



CASE CLOSURE SUMMARY REPORT

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

PUBLIC SCHOOLS
School Division

MR. AND MRS.
Name of Parents

ESQUIRE
Representing School Division

Name of Child

Superintendent of Schools

PARENTS REPRESENT SELF/CHILD
Representing Parents/Child

Hearing Officer

PUBLIC SCHOOLS
Party Initiating Hearing

Hearing Officer's Determination of Issues:

- 1. Residential placement is necessary for _____ to receive an appropriate education.
- 2. _____ Public Schools may proceed forward with providing residential school placement for _____ without the consent to placement of the parents.

Hearing Officer's Orders and Outcome of Hearing:

Prior to placement and subject to the above decision of the hearing officer herein that _____ County Public Schools shall follow procedures set forth in *The Regulations Governing Special Education Programs for Children with Disabilities in Virginia* and in particularly 8 VAC 20-80-66 regarding placement in a private school or facility that is licensed or has a certificate to operate.

Public Schools prevailed in all issues.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The Final Due Process hearing Report and Order is attached and 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.

Printed Name of Hearing Officer

Signature

VIRGINIA DEPARTMENT OF EDUCATION
FINAL DUE PROCESS HEARING REPORT and DECISION



School Division PUBLIC SCHOOLS

MR. AND MRS.
Name of Parents

Representing School Division ESQUIRE

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PARENTS REPRESENT SELF/CHILD
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Hearing Officer

PUBLIC SCHOOLS
Party Initiating Hearing

A. FINAL DUE PROCESS HEARING REPORT

I. Due Process Hearing Request:

Public Schools requested a due process hearing to determine if a residential placement is necessary for _____ to receive an appropriate education.

_____’s mother, objected to residential placement and refused to sign the IEP giving consent to residential placement.

II. Issues For Determination at Due Process Hearing:

**WHETHER RESIDENTIAL PLACEMENT IS NECESSARY FOR
TO RECEIVE AN APPROPRIATE EDUCATION?**

III. Proceedings:

A. **The Pre-Hearing Conference** was held _____, 2003, at the _____ School Board Offices, _____ VA. At the request of _____ the Pre-Hearing Conference was conducted *in person*. Mr. and Mrs. _____ Mr. _____, Dr. _____

, and the undersigned hearing officer were present for the pre-hearing conference.

B. The Due Process Hearing was held, by agreement of the parties, on _____, 2003 at the
School Board Offices, _____ VA. -

IV. One Extension of the Final Decision Date:

One extension of the final decision date was granted. At the conclusion of the Due Process Hearing, on _____, Mrs. _____ requested to provide written closing arguments after receipt of the transcript. The parties joined to move to provide written closing arguments after receipt of the transcript.

It was found to be in the child's best interest for a full and fair due process hearing to be conducted, for the parties to have opportunity to submit closing arguments as requested, and for the parties to receive a written transcript of the hearing and have reasonable time to review the transcript prior to submitting written closing arguments.

The final decision date was extended, on the joint motion of the parties, to _____. It was proposed and agreed to that _____ Public School's counsel would present his written closing arguments first. The School's written closing argument would be due within 10 days of the receipt of the transcript and then the Parents were to have 10 days to submit their written closings. Upon receipt of the closing arguments of both parties (or expiration of the agreed time for submission of closings) the hearing officer was to have 8 days for submission of the hearing decision. The following timeline was agreed to and adopted at the conclusion of the due process hearing:

- (*Due Process hearing was concluded on _____ 2003.*)
- a. _____, 2003 Estimated date transcript would be tendered to parties.
 - b. _____, 2003..... School's written closing arguments due.
 - c. _____, 2003..... Parents' written closing arguments due.
 - d. _____, 2003.. Final Decision Due Date.

No other extensions were granted in this case.

