05-015

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

by Her Parents,
( ), Complainant

VS

DUE PROCESS
HEARING DECISION

SCHOOLS), Respondent

FINAL POST HEARING DECISION AND ORDER
BY ANTHONY C. VANCE, HEARING OFFICER
ISSUED FEBRUARY 3, 2005

Hearings were held on December 20, 21, and 28, 2004, pursuant to the Individuals With Disabilities Act (IDEA), as amended, 20 USC §§ 1400 *et seq.*, and Virginia Code §§ 22.1-213 to 22.1-221, and governing regulations, involving 's (Parent or Complainant) basic contention that the Virginia Department of Education "VDOE" failed to provide his child, , a free and appropriate public education ("FAPE" , which in turn resulted in Complainant's unilateral placement of in a private day school, warranting tuition reimbursement and related and compensatory services. Mediation transpired and was unsuccessful (R 34-35).

The undersigned was appointed hearing officer on August 31, 2004. The instant school is Public Schools ("

---

* "R" refers to transcript page number of hearing days December 21 and 28, 2004. Day 1 refers to hearing date December 20, 2004. "Ex" refers to exhibit number and when preceded by "P" refers to Parent or Complainant's Exhibit; when preceded by "R" refers to Respondent's Exhibit; and when preceded by "HO" refers to Hearing Officer Exhibit.

or "Respondent"). Parent appeared pro se and was assisted by a non-attorney advocate, Lynn Brownley. is represented by John Cafferky,

By way of background, Complainant requested a due process hearing on August 25, 2004, and a decision on the merits was due on October 13, 2004 (HO Ex 1). The Hearing Officer's memorandum to the parties of September 2, 2004, enumerated the matters to be discussed in a telephonic prehearing conference scheduled for September 9, 2004 (HO Ex 4). After postponement was jointly requested by the parties for settlement purposes and granted by me (HO Ex 6), a telephonic prehearing conference transpired on October 22, 2004. A prehearing order was issued on October 22, 2004 (HO Ex 15). The parties could not agree to a settlement (R 28-29).

Hearings were initially set for September 27-28, 2004 (HO Ex 3). However, pursuant to the joint requests of the parties, supported by extensive documentation, hearing dates were continued on three successive occasions until hearing commencement date of December 20, 2004 (HO Exs 13, 16, 30, 33; Day 1, R 3). was not present at the hearing (R 7).

Exhibits of the parties were timely exchanged prior to hearing. Complainant submitted 47 exhibits consisting of over 1,195 total pages, all being accepted into evidence without objection (R 29-30) except that exhibit 47 was not accepted and exhibits 45 and 46 were accepted for argumentative purposes only (R 637-39). Respondent submitted 108 exhibits (total of 707 pages), all accepted into evidence (R 30). The Hearing Officer

submitted 40 exhibits dealing largely with prehearing orders and other matters leading or related to the hearings herein (R 80) A total of seven witnesses testified, one telephonically.* hearing transcript consists of 825 pages. Both parties submitted opening and reply briefs

After due consideration of a preponderance of the evidence, the pleadings, and the law, I find for Respondent on all issues.

B. Issues

The issues here involved are: (1) whether offered a free appropriate education that was reasonably designed to provide an educational benefit for ; (2) whether Parent's unilateral placement of in Academy, part of Academy (herein " "), a private day school, is appropriate under law to warrant the relief sought; (3) whether is eligible for retroactive access under Virginia's Comprehensive Services Act to state mandated funds for private day special education when a fully signed IEP was not in effect; (4) whether Complainant has been discriminated against by to warrant §504 relief.

C. Findings of Fact

I make the following findings of fact based upon a preponderance of the evidence:

---

* put on four witnesses: , Finance Manager, CSA Department of Family Services; , former Middle School Director, School: , Coordinator of Contract Services; , Contract Services Specialist; Parent put on three witnesses: , Specialist in Office of Contract Services; Coordinator of Office of Monitoring and Compliance; , Parent of .

1. was born in Russia on November 29, 1989, and adopted by Parents in September 1993 (P Ex 1, R 645). is learning disabled and eligible for special education services (R 796-97). has cognitive deficits, communication problems and was diagnosed as ADHD (R Ex 107).

2. attended school at Elementary (R 648) through the second grade and them transferred to , VA (R 649-50), spending two years there in the third and fourth grades (R 651-52) and made little or no progress. During the summer of 2000, Respondent proposed a private school placement at School, Washington, DC (R 655), which Complainant agreed to (P Ex 4, 22).

3. attended Day School during the 2000-01 and 2001-02 school years. a small private day school, was originally selected as the private day school that would attend because it was believed that it would fully meet 's needs. It is a special education school mainly dealing with learning disabled children, small classes containing about four to eight children per class, had occupational and speech therapy which needed, a reading program incorporated into the overall school program, and good special education teachers (R 97-998).

was viewed by Respondent in this program at many times. The program was educationally beneficial for and made progress at (R 78, 80-81, 99-100, 111-112, 132, 134; R Exs 59-65). Examples of progress comments made at concerning are: " is reading at a higher level then in the spring of 2001 when I first began working

with her" (R Ex 61, tutoring report); "she has shown marked improvement" (R Ex 62); continues to make slow but steady progress in reading and language arts"; "In math, has made a lot of progress" (R Ex 63); "Her reading skills have increased over the year by approximately one grade level", (R Ex 60); s organizational skills have dramatically increased over the course of the year" (R Ex 60). The former Director of Middle School, Ms. , observed academically over a year period and noted slowly progressing educationally (R 175-76, 231). was authorized to receive funding for this placement through the Comprehensive Services Act (R Exs 78, 80-81).

4. 's July 2000 and July 2001 IEP's were reasonably designed to offer educational benefit to (R 111, 113) and in fact did offer her educational benefit (R 135).

5. Complainant was dissatisfied with 's schooling at ' because, among others: (a) Parent contended 's was not implemented properly (P Brief, p. 2); (b) 's class size increased to 11-12 students (R 60); (c 's after school program was recreational and had no academic component (R 661); (d) 's physical location moved and was more inconvenient for Complainant (R 662-63; 666); (e) Complainant believed was not making sufficient progress (R 662); (f) some of 's classmates had more severe disabilities than (R 666); and (g) was not provided with the least restrictive environment (Parent's Opening Brief, p. 48).

