



CASE CLOSURE SUMMARY REPORT

(This summary sheet must be used as a cover sheet for the Hearing Officer's Decision at the end of the special education hearing and submitted to the Department of Education before billing.)

[redacted] School Division

[redacted] Name of Parent(s)

[redacted] Name of Child

Date of Decision or Dismissal

[redacted] Counsel Representing LEA

None Counsel Representing Parents/Child

Parent Party Initiating Hearing

Both Prevailing Party

Hearing Officer's Determination of Issues(s):

Compensatory Education Ordered, remainder of relief requested by the parent denied.

Hearing Officer's Order and Outcome of Hearing:

[redacted] is entitled to compensatory education for a period of time equal to the total class time [redacted] spent with [redacted], i.e. 206 hours. The compensatory education will be provided in a manner agreed upon by the IEP team.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

[redacted signature]
Hearing Officer

VIRGINIA DEPARTMENT OF EDUCATION  
POST HEARING REPORT



\_\_\_\_\_  
School Division

\_\_\_\_\_  
Parent

\_\_\_\_\_  
Division Superintendent

\_\_\_\_\_  
Child

\_\_\_\_\_  
Counsel Representing LEA

None  
Counsel Representing Parents/Child

\_\_\_\_\_  
Hearing Officer

Parent  
Party Initiating Hearing

I. ISSUES AND PURPOSE OF HEARING

1. Did \_\_\_\_\_ Schools fail to implement the IEP in place during the school year in one or more of the following ways:
  - A. Failed to provide auditory-verbal therapy (a.k.a., auditory-verbal approach),
  - B. Failed to comply with the IEP during the administration of the \_\_\_\_\_ grade Standards of Learning Assessments,
  - C. Failed to address the short-term objectives in the IEP,
  - D. Failed to provide occupational therapy,
  - E. Failed to provide specific methodology required due to the student's documented disabilities, and
  - F. Failed to provide necessary evaluation of the student.
2. If so, is the student entitled to compensatory education?
3. Did \_\_\_\_\_ Schools fail to follow all material Due Process procedural requirements, including any required notices?
4. Can \_\_\_\_\_ Schools provide an IEP and related services, if any?

## II. PROCEDURAL MATTERS

██████████ requested a due process hearing to address the issues set out above.

By letter dated ██████████ the Hearing Officer notified the parties that a formal impartial hearing was scheduled for ██████████

Prehearing conferences by telephone were conducted by the Hearing Officer with ██████████ and ██████████ on ██████████, ██████████, and ██████████. As a result, the date for the due process hearing was rescheduled for ██████████ to address the expanded list of issues shown on the Addendum to Pre-Hearing Report dated ██████████ and as set out above.

On ██████████, an additional pre-hearing telephone conference was held. As a result, the Hearing Officer issued an Order dated ██████████ addressing certain issues raised by letter and during the telephone conference and extending the deadline for providing copies of Exhibits to ██████████

██████████ at 5:00 p.m.

By letter dated ██████████, ██████████ requested dismissal of ██████████ request for a due process hearing without prejudice. However, by letter dated ██████████, ██████████ withdrew ██████████ request for a dismissal. In addition, ██████████ withdrew ██████████ earlier request for the Hearing Officer to impose sanctions on ██████████

On ██████████, an additional pre-hearing telephone conference was held to consider ██████████ Motion to Reconsider the Order entered on ██████████. At the conclusion of the conference, the Hearing Officer entered the Order dated ██████████.

The hearing commenced on ██████████ as scheduled. However, the hearing was not completed and by agreement of the parties was scheduled to resume on ██████████ at 9:00 a.m. as shown in the Second Addendum to Pre-Hearing Report dated ██████████

Pending the reconvening of the due process hearing, the Hearing Officer received a letter from [REDACTED] dated [REDACTED] objecting to [REDACTED]'s written notice dated [REDACTED] establishing an IEP meeting for [REDACTED] to consider ESY. [REDACTED] requested that the Hearing Officer order [REDACTED] to convene the IEP meeting without delay. By Order dated [REDACTED] the Hearing Officer declined to order that the requested IEP meeting occur prior to [REDACTED] but ruled that the matter would be considered, if requested by [REDACTED] at the beginning of the hearing on [REDACTED]. [REDACTED] did not on [REDACTED] request that the matter be further considered.

