VIRGINIA DEPARTMENT OF EDUCATION POST-HEARING REPORT FORMAL DUE PROCESS HEARING

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PUBLIC SCHOOLS

School Division

Director of Special Education

Hearing Officer

No. of Contract of

Student

Hearing Initiator

ISSUE AND PURPOSE OF THE HEARING

This due process hearing was initiated by and and e ("the parents"), parents of ("the student"), in a Request for Due Process Hearing signed by alone on (J.E. 91). This request was made to process the parents of the parents of the student", the Director of Special Education, Schools ("PS").

In the request, the parents voiced these complaints: PS failed to inform them it had not received the student's prior education records from the school next immediately attended in was administered a psychological test without their prior consent in grade; an Individualized Education Program ("IEP") was set up for in grade which they did not sign; and that though it is now recognized that the student is "borderline ("""), the deducation was supposed to be provided from were not carried out. The parents indicated that they had made inquiry of a private school, and sought funds from PS to pay for this private placement.

In response to the request, the undersigned hearing officer was appointed by letter dated

PS was represented by Virginia The parents declined to retain counsel and represented themselves at the hearing.

Following the hearing on the parties agreed to a schedule by which each side would have one week to review the hearing transcript and submit arguments in writing, with the final decision due one week thereafter (T. 249). The parents sought to have additional post-hearing evidence submitted, but that evidence was not considered, it being untimely and without the prior consent of

II. FINDINGS OF FACT

Prior to the hearing the parties stipulated to the admission of 93 exhibits which are contained in a Joint Exhibit ("J.E.") binder. These exhibits document the student's history at PS quite completely.

The student is a syear old currently attending School in

I. The student was first enrolled in PS in grade soon after the start of the academic year, transferring from y School in

(J.E. 1). Though PS made several attempts to obtain the student's academic records from (J.E. 2), it was not until that PS received a partial IEP from (J.E. 3). That partial IEP, containing results of educational and psychological tests of the student conducted in and identified certain learning deficiencies in the student;

specifically, that was performing at the grade level in reading, language and math. and had some problems with maintaining attention. An PS child study committee at the student's school took cognizance of this information and in its initial meeting on recommended re-evaluation (J.E. 4).

The following day, the school gave the parents written notice that having received information from the it was being recommended that the student receive exceptional education services through the PS to rogram, and requested the parents execute a form enclosed granting permission for evaluation to determine the student's needs (J.E. 5). The student's signed the form on and and returned it to the school (J.E. 6). Among the components identified (by circling) for action in the evaluation was "psychological."

A psycho-educational evaluation was performed during the following 6 weeks, and a report made on by School Psychologist (J.E. 7). Educational testing indicated that the student had made little or no progress in areas of reading and writing ability over the past academic year (compared to the levels reported in the student's math scores had improved to a grade level. In sum, if evaluation evaluation describes a child with 2-4 years below age group and grade setting, and WISC-III scores of 71 (full scale), 73 (verbal) and 74 (performance). The evaluation also notes problems with attentiveness, lack of self confidence in ability to do the work, and a sometimes negative attitude towards the school environment. There was no apparent hearing or visual impairment noted at any time. The student was determined to have

though improvement was noted in "activity level and concentration in school" as a result of low dosages of in early 1 (J.E. 17).

The student's principal at (T. 42-105), and grade teacher, (T. 107-151), both testified that was afforded instruction aimed at level, which included placement in a small multi-age group setting of 9 students and three adults (a regular teacher, a special education teacher, and a paraprofessional trained to work with special education children). Weaknesses appeared most marked in word recognition and decoding; strengths were in short term memory and verbal skills. Was being taught in a group of six to eight, and had daily instruction in reading in a group of two or three students with a paraprofessional or teacher. This allowed one-on-one instruction as needed. The reading instruction method was implemented, which uses audio and pictures to assist in word recognition. The evidence at the hearing implies this teaching approach was based on the learning deficiencies shown in the partial IEP from An IEP was developed in the late spring of following the re-evaluation performed by PS, which would be effective for the upcoming academic year, and to which the agreed (J.E. 19).

An IEP developed and approved by the for the following academic year () addressed again continued deficiencies in reading, math and language (J.E. 28). The student's IEP for the next academic year () noted again weaknesses in those same areas, and recommended placement in a special education setting, to which the parents agreed in writing (J.E. 32). An interim IEP was agreed to by the for the student's participation in a summer program in year (J.E. 43). The triennial IEP (J.E. 51) for the student's grade

proposed an assessment during the year at the analysis and after school tutoring when it becomes available at a current school. The signed this IEP.