6. Complainant filed a due process complaint in June 2002 to remove from ; he received legal advice that he would be unsuccessful, and then he voluntarily withdrew his complaint (R 671-72).

7. remained at during the summer of 2002 in an extended school year (ESY program (R 680).

8 FCPS proposed continuing 's program at for the 2002-03 school year (R Exs 13, 37; R 687

9. However, was unilaterally placed by Parent at a private day school in , VA, for the 2002-03 academic year (R 754, 762)

10. was not initially suggested as a private day school placement for by because it did not have a approved program and Respondent had no contractual relationship with it as had with in September 2000. was not familiar with 's educational program. By 2001 was in 's Service Fee Directory (R 93, 95-97) and Respondent had a contractual relationship with it. had placed a student with reading problems there but Respondent encountered problems with its program, including the use of a teacher who had no training in reading, lack of qualified teachers, and not receiving reports on the student enrolled there. Also, in 2001 did not provide speech and language therapy (R 116-118, see also R 350).

11. A series of IEP (Individualized Educational Program" meetings and attempted meetings transpired: June 24, 2002 where a proposed IEP was written but not signed by Parent (R 676, 691);

August 26, 2002 reevaluation meeting (R 682-83), which Complainant requested be continued (R 685); September 3, 2002,a reevaluation meeting in large measure (R 687-88); at the October 4, 2002 meeting an IEP not completed (R 688); no agreement was reached at the IEP meeting of October 7, 2002 (R 140); the meeting of January 29, 2003 (R 694) was cancelled because Complainant brought a court reporter to this meeting which Complainant was earlier advised was impermissible (R 697 ; the meeting held on July 8, 2003 was not attended by Complainant; Parent refused to permit Ms. to visit at , release her records or permit IEP participation (R 154, 156, 253, 707); Parent did not attend the August 27, 2003 meeting (R 159, 766) and ' offer to reconvene this meeting was refused by Parent (R Ex 27, R 768); Parent requested that the meeting scheduled for January 13, 2004 be cancelled (R 770-72); IEP meetings were held in February and March 2004: the first (February 19, 2004) meeting being short and involving IEP preliminaries (R 723), the second was held on February 25, 2004 and Parent brought a complete draft IEP to this meeting (R 723), and the third was held on March 9, 2004, attended by Parent and a proposed IEP was produced by , which was appropriate, but Parent refused to agree to or even sign the forms to acknowledge his presence at the meeting (R 380-88; R Ex 45). Complainant refused to agree to this March 9, 2004 IEP (R 391) because there was not expressly included in the IEP the specific name of the school would attend (R 392-93, 730)

During the period January 1, 2002 through March 9, 2004, proposed a total of eight draft IEP's and two IEP's (R Exs 36-45)

No IEP has been agreed to since that fully executed on June 7, 2001 (R 165), primarily because of Parent s refusal to cooperate in resolving the differences he had with Respondent and his insistence that any IEP agreed to by him had to have expressed therein that would not attend or be returned to or that be specifically named as the school where would be placed (R 370, 392-93, 721, 794-95; R Ex 45, p. 11, and R Ex 45, p. 3 of Ms. 's letter). The Virginia IEP form does not require naming a specific school which the involved child would attend (R 782) s practice is to not specifically name a school in an IEP that the child will attend. Specific school selection is worked out with the parents after an IEP is agreed to (R 426, 502).

Parent and , a contract service specialist for and 's case worker, dealt extensively with each other in the IEP and school placement process. Mr. and Ms. had difficulties working together. Parent called Ms. a liar and a fraud and Ms. lost her temper in dealing with Mr. (R 347; R Ex 24, p. 2). Parent believed the IEP process in 's case was a sham and so advised Ms. (R 364).

On June 20, 2003, Parent filed a complaint with VDOE, alleging, as he has done in the instant case, that Respondent had violated existing law by failing to convene a timely IEP meeting and completing same. In its findings of August 5, 2003, VDOE found Respondent to be in compliance on this issue, stating in part:

> From all the above, it is clear from the record that has made a number of attempts to communicate with Mr. to schedule and reschedule multiple IEP meetings over the past calendar year, in order to complete the review and possible revision of 's IEP.
>
> While the process of sending and responding to letters and e-mails and faxes has certainly been time-consuming, there is no indication in the record that failed to respond to Mr. 's request for an IEP meeting. Although one IEP meeting was discontinued, (which will be discussed below), there is no indication in the record that the school division refused to convene additional IEP meetings
>
> The record indicates that despite a series of communication difficulties, has conducted more than one meeting to review 's IEP over the past calendar year, and has repeatedly attempted to schedule other meetings. (pp. 7-8; R Ex 17).
>
> This VDOE decision was not appealed by Parent.

15. Parent filed a due process complaint with VDOE contesting the timeliness and appropriateness of his notification of an IEP meeting held on August 27, 2003. Hearing Officer Aschmann ordered on October 31, 2003 that (1 a new contract specialist be appointed in place of Ms , which in fact transpired, and (2) that a written list of potential hearing dates and locations be made and forwarded to from which he was ordered to select one or propose an alternative. Hearing Officer Aschmann also stated:

> The instant matter appears to be more a case of pique and disillusionment on the part of the parents. Manifestly, they do not like the system or the people involved in it and most particularly the contract specialist assigned to their case. (R Ex 29)
>
> This decision was never appealed by Parent

16. Parent filed a due process complaint alleging that did not provide sufficient notice for an IEP meeting which was scheduled for January 13, 2004. Hearing Officer David Smith

dismissed the Complaint, finding that sufficient notice was provided, even though technically defective. This technical procedural error, however, did not deny Parent substantive right or produce any material harm or deprivation. It was concluded that "the parent does seek a declaration that made a mistake" and added:

> "Due Process Hearing should not be for the purpose of simply making a point but to insure that the best interests of a disabled child are protected. It is difficult to see how the question of "notice" as presented here serves that purpose. It is not a situation where the parent first learned about an IEP meeting 24 hours prior to the meeting or had no input in scheduling the meeting." (R Ex 102, p. 12).

17. There has not been another Complainant-Respondent IEP meeting held since March 9, 2004 (R 729; 790-91). Complainant has not requested Respondent to have an IEP meeting since March 9, 2004 (R 790-91). The most recent Complainant-Respondent fully signed IEP is dated June 7, 2001 (R 165).

