

08-022

Received

OCT 21 2007

Dispute Resolution &  
Administrative Services

**VIRGINIA DEPARTMENT OF EDUCATION**

**DUE PROCESS HEARING**

**REVISED DECISION**

**SCHOOL DIVISION: PUBLIC SCHOOLS**  
**LEA COUNSEL: WENDELL M. WALLER, ESQUIRE**  
**LEA REPRESENTATIVE: DR.**  
**NAME OF PARENT:**  
**NAME OF STEP-PARENT:**  
**NAME OF CHILD/STUDENT:**  
**NAME OF COUNSEL: NONE**  
**PARTY INITIATING HEARING: PUBLIC SCHOOLS**  
**VDOE REVIEWER: REGINALD B. FRAZIER, SR., ESQUIRE**  
**HEARING OFFICER: SARAH SMITH FREEMAN, ESQUIRE**

IN RE:

PUBLIC SCHOOLS

v.

on behalf of her child,

**INTRODUCTION**

This matter came for hearing on October 8 & 9, 2007 at The Pruden Center for Industry and Technology, Virginia, before a duly appointed hearing officer. Present in person, in addition to the hearing officer and court reporter were the mother ("the Parent") and step-father, counsel for the local educational agency ("the LEA"), the LEA Representative and the VDOE Reviewer.

The LEA requested this due process hearing in writing on August 29, 2007. The LEA alleges that (1) the school division's offer of compensatory services provides a free, appropriate public education to student and (2) that the mother's repeated failure to send this child to school has denied student a free, appropriate public education.

Parent alleges that the LEA has failed to provide her daughter, a special education student ("Student"), an adequate, timely IEP; that the LEA failed to provide an acceptable setting to this child by segregating her from her peers at school; and that the LEA failed to prevent its personnel from harassing this child in Student's pursuit of her right to a free, appropriate public education in conformity with federal special education law, the Individuals With Disabilities Education Act, ("IDEA"), 20 U.S.C. 1400 et seq., and the regulations at 34 C.F.R. Part B, Section 300 et seq. and Virginia Special Education Regulations at 8 VAC 20-81 et seq.

### **FACTUAL FINDINGS**

1. Student is a Public Schools special education student who was born on March 17, and who qualifies for special education services in the category of "Mental Retardation." Student first qualified for special education services under the category of "Mentally Impaired" in Illinois on February 9, 2004. Her family physician attributes her illness to Down Syndrome, or Trisomy 21, with developmental delays. (S-83, S-68, P-1, P-2)

2. Student's present level of performance, the "PLOP" indicates that Student requires an independent aide to be successful in school. The "PLOP" summarizes how the student's disability affects participation in appropriate activities and describes the student's performance in all academic areas such as reading, math and history. The PLOP also describes functional skills in socialization, behavior and communication. (S-68)

3. Student was first educated in the \_\_\_\_\_, Illinois special education school district where Student participated in a self-contained special education setting for half of the day and a general education setting for the rest of the school day. She participated in physical education without any accommodations. Student received 60 minutes of speech therapy weekly. An independent aide was assigned to Student for one-half days during her prior special education placement in the Illinois school district (S-68, Dr. \_\_\_\_\_'s Testimony & P-1)

4. When Student first entered school, academic testing in the Illinois school district indicated that Student tested at a functioning level of 2-2.5 years of age when she was about 4 years of age. Cognitive level was 62, Communication was 50, Socio-emotional was 64, physical development was 68 and adaptive behavior score was 72. She matched pictures to objects, stacked blocks and manipulated small objects. According to the Illinois IEP, Student had a limited one word vocabulary and, primarily, used gestures to communicate her needs (S-68)

5. The current PLOP for Student indicates that Student will stay on task for 1-3 minutes only with visual, gestural and verbal prompts. Student throws objects across the room, hits students and yells out constantly during the day. Student breaks away from staff and will drop to the floor, refusing to stand up. (S-68, S-69)

6. The Illinois IEP, last reviewed and revised on May 2, 2006, asserted that Student can also "comply with simple commands if she chooses to do so" and Student can "keep her hands to herself with prompts." The Illinois IEP stated that "Student has difficulty following class rules without prompts" and "Student was said to have "difficulty with simple requests." (P-1)

7. Student's Illinois IEP required 60 minutes per week of speech as a related special education service to which additional increments of 15 minutes weekly consultative speech services were added by Addendum to the Illinois IEP. (P-1)

8. At the end of the year in 2006, Student left the Illinois School District and Student enrolled at the local LEA, \_\_\_\_\_ Elementary, \_\_\_\_\_, Virginia in the latter part of 2006. (Parent's testimony)

9. During student's enrollment at \_\_\_\_\_, Student did not receive all compensatory educational services to which she was entitled pursuant to the Illinois IEP. (Parent's Testimony & S-16)

10. Parent filed a complaint on March 26, 2007 with the Virginia Department of Education ("VDOE") because of the LEA's delay in its provision of services caused by the LEA's failure to timely obtain a copy of student's prior operative IEP "the transfer or

Illinois IEP.”(S-5, S-16)

11. At this hearing, Parent did not dispute that the factual findings issued by the VDOE complaints specialist solely addressed circumstances of Student’s enrollment at the setting from the dates of December 11, 2006 until March 30, 2007. With consent from the Parent, Student’s transferred from the prior setting to the Elementary school setting on March 7, 2007 where the IEP revisions were to occur. (Parent’s Testimony, Dr. ’s Testimony S-63-S-96)

12. In response to the parent’s complaints, the resulting “Letter of Findings” dated July 25, 2007 states as follows:

“The Complaint Appeal Reviewer has affirmed this office’s determination that the [LEA] is in non-compliance with respect to failure to follow appropriate procedures with regard to [Student’s] transfer IEP. We found that [the LEA] delayed in obtaining a copy of [Student’s] IEP and that it did not develop its own IEP within the required timeframes.” (S-32)

13. The VDOE Letter of Findings above directed the LEA to:

(1) “promptly convene a properly comprised IEP team for Student to discuss compensatory services that should be provided to Student and were delayed because of the LEA’s failure to obtain a copy of the Illinois IEP.” The IEP team was directed to consider the time period of December 11, 2006 until March 30, 2007. (S-32)

(2) “submit an IEP addendum, developed at the above meeting, which has been signed and consented to by the Parent and which outlines the IEP team’s plan to ensure that Student receives any compensatory services to which she is entitled.” “If, however, an agreement is not reached via the IEP process, the parties may consider the options of due process or mediation to resolve this matter.”

