

COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION & STUDENT SERVICES
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

Re: _____, by and through her parents, _____ and _____ v.
County Public Schools (LEA)

Child & Parent(s)/Guardian:

child
and _____, parent(s)/guardian

Administrative Hearing Officer:

Ternon Galloway Lee, Esquire
215 McLaws Circle, Suite 3A
Williamsburg, VA 23185
(757) 253-1570
(757) 253-2534

Child's Attorney:

Harold Belkowitz, Esq.
C. Belkowitz, Esq.

County of _____ County Public Schools'

Kathleen Mehfood, Esq.

Superintendent of _____ County Public Schools:

Dr. _____

COVERPAGE

Assistant Principal

Ms.

Autism Consulting Teacher

Child

Child's therapist/psychologist

Dr.

Elementary School

Elementary School

Father

Fifth Grade Reading Teacher

Fifth Grade Special Education Teacher

Head of Private School

LEA's Attorney

Math Teacher

Middle School

Mother

Music Teacher

Parents

Parents' Attorneys

Parents' Expert

Private School

Resource Teacher

School Nurse

Science Teacher

Sixth Grade SPED Math Teacher

Special Education Supervisor

Special Education History Teacher

Successor Special Education Supervisor

Sixth Grade Case Manager

Kathleen Mehfoud

Ms.

Middle School

and

Harold and Cheryl Belkowitz

William D. Ling, Ph.D

School

, Ed.D

**COMMONWEALTH OF VIRGINIA
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Re: Child, by and through his parent(s), Parent v. LEA

Child & Parent(s)/Guardian:

Child, child
Mr. and Mrs. Parents, parent(s)

Administrative Hearing Officer:

Ternon Galloway Lee, Esquire
215 McLaws Circle, Suite 3A
Williamsburg, VA 23185

Child's Attorney Advocate:

Child Attorney, Esq.
Advocate for Child

(757) 253-1570
(757) 253-2534

School Division Attorney

LEA Attorney, Esq.

Superintendent of LEA:

Dr. Superintendent

DECISION

I. PROCEDURAL HISTORY¹

Parents' due process complaint dated October 2, 2015, was received by the Local Educational Agency (LEA) on October 5, 2015. (HO Exh. 11, p. 2). The parents asserted IDEA and Section 504 claims in that complaint. During the initial prehearing conference (PHC) held on October 14, 2015, regarding the complaint, the parties were unable to agree on the issues. Thus, in her scheduling order issued on October 14, 2015, following the PHC, the Hearing Officer set forth the issues as she determined them to be. This order also granted counsel for the parties until October 20, 2015, to submit request seeking any modifications to the issues as stated. Counsel were also directed to state the reasons for any requested changes to the issues. (HO Exh. 27, p. 2). Next, by motion dated October 14, 2015, the LEA challenged the sufficiency of the parents' complaint and also argued that the Section 504 claims were IDEA claims in disguise. (HO Exh. 12). Five days after the LEA's sufficiency challenge, as required under 34 C.F.R. § 300.508(d)(2), the Hearing Officer ruled on the sufficiency challenge. Among other rulings, she dismissed the Section 504 claims. (HO Exh. 15).

Next, pursuant to the Hearing Officer's October 14, 2015 order referenced above, on

¹ Throughout the decision, the Hearing Officer will use the following abbreviations:

Transcript for day 1, 2, or 3 of the hearing	-	Tr. I, Tr. II, or Tr. III, respectively.
Parents' Exhibit		P Exh.
Local Educational Agency Exhibit	-	LEA Exh.
Hearing Officer Exhibit	-	HO Exh.

October 20, 2015, the parties, through counsel, submitted requests for revisions to the issues. Based on those submissions and careful review of the due process complaint, the Hearing Officer sent the parties correspondence setting forth the revised issues as she had determined them to be. (HO Exh. 25). The LEA's attorney objected to the revisions arguing that the parents were attempting to amend their complaint without following proper procedures under 34 C.F.R. § 300.508(d)(3)(ii). On October 27, 2015, a PHC was held to finalize the issues. Careful consideration was given to the discussions that took place during that PHC as well as the due process complaint. Thereafter, by order dated October 27, 2015, the Hearing Officer set forth the issues for the due process hearing. The Hearing Officer found that all issues stated in that order were asserted by the parents in their due process complaint. The LEA objections to the issues were noted. (HO Exh. 27).

Consistent with the scheduling order, the Hearing Officer held the due process hearing on November 20, 21, and 24, 2015. (HO Exh. 11). During the hearing the Hearing Officer admitted Parents' Exhibits P1 through P 33; P35 – 39; and P41 – 69. LEA's Exhibits 1 – 44 and 47 – 56 were also admitted. In addition, the Hearing Officer admitted her exhibits 1 – 37 consisting of pleadings, orders, and correspondence from and to the parties.

At the hearing both parties were given the opportunity to make opening statements. The parties elected to provide briefs for their closing arguments. They were submitted on December 7, 2015. During the hearing, each party through counsel was provided the opportunity to conduct direct examination of his/her/its witnesses and cross examination of the opposing party's witnesses. Counsel were also provided the opportunity to conduct redirect and re-cross of witnesses.

II. ISSUES

A. Regarding the January 30, 2013 IEP

1. Did the LEA fail to implement provisions of Child's January 30, 2013 IEP providing for sensory breaks or extended time during the two years proceeding October 5, 2015, the date the LEA received the parents' due process complaint? If so, was there a denial of FAPE?

B. Regarding the November 2013 Proposed IEP

1. Did a November 2013 proposed change to Child's IEP fail to provide FAPE in that the proposed change provided for a "lunch bunch" for Child which necessitated changing Child's schedule?

2. Did a November 2013 proposed change to Child's IEP fail to provide FAPE in that the proposed change included LEA's intention to conduct a FBA; but a FBA "working draft" was not provided until June 2014?

3. –Did the November 2013 proposed IEP fail to provide FAPE in that it failed to provide appropriate goals?

C. Regarding the January 2014 Proposed IEP

1. Did the LEA fail to provide FAPE in that the January 2014 IEP failed to provide appropriate goals?
2. Did the January 2014 Proposed IEP fail to address concerns regarding Child that were noted in this proposed IEP's Present Levels of Performance (PLOP)? If so, was Child denied a FAPE?
3. Did the January 2014 Proposed IEP fail to address any notations that Child
 - has difficulties with social interactions and peer relationships;
 - contributes very little in class if not a topic that Child is interested in;
 - often needs redirection.

If so, was there a denial of FAPE?

4. Did Child regress academically? If so, was the regression a manifestation of a denial of FAPE?

D. Regarding the August 28, 2015 Proposed IEP

1. Did the LEA fail to provide a FAPE in that the August 28, 2015 proposed IEP failed to provide appropriate goals?
2. Was the August 28, 2015 proposed IEP placement appropriate? If not, was there a denial of FAPE?
3. Did the LEA predetermine Child's placement at River Bend Middle School, if so was there a denial of FAPE?

E. Issues Pertaining to Relief/Remedies

1. Whether the parents should be reimbursed for private school placement?
2. If Child was denied FAPE, should Child receive compensatory education services for the time that FAPE was not provided?

III. BURDEN OF PROOF

The United States Supreme Court held in *Shaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed.2d 387 (2005), that the party seeking relief bears the burden of proof. Therefore, in this case the Parents bear the burden of proof as they are challenging the LEA's actions.

IV. FINDINGS OF FACTS

1. Child is a child with a disability and for purposes of the due process matter before this Hearing Officer, the LEA found Child in need of special education and related services on January 14, 2009, as a student with Autism. (LEA Exh. 6).

2. While Child was attending her fifth (5th) grade year in Elementary School, the IEP team developed an annual IEP for Child on January 30, 2013. The duration of the January 30, 2013 IEP was from January 30, 2013, to June 6, 2013, of Child's 5th grade year, and from September 3, 2013, to January 29, 2014, of Child's sixth (6th) grade year in school. Parents consented to this IEP. (LEA Exh. 7).

3. The goals in this annual IEP consisted of four (4) behavior goals and one (1) academic goal as stated below:

Behavior Goals:

By January 2014, [Child] will use polite words when speaking to peers and adults in 3 out of 5 days per week with 1-2 prompts using a behavior chart.

By January 2014, [Child] will focus on instruction with no more than 2 teacher prompts during a class period on 3 out of 5 school days per week using visual prompts.

By January 2014, [Child] will accept changes in her classroom activities and transitions and stay on task without having a meltdown on 3 out of 5 school days per week with 1-2 prompts.

By January 2014, [Child] will independently arrive to class on time prepared with needed materials and begin her work within 2 minutes after receiving instructions from the teacher with 2 or fewer teacher prompts with 3 out of 4 opportunities.

daily observation, anecdotal reports (OT support)

Academic Goal:

By January 2014, [Child] will write 75% of her writing assignments with 90% accuracy on 4 out of 5 opportunities.

(LEA Exh. 7, p. 6).

4. Pertinent accommodations, services, and related services identified in the January 30, 2013 IEP were the following:

During testing, Child was to receive frequent breaks in the general/special education (SE) classroom in a small group setting. The accommodation was to be

provided during classroom and standardized testing:

During instructional time, Child was to receive frequent breaks in the general/SE classroom in large group setting. This accommodation was to be provided throughout the school day.

During testing, Child was to be provided extended time (up to 50%) in the general/SE classroom in a small group setting when timed tests were given.

(LEA Exh. 7, p. 7).

Moreover, regarding the Least Restrictive Environment (LRE), the January 30, 2013 IEP noted, in relevant part, that Child's placement was the public day school and she would receive special education support in the general education curriculum due to Child's behaviors during classroom instruction. (LEA Exh. 7, p. 11).

5. As referenced above, Child was a 5th grader during the 2012-13 school year. As such she was enrolled in her last year in Elementary School. To assist Child in transitioning from elementary school to middle school in the fall of 2013, the LEA held a transitional meeting with Parents in spring 2013. Those attending this meeting were Parents, Child's 5th grade elementary special education teacher, and Assistant Principal of Middle School. (Tr. I, p. 110; and Tr. II, p. 215).

6. During the transitional meeting Parents expressed concern about Child having difficulty transitioning to middle school, particularly considering what the Parents described as Child's rigidity, a trait of her autism. Parents' perception from that meeting was that Assistant Principal offered or indicated that she would try to make two accommodations to facilitate Child's transition to the 6th grade. One, Child's schedule would include her having classes with some of the friends she had made in Elementary School who were also attending Middle School. Secondly, the school would set up a lunch bunch social support group so that Child would not be eating lunch alone, but with other special needs students or friends of Child. The parents left that meeting expecting those accommodations to be in effect when Child entered Middle School in September, 2013. (Tr. II, pp. 219-220). The evidence fails to establish that Child expected some of her friends to be in the same classes with her in Middle School/or be scheduled for the same lunch period as Child. (Tr. II, p. 12-13).

