

06-092

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

CASE CLOSURE REPORT

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

Hearing Officer's Determination of Issue(s):

On the issue of whether the LEA erroneously found the child ineligible for special education and related services during its previous evaluation on or about December 10, 2004, the hearing officer (HO) determined that the eligibility determination was seriously flawed and therefore invalidated. The HO then ordered the LEA, pursuant to the decision and order, to determine the child's eligibility again.

On the issue of whether the LEA administered appropriate testing to determine the child's eligibility, the HO found (i) the LEA failed to consider existing evaluation data and information from varied sources in determining the child's eligibility and (ii) the parent prevailed on the issue.

The HO found the LEA satisfied notice requirements. Further the HO determined that the record showed the child was a child with a disability and that the LEA was not providing the child with a FAPE.

Hearing Officer's Orders and Outcome of Case

By order entered August 24, 2006, the HO ordered the LEA to reconvene the

appropriate team/committee to determine the child's eligibility for special education and related services and to consider, consistent with the decision, information from varied sources.

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

 September 18, 2006

Signature, Hearing Officer Date

Cc: Dr. Judith Douglas, Virginia Dept. of Education
, Dir. of Special Services for
, Parent
, Esq.

Public Schools

VIRGINIA STATE EDUCATIONAL AGENCY

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

Child & Parent(s):

Attorney for Parent(s):

Local Educational Agency (LEA): Public Schools

Public Schools Attorney: , Esq.

Superintendent of LEA:

Administrative Hearing Officer: Ternon Galloway Lee, Esquire

DECISION CORRECTING CLERICAL/TYPOGRAPHICAL ERRORS

It appearing to the hearing officer that certain clerical/typographical errors were made in the decision issued in this matter on August 24, 2006. Accordingly, the hearing officer orders that the decision of August 24, 2006, be and same is hereby amended to make the following clerical corrections.

| Where Correction Made in the Decision | Correction Made |
|---|--|
| 1. Page 2, 3 rd Paragraph | Change order dated July 6, 2006, to order dated July 7, 2006 |
| 2. Page 2, 4 th Paragraph | Change July 14, 2006, to July 10, 2006 |
| 3. Page 7, Statement of Facts 16 and 17 | Change 's received to received |
| 4. Page 8, Statement of Fact 19 | Change reevaluating group to reevaluation group |
| 5. Page 9, Statement of Fact 23 | Change of to or |
| 6. Page 9, Statement of Fact 27 | Change 's to 's |

Enter Nunc Pro Tunc August 24, 2006.

Date September 18, 2006


HEARING OFFICER

VIRGINIA STATE EDUCATIONAL AGENCY

Re: [redacted], by and through his parent(s),
v. [redacted] Public Schools (LEA)

Child & Parent(s):

Attorney for Parent(s):

Local Educational Agency (LEA): Public Schools

Public Schools Attorney: [redacted] Esq.

Superintendent of LEA:

Administrative Hearing Officer: Ternon Galloway Lee, Esquire

DECISION

I. PROCEDURAL HISTORY¹

By request for due process hearing dated June 5, 2006, received by the
Public Schools (hereinafter "LEA") (hereinafter
"parent(s)"/"mother") requested a due process hearing asserting the LEA erroneously
found (hereinafter "child" or "student") ineligible for special education
and related services and sufficient assessments were not undertaken to determine eligibility.
The hearing officer (hereinafter "H.O.") held an initial pre-hearing conference on June 19,
2006, wherein the issue was determined to be the following:

- 1. Whether the LEA erroneously found the child ineligible for Education and related services prior to 2006?
- 2. Whether the LEA administered sufficient test during the evaluation process?

