

CASE CLOSURE SUMMARY REPORT



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

\_\_\_\_\_  
School Division

Dr. \_\_\_\_\_  
Ms. \_\_\_\_\_  
Name of Parents

\_\_\_\_\_  
Name of Child

Sept. 25, 2004  
Date of Decision or Dismissal

John Cafferky, Esq.  
Counsel Representing LEA

William B. Reichhardt, Esq.  
Counsel Representing Parent/Child

Parent  
Party Initiating Hearing

\_\_\_\_\_  
Prevailing Party

Hearing Officer's Determination of Issue(s):

Did the IEP prepared for the 2004-2005 school year which provided for private placement provide FAPE ?

Hearing Officer's Orders and Outcome of Hearing:

IEP did provide FAPE. Decision in favor of school system

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.

Lawrence E. Lindeman  
Printed Name of Hearing Officer

*Lawrence E Lindeman*  
Signature

**VIRGINIA DEPARTMENT OF EDUCATION**

**SPECIAL EDUCATION DUE PROCESS HEARING**

In the Matter of:

Dr. \_\_\_\_\_ and Ms. \_\_\_\_\_

v.

Public Schools

William B. Reichhardt, Esq. for Dr. \_\_\_\_\_ and Ms. \_\_\_\_\_  
John F. Cafferky, Esq. for \_\_\_\_\_ Public Schools

**HEARING OFFICER DECISION**

**Preliminary**

This matter was instituted by a July 9, 2004 letter from William B. Reichhardt, Esq., on behalf of Dr. \_\_\_\_\_ and Ms. \_\_\_\_\_, parents of \_\_\_\_\_, to the Virginia Department of Education requesting a due process hearing. Mr. Reichhardt averred that the 2004-2005 Individualized Educational Program (IEP) fails to provide \_\_\_\_\_ with a free appropriate public education (FAPE), fails to provide a setting that gives him opportunities and interventions in academic, social, and daily living skills on a continuous and meaningful basis, fails to offer him any transitional services from a residential program to a private day program and fails to offer social skills as a part of the extended school year (ESY) services.

By letter dated July 15, 2004 the undersigned was appointed as hearing officer.

On July 26, 2004 a telephonic prehearing conference was conducted. Mr. Reichhardt appeared on behalf of the parents, and Mr. Cafferky appeared on behalf of \_\_\_\_\_ Public Schools (\_\_\_\_\_). The parties agreed that the primary issue was the appropriateness of the IEP. Hearing was scheduled and held on September 13, 14, and 16, 2004 at the \_\_\_\_\_ facilities in \_\_\_\_\_ Virginia.

In this decision exhibits introduced by the parents will be identified as "Ex" and exhibits introduced by \_\_\_\_\_ will be identified as "Ex \_\_\_\_\_". Transcript references to the September 13 hearing will be referred to as "D1Tr", transcript references to the September 14 hearing will be referred to as "D2Tr", and transcript references to the September 16 hearing will be referred to as "D3Tr".

#### Statement of the Case

\_\_\_\_\_ is a fifteen year old eighth grader currently attending \_\_\_\_\_ school in \_\_\_\_\_, Massachusetts. He has been eligible for special education services since he attended \_\_\_\_\_ Elementary School in \_\_\_\_\_, Virginia (Ex \_\_\_\_\_ 1).

In May, 2000 \_\_\_\_\_ concluded that \_\_\_\_\_, a fourth grader at the time, continued to be eligible for special education services as a student with specific learning disabilities ( Exs. \_\_\_\_\_ 2 & 3). Thereafter, on June 15, 2000 an IEP was proposed for \_\_\_\_\_ and agreed to by his parents. The IEP provided for a variety of special education services in math, spelling and language, social studies and science. It also provided for an assistant who monitored his academic and social endeavors, and accommodations for test taking and classroom behavior. It established short term goals and objectives to be attained by \_\_\_\_\_ during the following school year (Ex. \_\_\_\_\_ 19).

One year later, June, 2001, another IEP was prepared for \_\_\_\_\_. This IEP reviewed \_\_\_\_\_'s history of learning difficulties, and his past and present levels of performance. It concluded that \_\_\_\_\_ had had a successful year as a fifth grader. He, with the monitoring of his assistant, participated in a contained math class, and in regular science and social studies classes. He was given speech-language services for approximately 90 minutes per week in his regular classroom. It noted that he continued to have difficulties in listening and following

directions. His relationships with his peers increased during the course of the year. Again, the IEP set forth certain short term goals for [redacted] to attain during the upcoming academic year ( [redacted] Ex. 20). In October, 2001, the IEP was modified to move [redacted] from a regular science class to a self contained science class (Ex. [redacted] 21).

In June, 2002, another IEP was prepared for [redacted]. This IEP found that he suffered from multiple disabilities. It concluded that while his social skills had improved, there were some areas, such as attentiveness, that need additional work. The IEP noted that he had been tested in January, 2002 to assess his current academic functioning. Generally speaking, his test results were in the lowest limits of average, or below average. Classroom accommodations and modifications for [redacted] were continued, as was the assignment of a personal assistant. Short term goals for the upcoming school year were also established (Ex. [redacted] 22). In the Fall of 2002 the IEP was slightly modified to address certain concerns expressed by the parents regarding [redacted]'s progress (EXs. [redacted] 23, 24, 25; D1Tr. 38).

