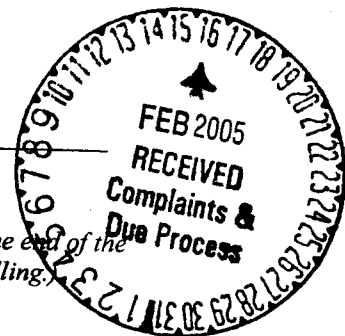


Local Hearing x

State Level Hearing _____



05-045

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.)

School Division _____

Name of Parents _____

Division Superintendent _____

Name of Child _____

KIMBERLY FRIEND SMITH
Counsel Representing LEA

None
Counsel Representing Parent / Child

Party Initiating Hearing _____

LEA
Prevailing Party

Hearing Officer's Determination of Issues:

* Whether or not the student has been denied a Free Appropriate Public Education (FAPE) in the least restrictive environment by his placement in another school environment. *Prevailing Party -- LEA*

* Whether or not the mother's consent is required for the new placement. *Prevailing Party -- LEA with IEP modifications*

* Whether or not the new placement is in violation of the student's present Individualized Education Plan (IEP). *Prevailing Party -- LEA*

Hearing Officer's Orders and Outcome of the Hearing:

It is hereby **ORDERED** that _____ continue to provide a 1:1 aide for _____ until such time as _____'s adaptive skills have developed to the point that he can routinely follow instructions without repeated or constant redirection.

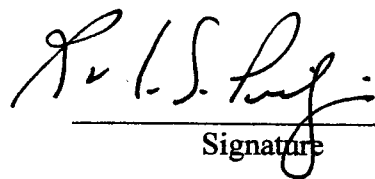
It is further **ORDERED** that a regimen of daily academic instruction be integrated into _____'s IEP to reinforce those academic skills he has already learned and to expose him to academic challenges that are suited for his intellect. Whenever practicable, worksheets should be used to reinforce

those academic skills has already learned and to introduce him to new academic skills.

It is further **ORDERED** that the present IEP be revisited by a fully complimented IEP team within 30 days of the date of this opinion, or within 30 days of the pending evaluation results, whichever is later, to bring the IEP into full compliance with the requirements of the IDEA. newest evaluation results should be considered when the IEP team meets.

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.

RHONDA J. S. PILGRIM
Printed Name of Hearing Officer
Date: February 12, 2005



Signature

VIRGINIA:

In the Matter of [REDACTED]
[REDACTED], a minor,
by his mother,

v.

PUBLIC SCHOOLS,

Petitioner

Respondent

DECISION OF THE HEARING OFFICER

INTRODUCTORY STATEMENT:

This due process hearing was initiated by Ms. [REDACTED] on December 1, 2004 against [REDACTED] is the mother of [REDACTED], an eight-year old who qualifies for special education services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 USC §1410, *et. seq.* in the category of mental retardation (MR).

The Hearing officer's appointment letter was received on December 3, 2004 and upon request of counsel for [REDACTED] and proper notice to all parties concerned, the first pre-hearing conference was telephonically convened on December 8, 2004. After identifying the issues, the initial pre-hearing report was distributed on December 9, 2004. Proper notices being given to all parties and at request of the parties, second and third pre-hearing conferences were telephonically conducted on December 17, 2004 and December 30, 2004. On January 3, 2005, depositions were independently taken of a witness who was scheduled for hospitalization during the pending hearing dates. Believing it to be in the best interest of the child, upon the granted request of both parties that the hearing be delayed, and upon proper notice to all parties, the two-day due process hearing was conducted on January 7, 2005 and



January 14, 2005 at City Hall in the conference room of the Exceptional Education Office.

FACTS:

is an eight year old who has been medically diagnosed with Down's Syndrome. He qualifies for exceptional or special education services pursuant to the IDEA for mental retardation (MR). has global developmental delays.

