06-036

VIRGINIA:

SPECIAL EDUCATION DUE PROCESS HEARING

et als. Complainants

v.

PUBLIC SCHOOLS Respondent.

DECISION OF THE HEARING OFFICER

I. Introduction

On November 4, 2005, the parents filed with the local educational agency (the "School District" or the "LEA") a Request for Due Process Hearing dated November 4, 2005 (the "Request"). On November 22, 2005, the LEA filed a Motion to Dismiss and Memorandum in Support (the "Motion to Dismiss") and in a footnote objected to the legal sufficiency of the parents' Request. By decision entered December 5, 2005, the hearing officer decided that the LEA is precluded from challenging the legal sufficiency of the parents' due process complaint notice because it notified the hearing officer and the parents of such challenge one day late, on November 22, 2005. HO 1[1]; *Individuals with Disabilities Education Improvement Act of 2004* (the "IDEA 2004") Sections 1415(c)(2)(A) and 1415 (c)(2)(C).

By decision entered December 9, 2005, the hearing officer decided that any attempt by the parents to move the school bus stop approximately 30 feet into their driveway fails because of the doctrine of collateral estoppel or issue preclusion for the reasons given in the hearing officer's decision. HO 2. The hearing officer also decided that the applicable statute of limitations bars the parents from raising any of the alleged actions or omissions of the LEA in their Request that arose before November 4, 2003. HO 2.

The hearing officer decided that all other matters raised in the Request other than those specifically barred by his decision entered December 9, 2005 could proceed to a due process hearing subject to the parties completing the resolution process mandated by the IDEA 2004 and subject to the hearing officer further clarifying those issues in the pre-hearing context. HO 2.

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1 References to the hearing officer's six (6) exhibits will be designated HO followed by the exhibit number. References to the parents' 19 exhibits all admitted into evidence at the hearing will be designated P followed by the exhibit number. Similarly, references to the School Board's 44 exhibits all admitted into evidence at the hearing will be designated SB followed by the exhibit number. The transcript of the 1 day hearing was not yet available to the hearing officer at the time of his decision.

The remaining issues which are to be decided in this proceeding are those specified in the hearing officer's "Status Report Following Second Pre-Hearing Conference Call," dated December 16, 2005 (HO 3):

> [The parent] clarified during the conference call that regarding the speech issue she raised in her complaint notice, she was challenging the implementation of the applicable IEP; specifically, that [the child] was receiving only one session per week of one-on-one speech therapy and that the other weekly session was not provided one-on-one. [The parent] also complains that the IEP does not specify exactly when the speech services are to be provided and cause to miss out on other classroom instruction he would otherwise receive. Finally, regarding the speech component of the complaint notice, [the parent] alleges that she has not been provided with certain data from a speech pathologist concerning [the child's] progress which the LEA stated, in an August 2005 prior written notice, would be supplied to the parents.
>
> [The parent] also clarified that concerning [the child's] math instruction, she contends that [the child] needs one-on-one instruction because the group tutoring has been unsuccessful.
>
> Regarding any procedural violations alleged in the complaint notice, the hearing officer after questioning [the parent] concerning the specifics, decided that these alleged violations all relate to the issue of the location/relocation of the school bus stop which the hearing officer decided was barred by the doctrine of collateral estoppel pursuant to his decision of December 9, 2005.

The parties duly attended the Resolution Session on December 16, 2005. SB 39. Accordingly, the hearing was held on January 20, 2006. In all, ten (10) witnesses testified at the hearing. The hearing officer admitted into evidence at the hearing all of the parents' 19 exhibits and all of the LEA's 44 exhibits. At the hearing, the LEA delivered to the hearing officer its "Points of Legal Authority" and subsequently on January 26, 2006, the parents also timely submitted to the hearing officer their "Facts and Supporting Legal Authority" (each a "Brief" and collectively, the "Briefs").

The hearing officer was appointed to this administrative due process proceeding on November 11, 2005.

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.

The hearing officer renders his decision based on the sworn testimony of the various witnesses, the numerous exhibits admitted into evidence and the argument of the parties.

II. Findings of Fact

1. and are the parents of the child.

2. The child was born on May 24, and his disability is identified by the School District as specific learning disability. SB 12 and 25.

