

06-093

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

CASE CLOSURE REPORT

_____	<u>Public Schools</u>	_____	_____
School Division		Name of Parent(s)	
<u>Dr.</u>	_____	_____	_____
Division Superintendent		Name of Child	
_____	_____	_____	_____
Counsel Representing Local Education Agency (LEA)		Counsel Representing Parent/Child	
<u>Ternon Galloway Lee</u>	_____	<u>Parent</u>	_____
Hearing Officer		Party Initiating Hearing	

Hearing Officer's Determination of Issue(s):

On the issue of whether the LEA erroneously found the child ineligible for special education and related services prior to 2006, the hearing officer (HO) determined that the eligibility determination was seriously flawed and therefore invalidated. The HO then ordered the LEA, pursuant to the decision and order, to determine the child's eligibility again.

The HO found the LEA satisfied notice requirements. Further the HO determined that the record showed the child was a child with a disability and that the LEA was not providing the child with a FAPE.

Hearing Officer's Orders and Outcome of Case

By order entered August 24, 2006, the HO ordered the LEA to reconvene the appropriate team/committee to determine the child's eligibility for special education and related services and to consider, consistent with the decision, information from varied sources.

VIRGINIA STATE EDUCATIONAL AGENCY

Re: _____, by and through his parent(s),
v. _____ Public Schools (LEA)

Child & Parent(s):

Attorney for Parent(s):

Local Educational Agency (LEA): _____ Public Schools

Public Schools Attorney: _____, Esq.

Superintendent of LEA:

Administrative Hearing Officer: _____ Ternon Galloway Lee, Esquire

DECISION CORRECTING CLERICAL/TYPOGRAPHICAL ERRORS

It appearing to the hearing officer that certain clerical/typographical errors were made in the decision issued in this matter on August 24, 2006. Accordingly, the hearing officer orders that the decision of August 24, 2006, be and same is hereby amended to make the following clerical corrections.

Where Correction Made in the Decision	Correction Made
1. Page 2, 1 st Paragraph	Deleted "The" before June 26, 2006
2. Page 2, 3 rd Paragraph	Changed July 6, 2006 to July 7, 2006
3. Page 11, 2 nd Paragraph	Changed to
4. Page 13, 1 st Paragraph	Changed to
5. Page 14, last Paragraph, last line	deleted "h" in where
6. Hearing Officer Exhibit List, Exhibit 23	Changed to

Enter Nunc Pro Tunc August 24, 2006.

Date September 18, 2006


HEARING OFFICER

Received

AUG 28 2006

Dispute Resolution & Administrative Services

VIRGINIA STATE EDUCATIONAL AGENCY

Re: _____, by and through his parent(s),
v. _____ Public Schools (LEA)

Child & Parent(s):

Attorney for Parent(s):

Local Educational Agency (LEA): _____ Public Schools

Public Schools Attorney: _____ Esq.

Superintendent of LEA:

Administrative Hearing Officer: _____ Ternon Galloway Lee, Esquire

DECISION

I. PROCEDURAL HISTORY¹

By request for due process hearing dated June 5, 2006, received by the
Public Schools (hereinafter "LEA") on June 6, 2006,
(hereinafter "parent(s)/mother") requested a due process hearing asserting the LEA
erroneously found _____ (hereinafter "child" or "student") ineligible for
special education and related services. The hearing officer (hereinafter "H.O.") held an
initial pre-hearing conference on June 19, 2006, wherein the issue was determined to be
the following:

Whether the LEA erroneously found the child ineligible for special
Education and related services prior to 2006?

