

CASE CLOSURE SUMMARY REPORT



Public Schools
School Division

Name of Parents

Name of Child

August 25,
Date of Decision or Dismissal

Esq.
Counsel Representing LEA

Esq.
Counsel Representing Parent/Child

Public Schools
Party Initiating Hearing

Parents/Child
Prevailing Party

Hearing Officer's Determination of Issue(s):

The LEA's proposed IEP does not provide with a FAPE pursuant to IDEA and Section 504.

Hearing Officer's Orders and Outcome of Hearing:

The Hearing Officer ordered the LEA to reconvene further IEP meetings and develop an IEP that sets age appropriate goals, benchmarks, and objectives; provide direct OT services; conduct an Assistant Technology Evaluation and implement recommendations; provide with a VQAS Level III SLI at all times in school; conduct an Independent Vocational Evaluation for transitional planning purposes; and provide parents with list of individuals who can conduct a vocational evaluation.

Implementation Responsibility:

The Hearing Officer reminds the LEA of its responsibility to submit an implementation plan to the parties, the Hearing Officer, and the SEA within forty-five (45) days of the issuance of the decision.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from the hearing has previously been mailed to all parties and faxed to counsel of record. This report has 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 of the decision.

, Hearing Officer

Signature

Public Schools v.

Counsel for Parent/Child:
Counsel for School Division:
Hearing Officer:



I. PROCEDURAL HISTORY

On or about May 19, , the Public School Division (LEA) requested a due process hearing seeking authorization to implement the proposed individual educational plan (IEP) developed for (aka). Attachment (Atth) 1. The hearing officer held the first pre-hearing conference on May 29.

, and initially scheduled the hearing for June 17, . Upon joint motion for a continuance by counsel for the parties, the hearing was rescheduled for July 22 - 24. The hearing officer found the continuance was in the best interest of the child to allow time for independent educational evaluations to be conducted and submitted as evidence. During the initial conference call, counsel for the parties elected to submit a written statement of the issues by June 16, , to facilitate clarification of the issues. The hearing officer scheduled a second pre-hearing conference for June 20, . Hearing Officer (H.O.) Exhibit (Exh.) 11.

During the June 20, conference call, counsel for the parties agreed the appropriateness of the IEP was an issue ripe for consideration by the hearing officer. The parties also argued whether the hearing officer had authority to hear seven other issues raised in counsel for the parents/child written statement of the issues. Those issues concerned compensatory educational services and the proposed IEP accommodating 's speech impairment, violating the Americans with Disabilities Act and Virginians

with Disabilities Act, and planning appropriately for [redacted]'s transition.

The parties expressed an interest in submitting written arguments on the hearing officer's authority to hear the above-referenced seven issues. Moreover, the parents, through counsel, requested additional time for the hearing due to the unavailability of an expert witness. By oral and written order dated June 20, [redacted], the parties were given an opportunity to submit written arguments regarding the hearing officer's authority to hear those remaining seven issues. To assist the hearing officer in determining the need for additional hearing time and the necessity of the proposed expert's testimony, counsel for the parents was ordered to provide the hearing officer with a curriculum vitae of the proposed expert witness and a summation of the proposed subject area of the witness' testimony. H.O. Exhs. 9, 10.

After considering the parties' oral and written arguments on hearable issues, the hearing officer determined the only issue(s) before her is the appropriateness of the IEP under the Individuals Disabilities Education Act (IDEA) and under Section 504 of the Rehabilitative Act of 1973 (Section 504). Further, after considering submissions about the proposed expert, the hearing officer determined the expert's testimony was necessary and it would be in the best interest of the child to grant additional hearing time to take the testimony. Accordingly, the hearing officer scheduled the afternoon of July 28, [redacted], as additional hearing time. That hearing time was later changed to July 30, [redacted], due to the witness' unavailability on July 28, [redacted]. The hearing officer found the July 30, [redacted] additional hearing time was in the best interest of the child for the same reason as originally scheduling additional hearing time on July 28, [redacted]. H.O. Exhs. 5, 7, 17, 21.

