

Received

JUL 25 2006

Dispute Resolution &
Administrative Services

**COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION & STUDENT SERVICES
OFFICE OF DISPUTE RESOLUTION & ADMINISTRATIVE SERVICES**

CASE CLOSURE REPORT

Public Schools	
School Division	Name of Parent(s)
Division Superintendent	Name of Child
Counsel Representing Local Education Agency (LEA) Ternon Galloway Lee	Counsel Representing Parent/Child
Hearing Officer	Party Initiating Hearing

Hearing Officer's Determination of Issue(s):

The hearing officer determined there were no procedural or substantive violations of the eligibility and child study requirements with respect to the School child study meetings on December 20, 2005, January 17, 2006.

The hearing officer determined that the School child study committee failed to meet within ten (10) business days after receipt of the January 25, 2006 request for a child study meeting. The hearing officer then determined the procedural error was harmless as it did not deny the child a free appropriate public education (FAPE) or deprive the child of educational benefits and it did not significantly impede the parents' opportunity to participate in the decision making process regarding the provision of a FAPE. Accordingly, the hearing officer granted no remedy to the parent.

The hearing officer found the LEA satisfied notice requirements. Further the hearing officer determined that the record showed the child was a child with a disability and found eligible for special education and related services on May 16, 2006. The hearing officer also determined the child had not been denied a FAPE.

Hearing Officer's Orders and Outcome of Case:

By order entered July 11, 2006, the hearing officer did not grant any remedy to the parents for the reason(s) stated above.

This certifies that to the best of my knowledge I have completed this matter in accordance with applicable law.

	July 21, 2006
Signature, Hearing Officer	Date

Cc: _____, parents
 Dr. Judith Douglas, Virginia Dept. of Education
 _____, Dir. of Special Ed., _____ Public Schools

JUL 14 2006

Dispute Resolution & Administrative Services

VIRGINIA STATE EDUCATIONAL AGENCY

Re: , by and through her parent(s)
v. **Public Schools (LEA)**

Child & Parent(s):

Attorney for Parents: , Esq.
Local Educational Agency (LEA): Public Schools
Public Schools Attorney: , Esq.
Superintendent of LEA: 1
Administrative Hearing Officer: Ternon Galloway Lee, Esquire

DECISION

I. PROCEDURAL HISTORY

By letter dated April 26, 2006, received April 27, 2006, by the Public Schools (hereinafter "LEA") (hereinafter "the parent(s)/mother") requested a due process hearing asserting the LEA violated procedural and substantive mandates of the Child Find and eligibility provisions of the Individuals with Disabilities Education Improvement Act of 2004 (hereinafter "IDEA/IDEA 2004"). The hearing officer (hereinafter "H.O.") held an initial pre-hearing conference on May 12, 2006, wherein the issues were determined to be:

- (i). Were there procedural or substantive violations of the eligibility and or child study requirements? If so, what relief, if any, should be granted?
- (ii). Was the child denied a free appropriate public education (hereinafter "FAPE")?
- (iii). Were the requirements of notice to the parent(s) satisfied?
- (iv). Does the child have a disability?
- (v). Is the child in need of special education and related services?

The H.O. also scheduled the due process hearing for June 21, 2006, and based on discussions during the pre-hearing conference issued a scheduling order on May 15, 2006.

By order dated June 13, 2006, the H.O. issued an order regarding a motion raising conflict concerns. Subsequently another pre-hearing conference was held wherein the parties affirmed they had no concerns to the hearing officer serving. By order dated June 15, 2006, the HO found again the parties had no concerns to her serving as the hearing officer, noted the changed location of the scheduled due process hearing, and deferred ruling on the parents' motion requesting the HO hear the issue whether the parents should receive reimbursement for occupational therapy services. By that same order, the HO granted the parties the option of submitting by June 16, 2006, written arguments on the reimbursement issue.

The due process hearing took place on June 12, 2006 and the HO's decision is set forth below.

