

Local Hearing   x  

State Level Hearing           

**CASE CLOSURE SUMMARY REPORT**

*(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of the special education hearing and submitted to the Department of Education before billing.)*

PUBLIC SCHOOLS ( PS)

School Division

Name of Parents

Name of Child

January 15, 2008

Date of Decision

KATHLEEN MEHFOUD  
Counsel Representing LEA

NONE  
Counsel Representing Parent / Child

Parties Initiating Hearing

Public Schools  
Prevailing Party

**Hearing Officer's Determination of Issues:**

- Whether                    Public Schools ( PS) may unilaterally provide educational services outside school hours without consent of the parents.
- Whether PS may unilaterally provide simultaneous services when the Individualized Education Program (IEP) specifies that the child receive one-on-one for these services?
- Whether PS should be permitted to conduct adaptive and psychological evaluations of the student absent the parent's consent.

**Hearing Officer's Orders and Outcome of the Hearing:**

The Hearing Officer issued the following orders:

- That PS conduct            triennial reevaluation within 45 days of the date of this decision;
- That this reevaluation include, but not be limited to, use of both adaptive and psychological components;
- That a copy of the reevaluation results be provided to the mother within 48-hours of receipt by PS;

- That \_\_\_\_\_'s parents fully cooperate with the reevaluation;
- That an appropriate compliment of IEP assessment team members, along with the parents(s), assemble within 14 calendar days of the date \_\_\_\_\_ PS receives \_\_\_\_\_'s reevaluation results;
- That \_\_\_\_\_ PS continue evaluating \_\_\_\_\_ in those areas consented to by the parent and that such evaluations be completed within 45 calendar days of this decision; and
- That the school psychologist and social worker be included on the assessment team if the reevaluation results deem their attendance appropriate.

*This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision/settlement from this hearing is attached. I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.*

January 15, 2008  
RHONDA J. S. MITCHELL  
Printed Name of Hearing Officer

  
\_\_\_\_\_  
Signature

Received

JAN 2 2008

Dispute Resolution &  
Administrative Services

**VIRGINIA:**

**DEPARTMENT OF EDUCATION**

**DUE PROCESS HEARING**

**IN RE:**

**and**

**PUBLIC SCHOOLS**

**HEARING OFFICER'S DECISION**

**INTRODUCTION**

This matter came to be heard on December 18 and 19, 2007 upon request of Mrs.

(mother), on behalf of her son, . for a due process hearing against

Public Schools ( PS), , Virginia. Mediation was declined.

is a student at Elementary School who qualified for special education services in March of 2004. has been diagnosed with autism due to Autism Spectrum Disorder and is therefore entitled to special education services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1410, *et seq.*

The mother alleges that PS has been slow to follow Individualized Education Program (IEP); that ' school day was unilaterally extended by PS without her permission; and that PS has been providing . with simultaneous services instead of the one-on-one services to which he is entitled pursuant to his IEP. Summarily, the mother alleges that these violations by PS have denied a "free appropriate public education" (FAPE) and that despite her numerous attempts to correct the discrepancies, PS have been unable to provide her with sufficient assurances that the IEP is being followed.

To resolve this case, the mother suggests that PS make restitution by providing with an additional 60 hours of one-on-one services. She requests that PS provide services as they are specifically outlined in the IEP, and that all services be provided during regular school hours.

PS argues that has been, and continues to receive the services listed in the IEP. They insist that has not received any services outside regular school hours. PS denies having

unilaterally extended [redacted]'s school day without parental consent and further denies that [redacted] received simultaneous services. They claim to have been providing all services as outlined in the IEP.

PS further argues that [redacted]'s schedule has been adjusted several times in an effort to address the mother's concerns. They claim that [redacted]'s present schedule should be satisfactory to the mother since it accommodates the very same issues that have been raised by her in this case. Therefore, PS alleges that the issues as raised by the mother in these proceedings are now moot.

[redacted] was last evaluated for services in March of 2004 and is overdue for his triennial reevaluation. Although the mother has consented to [redacted]'s triennial evaluation, she will not consent for adaptive or psychological components of the reevaluation to be administered.