Another IEP was prepared for [redacted] in June, 2003. In reviewing his performance for the previous year, the IEP present level of performance indicated that [redacted] continued to have significant deficiencies in reading, writing, math, and social skills. Psychological evaluation reports of [redacted] prepared in October and December, 2002 indicated that [redacted] had borderline to average cognitive abilities. His cognitive strengths lie in his conceptual reasoning skills and his ability to make connections between objects and ideas. His cognitive weaknesses are verbal processing, nonverbal/visual skills, attention, and executive functioning abilities. The achievement results from October and December, 2002 testing reveals [redacted]'s strengths to be in the areas of reading decoding, math reasoning, and spelling. His weaknesses lie in the reading comprehension, written expression, and math calculations. [redacted] continued to have a personal assistant assigned to him, and to have general and testing accommodations made

for him. Short term goals for the upcoming school year were also established. In addition, in July, 2003 an Individualized Transition Plan, which set forth the goals for the transition services to be provided for [redacted], was produced (Ex. [redacted] 27). The IEP was amended to provide for the occupational therapy services and social studies class to be moved to a special education environment (Ex. [redacted] 28).

An IEP was also prepared for the 2004-2005 school year, and a discussion of that IEP will be contained elsewhere in this decision.

At various times in the past [redacted] has been diagnosed as having a non-verbal learning disability, multiple disabilities, Aspergers, pervasive developmental disorder (PDD), semantic-pragmatic disorder, learning disabilities in all academic areas, speech/language delays, an attention deficit disorder (ADD), and being a slow learner with specific learning disabilities (Ex. 4; D1Tr. 37, 180; D2Tr. 130, 168; D3Tr. 52, 69).

[redacted] was a student in the [redacted] school system from the first grade through middle school. For the 2003-2004 school year he attended [redacted], pursuant to an agreement between the parents and [redacted] (Hearing Office Ex. 1; Ex. PS 30-35, 37;)

Dr. [redacted] is [redacted]'s father. He has been actively engaged in [redacted]'s special education participation since [redacted] first became eligible, when he first started school. [redacted] was assaulted and teased at [redacted], and Dr. [redacted] thought that [redacted] was not a safe environment for him. He heard about [redacted] from a friend, and placed [redacted] there for the summer session in 2002. [redacted] did not qualify for [redacted] ESY services during that period of time because he didn't regress enough during the summer months (D3Tr. 5, 7, 8-10).

Dr. [redacted] has participated in all of [redacted]'s IEP meetings. After the private day placement was recommended in 2004 there was no discussion regarding any particular program. Furthermore, there were no conversations with [redacted] personnel regarding any specific

private day program at any time. He is simply looking for the program which best meets the needs of his son. If a private day program could be found which would meet this criterion, he would have no objection to 's participation in such a program (D3Tr. 5, 146-148, 152, 154, 155, 156).

In April, 2004 Dr. made a deposit with for the 2004-2005 academic year. In May, 2004 he made a deposit for the 2004 summer program. Had he not made the deposits, 's potential place in these programs might have been allotted to another (Ex. 68 & 69; Tr. 10, 161)

is 's mother. She has been extensively involved in 's special education participation since its inception. She has observed him in class, communicated frequently with his teachers, and attended all of the IEP meetings. She thought that the special education program for elementary for was good, but was less than enthralled by the program. In order to assist, she contacted the Virginia Autism Research Center (VARC) and induced them to put on a seminar at which 's special education team attended. In addition, VARC provided training for s individual aide (D1Tr. 36; D3Tr. 165-167, 171).

She frequently communicates with both and his counselors and teachers, and thinks that the staff deals very well with (D3Tr. 172, 180).

Ms. visited School in 2003 when she was considering a private placement for . However she was not impressed, and concluded that it was not an appropriate program for her son. She also visited School, and did not think that its program was appropriate for either. She informed the IEP team members of this position during the June, 2004 IEP meeting (D3Tr. 176, 177-179, 220, 236-237, 248).

Ms. [redacted] testified that she was unable to agree with the private day placement of the IEP because she had insufficient knowledge regarding the specifics of the program. She also indicated that supplemental services would be necessary to meet the IEP goals and objectives, and these services should be specified in [redacted]'s IEP. This is especially true since [redacted] has a difficult time adjusting to transitions in his life (D3Tr. 217, 218-219).

Subsequent to the IEP meeting and report, which the parents refused to sign except insofar as it related to the summer ESY program, as they did not agree with the placement conclusion, [redacted] sent out application packets to five private day schools in the Washington metropolitan area. [redacted], [redacted] School, and [redacted] reviewed the packet and concluded that they did not offer the type of services [redacted] needed, or that they had no openings. [redacted] requested an interview with Ms. [redacted], which she attended in early July. She spent approximately one and one-half hours, and spoke with Ms. [redacted]. ESY was not discussed. She also observed a class in the gym. She concluded that [redacted] was simply not a good fit for [redacted]. She also visited [redacted] but concluded that it had no social programs beyond the normal school day, which did not seem to fit [redacted] needs (Ex. [redacted] 18; D3Tr. 196, 200-203, 204, 205, 208, 209-210, 212, 214, 234, 249).

[redacted], Ph.D. has been a neuropsychologist since 1984. He received his undergraduate and master's degree from the University of Washington, and his Ph.D. from the University of Minnesota. He has been on the staff at Harvard University and Tufts University Hospitals, and is currently on the staff at Children's Hospital and George Washington University Hospital. The majority of his patients are special education students. He presently evaluates children for special education programs, and is familiar with the IEP process (D3Tr. 22, 23-24, 25).

Dr. \_\_\_\_\_ has known \_\_\_\_\_ since he was approximately five or six years old. \_\_\_\_\_ parents became concerned about his academic and social progress, so Dr. \_\_\_\_\_ performed a psychological evaluation of \_\_\_\_\_ in September and October, 2002. This evaluation consisted of the administration of some twenty-five tests and subtests (Ex. 4; D3Tr. 26, 27, 28).