18. By summer 2003, had made substantial improvements in its teachers, school stability, and Respondent was ready to permit to attend if the IEP team agreed (R 161-63, 297-98). However, any such placement could not occur without IEP consent from Parent which was not forthcoming from him(R 395, 424).

19. has attended for the following school years: 2002-03, 2003-04, and 2004-05 (R 762). has received educational benefit there and Complainant thinks is good for (R 708) and is responsive to what she needs (R 709), even though does not receive the five hours per week of individual tutoring instruction she received without additional cost at

Now non- teachers provide reading lessons approaching five hours at Complainant's house, and cost (R 763).

's summary report at as of September 11, 2004, for grade 8, states:

> When compared to others at her age level, 's performance is low in reading comprehension, math reasoning, and written expression; very low in broad reading, basic reading skills, math calculation skills, and written language. (R Ex 7

20. graduated from the eighth grade at in June 2004. goes through the eighth grade and not beyond, but who should be in the ninth grade during the 2004-2005 school year, still attends and is being accommodated there (R 785-86). remains at this year because Complainant is pleased with its program. However, the option of leaving at beyond this year expires in June 2005 (R 788). Complainant expects Respondent to pay for 's expenses incurred for the 2004-2005 school year (R 709, 810).

21. began the 2002-03 school year at during the last week of August, sometime before August 29, 2002 (R 754-55). Parent sent an e-mail to Respondent dated August 28, 2002, 11:05 AM, advising that has been attending for days Nothing in the e-mail forwarded by Complainant to Respondent specifies that Complainant would seek reimbursement from Respondent for attendance (R 756-57 There was no IEP meeting from July 2001 through the time started wherein Complainant indicated to an IEP team that Complainant was going to unilaterally place at as he subsequently did. Before unilaterally placing at Parent

never stated to in writing that he would seek reimbursement (R 756-58). , as of August 29, 2002, had intended that reenroll at and was holding a place there for (R 351, 752).

22. Complainant has submitted a list of alleged procedural violations, in conclusionary form, fifteen in number, which have allegedly been committed by (P Ex 43). No creditable substantial evidence was presented to prove that any or all of the items listed has or have denied Complainant the opportunity for meaningful participation in this case or compromised 's right to an appropriate education, or caused a deprivation of material educational benefits.

23. Virginia mandated funds under the Comprehensive Services (CSA) may not be accessed retroactively to reimburse Complainant for a private day placement program at for school years 2002-2003, 2003-2004, and afterwards, when a Respondent IEP team had recommended IEP placement but no IEP was agreed to for the school year period 2002 forward. Thus, a fully executed IEP is required for to obtain funding for a private placement under the Virginia CSA and Complainant agrees (R 809-10). If available funds are not used in the fiscal year they are allotted, they are not retained. (See R Exs 103, 104; R 41-42, 44-45.) There is no extenuating circumstance exception or waiver provision precluding the applicability of this rule (R 46-47).

24. The basic thrust of Complainant's §504 claim is that: Respondent decided in September 2004 that was providing FAPE to 's delay in moving forward to implement this

FAPE conclusion resulted in and Complainant being discriminated against (R 799-01) No damage amount has been specified or evidence produced bearing specifically on this claim

25. Complainant has submitted an "Estimate of Claim", which specifies the funds he seeks to be reimbursed, for 's attendance years 2002-03, 2003-04, the 2003 summer program at and the non- 2004 summer school program. The total reimbursement sought is $93,396.70. See P Exs 35, 44. Complainant's transportation reimbursement of about $28,000 is based upon Yellow Cab rates that Respondent paid when transporting to (R 775). Complainant also seeks about $9,000 for reading instruction reimbursement and about $16,000 in compensatory education (P Ex 44)

26. Complainant's instant due process request concerns the period August 2002 - August 2004 (R 807-08, 810).

27. has proposed appropriate IEP's for , the last being that proposed on March 9, 2004, which would have provided educational benefit for That IEP could not be implemented because Parent failed to agree to the IEP (R Ex 45; R 394)

28. Parent is literate and can write in English Compliance with the relevant regulations concerning private school reimbursement would not result in physical or serious emotional harm to has not prevented Complainant from providing appropriate notice to Respondent. Parent has received

notice of the relevant notice requirement in the governing regulations pertaining to the cost of reimbursement sought.

29. Parent did not sponsor an expert witness herein who introduced expert testimony or other evidence concerning the insufficiency or inadequacy of any IEP proposed or implemented by

30. Complainant cites extensive comments (e.g., Complainant's Reply Brief pgs. 31, 33-39, and 40-41) by Hearing Officer Joseph Kennedy who was appointed to hear an earlier due process complaint filed by Parent. filed a verified Petition for Disqualification of Hearing Officer Kennedy, contending he was not impartial and prejudged the merits of Parent's case, among others (R Ex 100). Hearing Officer Kennedy subsequently submitted a voluntary Order of Recusal dated March 9, 2004 (R Ex 101).

2. D. Burden of Proof

Complainant alleges that ' procedural and other IDEA non-compliance has denied Child FAPE. Complainant also alleges that committed various IEP errors including : (1) not having an IEP for in effect for the beginning of school years 2002-03 and 2003-04; 2) failure to properly review the IEP of June 7 2001. Other errors alleged are that committed procedural error in placing at , failed to meet the Least restrictive Environment ("LRE") requirement, and failed to offer ESY services during the summer of 2003 and 2004.

In *Weast v. Schaffer*, 377 F.3d 449 (4th Cir. 2004), it was held "that parents who challenge an IEP have the burden of proof

in the administrative hearing."* *Weast* added that the Court had "no valid reason to depart from the general rule that the party initiating a proceeding has the burden of proof", which here is Parent This Court also referenced both substantive and procedural violations but did not assign burdens of proof to different parties for each. Thus, *Weast* appears to have overruled *Speilberg v. Henrico*, 853 F.2d 256 (4th Cir. 1988), *cert. den.* 450 US 911, to the extent that *Speilberg* may be subject to the interpretation that the burden of proof is on the school division to prove procedural compliance.** In sum, after reviewing *Weast* very closely, I reverse my previous statement in the Prehearing Order that has the burden here to prove procedural compliance. Therefore, under *Weast*, Parent has the burden as the party initiating this proceeding to prove both its substantive and procedural violation allegations by a preponderance of the evidence. This means that the Parent must at least prove that 's program for was not appropriate, that was denied FAPE, and that 's placement at was appropriate. See Student with Disability 103 LRP 9822 (VA 2003).

