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

CASE CLOSURE SUMMARY REPORT

County Public Schools	Mr. and Mrs.
School Division (LEA)	**Name of Parents**
	May 20, 2015
Name of Child	**Date of Decision or Dismissal**
Patrick T. Andriano, Esq.	Parents represented the child
Counsel Representing LEA	**Representative of the Parent/Child**
Parents	School Division
Party Initiating Hearing	**Prevailing Party**

Hearing Officer's Summary and Determination

On March 6, 2015, Mr. and Mrs. ("Parents") filed a "Request for Due Process Hearing" alleging the County Public Schools, the Local Educational Agency ("LEA") failed to provide an annual Individualized Education Program ("IEP") for the student for the 2014-2015 school-year concerning , Jr. ("Student"), the minor child of the parents. The parents proposed as a resolution an appropriate IEP, a Tablet, Extended School Day/Extended School year and a private placement at the Academy.

The Hearing went forward on April 27 and April 28, 2015 in County, VA. The Issues presented were as follows:

1. Whether the IEP developed for the Student dated March 11, 2015 is reasonably calculated to confer educational benefit to the Student;
2. Whether the parent's request for a private placement at the is supported by the record.
3. Whether the LEA should be authorized to implement the March 11, 2015 IEP.

IT IS HEREBY ORDERED as follows:

The IEP dated March 11, 2015 is reasonably calculated to confer educational benefit to the student and the accommodations set forth therein, including the availability of assistive technology, are appropriate for enabling the student to benefit from the educational opportunities provided to him. There was no evidence that the student would benefit from Extended School Day/Extended School year; thus such is not ordered; accordingly, the LEA is authorized to implement the IEP. Furthermore, the placement at

JHS is an appropriate placement for the student and a placement at the is not an appropriate placement.

This certifies that I have completed this hearing in accordance with the regulations. .

David R. Smith
Hearing Officer

May 20, 2015
Date

Cc: Mr.
Mrs.
Patrick T. Andriano, Esq.
Reginald B. Frazier. Esq.
Ron Geiersbach, Esq.,
Virginia Department of Education

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

MR. & MRS.	)	
Complainants,	)	
v.	)	**IN RE:**
	)	**("STUDENT")**
PUBLIC SCHOOLS,	)	
Respondent,	)	
(Local Educational Agency)	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

INTRODUCTION

A. Procedural History

On March 6, 2015, Mr. and Mrs. ("Parents") filed a "Request for Due Process Hearing" ("Complaint") against the County Public Schools, the Local Educational Agency ("LEA") in regards to the Student, the minor child of the parents.

The Complaint was filed pursuant to 20 U.S.C. 1415 (b) (6) and 8 VAC 20-81-210 C (2). The parents alleged the LEA failed to provide an annual Individualized Education Program ("IEP") for the student for the 2014-2015 school-year. The parents proposed in the Complaint as a resolution an appropriate IEP, a Tablet, Extended School Day/Extended School year and a private placement at the

By letter dated March 13, 2015, the undersigned was appointed to serve as the hearing officer in the above captioned Due Process Hearing in accordance with the "Individuals with Disabilities Education Act ("IDEA") 20 U.S. C. §1400. The LEA also provided the hearing officer with a copy of the Complaint that was filed by the parents.

The parties participated in an initial pre-hearing conference call on March 20, 2015. The purpose of the initial conference call was to discuss procedural matters relevant for going forward with the hearing, including the dates for the hearing which was agreed to as April 27 and April 28, 2015. The five (5) day disclosures, including exhibits and list of witnesses the parties agreed would be provided to each other on April 20, 2015. The location of the hearing was agreed to as a facility to be provided by the LEA in County and the parents decided they wanted an open hearing. The parties also discussed the issues in this case that would be resolved by the hearing. The date for the issuance of the hearing officer's final decision was determined to be May 20, 2015. In view of the fact that the parents filed the Complaint, they had the burden of proof.

Subsequent to the initial prehearing conference call, the parties brought to the attention of the hearing officer several matters that were addressed prior to the hearing. The LEA had requested that the student be reevaluated in the following areas; Psychological, Educational, Speech/Language and Social. The parents initially did not give their consent; however, after the LEA responded to questions the parents had, consent was provided by email dated March 26, 2015.