14. In response to the VDOE’s Compliance Specialist’s finding against the LEA, the IEP team convened on June 25, 2007 and concurred that the local LEA had not provided Student with a free and appropriate education on December 11 to 21, 2006 (9 school days), on January 2 to 31, 2007 (20 school days); on February 1 to 28, 2007 (19 school days, and on March 1 to 30, 2007 (22 school days). Consensus of the IEP team was that 77 hours direct instruction plus 7 hours of speech services as compensatory educational services would sufficiently address Student’s lost time. Student’s PLOP was considered in development of the recommendations by the IEP team. Services offered were to be delivered between July 2, 2007 and August 23, 2007 in sessions lasting no longer than three hours at a time. (S-7)

15. Parent does not assert that the compensatory educational services to be provided to Student are “inadequate.” Parent does not dispute the substance or the educational

content of the compensatory educational service hours offered to Student by the LEA. (Parent's testimony)

16. Parent asserts that she does not consent to the services offered because the LEA did not follow the Illinois IEP properly in that the term "independent aide" means that multiple teacher's assistants cannot be assigned. Parent complains that the setting was hostile to Student and segregated her from her peers at school, and that LEA personnel harassed Student resulting in a denial of her right to a free and appropriate public education. (Parent's Testimony)

17. The LEA asserts that the 77 hours direct instruction plus 7 hours of speech as a related service are adequate and compensatory educational services being offered by the LEA to Student are appropriate. The LEA asserts that it is the Parent's repeated failure to send Student to school that has caused a denial of FAPE to this child. (School Board Attorney's Opening & Closing Remarks)

18. Dr. , the LEA's Special Education Director, made arrangements to "welcome" Student and Parent to the school setting. Dr. selected this school because one of the teachers, is the parent of a Down Syndrome child who successfully completed the program at this school. 's principal, selected Student's classroom teacher, to manage Student's daily delivery of services because of the teacher's warm personality. It is clear that the LEA intended Elementary School to be a "good match" for Student and Parent. (Dr. 's Testimony, ' Testimony, 's Testimony)

19. 's personnel, Ms. and , Guidance Counselor, indicated that the Parent's demeanor at the setting was at all times "pleasant." ( ' Testimony, ' Testimony)

20. , Child Study Chairperson, described student as a "really happy little girl." Parent asked Ms. at the hearing, "Was one assistant available for the child all day?" Ms. testified that she "mainly saw [Student] with the same assistant." ( 's Testimony, 's Testimony)

21. The LEA's Corrective Action Plan for Student dated August 15, 2007 contained the following enclosures from the LEA to the Parent: (1) the LEA's letter to Parent from the LEA containing a summary of the Addendum meeting on June 25, 2007 (2) Written Prior Notice – an invitation to the IEP meeting which was convened on June 25, 2007 ("the Addendum meeting") (3) the proposed IEP Addendum offering 77 hours of direct instruction and 7 hours of speech as a related service (4) the IEP Addendum signature page (Parent signed later but did not attend) (5) the written notice of Proposed/Refused action and a (6) request for mediation services. (S-7, S-8, S-9, S-10, S-11 & S-12)

08-022

Received

OCT 21 2007

Dispute Resolution &  
Administrative Services

**VIRGINIA DEPARTMENT OF EDUCATION**

**DUE PROCESS HEARING**

**REVISED DECISION**

**SCHOOL DIVISION: PUBLIC SCHOOLS**  
**LEA COUNSEL: WENDELL M. WALLER, ESQUIRE**  
**LEA REPRESENTATIVE: DR.**  
**NAME OF PARENT:**  
**NAME OF STEP-PARENT:**  
**NAME OF CHILD/STUDENT:**  
**NAME OF COUNSEL: NONE**  
**PARTY INITIATING HEARING: PUBLIC SCHOOLS**  
**VDOE REVIEWER: REGINALD B. FRAZIER, SR., ESQUIRE**  
**HEARING OFFICER: SARAH SMITH FREEMAN, ESQUIRE**

IN RE:

PUBLIC SCHOOLS

v.

on behalf of her child,

**INTRODUCTION**

This matter came for hearing on October 8 & 9, 2007 at The Pruden Center for Industry and Technology, Virginia, before a duly appointed hearing officer. Present in person, in addition to the hearing officer and court reporter were the mother (“the Parent”) and step-father, counsel for the local educational agency (“the LEA”), the LEA Representative and the VDOE Reviewer.

The LEA requested this due process hearing in writing on August 29, 2007. The LEA alleges that (1) the school division's offer of compensatory services provides a free, appropriate public education to student and (2) that the mother's repeated failure to send this child to school has denied student a free, appropriate public education.

Parent alleges that the LEA has failed to provide her daughter, a special education student ("Student"), an adequate, timely IEP; that the LEA failed to provide an acceptable setting to this child by segregating her from her peers at school; and that the LEA failed to prevent its personnel from harassing this child in Student's pursuit of her right to a free, appropriate public education in conformity with federal special education law, the Individuals With Disabilities Education Act, ("IDEA"), 20 U.S.C. 1400 et seq., and the regulations at 34 C.F.R. Part B, Section 300 et seq. and Virginia Special Education Regulations at 8 VAC 20-81 et seq.

### **FACTUAL FINDINGS**

1. Student is a Public Schools special education student who was born on March 17, and who qualifies for special education services in the category of "Mental Retardation." Student first qualified for special education services under the category of "Mentally Impaired" in Illinois on February 9, 2004. Her family physician attributes her illness to Down Syndrome, or Trisomy 21, with developmental delays. (S-83, S-68, P-1, P-2)

2. Student's present level of performance, the "PLOP" indicates that Student requires an independent aide to be successful in school. The "PLOP" summarizes how the student's disability affects participation in appropriate activities and describes the student's performance in all academic areas such as reading, math and history. The PLOP also describes functional skills in socialization, behavior and communication. (S-68)

3. Student was first educated in the \_\_\_\_\_, Illinois special education school district where Student participated in a self-contained special education setting for half of the day and a general education setting for the rest of the school day. She participated in physical education without any accommodations. Student received 60 minutes of speech therapy weekly. An independent aide was assigned to Student for one-half days during her prior special education placement in the Illinois school district (S-68, Dr. \_\_\_\_\_'s Testimony & P-1)
4. When Student first entered school, academic testing in the Illinois school district indicated that Student tested at a functioning level of 2-2.5 years of age when she was about 4 years of age. Cognitive level was 62, Communication was 50, Socio-emotional was 64, physical development was 68 and adaptive behavior score was 72. She matched pictures to objects, stacked blocks and manipulated small objects. According to the Illinois IEP, Student had a limited one word vocabulary and, primarily, used gestures to communicate her needs (S-68)
5. The current PLOP for Student indicates that Student will stay on task for 1-3 minutes only with visual, gestural and verbal prompts. Student throws objects across the room, hits students and yells out constantly during the day. Student breaks away from staff and will drop to the floor, refusing to stand up. (S-68, S-69)
6. The Illinois IEP, last reviewed and revised on May 2, 2006, asserted that Student can also "comply with simple commands if she chooses to do so" and Student can "keep her hands to herself with prompts." The Illinois IEP stated that "Student has difficulty following class rules without prompts" and "Student was said to have "difficulty with simple requests." (P-1)
7. Student's Illinois IEP required 60 minutes per week of speech as a related special education service to which additional increments of 15 minutes weekly consultative speech services were added by Addendum to the Illinois IEP. (P-1)
8. At the end of the year in 2006, Student left the Illinois School District and Student enrolled at the local LEA, \_\_\_\_\_ Elementary, \_\_\_\_\_, Virginia in the latter part of 2006. (Parent's testimony)
9. During student's enrollment at \_\_\_\_\_, Student did not receive all compensatory educational services to which she was entitled pursuant to the Illinois IEP. (Parent's Testimony & S-16)
10. Parent filed a complaint on March 26, 2007 with the Virginia Department of Education ("VDOE") because of the LEA's delay in its provision of services caused by the LEA's failure to timely obtain a copy of student's prior operative IEP "the transfer or



