# VIRGINIA DEPARTMENT OF EDUCATION

### OFFICE OF SPECIAL PROGRAMS

### POST HEARING REPORT



School Division	Name of Parents
Director, Special Education	Name of Child
Counsel Representing LEA	Counsel Representing Parent/Child
Hearing Officer	Party Initiating Hearing

## ISSUE(S) AND PURPOSE OF HEARING

all issues that exist between the system and concerning implementation and execution of IEP. The issues presented for consideration are:

- Has PS implemented individualized education plan ("IEP"), dated 2001?
- Has PS used appropriate communication tools to inform Mrs. of educational progress?
- Has PS provided appropriately qualified staff capable of implementing the goals and objectives of IEP?
- 4. Does Dr. observation of on 2001 require that 2001 IEP be revised?
- 5. Is attendance at the with a free appropriate public education (FAPE)?
- 6. Has PS provided with a free appropriate public education (FAPE)?
- 7. Must PS pay for evaluation by the Education
  Center?

## PROCEEDINGS

A Due Process Hearing took place on 2002 at the Administration B a.m.	Thursday and Friday, uilding. The hearing c	ommenced at 9:30
introduced 29 eintroduced 173 numbered exhibits and two let into the Record of this proceeding. Addition Vocational Evaluation Report dated Education Center. The Parents Exhibit 30.	ttered exhibits. All exh nally, the Hearing Offi 2002 for	cer has received a from
Although initiated the due proced could proceed first to accommodate the called the following witnesses:	ess hearing, the partie e schedules of witr	s agreed that Mrs. nesses.
The		
Senior Teacher for Special Education Public Schools		
Special Education Teacher Public Schools		
Teacher, Education for Employment Public Schools	7 75%	S
Associate Professor		

Mother Control

Public Schools presented the following witnesses:

School psychologist

Public Schools

Special Education Specialist
Public Schools

Autism Positive Behavioral Support Specialist
Public Schools

Lead Teacher Specialist for Special Education Transition Services Public Schools

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#### FINDINGS OF FACT

### Documentary Evidence

was born on 1985 to 19

threatening teacher and using abusive language, Subsequently, received homebound instruction from 2001. Ex. Book B, Tab 44) Ms. noted slow but steady progress in a Progress Report dated February 15, 2001.

On or about 2001, complained to the Virginia Department of Education about the special education services provided complaint was mediated on 2001 and resulted in a Mediation Memorandum of Agreement, executed 2001 Ex. Book B, Tab 1) The Mediation Memorandum of Agreement addressed, among other topics,

continuing every Tuesday and Thursday thereafter at the School Board office for the remainder of school year 2000 – 2001;

- (ii) daily communication regarding through a communication notebook established by and and
- (iii) consideration of dietary needs; and
- (iv) convening an IEP meeting on 2001, at which the parties would discuss the possibility of attending class three days per week.

Consistent with the Mediation Memorandum of Agreement, transition teacher for presented a detailed statement of functional Academic Dates and Material Covered for from 2001 through 2001. Ex. Book B, Tabs 45, 46). maintained a communications notebook from through 2001. Ex. Book B, Tab 49)

Following the 2001 IEP meeting, IEP. Gagreed to discuss this request at its 2001 IEP meeting. As a goal, IEP. Galler discuss this be provided with assistance with food purchasing and preparation to meet dietary needs. In additional residential service as an issue when mediating prievance in 2001.

meeting, the IEP team denied request for in-home residential support services. Ex. Book B, Tab 32)

By e-mail dated 2001, 2001, asked that the 2001 mediation be reopened to consider request for in-home residential services. Through declined. (Ex. Book B, Tab 33) then asked, on 2001, for a full formal educational evaluation of Ex. Book B, Tab 34)

progressing with FIEP goals/objectives and expressed the opinion that time at school should be increased. As a means of transitioning into High School, the IEP team proposed that attend the School Board Office simulated classroom three days per week. (Ex. Book B, Tab 39) objected to this proposal.

