

MAR 01 2006

06-039

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

Dispute Resolution &
Administrative Services

CASE CLOSURE SUMMARY REPORT

PUBLIC SCHOOLS
School Division

MR. AND MRS.
Name of Parent(s)

Name of Child

FEBRUARY 27, 2006
Date of Decision or Dismissal

BRADFORD A. KING, ESQ.
Representing LEA

PARENTS
Representing Parents/Child

PUBLIC SCHOOL
Parties Initiating Hearing

PUBLIC SCHOOLS
Prevailing Party

HEARING OFFICER'S DETERMINATION OF ISSUES:

WOULD NOT BE DENIED A FREE APPROPRIATE PUBLIC EDUCATION ("FAPE") IN THE
LEAST RESTRICTIVE ENVIRONMENT ("LRE") IF HE IS TRANSITIONED FROM AND PLACED IN THE
PUBLIC SCHOOLS.

CONTINUED PLACEMENT IN IS NOT REQUIRED FOR PROVISION OF A FAPE IN THE LRE.

HEARING OFFICER'S ORDERS AND OUTCOME OF HEARING:

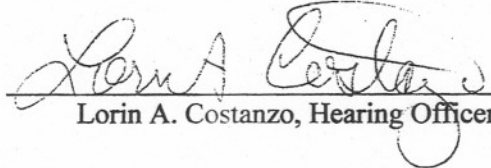
1. has met its burden of proof.
2. would not be denied a free appropriate public education ("FAPE") in the least restrictive environment ("LRE") if he is transitioned from and placed in the Public Schools.
3. The IEP offered by at the October 11, 2005 IEP team meeting, which is set forth in SB3, Ex. 49, is reasonably calculated to provide a free appropriate public education in the least restrictive environment to
4. Continued placement at is not necessary to the provision of a free appropriate public education in the Least Restrictive Environment to
5. The IEP which was offered at the IEP meeting of October 11, 2005 (SB 3, Ex. 49) shall be implemented by and returned to Public Schools as provided in said IEP.

6. Determination is further made that:

- a. The requirements of notice to the parents were satisfied.
- b. _____ has a disability.
- c. _____ needs special education and related services.
- d. _____ Public Schools is able to provide a free appropriate public education.

This certifies that I have completed this matter in accordance with the regulations and have advised the parties of their appeal rights in writing. The Hearing Report and Order in this cause is attached. I have advised the LEA in writing of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days of the rendering of a decision or the withdrawal of a hearing request.

February 27, 2006


Lorin A. Costanzo, Hearing Officer

Copies of this Case Closure Summary Report mailed this date to:

Dr. Judith A. Douglas, Office of Dispute Resolution and Admin. Services,
Va. Dept. of Education
P.O. Box 2120
Richmond, VA 23218-2120

Mr. Bradford A. King, Esq.
Harrell & Chambliss
707 East Main Street
Richmond, VA 23219

_____, Director of Special Education
Public Schools

MAR 01 2006

Dispute Resolution & Administrative Services

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

DECISION AND FINAL HEARING REPORT

PUBLIC SCHOOLS

School Division

Name of Parents

Name of Child

BRADFORD A. KING, ESQUIRE
Representing LEA

PARENTS
Representing Parents/Child

LORIN A. COSTANZO
Due Process Hearing Officer

PUBLIC SCHOOLS
Parties Initiating Hearing

I. PRELIMINARY MATTERS

A. ISSUES AND PURPOSE OF HEARING:

A Request for Due Process Hearing was made by the _____ Public Schools on October 31, 2005 and received by Mr. and Mrs. _____ this same date. The undersigned was appointed hearing officer in this cause.

Issue:

WHETHER _____ WOULD BE DENIED A FREE APPROPRIATE PUBLIC EDUCATION ("FAPE") IN THE LEAST RESTRICTIVE ENVIRONMENT ("LRE") IF HE IS TRANSITIONED FROM _____ AND PLACED IN THE _____ PUBLIC SCHOOLS OR IS CONTINUED PLACEMENT IN _____ REQUIRED FOR PROVISION OF A FAPE IN THE LRE?

B. PRE-HEARING CONFERENCE:

At the Pre-Hearing Conference of November 14, 2005 it was determined that:

- i. The due process hearing will be closed to the public at the parent's request.
- ii. The exhibits, by agreement, will be admitted *en masse*.
- iii. The parties stipulate that _____ is a child with a disability and requires special education and related services.
- iv. Mediation is not agreeable to both parties.

COPY

C. TWO EXTENSIONS OF FINAL DECISION DUE DATE GRANTED:

I. At the pre-hearing telephone conference of 11/14/05 parents moved for an extension of the final decision due date. Upon hearing the motion and arguments it appeared that:

- i. The LEA filed the request for due process hearing in this cause.
- ii. The Parents requested a continuance of the due process hearing and an extension of the final decision due date to have opportunity to seek an attorney.
- iii. This is the first request for a continuance and an extension of the 45 day time limit by parents.
- iv. The parties agreed that _____ will remain at _____ until this cause is resolved.
- v. Parents are entitled to have an attorney/presenter assist them if they so desire.
- vi. Counsel for the LEA does not object to the continuance or the extension.
- vii. It is in the best interest of the child that there be a full, fair, and complete hearing of the issues.

Upon consideration of the above, it being in the best interest of the child, the due process hearing was continued to December 19, 2005 (with a second day of hearing set on December 20, 2005) and the 45 day period for the final decision due date extended to January 16, 2005.

II. Issues arose at due process hearing regarding the exchanged exhibits being the same as to content and organization. These matters were resolved with an extensive expenditure of hearing time and the hearing was not concluded 12/20/05. The parties joined to move for a continuance and extension and it appeared that:

- i. Basic fairness required that issues with exhibits be resolved to insure that all parties and the hearing officer had identical exhibits and that the exhibits be organized/numbered identically.
- ii. Due process requires a full and fair hearing of issues.
- iii. Basic fairness requires the parents have a reasonable opportunity to be present at due process hearing, Parents were unable to continue the hearing to 12/21/05. Parents further set forth other considerations and special needs as to scheduling.
- iv. Scheduling matters and concerns of both parties were presented and given consideration.
- v. The exhibit issues that arose were not directly attributable to parents.
- vi. The complaint for due process hearing was filed by the LEA.

On the joint motion of the parties and upon consideration of the above, it being found to be in the child's best interest, the due process hearing was on December 20, 2005 continued to 1/24/06 and 1/25/06 (and, if necessary, to successive days thereafter until completed) and the final decision due date was extended to 2/27/06.

II. DUE PROCESS HEARING:

This Due Process Hearing concluded after four days of hearing. Hearing days one and two were held on December 19, 2005 and December 20, 2005 at the Community Suite B, _____ Health and Human Resources Building, _____. Due to the non-availability of the prior hearing site the hearing location was moved to a new location. By agreement of the parties,

III. WITNESSES:

A. Witnesses called by School:

B. Witnesses called by Parents:

IV. EXHIBITS:

Exhibits admitted are contained in five volumes (each of which is a three ring binder) plus two VCR cassette tapes.

A. Parents' Exhibits:

1. Volume I ... three ring binder containing pages numbered 1 through 419.
2. Volume II ... three ring binder containing pages numbered 1 through 383 (labeled F C Exhibits).
3. Two VCR cassette tapes.

B. Public Schools' Exhibits:

1. Volume I ... three ring binder containing Exhibits numbered 1 through 100 (excluding Exhibits number 13 and 95).
 - a.) Exhibits number 13 and 95 of Volume I were withdrawn at hearing, by agreement of both parties, as each was in reference to an individual other than
 - b.) Exhibit number 60 of Volume I was redacted at hearing, by agreement of both parties, as to matters referring to an individual other than
2. Volume II ... three ring binder containing Exhibits numbered 1 through 100.
3. Volume III ... three ring binder containing Exhibits numbered 1 through 57.

V. DESIGNATION OF TRANSCRIPT AND EXHIBITS:

A. The transcript of the due process hearing consists of four volumes and is referred to as "Tr. ___ pg. ___" with the volume number inserted at the first "___" and the page number inserted at the second "___".

December 19, 2005, hearing day 1 Volume 1 of transcript
December 20, 2005, hearing day 2 Volume 2 of transcript
January 24, 2006, hearing day 3 Volume 3 of transcript
January 25, 2006, hearing day 4 Volume 4 of transcript

B. The Parents' Exhibits are designated as "P __, pg. __" (with the volume number inserted at the first "__" and page number inserted at "__").

C. Public School's Exhibits are designated as "SB __, Ex. __" (with the volume number inserted at the first "__" and the exhibit number inserted at the second "__").

VI. FINDINGS OF FACT:

01. _____ was born on _____ 1994 and is the oldest of three children born to Mr. and Mrs. _____. _____ siblings were born in 1997 and 2000. (Tr. 4, pp. 13-14)

02. _____ was diagnosed in 1997 as having Pervasive Developmental Disorder not otherwise specified/Autism at the Infant and Young Child Clinic at _____ Children's Hospital. In 1998 Communication Disorders Clinic determined _____ presented with a communication disorder involving significantly limited means of expressive communication. (P 1, pg. 15; SB 1, Ex. 1; Tr. 4, pp. 5, 6, 15)

03. _____ is nonverbal and a child who may exhibit behaviors as a form of communication. He hits and bites himself and others. He has exhibited self-stimulatory behaviors including sitting on the floor and banging the floor and rocking back and forth. He can obsess, has sleeping issues, and issues of PICA. (Tr.4, pp. 10, 11)

04. On 3/5/04 _____ mother felt that the situation at home was "totally out of control". She called the police and told them that she needed help at home with _____. He was out of control, throwing objects, screaming, acting out, and hitting others. _____ threw his medications all over the kitchen, threw a microwave, threw food, and hit his brother. (Tr. 4, 68; SB 2, Ex. 86)

05. A Temporary Detention Order was entered on 3/5/04 transporting _____ to _____, in _____ which is now renamed _____ ("_____"). (P 1, pg. 84) _____'s admission to _____ was later converted to a voluntary status by his parents and _____ remained at _____ until his discharge on 4/19/04. (SB 2, Ex. 12)

