

06-097

VIRGINIA DEPARTMENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

Received

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Dispute Resolution &
Administrative Services

Case Closing Summary Report

Local hearing

Norfolk Public Schools
School Division

Mr. & Ms.
Parents/Guardians

Child

August 26, 2006
Date of Decision

Esq.
Counsel for School Division

Counsel

The Parents
Party Initiating hearing

Public Schools
Party Prevailing

PURPOSE:

The Parents filed a Complaint requesting a due process hearing to determine the provision of a free appropriate public education (FAPE) to _____ in Middle School (_____) during the school years 2004 - 2006.

HEARING OFFICER'S DETERMINATION OF THE ISSUES:

Due to the lack of evidence presented by either party regarding the school year 2004-05, this decision relates only to the year 2005-06.

The requirements of notice to the Parents have been met throughout _____'s attendance at _____ does have a disability. _____ needs special education and related services. _____ has received a free appropriate public education.

Issue 1: Were the IEPs developed for _____ since his enrollment in Middle School in 2004 through 2006 properly implemented during those school years?

The IEP developed for Anthony for 2005-06 was implemented properly during the year. The only deviation from the strict requirements of accommodations was Mr. _____'s voluntary increase in the amount of time he gave to help _____ through his difficulties to passing grades and promotion. Had it not been for Mr. _____'s working with _____ and the cooperation of the other teachers, _____ might not have been promoted. By virtue of these teachers and their efforts, _____ has received good educational benefit.

Issue 2: Did PS fail to consistently and adequately communicate with the Parents regarding his schooling?

The evidence is clear that the Parents were kept well advised of _____'s course through the year through telephone calls by Mr. _____ and meetings with him and other teachers, in addition to IEP meetings. In one instance, _____'s science teacher made an apparently off-hand statement at the end of the year to the effect that he happily would not be teaching an eighth grade class in 2006-07. This was overheard by _____ who reported it to Mrs. _____ as stating that _____ would not be promoted to eighth grade. The evidence shows that the remark was misunderstood by _____ and was explained to the Parent.

Issue 3: Was _____'s parent kept sufficiently informed of his progress in his schooling?

The Parents continuously urged the teachers to be sure that all the accommodations and modifications in _____'s IEP were fully carried out. Again the evidence makes clear that the accommodations and modifications were duly carried out, and moreover, that _____'s progress was discussed with Mrs. _____ by Mr. _____ on many occasions. In addition _____'s report cards and promotion clearly show good progress being made by him.

Issue 4: Has _____PS provided _____ with adequate support services and accommodations during his schooling?

The evidence is clear that _____PS provided and utilized every accommodation and service to which _____ was entitled under his IEP and which he needed to obtain educational benefit under the IDEA.

Issue 5: Has _____ been denied a free appropriate public education by reason of ridicule by _____PS faculty and staff because of his disability?

It is shown by the evidence that no member of faculty or staff ridiculed _____ at any time because of his disability. _____ at times would become disturbed by the firm efforts of teachers to keep him on task and focused; but those efforts were successful in enabling him to make the progress he needed to make. In any event the steady improvement in _____'s grades evidences that he received a FAPE.

In conclusion, _____'s teachers and his case manager have served him well. _____ can be proud of his accomplishments in the last school year in the face of his disability and its attendant difficulties.

HEARING OFFICER'S ORDERS AND THE OUTCOME OF THE HEARING:

The Parents were ordered to enroll _____ in _____ Middle School for his 8th grade year.

This case arose out of failures of communication between the Parents and the _____PS over the course of _____'s first two years at _____. The upshot of the matter was that the

Parents were not happy with _____'s progress in any areas – academics as well as nonacademics. Consequently, they were unhappy with the faculty and staff. However, both the documentary evidence and the testimony presented by _____PS presented a boy who performed very well as long as his teachers and aides kept him to his tasks. In short, the IEPs have been appropriately implemented, and _____ has been receiving a FAPE.

I hereby certify that I completed the hearing in this case in accordance with regulations and advised the Parties in writing of their appeal rights. The written decision of this hearing was forwarded earlier.