The LEA does not assure students that they will be assigned to classes or lunch periods with their friends. (Tr. III, p. 258).

7. Upon attending their child's orientation before the commencement of the 2013-14 school year and receiving Child's schedule, Parents discovered that Child was not scheduled for classes and lunch with any of her friends. (Tr. II, p. 222). Thereafter, Parents soon communicated their concerns about the schedule with Case Manager. Parents asked for a meeting with Case Manager once Child started Middle School because Child's schedule did not include classes with friends and Child's lunch period was not at the same time as her friends. Once Parents' concerns were made known to Case Manager, Parents recall that Case Manager

responded in words to the effect of "the school has 1200 students enrolled and cannot make special schedules for all of them." Parents were frustrated and discouraged by Case Manager's comments and felt Case Manager was not being an advocate for Child. (Tr. II, p. 224-25 and 229).

8. In addition, in September 2013, within three days of the school year starting, Parents requested a meeting with all of Child's teachers because they were concerned that Child's IEP would not be followed. That meeting was held with Child's teachers in September 2013, at the beginning of the school year. (Tr. II, p. 225, 235, 282).

9. Next, on or about October 16, 2013, Father sent an email to Assistant Principal and requested a meeting with Assistant Principal. The request was made for a meeting with the assistant principal and not Case Manager, because, Parents felt Case Manager was unresponsive to their concerns about Child and that she became defensive when they expressed them. Also, Parents were discouraged by Case Manager's comments as referenced above and did not believe Case Manager was, pursuant to her responsibilities as case manager, looking out for the interest of Child. In addition, Father requested the meeting with Assistant Principal because the assistant principal, not Case Manager, attended the transitional meeting in the spring of 2013 where he felt the accommodations were promised.

Assistant Principal delegated scheduling the meeting between Assistant Principal and Parents to Case Manager. Over a period of weeks, Case Manager attempted to schedule the meeting with Parents and Assistant Principal several times, by email, telephone, and communications written on some of Child's daily behavior charts that were sent home. For reasons noted above, Parents did not communicate with Case Manager. Eventually, on November 8, 2013, Father sent an email to Assistant Principal again requesting a meeting with her. A meeting was then scheduled for November 13, 2013, and held as scheduled. By then, a month had passed since Father's initial request to meet with Assistant Principal. (Tr. II, p. 224-25, 229, 233, 282; P Exh. 10).

10. Those who attended the November 13, 2013 meeting were Case Manager, Parents, and Assistant Principal. Concerns expressed by the parents during that meeting were Child not being scheduled in any classes with her friends; no implementation of the lunch bunch; Child's need for social skills; and Child's need for breaks. Regarding the latter, Child reportedly had informed her parents that she was not receiving breaks. (Tr. II, pp. 225-28).

When Child testified during the due process hearing, she did not state that she was not receiving breaks when she attended Middle School. (Tr. II, pp. 6-26).

The evidence establishes that during the 2013-14 school year, Child's teachers gave Child breaks and she was provided additional time to do assignments. (Tr. III, p. 198). For example, Child's Math Teacher observed Child was upset when she came to class, he would take a mini break with Child. After that break, Child was ready to start working on the math for the day. (Tr. II, p. 105). Science Teacher participated in some of Child's breaks with her. Others she observed and noted that Child was reading a novel during her break. (Tr. III, pp. 63-64). Extra time was provided for Child to complete assignments. (Tr. 70). SI

History Teacher also implemented Child's breaks and provided Child with extra time to complete assignments. (Tr. III, p. 28-9). Case Manager also confirmed Child was receiving breaks. (Tr. I, pp. 308, 401-02).

Child's IEP was being implemented. (P Exh. 13).

11. Additionally, regarding the November 13, 2013 meeting, while testifying during the due process hearing, Father recalled that during that meeting, Assistant Principal apologized and stated that she had gone out on maternity leave and someone had dropped the ball regarding scheduling Child with friends. (Tr. II, p. 225). Moreover, at the time of the November 13, 2014 meeting the lunch bunch had not been started because the individual who set it up was out on maternity leave. (Tr. II, p. 228).

During her testimony at the hearing, Case Manager recollected that during the November 13, 2013 meeting, Assistant Principal apologized to the Parents that they got the perception that the school could assure that Child would be scheduled in classes with her friends. Case Manager went on to say that Assistant Principal informed Parents that such a representation was not likely made considering the numerous students attending the middle school and a student could not be guaranteed to be in a class with her/his friend (Tr. I, p. 274).

The Hearing Officer finds that it is reasonable to conclude that the LEA did not assure Parents at the transitional meeting that Child would be scheduled in classes with friends considering numerous students make up Middle School student body.

12. On November 14, 2013, immediately following the November 13, 2013 meeting, Case Manager drafted amendments to the child's IEP that she felt incorporated concerns and changes proposed by Parents at the November 13, 2013 meeting. (P Exh. 12).

13. The amendments in the November 14, 2013 proposed IEP included modifications to three sections.

First, there was an amendment to the section of the IEP titled "Parent Input for Enhancing Child's Education." Particularly, this amended section reads as follows:

November 2013 amendment concerns from parents: [Child's] parents are concerned that she needs more breaks throughout the day. [Child] has been very successful so far this year in school, however her parents would like her to have a mid-day break for five minutes to relax and get her thoughts together. [Child] often forgets or cannot explain to her parents why she received a "No" on her behavior chart. In order for [Child's] parents to help [Child] and talk about her day, they would like a more detailed ABC chart that will help them address any issues that has (sic) happened throughout the day. Additionally, [Child] often leaves things at school and her parents would like her to have a check-out system with her last block class to check and see if she has what she needs for homework.

(P Exh. 12, p. 3).

14. Next, the November 14, 2013 proposed IEP amended the section titled "Special Education Accommodations, Services, and Related Services." Specifically, the changes are noted here:

During instruction in the general/SE classroom in a large group setting, Child was to receive five (5) minute breaks when triggers were noticed;

During instruction in the general/SE classroom in a large group setting, Child was to have her agenda signed when homework was assigned; and

Child was to check out at the end of the day with her last teacher, in the general/SE classroom in a large group setting.

(P Exh. 12, p. 7).

15. The final amendment noted on the November 14, 2013 proposed IEP was a notation in the LRE section. The modification set forth the language below in the subsection titled "a. Progress in the general curriculum is impacted by the disability?"

An amendment was done November, 2013 to add parental concerns and accommodations. [Child] should receive frequent breaks in class when triggers such as: (arguing with the teacher, heavy breathing or acting agitated in any way that cannot be easily redirected) are noticed. [Child's] teachers should sign [Child's] agenda when homework is given. [Child] often does not bring home what she needs from school and needs to have a checkout system with her last block teachers to go over what she should have for homework.

(P Exh. 12, p. 11).

16. The November 14, 2013 Proposed IEP maintained the same goals as stated in Child's January 30, 2013 IEP. The January 30, 2013 IEP goals are listed above in Finding of Fact# 3.

Although not an amendment, the November 14, 2013 proposed IEP noted in the section titled "Behavior Need" that "the Team considered the student's need for positive behavior interventions, supports and strategies to address behaviors that impede learning of self or others and determined that the IEP Team has sufficient data and will proceed to develop/modify the Functional Behavior Assessment." (IEA Exh. 13). There is no evidence Parents requested a Functional Behavior Assessment (FBA) at that time.

17. In addition to the above referenced amendments proposed in the November 14, 2013 IEP, the IEA also proposed a schedule change for Child. This was done in consideration of Parents concerns expressed at the November 13 meeting that Child did not have classes with any of her friends. (P Exh. 11). The proposed schedule involved changing the time of some of Child's classes. This would result in the students in some of Child's classes changing. The

proposed schedule change also meant that some of Child's teachers would change. The specific changes can be found in Parents' Exhibit 11. (P Exh. 11).

Child's IEP in effect at the time noted that Child has difficulty with changes to routine. And such changes can lead to emotional outbursts. (P Exh. 2).

18. On November 14, 2013, Case Manager sent (by way of the child) the proposed schedule change and the proposed November 14, 2013 IEP to Parents. (LEA Exh. 14; P Exh. 12). An email on the same date was sent to Parents asking for their feedback on the proposals. Case Manager requested a response from the parents again on November 20 and 25, 2013.

By November 25, 2013, Parents informed Case Manager and Assistant Principal that Child had chosen to not change her schedule because of the amount of time that had gone by before the schedule change was offered and Child did not desire to disrupt the routine she had established at school with her schedule since school began that year. (P Exh. 13; Tr. I, p. 129).

Then on November 26, 2013, by email Parents stated they had not seen the proposed IEP and asked for another copy of it. Parents also asserted that the delay in offering the schedule with Child's friends was detrimental to Child's social development. (P Exh. 13). Case Manager sent another copy of the proposed IEP.

Child's teachers reported Child was making progress academically and socially. (Tr. II, p. 99; III, pp. 53-4 and pp. 60-7 and pp. 184-85).

19. Through December, 2013, Case Manager continued to ask Parents for their response to the November 14, 2013 proposed IEP. None was forthcoming.

20. Parents testified that by the second quarter of the school year, Parents observations were that Child did not want to go to school. She was very resistant to doing homework. Many homework assignments were not done or incomplete. Child was unable to inform Parents of what was taught in math class to assist Parents in helping Child complete her math homework assignment. Parents' impression was that there was too much homework. (P Exh. 15; Tr. II, p. 236-39).

21. By email dated December 16, 2013, Case Manager also contacted the parents about scheduling Child's annual IEP meeting for a date in January 2014. The parties eventually agreed to hold the meeting on January 23, 2014, (LEA Exh. 16). Apparently because of inclement weather resulting in January 23, 2014, being designated a snow day, the parents notified the LEA that they would not make the meeting because January 23, 2014, was a snow day. (Tr. II, p. 240). The LEA responded by notifying the parents that it would commence the IEP annual review on January 23, 2014, as planned, because the IEP annual review was due by January 29, 2014. However, the LEA also informed the parents that it would reconvene the meeting on February 11, 2014, a date Parents were able to attend and provide input. (Tr. III, pp. 181-82). The IEP meeting was held on January 23, 2014.

22. On February 11, 2014, the LEA reconvened the IEP meeting. Both parents

initially were present for the meeting. They were cooperative. (Tr. II, p. 146). At some point before the conclusion of the meeting, Mother left to report to work. (Tr. II, p. 246). During the meeting, Parents expressed concerns about Child's social skills (including her ability to make friends), her progress in math, Child picking her nose, the number of breaks for Child, and Child receiving too much homework. Parents voiced that the IEP was not meeting Child's needs, especially her social ones. (Tr. II, pp. 134, 146, 241; Tr. III, p. 229).