PS is seeking an order that will require these two evaluation components. They suspect that [redacted] may be mentally retarded and claim these two evaluation components critical to establish mental retardation. They claim that with these test components, PS would be in a better position to assess [redacted]'s needs and formulate an appropriate IEP. Accordingly, PS alleges that these test components are necessary to provide [redacted] with the best possible FAPE.

#### *ISSUES*

The issues in this case are as follows:

- Whether [redacted] Public Schools ( PS) may unilaterally provide educational services outside school hours without consent of the parents.
- Whether PS may unilaterally provide simultaneous services when the Individualized Education Program (IEP) specifies that the child receive one-on-one for these services?
- Whether PS should be permitted to conduct adaptive and psychological evaluations of the student absent the parent's consent.

#### *PROCEEDINGS*

The mother's initial request for a due process hearing was received by PS on or about October 18, 2007. The Hearing Officer received notification of her appointment on October 21, 2007. The first pre-hearing conference call was conducted on October 26, 2007. During that call, both parties were asked to submit what they purported to be the issues in the case.

On October 29, 2007, PS filed a notice of insufficiency. The Hearing Officer determined that the mother's request for a due process hearing required more specificity and allowed the mother to file an amended due process request. On November 1, 2007, the mother filed an amended request for due

process. This amended request was accepted without challenge.

A second pre-hearing conference call was held on November 1, 2007. During this pre-hearing conference, the hearing dates were set for December 18 and 19, 2007. The 45-day decision due date was calculated to be January 15, 2008. It was also during this conference call that the issues of the case were discussed and decided.

Between October 28 and November 15, 2007, both parties submitted requests for the issuance of document subpoenas. On or about November 1, 2007, the Hearing Officer received a Motion to Quash from the mother to disallow certain documents requested by PS' subpoenas. PS also objected to some of the documents that were requested in subpoenas submitted by the mother.

Following much discussion and the hearing of arguments from both parties during a pre-hearing conference call conducted on November 13, 2007, the Hearing Officer ordered amendments to the originally submitted subpoenas. Subpoenas for documents were thereafter entered and served. Witness subpoenas were later issued and served.

On or about November 19, 2007, the mother submitted a motion to dismiss what she labeled a "counterclaim" from PS. After receiving argument from both parties, the Hearing Officer rendered a written decision dated December 4, 2007 allowing the issue of reevaluation without parental consent to be heard on the basis of judicial efficiency and economy, but not as a counterclaim. The Hearing Officer reasoned that the issue had already been introduced by PS during pre-hearing proceedings and had already been presented as an intricate part of their case.

The mother further objected to the reevaluation issue as a counterclaim for fear that if labeled a counterclaim she would be prohibited from withdrawing her request for a due process hearing. The Hearing Officer's decision made clear that the issue was not considered a counterclaim and that she was free to withdraw her request for a due process hearing at any time. The decision also made clear that if the mother were to withdraw her request for a due process hearing, it would be incumbent upon PS to initiate its own request for a due process hearing for the evaluation issue to be heard.

On or about November 20, 2007, the mother filed a motion for summary judgment. After considering argument from both parties, the Hearing Officer denied the motion by decision dated December 4, 2007, finding that there were issues of material fact to be tried. Since there were clearly issues of material fact that remained, summary judgment was inappropriate.

Around that same time, the mother filed a contempt motion against PS alleging its failure to adhere to document subpoenas. The Hearing Officer advised the mother during a conference call on December 5, 2007, that Hearing Officers lacked contempt powers and that enforcement jurisdiction rested with Circuit Court. The Hearing Officer did however, strongly encourage PS to produce any documents that may not have been delivered.

On or about December 12, 2007, the parties exchanged exhibit books and witness lists. The Hearing Officer was also provided with copies. The hearing commenced on December 18, 2007 at Public School Board Office, Virginia. The hearing concluded on December 19, 2007. Both parties filed post-hearing briefs.