3. The child has received special education services since preschool. P 1.

4. In his 5th grade school year (2003-04), the child received special education and related services, including speech therapy, at Elementary School. P 1.

5. The parents consented to the implementation of the child's IEP for his 5th grade school year at Elementary School. P 1.

6. The child works hard, is organized, and generally behaves well at school.

7. The IEP for the child's 2003-04 school year was appropriate and the LEA offered the child an appropriate education during the 2003-04 school year. The LEA made a good faith, collaborative, coordinated, reasonable effort to implement the child's 5th grade IEP.

8. During his 5th grade school year, the child made educational progress, received educational benefit and the parents have not proved upon a preponderance of the evidence that the child suffered any loss of educational opportunity due to any action or inaction on the part of the LEA.

9. In his 6th grade school year (2004-05), the child received special education and related services, including speech therapy, at Middle School. SB 12.

10. The parents consented to the implementation of the child's IEP for his 6th grade school year at Middle School. SB 12.

11. The IEP for the child's 2004-05 school year was appropriate and the LEA offered the child an appropriate education during the 2004-05 school year. The LEA made a good faith, collaborative, coordinated, reasonable effort to implement the child's 6th grade IEP.

12. During his 6th grade school year, the child made educational progress, received educational benefit and did not suffer any loss of educational opportunity due to any action or inaction on the part of the LEA.

13. In his current 7th grade school year (2005-06), the child is again receiving special education and related services, including speech therapy, at Middle School. SB 12 and 25.

14. The parents refused to consent to the implementation of the IEP proposed by the LEA for the child's 7th grade school year (the "Proposed IEP") at Middle School. SB 25.

15. However, the parents did agree with the statements of the child's present levels of performance and of the child's goals and objectives contained in the Proposed IEP.

16. Accordingly, the LEA has provided the child special education and related services in accordance with his 2004-05 school year IEP, focusing on the present levels of performance and the goals and objectives the parties agreed upon in the Proposed IEP (the "Conformed IEP").

17. The Conformed IEP is appropriate, offers the child an appropriate education and is reasonably calculated to provide the child with educational benefit and with a free appropriate public education ("FAPE"). SB 12 and 25.

18. The LEA has made a good faith, collaborative, coordinated, reasonable effort to implement the Conformed IEP.

19. During his 7th grade school year, the child has made educational progress, received educational benefit and did not suffer any loss of educational opportunity due to any action or inaction on the part of the LEA.

20. The testimony of the LEA's educational professionals was both credible and consistent on the major issues before the hearing officer and is entitled to deference from the hearing officer. The demeanor of such experts at the hearing was candid and forthright.

20. The Proposed IEP is appropriate and is reasonably calculated to provide the child with educational benefit and with a FAPE if and when it is implemented.

21. Any procedural violations were technical and did not actually interfere with the provision of a FAPE to the child.

III. Conclusions of Law and Decision

The parties do not dispute that the child has a disability, that the child needs special education and related services and that the child is entitled to a free appropriate public education pursuant to the IDEA 2004 and the Individuals with Disabilities Education Act of 1997 20 U.S.C. §§ 1400 et seq ("IDEA 1997") and Va. Code Ann. § 22.1-213-221 (1950), and the regulations promulgated thereunder. In this administrative due process proceeding initiated by the parents, the burden of proof is on the parents. Schaffer, ex rel. Schaffer v. Weast, 126 S.Ct. 528 (2005).

The new law retains the previous definition of a "free appropriate public education." IDEA 2004 Section 612(a)(1)(A). Accordingly, any analysis of the standard of FAPE must begin with Rowley. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982). The Rowley Court held that by passing the Act, Congress sought primarily to provide disabled children meaningful access to public education. The Rowley analysis provides that the disabled child is deprived of a free appropriate public education under either of two sets of circumstances: first, if the LEA has violated IDEA's procedural requirements to such an extent that the violations are serious and detrimentally impact upon the disabled child's right to a free appropriate public education or, second, if the IEP that was developed by the LEA is not reasonably calculated to enable the disabled child to receive educational benefit. Rowley, *supra*, 206-7 (1982); Tice v. Botetourt County School Board, 908 F.2d 1200 (4th Cir. 1990); Hudson v. Wilson, 828 F.2d 1059 (4th Cir. 1987); Gerstmyer v. Howard County Public Schools, 20 IDELR 1327 (1994).

