

-VIRGINIA:

DUE PROCESS HEARING

| | |
|----------------|---|
| Student, | : |
| | : |
| v. | : |
| | : |
| Public Schools | : |

DECISION

Statement of the Case

The Request for Due Process Hearing dated November 16, 2009, was filed on behalf of () by his parents Mr. and Mrs. () with the Public Schools (PS). By letter dated November 20, 2009, George C. Towner, Jr., Esq., was appointed by the Supreme Court of Virginia as the Hearing Officer in this matter. By letter and email dated November 23, 2009, the Hearing Officer scheduled a conference call on November 25th to set a date for hearing. On November 25th a conference call was held among the parties, counsel, and the Hearing Officer at which time the date of January 14, 2010, was set for hearing, December 18, 2009 was set for a Pre-Hearing Conference call, and January 30, 2010 was determined as the date by which a decision would be due. On November 30, 2009, PS filed its response to the request for a due process hearing. On December 7th the date of the Pre-Hearing Conference was changed to December 16th. On December 16th the Pre-Hearing Conference was held involving the parties and counsel.

At the Pre-Hearing Conference it was noted that the subject student, _____, is the brother of _____, a student for whom a prior due process hearing was conducted among the same parties at which the present Hearing Officer presided. The Hearing Officer inquired whether the parents or either of them or the LEA attorney objected to him serving in this case. The parents and the LEA attorney expressed their agreement to the undersigned serving as Hearing Officer, notwithstanding his having done so in the case of the brother, _____.

The Hearing Officer noted that he had within the statutory time line scheduled the hearing date for January 14, 2010, and established the location for the hearing at the _____ in _____, Virginia. In addition, the Hearing Officer had by letter dated November 23rd set forth his guidance with respect to the procedural aspects of the due process hearing. Counsel for the PS, Mr. John Cafferky, advised that the parties had not reached agreement during the mediation effort. The parents advised in response to the Hearing Officer's inquiry that they desired to have an open hearing.

The parties clarified and established the issues which the Hearing Officer was being asked to decide. The parents asserted that (1) PS was abusing _____ and in fact all of their children; (2) PS was not providing _____ with the accommodation required by his disability; (3) PS had denied Section 504 services to _____ when it was clearly understood that _____ had both a severe heart condition from birth and cerebral palsy, in addition to vision, social and emotional issues for which no accommodations had been provided by PS; (4) PS was retaliating against this student and against their other children as well, and that the treatment by PS was worsening the disabilities of this

child; (5) PS just didn't want their disabled children in the PS; and (6) the parents were asking that the Hearing Officer order their children be placed by a private placement at PS expense outside the Public School system.

The Hearing Officer set January 7th as the date to exchange witness lists and documents. He suggested that the parties not duplicate documents and that they work together to avoid doing so, and they agreed to cooperate.

By email dated January 6th the parties requested an extension of the time within which to file their lists of witnesses and their joint set of exhibits from January 6th to January 7th; an extension to January 8th was granted by the Hearing Officer.

On January 8th the parents and PS filed their witness lists. On January 9th the Hearing Officer sent an email to the parents to the effect that their list of witnesses was also to include a statement as to the scope of their anticipated testimony, and the parents were directed to file that information by Monday January 11th. On January 11th the parents filed a revised witness list complying with Hearing Officer's direction.

By email dated January 12th counsel for the PS, Mr. Cafferky, raised objections to the large number of witnesses cited by the parents and requested that action be taken to modify the list or to have the Hearing Officer arrange for appropriate scheduling. By email also dated January 12th the Hearing Officer directed that there be a second Pre-Hearing Conference call that same day to resolve the issues with regard to witnesses. A second Pre-Hearing Conference call was held to deal with the issue of the large number of witnesses to be called by the parents. After discussion with the parties, it appeared that many of the parents' witnesses were to be called to testify in rebuttal to testimony the

parents anticipated would be presented by PS. The parents agreed to submit a list with fewer primary witnesses with the understanding that other witnesses on the list could be called as rebuttal witnesses if required. The parents complied with this direction.

The hearing commenced as scheduled on January 14th. At that time the Hearing Officer submitted to the parties and counsel his Pre-Hearing Conference Report as well as his Pre-Hearing Conference Report No. 2. Additional full days of testimony were held on January 15th and January 22nd at which time the hearing was concluded.