The parents had also submitted draft subpoenas; however, LEA objected as being overly broad for, among other reasons, the subpoenas were not timely filed, were for a period beyond the IDEA's statute of limitation and requests for witnesses included individuals who no longer worked for the LEA;

accordingly, the subpoenas were not issued; however, in their respective 5-Day disclosure documents, the parties disclosed the witnesses that would be called to testify at the hearing without objection.

B. Pre-Hearing Summary:

The parents represented the student at the hearing. The LEA was represented by Patrick T. Andriano, Esq. and Ms. Director of Student Services, was the LEA representative.

The LEA did not file a Notice of Insufficiency challenging the matters presented in the Complaint; accordingly, the hearing went forward based on the Complaint filed by the parents.

(1) Disclosures:

As required by the pre-hearing conference call of March 20, 2015 both parties submitted Five-Day disclosures identifying their witnesses and containing their respective exhibits to be admitted into evidence as exhibits for the hearing.

(a) Proposed Exhibits:

(1) Parents' Exhibits, 1 through 16, (See Attachment A- "P Ex. "): (the parents provided 12 exhibits with their five-day, but added four (4) additional exhibits (13 - 16) were added at the hearing which were the evaluations conducted by the LEA and included with the LEA's exhibits as Numbers 31, 32, 33 and 35).

(2) Respondent's Exhibits: 1 through 40, (See Attachment B - "LEA Ex. ")

(The disclosure documents of both parties were admitted into evidence at the hearing with the exception of a portion of Parents' Exhibit 2 referring to the case of "M.L. Versus Federal Way School District" that was omitted from the record and Parents' Exhibit 6 that was not admitted).

(b) Witness who testified at the hearing:

Parents:

The Student
Mrs.
Mr.
Ms.
Ms.

Respondent:

Ms. , School Psychologist, (Expert in school psychology. assessments and eligibility of students with disabilities)

Ms. . Special Education Teacher and Case Manager (Expert in special Education):

C. The Record:

The Record in this matter upon which this decision is based consists of the following:

1. The Parents' Due Process Hearing Complainant dated March 6. 2015;
2. Transcripts of the Hearing – April 27. 2015 and April 28. 2015;
3. Parents Exhibits, as listed above;
4. Respondent's Exhibits as listed above;
5. The Pre-Hearing Summaries/Orders dated: March 23, 2015. March 26. 2015. April 3. 2015,April 13, 2015.
6. This Findings of Fact, Conclusion of Law and Decision.

ISSUES TO BE RESOLVED

1. Whether the IEP developed for the Student dated March 11, 2015 is reasonably calculated to confer educational benefit to the Student;

2. Whether the parent's request for a private placement at the is supported by the record.
3. Whether the LEA should be authorized to implement the March 11, 2015 IEP.

FINDINGS OF FACTS

The Student is fourteen (14) years old of age and has been determined eligible for special education services pursuant to the IDEA with a Specific Learning Disability, Speech and Language Impairment and Autism. (Tr. pg. 194; LEA Ex. 9). The student is currently in the 9th grade at the Junior High School (" JHS"). The student likes to travel, draw, watch trains and wants to be a train engineer when he graduates from school (Tr. pg. 19).

The student testified that one of the classes he enjoys is the Fifth Block class called the "resource class," also called the "independent living class" (Tr. pg. 21) where he does his homework and gets assistance from the resource classroom teacher, Mr. . who works with the student on his homework assignments, including math and sometimes works with the student "directly." (Tr. pg. 25).

The last agreed upon IEP for the student is dated June 2, 2013 (LEA Ex. 9) and as such functions as the student's "stay-put" IEP; therefore, the special education and related services the student has been receiving for the 2014-2015 school-year is based on this June 2, 2013 IEP.

The June 2, 2013 IEP concluded the student was eligible for special education and related services and met the criteria as a student with a Specific Learning Disability, Speech and Language Impairment and Autism. The IEP had the student participating in special education and general education setting during the school day. He participated in a self-contained setting for math, English, social studies and a resource class. He participated in a collaborative setting for science. He participated in the general education setting for health, physical education and exploratory classes. (LEA Ex. 9).