In September of 1998, at the age of two, was initially evaluated by to establish his eligibility for preschool exceptional education services. In December of 1998, an eligibility committee found developmentally delayed and therefore eligible for exceptional preschool services. Speech therapy was also authorized for On February 11, 1999, an Individualized Education Program (IEP) team met and placed at where he was to receive special education services. attended for a few weeks during this initial placement but was withdrawn by his mother, , because of an altercation between herself and one of the teachers.

did not return to until 2001 when he was five years old.

On September 27, 2001, at the age of five, gave permission for to again be evaluated. A psychological evaluation was performed by Mr. who was then employed by Crater Child Development Clinic. Mr. determined that was developmentally delayed. Overall, he opined that was functioning at an estimated age of 25 months. He further concluded that cognitive functioning indicated a "full range of cognitive and developmental delays." Mr. noted that at the age of five years, was not fully toilet trained and that his language and motor skills

ranged between 20 and 21 months. Mr [redacted] recommended [redacted] for placement in a special education setting that would address his developmental delays.

On November 20, 2001, an eligibility committee again found [redacted] eligible for special education services in the category of mental retardation. The committee considered Mr. [redacted]'s findings as they related to [redacted]'s global developmental delays as well as the fact that he had missed most of his preschool structured classroom experience. Accordingly, the committee recommended that [redacted] be enrolled in a preschool developmentally delayed classroom for school year 2001-2002. However, [redacted] only attended school for a couple of months during that school year.

In September of 2002, an Individualized Education Program (IEP) was developed for [redacted] to address his developmental delays. He was assigned to [redacted] School. However, [redacted] failed to enroll [redacted] for school year 2002-2003.

At the age of seven, in September of 2003, [redacted] returned to school. He was placed at [redacted] School in an MR-Adaptive support program. On October 31, 2003, [redacted] requested that [redacted] be reevaluated. On November 11, 2003, a new IEP was developed and the IEP team agreed that [redacted] should be reevaluated believing that more recent information about [redacted]'s abilities and skills would be helpful to the IEP team.

On November 13, 2003, Ms. [redacted] the MR-Adaptive classroom teacher, conducted an informal educational evaluation of [redacted] Ms. [redacted] found that [redacted] needed constant redirection and could not perform basic pre-kindergarten skills.

Shortly after Ms. [redacted]'s evaluation, [redacted] and the instructional assistant, Ms. [redacted], were involved in a verbal altercation. [redacted] alleges that Ms. [redacted] inappropriately attempted to redirect [redacted] behavior. Ms. [redacted] Instructional

Specialist, and Ms. _____ were both privy to some part of the verbal altercation but were unclear about what they actually witnessed. To calm the situation and to insure that _____ continued in school, Ms. _____ suggested that _____ be transferred to _____ Elementary where he was assigned to the Transitional Developmentally Delayed (TDD) classroom.

_____ was reevaluated on December 12, 2003 by _____, the school counselor at _____ Elementary. Mr. _____ noted that _____ required constant redirection, was easily distracted, and had difficulty focusing for any length of time.

On February 2, 2004, _____ was again evaluated by School Psychologist _____ who found _____ to be noncompliant, inattentive, and highly distractible. Overall, Ms. _____ found that _____ was unable to perform basic tasks for psychological testing. When assessing _____'s adaptive behavior, she reported standard scores ranging from 45 to 48 with an age equivalent of one year. On February 26, 2004, _____ administered further testing of _____. _____ received a standard score of 65, representing the lowest possible score. His age equivalent was 28 months in the area of cognitive abilities and 24 months in the area of adaptive skills.

On March 1, 2004, an eligibility team met to consider the reevaluation results and to address _____'s academic and behavioral problems. _____'s exceptional education teacher, Ms. _____, from _____ Elementary, reported _____ academic and adaptive skills to be below the kindergarten level. She reported his behavior as aggressive and difficult to manage, requiring constant redirection throughout the school day. She also reported frequent absences from school along with frequent tardies. Despite these reports, Ms. _____ awarded _____ with a certificate that read "most improved." Ms.

failed to provide [redacted] with required progress reports on [redacted] throughout the year.

