### VIRGINIA DEPARTMENT OF EDUCATION



IN RE:	
v.	
PUBLIC SCHOOLS	

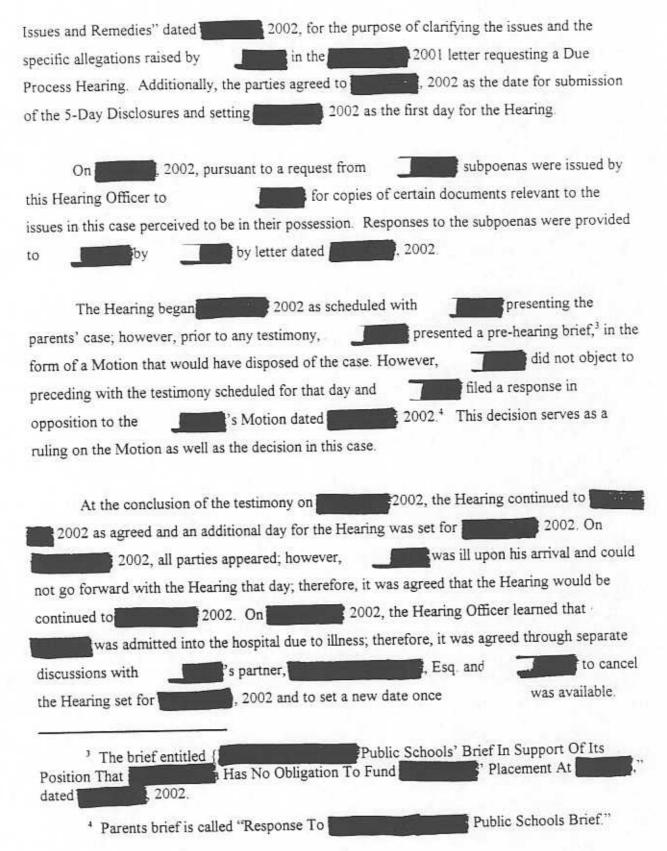
# I. INTRODUCTION

### A. Procedural History

(200) (200)(3)					
The	undersigned was	appointed by	the	School Boa	rd ("
), 8	as the hearing off	icer to preside	over a Due Process I	Hearing concerning	g
	(hereinafter refe	erred to as	The letter of appo	ointment is dated	الساسية
2001 and si	igned by		Director of Special I	Education, for	A
Due Proces	ss Hearing was re	equested by	7	in a h	andwritten letter
dated	, 2001 (	-02).1	filed the requ	est for a Due Pro	cess Hearing at
	office in	1,2			
A P	Pre-Hearing Cont	erence was he	eld by telephone on	2001	involving this
Hearing Of	fficer,	Esq.,	, counsel for [	and and	5
Esq., coun	sel for the parent	s. As a result	of the Pre-Hearing,	filed	a "Statement of

<sup>&</sup>lt;sup>1</sup>The parents exhibits are identified as " -01 through 40" and exhibits are identified as "SB-01 through SB-93".

and are referred to collectively as the and are referred to collectively as the and "



and discussed with this Hearing On I 2002. Officer by telephone, dates for reconvening the Hearing. The dates agreed to were stated that the parents intended 2002,5 2002. By letters dated A to recall four(4) witnesses who had previously testified for the parents. On 2002. After 2002. opposed this request by letter dated considering the request and response thereto, the Hearing Officer denied on the basis that the witnesses to be recalled had already been thoroughly examined by both counsel and allowing the recall of these witnesses would only further delay this proceeding.6 presenting 2002, the Hearing went forward as agreed with 2002, as scheduled. case. Testimony continued to However, the parties agreed to another day of testimony because two witnesses 2002 and concluded. were still scheduled to testify. The Hearing was continued to

This Due Process Hearing, encompassed seven (7) days, involving the testimony of fourteen (14) witnesses, seven transcripts<sup>7</sup> covering 1544 pages and a total of 133 Exhibits.

### B. Background

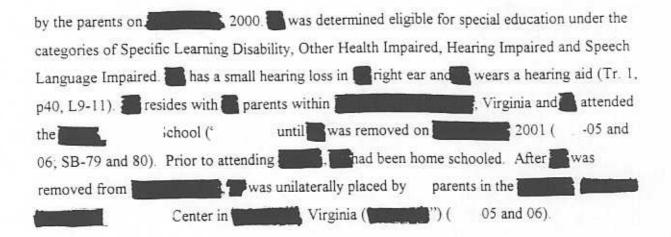
is a year old student identified as eligible for special education and related services under the Individual with Disabilities Education Act, 20 U.S.C. § 1412 et seq, ("IDEA").

was determined to be eligible by pursuant to an eligibility meeting on 2000 (SB-49). As a result, an IEP was developed dated 2000 (SB-71) and signed

recalled in the 2002 letter; and were requested to be recalled in the letter dated 2002.

<sup>6 &</sup>quot;Decision of the Hearing Officer Regarding the Recall of Witnesses," 2002.

Their are seven (7) transcripts, designated as follows: Day One, 2002, "Tr 1"; Day Two, 2002, "Tr 2"; Day Three, 2002, "Tr 3"; Day Four, 2002, "Tr 4"; Day Five, 2002, "Tr 5"; Day Six., 2002, "Tr 6"; Day Seven, 2002, "Tr 7".



# II. CONTENTIONS OF THE PARTIES AND QUESTIONS PRESENTED

### A. Contentions of the Parties

The parents requested a Due Process Hearing alleging that had denied a Free and Appropriate Public Education ("FAPE") by failing to consider independent evaluations of in developing an Individualized Educational Program ("IEP") for that the IEP developed 2001 (Hereinafter called the IEP," or "SB-77") was not an appropriate IEP and that failed to determine an appropriate placement for for the 2001-2002 School Year. As a result, among other things, the parents request that fund at a private placement unilaterally selected by the parents.

contends that it has developed an appropriate IEP, that the parents failed to express any specific concerns about the IEP and failed to reject it as being appropriate for Additionally, contends that the parents provided an improper notice of the unilateral placement at As a result, contends that it is not liable for funding the placement at

### B. Questions Presented

- Did the parents fail to provide appropriate prior notice of s removal from including notice of rejection of the IEP proposed?
- Did the parents indicate specific concerns with IEP at the IEP meetings?
- Did the IEP address all areas of suspected disability?
- 4. In developing the IEP, were the evaluations of the parents' independent experts considered?
- 5. Is an appropriate placement?

## III. SUMMARY OF RELEVANT EVIDENCE

There were a total of fourteen (14) witnesses called to testify at this Hearing, nine (9) for
the parents and five (5) for On the first day of the Hearing, 2002,
three witnesses testified for the parents: on own behalf, and two witnesses who testified as
experts in their fields, independent audiologist and speech pathologist and
Speech Pathologist at
The first witness to testify was who was asked about experience at and
said that thought that there were too many kids in classes at and that
it was difficult for to concentrate. said that at classes are smaller and there
are less kids in a class and a can concentrate better. testified that there are two teachers in
class rooms at whereas at had one in each of classes and up to 12
students. testified that wears a hearing aid in right ear, but that doesn't turn it on
because it is too loud. (Tr. 1, p 40, L9-11).
The next witness to testify for the parents was testified
that has a Bachelor's degree in Speech/Language Pathology and Audiology, a Master's Degree
in Audiology and Communication Sciences, and a Doctorate in Education.

has worked in private practice as an Educational Audiologist and Speech/Language Pathologist.

has also worked in a clinical practice in speech and hearing centers and nursing homes.

testified that most of work has been in education and that taught as a professor for twelve years (Tr. 1, p 43-45). Dr. testified as an expert in Audiology and Speech and Language Pathology (Tr. 1, p 54, L4-6).

program was a four-hour a day, five day a week program for five weeks during the Summer 2001. It was designed for children identified as having learning problems in school, primarily auditory processing and language related and reading problems. (Tr. 1, p58, L 16-22). At the conclusion of the Summer program said that wrote a report for the parents reflecting conclusions with regard to (15) (Tr. 1, p77, L 5-9).