B. DUE PROCESS HEARING DECISION

1. Due Process Hearing:

The undersigned was duly appointed hearing officer in this cause. Due Process Hearing was held in the matter of *Public Schools and*, by agreement of the parties, on at the Board Room, Public Schools, Virginia.

Mr. and Mrs. represented themselves and their child and both were present throughout the proceedings. Mr. Esquire, who represented the Public Schools, and Dr. Director of Special Education,

Public Schools were also present throughout the proceedings.

There being no objection, telephone testimony of certain witnesses on behalf of the Public Schools, as below noted, was taken at due process hearing.

The following witnesses testified at the due process hearing:

1. , Ph.D. (via Speaker Telephone), Licensed Clinical Psychologist - team leader on the residential treatment program, Virginia Treatment Center for Children.
2. Mr. Special Education Teacher.
3. , Principal of School.
4. Principal of School.
5. (via Speaker Telephone), admissions coordinator
6. (via Speaker Telephone), Social Worker,
7. (via Speaker Telephone), Program director at
8. Special Ed. teacher at School.
9. , Director of Special Education, Public Schools.
10. L.C.S.W. - Public Schools.

2. Exhibits:

Public School's exhibits numbered 1A through 90B were admitted, *en masse*, by agreement of the parties, into evidence. No exhibits were presented by Parents nor admitted.

3. Designations of Transcript and Exhibits:

The transcript of the due process hearing, consisting of one volume, is referred to as "Tr. pg. ___" (with the page number inserted at "___"). The School's Exhibits are designated as "S Ex. ___" (with the Exhibit's page number inserted at "___"). There are no Parent Exhibits submitted nor admitted in this proceeding.

4. FINDINGS OF FACT:

1. _____ is a _____ year old _____ born _____ has a _____ been classified as "Emotionally Disturbed" which was identified in the first grade and has diagnoses of Oppositional Defiant Disorder, Attention-Deficit/Hyperactivity Disorder, Combined Type, and Borderline Intellectual Functioning (S Ex. 5F)

2. On _____ hit _____ teacher on the hand and threatened to kill _____ teacher. (Tr. pg. 77, 78). When _____ principal asked _____ if _____ really meant to threaten to kill the teacher _____ replied that _____ did. (Tr. pg. 97)

3. On _____, _____ was suspended for three days for numerous activities including pointing a pencil at a student and telling the student that _____ (i.e. the other student) would be going to the hospital, throwing a pencil at a student, yelling at a teacher, telling a principal to "shut up" and "you are stupid", hitting a window, and spitting on the window. (S Ex. 55A, Tr. pg. 184)

4. On _____ and a younger child vandalized the _____ school. Damage was done in the amount of \$7025.37. (Tr. pg. 122, S Ex. 83)

5. On _____ spit in a teacher's face (Tr. pg. 240). _____ was convicted of assault due to this incident and served a 10 day in juvenile detention.

6. On _____ the IEP team met to consider a change in placement to a residential placement. _____'s parents refuse to consent to the implementation of the IEP Addendum providing for residential placement. (S Ex. 4B & 5A)

7. Psychological Evaluation at _____ ("____") of _____ noted that "Overall _____'s reasoning and problem-solving abilities are underdeveloped. This likely has been influenced, in part, by the many interruptions in _____ formal educational experiences. Further, _____'s emotional difficulties have likely adversely impacted the extent to which _____ has been able to benefit from schooling" (S Ex. 5A7).

8. The IEP for School Year _____ was adopted on _____ (S Ex. 39 A-S). Subsequently 5 Addendums were adopted with parental consent and there was 1 proposed Addendum for which parental consent was refused. The _____ IEP indicated _____ was having difficulty progressing in the general curriculum because of behavioral problems and _____ emotional disturbance negatively effects _____ academic performance.