The parties did not dispute that the student showed some improvement the first year in the PS school, and with the parents' consent, the student repeated the grade to reinforce the progress made. However, progress the second year was minimal, and the student's weaknesses in math, reading and language appeared to stagnate or retrogress in subsequent years. Teacher comments from academic years to indicate the student was losing focus in the classroom and was not following up on homework assignments (and therefore, not reinforcing classroom progress).

This fall, the student's eligibility team determined would be best served by classification as a student and an IEP was proposed (J.E. 90). Only the attended this IEP team meeting. Though it purports to provide the student more individualized instruction in weak areas, the parents objected to its implementation and filed this due process hearing request. The student remains is status quo as an asstudent at appending the results of this matter.

III. CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq. And the implementing regulations (34 C.F.R. Parts 300 and 303 and Virginia Regulations), is intended to provide a free and appropriate public education (FAPE) for every child with a

disability. Timothy W. v. Rochester New Hampshire School District, IDLR 441:393

(1stCir.1989). While the Supreme Court has held that the requirement of a FAPE is met if the child is able to "benefit educationally from that instruction," that does not impose a duty on the state to maximize the potential of the child. Hendrick Hudson Board of Education v. Rowley, 458

U.S. 176 (1982). The Rowley standards for a FAPE are met in this case if the preponderance of the evidence shows that PS has complied with the procedural requirements of the IDEA and if the IEP developed according to the IDEA procedures is reasonably calculated to enable the student to receive educational benefits. Id., 203-204.

A preponderance of the evidence presented at the hearing demonstrates no serious procedural violations by PS. The parents were timely apprised of all relevant steps taken by PS, as is amply documented in the exhibits. The signature of one or both parents appears on all IEPs in evidence (with the exception of the last one at issue).

While PS never obtained the student's file from the school, blame cannot be laid at the doorstep of PS because its employees apparently made numerous attempts to obtain the student's records for grades through at the time of enrollment at handle of the student's placed it on alert of the student's deficiencies and appropriate educational measures were implemented to address those until further evaluations could be performed and IEPs developed.

To the extent the parents complained that they did not give prior consent to the psychological evaluation of the student requested by PS, the parents are wrong. The request

form was signed by the and the form itself indicated a psychological evaluation would be conducted.

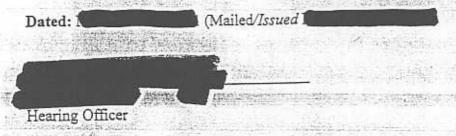
While it is alarming that the student has not progressed to a level expected by parents and teachers, and remains woefully weak in basic educational skills, Rowley does not require PS or any school district to provide more than reasonable specialized instruction and related services. The proposed IEP to which the parents object, based upon the evidence presented at the hearing, appears reasonably calculated to afford the student specialized instruction and related services tailored to needs as a learning-disabled child. No evidence was offered by the parents to substantially contradict the evidence of PS that the IEP proposed was appropriate and reasonable for the student's needs, and evidence was adduced that implicates the student's lack of cooperativeness as a contributing factor.

While the parents believe private placement at the py (" is necessary and the cost should be borne by PS, the evidence does not support that conclusion. The sole witness called by the parents on this proposed placement, Head of School at private at the parents of what could be offered the student if accepted for admission. Much of what the witness testified might be provided the student was already available to through the specialized instruction and programs afforded by PS... The Supreme Court has held that reimbursement of private school tuition is inappropriate absent proof that the school district's program is inappropriate and the parents' proposed program is appropriate. Burlington Sch. Comm., et al., v. Dept. Of Education, et al., 471 U.S. 359 (1985). It is impossible from the evidence presented to make that determination at this time.

IV. SUMMARY

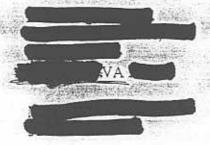
In summary, the Hearing Officer finds that the PS committed no procedural or substantive violations of IDEA which have denied the student a free and appropriate public education, that the proposed IEP appears reasonably calculated to enable the student to receive educational benefit as appropriate to meet educational needs, and that should the student be enrolled at the PS is not required to reimburse the parents for the costs of such education at this time.

This decision is final unless a party to the hearing appeals to the state for an administrative review. An appeal by either party must be instituted within 30 administrative working days of the date of issuance of this decision.



Certificate

I certify that I caused a true copy of the foregoing to be mailed, postage pre-paid, to the following persons, this





Coordinator, Due Process and Complaints Virginia Department of Education P. O. Box 2120 Richmond, Virginia 23218-2120