¹ Throughout the decision the following abbreviations will be used:

| | |
|--------------------|--------|
| Exhibit | Exh. |
| Transcript | Tr. |
| Exhibit for LEA | Exh. S |
| Exhibit for Parent | Exh. P |

The H.O. also scheduled the due process hearing for July 10,13, 2006, and based on discussions during the pre-hearing conference and subsequent conference issued a scheduling order. By letter dated June 20, 2006, the parent waived the resolution session. By motions submitted to the hearing officer on June 21, 23, 2006, counsel for the LEA asserted the parent's due process request was insufficiently pled. Counsel's June 23, 2006 motion also moved to dismiss the due-process request on grounds that the parent had previously agreed on December 10, 2004, to terminate the LEA's provision of special education and related services to the child. The hearing officer held a subsequent pre-hearing conference on June 23, 2006, and based on discussions during the conference granted the parent until July 5, 2006 to respond to the LEA's motion to dismiss on grounds other than the sufficiency challenge and issued orders dated June 28, 2006, and June 26, 2006. By order dated June 26, 2006 found the parent had sufficiently pled her due process request/complaint. The hearing officer issued an amended order correcting a typographical error and matter regarding the date of receipt of the due process request.

By letter dated July 5, 2006, the LEA waived the resolution session also. On July 6, 2006, a third pre-hearing conference was held, to discuss among other matters, the order of witness testimony at the scheduled due process hearing and the motion to dismiss

After receipt of the parent's response to the LEA's motion to dismiss on grounds other than sufficiency of the complaint, the hearing officer entered an order dated July 6, 2006, denying the LEA's motion to dismiss.

The due process hearing was held on July 14, 2006. By joint motion the parties requested an extension in time for the decision due date to allow time for submission of written closing arguments. The hearing officer found the extension in the best interest of

the child and extended the due date of the decision to August 24, 2006.

The HO's decision is set forth below.

The IDEA 2004 was signed into law on December 3, 2004. With the exception of some elements of the definition of "highly qualified teacher," which took effect on December 3, 2004, the provisions of IDEA 2004 became effective July 1, 2005 (the "Effective Date"). Concerning this administrative due process proceeding, where the events occur before the Effective Date, IDEA 1997 and the implementing regulations apply. Obviously, concerning events occurring on or after the Effective Date, the IDEA 2004 applies. In this event, any federal and state special education regulation not impacted by the Act remains in effect until newly revised federal and/or state special education regulations are implemented. Newly implemented federal regulations become effective October 13, 2006.

II. ISSUES

1. Whether the LEA erroneously found the child ineligible for special education and related services during its previous evaluation on or about December 10, 2004?
2. Did the LEA administer the appropriate test to determine the child's eligibility?

III. STATEMENT OF FACTS

1. The LEA found _____ (hereinafter "_____") had a speech and language impairment and he was found eligible for special education and related services. Pursuant to his individual educational program (hereinafter "IEP") in 2000, he received speech and language therapy twice a week for twenty minutes. Tr. 165-66, Exh. S-2.

2. _____ (hereinafter "parent" or "mother") withdrew

from the LEA sometime in 2000, and enrolled him in private school. The parent reenrolled the child in the LEA July, 2003. Tr. 165-66.

3. Upon [redacted]'s reenrollment in the LEA, the parent did not provide the LEA with an IEP from the private school and the LEA assumed [redacted] was ineligible for special education and related services. Tr. 167.

4. Upon reenrollment [redacted] was generally screened in the area of height, weight, speech, language and motor function. No concerns in those areas were detected and [redacted] was not referred for further screening to determine if he was in need of special education and related services. Tr. 168.

5. The LEA did not reevaluate [redacted] for special education and related services upon his reenrollment. Tr. 168.

6. The parent referred the child to child study on May 21, 2004, expressing concerns that the child needed additional time to complete educational tasks. Exh. P-4, S-1.

7. The ensuing child study meeting was held on June 1, 2004, wherein an intervention plan was developed to give the child more time to complete educational tasks, to allow child to take home some tests to complete them, and to allow child to request from teacher "peer" notes as needed. The child study meeting was to be continued to sometime in September 2004; however, the committee did not meet again until October 14, 2004 of the 2004 - 2005 school year. Exhs. P-4. S-1.

8. [redacted] was a seventh grade student in the LEA during the 2004-2005 school year. Tr. 132.

9. At the October 14, 2004 child study meeting, the committee considered,

among other information, the parent's concern that the child needed additional time to complete educational tasks and the child's grades in four subjects ranging from "A" to "F." The committee recommended a speech and language evaluation. Exh. S-1.

