph Comprehension which was low average. His composite score was 66, indicating a severe language disorder. [MM] has significant deficits in the areas of word knowledge, word relationships, understanding inferences, oral expression, and pragmatic skills. Occupational Therapy: [MM's] strengths include his ability to follow social conventions, adaptive skills, safety awareness and compliance with adult directives and school rules. He requires minimal adult assistance or adaptations for physical tasks. Weaker areas are using materials, written work, manipulation with movement, functional communication, memory and understanding, positive interactions with peers, and behavior regulation. Social History notes that [MM] has a twin who also attends School. He and [MM] are good friends and enjoy each others company. English is the main language spoken at home. Father and paternal grandparents also speak Amharic. Allergic to tree nuts and strawberries. [MM] carries an epipen. Hearing is within normal limits. Participates in visual tracking therapy and wears glasses. Takes medication for ADHD. The committee reconvened on 1/28/2010.<sup>66</sup>

<sup>65</sup> P. Ex. 50

<sup>66</sup> S. Ex. 17.

Parents consented, as evidenced by their signatures, to the determination that MM would remain eligible for special education and related services (Recommended related services: Speech and Language, Occupational Therapy).<sup>67</sup>

### **3. IEP of February 17, 2010.<sup>68</sup>**

*The IEP team met on 2/17/10. Parents were active and meaningful participating members of the IEP team. Parental concerns were discussed and taken into consideration by the IEP team. After considerable discussion, the IEP team proposed an IEP which contained:*

#### *A. 21 annual goals for MM with Objectives/Benchmarks as to each goal in areas of:*

*fine motor ideation & planning  
pragmatic language  
expressive language  
receptive language  
decoding  
reading comprehension  
math calculation  
math reasoning  
written language  
attention,  
adaptive skill  
behavior  
social skills-participation  
adaptive skills-routines  
organization  
communication/participation  
written language-planning  
spelling  
math word problem  
self determination  
written expression-mechanics*

#### *B. Accommodations/Modifications for MM including:*

*SOL Calculator  
Adapted alternatives to text/materials  
Assistance with Directions  
Calculator/Arithmetic tables  
Large-print Test  
Math Aids  
Other- raised line paper, Handwriting w/o Tears paper  
Plain English Math SOL*

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<sup>67</sup> S. Ex. 17.

<sup>68</sup> S. Ex. 22.



*Reading all test items in English/Read aloud*  
*Social stories to predict, describe and define and solve problems*  
*Spelling Aids*  
*Subject matter in smaller chunks*  
*Use of highlighter, yellow only*  
*Use of tracking card*  
*Mark in test booklet or student responds verbally*  
*Word processor*  
*Environmental Modification: use of study carrel*  
*Small Group*  
*Breaks during instruction and tests.*<sup>69</sup>

**C. Services and Least Restrictive Environment provided for MM:**

("Duration" was listed as 02/17/2010 - 06/25/2010 and 09/07/2010 - 2/16/2011 for each of the below items.)

<b><u>Services:</u></b>	<b><u>Provider</u></b>	<b><u>Frequency</u></b>	<b><u>Location</u></b>
Occupational Therapy	Occupational Therapist	0.5 hours/ 2 times wkly	Special Ed
Speech-Language Therapy	Speech Language Pathologist	0.5 hours/ 2 times wkly	Special Ed
Attention/Organization	Special Education Staff	1.0 hours/ 3 times wkly	Special Ed
Mathematics	Special Education Staff	1.0 hours/ 5 times wkly	Special Ed
Written Language/Spelling	Special Education Staff	1.0 hours/ 5 times wkly	Special Ed
Reading	Special Education Staff	1.5 hours/ 5 times wkly	Special Ed
Adaptive Functioning	Special Education Staff	.25 hours/ 5 times wkly	Special Ed
Social Skills	Special Education Staff	.25 hours/ 2 times wkly	Special Ed
Communication/Participation	Special Education Staff	.25 hours/ 2 times wkly	Special Ed
Behavior/self Determination	Special Education Staff	.25 hours/ 2 times wkly	Special Ed
Attention/Organization (Co-Teach)	Gen. & Sp. Ed Staff	1.0 hours/ 5 times wkly	General Ed
Social Skills (Co-Teach)	Gen. & Sp. Ed Staff	.25 hours/ 3 times wkly	General Ed
Communication/Participation (Co-Teach)	Gen. & Sp. Ed Staff	.25 hours/ 3 times wkly	General Ed
Behavior/Self- Determination (Co-Teach)	Gen. & Sp. Ed Staff	.25 hours/ 3 times wkly	General Ed <sup>70</sup>

**D. Placement Decision for MM:**

The 2/17/10 IEP indicated:

**Placement Decision:** MM is currently attending \_\_\_\_\_ School, a private separate school facility for children with learning disabilities. Parents and legal representative believe that MM is most appropriately placed in his current private school placement because it is a place where all of his instruction and accommodations can be met. Parents shared their concern about the timing of MM's transition to public school. They feel that he should remain \_\_\_\_\_ School, where they feel he is making progress and is successful. Parents believe

<sup>69</sup> S. Ex. 22, pg. 45.

<sup>70</sup> S. Ex. 22, pg. 64-65.

that is the least restrictive environment. There was a great deal of discussion regarding the meaning of least restrictive environment in relation to MM. [LEA] committee members stated that a public school setting would provide the most appropriate least restrictive setting for [MM] because [LEA] can provide specialized instruction and accommodations throughout the school day in a self contained setting with special education support in general education settings because the team felt strongly that access to typically-developing peers is an important part of his social and communication skills as a means to demonstrate academic skills. [LEA] feels that MM's needs would be met in a special education small group environment to address weakness in reading, math, written language, spelling, attention, organization, behavior, self-determination, social skills, communication, participation, adaptive skills, with the support of occupational and speech therapy. Weakness in social skills, participation, behavior, self-determination, communication, attention, and organization weakness will also be addressed in both general education and special education settings, with special education support.

