



VIRGINIA

DEPARTMENT OF EDUCATION (SPECIAL EDUCATION)

[REDACTED]

Parents

v.

[REDACTED]

PUBLIC SCHOOLS

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DUE PROCESS HEARING

IN RE:

[REDACTED]

PRELIMINARY STATEMENT

Pursuant to an appointment made by [REDACTED] Public Schools (LEA or [REDACTED] on [REDACTED] the undersigned Hearing Officer was designated to hear the due process complaint brought by [REDACTED] and [REDACTED] (and/or [REDACTED]), parents of [REDACTED] (child).

An initial telephonic pre-hearing conference was held on [REDACTED] between [REDACTED] and [REDACTED] counsel for the LEA. At that time the hearing was scheduled to be held on [REDACTED] with an anticipated decision date of [REDACTED].

On [REDACTED] [REDACTED] faxed a request to the Hearing Officer that the hearing date scheduled for [REDACTED] be rescheduled. The reasons involved the unavailability of certain key witnesses and the possibility of seeking legal counsel. The Hearing Officer returned from vacation on [REDACTED] and called both [REDACTED] and [REDACTED] on [REDACTED] in order to deal with the request and other procedural matters. A pre-hearing telephone conference was held on that date with [REDACTED] and [REDACTED]. At that time the Hearing Officer was advised that [REDACTED] whom both parties agreed was the most critical witness in the case was unavailable on [REDACTED]. In light of the undisputed importance of having the availability of that witness and the fact that a decision could be rendered prior to the beginning of the school year, the continuance was granted for good cause. The hearing was rescheduled for [REDACTED], the earliest date available. [REDACTED] was also advised to retain counsel as soon as possible if [REDACTED] were going to do so and have such counsel contact the Hearing Officer. At that time the anticipated decision date was [REDACTED]. Due to unforeseen circumstances, the rendering of the decision was delayed until [REDACTED].

The hearing began at 8:35 a.m. on [REDACTED] and was completed at 6:14 p.m. The LEA was represented by [REDACTED] Esquire. The [REDACTED] were not represented by counsel. Nine witnesses testified for the parties. All exhibits offered by both parties were admitted into evidence without objection. The Hearing Officer has reviewed the exhibits, notes taken of the testimony at the hearing and conducted appropriate research into the law governing the issues in this proceeding.

ISSUES OF DUE PROCESS HEARING

The parents argue that the IEPs for their [REDACTED] are deficient in several respects: 1) they lack sufficient goals and sufficient means of measuring whether goals have been achieved; 2) they fail to address the social issue problem which their [REDACTED] has; 3) they do not provide sufficient services, particularly OT and speech therapy; 4) the LEA has failed to demonstrate that the child has achieved sufficient competency.

They also argue that [REDACTED] is violating the least restrictive environment requirements by directing that their child be sent to [REDACTED] School [REDACTED].

The parents also argue that their [REDACTED] is not capable of achieving in a regular classroom setting and request that the Hearing Officer approve [REDACTED] transfer to [REDACTED] and require [REDACTED] to reimburse the parents for the cost of tuition.

FACTUAL EVIDENCE

[REDACTED], is licensed in Virginia in speech and language pathology and learning disabled with twenty-nine years of experience in speech and language impairment, learning disability and emotionally disturbed and [REDACTED] children. [REDACTED] taught the child language arts during this past school year, where [REDACTED] was in the [REDACTED] grade. [REDACTED] described the child's social problems as involving inappropriate calling out, pointing to other children's behavior, interacting little with the children and being socially sensitive to perceived criticism. By comparison to other [REDACTED] graders [REDACTED] said that [REDACTED] had an extremely short attention span and an intolerance to criticism. At the end of the year, [REDACTED] said that [REDACTED] had achieved mid-[REDACTED] grade level in reading. [REDACTED] did not believe [REDACTED] had a problem in transitioning from regular to special education classes or vice versa.