The evaluator, Dr. \_\_\_\_\_, Ph. D., concluded that \_\_\_\_\_ was friendly and enthusiastic and worked well within the structure of the one-on-one testing. However, he did demonstrate difficulty in sustaining his attention, and was distractible. He also displayed significant language problems (Ex. 4).

On the Wechsler Intelligence Scales for Children - Third Edition (WISC-III) test \_\_\_\_\_ demonstrated a verbal IQ of 84, a performance IQ of 66, and a full scale IQ of 73. These scores indicate \_\_\_\_\_'s relatively strong performance in verbal conceptualization, and relatively weak performance in spatial and visual performing. Dr. \_\_\_\_\_ concluded that \_\_\_\_\_'s ability to learn and to retain verbal material was appropriate for his age, but his ability to think flexibly and retain information in working memory was less well developed. On the performance scale, Dr. \_\_\_\_\_ concluded that \_\_\_\_\_'s abilities were impaired, which was consistent with his previous diagnosis of having a nonverbal learning disability (Ex. 4).

In the area of verbal information processing, \_\_\_\_\_'s word knowledge was average, but his verbal comprehension and verbal expression/production were below average. In the areas of verbal learning and memory, phonological awareness, and verbal concept formation and abstract reasoning \_\_\_\_\_'s performance was uneven or inconsistent (Ex. 4).

The visual-spatial organization and visual-motor integration tests indicated that \_\_\_\_\_ was performing at a below average scale. The attention and executive functioning tests demonstrated that \_\_\_\_\_ had difficulties in these areas. Dr. \_\_\_\_\_ concluded that the



problems in the attention area indicated that [redacted] had a continuing attention disorder (ADHD), which his medication was not containing, and that the problems in the executive functioning area indicated that [redacted] had difficulty in generating and implementing strategies to organize and retrieve information (Ex. 4).

In the academic achievement areas, the test scores revealed that although [redacted]'s reading skills were average, his reading comprehension skills were below average. Similarly, although his spelling skills were average, his ability to compose logical and grammatically appropriate sentences was below average. His math skills were uniformly below average, which is consistent with the diagnosis that [redacted] has a specific learning disability in the math area (Ex. 4).

In the area of social/emotional functioning, Dr. [redacted] concluded that [redacted] is an immature and vulnerable youngster, quite dependent on adults for guidance and structure in his life (Ex. 4).

The psychological evaluation concluded that [redacted] needed an environment which would provide him with intensive, multi-sensory instruction in all academic areas, and enable him to improve his self-esteem and social abilities. His academic requirements would include a small class size and some individual tutoring. His social skills requirements would include intensive one-on-one instruction and supportive group activities (Ex. 4).

Dr. [redacted] testified that [redacted] primary deficits were his multiple deficits, including nonverbal learning disabilities, memory problems, attention and executive functioning problems, and social problems. [redacted]'s weaknesses are extremely weak. He needs to feel safe, otherwise he experiences severe attention problems. He also needs a low student/teacher ratio to learn. His social/emotional environment is enormously important to [redacted], as he cannot function under stress. [redacted] has difficulties in understanding others, in

verbally defending himself, and in properly interpreting social clues (D3Tr. 31-33, 34, 35, 37, 38, 43-44, 45, 69).

Dr.        saw        in June, 2004, and is of the opinion that there are many benefits to        s attendance at        . His social and emotional development was very good at        , as he developed friends. Frequently private day students do not develop friends outside of school.        became more relaxed and self confident, and learned to self regulate.

      is also important because most of the students there are at the same level, with the same disabilities. The twenty-four hours per day, seven days per week intervention facet is extremely important for        . The        program is designed specifically for the low functioning limited disability student, such as        (D3Tr. 29, 47-49, 50, 82).

Dr.        is concerned that if        is placed with students having significant behavioral problems this will have a negative impact on him.        is basically a well behaved student and does not need a behavioral based program (D3Tr. 54-55, 56).

Dr.        stated that        could benefit from private day placement, but that the program would have to be specifically geared to low functioning limited disability students, plus provide social skills services and supplemental services, such as speech and language therapy, etc. However, he did not know of any private day school in the Washington metropolitan area which provided this panoply of services, but has not had any recent contact with        or        . He though that transitions were also important to        , as they tend to make him anxious and stressed. He believed that transition planning should be part of the IEP (D3Tr. 58, 59-61, 62, 70, 71-72, 76, 77).

      is a licensed clinical social worker and child psychologist who has been engaged in practice for the past twenty years. She has been working in the area of child autism spectrum disorders for the past thirteen years, and sees approximately fifty children

per year. She works with children and their families, special education programs, and participates in IEP meetings (D2Tr. 102-103).

Ms. [redacted] has known [redacted] for the past six years. She evaluated him for his social skills group, and continued to counsel him approximately twice weekly until he went to [redacted]. She continues to see him when he is home for breaks, etc. She worked with the staff at [redacted] elementary school when [redacted] was a student there, and helped to establish a social skills program for him there. She reviews his IEPs yearly, and makes suggestions regarding them to his parents and school officials (D2Tr. 109-110, 112, 113).

When [redacted] attended [redacted] it was a particularly stressful time for him. He had high anxiety, and was scared and confused. He felt over controlled by the aide who had been assigned to him. He was teased and bothered by disruptive students. She had meetings with [redacted] administrators and found them to be receptive to her suggestions. She communicated with [redacted], outlining the problems and suggesting solutions (Ex. 5; D2Tr. 115-117, 173-174, 177, 211-212, 214-215).