Counsel for the parents/child submitted a Motion to Compel Production of List

Vocational Evaluators on July 11, . By conference call on July 16, , the hearing officer heard arguments on the motion and based on representations of counsel during that conference deferred ruling on the motion. The hearing officer denied counsel for the parents/child request for a continuance finding that it would not be in the best interest of the child to continue the case. H.O. Exh. 1.

The hearing officer received a Motion to Dismiss/Motion for Summary Judgment from counsel for the parents/child after 5:00 p.m. on July 21, . The hearing officer dismissed that motion because the case before the hearing officer presents a matter in controversy and because the motion was not timely. Vol. 1 and 4, Tr. 13, 760.

The hearing convened on July 22 -24, 30, , and continued until August 1, . H.O. Exh. 21, Atth 2 herein.

II. ISSUES

Whether the proposed IEP is reasonably calculated to provide an educational benefit under the IDEA.

Whether the proposed IEP is providing a free appropriate public education (FAPE) to under Section 504; that is, whether the LEA is providing to an education comparable to the education provided to non-handicapped students.

III. FINDINGS OF FACT (FF)

1. is a student attending High-School (HS) in Virginia.
2. has Downs syndrome and has been found eligible for Special Education and related services under the Mentally Retarded label. Vol. 1, Tr. 76. LEA Exh. 4. geneticist also has diagnosed with oral motor apraxia. Vol. 4, Tr. 767.

3. 's most current IEP is dated June 11, . Addenda to that IEP are dated August 21, . LEA Exh. 2.

4. The IEP team met several times during the 20 -20 school year to develop and implement a current IEP for . The parents attended an IEP meeting on September 27, to review and discuss a proposed IEP. The parents did not accept that proposed IEP. Vol.1, Tr. 102-104. LEA Exh. 38.

5. In October, , the parents submitted a list of numerous concerns about ' s proposed IEP. (), ' s resource teacher and case manager, responded in writing to the parents' concerns. Vol.1, Tr. 103-104. LEA Exh.

39.

6. The LEA notified the parents of an IEP meeting scheduled for November 18, 20 . The LEA cancelled the meeting because the parents were unable to attend. It was rescheduled for November 25, . The parents were unable to meet on November 25, also. sent the parents a copy of the draft IEP. Vol.1, Tr. 104. LEA Exh. 43.

44.

7. The LEA met on November 25, without the parents because the LEA perceived a significant amount of the school year had passed and progress needed to be made on the IEP. The LEA sent the draft IEP developed from that meeting to the parents and it was rejected because the parents perceived, among other things, the curriculum was not appropriate and a sign language interpreter (SLI) was needed. Vol.1, Tr. 106, LEA Exh. 48.

8. The LEA made a good faith attempt to schedule follow up IEP meetings in December, , January and February, , but the parents were often unavailable.

Vol.1, Tr. 107, LEA Exh. 49.

9. The LEA rescheduled an IEP meeting previously scheduled for March 3, because it received less than a twenty-four (24) hour notice that the parents would be accompanied by their attorney. The LEA desired to be accompanied by its attorney who was unable to attend the March meeting because of the short notice. The IEP team, including the parents, met on April 7, 14, and May 5, Vol.1, Tr. 107, 109-110.

10. During the April and May IEP meetings the team discussed the IEP section labeled "Present Level of Educational Performance" (Performance Section). The IEP team agreed to modify the direct physical therapy (PT) services to consult services. Vol.1 and 2, Tr. 110, LEA Exh. 1, p.24.

11. During the May 5, meeting, read the entire proposed IEP excluding the performance section. That section was not read aloud because the attorney for the parents stated the parents had already reviewed it. Vol.4, Tr. 870. also emphasized the agreed upon paragraph about physical therapy and the need to discuss speech therapy services. Vol.5, Tr. 809-10.