06. _____'s TDO and admission to _____ were due to the aggression _____ exhibited at his home. (SB 2, Ex. 12)

07. While _____ was at _____, _____ Public Schools' IEP team addressed Extended School Year ("ESY") services. The IEP, signed by Mrs. _____ indicating consent on 3/31/04, provided for an ESY residential placement at _____ for _____ to begin as soon as possible as a transition directly from _____ (SB 2, Ex. 38)

08. Upon discharge from _____, went directly to _____ as an ESY service provided by _____ Public Schools (“_____”) pursuant to an IEP. The IEP further provided for assistance with _____’s transition back home and to _____ in August of 2004 for the start of the 2004-2005 school year. (SB 2, Ex. 38)
09. In August of 2004 _____’s IEP extended his attendance at _____ until January 2, 2005 and indicated _____ would be working on transition activities to support returning to _____ Public Schools on January 3, 2005. (SB 2, Ex. 80)
10. In December of 2004 an IEP Addendum (signed by a parent indicating consent on 12/9/04) provided for _____ to remain in _____ until February 3rd, 2005. (SB 2, Ex. 100)
11. In January of 2005 an IEP Addendum, signed by a parent indicating consent on 1/26/05, extended services at _____ through August 10, 2005. The Addendum provided for _____ Public Schools staff to visit _____ and consult with the staff and observe _____ there. (SB3, Ex. 10)
12. _____’s IEP team met on 7/12/05, 8/24/05, and 10/11/05. A proposed IEP was generated but was not agreed to by _____ parents. This IEP provided for _____ to remain _____ school until April 26, 2006 while working on transition activities to support his return to _____ or a private day school on April 27, 2006. _____’s parents refuse to sign an IEP returning _____ back home and to _____ (SB 3, Ex. 49; Tr. 2 pp. 148, 222)
13. _____ attended _____ Public Schools from preschool through part of the third grade/March 2004. _____ has remained at _____ and not returned to _____ since his placement at _____ (Tr. 2, pg. 204)
14. _____ Public Schools’ eligibility committee found _____ eligible for Special Education and/or related services September 28, 2000 the with the identified disability of Autism and Speech & Language Impaired. Communication and social barriers were found to impact educational performance as well as lack of independent functioning. (SB 1 Ex. 1)
15. _____ was most recently found eligible for special education and related services on 7/21/04. Parental consent was given to _____ Public Schools’ eligibility committee determination of this date changing _____’s identification from Autism to Autism/MR. _____ qualified for a label of Autism (Severe Range) with a secondary label of MR due to adaptive functioning across achievement. An IQ score could not be obtained due to his lack of communication for standardized testing. (SB 2, Ex. 73)
16. The IEP of 5/31/2002 provided for _____ to be educated in the general classroom for the majority of the day with intensive 1-1 pullout instruction for training of communication system and cognitive-readiness skills. (SB1, Ex. 4)
17. _____, Speech Therapist, recommended on 1/29/03 use of the Picture Exchange Communication System (“PECS”). (SB 1, Ex. 6)
18. On 3/27/03 _____ was evaluated by _____ for Facilitated Communication (“FC”). _____ was subsequently observed using the AlphaSmart which appeared to be working.

During follow-up visits it was observed that _____ was beginning to use FC throughout the day, he was at sentence level at least part of the day, and he was able to initiate FC independently a few times. (Tr. 1, pg. 134; SB 1, Ex. 27, 32, 44)

19. Initially, on April 3, 2003, Parent indicated positive reaction to Facilitated Communication. (SB 1, Ex. 38)

20. The IEP of 4/17/03 (for which Parental consent was given) indicated _____ as showing a high level of interest in current events and having reading academic skills. This IEP further indicated:

- _____ has made progress with his receptive language skills and continues to respond to directions with gestures, expressions, touch, etc.
- _____ shows some progress using a PECS layout structure.
- _____’s communications is very limited and he needs assistance with self-help skills.
- Hitting, pinching, biting, escaping, and avoidance have surfaced more.
- _____ has inconsistent academic engagement, a limited communication system, poor fine motor skills, and continues working with “Go Talk” or other assistive technology devices. His gross motor skills are within normal limits. (SB 1, Ex. 36)

21. The 4/17/03 IEP provided for accommodations/modifications including providing picture/word communication boards, intensive sensory breaks throughout the day, short breaks during instructional activities, daily picture/word schedule, scheduled team meetings, daily communication for parents to review, extra time to respond. (SB 1, Ex. 36)

22. On 5/27/03 a Behavior Support Plan was developed. A Functional Behavior Assessment addressed biting and hitting others and himself. Throwing objects was noted but not targeted. (SB 1, Ex. 45)

23. The 5/29/03 IEP (a parent signed indicating permission to implement) provided for _____’s placement in the general classroom with intensive 1-1 pullout instruction for training of communication system and computer skills. (SB 1, Ex. 47)

24. _____’s 5/29/03 IEP reported him as having made progress with his receptive language skills and that he showed some progress using a PECS layout structure. Hitting, biting, escaping, and avoidance behaviors were observed and _____ showed moderate alertness, delays in responses, fair-poor awareness of others, and showed to be moderately aware of his environment. (SB 1, Ex. 47)

25. _____ received extended school year services (“ESY”) from July 14, 2003 to August 8, 2003 at the Summer Learning Camp at _____ Primary School. (SB 1, Ex. 48)

26. The Psychoeducational Report of 9/15/03 indicated, “_____ has reportedly made significant progress with the use of facilitated communication...” (SB 1, Ex. 63)

27. _____, M.S. Speech-Language Pathologist evaluated _____ on 9/22/03. She described _____ as a nonverbal child who expresses himself via sounds, FC, facial expressions, and eye gaze. Ms. _____ presented that _____ appears to be making “tremendous progress” in his ability to communicate with others and he expresses himself effectively since engaging in facilitated communication. (SB 1 Ex. 65)

28. At the 9/29/03 reevaluation the Eligibility Committee found [redacted] qualified for the disability category of autism and that he qualified for related services, occupational therapy, music therapy, and speech therapy. Parent provided comments that, "Mother is pleased with [redacted]'s progress with FC at school. Concerns with things he types are not true. Success with yes/no cards at home." (SB 1 Ex. 67)

29. In the Triennial Evaluation for Music Therapy of September 2003 [redacted], MT-BC, stated [redacted] has grown and progressed on his goals and objectives. (SB 1 Ex. 66)

30. An IEP (for the period of 11/3/03 to 11/3/04) was signed by Mrs. [redacted] on 11/18/03 indicating consent. This IEP provided for a placement in the general classroom with same age peers for the majority of the day with intensive 1-1 pullout instruction for computer skills and specific therapies as needed. The IEP further provided that:

- a. Facilitated Communication is [redacted]'s primary communication tool at school. At home, [redacted] uses a pre-made communication board and word cards to communicate. At times he uses facial expressions and vocalization to express himself.
- b. After beginning FC many of [redacted]'s behaviors such as biting, hitting, kicking, pinching, escaping, and avoidance were noted to have decreased. Their frequency and intensity varied. (SB 1, Ex. 87)

31. On 01/22/04 [redacted]'s Behavioral Support Plan was updated and provided that target behaviors have not been a significant issue at school during the first semester of school year 2003-2004 which was attributed largely to changes in health and medications regime. (SB 2, Ex. 1)

32. On 3/3/04 [redacted] didn't want to get off the school bus and an incident occurred involving hitting the bus aide. [redacted] was prevented from hitting others. (SB 2, Ex. 11)

33. [redacted] Public Schools' educators did not participate in any treatment format for [redacted] at [redacted]. (Tr. 2, pg. 64)

34. Mr. [redacted], Behavior Specialist at [redacted], testified. Mr. [redacted] is a Board Certified Associate Behavior Analyst who has worked with [redacted] at [redacted] since the end of August, 2005. (Tr. 2, pg. 89) Mr. [redacted] does not see [redacted] individually but sees him within part of a group or working with an individual therapist. (Tr. 2, pg. 102) Mr. [redacted] had not been to [redacted] and does not have knowledge of [redacted] programs that may be offered. (Tr. 2, pp. 149, 156-157)

35. [redacted] has been on psychotropic medications previous to and at all times Mr. [redacted] has been working with [redacted] at [redacted]. Mr. [redacted] has not observed [redacted] when he was not on medication. (Tr. 2, pp. 107, 112).

36. [redacted], at the time of the due process hearing, attends the [redacted] school program which has approximately 65 - 70 students. The school has eight classrooms and he resides in a home with 3 other individuals with autism or some other developmental disability. (Tr. 2, pp. 107, 121)

37. [redacted] does not provide a one to one aide assigned to [redacted]. However, within the classroom there are instructional aides or assistants. (Tr. 2, pg. 103)

38. is currently taking multiple psychotropic medication at . A goal of these medications is suppressing or reducing aggressive tendencies. (Tr. 2, pp. 107, 108)
39. Mr. has not visited Public Schools to evaluate what programs they might be offering. He has never been at Public Schools' program and knows little about it. (Tr. 2, pp. 149, 156-67)
40. While was at , Mrs. expressed that has been extremely aggressive towards her, and she was concerned with the safety of her other children and the welfare of her family. Mrs. believed needs 24 hour care in a safe environment. (SB 2, Ex. 19)
41. 's parents requested that Facilitated Communications not be used at . The 3/29/04 IEP Amendment of provided that, at 's parents' request, Facilitated Communication would not be used during 's stay at A Parent signed this IEP amendment indicating consent. (SB 2, Ex. 34)
42. did not discuss with Public Schools 's parents' request to discontinue FC while was at discontinued using FC with (Tr. 2, pg. 175)
43. 's parents have not asked Public Schools to stop using FC with while he was in (Tr. 2, pg. 175)
44. Public Schools utilizes full inclusion. (Tr. 3, pg. 164)
45. The Public Schools Special Education Individualized Education Plan for the period of 3/30/04 to 3/29/05, (signed by parent giving consent on 3/31/04), provided that:
- has made great progress in the area of communication at school.
 - Parents had concerns that does not always select FC choices that align with his usual preferences and he has demonstrated inconsistent use of FC since the fall. His parents felt 's responses have been less accurate and he has demonstrated less control over his typing and hand movements.
 - has demonstrated less use of FC and more use of the white-board for communication needs. Parents had little success with FC and other communication tools. (SB 2, Ex. 38)
46. A number of methodologies have been used over the years by Public Schools to communicate with in the classroom. Public Schools has used, with varying degrees of success, Picture Exchange Communication System ("PECS"), Communication Boards, Communication Notebooks, and Facilitated Communication. (Tr. 3, pp. 167 - 169)
47. Mrs. first evaluated in 2003 to determine if facilitative communication would be a communication strategy that would work for . (Tr. 1, pg. 134) She determined that was a good candidate for facilitative communication and that he needed to be supported in his environment to use it. (Tr. 1, pg. 140)
48. On April 7, 2005 . observed in the classroom at (SB 3 Ex. 24)