10. (hereinafter " "), speech therapist, conducted the speech and language assessment on November 18, 2004, and November 23, 2004. She administered the Clinical Evaluation of Language Fundamentals, Third Edition (hereinafter "CELF 3") which is a standardized language assessment that tests expressive and receptive language skills. Exh. S-2, Tr. 88-89.

11. The CELF 3 included 3 subtests in the area of receptive language. Those three subtest were Concepts and directions, Listening to paragraphs, and Semantic relationships. It also included 3 subtests in the area of expressive language. Those 3 subtests were Formulated Sentences, Recalling Sentences, and Sentence Assembly. received a score of 104 on the receptive language portion of the CELF 3 and a score of 106 in the expressive language area. His total CELF 3 score was 105. Both his subtests and total score were in the average range of 85 - 115. Exh. S-2.

12. An informal articulation test, which is an acceptable means of initially testing a child's articulation, was also administered on the CELF 3 and was found to have no articulation errors and was found to be 100% intelligible to unfamiliar listeners. Tr. 89-90.

13. The CELF 3 testing and results are valid and reliable. Tr. 94-95.

14. 's Civics teacher for the 2004-2005 school year was often did not complete and turn in many homework, project and notebook assignments to his civics teacher even after being given an extension on the due date of

these assignments. At times, some assignments were submitted late. He was also not organized in his civics class. Tr. 119-20, 122. received the following report card grades in 's class during the 2004-2005 school year.

| | |
|------------------------|---|
| 1 st 6 week | B |
| 2 nd 6 week | D |
| 3 rd 6 week | C |
| Semester 1 Average | C |
| 4 th 6 week | C |
| 5 th 6 week | B |
| 6 th 6 week | F |
| Exam | F |
| Semester 2 Average | D |
| Final Average | D |

Exh. S-13.

15. 's 7th grade language arts teacher was (hereinafter " "). In language arts, was not organized. Often he did not turn in assignments even after being given additional time to submit them. On other occasions, he submitted assignments late. Tr. 128-29. received the following report card grades in her class for the 2004-2005 school year.

| | |
|------------------------|---|
| 1 st 6 week | C |
| 2 nd 6 week | D |
| 3 rd 6 week | C |
| Semester 1 Average | C |
| 4 th 6 week | D |
| 5 th 6 week | F |
| 6 th 6 week | F |
| Exam | F |
| Semester 2 Average | F |
| Final Average | D |

Exh. S-13.

16. was taught 7th grade science by (hereinafter

“ ”) in an inclusion class during the 2004-2005 school year. Tr. 132, 138. He therefore had the benefit of being able to receive help from two teachers during his science class. Tr. 138-40. had difficulty completing homework assignments. He also did not always turn in notebook assignments which adversely affected his grades because turning in the notebook was the equivalent of a test grade and because quizzes and tests were compiled from information in the notebook. When given additional time to turn in assignments often, he did not submit them. Tr. 133, 35. received the following report card grades for science during the 2004-2005 school year.

| | |
|------------------------|---|
| 1 st 6 week | F |
| 2 nd 6 week | C |
| 3 rd 6 week | F |
| Semester 1 Average | F |
| 4 th 6 week | F |
| 5 th 6 week | F |
| 6 th 6 week | F |
| Exam | F |
| Semester 2 Average | F |
| Final Average | F |

Exh. S-13, Tr. 138.

17. (hereinafter “ ”) taught math during the 2004-2005 school year. considered math a strength of Tr. 145. failed to turn in assignments on a regular basis and even when given extra time to complete assignments, he often did not turn them in. Tr. 142-43. received the following report card grades for science during the 2004-2005 school year.

| | |
|------------------------|---|
| 1 st 6 week | A |
| 2 nd 6 week | B |
| 3 rd 6 week | B |
| Semester 1 Average | B |
| 4 th 6 week | C |
| 5 th 6 week | F |

| | |
|------------------------|---|
| 6 th 6 week | D |
| Exam | F |
| Semester 2 Average | F |
| Final Average | C |

Exh. S-13.

18. On October 18, 2006, the LEA commenced the process to reevaluate by notifying the parent and obtaining the parent's permission for to be evaluated in speech and language. Exh. S-5.