The adopted Addendums for which there was parental approval were as follows:

1. _____ placed on Homebound provided at school from 12:00 - 3:05 at school while continuing morning classes (S Ex. 34A)
2. School day shortened to 11:35 (S Ex. 29A)
3. ; ... placed on Homebound w. work packets (S Ex. 25A)
4. Homebound placement continued with a teacher (S Ex. 13A)
5. placed at _____ for evaluation (S Ex. 7B)
6. Parental consent refused for the IEP recommending residential placement. (S Ex. 4B)

9. The IEP for School Year was adopted on _____ and three addendums to the IEP were approved. The Present Level of Educational Performance noted that _____ was having difficulty progressing in the general curriculum because of behavioral problems caused by emotional disturbance and _____ disability of emotional disturbance has as adverse impact on _____ academic performance. (S Ex. 56A-P)

1. Addendum proposed to explore techniques to decrease disruptive behaviors. (S Ex. 49A-49F)
2. Addendum to change placement to Tri-County Alternative (S Ex. 47B)
3. Addendum changes placement to Homebound. (S Ex. 44A)

10. The IEP for School Year was adopted _____ (S Ex. 74 A-W) and two addendums adopted.

1. . Addendum placing _____ on Homebound pending psychological evaluation (S Ex. 71B).
2. .. Addendum providing Homebound services through _____

11. Placements for _____ include:

1. Special Education Classes
2. Homebound Services
3. Homebound Summer Services _____ (continued through _____)
4. Special Education Classes at _____
5. _____
6. Homebound Services
7. Special Education Classes
8. Morning classes and afternoon Homebound services at school
9. Shortened School Day with work packets
10. Homebound with work packets
11. Homebound with homebound teacher
12. 30 day evaluation placement at _____
13. Residential placement recommended by IEP, but parental objection

12. Evaluations conducted with _____ include:

1. _____ r (S Ex. 60A-60H)
2. _____ and _____
(S Ex. 33C-33E)

3. UVA Diagnostic Evaluation and Intake Summary (S Ex. 12A-12J)
Consultation dated
4. Functional Behavior Assessment-Ft. : School (S Ex 31)
5. Educational Evaluation FT. : School (S Ex. 21A-21J)
6. Abingdon Psychological Services Psychological Evaluation (
(S Ex. 18A-18J)
7. Psychological Report-Component of Report (
Ph.D.) (S Ex. 5A1-9)
8. Evaluation (S Ex. 5A-H)

5. CONCLUSIONS OF LAW:

A. Burden of Proof. The school initiated this proceeding and bears the burden of proof in this due process hearing.

B. Determinations as required by *The Regulations Governing Special Education Programs for Children with Disabilities in Virginia* :

- a. The Requirements of notice to the parents were satisfied;
- b. has a disability; *and*
- c. needs special education and related services.

The parties stipulate that has a disability, that is in need of special education and related services, and that there is no contest as to the issue of notice to parents.

The matter of the provision of a free, appropriate, public education is at issue as to the School's provision of an "appropriate education". Public Schools has requested determination if residential placement is necessary to provide an appropriate education for

The IEP team that met on concluded that residential treatment was required however, Mrs. objected and refused to sign the IEP giving her consent to the implementation of the IEP.

C. Behaviors exhibited at school:

In the Grade (the school year) / was taken 7 times to the school office on disciplinary issues which included fighting, grabbing another child's arm, throwing a tantrum, yelling, pounded on the table, and talking back. (Tr. pg. 214) This was in addition to disciplinary actions taken in the classroom.

In the grade (the school year) on hit teacher and threatened to kill teacher. was disruptive in class and when teacher tried to redirect refused to stop behavior, hit teacher, and threatened to kill . When principal asked if was serious about the threat, said was serious. (Tr. pg. 77, 78, & 97). On a risk assessment committee meeting was convened and determined the threat made was "not low". (Tr. pg. 99)

In the grade (the school year) Disciplinary Records include 10 incidents between August and December of involving confrontations with students, name calling, disruptive activity, threats, and tantrum.