Illinois IEP.”(S-5, S-16)

11. At this hearing, Parent did not dispute that the factual findings issued by the VDOE complaints specialist solely addressed circumstances of Student’s enrollment at the setting from the dates of December 11, 2006 until March 30, 2007. With consent from the Parent, Student’s transferred from the prior setting to the Elementary school setting on March 7, 2007 where the IEP revisions were to occur. (Parent’s Testimony, Dr. ’s Testimony S-63-S-96)

12. In response to the parent’s complaints, the resulting “Letter of Findings” dated July 25, 2007 states as follows:

“The Complaint Appeal Reviewer has affirmed this office’s determination that the [LEA] is in non-compliance with respect to failure to follow appropriate procedures with regard to [Student’s] transfer IEP. We found that [the LEA] delayed in obtaining a copy of [Student’s] IEP and that it did not develop its own IEP within the required timeframes.” (S-32)

13. The VDOE Letter of Findings above directed the LEA to:

(1) “promptly convene a properly comprised IEP team for Student to discuss compensatory services that should be provided to Student and were delayed because of the LEA’s failure to obtain a copy of the Illinois IEP.” The IEP team was directed to consider the time period of December 11, 2006 until March 30, 2007. (S-32)

(2) “submit an IEP addendum, developed at the above meeting, which has been signed and consented to by the Parent and which outlines the IEP team’s plan to ensure that Student receives any compensatory services to which she is entitled.” “If, however, an agreement is not reached via the IEP process, the parties may consider the options of due process or mediation to resolve this matter.”

14. In response to the VDOE’s Compliance Specialist’s finding against the LEA, the IEP team convened on June 25, 2007 and concurred that the local LEA had not provided Student with a free and appropriate education on December 11 to 21, 2006 (9 school days), on January 2 to 31, 2007 (20 school days); on February 1 to 28, 2007 (19 school days, and on March 1 to 30, 2007 (22 school days). Consensus of the IEP team was that 77 hours direct instruction plus 7 hours of speech services as compensatory educational services would sufficiently address Student’s lost time. Student’s PLOP was considered in development of the recommendations by the IEP team. Services offered were to be delivered between July 2, 2007 and August 23, 2007 in sessions lasting no longer than three hours at a time. (S-7)

15. Parent does not assert that the compensatory educational services to be provided to Student are “inadequate.” Parent does not dispute the substance or the educational

content of the compensatory educational service hours offered to Student by the LEA. (Parent's testimony)

16. Parent asserts that she does not consent to the services offered because the LEA did not follow the Illinois IEP properly in that the term "independent aide" means that multiple teacher's assistants cannot be assigned. Parent complains that the setting was hostile to Student and segregated her from her peers at school, and that LEA personnel harassed Student resulting in a denial of her right to a free and appropriate public education. (Parent's Testimony)

17. The LEA asserts that the 77 hours direct instruction plus 7 hours of speech as a related service are adequate and compensatory educational services being offered by the LEA to Student are appropriate. The LEA asserts that it is the Parent's repeated failure to send Student to school that has caused a denial of FAPE to this child. (School Board Attorney's Opening & Closing Remarks)

18. Dr. , the LEA's Special Education Director, made arrangements to "welcome" Student and Parent to the school setting. Dr. selected this school because one of the teachers, is the parent of a Down Syndrome child who successfully completed the program at this school. 's principal, selected , Student's classroom teacher, to manage Student's daily delivery of services because of the teacher's warm personality. It is clear that the LEA intended Elementary School to be a "good match" for Student and Parent. (Dr. 's Testimony, ' Testimony, 's Testimony)

19. 's personnel, Ms. and , Guidance Counselor, indicated that the Parent's demeanor at the setting was at all times "pleasant." ( ' Testimony, ' Testimony)

20. , Child Study Chairperson, described student as a "really happy little girl." Parent asked Ms. at the hearing, "Was one assistant available for the child all day?" Ms. testified that she "mainly saw [Student] with the same assistant." ( 's Testimony, 's Testimony)

21. The LEA's Corrective Action Plan for Student dated August 15, 2007 contained the following enclosures from the LEA to the Parent: (1) the LEA's letter to Parent from the LEA containing a summary of the Addendum meeting on June 25, 2007 (2) Written Prior Notice – an invitation to the IEP meeting which was convened on June 25, 2007 ("the Addendum meeting") (3) the proposed IEP Addendum offering 77 hours of direct instruction and 7 hours of speech as a related service (4) the IEP Addendum signature page (Parent signed later but did not attend) (5) the written notice of Proposed/Refused action and a (6) request for mediation services. (S-7, S-8, S-9, S-10, S-11 & S-12)

22. Letter to the Parent dated August 15, 2007, states that Supervisor of Special Education for the LEA, personally spoke with Parent on June 18, 2007 about the June 25, 2007 Addendum meeting and invited the Parent to participate at the meeting. Parent agreed to meet with on June 25, 2007 but Parent did not attend the meeting scheduled to implement the IEP Addendum. (S-7, S-34, 's Testimony, Dr. 's Testimony)

23. The IEP team contacted Parent by telephone on June 25, 2007. Parent responded:

"I am not in agreement because I feel that [Student] should have received the services during the school year and I should not have to rearrange my summer schedule to receive services that should have already been provided. [Student] has her summer schedule and for the past three years she has been out of school for the summer. Anyway, we are moving back to Illinois. She will not be returning to [LEA] schools. I will not allow her to be treated the way she was treated by anyone else from [the LEA.] I understand you are all trying to make up for where you messed up, but it is too late." (S-7)

24. Parent signed off on the June 25, 2007 IEP Addendum only as a participant (not to give consent) and she wrote this note at the bottom of the proposed IEP Addendum and Parent refuses to consent to its implementation:

"I would appreciate services, but unable due to situation at times, will be returning to Illinois in near future for services for daughter in education." (S-7, S-8, S-10)

25. Closure letter to the LEA and to the Parent dated August 28, 2007, indicates that the VDOE will follow up with the LEA to ensure that the Corrective Action Plan is implemented. The LEA's Corrective Action Plan responds to the VDOE's May 24, 2007 Letter of Findings, which were affirmed after an appeal to the state, by decision of the VDOE dated July 20, 2007. (S-5, S-6)