Both parties had notice of and participated in the hearings conducted on [REDACTED] and [REDACTED]. Requirement of notice to the parent of the hearings was met. The parent did not object to the hearings being conducted at the chosen location. At the request of the parent, the hearing was open.

### III. WITNESSES

On [REDACTED] the witnesses in order of appearance were as follows:

For the student:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]

On [REDACTED] the witnesses in order of appearance were as follows:

For the student:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

For the School:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

#### IV. EXHIBITS

The exhibits for the student, compiled in a separate binder, are numbered Exhibits No.1 through No. 144.

The exhibits for the school, contained in a separate binder, are lettered Exhibits A through AAA. Exhibits TT and UU were withdrawn by [REDACTED] and not considered. Exhibits I, RR and OO were admitted over [REDACTED] objection. In addition, the Hearing Officer did not allow the admission of [REDACTED] grade book which was offered by [REDACTED] together with letter dated [REDACTED]. [REDACTED]'s letter and proffered exhibit are included in the school's binder of exhibits but was not considered by the Hearing Officer in reaching the decision due to the untimely filing of the exhibit.

In addition to the exhibits listed, the Hearing Officer considered the written arguments submitted by [REDACTED] and by [REDACTED] on behalf of [REDACTED] Schools.

#### V. APPLICABLE LAW AND REGULATIONS

- A. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400, et seq.
- B. Code of Federal Regulations
- C. Virginia Code Sections 22.1-213, et seq.
- D. Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective 1/1/2001.

In addition, the parties cited the following case law:

- The Board of Education vs. Rowley, 458 US 176 (1982)
- Hartman vs. Loudon County Board of Education, 1818 F.3d996 (1997)
- Barnett vs. Fairfax County School Board, 927 F.2<sup>nd</sup> 146 (4<sup>th</sup> Cir., 1991)
- Burke County Board Education vs. Denton, 895 F.2<sup>nd</sup> 973 (1990)

Mrs. C. vs. Wheaton, 916 F.2<sup>nd</sup> 69 (1990)  
Parents of Student W vs. Puyallup School District, 31 F. 3<sup>rd</sup> 1489 (1994)  
Jaynes v. Newport News School Board, Unpublished opinion of the United State  
Court of Appeals (4<sup>th</sup> Cir., 2001)

#### VI. SUMMARY OF THE EVIDENCE

[REDACTED] is [REDACTED] years of age. [REDACTED] currently attends [REDACTED] School in [REDACTED] Virginia. [REDACTED] is eligible to receive special education services.

Prior to enrolling in [REDACTED] School, [REDACTED] attended [REDACTED] School, also in [REDACTED] and participated in the self-contained program for the [REDACTED] with speech/language therapy and occupational therapy provided as related services. [REDACTED] has experienced difficulties with ear infections and has had surgery on [REDACTED] ear drum. [REDACTED] has worn hearing aids and has used an auditory trainer.

[REDACTED] was [REDACTED] by the [REDACTED] in [REDACTED]. Prior to [REDACTED] had spent [REDACTED] first four years of life in [REDACTED]. [REDACTED] hearing difficulties and educational needs were not addressed until [REDACTED] adoption. [REDACTED] and [REDACTED] family moved to Virginia from [REDACTED]. She received special education services while in [REDACTED] and has continued to receive special education services while residing in [REDACTED] Virginia.

An IEP was adopted on [REDACTED] for the period commencing [REDACTED] and ending [REDACTED]. [REDACTED] attended the IEP meeting held on [REDACTED] and gave permission to implement the IEP and the placement decision.

On [REDACTED] an additional meeting was held and attended by [REDACTED]. [REDACTED] gave permission to implement the addendum adopted on [REDACTED]. The addendum provided that [REDACTED] was performing at or near [REDACTED] ability and a current evaluation was requested in occupational therapy and physical therapy to establish present functioning level. The addendum also

set out that the school had provided the wireless transmitter noted on page 14 of the original IEP. Finally, the addendum tabled the request for a vision evaluation, stating that (Occupational Therapist) would investigate the possible assessment.