A small violation of IDEA's procedural requirements does not, without evidence of an actual loss of educational opportunity, constitute a failure to provide the disabled child with a free appropriate public education. Rowley, *supra*; Gadsby v. Grasmick, 109 F.3d 940 (4th Cir. 1997); MM v. School District of Greenville County, 303 F.2d 523 (4th Cir. 2002); Dibuo v. Board of Educ., 309 F.3d 184 (4th Cir. 2002); Hall v. Vance County Board of Education, 774 F.2d 629 (4th Cir. 1985); Tice, *supra*; Doe v. Alabama Department of Education, 915 F.2d 615 (11th Cir. 1990); W.G. v. Board of Trustees of Target Range School District, 960 F.2d 1479 (9th Cir. 1992); Evans v. School District No. 17 of Douglas County, 841 F.2d 824 (8th Cir. 1988). Technical violations of IDEA procedures that do not deny the student FAPE are considered de minimis. See, e.g., Fairfax County Sch. Bd. v. Doe, Civil Action No. 96-1803-A (April 24, 1997); see also Roland v. Concord School Committee, 910 F.2d 983, 994 (1st Cir. 1990), cert. denied 499 U.S. 912 (1991); Burke County Bd. of Educ. v. Denton, 895 F.2d 973, 982 (4th Cir. 1990); Spielberg v. Henrico County Sch. Bd., 853 F.2d 256, 259 (4th Cir. 1988); Hall v. Vance County Bd. of Educ., 774 F.2d 629, 633-635 (4th Cir. 1985); and Board of Educ. v. Brett Y, 155 F.3d 557 (4th Cir. 1998).

In Dibuo, the Court reaffirms the law in our circuit that not every procedural violation of the IDEA warrants granting the relief requested. Before any relief can be afforded, the Court (or hearing officer) must proceed beyond the finding of any procedural violation of the IDEA to further analyze whether the procedural violation actually interfered with the provision of a FAPE to a child:

> Most recently, in MM, we relied upon our decision in Gadsby v. Grasmick, 109 F.3d 940 (4th Cir. 1997) to reiterate that [HN6] "when . . . a procedural [violation of the IDEA] exists, we are obliged to assess whether it resulted in the loss of an educational opportunity for the disabled child, or whether, on the other hand, it was a mere technical contravention of the IDEA." MM, 303 F.3d 523, 533, 2002 WL 31001195 at *7.

Dibuo, *supra*, at 190.

Essentially, this standard has now been codified in the new law. IDEA 2004(f)(3)(E)(ii). Any asserted procedural violation concerning this proceeding simply does not rise to the level

necessary to constitute a loss of educational opportunity and denial of FAPE to the child. The parents complained that they were not provided certain data from the child's speech pathologist concerning the child's progress which the LEA stated, in an August 2005 prior written notice, would be supplied to the parents. However, the parents offered little if any evidence concerning the impact of this violation (if, indeed, it is claimed to be a procedural violation) or any other asserted procedural violations and have failed to meet their burden of proof concerning the serious impact of any such alleged procedural violations upon their child's education.

The parents appear to concede that the IEPs for their child's 2003-04 and 2004-05 school years, to which they consented, were appropriate. In any event the hearing officer finds that such IEPs were appropriate. Instead, the parents contend that their child's IEP was not properly implemented during such school years. The parents further contend that the LEA's failures to properly implement the 2003-04, 2004-05 and 2005-06 IEPs denied the child FAPE and seek compensatory education and "reimbursement for private instruction not provided by [the LEA]." Parents' Brief 3.

The parents' main challenges to the LEA's implementation of the child's 2003-04 IEP revolve around the failure of Elementary School to assign the child certain homework which the parents believe should have been assigned, particularly in Math, and the practice of the school in pulling the child out of his 6th grade self-contained language/arts class for 30 minutes per week to attend speech therapy and out of his collaborative science class for 30 minutes per week to attend speech therapy. Ms. , the only witness to testify from , testified that she exercised her considered professional judgment not to assign homework in math because of the intensity of the special education instruction and that through the coordinated, collaborative, good faith efforts of the team of teachers associated with the child, efforts were made to implement the whole IEP and to help the child learn and meet his IEP benchmarks. The assignment or non-assignment of homework properly falls within the educators' considered professional judgment, discussed extensively below, as long as it does not deprive the child of educational benefit.