26. On March 30, 2007, the Parent provided her consent to implement the proposed IEP completed on that date. Student's IEP states that Student will be provided with supplementary aids and/or services: Independent aide. The IEP appears to conform to the current PLOP. (S-64, S-65, S-84)

27. Parent was provided with adequate opportunity to review a draft of the IEP before she gave her consent to it. Parent did not then object to the number of independent aides who would assist Student. (S-93)

28. When parent did object to the number of independent aides attending to Student, Ms. , 's principal, testified that the number of aides was reduced. ( Testimony)

29. \_\_\_\_\_, Special Education Teacher for Student, testified that she created the March 30, 2007 IEP. The LEA assured the Parent that Student would have an independent assistant with Student at all times. In the IEP, \_\_\_\_\_ testified that the LEA never intended to provide only one independent aide to the Student. ( \_\_\_\_\_'s Testimony)

30. The LEA requests a ruling from this hearing officer that the Parent has refused to send her daughter to school on 20 different dates from March 7, 2007 through the end of the 2006-2007 school year. Specifically, the dates claimed by the LEA are absences on March \_\_\_\_\_, 2007, April \_\_\_\_\_ thru April \_\_\_\_\_, 2007, April \_\_\_\_\_, thru April \_\_\_\_\_, 2007, April \_\_\_\_\_ thru April \_\_\_\_\_ 2007, April \_\_\_\_\_ 2007 thru May \_\_\_\_\_ 2007 & May \_\_\_\_\_ thru May \_\_\_\_\_ 2007. (S-37 thru S-56)

31. Parent freely admits that she refused to send her daughter to school on the above dates. Parent asserts in her defense that she had no assurance from the LEA that her daughter's IEP would be followed. Parent states that she lacked confidence in the LEA's special education proposals for her daughter because the LEA had assigned "too many assistants" at \_\_\_\_\_. Parent, who insisted that "independent aide" meant "one aide only," was dubious that "many" assistants could properly manage her daughter's unique needs at school. "Independent aide means just what it says, one aide," she asserted. (Parent's testimony)

32. Although it was sometimes difficult to capture chronological detail during Parent's impassioned testimony, this hearing officer gleaned enough information from the Parent to make a sound interpretation of events: Parent attributes her refusal to send her daughter to school to four different incidents at \_\_\_\_\_ which, she alleges, signify that \_\_\_\_\_ could not manage her daughter with multiple independent aides. (Parent's Testimony)

33. On March 13, 2007, a field trip was planned for \_\_\_\_\_ for all of the 45-50 students at this school which included Student's entire class of 10-13 children. Students were required to board a bus and travel some distance away from the school to attend a local play described as a "musical." Prior to the event, LEA school personnel contacted the Parent and asked her to accompany her child on the trip and to sit with her daughter during the performance. Parent was told that her presence was required "for Student's safety." (Parent's Testimony, \_\_\_\_\_' Testimony, \_\_\_\_\_' Testimony))

34. The classroom teacher explained that although three assistants had been assigned to student only one could be available for the play. Student was considered "a runner" and her classroom teacher testified that LEA personnel "couldn't run after her [Student]." ( \_\_\_\_\_' Testimony)

35. Alternately, \_\_\_\_\_'s principal testified that this student was "new" and that

LEA teachers needed time to “get to know [Student’s] needs.” (            ’ testimony)

36.     The classroom teacher and the            principal discussed the matter of Student’s participation in the field trip. This discussion resulted in the LEA’s request for a parent to accompany Student on the bus and through the performance of the musical. (            ’ testimony,            ’ testimony)

37.     Student’s classroom teacher testified that “We requested Mom or Dad out of concern for [Student’s] safety.” It is not “unheard of,” the principal testified, “to ask a parent to go on a field trip.” (            ’ Testimony,            ’ Testimony)

38.     Upon cross-examination, Student’s classroom teacher responded to the question, “Would Student have been permitted on the [school] bus without a parent.” Answer: “no.” (            ’ testimony)

39.     Another incident occurred in early March, 2007 about which there was also considerable dispute between Parent and the LEA. Parent stated that she had been asked by the school to return to “pick up her child” because of the classroom teacher’s absence from school. Parent testified that she traveled back to the school and retrieved her daughter from the school as she was requested to do. Upon departure with her daughter, LEA personnel indicated that student’s absence for the day would be marked, “excused for home.” (Parent’s testimony)

40.     ’s principal testified that she was certain that Parent was never contacted by the school to remove Student after arrival to school. The principal denies that she ever told Parent to keep her daughter at home. The principal did recall that Parent had expressed “concerns” regarding substitute teachers and Student’s need for continuity and structure in Student’s school setting. The principal admits that it is possible that the she may have discussed with Parent her decision to sometimes keep student at home when substitutes cause Parent concern for her daughter’s well-being. (            ’ testimony)

41.     Parent testified that the principal contacted Parent and confided to her, “Don’t bring [Student] to school today, the teacher is sick.” Parent testified that the principal stated to her by telephone, “If you could just keep [Student] home today... I’m so sorry... Ms.            [the classroom teacher] is going to be out so could you keep your child at home?” When Parent returned to school that day, she testified that LEA personnel assured her that her daughter would be marked “excused for home.” (Parent’s testimony)

42.     Another controversial incident occurred on or about March 30, 2007 at Parent and the principal participated in a meeting concerning student. As the principal and the Parent exited their conference and walked down the hall, the parent inadvertently looked outside and saw her child sitting alone on the playground. When this incident

occurred, Parent is certain that Student was the only child on the playground and that no adults were with her daughter. Parent references this incident as proof of the LEA's "segregation" of her daughter who is disabled and another incident to corroborate Parent's aversion to multiple independent aides. (Parent's testimony)

43. When asked if he recalled an incident when student was on the playground by herself, \_\_\_\_\_, Supervisor of Instruction & Compliance, who was also present at the meeting stated, "I don't remember that." ( \_\_\_\_\_'s Testimony)

44. \_\_\_\_\_'s principal does not recall this incident "at all." It would not be "unusual," she testified, for one of [Student's] personal assistants to take Student outside to a small, enclosed "garden area" to "calm student down" if she had become unruly. ( \_\_\_\_\_' testimony)

45. In mid-April, 2007, Parent described an incident she referenced as "the last straw." Parent related that she was again contacted by \_\_\_\_\_ to pick up her daughter. When Parent arrived at the school, Student was sitting in the office on a "sidebench." Parent inquired regarding the school's reason for sending student home and LEA personnel indicated to Parent, "She kicked a teacher. [The school principal] will be contacting you about what happened." (Parent's Testimony)

46. At the hearing, the principal first indicated that Student had a "bathroom accident" which had been cleaned up by the Student's assistants. The principal indicated that Parent "understood" this when she came to school to pick up her child. "This was," Ms. \_\_\_\_\_ stated, "a situation where the child needs to be in a bathtub." ( \_\_\_\_\_' Testimony)