The hearing officer notes any federal or state regulations not impacted by the mandates of IDEA 2004 remain effective until changed by revised federal and state regulations implementing IDEA 2004.

II. ISSUES

1. Were there procedural or substantive violations of the eligibility and or child study requirements? If so, what relief, if any, should be granted?
2. Was the child denied a free appropriate public education (hereinafter "FAPE")?
3. Were the requirements of notice to the parent(s) satisfied?
4. Does the child have a disability?
5. Is the child in need of special education and related services?

III. STATEMENT OF FACTS

1. _____, the child, attended _____ Christian School

(hereinafter " C"), a private school, during the 2005-2006 school year Tr. 30, 85.

2. The child's overall school performance December 6, 2006 was passing and she did complete the 2005-2006 school year as a kindergartener Tr. 33, Exh. P-8.

3. By letter dated and received December 1, 2005, the parents referred their child to child study Exhs. S-1, S-19.

4. Because the parents referred the child to child study, (hereinafter " "), chairperson of the child study committee at Elementary School, contacted the mother by telephone on December 2, 2005 to schedule a child study meeting and complete the child study Referral Form. This form solicited information from the parents about the child's educational history and problems Tr. 122, Exh. S-2, S-5.

5. Prior to December 2, 2005, had not had any conversation with the parents regarding a referral for child study Tr. 122.

6. The parent did not indicate during the December 2, 2005 conversation with that the child was having difficulty reading. Instead she expressed her main concern was with her child's writing. She also stated her child's IQ was above average, and she attended C, and excelled orally. Tr. 123-124; Exh. S-2, S-5.

7. While conversing with the mother on December 2, 2005, offered to schedule the child study meeting for December 6, 2006; however, due to a conflict in the mother's schedule, the mother was unable to meet on that date and the parties mutually agreed to a child study meeting on December 20, 2005- the LEA's next designated child study meeting date Tr. 126.

8. The LEA did not have a signed release for the child's records Tr. 136.

Because the child had no records in the public schools, the agency conducted no record review prior to the December 20, 2005 child study meeting Tr. 129-130.

9. The parents' written referral for child study stated they would make available to the LEA a copy of their child's complete C school file Exh. P-1.

10. The mother brought to the December 20, 2005 child study meeting some writing samples from the child's school work Exhs. P-9, P-10, Tr. 145. The mother also reported the child had undergone a psychological evaluation but the report was unavailable at the time. The mother also expressed her primary concern was her child's writing and the child's need for accommodations in class to be successful Tr. 127, 141-142, 154-155.

11. Because the committee determined more information was needed, to include the report from the psychologist, which the parent indicated would be available the next day, and input from the child's teacher, the committee scheduled a second child study meeting for January 17, 2006. Exhs. S-7, P-5, Tr. 128.

Customarily a child study meeting is reconvened at a later date for the purpose of gathering additional relevant information Tr. 138, 150.

12. (hereinafter " "), an educational diagnostician for the LEA, served on the December 20, 2005, January 17, 2006 child study committees. She informed the mother at the December 20, 2005 meeting that the committee preferred she bring the child's teacher to the next meeting, but if she could not attend they would accept a letter Tr. 139-40, 148-149.

13. (hereinafter " ") is a psychologist with the LEA. She was a member of the January 17, 2006 child study team Tr. 152-153.

14. Additional documentation presented by the parent for review at the January 17, 2006 meeting included a progress report, teacher comments, the completed parent questionnaire and the psychological evaluation from Dr. [redacted] dated December 14, 2005 Tr. 130-132, 154, Exhs. S-15, P-16.

15. The January 17, 2006 child study meeting lasted about ninety (90) minutes, three times as long as such a meeting normally lasts. Tr. 154. During that time, the committee considered all documentation presented Tr. 132-133, 142-143.

16. The child study committee discussed the visual concern raised in the teacher's written comment. Although the teacher comments/suggested the child was having focusing problems as well, when the committee inquired about it, the mother was not receptive to discussing any focusing problems Tr. 155.