12. The IEP team made very little progress in the IEP meetings. Vol.1, Tr. 110.

13. The parents expressed concerns about the effectiveness, appropriateness, and application of the components of the IEP as well as the services proposed to be offered, decreased, or eliminated. The parents' request for sign language interpreting services consistent with the requirements set forth in the Virginia Regulations Governing Special Educational Programs became a sticking point for the IEP team. Vol.1, Tr. 110.

14. The parents rejected the proposed IEP. The parents did not refuse to provide the LEA with consent necessary for to be administered the Virginia Alternative

Assessment Program (VAAP) assessment test. During the May 5, IEP meeting, discussed the VAAP test and thought that would take it. The LEA decided sometime after May 5, would not participate in the VAAP and did not administer the VAAP. Vol. 1, Tr. 95-96, 126. The LEA promoted to the 12th grade and now takes the position that is no longer an eleventh grader and therefore ineligible to participate in the VAAP. According to instructional specialist with the LEA, will remain a 12th grader for three years. Vol. 4, Tr. 790.

15. Sometime between May 5, and the July, due process hearing, the parents learned the LEA would not administer the VAAP test to is scheduled to graduate in Vol.4, Tr. 790.

16. A May 27, follow up IEP meeting was scheduled, but later the LEA cancelled that meeting deciding to request a due process hearing for a ruling on the appropriateness of the proposed IEP and authorization to implement it. Vol.4, Tr. 790-91, Vol. 5, Tr. 807.

17. After the May 5, IEP meeting, the LEA made changes to the proposed IEP. The pages were paginated and the document dated to reflect the May 5, meeting date. Page 21 was changed to reflect that was a twelfth grader and therefore ineligible to participate in the VAAP. Vol.4, Tr. 787-88.

18. The parents were intimidated by the presence of what they described as so many administrators at the IEP meetings. Vol. 3, Tr. 647 -50.

19. The LEA identifies all six annual goals in the proposed IEP as both transitional and non-transitional goals. Vol. 1, Tr. 87-90. Vol.5, Tr. 815, LEA Exh. 1, pp.7-8.

20. Pages three (3) through six (6) of the IEP makeup the Performance Section. Those pages, in part, indicate:

- (i) [redacted] has the ability to participate inclusively with peers in non-academic and elective classes. LEA Exh. 1, p.4.
- (ii) [redacted] ([redacted] 's) speech is usually intelligible at the word level; however, error sounds are consistent. LEA Exh. 1, p.4.
- (iii) [redacted] will not receive homework. LEA Ex. 1 at 9,11,12,14,15,17, Vol.4, Tr. 620.
- (iv) [redacted] can accurately articulate the names of the alphabet with 50% accuracy which has increased from forty-eight percent accuracy in November [redacted]. LEA Exh. 1 p.6.
- (v) Conversational samples have slightly improved from an average of 70% intelligibility. LEA Exh. 1, p.6.
- (vi) [redacted] is capable of expressively communicating with [redacted] teachers and peers. LEA Exh. 1, p.6.

21. [redacted] 's father observed [redacted] at least twenty (20) times during the [redacted] and [redacted] school years. On one occasion, [redacted] was observed in [redacted] physical education (PE) class for thirty-five (35) to forty (40) minutes. [redacted] observed [redacted] sitting on the bench the entire time. That visit prompted [redacted] to visit [redacted] 's P.E. class 3 additional times. Vol. 3, Tr. 617.

22. On each occasion [redacted] observed [redacted] was sitting on the bench and not participating in physical educational activities. Other students would arrive and acknowledge [redacted]. The boys would wave at [redacted]. The girls would often hug [redacted] and then proceed to participate in physical educational activities. [redacted] remained on the bench. Vol.3, Tr. 508, 517.

23. During another observation, [redacted] observed [redacted] as [redacted] was walking to the library. [redacted] described the interaction between [redacted] and [redacted] teachers as brief and mostly instructional. Vol.3, Tr. 509. [redacted] perceived [redacted] did not have an opportunity to express [redacted] self. Vol.3, Tr. 509.