In terms of [REDACTED] intelligence, [REDACTED] said that [REDACTED] had good recall particularly with regard to animals and science, that [REDACTED] saw humor in other students and that [REDACTED] had "some average abilities". [REDACTED] attention was a big hindrance. As well, [REDACTED] had very poor hand writing and problems with not following instruction on mechanics. [REDACTED] did recall a statement made by an occupational therapist that [REDACTED] would "never be able to write".

When asked to review parents Exhibits 16 and 17 which represented work at [REDACTED] and [REDACTED] ([REDACTED] respectively, [REDACTED] stated that the exhibit for [REDACTED] was representative of [REDACTED] work, although inconsistent, and that "some days", [REDACTED] wrote as well as the information contained in the [REDACTED] exhibit.

In response to questions as to the strategies which [REDACTED] found effective for the child [REDACTED] responded: 1) one on one; 2) a direct teaching approach, with lots of repetition; and 3) rapid instruction for short periods of time. [REDACTED] further said that when on medication, [REDACTED] could work longer periods of time. [REDACTED] stated that [REDACTED] did not believe [REDACTED] could receive these strategies in a regular school setting. On cross-examination by LEA counsel, [REDACTED] discussed the various IEPs which had

been written for the child and were offered as exhibits in the proceeding. [redacted] taught [redacted] language arts: reading, writing, spelling and manuscript. [redacted] said that [redacted] was removed from the regular classroom because [redacted] did not know phonics, had attention problems and had limited eye contact, both with other students and with teachers.

In reviewing the various IEPs, [redacted] stated that [redacted] considered them to be appropriate for [redacted] noting that in [redacted], [redacted] was 56% in a regular class and 44% in special education. [redacted] thought that the child wanted to be in a large group of children, that [redacted] learned from other children, in social terms and was able to relate things to [redacted] which [redacted] learned in the regular classroom. [redacted] pointed out that [redacted] is sometimes accompanied by a special education aide so that [redacted] will maintain appropriate behavior.

In [redacted] IEP increased the time that [redacted] was spending with [redacted] a specialist in [redacted] and added special education services for mathematics. [redacted] thought that [redacted] was making progress insofar as [redacted] social skills were concerned and that it was important that [redacted] continue contact with regular education.

This last IEP was written on [redacted] [redacted] was not present at that meeting because of an illness in [redacted] family; however, [redacted] had prior involvement in the recommendations that were made and considered the decisions to be appropriate, including the decision to send the child to [redacted] because of their program for [redacted] children. [redacted] testified that there was a special education teacher with three aides for up to eight students, where there would be substantial opportunity for one to one instruction.

In describing the child's progress in the last month of school, [redacted] said that [redacted] had become quieter when others were speaking and was more patient. [redacted] observed that some improvement may have been due to some new medication that [redacted] had been given. [redacted] progress in written language was not as consistent as in [redacted] reading, and [redacted] hand writing continued to be a problem. [redacted] attributes at least some of that to certain behavioral issues including a lack of eye contact with [redacted] papers and a low tolerance for frustration. Again, [redacted] said that these issues improved while on medication.

In response to questions from the Hearing Officer, [redacted] discussed how [redacted] wrote the cover sheet for the [redacted] IEP, noting that there had been a recommendation from a central special education committee (LEA Exhibit 61) that was endorsed by the [redacted] team.

Although [redacted] would have hoped for more progress in social skills, [redacted] had made "appropriate" progress during the year. [redacted] said that [redacted] sat in the seat, [redacted] eye contact, both with [redacted] materials and others was good, [redacted] negative behavior with other people decreased, and [redacted] greeted other students and asked about them.

Insofar as social issues for next year at [redacted] are concerned, [redacted] said that the goals were the same except that an [redacted] teacher would take over what had been handled by the [redacted] and [redacted] teachers at [redacted] [redacted] believed that [redacted] improvement was due

to the success of their strategies but, admitted that [redacted] did not do grade level appropriate work in regular education. This was the reason why a decision was made to have [redacted] repeat the [redacted] grade, a decision joined in by the parents.