This failure to provide timely and required progress reports, coupled with an award to [redacted] as "most improved" for the year, seemed to have led [redacted] to believe that [redacted] was academically and adaptively progressing and well-suited for placement in Ms. [redacted]'s TDD classroom.

Ms. [redacted] exceptional education assistant at [redacted], apparently agreed with Ms. [redacted]'s reports about [redacted]'s aggressive and disruptive behavior. However, at the due process hearing and from her brief to the hearing officer, it was apparent that [redacted] was surprised to learn of Ms. [redacted]'s agreement with Ms. [redacted].

Based on the results of the reevaluations and the reports of Ms. [redacted], the team again found [redacted] eligible for exceptional services in the MR category. The committee also requested the assignment of a 1:1 aide to address [redacted] tendency to run, his lack of self control and need for constant redirection to remain focused and on task, behaviors that were also reported to the team by Ms. [redacted] and Ms. [redacted].

An IEP/FAPT meeting was held on April 13, 2004. The team recommended that [redacted] be placed in an MR-Adaptive class for school year 2004-2005. The team also recommended that [redacted] continue to be assigned a 1:1 aide. On April 21, 2004, an IEP meeting was convened at [redacted] Elementary. Although [redacted] was present, the complete IEP team was not. According to [redacted], Ms. [redacted] drafted an IEP, told her there was a deadline for submission of the IEP on-line for assignment of a 1:1 aide, therefore making it necessary for her to sign the IEP that day. [redacted] suggested changes to the

proposed IEP, including deletion of the word "adaptive" and removal of any reference to needing toilet training. With these changes [redacted] then signed the IEP.

Based on the April 21, 2004 IEP then in place, Ms. [redacted] comments, and the recommendations of the IEP/FAPT team, [redacted] was placed in an MR-Adaptive class at [redacted] for school year 2004-2005. According to [redacted], there was a lack of space at [redacted]'s home school, [redacted] so he was assigned to [redacted] where an MR-Adaptive placement was available. However, space shortly thereafter became available at [redacted]'s home school, [redacted], and [redacted] was reassigned to that school in October of 2004 where he presently attends school.

[redacted] objected to the placement at either [redacted] and [redacted] requested an out-of-zone placement back to [redacted] Elementary where [redacted] attended the previous year, where his twin sister attends, and where his grandmother works. [redacted] denied [redacted]'s request because there is no MR-Adaptive classroom available at [redacted] Elementary.

On October 25, 2004, an IEP meeting was held to review [redacted]'s present IEP and to discuss concerns raised by [redacted] who wanted [redacted] to be reevaluated. [redacted] did not agree with the scores reported by Ms. [redacted] in February of 2004 claiming that they did not accurately reflect [redacted] academic or adaptive skills. [redacted] also stated that [redacted]'s behavior was no longer a problem. The IEP team did not agree. [redacted] clearly expressed concerns about [redacted] placement in an MR-Adaptive classroom. She wanted [redacted] school day to include more academics with less concentration on tasks designed to enhance functional and adaptive skills.

On that same day, [redacted] was reevaluated per [redacted] request. Now employed by Mr. [redacted] who first evaluated [redacted] in 2001, conducted a psychological evaluation. Mr. [redacted] determined that [redacted]'s IQ was approximately 36, which placed [redacted] as extremely low functioning and although classified as moderately mentally retarded, [redacted]'s score was only one point above a classification of severely mentally retarded. Mr. [redacted] concluded that [redacted] would be best suited for a "comprehensive exceptional education program designed to enhance adaptive skills and early readiness activities in academics."

Another IEP meeting was held on December 13, 2004 but matters other than the IEP were discussed. It was agreed that the IEP would be revisited once testing results became available in February of 2005. The record indicates that both parties agreed not to delay this due process hearing any further to wait for test results. Such a delay was not in [redacted] best interest. During this due process hearing, [redacted] also produced evidence that [redacted] would soon be retested by evaluators who specialize in testing children with Down's Syndrome.