Tab 1) At its core, complained that would not allow to implement and follow the terms of the 2001 Mediation Agreement. S and were in conflict in that was working to return to a classroombased setting, contrary to the desire of Ex. Book C, Tab 2) countered by filing own request for a due process hearing. (Ex. Book C, Tab 7) The due process requests of both parties were merged. (Ex. Book C, Tab 9)

next IEP occurred on 2001, at which time the IEP team considered extended school year ("ESY") services for the summer 2001.

Were in attendance; signed the IEP Addendum. (Ex. Book C, Tab 15)

By correspondence dated 2001, child psychiatrist M.D. recommended homebound instruction and external training option ("ETO") for Ex. Book C, Tab 10)

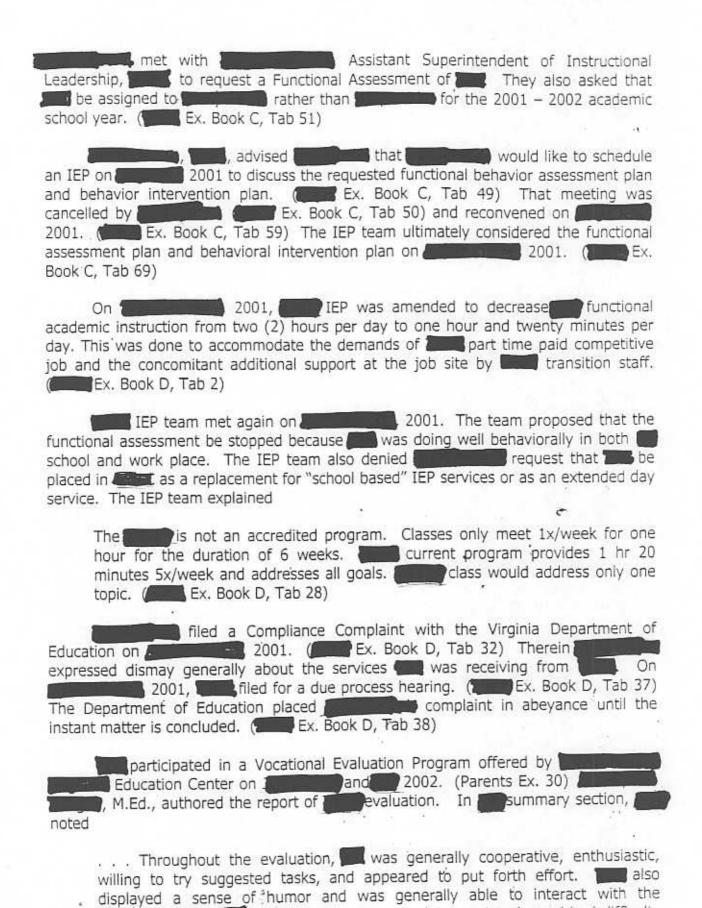
The parties to this proceeding resolved their respective due process claims through a Settlement Agreement and Order, entered 2001. The Agreement provided, among other things, that would receive educational services at High School for the 2001 – 2002 academic school year. agreed to provide an orientation for with new case manager and teachers. It was agreed that an IEP team would meet no later than 2001, to adopt the goals and objectives of IEP which had been approved by the IEP team and authorized by 001. Further, the parties agreed that

- the IEP team would not consider any new goals until the completion of at least one full academic semester in the 2001 – 2002 academic year; and
- (ii) would focus efforts on functional academics and vocational education. (Ex. Book C, Tab 30)

Following execution of the Settlement Agreement and Order, raised questions about the transition services would provide Ex. Book C, Tab 33). responded on 2001 to explain that was required to provide extended school year service pursuant to the 2001 Mediation Memorandum of Agreement. explained that was carrying out this directive by conducting assessments to determine future work site experience. (Ex. Book C, Tab 34)

asked to consider the summer program offered by the ("CVILC") to fill the hours would otherwise have spent with (Ex. Book C, Tab 33) agreed to reschedule August IEP to an earlier time to consider this request. Ex. Book C, Tab 37) convened an IEP on 2001 and concluded that the summer program was appropriate to support IEP for the duration from 2001 through 2001. (Ex. Book C, Tab 38)