47. When Parent discussed this incident with the principal, Parent was told by the Principal that Student had smeared feces on herself and Student had consumed her own waste. (Parent's Testimony)

48. SOS Teacher Concerns and Observations states, "Inappropriate Bathroom Behavior – throwing feces, eating feces." (S-120)

49. At the hearing, the principal testified that the feces-smearing and eating incident was not something that she witnessed personally. This rather graphic incident was merely related to her by Student's personal assistants who were "with Student at all times." ( \_\_\_\_\_' Testimony)

50. When she arrived at the school that day, Parent testified that she saw no fecal matter on the child and that Student "did not smell." (Parent's Testimony)

51. Upon cross examination, the principal testified that she was uncertain, in fact, if Parent was asked to pick up her child because of the feces smearing/eating incident or if the Student had kicked a teacher. ( 's Testimony)

52. Teacher's assistants for Student did not testify regarding any of the above incidents.

53. On March 30, 2007, at the child behavior study meeting, Guidance Counselor, proposed a full child study referral because one of the teacher's assistants had been injured while working with the Student. ( 's Testimony)

54. The March 30, 2007 IEP to which Parent consented calls for full inclusion all day in the general education classroom which is described as the least restrictive environment for Student. Student's current IEP calls for special education services as follows: In addition to other incidental services, the general education classroom (91%); Speech – once weekly for 30 minutes, for nine weeks or 270 minutes weekly. (S-63 thru S-104, S-107)

55. "Coverage" for Student indicates that 5 different teacher's assistants were assigned to Student on a given day. All of the educational activities described appear to be structured and in conformity with Student's IEP. (S-126)

56. Ms. and Dr. asserted at the hearing that the independent assistant assigned to Student does not have to be the same individual exclusively. (Dr. 's Testimony, Ms. 's Testimony)

57. Ms. testified that she saw "two assistants and three teachers in Student's class on a given day." Ms. testified that she never saw Student alone, "An assistant and teacher were always there." ( 's Testimony)

58. When Parent did express her belief that too many assistants were working with Student the above list was reduced from 5 assistants to 3 assistants. ( 's testimony)

59. , Supervisor of Special Education, entered a daily note for review by the child-study team in preparation for March 30, 2007 IEP review. On the date of observation, March 21, 2007, Student had been removed from the class for misbehavior. One of the teacher's assistants returned with the Student two minutes after this note was created. Observation on this date continues with Student alternately showing compliant behaviors (cut/paste activities, sitting quietly, writing her assignment) as well as non-compliant behaviors (stating "no" to the teacher, touching other classmates and objects, refusing to put her hands in her lap). Student was appropriately praised by

Ms. \_\_\_\_\_ for good deeds and allowed to sit on her teacher's lap. (S-127 & Deposition of \_\_\_\_\_ )

60. SOS ("Strategies Offered for Success") is a behavior intervention strategy designed to modify non-compliant behaviors. "The SOS team is a school based intervention team that meets to address student difficulties that are impacting school performance." SOS is synonymous with a "behavior intervention plan." Parent attended the IEP meeting and the SOS meeting on March 30, 2007. (S-64, S-108, S-111)

61. Educational assessments were to be completed to address Student's educational, socio-cultural, medical, psychological and speech pathology needs. Revision to Student's Illinois category "MI" had to be changed to "MR." Parent did not attend the child study meetings on March 13, 2007 or on March 27, 2007 or the IEP Addendum meeting on June 25, 2007. (S-7, S-8, S-122, S-123, S-124, S-125, S-130, S-132, S-130)

62. Dr. \_\_\_\_\_, School Psychologist, testified that although Parent did not attend the child study meeting on March 27, 2007, Parent initially consented to the above evaluations. Later, Dr. \_\_\_\_\_ testified, Parent withdrew her consent for Student's re-evaluations on May 25, 2007. (S-35 & S-36, Dr. \_\_\_\_\_'s Testimony)

63. Parent consented to the assistive technology assessment. (S-104)

64. Behaviors to be modified were: In class – throwing objects, yelling, ripping assignments, spitting, running from staff, dropping to the floor, yelling "no" to staff, hitting; At lunch – taking other student's food, spitting food out, putting food on staff; In the bathroom – throwing feces, eating feces. Except for some of the inappropriate bathroom behaviors and spitting, Parent confirmed that she had experienced all of the above behaviors with Student. (S-120, Parent's testimony)

65. \_\_\_\_\_, Assistive Technology teacher, testified that she developed a Positive Behavior Reinforcement Schedule to formulate strategies to modify Student's behavior. Ms. \_\_\_\_\_ demonstrated a picture communication method called the "Language Card Master" for which the LEA had spent \$494.85 to work with Student. (S-97, S-100, S-101, S102-S-103, S-104)

66. Although, by all accounts, Parent seemed "excited" about the LEA's strategies to educate her daughter, \_\_\_\_\_, the SOS Facilitator, asserts that LEA educators have never had adequate opportunity to work with Student because of her overwhelming absenteeism. Behavioral and educational strategies, developed during the evaluations, were to begin on April 16, 2007 at \_\_\_\_\_. There has been little academic achievement with this child because, the LEA asserts, the parent will not send Student to school. ( \_\_\_\_\_'s Testimony)



67. At the hearing, Parent stated emphatically that Student's school absences were groundless. Parent testified that she would have "welcomed" a truant officer to whom, presumably Parent would plead Student's issues with this LEA. and , LEA personnel, painstakingly recreated the lengthy list of absences accumulated by Student who missed 20 of 39 days from March 13, 2007 through May 8, 2007. Parent never indicated to Ms. or Ms. that Parent's discontent with Student's special education plan was the reason why parent chose to disobey compulsory school attendance laws. When the LEA regularly called Parent's home to verify the absences, Parent either did not answer or indicated to the LEA that she would be keeping Student "home with Mom." (Parent's Testimony, 's Testimony. 's Testimony, S-37 thru S-56)

68. Virginia state compulsory school attendance laws state that absences and tardiness may be excused for the following reasons: (1) sickness of student (2) severe illness in the immediate family – a parent, guardian, sister or brother (3) exposure to a contagious disease (4) death in the immediate family (5) fire to place of residence which requires the family to move & (6) other extenuating circumstances. (P-9)

69. principal, Ms. , testified that she sent out the school social worker to inquire about Student's absences on three different dates in order to get Student back in school. ( ' Testimony)

70. At the hearing, Parent testified that Student was "swung around," "treated just like an experiment," and "less than human." (Parent's Testimony)

71. Parent asserts that Student has "trust" issues and for that reason, only one independent aide should be assigned to Student. (Parent's Testimony & S-109)

72. Dr. , M.D., Student's primary care physician, states in Student's medical reports that Student has Trisomy 21 or Down Syndrome and developmental delays for which she sees a psychiatrist for "acting out." In her medical reports dated July 20, 2007 and September 19, 2007, Dr. stated that Student needs "an IEP which should be followed to maximize her potential." (P-2 & P-8).