### *FACTS*

is an eight-year old boy with autism. Linguistically, he functions at the two-three year old level. He entered Elementary School in September of 2007 as a kindergarten student. He was last evaluated in March of 2004 when he was determined eligible to receive special education services under IDEA with the disability of Autism Spectrum Disorder. He is overdue for his triennial reevaluation.

was home-schooled during the 2006-2007 school year and also received some outside services during this period. He attended PS prior to his home-school year.

In October of 2006, PS and ' parents negotiated an IEP that specifically provided that receive the following services:

- ½ hour each day of direct speech therapy;
- 15 hours of one-on-one services per week in a private location;
- ½ hour each day of speech consultation/collaboration;
- ½ hour each day of direct occupational therapy;
- ½ hour each day of occupational therapy consultation/collaboration;
- Individual support for all meals, transitions, APE, and new concepts; and
- Lunch in the classroom.

During the present school year, , ' mother, has been in constant communication with school officials regarding ' education and appropriate implementation of his IEP. She is concerned about the means by which PS is administering the IEP and complains that PS has breached the terms of the ' IEP.

Specifically, the mother claims that PS provided collaborative and consultative services before school hours and, on occasion, had several staff members present when should have been

receiving one-on-one services. She claims that PS failed to provide all of the one-on-one services to which [redacted] was entitled, slighting him at least 10 minutes per day for an unspecified period, by claiming to have provided these services between 8:50 and 9:00 AM. She alleges that at one point, PS unilaterally decided to provide one-on-one services during [redacted]'s lunch period, thereby denying him a lunch break. The mother complains that she did not give her consent for these changes and that they were unilaterally made by PS. She alleges that PS attempted to deliver some of [redacted]'s IEP services outside regular school hours, also without her consent.

The mother claims that [redacted] is not appropriately learning and contributes much of this failure to PS's actual implementation of the IEP. She alleges that PS personnel have sometimes been uncooperative and unresponsive to her inquiries and questions. She questions why [redacted] has had at least six different schedules for the present school year.

PS takes the position that they have provided all of the services set forth in the IEP and that many, if not all, of the schedule changes resulted from concerns expressed by the mother. PS contends that they have responded to Mrs. [redacted]'s overwhelmingly numerous requests for information and inquiries and have made every attempt to cooperate with Mrs. [redacted].

PS personnel are concerned that [redacted] may not only be suffering from autism, but also mental retardation. They claim that [redacted] exhibits cognitive delays that may be attributable to mental retardation. They seek to conduct adaptive and psychological evaluations to determine whether or not [redacted] is mentally retarded. Although the mother has consented to [redacted] triennial reevaluation, she has refused to consent to the adaptive or psychological components.

#### **DISCUSSION AND FINDINGS**

*Issue: Whether [redacted] Public Schools ( PS) may unilaterally provide educational services outside school hours without consent of the parents.*

Mrs. [redacted] contends that PS claimed to have provided [redacted] with one-on-one services between 8:50 and 9:00 AM. She contends that if such services were indeed provided during that period, they were provided outside regular school hours and without her permission. Regular school hours begin at 9:00 AM and end at 3:30 PM.

The mother asserts that children are arriving at school between 8:50 and 9:00 AM. She established via the school bus log that [redacted] most often arrived at school around 8:48 AM. She alleges that one-on-one services could not have been provided between 8:50 and 9:00 AM as PS claims.

because once [redacted] arrived at school, walked to class, took off his coat, visited the restroom, greeted his fellow students and teachers, and engaged in other preparations for the day, there was simply no time to provide one-on-one services prior to 9:00 AM.

Dr [redacted], the Director of [redacted] Special Education, testified that students are taught as they arrive at school. According to Dr. [redacted], additional instruction would be beneficial to the child rather than them sitting around doing nothing. This additional instruction would include the time between 8:50 and 9:00 AM as children are arriving at school.

Ms. [redacted], [redacted]' teacher, testified that at the mother's request, [redacted] no longer received services between 8:50 and 9:00 AM. This admission substantiates the mother's claim that at some point PS was claiming to have been administering one-on-one services to [redacted] between 8:50 and 9:00 AM.

