

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 Parents

Name of Child

Date of Decision

Representing LEA

_____, ESQ.
Representing Parents

Party Initiating Hearing

Prevailing Party

Hearing Officer's Determination of Issues:

1. _____ was provided a FAPE by the _____ Public Schools.
2. _____ Public Schools did not fail to provide ABA therapy with a one-to-one aide as described in _____'s IEP for the _____ summer school or for the 20____-20____ school year nor fail to provide a aide with adequate training.
3. Compensatory ABA is not required.
4. THE School Board is not required to provide or fund outside services for the provision of ABA therapy.

Hearing Officer's Orders and Outcome of Hearing:

As stated herein, _____ Public Schools is the prevailing party on all issues.

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.

Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23216-2120



DUE PROCESS HEARING REPORT AND DECISION

School Division PUBLIC SCHOOLS

Name of Parents _____

Name of Child _____

Representing LEA ESQ.

Representing Parents ESQ.

Due Process Hearing Officer _____

Party Initiating hearing _____

I. PURPOSE AND ISSUES FOR DETERMINATION:

_____, parent of _____, made a written request for due process hearing dated _____

_____, but faxed to and received by the _____ Public Schools on _____

The request for due process hearing stated, "_____ Public Schools have not provided _____ a free appropriate public education". (S Ex.1)

The issues for determination in the due process hearing:

1. WHETHER _____ WAS PROVIDED A FREE, APPROPRIATE, PUBLIC EDUCATION.
2. WHETHER BY FAILING TO PROVIDE AN AIDE WITH ADEQUATE TRAINING, THE SCHOOL BOARD FAILED TO PROVIDE ABA THERAPY WITH A 1:1 AIDE AS DESCRIBED IN _____'S IEP FOR THE _____ SUMMER SCHOOL AND FOR THE 20____-20____ SCHOOL YEAR.
3. WHETHER COMPENSATORY ABA THERAPY IS APPROPRIATE GIVEN THE ABOVE FAILURE.
4. WHETHER, IN THE ABSENCE OF AN AIDE WITH ADEQUATE TRAINING, THE SCHOOL BOARD SHOULD FUND OUTSIDE SERVICES FOR PROVISION OF ABA THERAPY.

(see HO EX. 1)

II. ONE EXTENSION OF FINAL DECISION DUE DATE:

Upon appointment in this cause the undersigned hearing officer contacted the parties.

_____ were not represented by counsel but were actively seeking counsel and _____ Public Schools was represented by _____, Esq. On the initial contact the parties agreed to a pre-hearing conference set for _____ and the due process hearing set for _____. The final decision due date was _____.

On _____ the undersigned was notified that _____, Esquire would represent the parents. At the _____ pre-hearing conference, a joint motion was made to continue the due process hearing date from _____, and for extension of the final decision date beyond the 45 day period required by the *Rules Governing Special Education Programs for Children with Disabilities in Virginia*.

_____ requested additional time to investigate and to prepare for the due process hearing and both parties wanted to pursue mediation.

It was found to be in the best interest of the child (1.) that the parents have the right to retain counsel and be represented at due process hearing, if they so choose (2.) that counsel have adequate time to fully investigate matters, adequately prepare for hearing, and fully present all matters at issue and (3.) that there be opportunity for a full, complete, and fair hearing on all issues. Basic fairness requires that there be a full, fair, and complete hearing of the issues.

At this pre-hearing conference, on joint motion of the parties, it being found to be in the best interest of the child (for reasons as set forth above) the final decision date was extended and the due process hearing was continued. A timeline was established setting a second pre-hearing conference on _____, the due process hearing on _____, and the final decision date was extended to _____. At the _____ pre-hearing conference, both parties desired to present written briefs/arguments upon completion of the due process hearing and the final decision date of _____ was established to allow 10 business days after due process hearing for transcript delivery then for each party to have 7 days for brief/argument submission and then for there to be 7 days for the decision to be tendered.