17. The committee also discussed Dr. [redacted]'s report dated December 14, 2005, and accepted all provisions of it except his finding/conclusion that there were significant discrepancies between the child's verbal and non-verbal IQ scores. The committee rejected Dr. [redacted]'s finding because it found all IQ scores were in the average range Tr. 143, 157-8, Exh. S-15. The committee determined next there was no need for further testing because the child's ability and achievement were commensurate Tr. 144, 156-158.

18. After considering Dr. [redacted]'s finding that "significant weaknesses were noted on non-verbal tasks that measured eye/hand coordination and visual motor integration with pencil and paper tasks," the child study committee determined an evaluation was not necessary because the committee had an adequate picture of the problem and could implement additional accommodations to adequately address them Tr. 158-160. The committee determined a referral to the 504 committee was appropriate

pursuant to section 504 of the Rehabilitation Act 1973. Exh. P-12.

19. The parents rejected the child study committee's decision to refer the matter to a section 504 committee and requested another child study team or mediation/due process. Exh. P-19.

20. Writing letters and names backward can be a characteristic of dyslexia but not necessarily Tr. 162.

21. Although it is uncommon for the LEA to reassign a child study committee, (hereinafter " "), Director of Special Education for the LEA, granted the parents' request to do so. Tr. 230-232.

22. then assigned another child study committee at Elementary School to review the parents' concerns about their child Tr. 230.

23 (hereinafter " ") is chairperson of the child study committee at Elementary School Tr. 172-173. She completed the child study referral form, for the Elementary School child study committee with the mother over the telephone to begin the second child study process. During the telephone conversation, the mother stated the child was having trouble with reading and math, and she had concerns about her child's performance in kindergarten and an independent evaluation suggested her child was dyslexic and dysgraphic. Exhs. P-23, 24, Tr. 175. The parent subsequently completed and submitted a parent questionnaire for the February 28, child study meeting. Exh. P-24, Tr. 191.

24. On February 21, 2006, school psychologist for Elementary School, (hereinafter " "), contacted the mother by telephone and scheduled the February 28, 2006 child study meeting at Elementary School.

In preparation for the meeting he gathered the information obtained as a result of the prior child study committee meetings on December 20, 2005, and January 17, 2006. Tr. 193. Additional documentation presented at the February 28, 2006 meeting included parent questionnaire completed for the February 28 2006 meeting and work samples from the entire class brought by the teacher. Tr. 194-95.

25. The February 28, 2006 committee considered everyone's comments and referred the child for a medical evaluation, completed March 14, 2006 and an occupational therapy evaluation Tr. 195-196, Exh. S-37.

26. After the February 28, 2006 child study meeting, the parent provided with a second report or supplement to Dr. 's report. It was reviewed by and provided to the occupational therapist. The second document did not alter his opinion regarding the requested occupational therapy evaluation Tr. 200-201, 204.

27. On March 27, 2006 the parent inquired about the length of time it was taking to schedule the occupational therapy evaluation and provided available dates to schedule the evaluation Exh. S-43.

28. (hereinafter ' '), an occupational therapist with Infinity Rehab, performs occupational therapy evaluations for children within the jurisdiction of the Public School System Tr. 218.

29. received the referral for the occupational therapy evaluation on March 1, 2006 and she began the evaluation on April 17, 2006 by conducting clinical observations and standardized testing of the child. She concluded the classroom observation portion of the test on April 24, 2006. Tr. 218-19.

30. Standardized tests administered included visual motor skills and visual

perception skills tests, which showed the child functioning just below average in those tested areas Tr. 223.

31. The Occupational therapist also administered on April 17, 2006 the Southern California Test of Right-Left Discrimination. Results also showed the child functioning just below average Tr. 222.

32. The results of the Gardner Reversal Frequency Test, which was also administered on April 17, 2006, however, showed the child's functioning was significantly delayed in the same areas Tr. 223.