It is PS' contention that since [redacted] is no longer receiving one-on-one services between 8:50 and 9:00 AM, the problem has been corrected and the issue is now moot. They claim that all of [redacted]' IEP services are being administered during regular school hours and that [redacted] receives no services outside regular school hours. Moreover, PS contends that any alleged error by PS in the administering of one-on-one services was a minor infraction and was not so severe as to amount to a denial of FAPE.

The mother, in her request for a due process hearing, requested restitution in the form of additional one-on-one services for [redacted] since some of the one-on-one services to which he was entitled were lost between 8:50 and 9:00 AM. The mother contends that it was not possible for [redacted] to effectively receive one-on-one services prior to the regular school day. The mother did not consent to one-on-one services being given outside regular school hours and claims that this change in [redacted]' IEP has been detrimental to his learning and is contrary to his IEP.

In October of 2006, it appears that the parents and PS took great pains to create an IEP for [redacted]. Specific services were to be provided [redacted] pursuant to the terms of the IEP. The IEP was negotiated in October of 2006 and was set for implementation when [redacted] entered school in September of 2007. One of the components of the IEP was for [redacted] to receive 15 hours of one-on-one services each week in a private location.

The mother claims that she was not afforded an opportunity to participate in the schedule change



which precipitated the 8:50 to 9:00 AM one-on-one services. She claims that the schedule change was made unilaterally by personnel at PS without her consent or input, and that this unilateral change violated the terms of the IEP.

When considering 's 8:48 AM arrival time at school, it seems unlikely that could receive beneficial one-on-one services between 8:50 and 9:00 AM. Therefore, PS should not be given credit for providing one-on-one services between 8:50 and 9:00 AM. This time should not be counted towards 's 15 hours per week one-on-one services as set forth in his IEP. Given the fact that had to walk from the bus to the classroom, go to the bathroom, hang up his book bag and make other preparations for the day, coupled with the constant distraction of other children arriving for school. I question how could have received beneficial one-on-one services during that same time.

PS claims that 's present schedule no longer includes one-on-one services to be provided between 8:50 and 9:00 AM. Therefore, the issue has been resolved. The mother did not dispute this contention but indicated that she was unsure what to believe because of the numerous schedules that had been created during the school year.

I accept the position of PS that this issue has now been resolved, however, I FIND that PS failed to provide with 15 hours of one-on-one services each week during that period when one-on-one services were scheduled from 8:50 to 9:00 AM. I further FIND that PS has made appropriate schedule changes to adjust 's receipt of one-on-one services and that is now receiving the services to which he is entitled.

Although I find that PS did not provide one-on-one services between 8:50 and 9:00 AM, I do not find that this deficiency rose to such a level as to deny a FAPE. It has been held that only those procedural violations that actually interfere with the provision of a FAPE are actionable under IDEA. See *DiBuo v. Bd. of Educ. of Worcester County*, 309 F.3d 184, 190 (4<sup>th</sup> Cir. 2002).

Under the standard set forth in the very well-known case of *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 205, 102 S. Ct. 3034, 3050, 73 L.Ed.2d 690 (1982), the court stated the following:

Inssofar as a State is required to provide a handicapped child with a 'free appropriate public education,' we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP.

During the very impressive demonstration given at the hearing by [redacted] and his teacher, [redacted], it became clear that [redacted] was receiving appropriate instruction. Therefore, despite my finding that [redacted] PS failed to provide one-on-one instruction between 8:50 and 9:00 AM as they claimed, I also FIND that [redacted] PS provided [redacted] with personalized instruction during the school day and maintained sufficient support services to permit [redacted] to educationally benefit. I do not find a deprivation of services for 10 minutes per day for a short period of time sufficient to have denied [redacted] a FAPE.

The mother claims that [redacted]'s schedule was unilaterally changed by [redacted] PS without her consent. [redacted] has had six schedules during the school year. [redacted] PS purports that some of these schedule changes were made at the mother's request or recommendation and others as educators deemed necessary for [redacted]'s educational success.