23. Parents felt the goals in the IEP were not appropriate. As reported by Father, during the time the January 2014 IEP was being developed, Child was unable to initiate a conversation about a topic not of interest to her. Parents believed the goals in the IEP were either too limited or too broad. Parents' perception was that the LEA was resistant to Parents' concerns. Thus, Parents requested time to take the IEP drafted on February 11, 2014, to Child's therapist and get back with the LEA within a week. The anticipation was that the therapist would be able to provide recommendations to the IEP team regarding addressing Child's social skills. LEA was under the impression that Parents would be providing further input. Some of the input expected was recommendations from Child's therapist. Parents never provided the IEP team with any additional feedback. Of note, a March 10, 2014 letter from that therapist was not shared with the LEA until November 2015. (Tr. II, pp. 245, 252-55; Tr. III, p. 191; P Exh. 44).

At some point in spring, 2014, Father signed the IEP developed on February 11, 2014, indicating the parents rejected it. The signature was not dated. (P Exh. 19).

24. In addition Parents assert that the IEP drafted on February 11, 2014, contains misrepresentations in the summary of the Present Levels of Academic Achievement and Functional Performance (PLOP). (Tr. II, pp. 246-48).

25. Regarding the PLOP section, Parents assert that the sections titled "Behavior Social" and "Social Skills" make erroneous statements. These sections of the proposed IEP drafted on February 11, 2014, read as follows:

Behavior/Social: [Child] is using her words more effectively by expressing her concerns to an adult 2-3 times per block. This has been helping her work through her emotions when she becomes upset. [Child] responds exceedingly well to positive feedback to her work and works harder when she receives it. This helps her listen to any corrective feedback that follows. In general [Child] is well-behaved student who follows school and classroom rules. [Child] has made significant improvements in staying on task and completing her work and classroom. She is, however inconsistent with doing her homework and is behind the next day when the class is reviewing the homework. She is also able to recognize appropriate personal space when speaking with others. [Child] has been successful this year transitioning between different class activities with support. [Child] has demonstrated strengths in many student academic behaviors which have contributed to the success of her educational performance in the classroom this year.

Social Skills: [Child] comes to class prepared. She participates more in group

discussions and gets along with teachers and peers in class. She is easily redirected in class and has a positive attitude during social skills lessons. [Child's] teacher states that [Child] has improved since the beginning of the year. [Child] has began (sic) to initiate conversations with her peers, that are on non-preferred topics. She has been seen expressing more empathy and concern for her peers in casual conversations.

(P Exh. 19, pp. 5-6).

26. Parents assert that the concerns raised by them during the February 11, 2014 IEP meeting were that Child was isolating herself at school, decompensating, not doing her homework, and having outburst. Further, Parents contend during the 2013-14 school year, Child was unable to initiate a conversation about a topic that was of no interest to her. (Tr. II, pp. 248, 255). At the time of the February 11, 2014 IEP meeting, Parents were not aware of Child participating in any lunch bunches for social support. However, Father recalled that during the meeting the LEA reported that at least 1 lunch bunch with Child's participation had occurred and the LEA anticipated more would take place because the person who took charge of them had returned from maternity leave. (Tr. II, p. 244).

27. Also, regarding the PLOP, Parents assert that the section titled "In Mathematics" contains misrepresentations as well. That section of the PLOP reads as follows:

In Mathematics: [Child] receives math instruction in the general education classroom with academic support. Her teacher reports that she is able to complete basic math operations. She can also identify properties 94%, find and plot points on a coordinate plane 91%, and solve one-step equations in any inequalities 82%. She is successfully able to organize information to solve mathematical problems. [Child] has demonstrated progress in solving simple word problems and is likely to meet grade level expectations within the year. She is particularly good at using formulas in math and knows which formulas to use to solve mathematical problems with 81% accuracy in 3 trials. She is able to create, read, and interpret various graphs and charts with 89% accuracy. She is able to understand properties of real numbers, exponent and sequences with an average of 88% in 3 trials.

(P Exh. 19, p. 5).

28. Parents contend Child is not progressing in math as noted in the immediately above section of the PLOP and Child's grade reports would support the parents' concerns. (Tr. II, p. 249). Of note, Child's math grades for quarters 1, 2, 3, and 4 during the 2013-14 school year are B+, C+, B+, C-, respectively. In addition, Child's SE Math Teacher reported Child was making progress during the 2013-14 school year. Child's yearly average in math for the 2013-14 school year B-. (LEA Exh. 23).

29. The PLOPs in both of the proposed IEPs (i.e., the January 23, 2014 and February 11, 2014 IEPs) identify the same behavior/social difficulties and consequential needs of Child. They include the following:

- Child is experiencing difficulty with non-preferred classroom assignments or changes in homework requirements. Regarding this problem the PLOPs note that Child gets upset at times when completing a non-preferred task. Some teachers reported Child cries at times in class;
- Child is often off task and often needs prompting to return to a task;
- Child is experiencing difficulty in sustaining effort. The PLOPs note that when Child is presented with lengthy assignments to be completed over several days, Child has difficulty independently determining what steps are needed to complete the task. As a result, lengthy assignments need to be divided into smaller ones.
- Child is experiencing difficulty with social interactions and peer relationships. The PLOPs note that Child will raise her voice at times, but since the middle of her 6th grade year she started seeking assistance from her teachers when she became frustrated. She often talks about her interest and fails to understand when to stop talking and allow others to join into the conversation. When Child does participate in conversations with her peers, it is difficult for her to take the initiative to add to the conversation.
- In class Child will frequently talk about things that do not relate to topic being taught. If an off topic thought is interrupted, Child will get upset and argue with teacher and it becomes more difficult to redirect Child.
- Child zones out during classroom lessons and independent work. As such she does socially inappropriate things. They include picking her nose or talking to herself out loud. These actions caused Child to stand out amongst her peers and to fall behind in classwork.
- Child struggles with peer interactions and requires the support of adults to work in groups and interpret some interactions with others.

(LEA Exhs. 17, p. 5; IFA Exh. 20, p. 6).

In addition, these PLOPs note that [Child's] greatest area of weakness is " that [Child] struggles with different styles of teaching styles and transitioning from one class to the next if she has had a meltdown in the class before." (LEA Exh. 17, p. 5 and LEA Exh. 20, p. 6).

30. Also, as referenced above, Parents disagreed with goals in the IEP drafted on February 11, 2014, The IEP noted 4 behavior goals and 2 academic goals. They appear below:

Behavior Goals:

By January 2015, [Child] will use polite words and an appropriate tone voice when speaking to peers and adults with 90% success per week in all classes with 1-2 prompts using a behavior chart in 4 out of 5 school days (Speech-Language support).

By January 2015, [Child] will remain focused and on task during instruction with no more than 2 teacher prompts during a class period in 3 out of 5 school days per week using visual or verbal prompts. OT support

By January 2015, When given instruction, practice and visual/verbal supports, [Child] will independently use a coping strategy (i.e., deep breaths, asking for a break/help, etc.) during times of distress (i.e., unexpected schedule/routine changes, non-preferred demands placed, etc.) in 3 out of 4 opportunities across 3 consecutive days. OT support

By January 2015, [Child] will, with two of (sic) less prompts, independently organize her materials in corresponding subject folders and accurately record all homework and upcoming assignments in her daily planner in 3 out of 4 core subject classes. Based on teacher observation, agenda or behavior chart.

Academic Goal:

By January 2015, [Child] with prompting [Child] will complete 70% of her in class writing assignments (i.e., notes, homework, essays, journals, etc.) in 4 out of 5 opportunities.

By January 2015, [Child], independently, will use graphic organizers as a pre-writing strategy to generate and organize ideas to produce a multiple paragraphs essay using a variety of sentence types with each paragraph containing a topic sentence with at least 3 supporting details with 80% accuracy, as measured by writing samples.

(IEA Exh. 20; P Exh. 19).

31. As previously referenced, Parents felt that the Child was lacking in social skills. And in their view, the behavior/social goals failed to meet Child's socialization needs as they were either too limited or too broad. Also they believed a math goal was needed. (Tr. II, pp. 252-55).

32. Parents also contend that the parental input section of the January 23, 2014 IEP developed on February 11, 2014, omitted concerns they expressed during the IEP meeting.

Specifically, this section reads as follows:

Parent Input for Enhancing Child's Education

Parents concerns at this time are: that [Child] is not aware of what the work is, where she is in the progression in the class and how to complet (sic) the mathematic equations at home when attempting to complete homework. The parents are also concerned about the increased homework load, the time it takes her to complete it and the mental and physical fatigue that it has been causing in her recently. The parents are also concerned with the homework assignments and Social Studies where the directions are not always clear or available. The parents also concerned with teacher reports of [Child] picking nose frequently during the school day.

(P Exh. 19, p. 7).

Parents did express concerns about Child's social skills during the IEP meeting. The above-referenced parental input section does not mention those concerns. (Tr. II, p. 146; P Exh. 19, p. 7). However, Hearing Officer finds Parents' concerns expressed during the IEP meeting are mentioned in each IEP's PLOP. Specifically, they are addressed in the section titled "Needs as They Affect Learning" section of the proposed IEP. (P Exh. 19, p. 6).

33. Autism Consulting Teacher attended the February 11, 2014 IEP meeting at Case Manager's request. Autism Consulting Teacher, among other credentials, is licensed to teach special education in Virginia to grades K - 12, and she holds certification in learning disabilities and emotional disabilities. For 12 years, she taught autistic students in grades 1 through 5 in self-contained classes. She also holds a master's degree and has taken at least an additional 18 hours of course work. Autism Consulting Teacher's coursework to obtain her master's degree and additional education included workshops and classes about educating children with Autism. She is also a Board Certified Behavior Analysis (BCBA). To obtain this certification, Autism Consulting Teacher has been trained in collecting data about behaviors. In addition, for the BCBA certification, she has been educated in analyzing peoples' behaviors so that she can make recommendations to modify negative behaviors and improve positive behaviors. In this regards, she has employed the BCBA techniques with children with Autism. (Tr. II, pp. 149-51 and p. 165; LEA Exh. 53).

Autism Consulting Teacher has progressed in the school system from a classroom special education teacher to her current role. It is in her current position that she acts as a resource for teachers and case managers working with students on the autism spectrum, to include assisting them in writing IEPs/providing suggestions on strategies that can be used with autistic students.

She assisted Case Manager in setting up behavior graphs. The graphs were based on data Case Manager collected about Child's behavior from her teachers. (Tr. II, pp 126 - 127 and p. 173).

Autism Consulting Teacher qualified as an expert during the hearing in the areas of (i) educational planning for children with autism including IEP development and (ii) behavior management which incorporates data collection and analysis. (Tr. II, pp. 165- 72).

34. Autism Consulting Teacher opined that the February 11, 2014 IEP was

appropriate. She noted the goals in the IEP focused on the areas of need mentioned in the P.I.O.P. Autism Consulting Teacher also remarked that Parents' concerns were addressed in the accommodations in that IEP. Those accommodations included the allowance for frequent breaks, homework reduction by 50%, permitting extended time, providing a hard copy of notes if Child's notes were incomplete. Moreover, Autism Consulting Teacher noted the IEP was appropriate because the Child's social skills were addressed. She remarked that first the social skills were taught in a small setting, the resource room, and then they were reinforced and applied in the general educational setting. Regarding the first behavior goal in the IEP, she mentioned that it was about Child maintaining communications. She commented that usually an IEP does not contain a goal for every deficit in a particular area of a child because it may be appropriate to work on one goal at a time before moving on to another area of need. Concerning Parents' suggestion that the IEP should have contained a Math goal, Autism Consulting Teacher commented that Child was on grade level in Math, and therefore no goal in that subject was warranted. (Tr. II, pp. 139, 156, and 180-83, and 187).