19. A group on October 18, 2004, consisting of the parent, (hereinafter " "), school administrator or designee; (hereinafter " "), special education administrator; (hereinafter " "), school nurse; and (hereinafter " "), the school psychologist recommended a speech and language assessment. (hereinafter the aforementioned group will be referred to as the "reevaluating group"). The reevaluation group explained that its reason for recommending the assessments was the child was last in the LEA in 2000 and had an IEP for speech/language. The child was withdrawn and attended a private school and is now back and his speech skills need to be re-assessed. The reevaluation group also noted the child can become anxious about meeting new people. Exh. S-5.

20. The October 18, 2004 reevaluation group did not identify specific records reviewed. Exh. S-5.

21. By notice dated November 18, 2004, the LEA scheduled an eligibility meeting for December 10, 2004. Although did not receive special education and related services upon his reenrollment in the LEA in 2003, the notice of the eligibility meeting stated the purpose of the meeting was to determine 's continued eligibility for special education and related services. Exh. S-7.

22. The eligibility committee consisting of _____ (hereinafter "_____"), special education administrator; _____, principal or designee; _____ (hereinafter "_____"), regular education teacher; parent; and _____ speech therapist recommended _____ be terminated from special education and related services because (i) current assessments indicate that all language skills are average and (ii) at this time, _____ does not demonstrate any delays in communication skills. Exh. S-9.

23. The eligibility committee did consider the CELF 3, administered November 18, 23, 2004, the child's hearing, input from teacher reports indicating child did not complete long term assignments and there was no evidence of speech or language problems. The committee also considered parental input expressing the child needed speech services and had made a smooth transition back to the LEA. The parent also expressed concerns about school building safety. Exh. S-9, Tr. 153.

24. The eligibility committee did not consider any developmental, psychological, sociological and medical assessments of _____. Exh. S-9.

25. On December 10, 2004, the LEA presented the parent with a prior notice proposing to terminate the provision of special education and related services for _____. The notice's explanation for the proposal was testing results regarding the child's communication skills were within normal level. The notice also stated no other options were considered and referred the parent to the reevaluation report. Exh. S-10.

26. December 10, 2004, the parent gave written consent to the termination of special education and related services for _____. Exh. S-12.

27. The LEA represents _____'s special education and related services were terminated December 10, 2004. Exh. S-12.

IV. APPLICABLE LAW AND ANALYSIS

A. Child Find/Child Study

Because the parent had concerns about [redacted]'s speech and his need to have extra time to complete educational tasks, she referred [redacted] for child study on May 21, 2004. Exh. P-4.

The LEA acted on the referral by establishing a child study committee and convening an initial meeting on June 1, 2004. The June 1, 2004 child study committee was made up of classroom teacher [redacted]; [redacted] identified as a specialist; the parent who was also the referring source; [redacted], classroom teacher; a visiting teacher; the school psychologist; and [redacted]. The hearing officer was unable to determine from the document submitted at the hearing what committee member was the principal/designee. The hearing officer further notes that applicable regulation 8 VAC 20-80-50(3) requires the principal or designee attend the child study meeting. Exh. P-4.

The June 1, 2004 child study committee made recommendations that would be implemented in the general education of [redacted] which consisted of an intervention plan that would (i) allow [redacted] more time on tasks such as tests and class work (ii) allow the child to take home some tests for completion, and (iii) permit the teacher to request peer notes for the child as needed. Exh. P-4.

Although the committee also agreed on June 1, 2004, to a follow-up meeting in September, 2004, the subsequent meeting actually took place on October 14, 2004. Exhs. S-1, P-4.

The October 14, 2004 child study committee consisted of _____, principal or designee; _____, classroom teacher; _____, specialist; _____, school social worker; the parent and referring source; _____, occupational therapist; _____ and _____, regular education teachers; and the school psychologist. The hearing officer finds the required committee members did make up the child study committee on October 14, 2004.

After considering the parent's input regarding the child's need for more time to complete tasks and reports from the child's teachers, the October 14, 2004 child study committee referred _____ for a speech and language evaluation. Exh. S-1.

On October 18, 2004, the reevaluation group recommended an identical evaluation for what was described as determining if _____ continues to be eligible for special education and related services.

The hearing officer examines below the reevaluation/evaluation process, the eligibility process, and the decision to terminate eligibility.