In response to questions from [redacted] [redacted] said that the two hours of prescribed occupational therapy "could be adequate". [redacted] added that the occupational therapist and special education teachers needed to confer as to handwriting strategies and would like to see them continue in view of [redacted] improvement after the change of medications.

[redacted] is a speech language pathologist with thirty one years of experience, including [redacted], who is licensed in Virginia. [redacted] worked with the child for the last one and one half years. [redacted] goals, [redacted] stated, were to be found on page 7 of the [redacted] IEP (LEA Exhibit 58, goals 2-7). [redacted] was in a group of three persons after two others joined in the [redacted] time frame. [redacted] primary focus was in correcting [redacted] expressive language. The eye contact issue was not listed as one of the goals with [redacted], because, [redacted] said, it need not be addressed in a small group setting. [redacted] said that [redacted] was satisfied with progress [redacted] made in the small group setting and did not have the opportunity to see [redacted] in regular classes. Like [redacted], [redacted] had not observed any transitional problems between regular and special education classes for the child.

In response to questions from counsel for the LEA, [redacted] said that [redacted] believed that [redacted] had made adequate progress in the goals for which [redacted] had responsibility. [redacted] thought that [redacted] had input into those goals and that they were appropriate. [redacted] suggestions, [redacted] said, were accepted in the [redacted] IEP.

[redacted] was the child's [redacted] grade regular teacher at [redacted] [redacted] has been a teacher for thirteen years teaching children with disabilities in the [redacted] and [redacted] [redacted] described [redacted] problems in class as being easily distracted, a failure to maintain appropriate eye contact with teachers and peers, and that [redacted] sometimes disrupted class by calling out.

Insofar as the transition between regular and special education classes were concerned [redacted] said that at the beginning it was difficult for [redacted], but, by the end of the year it was "routine".

[redacted] said that it was difficult to assess [redacted] ability to learn because of [redacted] impairments. [redacted] was at grade level with regard to science and social studies with some acceptable modifications of testing (seating, peer tutors and hands on) In terms of interactions with [redacted] peers, [redacted] said that [redacted] was age appropriate at [redacted] both in regular and special education and had playmates at [redacted]. [redacted] also said that at the beginning of the year [redacted] had more problems with the other children in verbalizing [redacted] complaints. [redacted] tended to simply repress them but by the end of the year [redacted] could "tattle". [redacted] attributed the improvement to the transition between special education and regular education and the interaction with other children.

[redacted] stated that [redacted] did not know whether the [redacted] IEP requirements for handwriting services were adequate. It depended on where else [redacted] was working on it.

In response to questions from LEA counsel, [redacted] stated that it was appropriate for the child to be in regular class in both science and social studies because [redacted] could meet the objectives. In terms of behavioral improvements, [redacted] said that [redacted] was verbalizing [redacted] problems, was less off task at the end of the year, made better eye contact and improved play with peers. In addition, [redacted] reduced [redacted] problem of calling out and raised [redacted] hand instead to give information. [redacted] also described [redacted] handwriting as having improved throughout the year.

As far social skills were concerned, there had also been progress. [redacted] learned to respect the personal space of others and was exhibiting kindness and role modeling. The verbalization of [redacted] problems, [redacted] thought, was [redacted] biggest improvement.

[redacted] is assistant principal of [redacted] School. [redacted] has been an employee of [redacted] since [redacted], and for the last ten years in administration. In addition to some testimony which was cumulative of previous testimony, [redacted] discussed [redacted] IEP. [redacted] said they were interested in increasing [redacted] time in the regular classroom. [redacted] stated that [redacted] thought that the parents were not happy with the special education teacher that [redacted] had previously. In answer to a question from [redacted] as to how it was determined as to whether a student needed special education, [redacted] said that this was done by communication between special education teachers and the regular education teacher.