Witness testimony throughout the hearing clearly showed that Mrs. [redacted] played a very active role in the implementation of [redacted]'s IEP. She regularly wrote notes to his teacher and other [redacted] educators. She made suggestions and reviewed educational information regarding [redacted]'s progress. Under these facts, the mother has not been deprived of an opportunity to meaningfully participate in the implementation of [redacted]'s IEP. Although the mother may not have specifically agreed to the exact timing of services, [redacted] PS made many of the schedule changes because of an expressed concern of the mother regarding the delivery of services. Other schedule changes were made as [redacted]'s needs dictated.

Applicable law defines an IEP as a written plan that incorporates placement decisions made by the child's IEP team. The team is composed of school authorities, the child's parents, and other knowledgeable persons. See 20 U.S.C. §1401(a)(20). Congress devised procedural safeguards and remedial provisions to ensure full parental participation and the proper resolution of substantive disagreements. See 20 U.S.C. §1415. Each IEP is a contract between the school division and the parent.

One of the fundamental goals of IDEA's procedural protections is to ensure that parents have a meaningful opportunity to participate in the IEP development and implementation. The evidence shows that Mrs. [redacted] routinely participated in [redacted]'s day-to-day educational development.

I therefore FIND that the mother meaningfully participated in the implementation of [redacted]'s IEP. I do not find that the mother had to consent to schedule changes but instead FIND that it was the

prerogative of PS to make schedule changes as they deemed necessary for educational progress. I defer schedule changes as a prerogative of the child's educators so long as the changes do not cause harm to the child or deny the child a FAPE.

As a remedy for PS' deprivation of services, the mother has asked for restitution in the form of 60 additional hours of one-on-one instruction to be provided by PS at public expense. Although I might have been inclined to order additional services on the basis of contract breach (providing services between 8:50 and 9:00 AM), the mother has failed to sufficiently carry her burden by calculating for this Hearing Officer how and why she arrived at the sum of 60 hours. No evidence regarding the calculation of lost hours was provided during the hearing and although the mother has made an attempt to provide a basis for the calculation in her post-hearing brief, it is abstract. Therefore, any calculation made by the Hearing Officer would, at best, be speculative.

However, as a show of good faith, I suggest, but do not order, that PS and the mother attempt to reach an agreeable number of hours for to receive additional one-on-one services. Such a gesture by PS might ease the apparent tension that now exists between PS and the mother.

*Issue: Whether PS may unilaterally provide simultaneous services when the Individualized Education Program (IEP) specifies that the child receive one-on-one for these services?*

The mother contends that PS provided with simultaneous services during times when he should have received one-on-one services. She further contends that such simultaneous services were provided without her consent and knowledge. Specifically, the mother objects to consultative or collaborative services being provided outside the school day and claims that these services were sometimes provided outside regular school hours.

The mother claims that received one-on-one services with several staff members servicing at the same time, and at one point, provided with one-on-one services during his lunch time thereby depriving him of a lunch break. She contends that providing services in this manner violated the IEP. The mother also contends that school officials were uncooperative and non-responsive to her pleas to stop providing with simultaneous services.

PS contends that they acted reasonably and that it is not unusual for consultative services to be given outside school hours. They substantiate this claim with testimony from (Assistant Principal, Elementary), (Supervisor of Special Education for

Public Schools), and (Special Education Director for Public Schools). These witnesses summarily indicated that consultative or collaborative services were generally conducted between teachers and that although the child may be present, it is not necessary for the child to be present. In essence, they testified that collaborative and consultative services were often used by educators to discuss the child's progress and to determine the best course of action to educate the child.

The mother claims that PS ignored her regarding this issue. However on pages 17 and 18 of her own post-hearing brief, Mrs. states that on September 20, 2007, Ms. wrote to her the following: "As you requested, we are forwarding 's daily schedule. The summary of services has been reviewed by both Mrs. and I. We believe that this schedule is consistent with the IEP and any agreements made." On September 27, 2007, Ms. wrote a more extensive note to Mrs. . This note states the following: "There may be times when he is with them during collaborative piece for observation, modeling purposes or demonstration of strategies to assist in goal development. Overlap may occur during this instructional period where both professionals are working with . ...You will note that according to the schedule, is receiving three hours a day of ABA instruction consistent with the IEP and agreement...I hope this answers your questions and trust that you agree that we are working very hard to help learn per his IEP." I do not find these notes non-responsive or uncooperative.