¹ Throughout the decision the following abbreviations will be used:

- | | |
|--------------------|--------|
| Exhibit | Exh. |
| Transcript | Tr. |
| Exhibit for LEA | Exh. S |
| Exhibit for Parent | Exh. P |

The H.O. also scheduled the due process hearing for July 14, 2006, and based on discussions during the pre-hearing conference and subsequent conference issued a scheduling order. By letter dated June 20, 2006, the parent waived the resolution session. By motions submitted to the hearing officer on June 21, 23, 2006, counsel for the LEA asserted the due process request was insufficiently pled. Counsel's June 23, 2006 motion also moved to dismiss the due process request on grounds that the parent had previously agreed on December 10, 2004, to terminate the child's provision of special education and related services. The hearing officer held a subsequent pre-hearing conference on June 23, 2006, and based on discussions during the conference granted the parent until July 5, 2006 to respond to the LEA's motion to dismiss on grounds other than the sufficiency challenge and issued orders dated June 28, 2006, and June 26, 2006. By order dated The June 26, 2006 the hearing officer found the parent had sufficiently pled her due process request/complaint. The hearing officer issued an amended order correcting a typographical error and matter regarding the date of receipt of the due process request.

By letter dated July 5, 2006, the LEA waived the resolution session also. On July 6, 2006, a third pre-hearing conference was held, to discuss among other matters, the order of witness testimony at the scheduled due process hearing and the motion to dismiss.

After receipt of the parent's response to the LEA's motion to dismiss on grounds other than sufficiency of the complaint, the hearing officer entered an order dated July 6, 2006, denying the LEA's motion to dismiss.

The due process hearing was held on July 14, 2006. By joint motion the parties

requested an extension in time for the decision due date to allow time for submission of written closing arguments. The hearing officer found the extension in the best interest of the child and extended the due date of the decision to August 24, 2006

The HO decision is set forth below.

The IDEA 2004 was signed into law on December 3, 2004. With the exception of some elements of the definition of "highly qualified teacher," which took effect on December 3, 2004, the provisions of IDEA 2004 became effective July 1, 2005 (the "Effective Date"). Concerning this administrative due process proceeding, where the events occur before the Effective Date, IDEA 1997 and the implementing regulations apply. Obviously, concerning events occurring on or after the Effective Date, the IDEA 2004 applies. In this event, any federal and state special education regulation not impacted by the Act remains in effect until the newly revised federal and/or state special education regulations are implemented. Said newly revised federal regulations become effective on October 13, 2006.

II. ISSUES

Did the LEA erroneously find education and related services?

ineligible for special

III. STATEMENT OF FACTS

1. (hereinafter " ") was found eligible for special education and related services for a mild articulation delay in 1999 when he was a first grader in the LEA. is now a rising eight grader in the LEA. Exh. P-10, Tr. 77.

2. The LEA created [redacted]'s individual educational program (hereinafter "IEP") and implemented it November 17, 1999. Exh. P-11.

3. Pursuant to the IEP, [redacted] was to receive speech therapy from November 17, 1999, to the anticipated completion date of November 17, 2000. Exhs. P-10, 11.

4. [redacted] (hereinafter "[redacted]" of "parent") withdrew from the LEA in May 2000. [redacted]'s related services ceased at that time and were not completed. Exh. P-4, 10.

5. Upon the child's re-enrollment in the LEA in 2003, the LEA did not reevaluate him. Exhs. S-1, P-4.

6. On October 25, 2004, the parent referred [redacted] to child study expressing the child had a history of speech problems and expressing the desire to have the child complete his speech therapy commenced in 1999 through his IEP. Exhs. P-15, S-4. Tr. 74-76.

7. The child study committee consisting of [redacted] (hereinafter "[redacted]"), principal or designee; [redacted] (hereinafter "[redacted]"), [redacted]'s science and math classroom teacher; [redacted] (hereinafter "[redacted]"), specialist; [redacted], parent and referring source; and [redacted] (hereinafter "[redacted]"), school psychologist met on October 26, 2004. The child study committee considered the parent's concern about the child's history of speech problems. It also considered [redacted]'s input that [redacted] was in an above level academic environment and did not exhibit a speech problem. [redacted]'s input also included a behavior note form which she completed October

25, 2004 regarding . Tr. 33-34, Exhs. P-15, 3, S-3, S-8.