49. _____ is an autistic child and also has been determined to be Mentally Retarded. _____ Public Schools ("_____ S") has approximately 60 students diagnosed with a disorder on the autism spectrum and approximately half of that number with secondary labels including M.R. (Tr. 1, pg. 30)
50. Mrs. _____ expressed concerns over _____'s aggression, concern for the safety of her other children, and concern for her family's welfare. She felt _____ to need 24 hour care in a safe environment. (SB 2, Ex. 28)
51. Ms. _____ and Ms. _____ met 12-10-03 and discussed concerns with _____, medical issues, and the school. Ms. _____ raised the possibility of _____ or _____ Education Center as a possible ESY placement for the summer of 2004 but stated it would have to be an IEP decision. (Tr. 4, pg. 67; P1, pg. 71)
52. _____ had expressed to _____ concerns that _____ has no reliable way to communicate and that they felt a return to _____ was appropriate. _____ expressed a number of times its desire to initiate transition activities to have _____ return to _____ Public Schools. (SB 3, Ex. 11)
53. The IEP team's decision to place _____ at _____ for ESY services was not strictly for educational reasons. The IEP team believed ESY services were appropriate. There was also the decision to provide a respite for the family and afford an opportunity for family support services and family counseling. (Tr. 2, pp. 187-189; Tr. 3, pp. 72,74, 155-156)
54. In December of 2003 the _____ advised Ms. _____ they were having increasing problems with _____'s aggression in the home. Additionally, the _____ were concerned about their family disintegrating and safety of their other children. (Tr. 2, pg. 19)
55. _____'s parents have filed for relief of custody but on 1/31/05 withdrew the petition to be relieved of _____'s custody. (SB 3, Ex. 14; 39)

VII. DISCUSSION and CONCLUSIONS OF LAW:

_____ is an 11 year old child who is eligible for special education and related services as autistic and MR. _____ is currently in a residential program at _____ in Richmond, VA and has been there since April of 2004 when he entered there as an Extended School Year ("ESY") service provided by his _____ Public School IEP. _____ provides _____ with a group residential home setting and an educational placement.

The parties have stipulated that _____ is a child with a disability and that _____ is in need of special education and related services.

A disagreement exists between the parents and school as to whether _____ can be provided a FAPE in the LRE by the _____ Public Schools or if continued placement in _____ is necessary. _____ Public Schools and the Parents are not able to agree to an IEP. Mr. and Mrs. _____ believe that _____ needs to remain at _____ Public Schools

believes it is able to provide a FAPE in the least restrictive environment and that is not a least restrictive environment.

Extensive testimony and exhibits were presented indicating that both parties have devoted a considerable amount of time and effort crafting past IEP's and attempting to craft an acceptable current IEP. Annual IEPs were typically developed after a number of meetings with the regarding IEP development and services provided. (Tr. 1, pp. 61-63)

This cause arose after a number of attempts were made to develop an IEP which would be agreeable to 's parents. A third drafting of a proposed IEP was offered in October 2005, (SB 3, Ex. 49). This proceeding was filed by when parents did not consent to the draft.

After a number of IEP meetings and discussions 's parents were not willing to sign the proposed IEP providing for return from to Public Schools. 's parents objected to his being returned to and desire him to remain at

Mrs. wants to remain at . She believes that has a specialized trained school staff which can teach the things he needs to learn. (Tr. 4, pg. 71) Mrs. believes needs 24/7 care. She testified that is at because that's where he needs to be and it's most appropriate for him to get his educational needs met there as well as his home and community needs. (Tr. 4, pg. 72)

While there have been disagreements, parental input has been given consideration and the parents have actively and meaningfully participated as members of the IEP team in the IEP process.

Parental involvement

Mr. and Mrs. have been honest and open in sharing issues and concerns with . Mr. and Mrs. have taken a very active roll in welfare and education. They have participated in the IEP process actively and meaningfully.

In 2003 had not experienced the behavioral issues with to the degree the were experiencing them in the home. was receiving a program with extensive accommodations, supports, and a great deal of structure within the school. In school had schedule pictures to follow, communication systems, a full-time instructional assistant, and a Positive Support Plan in place. (Tr. 1, pp. 47, 48)

The family was dealing with stress in the home. In March of 2004 was being extremely aggressive towards Mrs. . She was concerned with the safety of her other children and the welfare of her family. She believed needed 24 hour care in a safe environment. (SB 1, 47; SB 2, Ex. 28) Mrs. sought assistance for in the home and indicated that her family is in a "crisis" in February of 2004 (P 1, pg. 78)

The have observed . Mrs. visits with at and takes him clothing, snacks, and foods he likes. She testified she takes him books that he likes. Initially she saw twice a month and then once a month and she stays in contact with by telephone and E-mail. (Tr. 4, pg. 76, 77)

In August of 2004 [redacted] suffered a broken arm while at [redacted] Mrs. [redacted] stayed with him in the hospital and in his residence at [redacted] Mrs. [redacted] was told that after a week could go back to school but she felt he needed more time. She felt that [redacted] was being really good, not aggressive, and she wanted [redacted] to come back home for a week. She brought [redacted] back to their new home (they had moved residences since [redacted] was away). Everything was new to [redacted]. When [redacted] arrived at his new home he couldn't sit still, became upset, and was running around. He was hitting at his brother and sister, going after them, attacking them, and they were scared and crying. [redacted] was screaming and making loud noises to the point that the neighbors of the family's townhouse came over. Matters were at such a level that Mrs. [redacted] took [redacted] back to that night. (Tr. 4, pp. 79 & 80)

IEP's and Eligibility Meetings for period of 2003 - 2005

The following is a chronology of documents entitled IEP/IEP Amendments and of Eligibility Committee Determinations for the period of 2003 through 2005. Prior years are not set forth herein. This chronology includes IEP's which are contested/objected to by [redacted] contends that certain IEP's generated by [redacted] are not controlling and that [redacted] Public Schools, not [redacted], is responsible to insure IEP development and implementation. (Tr. 2, pp. 5 & 6).

A. Eligibility Meetings for 2003 through 2005

<u>date</u>	<u>reference</u>	<u>site</u>
07/21/04	SB2, Ex. 73	
09/29/03	SB1, Ex. 67	

B. IEP / IEP Amendments for 2003 through 2005

<u>meeting date</u>	<u>consent of parent(s)</u>	<u>reference</u>	<u>agency</u>
draft IEP - 2005	- <i>not</i> signed by parent(s) -	SB 3, Ex. 49	
01/26/05	signed by parent 1/26/05	SB 3, No. 10	
12/09/04	signed by parent 12/09/04	SB2, Ex. 100	
08/19/04	signed by parent 08/25/04	SB2, Ex. 80	
07/27/04	signed by parent 07/27/04	P1 pp. 178-179	
05/14/04	signed by parents 05/14/04	SB2, Ex. 50	
03/29/04	signed by parent 03/31/04	SB2, Ex. 38	
03/29/04	signed by parent 03/29/04	SB2, Ex. 34	
11/03/03	signed by parent 11/18/03	SB1, Ex. 87	
05/29/03	signed by parent 06/02/03	SB1, Ex. 47	
04/17/03	signed by parent 04/14/03	SB1, Ex. 36	

8 VAC 20-80-62 (A) (1) provides that the local educational agency shall ensure an IEP is developed and implemented for each child with a disability by that local educational agency, including a child placed in a private special education school by a local school division.

[redacted]'s placement at [redacted] was made as an Extended School Year services by the [redacted] Public Schools' IEP team. The IEP, signed by Mrs. [redacted] indicating parental consent on 3/31/04, recommended an ESY residential placement for [redacted] (SB 2, Ex. 38) The IEP team was concern that it would be too traumatic for [redacted] to return home from [redacted] for a short

time and then have to leave to go to _____ so they recommended residential services begin as a transition directly from _____.

As to the Amended IEP of _____ (SB2, Ex. 34) _____ was not placed there by Public Schools. _____ was initially placed there by a Temporary Detention Order.

Upon review of these factors, _____ Public Schools is responsible for IEP development and implementation and not _____.

On March 5, 2004 _____ was enrolled in _____ Public Schools when an incident occurred at home which led to him being admitted, under a Temporary Detention Order, to _____ ("_____"). _____'s parents subsequently admitted him there as a voluntary admission where he remained approximately 44 days until his discharge on April 19, 2004.