On June 23, 2014, the LEA sent the parents a meeting notice stating an IEP meeting for the student was scheduled for June 26, 2014. The meeting notice stated that Ms. , special education teacher and the student's case manager was the point of contact. The purpose of the meeting included "IEP Development or Review" and "Transition: Postsecondary Goals, Transition Services." (P Ex. 4) At the time of the June 26, 2014 IEP meeting, the student was in the 8th grade and transitioning to JHS. (Tr. pg. 232).

The IEP meeting went forward as scheduled on June 26, 2014 and the attendees were, Mr. , father, Ms. , Special Education Teacher, Mr. , Assistant Principal and Ms. , Speech & Language Pathologist. (LEA Ex. 11). Mrs. , the student's mother, did not attend the June 26, 2014 IEP meeting (TR. pg. 39), but attended the October 6, 2014 IEP meeting, but not the follow-on meeting held on October 9, 2014.

Mr. was called by the parents to testify. Mr. is the assistant principal at the student's school. (Tr. pg. 42). Mr. served as the LEA designee at the IEP meetings. (Tr. pg. 119). Among Mr. responsibilities as the LEA representative is to determine the appropriate needs of the student at the IEP meeting. (Tr. pg. 42). Mr. has an endorsement to teach and a master's in education, specializing in administration and supervision in pre-K through 12. (Tr. pg. 43).

At the June 26, 2014 IEP meeting, the parents requested that the student be provided a tablet for his personal use." (P. Ex. 4). The LEA issued a "Prior Notice" (LEA Ex. 12) stating, among other things, that the LEA was not assigning a tablet to the student because the use of a tablet for him was not necessary in order for him to access the curriculum. The use of the tablets was available for the teachers

to use as a resource, but not to be assigned to each student individually. (Tr. pgs. 72, 73, 74 - Testimony of Mr.).

The parents requested that the student be provided with one-on-one instruction in history and science (P. Ex. 4). The parents contend the student performs better in a one-on-one instruction setting and testing or small group instruction (Tr. pg. 32).

The LEA responded that he was getting one-on-one instruction through his accommodations placed in his proposed IEP as far as clarifying and checking for understanding. (Tr. pg. 112). Mr. testified that the student receives one-on-one instruction in his resource room class in fifth period where through "Extra Time-Extra Help" ("ETH") he can request assistance from a teacher or paraprofessional in the classroom. (Tr. pg. 113). This would include extra help from a general education teacher endorsed in math, science, English or social studies as well as time to do his homework and ask questions about his homework. (Tr. pg. 117). Mrs. attended the June 26, 2014 IEP meeting, but an IEP for the student for the 2014-2015 school year was not agreed to.

The proposed June 26, 2014 IEP included a combination of general education and special education services for the student. (LEA Ex. 14; Tr. pg. 122). Also, added to the proposed June 26, 2014 IEP was a note regarding Mrs. the student's English teacher: "Mrs. noted to the team that some strategies she uses for (the student) and the other students in the small group instruction environment is the use of positive reinforcement, enlarged font on assignments, slow pace, and adult proximity. The structure of the class has allowed for demonstration of success." (LEA Ex. 18, pg. 8; Tr. pg. 129-130)

After the June 26, 2014 IEP meeting, on August 4, 2014, the parents notified the LEA that they were only consenting to the student being placed in all general education classes with speech and

language services twice a week 30 minutes each and that the IEP of June 26, 2014 should not be implemented. (LEA Ex. 14)

On September 23, 2014, as a result of mediation, a representative of the LEA and the parent signed an agreement where, among other things, it was agreed that in the student's resource class, he would receive direct assistance in math, science, English and social studies, giving him an opportunity for extra help, extra time to work on assignments, remediation, clarification. (LEA Ex. 16; Tr. pg. 124).

In addition, the Mediation Agreement contained a paragraph 7 that reads as follows:

> "An IEP meeting will be convened on October 6th at 9:30 a.m. at Jr. High. This IEP meeting will incorporate points #2 and 4 in this agreement and any other items which may be determined at the meeting. Upon inclusion of these points into the draft IEP, Mr. agrees to sign the IEP for the 2014-2015 school-year so it may be implemented. Should parties need to adjust this date they can communicate with each other."
>
> Point 2 of the agreement reads as follows"
>
> A laptop will be made available for (the student's) use for school and home. By October 1, 2014, (the student) will receive a tutorial in the use of the laptop and programs. A set of written instructions will be provided. Any downloads for the laptop from teachers will be completed."
>
> Point 4 of the agreement reads as follows"
>
> (The student's) schedule will remain as it is on this date: 2 self contained classes and 2 collaborative classes. His current Independent Living/Resource Block will be customized to provide (the student) with re-teaching opportunities and focus on his 2 collaborative classes. There will be no Independent Living curriculum taught. A review of his progress in the 2 collaborative classes as well as his progress in Extended School Day and whether or not it should be continued will be reviewed after the first semester of 2014-2015 school year on or before Feb. 1, 2015. The Case manager will contact the parent to set up this meeting."