The parents' main challenges to the LEA's implementation in school year 2004-05 of the 2004-05 IEP also revolve around the practice of the school, in this instance Middle School, pulling the child out of his 6th grade self-contained resource class for 30 minutes per week to attend speech therapy and out of his "ACE" (academic core enrichment or academic core extension) class for 30 minutes per week to attend speech therapy. The parents also complain that the IEP does not specify exactly when the speech services are to be provided. Under applicable law, the IEP is not required to designate the exact time and day when services are to be provided. Concerning the parents' contention at the hearing that the speech services should be provided either before or after school, the parents failed to meet their burden of proving that the child needs such an arrangement to meet his unique needs in order to obtain the necessary legal quantum of educational benefit.

The LEA's professional educators who testified concerning the child's 6th grade year testified the pull-outs for speech did not deprive the child of the necessary legal quantum of educational benefit because the child was not withdrawn from core academic instruction, he was able to catch up for lost time upon his return from speech and because the child's teachers made a good faith,

collaborative and coordinated effort to implement the whole IEP and to help the child learn and meet his IEP benchmarks.

The parents' main challenges to the LEA's implementation in school year 2005-06 of the Conformed IEP again revolve around Middle School's practice of pulling the child out of his 7th grade self-contained resource class for 30 minutes per week to attend speech therapy and out of his "ACE" (academic core enrichment or academic core extension) class for 30 minutes per week to attend speech therapy. Concerning the parents' contention at the hearing that the speech services should be provided either before or after school, the parents failed to meet their burden of proving that the child needs such an arrangement to meet his unique needs in order to obtain the necessary legal quantum of educational benefit. Similarly, concerning the parents contention that the child needs one-on-one math instruction because the group tutoring has been unsuccessful, the parents failed to meet their burden. The child received an "A" grade in Math both for the first 9 weeks of the 7th grade (SB 38) and for his current interim grade (SB 41).

The Conformed IEP calls for "individual instruction" in speech and in the current school year, one of the two 30 minute sessions is provided by the speech therapist in conjunction with another pupil. Ms. the speech therapist, testified that the child still receives individual instruction in this session and that the child has greatly benefited from having the other pupil present in the session. Both pupils have similar goals, are well behaved and the arrangement allows for "invaluable" exchange, development of body language skills, role-playing skills, etc.

The parents acknowledged at the hearing that they were pleased with the child's progress in speech, noting that he did not speak at all until he was 6. The parents have not shown upon a preponderance of the evidence that the LEA has failed to provide the child the necessary quantum of educational benefit because of the 30 minute session of speech therapy being provided with one other pupil. Indeed, the evidence shows quite the opposite, namely that the child's acquisition of skills and mastery of his IEP goals has greatly benefited from his participation with the other student in one 30 minute session of speech therapy per week.

"The appropriate inquiry is whether the Board's IEP, at the time of creation, [was] reasonably calculated to provide some educational benefit." Board of Educ. of County of Kanawha v. Michael M., 95 F.Supp.2d 600, 609 (S.D.W.Va. 2000) (citation omitted) ("Courts should not judge an IEP in hindsight; instead, courts should look to the IEP's goals and methodology at the time of its creation and ask whether it was reasonably calculated to provide educational benefit").

The determination of the IEP's reasonableness at the time of its creation is limited to the information known to the IEP team when it wrote the IEP. See Adams v. State of Oregon, 195 F.3d 1141, 1150 (9th Cir. 1999) (IEP "was reasonably developed based on information available to the [multidisciplinary team] including information from the parents").

The law does not require that the child receive the optimal education available, nor even that the education provided allow the child to realize his full potential commensurate with the

opportunity provided to other children. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, at 198, 102 S.Ct. 3034 (1982); Bales v. Clark, 523 F.Supp. 1366 (E.D.Va. 1981).