8. described as an honor and model student with no weaknesses who earned A's and B's in her science and math class. did not observe having any speech difficulty, to include articulation problems, difficulty understanding math and science or problems doing educational tasks for class. Tr. 48, 54-55.

9. 's final report card for the 2004-2005 school year reported above average performance with one exception, a satisfactory performance in an Introduction to Computer Skills course. Exh. S-14.

10. The child study committee referred for a speech evaluation. A speech and language evaluation, the Clinical Evaluation of Language Fundamentals, Third Edition (hereinafter "CELF 3"), was administered to by speech therapist on November 11, 2004. Exhs. S-2, S-8.

11. (hereinafter " "), speech pathologist for the LEA has seventeen years experience in the area of speech. She holds a Bachelor of Science degree in speech pathology from Radford University and a Masters of Science degree from James Madison University in Speech language pathology. She is licensed by the Virginia Department of Education of Health Professions. Tr. 62.

12. has been specially trained in the areas of test administration and interpretation. Tr. 62.

13. Although did not administer the CELF 3 to in 2004, she is familiar with the test, reviewed it on or about December 10, 2004, agreed with the findings and recommendations of the assessment and qualified as an expert to explain the

CELF 3 and 's test results. Exh. S-1, Tr. 62-63.

14. The CELF 3 is a standardized language assessment that tests expressive and receptive language skills. Tr. 63

15. During 's CELF 3 testing, he was also informally tested in the areas of articulation, voice fluency, and oral motor skill. Tr. 63.

16. The CELF 3 articulation test results showed had no articulation errors and he was 100 percent intelligible to unfamiliar listeners. Exh. P-4, Tr. 63.

17. The articulation test was informal and is a generally accepted and reliable method of testing for difficulties in articulation. Tr. 63-64.

18. The standard average score on the CELF 3 is 85-115. 's expressive language and receptive language scores were average, 114 and 108, respectively. His total language score was 111 and in the average range also. Exh. S-1.

19. If had had difficulty expressing his R's and/or substituting F's for Th's, these difficulties would have been revealed when his speech and language was assessed. Tr. 66.

20. 's CELF 3 test results are valid and reliable. Tr. 64.

21. administered to a formal articulation test, the Goldman-Fristoe Test of Articulation, Second Edition, on May 23, 2006. received a standard score of 104 on the test which is in the average range of 85 - 115 and had no articulation errors on and the test. His speech was also found to be 100% intelligible. Exh. S-19, Tr. 65, 69.

22. The test results of the formal articulation test administered in 2006 were

valid and reliable. Tr. 65.

24. On October 26, 2006, the LEA commenced the process to reevaluate by notifying the parent and obtaining the parent's permission for to be evaluated in speech and language. Exh. S-5.

25. A group consisting of the parent, , school administrator or designee; , special education administrator; , science and math teacher; and the school psychologist (hereinafter "reevaluation group" recommended speech and language assessments only. The group explained that its reason for recommending the assessments were the child was last in the LEA in 2000 and had a speech IEP and when he returned to the LEA, he was not reevaluated. The group also noted the child was shy/quiet and the parent felt the child had difficulty expressing himself and may have difficulty with pragmatics. The group noted no attendance concerns and that the teacher had no speech concerns. Exh. S-5

26. The October 26, 2004 reevaluation group did not identify specific records reviewed. Exh. S-5.

27. By notice dated November 18, 2004, the LEA scheduled an eligibility meeting for December 10, 2004. Although did not receive special education and related services upon his reenrollment in the LEA in 2003, the notice of the eligibility meeting stated the purpose of the meeting was to determine 's continued eligibility for special education and related services. Exh. S-9.