Ms. [redacted] reviewed Dr. [redacted]'s evaluation of [redacted], which she agreed with. [redacted] has nonverbal learning disabilities, and PDD. He has extreme executive function deficit, which are the components which permit a person to process information, make plans, etc. [redacted] is self absorbed, and has problems engaging in dialogues with his peers. He is good at following specific, logical instructions and directions. He can communicate well, but not function at the same level of communication (D2Tr. 167-171, 172).

She has noticed a change for the better in [redacted] since he has been attending [redacted]. He looks different, has a broader range of topics to discuss, is more willing to listen to another person's point of view, and feels important (D2Tr. 183-184, 222).

Ms. [redacted] is familiar with the [redacted] and [redacted] private day programs. She feels that the former is not appropriate for [redacted] as its programs are based upon behavioral management, which is designed to make a change in a student's behavior. [redacted] is not a behavior problem, thus these strategies will not meet his needs. This witness claims that the [redacted] students are violent and disruptive in the classroom. If [redacted] were thrown in with this type of student he would regress into a confused state. Although Ms. [redacted] has never visited [redacted], she has been involved in IEP meetings involving this school (D2Tr. 188, 189, 190-191, 197, 198, 203, 205, 206, 207).

With respect to [redacted], Ms. [redacted] is of the opinion that that program is designed primarily for students with psychiatric problems, who are disruptive in the classroom. [redacted] would be unable to develop any long term relationships at [redacted] because of the constant student turnover. Thus the [redacted] program would not be appropriate for [redacted] either. She has, admittedly, never spoken to [redacted] personnel about their program (D2Tr. 198-199, 208, 209).

Ms. [redacted] thinks that [redacted] might benefit from a private day program, if it was geared towards his needs. However, she knows of no such program in the Washington metropolitan area. She also thinks that any transition support offers should be contained in [redacted]'s IEP (D2Tr. 200, 201-202, 203).

[redacted] is the Educational Supervisor of Student Services at [redacted] School. She works with the students, teachers, and dormitory coordinators. She is a licensed special education teacher (D2Tr. 120).

[redacted] located in [redacted], Massachusetts, was founded in 1957. It is a residential school with a potential enrollment of 183 male and female students in its secondary and post secondary programs. During the 2003-2004 school year 115 students

were in attendance. On measures of intellectual ability, the majority of the students score within the 70-100 range, and have a primary diagnosis of learning disability and/or complex language or learning disorder. \_\_\_\_\_ is licensed by the Commonwealth of Massachusetts and fully accredited (Ex. 18; D2Tr. 138).

\_\_\_\_\_ provides academic instruction by means of a thematic, integrated curriculum. Its maximum class size is eight students, and its faculty/student ratio is 1:4. In addition to academic instruction, \_\_\_\_\_ provides an advisor to each student. The task of the advisor is to act as a liaison between home and school, and provide support to the student in areas such as self-advocacy, self-awareness, and social skills. Students at \_\_\_\_\_ also have the opportunity to participate in various social, recreational, and sporting activities. Students have individual advisors, who provide individual informal counseling (Ex. 18; D2Tr. 146).

Ms. \_\_\_\_\_ first met \_\_\_\_\_ when he enrolled at \_\_\_\_\_. She remembers him as initially being reluctant to interface with the other students and the teachers at \_\_\_\_\_. He was rather timid, and need interventions from both his academic and residential support teams. He needed reinforcement on a daily basis. \_\_\_\_\_ was unable to problem solve on his own when he arrived at \_\_\_\_\_. His non-verbal and Asperberger problems needed to be worked on (D2Tr. 120, 122, 130, 131).

\_\_\_\_\_ 's \_\_\_\_\_ schedule provides that he attends classes from 8:15 - 3:00 Monday - Friday. It also provides him with one hour of reading per day. He still requires assistance with his reading comprehension skills. He also receives speech/language assistance. \_\_\_\_\_ continues to have problems with math (D2Tr. 123, 126, 143).

At \_\_\_\_\_ the residential and academic support teams work on the same skills for the students on a daily basis. The two teams meet each afternoon, so that the residential

team is aware of what the classroom team has been working on in the classroom during the day. Then when the student returns to the dormitory in the evening the residential team can continue the work which was initiated in the classroom. In the morning the residential team leaves notes for the classroom team if any event transpired in the evening which needs to be worked on during the day. In addition, [redacted] can get informal counseling at any time (D2Tr. 128-129).

Ms. [redacted] has noticed major improvements in [redacted]'s social and academic skills during the past year. He is now able to think things through, initiate conversations, and is developing new friendships. The majority of these changes occurred during the second semester. The increased social skills exhibited by [redacted] have enabled him increase his ability to learn, take risks, etc. (Ex. 25; D2Tr. 131, 132).

[redacted] resides in a dormitory along with ten - twelve other students. He has been involved in several altercations with other students at [redacted], in both the classroom and the dormitory. Ms. [redacted] describes these problems as "typical teenager stuff" (Ex. [redacted] 64; Ex. 20, 21; D2Tr. 143, 154, 156-157, 159).

Ms. [redacted] opines that [redacted] needs assistance from his support teams on a daily basis. [redacted] needs to practice and hone the skills he learns in the classroom after school hours. He needs to be able to communicate with his friends after school. For these reasons she is of the opinion that private day placement is not a viable option for [redacted]. If [redacted]'s present level of support is withdrawn, he would regress, and become depressed. A move from [redacted] to private day placement would be a major transition for [redacted], one which he would not be able to adjust to without consistent and frequent support (D2Tr. 134-137, 163, 164).