This was the only continuance/extension granted in this cause.

III. PROCEEDINGS:

1. First Pre-Hearing Conference was held _____ (via telephone conference call) and upon motion of the parties the due process hearing date was continued, the final decision date was extended, and the below timeline was adopted. The extension was granted on the joint motion of the parties and upon finding it to be in the child's best interest (for the reasons previously set forth). The parties additionally expressed their desire to proceed with mediation and to attempt to resolve matters outside of the due process hearing.

At this first pre-hearing conference the below timeline was agreed to and established:

- i. Specific written issues to be provided no later than this date.
- ii. Second pre-hearing conference (via telephone).
- iii. Due Process Hearing.
- iv. Anticipated date transcript delivered.
- v. 's Brief/Argument due.
- vi. 's Brief/Argument due.
- iv. Final decision due date.

2. Second Pre-Hearing Conference was held on _____ (via telephone conference). The parties confirmed that mediation efforts did not resolve matters and the due process hearing would proceed as previously scheduled. Counsel for parents agreed to submit narrowed issues for determination at due process hearing. The timeline set forth at the first pre-hearing conference was confirmed.

3. Due Process Hearing was held on _____, starting at 10:00 A.M. at the Third Floor Board Room, _____ Public Schools Administrative Building, _____, VA. before the undersigned duly appointed hearing officer. Per parent's motion the due process hearing was closed to the public.

- a. The following witnesses testified at the due process hearing:

b. Exhibits: The following exhibits were, by agreement of the parties, admitted into evidence at the due process hearing:

- I. Parents' exhibits designated A through U.
- II. School's exhibits designated 1 through 52 (and including 41A, 41 B)
- III. Hearing Officer's Exhibit . . . designated as HO 1

c. Transcript: The transcript of the due process hearing consists of one volume. At the request of all parties, the transcript pages were reduced in size to allow four pages of transcripts printed on one sheet of paper. A total of 315 numbered pages (reduced in size to 4 numbered pages on each sheet) comprise the transcript plus a word index was provided. The transcript is referred to as "Tr. pg. ____" (with the page number inserted at "____"). The Parent's Exhibits are designated as "P Ex. ____" (with the page number inserted at "____"). The School's Exhibits are designated as "S Ex. ____" (with the page number inserted at "____"). The Hearing Officer's Exhibits are designated as "HO Ex. ____" (with the page number inserted at "____").

d. Post-Hearing Timeline: At the conclusion of the Due Process Hearing the parties confirmed their desire to provide written brief/arguments as requested at the first pre-hearing conference. Approximately 10 business days were required for the court reporter to provide a written transcript of the proceedings to the parties. Based upon this and to allow 7 day periods for each party's brief/agreement and 7 days for the final decision the following post-hearing timeline (which was discussed in pre-hearing conference) was set::

- .. Transcript due (10 business days estimated being needed to prepare).
- ... Brief/argument of _____ due.
- ... Brief/argument of _____ due.
- ... Due Process Decision due.

e. Tender of Transcript and Written Briefs/Arguments: The transcript was actually received on . In conference call with the parties held after receipt of transcript, the established due dates of for 's brief/argument, for 's brief/argument, and for the final decision date was agreed to be maintained. Each party tendered his or her written brief/argument in a timely manner.

IV. FINDINGS OF FACT:

Based upon all of the evidence presented at due process hearing, including the testimony of witness and review of the exhibits admitted, the hearing officer makes the following findings of fact:

01. is a child born on and who at all times relevant to these proceedings resides with parents in the , Commonwealth of Virginia.

02. from the Virginia Autism Resource Center screened in home and found that could not label as autistic but verified was autistic-like because had so many characteristics of autism. (Tr. pg. 28)

03. Public Schools Special Education Eligibility Committee met on , and (then age 31 months) was found eligible for Special Education in the Early Childhood Special Education ("ECSE") REACH Program and was found eligible for Related Services. The Eligibility Committee found that " is displaying significant delays in all areas. shows autistic type characteristics." showed significant delays in communication, cognitive, and motor development (see S Ex. 5 and 9) and was identified as Developmentally Delayed and Speech /Language Impaired.