In Rowley, *supra*, the Court cautioned judges against imposing their view of preferable education methods upon school districts. Noting that courts lack the wisdom and experience necessary to resolve persistent and difficult questions of educational policy, the Court limited the permissible inquiry to determining whether the specified requirements of the Act were being met. Id. at 206, 102 S.Ct. at 3051.

Subsequent court decisions have also been careful to recognize the importance of leaving the business of running schools to the considered judgment of local educators.

In Hartmann v. Loudoun County, the court stated:

> Although section 1415(e)(2) provides district courts with authority to grant 'appropriate' relief based on a preponderance of the evidence, 20 U.S.C. 1415(e)(2), that section 'is by no means an invitation to courts to substitute their own notions of sound educational policy for those of the school authorities which they review.' (citations omitted)... [t]hese principles reflect the IDEA's recognition that federal courts cannot run local schools. Local educators deserve latitude in determining the individualized education program most appropriate for a disabled child. The IDEA does not deprive these educators of the right to apply their professional judgment.

118 F.3d 996, 1000-1001 (4th Cir. 1997).

See also Springer v. Fairfax County, 134 F.3d 659, 663 (4th Cir. 1998) (holding that "[a]bsent some statutory infraction, the task of education belongs to the educators who have been charged by society with that critical task"); Barnett v. Fairfax County School Board, 927 F.2d 146, 151-52 (4th Cir.), cert. denied, 502 U.S. 859 (1991) (recognizing Congressional intent to leave education decisions to local school officials and recognizing the importance of giving school officials flexibility in designing educational programs for students); and Tice v. Botetourt County, supra, at 1207 (once a "procedurally proper IEP has been formulated, a reviewing court should be reluctant . . . to second-guess the judgment of education professionals" – rather, the court should "defer to educators' decisions as long as an IEP provided the basic floor of opportunity that access to special education and related services provides").

Accordingly, hearing officers must not succumb to the temptation to substitute their judgment for that of local school authorities in IEP matters. Arlington County Sch. Bd. v. Smith, 230 F.Supp. 2d 704, 715 (E.D. Va. 2002).

However, once the LEA structures an IEP which is reasonably calculated to provide FAPE, it cannot simply negate its requirements by somehow assuming that a child was not injured by its

failure to implement the IEP. The LEA must provide the special education and related services necessary to implement the IEP. The development and implementation of the IEP are the cornerstones of IDEA. Honig v. Doe, 484 U.S. at 311 (1988).

34 C.F.R. § 300.350 addresses accountability for progress under an IEP. It provides:

> (a) *Provision of services.* Subject to paragraph (b) of this section, each public agency must: (1) Provide special education and related services to a child with a disability in accordance with the child's IEP; and (2) Make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.
>
> (b) *Accountability.* Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the Act does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school or agency performance.
>
> (c) *Construction-parent rights.* Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required in paragraph (a) of this section are not being made.
>
> (Emphasis supplied.)

The issue is precisely whether the applicable IEPs have been implemented. In the context of IEP implementation, the correct legal standard for determining whether FAPE has been provided involves an analysis concerning whether the LEA has implemented substantial or significant provisions of the IEP and whether the LEA has provided the necessary quantum of "some educational benefit" required by Rowley. Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 31 IDELR 185 (5th Cir. 2000); Gillette v. Fairland Bd. of Educ., 725 F.Supp. 343 (S.D. Ohio 1989), rev'd on other grounds, 932 F.2d 551 (6th Cir. 1991).

> The approach taken in Gillette seems reasonable, particularly in light of Rowley's flexible approach. Therefore, we conclude that to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP's, but it still holds

> those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit.

Houston Indep. Sch. Dist. v. Bobby R., *supra*.

IDEA defines FAPE as special education and related services that (i) have been provided at public expense and under public supervision and direction; (ii) meet the standards of the state educational agency; (iii) include an appropriate preschool, elementary or secondary school education in the state involved; and (iv) are provided in conformity with an IEP. 20 U.S.C. § 1401(8).

In determining the quantum of educational benefit necessary to satisfy IDEA, the Rowley Court explicitly rejected a bright-line, single standard test. Instead, educational benefit "must be gauged in relation to the child's potential". Rowley at 185 and 202; see also, Hall v. Vance County Bd. of Educ., 774 F.2d 629, 635 (4th Cir. 1985).