Statement of Facts

The student was born February 25, and at the time of the hearing was years old. He is the oldest of three children. was adopted by the when he was two years of age. 's medical history includes being born prematurely and suffering from an underdeveloped heart valve. His eyesight was also underdeveloped. In 1995 he was involved in a car accident. The Social-Cultural Report reflected that there was damage done to 's brain in the area that is responsible for speech. The PS Sociocultural Assessment notes that was diagnosed with cerebral palsy [Ex. 51].

was initially found to be eligible for special education services with the classification of multiple disabilities. had attended five different elementary schools and experienced some behavioral problems. Eventually the parents withdrew in February of 2000 from PS schools and began home schooling. 's parents provided tutors to assist with 's education. attended a private school

for the 7th and 8th grade. continued to be home schooled until the summer of 2009 when he applied for admission S.

Prior to his application for admission he had been under the care of , PhD, a clinical psychologist and , OD. initially came under the care of Dr. in 2002. The concerns reported to Dr. by Mrs. were excessive fatigue during near-point tasks such as reading and writing.

also reported that it took him above average time to complete reading assignments because he had to re-read passages. Dr. diagnosed 's condition as follows: (1) "high esophoria /unstable fusion/suppression". These deficiencies in eye-teaming cause, according to Dr. , to use excess effort to take in and process visual information. The doctor also concluded that had (2) "accommodation dysfunction", which reduced his ability to focus the eyes rapidly and automatically. Finally, exhibited symptoms of (3) "ocular motor dysfunction" with lack of control of eye movements when reading. Dr. recommended certain accommodations for his school attendance and test taking environment as follows:

1. Allow any needed breaks when doing near-centered tasks.
2. Allow extra time for tests and assignments.
3. Limit the amount of copying from the board for . If possible, place a copy of board work directly on his desk to reduce the fixation changes.
4. Permit work to be done orally when possible.
5. Place in smaller classroom sizes with a low student-teacher ratio where appropriate.

6. Glasses have been prescribed with a bifocal addition for near.

Dr. : in his report of November 19, 2008 [Ex. 15] concluded that:

is an adolescent with notable cognitive problems. He has problems with short-term working verbal memory, executive functioning, and general efficiency of processing information. He has numerous cognitive strengths but has difficulty with more complex and abstract functions. He processes information in a very slow and deliberate style and has trouble completing tasks within normal time constraints. He is quite slow in forming and developing more abstract concepts in his reading and when listening in lecture style situations. However with redundancy in the information and a more deliberate pace of presentation he seems to do well. He does not appear to have any notable problems with attentional mechanisms and indeed can be quite perseverant when faced with challenging tasks.

He appears to qualify for special education as a learning disabled student and perhaps as an OHI student, particularly in view of some of his motor function problems. He clearly needs IEP goals addressing needs in social areas, verbal reasoning, organizational functioning, and attentional areas. He would benefit from talking books, opportunity to access notes of his classmates, smaller classroom situations, team taught classes, relaxed time constraints – particularly on tests, opportunity for alternative testing formats, and close monitoring by special education staff.

would benefit from learning to use tape recorders, voice recognition software, keyboards, and related assistive technology to help him with all aspects of his learning. has some modest fine motor problems undoubtedly related to Cerebral Palsy.

appears intellectually and emotionally capable of handling a high school experience, although great care must be taken in class selection. Teaching format and classroom atmosphere will be extremely important in deciding how well he can adjust to being back in a public school setting.

Armed with these reports, the presented to PS for admission to School. On July 16, 2009, and his parents met with Mr. , Principal of School, and presented to him the reports of Dr. and Dr. . After that meeting the local screening committee was convened to meet on August 6th at the . Appropriate notice was given to the on July 30th.

At the Screening Committee meeting on August 6th it was agreed that an initial evaluation should be undertaken to determine if had a disability and required special education services. The areas to be assessed were psychological, socio-cultural, educational, hearing, and functional vision. The various tests were undertaken involving a variety of PS staff. The psychological report was prepared by Ms. , a school psychologist at School. The socio-cultural report was prepared by , a social worker at School. The educational report was prepared by , the Exceptional Education Teacher at School.

In the weeks and months following, the and various School and PS staff exchanged a significant number of emails. The parties submitted in evidence to the Hearing Officer a total of 697 emails, including duplicates, that were exchanged in the five months between July 22, 2009, and December 17, 2009. Sixty-nine of these were from the to school staff; 49 were from school staff to the , and 215 were from staff to staff.