33. Prior to completing the classroom observation portion of the occupational therapy evaluation, conversed with the child's mother and teacher, who collectively expressed concerns about 1) the child reversing letters or numbers and 2) the need to provide accommodations for the child to complete writing assignments Tr. 220.

34. While performing classroom observation portion of the occupational therapy evaluation, also spoke with the child's teacher while observing the child participating in a group activity and/or transitioning between activities Tr. 219-220.

35. Although it normally takes two (2) weeks to complete the written occupational therapy report, prepared it in 2 days to accommodate the parent's request to expedite writing the report Tr. 221-222.

36. The parent's independent occupational therapy evaluation, completed May 11, 2006, deferred to testing conducted by and reported 's April 24, 2006 occupational therapy evaluation Tr. 223-224.

37. On May 16, 2006, the eligibility team determined the child was eligibility for special education and related services Tr. 198, Exh S-9.

38. An occupational therapist is not trained to diagnose dyslexia. Medical records do not support a diagnosis of dyslexia Exh. P- Tr. 224, 229.

39. Although parent's December 1, 2005 letter indicates child having problems reading, Dr. 's report indicates child's reading is average S-15.

IV. APPLICABLE LAW AND ANALYSIS

A. Referral for Evaluation or for Child Study

Addressing a referral for evaluation, 8 VAC 20-80-52 A1 provides the following:

All children, aged 2 to 21, inclusive, whether enrolled in public school or not, who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.

1. Referrals may be made by any source, including a parent,....

8 VAC 20-80-52 A1.

Concerning a referral for child study, 8 VAC 20-80-50 in pertinent part states:

A child study committee shall be established in each school to review records and other performance evidence of the children referred through a screening process, ..., the parent or parents

- a. All referrals to the child study committee shall be made to the principal or designee.

8VAC 20-80-50 C3.

1. Oral Referral

The mother testified she contacted _____ Elementary School October, 2005, by telephone and spoke to someone about problems her child was experiencing in kindergarten. The mother does not know to whom she spoke but contends the telephone

conversation constituted a referral for evaluation. Subsequently, the parents contend that on or about December 2, 2005, they also submitted a written referral for evaluation. Tr. 67, Exh. P-46.

Applicable law does permit oral referrals; however, a referral for child study must be made to the principal/designee and a referral for evaluation must be made to the special education administrator/designee. 8VAC 20-80-50 C3; 8VAC 20-80-52. The evidence does not show any oral referral reached either of the designated employees of the LEA. Accordingly, the hearing officer finds the parents did not make a referral of any kind October, 2005.

2. Written Referral

, principal/designee and child study chair for Elementary School received the parents' December letter and contacted the mother by telephone on December 2, 2005. While testifying, the mother stated she "submitted the letter on December the 1st. And then ... continued with the evaluations with Dr. awaiting ... a child study." Tr. 69. Moreover, by letter dated January 25, 2006, the parents stated in pertinent part "[m]y written request for child study was received December 2, 2005." Exh. S-19. Considering (i) the acknowledgements of the parents through testimony and in writing and (ii) the LEA's designee tasked with receiving child study referrals received the parents' December letter, the hearing officer finds the parents referred their child to child study on or about December 2, 2005.

B. Child Study

Child study falls under the umbrella of "child find" - an affirmative duty placed on the LEA to identify, locate, and evaluate those children residing in its jurisdiction who are

in need of special education and related services, including, among other students, those attending private schools. 20 U.S.C. Section 1412 (a)(3); 34 C.F.R. Section 300.121(e), 300.125.

The child find duty is triggered when the LEA has a reason to suspect a disability and reason to suspect that special education services may be needed to address that disability 103 LRP 36798 (Jan. 27, 2003) (quoting from Corpus Christi, Indep. Sch. Dist., 31 IDELR. Paragraph 41, at 158, No. 105-SE-1298 (Jan. 19, 1999)).