Following execution of the Settlement Agreement and Order, requested an Educational Assessment for (Ex. Book C, Tab 40) conducted the evaluation and submitted report to the IEP team. (Ex. Book C, Tab 60) On 2001 requested a Functional Behavioral Assessment and a Behavioral Intervention Plan for (Ex. Book C, Tab 41) On 2001, expressed dissatisfaction that was not assigned to as a teacher. (Ex. Book C, Tab 44) On 2001,



evaluation staff. In needed support to complete most tasks and had difficulty

remaining in work area. Ineeded prompts and reminders to maintain eye contact, wait for instructions prior to initiating tasks and limit talking while working. . . Overall was an enthusiastic, enjoyable hard working young would benefit from training that focuses on mastering suggested vocational/work preparatory skills and behaviors with opportunities to revisit goals during educational/transitional planning. This training should include monitoring and immediate feedback. Training goals should focus on preparing for increased independence and future employment. Witness Testimony is a developmental pediatrician. experience consists of three years of medical residency, three years of post residency fellowship working with children with developmental disabilities, and a twenty-year special interest in the field of autism. Dr. has treated for several years. testified that is autistic suffers from attention deficit hyperactivity disorder ("ADHD"). also presents wheat and gluten intolerance. Dr. testified that diet can affect an autistic's behavior. Intolerance to wheat can produce a chronic inflammatory response in the gut wall. Gluten intolerance can lead to celiac disease and colon cancer. It is therefore important for to understand what might happen to health if includes gluten in diet. Dr. further testified of the importance of maintaining a schedule for so a can anticipate the events in daily life. In Dr. opinion, will need support to manage diet, to obtain and retain employment, and to live independently.

Dr. was not familiar with the services PS provided

progression through the

is a friend of the family. In has attended training with the

School system.

served as PATH coach in 2000. testified that

-Autism Society and has known and the since 1991. has witnessed

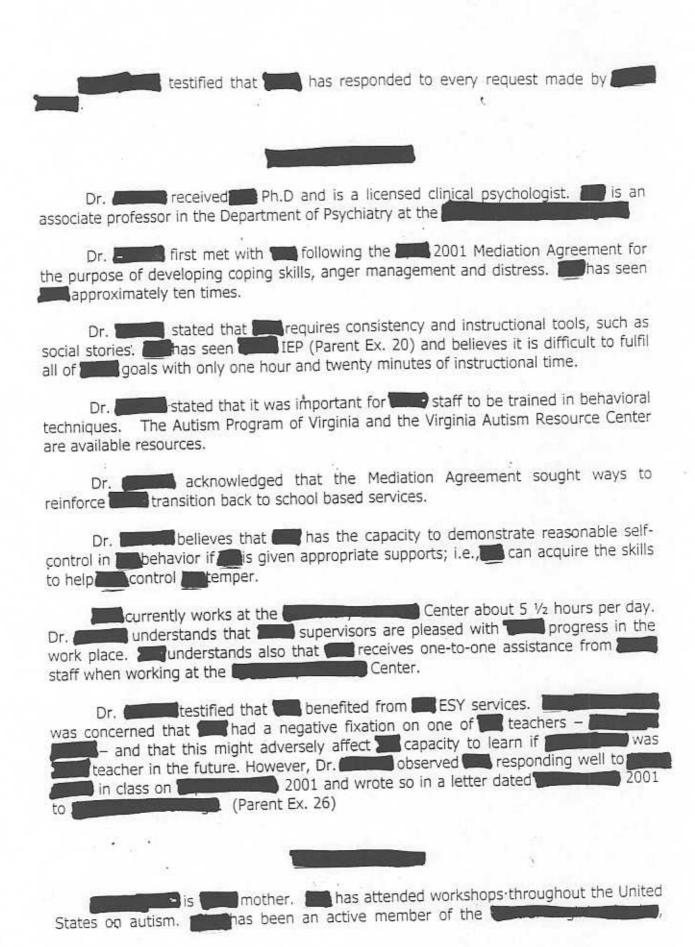
was very excited about PATH meeting. During the meeting, was in control,