On [REDACTED] an additional IEP meeting was conducted which was attended by [REDACTED]. The IEP addendum adopted on [REDACTED] set out that the physical therapy evaluation was reviewed and that school related physical therapy was not indicated or recommended at that time. The IEP team also concluded that school related occupational therapy services were no longer needed. [REDACTED] gave permission to implement the IEP but noted disagreement with "the decision not to remediate visual motor deficits".

On [REDACTED] an IEP meeting was conducted for the purpose of reviewing goals and objectives. At the meeting an annual goal in the skill area of organizational skills was adopted together with four objectives. [REDACTED] attended the meeting and gave permission to implement the IEP addendum.

#### VII. DECISION

The parent has the burden of establishing that [REDACTED] Schools failed to implement the IEP, as modified, during the school year [REDACTED], as more fully set out at page one of this Decision.

In considering the evidence presented to the Hearing Officer, the evidence is viewed in light of the standards set in the Rowley case decided in 1982. In that case the Court held that the substantive requirement that FAPE be provided is satisfied if the IEP is "reasonably calculated to enable the child to receive educational benefits." The Fourth Circuit Court of Appeals adopted the Rowley standard in the Barnett case stating that "...an appropriate education is one which allows the child to make educational progress."

This decision addresses the issues raised in the order in which they are set out on page one of this Decision as follows:

I. A. Failed to provide auditory-verbal therapy

The IEP annual goals for speech and language therapy and reading instruction do not include a specific reference to auditory-verbal therapy. However, the use of AVT was incorporated into the IEP as an accommodation to be "integrated in speech" and "integrated in reading". The evidence viewed in its entirety supports the schools assertion that AVT was provided as an accommodation as set out in the IEP. [REDACTED] an expert with excellent credentials, reviewed [REDACTED] records, viewed [REDACTED] video and observed [REDACTED] and [REDACTED] work with [REDACTED] in the classroom setting. [REDACTED] testified that both [REDACTED] and [REDACTED] used methodology consistent with the auditory-verbal approach. In addition, the testimony of [REDACTED] and [REDACTED] supports the conclusion that [REDACTED] complied with the IEP in this regard.

I. B. Failed to comply with the IEP during the administration of the [REDACTED] grade SOL

[REDACTED] points out that [REDACTED] IEP requires 225 minutes of special education instruction in the special education classroom. [REDACTED] asserts that during the administration of the [REDACTED] grade SOLs in [REDACTED] [REDACTED] was removed from the special education classroom and placed in a general education classroom, with no instruction provided by a special education teacher.

[REDACTED] the principal at [REDACTED] school, testified that two days in March were involved with the SOL testing. [REDACTED] testified that on one day [REDACTED] was placed in the regular education classroom for one hour during SOL testing and on the second day for an hour and one half.

[REDACTED], the special education teacher, testified that [REDACTED] provided [REDACTED] with assignments which were designed to be done independently, assignments which were independent



work of the type [REDACTED] had provided to [REDACTED] in [REDACTED] special education classroom. While [REDACTED] argues that [REDACTED] failed to provide any samples of the work produced during the SOL testing time, the testimony of [REDACTED] and [REDACTED] is adequate to establish that the deviation did not constitute a denial of FAPE.

I. C. Failed to address the short-term objectives in the IEP

The totality of the evidence supports [REDACTED] contention that [REDACTED] failed to provide [REDACTED] with FAPE during the first eleven weeks of the school year. The content of the IEP was adequate. However, the Hearing Officer views the evidence as proof that during the eleven weeks that [REDACTED] was [REDACTED] teacher, very little was done to implement the short term objectives for the annual goals set out in the IEP.

In contrast, the Hearing Officer concludes that the short term objectives in the IEP were addressed during the balance of the school year.