A. Evaluation/Reevaluation Requirements

8 VAC 20-80-54 F2 provides in pertinent part that as part of a reevaluation, the LEA shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate, review the reason for the evaluation request and existing evaluation data on the child. If the group determines more data is needed, the LEA must administer test and other evaluation material in accordance with 8 VAC 20-80-54E. 8 VAC 20-80-54 F4.

1. Make-up of the Reevaluation Group

On October 18, 2004, the LEA provided the parent a form titled "Prior Notice and Parental Permission" which informed the parent that [redacted] would be undergoing a reevaluation for special education and related services. Exh. S-5. The evidence also shows that on October 18, 2004, the reevaluation group consisting of the parent, [redacted], school administrator or designee; [redacted], special education administrator; school nurse; and the school psychologist recommended a speech and language evaluation. Exh. S-5.

For a child whose only disability is a speech-language impairment, a speech-language pathologist is the special education provider that is required to be a member of the group reviewing the reason for the evaluation request and existing evaluation data. 8 VAC 20-80-62 C 1 c.

The LEA's director of special education testified that [redacted] was found eligible for speech services. Tr. 147. Moreover, the October 18, 2004 notice to the parent indicates that [redacted]'s last IEP in 2000, was for speech/language. Exh. S-5. The hearing officer, therefore finds that as of October 18, 2004, [redacted]'s only identified disability was speech/language and a speech-language pathologist was required to be a member of the reevaluation group. The hearing officer notes that the reevaluation group did not include a speech-language pathologist as required by 8 VAC 20-80-54F2 and 8 VAC 20-80-62C nor did the child study committee who, arguably, could be considered a member of the reevaluation group since the child study committee met only four days before the reevaluation group and referred the child for a speech and language evaluation also. Exhs. S-5, 1.

The LEA may contend that the speech pathologist was not a required member of

the October 18, 2004 reevaluation group because [redacted] was not receiving special education and related services October, 2004. The hearing officer finds a speech language pathologist was required to be a member because prior to December 10, 2004, [redacted]'s eligibility for speech services had not been terminated.

2. Existing Evaluation Data

[redacted] had an IEP with the LEA in 2000, before the parent withdrew him from school. Exh. S-5. The LEA, therefore, had or should have had pursuant to 8 VAC 20-80-54A and 8 VAC 20-80-54B existing evaluation data substantiating the child's eligibility and receipt of related services in 2000. On its notification form dated October 18, 2004, the reevaluation group described the information it used to recommend the evaluation as "Rev. (Review) of records & teacher & parent input." Exh. S-5 (parenthetical added). The hearing officer does take note that a second notation on the form makes reference to prior child study notes. However, the two notations do not convince the hearing officer that existing evaluation data referenced above was reviewed.

The hearing officer is mindful that the reevaluation group may conduct its review without a meeting; however, nothing in the record shows any member of the group, individually or collectively, reviewed the above-referenced existing evaluation data. The hearing officer, therefore, finds the record as a whole does not establish the LEA met its obligation during the re-evaluation process of reviewing existing evaluation data; that is evaluation data related to the child's IEP in place during 2000.

3. Additional Data

The reevaluation process is not only designed to determine if a child continues to have a particular disability but to determine if he has additional ones also. See 8 VAC 20-

80-54F2a,b. An assessment in speech and language presumably would only address whether the child has a disability in that category.

The hearing officer finds that the reevaluation group had input from the parent and child's teachers considering, among other factors, that some of the members on the October 14, 2004 child study committee were also members of the reevaluation group. That input includes the parent's concern about needing extra time to complete educational tasks and teacher assessments that was not organized, did not apply himself, had difficulty completing long term assignments, and his grades ranged from A to F. Exhs. S-1, S-5, P-4, Tr. 119-22, 128-29, 133-35, 128-29. The reevaluation group also noted becomes anxious about meeting new people and gave instructions to call the parent at least a week in advance before "pulling for evaluation." Exh. S-5.

's identified deficiencies or problems, as mentioned above, may have been caused by impairments other than speech and/or language.