24. also observed eating lunch with other students around but not expressing self during those times. described as "alone in a crowd." Vol.3, Tr. 660. also observed in IEP meetings and on at least one occasion in 's class during the previous school year and 's prior teacher's class during the school year. Vol.3, Tr. 662-63.

25. has communicated to father that wants to socialize with peers more to discuss such topics as girls, T-shirts, MTV, BET. Vol.4, Tr. 665.

26. The LEA states the following are 's non-transitional and transitional goals:

- (1) will improve intelligibility in conversational speech to 75% accuracy when context is known to the familiar listener.
- (2) will improve communication skills in the areas of expressive language to 75% accuracy when context is known to the familiar listener.
- (3) By May, will improve daily living skills as measured by classroom participation, classwork and criterion referenced test based on Brigance Life Skills Assessment test and teacher made test in 4/5 trials.
- (4) will demonstrate the ability to solve practical math problems involving money, quantitative/qualitative measurements and identify and write numbers one (1) to fifty (50) in 4/5 trials as measured by classroom participation, classwork, and observation.
- (5) By May, will utilize strategies for improved functioning in school and community environments and improve those strategies 4/5 times as measured by teacher observations and weekly checklists.
- (6) By May, will demonstrate functional and vocational skills of following directions, matching, sorting, sequencing and categorizing objects and choosing vocational choices as measured by teacher testing, classwork and objective.

Vol.1, Tr. 87-91, LEA Exh. 1, pp. 8-17.

27. The secondary transition page of the IEP does not identify the specific pages in the

IEP which address each transition service. LEA Exh. 1, p. 7, 8.

28. The parents were confused about which sections of the IEP addressed [redacted]'s [redacted] transitional planning, to include, but not limited to, goals and services. The parents do not understand how some decisions were made about the extent of services. Vol.5, Tr. 814.

29. As part of the LEA's transitional planning, [redacted] referred [redacted] to the Department of Rehabilitative Services (DRS). Vol.1, Tr. 101, LEA Exh. 37. According to [redacted] the DRS is helpful in assisting individuals like [redacted] to transition into the work place and find appropriate jobs. Vol. 1, Tr.102.

30. The LEA has identified work awareness and transition on page 24 of the proposed IEP as the transition service for the post secondary employment and career and technical education. [redacted] has been placed at [redacted] Center [redacted]

[redacted] to receive this service with the possibility of advancing to a job coach placement. Vol.1, Tr. 164, 168. Vol.2, Tr. 315. LEA Exh.1, p.24.

31. [redacted] is the primary agency the LEA contracts with to accept mentally retarded students for vocational and job training. [redacted] is a regional educational facility that provides services to school divisions on a contractual basis. Vol.1, Tr. 164. Other programs possibly accepting vocational placement of mentally retarded students are the Community Service Board (CSB), sheltered workshop and the Association of Retarded Children (ARC). Vol.2, Tr. 339-40.

32. In [redacted]'s case, exploring vocational placement options other than [redacted] is a decision to be made by the IEP team. Vol.2, Tr. 341.

33. [redacted] ([redacted]), a coordinator at [redacted] is responsible for three programs at the facility:

- (i) a job coach program which works with students with disabilities who come to _____ for part of the school day. Students in this program have a specific training plan and under supervision receive job training in the community. Vol.1, Tr. 164.
- (ii) vocational education; and
- (iii) work awareness transition program where students receive job training at _____. Within this program, the students run a business and work on work behaviors such as promptness, appropriate work attire, hygiene, and social skills. Vol.1, Tr. 164.

34. _____ originally was in the job coach program but was withdrawn from it because _____ would sleep on the job and needed extensive supervision. Vol.1, Tr. 166.

35. For about two years now, _____ has been in the Work Awareness and Transition program at _____, Vol.1, Tr. 166. _____ will begin the _____ in this program. Vol.1, Tr. 166.

