

06-076

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Resolution &  
Administrative Service

DEPARTMENT OF EDUCATION  
DUE PROCESS HEARING

	PUBLIC	MR. and MRS.
SCHOOLS	(Schools, LEA )	( Parents )
( Child, Student )		June 20, 2006 ( Date of decision )

KATHLEEN S. MEHFOUD ( Counsel for Schools, LEA)	Parents represented themselves ( Counsel for Parents, Child )
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DECISION OF HEARING OFFICER

This proceeding was initiated by Parents by Request for Due Process filed April 10, 2006. Objection to the sufficiency of the Request was not filed until May 2, and the Hearing Officer concluded that the Request was adequate, but allowed the Parents to file an amended request on the State Form, which was done on May 10. A Response to Parents Request was also not filed until May 2 but it did not appear important to deal with it. There were 4 telephone prehearing conferences, involving many details and much time. 5 subpoenas were issued. Mediation was not done, but Resolution was attempted without success. Hearing was set for 9 A.M. June 12-13 at the Schools office building, but was completed by working until 6:45 P.M. on June 12.

The Schools submitted a compilation of 49 exhibits, plus 46A, which were acceptable to the Parents, and were received into the record by agreement. The Parents presented 38 exhibits, with all but No. 9 being received into the record. There was some duplication. Schools presented 3 witnesses, and both Parents testified. Student was present for part of the hearing. Both sides made opening and closing statements. Numerous issues were indicated in the Request for Due Process, and related handling. Those that remained for hearing were basic questions of the adequacy of the IEP, whether it would provide FAPE, questions of need for Extended School Year services, the school placement of Student, and whether there were procedural inadequacies in the handling by Schools. Issues that were resolved prior to hearing, shown by documents of record, were that the Parents properly represented Student who was 18 years old turning 19, and that Student was eligible for continued special education, and that Schools had responsibility for him.

THE EVIDENCE AND FACTS ----

Student is a boy, 18-19 years old, 6 ft. tall, in good health, who has been receiving special education services for some years and is classified as having Mental Disability and being Speech Language Impaired. Other problems are mentioned such as ADHD, OCD, and Aspergers. He attended a private academy in Richmond area for 9th and 10th grade. His eleventh grade was at one of Schools regular high schools, where his parents reported that he had some unpleasant treatment and comment from other students, including a petition signed by perhaps 100 students, and ran into some problems with his own personal conduct, and some problems with participation in extra-curricular activity. As a result he attended the same academy for 12th grade. He has not received a regular high school diploma. He is reported to

be pleasant and cooperative, but to have some difficulties with attention span, and other details. The Parents had not seen the petition mentioned.

The Student and the Parents are seeking continued special education for Student, with emphasis on vocational, and job training, and preparation for regular work, and further work in math and reading. He has expressed interest in lawn and garden type activity in particular, and in other possible activity. The Parents are concerned that the potential program at the high school he would normally attend is not adequate, or the best for him, or as good as is available at other area schools, and would like consideration of attending a program at another high school or a special vocational school, including schools in another jurisdiction. The Parents felt that the vocational assessment was inadequate, and they wanted representatives of the vocational schools present at the IEP meetings.

They were concerned about the unpleasant experiences Student had at the area high school for his 11th grade year, and the need for adequate or better social environment. The Mother testified in detail about the bad experiences, and the inadequate program details, during the Students 11th grade year at the area high school. Parents sent Student back to the private academy for his 12th grade.

A problem of special concern to the Parents is that the slightly younger sister is also a student, in an honors program, at the same area high school, and was quite distressed and adversely affected by the comments and attitudes of other students towards her brother, when he attended the school for his 11th grade. This is another major reason why the Parents would like the Student to attend another school for his vocational and other instruction in the 2006-7 school year. The Mother testified that they had taken steps for a waiver for Student to attend another school, but could not get a meeting with the principal of the desired school. (At the closing argument Schools advised that there was a review or appeal procedure dealing with Waivers at the Schools top staff level)

Parents initiated contact with Schools in January 2006, and did much follow up seeking to progress an IEP for Student, and felt that they were not getting cooperation from Schools, and were being treated evasively and improperly. They felt they did not get any action from Schools until they filed the Request for Due Process on April 10. They were much concerned about the timing and need to get Student placed before Fall.