_____ did not observe the level of aggression that was reported at home and in school. _____ did hit staff from time to time when frustrated but he usually responded quickly to redirection. He bit himself lightly on the hand a few times but did not break the skin. (SB 2, Ex. 12)

_____ did not observe signs of academic skills. (SB 2, Ex. 12) _____ indicated _____ has not shown the ability to use the AlphaSmart. Yes/No cards and a wipe-off board were attempted and his answers were inconsistent and unreliable (SB 2, Ex. 30) (S2, Ex. 12, 47)

While _____ was at _____, _____ Public Schools considered an Extended School Year residential placement for _____ (SB 2, Ex. 19). _____ had received Extended School Year Services the previous summer at the Summer Learning Camp at _____ Primary School. (SB1, Ex.48)

ESY to _____ and extensions

_____ staff and the _____ met on March 25, 2004 and discussed issues regarding _____ and the situation at _____. _____ advised that they had been seeing a different situation at school than was being described by the Parents. _____ advised that they could meet _____'s educational needs in the school setting. (Tr. 2, pp. 78-80)

Much time was spent discussing the Parent's concerns about _____ returning to their home and Parents' concerns that they were not receiving sufficient support. Parents discussed their concerns that having someone in their home around the clock assisting with _____ would be too disruptive to the family. (Tr. 2, pp. 83-84)

When _____ was ready to discharge _____ the IEP team offered an ESY residential placement at _____ which was agreed to by the parents. This initial placement at _____ is found in the IEP signed by a parent on 3/31/04 and specifically provided for _____ to return to his public school placement for the start of the 2004-2005 school year. This ESY placement was to be from March 30, 2004 to August 25, 2004. (SB 2, Ex. 38)

Goals identified in the then current IEP which were to be addressed by ESY services included all of _____'s self-help and communications goals except the goals related to speech and FC. Services provided included transportation to and from the residential facility, mileage reimbursement for parent visits, also parent counseling and parenting skills consultations. These were to be provided to the family in collaboration with the serving facility to assist _____'s transition back home. This ESY placement had educational elements but there were other considerations, including respite care. (Tr. 2, pp. 72-74) Ms. _____ testified that she did not believe residential placement was necessary for _____ to benefit educationally and he could have been served educationally through extended school year services in _____. (Tr. 2, pp. 184-189)

_____ attempted to transition _____ back to _____ for the opening of the 04-05 school year. (Tr. 2, pg. 200) On June 4, 2004 Ms. _____ asked to convene an eligibility meeting which ultimately led to a change in identification for _____. (Tr. 2, pg. 215)

_____ 's IEP team convened in August of 2004 in response to the new eligibility determination and revisited the IEP based on his label being changed to Autism and MR. In this process the IEP team wanted input from _____ and _____ requested additional time to get the information together. _____ asked the IEP team to reconvene at a later date. (Tr. 2, pg. 221)

An IEP was generated, signed by Mrs. _____ on August 25, 2004 provided:

- a. _____ to remain at _____ until January 2, 2005 and that during his time there he will be working on transition activities with _____ and _____ staff in order to support his step down to _____ regular class on January 3, 2005.
- b. _____ is able to provide all educational services included in _____'s current IEP beginning August 26, 2004 but the IEP team felt that additional transition time is needed to be provided due to _____'s move to a new school and due to the fact that _____ has not returned home prior to the first day of school

The IEP team discussed the expectation of _____ returning for the 2005-2006 school year but his parents were still very concerned about _____'s level of aggression and behavioral issues he was demonstrating at _____. (Tr. 2, pg. 224)

The IEP team extended _____'s return date to _____ to 1/2/05 after discussing certain matters including the _____ family moving to a new home (which would mean _____ going to a different school within _____), concerns that _____ had not visited his home, concerns that he needed a transition plan in place, and parental concerns over _____'s aggressive episodes. (Tr. 2, pg. 229) The IEP stated that _____ would return to _____ by January, 2005 and referenced transition activities to take place until then. A parent signed this IEP indicating consent. (SB. 2, Ex. 80)

In November of 2004 the _____ requested an IEP meeting. An IEP Addendum was signed by Mrs. _____ giving consent to an IEP Addendum extending _____'s then current IEP to February 3, 2005 and thus providing for an extension at _____ until February 3, 2005. (SB2, Ex. 100) Concern was given to a relief of custody petition filed by _____'s parents in the Juvenile and Domestic Relations District Court.

_____ 's IEP team met again in January of 2005 and an IEP Addendum was signed on January 26, 2005 which extended services at _____ through August 10, 2005. (SB 3, Ex. 10) Consideration

taken by the IEP team included custody issues pending in court, the fact that home visits did not appear to be working, medical matters with _____, and a number of other issues. (Tr. 2, pg. 256)

On June 23, 2005 Mrs. _____ requested an IEP meeting to review/revise _____'s current IEP based on his current level of functioning and progress. (SB 3, Ex. 31). An IEP meeting was held on July 12, 2005 with Mrs. _____ in attendance/participating. (SB 3, Ex. 35). A number of matters followed with a number of draft IEPs being developed but not agreed to by Parents. These matters include:

<u>matter</u>	<u>SB3, Ex. No.</u>	
IEP Meeting Agenda/Checklist - 7-12-05	35	parent participated in this IEP Meeting
1st draft of Proposed IEP	36	
Notice of IEP Meeting for 8/24/05	40	
IEP Meeting Agenda/Checklist - 8/24/05	41	parent participated in this IEP Meeting
2nd draft of Proposed IEP	43	
9/1/05 parent reply to draft 1	44	
3rd draft of Proposed IEP -9/20/05	49	
IEP notice for 10/11/05	54	
IEP Meeting Agenda/Checklist -10/11/05	55	parent participated in this IEP Meeting
Due Process request	56	

After a number of meetings the _____, stated they would not sign any IEP that included transitioning _____ back to _____. (Tr. 2, pg. 269)

Mrs. _____ does not believe the proposed IEP is appropriate. She has, however, acknowledged the goals and objectives of the proposed IEP are appropriate. (Tr. 4, pg. 87) She does feel a transition plan to transition _____ back to _____ needs to be outlined specifically in an IEP. However, she does not believe _____ should be transitioned back to _____. Mrs. _____ believes _____ is making progress at _____. (Tr. 4, pp. 81-86)

_____ has repeatedly, since agreeing to an ESY placement at _____ stated it would like to transition _____ back to _____. A parent has signed a number of IEP addenda /IEP's that have specifically stated _____ would return to _____ through a transition plan. A number of dates for _____ to return to _____ were agreed to in IEPs signed by a Parent. _____ has attempted on a number of occasions to develop transition plans. (Tr. 4, pp. 93, 89-90)

IEP at

2003

_____ 's April 17, 2003 IEP indicated he was showing a high level of interest in current events and was described as having reading academic skills. This IEP indicated that _____ has made progress with his receptive language skills. He needed prompts with answering yes and no questions with augmentative and assistive technology, and he was showing some progress using a PECS layout structure. _____ was described as having very limited communications and needing assistance with self-help skills. Hitting, pinching, biting, escaping, and avoidance behaviors surfaced more. He exhibited inconsistent academic engagement, a limited communication system, and poor fine motor skills. His gross motor skills were within normal limits. He was working with "Go Talk" or other assistive technology devices.

This IEP provided for accommodations/modifications including providing picture/word communication boards, intensive sensory breaks throughout the day, short breaks during instructional activities, a daily picture/word schedule, scheduled team meetings, daily communication for parents to review, extra time to respond, a plan to address specific aggressive/self injurious behaviors, avoidance/escape, and transition strategies. (SB1,Ex. 36)

The May 29, 2003 IEP provided for to remain in the general classroom with intensive 1-1 pullout instruction for training of communication system and computer skills. had made progress with his receptive language skills and showed some progress using a PECS layout structure. Hitting, biting, escaping and avoidance behaviors continued. showed moderate alertness, delays in responses, fair-poor awareness of others, and to be moderately aware of this environment. (SB1, Ex.47)

In the summer of 2003 received extended school year services at the Summer Learning Camp, Primary School from July 14, 2003 to August 8, 2003. (SB1, Ex. 48).

The November 18, 2003 IEP continued 's placement in the general classroom with same age peers for the majority of the day with intensive 1-1 pullout instruction. This IEP stated that Facilitated Communication is 's primary communication tool at school and at home. used a pre-made communication board and word cards to communicate. This IEP also noted that after beginning FC many of 's behaviors such as biting, hitting, kicking, pinching, escaping, and avoidance decreased. (SB1, Ex. 87)

Medical concerns increased in the fall of the 2003-2004 school year. contacted 's doctor, Doctor (Tr. 2, pg. 12)

2004

's Behavioral Support Plan was updated in January of 2004 and provided that the target behaviors have not been a significant issue at school during the first semester of the 2003-2004 school year. This was largely attributed to changes in his health and medications regime. (SB 2, Ex. 1)

's IEP, which a parent signed indicating consent on March 31, 2004, provided for an ESY residential placement in order to gather information on PLOP's, FC, and to offer parents an opportunity to participate in parenting skills and counseling sessions. At this time was at and the committee felt that it would be too traumatic for to return home from for a short time then leave for another facility. The IEP provided that residential ESY services begin as a transition directly from .. The long term plan was for to return to for the start of the 2004-2005 school year. SB 2, Ex. 38

In August of 2004 s IEP extended his attendance at until January 2, 2005. The IEP indicated will be working on transition activities in order to support his going back to regular class on January 3, 2005. This IEP provided that is able to provide all educational services included in 's current IEP beginning August 26, 2004. However, the IEP team felt that additional transition time was needed due to 's move to a new school and the fact he has not returned home prior to the first day of school. SB2, Ex. 80

In December of 2004 an IEP Addendum (signed by a parent on 12/9/04 indicating consent) provided that _____'s current IEP will remain in place until February 3rd, 2005. (SB 2, Ex. 100)

2005

In January of 2005 an IEP Addendum, signed by a parent indicating consent on 1/26/05, extended services at _____ through August 10, 2005. During this extension it was provided that staff from _____ would visit _____ and consult with staff and observe _____. _____ was concerned that _____ had no reliable way to communicate in his residential setting. (SB 3, Ex. 10, 11).

Witnesses

_____, Director of Special Education for _____ Public Schools, testified in this proceeding. She has 20 years in this position and a masters degree in elementary administration with endorsements in severe profound disabilities, learning disabilities, M.R., visiting teacher, elementary administrator, special ed. administrator. Additionally Ms _____ teaches a graduate class at _____ University in high incidents disabilities, including L.D., M.R., E.D., Autism, and Health Impairments. (Tr.1 pp. 25-27).