28. The eligibility committee consisting of (hereinafter " "), special education administrator; principal or designee;

(hereinafter “ ”), regular education teacher; parent; and , speech therapist/pathologist recommended be terminated from special education and related services because (i) current assessments and observations indicated that 's language skills were average to high average and (ii) no speech or language concerns had been reported at the time. Exh. S-10.

29. The eligibility committee did consider the CELF 3, administered November 11, 2004, the child’s hearing, input from at least one teacher expressing she had no academic or speech concerns about the child. The committee also considered parental input expressing concerns about school building safety and the mother’s desire to have complete services provided in his 1999 IEP. Exh. S-10, Tr. 76.

30. The written summary of the eligibility committee deliberations does not indicate the eligibility committee considered any developmental, adaptive, psychological, sociological and medical assessments of . Exh. S-10.

31. On December 10, 2004, the LEA presented the parent with a prior notice proposing to terminate the provision of special education and related services for . The notice’s explanation for the proposal was testing results regarding the child’s communication skills were within normal level. The notice also stated no other options were considered and referred the parent to the reevaluation report. Exh. S-11.

32. December 10, 2004, the parent gave written consent to the termination of special education and related services for . Exh. S-11.

33. The LEA represents special education and related services were terminated December 10, 2004. Exh. S-11.

IV. APPLICABLE LAW AND ANALYSIS

A. Child Study

Because the parent had concerns about the child's history of speech difficulty and his completing his 1999 IEP, she referred him to child study on October 25, 2004. Exh. S-4.

The LEA acted on the referral by establishing a child study committee and convening a child study meeting on October 26, 2004. The committee was made up of [redacted], principal/designee; the parent who was also the referring source; [redacted], science and math teacher; the school psychologist; and [redacted], specialist. Exh. S-8.

The committee recommended a speech evaluation after considering the mother's concerns and teacher input that the child was having no speech problems and doing above average in class. Exh. S-8.

The hearing officer examines below the reevaluation/evaluation process, the eligibility process, and the decision to terminate eligibility.

B. Evaluation/Reevaluation Requirements

8 VAC 20-80-54 F2 provides in pertinent part that as part of a reevaluation, the LEA shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate review the reason for the evaluation request and existing evaluation data on the child. If the group determines more data is needed, the LEA must administer test and other evaluation material in accordance with 8 VAC 20-80-54E. 8 VAC 20-80-54 F4.

1. Make-up of the Reevaluation Group

On October 26, 2004, the LEA provided the parent a form titled "Prior Notice and Parental Permission" which informed the parent that [redacted] would be undergoing a reevaluation for special education and related services. Exh. S-5. The evidence also shows that on October 26, 2004, a group consisting of the parent, [redacted], school administrator or designee; [redacted], special education administrator; [redacted], classroom teacher; and the school psychologist - the reevaluation group- recommended a speech and language evaluation. Exh. S-5.

The group reviewing existing evaluation data for purposes of the reevaluation, must be the same individuals as an IEP team and other qualified professionals, as appropriate. 8 VAC 20-80-54F2. For a child whose only disability is a speech-language impairment, the special education provider that is required to be a member of the IEP team must be a speech-language pathologist. 8 VAC 20-80-62 C 1 c.

[redacted]'s 1999 IEP identifies him as having only one disability, speech impaired. Exh. P-11. The hearing officer notes that the reevaluation group did not include a speech-language pathologist as required by 8 VAC 20-80-54F2 and 8 VAC 20-80-62C, nor did the child study committee, who arguably could be considered a member of the reevaluation group since the child study committee also met on October 26, 2006, and referred the child for a speech and language evaluation. Exhs. S-5, 8.

The LEA may contend that the speech pathologist was not a required member of the reevaluation group because [redacted] was not receiving special education and related services October, 2004. The LEA's own documentation that notified the parent of the

reevaluation process shows that it treated [redacted] as if he was a child with a disability suspected in the area of speech and language. Further, the child's prior IEP identified him as a child with a speech impairment and made provisions for only one related service, speech therapy. Prior to December 10, 2004, [redacted]'s special education and the related services had not been terminated. Accordingly, the hearing officer finds a speech-language pathologist was required to be a member of the reevaluation group.