E. Overview of IDEA and FAPE

The Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1400 et seq., provides federal funds to assist state and local agencies in educating disabled children. IDEA conditions

* Also note that this Court stated that "in an administrative hearing, parents will have to offer expert testimony to show that the proposed IEP is inadequate."

** See also, *McKenzie v. Smith*, 771 F.2d 1527, 1532 (DC Cir. 1985), stating that the burden of proof is assigned to the school division where an IEP is challenged procedurally.

the receipt of such funds upon a state's compliance with certain goals and procedures. The Virginia General Assembly has enacted a number of statutes to ensure compliance with IDEA requirements See Code §§ 22.1-213 to 22.1-221. In addition, VDOE has developed regulations for implementing the statutory scheme. See 8 VAC 20-80-10, et

Both IDEA and the Virginia Code require schools to make FAPE available to disabled children. 20 USC § 1412(a)(1)(A); Code §§ 22.1-214(A) and 22.1-215. Local agencies provide an appropriate education to each disabled child by means of an IEP. 20 USC § 1414(d); 8 VAC 20-80-10, 20-80-62. The IEP is a written document developed after a meeting attended by the disabled child's parents, his or her teacher(s), and local school division representatives. 20 USC § 1414(d); 8 VAC 20-80-62. The IEP contains, *inter alia*, a description of the specific educational services to be provided the child, annual goals, and objective criteria for evaluating progress. 20 USC § 1414(d); 8 VAC 20-80-62. IDEA favors mainstreaming children by requiring that disabled children be taught with non-disabled children, to the maximum extent possible, and by requiring that the disabled child be placed in the least restrictive environment, consistent with the child's needs. 20 USC §§ 1412(a)(5)(A) and 1414(d)(A); 8 VAC 20-80-64. The local agency must review each child's IEP at least annually, 20 USC §§ 1414(d)(4)(A)(i); 8 VAC 20-80-62, and is required to include the parents in the development of the child's IEP. 20 USC § 1414(f); 8 VAC 20-80-62(C). Parents have the right to an impartial due process hearing, through which to bring

complaints regarding proposed services. 20 USC § 1415; 8 VAC 20-80-70. Lastly, any party aggrieved by the findings and decision at the state administrative hearing has the right to appeal to a state court of competent jurisdiction or a federal district court without regard to the amount in controversy.

F. Has provided, and Proposed To Provide, FAPE For _____

IDEA guarantees all students with disabilities in participating states the right to FAPE. 20 USC § 1412(a)(1), 1401(8). FAPE includes special education and related services that are reasonably calculated to provide the student with educational benefit. 20 USC § 1414(a)(5); *Hudson v. Rowley*, 458 US 176, 206-07 (1982). FAPE is tailored to the unique needs of the disabled child by means of an IEP, (20 USC § 1401), which is prepared at a meeting between school personnel, the child's parents or guardian, and where appropriate, the child. It consists of a written document containing, *inter alia*:

a) a statement of the present levels of educational performance of such child;
b) a statement of annual goals, including short-term instructional objectives;
c) a statement of the specific educational services to be provided to such child, and the extent to which the child will be able to participate in regular educational programs
d) the projected date of the initiation and anticipated duration of such services; and
e) appropriate objective criteria and evaluation procedures and schedules for determining, on a least an annual basis, whether instructional objectives are being achieved. 20 USC § 1401

IDEA does not prescribe any substantive standard regarding the level of education to be accorded to disabled children, *Rowley, supra* at 189, 195, *Fort Zumwalt v. Clynes*, 119 F.3d 607,

611-12 (8th Cir. 1997 , and does not require "strict equality of opportunity or services." *Rowley, supra* at 198. Rather, a local educational agency fulfills the requirements of providing FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction." *Rowley, supra* at 203.

Furthermore, the program provided by the IEP is not required to maximize the educational benefit to the child, or to provide each and every service and accommodation that could conceivably be of some educational benefit. *Rowley, supra* at 199. Moreover, an educational benefit must be more than *de minimis* to be appropriate, *Doe v. Tullahoma*, 9 F.3d 455, 459 (6th Cir. 1993) In articulating the standard for FAPE, *Rowley* concluded that "Congress did not impose any greater substantive educational standard than would be necessary to make such access meaningful *Rowley, supra* at 192. *Rowley* found Congress' intent was "more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside." *Ibid*

Given this purpose, IDEA defines FAPE in broad, general terms, without dictating substantive educational policy mandating specific educational methods. The imprecise nature of IDEA's mandate reflects two important underpinnings of FAPE. First "Congress chose to leave the selection of educational policy and methods where they have traditionally resided-with state and local officials." *Daniel v. State* , 874 F.2d 1036, 1044 (5th Cir. 1989). Second, Congress sought to bring children with disabilities into

the mainstream of the public school system. *Mark A. v. Grant Wood* 795 F.2d 52, 54 (8th Cir. 1986); *Rowley, supra* at 1889

The key inquiry in determining whether a school is providing FAPE is to assess "whether a proposed IEP is adequate and appropriate for a particular child at a given point in time." *Burlington v. Dep't of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984), *aff'd*, 471 US 359 (1985).

Complainant contends that failed to (1) provide FAPE, (2) have IEP's in effect at the beginning of two school years, 3) provide ESY during two summers, and committed IEP and procedural errors.

As noted earlier, Parent has the burden of proof to show by a preponderance of the evidence that has not provided FAPE. Parent is the only witness alleging that has not provided FAPE. No teacher, tutor, or expert was called by Parent.

presented witnesses familiar with and her program at proving that the proposed IEP's for were designed to offer educational benefit for her. ' experts proved that progressed educationally when at . The witnesses are eminently well qualified, and they, and other evidence presented, show a familiarity with 's file, background, school work and activities, among others. Their opinions are entitled to great weight. The law in this Circuit is that the professional judgments of such witnesses as provided by should be respected and that great deference should be

provided their views.* This is especially true when ' opponent is an uncooperative Parent who may have self-serving interests to be advanced, i.e., reimbursement of private school funds and non placement of at Thus, proof "that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act." *Kerkam v. McKenzie*, No 87-7212, slip op. at 4 (DC Cir., 12/9/88).