The parents on September 8, 2009 requested that there be a “temporary 504” designation for so that there could be accommodations to deal with his disabilities.

commenced school on September 8, 2009. He was initially enrolled with seven courses: Journalism, Geometry, Health & PE, Japanese, Chemistry, English XII, and US & Virginia Government [Ex. 28]. The school staff concluded from a review of the materials that the had submitted on behalf of that he would qualify as a grade [Ex. 39]. In order to confirm that decision, they arranged for to take the Virginia Standard of Learning (SOL) assessments which were scheduled to be held during the week of September 21 thru September 25, dates that were prescribed by the Virginia Department of Education. satisfactorily completed the grade SOLs for Earth Science, English Reading, Virginia & US History, World History & Geography 1500 AD to the Present; World History & Geography to 1500 AD. In addition, on the final day of testing he retook the tests in Algebra I and Biology and successfully passed those. This meant that the only test that he did not successfully pass was Algebra II, which was not required for graduation. The English Writing test was not given at that time and was scheduled to be given to him in January or at a later times during the school year [Ex 27].

As the various elements of the initial screening were completed, Ms. , the school psychologist, and other School and PS staff maintained an almost constant contact with Mrs. . Mrs. was writing emails, trying to bring to the attention of school staff the impact she believed that 's disabilities would have on his ability to pursue his courses. Eventually, on October 16, 2009, a preliminary eligibility meeting was held only to find that not all the parties were able to participate fully, with the result that the meeting was postponed to October 29th. On October 19th Mr.

and Mrs. and met with Principal and Vice Principal to discuss their concerns. Subsequently emails were exchanged between the and school staff to the effect that the had determined that they did not wish special education services for . This is evidenced by emails dated October 20th and 21st. At the screening committee meeting on the 29th the committee considered emotional disability, specific learning disability, and multiple disabilities as the possible basis for to receive special education services. The eligibility report reflects that the committee determined that no special education services were required for . However, the committee also agreed that should be evaluated under Section 504 of the Rehabilitation Act of 1973 to determine whether there were accommodations that could be made to assist in his education. The at that time requested the screening committee to put in place a Section 504 plan for , and a referral was made. Subsequently on November 11th a screening committee meeting was held and a 504 plan was developed under the leadership of Mr. . Present at the 504 screening meeting, in addition to and his parents and Mr. were , the school counselor; , his English teacher; , his math teacher; Mrs. , his Japanese teacher; and Mr. , his government teacher. The 504 plan developed by Mr. itemized four accommodations for . These are spelled out in Exhibit 13, Part A. Mr. testified that he basically structured 's accommodations to meet the accommodations suggested by Dr. in his reports.

Over the course of the period from the opening of school in September 2009 to December 2009 the record shows that a variety of issues developed between the family and the school system with respect to [redacted]'s education. A number of events occurred which were both upsetting to the [redacted] according to the emails to and from the [redacted], and concerning to the school staff that observed them. Among the incidents that were noted early on were [redacted]'s failure to eat his meals in the cafeteria and allegedly, on one occasion, eating a meal in the restroom; incidents where [redacted] became agitated and angry and had to leave the classroom; and an incident where his parents believe that he was disparaged by one of his teachers in the use of a computer keyboard with the teacher failing to recognize that [redacted] had motor difficulties due to his cerebral palsy condition.

It was also noted that [redacted] was drawing pictures of weapons, which was reported to be disturbing to students sitting adjacent to him. The student reported this action to the teacher, which eventually led certain of the faculty to raise the issue of whether [redacted] was a threat and whether a threat assessment should be done. Eventually this was examined by Ms. [redacted], who was subsequently advised by her supervisor, Ms. [redacted]

[redacted], that [redacted]'s actions in drawing these weapons did not qualify as a threat which required a threat assessment.

[redacted]'s parents also expressed concern that, during the time [redacted] was taking the SOL exams, his teachers seemed to be unaware that he was taking these exams and treated him as being either tardy or absent. The teachers also continued to require [redacted] to take the tests and participate in his regular courses.

As all of these events took place and the _____ became aware of them, they became more agitated and discouraged by what they viewed as a lack of support by PS in providing accommodation to _____ and a failure on the part of PS to recognize the impact that his disabilities would have on him basically from a social and an emotional status. Eventually on November 16th the parents filed the request for a Due Process Hearing that included assertions that the school system was abusing _____, that it was not providing the accommodations required by his disability, and that it was retaliating against _____ and making his disabilities worse.