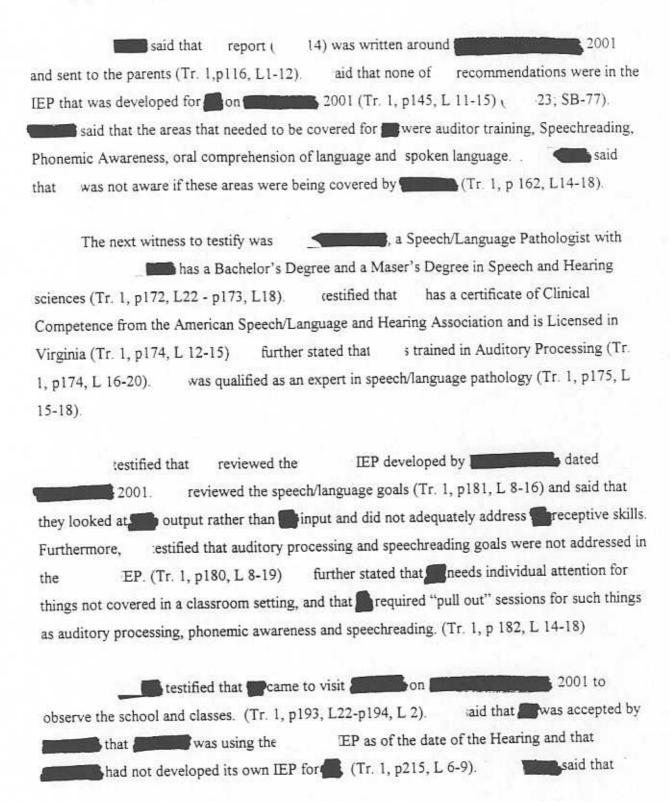
in the central nervous system the information getting through is not being decoded properly (Tr. 1, p 62 - 63).

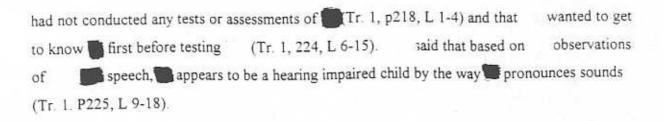
stated that wrote a report (14) about the testing that 'performed on said that the underlying deficit has is auditory decoding in terms of auditory processing.

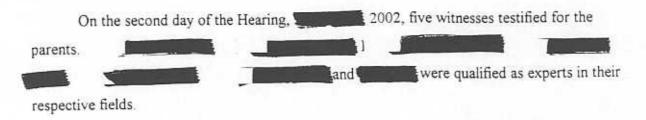
ecommended that needed work on listening skills, working on information and understanding how to use the auditory information and relate it to language. (Tr. 1, p64, L7-11)

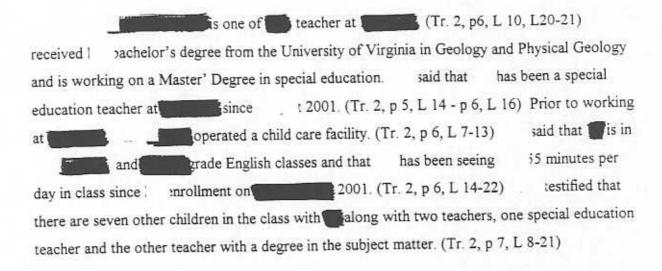
minutes to twenty minutes. said that had not observed at was not aware if is using any of the methods recommended in reports. (Tr. 1, p134, L12-16) said that based on observations and knowledge that has an auditory processing problem that impacts ability to get and understand the information that has a swell as language. (Tr. 1, p79, L3-9) testified that had reviewed the IEP that had developed for It was opinion that the IEP was not appropriate for because it does not address real academic issue which is can't receive information due to

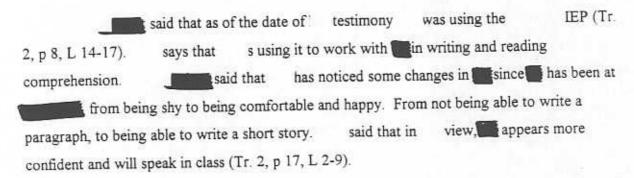
auditory processing deficits (Tr. 1, p 82, L 8-19).











that uses. said that received training in the Wilson Reading Method in-

house at by viewing a six-hour video. aid that class follows the Eighth grade curriculum Standards of Learning ("SOL's"). (Tr. 2, p35, L5-17)

is the Educational testified. Following said that a certified special education teacher in Virginia. (Tr. 2, p 39, L 2-3) as a Bachelors Degree in Elementary Special Education and a Master's Degree in Leadership in Teaching. (Tr. 2, p 38, L 19 -22) first met when visited the school or 2001. (Tr. 2. said that p45, L14 - p 46, L5) The parents had visited earlier on 2001 (Tr. 2, p 46, L EP, but that it did not seem appropriate said that was using the because it was incomplete (Tr. 2, p 51, L 9 - p 53, L 10, p 54, L 15-20) aid that when first met the parents on 2001, they had an IEP dated 2000 (SB-71) with said that first got the \_\_\_\_ IEP during a meeting with the them. (Tr. 2, p83, L 4-14) parents on 2001. (Tr. 2, p 84, L 8-12) was accepted into on on 2001. (WH-07)

Certified Developmental Neuropsychologist. (Tr. 2, p 123, L 20-21) has an undergraduate degree in chemistry and Psychology, a Master's Degree in Neurophysiology, a dual doctorate in Child Development and Neuropsychology. described Neuropsychology as the study of brain function and brain development. Said that has been in private practice for over 20 years and has testified as an expert "hundreds of times." ( -37) (Tr. 2, p 124, L1 - 125, L23) was qualified as an expert in the fields of Neuropsychology, social psychology, Clinical Psychology, Learning Disabled. (Tr. 2, p 128, L 22 - p 129, L 3)

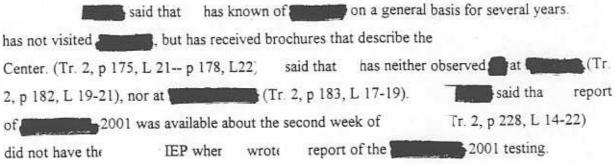
Neuropsychological evaluation of at the request of the parents, which was completed