The screening process for determining if a child is eligible for special instruction and services includes the establishment of a child study committee at each school to meet, identify, and recommend strategies to address the child's learning, behavior, communication, or development. The law mandates the committee meet within 10 business days following receipt of the referral. Moreover, the committee is mandated to refer the child to the special education administrator or designee within five (5) business days following the determination by the child study committee that the child should be referred for evaluation for special education and related services. 8 VAC 20-80-50 C3.

The matter before the hearing officer involves two (2) different child study committees- one at Elementary School and the other at Elementary School - and three (3) child study meetings. The hearing officer examines each herein to determine if procedural and/or substantive violations of the eligibility and or child study requirements occurred.

1. The December 20, 2005 Child Study Meeting

When contacted the parent on December 2, 2005, concerning the child study meeting, she attempted to schedule the meeting for December 6, 2005, the first

business day after receipt of the referral. Because the mother had a scheduling conflict with that date, the initial child study meeting was scheduled for December 20, 2005. The mother did not request a meeting date sooner than December 20, 2005; however, if she had, the LEA would have tried "to accommodate her." Tr. 126.

The hearing officer finds, as was conceded to by the parents' counsel, that the parents' schedule precluded holding the meeting within the required 10 business day timeframe. Tr. 243-44; 8 VAC 20-80-50C3b

The child study committee must include the referring source, the principal or designee, at least one teacher, and at least one specialist. 8 VAC 20-80-50C3a. Those attending the December 20, 2005 meeting included _____, child study chairperson and principal or designee; _____, the educational diagnostician; _____, the school's social worker; Mrs. _____, the principal; and the mother, the referring source.

The child attends private school and her teacher was not in attendance at the December 20 child study meeting. As discussed below, the committee did continue the December meeting to gather additional information, and requested, among other things, that the parent bring the teacher to that meeting. Accordingly, the hearing officer finds that failure to have a teacher at the December 20, 2005 child study meeting was not a procedural violation. Exh. S-7.

In order for the child study committee to identify and recommend strategies to address a child's learning, communication, or development, it must review records and other performance evidence of the child. 8 VAC 20-80-52C3.

Although the parents had represented in their December 1 letter they would make the child's entire school file available, the only documentation the mother brought to the

meeting was some, but not a huge amount of, writing samples from the child's school work. Tr. 145. The samples showed (i) some number reversing, such as "01" written for "10" and (ii) some letter reversing, such as "s" written backwards. Exhs. P-9,10. Tr. 146. A parent questionnaire that allows the parents to state problems the child is experiencing was not completed by the parents and submitted to the committee for consideration. Tr. 96. The committee, however, did have for review notes from [redacted]'s December 2 telephone conversation with the mother wherein the parent expressed the child had an above average IQ and the child's main problem was writing. Exhs. S-2, S-5.

During the meeting, the mother informed the committee that Dr. [redacted] had independently evaluated the child. While the mother had some information to share with the committee about the testing components of the evaluation and possible findings, the written report was not yet available. The committee scheduled January 17, 2006, to reconvene the meeting to allow the mother time to obtain the written report and to obtain input from the child's teacher.

As previously noted, the purpose of the child study meeting is to identify and recommend strategies to address the child's learning, behavior, communication or development. The hearing officer has considered the brief period of continuance, approximately 10 business days from December 20, 2005, to January 17, 2006; the responsibility of the child study committee; and the apparent agreement of the parents to the continued meeting as they voiced no objection. The hearing officer is also mindful that the committee is not excluded from making a referral for evaluation for special education and related services prior to implementing strategies. Considering the above, the hearing officer finds the committee's decision to reconvene the meeting on January 17, 2006,

reasonable. See e.g. 45 IDELR 144 (April 29, 2005) (where child study committee meeting continued from August 31 to September 13 due to psychologist being unable to attend due to a crisis in another county).