On

- a. showed a student his fist and told him that (i.e. () fist was larger than the other student's fist.
- b. growled at teacher. (Tr. pg. 184)
- c. pointed a pencil at a student and told the student (i.e. the other student) would be going to the hospital. (S Ex. 55A)
- d. threw a pencil at a student.
- e. yelled to teacher that was not going to do what the teacher asked to do but was going to do what wanted to do.

When taken to the principal's office on

- a. Tore up paper and threw it on the floor and stuffed paper in ears.

b. Put paper in ears so he would not have to listen to the principal.

c. When told to quit hitting a window told the school principal several times "to shut up", "you can't tell me what to do" and "you're stupid". Also put thumbs in ears and waived fingers at the principal., thumbed nose, stuck tongue out, put paper in nose that had been in ears, and spit on a window.

Additionally, during this school year was observed eating whole sheets of paper and playing with chewed up paper spit out on the desk. ate pencils (the erasers, wood, and the lead). told other students that was going to hit them and that they would go to the hospital, and that fist was larger than other students. (Tr. pg. 187) tried to trip other students, brought a rock to school and was throwing it against the wall in the rest room, was refusing to do work; laid on the floor, and was disrespectful.

In incidents at school occurred with telling students to "shut the fuck up", and using other disrespectful language and profanity. was suspended for three days in

In the Summer of , on was involved with causing \$7025.37 in damage at School (S Ex. 83). and one other (who was younger than

) damaged school property and:

- a. Got hold of a key which was broken off in a closet.
- b. Broke two windows and broke glass in a showcase.
- c. Discharged a fire extinguisher and damaged/destroyed 4 computers and a camcorder.
- d. Wrote over one computer and cut cords.
- e. Jerked a camera off the wall.

Additionally damage was done to a car. (Tr. pg. 122-124, S Ex. 83)

In the grade (the school year) on spit in a teacher's face. (Tr. pg. 240). After this incident was suspended and on was placed on Homebound and subsequently placed at evaluation.

(S Ex. 7B)

D. Evaluations conducted:

was admitted to the _____ for evaluation on _____

The approximately 30 day residential placement for evaluation was done because of concerns that _____ has been having such extreme difficulties that _____ had not been able to function within _____ school setting. _____ mother consented to the placement.

On initial interview at _____ it was related that _____ sleeps with a knife under _____ bed and has access to guns and ammunition (Tr. pg. 25-26), that _____ exhibited aggression to peers and staff (Tr. pg. 31), that _____ has hit, kicked, and thrown objects at peers, and that on one occasion exposed self to a peer (Tr. pg. 32). While at _____ was observed banging doors and banging _____ head on the wall. In one incident at _____ security/ _____ police was involved with _____ (Tr. pg. 59)

The _____ evaluation team recommended _____ needed to stay for residential treatment beyond the 30 day evaluation period but Mrs. _____ did not want _____ to stay for residential treatment. (Tr. pg. 35) _____ was discharged from _____ on _____,

While Mrs. _____ was very concerned about _____ behavior and the path _____ was taking in life she wanted _____ to be closer at home. (Tr. pg. 37) _____ expressed a strong concern that _____ would not be home on weekends and that this was one of the main objections to residential placement.

Dr. _____ is an assistant professor in the Department of Psychiatry _____ team leader on the residential treatment program at _____ and head to the evaluation team. Dr. _____ indicated _____ personally observed and evaluated _____ indicated

that needs to be in a very highly structured and therapeutic setting that has firm expectations for with a behavior management program in place, therapy services for and family, and medication management. further indicated that for a child to require residential treatment the child needs to be demonstrating a significant level of dysfunction and a certain level of unsafe behavior and if were able to maintain on the weekends there would be questions of the need for residential treatment during the week. (Tr. pg. 50)

is diagnosed with Oppositional Defiant Disorder, ADHD, borderline intellectual functioning. (Tr. pg. 38) s Global Assessment Functioning was 45 (Tr. pg. 40) and was found to present as an angry, impulsive teenage with very poor judgment and with access to guns.