Ms. _____ is personally familiar with _____ having observed him within the school setting with five or six formal observations with one formal observation at _____. She has additionally observed him informally on a number of occasions and has conferred with _____ direct case manager. She has attended planning meetings and has communicated with the _____ concerning _____ in meetings, by phone, and in correspondence on numerous occasions. (Tr. 1, pp. 32,-33)

Ms. _____ believes that _____'s return to the public school is appropriate and _____ is able to provide _____ educational benefit. She has consistently held that residential placement is not necessary for _____ to benefit educationally and _____ could meet _____'s educational needs. (Tr. 2, pp. 188, 229) She was concerned with reports from _____ of _____ refusing to complete school work and the effect of this on his ability to benefit educationally from the _____ placement. (Tr. 2, pg. 262)

Ms. _____ testified that _____, described by her as an expert on individuals with disabilities who was hired by _____ consulted with _____ on _____ case in 2002. Mr. _____ worked with _____ on instructional suggestions for _____ and in 2003, at the school's request, visited the _____'s home to address issues they expressed they were having in the home. (Tr. 1, pg. 50; SB 1, Ex. 3)

After consultations in 2002 Mr. _____ recommended _____ be educated more in the general education classroom. He indicated _____ was not being challenged enough by his curriculum and that _____ had skills that were not readily evident due to his communication disability as part of his autism. (Tr. 1, pp. 64, 65)

Ms. _____ testified in this proceeding. She is employed at Virginia Tech's Training and Technical Assistance Center to provide consulting services to school divisions and owns a consulting business, CMI Consulting. She specializes in students with autism, challenging behavior and communication, and particularly facilitative communication. (Tr. 1, pp. 118-121)

Ms. _____ has a Master's Degree in severe disabilities from VCU, a BS from James Madison University in Mental Retardation and Emotional Disturbances, and a teaching license with endorsements in MR, ED, severe disabilities, K - 12. She taught for 13 years and has been a consultant in areas of autism and challenging behavior and communication for the past 16 years. She has received training in facilitated communication at Syracuse University, has worked with students in facilitative communication since the early 90's, has evaluated a number of students for the use of facilitative communication, supported students in therapy with FC, and provided support to school divisions that were using FC. (Tr. 1, pg. 123)

Ms. _____ worked with _____, monitored _____'s use of FC, and provided training concerning facilitated communication with educators who worked with _____. She provided several workshops and more training each time she visited _____. She received positive reports from staff concerning _____'s use of FC. (Tr. 1, pp. 145-147)

In March of 2003 Ms. _____, evaluated _____ concerning Facilitated Communication (SB 1, Ex.27) The evaluation was at the parent's request per Ms. _____. A follow-up visit on March 27, 2003 noted _____ beginning to use FC throughout the day. He was at sentence level at least part of the day and he was able to initiate FC independently a few times. (SB 1, Ex. 44) On April 14, 2003 she observed _____ was using the AlphaSmart which appeared to be working. (SB 1, Ex. 32)

Based upon her observations and what staff was reporting she believed that FC remained viable for _____'s problems. She did note problems and pointed out suggestions concerning FC but _____'s use of FC showed improvement since her first visit. Staff in the school reported a big change in behavior and _____'s ability to participate in the general education classroom. Fussing was diminishing and _____ was able to spend longer periods of time in the general ed. classroom. (Tr. 1, pp. 149-151)

Ms. _____ testified that facilitated communication is not appropriate for all students and has recommended in the past that facilitated communication not be used with certain students. (Tr. 1, pg. 133) She further testified facilitated communication should be used with other communication methods which may also include a communication board. (Tr. 1 pp. 131-132)

Ms. _____ personally evaluated _____ in 2003 and determined that _____ was a good candidate for facilitative communication and needed to be supported in his environment to use it. (Tr. 1, pg. 140) She also consulted with Mrs. _____ concerning FC in the home and went to the home to help her get started with facilitation. (Tr. 1, pp. 150-151)

Ms. _____ recommended _____ be exposed to higher order thinking skills, This recommendation was made after she observed different activities being done with _____ and that _____ appeared less frustrated. (Tr. 3, pg. 172)

Ms. _____ testified that in January of 2004 _____ was progressing really nicely. (Tr.1 pp. 168-169)

Ms. _____ testified in this due process hearing. She is licensed to teach in Virginia and endorsed in mental retardation. This is the fifth year she has served as a special education teacher in

Public Schools. She has attended conferences on Autism and Augmented Communication (Tr. 3, pg. 162) She additionally has case management responsibilities and provides direct consulting to other teachers and educators. (Tr. 3, pp. 164, 165)

Ms. [redacted] was [redacted]'s special education teacher when he was in the second and third grade at [redacted] (Tr. 3, pg. 165) She testified [redacted] loved books. Some of this was sensory and sometimes he wouldn't be reading but would touch books to his lip or nose and just feel the pages but he would also read books. [redacted] seemed to be stronger in reading. Communication and self-help skills were considered to be a weakness. (Tr. 3, pg. 167)

Ms. [redacted] tried various methods of communications with [redacted] including PECS, Communication Boards, Communications Notebooks, and Facilitated Communication which was implemented in second grade. (Tr. 3, pg. 168)

Ms. [redacted] testified FC was successful and she saw a tremendous difference in [redacted]'s behaviors before and after it was introduced. Various people were facilitating with [redacted]

About the same time FC was introduced the type of curriculum went from very functional kinds of activities to grade level curriculum with opportunities to work on classroom activities. (Tr. 3, pg. 171)

Ms. [redacted] became especially concerned with [redacted]'s medical situation in the late fall of his third grade year. She related an incident occurring outside school involving kicking out/kicking a windshield. There was concern over the injury and/or medication prescribed giving rise to a reaction and seizures. (Tr. 3, pg. 185) [redacted] was out of school a few days and when he returned he didn't come back quite the same as when he left. Significant regression in self help skills and ability to function within the classroom were noted. She observed drooling, glazed eyes, shaking at times, and noted she couldn't get a response from him. Toileting became an issue. Both the parents and school had expressed concerns and the parents related [redacted]'s physician said it could be side effects from the medications [redacted] was taking. (Tr. 3, pp. 186, 187)

Mr. [redacted] testified at the due process hearing. Mr. [redacted] is a Board Certified Associate Behavior Analyst employed at [redacted], part time August 30, 2005 and then full time since the end of September, 2005. He has been employed in the field of Applied Behavior Analysis since June of 1997. Mr. [redacted] works with [redacted] as a Behavioral Specialist and has been working with [redacted] at [redacted] for approximately 3 months. (Tr. 2, pg. 88)

At [redacted], [redacted] lives in a three/four bedroom house with three other individuals with autism or some developmental disability. [redacted] takes a van from his residential program to the school program and his schedule is fairly regimented. (Tr. 2, pp. 106, 107)

Mr. [redacted] indicates [redacted] can dress himself with minimal assistance. [redacted] wouldn't be able to walk into a room find his outfit and put on his clothes correctly but would be able to participate actively in the choice of two shirts and pick one. [redacted] could offer some physical assistance and once started he is able to do a lot on his own. (Tr. 2, pp. 116, 117)

As to toileting, staff at _____ have reported _____ is able to initiate by getting up and walking in the direction of the bathroom. He gets some assistance in the bathroom. He does have toileting accidents but they are described as not that frequent. (Tr. 2, pp. 117, 118)

Mr. _____ testified that the behaviors he has seen _____ exhibit and the behaviors _____ has related _____ exhibited are extremely common behaviors with children with autism. (Tr. 2, pg. 151) _____ does occasionally have problems going from one activity or place to another but it's not an automatic thing. He describes _____ as a very sociable person with great eye contact who does not speak to communicate but can interact with you in many ways. (Tr. 2, pp. 89 & 90)

Mr. _____ has never visited _____ Public Schools to evaluate what program they might be offering _____ and he has never been to _____ program and knows relatively little about it. (Tr. 2, pp. 149, 156) He has met with Ms _____ Behavior Specialist for _____, at _____ and discussed behavior management issues and reviewed positive behavior support plans that _____ developed for _____. (Tr. 2, pp. 153, 154)

He is aware of the IEP's crafted and signed calling for _____'s transitioning back to _____. He believes it to be appropriate for _____ to have transitioning involving visits to re-familiarize with _____ before returning to his home. (Tr. 2, pg. 150)

_____ testified at this due process hearing. Ms. _____ is a behavior specialist for _____ and has been a teacher for 30 years. She has worked in private treatment centers, public school settings, elementary, middle and high schools in self-contained segregated special ed and inclusive settings and has been a coordinator for the Training and Technical Assistance Center at _____. Ms. _____ is a member of the national and state training teams for positive behavior supports and teaches Introduction to Severe Disabilities and Mental Retardation at _____. (Tr. 3, pg. 224-228) Her work has been profiled in publications and she has given presentations nationally and on a limited basis internationally in the area of Autism (Tr. 3, pg. 238)

Ms. _____ has observed _____ in his classes. (Tr. 3, pg. 251) She first met _____ in November of 2002 when she accompanied _____, behavior consultant. (Tr. 3, pg. 231)

She was asked to facilitate an IEP process in February of 2003. She observed _____ was spending a lot of time lying on the floor, that he had a few very narrow interests and was difficult to interact with. (Tr. 3, pg. 234) In the IEP of May 2003 Ms. _____ provided regular consultation to _____'s IEP team. She helped the design and implementation of a functional behavior assessment and helped formulate a positive behavior support plan for the following school year. (Tr. 3, pp. 235, 236)

In 2003 behaviors of hitting and biting himself and others were addressed. A composite scatter plot of data observed in May of 2003 was developed. The Scatter plot indicated that these behavior were more likely to occur in the afternoons from 4:00 until bedtime in the home setting and these behaviors were sporadic at school. (Tr. 3, pp. 241, 241; SB1, Ex. 44) A positive behavior support plan based upon the functional behavior assessment data was developed. Some definite patterns were found. At times the behavior was more likely to occur at home than school. When it happened at school it was mainly in unfamiliar situations or when a task demand was presented but _____'s communications options

within that situation or task were limited. It was found that the behaviors were unlikely to happen at times when there was a lot of structure and consistency in the daily routine. (Tr. 3, pp. 246 - 247)

Ms. testified that the positive behavior support plan was reasonably designed to help at home and school. In May 2003 she agreed with the school staff who reported the frequency of problem behaviors decreased sharply since began using FC. went from being pretty much unengaged to spending periods willing to type with someone and work at his desk. Also, it was easier for him to be with groups of kids. (Tr. 3, pp. 248, 249)

In the fall of 2003 began experiencing medical problems. Ms. noted that in August of 2003 was in the hospital and returned to school in September 2003. She observed and in October the school staff was concerned was ill. Participation diminished and personality changes were noted since was receiving additional medications. No problems with aggression were noted but he was restless, constantly roaming around and asking to go home. Concern was noted that he didn't seem like himself. (Tr. 3, pp. 253, 254)

In January of 2004 Ms. observed and talked with his occupational therapist, special ed teacher, and instructional assistant concerning . She had strong concerns about his physical health. Significant behavioral issues were not seen but was described as sleepy/lethargic, staring, and breathing heavily. The occupational therapist reported he had lost strength and coordination.