ISSUES:

The issues in this case are as follows:

- * Whether or not the student has been denied a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE) by his placement in another school environment.***
- * Whether or not the mother's consent is required for the new placement.***
- * Whether or not the new placement is in violation of the student's present Individualized Education Program (IEP).***

DISCUSSION and FINDINGS:

*** Whether or not the student has been denied a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE) by his placement in another school environment.**

contends that placement by in the MR-Adaptive classroom at Elementary instead of in an MR-Academic classroom has effectively denied her child a FAPE in the LRE. She believes that is ready for more academic than functional and adaptive skills instruction. contends that benefited more from his educational experience at Elementary (in a TDD classroom) than he is now benefiting from his present placement at in an MR-Adaptive environment.

has been repeatedly diagnosed as mentally retarded and although it is clear that he would benefit from academic training, it is equally clear from the testimony of several witnesses and from 's appearance during the due process hearing, that he requires constant redirection to remain focused and on task. As a mentally retarded child, has certain limitations in mental functioning and in skills such as communication, taking care of himself and in social skills. These skills must be taught and may take longer to develop because of the mental retardation. These skills are adaptive and are best taught in an MR-Adaptive classroom environment. IDEA defines mental retardation as follows:

"...significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance." [34 Code of Federal Regulations §300.7(c)(6)].

As an MR child, _____ requires assistance with adaptive skills, which are those skills needed to effectively function, work and play in the community. IDEA requires that schools tailor a disabled child's educational experiences to that child's individual needs. To do otherwise would be in violation of IDEA and would deny the disabled child a FAPE. In this case, the testimony of _____'s teachers at _____ Elementary as well as the testimony of his present teacher, Ms. _____, is compelling. Both Ms. _____ and Ms. _____ (the aide) testified that _____ was disruptive and required constant redirection. Ms. _____ confirmed this behavior by reinforcing the continued need for _____ to be assigned a 1:1 aide. Moreover, _____ showed the need for constant redirection when he appeared before this hearing officer. Although it appears that _____ did show some behavioral and academic improvement while at _____ Elementary assigned to a TDD classroom, the record consistently indicates that _____ requires training in the area of adaptive skills. Without an accomplishment of adaptive skills, it may become impossible for _____ to become academically sound.

_____ is under no obligation to provide _____ with *maximum* educational benefit. However, both the IDEA and Virginia law require more than just *minimal* educational benefit to a handicapped child. See *Martin v. School Board of Prince George County*, 3 Va. App. 197 (1986). The assignment of a full-time 1:1 aide, the many reviews of _____'s IEP, the many meetings regarding _____ placement, as well as the evaluations and reevaluations of _____, seem to indicate that _____ has tried its best to properly evaluate _____, identify his strengths and weaknesses, and formulate a personalized plan for his educational success.

“Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized

instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the IDEA, and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." See *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 205, 102 S. Ct. 3034, 3050, 73 L.Ed. 2d 690 (1982). If placed in a strictly academic environment, [redacted] would not be able to make passing marks. The testimony from evaluators and teachers alike indicate that [redacted] is operating in most (if not all areas) on below kindergarten level and is in need of instruction in the area of adaptive skills.

Accordingly, I FIND that [redacted] is in need of personalized instruction to receive a FAPE in the LRE, and that the [redacted] has appropriately placed [redacted] in the MR-Adaptive environment. I FIND that for [redacted] to receive a FAPE, a 1:1 aide is required and that such an aide should be provided by [redacted] until such time as [redacted] adaptive skills have developed to the point that he can routinely follow instructions without repeated redirection.