Ms. [redacted] has had conversations with [redacted]'s [redacted] teachers and counselors and with individuals from [redacted]. She also participated in the 2003-2004 IEP meetings (D2Tr. 121-122, 160).

[redacted] is the Private Placement Specialist for [redacted], a position she has held for the past three years. She received her BS in education from the University of Virginia, and her Masters degree in learning disabilities from the University of Connecticut in 1977. She has been with [redacted] since 1980, being employed as an educational diagnostician, learning disability resource teacher, and elementary school learning disability liaison teacher. Her present position involves the placement of students in private day or residential schools. In this regard she visits the schools, studies their programs, consults with the parents and teachers, and is involved in the planning and implementation of transitional strategies for returning to public schools. She has visited the facilities of [redacted] School and [redacted] School. Although she has communicated with the personnel at the [redacted] School, she has never visited that facility (D1Tr. 125-130, 136, 209).

Ms. [redacted] considers that [redacted] School, located in [redacted], Virginia, meets the individualized educational needs of [redacted], both academically and vocationally. It offers a very structured program, has a good record in the areas of academics and behavior, offers community involvement programs, and uses the level system of progression. She thought that [redacted] would not be placed with aggressive students if he attended [redacted] School, located in [redacted], Virginia, offers a similar program, but works on the team concept of teaching and learning. This witness opined that either [redacted] or [redacted] could successfully implement [redacted]'s 2004-2005 IEP (D1Tr. 159,, 160, 166-171, 235-236, 242).

She was concerned about the dormitory situation at [redacted], and about the problems which [redacted] has encountered in dormitory life (Ex. [redacted] 64). She stated that the

dormitory incidents were not known by the IEP team when it was meeting and preparing the IEP. She also thought that dormitory life was not necessary for [redacted] to receive educational benefit (D1Tr. 173, 174, 191, 197, 198-100, 241).

The question of individual counseling also arose during the course of this witness' testimony. Ms. [redacted] testified that [redacted] School would assign a counselor to [redacted] who would work with him for the IEP mandated one hour per week. In addition, there was individual counseling on call whenever needed, and group counseling in the classroom.

[redacted] also provided [redacted] with one hour per week of individualized counseling, and crisis intervention counseling twenty-four hours per day, seven days per week was also available (D1Tr. 224-227, 230).

Ms. [redacted] was a member of [redacted]'s 2004-2005 IEP team and participated in all of the meetings. Other participants included [redacted]'s parents, other [redacted] teachers and administrators, and [redacted] School personnel. She provided [redacted] with a draft copy of the IEP so that the IEP team members would have the benefit of [redacted]'s comments and suggestions, which were subsequently incorporated into the IEP. She read the psychological evaluation report prepared by Dr. [redacted]'s office, but not until after the IEP meetings had been completed. She is of the opinion that the private day placement recommended by the IEP team would provide educational benefit to [redacted] while at the same time constitute the least restrictive environment for him. Although [redacted] was not present for placement discussions at the last IEP meeting, it was obvious to this witness that they wanted [redacted] back at [redacted]. If she thought that [redacted] needed residential placement, she would have had no hesitation to agree to it. (Exs. [redacted] 8-12; D1Tr. 133, 141-142, 145-152, 156-157, 177, 211, 246; D2Tr. 259-262).



Subsequent to the development of the IEP, the parents agreed to the ESY provisions only. Ms. [redacted] then put together an application "packet" regarding [redacted] and sent it to various private schools in the greater Washington Metropolitan area. Of the five schools contacted, only two, [redacted] and [redacted], responded affirmatively, and indicated a willingness to interview [redacted]'s parents (Exs. [redacted] 16 & 17; D1Tr. 154, 164 ). As will be subsequently discussed, it is rather unclear on the record whether this affirmative response included the ESY proposal or not.

[redacted] was present on July 2, 2004 when Ms. [redacted] signed the IEP, and subsequently mailed the IEP packets to the five private day schools mentioned previously. She mailed the packets the next day, and phoned the schools and asked them to review the packets as soon as possible in view of the time constraints (D3Tr. 222, 223, 225).

[redacted] was a psychologist employed by [redacted] since 1994. She obtained her MA in clinical Psychology from the University of Maryland in 1994. She is certified as a school psychologist. Her position primarily involved trying to understand student functioning and to assist them in achieving their educational goals. She also does psychological evaluations of students, counsels students and parents, and assists in crisis interventions (Ex. [redacted] 72J; D2Tr. 4, 5-6).

Ms. [redacted] met [redacted] when he attended [redacted] Middle School. She gave him psychological testing in 2002 and 2004. Both tests resulted in the same basic findings and recommendations about [redacted]. She found [redacted] to be a hard worker, although in need of reassurance. He exhibited no particular attention deficit, except when the material at hand became difficult for him to comprehend. Her conclusions were that in the cognitive skills assessment [redacted]'s performance was below average. When tested on the Gray Oral Reading Test (GORT-4) in 2002, his standard scores were significantly lower than his "off limits"

scores. The difference between the two methods of testing, i.e., standard and off limits, is that the former is timed; whereas the latter, which is given immediately after the testing has concluded, is not. The witness was of the opinion that the off limits scores more accurately reflected 's abilities. In 2004 the standard and off limits test scores were practically identical. Ms. found 's decoding skills to be good, but his rate of reading to be slow and his comprehension level not very good. also demonstrated oral language problems and math and writing problems. She concluded that 's verbal cognitive ability fell below the average range, so that he has problems understanding language and expressing his ideas. She considers that has autistic symptoms, and needs to work on his skills at school and at home to develop them. Several recommendations were made for both , and these recommendations, for the most part, were contained in both the 2002 and 2004 reports. Ms. recommended that, among other items, would benefit from a very structured day, constant reassurance, having someone monitor his level of attention, learning basic math skills, feedback from his teachers, short summaries to preface reading assignments, class notes prior to the lesson, extended time to take tests, and taking tests orally where possible (Exs. : 38 & 39; D2Tr. 7, 11-13, 16, 20, 21, 27, 28-30, 63-70, 73-76, 79-82, 84, 88).