04. was found eligible for services in the Noncategorical Preschool Disabled Program with Speech as a related service. (S Ex.6) The eligibility committee recommended ECSE Class 3 hours five days weekly, speech therapy, and PT/OT Evaluation. (S Ex. 5).

05. began receiving services from the Public Schools in the year 20 . (Tr. pg. 21)

was in the REACH program at _____ Elementary school. (Tr. pg. 35) _____ was referred to the REACH program due to a speech and language delay, not feeding _____ self with a spoon and fork, not playing with toys appropriately, and not interacting with other children. (S Ex. 4.)

06. IEP's for periods prior to the summer of 20__ a number of IEPs and Amendments to IEPs were developed for _____ and implemented including:

(a.) Initial IEP - of _____ found delays across all developmental domains. Gross motor skills were solid at 19 months with a scatter to 24 months and fine motor skills are solid at 8 months. Communication Skills were within the 6-9 month range (feeding skills 16-19 mo.). Cognitive scores were at the 9-11 month range and Social skills at 12-15 months. (S Ex. 7)

(b.) Amendment to IEP of _____. (S Ex. 9).

(c.) Amendment to IEP of _____. (S Ex. 10)

(d.) Amendment to IEP of _____ provided for a meeting to discuss _____ Receiving ABA training in classroom with further recommendations pending observation. (P Ex. D)

(e.) Amendment to IEP of _____ provided direct ABA instruction, for a 1:1 aide 3 hours a day beginning _____, and for instruction of ABA in a distraction free environment for discrete trial training. (P Ex. 12)

(f.) Amendment to IEP of _____ provided for a direct ABA instructor. (S Ex. 13)

(g.) IEP (Annual) of _____ provided:

from _____	-	ECSE Classroom 3 hours a day 5 days week	
		ABA/1:1 Aide 3 hours a day 5 days a wk.	from _____ to _____
from _____	-	: Summer School 5 ¼ hours a day 4 days a week	
from _____	-	: ECSE Class with a 1:1 Aide 3 hours a day 5 days a week	
		ABA with a 1:1 Aide 3 hours a day 5 days a week	
		Speech Therapy 30 minutes 2 times a week	
		Occupational Therapy 30 min. two times a week	(S Ex. 14)

(h.) Amendment to IEP of _____ added additional goals to current IEP. (S Ex. 17)

07. IEP of _____. (S Ex. 20) The IEP of _____, provided for Early Childhood Special Education ("ECSE") Class 3 hrs 5 times a week; ABA with a one-to-one aide 3 hours a day 5 days a week; Speech 30 minutes 2 times a week; Occupational Therapy 30 minutes 2 times a week, and a one-to-one aide Regional Autism classroom 5 days week. The beginning date services was _____ and the ECSE had an

"Anticipated Completion Date" of _____ but the remaining services' indicated Anticipated Completion

Dates of _____ . ESY services were from _____ to _____ .

On _____ , the IEP Team found _____ is a child who has been diagnosed with autism and who is currently showing significant delays in all developmental areas and recommended ESY services for _____ to maintain _____ current level of functioning.

Extended School Year ("ESY") services from _____ to _____ were set forth. ESY services included ABA/ one-to-one aide 3 hours a day for 4 days a week, Speech once a week for 30 minutes and OT once a week for thirty Minutes.

_____ signed giving permission to implement. (S Ex. 20)

08. Revised IEP of _____ (S Ex. 26) A second IEP meeting was convened on _____ after the school received a letter rescinding the approval earlier given by parents at the _____ IEP meeting. The _____ meeting was attended by _____ . _____ signed the IEP on _____ indicating permission for implementation of the IEP and agreement to the placement decision.