The record in this proceeding establishes that the child did receive educational benefit from each of his school years at issue in this proceeding. See, e.g., SB 28, 38 and 41. Clearly, the record shows that the child received the necessary quantum of educational benefit from his education during the subject school years at Elementary School or Middle School. Educators exercising their considered professional judgments to implement a procedurally correct IEP should be afforded significant academic autonomy and should not be easily second-guessed by reviewing persons. Hartmann v. Loudoun County Bd. of Educ., 118 F.3d 996, 1000-1001 (4th Cir. 1997); Johnson v. Cuyahoga County Comm. College, 29 Ohio Misc.2d 33, 498 N.E.2d 1088 (1985). In short, where the LEA has developed an IEP in compliance with applicable legal procedures, the hearing officer is required to defer to the considered educational judgment of the LEA's representatives concerning its implementation. MM v. School District of Greenville County, 307 F.3d 523 (4th Cir. 2002).

The central question in due process hearings is whether the student received an appropriate education. Rowley; Ridgewood Bd. of Educ. v. Stokley, 172 F.3d 238 (3d Cir. 1989). If a child is provided FAPE notwithstanding a technical violation of IDEA, the LEA has fulfilled its legal obligations. MM v. School District of Greenville County, 303 F.3d 523, 534 (4th Cir. 2002) (citing Burke County Bd. of Educ. v. Denton, 895 F.2d 973, 982 (4th Cir. 1990) (citation omitted)).

While the parents' efforts to provide the best education for the child are understandable and admirable, the IEP team's decision concerning the provision of special education and related services must be analyzed in light of the standards and requirements imposed by law. While the child's grades at Middle School have been consistently and uniformly good, the parents are justifiably concerned by the discrepancy between the child's grades which generally show him performing very well at grade level and his failures concerning the Commonwealth's Standards of Learning Tests. The child has passed the history SOL but, for example, in the Spring of 2005 failed 5th grade English with a score of 354 and failed 5th grade Math with a score of 384. LEA representatives have offered supports to the child to assist him with the SOLs. For example, the child was offered and participated in the after school "STAR" (SOL Targets for Amazing Results)

program during his 6th grade year. The child was again offered the STAR program for his 7th grade year but the parents declined. The STAR program is a voluntary program designed to assist students in taking the SOLs. The child has also received from the LEA other assistance concerning test taking strategies and extended school year services. The child's Math score on the same 5th grade SOL test did improve from 310 (P 8) to 384 (SB 31). Of course, Part B of IDEA 1997 or IDEA 2004 does not mandate that a child achieve the progress projected in the annual goals and benchmarks or objectives, far less that he pass the SOLs. As the LEA representatives testified, they are frequently surprised by regular education students who are performing well at grade level in the general curriculum, but who nonetheless fail the SOLs.

The placement of the child within Middle School in his 7th grade year pursuant to the Conformed IEP provides the child the support to learn and progress academically in the least restrictive environment.

The IDEA 2004 like the IDEA 1997 requires that children with disabilities be educated in the least restrictive environment ("LRE") and have the opportunity to be educated with non-disabled children to the greatest extent possible. 20 U.S.C. § 1412(A)(5); see, also 34 C.F.R. § 300.550(b). Removal of disabled children from the regular education environment should only occur when the nature or severity of the disability is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily. Id. LRE is a mandate to all public schools which must be considered by the appropriate multi-disciplinary IEP Team in programming for children.

The LEA has looked at the child's strengths, weaknesses and progress in light of his disability and has implemented an IEP in which his weaknesses, both scholastically and socially can be addressed, but where his academic strengths can also be developed, accommodated and built upon. The LEA's Conformed IEP also provides the child a regular opportunity to promote his socialization skills and participate in activities with non-disabled students in certain areas, as mandated by the LRE requirement.

The parents bear the burden to establish by a preponderance of the evidence that the LEA has failed to provide their child with FAPE concerning the issues they raised in this proceeding and they have not sustained this burden.

The LEA is reminded of its obligations concerning 8 VAC 20-80-76(I)(16) to develop and submit an implementation plan to the parties, the hearing officer, and the SEA within 45 days of the rendering of this decision.

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Right of Appeal. 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.

ENTER: 1 / 30 / 06

John V. Robinson

John V. Robinson, Hearing Officer

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