Ms. was also a member of 2004-2005 IEP team. She participated in all of the meetings and agreed with the conclusions of the member of the team regarding placement. She was concerned because 's academic progress had not improved to the extent she expected. She reviewed the psychological evaluation of , PH.D. prior to the IEP meetings and found nothing in that report which would lead her to believe that private day placement would not be beneficial for . She thought that private day placement would provide social skills assistance and supplemental services.

Ms. [redacted] did not think that [redacted]'s transfer to a private day school would represent a particular transitional problem. She opined that private day placement would provide material educational benefit in the least restrictive environment, and could perceive no educational benefit in the residential program, as it would be too restrictive. She admitted that although private day placement was the recommendation of the [redacted] members of the IEP team, no specific private day school programs were discussed. She also concluded that there were no significant differences between her findings and conclusions in her evaluations and those of [redacted]. Although different tests were used, [redacted]'s patterns of strengths and weaknesses were the same. There were no differences between [redacted]'s academic strengths and weaknesses on the evaluations (D2Tr. 9, 15, 27, 32-38, 39, 40, 42, 43-44, 48, 52, 54, 56, 60).

[redacted] has been employed as an Autism Resource Specialist by [redacted] since 2000. She received her undergraduate degree from the University of Rhode Island in 1997 and her graduate degree from Simmons College in 2000. She received her license from the Commonwealth of Virginia in 2000 (Ex. [redacted] 72D; D1Tr. 20, 21, 117).

Ms. [redacted] testified that she works with teachers, parents and support groups, oversees programs dealing with autistic and development delays in students, and attends IEP meetings. She has worked with students having attention problems, including a stint at the New England Center for Children, which specializes in children with autism and behavior disorders in both an academic and residential setting (Ex. [redacted] 72D; D1Tr. 22, 23, 24).

Ms. [redacted] first encountered [redacted] in 2002 when he was a seventh grader at Middle School. At that time he had been diagnosed as having a social cognitive deficit and pervasive development delay (PDD) and multiple learning disabilities. Social cognitive deficits would include such items as missing social clues, etc., and would be indicative of

not functioning easily in a social setting. PDD is different from autism, and is not a special education disability by itself. In 2002 she worked with [redacted]'s IEP team, spoke with his parents, and observed him in the classroom. Although she was familiar with [redacted]'s individual therapist, [redacted], she has never spoken to her (D1Tr. 26, 27, 28, 70-72).

Ms. [redacted] also developed several plans for [redacted] at [redacted]. One was a behavior contingency plan, which was designed to deal with his attention deficit problems. She later developed a behavior intervention plan, social interaction plans, and strategies for dealing with some of [redacted]'s problems (Exs. [redacted] 43, 53, & 54; D1Tr. 32, 34, 35, 36, 72, 73).

She also worked with the 2003 and 2004 IEP teams of [redacted], and observed him at [redacted]. Through her [redacted] observations and conversations with his teachers she concluded that [redacted] had attention problems. His math was at a first grade level, and his social studies level was not up to his [redacted] standards. Ms. [redacted] observed [redacted] reading at [redacted], but thought that he could not understand what he was reading, as the comprehension level was too high for him. She thought that his work at [redacted] was at an early elementary school level, and was not challenging enough for him. She observed that his interaction with his [redacted] peers was good, and considered it consistent with his [redacted] peer relationships (Ex. [redacted] 66; D1Tr. 29, 40-43, 44-45).

The witness did not observe the residential component of the [redacted] services being provided [redacted], as it was deemed not necessary for her to do so. However, she did observe [redacted] at times other than in the classroom at [redacted], such as in the cafeteria, in the transition times between classes, etc. She also reviews the progress reports prepared by [redacted], including those regarding [redacted]'s social cognitive deficits (D1Tr. 77, 78, 79, 80, 81).

In the reading class at [redacted] in which Ms. [redacted] observed [redacted], there was a 4:1 student teacher ratio. The particular day Ms. [redacted] observed [redacted], the latter was

experiencing difficulties in comprehending the story. The \_\_\_\_\_ teacher sat next to \_\_\_\_\_ throughout the class and repeatedly prompted him to keep him on course (D1Tr. 62, 64, 86-90, 93).

Ms. \_\_\_\_\_ was a member of \_\_\_\_\_'s 2004 IEP team. As such, she participated in three meetings - May 21 and 29, and June 9, 2004 - regarding the preparation of \_\_\_\_\_'s IEP. Each meeting lasted approximately three hours. Other participants in the meetings included \_\_\_\_\_'s parents, other \_\_\_\_\_ teachers and administrators, and personnel from \_\_\_\_\_ School. From these meeting the 2004 - 2005 IEP for \_\_\_\_\_ was developed. The witness agreed with the other \_\_\_\_\_ member of the team that private day placement was appropriate for \_\_\_\_\_ even though no specific private day placement program was discussed or promoted. She was, however, familiar with the \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ programs, although she had never visited \_\_\_\_\_ or \_\_\_\_\_ (D1Tr. 46-49, 100, 101, 102, 103, 120-121).