The revised IEP of _____ provided for _____ to receive ABA service with a one-to-one aide 3 hours daily, monitoring by a Regional Autism in Class Teacher 5 days a week, speech services twice a week for 30 minutes, and occupational therapy twice a week for 30 minute each. _____ signed this on _____ giving permission to implement. (S Ex. 26)

09. Amendment to IEP of _____ (S Ex. 28) The _____ Amendment to IEP provided for ECSE with an one-to-one aide 3 hrs - 5 days a week and for ABA with an one-to-one aide 3 hrs for 5 days a week. Additionally, there was to be an ABA consultation once a week. The beginning date for services was _____ and the anticipated date of completion of services is _____ (excepting one provision for _____ - _____). _____ signed this Amendment on _____ giving permission to implement. (S Ex. 28)

10. Amendment to IEP of _____ (S Ex. 32) The purpose of this amendment was to change the amount of time with an aide to be trained in ABA from 5 days a week for 3 hours a day to 5 days a week for 1.5 hours a day. ECSE (with 1:1 aide) was provided at 4 hrs per day for 5 days a week and an ABA consult of 1.5

hrs a day for 10 days was provided. The beginning date for services was _____ and the anticipated date of completion is _____. _____ signed giving permission to implement. (S Ex. 32)

11. Amendment to IEP of _____ (S Ex. 37) The purpose of this amendment was to make changes in percentage of service. ECSE with a one-to-one aide was provided at 4.5 hours per day for 5 days a week, ABA with an one-to-one aide 1.5 hrs per day for 5 days a week and for an ABA consult of 1.5 hours. The beginning date for services was _____ and Anticipated Date of Completion was _____. This amendment was not signed by a parent to indicate permission for services. (S Ex. 37)

12. Amendment to IEP of _____ (S Ex. 40) This amendment was to change services to reflect 6 hours total instruction including related service within ESCE Classroom with removal of 1.5 hours per day of ABA services. REACH preschool classroom was provided for 6 hrs per day 5 days a week. The beginning date for services was _____ and Anticipated date of completion was _____. This amendment was not signed by a parent to indicate permission for services. (S Ex. 40)

13. Proposed IEP Amendment/Addendum of _____ (S Ex. 41A) This proposed amendment IEP was to correct prior clerical error and to provide 9 hours of in home ABA services in compensation for 9 hours that were missed during ESY services in summer of _____. It attempted to clarify Special Education services per IEP and it provided ECSE, Classroom, for 4.5 hrs. per day for 5 days a week from _____ - _____ and for ABA with 1:1 aide for 1.5 hrs. per day 5 days a week from _____ - _____. Service location was _____ Elementary School ECSE Classroom. This IEP was signed by _____ indicating _____ was a member of the IEP committee but was not signed indicating if permission was or was not given for _____ to receive Special Education Services as indicated by the addendum/amendment. (S Ex. 41A).

14. On _____, the IEP Team found _____ to be a child who has been diagnosed with autism and who is currently showing significant delays in all developmental areas. _____ signed giving written permission to implement this IEP on _____ (see S Ex. 20). However, in the photo copy of the same page which _____ signed giving permission to implement the IEP on _____ below _____'s consent

signature was a handwritten notation stating, "Letter received that you rescinded your written approval for this IEP." (see S Ex 26)

15. On [redacted] requested a meeting to amend the IEP to (a.) remove the one hour in the Autism classroom from [redacted]'s IEP, (b.) provide the aide be trained by a trainer with over 500 hours one-to-one ABA discrete trial experience for both ESY and next school year, (c.) a program developer having over 500 hours one-to-one ABA discrete trial training experience and extensive training and (d.) ABA in a separate distraction-free room. (P Ex. G) A second meeting was to be held on [redacted].