73. Dr. , M.D., states Student's diagnosis is: ADHD, oppositional defiant disorder and mental retardation. Mental retardation is in the "moderate" range, however, the other two diagnoses are in "severe" range. (P-2)

74. Student's treatment plan is as follows; weekly psychiatrist visits, IEP, yearly examinations of her spine, check-ups of her physical health & medication monitoring. Dr. recommended combined medications, individual and family therapy, and an IEP for her special education needs. (P-2)

75. Parent did not present any evidence that Student had attended weekly psychiatric visits as recommended by the family physician.

76. On March 6, 2007, Parent sent a letter to the LEA's Special Education Director, Dr. \_\_\_\_\_, in which she effusively thanked "\_\_\_\_\_" for placing Student "at a good school." Parent states therein that Student "seems to be real comfortable with everyone." Parent asserts, "I plan on putting [Student] back in the 'Illinois school' after school releases her, but I so appreciate you so much." (S-140)

77. On March 15, 2007, Parent sent a letter to the classroom teacher, Ms. \_\_\_\_\_ in which she thanked her for being "so much more than just a great teacher you are a great human being....Love, [Parent]." Testimony from Ms. \_\_\_\_\_ and Ms. \_\_\_\_\_, \_\_\_\_\_'s principal, indicated that the two women had delivered Student directly to Parent's home after school. Parent had lost her keys. Ms. \_\_\_\_\_ accompanied Ms. \_\_\_\_\_ to discuss Student's absences. Parent agreed that Student needed to "come more." (S-128, \_\_\_\_\_'s Testimony, \_\_\_\_\_'s Testimony)

78. Dr. \_\_\_\_\_ testified that it was her professional opinion that "the transfer IEP" or "the Illinois IEP" would not necessarily be deemed appropriate for Student. In her Corrective Action Plan dated August 15, 2007 to the VDOE, Dr. \_\_\_\_\_ asserted that she knew she had 30 days to accept the prior IEP or develop a new one. Dr. \_\_\_\_\_ was unconvinced that the prior "transfer" IEP represented the least restrictive environment for Student. (Dr. \_\_\_\_\_'s Testimony & S-7)

79. Dr. \_\_\_\_\_ contacted the principal who oversaw the \_\_\_\_\_, Illinois school district IEP for student. The principal related that Student spent only one-half day in the \_\_\_\_\_ in the general education class during her kindergarten placement. The following year, which would have been Student's first grade year, would be spent in a totally self-contained placement for the "mentally impaired." (In Illinois, the category "MI" is comparable to the Virginia category "MR.") Dr. \_\_\_\_\_ was "unconvinced" that Student could not function in a lesser restrictive environment, the full inclusion model, in the Virginia LEA. (Dr. \_\_\_\_\_'s Testimony)

80. The Illinois principal confirmed that one assistant had been assigned to Student for her kindergarten year. Because there were "growing behavioral concerns" for Student, however, a change of placement was contemplated by the Illinois school district. If the placement were to change, the Illinois principal stated, it was not likely that the same one-to-one assistant would be assigned to Student to function exclusively as Student's independent aide. (Dr. \_\_\_\_\_'s Testimony)

## **BURDEN OF PROOF**

In *Schaffer v. Weast*, 126 S. Ct. 528, the United States Supreme Court has ruled that under IDEA, in an administrative hearing, the burden of proof properly rests upon the party who seeks relief. In resolution of the issue of which party bears the burden of proof at a due process hearing, the court stated therein “[t]he burden of persuasion in an administrative hearing challenging an IEP is properly placed upon the party seeking relief, whether that is the disabled child or the school district.”

In the instant case, the LEA bears the burden of sufficiency of the evidence in this case.

## **APPLICABLE LAW**

8 VAC 20-80- 78, 34 CFR 300.512 states as follows regarding resolution procedure following the filing of a complaint with the Virginia Department of Education:

- (A) The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings, regarding violations of the rights of parents or children with disabilities.
- (C)(4) During the course of the investigation, the Virginia Department of Education shall:
  - (c) Ensure that the Virginia Department of Education’s final decision is effectively implemented, if needed, through:
    - (3) Corrective actions to achieve compliance.

8 VAC 20-80-78(C)(5)(a-b) states: In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education must address:

- (a) The remediation of the denial of those services, including, as appropriate, compensatory services, the awarding of monetary reimbursement, or other corrective action appropriate to the needs of the child; and
- (b) Appropriate future provision of services for all children with disabilities.

8 VAC 20-80-76(B)(1)(A-D) and 8 VAC 20-80-76(B)(2) state as follows

regarding the LEA's request for due process hearing in order to resolve FAPE issues:

(B) Basis for due process request.

- (1) Either a parent or parents or a local educational agency may request a due process hearing when a disagreement arises regarding any of the following:
  - (a) Identification of a child with a disability;
  - (b) Evaluation of a child with a disability
  - (c) Educational placement and services of the child; and
  - (d) Provision of a free and appropriate public education to the child.
- (2) A local educational agency may initiate a due process hearing to resolve a disagreement when the parent or parents withhold consent for an action that requires parental consent to provide services to a student who has been identified as a student with or who is suspected of having a disability.

8 VAC 20-80-60 (A)(1)(a-b) defines the population to be provided a FAPE and the general continuum of services to be offered to children with disabilities as follows:

(A) Age of eligibility:

- (1) A free and appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, residing within the jurisdiction of each local educating agency.

- (a) The services provided to the child under this chapter shall address all of the child's identified special education and related service needs.
- (b) The services and placement needed by each child with a disability to receive a free and appropriate public education must be based on the child's unique needs and not on the child's disability.

8 VAC 20-80-60(E)(1)(a-c) requires that the LEA make assistive technology available to the special education student if the IEP team determines that its use is necessary to provide a FAPE to the child as follows:

(E) Assistive technology.

- (1) Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in this chapter, are made available to a child with a disability if required as part of the child's:
  - (a) Special education;
  - (b) Related services; or
  - (c) Supplementary aids and services.

8 VAC 20-80-62(E)(1)(a-b) and 8 VAC 20-80-62(E)(2)(a) states as follows regarding development, review and revision of the IEP:

(E) Development, review and revision of the IEP.

- (1) In developing each child's IEP, the IEP team shall consider:
  - (a) The strengths of the child and the concerns of the parent or parents for enhancing the education of their child;
  - (b) The results of the initial or most recent evaluation of the child;

and:

- (E)(2) The IEP team shall also:

- (a) In the case of a child whose behavior impedes the child's learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies and supports to address that behavior.