[REDACTED] is correct when [REDACTED] argues that the Rowley substantive standard of FAPE does not require an LEA to hire the most highly qualified teachers. However, the Rowley standard does require the teachers who are hired to implement the IEP. [REDACTED] failed to do so. [REDACTED] testified that in teaching [REDACTED] used "eclectically" whatever "[REDACTED] needs" to teach [REDACTED] to read. [REDACTED] stated that [REDACTED] did not use the Herman Method, that [REDACTED] did not usually assign homework and that [REDACTED] could not recall the purpose of an assignment shown to [REDACTED] (Exhibit 96). [REDACTED] testimony regarding what objectives were addressed was in conflict with notations made on the daily instructional objectives record sheets (Exhibit 95). [REDACTED] testimony that [REDACTED] turned off the classroom lights for ten minutes from two o'clock to 2:10 to get the kids to "relax and refocus" was not credible when considering that their school day ended at 2:30. The Hearing Officer further questions the quality of

instruction when considering that misspelled student's name, rather than, on daily instructional objectives records sheets. This from the teacher.

argues that's communication goals are paramount to appropriate education and every aspect of life. is critical of the School's efforts with respect to addressing's hearing deficit and providing appropriate strategies to monitor communication break downs and implement the short term objectives and annual goals. However has not presented evidence sufficient to carry burden of showing that the school during the balance of the school year failed to provide FAPE as required by Rowley.

I. D. Failed to provide occupational therapy

's IEP adopted on provided that would receive occupational therapy sixty minutes per month in the special education classroom and twenty minutes per month in integrated settings. Following a physical therapy evaluation and an occupational therapy evaluation the IEP team on concluded that neither physical therapy nor occupational therapy was indicated and would not be provided after

While' argues that disagreed with the decision regarding occupational therapy, did give written permission to implement the IEP as shown on the "Prior Notice of IEP Placement Decision" dated. Accordingly, it is not clear to the Hearing Officer that the school had a duty to initiate a Due Process Hearing regarding this issue.

The measurable annual goal related to occupational therapy contained in the IEP relates to visual-motor skills, ie, keyboarding skills. argues that called the keyboarding instruction "visual-motor" simply in order to have the occupational therapist provide these services.

Occupational therapy evaluations were performed by the [REDACTED] Center in [REDACTED] and by [REDACTED] of the [REDACTED] for Special Education. [REDACTED] report concluded that [REDACTED] no longer needed school related occupational therapy services to improve school functioning or to increase [REDACTED] benefit from [REDACTED] special education program. [REDACTED] has not met [REDACTED] burden of proving otherwise.

1. E. Failed to provide specific methodology required due to the student's documented disabilities

[REDACTED] School's duty is to provide a free appropriate public education to [REDACTED] Its responsibility to do so is achieved by adopting and implementing an IEP.

It is clear from the evidence that [REDACTED] believes that the exclusive use of auditory-verbal therapy would maximize [REDACTED] progress. [REDACTED] also believes that a computer program known as "FastForward" should have been used in [REDACTED] educational program. However, [REDACTED] argues that neither the adopted IEP, as amended, nor federal or state laws and regulations, require the school to comply with [REDACTED] demands regarding specific methodology used in implementing the IEP. [REDACTED] is correct.

With the exception of [REDACTED] class, [REDACTED] received FAPE, even when considering the school's decision not to use "FastForward" and when considering its implementation of AVT in the manner required by the IEP.

1. F. Failed to provide necessary evaluation of the student

[REDACTED] contends that [REDACTED] requested a neuropsychological evaluation for [REDACTED] continuously since [REDACTED]. [REDACTED] also contends that [REDACTED] requested a visual-motor evaluation and an independent educational evaluation with an appropriately trained provider.

The evidence indicates that as part of the development of the IEP, [REDACTED] requested [REDACTED] to conduct the neuropsychological assessment. However, [REDACTED] testified that such an assessment was not necessary to assist the IEP team in the evaluation or re-evaluation of [REDACTED] for the purpose of determining eligibility. [REDACTED] wrote [REDACTED] on [REDACTED] denying the request for a neuropsychological assessment. Such being the case, [REDACTED] has the burden of showing either that the school was required by law to provide such an evaluation or that failing to provide such an evaluation deprived [REDACTED] of FAPE. The evidence does not support either argument.