16. The school year began on [redacted] but because there was no one-to-one aide for [redacted] kept [redacted] out of school three days (Wednesday [redacted], Thursday [redacted] and Friday [redacted]). On Monday [redacted] went to school. (P Ex. M)

17. On [redacted] wrote the [redacted] Public Schools that, "I am requesting [redacted] be kept out of the "ABA" program until a program is set up for [redacted] and that [redacted] is trained thoroughly." (" [redacted]" refers to [redacted]). (S Ex. 31)

18. [redacted] observed [redacted] at the REACH program in 20 [redacted]-20 [redacted] attended the IEP meeting following that on [redacted] and attended multiple IEP in subsequent school years. [redacted] observed [redacted] and consulted with [redacted]'s teachers in 20 [redacted]-20 [redacted] and 20 [redacted]-20 [redacted] school years each three weeks and consulted approximately 4 times after [redacted] in the 20 [redacted]-20 [redacted] school year. (Tr. 196-198) [redacted] testified that [redacted] is capable of learning and that [redacted] has seen "outstanding growth" and described [redacted] as having made progress continually from the beginning (Tr. pg. 203)

19. [redacted] was an aide who provided ABA services to [redacted]. [redacted] was temporary and then given full time employment on [redacted] (Tr. pg. 262). [redacted] received training by the [redacted] classroom teacher at the beginning of the school year and by autism specialists both as a substitute and upon going to full time status. [redacted] has a high school diploma. (Tr. 262-264)

20. is 's teacher in the 20 -20 school year. This class had a maximum of eleven students in the class and the class is staffed with one teacher and two classroom aides plus 's one-to-one aide. (Tr. pg. 282)

21. There is no national standard for training before you call yourself an ABA therapist, no licensure as an ABA therapist. (Tr. pg. 214, 215)

22. There are no state standards for aide training and no requirements under Public School's procedures other than a requirement that aides be high school graduates (Tr. pg. 163-164).

V. DISCUSSION AND CONCLUSIONS OF LAW:

's parents brought this due process proceeding due to concerns that has not been receiving an appropriate education and particularly raising their concerns that the Public Schools failed to provide an adequately trained one-to-one aide for as required in IEP for summer school and school year 20 -20 . The parents further raise questions about compensatory therapy and the need for services to be provided outside the Public Schools.

The IEP for the 20 -20 school year was signed by indicating permission for services on . However, on requested the IEP be amended and to this end a second IEP meeting was held and subsequently signed by indicating permission.

Parents Exhibit (P Ex. I) shows that on , signed as participants in the development of the IEP and the placement decision but the IEP does not bear any signature indicating if a parent gave or did not give permission. School Exhibit (S Ex. 26) shows signed the IEP on

as participants and shows permission being given for implementation by dated . Both "P Ex I" and "S Ex. 26" reflect the meeting with the second IEP Meeting changes.

On an Amendment to IEP (purpose was change of placement) was signed by indicating consent. (S Ex. 28) indicated that at the meeting was informed

(the same aide who worked with [redacted] in summer school) would be [redacted] aide but on the first day of school ([redacted]) [redacted] did not have an aide. As there was no one-to-one aide for [redacted] kept out of school three days (Wednesday [redacted], Thursday [redacted], and Friday [redacted]). On Monday [redacted] went to school (P Ex. M)

[redacted] testified that an aide that they intended to offer the position to did not accept that position and the person they eventually hired as an aide for [redacted] was [redacted]. (Tr. pg. 144-145)

[redacted] expressed concerns about school personnel training and that ABA was not properly being conducted and on [redacted] requested [redacted] be kept out of the ABA program. (P Ex. M; S Ex. 31) At the [redacted] IEP Amendment meeting the minutes indicated [redacted] made suggestions for training of school personnel. [redacted] also expressed concern that [redacted] was behind and requested a home ABA program. (S Ex. 32)

On [redacted] indicated, after [redacted] in school observation, [redacted] feelings that two school personnel working with [redacted] were "unsure of appropriate ABA techniques" and that neither person could get to do anything productive. (P Ex. L)

[redacted] testified that on [redacted], [redacted], and [redacted] all told [redacted] the aide ([redacted]) was not trained and should not be providing services to [redacted]. (Tr. pg. 52)

A.