I accept the explanation set forth in Ms. 's notes to Mrs. and FIND that PS acted reasonably and did not provide simultaneous services outside regular school hours. I further FIND that PS was responsive to Mrs. 's requests and made admirable efforts to explain the purpose and importance of collaborative and consultative services. PS did not violate the terms of the IEP when providing these services. It would appear that Mrs. simply refused to accept the explanation.

***Issue: Whether PS should be permitted to conduct adaptive and psychological evaluations of the student absent the parent's consent.***

Providing with a FAPE is of utmost importance to this Hearing Officer. I strongly suggest that providing the best possible FAPE for should likewise be the goal and objective of all parties concerned with this due process hearing.

is overdue for his triennial evaluation. PS is seeking an order that authorizes both adaptive and psychological evaluation components to be included in 's reevaluation. Both the mother and PS personnel express concern that may be mentally retarded PS staff members believe that psychological and adaptive evaluations are both necessary to establish cognitive delays that may be associated with mental retardation. All witnesses from PS who testified on this issue asserted that it would be in 's best interest for such evaluation components to be included with his triennial evaluation.

Although the mother has consented to 's reevaluation, she objects to the use of adaptive and psychological components. Accordingly, she has denied consent to use these two components for 's reevaluation. In Section VII(D) of her post-hearing brief entitled Parental's Assessment Suggestions, the mother explained her objections as follows:

In the case at hand, the have already agreed to comprehensive testing. They are willing to have Elementary School's regular evaluator give the WISC, the ABLLS, the Vineland, the CARS, the GARS, and the Battelle, all of which the evaluator has testified that she can use or can qualify to use (Bennett, pp. 218, 232 ), many of which have a psychological or adaptive component, most of which the school system already used in 2004 on for eligibility purposes (Exhibit N), as well as any appropriate Speech or OT assessment instruments.

The use of the above-named instruments would serve two purposes: One, provide comprehensive testing. Two, allow parents and educators to compare 's progress and development directly since the assessment instruments are the same.

Furthermore, these instruments were all thought to be sufficiently comprehensive in 2004 "to identify the child's special education and related services needs." The School Board has not shown why they are not sufficient now during reevaluation which is generally a lesser comprehensive evaluation than the initial eligibility evaluation. Mental retardation was a concern in 2004 (Exhibit N, Haxter Developmental Evaluation), yet back then these instruments were all thought perfectly acceptable. was behind his peer group back then as he is now. The School Board has not demonstrated that circumstances have changed so much as to warrant different or more assessment instruments.

I do not agree with this argument. Simply because certain evaluation components were not used previously, does not exclude them from the present spectrum of choices. I give deference to PS educators regarding this issue.

Section VII(E) of the mother's post-hearing brief entitled School Board's Agenda, is alarming. Mrs. alludes to PS having some "hidden" agenda for its desire to test psychologically and adaptively. It appears she believes that PS failed to appropriately educate

when he attended PS the first 2 ½ years and that they are now trying to label mentally retarded, as some sort of "cover-up." In her brief, Mrs. states the following:

The real problem is that the School Board is not satisfied with the 's permission to test because they want a psychologist, rather than the evaluator, to test . The School Board wants, in effect, to use a psychological assessment "to rule out alternate causes of functional impairments in academic achievement." 71 Fed. Reg 156 at 46643 (Aug. 14, 2006). PS seeks to be permitted to conduct adaptive and psychological evaluations of the student by a psychologist in addition to five other tests that the parents have already agreed to, presumably because the Respondent wishes to explain the student's lack of progress in some way, but this kind of special permission to test psychologically is exactly what the regs refused to give special credence or support.