While a reevaluation does not necessarily require the depth and breadth of an initial evaluation, the hearing officer finds that in this case, a more in depth evaluation was needed for several reasons noted below. At the time the reevaluation process commenced, five years had gone by since the LEA initially evaluated for special education and related services. When the parent reenrolled in the LEA in 2003, the LEA did not reevaluation the child. The evidence does not show the LEA had in its possession and reviewed records from the school attended during his 2000 to 2003 absence from the LEA. 's deficiencies or problems noted by his parent and teachers may be explained by reasons other than 's non-application of himself to educational tasks. Moreover, the reevaluation group did not have before it existing evaluation data accumulated to

substantiate [redacted]'s eligibility and receipt of services in 2000.

Considering the above, the hearing officer finds additional data, to include, but not necessarily limited to assessments on the child's physical condition, social or cultural background, development, and adaptive behavior, were needed to sufficiently reevaluate and determine if he was a child with any additional disabilities or continues to be a child with a disability in need of related services. 34 CFR 300.535; 8 VAC 20-80-56 C1.

C. Eligibility Procedures

1. Committee Members

Pursuant to the applicable regulations in December, 2004, eligibility for special education and related services is determined by a group of qualified professionals and the parent or parents (hereinafter "eligibility committee") after the completion of administration of tests and other necessary evaluations or after the determination that additional data is not needed. 8 VAC 20-80-56 B, C; 34 CFR Section 300.534. For reasons discussed herein, additional data was needed in this case.

The eligibility committee must include, but is not limited to LEA personnel representing the disciplines providing assessments, the special education administrator or designee, and the parent(s). At least one LEA representative on the committee must have assessed or observed the child. 8 VAC 20-80-56 B 1,2,3.

Following the administered speech and language evaluation, the eligibility committee met on December 10, 2004, to determine if [redacted] was in need of special education and related services. The eligibility committee consisted of

[redacted], special education administrator; [redacted], principal/designee; [redacted], regular education teacher; parent; and [redacted], speech pathologist. Exh. S-9. The hearing officer therefore finds the individuals required by applicable law to be a part of the committee

determining the child's need for special education made up the eligibility committee.

2. Informational Sources

When deliberating whether a child meets the eligibility criteria, the eligibility committee must draw from a variety of informational sources. Data concerning the child's aptitude and achievement tests, physical condition, social or cultural background, adaptive behavior, parental input and teacher recommendations must be carefully considered and such consideration must be documented. 34 CFR 300.534; 8 VAC 20-80-56 C1.

(a) Speech and Language Assessment

The eligibility committee contends it considered [redacted]'s 2004 speech and language assessment. Exh. S-9.

The instrument used for the assessment was the CELF 3. [redacted] was tested in two areas, receptive language and expressive language. The receptive language subtests assessed [redacted]'s ability to (i) follow oral directions containing linguistic concepts, (ii) retain or utilize information from paragraphs such as main ideas, details, sequence drawing inferences and making predictions and (iii) interpret sentences that make comparisons, identify directions or location, include temporal relations, include sequential order or are expressed in a passive voice. [redacted] received a score of 104 on the receptive portion of the CELF 3 which was in the average score range. Exh. S-2.

The expressive language subtests evaluated [redacted]'s ability to formulate sentences, recall sentences, apply grammar in assembling sentences. Exh. S-2. [redacted] received a score of 106 on the expressive test which also was in the average score range. Exh. S-2.

Assessing [redacted]'s ability to process information was a component of the CELF 3.

During the speech and language assessment, [redacted] was also administered an

informal articulation test which assessed [redacted]'s speech. The findings were [redacted] had no articulation errors and was 100% intelligible to unfamiliar listeners. Exh. S-2.

The hearing officer notes that non-standardized test, administered by qualified personnel, may assist in determining whether the child is a child with a disability. 20 VAC 20-80-54 E 7. The LEA's speech therapist, [redacted], a qualified employee administered the informal articulation test. The hearing officer therefore finds the informal articulation test was a valid tool in assessing the child's articulation for purposes of determining his eligibility for special education and related services.

The special education administrator testified the committee reviewed the aforementioned CELF 3 evaluation which was based on assessments done on November 18, 2004, and November 23, 2004. Tr. 153, 155-56. Exh. S-9. The hearing officer finds the special education administrator's testimony is not contradicted and consistent with supporting documentation summarizing the eligibility meeting. Accordingly, the hearing officer finds the committee considered the valid and reliable speech and language evaluation when it deliberated the child's eligibility.