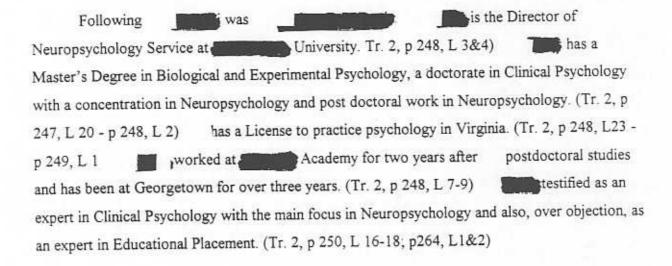
2001. (Tr. 2, p 131, L 4-12) ( -16) conducted a second evaluation on

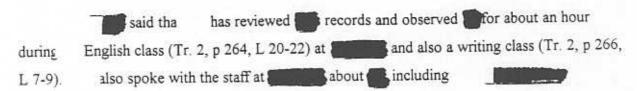
2001. (Tr. 2, p 132, L 2-9) said that disagrees with

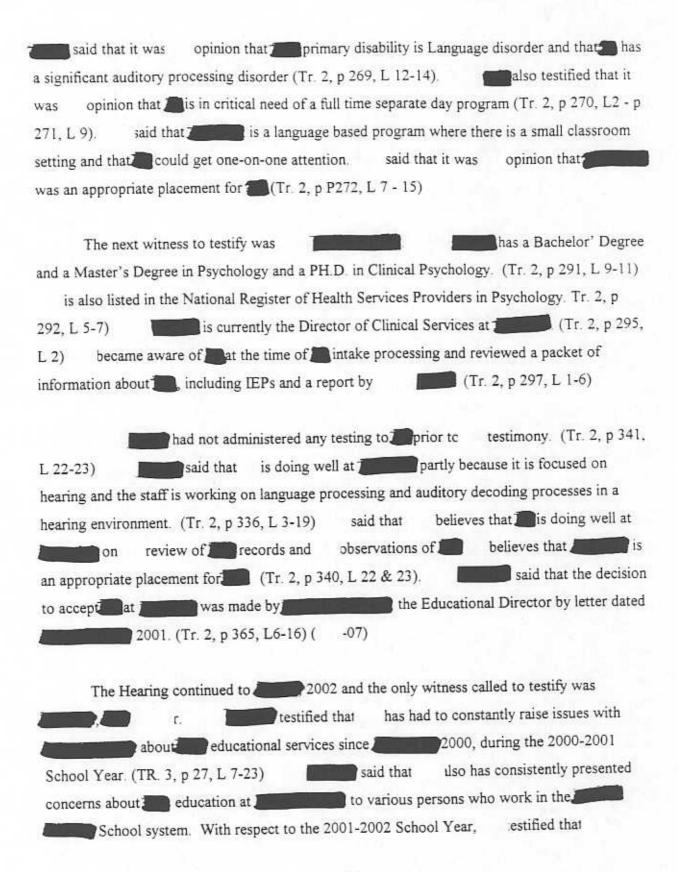
brain injury, secondary diagnosis is multiple cognitive deficits and thirdly, hearing loss.

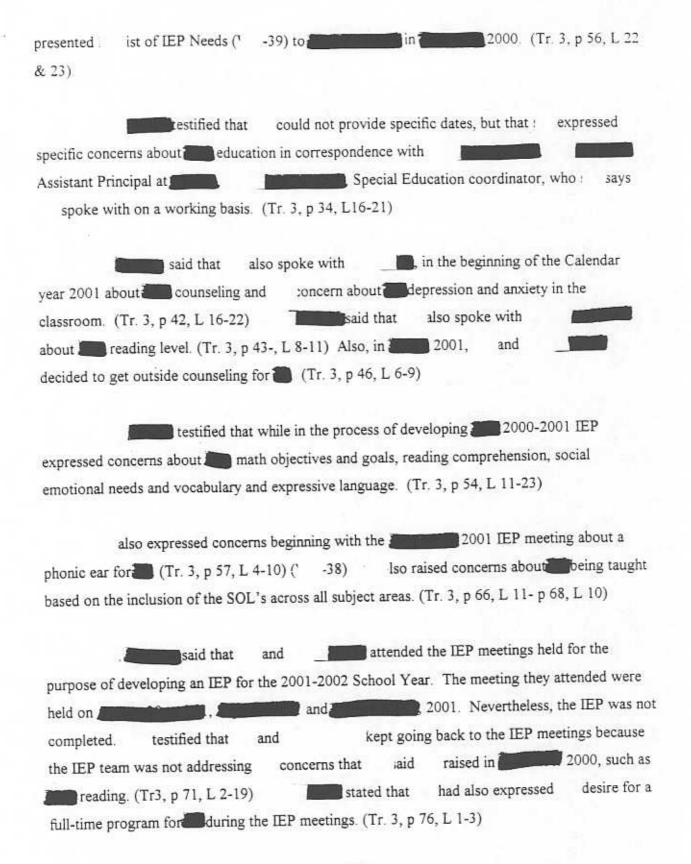
reviewed the IEP (Tr. 2, p 144, L 9-19) and said that based on review, there were no goals in it that addressed any of concerns (Tr. 2, p 145, L 22- 146, L 11) and that it was opinion that the IEP was inappropriate. Tr. 2, p 146, L 7-12) further stated that requires one-on-one intervention in nearly every area (Tr. 2, 150, L 10-p 151, L 9) has multiple disabilities that requires a self-contained program with an individualized instruction by specialist in brain injury, multiple handicapped children. (Tr. 2, p 172, L 12-23)

