

VIRGINIA DEPARTMENT OF EDUCATION  
DUE PROCESS HEARING



\_\_\_\_\_ v. \_\_\_\_\_  
Public Schools

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In re \_\_\_\_\_

Introduction

This matter came on to be heard as a result of a request for a due process hearing by \_\_\_\_\_ on behalf of \_\_\_\_\_, on \_\_\_\_\_ is a \_\_\_\_\_ year old child and has been identified as being autistic. \_\_\_\_\_' autism is severe. \_\_\_\_\_ is non-verbal with extremely limited effective communicative abilities, engages in a variety of self-stimulatory behavior, such as jumping, banging, spitting and arm flapping and is not yet toilet trained.

\_\_\_\_\_ is currently enrolled at the \_\_\_\_\_ School, \_\_\_\_\_ County, in a self-contained classroom.

\_\_\_\_\_ seeks compensatory primary special education services for the school year for which \_\_\_\_\_ alleged the services were inadequate and did not provide \_\_\_\_\_ with a Free and Appropriate Public Education.

\_\_\_\_\_ also seeks compensatory related services in speech and occupational therapy for the same period alleging that the service was not provided on a consistent basis.

Thirdly, \_\_\_\_\_ seeks reimbursement for expenses incurred by \_\_\_\_\_ to provide Extended School Year services (ESY) for \_\_\_\_\_ during the summer of

It is believed that this matter has been resolved between \_\_\_\_\_ and PS.

Lastly, \_\_\_\_\_ seeks Extended Year Services commencing \_\_\_\_\_ and ending \_\_\_\_\_, 5 days a week, 6 hours per day.

\_\_\_\_\_ requested that an expedited hearing be conducted but it was explained to \_\_\_\_\_ that an expedited hearing was only conducted for disciplinary matters under 300 CFR 528. \_\_\_\_\_ was promised, however, that the hearing would be conducted in an expeditious manner so that the problem surrounding the ESY for the summer of \_\_\_\_\_ would be resolved.

A telephonic pre-hearing was conducted on \_\_\_\_\_ and the hearing was conducted on \_\_\_\_\_. The hearing was open at the request of the parent. The parent represented \_\_\_\_\_ and was accompanied by two advocates. \_\_\_\_\_ represented \_\_\_\_\_ PS.

#### Discussion

##### 1. Compensatory Services for School Year

\_\_\_\_\_ bases \_\_\_\_\_ request for compensatory services mostly on allegations that the primary special education teacher for the year \_\_\_\_\_ was not licensed in Special Education. The teacher testified that \_\_\_\_\_ thought \_\_\_\_\_ was awarded a provisional license because \_\_\_\_\_ had the prerequisites for a provisional license, namely 7 hours in Special Education and a degree in Speech Pathology from \_\_\_\_\_. \_\_\_\_\_ also testified that \_\_\_\_\_ had attended numerous courses in in-service training at \_\_\_\_\_ PS. She had learned TEACCH and ABA. There is no indication that this teacher was not trying, but because this was \_\_\_\_\_ first year

of teaching. \_\_\_\_\_ did have weaknesses. This was confirmed by the School Principal who failed to hire \_\_\_\_\_ for another year. Notwithstanding this, \_\_\_\_\_ failed to prove that \_\_\_\_\_ did not make any progress during that school year and there are indications that in certain areas \_\_\_\_\_ made "some" progress. Even the doctor who examined \_\_\_\_\_ on \_\_\_\_\_ stated "\_\_\_\_\_ continues to make gradual progress." (PS ex. 40). Nor did \_\_\_\_\_ show that the intermittent shifting of other care givers deprive \_\_\_\_\_ of a Free Appropriate Public Education. "An appropriate education is not synonymous with the best possible education." *Spring School District v. Grace*, 494 F. Supp. 266, 2 (W. Dist. Ark., 1980).

Furthermore, \_\_\_\_\_ failed to offer proof as to what \_\_\_\_\_ meant by compensatory education. When asked at both the pre-hearing and the hearing as to what \_\_\_\_\_ was seeking, \_\_\_\_\_ was vague at best.

Because of the progress \_\_\_\_\_ has made in the school year it would be difficult, if not impossible, to measure what was lost, if any, in

## 2. Extended School Year Services

"Extended School Year (ESY) refers to special education and/or related service provided beyond the normal school year of a public agency for the purpose of providing FAPE to a student with a disability." Extended School Year Services Technical Assistance Resource Document, Virginia Department of Education, August 2000 (Parents Exhibit 3, PS Exhibit 54).

"Factors to be considered when determining the need for ESY services include regression/recoupment, degrees of progress emerging skills/breakthrough opportunities interfering behaviors, the nature and/or severity of the disability and other factors. Id.

Both parties agree that ESY is needed for \_\_\_\_\_ and an amended IEP was developed for Extended School Year Services for \_\_\_\_\_

The proposed IEP for ESY dated \_\_\_\_\_ (PS Exhibit 33) calls for the following:

\_\_\_\_\_

Speech/Language 2 hours per week

Occupational Therapy 90 minutes per week

\_\_\_\_\_

Special Education Services 17.5 hours per week

Speech/Language 100 minutes per week

Occupational Therapy 1 hour per week

\_\_\_\_\_

Speech/Language 2 hours per week

Occupational Therapy 1.5 hours per week

In informal conversations between the parties outside of the hearing, \_\_\_\_\_ PS has proposed to also offer a number of hours of Special Education Services for the periods \_\_\_\_\_ and \_\_\_\_\_

I am concerned about this IEP in that the services provided in the first and third portions do not provide for Special Education Services and that the second portion the Life Skills program appears to be a one-size-fits-all program (Transcript pgs. 313, 314). My major concern is that not one of \_\_\_\_\_' service providers will be providing services to

\_\_\_\_\_, therefore, possibly causing a regression. My other concern is that the Life Skills program is to be furnished at another school location, totally unfamiliar to \_\_\_\_\_. Again, none of \_\_\_\_\_ present service providers will be involved. (Transcript pg. 399, 400).