2. Existing Evaluation Data

The LEA developed an IEP for the child on or about November 17, 1999, before the parent withdrew him from the LEA. Accordingly, the LEA had or should have had pursuant to 8 VAC 20-80-54A and 8 VAC 20-80-54B existing evaluation data substantiating the child's eligibility and receipt of related services that commenced in 1999. The child study committee documents reviewing the parent's concerns and the science and math teacher's comment that the child was an honor student and had no speech problems. Exh. S-8. The eligibility committee does not document reviewing any of the above-mentioned existing evaluation data pertaining to [redacted] being found a child with a disability and in need of services in 1999. Exh. S-10. Although the LEA's Exhibit 5 notes that on October 26, 2004, the reevaluation group recommended [redacted] be evaluated for speech and language and the information used to recommend the evaluation was "Review of records, teacher & parent input," the notation does not indicate specifically what records were reviewed. Exh. S-5. Accordingly, the hearing officer can not speculate and find the reevaluation group reviewed existing evaluation data referenced above.

The hearing officer is mindful that the reevaluation group may conduct its review without a meeting; however, nothing in the record shows any member of the group, individually or collectively, reviewed the above-referenced existing evaluation data. The hearing officer, therefore, finds the record as a whole does not establish the LEA met its obligation during the re-evaluation process of reviewing existing evaluation data; that is evaluation data related to the child's IEP in place during 2000.

3. Additional Data

The reevaluation process is not only designed to determine if a child continues to have a particular disability but to determine if he has additional ones also. See 8 VAC 20-80-54F2a,b. An assessment in speech and language only allows the eligibility committee to determine if the child continues to have a speech and or language impairment. Among other things, the parent expressed to the LEA that the child is shy and quiet and may have difficulty expressing himself as he gets older. The reevaluation group found the mother's concerns was a reason to recommend for a speech and language evaluation. However, 's shyness and possible "diff. [difficulty] with pragmatics" may be caused by other impairments that would go undetected if the child is only assessed in the area of speech and language. See Exh. S-5 (noting in pertinent part that child may have diff. (difficulty) with pragmatics) (parenthetical added).

Moreover, while reevaluation does not necessarily require the depth and breadth of an initial evaluation. the hearing officer finds that in this case, a more in depth evaluation was needed for several reasons noted herein. At the time the reevaluation process commenced, five years had gone by since the LEA initially evaluated as a first

grader for special education and related services. When [redacted] reenrolled in the LEA in 2003, no reevaluation was done. The evidence does not show the LEA had in its possession and reviewed records from the school [redacted] attended during his 2000 to 2003 absence from the LEA. [redacted]'s shyness/quietness and presumed difficulty with the pragmatics and with expressing himself may be explained by assessments in areas other than speech and language. Moreover, the reevaluation group did not have before it background data on the child such as the existing evaluation data accumulated when the child was initially found a child with a disability in 1999.

Considering the above, the hearing officer finds the evaluation group should have determined that additional data, to include, but not necessarily limited to the child's physical condition, social or cultural background, development, and adaptive behavior, was needed to sufficiently reevaluate [redacted] and determine if he was a child with an additional disability or continues to be a child with a disability and in need of educational services. 34 CFR 300.535; 8 VAC 20-80-56 C1.

C. Eligibility Procedures

1. Committee Members

Pursuant to the applicable regulations in December, 2004, eligibility for special education and related services, whether initial or continuing, is determined by a group of qualified professionals and the parent or parents (hereinafter "eligibility committee") after the completion of administration of tests and other necessary evaluations or after determining that additional data are not needed. 8 VAC 20-80-56 B, C; 34 CFR Section 300.534. For reasons discussed previously, additional data was needed in this case

The eligibility committee must include, but is not limited to LEA personnel representing the disciplines providing assessments, the special education administrator or designee, and the parent(s). At least one LEA representative on the committee must have assessed or observed the child. 8 VAC 20-80-56 B 1,2,3.