(see Parents Ex. 1 and 2, the Requests for Due Process, plus their testimony, and Exhibits 4-8, 12, 13, 14, 15, 22, as to the above paragraphs).

An IEP procedure was initiated by Schools, and a meeting took place on April 26, with the Parents, the Student, and many staff members present (including a Transition Coordinator), and a draft IEP was submitted, which proposed placement at the area high school. Further information and evaluation was sought by Schools and the Parents consented. (Schools Ex. 22, 23; Parents Ex. 20, 21). The Parents rejected this draft with various comments including objection to the proposed school placement, a request for more vocational, and a desire for placement at possible other schools which were thought to have better programs and resources (Parents Ex. 22).

The Parents had a Psychological Evaluation done by a Ph.D. on 4/7/06 and 5/5/06, who

reported that Student had various problems, and met the criteria for Mild Mental Retardation (Parents Ex. 32; Schools Ex. 20). Schools had a Psychological Evaluation done 6/1/06 by their highly experienced psychologist (resume, Schools Ex. 43), who likewise reported many details and reached a similar conclusion (Schools Ex. 46). He had also done an evaluation in 6/03. The school psychologist testified at length and gave support to the proposed IEP as being appropriate and beneficial for Student. He also stated that there was no need for extended school year services, as Student had not had ESY before and had not shown regression to justify ESY. He had advised the Parents about the Schools Waiver procedure for possible attendance by Student at another school.

Another IEP meeting took place on June 7, and another draft IEP was prepared, and edited after the Parents had to leave the 5 hour meeting. The editing was intended to reflect the changes that had been discussed with the Parents. An edited copy was supplied to the Parents that evening (Schools Ex. 49). That IEP reflected changes from the IEP of April, and added more vocational training time. It provided for Student to attend the area high school, which is the same one attended by the sister, who is in an honors program there. The Parents are not satisfied with this IEP and are concerned about adequacy of the vocational aspects, and other details of the program, and the location at the particular high school, for the same reasons they had expressed before. The Mother testified in detail about various concerns as to vocational, job skills, math, inadequate goals, etc. A vocational school representative was present at this meeting.

Schools had Student examined for some hours by a very experienced staff member (resume, Schools Ex. 41) for a Vocational Assessment, and a report was dated 5/26/06 (Parents Ex. 25; Schools Ex. 46A). A lengthy comprehensive assessment was done. Horticulture and carpentry were specifically considered, and some other activity. Problems were noted, and the detailed report indicated that Student needed help to improve work related behaviors, and other details and transition goals. This person testified at length and gave detailed explanation of the IEP proposed vocational program, and potential benefits to Student---that it offered flexibility and would allow him to progress as rapidly as he could. He also explained why some of the other possible vocational programs were not suitable for Student, due to his limitations, due to long term time commitments, due to safety concerns, etc. He explained that specialized vocational transition instructors would go to the school to provide Student with the Employability Skills and Work Prep services specified in the draft IEP,

The Administrator of Special Education from the area high school was the 3d witness for Schools. She had extensive experience (resume, Schools Ex. 44). She had known Student since 2003 and had done 2 Educational Evaluations on him, the first in 2003 (Schools Ex. 3), and the latest being 5/17/06 (Schools Ex. 26; Parents Ex. 33). She said that the current IEPs were in reasonable time for the 2006-7 school year, and there was no harm to Student caused by delay. She described some of his needs for a structured environment, for prompting, and said that he would have problems in large classes. There are over 130 special education students at the high school, and there is qualified staff, and there are services of career transition coordinators, who deal with vocational problems like those of Student. She reviewed the latest draft of IEP and explained that the changes were all discussed with Parents, and some were modified to meet Parents desires. Math, Reading and Writing, instruction was discussed, and she expected to have 1 teacher plus an aide for each 5 students. She expected 10 students in