As part of the discovery aspect for this hearing, as noted above, the school system made available hundreds of email communications involving _____, as well as producing a variety of documents illustrating of his educational process. Of primary concern to the _____ were changes that had been made in the psychological evaluation and the social-cultural assessment from the versions that had been provided to them by staff members and the versions that eventually were submitted by PS as the final documents that were part of the eligibility committee meetings, and the _____ indicated that they felt they had been misled by the changing of the text of their reports used by the eligibility committee.

1. Was _____ Eligible for Special Education Services?

In the Request for a Hearing the _____ presented the following requests to the Hearing Officer:

1. Complete a proper 504 Plan for _____ listing all medical disabilities with the same 504 committee members in the 11/11/09 meeting.

2. Hold a proper and appropriate Eligibility meeting for IDEA services.
3. PS Honoring and recognizing all 's disabilities.
4. Remove all stigma and discriminating acts towards
5. Put in place a monitoring agency to protect from retaliatory actions.
6. Have Virginia Department of Education investigate all the allegations.
7. Stop all discriminating acts towards
8. Have PS implement the 504 as required by Law.
9. Reconvene the present 504 committee members at the 11/11/09 meeting.
10. Allow all parents and teachers recommendations for accommodations for
11. Have 's complete file at 504 Plan meeting.
10. Properly accommodate for his medical disabilities.
12. Bring in proper organizations and agencies to assist PS into properly understands and properly accommodate 's disabilities to end all stigma and discrimination.

Following the Pre-Hearing Conference the Hearing Officer reported without objection that the issues at the hearing were

- (1) PS is abusing and in fact all of their children,
- (2) PS is not providing with the accommodation required by his disability,
- (3) PS denied Section 504 services to when it was clearly understood that had both a severe heart condition from birth and cerebral palsy, in addition to vision, social and emotional issues for which no accommodations had been provided by PS,
- (4) PS was retaliating against this student and against their other children as well, and that the treatment by PS was worsening the disabilities of this child
- (5) PS just doesn't want their disabled children in the PS, and

(6) the parents are asking that the hearing officer order their children be placed by a private placement PS expense outside the Public School system

While the request for special education services was not mentioned during the Pre-Hearing Conference, at the hearing the reasserted their claim for such services for .

The local screening committee which met at on August 6, 2009, had recommended that evaluation for be undertaken. That was accomplished and initially the screening committee was scheduled to meet on October 16th. However, at the time of the meeting there were some difficulties among the participants and in addition some of the participants had to leave early so the meeting was rescheduled for October the 29th.

The following Monday, October 19th the met with the School Principal, and the Assistant Principal . During or following that meeting apparently the decision was made by the that would not receive special education services but would proceed to securing accommodations under Section 504 of the Rehabilitation Act of 1973. Evidence of this decision first appeared in an email dated October 20th from the to Mr. , Special Education Chair at School.

“We are informing you again as we did on the phone that ’s educational needs were discussed in yesterday's meeting with Mr. and Ms. We informed both Mr. and Mrs. DO NOT want special educational service for at . We all agreed in yesterday's meeting will be needing a 504 Plan for his ADA

disabilities closing this issue of [redacted]'s educational needs.”
[Ex. 48, p. 31]

Subsequently in another email to Mr. [redacted], the Sec 504 contact at [redacted] School, the [redacted] requested that he assist them in getting the 504 plan put in place for [redacted]. The email goes on to say

“ [redacted] will not be receiving special education services and if you need any more information on this you should contact Mr. [redacted] and Mrs. [redacted].” [Ex. 48, p.34].

Confirming this position, we note that on page 2 of the Special Education Eligibility report [Ex.12] the box “I give consent for the change in eligibility determination from emotional disability / specific learning disability to none” was signed by [redacted]. It was also signed by [redacted]. Finally, during the course of [redacted]'s testimony when asked by the Hearing Officer whether he understood that he would not be receiving special education services he replied that he did understand [Tr. p 1029].

The above evidence together with the request for a Sec 504 meeting makes it clear that the [redacted] had withdrawn their initial request for special education services and the Hearing Officer so finds.

However, considering the evidence on this question in the best light for the parents, the Hearing Officer also concludes that in any event the evidence presented did not justify providing [redacted] with special education services.

IDEA is designed to provide special education services to a student with a disability if those services are required for the student to achieve some educational

benefit. One of the critical questions in making the determination as to whether services are required is the student's achievement level. Thus a paraplegic student is clearly disabled. But if that paraplegic student is able to secure straight A's in his or her courses he or she does not need special education services. What the paraplegic student does need is the kind of accommodations called for under Section 504, i.e. accommodations to provide him or her the ability to access the classroom, etc.