In response to a questions from LEA counsel, [redacted] related the history of the reasons why the child was in various schools. [redacted] began in [redacted] at [redacted] even though [redacted] was in the [redacted] School zone because special education services were unavailable at that school. The parents then moved to the [redacted] area. Because there was no such program at [redacted] stayed a [redacted]. [redacted] has such a program, now, but at a meeting in the spring, there was no consideration given to transferring [redacted] there because the parents opposed it.

In comparing the programs at [redacted] to those of [redacted] [redacted] said that [redacted] had all of the programs internally and did not rely on outside services such as itinerant [redacted] specialists and occupational therapists.

[redacted] the child's [redacted] related the educational history of [redacted] and the problems which [redacted] has experienced. At age [redacted] and one half [redacted] went to [redacted] at [redacted]. Because of certain unusual behaviors [redacted] exhibited, [redacted] was tested at [redacted] where [redacted] was diagnosed as "[redacted]". In the [redacted] year [redacted] went to [redacted] for the [redacted]. The next year [redacted] was main streamed at [redacted] but had home visits and speech services. In the spring of that year ([redacted] was first given Ritalin. The [redacted] year [redacted] went to [redacted] where [redacted] was in [redacted] and main streamed. Speech and occupational therapy were added. [redacted] also received learning disability and certain social services.

In the [redacted] of [redacted] the Ritalin began losing effectiveness. Other medications were tried but a return was made to Ritalin. At about that same time [redacted] was told about the special education

program at [REDACTED], where [REDACTED] entered in the [REDACTED] of [REDACTED] in the [REDACTED] program. [REDACTED] stated that [REDACTED] thought that it was a program for socially delayed and did not realize that it was an [REDACTED] program.

In [REDACTED] [REDACTED] called [REDACTED]. [REDACTED] was upset with some of the things that [REDACTED] was learning there and felt that was an inappropriate environment for [REDACTED]. In the spring of that year [REDACTED] also went to see [REDACTED], a pediatric neurologist, for testing. [REDACTED] was diagnosed as "[REDACTED] [REDACTED]". [REDACTED] also testified about the various schools that were considered and the reasons why [REDACTED] did or did not approve of them, including why [REDACTED] did not want [REDACTED] to go to [REDACTED]. In [REDACTED], [REDACTED] and [REDACTED] were hoping that [REDACTED] could transfer to [REDACTED] but was told that they did not have the necessary services so they started looking outside the public school system. In the [REDACTED], [REDACTED] said that the IEP team said that [REDACTED] was getting worse. They went to see [REDACTED] and [REDACTED] was put on another medication on [REDACTED].

[REDACTED] described [REDACTED] child's interaction with other students as limited to people like [REDACTED] or other "underdogs." [REDACTED] rarely saw [REDACTED] play with "regular" children.

[REDACTED] continues to object to sending [REDACTED] to [REDACTED] because [REDACTED] had a friend with an [REDACTED] child that did not have a good experience there.

[REDACTED] [REDACTED] has eleven years experience in special education, all at the [REDACTED] level and seven years experience with [REDACTED] children. [REDACTED] recently received a job transfer from being the [REDACTED] teacher at [REDACTED] to being an itinerant [REDACTED] teacher in [REDACTED]. [REDACTED] said the emphasis there is on social skills and modification techniques. [REDACTED] was present at the [REDACTED] IEP meeting and agreed with the recommendations. At [REDACTED] the aides go with [REDACTED] children into the regular class so that they can help them there. There are two aides and one student has his or her own aide. The total number of children in the class in which the child would be located is five.

When asked about a letter from [REDACTED] (Parent's Exhibit 12) [REDACTED] testified that [REDACTED] believed that [REDACTED] would meet all of the requirements set out by [REDACTED].

[REDACTED] outlined the extent to which [REDACTED] met with regular education teachers for each of [REDACTED] special education pupils and that [REDACTED] thought that it was a benefit for [REDACTED] children to be "mainstreamed." [REDACTED] denied seeing any negative effect of transitioning between special education and regular education.