The hearing officer finds nothing in the law to preclude the LEA from reasonably reconvening a child study meeting to allow time to gather more information so the screening committee can be better equip to fulfill its Child Find responsibilities.

Accordingly, the hearing officer finds the LEA did not violate its child find obligation by holding the initial child find meeting on December 20, 2005, and reconvening it to January 17, 2006, for purposes of obtaining other relevant information, to include comments from the child's teacher and the written independent evaluation report.

2. The January 17, 2006 Child Study Meeting

On January 17, 2006, the child study committee did reconvene with the mother, _____, the school psychologist; _____, the school's psychologist; _____, the nurse; and Mrs. _____, the principal. Tr. 130-31. The mother did provide a completed parent questionnaire for the child study meeting expressing concerns about her child's written work, poor organization with school work and problem understanding and following 3 step directions at home; the child's progress report; and Dr. _____'s written psychological evaluation report. Exh. S-12, Exh. P-15, Tr. 142.

The mother also provided the committee with written comments from the child's teacher. At the initial meeting in December, the child study committee had expressed a preference for the teacher to attend the January meeting so the committee could obtain teacher input. The mother testified the teacher was unable to attend due to her attending a field trip the same day Tr. 74, 139-141. Exh. P-16.

The committee reviewed Dr. [redacted] 's report to include, but not limited to, the test administered - The Wechsler Preschool and Primary Scale of Intelligence- Revised and the Wide Range Achievement Test, 3rd Edition -tests results, findings, references, and conclusions. Tr. 156-59. Even though Dr. [redacted] used an older version of at least one of the test, the committee was of the opinion that the test results accurately reflected the child's functioning level. Tr. 157. Although Dr. [redacted] found in his report a significant discrepancy between the child's verbal and non-verbal scores, the committee, after reviewing the report, found the child's non-verbal and verbal IQ scores were in the average range and therefore there was no discrepancy. Tr. 157. The committee also reviewed Dr. [redacted] 's statement that the child has characteristics of dysgraphia.

The committee also considered and discussed the teacher's comments which expressed the child had visual-motor integration and focusing problems in the classroom. The mother expressed the child's visual-motor integration was the child's main problem. The mother was unreceptive to discussing the child's focusing problems. Tr. 155-56.

After deliberations, the committee determined and identified the child as having delays in written language and with fine motor skills Tr. 160. The committee then concluded further evaluation was unnecessary because untried accommodations could be made to address the child's weaknesses Tr. 158-159. Those accommodations included, but were not limited to using colored templates and colored pencils and having the child write in sand or with shaving cream Tr. 161.

At the conclusion of the meeting, the committee decided to refer the child to a 504 committee for a Section 504 plan under the Rehabilitation Act of 1973. Exh. S-13.

The parents argue the LEA did not consider the independent educational

evaluation (hereinafter "IEE") of Dr. . Exh. P-46.

Consider means "to reflect on; think about with a degree of care or caution." T.S. ex rel. S.S. v. Board of Educ. Of the Town of Ridgefield 20 IDELR 8890 (2d Cir. 1993) (quoting Webster's Third International Dictionary 483 (1986). The school psychologist, testified the committee reviewed the report. In that review the kinds of tests administered were reflected on, verbal and non-verbal test results were compared, versions of tests administered were considered. The committee also determined what, if any, diagnoses Dr. made. Other witnesses of the LEA, and corroborated the school psychologist's contention that the committee reviewed the documentation submitted by the mother, to include the IEE. Tr. 132, 143. The hearing officer finds the committee gave careful review to the IEE of Dr.

The parent also argues on or before January 17, 2006, the LEA had reason to believe the child had exceptional educational needs and therefore should have referred the child for an evaluation:

The evidence shows that as of January 17, 2006, the LEA had information before it showing the child had verbal and non-verbal IQ scores in the average range; a progress report showing the child passing; notes from the December 2, 2005 child study meeting indicating the child had good grades and a "huge vocabulary and memorization"; expressed parental concerns that the child had difficulty writing and organizing her school work and following 3-step directions; expressed concerns of the teacher that the child has problems writing and staying focused, but does well orally; no diagnosis of dyslexia and no definitive diagnosis of dysgraphia. Exhs. S-5, S-15, Tr. 120, Exh P-15.