F. Mather Archer
Hearing Officer

August 30, 2006

AUG 30 2006

Dispute Resolution & Administrative Services

VIRGINIA DEPARTMENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

POST HEARING REPORT

Public Schools
School Division

Mr. & Mrs.
Parent

Dr.
Superintendent

Child

Esq.
Counsel for School Division

Counsel for Parent/Child

F. Mather Archer
Hearing Officer

The Parents
Party Initiating Hearing

The Parents filed a Complaint requesting a due process hearing to determine the provision of a free appropriate public education (FAPE) to in Middle School () during the school years 2004 - 2006.

ISSUES:

1. Were the IEPs developed for since his enrollment in Middle School in 2004 through 2006 properly implemented during those school years?
2. Did PS fail to communicate consistently and adequately with the Parents regarding his schooling?
3. Was 's Parent kept sufficiently informed of his progress in his schooling?
4. Has the PS provided with adequate support services and accommodations during his schooling?
5. Has been denied a FAPE by reason of ridicule by PS faculty and staff because of his disability?

PRELIMINARY MATTERS:

The Parents initially had declined to participate in the resolution meeting originally set by the PS for June 28th, 15 days after the filing of the Parents' request for a due process hearing. At the first Prehearing Conference on June 30th, PS moved that the June 30th prehearing conference be postponed because of the failure of the Parents to attend the resolution meeting. The Parents were advised by this hearing officer that they were required to attend the resolution meeting or waive it in writing. The Parents then agreed to attend the meeting, which was

subsequently set for July 13th, the last day of the resolution meeting period, and was duly held with the Parents in attendance. Since the Parents agreed to attend the resolution meeting as soon as the PS set the date, and because there was ample time remaining in the 30-day resolution period in which to hold the meeting, I denied the PS motion, and PS excepted.

It is important to note that the Parents were not represented by counsel or advocate throughout the hearing and at all stages of the due process proceeding, although they tried to retain counsel.

At the opening of the hearing, PS moved that the 45-day period for decision of the case be adjusted to September 12, 2006, because of the Parents' initial failure to attend the resolution meeting having caused the loss of the first 15 days of the resolution period. Because the meeting was held on July 13th, within the prescribed resolution period; and further, because the adjustment to the 12th of September requested by PS was well beyond the beginning of the 2006-2007 school year and would clearly work harm to and his education, the motion was denied, PS excepted, and the hearing proceeded.

At that point, PS moved for judgment for PS on the ground that the Parents had not exchanged their witness list and documentary evidence and since the Parents ought not to be permitted to present their evidence, they could not proceed with their case and therefore failed to carry their burden of proof. This motion, insofar as it called for denial of the Parents' right to present evidence, was granted in part as to their burden of proof; and denied in part, because the Parents had the right at least to cross-examine the PS witnesses. The Parents were denied the right to present testimonial and documentary evidence because, as they said, they intended to mail their witness list and documentary evidence in exchange as required, but did not do so. In addition, they went to on the 28th (a day late) and didn't have the documents to be exchanged with them even then. That failure raised the question whether they really intended to make the exchange. Accordingly they were not permitted to present any evidence and were left to cross-examination of PS witnesses. (Tr pp 8-24)

EXHIBITS:

The following exhibits were presented by PS:

As listed and indexed in black notebook entitled " Due Process Hearing Exhibits".

The Parents presented no exhibits.

DECISION

SUMMARY OF THE CASE.

This case arose out of failures of communication between the Parents and the PS over the course of 's first two years at . The upshot of the matter was that the Parents were not happy with 's progress in any areas – academics as well as nonacademics. Consequently, they were unhappy with the faculty and staff. However, both the documentary evidence and the testimony presented by PS presented a boy who performed very well as long as his teachers and aides kept him to his tasks. In short, the IEPs have been appropriately implemented, and has been receiving a FAPE.

Findings of Fact.

Having heard the testimony of Mr. , and read the documents presented in evidence, I find the following facts.