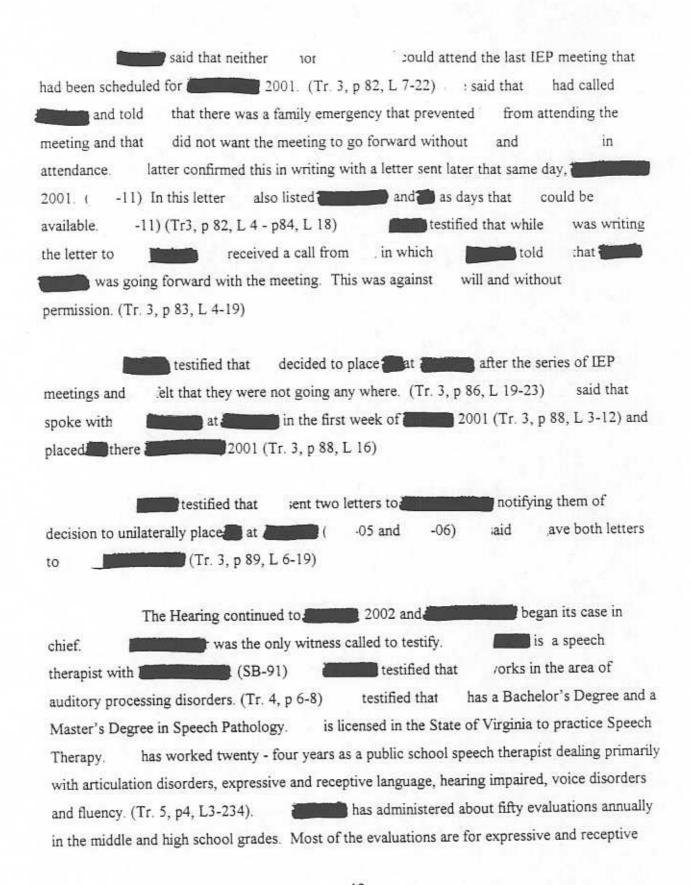


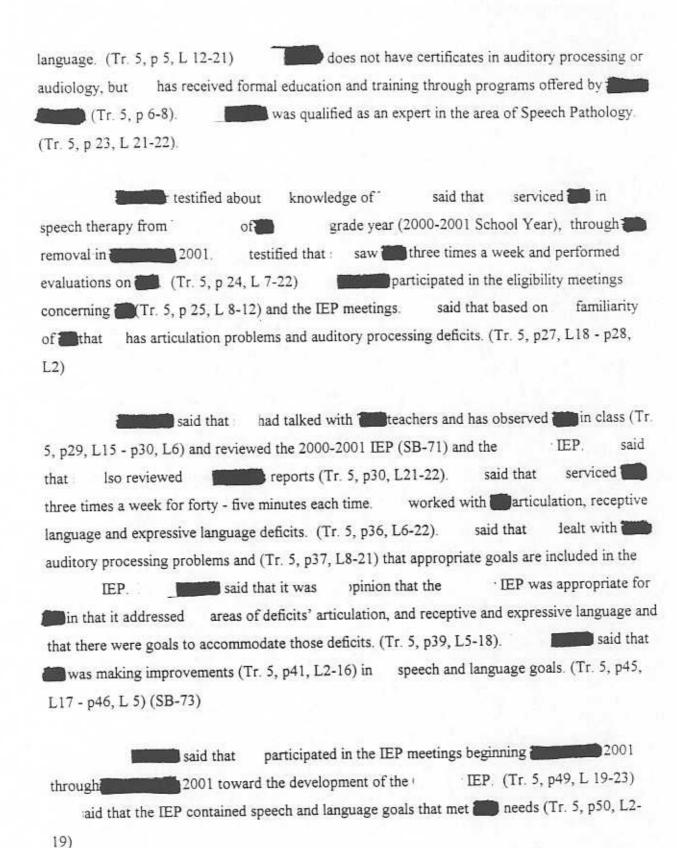


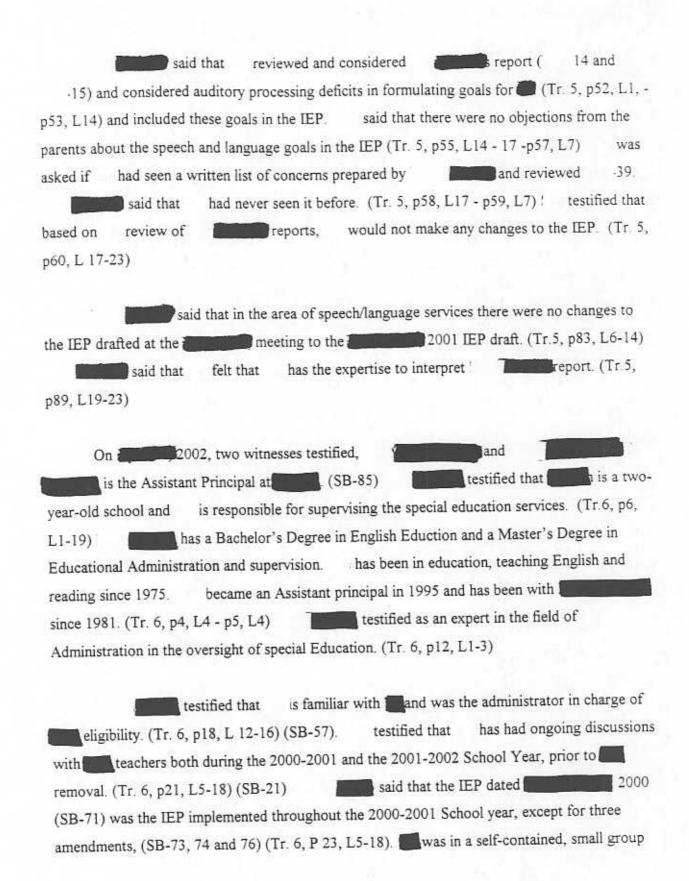


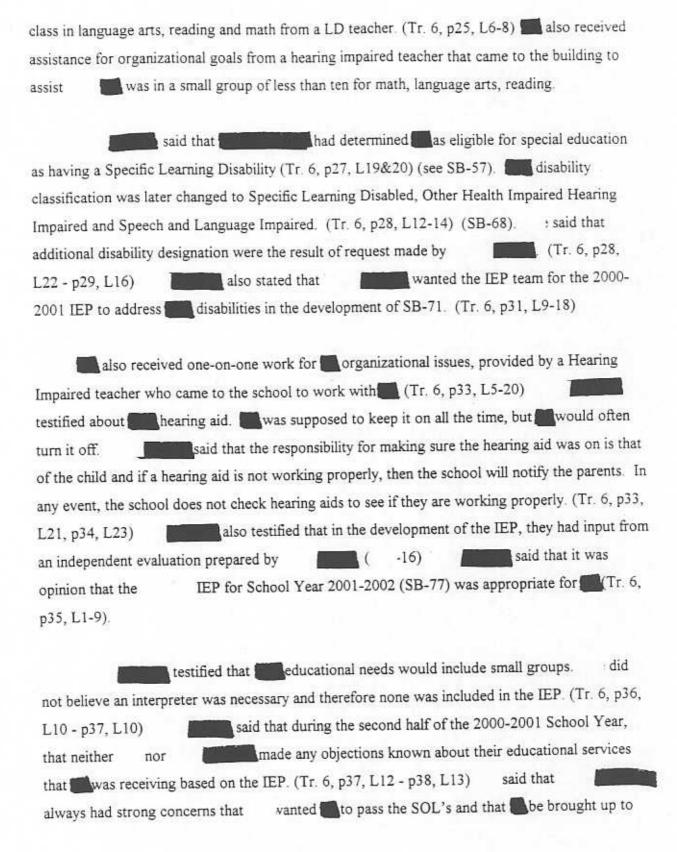












grade level. went on to say that the curriculum that was being taught from was in most instances a grade level curriculum modified to level. Nevertheless, that having on grade level was not a realistic expectation in view of lisabilities. (Tr. 6, p38, L6 - p39, L 18)

said that the IEP team began the IEP, (SB-77), With regard to the met with the IEP team and that process of developing the IEP on the team met for four and a half hours. (Tr. 6, p40, L13-23) And that during that time, they developed the Present Level of Performance pages and closed out the IEP for the was not present at the meeting, but spoke extensively with School year. who chaired the meeting on behalf. (Tr. 6, p41, L14-17) and reconvened on the of for another two IEP team concluded on hour meeting. Tr. 6, p43, L8-19) aid that at this meeting they got stuck talking about SOL's and math. (Tr. 6, p43, L21 - p44, L4) went on to say that math was a big concern of and the team attempted to determine what type of goal they could put in the IEP for that would also address the Sol? (Tr. 6, p44, L10-16)

already spent six and a half hours on drafting an IEP, asked to chair the next meeting. The concern was that the team had already spent six and a half hours and still had not finished, when the typical IEP runs from thirty minutes to an hour and a long IEP is an hour-and-a-half to two hours. (Tr. 6, p46, L14-21) said that then directed to send a draft of an IEP, at least what they had finished, to (Tr. 6, p47, L3-6) said that the draft was essentially a completed document. (Tr. 6, p48, L3-8)

The draft was sent to the parents on and the parents were asked to review the draft and make suggested changes (Tr. 6, p48, L3-8); however, the parents did not make any suggested changes to the draft. (Tr. 6, p49, L2-4) The IEP team was again scheduled to meet for an hour on however that meeting was short as said that did not see any point in going forward with this meeting. (Tr. 6, p51, L7-16)

p51, L20- p52, L2) did not present any written list of concerns at the meeting. (Tr. 6.