(b) Teacher Reports and Parental Input

The eligibility committee also contends it considered teacher reports from [redacted]'s math, civics, language arts, and science teachers. Exh. S-9.

In essence [redacted]'s teachers reported they had no behavior problems out of [redacted]; however, [redacted] did not perform up to his potential because he failed to complete many assignments, mainly homework assignments, projects and/or notebooks. Several teachers noted [redacted] did well initially but slacked off doing his work as the school year progressed. They all recalled conferring with the parent about [redacted] completing assignments and

granting additional time to complete them. In some cases, the child was given time to submit work at the end of the six week marking period that was assigned and due long before the marking period ended. Consistently, the teachers noted that even when granted additional time to complete missed or incomplete assignments, often did not take advantage of the extensions, which resulted in his receiving poor grades. Tr. 119-22, 128-29, 133-36, 128-29, 143.

's civics and language arts teachers also described him as being unorganized. Tr. 122, 128. His math teacher described him as being strong in that area but not being motivated to do the work all the time. She stated he started the year with a B the first marking period and went down hill. The teachers attributed 's low grades to the missed assignments as none of his them observed having difficulty understanding their respective subjects nor did ever express having difficulty in their respective classes.. Tr. 119-27, 131, 141-44.

The special education administrator testified that the teachers' reports considered at the eligibility meeting were consistent with the teachers' testimony at the due process hearing. Tr. 170 The special education administrator's testimony is not contradicted and consistent with supporting documentation summarizing the eligibility meeting.

Accordingly, the hearing officer finds the committee considered the teachers' reports.

The hearing officer also finds the committee considered 's mother's concern about the child needing more time to complete tasks. Tr. 154-55.

After considering the assessment, teachers' reports and parental input, the committee determined was not eligible for special education and related services because 's test results showed his speech and language skills were average and he did

not demonstrate any delays in communication. Exh. S-9.

(c) Other Information

As previously mentioned, when deliberating to determine eligibility data concerning the child's aptitude and achievement tests, physical condition, social or cultural background, adaptive behavior, parental input and teacher recommendations must be carefully considered and such consideration must be documented. 34 CFR 300.534; 8 VAC 20-80-56 C1.

The hearing officer notes that although the school's social worker, , could not remember if she attended the child study meetings in 2004, the LEA's evidence indicates she attended the child study committee meeting held on October 14, 2004. Tr. 82, Exh. S-1. The evidence, however, is silent on what input, if any, provided at the eligibility meeting she attended. Nothing in the record shows that the December 10, 2004 eligibility committee considered and documented the child's social or cultural background. Nor does the evidence show the eligibility committee considered and documented the child's adaptive behavior, and physical condition, with the exception that his hearing was tested and found normal during administration of the CELF 3. Exhs. S -2, S- 9

The parent argues that the physical education teacher should have participated in the screening process, presumably to provide information about the child's physical condition. The parent further contends that all required testing was not administered when the child was being considered for eligibility. The evidence does not show the parent requested the physical education teacher participate in either the child study meeting or the eligibility meeting. Neither does it show the parent requested an independent educational evaluation.

However, as previously noted, the LEA has an affirmative duty to consider information from varied sources to determine whether the child is one with a disability and in need of special education and related services and to document its considerations. Because the LEA did not consider information from varied sources, to include but not limited to, social or cultural background information of the child and the overall physical condition of the child, the hearing officer finds its limited consideration of information was insufficient.

D. Termination of Special Education and Related Services

The regulation governing special education programs for children with disabilities in the Commonwealth of Virginia regarding termination of special education and related services provides in pertinent part that the LEA must evaluate a child with a disability in accordance with 8 VAC 20-80-54 before determining that the child is no longer a child with a disability. 8 VAC 20-80-58 A. The LEA's evidence shows the evaluation group met to commence [redacted]'s re-evaluation on October 18, 2004. Exh. S-5. Existing evaluation data must be reviewed when the LEA conducts a re-evaluation. As discussed previously herein, the LEA did not conduct the requisite review of existing evaluation data nor did it identify additional data needed to determine if the child continued to have a disability or had any additional disabilities.