Although [redacted]'s adaptive skills are low functioning and require much attention, I agree with [redacted] that [redacted] could benefit from a daily routine of academic instruction. [redacted]'s appearance during the due process hearing indicated that he is capable of academic learning, and that with routine reinforcement and challenge, could soon master many basic academic skills. I therefore FIND that a regimen of daily academic instruction should be integrated into [redacted] IEP to reinforce those academic skills he has already

learned and to expose him to academic challenges suited for his intellect. Whenever practicable, worksheets should be used, similar to those used by during this due process hearing, to reinforce those academics he has already learned and to introduce him to new academic skills. This does not mean, however, that should be "singled-out" or separated from his classmates to work on worksheets, but it does mean that the use of worksheets should be integrated into 's routine since he has apparently received some educational benefit from their use. 's progress should be monitored frequently to insure teacher compliance and continued educational benefit through use of the worksheets.

Further, I admonish to allow to fully participate in class activities designed to strengthen his adaptive skills. needs to learn appropriate social skills. Those class outings included in Ms. s classroom curriculum are designed to help the students learn appropriate behavior in different settings. Although may be otherwise exposed to some of the activities included in the outings, the reinforcement of appropriate behavior in different environments is important.

**** Whether or not the mother's consent is required for the new placement.***

alleges that her consent was not properly given for implementation of the April 21, 2004 IEP and that this procedural error has effectively denied a FAPE.

contends that she was essentially "tricked" into signing the IEP by Ms. who told her that the IEP was really a draft that required immediate on-line submission so that a 1:1 aide could be assigned to . However, the record reflects that accepted the April 21, 2004 IEP as the effective IEP and used it to place for the 2004-2005 school year. More seriously, the record reflects that Ms. had to sign the IEP without full compliment of the IEP team, as is required by IDEA. When the

IEP was signed on April 21, 2004, only _____ and Ms. _____ were present. In fact, the fully complimented IEP team did not meet until some time in October of 2004. This is most disturbing.

It is equally disturbing that Ms. _____ only provided one written progress report to _____ for school year 2003-2004. There was no final report for _____, although Ms. _____ testified that she had provided such reports for all of the other students in her class. When asked why she did not provide the required reports to _____ for _____, her response was simply, "I should have. I just didn't." To add to the confusion, Ms. _____ awarded _____ a certificate for "most improved" at the end of the school year. When asked why this certificate was given to _____, Ms. _____'s immediate response was that she "didn't know." When pressed, Ms. _____ explained that she had indeed seen some progress in _____'s behavior and academics since his first arrival in the classroom, but nominally so.

_____ contends that any alleged procedural error that may have been made was not so severe as to amount to a denial of FAPE in the LRE. Via a brief to the Hearing officer, _____ argues the following in support of its position:

"...Failure to comply with IDEA's procedural requirements, where procedural error does not actually interfere with the provision of FAPE, is not sufficient to support a finding that a local education agency failed to provide FAPE. Gadsby v. Grasmick, 109 F.3d 940 (4th Cir. 1997). Mere technical violations do not render a school system's proposed program inappropriate. Any other rule would exalt form over substance. Doyle v. Arlington County School Board, 806 F. Supp. 1253 (E.D. Va. 1992)(citing Burke County Board of Education v. Denton, 895 F.2d 973, 982 (4th Cir. 1990); Scituate School Committee v. Robert B., 620 F. Supp. 1224, 1228-30 (D.R.I. 1985), aff'd., 795 F.2d 77 (1st Cir. 1986)). There must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate

education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits. Kathleen H. v. Massachusetts Dept. of Educ., 154 F.3d 8, 14 (1st Cir. 1998)(citing Roland M. v. Concord Sch. Comm., 910 F.2d 983, 994 (1st Cir. 1990)). Thus, PS' alleged failure to satisfy procedural requirements does not, by itself, mandate a finding that it denied a free appropriate public education. must show that PS's failure to have a full complement of IEP team members actually denied him a free appropriate public education.