The next IEP meeting was set for did not make comments to the draft that had been sent to for the draf

At the meeting, the team reviewed a report that had been prepared by

14) (Tr. 6, p55, L2 - p56, L5) said that hever saw

report 13) and to knowledge, the report was not provided

to (Tr. 6, p56, L6, L12). said that did recall seeing report

(14) and that it was discussed at the meeting held on which meeting

lasted one hour and fifteen minutes. (Tr. 6, p56, L21-23) said that greed with

report except for the one-on-one teacher that lad recommended because the team felt

that was making good progress. (Tr. 6, p57, L5-12)

testified that the draft IEP developed as of was complete with the exception of pages one and two and that there were no significant changes to the draft that and no changes between they had presented to the parents on and [ (Tr. 6,p 58, L8-18). With respect to and said that the team did not specifically go over report and identify where in the IEP concerns were addressed; however, they read the last page of the report which was a summary at the meeting, which was a summary of eport. (Tr. 6, p58, L22 -p59, L8) IEP and indicated that auditory processing is listed in the lso reviewed the present level of performance pages. (Tr. 6, p59, L4-8) also said that at the meeting on the they discussed the math goals, because it was a concern of did not express any concern with the present levels of performance or said that goals and objectives as stated in the IEP at that meeting. (Tr. 6, p59, L9-13)

meeting for (Tr. 6, p64, L21 - p65, L5) said that it was decided to proceed with the meeting as schduled on in spite of the not attending, because believed "it was in best interest that have an IEP in place." (Tr. 6, p66, L1-6) Also, said that they were spending a lot of time trying to generate an IEP. (Tr. 6, p 66, L 1-4) When asked if there was an IEP in place, testified "We had a previous year's IEP, but we needed to have the current IEP." (Tr. 6, p66, L17-18)

and was the first two pages. (Tr. 6, p68, L2-5) said that believed that the IEP was appropriate. (Tr. 6, p68, L14 - p69, L8)

testified that the IEP team had spent numerous hours in closing out the IEP for (SB-71) and they felt very comfortable that they knew what had accomplished the previous year and what needed to accomplish for the school year. Also, the individuals who had worked in developing the IEP were the individuals who had worked with in the classroom, they knew what knew and didn't know.

said that they also had the benefit of the independent evaluations and significant parental input through hours of meeting with the parents. said that concluded that the team had developed an IEP that addressed weaknesses and strengths, both instructionally and learning styles (Tr. 6, p 68, L12 - p69, L8).

meeting had been held and the parents were provided copies of the first two pages of the October IEP that they didn't have. The parents were told that if there was anything that they felt needed to be changed that the IEP meeting could be reconvened. Said that did not hear back from the parents. (Tr. 6, p70, L3-14) said that the final version of the IEP as developed on was sent to the parents within a few days after the meeting.

following the meeting and had not seen the parents written list (W-39) (Tr. 6, p75, L16-19)

Along with several other people from wisited wisited to observe (Tr. 6, p78, L19-20). Said that looked for the instruction methods, classroom management and content of materials being utilized. Said that the visit in total was about two-and-a-half hours. Said that in view the class sizes were comparable to and that both and used the Wilson Reading Program. (Tr. 6, p89, L13) However, the teachers receive sixteen hours of classroom training by a Wilson trainer, whereas, the training consisted of viewing a video. Based on observations and discussions with personnel, concluded that could provide the same level of education as (Tr. 6, p89, L1-16) said that shad not seen report 13) and that the IEP committee did not have a copy of the evaluation prior to the meeting. (Tr. 6, p96, L 8-23)

Psychologist under the special education program in (Tr. 6, p191, L 12 & 13)

has an Bachelor's Degree in Psychology and a Master's Degree in School Psychology.

Is licensed in Virginia as a School Psychologist and has a national certification through the National Association of School Psychologists "NASP." (Tr. 6, p191, L 18 - p192, L12)

is also licensed through the Virginia Department of Education as a School Psychologist. (Tr. 6, p192, L 13-16)

f said that has experience dealing with students who have auditory processing problems.

also evaluates students to see if there is an auditory processing problem. (Tr. 6, p193, L12 - p196, L7)

school Psychology. (Tr. 6, p198, L6 & 7)

progress since started at in the of following the completion of IEP (Tr. 6,

p198, L12, p200, L3) (SB-71).

Auditory Processing Report 14), but had not Summer Remediation Report (SB-15) (Tr. 6, p225, L8 - p226, L1) had not seen list of concerns (SB-15) (Tr. 6, p224, L2-6) participated in the drafting of the IEP and believed it to be appropriate for and that reducational needs could be met with the IEP. (Tr. 6, p226, L5-23)

testified that was part of the team from that went to on (Tr. 6, p231, L10-18) said that did not see any major differences between program and the program at (Tr. 6, p233, L7-15) It was popinion that did not require a private placement (Tr. 6, p237, L17-p234, L1). testified about intellectual functioning and concluded that is in the low average range and disagreed with findings that IQ scores are at a higher level. (Tr. 6, p240, L14 - p241, L17) said that has reviewed report 13) since the IEP meeting but saw no significant difference between that report and earlier report 16) (Tr. 6, p263, L15-18)

Two witnesses testified on the final day of the Hearing,

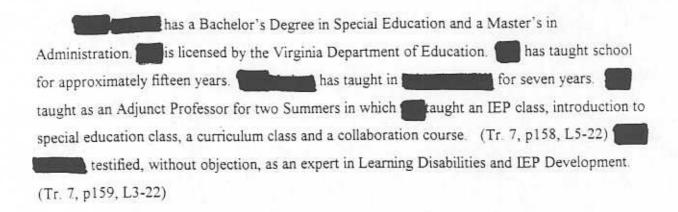
(SB-87) who was the first witness to testify, is a special education teacher in the LD program at (Tr. 7, p4, L1&2) holds a Bachelor's Degree in Special Education. participated in additional training provided by is certified to teach the Wilson Reading Program and is certified through the Virginia Department of Education. (Tr7, p5, L5-21) has been licensed as a teacher in Virginia since (Tr7, p6, L16 & 17) was accepted, without objection, as an expert in teaching children with disabilities, learning disabled and multi-disabled children, teaching the Wilson Reading Program and IFP preparation and implementation. (Tr 7, p10, L22- p11, L3)

was also in the was in self contained English and math programs. As case manager, schecked with teachers to see how was doing. (Tr. 7, p14, L 1-21)

was present at the IEP meeeting held on Prior to enrolling at had been Homebound. (Tr. 7, p15, L3-12). Said that the IEP for School (SB-71) included interpreter services that had been requested by Tr. 7, p20, L7-p21, L3)

participated in the development of the IEP for and said that was very unhappy with the math goals and felt that they were repetitive from the prior year. (Tr. 7, p52, L17 - p53, L5) said that wanted working at grade level and that the team told this was inappropriate for (Tr. 7, p53, L6-23). said that the team spent five to six hours discussing math goals. (Tr. 7, p54, L4-7) said that did not understand concern with the math goals and that was not specific about how wanted the goals changed (Tr. 7, p56, L4-15) said that had not seen list of concerns (39). was aware that wanted the IEP to reflect the SOL's, but that this would not be appropriate for because they are written for the general education population and not for LD students. (Tr. 7, p58, L11-16)

education LD teacher at and also serves as a Special Education Department Coordinator at (Tr. 7, p156, L15-19) responsibilities include coordinating child study and eligibility meeting, assigning caseloads for all of the special education teachers, working on issues regarding the kids and coordinating SOL testing. The same acceptance of the special education teachers and team-teaches. It is also responsible for doing the reevalations on the students. (Tr. 7, p156, L15 - p157, L10)