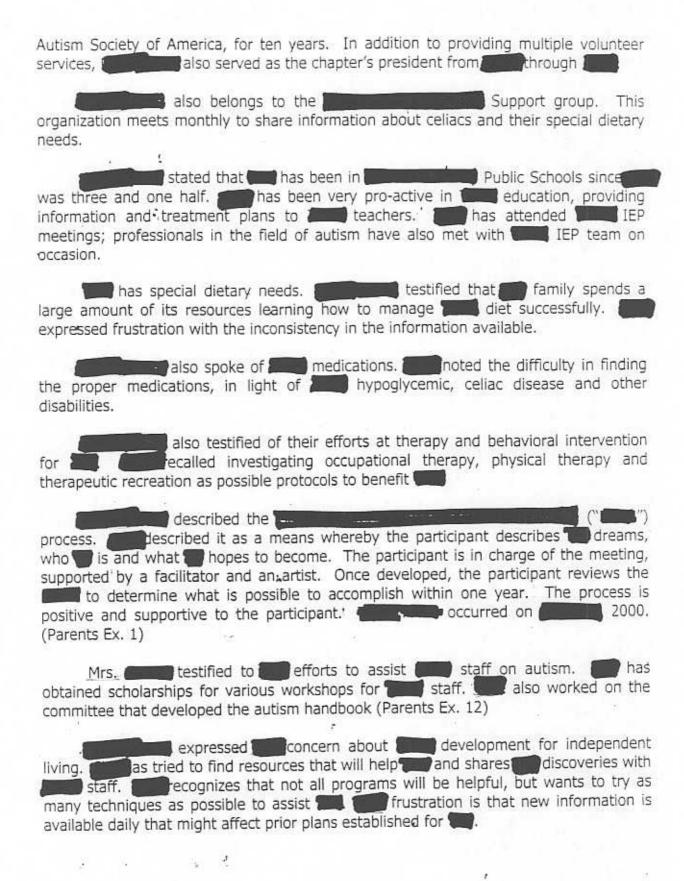
frequently takes with on errands.
On 2001, took to meet and and at High School. The purpose of the meeting was to acquaint with the arrangements made for transition back into the academic environment. also met with Mr. the school principal, and former Education for Employment teacher. They discussed classroom location, access to the bathroom, drop-off at school and cooking class. (Parents Ex. 25)
uses visual schédules, social stories and positive behavioral supports in relationship with
holds a BS degree in Special Education, an MS degree in Counselor Education and is certified for grades K through 12.
the summer 2001. Communicated daily with during the ESY, using a communications notebook format requested by (Parents Ex. 7, 20).
utilized during ESY. (Ex. Book D, Tab 43) testified that, in ppinion, understood dietary needs and limitations; i.e., understood what diet meant.
ESY. stated that completed all the goals and objective set for ESY.
holds a BS degree and a comprehensive Special Education EMP program for grades K through 12.
the school year (\$2001) testified that first sessions with were "rough, but and developed a good relationship as time progressed.

exhibited great behavior during cooking and functional skills training.

100 CH 10	Services Board rather than at home. Sobserved that did not function as well, attributing performance on the change in location.
	instructions and cooking supplies appropriate for diet.
	out to be confusing for because thought school day ended at 4:00 pm. After consultation with the IEP team, the instruction time was changed.
	holds a Bachelor's degree in business administration and management and a Master's degree in rehabilitation counseling. has also attended a number of postgraduate courses in education for special needs and in substance abuse. has been a teacher for twenty years.
	recalled being in class and that did well. Found easy to redirect, when needed, and offered the thought that faired well because class was less structured than others.
	served as coach, with the for meeting on 2000. It testified that took great pride in the meeting and served as "host" for the gathering.
	recounted a time when asked to write a letter of recommendation for the Forum. Forum did not think this was appropriate and after some time explained to at some length why would not write the letter. In understood position and expressed no hard feelings – either then or subsequently.
	fishing license so could accompany wrote to wrote to communication notebook that permission. Preceived no reply to the inquiry.
	Since then, has expressed reluctance to maintaining friendship with believes there is too much dissension with and that this has interfered with ability to learn. The also believes that it many and cumulative requests for services for has demanded a disproportionate amount of school resources for case management. By continuing friendship/mentorship with may lose what free time has to mentor other children with special