35. In addition Autism Consulting Teacher supported her opinion that Child's behavior/social needs were being met by her examination and analysis of behavior data collected on Child.

Autism Consulting Teacher opined that the I.F.A.'s behavior data collection sheets were appropriately set up to collect data for several reasons. First, she noted that the behaviors identified on the collection sheets were specific. Those identified behaviors were 1) follow directions without protest, 2) stay focus and on task, 3) did not cry in class or talk back to the teacher, 4) complete classwork/homework, 5) did not interrupt the teacher or peers, and 6) participate well in group. (P Exh. 39; Tr. II, pp. 173-174).

Also, Autism Consulting Teacher opined the data collection sheet was appropriated because, at the top of the data collection sheet, directions were provided regarding how to collect the data. For example, the teacher was to score a "yes" if Child did not have to be prompted more than twice. A "no" was to be scored if Child had to be prompted more than twice. (P Exh. 39; Tr. II, pp. 173-174). She commented that with the specific directions, the data could be uniformly collected between classes. (Tr. II, p. 174).

In preparation for the due process hearing, Autism Consulting Teacher reviewed and analyzed behavior data collected on Child during the 4th quarter of the 2013-14 school year. Autism Consulting Teacher then determined Child's behavior progress during the 4th quarter of the 2013-14 school year. As measured, that analysis demonstrated that Child was able to follow directions without protest 95% of the time; stay on task and focus 86% of the time; not cry or talk back to the teachers 87% of the time; complete classwork or homework 76% of the time; did not interrupt teacher or peers 95% of the time; and participated well in groups 94% of the time. (Tr. II, pp. 175-176).

To derive the above-noted percentages, Autism Consulting Teacher totaled the numbers of "yes's" and the number of no's regarding a particular behavior for the 4th quarter. She then determined the percentage of yes's Child got for that behavior and the number of no's. The analysis did not consider the number of times there was no data provided regarding a particular

behavior. (Tr. II, pp 204-05 and 212-14).

Autism Consulting Teacher did not directly interact with Child. (Tr. II, p. 190). Prior to the IEP meeting on February 11, 2014, Autism Consulting Teacher could not remember if she had reviewed any information/IEP about the Child. While she observed Child once, Autism Consulting Teacher could not recall if the observation predated the IEP meeting. (Tr. II, pp. 134-135, 142). Autism Consulting Teacher provided little/no input during the IEP meeting. (Tr. II, p. 141).

36. Special Education Supervisor also attended the February 11, 2014 IEP meeting. Special Education Supervisor holds an undergraduate degree in elementary education, grades K - 8, and special education, grades K - 12. She has a master's degree in learning disabilities and emotional disabilities. She holds an education specialist degree in special education and transition and a doctorate degree in special education leadership. (Tr. III, p. 169; LEA Exh. 48).

Also, Special Education Supervisor has licenses in Virginia to teach special education in grades K - 12 and non-categorical in grades K - 8. In addition, she is licensed as an administrator. She has been an educator for 25 years and has taught as a self-contained teacher for students with emotional disabilities. She has taught students with varying disabilities in special education and general education classes. She was a special education supervisor for 13 years with the LEA until August 1, 2015. As such she attended numerous IEP meetings, provide training on writing IEPs. She has done so for almost 20 years. Special Education Supervisor has attended training about autism and has developed at least 50 to 60 IEPs for students with autism. (Tr. III, p. 174).

Special Education Supervisor never taught Child. Fall 2014, she did observe Child in an educational setting at Private School for about 2 hours. (Tr. III, p. 222).

During the due process hearing, she qualified as an expert in the area of education of children with autism and development of IEPs for autistic children. (Tr. III, p. 179).

37. Special Education Supervisor had become familiar with Child at the beginning of the 2013-14 school year when Special Education Supervisor was contacted by Case Manager about Child's case and concerns of the parents. Case Manager had indicated that she was having difficulty reaching the parents. Special Education Supervisor had reviewed the child's records. Prior to the February 11, 2014 meeting, she had attended the January 23, 2014 IEP meeting. Subsequent to the February 11, 2014 IEP meeting, she drafted a FBA and attended an IEP meeting held on September 4, 2014. (Tr. III, pp. 180-81).

38. Regarding the February 11, 2014 IEP, Special Education Supervisor opined that the IEP was appropriate for several reasons. She noted that the IEP team in designing the IEP considered all the concerns Parents expressed during the February 11, 2014 meeting. She mentioned, among other concerns, Parents' comments regarding child's deficient social skills, excessive homework, need for breaks and positive comments on Child's behavior charts. (Tr. III, pp. 183-84).

She noted that the developed IEP addressed Child's needs for social skills by providing for a specific social skills part of the day. And further, Child received support in her academic classes to help with her behavior. That support included monitoring and prompting to help Child stay on tasks. In addition breaks were allowed. Special Education Supervisor also noted that the program outline in the February 11, 2014 IEP was similar to her current program at the time and Child was being successful with it. Moreover, she commented that Child's teachers were reporting that Child's behavior charts were showing Child's behavior had greatly improved since the beginning of the year. (Tr. III, pp. 184-85).

39. Special Education Supervisor also commented that the services on the IEP addressed Child's needs and concerns of parents. Those services included the continuance of inclusion classes which were co-taught by a general education teacher and special education teacher, social skills training and additional time to complete work in the resource class. (Tr. III, pp. 189-90).

40. In rendering her opinion about the appropriateness of the IEP, Special Education Supervisor also felt the goals were appropriate. Concerning the behavior goals, she commented that the first two behavior goals addressed Child's social skills as the main concern reported by teachers were that Child raised her voice when she was frustrated or when engaged in a non-preferred activity. Thus, Special Education Supervisor found the goal to be appropriate. In addition the second goal was social in nature and appropriate also. (Tr. III, pp. 189-90).

During the February 11, 2014 IEP meeting, the team discussed updating Child Functional Behavior Assessment (FBA). (Tr. III, p. 191). Upon entering the 6th grade, Child had an FBA from Elementary School transferred to Middle School. Parents agreed to this FBA upon Child entering Middle School. (LEA Exhs. 8, 11; Tr. III, pp. 192-93). Thus, at the time of the February 11, 2014 IEP meeting the FBA in place was the one transferred from Elementary School and agreed to by parents. (Tr. III, p. 192-93).

The FBA identified two behaviors of concern that interfered with Child's learning. They were Child using impolite words toward teachers and peers, and Child demonstrating noncompliant behaviors when there is a change in routine during the school day. (LEA Exhs. 8 and 11). These behaviors had been identified as areas of concern when Child entered Middle School. Because of this observation, Special Education Supervisor opined that the FBA signed by Child's mother on September 6, 2013 remained appropriate at the time of the February 11, 2014 meeting. (Tr. III, pp. 192-93).

The IEP team discussed the FBA during the February 11, 2014 IEP meeting and decided to update the FBA. However, the LEA did not do the FBA initially. Parents had indicated initially at the conclusion of the February 11, 2014 meeting that they would be providing feedback from Child's therapist. Then sometime in spring 2014, Parents signed the IEP indicating they disagreed with it. The parent's signature was not dated. Next, on April 30, 2014, the LEA was notified that parents had retained an attorney and all communications were to go through the attorney. Thereafter, the parents and attorneys met and the parents requested an FBA. Special Education Supervisor then prepared a draft FBA. (Tr. III, p. 209).

41. Child's grades for the 2013-14 school year are as set forth below:

Subject	1 st Pd. ²	2nd Pd.	Sem. Avg.	3 rd Pd.	4 th Pd.	Sem. Avg.	Year Avg.
English 6	A	B+		A-	C		B+
Art 6				A	B-	B+	B+
Music Lab 6	A-	A+		C+	A+		A-
Health/ PE 6	A+	A+		A	A+		A+
Math 6	B+	C+		B+	C-		B-
Science 6A	A-	A-		A	A-		A
6US History	A	B		B	B		B+
Key- Boarding6	B+	A-	B+				B+

(LEA Exh. 23).

42. During the 2013-14 school year, LEA issued Progress Reports. They were based on Child's progress on her goals in the last agreed upon IEP. That IEP is the one developed on January 30, 2013. It is referred to here as the January 30, 2013 IEP. Specifically, the progress reports indicate Child's level of mastery on each of the IEP's goals.

Regarding the first goal listed concerning Child's usage of polite words, notations on the progress report indicate that that about the middle of the school year "[Child] has improved this quarter with using polite words while speaking to adults and peers." And then by the end of the year the progress report states that [Child] is making progress towards mastering this goal. Her mastery level was noted as making sufficient progress toward achieving the goal. The progress report noted also that as of June 16, 2014, Child was able to use polite words when speaking to peers and others with 100% accuracy as measured. (LEA Exh. 23A, p.2).

Concerning the second goal listed that concerns Child focusing on instruction with no more than 2 teacher prompts, the IEP progress report notes that by November 1, 2013, "[Child] needs 3 to 4 prompts in class to stay focused on her work/assignments. She needs more prompts when she is asked to do and (sic) non-desired activity/assignment such as writing or gluing handouts into a notebook." The progress report noted that Child's score on this goal as of

² Please note the following abbreviations used above: Period (Pd.), Semester (Sem.), and Average (Avg.).

November 1, 2013 was 65%. Further the progress report noted that as of January 31, 2014 child's score had improved to 93%. By April 11, 2014 the progress report noted that child's score was at 50% and then at the end of the year the progress report noted that child was able to maintain focus as measured 90% of the time. By the end of the school year, Child was noted as making sufficient progress toward achieving the goal. (LEA Exh. 23A, p.4).

Regarding the third annual goal about accepting changes and staying on tasks without a meltdown. A note dated January 31, 2014 indicated that Child was doing very well with classroom changes. Notations also indicated that the child does struggle more when she feels rushed. The need for extra prompting was noted for Child to begin a task. On January 31, 2014, it was noted that Child scored 86% on accepting changes. By the end of the school year, the progress report noted that Child was able to with 100 % accuracy accept change and transitions. The report also indicated that Child continued to struggle with completing non-preferred activities such as writing assignments and gluing. In that area she scored 50%. Overall, the progress report noted that Child was making sufficient progress toward achieving the goal. (LEA Exh. 23A, p.6).