1. is a 13-year-old (as of 7/9/05) boy in 7th grade whose primary disability is other health impaired with a diagnosis of attention deficit disorder (OHI/ADD). He has been enrolled in since 9/04. is placed in an inclusive class with regular education students. (Tr p. 28)
2. has been 's case manager since the beginning of the 05/06 school year. As such, he was also the collaborative teacher in 's classes. Mr. writes 's IEP and oversees its implementation. He served as co-teacher for in the regular education class. As case manager, he has myriad duties serving both regular education and special education (SPED) students. (Tr pp 27-31)
3. has difficulty staying focused and motivated. He often requires external motivation from Mr. , as well as prompting to keep up the pace of his work, often falling well behind the teacher's pace in the class work. is capable of doing the work in his classes, but his lack of focus interferes with his work and attention in his classes. (Tr p 32)
4. 's IEP required several accommodations and program modifications. Mr. worked with in his English and science classes. These accommodations were applied in those classes, but he didn't know how teachers in 's other classes implemented them. (Ex red tab, *SPED Documents #2*, p 8 of 14, and Ex white tab, *Accommodation Sheets #4*; Tr pp 33-37).
5. The accommodations were implemented in 's English and science classes, but as the first semester ended and the second semester got closer to Spring, his

- productivity fell off. He was talking more and attending to his work less as time wore on. It got to the point where Mr. [redacted] had to sit with him to keep him on task – to the point where he had to give [redacted] one-to-one attention, and Mr. [redacted] finally had to get firm with him to make him do his work. (Tr pp 38-41)
6. Because of his slipping productivity in the first semester, [redacted]'s report cards for 2005-06 showed failing grades in reading and in science in the first interim reporting period. As a result, a meeting of [redacted]'s parents and teachers was called. His mother was informed of the reason for the low grades. After the meeting, Mr. [redacted] told Mrs. [redacted] that he would stay after school with [redacted] to get the science assignments made up. [redacted]'s reading and science grades increased to "C" through the end of the year because of the efforts of Mr. [redacted]. (Ex blue tab, *Academic Documents*, #10, 1st sheet; Tr pp 42-51)
7. In the March-April time period, [redacted]'s focusing and staying on task was overcome by his talking with other students to the point that he failed English in the fourth interim period. To remedy this, Mr. [redacted] was in his English class the entire period to work with [redacted]. Threatening to call Mrs. [redacted] had no effect on [redacted]; so Mr. [redacted] finally called her. [redacted] knew what he had to do, but couldn't get it done. After the call to his mother, he returned the next day and got to work. Mr. [redacted] continued working with him, and [redacted] ended the grading period with an "A". (Ex blue tab, *Academic Documents*, #10; Tr pp 52-58)
8. Mrs. [redacted] was kept informed about [redacted]'s academic progress through the periodic report cards. Mr. [redacted] called her whenever there was a problem with his academic work. The teachers meeting of 11/2/05 involved Mrs. [redacted] and [redacted] provided information for her about the accommodations for [redacted] (Ex yellow tab, *Statements of Teachers/Administrators, Coghill Statement – "Services provided for [redacted]"* (2005-2006); Tr pp 58-61)
9. For [redacted]'s English class, to help bring up his failing grade, Mr. [redacted] arranged a schedule change for [redacted] through a full 90 minutes of the class block, which allowed for more concentrated time with him. (Ex red tab *Sped Documents* #2, pp 11-14; 63-64)
10. In the meeting with the Parent and teachers on 11/2/05, it was agreed that the teachers would check [redacted]'s handbook to ascertain whether he had written down his daily assignments for him to show his mother. However, there was a breakdown

in that means of communication with her in this regard because he lost his handbook. (Tr 64-66)