It should be recalled that Parent agreed to the IEP's and placement initially. Also Complainant did not present any testimony here by teachers or other experts to the effect that the placement was inappropriate. ** See *Arlington v. Smith* 230 F.Supp.2d 704 (ED VA 2002).

I have given greater weight to the evidence provided by witnesses, because they were more persuasive and creditable than Complainant. See *Faulders v. Henrico*, 190 F.Supp. 849 2d (ED VA 2002); *Doyle v. Arlington*, 806 F.Supp. 1253 (ED VA 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994).

In sum, I find that the IEP's proposed by for implementation at , a private day school, provided with an appropriate special education, permitting to benefit educationally, and, in fact, made educational progress at

---

* See *Hartmann v. Loudoun*, 118 F.3d 996, 1000-01 (4th Cir. 1997); *A.B. v. Lawson*, 354 F.3d 315, 328 (4th Cir. 2004) ("IDEA requires great deference to the views of the school system rather than those of even the most well meaning parents.")

** correctly points out (Reply Brief p. 3) that Dr. Federici, a Neuropsychologist who evaluated (P Ex 20) but did not testify herein, never recommended that be placed at or that the school be changed from .

before Parent unilaterally placed her at Paladin in a program that was not needed for her to progress educationally. I also find that ' currently proposed IEP of March 9, 2004, which Parent refused to sign, was appropriate for and would provide educational benefit for her.

G. Parent's Alleged Procedural Errors

Turning next to procedural violations, these alone may constitute a failure to provide an appropriate education under certain circumstances, *Rowley, supra* at 206-07, but each case must be reviewed in the context of the particular facts presented. An IEP will not be set aside absent "some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits." See *Roland M. v. Concord*, 910 F.2d 983, 994 (1st Cir. 1990)(finding procedural violations insufficient to render the IEP inadequate); see also, *Burke v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990)(finding a procedural violation did not deprive the child of educational benefits or opportunity); *DiBuo v. Worcester*, 309 F.3d 184 (4th Cir. 2002) (procedural violation must deny FAPE before parents are entitled to reimbursement).

Below I address the specific procedural violations cited by Parent in his Opening Brief and rule on each.

1. Alleged Failures To Have Effective IEP's At Beginning of School Years 2002-03 and 2003-04

Parent cites 34 CFR §300.342 (a), which requires that an IEP be in effect at the beginning of each school year and argues that

this provision was violated here, resulting in the denial of FAPE (Parent Opening Brief, pp. 36-37).

The last, fully signed IEP by the parties was dated June 7, 2001. Draft IEPs were prepared December 21, 2001, January 17, 2002, and June 24, 2002. AN actual IEP was prepared on September 3, 2002 (R Ex 34-38). Likewise for 2003-2004 school year, prepared seven draft IEP's (R Exs. 39-45).

Parent participated in the actual IEP preparation for school years 2002-03 and 2003-04 but refused to cooperate fully and would not execute any IEP (e.g., Findings of Fact 11, 12, *supra*). was placed at in late August, 2002, with little advance notice to In these circumstances, I find that the reason did not have a fully effective IEP at the start of either claimed school year was because Parent refused to cooperate to produce a signed IEP. Parent wanted a written guarantee inserted in an IEP that would not be returned to in the 2002-03 school year, and following years, either by preclusion or being specifically named as the IEP placement. As stated earlier, this is contrary to ' practice and not required by law. See *Jennings v. Fairfax*, 35 IDELR 667, 670 (ED VA 2001):

> - - - a recommendation for a child's educational placement means recommendation to the actual educational program and <u>not the particular institution where the program is implemented</u> - - [case citations omitted] Thus, in order for a school system to make a proper recommendation for placement, the school system must make a written recommendation of a specific educational program for the child. - - - Therefore the - - - recommendation to place - - - [child] in a private day school program

> complied with IDEA's procedural requirements for a written education placement offer. (emphasis added)

Accord, AW v. Fairfax, 372 F.3d 674 4th Cir. 2004).

In *Patricia v. Board*, 31 IELR 211 (7th Cir. 2000), Parents disagreed with a recommendation for placement in a behavior disorder resource program with some social work services and then enrolled child in a private school. The Court held that "parents who, because of their failure to cooperate, do not allow a school district a reasonable opportunity to evaluate their disabled child, forfeit their claim for reimbursement for a unilateral private placement." See also, *SM v. Weast*, 38 IDELR 96 (D. MD 2003 Parents failed to cooperate in the development of an IEP by withholding critical information from the IEP team.); *MM v Greenville*, 303 F.3d 523, 535 (4th Cir. 2002 improper to hold school liable for a procedural violation of failing to have an IEP completed and signed when that failure was the result of parents' lack of cooperation).

I find that no IEP's were in effect at the beginnings of school years 2002-03 and 2003-04 because "Parent's own actions here frustrated the process of IEP completion." I further find that did not sustain the loss of an educational opportunity or interference with the provision of FAPE because of these alleged procedural violations. See also, Prince *William v. Hallums*, CA 02-1005-A, slip op., p. 13 (ED VA 2003) (only those procedural violations that actually interfere with the provision of FAPE are actionable under IDEA); *Dibuo v. Worcester*, 309 F.2d 184, 190 4th Cir. 2002 (a procedural violation of IDEA cannot

support a finding that a school district failed to provide child with FAPE when the procedural violation did not actually interfere with the provision of FAPE for child).

2. Alleged Failure of to Review IEP of June 7, 2001

Parent next contends that failed to annually review the signed IEP of June 7, 2001, in violation of 34 CFR 300.343. Parent acknowledges the many IEP meetings had which resulted in drafts and IEP's after June 7, 2001, but dismissed these with the statement "that no teachers or other personnel from were invited or included" thereby resulting in IEP's as nullities (Parent Opening Brief, pp. 40-41).