In addition, the 4th goal listed on the IEP addressed Child arriving to class on time. The progress report notes that at the beginning of the school year, Child was arriving to class on time 70% of the time. Child's was deemed making sufficient progress toward achieving this goal within the duration of the IEP. By the end of the school year, when classes were close by, Child arrived on time with 100% accuracy. At the same time, Child was tardy 70% of the time in the morning. By the end of the year, Child was rated as mastering this goal. (LEA Exh. 23A, p.9).

Regarding the 5th IEP goal concerning Child's writing, the progress report indicates that Child started the school year by demonstrating some progress on the goal. Child was making sufficient progress during the 3rd quarter. But by the end of the school year Child was at the same level she had started. At this time, she was demonstrating some progress, but she required a lot of teacher assistance when writing. (LEA Exh. 23A, p.11).

Throughout the 2013-14 school year, on each goal, Child's progress reports demonstrated that she never fell below level 3; that is, making some progress toward achieving the goal. Overall, Child's reports indicated she was either making sufficient progress toward achieving the goals within the duration of the IEP or she had met the criteria for the goal. (LEA Exh. 23A)

In addition, as mentioned previously Child's teachers reported that Child was making progress both academically and socially.

43. The LEA held an IEP meeting on August 28, 2015, and developed the August 28, 2015 IEP. Those in attendance were Father, Special Education Director, LEA's Designee, General Education Teacher/Science Teacher, Successor Special Education Supervisor, Case Manager, LEA's Attorney, Parents' Attorneys, and Head of Private School. (LEA Exh. 31).

44. Head of Private School attended as a representative from Private School. She holds a bachelor's degree in special education and a master's in administration and supervision. She has taught special education. Prior to becoming the head of Private School, she worked in a

public school district. Her duties, among others, included writing IEPs for three to five year olds. Head of Private School's entire career has involved special education. Head of Private School qualified as an expert in drafting IEPs, including writing IEP goals. (Tr. 24-5; P Exh. 51).

Head of Private School noted that Child could be maintained at the LEA's public day school, but she felt the public day school was not the best for Child's overall growth. She also provided input regarding the proposed goals listed below and indicated they were appropriate. (Tr. I, p. 90 and Tr. III, p. 285).

45. During the August 28, 2015 IEP meeting, Parents had the opportunity to participate. However, most of the talking on behalf of the parents came from the parents' attorneys. Father did state that Child would not be attending the LEA school system during the 2015-16 school year as she was already enrolled in Private School. (Tr. I, p. 485 and Tr. II, p. 299).

46. The goals developed as a result of the the August 28, 2015 IEP are set forth below:

Behavior goals

By June 2016, [Child] will use polite words and appropriate tone of voice when speaking to peers and adults with 90% success per week and all classes with 1-2 prompts using a behavior chart in 4 out of 5 school days (Speech – language support)

By June 2016, [Child] will remain focused on tasks during instruction with no more than 2 teacher prompts during a class period in 3 out of 5 school days per week using visual or verbal prompts. OT support

By June 2016, when given instruction, practice and visual/verbal supports, [Child] will independently use a coping strategy (i.e. deep breaths, asking for break/health, etc.) during times of distress (i.e., unexpected schedule/routine changes, non- preferred demands placed, etc.) in 3 out of 4 opportunities across 3 consecutive days. OT support

By June 2016, [Child] will, with two or less prompts, independently organize her materials in corresponding subject folders and accurately record all homework and upcoming assignments in her daily planner in 3 out of 4 core subject classes. Based on teacher observation, agenda or behavior chart. daily, observation, anecdotal reports (OT support)

By June 2016, with 2 teacher prompts, [Child] will navigate lunch routine (i.e. enter the lunch room, sit with the peer, engage in a conversation, etc.), and have the ability to reflect upon her lunch experience with her case manager in 4 out of 5 instances, as measured by teacher observations and reports.

By June 2016, with 2 teacher prompts, during a time of transition, [Child] will stop her self pacing and replace this self soothing behavior with a more socially appropriate response (i.e. interact with your peers, sit at her seat, asked for assistance, etc.), and 4 out of 5 instances as measured by teacher reports and observations

By 2016, with 2 teacher prompts, [Child] will in a variety of settings apply the rules of daily group social interactions in a variety of settings (i.e. how to enter groups, differences of group interactions, work with a group within the classroom setting, etc.), in 4 out of 5 instances as measured by teacher observations and reports.

Academic goals

By June 2016, with prompting [Child] will complete 70% of her in class writing assignment (i.e. notes, homework, essays, journals, etc.) in 4 out of 5 opportunities

June 2016, [Child] will independently use graphic organizers as a pre-writing strategy to generate and organize ideas to produce a multiple paragraph essay using a variety of sentence types with each paragraph containing a topic sentence with at least 3 supporting details with 80% accuracy as measured by writing samples

(P Exh. 28, pp 8-9).

In addition, the proposed IEP indicated Child's needs as reported by Private School that Child attended during the 2014-15 school year. Those needs as they affect learning were noted to be in the areas of writing, work completion, appropriate social skills/social interactions with others, and participating in non-preferred tasks and activities, on-task behavior and level of effort put forth on class work. (LEA Exh. 31, p. 5; P Exh. 28, p. 5).

47. During the August 28, 2015 meeting Special Education Director offered to permit Child to attend any one of the other 15 middle schools within the LEA. (Tr. III, p. 285-86).

48. Case Manager had observed Child at Private School. She expressed concerns about the curriculum taught was below Child's grade level. Further, Case Manager noted that on observation inappropriate behaviors by Child and by classmates were not addressed by Private School teachers. From what she observed Case Manager opined that Child's social skills showed regression at Private School. Further, Case Manager observed Child engaging in inappropriate behaviors that had been noted at Middle School. One such behavior was Child was noted to be arguing with teachers at Private School. (Tr. I, p. 477- 80; LEA Exh. 30).

49. Special Education Director has over 40 years of educational experience and qualified as an expert in special education, IEP development, and designing programs for

children with disabilities, to include inclusion programs and programs for students on the autism spectrum. (Tr. III, pp. 271-79). Special Education Director opined that the August 28, 2015 IEP was appropriate because it identified Child's needs, her strengths, the goals that were necessary, and accommodations that were needed for Child to progress. (Tr. III, p. 280).

50. The placement proposed for Child at the conclusion of the meeting was a self-contained setting. This setting was proposed because for the 2014-15 school year, Child had been attending a private school and was in classes with fewer than 10 students. The self-contained placement proposed would have no more than 10 students. The plan was from the self-contained setting Child would be transitioned at an appropriate time to inclusive classes. It was noted that Child had progressed in the 6th grade when she received instruction in her core subjects in an inclusive class. (Tr. I, p. 485 and Tr. III, pp. 280-84).

51. At the conclusion of the meeting, Father and his attorneys indicated they would be providing feedback regarding the proposed IEP. None was received. On October 5, 2015, Parents filed a due process complaint. (Tr. III, pp. 284-85).

52. Case Manager has been a special education teacher for 9 years with the LEA. She holds certifications regarding autism, crisis training, FBA, and BIP development. In addition, she has developed more than 300 IEPs of which about 60 of them were developed for a children with autism. Moreover, she has training in autism and Asperger syndrome, to include social skills training. (LEA Exh. 47; Tr. I, pp. 376 – 84).

Case Manager was qualified as an expert for educational programming for students with disabilities, in particular autism. She was also qualified as an expert in IEP development. (Tr. I, p. 384). Case Manager opined that the Least Restrictive Environment for Child's placement from the 2013-14 school year forward was public day school. Further, she opines that the IEP's proposed for Child from the 2013-14 school year forward are appropriate. (Tr. I, p. 487).

53. Private School provides Child with only limited to associate with neuro-typical peers at the Private School. Private School is not licensed by the Virginia Department of Education. (Tr. I, pp. 32- 3, and 79).

54. The August 27, 2014 IEP developed on September 4, 2014 was offered by the LEA and is appropriate. Parents had an opportunity to participate in the development of this IEP but declined to do so.

55. In addition, Parents' expert psychologist did not have firsthand knowledge that Child's behavior had improved once she enrolled in Private School. (Tr. I, p. 562).

56. Private School does not have a speech therapist on staff. (Tr. I., p. 91).

57. Parents' Expert qualified as an expert in clinical psychology, neuropsychology, and neuro developmental psychology. (Tr. I, p. 510). He is not an educator.

V. APPLICABLE LAW AND ANALYSIS

The pivotal purpose of the Individuals with Disabilities Education Act (IDEA) is to ensure that students with disabilities have available a free appropriate public education (FAPE). *See Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-81, 200-01. A FAPE includes special education and related services planned to meet the student's unique needs and provided in conformity with a written IEP. 34 C.F.R. § 300.17(d) and 34 C.F.R. § 300.320. The school district offers FAPE to a student when the IEP is reasonably calculated to enable the child with a disability to receive educational benefits and the procedural requirements of the IDEA are met.

While school districts are required to comply with IDEA procedural requirements, not all procedural errors render an IEP legally inadequate under the IDEA. In matters alleging a procedural violation, a child with a disability does not receive a FAPE only if the procedural inadequacies (1) impede the child's right to a FAPE, (2) significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the parents' child, or (3) cause a deprivation of educational benefit. 20 U.S.C. § 1415(f)(3)(E)(ii).

The FAPE requirement is satisfied when State provides the handicapped child with "personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction." *Doyle v. Arlington County School Bd.*, 953 F.2d 100, 106 (4th Cir. 1991) (citing *Rowley*, 458 U.S. at 203). The statute guarantees and appropriate education, not in education that includes everything that a loving parent might desire. *See Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 132 (2d Cir. 1988) (quoting *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2d Cir. 1989) (citations omitted); *See Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 379 (2d Cir. 2003).

In the present case, Parents assert that the LEA has denied Child the FAPE required under the IDEA for numerous reasons. The Hearing Officer examines these claims here.

A. Regarding the January 30, 2013 IEP

1. **Did the LEA fail to implement provisions of Child's January 30, 2013 IEP providing for sensory breaks or extended time during the two years preceding October 5, 2015, the date the LEA received the parents' due process complaint? If so, was there a denial of FAPE?**

Parents assert that the LEA failed to implement two provisions of the January 30, 2013 IEP. Those provisions required the LEA to provide for frequent breaks and extended time on testing as noted in "Finding of Fact" # 4. Parents assert that the LEA failed to give Child breaks or extended time to complete assignments during the 2013-14 school year. The evidence demonstrates that Parents did not observe Child at school and therefore they have no first-hand

knowledge of whether breaks and extended time on assignments were allowed. (Tr. II, p. 281). Of critical note, when Child testified she did not state that the school staff failed to give her breaks or additional time to complete assignments/testing. Child's teachers testified credibly that the Child was provided breaks and extended time. In fact, the evidence shows that sometimes, teachers even participated in the breaks. Accordingly, the Hearing Officer finds the parents have failed to meet their burden and show that the LEA did not implement Child's IEP.

Of note as well, the evidence establishes that after Parents expressed concerns about the child not receiving breaks, the LEA responded. In addition to other breaks already received by Child, the LEA instituted a mandatory break at the parents' request.