Discussion was held over looking at community based options if 's health condition persisted. There were concerns over whether his IEP could be implemented. (Tr. 3, pp. 258-260) Meetings were held with staff and Ms. who was keeping staff informed on medication issues and doctor visits. It was hoped that was just going through a difficult time with health and was going to get better.

In January 2004 a planning meeting was held (SB2, Ex. 1) regarding 's program. Ms. requested looking at prevention strategies and the Behavior Support Plan was updated 1/22/04. (SB 2, Ex. 2) (Tr. 3, pg. 261)

A meeting on February 19, 2004 between Mrs. , Ms and Ms discussed medications and issues with on the bus. Records were to be kept on where would become stuck/refuse to move and required assistance to get him to move. (Tr. 3, pg. 267)

Ms. has attended meetings and discussed 's progress and program, spoken with behavior specialists, visited and monitored reports prepared by (including his then current behavior support plan). She has observed in the classroom (both at and), and participated in IEP meetings for since he was placed residentially. (Tr. 3, pp. 270-273)

Ms. testified, "I don't see any reason why we couldn't serve appropriately in this public school setting." (Tr. 3, pg. 283) She further indicated 's problem behaviors were worse at She expressed concerns that has the right to curriculum and the place to learn the skills for dealing with daily life is in the stream of daily life. He appeared to be benefiting greatly, when not sick, from access to his regular class activities. (Tr. 3, pg. 284)

Public Schools focused on a variety of options for communications although facilitated communication was _____'s primary one. _____ was seen as requiring a variety of communication options. Ms. _____ testified it was not appropriate to focus only on facilitated communication with a student with the kinds of intensive communication needs that _____ has. (Tr. 3, pg. 305) She did see a huge amount of success in school with facilitated communication. (Tr. 3, pg. 104)

_____ testified at hearing. Ms. _____ is the Supervisor of Special Education at _____ and has been for approximately ten years. Ms. _____ has an undergraduate degree, Special Education with endorsement in mental retardation, a Masters degree in clinical teaching with endorsement in learning disability, and post Master's work at Virginia Tech where she received supervision special education endorsement and a elementary principalship endorsement. She has taught children with disabilities in North Carolina and Missouri. At Southwest Missouri State she taught special education classes and in Nebraska she was on the University of Nebraska affiliated facility as the learning disabilities coordinator. She was a resource teacher for approximately seven years, a coordinator of Special Education, and a consulting teacher for five years. She has over thirty years experience as a public educator. (Tr. 3, 319-320)

Ms. _____ has participated in IEP and eligibility meetings for _____ since he first arrived in _____ as a preschooler. For the last five years she has been working with residentially placed children as case manager and she has responsibility for _____. She has observed _____ at preschool, at _____, and at _____. (Tr. 3, pp. 325-327, 342)

Ms. _____ testified that _____'s needs center around communication and support. She believes he has the potential to be an academic student and believes he reads from what she observed with facilitative communication. Ms. _____ has concerns that _____ is not getting enough of an academic challenge at _____. (Tr. 3, pp. 327, 328)

Ms. _____ testified that at one time _____'s parents agreed that _____ might be an academic student and the school's way of communication was a good way but they don't hold that opinion anymore. Additionally, _____'s parents have expressed on many occasions their concerns about having _____ in their household. (Tr. 3, pg. 333)

Ms. _____ is aware transitioning _____ from _____ to _____ has been discussed by _____ with the _____. (Tr. 3, pg. 332)

Ms. _____ believes that _____ is most appropriate for _____ because _____ has an inclusion option for him in his own county. _____ is doing shape puzzles and things like that at _____. (Tr. 3, pg. 336) She has expressed concern over _____'s request to reduce services. (Tr. 3, pg. 338)

While Ms. _____ believes a residential placement is appropriate for some students for educational reasons she does not believe it to be appropriate for _____. She believes the more academic program is the appropriate program and that _____ was participating and getting something out of it. (Tr. 3, pp. 340-341)

Support Team Meeting Minutes ("STM Minutes") of 4/28/04 indicated:

- a. is generally happy and prefers to sit off to one side of the classroom and play with his phone books. was able to complete a sorting activity after some hand-over-hand prompting along with visual and verbal cues. Staff also attempted to have match colors. (P. pp. 100-110)
- b. seems to be adjusting well to everybody. He has had several toileting accidents, he will hit himself and others, He sleeps throughout the night.
- c. Continued work was done on goals that will help lead to a return to public schools

STM Minutes of 6/23/04 noted speech therapy was focusing on phase one of PECS. Aggression, self-injury, plopping, and 's broken finger were noted. A return to public school was being proposed by . (P 1, pp. 135-144)

STM Minutes of 5/26/04 (P 1, pp. 148-156) indicate speech therapy was missed due to the SLP being absent, some aggression to self and others was observed, and the transition proposed was a return to public school at the end of Extended School Year.

STM Minutes for the period of 6/19 -7/23/04 indicated 's medications were changed. Work to decrease maladaptive behaviors continued and is starting to interact well with peers. He has been staying seated for approximately 10-20 minutes and following directions with fewer verbal prompts. (P 1 pp. 180-190)

STM Minutes for the period of 8/1/04 - 10/6/04 (P 1, pp. 199-211) indicated increased behavioral difficulties and that PRN medications are used when becomes agitated. Speech Therapist noted a regression and that was unable to receive therapy a number of times for behavioral reasons. broke his arm in August and there were several medication changes.

On 10/6/04 provided 1:1 support for a 30 day period due to extreme behaviors. PRNs were used daily x2 for a period of time which were reported to help with behaviors. (P 1, pg. 209)

On December 7, 2004 contacted Ms. had bitten another child and wanted to discuss an increase or change of medications for with his doctor and recommend hospitalization if the doctor will consent. officially notified Ms. that plans to discharge in 30 days if things don't get better. (P 1, pg. 222)

STM Minutes of 4/6/05 (for the period of 1/29/05 - 4/1/05) indicated is receiving 25 minutes not 50 minutes of speech therapy a week due to caseload management issues. was requested to use FC as an alternative source of communication but did not observe successful interactions. attributed behavior difficulty at the end of February to the possibility of side effects from a medication change. Academically, continued to refuse to complete much school work and continued to refuse to participate in activities. He occasionally was showing aggression/self abuse. (P 1, pp. 272-282)

STM Minutes of 8/3/05 (for the period of 5/28/05 - 7/29/05) noted OT at 25 minutes a week and poor progress in OT. maintained previous reductions in aggressive behavior but still had some

episodes. Residential progress was noted. [redacted] was still looking at transitioning [redacted] back to the public school setting. (P 1, pp. 287 - 295)

[redacted] expressed to [redacted] concerns that [redacted] has no reliable way to communicate and that they felt a return to [redacted] was appropriate. [redacted] expressed a number of times its desire to initiate transition activities to have [redacted] return to [redacted] Public Schools. (SB 3, Ex. 11)

[redacted] sent speech therapists and the consulting teacher to visit with [redacted] to [redacted] and to look at his communication system. They wanted to provide [redacted] opportunity to know some of the staff he would be working with on returning to [redacted]. Transitioning planning services including home visits also were presented to [redacted]. (Tr. 3, pg. 330)

From his admission in April of 2004 to June 22, 2004 [redacted] was using phase one of PECS and his progress with PECS was inconsistent. More aggression was observed in school and fewer incidents of physical aggression and self-injurious behaviors were seen at the group home. [redacted] determined that, "This may be due to the differences in the demands required of [redacted] in different settings." (P 1, 163- 165)

The [redacted] Quarterly Progress Summary for period of 8/11/04 - 11/03/04 (SB 3, Ex. 3) provided that:

- a. Occupational Therapy time was temporarily reduced due to a shortage of OT therapists.
- b. Speech Therapy was reduced in part due to low staffing and it was recommended that Speech Therapy be discontinued or placed on hold.
- c. [redacted] was highly agitated much of the time, soiling himself up to 4 times a day and resisting staff attempts to clean him. These behaviors may be due in part to discomfort related to [redacted]'s arm injury and cast.
- d. [redacted] issued a 30 day discharge date for [redacted] of January 7, 2005.
- e. Prescription medications were provided to [redacted] and were being adjusted. (SB 3, Ex. 3)

The 30 day discharge date was subsequently discontinued following a medication change and an improvement in overall behavior. (SB3, Ex. 15)

In August of 2004 [redacted] suffered a broken arm. His cast was removed 10/26/04. (SB2, Ex. 94)

The [redacted] Quarterly Progress Summary for period 11/24/04- 02-15-05 indicated:

- a. While scheduled for 50 minutes of speech therapy a week [redacted] was receiving 25 minutes.
- b. OT time was temporarily reduced due to shortage of OT therapists.
- c. Dramatic reductions in [redacted]'s negative behaviors were noted which may, it was noted, be due in part to the removal of [redacted]'s arm cast and/or medication changes. [redacted] was reported to have made great improvement behaviorally during the quarter. (SB 3 Ex. 21)

Quarterly Progress Summary for period of 2/16/05 - 5/09/05 indicated reductions in 's negative behaviors were maintained. Data indicated a spike in negative behavior immediately following a medication change in late February and towards the end of March.