The Fourth Circuit has stated that procedural flaws in the development of an IEP do not necessarily require a finding that a disabled child has been denied FAPE. A student is denied FAPE only when the procedural deficiency results in a loss of an educational opportunity or *seriously infringes a parent's opportunity to participate in the process of formulating the IEP*. Burke County Bd. of Educ. v. Denton, 895 F.2d 973, 982 (4th Cir. 1990)(emphasis added); Roland M. at 994. Therefore, based on the foregoing, it is necessary to examine whether the absence of other team members denied a free appropriate education.

When the eligibility committee met on March 1, 2004, it determined that continued to be eligible for special education and related services in the MR category. It also determined that needed a 1:1 to foster behavioral and thus functional and academic success. The IEP/FAPT team concurred. It recommended an MR/adaptive setting for with a 1:1. Ms. prepared a *draft* of the IEP and reviewed it with . She voiced her opinion and based on her point of view, certain revisions were made. Satisfied with the revisions, signed the IEP. Certainly was not denied the opportunity to participate in the formulation of the IEP. The full IEP team met again in October of 2004 to review the April IEP. The team found it appropriate and made no changes at that time."

I am very disturbed by the actions of Ms. and must decide whether or not her procedural infractions were severe enough to *seriously infringe* upon 's opportunity to fully participate in the formulation of 's April 21, 2004 IEP. I must also decide

whether or not, under the circumstances, _____ actually provided her informed consent for implementation of the April 21, 2004 IEP.

An IEP is a written plan which incorporates the placement decisions made by *the child's IEP team of school authorities, the child's parents, and other knowledgeable persons*. See 20 U.S.C. §1401(a)(20). Congress devised procedural safeguards and remedial provisions to ensure *full parental participation* and the proper resolution of substantive disagreements. See 20 U.S.C. §1415 (emphasis added by the hearing officer).

Ms. _____ failure to convene the appropriate balance of players to formulate the IEP is in strict violation of IDEA. _____ was accustomed to all the players being present for an IEP to be implemented. Ms. _____ compounded failure to provide required progress reports and to appropriately document _____ progress (or lack of progress) on the IEP, coupled with her award to _____ of the "most improved" could have understandably misled _____ to believe that _____ was progressing adequately in Ms. _____'s class and that the TDD classroom placement was appropriate.

Accordingly, the question arises whether _____ could have actually and knowingly consented to implementation of the IEP without full knowledge of the facts. Was _____ ability to fully participate in formulating the April 21, 2004 IEP infringed upon by Ms. _____'s failure to convene the IEP team and her failure to appropriately document _____ progress? Under such circumstances, could _____ have actually and knowingly given her informed consent to implement the April 21, 2004 IEP?

Although I am very disturbed by Ms. _____'s conduct, I do not find that it rises to such a level as to deny _____ a FAPE in the LRE and must agree with the argument made by _____ should have been alerted to the problems _____ was having in Ms. _____'s

class when she presented her report to the eligibility team on March 1, 2004. Ms.

made clear at that time how she felt about placement in her classroom. Ms.

, the classroom assistant, likewise made clear that she thought had not been appropriately placed in Ms. 's TDD class. did in fact review the IEP and suggested changes before its implementation.

On April 13, 2004, was present at the IEP/FAPT team meeting which placed in an MR-Adaptive class for school year 2004-2005 and also continued the assignment of a 1:1 aide. Although may have disagreed with the placement, local educators should be afforded deference when placing a disabled child.

Therefore, I FIND that did in fact consent to implementation of the April 21, 2004 IEP and that the procedural error made by did not rise to the level of denying a FAPE in the LRE and that is indeed providing with a FAPE in the LRE.

However, I also FIND that the IEP was drafted without compliment of the full IEP team as required by the IDEA and should be revisited within 30 days of the date of this opinion, or within 30 days of the pending evaluation results, whichever is later, with the full IEP team in place. 's new evaluation results should be considered when the IEP team meets.