Accordingly, considering the evidence, the Hearing Officer finds no denial of FAPE.

B. Regarding the November 2013 Proposed IEP

1. Did a November 2013 proposed change to Child's IEP fail to provide FAPE in that the proposed change provided for a "lunch bunch" for Child which necessitated changing Child's schedule?

The parents assert that the LEA had represented before school started that when Child matriculated to Middle School, she would be scheduled for her lunch period and in some classes with her friend. The parents understood the LEA offered this scheduling as an accommodation to Child to address the social needs of Child. Upon receiving Child's schedule at orientation, the parents discovered that Child was not scheduled for lunch and in any classes with her friends. Parents raised concerns with the school about Child's social needs the first month of school. In addition, on October 16, 2013, Father sent Assistant Principal an email requesting she meet with Parents. Assistant Principal delegated scheduling the meeting to Case Manager who attempted several times to set up the meeting for Assistant Principal. Because the parents did not believe Case Manager was "advocating" for Child, they declined to converse with Case Manager for purposes of scheduling the meeting. When Parents opposition to Case Manager setting the meeting was brought to the attention of Assistant Principal, Assistant Principal immediately scheduled a meeting with the parents. By then it was November 13, 2013, and a month had passed since Parents initial request for a meeting with Assistant Principal. During the November 13, 2013 meeting the parents focused on Child's scheduling, need for breaks, the Child's behavior chart, having a signed agenda, and instituting a check-out system for Child at the end of the school day.

The day after the November 13, 2013 meeting, Case Manager drafted an amendment to the Child's IEP and sent it home by Child to provide to Parents. In addition, Case Manager sent home a proposed schedule Change for Child. The modified schedule included setting Child's lunch period at a time with her friend. The proposed IEP added the accommodations of a mandatory break, signing the agenda, and a check out system for Child at the conclusion of her school day.

Parents never provided feedback regarding the proposed amendments to the IEP. They did, however, reject the proposed schedule change on or about November 26, 2013. The

schedule change was declined because Child informed her parents that she had gotten accustomed to the schedule that had been implemented since the beginning of the school year and she did not want to change her teachers or schedule at this time. Parents informed the school that too much time had gone by and they were not agreeing to the change.

The Hearing Officer has considered the evidence and finds that it fails to establish that the LEA promised the scheduling accommodations claimed by Parents. Of relevant note, during the due process hearing, Child could not recall having any expectation when she started Middle School of being in class/lunch period with some of her friends. Also, a review of the last agreed upon IEP indicates that the accommodations were not provided for in that IEP.

Parents contend that the delay in implementing or offering the schedule change denied Child a FAPE. The Hearing Officer has already found that scheduling Child with her friends was not promised by the LEA. Of note also, the delay in the LEA offering the changed schedule that permitted Child to have lunch with her friends, was caused (at least in part) by Parents. Clearly, the parents have not met their burden and there is no denial of FAPE.

2. Did a November 2013 proposed change to Child's IEP fail to provide FAPE in that the proposed change included LEA's intention to conduct a FBA; but a FBA "working draft" was not provided until June 2014?

The proposal for a FBA was unilaterally made by the LEA in its proposed IEP of November 14, 2013. Parents never agreed to this proposed IEP. In fact they never responded to multiple requests from Case Manager for input.

In addition, the LEA unilaterally proposed an FBA in its January 23, 2014 IEP that was developed on February 11, 2014. By his testimony, Father rejected that IEP sometime in the spring of 2014, by signing the IEP and returning it to the school. The date he signed is not clear because the signature was not dated. The evidence is not sufficient to determine that the parents requested a FBA before April 30, 2014. The first notation indicating the Parents were requesting a FBA was when the parents retained an attorney and by letter dated April 30, 2014, the attorney requested the FBA. Thereafter the parties and their attorneys met. The FBA was requested and a draft FBA was completed on June 20, 2014.

What is more, the evidence demonstrates that Child's behavior progressed during the school year. An analysis of behavior data indicated that by the 4th quarter of the 2013-14 school year, Child was able to follow directions without protest 95% of the time; stay on task and focus 86% of the time; not cry or talk back to the teachers 87% of the time; complete classwork or homework 76% of the time; did not interrupt teacher or peers 95% of the time; and participated well in groups 94% of the time.

The Hearing Officer notes Parents' opposition to the behavior data collected by the LEA and the analysis. That said, the Hearing Officer gives deference to this evidence. This is so because of the credentials of the Autism Consulting Teacher, her expertise, and the fact that the

data was collected uniformly.

Considering the above, the Hearing Officer finds the parents have not met their burden and shown a denial of FAPE because the FBA was not drafted until June 2014.

3. Did the November 2013 proposed IEP fail to provide FAPE in that it failed to provide appropriate goals?

Parents argue that the November 14, 2013 IEP goals are in appropriate.

In pertinent part, the IDEA requires that each IEP developed for a child with a disability must include a statement of measurable annual goals, including academic and functional goals designed (i) to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and (ii) to meet each of the child's other educational needs that results from the child's disability. 34 C.F.R. § 300.320 (a) (2).

The goals in the November 14, 2013 proposed IEP consisted of four (4) behavior goals and one (1) academic goal as stated in "Findings of Facts" # 3 above. These goals are identical to the ones in Child's January 30, 2013 annual IEP.

First, the Hearing Officer considers Child's needs. Of note, the section of the IEP titled "Needs as they Affect Learning" indicates that Child is strong in all subjects except sustained writing. The academic goal in the IEP addresses Child's writing needs. In addition the IEP's PLOP states that Child struggles with her behavior during the school day. Particularly it notes that Child has emotional outburst during the school week and has difficulty controlling them. It is noted that the outburst normally occurs when there is a minor change in schedule or when Child has to do a non-preferred activity. (P Exh. 7, p. 3). A review of the goals indicates that 4 of the 5 goals address Child's behavior. Also, Goal 3 specifically addresses changes in activities, transitions, and avoidance of meltdowns. Because the goals address Child's needs, the Hearing Officer finds them appropriate.

In addition, the Hearing Officer reviewed Child's progress reports to determine if the goals are sufficient. Regarding the first goal about using polite words, Child is noted to have made progress during the 2013-14 school year. By the end of the year, Child had mastered the goal as measured. Concerning Child's second goal pertaining to focusing, the progress reports indicated that as of November 1, 2013, Child's progress was scored at 65%. By the end of the year, Child was noted to be maintaining focus 90% of the time as measured. Regarding the third goal pertaining to accepting changes, the progress report indicated that Child was doing well with classroom changes as of January 31, 2014. By year's end, Child was accepting change 85% as measured. She continued to struggle with completing non-preferred activities. The progress report indicated that Child was making sufficient progress on goal three. (LEA Exh. 23A, p. 6).

Concerning goal 4 pertaining to timeliness, progress reports showed that during the school year, Child was deemed to be making sufficient progress toward achieving the goal. By the end of the year, Child had mastered the goal. (LEA Exh. 23A, p. 9). Regarding the goal 5 on

the proposed IEP, the progress report indicates that Child started the school year by demonstrating some progress on the goal. Child was making sufficient progress during the 3rd quarter. But by the end of the school year Child was at the same level she had started. At this time, she was demonstrating some progress, but she required a lot of teacher assistance when writing. (LEA Exh. 23A, p.11).

Moreover, in determining the appropriateness of the IEP goals, the Hearing Officer considers Child grade reports. Child's entire grade reports are stated in "Finding of Fact" # _____. In summary they show Child overwhelming made "A"s and "B"s on her report cards throughout the school year. Her lowest grade was a "C"- in math for the 4th quarter. As previously mentioned, the goals in the January 30, 2013 IEP (the last agreed upon IEP) and the November 14, 2013 IEP are the same. Of note under those goals, at the time the November 14, 2014 IEP was proposed, Child's grades consisted of 4 "A"s, 2 "B"s, and 1 "C."

In addition, Child's teachers and educators expressed that the goals were appropriate.

Accordingly, considering the Child's progress and needs at the time, the Hearing Officer finds the goals in the November 14, 2013 proposed IEP were appropriate. *See Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990) ("An IEP is a snapshot not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.").

C. Regarding the January 2014 Proposed IEP

1. Did the LEA fail to provide FAPE in that the January 2014 IEP failed to provide appropriate goals?

In pertinent part, the IDEA requires that each IEP developed for a child with a disability must include a statement of measurable annual goals, including academic and functional goals designed (i) to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and (ii) to meet each of the child's other educational needs that results from the child's disability. 34 C.F.R. § 300.320 (a) (2).

Two proposed IEPs are identified as the January 23, 2014 IEP. The first one is an IEP proposed at the IEP meeting held on January 23, 2014. In the upper right corner of this IEP's first page appears the printed date January 23, 2014. The parents had agreed to meet with the IEP team on January 23, 2014, to develop the child's annual IEP. However, they were not able to attend this meeting because January 23, 2014 was a snow day. The second proposed IEP was developed at the February 11, 2014 IEP meeting. This meeting was a continuance of the January 23, 2014 IEP meeting. It was set at an available time for the parents to afford them the opportunity to provide input in Child's educational plan. The IEP developed on February 11, 2014 also has the printed date January 23, 2014 in the upper right corner of its first page. Accordingly, the Hearing Officer finds the January 23, 2014 IEP consists of two IEPs, the one proposed on January 23, 2014, and then modified and proposed on February 11, 2014.

The PLOPs in both of the above-referenced IEPs reference identical behavior/social difficulties and consequential needs of Child. This information is cited in "Finding of Facts" # 29. In addition, these PLOPs note that [Child's] greatest area of weakness is "that [Child] struggles with different styles of teaching styles and transitioning from one class to the next if she has had a meltdown in the class before."

A review of the two IEPs bearing the January 23, 2014 date show identical goals. These goals are listed in "Finding of Fact" # 30. Having thoroughly reviewed these goals, the Hearing Officer finds the goals appropriate. To begin with, several of Child's needs as mentioned above are addressed in the goals. For example, the goals focus on difficulties Child has with non-preferred activities, staying on tasks, using polite words, and transitioning.

Moreover, these IEPs offer the services in conjunction with the goals. One such service is behavior management class for 25 minutes, 5 times every two weeks in Child's resource/special education class. In addition this service was provided 5 times a week for 20 minutes in Child's general education classes. (LEA Exhs. 17 and 20; P Exhs. 19, p. 13 and 36, p. 10). (P Exh. 6, p. 2; LEA Exh. 20, p. 13; LEA Exh. 17, p. 11; P Exh. 36, p. 11; P Exh. 19). The evidence shows that behavior management involves social skills being taught using strategies such as giving social skills training contemporaneously with or soon after inappropriate behavior was exhibited in class, whether by Child or another student. Other strategies include watching videos about socialization and then applying skills taught, role modeling acceptable behavior, engaging in activities that foster Child initiating and maintaining conversations, and practicing socialization in a group setting. (Tr. I, p. 420). Moreover, Child's resource teachers reviewed her behavior charts with Child either daily or every other day during behavior management or resource time. Also, those behavior charts were provided to Parents promptly for parental input or comments. (Tr. III, pp. 107-12) and (Tr. I., pp. 290, 420, 439-41). Moreover, a practical application of the behavior management entails Case Manager regularly communicating with Child's teachers and those teachers also prompting Child when behavior is inappropriate or modeling appropriate behaviors. (Tr. III, p. 31). For example, Child's history teacher reported role modeling appropriate behavior or social skills. (Tr. , III, p. 31). (LEA Exhs. 17 and 20; P Exhs. 19, p. 13 and 36, p. 10).