When the eligibility group convened on October 29th, included among the participants were both parents and _____, together with _____, the Assistant Principal; _____, who was sitting in for _____, the psychologist; _____, the English Teacher; _____, the school social worker; together with _____, the support person, and Mr. _____, the Special Education Department Chair. The report indicated that three areas of disability were considered: specific learning disability, emotional disability, and multiple disabilities. With respect to each of the these conditions, the committee did conclude that _____ did not need specialized instruction to progress in school. The committee did indicate, however, that he would require some level of accommodation because of these disabilities.

It is clear from the evidence presented to the Hearing Officer that special education services were not required. This is outlined best by the testimony of _____ who was a senior psychologist in the public school system. In her testimony she clarified the committee's position on this subject and she testified as follows:

Q. [by Mr. Cafferky] Now, that was the decision of the committee. Were you in agreement with the decision of the Committee?

A. [by Ms. ...] Yes.

Q. Can you tell us briefly why?

A. Well, there were some issues that had been identified and that we did note. However, in looking at the complete picture of as a student, one of the things that we needed to state or have clear was that the difficulties that he was having were having a significant impact on his ability to progress, to participate in his education and progress successfully. And so –

Q. When you looked at that, what did you see, at least as of that point?

A. Well, at that point we certainly had historical data that said he had had some difficulties. He still had some evidence. But he was in a transition process. It was clear in talking with him, his family, and the rest of the committee at the table that the feeling was not that these were going to be a deterrent to his continued progress.

And so noted kind of the things that we saw, but said that he didn't need specialized instruction or supports at that point, in terms of the, being identified as a student with a specific emotional or learning disability.

Q. Assuming, Doctor, for the purposes of this question that since the time of this eligibility, has continued to participate there in the grade at School in regular education classes, and is achieving at this point all passing grades, including A's, B's, and C's, would that – what effect would that have on your opinion about whether the eligibility committee decision in October was correct or not?

A. I'd say it was bearing out our thoughts and decision. [Tr. p. 822-824]

As noted above the key test in determining whether special education services are required is how the disabilities affect the achievement of the student. The record is clear, considering _____'s grades, even with his initial difficulties, that he was receiving educational benefit from his education at _____ and indeed was doing quite well with a mixture of As, Bs, and Cs in his two report statements immediately prior to the hearing.

2. Did the actions of FCPS Discriminate Against _____

In Violation Of Section 504?

The Regulations relating to the provisions of Section 504 of the Rehabilitation Act provide as follows

“No otherwise qualified individual with a disability . . . Shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 29 USC § 794

“Discrimination is the exclusion from participation in, the denial of benefits of, any program or activity receiving or benefiting from federal financial assistance. Students may not be denied participation in or be denied benefit from services that are afforded nondisabled students.” 34 CFR \ 104.4

The requests contained in Request for Hearing together with issues spelled out the Pre-Hearing Conference report and taken together with the examination of witnesses during the course of the hearing by Mrs. _____ and through the introduction of the hundreds of emails between the parties involved, when summarized, are clearly an attempt to show that the school system discriminated against _____ in violation of Section 504.

It is clear from the evidence, and the court can take judicial notice of the prior proceeding, that there had been significant stress between the _____ and the school system in the past prior to _____'s enrollment at _____ School. _____ in his testimony related that his relationship with his teachers had been influenced by his experiences in elementary school. [Tr. p994] In addition the _____, as a result of the actions or lack of action by _____ PS staff during the early months of school as augmented through their discovery of _____ PS emails, became extremely concerned with the performance of the school system staff to such an extent that Mrs. _____ categorized them as "incompetent". [Tr. p.1068] However, in reviewing this evidence as to the actions of _____, his parents and _____ PS staff, the context of what was occurring in September through December 2009 has to be kept in mind. What we had is the introduction of a year old teenager into an entirely new school model than he had never participated in during his school career. While that introduction was at his own choice and indeed the record reflects with some level of eagerness, nonetheless the record is also clear that _____ was a shy reserved child, and he had had prior difficulties with the school system when he was much younger. The record reflects that concern with his teachers and school staff had carried over and constituted the environment within which _____ worked at school. In addition, the other elements of a suburban education program served to impinge on _____ and deprived him of the freedom he had experienced in his earlier education. These elements included the presence of 1800 fellow students at _____ School with the crowded corridors and constant class change. This combined with _____'s suspicion of teachers and the cafeteria phobia that apparently encompassed him – all of

these factors served to undermine a smooth transition into the life of a school .
Fortunately for , his determination and that of his parents as well as
accommodations that were eventually made by PS staff enabled him to overcome these
challenges. In particular the fact that 's parents had arranged for him to receive
virtually daily tutoring at the C-2 program proved extremely helpful in enabling to
overcome his vision difficulties and his personal concerns about his school environment.