E. Child with a Disability

[redacted] must have a qualifying disability and it must adversely affect his educational performance to qualify for special education and related services. 20 U.S.C. Section 1401(3)(A)(ii), Board of Education v. Rowley, 458 U.S. 176 (1982).

Of the fourteen (14) disability categories identified under applicable law in December 2004, the eligibility committee only obtained a speech and language assessment and therefore only considered whether [redacted] was disabled under that category. The committee found he had no speech and language impairment based on the child's average scoring on the assessment and teacher reports and parental input.

Because, the committee did not consider information from varied sources to enable it to determine if [redacted] had a continuing disability or additional disabilities, the hearing officer finds its eligibility determination is seriously flawed.

V. DECISION AND ORDER

The LEA asserts the language and speech assessment shows the child performing in the average range and further the child's teachers reported no concerns about the child's ability to learn or do his educational tasks. The LEA also contends the parent as the moving party has the burden of proof.

Under the "child find" provisions of IDEA, the state or LEA has an affirmative duty to identify locate, and evaluate children with disabilities residing in state. 20 U.S.C. Section 1412(a)(3); 34 CFR Section 300.125. The child find provisions apply to, among others, children suspected of having a disability and in need of special education services. 103 LRP 36798.

The LEA had reason to suspect [redacted] had a disability in this case. [redacted] had received speech services in 2000 when he withdrew from the LEA. Upon his return, he was not reevaluated and terminated from special education and related services. His parent also made a referral on May 21, 2004, because she was concerned about his need

for additional time to complete tasks. While [redacted]'s teachers reported he did not apply himself or put forth enough effort, they consistently reported he had difficulty completing assignments and was disorganized, deficiencies that may be characteristic of a disability.

In this case, the hearing officer is not persuaded that the school was absolved of its duty to evaluate [redacted] under the Child Find provisions because the LEA usually and generally screens a child when he is enrolled in the school system and if suspicions arise from that screening, the child is further screened for eligibility. Considering the facts of this case, the hearing officer finds the LEA had an affirmative duty under the Child Find provisions of IDEA to evaluate/reevaluate [redacted].

The hearing officer has reviewed and considered all evidence of record, to include, but not limited to evidence mentioned in this decision and evidence concerning the child's 2006 referral for evaluation and determination of eligibility.

The hearing officer has found the LEA's 2004 reevaluation group did not have a speech pathologist as a member, did not review existing evaluating data and should have obtained additional data to assist in determining if the child had a disability or continued to have one. Further, the hearing officer has found that the eligibility committee did not draw from a sufficient variety of information to determine eligibility. The hearing officer finds the total effect of these flaws in the reevaluation/eligibility process is serious and voids the LEA's December 10, 2006 eligibility decision and orders the following:

The LEA is ordered to reconvene the appropriate team or teams within the next 30 days to determine if the child is in need of special education and related services or remains a child with a disability and consider information from a variety of sources as

mandated by applicable law. This means the LEA is to consider among other information, reports/assessments about the child's medical and physical condition, adaptive behavior, development, and his social or cultural background along with assessments on speech and language. If the LEA does not have such reports or cannot obtain them from other sources such as, but not limited to the parent, the LEA is ordered to assess the child in all areas it is required to consider in its deliberation. Further, the hearing officer orders the LEA to document with specificity its consideration of the varied forms of information, to include but not limited to its consideration of the child's physical condition, social or cultural background, adaptive behavior, and development.

I find that all requirements of notice to the parent have been satisfied, that the LEA had previously found the child was eligible for special education and related services and the child had an IEP while a student enrolled in the LEA in 2000. Because the child's December 10, 2004 eligibility determination is invalidated, the child remains a child with a disability in need of special education and related services. Because the LEA has not implemented an IEP for _____ since he reenrolled in the _____ Public Schools Division in 2003, the hearing officer finds the LEA is not providing the child a free appropriate public education.

VI. PREVAILING PARTY

On the issue of whether the eligibility decision was erroneous, no party prevailed.

On the issue of whether the LEA administered the appropriate test in the eligibility process the parent prevails.

VII. APPEAL INFORMATION

This decision is final and binding, unless either party appeals in a federal District