**Placement Continuum Options Considered:** Private Day School and Private Separate School Facility.

**Placement continuum Option Chosen:** Public day school

Parents expressed concern that MM is most appropriately placed in his current private school placement at School, where he has been for the last 5 school years. LEA committee members expressed concern that a public day school setting would provide the most appropriate least restrictive setting for MM.

Parents contend a placement in School deprives MM of meaningful social interaction and the shuffling in and out of part-time special education students would affect his ability to concentrate. Also concern is expressed that the IEP's recommendation of approximately five hours a week in supported general education would be detrimental to MM in that he would be unable to keep pace with the class, he would feel different than normal developing children, and he would lose what confidence and progress he has achieved.

The IEP team, over Parents concerns and objections, chose the placement continuum option of "Public Day School" and MM was recommended for placement at School.<sup>71</sup>

#### 4. Placement

Parents disagree with the placement decision for MM determined in his 2/17/2010 IEP. Parents feel strongly that a private separate school facility/the School, is the appropriate placement for their son and that a public day school. School not able to provide an appropriate education.

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<sup>71</sup> S. Ex. 22 pg.61, 62 & 66.

A. School (" "):

MM has attended for the last 5 school years. His brother also goes to School is a private, special education school located in Washington, D.C. with about 200 students divided between lower, middle, and upper school. All students are students with disabilities. The lower and middle schools are ungraded (ages 5-13). MM was in the lower school for the 2009-2010 school year.<sup>72</sup> If he were at for the 2010-2011 school year MM would be in lower school. Approximately 45 students are in 's lower school and about 52 in middle school.<sup>73</sup>

MM was in a class of about 9 or 10 students at . Last year MM's class members had a number of different eligibility classifications including, other health impaired, severe learning disabilities, autism scale, autistic, pervasively developmentally delayed, speech and language impaired, and hearing impairment.<sup>74</sup> At MM has, at least, a teacher and an assistant teacher/assistant in the classroom. His teacher and assistant teacher change every year and at least some of the students in his class change every year.<sup>75</sup>

Students at are able, as an extracurricular activity, to participate in various sports programs. is a member of a couple of small sports leagues where the students may participate in various sports activities with children from other schools within the area.<sup>76</sup>

MM has participated in the track and field six-week module at on an extracurricular basis with children from five other private and public schools. These schools were a combination of special education, full-time special education, private, and the public schools.<sup>77</sup>

does not have a cafeteria. Classes at middle school level are combined for lunch but lower school students eat in their classroom. Middle and upper levels have available a lunch service where they can buy their lunch and eat at tables set up in the "sun room". As a lower school student at , MM would eat in his classroom with his class. Upon moving to middle school level he would be eating in the "sun room" where classes are combined for lunch.<sup>78</sup>

MM would be with his class for recess. His class would be combined with another class so that two classes use the playground at the same time. MM would be one of up to approximately 20 children comprising the two classes using the playground at a single time.<sup>79</sup>

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<sup>72</sup> Tr. 443-444.

<sup>73</sup> Tr. 483.

<sup>74</sup> Tr. 489-490.

<sup>75</sup> Tr. 385.

<sup>76</sup> Tr. 488.

<sup>77</sup> Tr. 524, 530.

<sup>78</sup> Tr. 529-530.

<sup>79</sup> Tr. 526.

For music or art, MM's class would travel as a unit to other classrooms within the school and MM would be with the other students in his class. Art activities occur in the art room. Music activities occur in the music room.

In MM's class the nine or ten classmates are not always in the classroom all together all the time. Students are going out of the classroom at various times for individual counseling, occupational therapy and other reasons.<sup>80</sup> MM received individual tutorial support outside the classroom in math, on Mondays and Wednesday, and reading on Thursday. Second Step, a social skills training program, occurs within the classroom. does not have gym but has PE facilities the students use on site. For individual Occupational Therapy sessions that are pull-out students go to the treatment rooms and, sometimes, pull out occupational therapy is with other pull-out students from another class.<sup>81</sup>

*B. School (" ")*

is a public school that serves has approximately 600 students from pre-K through the fifth grade. School is MM's neighborhood school.<sup>82</sup>

has regular education classes and special education classes and services from pre-K to fifth grade.<sup>83</sup>

There are two special education classrooms at . Under the proposed IEP of 2/17/10 MM would be in one of the two special education classrooms that is staffed by a highly qualified special education teacher and, depending on the size of the class and/or the learning needs of the students, there would be an assistant teacher.<sup>84</sup> The Special Education class size ranges from three to a maximum of nine students.<sup>85</sup>

MM would be in the special education classroom with third, fourth, and fifth grade students. The students are instructed on their instructional level and the teacher in the classroom is a highly qualified special education teacher who has training in the areas of reading, mathematics, and differentiation of instruction.<sup>86</sup> MM would be in a small, highly structured self-contained special education classroom for his core academic subjects. An assistant would be available depending on the number of children in the class and/or the learning needs of the students.<sup>87</sup>

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<sup>80</sup> Tr. 509.

<sup>81</sup> Tr. 511-513.

<sup>82</sup> Tr. 199, 200.

<sup>83</sup> Tr. 199-200.

<sup>84</sup> Tr. 203-206.

<sup>85</sup> Tr. 205.

<sup>86</sup> Tr. 203.

<sup>87</sup> Tr. 203-206.