The parent presented two witnesses to corroborate her claim that the LEA should

have recognized the child had exceptional needs and therefore referred her for evaluation sooner than March 1, 2006. (hereinafter “ ”) is the administrator at

C and did not recall any other kindergartener struggling similarly to the child.

(hereinafter “ ”), a third grade teacher at C, determined that the child should be tested for dyslexia because she exhibited 9 of 10 characteristics of dyslexia appearing on a checklist had obtained from a related conference. Tr. 50

The hearing officer notes that never taught the child or reviewed any of her class work. Although did review some school work of the child, she never observed or taught the child either. Also, the parent did not invite either of these witnesses to attend the December 20, 2005 or January 17, 2006 child study meetings and therefore neither provided any input for the child study committee to consider. Tr.36, 48,50.

Considering the above evidence presented at the December and January child study committee meetings, and that writing backwards is common for kindergarteners, the hearing officer finds that the parent can not show by a preponderance of the evidence that the LEA had reason to believe the child had exceptional educational needs and should have recommended a referral for evaluation.

3. The February 28, 2006 Child Study Meeting

- a. Did the LEA have an obligation to submit
A referral for evaluation before the February 28, 2006
Child Study Meeting

The parent argues essentially the LEA should have submitted the child for evaluation before February 28, 2006.

The parents rejected the recommendation of the January 17, 2006 child study

committee and requested the LEA assign another child study team or resolve the matter in a due process proceeding, if mediation failed. Exh. P-19.

The administrator of Special Education granted the request for a new child study committee because she (i) believed a personality conflict existed between the mother and school psychologist involved in the Elementary school child study committee and (ii) gave the parents the benefit of the doubt concerning their statements that they did not currently believe their child would receive a fair evaluation from the Elementary School child study committee. Tr. 231.

Among those attending the February 28, 2006 child study meeting was Ms.

, the child's teacher at C. Ms. had not attended the other two child study meetings. Tr. 195, Exhs. S-7, S-13, S-32. In addition to the team reviewing the documentation and information obtained from the prior child study meetings, the committee reviewed school work samples the teacher brought with her from the child's entire class. After consideration of all the information, the committee decided to refer the child for medical and occupational therapy evaluations based on Dr. 's evaluation and current class performance. Exh. S-32, Tr. 195.

As previously discussed herein, prior to the February 28, 2006 child study meeting, the Elementary School child study committee knew the following:

- (i) the child has average verbal and non-verbal IQ scores;
- (ii) the child's progress in school was satisfactory;
- (iii) two (2) school work samples showed the child reversing some numbers and writing backwards;
- (iv) writing backwards is not uncommon for a kindergartner;

- (v) the child's teacher reported in writing she had concerns about the child's "visual" and focusing;
- (vi) the mother was not receptive to discussing focusing problems the child may have;
- (vi) the main concern of the child's mother was the child's visual and motor integration and the need for accommodations in school to complete assignments;
- (vii) reasonable accommodations were available to address the child's weaknesses which had not been;
- (viii) the child had no definitive diagnoses of dysgraphia and no diagnoses of dyslexia.

The hearing officer finds the teacher's input and class work samples were of such usefulness they became **the a** critical if not decisive factor in determining whether the committee had an obligation to submit a referral for evaluation. The work samples from the entire class allowed the committee to closely compare the child's class work with that of her classmates and presumably determine the extent of the child's deficiencies. Tr. 195. Moreover, although previously sought through the parent for the prior child study meeting, the committee had the advantage of the teacher's attendance and direct input, at the February 28, 2006 meeting. With this new information considered along with the prior information accumulated, the February child study committee now had enough information to determine the child had a sufficient gravity of uniqueness to lead the committee to suspect a disability.