Concerns were expressed that there is the potential that could become angry and become violent with the guns. It was noted there that did not make actual threats and has not been reckless with guns in the past. (Tr. pg. 45) However, it was specifically noted that has characteristics of children who may want to act out aggression and that if did make statements such as that, they should not be minimized. (Tr. pg. 46)

Dr. based upon evaluations of indicated cannot be provided an appropriate education without participation in a residential program (Tr. pg. 50-51). further indicated that psychological needs are interfering with ability to function academically and that is not going to be able to function as needs to in order to benefit from educational instructions. (Tr. pg. 68-70)

Dr. further expressed concern that a day treatment program would not be appropriate for and that would not receive the treatment needs from a day program. (Tr. pg. 69-70)

At [redacted] psychological evaluations indicated [redacted] achieved an overall nonverbal IQ score of 71, which falls in the low borderline range. This score is consistent with test results from a [redacted] evaluation.

On the Peabody Picture Vocabulary Test - Third Edition, which measures receptive vocabulary [redacted] achieved a standard score of 97, a score within the average range. [redacted] shows average ability in selecting pictures that represent words but [redacted] ability to perform more complex tasks and use information in a more meaningful way is limited.

Personality testing revealed three central themes:

First, themes of depression. [redacted] does not view the world as a safe place and does not anticipate positive social interactions with others.

Second, problems with reality testing. [redacted] does not perceive events as others [redacted] age do. [redacted] tends to distort reality and come to conclusions that might not make sense. As a result is likely to respond to everyday situations in abnormal or exaggerated ways.

Third, [redacted] results indicate that [redacted] has limited coping ability and [redacted] currently lacks adequate internal resources to manage the stresses of everyday life. (S Ex. 5A-5C)

E. Other Evaluations:

Previous testing done by Abingdon Psychological Services, P.C. on

[redacted] indicated, on administration of the WISC-III, [redacted] obtained a Verbal IQ score of 71 (3rd percentile) a Performance IQ of 75 (5th percentile) and a Full Scale IQ score of 71 (placing within the Borderline range of Intellectual Functioning). As compared with others [redacted] age in this country [redacted] FSIQ score fell at the 3rd Percentile. It was noted that [redacted] will have difficulty academically due to relatively low cognitive capabilities and the aggressive behavior in the context of ADHD and impulsivity will complicate the problem. (S Ex. 18D, 18I)

Public School Educational Evaluation of _____ indicated that _____ reads and comprehends on a 4th grade level (while in grade 7) and that _____ is noted to be a bully. (S Ex. 21G)

The Behavioral Consultation of 3/26/02 (S Ex. 33C) noted a 11 point difference between performance/verbal IQ. (S Ex. 21A)

_____ Center conducted a psychological evaluation (dated _____) on referral of the _____ Schools for a risk assessment. The WISC III indicated full scale IQ of 81 (low average range of intelligence). The Wide Range Achievement Test - III indicated that _____ is not functioning on grade level in any area and is particularly weak in the area of mathematics. _____ scores are below what would be expected of a child with _____ intellectual abilities.

Risk assessment recommendations stated in part:

"It is the undersigned examiner's opinion that _____ presents a significantly higher risk than the average _____ age and grade to exhibit violence toward _____ teachers within current classroom setting. The risk is such that _____ probably should not return to previous classroom setting. (S Ex. 60A-60 H)

F. IEPs and Placements:

School Year _____ The IEP for was adopted and approved by parent on _____

(S Ex. 39A-39S). This IEP indicated _____ was having difficulty progressing in the general curriculum because of behavioral problems and _____ emotional disturbance negatively effects academic performance.