36. During the _____ school year, _____ was placed in the woodshop and laundry service section of the work awareness and transition program. _____ spent approximately two hours and twenty minutes each day at _____. Vol.1, Tr. 170. Students in this program make products, sell them, and earn money. Each student also receives shares. At the same time, each student is working on objectives, which can change. How well a student does on mastering the objectives determines the number of shares he/she earns. Vol.1, Tr. 167.

37. _____ worked on five objectives at a time. Since being placed in work awareness, _____ has progressed from mostly standing and doing fairly simple work in the woodshop to using a variety of tools. It is unlikely that _____ will be able to get a job in a wood shop based on _____ experience in the program. Vol.1, Tr. 183. The crux of the program is work behavior and the woodshop class' objective is to lead the student to other training such as job coach or vocational education. Vol.1, Tr. 184, 167.

38. Initially, 's objectives were basic such as following directions, responding positively, staying on task. Then they progressed to behaviors such as showing initiative, increasing productivity, and communicating more. Vol. 1, Tr. 168.

39. became a team leader at and primary function was setting up the work and directing its flow for other students. Vol.1, Tr. 167.

40. , a certified vocational evaluator, conducted such a vocational evaluation of at in September over a three day period. Vol.1, Tr. 176, 183. LEA, Exh. 20.

41. Although was accompanied by (communicative assistant) to assist in communicating during the evaluation, testified was not needed. Vol.1, Tr. 176. 's evaluation began with a tour of the vocations. expressed an interest in cosmetology, food service and the military and then completed standardized and normed reading free vocational interest inventories which rated as having a high interest in clerical, patient care, personal service, and laundry service work. LEA Exh. 20, p.2, Vol.1, Tr. 174.

42. Work samples for cashier work and cosmetology were then set up and performed several standardized aptitude tests in those work samples. The attitude tests were not normed because of 's cognitive ability. Vol.1, Tr. 193. The report indicated lacked motivation during portions of the test which adversely affected performance. Recommendations as a result of the evaluation included:

- (i) continue development of work related behaviors in a programs such as the Work Awareness Transition Program;
- (ii) consider placement in a job coach training program such as the Job Coach Program after completion of the Work Awareness Program;

- (iii) consider referral to the ARC of the Virginia Peninsula Chance/Topps program through Old Dominion University's Darden College of Education and Colonial Services Board (CSB); and
- (iv) consider obtaining information about Goodwill Industries of Hampton Roads.

LEA Exh. 20.

43. The proposed IEP lists DRS and CSB as agency linkages, agencies that may/will provides services for [redacted] once [redacted] graduates or no longer needs services. through the LEA. Vol.2, Tr. 317. DRS can provide job coach services. Typically a student is referred the second semester of his/her junior year. Vol.2, Tr. 334. CSB, among other services, can provide medication management, in home services, etc. Vol.2, Tr. 318. [redacted] referred

[redacted] to DRS and invited [redacted] ([redacted]), a counselor at DRS, to [redacted] 's IEP meeting. Vol.2, Tr. 333.

44. [redacted] testified that [redacted] also informed [redacted] in March [redacted] that [redacted] will not graduate for three years and [redacted] may not need to be involved at this time. Vol.3, Tr.

726. The LEA has referred [redacted] to DRS. [redacted] case is inactive because [redacted] is not in [redacted] last year of high school and it is DRS' policy to activate a case during the student's last year. There are exceptions. If an individual is in the Post Secondary Education/Rehabilitation Transition Program (PERT), the case is activated. Vol.3, Tr. 722-723.

45. According to the Virginia Department of Rehabilitative Services (VDRS), PERT is a program that "provides high school students a comprehensive evaluation in the areas of vocational skills, independent living skills, and leisure and social skills. These evaluations may lead to additional vocational programs and services that may assist the student with a smooth transition from secondary to post-secondary education, training and employment."

See <http://www.vadrs.org/downloads/transitionservices.pdf> and

<http://www.wvrc.net/menuroot/VR-pert-transition-services.htm> and see also Vol.4, Tr.

732.