For a small part of the school day MM would be, pursuant to his IEP, in a general education class/setting with the support of a special education teacher or assistant. This would include the "morning meeting", recess, and non core-academic classes as art, music, and/or physical education, and end of day.<sup>88</sup>

### **5. Least Restrictive Environment ("LRE")**

It is a basic responsibility of the LEA to provide all eligible students with disabilities a free appropriate public education in the least restrictive appropriate environment consistent with the student's individual education program and in order to meet their unique needs. Virginia courts have stressed, this is not just "a laudable goal but is also a requirement of the Act" (*Doyle v. Arlington County School Board*, 806 F. Supp. 1253, 1259 (E.D. Va. 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994)).

LRE mandates that wherever possible, educational services must be provided to handicapped children in public schools. (20 U.S.C. § 1412(5); *Burlington School Committee v. Massachusetts Department of Education*, 471 U.S. 359, 369 (1985)).

The LEA can only consider private placements when a student's disability is so severe that the student cannot be educated in a public school setting. (34 C.F.R. § 300.550(b); see also *Hessler v. State Board of Education*, 700 F.2d 134(4th Cir. 1983) .

Serious consideration is required to be given to the least restrictive appropriate environment for each student with a disability based on his or her unique needs when determining the appropriate placement for the child to receive special education. "To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. §1412(a)(5)(A)

If a determination is made that a student with a disability cannot be educated satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, then that student could be placed in a setting other than the regular classroom. However, placement decisions must be individually determined on the basis of each child's abilities and needs, and not solely on factors such as category or severity of the child's disability, configuration of the service delivery system, availability of space, or administrative convenience. Each student's Individualized Education Program (IEP) forms the basis for the placement

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<sup>88</sup> Tr. 261.

decision. 34 CFR §300.552(b)(2).

Further, the regulations implementing the IDEA require that public agencies have available a continuum of alternative placements to meet the needs of children with disabilities for special education and related services. 34 CFR §300.551. This continuum of alternative placements must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions .

LRE is not intended to replace appropriateness. The IDEA's mainstreaming provision established a presumption, not an inflexible federal mandate. Under its terms, disabled children are to be educated with children who are not disabled "to the maximum extent appropriate." 20 U.S.C. Section 1214(5)(B) explicitly states that mainstreaming is not appropriate when the nature or severity of the disability is such that education in regular classes with the use of supplementary and services cannot be achieved satisfactorily. *Hartmann v. Loudoun Co. Bd. Of Ed.*, 118 F.3d 996; 1997 (4th Cir. 2002)

The court has held that mainstreaming is not required where (1) the disabled child would not receive educational benefit from mainstreaming; (2) any marginal benefit received from mainstreaming would be far outweighed by benefits gained from services which could not feasibly be provided in a separate instructional setting or, (3) the disabled child is a disruptive force in regular classroom setting. *DeVries v. Fairfax County School Board.*, 882 F.2d 876, (4th Cir. 1989) (citing *Roncker v. Walter*, 700 F.2d at 1063). For a student who is not to receive academic instruction in regular education classes, the LRE requirement also means that an IEP team must consider whether the student is able to attend other school activities, such as recess, assemblies etc. with non-disabled peers.

### **5. Free Appropriate Public Education ("FAPE")**

Hearing officers ordinarily engage in a two step inquiry to decide whether FAPE has been provided under the IDEA. First, it is determined whether school officials have complied with the procedures contained in the Act and second, whether the IEP is reasonably calculated to enable the child to receive educational benefits. *Board of Educ. v. Rowley*, 458 U.S. 176, 181 (1982). .

As to procedure, there does not appear to be any dispute as to whether the LEA followed the procedures set forth in the IDEA. Additionally, the evidence indicates that the parents had a full opportunity to participate in a meaningful way in the decision making process that resulted in the development of the IEP of 2/17/10.

According to the *Regulations Governing Special Education Programs for Children with*

*Disabilities in Virginia*, a "free appropriate public education" (FAPE) means special education and related services that:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include an appropriate preschool, elementary school, middle school or secondary school education in Virginia; and
4. Are provided in conformity with an individualized education program that meets the requirements of this chapter. (8 VAC 20-81-10)

A FAPE "consists of educational 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." *Board of Educ. v. Rowley*, 458 U.S. 176, 188-189 (1982).

In *Rowley*, the Supreme Court provided:

Implicit in the congressional 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 ... 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 give education benefit to the handicapped child. *Rowley*, 458 U.S. at 200, 201.

These special education services may be provided in a public school setting or in a private school setting at public expense, depending on the student's individual educational needs as determined by the student's IEP Team.

The courts have provided guidance regarding what is required for special education to be considered "*appropriate*". An "*appropriate*" educational program is one that is reasonably calculated to offer a child some educational benefit (*Board of Education v. Rowley*, 458 U.S. 197, 203 (1982), and *Doyle v. Arlington County School Board*, 806 F. Supp. 1253, 1259 (E.D. Va. 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994)).

As discussed in *Rowley*, the Education of All Handicapped Children Act (now IDEA) was enacted to provide a "basic floor of opportunity". *Rowley* provides that the issue is whether the IEP is reasonably calculated to enable the child to receive educational benefit, not whether it will enable the student to maximize his or her potential. *Id.* at 177. Under *Rowley* the requirements of the IDEA are met if the School complies with the IDEA's procedural requirements and if the IEP is reasonably calculated to enable the child to receive educational benefit.

Although the IDEA does not require that a state provide the best education possible, "Congress did not intend that a school system could discharge its duty under the [Act] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985).