### **DISCUSSION AND CONCLUSIONS OF LAW**

Subsequent to the LEA's inability to obtain Parent's consent to the VDOE's compliance directive, the evidentiary record is clear that the parent would not provide parental consent necessary to comply with the LEA's Corrective Action Plan. The LEA has properly invoked due process to resolve this ongoing dispute between the Parent and the LEA.

The record in this matter reflects that Parent elects to assert her decision to disobey the school's compulsory attendance laws. Exercise of the Parent's right of civil disobedience, in this case, adversely impacts this child's right to receive a free and appropriate public education. I do find that Parent has refused, without just cause, to send this child to school.

From the time a child is of school age, especially for a child with Down Syndrome and developmental delays, it is Parent's duty to make certain that the child gets to school. School attendance laws are, by definition, compulsory, School is not optional, it is essential that a school age child attend school. This case is particularly troubling because it is evident that the recalcitrant parent asserts that she has rightfully kept her daughter home in the child's best interest. For this child, denial of a FAPE does not only mean that the child will not progress academically, it means that this child will never develop the life skills necessary to progress through life at all.

Having a dispute with the LEA never evolves into a justifiable ground to refuse services for one's child to the extent that no educational program serves the child. What has happened to this child is a travesty of this child's independent right to receive a FAPE.

It is evident that this LEA has worked diligently to correct past deficiencies in delivery of services to this child and to, in good faith, accommodate her IEP needs. If the Parent had unresolved issues with this LEA, she could have filed for due process or mediated this matter with the LEA. It was not "too late." The LEA and the VDOE provided Parent notice of her due process rights. By her own assertions, Parent is knowledgeable about the IDEA and accompanying due process rights.

In response to the LEA's assertion of Parent's "repeated refusals" to send this child to school, Parent testified that she "would have welcomed a truant officer." Parent knows that a truant officer would have no authority over her daughter's special education needs.       's principal, Ms.       , and Ms.       , the classroom teacher, personally came to the home on March 14, 2007 to inquire about absences. Parent responded that "[Student] would come more." Parent did not address "her concerns" about the field trip incident which occurred on March 13, 2007, the day before, nor did Parent express concern about the number of independent aides available to Student.

On March 30, 2007, Parent executed consent for implementation to the IEP proposed by the team. (S-65) Parent was provided with a draft copy of the IEP well in advance of the IEP meeting. The term "independent aide" is clearly written on the face of the IEP (S-93) and the Parent did not object to the number of aides available to Student nor did she state reservations regarding her daughter's stability or level of trust in the

aides.

Observations of the child in class do not reflect that Student was in danger or mistrustful of the teacher or aides. Student was described by Ms. [redacted] as “a happy little girl.” Ms. [redacted] also the mother of a child with Down Syndrome, testified that she saw Student often in the school hallway and she testified that Student was “mainly with the same aide.” It is unlikely that Ms. [redacted] would be insensitive to mistreatment of a child whose circumstance in life is the same as her daughter’s.

When Student was in school, testimony revealed, Student’s experience overall, was a positive one. Discipline was appropriately meted by use of “time out” or walks outside the class. Student sat comfortably in her teacher’s lap when a story was read to her. It is apparent that Student will fare much better in school if the parent will allow the LEA to regularly educate and discipline the child. This child’s manageability in school will never improve if she is at home.

Within the bounds of reason, school personnel have attempted to accommodate the parent. Though school personnel expressed frustration in attempts to modify Student’s classroom behavior, the LEA agreed to subsequently reduce the number of aides in response to Parent’s objection to the number of independent aides.

Parent took an active role in the preparation of the March 30, 2007 IEP which represented a collegial, comprehensive effort to address this child’s special education needs in conformity with the IDEA. Student will never be able to benefit from this meaningful work unless she is permitted by her parent to attend school.

Parent regularly eludes the LEA by making statements to the LEA indicating that



she “will soon return to Illinois.” Parent testified at the hearing that she “washes her hands of the LEA.” In fact, Parent has not yet returned to Illinois and it has been months since Student was seated inside a school building. It is unlikely that any academic progress will be made if the child continues to sit at home.

With due respect to the Parent’s right to oversee her daughter’s special education needs, Parent must appreciate that a regular special education program, not Student’s removal from school, will resolve the issues. It is simply not in this child’s best interest for the Parent to summarily reject the school’s offer of services.

The assistive technology suggested by Ms. \_\_\_\_\_, the “Language Card Master,” appears to be an effective tool to increase Student’s ability to communicate her needs to the external world. It is anticipated that Student’s mounting disciplinary issues will subside if she is allowed to use this methodology to express herself. This hearing officer fully concurs with the LEA’s recommendation that speech related services be added to the IEP Addendum. Total hours of compensatory instruction in the amount of 77 hours of direct instruction and 7 hours for speech are not adequate. This hearing officer recommends that an additional 2 hours direct instruction and .09 hours or 11 minutes be added for speech therapy as compensatory educational services. The additional amount of compensatory educational services will fully remediate the child for time lost on the field trip day on March 13, 2007 and for the additional lost day in mid-April, 2007. This amount should be added to the LEA’s final Addendum figure. Communication is a primary goal for this special education student. There must be no further delay in delivery of these services to Student.

This hearing officer acknowledges that the school did not provide adequate educational services to the Student on the field trip date, March 13, 2007, and on the date in mid-April when was Parent was called to retrieve her child. This child was entitled to a full day of school on March 13, 2007 and on the mid-April day when services either were not provided or were not adequately provided. In any event, the facts show that Student did not receive a complete FAPE on these dates.

On the date of the field trip, this event was planned to which student would not be permitted access without a Parent. Although it is understandable that personnel had justifiable reservations about Student's safety on the bus and at the field trip destination, there is no evidence that the five aides then assigned to Student could not manage her. All school students were to participate in the field trip and Student was excluded. In this instance, I do find that this child was denied her right to a FAPE.

Regarding the early March incident, the LEA has met the burden of proof in support of this incident. Ms. denies that she ever asked Parent to pick up the child from school. Parent has kept this child home so often that it is difficult to know whether Parent decided to keep the child "at home with Mom" again. If Parent had known that the teacher would be sick or absent, it is likely that Parent would have elected to keep the child at home.

Parent related another incident that occurred on March 30, 2007. As Parent and 's principal, Ms. , walked down the school hallway, Parent reports that Parent observed her daughter, alone, "segregated" on the playground. The LEA has met

the burden of proof in proving that these events did not occur as Parent alleged. Few details about this incident were corroborated. It is more likely that if Student were seated outside, Student was being separated from the class for a “time out break” just as the principal has testified.

Parent asserts that the incident occurring in mid-April resulted in a denial of FAPE to her daughter. By all accounts, there was confusion on the part of school personnel about the request to pick Student up from school. According to \_\_\_\_\_’s principal, the child needed a bath because of a bathroom incident. According to the Parent, school personnel indicated that the child had kicked a teacher that day. In any event, the LEA does not have sufficient documentation to explain why Student did not receive educational services that day. On this date, I do find that the child was denied a her right to a FAPE.