On September 30, 2014 a Meeting Notice was issued by the LEA scheduling an IEP meeting for October 6, 2014. The IEP meeting went forward on October 6, 2014 as scheduled and a proposed IEP was drafted by the LEA for the student for the 9th grade. (LEA Ex. 18). The attendees at this meeting

were: Mrs. , Ms. , Mr. , Ms. and Ms.

Mrs. attended the meeting, but did not sign the participation page because it was not presented to her and the team indicated the meeting was to be continued to October 9, 2014. (Tr. pg. 29). An IEP for the student for the 2014-2015 school-year was discussed, but not agreed to.

As of the October 6, 2014 IEP meeting, the student was in class at JHS for approximately six (6) weeks. (Tr. pg. 239). He was in self-contained (special education) classes for English and his teacher was Ms. , who is endorsed as a general education and special education teacher (Tr. p 83), for science his teacher is Ms. , for math he has Mrs. , for history Mr. , a collaborative class, for health and PE, Mr. and his fifth block resource independent living class is with Mr. and band Mr. (Tr. p 80).

At the October 6, 2014 IEP meeting, the parent requested that a personal tablet be made available for the student. This request was based on a list of supplies required by Ms. the student's Algebra One teacher that stated, among other things: "Supplies - Please replace as necessary Calculator for home use (TI-83)" (P. Ex. 5). The parents took this as a requirement for the student in his math class. However, the LEA representatives disagreed indicating they did not believe such was necessary for the student to access the curriculum and that the accommodations provided in the proposed IEP would meet his needs, such as lower technology items like Post-It notes and highlighters.

Following the October 6, 2014 IEP meeting, the LEA issued a Prior Notice refusing to implement the parent's request for a TI-83 calculator for home use until an assistive technology evaluation has been completed, until then the use of such would not be necessary for a free and appropriate education at the time. The TI-83 calculator would be made available for the student by the

math department at JHS if needed. The LEA would also encourage students to use such during the ETH in the resource room, but if the student needed to take one home, one would be made available for him (Tr. pg. 133, 134). Mr. testified credibly that the team felt a tablet would be a hindrance to the student (Tr. pg. 63).

The parents had also requested that the IEP team meet every 10 days to discuss the student's progress. (P. Ex 3; Tr. pg. 101). The LEA refused to implement the parent's request for an IEP meeting every 10 days and stated progress reports would be sent home every 4 ½ weeks and that the parents have access to the school parent portal for monitoring the student's grades and that teachers could be contacted through email or phone when the parents have questions. (P Ex. 5, page 38). (Tr. 135.). The IEP meeting was continued to October 9, 2014.

For the 2014-2015 school-year, the student participated in special education and general education setting during the school day. He was in a self-contained setting for math, English and Skills for Independent Living. (Tr. pg. 207). A self-contained setting is a setting where students are placed in a small group setting with a limited number of kids and they can get instruction from a classroom teacher and a paraprofessional or special education teacher and a student can address their accommodations such as clarifying directions and simplifying things and use assistive technology is available. (Tr. pg. 207-208; testimony of Ms.). He was in a collaborative setting for science and social studies. A collaborative setting is described as a setting that would include a general education teacher and a special education teacher in the same classroom teaching a subject (Tr. pg. 197). The student participated in the general education setting for health, physical education and vocational classes. (Tr. pg. 197).

Based on his disabilities, at times, the student had difficulty during the 2014-2015 school-year expressing his thoughts when working in groups; however, he has shown success in an environment that provides small group instruction for his core academic classes. He requires the structure of a self-contained class with small group instruction where support and teaching techniques are utilized. (Tr. pg. 207 - Ms.).