's quarterly status report for August 2005 to November 2005 indicated wanted to transition back to public schools the last six weeks of the 2005-2006 school year. wanted a transition plan in place. (Tr. 4, pg. 90)

Facilitated Communication

has utilized facilitated communication while at Public Schools and was reported to be doing so with some degree of success. The Psychoeducational Report of 9/15/03 indicated, has reportedly made significant progress with the use of facilitated communication ..." (SB1, Ex.63)

In March, 2003 Ms. , evaluated for Facilitated Communication (SB 1, Ex.27). She believed FC would work for and he began using FC at . (SB 1, Ex. 44) staff reported a big change in behavior and s ability to participate in the general education classroom. (Tr. 1, pp. 149-151)

, M.S. Speech-Language Pathologist evaluated on 9/22/03. She described as a nonverbal child who expresses himself via sounds, facilitated communication, facial expressions, and eye gaze. Ms. concludes that appears to be making "tremendous progress" in his ability to communicate with others and he can express himself effectively since engaging in facilitated communication. (SB 1 Ex. 65)

The "Triennial Evaluation, Summary of Syracuse Community-Referenced Curriculum Guide, completed by and " indicated that, "Since beginning to use Facilitated Communication last year, has made tremendous progress and seems to be much more content in the school setting." This evaluation further provided that, " needs full assistance with safety issues. Although he does use facilitation to communicate, Mrs. and I felt at this point is not able to inform adults of safety concerns or emergencies independently." Additionally it was provided that, " has also had many gains in the past year with his overall functioning in the school setting." SB1, Ex. 64

Ms. was 's special education teacher in the second and third grade. She testified in the years she worked with FC was very successful and she saw a tremendous difference in 's behaviors before it was introduced and after it was introduced. (Tr. 3, pp. 170-171)

Ms. Supervisor of Special Education at , testified that 's needs center around communication and support. She believes can be an academic student and believes from what she observed with facilitative communication he does read. She is concerned that is not getting enough of an academic challenge at (Tr. 3, pp. 327, 328)

Medication and Medical Conditions

It is noted that medications have been prescribed for _____ and medication adjustments have been occurring. Witnesses have addressed their concerns and observations over the effect illness, medications, health, and injury have on _____ and his behaviors. (Tr. 1, pg. 176; Tr. 3, pg. 185). Witnesses have discussed their observations of changes in behavior which occur about the time of a medical event or medicine adjustment being made.

_____ had a broken finger and then a broken arm while he was at _____. From August of 2004 to October 26, 2004 _____'s arm was in a cast. (SB2, Ex. 94) Pain and discomfort were raised as possibly affecting behaviors. He also went through a number of medication issues and medication changes which were raised as having an affect on his behaviors. (P 1, pp. 135-144)

In 2005 _____ observed dramatic reductions in _____'s negative behaviors which they attribute as being due in part to his cast being removed and medication adjusted. He was reported to have made great improvement behaviorally. (SB 3 Ex. 21)

_____ 's medications were adjusted a number of time including, but not limited to:

- a. 2/19/04... Records indicate _____'s alertness was better with medication changes when he was taken off Risperdol and taking Prevacid, Celexa, Clonidine, Bethanacol, Diflucan, B23, Depakote, and Miralax. Reportedly, aggressions were way up at first and leveling off with a problem in refusing to move from place to place. (P 1, pg. 81)
- b. On discharge from CCCA (4/19/04) _____'s discharge medications listed included Helexa, Clonidine, Multivitamin, and Benefiber. His discharge diagnosis included Autistic Disorder, Expressive Language Disorder, Oppositional Defiant Disorder, mild and mental Retardation, severity unspecified. (P 1, pg. 100)
- c. At _____ on 5/01/04 medications listed were Celexa, Multivitanin, Clonodine, Benefiber. (P 1, pg. 111) Abilify was added on 7/13/04 and Abilify discontinued and Seroquel added. (P1. pg. 206)
- f. 8/2/05 Medications include Celexa, Clonidine, Multi-vitamin, Benefiber, Tums, Seroquel, Clonidine, Inderal. (P 1, pg. 292)

A number of references in the exhibits and in the testimony of witnesses draw attention to medication and its possible effect on _____. Medication and medication management have, at times, appeared to coincide with behaviors. _____ being in pain or physical discomfort has also been presented as affecting behaviors. However, it is noted that there was no expert testimony concerning medication/physical illness/injury and the effects or lack of effects thereof on _____.

2 VCR Cassette Tapes

Parents' Exhibits include 2 VCR cassette tapes. These tapes presented scenes concerning _____ and showed views of:

The individual, _____, with _____ in the classroom and with other children.

Educational efforts with _____

Communication efforts and efforts to improve communications with _____

Varying degrees of success and/or lack of success with communication activities including, but not limited to, FC.

Instances of interaction, avoidance, withdrawal, and aggression.

receiving reinforcement and his reaction to the reinforcement.
being denied or re-channeled and his reaction thereto.
s actions which, as described by witnesses, may be a form of his communication.
Instances showing _____'s span of time working on or addressing a project.

As requested, the hearing officer has viewed these tapes. It is noted that the scenes depicted were selective and recorded over various periods of time. The tapes of _____ and what was observed in the tapes was given consideration in this cause.

Burden of Proof

_____ has the burden of proof as they requested this due process hearing. Schaffer v. Weast, 126 S.Ct. 528 (2005)

Free Appropriate Public Education and Least Restrictive Environment

_____ is charged with providing children with disabilities a free appropriate public education ("FAPE") under Individuals with Disabilities Education Act, ("IDEA") 20 U.S.C. Section 1400 et seq., as amended by the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA 04") Pub. L. No. 108-446, 118 Stat. 2647 (2004).

The "Regulations Governing Special Education Programs for Children with Disabilities in Virginia", provides that a free appropriate public education ("FAPE") means special education and related services that meet the requirements of Virginia's special education regulations and are provided in conformity with a child's individualized education program ("IEP") at public expense, under public supervision and direction, and without charge to the student (8 VAC 20-80-10). A free appropriate public education consists of educational instruction specially designated to meet the unique needs of the disabled child and supported by such services as are necessary to permit the child to benefit from the instruction. Board of Educ. of the Hendrick Hudson Central School District, et al. v. Rowley, et al., 458 U.S. 176, 188-189 (1982).

The best possible education is not required. A child with a disability must be provided specialized instruction and related services sufficient to confer some educational benefit. It is not required that the child be furnished of every special service necessary to maximize the child's potential. MM v. School District, 303 F.3d 523, 526-527 (4th Cir. 2002). Federal law establishes only a minimum "baseline" of educational benefit that must be offered students with disabilities. G v. Fort Bragg Dependent Schools, 324 F.3d 240, 248 (4th Cir. 2003). Although not required to provide the best education possible, Congress did not intend that a school system could discharge its duty by providing a program that produces some minimal academic advancement, no matter how trivial. Hall v. Vance County Bd. of Education, 774 F.2d 629, 636 (4th Cir. 1985).

Whether an IEP is appropriate, and whether it meets the statutory definition is a question of fact. DiBuo v. Bd. of Educ of Worcester County, 309 F.3d 184, 188 (4th Cir. 2002). The U.S. Supreme Court held that an inquiry in determining whether a FAPE is provided is twofold. First, have the procedures set forth in the IDEA been adequately complied with? And second, is the IEP developed reasonably calculated to enable the child to receive educational benefits? Rowley, 458 U.S. at 206-207.

The Regulations Governing Special Education Programs for Children with Disabilities in Virginia defines an IEP as a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with Virginia's Special Education regulations (8 VAC 20-80-10). Certain changes have been included in IDEIA 04 with respect to an IEP. In accordance with the IDEIA 04 the IEP must include:

- a. A statement of the student's present level of academic achievement and functional performance.
- b. A statement of measurable annual academic and functional goals.
- c. A description of how the student's progress will be measured and when parents will receive progress reports. and
- d. A statement of the special education and related services and supplementary aides, based on peer-reviewed research, that are necessary to meet the child's unique needs

(Pub. L. No. 108-446, Sec. 614 (d)(1)(A); 20 U.S.C. Section 1414(d)(1)(A)).

Consideration has been given to whether _____ requires a residential placement for *educational* reasons. Only a residential placement that is a necessary predicate for learning is required under the statutes. ***Krulle v. New Castle County Sch. Dist.***, 642 F. 2d 687, 693 (3rd Cir. 1981)

A School is required to provide residential care if the "educational benefits which can be provided through residential care are essential for the child to make any educational progress at all..." ***Burke Co. Bd. of Educ. v. Denton***, 895 F.2d 973, 980 (4th Cir. 1990)

The educational benefit required to meet the FAPE standard must be provided to a disabled child in the least restrictive and appropriate environment with the child participating, to the maximum extent possible, in the same environment as non-disabled peers. ***MM v. School District***, 303 F.3d 523 (4th Cir. 2002). Virginia Regulations require that a disabled child be educated in the least restrictive environment. Least restrictive environment (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (8 VAC 20-80-10)

Courts have stressed that education in the least restrictive environment is not merely a laudable goal but is required. ***Doyle v. Arlington County School Board***, 806 F.Supp. 1253, 1259 (E.D. Va. 1992) *aff'd*, 39 F.3d 1176 (4th Cir. 1994)

Two witnesses were presented by Parents in this cause, Mrs. _____ and Mr. _____

Mrs. _____ doesn't believe the proposed IEP is appropriate but has stated the goals and objectives are in the IEP are appropriate. (Tr. 4, pg. 87) She feels a transition plan needs to be in the IEP however, she doesn't believe _____ should be transitioned back to _____ . Mrs. _____ further believes _____ is making progress at _____. (Tr. 4, pp. 81-86) Mrs. _____ has raised a number of concerns she has over _____ returning to the home involving the effect this would have on her family and her concerns over safety if _____ should act out.

Mr. _____ was called by Parents as a witness. As a Behavior Specialist at _____ he has observed _____ at _____ but testified he has not observed _____ when _____ was not on medication. (Tr. 2, pp. 107, 112) .

It is noted that consideration was given to Mr. _____ testimony that he has not viewed _____ and that he had little, if any, knowledge of what programs _____ might offer. (Tr. 2, pp. 149, 156-67)

_____ has presented a number of witnesses whose testimony and qualifications were discussed above. A number of witnesses have had personal contact with _____, knowledge of knowledge of both schools programs, and knowledge of _____'s needs.

