

### 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.)*

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

\_\_\_\_\_  
Name of Parents

\_\_\_\_\_  
Name of Child

\_\_\_\_\_  
Date of Decision or Dismissal

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

\_\_\_\_\_  
Counsel Representing Parent/Child

\_\_\_\_\_  
Party Initiating Hearing

\_\_\_\_\_  
Prevailing Party

Hearing Officer's Determination of Issue(s):

WHETHER PETITIONER (PARENT) COULD CHALLENGE THE STUDENT'S PLACEMENT AT THE SCHOOL BY INITIATING A DUE PROCESS HEARING

Hearing Officer's Orders and Outcome of Hearing:

CASE DISMISSED THE PLACEMENT WAS A NON-EDUCATIONAL PLACEMENT INITIATED BY THE "PAPT" BUT NOT THE SCHOOL BOARD

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.

\_\_\_\_\_  
Printed Name of Hearing Officer

\_\_\_\_\_  
Signature

VIRGINIA:

VIRGINIA DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION APPEAL  
DUE PROCESS HEARING



Petitioner,

v.

SCHOOL BOARD

Respondent.

In Re:

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION

I. INTRODUCTION:

A. Background:

The undersigned was appointed by the Respondent, the School Board (" ") to serve as the hearing officer with respect to a request for a Due Process Hearing filed by Petitioner, , concerning her

(Hereinafter the "student"). The student is ; old and has been diagnosed with Rett Syndrome and is severely limited in development.

By letter dated (Exhibit 1), Petitioner filed request for a Due Process Hearing challenging the student's placement at the , a residential placement facility and requested that the student be returned to the School in County.

On \_\_\_\_\_, \_\_\_\_\_ filed a "Motion and Memorandum In support of \_\_\_\_\_ School Board's Motion to Dismiss" ("Motion to Dismiss", Exhibit 2), for the purpose of dismissing Petitioner's hearing request. The Motion is based on the following: 1), the residential placement was not made by \_\_\_\_\_, but rather was the result of a non-educational placement initiated by the \_\_\_\_\_ Family Assessment and Planning Team ("FAPT"); therefore, Petitioner must challenge any placement through FAPT ; 2), the Petitioner was committed to a state psychiatric facility pursuant to court ruling that \_\_\_\_\_ was mentally incompetent to stand trial on a criminal matter. As a result, any legal proceeding initiated by Petitioner required the services of a fiduciary and no fiduciary initiated the hearing request on behalf of Petitioner; 3), Social Services and not the Petitioner has custody of the student and therefore Petitioner cannot initiate a Due Process Hearing.

**B. The Record:**

The Record in this matter consists of the following:

1. Hearing Request filed by Petitioner dated \_\_\_\_\_ and received by \_\_\_\_\_ on \_\_\_\_\_ ;
2. Letter from Petitioner to \_\_\_\_\_ dated \_\_\_\_\_, received by \_\_\_\_\_ on \_\_\_\_\_ ;
3. Hearing Officer's Letter to Petitioner dated \_\_\_\_\_ ;
4. Petitioner's letter to Hearing Officer dated \_\_\_\_\_ ;
5. \_\_\_\_\_'s "Motion and Memorandum In support of \_\_\_\_\_ School Board's Motion to Dismiss," dated \_\_\_\_\_, including 5 Attachments.

**C. ISSUE:**

1. Whether Petitioner may challenge the student's placement at the by initiating a Due Process Hearing?

**FINDINGS OF FACT**

Based on the evidence presented in this matter, I find that:

1. By Order dated \_\_\_\_\_, the \_\_\_\_\_ Juvenile and Domestic Relations District Court placed the student in the custody of the Department of Social Services.<sup>1</sup> As of the date of this Decision, no evidence has been submitted indicating that the Petitioner now has custody of the student.

2. On \_\_\_\_\_, \_\_\_\_\_ Family Assessment and Planning Team ("FAPT") decided that the management of the case concerning the student be assigned to the Department of Social Services and that the student should be placed in the \_\_\_\_\_.<sup>2</sup> The FAPT was created pursuant to the Comprehensive Services Act for At-Risk Youth and Families, Va. Code §2.2-5200 et seq. Although \_\_\_\_\_ is represented on the FAPT in accordance with Va. Code §2.2-5207, there is no evidence suggesting that \_\_\_\_\_ is to be held accountable for a placement decision of the FAPT.

3. In making the non-educational placement determination, FAPT listed on the ARYFS Case Action Form<sup>3</sup>, under the heading "Qualification of Type of Services," that the student would receive residential special education services.

4. The determination of the FAPT issued on \_\_\_\_\_ was clarified on \_\_\_\_\_ to state that it was the intention to declare the "Qualification of Type of Services" for the student "as solely being Residential Foster Care."<sup>4</sup>

<sup>1</sup> Attachment 2 to Respondent's Motion to Dismiss

<sup>2</sup> Attachment 1 to Respondent's Motion to Dismiss

4. On \_\_\_\_\_, Petitioner was found incompetent to stand trial on criminal charges and was placed in a State Hospital on an inpatient basis.<sup>5</sup> Although Petitioner has communicated with the Hearing Officer by telephone and in writing (see Exhibit 4), no evidence has been submitted that there has been a change in Petitioner's status.

### CONCLUSION

Based on the evidence, the student was not placed in the \_\_\_\_\_ School by \_\_\_\_\_ as an educational placement, but rather, \_\_\_\_\_ placement was the result of a determination reached by the FAPT. The Petitioner must therefore utilize the applicable procedures in court if \_\_\_\_\_ wishes to challenge the placement decision. Also, the Petitioner was declared incompetent by court order; consequently, any proceeding should have been initiated by a fiduciary pursuant to Va. Code § 37.1-141. Furthermore, although not a determining factor here, it is noted that based on the evidence, Petitioner does not have custody of the student, such being with the Department of Social Services, who has not initiated this proceeding.

### ORDER

For the reasons discussed above, it is hereby **ORDERED** that this matter is **DISMISSED**.

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<sup>3</sup> Attachment 1 to Respondent's Motion to Dismiss

<sup>4</sup> Attachment 3 to Respondent's Motion to Dismiss

**APPEAL INFORMATION**

This decision is final and binding unless the decision is appealed by a party in a state circuit court within one year of the issuance of the decision or in a federal district court.

\_\_\_\_\_  
**Date**

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

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<sup>5</sup> Attachment 4 to Respondent's Motion to Dismiss