Parent states that he attended most of the IEP meetings (Parent Reply Brief, pp. 16-17) and therefore had ample opportunity to press for any review and change desired. As stated, the reason that an IEP was not produced after June 7, 2001, which reflected all of the changes desired, was because Parent failed to cooperate to IEP completion as stated earlier Moreover, as correctly argued by the instant Parent complaint, at least to the extent that it falls beyond the two year statute of limitations period, is barred as a basis for Parent relief. See *Manning v. Fairfax*, 176 F.3d 235 (4th Cir. 1999) (dismissal of time barred claims). Lastly, to the extent that Parent argues IEP nullification because teachers or representatives were not at the IEP meetings, *supra*, the failure to include such personnel, to the extent this existed, is not a fatal procedural defect because "had available to it information - - in the form of documents - - and had the benefit

observations by another IEP team member. As such, this alleged procedural violation is insufficient to invalidate the cited IEP. *White v. Henrico*, 549 S.E. 2d 16 (VA Apps. 2001).

Thus, because of the foregoing and the fact that no loss of educational opportunity has been shown by Parent in support of this contended violation, this alleged error is unmeritorious.

3. 2002-03 Alleged Intended Placement at Kingsbury Without an IEP in Effect

Parent alleges that intended placement of at for the 2002-03 school year without an IEP in effect was a procedural violation that denied FAPE (P Opening Brief, 43-44).

As stated earlier, produced two draft IEP's and an IEP before the commencement of school for the 2002-03 school year (R 34-38). These IEP's did not reach final fruition because of Parent's non-cooperation, as earlier detailed. Parent knew that would continue at during the 2002-03 school year in accordance with the IEP of June 7, 2001 (See P Ex 24, R 351-52) which continued in effect until replacement (R 606). See *MM v. Greenville, supra* at 34 (A school district only need continue developing IEP's for a child no longer attending its schools when a prior IEP is under administrative or judicial review). Parent's contended error is without merit.

4. Alleged Failure to Meet LRE Requirement

Parent contends that did not provide with the least restrictive environment ("LRE" , i.e., had no opportunity to interact with non-disabled peers, as could have at (Parent's Opening Brief, p.48).

IDEA requires that the IEP program be implemented in the LRE. An IEP team makes the decision concerning LRE (R 488). the responsibility for selecting the school of placement, not the parents. *Schimmel v. Spillane* 819 F.2d 477 (4th Cir. 1987). However, "where necessary for educational reasons, mainstreaming assumes a subordinate role in formulating an educational program." *Carter v. Florence*, 950 F.2d 156, 160 4th Cir. 1991), *aff'd*, 510 US 7. Lastly, LRE must be read in conjunction with the "appropriateness" standard. Of the possible placements which are appropriate, the least restrictive one should be selected. There may be other placements along the continuum which are even less restrictive, but if inappropriate, they cannot be considered. See *Devries v. VDOE*, slip op. pp. 8-9 (ED VA 1988), *aff'd*, 882 F 876 (4th Cir. 1989).*

was not an appropriate placement for before the summer of 2003. See my Findings of Fact 10 and 18. After the summer of 2003, could not be selected by because of Parent's lack of cooperation in producing a signed IEP. Parent would not agree to an IEP that had not named as the placement school or expressly excluded as such. In short, this assignment of error also lacks merit

5. Alleged Failure to Offer ESY In 2003 and 2004

Parent alleges that improperly denied ESY services in the summers of 2003 and 2004 (Parent Opening Brief p. 56).

attended summer school at ' in 2002 (Finding of Fact

* The burden of proof in mainstreaming cases is on the moving party. *Clyde K. v. Puvallup*, 34 F.3d 1396 (9th Cir. 1994).

7 , was enrolled in the ESY program during the summer of 2003 (Parent Brief p. 18), and attended another program in the summer of 2004. was willing to provide ESY to during the summer of 2003 (R 352), which Parent refused to accept. An IEP was proposed in March 2004, which would have been the basis for ESY in 2004, but Parent refused to agree to such (Finding of Fact

The determination of whether requires summer school services is made by the IEP committee. *Lawyer v. Chesterfied*, 20 IDELR 172 (ED VA 1993). The need for summer school services is made each year in an IEP meeting. There is no automatic renewal or denial. *Schwartz v. Wassau*, 489 N.Y.S. 2d 274 (App. NY 1985). Furthermore

> ESY services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months. *MM v. Greenville*, 303 F.3d 523, 537-38 (4th Cir. 2002).

ESY services are not required by any particular date and it is "flawed reasoning" to contend that if ESY was "not in the IEP then it is not an included service". *Henrico v. Palkovics*, 2003 WL 22287923, 103LRP 45977 (ED VA 2003).

In summary, received summer school services during both of the years attacked by Parent. The determination for ESY is made by the IEP team, but the burden is on Parent to timely request such and make the proper showing indicated in *Schwartz, supra*. Moreover, Parent must request an IEP meeting if needed,

be willing to attend such meeting, and sign off on an IEP provides such services, which Parent did not do here. Note Parent's refusal to execute the March 9, 2004 IEP. In other words, here, as in *Palkovics*, Parent "never gave the School Board an opportunity to actually give or deny ESY services". Finally, this ESY alleged procedural deficiency did not result in any loss of educational opportunity or deny FAPE and appears, again, to be in the nature of a technical violation.

In summary, Parent has failed to prove that any of the contended procedural errors has produced loss of educational opportunity, infringed on, or prejudiced, Parent's rights to IEP participation, or amounted to a violation of FAPE.

H. Parent Is Denied the Fund Reimbursement Sought

Parent seeks to "be awarded reimbursement for tuition, transportation, and related expenses associated with the program provided " and compensatory education, because of failure to provide the services needed for to make educational progress (Parent Opening Brief, p. 3). The total reimbursement sought is $93,396.70, which includes transportation reimbursement of about $28,000, $9,000 for reading instruction reimbursement, and about $16,000 in compensatory education (Finding of Fact, *supra* at 25).

1. Parent Did Not Comply With IDEA or Virginia's Private School placement Regulations

The facts here prove:

began the 2002-03 school year at during the last week of August, sometime

> before August 29, 2002. - - Parent sent an e-mail to Respondent dated August 28, 2002, 11:05 AM, advising that has been attending for days. Nothing in the e-mail forwarded by Complainant to Respondent specifies that Complainant would seek reimbursement from Respondent for attendance - - There was no IEP meeting from July 2001 through the time Lucy started Paladin wherein Complainant indicated to an IEP team that Complainant was going to unilaterally place at as he subsequently did. Before unilaterally placing at , Parent never stated to in writing that he would seek reimbursement for - - (Finding of Fact 21, with record cites omitted).

had last proposed an appropriate IEP for on March 9, 2004, which Parent rejected (Finding of Fact 27, *supra*).