In responding to the question as to how [REDACTED] would address social skills issues, particularly the attention problems of the child, [REDACTED] said they would break the task down so that [REDACTED] was being successful and make the necessary modifications. [REDACTED] also outlined other strategies that [REDACTED] uses in [REDACTED] program.

In response to LEA counsel, [REDACTED] stated that all the students in the class at [REDACTED] to which the child would belong are higher functioning [REDACTED].

also described certain handwriting strategies which were used, successfully. at
believed that is an appropriate placement for the child.

has an child who attended said that thought
had an excellent program but it was too far from home. did not want child
removed from the neighborhood for socialization reasons and believed that a such removal is
detrimental to

is an instructional specialist for, early childhood special
education and severe disability program. has twenty five years experience with from
nearly birth through adults. duties are to support and be the facilitator for the programs
for for all age levels.

became familiar with the child when was asked to give consultative services and
estimated that saw about six times for eight to nine total hours. went to three IEP
meetings, a triennial review meeting and a central special education committee meeting. In addition,
supervised the specialist who works with the child.

testified that has reviewed the, is familiar with the program and
believes that it is an appropriate place for

said that is making progress but not as much as is capable of in language arts and
social skills. The consultative services provided to through an itinerant person have
produced progress; but, thought they would be helpful to if given on a more regular basis.
said that the program at was different from that of because teacher
there would be a specialist in. The child is also able to move at own pace between regular
and special education, increasing or decreasing services as necessary. described it as a more
integrated program. The extra service given for believed, to be necessary for the child
because has some different learning styles than other persons with disabilities, for example,
the aspect.

was asked about the nature of the program in light of job change.
said that the program would continue as before with replacement. When asked about the length
of the bus ride that the child would have in order to attend said that it would be a
maximum of fifty-five minutes, based upon the children that they knew at this time would be in the
program.

In response to questions from discussed some of the child's social skill
difficulties. said that was interested in peers but had difficulty bringing into the
group, tending to be an observer. When asked what goals in the IEP involved social skills,
referred to goal 6, relating to personal space, greeting adults and eye contact. also said there
would be other opportunities for social skill improvement and participation based goals. said that
children can be overwhelmed and distracted by large groups and that the strategies available

depend upon whether there is group activity or an individual working in a group. [REDACTED] then described a couple of different strategies that [REDACTED] had used with [REDACTED].

In response to questions from LEA counsel, [REDACTED] said that the child benefitted from the time spent in [REDACTED] regular education class, that [REDACTED] enjoyed being with [REDACTED] peers and used them as role models. [REDACTED] also testified that there are numerous texts which support the benefit of main streaming [REDACTED] children.

[REDACTED] [REDACTED] is the Director of Special Education for [REDACTED]. [REDACTED] described the roles of central education committees as being set up to make recommendations to schools on IEPs, but not usually the final decision maker unless requested. These committees are not established by law but by county policy.

In response to a question as to how decisions about promotion for students not at grade level are made, [REDACTED] said this was done by the IEP teams.

DECISION

In essence the parents argue that their child has not made adequate progress, both academically and socially, in the [REDACTED] Schools system, whether because the strategies have been unsuccessful or its lack of necessary resources, and that [REDACTED] should be placed in a private school with tuition reimbursement from [REDACTED]. The evidence demonstrates that the parents have been largely supportive of the efforts made by [REDACTED]. Indeed, there are few facts in dispute in this proceeding. There is no disagreement as to the nature of the medical disability of their child nor even the particular problems which [REDACTED] experiences in the school setting. The parents simply believe that [REDACTED] has not progressed as [REDACTED] should, in particular that [REDACTED] is behind grade level in [REDACTED] performance, and that [REDACTED] would be better served in the private school in which they want [REDACTED] to enroll. In making this argument, they complain that the IEPs do not contain adequate goals to resolve [REDACTED] disability issues nor the means of measuring them and that certain provided services are insufficient, particularly occupational therapy and speech therapy.