Following the administered speech and language evaluation, the eligibility committee met on December 10, 2004, to determine if [redacted] was in need of special education and related services or continued to be in need of special education and related services. Exhs. S-9,10. The eligibility committee consisted of [redacted], special education administrator; [redacted], principal/designee; [redacted], regular education teacher; [redacted], parent; and [redacted], speech therapist/pathologist who administered the speech and language evaluation to [redacted] on November 11, 2004. Exh. S-10. The hearing officer therefore finds the eligibility committee consisted of those individuals required by law.

2. Informational Sources

When deliberating whether a child meets the eligibility criteria, the eligibility committee must draw from a variety of informational sources. Data concerning the child's aptitude and achievement tests, physical condition, social or cultural background, adaptive behavior, parental input and teacher recommendations must be carefully considered and such consideration must be documented. 34 CFR 300.535; 8 VAC 20-80-56 C1.

The eligibility committee considered the 2004 assessment in language and speech and noted the scores on the receptive and expressive subtests and the child's overall test score. All were in the average to high average range. The committee also considered

sections of the assessment addressing the child's articulation, voice fluency and oral motor skills which found the child had no articulation errors, was intelligible to unfamiliar listeners, and voice quality, hearing and fluency skills were all in normal limits. Tr. 76, Exh. S-10, S-1.

The eligibility committee also considered parental input wherein the parent expressed (i) a desire to have complete speech therapy services that were provided for in his 1999 IEP and (ii) concerns about safety in the school building. Tr. 36, Exh. S-10. The committee also considered the input from the regular classroom teacher who reported that there were no academic or speech concerns. Exh. S-10..

Having reviewed the eligibility committee's written summary of its deliberations, the hearing officer finds no mention of its review of existing evaluation data pertaining to

's eligibility decision made in 1999 and that only one current assessment, a speech and language one, was obtained and reviewed by the committee even though over 5 years had passed since the child was initially evaluated for special education and related services. Exh. S-10, Tr. 76. Neither does the summary document review of the child's social or cultural background, physical condition (with the exception of hearing), or adaptive behaviors. For these reasons the hearing officer finds the committee did not consider the variety of information it was required to consider in deliberating 's eligibility.

D. Termination of Special Education and Related Services

The regulation governing special education programs for children with disabilities in the Commonwealth of Virginia regarding termination of special education and related services provides in pertinent part that the LEA must evaluate a child with a disability in

accordance with 8 VAC 20-80-54 before determining that the child is no longer a child with a disability. 8 VAC 20-80-58 A. The LEA's evidence shows a team of individuals met to commence [redacted]'s reevaluation on October 26, 2004. Exh. S-5. Existing evaluation data must be reviewed when the LEA conducts a re-evaluation. 8 VAC 20-80-54F 2. As discussed previously herein, the LEA did not conduct the requisite review of existing evaluation data nor did it identify additional data needed to determine if the child continued to have a disability or had any additional disabilities.

E. Child with a Disability

[redacted] must have a qualifying disability and it must adversely affect his educational performance to qualify for special education and related services. 20 U.S.C. Section 1401(3)(A)(ii), Board of Education v. Rowley, 458 U.S. 176 (1982).

Of the fourteen (14) disability categories identified under applicable law in December 2004, the eligibility committee only obtained a speech and language assessment and therefore only considered whether [redacted] was disabled under that category. The committee found he had no speech and language impairment based on its consideration and documentation of the child's average scoring on the assessment and teacher reports and parental input. The consideration was previously discussed in detail above.

Because, the committee did not consider information from varied sources, to include, but not limited to, social or cultural report, physical/medical assessment, adaptive behavior assessment, to enable it to determine if [redacted] had a continuing disability or additional disabilities, the hearing officer finds its eligibility determination is seriously flawed.