A FAPE is implemented through an IEP. The *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* defines an IEP as, "a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs". (8 VAC 20-81-10),

If an IEP fails to give a disabled child a free appropriate public education, parents have a right to reimbursement for private school tuition. *Burlington v. Dept of Educ.*, 471 U.S. 359, 370, 105 S.Ct. 1996 (1985).

**Vincent P. Culotta Ph.D. ABPN**, (American Board of Professional Neuropsychology), a pediatric neuropsychologist, conducted an evaluation of MM in July of 2009 when MM was approximately 9 years and 8 months of age. His evaluation determined a diagnosis of Pervasive Developmental Disorder - NOS characterized by co-occurring Mixed Receptive-Expressive Language Disorder, Attention-Deficit/Hyperactivity Disorder-Combined, Learning disorder, and Developmental Coordination Disorder with Dysgraphia. He noted that, cognitively, MM's profile is varied.

Dr. Culotta found MM demonstrates strength in verbal abstract reasoning skills, as measured by the Similarities Subtest of the WISC-IV. He also demonstrated grossly normal performance on measures of immediate auditory memory for digits. MM's overall nonverbal cognitive skills and processing speed remain areas of significant weakness. His processing Speed Index score on the WISC-IV fell in the limited range. He performed somewhat better on the CTONI, earning a Nonverbal IQ score in the borderline range.

MM's performance on measures of neurocognitive functioning reveals relative strength in immediate verbal memory, semantic memory or memory for contextually-related materials, and verbal fluency. His neurocognitive weaknesses were most apparent in fine motor speed and coordination bilaterally, visual construction skills, and speed of processing.

Emotionally, MM was not found to endorse symptoms of distress or depression. He was described as presenting as a pleasant, though somewhat disengaged young man who was quite distractible throughout testing. He evidenced a mild degree of repetitive motor behavior, difficulty with basic conversational give and take, inconsistent eye contact, and some anxiety and frustration as the language of instruction became more complex. He is, however, found to be a hard-working youngster who is clearly motivated to do well.<sup>89</sup>

Recommendations of Dr. Culotta in his evaluation of July 2009 include, but are not limited to the following:

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<sup>89</sup> P. Ex. 57.



Placement in a small, highly-structured, language-modified classroom staffed by special educators throughout his academic day.  
Access to a research-based reading program emphasizing decoding, vocabulary, comprehension, and fluency skills  
Intensive instructions in mathematics with opportunity for one-to-one instruction and frequent rehearsal and repetition.  
Access to manipulatives for math.  
Access to an AlphaSmart for all written work.  
Continued push-in and pull-out speech -language services.  
Continued push-in and pull-out occupational therapy services.  
Access to an evidence-based, embedded social skills program....  
Maintenance of a structured daily schedule with adult supervision throughout the day.  
Access to a simple sensory diet to help him regulate attention, distractibility and restlessness  
Opportunities to explore his areas of strength and interest in the context of his academic program  
System-wide positive behavioral supports.

Dr. Culotta indicated that MM's 2/17/10 IEP 's comprehensiveness, length, and girth is consistent with the severity of MM's needs and addresses MM's areas of needs well and articulates his needs well.<sup>90</sup> However, he takes issue with the requirement of approximately five hours per week of inclusion and testified this is inappropriate and mitigates against MM's ability to make appropriate progress.<sup>91</sup> He contends MM's weak processing speed, difficulty comprehending language, and difficulty navigating social environments would make his ability to make progress in a general education environment very limited and the 5 hours of inclusion mitigates MM ability to make appropriate progress. He further expressed that there is a risk of potential for harm if the language of instruction is over his head and the speed of the classroom is beyond his rate. Concern is expressed that MM will experience greater anxiety and will be less likely to learn and this would not be an environment where he can make appropriate progress.<sup>92</sup>

Dr. Culotta expressed his belief that MM needs to be with youngsters within his zone of development and his zone is not neurotypic peers. He does not contest the services or the instructional based and evidence-based methodologies but is concerned by the learning environment itself.<sup>93</sup> He does not believe it's typically developing peers where he will make that progress. He is concerned that MM will be in the school, but won't be of the school at

Dr. Culotta opines that the value of inclusion is far offset by the intensity of MM's needs and is no longer meaningful.<sup>94</sup> He believes that time period MM is to be with the general

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<sup>90</sup> Tr. 335-336.

<sup>91</sup> Tr. 337.

<sup>92</sup> Tr. 336-339.

<sup>93</sup> Tr. 344.

<sup>94</sup> Tr. 348.

education population as an opportunity lost. He believes it "works against our ultimate goal, which is a more independent and functioning young man." <sup>95</sup>

Dr. Culotta has not observed MM at \_\_\_\_\_, or in an educational setting. He does not have experience as an educator of special education students, a special education administrator, or as a school psychologist.

\_\_\_\_\_, **M.A.** (M.A. Liaison Special Education) Director, The \_\_\_\_\_ School, indicated as far as MM's IEP's present levels, goals and objectives, supplementary aids, modifications she has no problem with MM's IEP. She further indicates the goals and short-term objectives are very appropriate for him and there is a similarity between his IEP and what would appear in the \_\_\_\_\_ ISPs for MM. <sup>96</sup>

Ms. \_\_\_\_\_ believes that MM would not be appropriate for mainstreaming in the general education setting. She contends that MM needs full-time special education. She indicates:

1. MM needs as much instructional time to achieve goals as possible.
2. MM would be entering a social group that is a very dynamic group and she is concerned over the difficulties MM has with making transitions and getting himself oriented.
3. MM, given the nature of his language skills, does not have the ability to keep up with peers in terms of being able to meet the language demands of a classroom. <sup>97</sup>