Under Federal and Virginia law, a child with disabilities who qualifies is entitled to a FAPE. In determining whether a child has received the legally mandated services it first must be determined whether the legal procedures have been adequately complied with and secondly whether the IEP is reasonably calculated to enable the child to receive educational benefits. Board of Education v. Rowley, 102 S.Ct.3034 (1982) The second prong of that test has been the focus of this proceeding.

Any analysis of whether a special education child is receiving a free appropriate public education begins with the Individuals with Disabilities Education Act, 20 U.S.C. § 1412(5), which provides, "to the maximum extent appropriate, children with disabilities...[should be] educated with children who are not disabled..." This requirement for "least restrictive environment" or "main streaming" is secondary and subordinate to the requirement of appropriate educational benefit. Carter v. Florence County School District Four, 950 F.2d 156, 18 IDELR 350, 352, (4th Cir. 1991)

The parents argue that [REDACTED] lacks the resources to meet the needs of their child and that [REDACTED] should be placed in a private school where all students have disabilities. There simply is no expert evidence which has been offered in this case to support the view that [REDACTED] cannot and should not be having some educational experience in the regular education setting. All of [REDACTED] teachers who testified stated that [REDACTED] needs to be in regular education to the maximum extent possible and that [REDACTED] has benefitted from it.

The only expert evidence offered by the parents is a letter from [REDACTED] (Parents Exhibit 12). In [REDACTED] letter [REDACTED] said that [REDACTED] needs a "high degree of structure". In argument the parents have relied on this for the proposition that [REDACTED] needs to be entirely in a special education setting. If that were [REDACTED] intent, [REDACTED] has not made it clear in [REDACTED] letter. [REDACTED] was not available to testify, and, therefore, could not be questioned on that issue. It is unfortunate and, perhaps, all too often true that for whatever reason families have difficulty obtaining the services of an expert witness to participate in matters of this type. Nevertheless, as Hearing Officer, I can only consider the evidence before me. The parents have not met the burden of proving that their child should not be receiving any regular education benefits, whether in a public or private setting. Accordingly, I must reject the request that it is in the child's best interest to be placed at a facility where [REDACTED] receives only special education.

The evidence does support the view that the child can and should continue to be involved in some regular education and classroom instruction. It is true that the child has both academic and social problems in the regular classroom. The academic problems are being dealt with by providing [REDACTED] with language and mathematics instruction in special education, with some specific resources diverted to handwriting problems. In terms of social issues it is true that the child has problems in the regular classroom setting involving inappropriate calling out, pointing at other children's behavior, insufficiently interacting with [REDACTED] peers, being socially hypersensitive and others. These matters impact on academic performance in causing difficulties with insufficient eye contact with [REDACTED] work for peers or [REDACTED] teachers and a low tolerance for frustration. Nevertheless, [REDACTED] teachers have testified that there have been improvements in all of these areas, although not in some cases as much as they would have liked. For example, reading progress has been better than written and handwriting continues to be a problem. There was evidence also that [REDACTED] had done particularly better in the last quarter of the year, perhaps, because of a change in medication. Although there were earlier IEPs indicating that progress was not being made to the satisfaction of team members, the latest IEP ([REDACTED] [REDACTED]) demonstrates a substantially better performance in many areas.

As evidence that their child is not receiving an appropriate education, [REDACTED] parents rely upon the fact that [REDACTED] is working behind grade level. [REDACTED] was described as reading at mid-[REDACTED] grade level by [REDACTED] teacher, [REDACTED], at the end of [REDACTED] grade year. As previously noted, [REDACTED] is being held back to repeat the [REDACTED] grade. According to an evaluation of the child which was done on [REDACTED] and [REDACTED] [REDACTED] is functioning at a "low average range of ability with a full scale IQ of 83" (Parents Exhibit 8). While there is some difficulty in testing children with disabilities like those of this child, it was stated in the report that it was believed that the evaluations were reliable. Thus, the fact that [REDACTED] lags behind [REDACTED] classmates academically, is no proof of the fact that [REDACTED] has not

constructed an appropriate program for [REDACTED]. In addition, as previously noted, [REDACTED] report card for the [REDACTED] year indicates substantial improvement, particularly in the fourth quarter (Parents Exhibit's 13).