_____ disability creates a barrier to _____ full participation in the general education setting. Behavior results in confrontation with peers and authority shifting _____ focus from academic tasks. _____ behavior allows _____ to quickly complete tasks without utilizing the entire thought process

resulting in incorrect responses and reactions without thinking through the consequences.

inability to pay attention results in incorrectly completed assignments.

Accommodations include preferential seating, small group settings, breaks during tests, breaking up lengthily assignments and tests into smaller units, and interpret/assistance with directions given for assignments and tests. IEP Addendum noted disruptive behaviors in the afternoon and tried to address this with approximately 3 hours of a homebound setting in the school (a teacher would be 1:1 with [redacted] in the school).

5 Addendums were adopted with parental consent and 1 proposed Addendum for which parental consent was refused.

The adopted 5 Addendums for which there was parental approval were:

1. Child placed on Homebound provided at school from 12:00 - 3:05 at school while continuing morning classes (S Ex. 34A)
2. ... School day shortened to 11:35 A.M. (S Ex. 29A)
3. .. Child placed on Homebound w. work packets. (S Ex. 25A)
4. .. Homebound placement continued with a teacher. (S Ex. 13A)
5. .. Child placed at [redacted] evaluation (S Ex. 7B)

The IEP meeting for which parental consent was refused was held on [redacted]. Parental consent was refused for the IEP addendum recommending residential placement. (S Ex. 4B).

School Year [redacted] The IEP was adopted and agreed to by parent on [redacted] l
(Ex. 56A-P) and three addendums were approved .

1. .. IEP team proposed to explore techniques to decrease disruptive behaviors. (S Ex. 49A - 49F)
2. ... Addendum to change placement from [redacted] School to [redacted] (S Ex. 47B) an all day Special Education environment, alternative day program in [redacted] Va. (Tr. pg. 194)

3. Addendum changes placement to Homebound. (S Ex. 44A)

G. Programs attended:

attended Kindergarten in a regular education class. In the First Grade was identified as a special education student and received resource services (was classified as emotionally disturbed). was in a self-contained classes at Elementary School from the Second Grade to of

At the beginning of the school year was placed in self-contained special education classes. (Tr. pg. 250) On the was placed on homebound because of the threat to kill teacher. (Tr. pg. 251)

In t of s parent enrolled in School. In an IEP looked at techniques utilized in an effort to change how the school were responding to behaviors and to address s lack of progress.

Next, was placed in the (in VA) by IEP addendum on , but again due to problems and lack of progress a change in placement was suggested. As Mrs. suggested, the IEP of proposed a change of placement from to homebound and a homebound a teacher was sent to the home to provide services. The homebound was subsequently extended to

was not registered in Public Schools when the school year had begun on and parents met with school staff on began attending School per the IEP agreed to on (Tr. pg. 233) This lasted until the Addendum to the IEP placed on what was called "homebound at school" (attended regular classes in the morning and in the afternoon

had a one-to-one teacher in a classroom by himself). On [redacted] this was determined to be not working and an IEP addendum shortened school day (for a short term period) to 11:35 a.m. and did homebound (with work packets sent home). This continued until [redacted] when [redacted] spit on a teacher and was suspended.

Due to spitting in a teacher's face on [redacted] [redacted] was suspended and on [redacted] a Discipline Manifestation Determination was held. At this meeting the parents indicated that they felt the evaluation of their child needed to be updated (Tr. pg. 241) (S Ex. 15A).

On [redacted] an IEP addendum placed [redacted] on homebound while further evaluation was conducted. (Tr. pg. 242) On [redacted] an IEP meeting at Middle School was held concerning an evaluation to look at services for [redacted] / had been on homebound after the incident of spitting in a teacher's face in [redacted] Residential services of approximately one month for evaluation was approved by the team and Ms. [redacted] agreed to the evaluation at [redacted] (S Ex.:7D) (Tr. pg. 247-250)

H. Disability and education:

Dr. [redacted] voiced concern that [redacted] is not going to be able to function as [redacted] needs to in order to benefit from educational instruction. [redacted] states that, based upon evaluations, psychological needs are interfering with [redacted] ability to function academically (Tr. pg. 68) and that [redacted] cannot be provided an appropriate education without participation in a residential program (Tr. pg. 50-51).