Ms. \_\_\_\_\_ believes MM needs full-time special education and points to the extensive IEP. She characterizes the IEP as one of the most extensive IEPs \_\_\_\_\_ that we have compared to students at \_\_\_\_\_. <sup>98</sup>

Ms. \_\_\_\_\_ indicated she has not done a formal evaluation of MM at any time and she has not been MM's teacher. She has, though, reviewed and provided editorial input into certain reports and/or documents. <sup>99</sup>

\_\_\_\_\_, **Ed.D.**, the Director of Special Education for the LEA has 16 years experience in special education. Her doctorate is in special education, and she taught special education classes, been a special education coordinator, and been the Director of Special Education for 4 years. <sup>100</sup>

Dr. \_\_\_\_\_ was involved in MM's IEP of 2007. She was involved in the student study committee meeting where the evaluations were requested. She has observed MM in the

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<sup>95</sup> Tr. 353.

<sup>96</sup> Tr. 450.

<sup>97</sup> Tr. 453-454

<sup>98</sup> Tr. 454.

<sup>99</sup> Tr. 502, 503.

<sup>100</sup> Tr. 138-139.

setting in August of 2009 and at in the fall of 2009.<sup>101</sup> She has talked to staff who have been working with MM, has spoken to his parents, and has reviewed records.<sup>102</sup> She has reviewed the 2/17/10 IEP and is familiar with the special education program at School and the special education program offered MM at . She has observed the program and supervises the related service providers and she has been a special education coordinator.<sup>103</sup>

Dr. testified she believes the proposed IEP and the proposed placement for MM is one that would be appropriate for him and provide MM educational benefit. She stated,

"I do. I actually feel strongly that this is an educationally appropriate IEP for him. I feel that it would address not only his academic and his functional needs, but his social skill and language needs within his day at . I feel that if were allowed to implement this IEP we would see [MM] making progress at

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Dr. indicated that she did not feel it unduly disruptive to MM to have students at some point during the day exit the class and go to a regular education class. She noted there was movement within the class at and he was able to stay focus. Based on her observation of MM at , where he was in a fairly loud room, there was transition and he moved a lot that he was able to stay focused and open to redirection. She also noted when students transition into a class, it's either at a natural break of the day, or they come in quietly.<sup>105</sup>

Dr. indicated that there under the proposed IEP of 2/17/10 MM would participate with nondisabled peers in a "special" taught by a general education teacher, a music teacher, an art teacher, a physical education teacher. There would be a special education teacher or an instructional assistant who would go in with the class.

Dr. opined it is important for MM to be in the general education classroom to have opportunity to practice some of the things being taught, to have conversations, to work on his social skills. She believes MM has the skills to communicate. He is right on the edge of some communication opportunities, he's got the interest, and he wants to be involved.<sup>106</sup> She testified the LEA could give him the skills to know how to enter the conversation appropriately and have those opportunities to do it, and give him the skills to move him along.<sup>107</sup>

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<sup>101</sup> Tr. 142.

<sup>102</sup> Tr. 143, 152.

<sup>103</sup> Tr. 138, 181.

<sup>104</sup> Tr. 181-182.

<sup>105</sup> Tr. 210-211

<sup>106</sup> Tr. 216.

<sup>107</sup> Tr. 216.

Dr. [redacted] addressed issues of anxiety indicating MM had behavior assessment rating scales and did not have any areas clinically significant. Also, as Dr. Culotta determined, MM does not meet the criteria of an anxiety disorder. MM has shown some anxieties coming into an unfamiliar situation and sometimes he was resistant to change or anxious but he was able to then be redirected.<sup>108</sup>

Dr. [redacted] has reviewed Dr. Culotta's Neuropsychological Evaluation (evaluations done 7/14/09 and 7/31/09) and the recommendations set forth therein. Dr. [redacted] testified that the placement at [redacted] would be consistent Dr. Culotta's recommendations.<sup>109</sup>

[redacted], **M.A.** is a Nationally Certified School Psychologist with 13 years experience with the LEA.<sup>110</sup> She observed MM in December of 2009 and conducted an evaluation of MM at [redacted] in December of 2009 after having reviewed Dr. Culotta's evaluation.<sup>111</sup> She participated in MM's eligibility committee meeting and was a member of the February 2010 IEP team. She has reviewed the documents submitted in this cause. She and is familiar with [redacted] School. Ms. [redacted] was in agreement with the placement decision for MM at [redacted] made at the IEP meeting of 2/17/10.<sup>112</sup>

On December 7, 2009 Ms. [redacted] observed MM at [redacted] School for about 2 hours during testing and one hour when he was in a language arts lesson, transitioning to his classroom, and transitioning to snack. Ms. [redacted] indicated she had never met MM before this and she observed that:<sup>113</sup>

- MM was very polite and was able to very skillfully show her to the classroom.
- MM was seen as very comfortable in both the one-on-one setting and within the classroom.
- She observed some rigidity in terms of MM's behavior. When MM was told he would be working with her individually in the testing, he was concerned about his schedule, especially that he didn't want to miss his recess and lunch periods.
- MM was correctly responding to oral directions.
- MM was very quick to help, some of the other students were slower in getting their snacks and their activity so he was quick to help them.

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<sup>108</sup> Tr. 217.

<sup>109</sup> Tr. 217-218.

<sup>110</sup> Tr. 601-603.

<sup>111</sup> Tr. 610.

<sup>112</sup> Tr. 637.

<sup>113</sup> Tr. 612.