11. The year-end IEP meeting was held on 5/31/06. Mrs. [redacted] and the IEP team participated as she had in the previous meetings. Mrs. [redacted] gave consent to implementation of this IEP as she had for the earlier two IEPs. In the meeting on 5/31/06, the Parent reiterated her concern that the teachers make certain that the accommodations were provided for [redacted], as she had done in the previous meetings, but without pointing out any specific accommodations. Generally, the Parent seemed more concerned that [redacted] was not receiving enough time for the services he was provided. When [redacted] received a poor grade – like the E’s in English, science and reading – the Parent faulted the teachers for those grades. Those grades resulted from [redacted]’s lack of production at those times that in turn was the result of his serious focus and attention troubles caused by his ADD disability. But when pressed and helped by Mr. [redacted], he did perform reasonably well, as indicated by the A he received in English at the end of the year. (Ex’s red tab *Sped documents* #1, #2 pp 8 & 11, #3; Tr pp 66-72)
12. Mr. [redacted] heard nothing from faculty or staff members derogatory or demeaning toward [redacted] because of his disability. At the year-end IEP meeting the Parent brought up a statement [redacted]’s science teacher made in [redacted]’s hearing during or just after science class that he was glad he wasn’t going to teach 8th grade next year. [redacted] reported this to his mother as saying that [redacted] wasn’t going to be in 8th grade next year. She reported it to the IEP meeting. But it was a misunderstanding by [redacted]. (Tr 72-74).
13. The IEP team made some changes for 2006-07. Use of a calculator was added to accommodations, along with reading of his tests for him, and extended time was increased to 3 days for completion of assignments and projects. The grading scale modification was eliminated. The Parent had no objection to these changes from previous IEPs. (Ex red tab *Sped documents* the “Accmodations, Supplementary Aids and Services, Program Modifications” page (the 9th page); Tr 83-86)
14. The Parent was always interested in the progress [redacted] was making in school and talked about it with Mr. [redacted]. She never raised a concern about goals and objectives in any of the meetings. (Ex’s red tab *Sped documents* #2 pp 5, 6, 7; Tr pp 87-90)

Conclusions of Law.

Due to the lack of evidence presented by either party regarding the school year 2004-05, this decision relates only to the year 2005-06.

The requirements of notice to the Parents have been met throughout [redacted]'s attendance at [redacted]. [redacted] does have a disability. [redacted] needs special education and related services. [redacted] has received a free appropriate public education.

Issue 1: Were the IEPs developed for [redacted] since his enrollment in Middle School in 2004 through 2006 properly implemented during those school years?

The IEP developed for [redacted] for 2005-06 was implemented properly during the year. The only deviation from the strict requirements of accommodations was Mr. [redacted]'s voluntary increase in the amount of time he gave to help [redacted] through his difficulties to passing grades and promotion. Had it not been for Mr. [redacted]'s working with [redacted] and the cooperation of the other teachers, [redacted] might not have been promoted. By virtue of these teachers and their efforts, [redacted] has received good educational benefit.

Issue 2: Did PS fail to consistently and adequately communicate with the Parents regarding his schooling?

The evidence is clear that the Parents were kept well advised of [redacted]'s course through the year through telephone calls by Mr. [redacted] and meetings with him and other teachers, in addition to IEP meetings. In one instance, [redacted]'s science teacher made an apparently off-hand statement at the end of the year to the effect that he happily would not be teaching an eighth grade class in 2006-07. This was overheard by [redacted] who reported it to Mrs. [redacted] as stating that [redacted] would not be promoted to eighth grade. The evidence shows that the remark was misunderstood by [redacted] and was explained to the Parent.

Issue 3: Was [redacted]'s parent kept sufficiently informed of his progress in his schooling?

The Parents continuously urged the teachers to be sure that all the accommodations and modifications in [redacted]'s IEP were fully carried out. Again the evidence makes clear that the accommodations and modifications were duly carried out, and moreover, that [redacted]'s progress was discussed with Mrs. [redacted] by Mr. [redacted] on many occasions. In addition [redacted]'s report cards and promotion clearly show good progress being made by him.

Issue 4: Has PS provided [redacted] with adequate support services and accommodations during his schooling?

The evidence is clear that PS provided and utilized every accommodation and service to which was entitled under his IEP and which he needed to obtain educational benefit under the IDEA.

Issue 5: Has been denied a free appropriate public education by reason of ridicule by PS faculty and staff because of his disability?

It is shown by the evidence that no member of faculty or staff ridiculed at any time because of his disability. at times would become disturbed by the firm efforts of teachers to keep him on task and focused; but those efforts were successful in enabling him to make the progress he needed to make. In any event the steady improvement in 's grades evidences that he received a FAPE.

In conclusion, 's teachers and his case manager have served him well. can be proud of his accomplishments in the last school year in the face of his disability and its attendant difficulties.

ORDER

It is accordingly ordered that the Parents enroll in Middle School for his 8th grade year.

NOTICE: This decision is final and binding unless it is appealed by either party to a state circuit court within one year following the date of this decision, or to a Federal district court within 90 days following the date of this decision.


F. Mather Archer
Hearing Officer

August 26, 2006

Cc: parties & counsel
Virginia Department of Education.