At the hearing, Mr. provided credible testimony at the hearing that one-on-one instruction for the student was neither a strength, nor a weakness, but that all student would benefit from one-on-one instruction.(TR. pg. 51). Further Mr. testified that based on his history with the student, and taking time to clarify for him or checking on him to make sure that he is on task and understands what needs to be done, are opportunities for one-on-one instruction. (Tr. pg. 51)

The proposed June 26, 2014 IEP was a Transitional IEP when the student was still in the eighth grade, but being promoted from the Eighth grade to the Ninth grade. The proposed October 6, 2014 IEP was a continuation of the proposed IEP of June 26, 2014. (Tr. pg. 54). One-on-one instruction was placed in the student's IEP as the student's present level of performance as information from the student's teacher's. (Tr. pg.53).

Following the October IEP meetings, on November 18, 2014, an Assistive Technology Considerations/Assessment was conducted pertaining to the student. (LEA Ex. 21). Among other things, the team concluded that for the student, low-tech visual organizers were recommended, that audio playback assistive technology not be used, a laptop was recommended for typing, editing, writing greater than one paragraph and that specific examples be used for each section of tested material. (Tr. p. 163, testimony of Ms.). Another IEP meeting went forward on December 19, 2014 for the purpose of reviewing the Assistive Technology Evaluation. The parent and the LEA representative

agreed that the IEP that was proposed in October 2014 did not require revision to address the student's assistive technology needs; however, the parents requested an Independent Education Evaluation ("IEE"), which request was agreed to by the LEA. (P Ex. 9, p. 15; Tr. p. 164-165; also see LEA Ex. 34). The IEE was conducted by Children's Hospital of Richmond at VCU (P. Ex. 9), but Children's Hospital did not speak to any of the student's teachers. (Tr. p. 165, testimony of Ms.).

On March 3, 2015, a Meeting Notice was sent to the parents scheduling an IEP meeting for March 11, 2015. (LEA Ex. 24). The notice stated the purpose was for IEP Development or Review and for Transition. However, the LEA was informed by email dated March 10, 2015 from the parents that they would not participate in the meeting in view of their request for a Due Process Hearing that was subsequently scheduled for April 27 and 28, 2015.

A Meeting Notice was provided the parents dated March 3, 2015 (LEA Ex. 24 pg. 42) that included a letter summarizing what would be included in the IEP (LEA Ex. 24, pgs. 43-44). The letter stated that the LEA proposed to implement the IEP developed on March 11, 2015 and that it proposed to conduct a comprehensive reevaluation of the student. The Meeting Notice also stated the IEP would provide for a placement in a public day school with direct special education support for math 225 minutes/week; English 225 minutes/week; science 225 minutes/week history 225 minutes/week and study skills 300 minutes/week. The letter also stated the IEP would be prepared to provide the student the services he requires. (LEA Ex. 24, pg. 43).

In addition to the comprehensive services to be provided to the student, the IEP would provide the student with specific accommodations and contained annual goals to address the student's specific weaknesses in the areas of reading, writing, mathematics, communication, social skills and transition and related service of speech-language pathology services. The LEA also proposed to reevaluate the

student and conduct educational, psychological, speech/language and sociocultural evaluations of the student.

The letter stated the LEA considered the option of placement of the student in collaborative classes, but rejected this option because the student requires direct special education support with small group instruction in the structure of a special education classroom. The option of a placement in a private education school was also considered, but rejected because such a placement would be too restrictive for the student. The option of extended school year and extended school day services were also considered but rejected because the LEA concluded, among other reasons, the student had been provided such services in the past but he often could not participate in such service as a result of being too tired from a full school day. The student would also receive direct Postsecondary Goals, Transition Services. (LEA Ex.24, pg. 44).

The March 11, 2015 IEP meeting went forward with the school division representatives participating. At the March 11, 2015 IEP meeting, among other things, an IEP for the 2015-2016 school year was drafted that included scheduling the student on a weekly basis in a Self-Contained Classroom for Language Arts, Math, Science and History. The IEP also provided for the student being in a Self-Contained Resource Room on a weekly basis for Study Skills and Specialized instruction in Reading. With regard to consideration for the "Least Restrictive Environment" ("LRE") the IEP also provided for the student to be placed in a self-contained setting for his core academic areas. Proposed IEP provided that the Study Skills class would consist of a customized block in which the student would be provided help with assignment in math, science, English and direct instruction for 60 minutes weekly from a reading specialist in the resource room and a self-contained English class. The self-contained setting is to provide the student with specialized support and interventions. The student would be provided with

direct instruction within the resource room with the use of his accommodations and teaching strategies. (LEA Ex. 24).