- MM seen initiating conversation. He appropriately initiated conversation with several of his peers, and his classmates responded back. He initiated some chatting and there was a little bit of joking going on.
- MM was observed doing independent activity although he did need some prompting and cueing to get his work done. He was very redirectable<sup>114</sup>

In her evaluation of MM, Ms. [redacted] used the following evaluative measures;  
*Behavior Assessment System for Children, Second Edition (BASC-2),*  
*Parent and Teacher Forms*  
*Behavioral Observation*  
*Kaufman Test of Educational Achievement, Second Edition (DTEA-II)*  
*Wechsler Nonverbal Scale of Ability (WNV).*

MM's current nonverbal cognitive functioning was assessed within the Low Average range overall (SS=82), based on his performance on the WNV, which is consistent with prior private neuropsychological evaluation data.

#### **Wechsler Nonverbal Scale of Ability**

Subtest Scores	T-score	Percentiles
Matrices	34	7
Coding	47	37
Spatial Span	39	14
Picture Arrangement	47	37
Full Scale Score	82	12

MM was administered the K-TEA II. His performance was well below Average in all areas assessed. Reading composite standard scores fall within the Borderline range. Within the Letter and Word Recognition subtest his scores fall within the Low Average Range. His Borderline reading Composite performance compares with Borderline performance assessed by the Broad Reading Cluster of the Woodcock-Johnson III within MM's July 2009 private neuropsychological evaluation. Math composite is consistent with prior evaluation by Broad Math Cluster of the WJ-III.

#### **Kaufman Test of Academic Achievement, Second Edition.**

	SS-Age	Percentile	SS-Grade	Percentile
<b>Reading Composite</b>	75	5	76	5
Letter & Word Identification	82	12	83	13
Reading Comprehension	72	3	71	3
<b>Math Composite</b>	61	0.5	54	0.1
Math Concepts & Applications	66	1	54	0.1
Math computation	62	1	50	<0.1

<sup>114</sup> Tr. 613-617.

Written Language Composite	58	0.2	58	0.2
Written Expression	40	<0.1	40	<0.1
spelling	75	5	74	4

Ms. indicated that MM's performance, both for her and Dr. Culotta, was higher on measures of nonverbal intelligence than on the overall measures of cognitive ability. With a "language reduced" test measuring nonverbal intelligence overall MM scored in the low average range, at the twelfth percentile for nonverbal ability.<sup>115</sup>

Ms. testified the nonverbal measures of intelligence or cognitive ability were seen as a better predictor of MM's ability, his ability to make progress, and his ability to function. MM's performance, both for Dr. Culotta and her, was higher on the measures of nonverbal intelligence than on the overall measures of cognitive ability.<sup>116</sup>

MM has a strength in his ability to look at visual information and then copy it. This is in the average range. He was able to sequence pictures demonstrating good visual sequencing skills. His other scores were below average. MM has strength in his decoding skills he was able to, within low average range, identify letters and words. He had significant difficulty in areas of math and in written language. He is not functioning at grade level in any area academically. His reading skills, his basic decoding skills are much higher than his comprehension, which is falling at the third percentile.<sup>117</sup>

Ms. testified that MM has the capability from an intellectual point of view to make more progress. MM has made great progress in the area Adaptive behavior, his overall independence, independent skills falls in the average range. He has a personal strength especially in his personal living skills.<sup>118</sup>

Ms. participated in the IEP discussion in February of 2010. She agrees with the recommendation that MM be in a special education classroom for the majority of the time and giving him access, with support, to nondisabled peers in the general education setting.<sup>119</sup> She believes this would allow him to make academic and educational progress.

Despite a lot of delays and concerns, she see MM with strengths socially. He exhibits some impairment in social relatedness but he exhibits some good social skills, some good helping skills, and some good empathy skills. She feels he could be stretched in that way and believes a program such as could stretch his independent skills. As to academics,

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<sup>115</sup> Tr. 620-622.

<sup>116</sup> Tr. 622.

<sup>117</sup> Tr. 624.

<sup>118</sup> Tr. 634-636.

<sup>119</sup> Tr. 637.

MM has speech and language processing and memory processing issues. With support in those areas MM could begin to make more academic progress.

Ms. [redacted] opined that she believed MM could succeed in a transition from [redacted] to [redacted]. He will need a plan to transition from his program at [redacted] and throughout his day. Transition and programs in place at [redacted] include the counseling program, the new child lunch bunch, strategies for help with anxiety or friendship issues, a jobs program, peer mediator and patrols, the co-facilitated friendship group with the special ed teachers, and the Second Step program.<sup>120</sup>

(ED.S Early Childhood Special Education, M.A. speech/Language Pathology)<sup>121</sup> has over 25 years experience in the field of speech and language pathology or special education. She has a Certificate of Clinical Competency in the field of speech and language pathology and is a special education coordinator. She has been with the LEA 17 years.<sup>122</sup> Ms. [redacted] has evaluated MM, reviewed information and past reports concerning him and attended the eligibility meeting and IEP meetings. She has reviewed the documents submitted in this case. She has met with MM and conducted a speech and language evaluation of MM on 7/8/09. Her summary of evaluation date indicate MM presents with deficits in attention and memory that negatively impact his language skills. He scored below average on all CASL subtests, except for Paragraph Comprehension. His composite score was 66, indicating severe language disorder. He has significant deficits in the areas of word knowledge and word relationships, understanding inferences, oral expression, and pragmatic skills.<sup>123</sup>

Ms. [redacted] works with children who have communication impacted to the degree that MM's communication is and with children who have greater communication deficits. She was on the eligibility committee and agreed with the eligibility determination. She was a member of the IEP team and believes that the IEP and its placement is appropriate.

MM would receive support, individualized to him acclimating his for entry into the general education setting. She testified this could include social story, talk, visiting the room, timed stays and other techniques which are available.