The proposed goals coupled with related services also demonstrate the appropriateness of the IEP goals. These IEPs provided for speech language therapy. The evidence demonstrates this related service involved helping Child build pragmatic language skills. Occupational Therapy would also be provided as a service in conjunction with the behavior goals.

Further, the evidence demonstrates that while Child's behavior and social skills were not perfect she made progress throughout the 2013-14 school year. For example, Science Teacher testified credibly that Child was able to work in groups in her class, knew the names of some of her classmates, and worked well with a male student in the class. Also, she noted that at the beginning of the year it was a hurdle for Child to change classes and participate in non-preferred activities. But as the year progressed, Science Teacher observed improvement in those areas with supports. Child would also ask for a hug from the teacher as she was leaving for the day. (Tr. III, pp. 60-7). Child's history teacher also reported progression during the school year, both

in areas of behavior and academics. By way of illustration, Child was able to self-advocate as the year progressed and ask for help with assignments. She got along with her peers and was able to engage in a conversations with peers. (Tr. III, pp. 32-54). Case Manager observed Child communicating with her peers throughout the year and that Child knew the names of some students in her class. (Tr. I, pp. 408, 463) Case Manager made prompting cards with questions/subjects on them that Child could use for conversations during her lunch period. Case Manager observed Child knew some of the girls she had lunch with and conversed with them. After her lunch period, Case Manager had discussions with Child about her lunch discussions with other students. (Tr. I, pp. 406).

The Hearing Officer also finds the goals are appropriate because parents had a meaningful opportunity to participate. First at the meeting held on February 11, 2014, that developed the proposed IEP dated January 23, 2014. Then parents were given the opportunity to submit additional feedback/information from Child's therapist. However, Parents never provided any input from the Therapist during the school year. Instead, Father signed the IEP sometime in the spring 2014 disagreeing with it. Around the same time, Parents directed the LEA to communicate with them through their attorney.

In addition, the Hearing Officer has considered Parents claim that Child was unable to initiate or maintain a conversation. Hearing Officer has also given great thought to the assertion that the goals are either too limited or too broad. The evidence fails to substantiate these claims. Parents therefore cannot meet their burden.

Parents have also argued that a math goal is necessary. In support of this position, they emphasize that Child received failing score, 386, on her math SOL. In addition, they reference the child's recent score on the Aimweb math test. This evidence alone does not suffice to show a math goal is needed. Of note, Child's quarterly grades in math at the time the IEPs dated January 23, 2014 were proposed was B+ for the first quarter and C+ for the second quarter. (LEA Exh. 23). Child went on to receive a B+ and C- for the third and fourth quarters, respectively.

Moreover, the math sections of both PLOPs state the following:

[Child's] teacher reports that (sic) is able to complete basic math 6 operations. She can also identify properties 94%, find and plot points on a coordinate plane 91%, and solve one step equations and any inequalities 82%. She is successfully able to organize information to solve mathematical problems. [Child] has demonstrated progress in solving simple word problems and is likely to meet grade level expectation within the year. She is particularly good at using formulas in math and knows which formulas to use to solve mathematical problems with 81% accuracy in three trials. She is able to create, read, and interpret various graphs and charts with 89% accuracy. She is able to understand properties of real numbers, exponents and sequences with an average of 88% in three trials.

(LEA Exh. 17, p. 5 and LEA Exh. 20, p. 5).

The I.E.A. members of the IEP team deemed Child performing at or about grade level and consequently a math goal was not necessary for Child's IEP. Hence none was developed. The Hearing Officer gives deference to the educator's decision.

The Hearing Officer has considered the educator's determination that no math goal was needed. In addition she notes Child's progress in math during the 6th grade. She is also cognizant that the educators reported that Child was on grade level or expected to be on grade level during the 2013-14 school year. Having made this thorough review, the Hearing Officer finds the Parents have failed to meet their burden.

This determination has been made having noticed that Child reportedly scored 386 on the math SOL. And this score indicates Child did not pass the math SOL. Further, the Hearing Officer has made this determination after considering the report of Child's scoring on the AIMSweb computation probe. Of note as well, the educators opined that Child's performance on the latter test was affected by the fact that the test was timed. Child had 8 minutes to do the test. And timed testing is a source of stress for Child. (Tr., II, pp. 94 and 120; I.E.A. Exh. 20, p.6 and I.E.A. Exh. 17).

2. Did the January 2014 Proposed IEP fail to address concerns regarding Child that were noted in this proposed IEP's Present Levels of Performance (PLOP)? If so, was Child denied a FAPE?

Concerns raised in the PLOPs include those mentioned above regarding Child's behavior/social needs. Also, the PLOPs reference essentially Child's difficulty in completing writing assignments, need for additional time to complete assignments, need for breaks when upset/frustrated, being polite and using the correct tone of voice; need for coping mechanism to avoid shutting down when asked to do a non-preferred activity; difficulty with higher order thinking skills; and difficulty branching out to new topics to read.

Close scrutiny of the goals, services, and accommodations illustrate the IEP addresses concerns raised in the PLOPs of the IEPs. For example, Child's academic goals address her difficulties in completing writing assignment. The accommodations provide for additional time to complete assignments, including writing assignments. Behavior goal 3 provides for breaks when Child is upset. An accommodation provides for breaks as well. In addition, behavior goal 3 addresses Child's need for coping mechanism to avoid shutting down when asked to do non-preferred activities. Behavior goal 1 and the behavior management service address Child using appropriate tone of voice and being polite.

In addition, the academic goals require Child to complete her writing assignments, to generate ideals, and to produce multiple paragraphs essay. These goals, promote, among other skills, higher order or deep thinking to produce ideals. Moreover, behavior goal 3 requires Child to use coping strategies to allow her to engage in demands which may be assignments that are not her preference. This goal fosters, among other skills, being receptive to reading materials that are not of interest to Child.

Accordingly, the Hearing Officer finds Parents have not met their burden and shown the LEA failed to address concerns noted in the PLOPs of the proposed IEPs developed on January 23, 2014, and February 11, 2014.

3. Did the January 2014 Proposed IEP fail to address any notations that Child

- has difficulties with social interactions and peer relationships;
- contributes very little in class if not a topic that Child is interested in;
- often needs redirection.

For the reasons previously discussed, the proposed IEPs address the notations listed above. Again, the behavior goals and behavior management service, and speech therapy address Child's socialization difficulties. Child's behavior goal 2 requires the use of coping skills to address, among other things, distressful times for the child when she is faced with an assignment or demand that she does not prefer. The goals indicate Child has a need to be redirected and addresses this.

Hence, Parents have failed to show the IEPs did not address the above noted needs of Child.

4. Did Child regress academically? If so, was the regression a manifestation of a denial of FAPE?

The Hearing Officer now considers Parents' assertion that Child regressed during the 2013-14 school year and therefore was denied a FAPE.

First, the Hearing Officer considers Child's grade reports. They are listed in "Findings of Fact" # 41. As previously mentioned, Child overwhelmingly made "A"s and "B"s. Her lowest grade was a "C"- in math for the 4th quarter.

Moreover, as discussed previously in another section, Child's teachers reported progress. Additionally, all of her quarterly progress reports showed that at a minimum Child was demonstrating some progress toward achieving her goal. More significant, the majority of these reports demonstrated that Child was either making sufficient progress toward achieving the goals or mastering the criteria.

Hearing Officer does not find Child regressed. Having made this decision, the Hearing Officer has considered the evidence of record. This includes, but is not limited to, her thorough review of Child's progress reports dated May 30, 2013, the "snapshot" progress reports prepared by each of Child's teachers for Case Manager, and Child's daily behavior charts.

Considering the above, Hearing Officer finds Parents cannot meet their burden and show Child regressed during the 2013-14 school year. Moreover, the Hearing Officer finds the evidence insufficient to establish the LEA failed to timely provide the parents with a prior written notice.

Summary regarding the January 23, 2014 IEP developed on January 23, 2014

The Hearing Officer considered the proposed IEP dated January 23, 2014, and developed on the same date. She finds for the reasons discussed that the goals were appropriate, Child did not regress, the notations in the PLOP as identified above were addressed by the IEP team, and the concerns noted in the PLOP were considered by the IEP team.

In addition, the Hearing Officer finds Parents were not denied the opportunity to participate in the IEP meeting held on January 23, 2014. The Parents had previously agreed to attend the IEP meeting. Because January 23, 2014, was a snow day they did not attend. The LEA notified the parents that they would proceed with the IEP meeting because Child's annual IEP was due to be developed by January 29, 2014. Further, the LEA reconvened the meeting on February 11, 2014, to obtain input from the parents. Both parents attended that meeting and provided comments. In addition, they were given additional time to make suggestions. They elected to not do so.

Summary regarding the January 23, 2014 IEP developed on February 11, 2014

The Hearing Officer also considered the proposed IEP dated January 23, 2014, and developed on February 11, 2014. She finds for the reasons discussed that the goals were appropriate, Child did not regress, the notations in the PLOP as identified above were addressed by the IEP team, and the concerns noted in the PLOP were considered by the IEP team.

D. Regarding the August 28, 2015 Proposed IEP

- 1. Did the LEA fail to provide a FAPE in that the August 28, 2015 proposed IEP failed to provide appropriate goals?**

Parents argue that the goals set forth in the August 28, 2015 IEP are inappropriate. IEPs must contain goals that are clearly written, measurable, and based on the child's specific needs. 34 C.F.R. § 320(a)(2).

The proposed IEP indicated that Child's needs as they affect learning were in the areas of writing, work completion, appropriate social skills/social interactions with others, and participating in non-preferred tasks and activities, on-task behavior and level of effort put forth on class work. The goals pertaining to this IEP are listed in "Findings of Fact" # 46. A review of them indicate that the IEP focuses on Child's areas of need as mentioned in the IEP. By way of example, behavior goals 1, 3, 5, 6, and 7, as listed in the IEP, address Child's socialization needs and challenges regarding engaging in non-preferred activities. In addition, Child's needs in the areas of writing and completing work are concentrated on in the academic goals. What is more, work effort and on task behaviors are addressed in the first academic goal listed and in behavior goals 2 and 3. Clearly, the goals in this proposed IEP tackle Child's needs.

Furthermore, on review of the goals, the Hearing Officer finds they are written

with clarity. Also, the measures employed to determine the progress Child is making to reach each particular goal are mentioned in each goal.