Finally, this hearing officer does not find that the Illinois IEP nor the Virginia IEP dictate that the term ”independent aide” means “exclusive aide” or that this child requires one aide, the same aide, all day long. In fact, now that disciplinary issues have begun to emerge with implementation of the child’s IEP here in Virginia, it is most likely that more than one independent aide will be a necessary feature of the inclusion placement for Student.

Based upon all of the evidence presented, applicable statutes, regulations, case law, and the arguments presented by the parties, the hearing officer makes the following conclusions of law:

1. \_\_\_\_\_ (“Student”) is handicapped, having “Mental Retardation”

and comes within the purview of IDEA.

2. The Student requires specific conditions and related services in order to derive educational benefit from her education.

3. At all times relevant hereto, Student's parent has resided in Virginia, thus the local educational agency ("LEA) is responsible for educating and providing her with a free and appropriate public education ("FAPE").

### **PROVISION OF FAPE**

With the exception of two school days, March 13, 2007, the day of the field trip, and the mid-April date, when the child had a bathroom accident or struck a teacher for which the Student was sent home early from school when this hearing officer has determined that a denial of FAPE occurred, it appears to this hearing officer that the LEA has otherwise provided with a FAPE.

In order to fully compensate Student for the dates when FAPE was not provided to her, this hearing officer instructs the school division to add additional educational compensatory time to the total offered to Student as follows:

Compensatory educational services in the amount of 77 hours of direct instruction and 7 hours of speech therapy were offered to the Student by the LEA.

Additional compensatory educational services in the amount of 2 hours of direct instruction and .09 hours (11 minutes) of speech therapy services will be added to the LEA's offer of services.

The hearing officer hereby ORDERS the LEA to provide a total amount of compensatory services, reflecting the cumulative total of the above amounts, for total direct services in the amount of 79 hours direct instruction and 7.09 hours of speech therapy services in total remediation of the LEA's failure to provide services addressed by the LEA's Corrective Action Plan dated August 15, 2007.

4. I find that parental notice requirements were satisfied by the LEA.

Accordingly, I find that:

5. With the compensatory educational services offered by the LEA, 77 hours direct instruction and 7 hours speech therapy together with the additional 2 hours direct instruction and .09 hours (11 minutes) of speech therapy or 79 hours direct instruction and 7.09 hours speech therapy, remedial compensatory educational services will fully compensate this child for the LEA's delay or failure in provision of services as set forth in the June 25, 2007 Addendum which services are adequate and appropriate; and

The LEA has properly requested a due process proceeding by virtue of the Parent's withholding of parental consent to the services offered to this Student by the LEA and refused by the Parent all in conformity with 8 VAC 20-80-76. On March 13, 2007 and an additional day in mid-April, 2007, the Student was denied a FAPE by the LEA. On all other dates, the LEA has provided a FAPE to Student in conformity with 8 VAC 20-80-60. Student has been provided an independent aide in accordance with her IEP. An independent aide in an IEP does not have to be the same individual all day long. More than one individual, at the discretion of the school division, may service a given child's IEP all in conformity with 8 VAC 20-80-60. Compensatory educational services in the amount of 79 hours direct instruction and 7.09 hours (11 minutes) speech therapy are hereby ORDERED in final resolution of this due process matter. The LEA has proven that Parent's repeated failure to send this child to school has resulted in a denial of FAPE to this Student.

6. The LEA has denied FAPE to this child on two separate dates as stated above, March 13, 2007 and one day in mid-April, 2007. As redress for the lost hours and with the addition of the above compensatory educational services to the total number of hours offered by the school division for a total of 79 hours direct instruction and 7.09 hours (11 minutes) of speech therapy, Student's IEP will be in conformity with 8 VAC 20-80-62 and the LEA's corrective action plan will be in conformity with 8 VAC 20-80-78, 3 CFR 300.512. In all other respects, the LEA has provided this Student with a FAPE.

DATE OF DECISION:

10/23/07

  
Sarah Smith Freeman  
Hearing Officer

## IDENTIFICATION OF THE PREVAILING PARTY

Pursuant to 8 VAC 20-89-76(K)(11) this hearing officer has the authority to determine the prevailing party on each issue that is decided. The hearing officer identifies the prevailing party on each issue as follows:

(1) Did the LEA's offer of compensatory services provide a free, appropriate public education?


The LEA did not prevail on this issue. The LEA's offer of services to \_\_\_\_\_ did not provide an adequate amount of compensatory educational services to \_\_\_\_\_. On two dates, March 13, 2007 & on a day in mid-April, 2007, the LEA failed to provide a FAPE to \_\_\_\_\_, therefore the LEA's total offer of services was not appropriate to compensate her for the LEA's delay in obtaining the Illinois IEP and the LEA's resulting failure to deliver adequate compensatory educational services to Student.

The LEA had offered 77 hours of direct instruction and 7 hours of speech therapy in the June 25, 2007 Addendum.. Because \_\_\_\_\_ did not receive two full days of instruction as stated above, this hearing officer ORDERED that \_\_\_\_\_ will be entitled to receive additional compensatory educational services in the amount of 2 hours for direct instruction and .09 hours (11 minutes) of speech therapy for a total amount of compensatory educational services to be offered to \_\_\_\_\_ in the amount of 79 hours of direct instruction and 7.09 hours of speech therapy.

(2) Did the Parent's repeated failure to send this child to school deny a free, appropriate public education?

The Parent's repeated failure to send the child to school has denied \_\_\_\_\_ a free, appropriate public education. With the exception of March 13, 2007 and one day in mid-April, 2007, the Parent has repeatedly failed to send this child to school which has resulted in a denial of FAPE during 18 of 39 school days from March 7, 2007 until the end of the 2006-2007 school year at \_\_\_\_\_ Elementary School.

DATED: *10/23/07*

  
\_\_\_\_\_  
Sarah Smith Freeman  
Hearing Officer

### APPEAL INFORMATION

8 VAC 20-80-76(0)(1) states:

1. This decision shall be 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 one year of the date of this decision.

2. The appeal may be filed in a state circuit court or in a federal district court without regard to the amount in controversy.

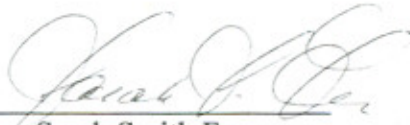
3. If the hearing officer's decision is appealed in court, implementation of the hearing officer's order is held in abeyance except in those cases where the hearing officer has agreed with the child's parent or parents that a change of placement is appropriate in accordance with subsection E of this section. In those cases, the hearing officer's order must be implemented while the case is being appealed.

### IMPLEMENTATION PLAN

It is the LEA's responsibility to submit an implementation plan to the parties, the hearing officer and to the Virginia Department of Education within 45 calendar days.

Dated:

10/23/07

  
\_\_\_\_\_  
Sarah Smith Freeman  
Hearing Officer