Issues:

WHETHER BY FAILING TO PROVIDE AN AIDE WITH ADEQUATE TRAINING, THE SCHOOL BOARD FAILED TO PROVIDE ABA THERAPY WITH A 1:1 AIDE AS DESCRIBED IN [redacted]'S IEP FOR THE [redacted] SUMMER SCHOOL AND FOR THE 20 [redacted]-20 [redacted] SCHOOL YEAR.

WHETHER COMPENSATORY ABA THERAPY IS APPROPRIATE GIVEN THE ABOVE FAILURE.

WHETHER, IN THE ABSENCE OF AN AIDE WITH ADEQUATE TRAINING, THE SCHOOL BOARD SHOULD FUND OUTSIDE SERVICES FOR PROVISION OF ABA THERAPY.

The above issues are related to the parents contention that [redacted]'s aide was not adequately trained and that not being adequately trained this affected the provision of ABA therapy and was a violation of the IEP. This in turn was impacting on the issue of provision of a FAPE (the issue of FAPE is discussed in "B" below).

In The IEP meeting of [redacted] as revised by the IEP of [redacted] (which was signed on [redacted] by [redacted]'s parent giving permission to implement) [redacted] was to receive 3 hours daily of Applied Behavioral Analysis ("ABA") services with a one-to-one aide. This IEP was later amended on [redacted] to change the amount of time with an aide to be trained in ABA to 1.5 hours daily (S Ex. 32).

Addressing the matter of one-to-one ABA Training it appears that on a number of occasions [redacted] expressed [redacted] concerns over the one-to-one aide's ABA training. [redacted] had requested ABA be stopped and [redacted] expressed [redacted] belief that [redacted]'s aide was not trained appropriately.

[redacted] provided training suggestions for [redacted]'s aide. In [redacted] of [redacted] indicated that the 1:1 aide working with [redacted] must be trained by a trainer with over 500 hours one-to-one ABA Discrete Trial Experience (P Ex G) and later at IEP meeting on [redacted] made other training suggestions. (S Ex. 32)

State Law has no requirements which specify the training that must be provided to an aide and there are no requirements under [redacted] Public School's procedures other than a requirement that aides be high school graduates (Tr. 163-164).

[redacted] was hired as an one-to-one aide for [redacted]. [redacted] was at first temporary and then given full time employment on [redacted] (Tr. pg. 262). [redacted] received training by the classroom teacher at the beginning of the school year and by autism specialists both as a substitute and upon [redacted] going to full time status. (Tr. 262-264) Coworkers who had experience in autism expressed opinion that [redacted] was adequately trained (Tr. pg. 125-128, 218, 264).

Beginning approximately [redacted] (disability service coordinator, regional program) provided training to [redacted]. Training began while [redacted] was a substitute assistant and continuing on after [redacted] became a full time employee on [redacted] (Tr. pg. 262, 263). [redacted] provided at least 30 hours of ABA training to [redacted] up until [redacted] when [redacted] took

over and then provided additional training. Even after took over went over to make checks on a daily basis. (Tr. pg. 264)

Public Schools Director of Special Education, testified did not state should not be doing one-to-one with (Tr. pg. 137). testified that was sufficiently and appropriately trained. did additionally indicated was ready and prepared and that the school planned to continue training as training was an ongoing process. (Tr. pg. 125, 126)

Regional Disabilities Service Coordinator, provided training to assistants and teachers who deliver ABA instruction. (Tr. pg. 254-256) has provided services to and worked with (Tr. pg. 260). provided classroom training to beginning on the of when was a substitute assistant and continued training after became a permanent employee. (Tr. pg. 262) provided some daily but undefined amount (as maintained no records) of training prior to , then ten hours in the week of , and then thirty hours after that week until took over with .