Further, Father was given the opportunity to provide parental input himself or through his two attorneys who also attended the IEP meeting. The Head of Private School attended and provided input. What is more, Parents were afforded an opportunity to provide additional feedback after the IEP meeting. None was submitted.

Of note also, during the due process hearing Parents offered their expert to support their assertion of inappropriateness. When asked if the goals were appropriate, Parents' expert responded that "generally they are."

In addition, Special Education Director, the general education teacher, and Case Manager testified that the goals were appropriate. These expert and factual witnesses testified convincingly. Their testimony was credible. The LEA witnesses who testified regarding Child have substantial training and experience in working with children with disabilities who require special education. Further they show expertise in working with children with autism. Some of them worked directly with the Child.

The hearing officer gives deference to the expert opinions of the LEA staff. The IDEA does not divest educators of their primary role in developing an IEP. *Hartmann v. Loudoun County Board of Education*, 118 F. 3d 996, 1001(4th Cir. 1997) *see also*, *Springer by Springer v. Fairfax County School Board*, 134 F. 3d 659, 663 (4th Cir. 1998) ("the task of education belongs to the educators who have been charged by society with that critical task..."); *MM by DM and EM v. School District of Greenville County*, 303 F.3d 523, 531 (4th Cir. 2002). ("The court is not, however, to substitute its own notions of sound educational policy for those of local school authorities.").

Hence, the Hearing Officer finds the parents failed to meet their burden regarding this issue.

2. Was the August 28, 2015 proposed IEP placement appropriate and did the LEA predetermine Child's placement?

The parents also contend that the placement noted in the August 28, 2015 IEP was inappropriate.

Hearing Officer finds the placement was appropriate for several reasons.

The placement proposed by the LEA's team members was Child would be in a partial self-containment setting. Child would be in special education classes in her core subjects: math, language arts, science, and social studies. She would also be in a self-contained class for resource. The class size would be no more than 10 students. Special Education Director opined that this placement was appropriate for Child because she would be transitioning back to public school from a private day school. In the latter setting, Child was accustomed to class sizes of

less than 10 students.

Also, Child's peers in the Private School placement were children with disabilities. The proposed placement would also provide Child an opportunity to assimilate with neuro-typical peers during times she was not in core classes or the resource room. Such integrations with non-disabled students would prepare Child for typical situations where Child is not with similarly situated peers as she had been in Private School.

The placement proposed also allowed for Child's social skills to be practiced in all settings: that is, the self-contained settings as well as those that were not in that setting. The Special Education Director testified that since Child had done well in the general education setting during the 6th grade, the LEA members of the IEP team felt Child after being in the self-contained setting for a time could be transitioned back to the inclusion setting. The general education teacher attending the IEP meeting as well as Case Manager agreed that the proposed placement was appropriate. Both were familiar with Child as the general education teacher was Child's 6th grade Science teacher. And Case Manager was Child's 6th grade case manager and one of her resource teachers.

The Hearing Officer gives great weight to the opinion and factual testimony of these educators because of their familiarity and/or expertise with Child. *Hartmann v. Loudoun County*, 118 F.3d 996, 1001 (4th Cir. 1997). Further, she declines to replace her judgement for that of the educators. *MM by DM and EM v. School District of Greenville County*, 303 F.3d 523, 531 (4th Cir. 2002). As referenced above, the general education teacher was Child's 6th grade science teacher and saw Child every other day for science. Case Manager was one of Child's 6th grade resource teachers. She qualified as an expert in educational programing for students with disabilities, particularly autism. She saw Child daily for 90 minutes. In addition, Case Manager had observed Child at Private School and opined after that observation that Child was performing better at Middle School. In addition, Special Education Director has over 40 years of educational experience and qualified as an expert in special education, IEP development, and designing programs for children with disabilities, to include inclusion programs and programs for students on the autism spectrum.

Of note also, Parents' own expert - Head of Private School - indicated that she thought Private School was the best placement for Child, but the student could be maintained in the public day school. In addition, Parents' expert psychologist did not have firsthand knowledge that Child's behavior had improved once she enrolled in Private School.

Considering the above, the Hearing Officer finds Parents are unable to meet their burden and show the proposed placement is inappropriate.

Next, the Hearing Officer turns to the Parents' assertion that the LEA predetermined Child's placement at River Bend Middle School, if so was there a denial of FAPE?

Predetermination of placement occurs when the LEA members of the IEP team unilaterally decide a student's placement prior to an IEP meeting. *See e.g.*, 52 IDELR 240 (CA SEA January 23, 2009). Moreover, the IDEA requires the LEA to ensure that the parents of each

child with a disability are members of any group that makes decisions about their child's educational placement. 34 C.F.R. §300.327, 34 C.F.R. §501(c).

At the August 28, 2015 IEP meeting Father attended along with his two attorneys. The evidence demonstrates that Father had an opportunity to provide input and that both he and his attorney spoke at the meeting. In addition, the head of Private School attended and provided input. Placement options, including placement in a private school were discussed. The LEA members of the IEP team proposed Middle School. Father indicated that the child opposed attending Middle School. Special Education Director offered that Child could attend one of the other 15 middle schools in the LEA's school district. Father rejected this offer. He then indicated that the child would be attending Private School during the 2015-16 school year. At the end of the meeting the decision was made that public day school and partial contained classes was the appropriate placement for Child. Parents were given an opportunity to provide further input after the meeting, but none was given.

After careful consideration of the facts, the Hearing Officer finds the LEA did not predetermine Child's placement.

E. Issues Pertaining to Relief/Remedies

1. Whether the parents should be reimbursed for private school placement?

Tuition reimbursement is not appropriate unless the parents prove the LEA's program is not appropriate. Reimbursement in this case is not appropriate because the LEA provided appropriate IEPs for Child and the parents' private unilateral placement is not required. See *Burlington Sch. Comm. v. Dept. of Education*, 471 U.S. 359 (1985); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993). Parents who make a unilateral placement run the significant risk that a court will find against them and they will be left bearing the cost of placement. See *Linkous the Davis*, 633 F. Supp. 1109 (W.D. Va. 1986).

Parents failed to show that the LEA did not provide Child a FAPE in the proposed IEPs.

Moreover, even if the LEA's IEPs were not appropriate, the Hearing Officer finds that placement at Private School is not suitable for Child. This is so for several reasons, to include but not necessarily limited to, the reasons noted here. For one, the Private School setting was too restrictive and provided limited opportunities for Child to associate with neuro-typical peers and develop social skills as a result of such exposure. In addition the evidence illustrates Child needs are addressed in part by providing for speech therapy. Private School did not have a speech therapist on staff. Also, the school was not licensed as a special education school by the Virginia Department of Education.

2. If Child was denied FAPE, should Child receive compensatory education services for the time that FAPE was not provided?

The Hearing Officer has found that the LEA has provided a FAPE. Accordingly, the

Hearing Officer denies Parents' request for compensatory education.

VI. DECISION AND ORDER

For reasons stated above, the Hearing Officer finds the following:

1. Regarding the January 30, 2013 IEP, the Parents failed to meet their burden and show that the LEA did not implement provisions of the January 30, 2013 IEP regarding providing breaks and extended time;
2. Regarding the November 2013 Proposed IEP, the parents failed to meet their burden and show that the proposed change to Child's schedule which permitted a lunch bunch denied Child a FAPE. Parents also did not meet their burden and show that Child was denied a FAPE because any proposal to draft a FBA was not completed until June 20, 2014. In addition, the Parents failed to meet their burden and show that the goals in the November 14, 2014 proposed IEP were inappropriate and Child was denied a FAPE.
3. Regarding the January 2014 Proposed IEP, the Parents failed to meet their burden and show that the goals in the IEP developed on January 23, 2014, and the goals developed at the IEP meeting held on February 11, 2014, in an IEP also dated January 23, 2014, were inappropriate and Child was denied a FAPE.

Parents also failed to show that the LEA failed to address concerns regarding Child noted in the IEP developed on January 23, 2014. The Parents also failed to show that the LEA did not address concerns regarding Child noted in the IEP developed on February 11, 2014, also dated January 23, 2014.

With respect to the IEP developed on January 23, 2014, the Parents failed to meet their burden and show that the IEP did not address any notations that Child

- has difficulties with social interactions and peer relationships;
- contributes very little in class if not a topic that Child is interested in;
- often needs redirection.

With respect to the IEP developed on February 11, 2014, also dated January 23, 2014, the Parents failed to meet their burden and show that the IEP did not address any notations that Child

- has difficulties with social interactions and peer relationships;
- contributes very little in class if not a topic that Child is interested in;
- often needs redirection.

With respect to the IEP developed on January 23, 2014, the Parents failed to meet their burden and show Child regressed academically.

With respect to the IEP developed on February 11, 2014, also January 23, 2014, the Parents failed to meet their burden and show Child regressed academically.

4. Regarding the August 28, 2015 IEP, the parents failed to meet their burden and show the goals were inappropriate, the placement was inappropriate, and the IEA predetermined the placement.

5. The parents should not be reimbursed for private school placement and Child is not due compensatory education.

The Child has not been denied a FAPE.

Further, regarding this issue before her, the Hearing Officer finds that all requirements of notice to the parents have been satisfied; that the school reports Child is one with a disability as defined by applicable law (34 C.F.R. § 300.8); that Child is in need of special education and related services; and, also, that the IEA has provided Child with a FAPE.

I have further denied the IEA's motion to strike the parents' case on the issues set forth in the due process complaint, because at the conclusion of the parents' case, it was not conclusively apparent that the parents had proven no cause of action against the IEA. See, *Williams v. Vaughan*, 214 Va. 307, 309, 199 S.E.2d 515, 517 (1973) (quoting *Leath v. Richmond, Fredericksburg & Potomac R.R. Co.*, 162 Va. 705, 710, 174 S.E. 678, 680 (1934)).

The Hearing Officer finds that the evidence is not sufficient to find the parents acted in bad faith.

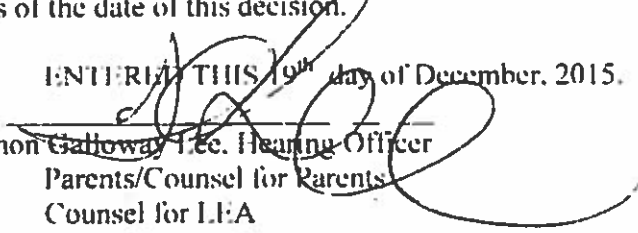
VII. PREVAILING PARTY

I have the authority to determine the prevailing party on the issue and find the prevailing party is the IEA.

VIII. APPEAL INFORMATION

This decision is final and binding, unless either party appeals in a federal district court within 90 calendar days of the date of this decision or in a state circuit court within 180 calendar days of the date of this decision.

ENTERED THIS 19th day of December, 2015.


Terner Galloway Lee, Hearing Officer
Cc: Parents/Counsel for Parents
Counsel for IEA
Dir. of Special Education for IEA
VDOE