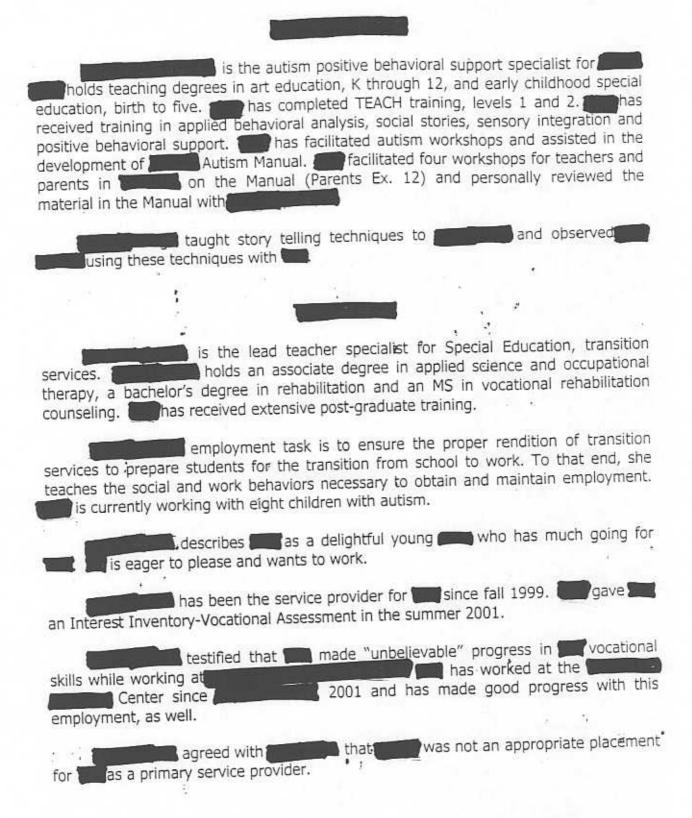
needs.





is the school psychologist for Public Schools. holds a BA degree in psychology, an MA degree in school psychology and a certificate of advanced study in the field of school psychology.
has known for about twelve years. Surrent association with began in the summer 1999. Since then has worked with in the Learn and Earn Program; has provided individual counseling to transition to High School; observed during work program at ('''); and observed during ESY program. has counseled since the summer 1999, with frequencies ranging from once per week to twice per month. has participated in IEP meeting since the summer 1999.
is trained in autism and is familiar with autism resources.
testified that is a likable young enjoys talking about accomplishments, working and earning money. also enjoys working at the Center.
progressed both socially and behaviorally. gets along well with most students and faculty members. cognitive strengths are: good listening comprehension, the ability to process visual images and schedules and to remember isolated facts. cognitive weaknesses are: verbal reasoning and comprehension, an inability to connect language concepts and memory difficulties.
mas found success with ALERT and story telling techniques.
testified that requires the following:
a continued focus on functional academics;
<ol> <li>continuation of the IEP vocational components now in place;</li> </ol>
<ol> <li>continued work on problem-solving skills and conflict resolution; and</li> </ol>
4. continued use of ALERT to help ( ) maintain appropriate levels of self-modulation.
finds happy and positive during their counseling sessions.
adulthood, in that is learning vocational and independent living skills. is also progressing in the classroom.

is a Special Education specialist for holds BS and MS degrees in education; has also received continuing course work in the area of administration. It is endorsed in emotional disturbance K through 12; mental retardation K through 12: special learning disabilities K through 12; and early education K through 4. That has received continuing education in the field of autism, TEACH training, positive behavioral support and behavioral intervention plans.
helped to develop the Autism Manual.
does not manage case, but has attended all of IEPs.
the 2000. In 2000, staff and looked into private placement, for School is well-versed in autism and IEP team thought placement at School would be appropriate. While application to School was in process, the IEP team proposed that receive homebound services for functional academics and work adjustment training. Initially voiced support for the School proposal, but withdrew support following a visit to the school. The application process was not completed, therefore, and began receiving homebound instruction.
recognized that had to be educated in the least restrictive environment possible. To that end, testified that established a classroom setting at the School Board Office to simulate a classroom setting. Selected the students to attend the class, which was taught by Following 2001, was to attend the classroom on Tuesdays and Thursdays and to receive homebound instruction on the remaining days. Testified that performed well in the class, to the point that wanted to attend class three days per week. The refused permission for to attend class three days per week.
defined ALERT as a specially designed program to help students self- regulate. ALERT training was available to and professionals.
testified that received a telephone call from a season of anything had done to necessitate a functional assessment.