Following the March 11, 2015 IEP meeting, the LEA conducted reevaluations of the student that included a Psychological Assessment conducted by Ms. who testified as an expert in the field of school psychology, assessments and eligibility of students with disabilities. (Tr. pg. 182. ; LEA: Ex. 37). Based on her assessment, Ms. concluded that the student has a very significant learning disability (Tr. pg. 189). His disabilities are in three categories, specific learning disability as his primary disability and secondary disability of speech and language impairment with a tertiary (least impactful) disability in autism. (Tr. pg. 194). Based on her review, Ms. concluded the proposed June 26, 2014 IEP prepared by the LEA was reasonably calculated to allow the student to make progress. (Tr. pg. 199). She further testified that the IEPs developed by the LEA accommodate his needs and that the proposed IEPs provide for extended time to complete work and have indicated time to do testing one-on-one so the student does not have to do it in a group. (Tr. pg. 193).

disagreed with the parent's note of August 4, 2015 in which the parents wanted the student to be in general education classes except for speech and language. The student was found eligible for special education because of his disabilities and needs specialized instruction. (Tr. pg. 202).

observed the student in his self-contained math class and noted that he raised his hand, asked for help and the paraprofessional was able to give him some individual attention (Tr. pg. 208). She also observed him in his collaborative world History classroom that has a regular education teacher and a special education teacher. He did not volunteer to answer any questions individually in the larger setting and he did not answer any question posed by the teacher to the class as a whole (Tr. p. 209).

reviewed the October 2014 IEP and determined and as drafted it was reasonably calculated to allow the student to make progress. (LEA Ex. 18)

Ms. reviewed the LEA's proposed IEP dated March 11, 2015 and noted it proposed that the student be in self-contained classrooms for four subjects: language arts, math science and history with study skills in the resource room and a reading specialist was added from the previous IEPs for two hours a week. Ms. concluded the March 11, 2015 IEP to be appropriate for the student. (Tr. pgs. 211-212). Ms. further noted the parents did not attend the March 11, 2015 IEP meeting and that they had sent the LEA an email dated March 10, 2015 that they would not be attending the meeting because of the a "due process complaint" had been filed. (LEA Ex. 22: Tr. pg. 212).

Ms. testified as an expert in special education (Tr. pg. 231), she has endorsements in specific learning disabilities and mental retardation. (Tr. pg. 229: LEA Ex.38). Ms. is the student's case manager and was his special education teacher in the eighth grade. (Tr. pg. 228). As the student's case manager, Ms. receives progress reports from the student's teachers every four and one half weeks (Tr. pg. 233).

Ms. attended the June 26, 2014 IEP meeting and testified that at the time, the services to be provided the student included having him in a collaborative setting. (Tr. pg. 234). The LEA IEP representatives also discussed a transition for the student in view of his age to learn what his interest were. (Tr. pg. 236).

Ms. recalled seeing the parent's August 4, 2014 note to the LEA indicating that the parents were requesting the student be in general education classes with speech services twice a week for 30 minutes. (LEA Ex. 14). Ms. testified that general education classes would not service the student's needs. (Tr. pg. 238).

Ms. was also in attendance at the October 6 and October 9, 2014 IEP meetings. She testified that an IEP was developed based on the June 26, 2014 IEP and the LEA team felt the IEP would meet the student's needs (Tr. pg. 239). Ms. testified the main difference between the June 26, 2014 IEP and the October 2014 IEP was that the LEA representatives decided to keep the two self-contained classes in math and English and the student would be in a collaborative setting for social studies and science. (Tr. pg. 243).