_____ has maintained contact with _____ and with _____ while he is at _____. _____ has been visited and observed at _____ by Ms. _____, Ms. _____, Ms. _____, Ms. _____, Ms. _____, Ms. _____, and _____ (Tr.2, pp. 75-76; Tr. 3, pg. 269, 236-327)

Ms. _____ stated a residential placement is not necessary for _____ to benefit educationally and _____ can meet _____'s educational needs. (Tr. 2, pp. 188, 229)

Ms _____ recommended _____ be exposed to higher order thinking skills. (Tr. 3, pg. 172)

Ms. _____ testified _____ is not getting enough of an academic challenge at _____ and she believes that _____ is most appropriate for _____. She expressed concern over _____'s request to reduce services. (Tr. 3. pp. 327-328, 338) Ms. _____ does not believe a residential placement is appropriate for _____. (Tr. 3, pp. 340-341)

Ms. _____ didn't see any reason why _____ couldn't serve _____ appropriately." (Tr. 3, pg. 283) and she expressed concerns that _____ has the "right to curriculum". She further stated _____ appeared to be benefiting greatly, when not sick, from access to his regular class activities. (Tr. 3, pg. 284).

Ms. _____ testified to concerns expressed to her by _____ the lead speech therapist concerning _____. Ms. _____ was concerned with _____'s communication. She visited _____ and had concerns that he had no reliable way of communicating in the educational and residential settings at _____. (Tr. 2, pg. 258)

A number of matters at _____ have raised concerns including in December of 2004 when _____'s speech therapist recommended discontinuing speech therapy. (Tr. 2, pg. 266, SB3, Ex. 31) Also of concern is when _____'s progress reports indicated _____ was refusing to complete schoolwork (Tr. 2, pg. 261; SB 3, Ex. 15) and the indications that _____'s accuracy with PECS declined.

IEP team met on 7/12/05, 8/24/05, and 10/11/05 attempting to develop a new IEP. Between the meetings contact was maintained between _____ and the parents. Parental input was sought and addressed. Parents participated as active members of the IEP team. However, from the

7/12/05 meeting _____'s parents stated they did not believe _____ should return home and return to _____ (Tr. 2, pg. 268)

A number of drafts were tendered to the _____ by the IEP team. The last proposed IEP offered to the _____ for their approval provided for:

- a. _____ returning to _____ by 4/26/06.
- b. Transitioning services assisting _____ to adjust to the move from _____ to _____
- c. ESY for the summer of 2006 to be considered by IEP team during transition.

(Tr. 3, pg. 367; SB 3, Ex. 49)

An impasse was reached when, on October 11, 2005, the _____ stated they would not sign a IEP that included transitioning _____ back to _____ home. They also have indicated they could not handle _____ at home. (Tr. 3, pg. 148, 222)

_____ educators have testified they believe _____ should be returned to _____ where he can receive educational services in the LRE with same-age peers. They believe that the proposed IEP is, based on his present level of performance, reasonably calculated to provide _____ a FAPE. (Tr. 2, pp. 274-275) Tr. 3, pg. 284, 363;) They further believe _____ is more appropriate for providing educational services due to:

- a. _____'s behavior has deteriorated while at _____
- b. _____ needs to learn daily living skills in the community rather than isolation.
- c. _____ previously benefited from general curriculum.
- d. _____ has a right to access the general curriculum.
- e. _____ believes _____ is able to read. (Tr. 3, pp. 84 ;283 - 284;)

It is further noted that the proposed IEP for _____ includes an increase in speech services from 50 to 90 minutes a week (Tr. 3, pp. 62-63; SB 3, Ex. 49) It is not contested that _____ has autism. Autism is " a developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance." 34 C.F.R. Section 300.7(c)(1)(i). A prime concern for children with autism is communications and social interaction.

In looking at the proposed IEP (SB3, Ex. 49) a number of matters are noted, including:

- a. _____ was given the Brigance Diagnostic Inventory of Earl Development at _____ School on May 11, 2004 and it shows that _____ is able to follow simple directions with verbal prompts.
- b. _____ reported he is able to follow 2 step directions.
- c. Test results with FC from _____ showed strengths in academic levels. _____ and _____ could not replicate this. _____ considered trying FC at eligibility, but has decided to focus on PECS. _____ is receiving instruction in using PECS (Phase 1) for communication and is doing well with this phase but is inconsistent.
- d. _____ was not given any standardized ability or achievement tests as he was not able to verbalize his answers or follow test directions.
- e. Speech evaluation suggests that _____ appears to understand what he hears, although a relative deficiency in receptive language is noted.
- f. Assessments by _____ in March, 2005 indicate moderate problems with harm to self or others, destruction, disruption, unusual habits, withdrawal, inattention, and not cooperating.

- g. _____ would greatly benefit from speech therapy.
- h. _____ recommends continued effort to find a communication device that _____ will use.

A division of opinion has developed. _____ indicates that due to level of achievement, communication deficits, and maladaptive behaviors _____ is unable to succeed in general education curriculum for his grade level and needs to be working on curriculum for kindergarten and grade 1. _____ indicates that the kindergarten/grade 1 curriculum may be well below _____'s interest and achievement levels (based upon past performance in _____ and on 4/05 observations by _____ staff).

The IEP team had a disagreement as to whether or not there are barriers to _____ attending public school. On one side, _____ and _____ parents, said there are barriers relating to attending public school. These barriers are limited or no contact during communication attempts, no demonstrated desire to initiate communication, no functional use of augmentative communication systems, aggression to self and other, difficulty motivating, difficulty with sensory regulation, and toileting accidents. On the other side _____ IEP team members said these are not barriers to attending public school.

The draft IEP report gains have been made in _____'s attempts to show communicative intent. _____ behavior specialists report improvement in _____'s ability to control or reduce some negative behaviors and _____ staff indicate that _____'s behavior has stabilized. Incidents of aggression and plopping have decreased but are still a concern.

The _____ and _____ have different views on FC and the effect that FC could have on _____. As discussed above, _____ has felt there have been some progress and successes noted with _____ using FC. Parents had request FC be discontinued at _____ has presented that FC is not the only communication method used but is one method used.

It further appears that the _____ have concerns over _____ returning to their home. The severity of behaviors reported by _____ in the home have not been necessarily observed by the School. _____ did not observe the level of aggression that was reported at home nor even what was reported in school. (SB 2, Ex. 12). The composite scatter plot of data observed in May of 2003 indicated that hitting and biting behaviors were more likely to occur in the afternoons from 4:00 until bedtime in the home setting and these behaviors were sporadic at school. (Tr. 3, pp. 241, 241; SB1, Ex. 44)

A number of educators have testified in this cause and is documented in the exhibits. _____ has presented testimony of professional educators who have expressed that the nature and severity of _____'s disability is such that education in regular classes, with the use of supplementary aids and services, can be achieved and _____ is able to achieve educational benefit from the IEP which is proposed for him at _____

A due process hearing is by no means an invitation to hearing officers to substitute their own notions of sound educational policy for those of the school authorities which they review. Board of Educ. of the Hendrick Hudson Central School District, et al. v. Rowley, et al., 458 U.S. 176, 206 (1982).

Once a procedurally proper IEP has been formulated, a reviewing body should be reluctant to second guess the judgment of educational professionals. Tice v. Botetourt Co. School Board., 908 F.2d 1200, 1207 (4th Cir. 1990)

The responsibility for determining the appropriate delivery of special education and related services rests with the IEP team. Although the Parents disagree with the IEP Team's determination regarding returning to primary responsibility is with the IEP Team with parental participation.

Reviewing officials should not second-guess the educational judgments of school employees. Faulders v. Henrico County School Bd., 190 F.Supp 2d 849, 853 (E.D. Va. 2001) Additionally, a Hearing Officer should defer to the expertise of professional educators when it comes to educational methodologies and strategies required to effectively educate special education students. Barnett v. Fairfax County School Board, 927 F. 2d. 146

The testimony of educational professionals who have had contact with involvement in his assessments, involvement in the IEP process, and who are aware of his programs both at and , indicates the proposed IEP is able to provide a free appropriate public education for in the least restrictive environment. Additionally, it establishes that is able to derive educational benefit from the proposed IEP.

has complied with the procedures set forth in the IDEA as amended by IDEIA and the IEP offered on October 11, 2005 (SB 3, Ex. 49) is reasonably calculated to enable to receive meaningful educational benefits. has met its obligations under IDEA as amended by IDEIA 04.

VIII. DECISION:

Upon consideration of the evidence in this cause, applicable statutes and regulations, for the reasons above stated it is the decision of the hearing officer that:

1. has met its burden of proof.
2. would not be denied a free appropriate public education ("FAPE") in the least restrictive environment ("LRE") if he is transitioned from and placed in the Public Schools.
3. The IEP offered by at the October 11, 2005 IEP team meeting, which is set forth in SB3, Ex. 49, is reasonably calculated to provide a free appropriate public education in the least restrictive environment to
4. Continued placement at is not necessary to the provision of a free appropriate public education in the Least Restrictive Environment to

5. The IEP which was offered at the IEP meeting of October 11, 2005 (SB 3, Ex. 49) shall be implemented by _____ and _____ returned to _____ Public Schools as provided in said IEP.
6. Determination is further made that:
 - a. The requirements of notice to the parents were satisfied.
 - b. _____ has a disability.
 - c. _____ needs special education and related services.
 - d. _____ Public Schools is able to provide a free appropriate public education.

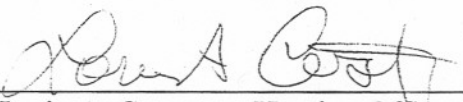
X. APPEAL AND IMPLEMENTATION:

1. Appeal rights: A decision by the hearing officer in any hearing shall be final and binding unless the decision is appealed by a party in a state circuit court within one year of the issuance of the decision or in a federal district court.

2. Implementation Plan: The local educational agency shall develop and submit an implementation plan within 45 calendar days of the rendering of a decision or the withdrawal of a hearing request with the following exception: the appeal or consideration of an appeal of the decision by the local school division and the decision is not an agreement by the hearing officer with the parent or parents of the child that a change in placement is appropriate.

FINAL DECISION DUE DATE: February 27, 2006.

February 27, 2006



Lorin A. Costanzo, Hearing Officer

Copies of this Decision and Final Hearing Report mailed to:
Dr. Judith A. Douglas, Office of Dispute Resolution and Admin. Services,
Va. Dept. of Education
P.O. Box 2120
Richmond, VA 23218-2120

Mr. Brad King, Esq.
Harrell & Chambliss
707 East Main Street
Richmond, VA 23219

, Director of Special Education