Dr. [redacted] indicated that [redacted] disability interferes with [redacted] ability to behave appropriately (TR 206) (7A&B). [redacted] did not make educational progress at [redacted] Middle, and [redacted] was concerned that [redacted] was not even maintaining. (Tr. pg. 285) [redacted] was not receiving educational benefit from the day treatment program (i.e. [redacted]) attempted

for approximately two months. (Tr. pg. 227, 228) believes that for to access education, to learn the basic things needs to learn as part of an appropriate education, has to have related services and that's the treatment of the therapy piece of the a program for . If does not receive treatment in conjunction with education will not be educated. testified that (has to have the therapeutic piece in order to be able to access the reading, writing, and arithmetic of what we are charged with teaching . (Tr. pg. 288-289)

1 , Licensed Clinical Social Worker, was familiar with and had reviewed assessments and treatment recommendations. also indicated: 1.) that has behavioral, social, and emotional problems, 2.) that these problems were so severe that they, in opinion, are preventing from getting the education needs, 3.) that these are primary underlying problems that affect approach to academics, and 4.) that needs to have these problems dealt with so that is prepared to approach academics in a way that will help be successful. (Tr. pg. 296)

was aware of no program, short of residential, that would give the intensive treatment needs. believes that issues blocks from being able to learn the basics and that residential placement is necessary for to get an appropriate public education.

also indicated that there were no accommodation that would be available and appropriate to allow opportunity to benefit from education. (Tr. 296-298)

I. Appropriate Education and LRE:

Placement decisions are required to be based upon the individual needs of the student and not on what is most convenient for the school. A residential placement must be for educational reasons and not merely for behavior problems. The requirements of "Free Appropriate Public Education" are to be met in any residential placement decision.

"Free Appropriate Public Education" means special education and related services that:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include preschool, elementary school, middle school or secondary school education in the state; and
4. Are provided in conformity with an individualized education program

(Regulations Governing Special Education Programs for Children with Disabilities in Virginia; 8 VAC 20-80-10)

Board of Education of the Hendrick Hudson Central School District et al v. Rowley, 458

U.S. 176 (1982) provides a two prong test to determine the appropriateness of the education being provided the child. First, whether the school system has complied with the procedures of the IDEA; and Second, whether the child's IEP is reasonably calculated to enable the child to receive educational benefit.

Under the IDEA, an appropriate education consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. White et al. v. School Board of Henrico County, 2001, 549 S.E.2d 16, 36 Va. App. 137.

The IEP must comply with the requirements of IDEA and be reasonably calculated to confer educational benefit. It is the School's responsibility to implement the Individualized Educational Program including any related services provided for therein. These related services are intended to support the provision of special educational services and are provided when such services are necessary for the student to benefit from special education.

Additionally, consideration must be given to requirements as to *Least Restrictive Environment*

- ã. Each LEA shall establish and implement procedures which satisfy requirements as follows:
- (1) To the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children who are not disabled; and
 - (2) Special class placement, separate schooling or other removal of children with disabilities from regular education environment occurs only when the nature or severity of the disability is such

that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

- b. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for non disabled children, each LEA shall ensure that each child with a disability participates with non disabled children in those services and activities, to the maximum extent appropriate to the needs of the child with a disability.

(see Regulations Governing Special Education Programs for Children with Disabilities in Virginia)

Least Restrictive Environment means that *to the maximum extent appropriate*, children with disabilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplemental aids and services cannot be achieved satisfactorily. *(emphasis added - see Regulations Governing Special Education Programs for Children with Disabilities in Virginia)*

Public Schools has provided a varying and a broad range of placements and services in their efforts to provide with "educational benefit". Significant behaviors have been exhibited by in the school that have presented risks to , to school staff , school property, and to other students. Additionally, these same behaviors have affected ability to progress academically and to receive educational benefit.