Ms. also attended an IEP meeting on March 11, 2015 at which an IEP was drafted by the LEA representatives (Tr. pg. 244; LEA Ex. 24). The parents were not in attendance at this meeting. (Tr. pg. 244). Ms. testified that after talking with the student's teachers it was determined that the student does better in his self-contained classes, which was a change from the October 2014 IEP. (Tr. pg. 245).The March 11, 2015 IEP also recognized that the student benefits from small group instruction that are the self-contained classes. (Tr. pg. 264). Ms. also testified that the March 11, 2015 IEP provides for "reteaching" in the student's resource class. Ms. went on to describe the setting to be provided by the March 11, 2015 IEP: "The environment he is being provided, small group instruction and reteaching, are offered within that setting." (Tr. pg. 266). When asked about the IEP not including the reference that the student "dramatically improves when given individual and small group attention. Ms. testified that the small group setting that is included in the March 11, 2015 IEP allows for the student to have individual attention and the student's strengths or weaknesses can be addressed. (Tr. pg. 272). She further testified that in the self-contained classes the student would benefit from the small group setting or one-on-one instruction. (Tr. pg. 273).

The hearing officer finds the testimonies of the witnesses who testified at the hearing to be credible, this includes the student, Mrs. , Mr. , Ms. , Ms. , Ms. and Ms. ; however, in view of the fact that Ms. and Ms. testified as experts in their

respective fields. greater weight is given to their testimonies about the needs of the student and the appropriateness of the March 11, 2015 IEP.

CONCLUSION:

The student has been receiving special education services based on a June 2. 2013 IEP prepared prior to him being promoted to JHS. After four (4) attempts to prepare an appropriate IEP for him providing for, among other things. transitional services, the parties were not able to agree on an IEP. In fact, following the June 26, 2014 IEP meeting, the parents stated their request for the student to be placed in general education. except for speech and language services, notwithstanding the fact that the student's disabilities were such that he had been determined eligible for special education services as a result of Specific Learning Disabilities, Speech and Language Impairment and Autism. Based on the evidence, the June 2. 2013 "Stay-Put" IEP is not appropriate.

The parents contend the IEPs proposed by the LEA for the student were not appropriate because, among other things, they did not provide for one-on-one instruction and did not recognize that the student "dramatically" improved with such; the parents contend these to be "strengths" of the student. Based on the evidence however, although not specifically called "one-on-one" instruction, the student testified that he had been receiving "direct" instruction from his resource room teacher and based on the testimony of Mr. , Ms. and Ms. . the resource room is designed to allow students to have access to a teacher to help them with their assignments on an individual basis. The 5th-Period resource room has been made available for the student and based on the testimony of the witnesses, the student has participated in this resource room and in fact functions better in a small group setting: consequently, the student has been receiving one-on-one instruction and the proposed IEPs have been drafted to accommodate this need.

On March 11, 2015 the LEA members of the IEP team drafted an IEP that includes the one-on-one services the parents had sought due to the fact the March 11, 2015 IEP places the student in self-contained settings for his core subject areas and he will continue to receive direct services in the resource room.

The self-contained setting is a small group setting with a special education teacher and another teacher or paraprofessional; consequently, the student will be able to have assistance with his assignments on an individual basis. In addition, the student has available to him what is called "ETH" which is designed to provide the student with extra help and time to do his work; accordingly, the student's strengths have not been overlooked by the LEA.

With regard to the student having a tablet for home use, based on the evidence, although the LEA does not assign such to individual students, one can be made available to the student through the math department if necessary; however, it is also clear that the student will have access to such in the resource room.

Based on the Record, the IEP developed for the Student on March 11, 2015 is reasonably calculated to provide educational benefit to the Student; it complies with the requirements of the IDEA.

The parents requested the student have Extended School Day/Extended School year in the Complaint; however, based on the testimony of Ms. , (Tr. pg. 147) the Extended Day service had been provided to him previously, but was not successful because the student was tired at the end of the school day. With regard to the Extended School year proposal, there was no evidence presented at the hearing regarding this type of service or how this would be of benefit to the student.

With regard to a private placement at the , there was no evidence presented at the hearing concerning this as a placement and also based on the evidence, the placement offered by the

LEA at JHS is an appropriate placement for the student and is well equipped to provide appropriate educational and related services to the student.

The hearing officer notes the parents have been fully engaged in trying to ensure the student receives the services he needs to be successful. They apparently have helped him in identifying a career path and are working with him to achieve his goal. Although the IDEA is a difficult law to understand, even for those who deal with it on a day-to-day basis, it is encouraging to see parents who have worked to attempt to understand the various aspects of the IDEA in order to not only assist the student, but to also present a credible argument about their concerns for him and present a reasonable case at a Due Process Hearing. The hearing officer encourages the parents to continue with their understanding the IDEA, but also, work with the LEA to ensure the student benefits fully from what can be made available to him. It is easy to see the parents have endeavored to understand the concepts of the IDEA as much as possible as they may relate to their son and his disabilities and help to prepare him for the future.