Ms. \_\_\_\_\_ has worked with students transitioning into and out of private placement, and considers herself to be experienced in this matter. She testified that the issue of transitioning was discussed at the IEP meetings, and that the IEP team developed strategies to deal with \_\_\_\_\_'s transition into private day placement, although not specifically labeled as "transition services" in the IEP. On the other hand, she did not notice any specific reference to "transition services" in the educational plan which \_\_\_\_\_ developed for \_\_\_\_\_ either (D1Tr. 45-46, 50, 51-52, 53, 109, 113-114, 122-123).

This witness reviewed the Psychological Evaluation of \_\_\_\_\_ prepared by Dr. \_\_\_\_\_ in 2002, and the Psychological Evaluation Reports of \_\_\_\_\_ prepared by Ms. \_\_\_\_\_ of \_\_\_\_\_ in 2002 and 2004 and found them to be consistent in their recommendations for \_\_\_\_\_, and consistent with private day placement (D1Tr. 54-55).

is the Program Supervisor for School. She taught at for ten years, and has been in her present position for the past three years. has been in existence since 1967. It provides individualized educational programs implemented by classroom staff. The teacher/pupil ratio is 1:4.5. It also provides small group instruction, one-on-one intervention, speech and language development, social skills training, and daily living skills. All teachers are certified by the Commonwealth of Virginia. employs numerous other professionals, including therapists, counselors, and psychologists (Ex. 70; D3Tr. 89, 98, 99, 107, 139-140).

The majority of students at are in the 14-18 year old range, with a wide range of disabilities, including multiple disabilities. Most of the students have social skills problems and learning difficulties. In assigning students to particular classrooms, social functioning is of the highest importance. This enables students with the same types of needs to be kept together. provides a highly structured program, and tries to keep distractions to a minimum. The students are with staff and classmates throughout the day, and there is a counselor for each classroom. Individual counseling is also available. Although there is nothing specific written into the program, routinely provides transitional services, working with incoming and outgoing students and their parents and the other facilities involved. has students with disabilities similar to 's in attendance, and has successfully dealt with these students and their problems in the past. uses the level system of progression, which is primarily based upon the student's behavior. However, academic factors play a large role in the program as well (D3Tr. 92, 93-94, 95, 96-97, 103, 105-106, 111, 112, 118, 121, 124).

Ms. had an intake interview with 's mother in July, 2004, but no specific decisions were made as also had to be interviewed as well (D3Tr. 91, 92, 126).

## Discussion and Conclusions

8 VAC 20-8-76 J 17 provides that each hearing officer decision shall include a determination of whether (a) the notice requirements to the parents has been satisfied, (b) the child has a disability, (c) the child needs special education and related services, and (d) the local educational agency is providing a free appropriate public education.

In this proceeding the parties agree that (a), (b), and (c) have been met, so no further discussion of these items shall appear in this decision. However, (d) appears to be the central issue involved herein.

The starting point for our discussion is the Individuals with Disabilities Education Act, (IDEA) 20 U.S.C. 1400 *et seq.* The objectives of that Act are "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. 1400(d)(1)(A).

A "free appropriate public education" is defined by the Act as "special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and, (D) are provided in conformity with the individualized education program required under section 614(d)." 20 U.S.C. 1401(8).

There are three primary issues for discussion and decision in this proceeding: (1) Who has the burden of proof; (2) Was the IEP proposed for valid; and, (3) Would private day placement meet the FAPE requirements insofar as is concerned. Each of these issues shall be considered seriatim.

Burden of Proof - As [redacted] has raised questions concerning the appropriateness of the IEP, and whether his proposed private day placement meets the FAPE requirements, it is his burden to establish that the IEP is not appropriate and that he would not receive FAPE if placed in a private day program. Weast v. Schaffer, 337 F. 3<sup>rd</sup> 449 (C.A. 4, 2004); Spielberg v. Henrico County Public Schools, 853 F.2d 256, 258 (C.A. 4, 1988); Bales v. Clark, 523 F. Supp 1366, 1370 (E.D.Va, 1981).

Validity of the IEP - In order to determine whether the IEP proposed for [redacted] was valid, it must be noted that there were three IEP meetings, on May 21 and 29, and June 9, 2004. Attendees at these meeting included [redacted]'s parents, [redacted] personnel, and, by telephone, [redacted] personnel. Each meeting lasted for approximately three hours. [redacted]'s progress, the eighth grade Standard Of Living (SOL) test, his dormitory life at [redacted] the type of diploma [redacted] was to aim for, his transition back into the community, his social and academic progress at [redacted], and his placement for the 2004-2005 school year were discussed. Notably, [redacted] personnel did not participate in the placement discussion, which was the last item to be covered, as prior commitments had to be attended to. The result of these meetings was an IEP of approximately thirty pages in length. It contains a fairly lengthy description of [redacted]'s present level of performance, goals and objectives for approximately nine different academic and social areas for him, a SOL assessment, and a transition plan. Apparently the parties were in substantial agreement with the content of the IEP except for one major area - placement. Subsequent to the preparation and distribution of the IEP and the last meeting of the IEP team, [redacted] provided the parents with an explanation of its refusal to change its position on the private placement issue (Ex. [redacted] i 14, 29; D1Tr. 46-49, 141-142, 145-152; D2Tr. 32-38, 122; D3Tr. 146-148, 152, 184-187).