V. **DECISION AND ORDER**

The LEA asserts the language and speech assessment shows the child performing in the average to above average range and further the child's teachers reported no concerns about the child's speech or academics and he made good grades. The LEA also contends the parent as the moving party has the burden of proof.

Just because a student makes good grades, as did during the 2004 -2005 school year, does not mean per se that the child is receiving a appropriate education. See Board of Educ. of Hendrick Hudson Cent. Sch. Dist. V. Rowley , 553 IDELR 656. (noting in footnote 25 that a student is passing from grade to grade is not per se evidence of an appropriate education). A child's educational performance is more than a child's ability to meet academic requirements. It also includes a reference to a child's development of communication skills, social skills, and personality. See 106 LRP 10834 (2004) quoting from Mary P. v. Illinois State Board of Education , 23 IDELR 1064, 1068 (N.D. Ill. 1996). The parent's concern that the child was shy/quiet and may be having difficulty with pragmatics could well indicate the child had impairments other than speech and language that may necessitate special education and related services.

Moreover, under the "child find" provisions of IDEA, the state or LEA has an affirmative duty to identify locate, and evaluate children with disabilities residing in state. 20 U.S.C. Section 1412(a)(3); 34 CFR Section 300.125. The child find provisions apply to, among others, children suspected of having a disability and in need of special education

services. 103 LRP 36798.

The LEA had reason to suspect [redacted] had a disability in this case. [redacted] had received speech services in 2000 when he withdrew from the LEA. Upon his return, he was not reevaluated and terminated from special education and related services. His parent also made a referral on October 25, 2004, because she was concerned about his history of speech difficulties, his shyness, difficulty expressing himself and difficulty with pragmatics. At least five years had gone by since he was evaluated for special education eligibility.

Considering the facts of this case, the hearing officer finds the LEA had an affirmative duty under the Child Find provisions of IDEA to evaluate/reevaluate [redacted].

The hearing officer has reviewed and considered all evidence of record, to include, but not limited to evidence mentioned in this decision and evidence concerning the child's 2006 referral for child study, evaluation and determination of eligibility.

The hearing officer has found the LEA's 2004 reevaluation group did not have a speech pathologist as a member, did not review existing evaluating data and should have obtained additional data to assist in determining if the child had a disability or continued to have one. Further, the hearing officer has found that the eligibility committee did not draw from a sufficient variety of information to determine eligibility. The hearing officer finds the total effect of these flaws in the reevaluation/eligibility process is serious and invalidates the LEA's December 10, 2006 eligibility decision. Accordingly, the hearing officer orders the following:

The LEA is ordered to reconvene the appropriate team or teams within the next 30

days to determine if the child is in need of special education and related services or remains a child with a disability and consider information from a variety of sources as mandated by applicable law. This means the LEA is to consider among other information, reports/assessments about the child's medical and physical condition, adaptive behavior, development, and his social or cultural background along with assessments on speech and language. If the LEA does not have such reports or cannot obtain them from other sources such as, but not limited to the parent, the LEA is ordered to assess the child in all areas it is required to consider in its deliberation. Further, the hearing officer orders the LEA to document with specificity its consideration of the varied forms of information, to include but not limited to its consideration of the child's physical condition, social or cultural background, adaptive behavior, and development.

I find that all requirements of notice to the parent have been satisfied, that the LEA had previously found the child was eligible for special education and related services and the child had an IEP while a student enrolled in the LEA in 2000. Because the child's December 10, 2004 eligibility determination is invalidated, the child remains a child with a disability in need of special education and related services. Because the LEA has not implemented an IEP for _____ since he reenrolled the _____ Public Schools Division in 2003, the hearing officer finds the LEA is not providing the child a free appropriate public education.

VI. PREVAILING PARTY

On the issue of whether the 2004 eligibility decision was erroneous, no party prevailed as the LEA is to re-determine eligibility