In all fairness to the school system, they have agreed to provide, in addition to the 4 week Life Skills program (17 ½ hours per week), a 15 hour per week program for the other weeks of the summer that \_\_\_\_\_ would be available. (Letter dated \_\_\_\_\_).

In \_\_\_\_\_ request for a due process hearing, \_\_\_\_\_ has requested 5 day a week, 6 hours a day, commencing \_\_\_\_\_ and ending \_\_\_\_\_. This would be an eight week program. \_\_\_\_\_ further provided evidence that \_\_\_\_\_ would like to place \_\_\_\_\_ in a six week, 6 ½ hours per day, program at a private school in \_\_\_\_\_ called the \_\_\_\_\_. (Transcript pg. 181, 182). This center consists of three rooms in an office building in an office park. My major concern with the \_\_\_\_\_ is that it fails the test of being the "Least Restrictive Environment" that can be made available to \_\_\_\_\_, namely the mandates that are prescribed by:

1. CFR 300.550(b)(1) "That to the maximum extent appropriate children with disabilities including children in public or private institutions or other care facilities are educated with children who are non-disabled." \_\_\_\_\_ does not meet that test. (Transcript pg. 177, 178).
2. CFR 300.553 "In providing or arranging for the provision of non-academic and extracurricular activities, including meals, recess periods and the services and set

forth in 300.306, each public agency shall insure that each child with a disability participates with non-disabled children in those services and activities to the maximum extent appropriate to the need of that child. A facility located in an office building, in an office park, does not meet that criteria. (Transcript pg. 218)

The witness for the parents has stated when asked, how many hours per day \_\_\_\_\_ should be involved in primary education services, \_\_\_\_\_ answered, "I would have to say, professionally, no less than four. And \_\_\_\_\_ has a lot of energy. So I would say six to eight hours, \_\_\_\_\_ would be able to handle in terms of stamina." (Transcript pg. 53). \_\_\_\_\_ stamina is disputed by the testimony of two of the witnesses for the school board who testified that \_\_\_\_\_, after lunch, has trouble keeping up with \_\_\_\_\_ tasks. (Transcript pgs. 357, 445).

There is a consensus, however, that more time than was originally offered for \_\_\_\_\_ is needed to give \_\_\_\_\_ a meaningful ESY program.

The National Research Council has done an extensive study on Educating Children with Autism, National Academy Press, 2001. (Parents Ex. 1). This study focused on children from birth till eight years of age. It concluded that educational services should include a minimum of 25 hours per week, 12 months a year. (Pg. ES 5).

"Each child must receive sufficient individualized attention on a daily basis so that adequate implementation of objectives can be carried out effectively." Id.

"Approaches that emphasize the use of specific one-size-fits-all packages of materials and methods may understate the multiple immediate and long-term needs of individual students for

behavioral support and for instruction across areas.” Id. (pg. ES 6).

This study is not meant to be law, but it appears from the depth of the study it will certainly influence the education of children with autism for years to come.

#### Finding of Fact and Conclusions of Law

1. \_\_\_\_\_ was diagnosed with severe autism.
2. Through \_\_\_\_\_ schooling at \_\_\_\_\_ Schools and \_\_\_\_\_ family home program, \_\_\_\_\_ is making some progress in \_\_\_\_\_ daily life skills.
3. \_\_\_\_\_ still needs a lot of one-on-one intervention.
4. \_\_\_\_\_ is in need of Extended Year Services that closely mirror \_\_\_\_\_ regular school services in order to continue to make progress.
5. \_\_\_\_\_ needs a minimum of 20 hours per week to minimize regression, maintain existing skills, work on those skills that \_\_\_\_\_ was making insufficient progress and acquire any new skills that may arise.
6. \_\_\_\_\_ is not entitled to receive Compensatory Service for \_\_\_\_\_ school year.
7. There was no disagreement among the witnesses that the goals and objectives developed in \_\_\_\_\_ IEP for the Extended School Year of \_\_\_\_\_ were in error. The only disagreement was in the time of performance.

#### Conclusions of Law

Despite the numerous references to summer school and summer programs, “Extended School Year (ESY) Services is not summer school.”

Nor is it necessarily a continuation of the total IEP provided to a student with a disability

during the regular school year and is not required to be provided in a traditional classroom setting. It must not be limited by financial resources of the County or other resources.”

Paraphrase of Extended School Year Services Technical Assistance Document, August 2000.

Decision

1. The parent's request for compensatory services for the school year \_\_\_\_\_ for \_\_\_\_\_ is denied.
2. The \_\_\_\_\_ Public School is ordered to implement a plan that will provide \_\_\_\_\_ with the recommended NRC minimum of twenty-five hours per week of Special Education and related services for the period \_\_\_\_\_ . \_\_\_\_\_ These services may be provided in a classroom setting, at the home, or wherever a Free and Appropriate Public Education in the Least Restricted Environment can be provided. It is essential, however, that to the maximum extent possible the provider or providers of the service be the same over the entire eight week period.
3. The implementation plan will be sent, within 45 days, to this Hearing Officer and the Virginia Department of Education. This Decision may be appealed to the U.S. Federal District Court or to the Virginia State Circuit Court within 2 years.

Dated \_\_\_\_\_

\_\_\_\_\_, 2007

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