Overall, I believe that the IEPs adopted for this child meet the legal requirements as reasonably calculated to enable the child to receive educational benefits. The frequency of IEP reviews and the comprehensiveness of the information contained in them demonstrate that [REDACTED] has seriously considered its responsibility to educate this child. The IEPs reflect changes that have been made in response to lack of progress in order to address those needs. The proportion of time spent in special education and regular education has also been adjusted as appropriate to address [REDACTED] particular disabilities. Finally, whatever arguments might be made as to the sufficiency of its education program at [REDACTED], a new and different program is in place for [REDACTED] for the coming year at [REDACTED]. This was recommended by the Central Special Education Committee which met on [REDACTED], (LEA Exhibit 61) and was adopted by the IEP team in [REDACTED]. As described by several of the witnesses on behalf of [REDACTED], the [REDACTED] program is a more self contained, coordinated approach for dealing with [REDACTED] children, which permits maximum flexibility in transitioning from special education to regular education and vice versa.

Parents also argue that the IEPs lack adequate means of measuring progress. The parents' concern seems to be that there is a lack of formal documentation to prove that certain goals are achieved. I note that the form for IEPs changed between the one adopted in [REDACTED] and the last one of [REDACTED]. The earlier IEPs had a less definitive means of measuring whether the goals were achieved. In the new form there are eight possible "procedures" that are used to measure progress. Each goal, then, identifies which one or more of the eight is to be used.

Witnesses explained that special education teachers are constantly evaluating their students, as well as discussing them with the regular education teachers. The child's report card is of course an important measurement. [REDACTED] also testified that the child was graded at the same standard as other [REDACTED] graders, excepting some modifications, previously discussed, which have been permitted in terms of [REDACTED] testing. There is no legal requirement that the "scores" for each of the goals be produced in some uniform manner as if one were grading tests. I am not persuaded that any lack of detail as to the goals or the means by which the measurements is to be made are sufficient to support an argument that the legally mandated requirements for these procedures have not been adequately complied with.

Parents argue that the IEPs have insufficient specific goals to deal with social skills. [REDACTED] identified a specific goal in the [REDACTED] (Goal 6). [REDACTED] also pointed out that strategies dealing with social skills are also interrelated with many of the other goals involving academic performance. It is not always possible to so compartmentalize each of the IEP goals. The fact that the child continues to have peer relationship problems is not proof that [REDACTED] has not provided a plan reasonably calculated to produce educational benefits. Indeed, all the testimony is to the effect that there have been social improvements.

Finally with regard to the IEPs, the parents complained that there are inadequate resources devoted to their child's handwriting problems. According to the testimony of several of [redacted] teachers, an occupational therapist who had been involved in the evaluation of that child stated [redacted] would never be able to write. Whether that is hyperbole or not, it is clear that the child has a substantial problem with [redacted] handwriting. A review of the recent IEPs is instructive. In the [redacted] IEP services of four hours by [redacted] occupational therapist was provided. This same level of service was also provided for in the [redacted] IEP and the [redacted] IEP. In the [redacted] IEP, the service was reduced to two hours. Neither the IEP nor the witnesses testimony in this case provide a clear reason for this change. When [redacted] was asked whether two hours was adequate, [redacted] replied it "could be adequate" and that the occupational therapist and special education teacher at [redacted] needed to confer on handwriting strategies. [redacted] when asked the same question, responded that it depended on whether [redacted] was working on handwriting in other strategies or goals and that [redacted] "didn't know" if that was being done. [redacted] said that [redacted] had seen improvement in handwriting but that it was still not satisfactory in terms of their goals. [redacted] also said that the techniques had not been entirely successful with regard to handwriting. Indeed in the [redacted] IEP it is stated "Written Expression was not administered because of (the child's) severe printing difficulties".