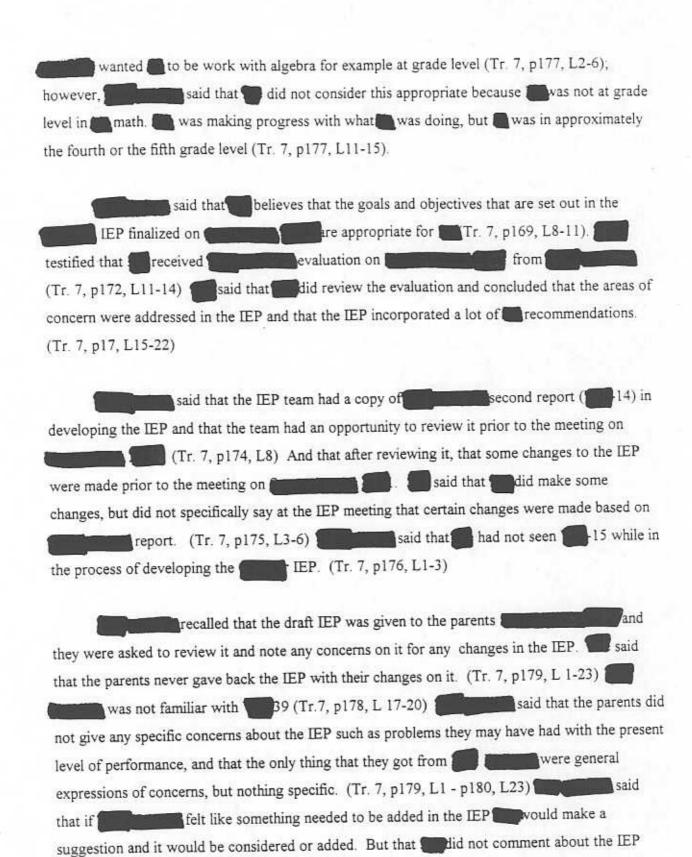


has known since was in social studies class for the school year. The also taught math for a while. Was placed in social studies class as a child with learning disabilties. (Tr. 7, p161, L7-17)

the development of SB-71 and the amendments thereto, (SB-73, 74 and 76). (Tr. 7, p164, L8-11) believed the IEP to be appropriate for and addressed all of needs (Tr.7, p167) said that regularly communicated with the parents about but arely had communication with and that most of the time talked with said that would have questions about program and might have a concern about something that wasn't being done or work that had been sent home. (Tr. 7, p162, L23 -p163, L11)

also participated in the development of the IEP (SB-77) (Tr. 7, p167, L7-13). Said that the IEP did not address auditory processing as an area, but that feels that the IEP supports that part of disabilty. Said that the IEP addrsses needs in the area of listening comprehension and oral expression which supports auditory processing deficits. (Tr. 7, p167, L14 - p169, L7)

the parents expressed concerns with the math goals set for (Tr. 7, p176, L11-16)



said that had an opportunity to observe at and concluded that needs could be adequately met at said that has a program that can provide the services as stated in the IEP. said that the difference between and was that has at least two adults in a classromm at all times, but in other respects, even class size, there would not be much difference. (Tr. 7, p186, L3 - p187, L17)

#### IV. FINDING OF FACT

- as having a Specific Learning Disability, Other Health Impaired, Hering Impaired and Speech/Language Impaired. That a mild hearing loss in right ear that requires to wear a hearing aid. Will often turn off hearing aid; however, having the hearing aid off is not a factor in disability.
- enrollment at the School for the School Year. The IEP was finalized on and signed by th parents on (SB-71)
- SB-71 was amended three times during the School Year (SB-73, 74, and 76)
- 4. In prepared a document that called "IEP Needs" (H-39); however, did not provide representatives with a copy of this document after
- 5. Beginning appropriate representives of along with the parents constituting the IEP team, met to develop an IEP for for the

School Year. The IEP was not completed on that day, so the team continued the meeting to meeting the team, including the parents, set as the date to finalize the IEP.

- and left a message that due to a family emergency, neither nor could attend the meeting. Said that got a call latter that day from while while was in the process of writing a letter confirming the earlier message. Said that the meeting would go forward without the being in attendance. Said that told and then followed up in writing with a letter stating that did not want the meeting to go forward without and being in attendance and also offered two alternate dates for the meeting and the however, finalized the School Year Fee Departments. The Fee Was signed by all IEP team members, except the parents
- for the IEP meeting on actively participated in all IEP meetings and expressed concern about math, SOL's, phonic ear, interpreter, depression and anxiety, reading, counseling, expressive language skills, disability disignation Hearing Impaired.
- 8. prepared second report concerning dated

  (13). The report was not presented to until after the

  IEP had been finalized. Therefore, the report was not considered in developing the

  IEP.
- had a family emergency that prevented her from attending the liep meeting. attendance was more essential than because was the one who communicated with on matters concerning

- 10. did not respond to request or concern as exressed in letter to dated (11).
- 11. visited on and and and sat in on classes while there met with before was accepted, on and and was accepted into on and (1007) withdrawn from on and started at on and started at the on and started at the on the started at the sta
- 12. Prior to the IEP meeting, received two independent reports of last also had received a report prepared by
- wrotes that the "Stay Put" IEP would be in effect (19-09) responed to the letter by letter also dated stating that did not know what a "Stay Put" IEP was. (19-10) The "Stay Put" IEP referred to the IEP for the School Year.
- 14. On gave gave a copy of report. (13) It was available before the end of
- 15. sent the parents its "Notice of Proposed/Refused Action" dated would be implemented.
- stating that it was their ten (10) day notice that they were removing from and placing in a private school at public expense. The effective date of the removal was indicated as

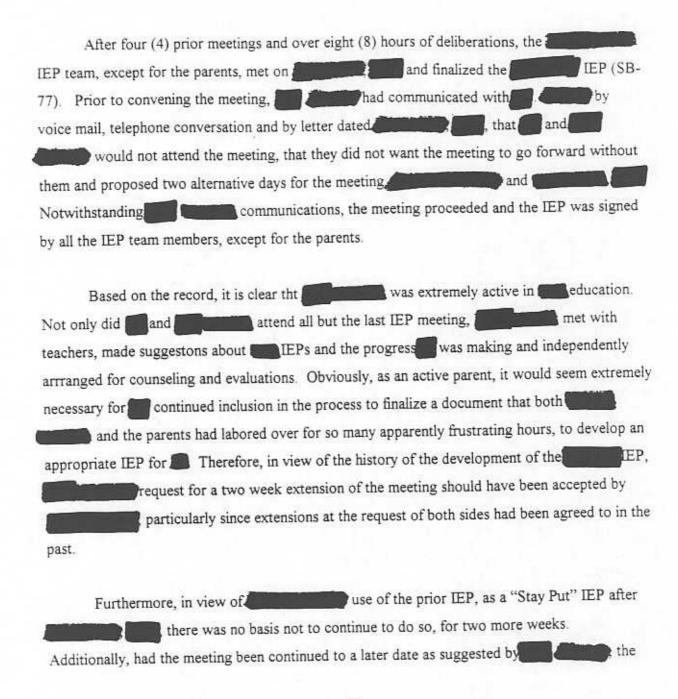
  They amended this letter, by a letter dated stating that

request for funding the private placement by letter dated (1940) The parents' letter were sufficient notice of the unilateral placement in compliance with IDEA.