the mildly mentally disabled group, and in the employability group she expected only 3 students. She discussed the transition goals, the accommodations and the services. She explained that there was no justification for ESY services. Employability Skill and Work Prep were combined to permit progress as fast as Student can do. She felt that Student could not handle the classes at the technical center located elsewhere, mentioning cognitive problems and safety concerns. The IEP can be amended later if circumstances suggest it. The placement decision was made when the Parents were still at the IEP meeting, but the language was composed and inserted in the draft supplied later on June 7. The tri-ennial had been done. She commented on the Waiver procedure to place Student at another high school, and said that was not a Special Education procedure. She said no consideration was given to the concerns of and about the sister attending the same school. She acknowledged receiving many contacts from Parents about events during Student's year at the high school, but was not aware of the petition about him. She said that if other students were offensive to special education students, they would be reported and there would be follow-up, and she thought there was no problem.

A Sociological Assessment done by schools dated 5/5/06 was also in the record (Schools Ex. 25; Parents Ex. 34) which showed among many details that Student is a pleasant attractive person with some serious limitations. This report discussed in some detail the problems Student had at the area high school in his 11th grade year.

#### THE ISSUES AND THE APPLICABLE LAW:

There is no unique special education law involved here, and so no case law will be cited.

It is proper for the Hearing Officer to consider evidence and documents that arose after the Request for Due Process was filed because all of the issues were raised in the Request, and issues are continuing. The several motions by Schools were properly rejected.

Parents initiated this Due Process case, and have the burden of proof. They have argued that the proposed IEP of June 7 is inadequate, and questioned some details, but have provided no specific evidence as to what would be satisfactory. Schools have demonstrated at length by competent witnesses that the proposed IEP provides Student with a potential program and services that will deal with and meet his various needs, and advance him on the way to some form of vocational activity that his abilities and limitations will permit him to handle. He is expected to make progress commensurate with his cognitive and other abilities. He is recognized to be entitled to continuing services, as needed, until age 21. Parents have failed to meet their burden of proof, and Schools has demonstrated that the proposed IEP will provide FAPE.

Parents offered no experts or evidence to deal with the IEP problems, and the views of the experienced staff of Schools are entitled to some deference.

While it does appear that there was some evasiveness and lack of cooperation by Schools early this year, the various Evaluations, and proposed IEP, are timely, and will provide a suitable program for Student for the 2006-7 school year. There were no procedural violations of any substance.

Extended School Year (ESY) services are not justified. Student has not had ESY before, and has not shown any significant regression.



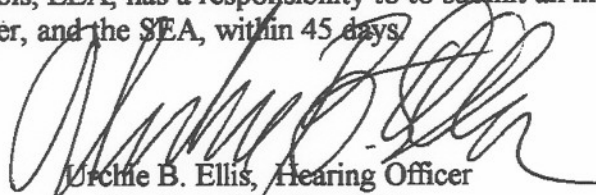
The Placement at the area high school in spite of the concerns by the Parents is a special education decision, that might be challenged for special education reasons related to the Student. Concerns about the sister are a separate matter, and may be dealt with through the Schools Waiver procedure. It is not clear if the Parents have formally requested a Waiver. The evidence was that the area high school could provide an adequate program, and there was no evidence that any other school would do better.

**CONCLUSIONS----**

The Hearing Officer has carefully reviewed all of the exhibits, and refreshed his memory as to the testimony and arguments, and concludes that the Parents have not established that the proposed IEP does not provide FAPE, or that there were any substantive procedural errors. Accordingly the case is dismissed.

This decision is final and binding unless either party appeals in a Federal District Court within 90 days of the date of this decision, or in a State Circuit Court within one year of the date of this decision. Any party wishing to appeal is advised to consult with legal counsel about procedures and deadlines. The Schools, LEA, has a responsibility to to submit an implementation plan to the Parties, the Hearing Officer, and the SEA, within 45 days.

June 20, 2006



Archie B. Ellis, Hearing Officer  
Va. State Bar No. 5422

cc: to the Parties, to Counsel, and to the Va. Dept. of Ed. (SEA)