testified that the training received was sufficient to train as an aide/assistant to provide ABA Services (Tr. pg. 264). 's training was to be ongoing and discussed this with . testified that, "There is always a need for change with the individual children, dependent upon their needs (Tr. pg. 264)

holds a Master's Degree in Special Education and has 28 years experience in the area of autism. has taught autistic children and taught classes at University training teachers to work with autistic children. received training in the area of Applied Behavioral Analysis and was involved with building ABA/Discrete Trial Training/Lovass programs for Area schools (Tr. pg. 193) testified that there is no specific Virginia licensure in autism nor in ABA. (Tr. pg. 187-189)

also testified that never stated to that 's aide was not trained or that the ABA had not been provided (Tr. pg. 221, 222)

_____ began involvement with _____ in 20 ____-20 ____ school year attending multiple IEP meetings from the 20 ____-20 ____ school year to the present school year and consulted with _____'s teachers for the same period (Tr. pg. 197, 198)

_____ testified that _____ believed _____ had received adequate ABA training. (Tr. pg. 218) and confirmed that additional training in the classroom was provided to _____ (Tr. 303, 304)

_____ had received training to keep notes and data sheets concerning ABA trials/data.(Tr. pg. 219-221) and

_____ testified that there was sufficient documentation to show whether _____ was making progress.

_____ created the data sheets that were used and maintained by _____ and/or _____

These data sheets were in _____'s opinion appropriate and accurate (Tr. pg. 221).

_____ testified to _____ belief that ABA was being provided in the classroom and _____'s IEP, as amended over the school year, was being implemented. (Tr. pg. 222) _____ further indicated that there are no standards for any one to deliver ABA and in some of the qualified nationally recognized programs there are students with no training who are trained on site on an ongoing process. (Tr. pg. 214)

_____ indicated _____ also observed ABA being provided to _____ in the REACH program and (_____ teacher), _____, and _____ self had on occasion utilized ABA. (Tr. 275)

Evidence indicated that _____'s aide did receive ABA training when _____ began working with _____ and this training was of a continuing and an ongoing nature. The training was sufficient to comply with the requirements of the IEP's as they evolved over time. _____'s aide was not subject to state regulations as to training requirements and it is evident from the record that _____ was provided training, assistance, and support.

_____ 's IEP's made provision for a one-to-one aide with ABA training. Under IDEA and its regulations the school is to provide special education and related services to a child with a disability as provided in the child's IEP. A school is in violation of IDEA if it fails to implement substantial or significant provisions of the IEP. (Houston Independent School District v. Bobby R., 200 F. 3d 341, 349 (5th Cir. 2000) However,

Public Schools did not fail to implement substantial or significant portions of the IEP.

Evidence at hearing indicated that there was adequate training of the aide and there was provision of ABA (by the aide, by the child's teacher, by , and by) consistent with provisions of the IEP's as the IEP's developed over time. Given this finding and in light of the finding set forth in "B" below, compensatory ABA therapy is not appropriate and outside services for the provision of ABA therapy is not required.

B.

WHETHER WAS PROVIDED A FREE, APPROPRIATE, PUBLIC EDUCATION.

A "Free Appropriate Public Education" (FAPE) means special education and related services that:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include preschool, elementary school, middle school or secondary school education in the state;

and

4. Are provided in conformity with an individualized education program (see *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*; 8 VAC

20-80-10)

Board of Education of the Hendrick Hudson Central School District et al v. Rowley, 458 U.S.

176 (1982) provides a two prong test to determine the appropriateness of the education being provided the child. First, whether the school system has complied with the procedures of the IDEA; and second, whether the child's IEP is reasonably calculated to enable the child to receive educational benefit. Under the IDEA, a "free appropriate education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. White et al. v. School Board of Henrico County, 2001, 549 S.E.2d 16, 36 Va. App.137.

The "free appropriate public education" requirement of the IDEA is satisfied by "providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction."