Accordingly, the preponderance of the evidence convinces the hearing officer that the LEA had no reasonable cause to believe the LEA had the obligation to submit a referral for evaluation prior to the February 28, 2006 meeting.

2. Was the evaluation timely?

The parents also contend the LEA did not timely evaluate and determine eligibility.

If a referral for evaluation is made by a child study committee it must be made within five (5) business days following the determination by the committee that the child should be referred for evaluation for special education and related services 8 VAC 20-80-52 (A)(2). Referrals for evaluation are to be made to the special education administrator or designee...8 VAC 20-80-52 A. The special education administrator or designee shall ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the referral for evaluation is received by the special education administrator or designee 8 VAC 20-80-52 B 7 d.

The second child study committee recommended a referral for evaluation on February 28, 2006, and the child was referred on March 1, 2006. Exh. S- 37. Although the child study committee had 5 business days (under the facts of the case, the 5th business day was March 7, 2006) to refer the child for an evaluation, it made the referral on March 1, 2006, the next business day after the committee's recommendation. The evidence shows April 10 -14, 2006, and May 29, 2006 were none business school days as well as all weekends between March 1, 2006, and June 5, 2006. The hearing officer therefore finds the child's eligibility and evaluation were due on or before June 6, 2006. The facts show the evaluations were completed by April 24, 2006, and eligibility determined on May 16, 2006. The hearing officer therefore finds the evidence shows the LEA timely completed the evaluations and eligibility.

3. Was the Elementary School Child Study Meeting Timely?

The parents made a referral for another child study by letter dated January 25, 2006, received by the LEA January 27, 2006. The child study committee is required to

meet within 10 business days after receipt of the referral. The hearing officer finds applicable law required the LEA to meet by February 10, 2006, and the LEA violated the 10 business day meeting rule with respect to the January 25 referral for child study.

Assuming the child study committee had timely met and recommended a referral for evaluation on February 10, 2006, and taken action to refer the child for evaluation the next business day as it did after the February 28, 2006 child study meeting, the child would have been referred for evaluation on February 13, 2006, and the evaluation and eligibility determination would have been due on or about May 19, 2006. Under the facts of this case, the LEA determined eligibility on May 16, 2006, which is earlier than required even if the committee had met timely on February 13, 2006.

The hearing officer therefore finds the procedural error was harmless.

V. DECISION AND ORDER

The hearing officer finds there were no procedural or substantive violations of the eligibility and child study requirements with respect to the Elementary School child study committee and meetings scheduled December 20, 2005, and January 17, 2006.

With respect to the Elementary School child study committee the hearing officer finds the committee failed to meet within ten (10) business days after receipt of the January 25, 2006 request. As discussed above, the hearing officer finds the procedural error was harmless as it did not deny the child a free appropriate public education or deprive the child of educational benefits. Further, it did not significantly impede the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education. Because the procedural error was harmless and no

substantive violation of the child study and eligibility mandates occurred, the hearing officer grants the parent no remedy.

The hearing officer has reviewed and considered the entire record and finds the LEA satisfied the notice requirements.

The hearing officer finds on May 16, 2006, the child was found in need of special education and related services and is a child with a disability. The hearing officer does not find the child was denied a free appropriate public education.

The parent argued the LEA is bias against providing special education to private school students. The hearing officer has examined the record and finds the argument without merit as the LEA has and does provide such services to private school students.

Tr. 186-188, 237-238.


VI. PREVAILING PARTY

Because the hearing officer found only one harmless procedural error and awarded no relief, the hearing officer finds the LEA is the prevailing party on the first issue. The hearing officer finds no prevailing party on the remaining issues.

VII. APPEAL INFORMATION

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

Entered into this 11th day of July, 2006.


Terri Galloway Lee
Hearing Officer

cc:

, parents
, Attorney for parents
, Attorney for LEA
, Director of Special Education for LEA
Virginia Department of Education (via mail)