Thus, Parent notified of the private unilateral placement of at but Parent never notified, orally or in writing, that he intended such placement to be at public expense. IDEA states:

> "(iii) LIMITATION ON REIMBURSEMENT. - The cost of reimbursement described in clause (ii) may be reduced or denied-
>
> "(I) if -
>
> "(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
>
> "(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa); (20 USC § 1412(a)(10)(C)

Virginia's *Regulations Governing Special Education Programs For Children With Disabilities*, 8 VAC 20-80-66, Private School Placement, are to the same effect. See Section B4. Also note 34 CFR 300.403(d).

Because of Parent's failure to give the required "public expense" notice, case law makes clear that the reimbursement sought should be denied for that reason alone. *Arlington v. Smith* 38 IDELR 8 (ED VA 2002); *Jennings v. Fairfax*, 35 IDELR (ED VA 2001 *aff'd*, 2002 WL 1544711 (4th Cir. 2002).*

2. Parent's Lack of Cooperation Also Bars Reimbursement

I have detailed in my findings of fact above Parent's lack of cooperation in his instant dealings with and particularly in the process of producing an IEP which would produce educational benefit for See my Findings of Fact 3-6, 11-18, 27, *supra*.

Thus, I find that Parent has avoided answering requests from pertaining to IEP meetings, has cancelled IEP meetings on short notice, has not permitted representatives to participate in IEP meetings or provide with material concerning 's program, has refused to permit a representative to visit , and has cited technical procedural violations to hinder the IEP process. In addition, Parent refused to sign an IEP unless expressly included therein as a specific named placement school, or inserted

* I do not reach the issue of the sufficiency of Parent's proof of damages claimed because of my denial of reimbursement of any and all damages claimed by Parent.

a guarantee that the IEP implementing school would not be

The evidence in this case also makes it abundantly clear Parent's actions have delayed finalization of a signed IEP which is needed to permit to obtain funding for 's placement in a private school. In other words, if the proposed IEP's for at least school years 2003-04, and 2004-05 had been signed by Parent, could have secured funding through CSA for s placement there. The evidence herein is clear that cannot secure CSA funding for any past period. See Finding of Fact 23, *supra*.

In summary, I find that Parent's non-cooperative conduct herein has been unreasonable and as such Parent's request for reimbursement should also be denied on this ground. See 8 VAC 80-66B(4)(c) and cases cited, *supra* at 23.

I. Parent's §504 Claim is Denied

Parent claims that discriminated against in violation of §504 (See P Ex 43, p. 2). The basic thrust of Parent's claim is that did not conclude until September that Paladin was providing FAPE to Parent contends that the delay in arriving at this conclusion resulted in discrimination to and Parent. (See Finding of Fact 24, *supra*). Parent does not allege that discriminated against because of her disability. No further particularization or damage amount has been submitted by Parent.

---

* Parent argues that could request a waiver (Parent Brief, p. 32). Of course, a "request" could always be made, but the evidence clearly indicates it would be denied (R 46-47), as action on earlier letter inquiry indicated (R Exs 103, 104).

Section 504 of the Rehabilitation Act of 1973 is prohibitory rather than mandatory in nature like the IDEA. 29 USC §794. Section 504 states that "[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." *Id.* Essentially, Section 504 is an anti-discriminatory statute provides no funding to effectuate compliance. As a result, it demands far less of covered entities than does IDEA

The standard of proving a Section 504 claim is extraordinarily high." *Doe v. Arlington,* 41 F.Supp.2d 599, 608 (ED VA 1999). A plaintiff must first demonstrate that he has "either been 'subjected to discrimination' or excluded from a program or denied benefits 'solely by reason of [his] disability.'" *Sellers v. Manassas*, 1431 F.3d 524, 528 (4th Cir. 1998), *cert denied*, 525 US 871 (1998). In addition, to secure damages under §504 a Plaintiff must establish that the School Board's educational decisions relating to a student constitute "either bad faith or gross misjudgment" (*Sellers*, 141 F.3d at 529), or intentional discrimination. *Marvin v. Austin*, 714 F.2d 1348 (5th Cir. 1983).

I find that the sketchy factual presentation submitted by Parent in support of his §504 claim is insufficient to support his summary contention. Furthermore, Parent has not made the needed allegations or submitted the necessary proof to support damages under §504, as stated above. Therefore, Parent's §504 claim is dismissed.

Conclusions

All of the defects and errors alleged by Complainant, procedural and otherwise, have been evaluated to determine whether they have resulted in the deprivation of FAPE, Complainant's central contention. In doing so, the impact of the defects was considered to the extent that such existed and not merely the alleged defects *per se*. *Doe v. Al Doe*, 915 F2. 651, 661-62 (11th Cir. 1990). After such analysis, I find no deprivation of FAPE proven here by Complainant, or other material error. Specifically, I find against Complainant on each procedural error cited by Complainant, deny Complainant the reimbursement sought, and dismiss Parent's §504 claim. Based upon a preponderance of the evidence, I conclude:

1. The requirement of notice to Parent was satisfied.

2. Petitioner was provided all records requested.

3. is learning disabled, has cognitive deficits, communication problems, and was diagnosed with ADHD.

4. needs special education and other services proposed by . ' evidence demonstrates clearly and convincingly that it has met, and is able to meet, all of the requirements of its special educational offering to .

5. The procedural and other deficiencies or errors claimed by Complainant have not been proven and, in any event, such. deficiencies or inadequacies did not materially hamper Complainant's opportunities to participate in the development of 's IEPs, result in the loss of any educational opportunity or benefit, and do not invalidate any of 's IEP's.

6. has complied with the procedures set forth in IDEA and VA law.

7 has provided, and proposes to provide in the future, FAPE for .

8. Complainant has not sustained his burden of proving the inadequacy or inappropriateness of s's past IEPs and the

proposed IEP of March 9, 2004.

9. 's IEPs have been appropriate under law.

10. ' proposed IEP of March 9, 2004, is reasonably calculated to provide educational instruction designed to meet 's' unique needs and is supported by such services as are necessary to permit to benefit from such instruction.

11. Since has provided and proposes to provide FAPE, Complainant's request for reimbursement of expenses incurred is denied.