The School Board is trying to do exactly what the Federal Register eschews. They want to categorize differently to excuse their failure to provide appropriate services early enough for to take full advantage of them. They want to determine that is "a child with a disability," albeit in a different category where the real "determinant factor for that determination is lack of appropriate instruction in reading or math, or limited English proficiency." 71 Fed. Reg. 156 at 46643 (Aug. 14, 2006). *The Complainant maintains that if is labelled mentally retarded as a result of psychological or adaptive testing by this psychologist, it is because of 's lack of appropriate instruction the first 2 ½ years in Public Schools and his limited English proficiency, induced by this lack of appropriate instruction, not because he necessarily is mentally retarded.* (Emphasis added.)

I am flabbergasted by this reasoning and reject the mother's argument. As long as is entitled to receive special education services pursuant to IDEA, he should receive the very best services possible. His deficiencies and disabilities should be extensively explored so he can receive the best FAPE possible. To do otherwise would serve an injustice.

Through use of appropriate testing and evaluation tools, most, if not all of. ' disabilities can be identified. Such identification is best accomplished through evaluation and testing. Once has been properly evaluated and classified, his parents, in cooperation with an appropriately assembled IEP team, can formulate the most comprehensive and beneficial IEP for ' educational benefit. It is unreasonable for a parent not to embrace this concept.

PS argues that the requested adaptive and psychological evaluation components are needed to determine ' current levels of functioning and his educational needs for IEP planning purposes. Testimony from several PS personnel confirmed that adaptive and psychological evaluations were necessary for IEP planning purposes. They asserted that these components were also required to reasonably determine expectations for ' future progress. PS requests that such evaluations be

ordered over the parent's objection and cite Houston Independent School District, 107 LRP 57047 (SEA September 12, 2007) as one authority for allowing such action by a Hearing Officer.

Citing various subsections of 34 C.F.R. §300.532 within the decision, the *Houston* case found the following:

The full and individual evaluation of the student is one that assesses the student in *all areas related to the suspected disability*, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. Additionally, the evaluation must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified. (Emphasis added)

The full and individual reevaluation of the student should consist of a psycho educational assessment, psychological examination, a functional behavioral assessment, and a counseling assessment, as these various assessments would address the student's previously recognized areas of disability.

I FIND *Houston* on point and concur with its rationale. I therefore override the parent's lack of parental consent and hold that PS be allowed to both adaptive and psychological components be included during ' reevaluation. I FIND these evaluation components necessary for IEP planning purposes and for ' educational progress.

I am convinced that use of these evaluation tools will serve to be in ' best interest. These evaluation components can not harm but only help by enlightening the parents and PS personnel of ' educational needs. As such, an appropriate IEP can be formulated that provides with the best possible educational benefit and the most effective FAPE.

#### **ORDERS**

Accordingly, it is hereby **ORDERED** that PS conduct ' triennial reevaluation within 45 days of the date of this decision; that this reevaluation include, but not be limited to, use of both adaptive and psychological components; that a copy of the reevaluation results be provided to the mother within 48-hours of receipt by PS; that ' parents fully cooperate with the reevaluation; that an appropriate compliment of IEP assessment team members, along with the parent(s), assemble within fourteen calendar days of the date PS receives ' reevaluation results; that PS continue evaluating in those areas consented to by the parent and that such evaluations be completed within 45 calendar days of this decision; and that the school psychologist and social worker be included on the assessment team if the reevaluation results deem their attendance appropriate.

**GENERAL COMMENTS**

It is imperative that all parties involved in this proceeding clearly understand that it is who should be the focus. is an adorable child who should be given every opportunity to receive a positive, beneficial and meaningful educational experience. The obvious, on-going "bickering" and distrust between the parent and PS must cease for to receive the best FAPE possible. Such senseless dissention can only result in needless harm to .

**RIGHT OF APPEAL**

8 VAC 20-80-76(O)(1) provides that 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. The appeal may be filed in a State Circuit Court or in a Federal District Court without regard to the amount in controversy. 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.

ENTERED: *January 15, 2008*

  
Rhonda J. Scott Mitchell  
Hearing Officer

Copies Furnished:

, Complainant  
Kathleen Mehfoud, Esquire, Counsel for  
Office of Due Process and Complaints  
, Director of Special Programs,

Public Schools

Public Schools