Ms. [redacted] indicated she believes the IEP goals, services, and placement for MM are appropriate. She also indicated she believes that it is very reasonable at this point for MM to have interaction with nondisabled students for at least a portion of his day.<sup>124</sup> She does not

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<sup>120</sup> Tr. 639-642.

<sup>121</sup> S. Ex. 39G.

<sup>122</sup> Tr. 532-534.

<sup>123</sup> P. Ex. 56.

<sup>124</sup> Tr. 570.

believe MM's communication needs to be limited to students who have disabilities. She believes he would receive benefit from a placement at Jamestown.

, Masters Degree in Special Education, and special education teacher at school for two years.<sup>125</sup> She teaches in the upper elementary room, 3rd, 4th, 5th grades. She was involved in the eligibility committee and the IEP team concerning MM. She had not met with MM but was familiar, through the data provided, including the psychological evaluation, academic achievement tests, and narratives. She agreed with the determination of eligibility and with the IEP proposed.<sup>126</sup>

*Analysis:*

Hearing officers are to give appropriate deference to local educators. *Hartmann v. Loudoun County School Board*, 118 F. 3d 996, 1000-1001 (4th Cir. 1997, *cert. denied*, 522 U.S.1046 (1998) provides that, "Local educators deserve latitude in determining the individualized education program most appropriate for a disabled child. They are entitled to latitude in the development of an IEP appropriate for the student." IDEA requires great deference to the views of the school system rather than those of even the most well-meaning parents. *A.B. v. Lawson* 354 F.3d 315, 328 (4th Cir. 2004).

I have taken into consideration the testimony of the witnesses and the evidence admitted at hearing. There is disagreement between MM's parents and the LEA on whether the proposed IEP of 2/17/10 and placement provided therein at is appropriate and the child's need for services could be met by the LEA there. There is disagreement in the testimony of the parties' witnesses in this proceeding also.

Consideration is given to the fact that Dr. Culotta is a pediatric neuropsychology and, as he testified, he has not been a special education teacher, special education administrator or school psychologist. He has not observed MM in a school setting or any setting other than his office and has not spoken with any staff, other than Ms. <sup>127</sup> Dr. Culotta was not aware what sort of things the LEA would do to assist or facilitate a transition of MM from to <sup>128</sup> He was not sure how many students went to , indicated "Maybe a hundred. I don't know". <sup>129</sup>

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<sup>125</sup> Tr. 684.

<sup>126</sup> Tr. 697-698.

<sup>127</sup> Tr. 369.

<sup>128</sup> Tr. 389.

<sup>129</sup> Tr. 331



He expressed concern as to possible excessive disruption to MM if he were in a classroom with the students at some point during the day exiting the class to go back to a regular education setting.

Dr. Culotta recommended MM should be encouraged to continue his participation in activities such as Tae Kwon Do, swimming, and piano as these may serve as an opportunity to initiate or sustain peer relations and support his emerging self-identity. He noted that MM had limited opportunities to interact with peers outside of school.<sup>130</sup>

Dr.                    had observed MM in the classroom at                    and observed MM able to stay focused with the movement within the class. At her observation of MM at                    , where there was a fairly loud room, where there was transition, she observed he was able to stay focused and remain open to redirection. Also, she indicated that when students transition into a class, it's at a natural break of the day or they come in quietly.<sup>131</sup>

Dr.                    opined it is important for MM to be in the general education classroom to have opportunity to practice some of the things being taught, to have conversations, to work on his social skills. She indicates that MM has the skills to communicate and he is right on the edge of some communication opportunities, he's got the interest, and he wants to be involved.

Dr.                    addressed issues of MM's anxiety. As Dr. Culotta determined, MM does not meet the criteria of an anxiety disorder. MM has shown some anxieties coming into an unfamiliar situation and sometimes he was resistant to change or anxious but he was able to then be redirected.<sup>132</sup>

Dr.                    has reviewed Dr. Culotta's Neuropsychological Evaluation and the recommendations set forth therein. Dr.                    testified that MM's placement at                    would be consistent Dr. Culotta's recommendations.<sup>133</sup>

Dr.                    was involved in MM's IEP of 2007, in the student study committee meeting and has observed MM in the                    setting and at                   .<sup>134</sup> She has talked to                    staff who have been working with MM, has spoken to the parents, and has reviewed records.<sup>135</sup> She has reviewed the 2/17/10 IEP and is familiar with the special education program at                    and the special education program offered MM. Dr.                    testified she believes the proposed IEP and the proposed placement at                    would be appropriate and provide educational benefit. She testified, "I actually feel strongly that this is an educationally appropriate IEP for him. I feel that it would address not only his academic and his functional needs, but his

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<sup>130</sup> Tr. 376.

<sup>131</sup> Tr. 210.

<sup>132</sup> Tr. 217.

<sup>133</sup> Tr. 217-218.

<sup>134</sup> Tr. 142.

<sup>135</sup> Tr. 143, 152.

social skill and language needs within his day at . I feel that if were allowed to implement this IEP we would see [MM] making progress at "136

, a Nationally Certified School Psychologist, observed MM in December of 2009 and conducted an evaluation of him at in December of 2009.<sup>137</sup> She participated in MM's eligibility committee meeting and was a member of the February 2010 IEP team. She has reviewed the documents submitted in this cause and is familiar with

School. Ms. is in agreement with the placement decision for MM at .<sup>138</sup> She testified the placement would allow MM to make academic and educational progress. She testified MM does exhibit impairment in social relatedness but also exhibits some good social skills, some good helping skills, and some good empathy skills. She feel he could stretch his skills, and stretch his independent skills. It is her opinion that MM, with continued support, could make academic progress under the IEP proposed.<sup>139</sup>

, Speech/Language Pathologist with over 25 years experience in the field of speech and language pathology and special education has evaluate MM, reviewed information and pasts reports concerning him, and attended the eligibility and the IEP meetings. She has reviewed the documents submitted in this case. Ms. works with children who have communication impacted to the degree that MM's communication is impacted and with children who have greater communication deficits. She testified that the IEP and its placement is appropriate.