Any decision regarding residential placement is made on an individual basis looking at the individual needs of the child and the ability of the school to adequately address the needs of the child in order for the child to receive educational benefit.

Public Schools has initiated multiple IEP team meetings to address needs. A continuum of placements have been investigated and utilized in attempting to provide appropriate educational services to . Educational Evaluations, Psychological Evaluations, and Risk Evaluations were conducted and reviewed. Attempts were made to provided modification of

services and placements to address both the educational needs of [redacted] and need for safety and security of [redacted]

Residential placement is a placement of last resort and is appropriate only when no other placement can provide the student with a free appropriate public education. To consider removing [redacted] from [redacted] Public Schools and to consider placing a [redacted] in a residential placement requires a determination that the nature and severity of [redacted] disability is of such a nature that reasonable educational progress cannot be achieved otherwise.

[redacted] Public Schools has provided services and documented the services provided to [redacted] and the extent to which the services were successful or less than successful. Unfortunately, there were too few successes and too short a length of maintain successes. There seems to be a yearly progression of behavioral issues that in and of themselves are detrimental to [redacted] but are also detrimental to [redacted] being able to receive benefit from his educational program and to make progress in his education.. [redacted] behaviors have negated his ability to progress.

[redacted] Public Schools has exhausted the other options and accommodations that are available to give [redacted] the opportunity to benefit from education and make reasonable educational progress.

[redacted] needs a residential program that provides strict behavioral program in order for [redacted] to receive educational benefit. [redacted] is not getting a basic educational foundation because what's going on emotionally/behaviorally, and socially. This blocks [redacted] from learning the basics and being able to receive educational benefit.

Residential treatment as proposed by the IEP team on [redacted], and as recommended by [redacted] the report received from the [redacted] is necessary if [redacted] is to receive an appropriate education. The intensive components of a residential program integrating behavioral,

psychological, and social, treatment/therapy are necessary if _____ is to access education and receive educational benefit. The treatment/therapy that can be provided in a residential program are services that are necessary to address educational issues. The treatment/therapy is intended to support the provision of special educational services and is necessary for the _____ to benefit from special education.

The Regulations Governing Special Education Programs for Children with Disabilities in Virginia provides that,

“Either a parent or parents or a local educational agency may request a due process hearing when a disagreement arises regarding Educational placement and services of the child and provision of a free appropriate public education to the child.”
(see 8 VAC 20-80-76 B.1 c.)

“A local educational agency may initiate due process hearing to resolve a disagreement when the parent or parents withhold consent for an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability”. (see 8 VAC 20-80-76 B. 2) and

It therefore the decision of the hearing officer, based upon the evidence presented at hearing and for the reasons above stated that:

1. Residential placement is necessary for _____ to receive an appropriate education.
2. _____ / Public Schools may proceed forward with providing residential school placement for _____ without the consent to placement of the parents.

Prior to any [placement, and subject to the above decision of the hearing officer, it is Ordered that _____ Public Schools shall follow procedures set forth in *The Regulations Governing Special Education Programs for Children with Disabilities in Virginia* and in particularly 8 VAC 20-80-66 regarding placement in a private school or facility that is licensed or has a certificate to operate.

The LEA is responsible to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

Appeal Information

A decision by the hearing officer in any hearing is final and binding unless the decision is appealed by a party in a state circuit court within one year of the issuance of the decision or in a federal district court. Either party may file an appeal to a state circuit court or a federal district court within one year of the date of the hearing officer's decision

date:

Hearing officer

Copies of this Final Due Process hearing Report and Decision mailed to:

- 1.
- 2.
- 3.
- 4.