- 17. The IEP team that met to develop the IEP spent over eight (8) hours trying to develop an IEP for for the School Year. The normal length of time that devotes to this process ranges in time from one-half hour to as much as two (2) hours for a long meeting.
- 18. implemented the IEP for School Year (SB-71) as a "Stay-Put" IEP after the IEP meeting and after the IEP had been signed by all IEP team members except the parents.
- did not raise any specific contends that l 19. concerns about their dissatisfaction with IEP or the services was receiving. contends that consistently raised concerns about various matters all the while was in also expressed an interest in a private placement, and that attendance at IEP team members did not want to address this option for The testimony of all and I witnesses, particularly the testimony of may not have articulated contention that expresed concerns. concerns with subject mattrer specificity; however, expressed clearly enough to require IEP and to cause the meetings leading to the development of changes to the IEP to be four (4) times longer than the typical IEP meeting.
- 20. The IEP does not list auditory processing as a specific deficit area to be addressed for which should be provided special education services. However, based on the testimony of and and it should have been.
  - 21. can provide with applicable special education services and can

### V. CONCLUSION

#### A. Parental Involvement



The Hearing Officers concludes that IDEA clearly supports parental participation in the development of an appropriate IEP:

### 34 C.F.R. §300.345 Parental participation.

- (a) Public agency responsibility general. Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate.
- (c) Other methods to ensure parent participation. If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.
- (d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as-
  - (1) Detailed records of telephone calls made or attempted and the results of those calls;
  - (2) Copies of correspondence sent to the parents and any response received; and
  - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

## (Emphasis Added)

It appears to the Hearing Officer that after so much time had already been devoted to developing an IEP, the draft of which had determined was appropriate, it was apparently concluded that another delay, even if two more weeks would not have produced any better results and perhaps the parents may still have not been satisfied. However, it is clear that wanted to participate in the meeting by communications with on the day of the meeting. Rather than attempt to convince that it was necessary for the meeting to go forward with the parents, simply said that the meeting will proceed.

Other than the one phone call that made to on 2001, the record does not reflect efforts of to convince the parents to attend the meeting and does not docment the efforts to do so. Accordingly, the Hearing Officer concludes that did not comply with the regulations cited above. Additionally, it is evident that was still interested in developing an IEP for the fact that on gave a copy of the fact that on the fact that the fact that on the fact that the fact th

In developing the IEP the team met four (4) times with the parents and one additional time without them. IEP the team met four (4) times with the parents and one the meeting due to a family emergency. The family member was Presumably, Could have attended; however, Was the one who dealt with Concerning and was clearly the parent most actively involved with Concerning and Couldingly, Concerning attendance at any meeting was necessary.

At the Hearing, questioned whether or not there was an actual emergency and if so, why couldn't another family member have dealt with it. Nevertheless, no evidence was presented that contradicted assertion of an emergency and one that had to deal with.

Additionally, the only evidence on the record concerning a basis for proceeding with the meeting, was as stated that felt needed a current IEP. Also, that the IEP was essentially completed except for the first two pages, a draft of which had been sent to the parents without any comments coming back.

The evidence is that proceeded to implement the prior year IEP as a "stay put" IEP after the meeting based on the letter from to

Therefore, it is clear that could have waited to hold a another meeting in which to develop IEP. If the meeting had been postponed, then last report could have been available for the team to consider in finalizing the IEP.

In the final analysis, the Hearing Officer concludes that should have either postponed the meeting or made appropriate efforts to get the parents to attend the meeting, even if by conference call. By not doing so, failed to comply with the above cited regulations.

Although it can be argued that the failure to comply with 34 C.F.R. §300.345 may only constitute a procedural violation, it has been held that while a procedural violation of IDEA may constitute a per se denial of FAPE, the procedural violation must be so significant as to deny the education itself or prevent meaningful parental involvement, Fairfax County Pub. Schs., 29 IDLER 1096 (SEA 1998), Hall v. Vance County Bd. Of Educ., 774 F. 2d 629 (4th Cir. 1985).

The Hearing Officer concludes that going forward with the meeting after the parents expressed their desire to attend and requested a continuation to two alternative days was such a precedural violation as to deny meaningful parental involvement, notwithstanding that this would have been the fifth meeting to finalize an essentially complete IEP.

#### Rejection of the IEP and Ten Day Notice B.

The IDEA and Supporting Regulations limit the parents' right to reimbursement if the provisions of the statute are not followed:

#### Limitation on reimburesment (iii)

The cost of reimbursement described in clause (ii) may be reduced or denied--

(1)

at the most recent IEP meeting that the parents attended prior to removal of the (aa) child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public educaion to their chlid, including stating their concerns and their intent to enroll their child in a private school at

public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the chld from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

34 d.F.R.300.403 (d); 8 VAC 20-80-66(B)(4). (Emphasis Added)

The last meeting that the parents attended was At that meeting, the parents did not say that they were rejecting the IEP that had been essentially completed. In fact, they participated in planning the date of as the date of the next meeting.

Accordingly, the parents, could not have rejected the IFP at the last meeting they attended. The rejection of the IEP occurred after informed the parents by Notice of Proposed/Refused Action, dated (100) that even though they had not signed the IEP it would be implemented.

With regard to rejecting the IEP, it is noted that asserted thoughout the Hearing that a did not articulated specific concerns with IEP, or the services that was receiving. On the otherhand asserts that consistently tried to inform the staff of concerns. A review of the record confirms assertion. On any not have expressed concerns with the degree of specificity that some could have done, nor to the satisfication of the applicable personnel. In any event, was clear enough to cause IEPs to be amended and concern with math was a major contributing factor in the length of the process of developing the IEP. Although intended to offer testimony with examples of how did not specify concerns, in the Hearing Officer's view, it had the opposite affect of supporting assertion that, on a consistent basis, expessed concerns to

The ten (10) day notice provision as stated in the above cited regulations allows the School division to address the parents' concerns before any removal. However, it is evident that

was no longer willing to address the parents' concerns, since the decision was made to proceed with the meeting with out the parents in attendance. Also, failed to consider the request for postponment of the meeting and then issued the Notice to implement the IEP even though it was earlier stated that the "Stay Put" IEP would be used.

In any event, the formally notified of their decision to place at effective by letter dated as amended by letter dated. The Hearing Officer concludes that actions of as stated herein and the letters of the parents constitute sufficient notice.

