

04-108

Local Hearing XX



### CASE CLOSURE SUMMARY REPORT

*(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of the special education hearing and submitted to the Department of Education before billing.)*

Public Schools  
 School Division \_\_\_\_\_  
 \_\_\_\_\_  
 Name of Child \_\_\_\_\_  
 J. Thomas Tokarz  
 \_\_\_\_\_  
 Counsel Representing LEA \_\_\_\_\_  
 Parent  
 \_\_\_\_\_  
 Party Initiating Hearing \_\_\_\_\_

Mrs.  
 \_\_\_\_\_  
 Name of Parents \_\_\_\_\_  
 \_\_\_\_\_  
 6/28/04  
 \_\_\_\_\_  
 Date of Decision \_\_\_\_\_  
 Mrs.  
 \_\_\_\_\_  
 Counsel Representing Parent/Child \_\_\_\_\_  
 Schools  
 \_\_\_\_\_  
 Prevailing Party \_\_\_\_\_

#### Hearing Officer's Determination of Issue(s):

Reimbursement for cost of private school was sought. Child has ADHD, and other problems. Program offered by Schools in current IEP provided FAPE, and was the Least Restrictive Environment.

#### Hearing Officer's Orders and Outcome of Hearing:

Reimbursement denied.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

Urchie B. Ellis  
 \_\_\_\_\_  
 Printed Name of Hearing Officer

\_\_\_\_\_  
 Signature

DEPARTMENT OF EDUCATION  
DUE PROCESS HEARING

PUBLIC SCHOOLS  
(Schools, LEA)

Mrs.  
(Parent)

(Child)

June 28, 2004  
(date of decision)

J. THOMAS TOKARZ  
(counsel for Schools)

Mrs.  
(counsel for Parents, Child)



DECISION OF HEARING OFFICER

This proceeding was initiated by the Parent, on behalf of the Child, by Request for Due Process Hearing filed with Schools on May 25, 2004. Prompt handling with the Parties lead to arrangement for hearing on June 23, 2004. The Hearing Officer had no conflicts, and the Parties had no objection to the Hearing Officer. Prehearing telephone conferences took place on June 3 and June 17. Mediation was unsuccessful. The hearing took place and was completed on June 23, starting at 9:30 A.M. and ending at 2:45 P.M.

The Parties got together and submitted a compilation of 95 exhibits, all of which were received, plus a 96th Exhibit presented and received at the hearing.. The Parent presented 3 witnesses, the Mother and both Grandparents, and the Schools presented 2 witnesses, a principal and a staff special education expert . Both sides made opening and closing arguments.

The Request for Due Process Hearing stated that Child "was diagnosed ADHD" and that the experience in the several programs at Schools had been a disaster, particularly in 6th grade where the students were cruel and the teachers did not understand ADHD; and that Child had been sent to a local private school for 7th grade; and they now desired to send Child to another private school. Cost about \$13,000. Reimbursement is sought.

THE FACTS: Child was born and is now years old. There is no dispute about her ADHD problems, and the various test reports in the exhibits make clear that she is in the low average level on cognitive ability, or IQ. She was in several of Schools facilities for 1st, 2d, 3d, and 4th grades, and in another state for 5th grade, and back to Schools for 6th grade; and to a private school for 7th grade. Parent desires to send Child to another private school for 8th grade, and is seeking reimbursement.

There have been several Individual Educational Programs, IEPs, which recognized the ADHD condition, and the academic problem, and attempted to provide a suitable

(2)

program. The IEP currently in issue is dated 6/10/04 (Ex. 89). It provides for various special education classrooms, programs, services, and accommodations.

There is no question that Child has had difficulties related to conduct and academics, and has been the subject of frequent concerns by Schools staff people, and frequent handling with the Mother, and the Grandparents who have been closely involved for 10 years and shared in the responsibility.

Various of the Exhibits over several years reflected that Child had made some progress in 5th, 6th and 7th grades, notwithstanding some serious conduct problems, related to ADHD. Parent and Grandparents felt that the Schools programs did not give Child sufficient attention and help. The placement sought by Parent for Child is at a small private school, with about 50 pupils, and student-teacher ratio of 8-1. The letter exhibit sounded like it could be a helpful situation, and the Parent thought it would be better than the program offered by Schools. However, the desired private school did not have the various professional staff persons and back-up services available at Schools. There was no evidence of its success with ADHD. All, or most, of its pupils had various special problems, so there would be little chance for participation with regular students in a least restrictive environment. Schools program offered some association with other pupils and thus the LRE.

Several of the exhibits, and the testimony of both witnesses for Schools, stated that the IEP was appropriate for Child and would provide educational benefit in the LRE.

**THE APPLICABLE LAW:** It is fundamental, that in order to obtain reimbursement for private school costs, the Parents must establish that the Schools are not providing a Free Appropriate Public Education (FAPE) and that the arrangements proposed by the Parents do provide FAPE. Burlington v. Dept. of Ed. Mass., 471 U.S. 359 (1985).

Related issues are that the Schools have complied with required procedures, and that the IEP is reasonably calculated to enable the child to receive educational benefits. Board of Education, etc v. Rowley, 458 U.S. 176 (1982). Least Restrictive Environment is also a factor to be considered.

Cases have held that IDEA does not require that a child be able to maximize potential, but that a plan must offer some educational benefits, and need not offer every special service necessary to maximize potential.

**CONCLUSIONS:** (1) The Child has ADHD, and defined problems and needs, and there is little, if any, dispute between the parties on these details.

(3)

(2) The IEP and public school program for the schoolyear 2004-5 is before the Hearing Officer, who concludes that it provides a FAPE for Child, in the Least Restrictive Environment.

(3) It is not necessary to determine if the private school does provide FAPE.

(4) There are no procedural problems.

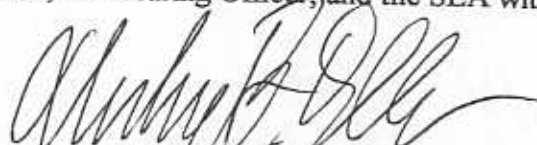
(5) The Hearing Officer heard the witnesses, reviewed the exhibits, and has given the matter considerable thought, and concludes that the preponderance of the evidence supports the position of Schools that it did offer FAPE. The Parents have not met their burden of proof.

(6) The sought reimbursement for the cost of the private school is denied.

ORDER: Reimbursement is denied. The proceeding is dismissed.

Either party has the right to appeal this decision by filing the appropriate action in a Virginia Circuit Court or U. S. District Court with jurisdiction. Any party wishing to appeal is advised to consult with legal counsel about procedures and deadlines. See Virginia Regulation 8 VAC 20-80-76 O Right of Appeal. Schools has a responsibility to submit an implementation plan to the parties, the Hearing Officer, and the SEA within 45 days.

dated: June 28, 2004

  
Archie B. Ellis, Hearing Officer  
Va. State Bar

cc: Parties ; Virginia Dept. of Education; Schools.