The parents contend that the IEP does not provide for FAPE for three primary reasons. First, the adequacy of services as described in the IEP is deficient. needs more than one hour of private counseling per week. The transition services to be provided for if he transfers from residential placement to private day placement are not adequately set forth. There are deficiencies in the description of supplemental services to be provided. needs services in both academic and non-academic areas, but they are not provided for in the IEP (Tr. D3Tr. 275,, 278)

Second, the ESY services mentioned in the IEP were never provided (D3Tr. 282)

Third, in the comparison of residential and private day placement, only the former will provide with a meaningful educational benefit in the least restrictive environment. The precise schools and benefits of private day placement are not set forth in the IEP. An investigation into the existing private day schools in the Washington metropolitan area will disclose that the FAPE components necessary for are simply not available at any existing facility, thus is the only alternative (D3Tr. 285-286, 289, 291, 315, 319).

argues that the IEP does provide for FAPE. The IEP was a joint cooperative effort of all of the involved parties. It contains a detailed description of present level of performance and goals and objectives. The question is not whether the residential program is superior to the private placement program, but whether the private placement program provides for FAPE for (D3Tr. 295, 308).

Both the federal regulations (34 CFR 300.347) and the Virginia regulations (8 VAC 20-80-62 F) set forth the requirements for the contents of an IEP. The IEP prepared for by his IEP team for the 2004-2005 school year adequately fulfills these requirements.

IDEA does not require that the school system provide the child with the best education possible. The system must provide "personalized instruction with sufficient

support services to enable the handicapped child to benefit educationally from that instruction". Hessler v. State Board of Education, 700 F.2d 134, 139 (C. A. 4, 1983). It must also be remembered that FAPE only guarantees an "appropriate" free, public education, not necessarily the best public education that the school system can purchase. Lewis v. School Board, 808 F. Supp 523 (E.D. Va., 1992)

It is argued that the proposed IEP involving private placement does not take into account the special and unique needs of [redacted], i.e., that he cannot learn in a stressful environment and that he requires an academically challenging structured environment. It appears, however, that [redacted] was cognizant of [redacted] academic strengths and weaknesses. [redacted] was a student in the [redacted] system for a number of years and a number of IEP's had been prepared for him. He had been given several psychological evaluation tests by [redacted] personnel, and the personnel were familiar with Dr. [redacted]'s testing results. Indeed, the present level of performance portion of the IEP demonstrates that the [redacted] personnel were cognizant of [redacted] strengths and weaknesses, both academic and social. The IEP further provides for twenty-four specific general curriculum support standards designed to enhance [redacted] educational experience (Ex. [redacted] 29).

The parents also argue that the description of the supplemental and transitional services to be provided is not specifically set forth in the IEP. Several witnesses ([redacted], [redacted], and [redacted]) testified that the provision of these services was a "given" and need not be specifically set forth in the IEP. It was stated that the transition plan actually involved several components, counseling, speech and language, etc., which were proposed in the IEP, thus there is no need to list them repeatedly. Other witnesses ([redacted], [redacted], and [redacted]) thought that the transition services to be provided ought to be specifically set forth in the IEP. It is my opinion that the potential problems to be encountered by the transition to

private day placement, such as stress, different environment, confusion, etc., are to be met with such supplemental services as counseling and therapy, which are set forth in the IEP. Thus it is not necessary for the IEP to presume what transition problems      may encounter, then describe what services will be provided to combat them. This is too inflexible an approach.

The question of the provision of ESY services for the period July 1 - August 1, 2004 has also arisen. By the time the parents had signed the IEP form indicating that they were in agreement with this portion of the IEP, it was July 2. Thus      couldn't have known of the acceptance of the offer until after the program was to have commenced. The application packet which      subsequently sent to the private schools contained the IEP, but the cover letter did not address the summer school issue one way or the other. At least one private school,      , thought the ESY issue was moot, as, after apparently conversing with      mother, it was under the impression that he had already been signed up by the parents to attend a summer program elsewhere (Ex.      17). I conclude that the lack of provision of ESY by      was simply the result of a miscommunication between the parties, and does not entitle the parents to reimbursement of      summer school expenses at      in 2004.

**Does Private Placement Meet FAPE Requirements** - The question of residential placement, as opposed to private day placement, has been before the courts in a number of instances. The deciding factor seems to be that if the educational benefits which can be provided only through residential care are essential for the child to make any educational progress at all, then residential care is required. On the other hand, residential placement is not required where its attributes merely enhance an otherwise sufficient day program. Burke County Bd. Of Education v. Denton, 895 F.2d 973, 980 (C.A. 4, 1990). The private

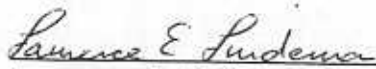
day placement envisioned by \_\_\_\_\_ for \_\_\_\_\_ was in a small, structured setting which would provide academic and related supplemental services such as counseling and therapy. This placement would assist \_\_\_\_\_ in his transition into the local community, and constitute the least restrictive environment for him. The fact that \_\_\_\_\_ did not specify a particular private day program suggests to me that \_\_\_\_\_ wanted to give the parents as much flexibility as possible on this issue. Several private day possibilities were suggested, and the parents given the option of choosing the one which was most attractive to them. The fact that they found none of the possibilities attractive does not mean that the \_\_\_\_\_ approach was not in accordance with the FAPE mandates. Thus I conclude that private day placement does provide FAPE.

Therefore, I find in favor of \_\_\_\_\_ on all of the issues involved in this proceeding, and deny the request for relief of \_\_\_\_\_.

#### Appeal Information

This decision is final and binding upon the parties. Any party may appeal this decision within one year of the date of the decision in either a state circuit court or a federal district court. See 8 VAC 20-80-76(0).

Dated: September 25, 2004


  
Lawrence E. Lindeman  
Hearing Officer

Certificate of Service

A copy of the foregoing decision has been served by first class mail, postage prepaid, on September 25, 2004 on the following:

William B. Reichhardt, Esq.

John F. Cafferky, Esq.

  
\_\_\_\_\_  
Lawrence E. Lindeman