**** Whether or not the new placement is in violation of the student's present IEP.***

IDEA requires the development and implementation of IEPs that are reasonably calculated to provide an educational benefit to the disabled student. See *Hartmann v. Loudoun County Board of Education*, 118 F 3d 996, 1001 (4th Cir. 1997.) The substance of 's IEP must be reasonably calculated to provide him with educational benefit. See *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 205, 102 S. Ct. 3034, 3050, 73 L.Ed. 2d 690 (1982). In the present case, 's eligibility for special education services is

undisputed and he has been offered such services by the Such reasonable services have been offered to in an MR-Adaptive classroom environment.

 argues that 's present IEP has been violated because the word "adaptive" was removed at her request. Therefore, she contends that should not be placed in an MR-Adaptive classroom but an MR-Academic environment. Such is not the case. Simple removal of the word "adaptive" from the IEP does not control 's educational needs and the responsibility of pursuant to the IDEA to develop and implement an IEP that recognizes 's needs and sets reasonable goals and objectives from which will educationally benefit. is responsible for placing in an educational environment that suits 's needs. In this case, the word "placement" does not mean location but services.

Moreover, it is important to note that local educators should be afforded latitude when determining the IEP most appropriate for a disabled child. The IDEA was not designed to deprive local educators of the right to apply their professional judgment. Instead, it should establish a "basic floor of opportunity" for every handicapped child. *See Rowley*, 458 U.S. at 201. States must provide specialized instruction and related services "sufficient to confer some educational benefit upon the handicapped child," *id.* at 200, but the Act does not require "the furnishing of every special service necessary to maximize each handicapped child's potential," *id.* at 199. Local educators should be given deference when educating a handicapped child.

Although I can understand persistence that attend Elementary where his twin sister is a student, where his grandmother is employed, and where he attended school the previous year, is not required to assign to Elementary School if that school is ill-equipped with those tools required to provide

with specialized instruction and related services sufficient to confer some educational benefit. Despite opinion regarding progress in the TDD class at Elementary, the record is clear that was inappropriately placed and that his placement in the MR-Adaptive class at Elementary is more tailored to educational needs.

contends the present IEP denies a FAPE in the LRE because he is not being taught in an academic environment but rather in an adaptive skills environment. The record is clear that is in need of adaptive skills, is developmentally delayed, and is being served well by his placement in an MR-Adaptive classroom that focuses on life-skills. However, the mother's judgment should not be totally ignored to give complete deference to professionals. In this case, I agree with on the limited issue of adding more academics to daily routine. However, with that exception, I FIND that present placement in an MR-Adaptive classroom is in compliance with the goals and objectives set forth in the present IEP – those goals and objectives being more adaptive than academic.

IEP should operate as a "fluid" or working document that can be changed as the need arises. As grows and is reevaluated by either professionals employed by the public school system, professionals who specialize in children who are mentally retarded, and/or professionals who specialize in evaluating children with Down's Syndrome, I admonish both and to be accepting of the evaluation results. Both the IEP team and should be willing to accept evaluation results and to accordingly modify the IEP so that it best fits evaluated and on-going needs. An appropriate order will be given to reflect this requirement.

ORDERS:

Accordingly, it is hereby **ORDERED** that continue to provide a 1:1 aide for until such time as 's adaptive skills have developed to the point that he can routinely follow instructions without repeated or constant redirection.

It is further **ORDERED** that a regimen of daily academic instruction be integrated into IEP to reinforce those academic skills he has already learned and to expose him to academic challenges that are suited for his intellect. Whenever practicable, worksheets should be used to reinforce those academic skills has already learned and to introduce him to new academic skills.


It is further **ORDERED** that the present IEP be revisited by a fully complimented IEP team within 30 days of the date of this opinion, or within 30 days of the pending evaluation results, whichever is later, to bring the IEP into full compliance with the requirements of the IDEA. newest evaluation results should be considered when the IEP team meets.

The LEA is reminded of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

RIGHTS OF APPEAL:

A decision by the hearing officer in any hearing, including an expedited 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. See 8 VAC 20-80-76.O.1.

ENTERED: February 12, 2005


RHONDA J. S. PILGRIM, Hearing officer