The Record shows that the LEA tried on several occasions to design a program for the Student, but reasonable minds will often disagree. In any event, based upon all of the evidence presented, the applicable statutes, regulations and case law and the arguments presented to the hearing officer, it is concluded the IEP of March 11, 2015 represents an appropriate educational program for the student. In Board of Education v. Rowley, 458 U.S. 176, 188 (1982), the United States Supreme Court concluded that the "free appropriate public education" requirement is satisfied by "providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction: the March 11, 2015 IEP satisfies this requirement.

DECISION

IT IS HEREBY ORDERED as follows:

The LEA's IEP dated March 11, 2015 is reasonably calculated to confer educational benefit to the student and the accommodations set forth therein, including the availability of assistive technology are appropriate for enabling the student to benefit from the educational opportunities provided to him. There was no evidence that the student would benefit from Extended School Day/Extended School year; thus such is not ordered; accordingly, the LEA is authorized to implement the IEP. Furthermore, the placement at JHS is an appropriate placement for the student and a placement at the is not an appropriate placement.

RIGHT TO APPEAL

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.

David R. Smith
Hearing officer

5-20-15
Date

ATTACHMENT A – PARENTS' EXHIBITS

Virgina Special Education

v PS

Howard Exhibit list

Exhibit 1	Complaint	10/6/14
Exhibit 2	Class schedule	2014-2015
Exhibit 3	Oct IEP Draft	2014
Exhibit 4	June 26 IEP Draft	2014
Exhibit 5	Algebra	2014
Exhibit 6	Assistance	5 + years
Exhibit 7	June IEP	2013
Exhibit 8	Re-Eval All	2013
Exhibit 9	Sch & IEE At report	2014-15
Exhibit 10	Tutoring	2014-15
Exhibit 11	Ind. Living	2014-15
Exhibit 12	Part. Page. resolution	2015

ATTACHMENT B – LEA EXHIBITS

EXHIBITS SUBMITTED ON BEHALF OF THE SCHOOL BOARD FOR THE OF

DUE PROCESS HEARING
April 27-28, 2015

TAB	DATE	Document Description
1.	2/7/2013	Vision and Hearing Screening for Evaluation of Special Education Services
2.	2/13/2013	Educational Evaluation Report
3.	2/27/2013	Observation Form
4.	3/1/2013	Social Development Study Reevaluation
5.	3/12/2013	Psychological Evaluation
6.	3/2013	Occupational Therapy Evaluation
7.	4/8/2013	Eligibility Summary
8.	4/8/2013	Prior Notice
9.	6/4/2013	IEP
10.	10/3/2013	Computer Use Form/Assumption of Responsibility
11.	6/26/2014	IEP
12.	6/26/2014	Prior Notice
13.	6/30/2014	Prior Notice
14.	8/4/2014	Refusal of Consent
15.	8/18/2014	Prior Notice
16.	9/23/2014	Mediation Agreement

17.	10/7/2014	Occupational Therapy Evaluation
18.	10/9/2014	IEP
19.	10/10/2014	Prior Notice
20.	10/15/2014	Letter from to re Mediation Agreement
21.	11/18/2014	Assistive Technology Assessment
22.	3/10/2015	Email regarding Parents' Refusal to Participate in IEP Meeting
23.	3/11/2015	Email regarding Parents' Refusal to Participate in IEP Meeting
24.	3/11/2015	IEP
25.	3/20/2015	Parental Consent – Refusal to Consent to Evaluation
26.	3/20/2015	Parental Consent – Refusal to Consent to IEP
27.	3/26/2015	Parental Consent to Evaluate
28.	2014-2015	Progress Reports
29.	2006-2014	Student Enrollment History
30.	4/16/2015	Student Transcript
31.	4/3/2015	Social Developmental Study Update
32.	4/13/2015	Educational Evaluation
33.	4/14/2015	Psychological Assessment
34.	4/14/2015	Letter re: private evaluation report
35.	4/15/2015	Speech-Language Evaluation
36.	Resume	, Director of Special Education
37.	Resume	, School Psychologist
38.	Resume	
39.	Resume	, Speech-Language Pathologist
40.	Resume	