Board of Education v. Rowley, 458 U.S. 176, 188 (1982).

holds licensure in Early Childhood Special Education and was _____'s teacher in REACH class in the 20 ____-20 ____ school year. _____ class had a maximum of eleven students in the class and the class is staffed with one teacher and two classroom aides plus _____'s one-to-one aide. (Tr. pg. 282) Around the Break (_____) _____ stopped attending class. _____ testified that _____ was making progress this year.

_____ testified _____ conducted probe testing and conducted measurements both in the school and home setting and concluded _____ was making progress in this school year and in prior school years. (Tr. page 203-208) _____ documented ABA Progress for _____ (S Ex. 35) and indicated _____ made progress in the areas of imitation skills, identify objects, labeling, the use of picture exchange, gross motor imitation, and in the use of action with objects and interaction with toys. _____ improved in ability to put puzzles together, sort big and little, matching letters, catching balls, and was improving in other skills. _____'s fine motor skills and gross motor skills had greatly improved. Following one step directions had improved and use of tactile materials and tactile activities had improved. (Tr. 204-206)

_____ also testified _____ was making progress noting that on _____ was unable to stay within the circle at school. _____ got up and wandered but _____ progressed to working with _____ teacher and with the other students within the circle time. (Tr. pg. 271, 272)

_____, _____'s classroom teacher, indicated _____ made progress during the current school year. _____ has seen a lot of progress with _____ and interaction with the other children (referring not to spontaneous interactions but interactions/opportunities set up for _____). _____ has continued picture exchange skills from last year but there have been added things to the book used. _____ indicated _____ definitely was making progress towards IEP goals and objectives for the 20 ____-20 ____ school year. (Tr. pg. 294)

A free appropriate public education does not require that the child receive the best education possible but requires that the child receive a "basic floor of opportunity" and that it is reasonably calculated to offer a child educational benefit. Board of Education v. Rowley, 458 U.S. 176, (1982).

The Virginia Supreme Court further provided that the education to which access is provided must be sufficient to confer some educational benefit on the handicapped child. School Board of Campbell County v. Beasley, 238 Va. 44 (1989) (*emphasis added*)

The evidence indicates Public Schools has proven that it has offered a n appropriate education to and has demonstrate that the proposed program of special education and related services was reasonably calculated to afford and did afford educational benefit. IEP was developed with the direct and meaningful input of the parents and other IEP team members. There were a number of occasions in which the parents asked for meetings to make amendments to the IEP and the IEP committee was convened to address parental concerns. 's IEP was amended a number of instances at the parents request.

The IEP team devoted significant time and effort to its development. The IEP included the opinions of school officials, parents, and other professionals who were involved with . These individuals have a direct and personal knowledge of needs, requirements, and progress and significant weight is given their educational opinions.

CONCLUSIONS:

1. Public Schools has the burden of proof as to provision of FAPE and has carried the burden. Public Schools have provided FAPE was provided to . Additionally, the school has provided adequate training to 's aide and has provided ABA Therapy with a 1:1 aide as described in 's IEP's for the times at issue.

2. The parents initiated due process and raised the issue of aide training and the provisions of ABA services and they bear the burden of proving their case as to these provision. see Spielberg v. Henrico County Public Schools, 853 F.2d 256(4th Cir. 1988), *cert. denied*, 498 U.S. 1016 (1989) The parents have not met their burden as to provision of ABA services and as to allegations concerning aide training

3. The requirements of notice to the parents were satisfied.

4. has a disability.

5. needs special education and related services.

6. The LEA is providing a free appropriate public education ("FAPE").
7. Compensatory ABA services are not required as _____ is being provided FAPE.

RIGHT OF APPEAL:

This decision is final and binding unless appealed by a party in a state circuit court within one
year of this decision's issuance date, or in a federal district court.

date: _____

Copies of this Report and Decision reported this date to:

- 1.
- 2.
- 3.