# CONCLUSIONS OF LAW

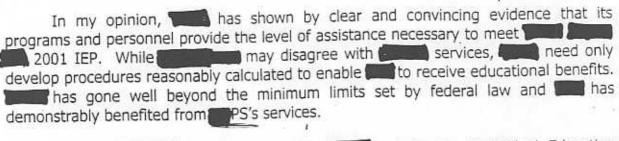
It is without question that and the have a common interest – the delivery of services that will enable to become self-reliant and employable. It is also clear that through its personnel, has been open and supportive of has given serious consideration to the requests and has provided intensive and supportive services to	5
The Record is also clear that the and and through mediation, agreed to services would receive. Following the mediation agreement, requested new services. These requests ultimately resulted in another agreement following which again requested additional services for Through mediation, agreed the requisite support to the face of the changing demands regretfully, it appears that advocacy for has badly impeded ability to service needs.	e d
A recurring fact throughout the Record is that is making progress in the system. The school system provides with support and feedback to help become employable and independent. Is given instruction and assistance with dietary needs, shopping, finances, time management and goal setting. Parent are teachers have used a communications notebook to keep each informed of dail experiences and needs. (Ex. Book D, Tab 43, 44, 45) The Record further establishes that teachers are highly qualified with professional license appropriate to the services they provide. (Ex. Book D, Tab 46) The evidence overwhelming that staff has devoted tremendous energy and talent to provide with appropriate academic, functional and vocational training.	ld ly er es is
One of the ironies of this proceeding is that the controversy between the and from 2001 to date runs counter to need for consistency environment and activity. Notwithstanding this upheaval, the Record establishes the has been successful with employment at the Center. To Record establishes that is receiving training in appropriate behavioral responsificon staff. The Record establishes, also, that enjoyed success with homebound instructor,	he ies
In Board of Education v. Rowley, 458 U.S. 176, 73 L. Ed. 690, 102 S. Ct. 30 (1982), the Court established two standards for determining if the State (a schesystem) has met the requirements of the Individuals with Disabilities Education ("IDEA"):	00

First, has the State complied with the procedures set forth in the Act [IDEA]? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the

obligations imposed by Congress and the courts can require no more. See id. at 206-207.

As stated in Board of Education of Montgomery County v. Brett Y, 155 F.3d 557, \_\_\_\_\_, 1998 WL 390553 (4<sup>th</sup> Cir. 1998 (Md.))

The IDEA does not require, however, that a school system fund the best possible placement for a child. "The [IDEA] requires only that the child be able to benefit from the instruction that [he] receives, not that [he] be able to maximize [his] potential commensurate with the opportunity provided non-handicapped children." Citing Burke County Board of Education v. Denton, 895 F.2d 973 (4th Cir. 1990).

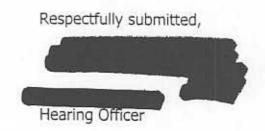


Last, has requested that pay for the Individual Education Evaluation (Vocational Evaluation Program) conducted by Regional Education Center. I find nothing in the Vocational Evaluation Report that adds to the knowledge already developed by through its testing, meetings, and working with

Accordingly, I make the following findings of law.

- has implemented IEP, dated 2001.
- has used appropriate communication tools to inform for the progress.
- has provided appropriately qualified staff capable of implementing the goals and objectives of IEP.
- 4. Dr. observations of on 2001 do not affect 2001 IEP.
- 5. Independent Living Center, Inc. is not an appropriate substitute for school based training.
- The placement and services offered by to constitute a free appropriate public education (FAPE).

7. is not required to pay evaluation by the Regional Education Center.



Dated: 2002

r.