### C. Consideration of Independent Evaluations

their recommendations and concerns addressed. Yet, witnesses testified as experts in their respective fields and testified that both of reports had been considered as well as the first report by Whereas does not have to accept the recommendations of outside experts or consider their concerns, here, said that they did consider the reports; yet, two highly qualified experts said that they could not find their recommendations and concerns in the IEP. It is difficult to believe that and could not find some of their recommendations in a report, if they were clearly expressed in the document.

Furthermore, the IEP of was not provided to until after the IEP meeting. Even though some witnesses testified that they had individually reviewed the report after the IEP meeting, but before the Hearing, they saw no need to make changes to the IEP. However, there does not appear to have been any IEP team discussion of the report, even if the team had individually read the

report. In view of very credible testimony, the Hearing Officer agrees that recommendations regarding auditory processing were not sufficiently addressed in the IEP. The Hearing Officer finds the testimony of to be pursuasive and that auditory processing is primary deficit.

### D. Appropriate IEP

It is noted that was not classroom teacher and only briefly observed in class; however, which more than just perform assessments and tests and evaluate got to know as a result of a five - week program in the Summer and was able to see first hand how reacts in an learning environment. prepared two reports concerning views regarding also prepared two reports, the first dated SH-16) and the second one dated (1-13).

The staff consisting of teachers and other professionals, got to know as a result of working with the classroom environment at the little is clear that they were aware of deficits, but with regard to auditory processing, approached as though auditory processing should not be a separate area to address, but included it among other deficits. Whereas the staff had greater access to and were in a postion to observe regularly, which is a highly skilled expert in the field of audiology and could make professional judgments regarding hearing problems. That sufficient access to personally observe and determine, in professional opinion, primary deficit which should have been treated as a major area in the IEP.

Furthermore, time with was impacted by the fact that started at in late and was absent from school a great deal in the beginning of the school Year prior to removal. Also, even though asserted that was improving, mother, who is extremely active in education stated the reverse, along with other experts for the parents.

Even though the staff testified as experts in their fields, the Hearing Officer is more pursuaded by the testimony of and about major deficit being auditory processing and it should have been specifically set out as such in the IEP.

# E. A Free And Appropriate Public Education "FAPE"

Under established Supreme Court decisions, a school system's failure to provide a student FAPE leads directly to the determination of whether parents identified a placement that provided him with educational benefit.

A Free Appropriate Public Education does not mean that the student is to receive the best education possible; instead, the student must receive the "basic floor of opportunity" and which is "reasonably calculated to offer a child some educational benefit." <u>Board of Education v. Rowley</u>, 458 U.S. 176 (1982).

would be correct in stating that under Rowley a school system is not required to provide the best education or to maximize each child's potential. However, it is difficult to understand how could have drafted an appropriate IEP for that was tailored to meet particular needs, without the participation in the IEP process of all independent evaluations showing that primary deficit is auditory processing. Also, it is particularly problematic that proceeded with the meeting in view of the history of the development of the IEP. The Hearing Officer did not find that the educational program offered by would maximize ducation. In fact, the special eduation programs that and offer are quite similar. But here, with respect to the difference in the Hearing Officer's opinion is that will address auditory processing deficit as suggested by and Therefore, the private placement is to offer that "basic floor of Opportunity".

It has been held that reimbursement for a private placement is not appropriate unless the

parent proves that the school's program is inappropriate and the private placement is appropriate.

Burlington Sch. Comm. V. Department of Educ., et al, 471 U.S. 359 (1985), Florence County

Sch. Dist. Four v. Carter, 510 U.S. 7 (1993). As stated herein, primary deficit is auditory

processing which should be a specific area addressed in SEP. has not

demonstrated that it will approach primary deficit as such, accordingly, the program is inappropriate for The Hearing also believes that the conclusions reached here are consistent with key decisions regarding reimbursement for unilateral placements.

Reimbursement is not appropriate when the Student's placement is "necessary for medical, social or emotional problems that are segregable from the learning process . . ." <u>Board of Educ.</u>

Of Montgomery County v. Brett Y., 28 IDLER 460, 466 (4th Cir. 1998), citing <u>Burke County Bd</u>

of Educ. V. Denton, 895 F. 2nd 973 at 980 (4th Cir. 1990).

Under <u>Burlington</u>, the Supreme Court explained that "parents who disagree with the proposed {educational program} are faced with a choice; go along with the [proposed program] to the detriment of their child if it turns out to be inappropriate or pay for what they consider to be the appropriate placement." 471 U.S. at 370.

To avoid compromising a child's right to a FAPE, the Court concluded that if "a court determined that a private placement desired by the parents was proper under the Act and that [a proposed] placement in a public school was inappropriate, "the IDEA authorizes retroactive reimbursement to parents." Id. This is necessary because "[t]he Act was intended to give handicapped children both an appropriate education and a free one; it should not be interpreted to defeat one or the other of those objectives." Id.

When the parents have made a unilateral placement at a private school which is not stateapproved, that fact will not bar reimbursement if the local school district was not providing FAPE, Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993). In <u>Carter</u>, the Supreme Court reaffirmed its ruling in <u>Burlington</u> and explained that "public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State's choice." 510 U.S. at 13.

IDEA requires that children with disabilities be educated in the "Less Restrictive Environment" in that they are to be educated, to the maximum extent appropriate, with nondisabled children, including children in public or private institutions or other care facilities. Furthermore, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

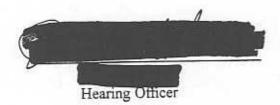
20 U.S.C. 1412(a)(5); 34 C.F.R. 300.130; 8 VAC 20-80-64(A)(1)

Among other things, testified that the classes are smaller with two teachers and can concentrate better. Furthermore, based on the testimony of the parents' expert witnesses, requires a more restrictive environment to address not only auditroy processing problem, but also to address anxiety, etc. In this regard, was determined to be the Least Restrictive Environment for by all of parents' expert witnesses, who the Hearing Officer find to be credible witnesses.

The test for whether a parental placement is "proper under the act" is whether "the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits." Carter, 950 F.2d at 163, quoting Rowley, 458 U.S. at 207. Accordingly, the question is whether the unilateral parental placement at provided with educational benefit. Parental placements are held to a less strict standard, since "it hardly seems

consistent with the Act's goals to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place." Carter, 950 F 2d at 164.

The Hearing Officer believes the same logic in <u>Carter</u> applies here and concludes: that the parents provided an appropriate notice of the unilateral placement, that the parents indicated their specific concerns to about the IEP; that the IEP did not sufficiently address all areas of suspected disability, that the IEP failed to sufficiently consider the independent expert evaluations; that IEP failed to sufficiently consider the is the decision of this Hearing Officer that the parents are entitled to reimbursement for placement at retroactive to and reimburesement for the independent evaluations.



Date 02

# ORDER

It is ORDERED that	place at	and reimburse the p	parents for
the placement retroactive to	It is further	ORDERED that	shall
reimburse the parents for the independe	ent expert educational	evaluations. It is furthe	r ORDERED
that submit an implement	ntation plan to the part	ties, the hearing officer	and the SEA
withn 45 calendar days.			

# APPEAL INFORMATION

Ar	opeal of this decision by either party must be instituted within 30 administrative	days
following	e date below by request made to the Virginia Department of education.	
Date	Hearing Officer	