That it was stressful to there can be no doubt as is evidenced by the fact that
he was required to take ten Virginia SOL exams within thirteen days of entering school
on a two-a-day basis. However, equally impressive is the fact that was able to pass
all but one satisfactorily which was something that he was proud of and the school system
was proud of as well. The other personal issues such as the alleged drawing of figures of
weapons on doodle pads, the sudden outbursts of anger accompanied by the need to step
outside of the room, and in particular the episode with Mr. with his comments
about 's computer typing are truly attributable to (1) the sensitivity that this young
man had in moving into an entirely new environment and (2) the fact that PS teachers
and staff being used to the hustle and bustle of a large suburban school were not as
attuned to 's needs and personality as we all might have hoped that they would be.
Unfortunately 's prior social and school experience had, despite his best efforts, not
given him the experience in how to deal with these stressful situations. What an adult or
a student who had grown up the system might have done under the circumstances was a
process that was unknown or at least very new to . As the evidence reflected, this led
to what were truly unnecessary confrontations or perceived confrontations with school

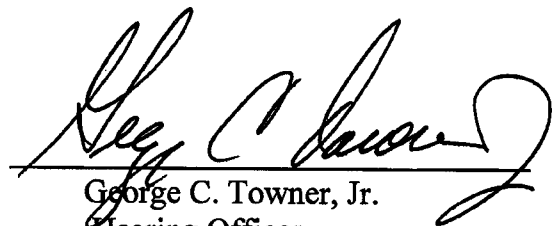
staff. In addition, his parents' great concern over his progress served to treat these stresses as having an even greater importance than they perhaps deserved. The parents went to great lengths, as the hundreds of emails clearly illustrate, to be sure that school staff was aware of the stresses that was incurring and to try to secure the support of staff as continued to move forward with his education. In this they were for the most part successful. It does appear, however, from the record that there were clearly glitches along the way as messages apparently were not received or at least not acted upon by staff. In addition staff clearly were concerned, as they should have been, by some of 's responses and actions. In his testimony denied that some of these actions had in fact taken place. But whether or not they did in fact take place, it is clear from the evidence that the responses of PS staff did not constitute any organized attempt to discriminate or even an individualized attempt to discriminate against .

Indeed, in his testimony indicated that (1) when it was required he could have good one-on-one dealings with his teachers and (2) he admitted that he had not really tried very hard to develop a relationship with his teachers that would perhaps have mitigated some of his stress in dealing with them. The history of his elementary school difficulties with his teachers clearly continues to this day, and is reflected in 's statement that he simply wants some impartial person at the school to watch him so that he could be protected from the teachers mislabeling him.[Tr. p. 994] In addition, the nature of the proceeding such as a due process hearing and the gathering of emails that one might not have anticipated would have been exchanged, has contributed to these feelings of anxiety, discouragement, stress, and annoyance among the parties on both sides. As was once

stated by a witness in a prior trial involving the Hearing Officer, when asked "Are you still friends with the Mr. (the person who was suing him), he replied "I'm not friends with anybody that sues me." The extensive discovery in this case clearly contributed to the mistrust that exists between , the family, and the school system. Whether that can be overcome is not clear, but it is certain that what must occur is that must continue to put out the effort that he has been putting out with a view that he can achieve his goals and in the end walk across the stage to get his diploma which everyone wants him to do.

The provisions of Regulations quoted above show that for there to be discrimination would have to be treated differently than other students who did not have a disability. There was no testimony that was denied a benefit or training that was available to other students. It is accordingly the Hearing Officer's view that has not been discriminated against by PS in violation of Section 504. Instead the Hearing Officer finds that the record shows that has grown up in his attempt to move forward in an environment that was new and challenging, and that for that reason no further action need be taken, and we await his graduation from School with pleasure.

Dated : January 30, 2010


George C. Towner, Jr.
Hearing Officer

APPEAL NOTICE

The parties are hereby notified pursuant to 8 VAC 20-81-210.T that a decision by the special education hearing officer in any hearing, including an expedited hearing is final and binding unless the decision is appealed by a party in a state circuit court within 180 days of the issuance of the decision, or in a federal district court within 90 days of the issuance of the decision.