In addition, at the [REDACTED] IEP team meeting, [REDACTED] requested a vision evaluation with a behavioral optometrist. The request was tabled until further information was gained.

The totality of the evidence, including the history of e-mails and other communications between [REDACTED] and [REDACTED], at best indicates a communication breakdown with respect to this issue. Following the various communications in this regard, an IEP team meeting was held on [REDACTED] to further discuss the assessments and evaluations which had been conducted, including a report done by [REDACTED] Center and the report prepared by [REDACTED]. The exhibits do not suggest that the school was on notice as of the [REDACTED] IEP meeting that the request for a vision evaluation continued to be an issue.

Finally, [REDACTED] on [REDACTED] requested an independent evaluation. [REDACTED] provided [REDACTED] with [REDACTED] independent educational evaluation policy, a list of evaluators for occupational therapy and other related materials. [REDACTED] correctly argues that [REDACTED]'s actions in this regard complied with the procedural requirements set out at 8VAC 20-08-70

(B). [REDACTED] has not shown that [REDACTED] committed a procedural violation with respect to the independent educational evaluation and thus denied [REDACTED] FAPE.

2. Is [REDACTED] entitled to compensatory education?

[REDACTED] is entitled to compensatory education for a period of time equal to the total class time [REDACTED] spent with [REDACTED] i.e. 206 hours. The compensatory education will be provided in a manner agreed upon by the IEP team.

3. Did [REDACTED] Schools fail to follow all material Due Process procedural requirements, including any required notices?

The evidence does not demonstrate that [REDACTED] failed to provide prior notice as required by 8VAC 20-80-70(C). However, the evidence does indicate that [REDACTED] noted disagreement with the decision in [REDACTED] to cease occupational therapy. While [REDACTED] granted permission to implement the IEP addendum adopted in [REDACTED] it may be argued that [REDACTED] denied parental consent for ceasing occupational therapy. If so, it can be argued that [REDACTED] violated 8VAC 20-80-70 (E)(c) which states that informed parental consent shall be obtained before "any partial or complete termination of special education and related services....". However, [REDACTED] correctly argues that such a procedural violation is not remediable if it did not cause [REDACTED] to lose any educational opportunities. The evidence does not prove such an assertion.

4. Can [REDACTED] Schools provide an IEP and related services, if any?

While the evidence amply demonstrates a long history of contentious relations between school personnel and [REDACTED] the evidence does not prove that the IEP as implemented is not providing some educational benefit to [REDACTED] as required by Rowley. While the evidence has clearly demonstrated certain shortcomings in communications and an implementation of the IEP, the

evidence has primarily demonstrated that [REDACTED] desires that [REDACTED] receive instruction and therapy from those that [REDACTED] has deemed to be the most competent in their fields using the materials [REDACTED] has deemed to be the most appropriate and effective. While [REDACTED] efforts are laudable, [REDACTED] burden in the hearing was to demonstrate [REDACTED] has failed to make progress. [REDACTED] has not carried this burden.

[REDACTED], the school psychologist employed by [REDACTED] Schools, stated [REDACTED] opinion that [REDACTED] is making satisfactory educational progress. [REDACTED] opinion was given considerable weight by the Hearing Officer.

The Hearing Officer, in reaching [REDACTED] decision, has placed great weight on the opinions of [REDACTED] and [REDACTED] their credentials and experience being unchallenged.

Accordingly, the Hearing Officer grants the request for compensatory education. In all other respects, the Decision is in favor of [REDACTED] Schools. All other requests for relief are denied.

#### VIII. NOTICE

The decision of the Hearing Officer shall be final and binding unless the decision is appealed by a party within one year of issuance of this decision. [REDACTED] Schools shall submit an implementation plan to the parties, the Hearing Officer and the SCA within 45 calendar days.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Hearing Officer

[REDACTED] 2002  
Date \_\_\_\_\_

cc: [REDACTED] II, Counsel for [REDACTED] Public Schools  
[REDACTED], Superintendent [REDACTED] Schools  
[REDACTED], Director of [REDACTED], [REDACTED] Public Schools  
Dr. Judith A. Douglas, Director, Office of Due Processing of Complaints  
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