12. Since Parent never timely and appropriately notified that 's private placement at would be at public expense, Parent's request for reimbursement of funds so expended is denied on this ground also.

13. Parent's lack of cooperation in dealing with to produce a timely, governing IEP for also bars reimbursement for Parent's expenditures and related costs.

14. Academy goes through the eighth grade. should be in the ninth grade during this school year 2004-05, is not, but is being "accommodated" by . If Parent desires assistance from to secure her future special education and related services after the termination of this academic year, Parent should contact Mr. , Coordinator of Monitoring and Compliance for and Mr. will make initial arrangements for a meeting of appropriate officials and Parent for placement of in an appropriate school commencing during the 2005-06 academic year, with ESY during the summer of 2005 if the IEP team thinks such is warranted. Parent must cooperate fully with the IEP team, Parent cannot request the express inclusion or exclusion of any named school in any proposed IEP or other governing document, and Parent must agree to permit access to 's records and personnel. Parent will not be required by to work with in securing such education for . should appoint a replacement for at the outset to deal with Parent. should be prepared to meet with Parent within twenty days after Parent's request for such a meeting and an IEP or other governing document should be produced within ninety days of the first meeting of the parties, and sooner if possible. The parties should consider starting their negotiations with the IEP of March 9, 2004, which appeared to be suitable for earlier. Parent should keep in mind that the central duty of here is to provide educational benefit for and maximization thereof is not in order. If Parent wishes to educate privately,

this paragraph shall be deemed to be a nullity.

15. All other relief requested by Complainant is denied

16. This Hearing Officer has jurisdiction over this matter.

Order

Wherefore, the premises considered, it is ORDERED that all of the relief requested by Complainant is denied, including Parent's request for reimbursement for private placement of at Academy. and Parent shall abide by the terms of paragraph 14, *supra*, if Parent elects to request the initial meeting with specified above. If Parent does not request such a meeting with on or before March 15, 2005, paragraph 14 than becomes null and void.

Right of Appeal

This decision is final and binding unless appealed by a party in a state circuit court within one year from the issuance date of this decision, or in a federal court.

Implementation Plan

is advised of its responsibility to submit an implementation plan to the parties, this Hearing Officer, and the State Educational Agency within 45 calendar days

February 3, 2005
Decision Date
Issuance

Anthony C. Vance
Hearing Officer

Certificate of Service

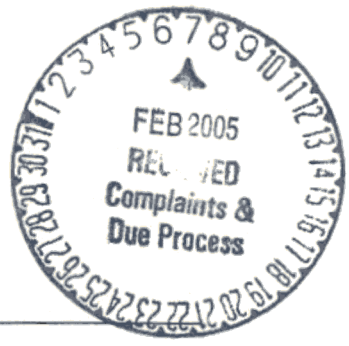
I hereby certify that true copies of the foregoing decision have been served by first class mail, postage prepaid, on the following persons this 3rd day of February, 2005:

Mr. Lynn Brownley
Legal Rights
15411 Kings Hwy.
Montross, VA 22520

John F. Cafferky, Esq.
Counsel for
Suite 300
4020 University Dr.
Fairfax, VA 22030

Patrick Andriano
Coordinator of Due Process
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218-2120

Anthony C. Vance
Hearing Officer



CASE CLOSURE SUMMARY REPORT

Public Schools
School Division (FCPS)

Name of Parents

Name of Child

February 3, 2005
Date of Decision

John Cafferky, Esq.
Counsel Representing LEA

Lynn Brownley
Pro Se and Advocate (Parent)

Party Initiating Hearing

Prevailing Party

Hearing Officer's Determination of Issue(s):

The issues here involved and my rulings thereon are listed below: (1) whether offered a free appropriate education "FAPE") that was reasonably designed to provide an educational benefit for ? Yes, ruling in favor of (2) whether Parent's unilateral placement of in Academy, part of Academy (herein "), a private day school, warrants the relief sought by Parent under law? No, ruling in favor of ; (3) whether is eligible retroactive access under Virginia's Comprehensive Services Act to state mandated funds for private day special education when a fully signed IEP was not in effect? No, ruling against Parent; (4) whether the reimbursement of funds expended by Parent for 's attendance at , and related expenditures, should be ordered? No, ruling in favor of ; (5) whether Complainant has been discriminated against by to warrant §504 relief? No, ruling in favor of (6) whether of the alleged procedural violations cited by Parent warrant a finding that FAPE was denied ? No, ruling against Parent

Hearing Officer's Orders and Outcome of Hearing:

prevailed on all issues in this case and all of the relief requested by Parent has been denied. Details concerning the latter are extensively set forth in my "Conclusions", pages 33-34, of my attached post-hearing decision.

My order (1) denies all of the relief requested by Parent, and (2) contains the following paragraph, which need not be implemented by unless Parent, on or before March 15, 2005, requests an initial meeting for the purposes specified in the quotation below by contacting Coordinator of Monitoring and Compliance:

> Academy goes through the eighth grade. should be in the ninth grade during this school year 2004-05, is not, but is being "accommodated" by . If Parent desires assistance from to secure her future special education and related services after the termination of this academic year, Parent should contact Mr. , Coordinator of Monitoring and Compliance for , and Mr. will make initial arrangements for a meeting of appropriate officials and Parent for placement of in an appropriate school commencing during the 2005-06 academic year, with ESY during the summer of 2005 if the IEP team thinks such is warranted. Parent must cooperate fully with the IEP team, Parent cannot request the express inclusion or exclusion of any named school in any proposed IEP or other governing document, and Parent must agree to permit access to 's records and personnel. Parent will not be required by PS to work with in securing such education for . should appoint a replacement for at the outset to deal with Parent. should be prepared to meet with Parent within twenty days after Parent's request for such a meeting and an IEP or other governing document should be produced within ninety days of the first meeting of the parties, and sooner if possible. The parties should consider starting their negotiations with the IEP of March 9, 2004, which appeared to be suitable for earlier. Parent should keep in mind that the central duty of here is to provide educational benefit for and maximization thereof is not in order. If Parent wishes to educate privately, this paragraph shall be deemed to be a nullity.

This certifies that I have completed this hearing in accordance with the regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which 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.

Anthony C. Vance
Hearing Officer

Anthony C. Vance
2/3/05