

## 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

John F. Cafferky, Esq.

Counsel Representing LEA

Parent,

Party Initiating Hearing

Mrs.

Name of Parents

February 25, 2005

Date of Decision or Dismissal

Lynn C. Brownley, Advocate

Counsel Representing Parent/Child

Public Schools (in Part)

(in part)

Prevailing Party

Hearing Officer's Determination of Issue(s):  
learning disability under IDEA.

burden of proof for reimbursement for  
and School.

Petitioner's appeal of placement at

is DENIED, as well as her claim for compensatory education. H.S., pursuant to the August, 2004 IEP  
from the intensive reading program, part-time, pursuant to my Final Order. would benefit

Hearing Officer's Orders and Outcome of Hearing:

Petitioner's appeal of the August 2004 IEP placement of at  
High School is denied. The claims for reimbursement and compensatory education  
are denied, except for

It is ordered that will complete her high school education at  
High School, and that an IEP be arranged to work out a schedule for part-time  
attendance at , pursuant to my Final Order attached hereto.

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.

LOUIS S. PAPA

Printed Name of Hearing Officer

Signature

VIRGINIA:

DUE PROCESS HEARING  
Special Education Appeal

Complainant,

v.

: In re:

PUBLIC SCHOOLS

Respondent

FINAL DECISION OF HEARING OFFICER, LOUIS S. PAPA

This formal Due Process Hearing was conducted for a period of seven days commencing December 6<sup>th</sup> through December 16<sup>th</sup>, 2005, at the Center, Virginia.

was represented by Lynn C. Brownley, legal advocate, and Public Schools was represented by John F. Cafferky, Esquire, of the law firm of Blainingship & Keith.

The transcript of the said Hearing comprised a total of 1,874 pages. The written briefs submitted by respective counsel totaled 116 pages; 48 by Mr. Cafferky and 68 by Mr. Brownley. Twenty-two witnesses were called to testify by the parties. Five large binder books of evidentiary documents were admitted into evidence.

The issues as outlined in my Pre-Hearing conference report of June 25, 2004 are as follows:

1. Whether or not Petitioner is entitled to reimbursement for tutoring and private placement for periods within the State of Limitations,
2. Whether or not Petitioner is entitled to unliquidated payment for compensatory education and whether the damages are retroactive
3. Whether "dyslexia" is a learning disability under IDEA.
4. Whether extended school year services were improperly denied to
5. Whether was denied FAPE under IDEA in the IEPs.

INTRODUCTION:

is a bright, intelligent 16 year old young woman student

who qualified for special education services in the first grade due to a learning disability in reading. She received special education in Public Schools where she was provided a fair and appropriate public education (FAPE) until May 16, 2002 at which time her mother, , withdrew from Middle School to pursue other unilateral private education for her daughter.

Mrs. is an extremely intelligent, highly motivated, loving and devoted mother who will make every sacrifice, seek and try anything in an effort to benefit her daughter. As a parent I can empathize with Mrs. However, in our attempts to help our children we parents sometimes permit our emotions to rule our decisions.

In the past 2 ½ years has been placed unilaterally by Mrs. in four different private schools, namely, (1) SCHOOL, for two months, (2) SCHOOL, for less than six months, (3) SCHOOL, from March 29, 2004, and finally (4) School for the 2004-2005 school year. In the fall of 2002 Mrs. enrolled at the in Washington, D.C.

The last Public School IEP meetings for were held over a four day period in August 2004. The IEP teams made a number of serious proposals for her educational needs at High School, all of which were summarily rejected by Mrs.

This recommended program would more closely, in my view, meet special education needs in a school close to her home, her friends and her neighbors. She would receive special education reading classes from teachers with graduate degrees in special education. And, as stated, High School offers a wide variety of extracurricular activities in sports, games, foreign languages, the arts, music and others. Further, it administers Virginia Standards of Learning (SOL) examinations and would best prepare her for a college education.

I further find that in addition to the August IEP recommendations would benefit from an intensive reading program such as offered by .. As Louisa, Ed.D. testified "it is an approach that requires a trained specialist but it stands the best chance of accelerating's rate of progress". However, the program, standing alone, would fail to provide with an appropriate well rounded education for the reasons stated above. It would only be of benefit as a supplement to her education at High School, pursuant to the August, 2004 IEP.

### CONCLUSIONS OF LAW

The INDIVIDUALS WITH DISABILITIES ACT (IDEA) 20USC1400, et sec. requires that all handicapped children have the right to a "free and appropriate public education" (FAPE), which Public Schools has provided.

The Petitioner herein requests reimbursement for the costs of the unilateral placement of in four different private institutions. However, no credible evidence was produced that received any appreciable educational

benefit from her brief attendance in each school. Accordingly, they were not appropriate.

Mrs. [redacted] in her zeal to find the best and most ideal program for [redacted]'s learning disability, namely, her dyslectic reading problem, has tried four different schools: [redacted] School (less than two months); [redacted] School (about 6 months); [redacted] School (about 3 months). No representatives from any of those schools attended the Hearing.

[redacted] is enrolled presently in the [redacted] School, a private school in [redacted], Virginia. It has no special education reading program.

None of the four schools named above provided [redacted] an appropriate education. Requested reimbursement for these schools is denied.

Accordingly, I do hereby affirm the IEP of August 2004 and order her placement at [redacted] High School with the implementation of the educational goals proposed.

In conjunction with [redacted]'s full time attendance at [redacted] High School I hereby rule that she be permitted to enroll in the intensive reading program at [redacted] on a part-time basis so as not to interfere with her classes at [redacted]. I direct the IEP team to work out an acceptable schedule and even consider an extended school year program at [redacted], which I direct be funded by [redacted] Public Schools. Petitioner also is to be reimbursed for her provable tuition and transportation expenses for her prior [redacted] program.

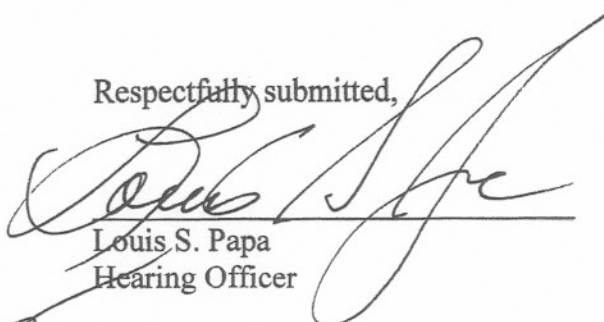
Petitioner's request for reimbursement of all other educational expenses, actual or compensatory, is denied.

In conclusion, I wish to express my admiration and respect for Mr. Brownley's and Mr. Cafferky's scholarly and professional conduct of this proceeding. Also, the witnesses for both sides were sincere and cooperative.

It is my hope that [redacted] will progress and live a full and happy life. Mrs. [redacted] must be respected for her fearless assertiveness in defense of [redacted].

This Decision is final and binding unless it is appealed by either party within one year from the issuance hereof. The appeal may be filed in a Virginia Circuit Court or a United States District Court.

Respectfully submitted,

  
Louis S. Papa  
Hearing Officer

  
Date of Issuance February 1, 2005

Copies mailed to:

Virginia Department of Education  
John F. Cafferky, Esquire  
Lynn C. Brownley, Esquire