In the face of a consensus that [redacted] handwriting progress was unsatisfactory even in terms of their goals, the IEP team reduced the occupational therapist time by one-half. Perhaps, they concluded that occupational therapy was not going to be a successful strategy and that others needed to be utilized. The IEP is deficient in stating what, if any, other strategies would be used to supplement the occupational therapist efforts. Finding no justification in the record either by testimony or by exhibit, I am of the opinion that the IEP adopted in [redacted] is deficient. Perhaps, [redacted] is correct in stating that the occupational therapist and the special education teacher should confer to deal with the handwriting problem. As a part of this decision, I order the LEA to convene the IEP team as soon as reasonably possible in order to devise a strategy for meeting the needs of this child with regard to handwriting difficulties.

Parents also argue that their child should be able to go to [redacted] own neighborhood school and receive all of the services which [redacted] requires at that location. They further maintain that the lengthy bus ride and separation from the children in [redacted] neighborhood is detrimental. There is no presumption under IDEA that the neighborhood is the least restrictive environment. Murray v. Montrose County School District, 51 F 3rd 921 (10th Cir. 1995). Moreover, placements in special education classes have been upheld despite being 50 miles from the home of a student with autism. Student v. Somerset County Bd. of Educ., 24 IDER 743 (D. Md. 1996). [redacted] testified that the longest period of time which would be required to transport this child to [redacted] is 55 minutes one way. Parents question this testimony in view of [redacted] testimony that [redacted] child traveled one way for one and one half hours last year, to the school. Whatever the situation was last year, I accept the testimony as to what is to be expected for the coming year. I do not believe that this is unduly burdensome so as to deprive that child of a free and appropriate public education. In fact the private school to which the parents seek approval for placement would take nearly as long even if the child were transported by car straight from [redacted] home to the school.

According to the United States Supreme Court in the case of Burlington v. US Dept. of Ed., EHLR 556:389 (US Supreme Court 1985), in determining whether the parents' choice of private placement with a concomitant requirement of tuition reimbursement is mandated, there must first be a showing that the public placement was not appropriate and, only then, should the appropriateness of the private school be considered. I find that the public placement is appropriate and, therefore, need not reach the second issue. I believe that it is important, however, to point out that there is insufficient evidence in this record for that determination to have been made in any event.

First there was no oral testimony, whatsoever, as to the nature of [REDACTED] nor its appropriateness for this child. The only three pieces of documentary evidence were a newspaper article about [REDACTED] (Parent's Exhibit 14), a letter from [REDACTED] of a page and one-half, describing its general approach to education of special education students (Parent's Exhibit 15) and some academic work done by the child at [REDACTED] in about a one week period (Parent's Exhibit 16). Even if it had been demonstrated that the child should not be in any general education classes, which I find that it has not, any conclusion that this child should be sent to [REDACTED] would require far more information about the program than has been provided and with particular attention to the educational plan for this child, as opposed to how the program is beneficial to many students with disabilities.

ORDER

On consideration of all the evidence admitted in the hearing, I find that the [REDACTED] Public Schools are providing a free and appropriate public education to [REDACTED] with the exception of that portion of the IEP dealing with strategies to improve [REDACTED] handwriting. Should the parents choose to keep [REDACTED] in the [REDACTED] Public School system, I direct the [REDACTED] Public Schools to convene the IEP team as soon as reasonably possible in order to devise an appropriate strategy for addressing the needs of this child with regard to handwriting difficulties. I reject [REDACTED] parents' request to approved [REDACTED] transfer to [REDACTED] with tuition reimbursement from [REDACTED] Public Schools.

Date: [REDACTED]

[REDACTED]
[REDACTED] Hearing Officer

NOTICE

This Decision is final unless the party aggrieved by the finding and decision by this administrative review brings civil action in any state court of competent jurisdiction or any federal court within on (1) year.