She also indicated it is very reasonable at this point for MM to have interaction with nondisabled students for at least a portion of his day.<sup>140</sup> She does not believe MM's communication needs to be limited to students who have disabilities.

, has a masters degree in special education, is a licensed special education teacher in Virginia, and is a special education teacher at . She was involved in the eligibility committee and the IEP team for MM. While she had not met MM personally based upon data provided, including the psychological evaluation, academic achievement tests, and narratives, she agreed with the determination of eligibility and with the IEP proposed.<sup>141</sup> She believed the goals and objectives were appropriate for MM.

At , under his IEP MM would be participating in the general education with support at morning meeting, lunch, recess, his specials (PE/music/art/library), and pack-up. The

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<sup>136</sup> Tr. 181-182.

<sup>137</sup> Tr. 610.

<sup>138</sup> Tr. 637.

<sup>139</sup> Tr. 637-639.

<sup>140</sup> Tr. 570.

<sup>141</sup> Tr. 697-698.

support would be either a licensed or certified special education teacher, and aide, or an assistant from special ed. Assistant.<sup>142</sup>

Consideration is given to the competing opinions of the respective witnesses. However, greater weight was afforded to the LEA witnesses who possessed significant special education experience, were knowledgeable of the proposed IEP, School and programs there, and were aware of MM's individual needs, educational needs, abilities, and limitations. Consideration given to the fact that Dr. Culotta, a pediatric neuropsychologist, is not a special education teacher, special education administrator, or school psychologist and had not observed the school setting, observed MM in the school setting, or talked with school staff other than Ms.

There does not appear to be conflict over the present levels, goals and objectives, supplementary aids, and modifications set forth in MM's IEP. The witnesses further indicate the goals and short-term objectives are very appropriate for MM and there is a similarity between his IEP and what would appear in the ISPs for MM.<sup>143</sup> Placement at a public day school/ and mainstreaming MM in the general education setting for the approximately 45 minutes a day appear to be a conflict.

The evidence indicates that the proposed IEP and placement for MM would have provided him with an appropriate education in the least restrictive environment. The IEP is reasonably calculated to offer him some educational benefit. He would be educated for the greater majority of the school day in a small, structured special education class. He would be one of about three students receiving their academic instruction in the special education classroom with 3rd, 4th, and 5th graders in the class. He would be afforded opportunity to be with nondisabled classmates for about 45 minutes a day in "specials" and in non academic activities as morning meeting, recess, lunch, and art/music.

Dr. Culotta's report included a number of recommendations and testimony indicated these recommendations would be consistent with a placement at (placement in a highly-structured language-modified classroom, access to research-based reading program, with SpellRead program being available, FASTT Math, manipulatives, social stories, etc.)

Support would be afforded MM by the special education staff in the "specials" and in transitions to and in the classroom. The evidence indicates that MM is participating with nondisabled peers in his Tae Kwan Do class, and has done so in 's sports league activities.

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<sup>142</sup> Tr. 667-669.

<sup>143</sup> Tr. 450.

The IDEA's mainstreaming provision established a presumption, not an inflexible federal mandate. Disabled children are to be educated with children who are not disabled "to the maximum extent appropriate." MM would receive educational benefit from the placement at

. His participation in a general education setting, with support for a small portion of his day would afford him opportunity to continue to develop relationships with peers and to further utilize and develop his socialization skills needed to be successful. The evidence demonstrates that MM is able to attend, with support, certain activities, such as recess, assemblies etc. with non-disabled peers and he would be able to derive educational benefit from this.

The evidence demonstrates that is an appropriate placement and that MM would receive an appropriate education, in the least restrictive environment under the proposed IEP of 2/17/2010.

### **Conclusion:**

Based upon consideration of the above and upon consideration of all of the evidence presented, applicable statutes, regulations, case law, and the arguments presented by the parties, the Hearing Officer makes the following conclusions of law:

- A. The proposed IEP of 2/17/10 and proposed placement at a public day school is appropriate and the LEA can meet the child's need for services.
- B. FAPE does not require a private day placement.
- C. The requirements of notice to the parent(s) were satisfied.
- D. The Child has a disability.
- E. The Child needs special education and related services.
- F. The proposed IEP offers a FAPE.

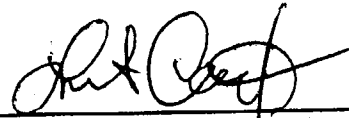
### **APPEAL:**

1. Appeal rights: The hearing officer's decision is final and binding unless either party appeals in a Federal District Court within 90 calendar days of the date of the decision, or in a state circuit court within one year of the date of the decision.

2. Implementation Plan: The local educational agency shall develop and submit an implementation plan within 45 calendar days of the rendering of a decision or the withdrawal of a hearing request with the following exception: the appeal or consideration of an appeal of the decision by the local school division and the decision is not an

agreement by the hearing officer with the parent or parents of the child that a change in placement is appropriate.

**45-DAY DECISION DUE DATE:** October 7, 2010.

A handwritten signature in black ink, appearing to read 'Lorin A. Costanzo', written over a horizontal line.

Lorin A. Costanzo, Hearing Officer

*Copies to:*

1. Parents' counsel
2. LEA's counsel
3. SEA
4. SEA Monitor