46. A student who is linked with DRS is eligible to be referred to PERT which is housed in the Woodrow Wilson Rehabilitative Center. needs to be referred by either the transitional specialist at HS or case manager to be considered for PERT. Vol.3, Tr. 719.

47. At present, once a student is referred, the instructional specialist with the LEA, and from the PERT program, decide who is eligible for PERT services. did not receive an application or referral for to attend the PERT program. Vol.2, Tr. 336, 348-349. Vol.4, Tr. 719.

48. and testified the final decision for acceptance of students for the upcoming PERT program have not been made and can still be considered for the program. Vol.4, Tr. 719.

49. According to , students attending the PERT program usually have no history of disciplinary infractions and an IQ of at least 60; however a lower IQ does not preclude a student from being considered. has at least one disciplinary infraction notice and IQ is 41. LEA Exhs. 22, 59. The LEA is responsible for transitional planning and making referrals to agencies. Vol.2, Tr. 334.

50. () is an interpreter specialist. coordinates interpreting services for the Public School system and has worked in this position for three years. Vol. 1, Tr. 143-44.

51. has a bachelor's degree in child development and a master's degree in deaf

education from the University of Pittsburgh. At the request of the School Division (LEA), assessed through observations 's need for a sign language interpreter (SLI) for receptive comprehension of the content presented in class and comprehension of the student's verbal expression to teacher and other students.

Vol.1, Tr. 150. The evaluation took place December . For 50 minutes observed in math class communicating verbally with teachers and other students. testified the others seemed to understand . Vol. 1, Tr. 147.

52. For an additional thirty (30) minutes, observed in the lunch room. During fifteen (15) minutes of that time, communicated with orally and by sign language. Vol. 1., Tr. 148, 153-55. testified sat across from in the lunch room and conversed with first by not using signs and then talked to using voice and signing. characterized 's sign language as "American Signs in English Word Order." did not recall if was able to fingerspell.

concluded was not in need of a SLI. Vol.1, Tr. 147-48. LEA Exh. The LEA compensated for the evaluation. Vol.1, Tr.160. At the time evaluated Virginia State screening level was Virginia Quality Assurance Screening Level II/II and did not have a national sign language certification. Vol.1, Tr. 149.

53. 's credentials did not indicate had experience assessing the communication needs of students like who sign but are not deaf. Vol.1, Tr.156-57.

54. () is fully nationally certified in sign language with the highest qualifications for an interpreter and has maintained this level for eighteen years; that is has a national transliteration certificate and a national interpretation certificate. Vol.2, Tr.

434, 449. was admitted as an expert in the area of assessing 's ability to sign and needs as related to signing. Vol.2, Tr. 442. has assessed children, like , for sign language skills fifty to sixty times. Vol.2, Tr. 439. has assessed the communication needs of students like who are not deaf. Vol.2, Tr. 438-439. has written IEPs and is a former Special Education teacher. Vol.2, Tr. 474.

55. works at the Virginia Treatment Center for children, the psychiatric unit at Medical College of Virginia in Richmond, Virginia. is a teacher for the deaf, and as schedule allows. also works with the hearing children. graduated with a bachelors' degree in elementary education from University of Virginia. also has a masters degree from Gallaudet University, the only university in the world for the deaf. Vol.2, Tr. 435. is certified to teach hearing children from nursery school to grade seven and deaf children from kindergarten through grade twelve. Vol. 2, Tr. 434-40, 478.

56. has experience working with mental retardation and Downs syndrome students. Before current job, worked with a school division, teaching multi-handicapped deaf children. Vol. 2, Tr. 478.

57. According to , American Sign Language (ASL) is a language of its own. It has a different syntax and structure than English-patterned signing. Normally, one does not use his/her voice when using ASL. Vol.2, Tr. 444.

58. There are two ways by which an individual can qualify as a SLI. Vol. 2, Tr. 443.

59. Virginia determines the qualification of a SLI by a process labeled "screening" which is accomplished through a test referred to as the Virginia Quality and Assurance Screening (VQAS). Vol. 2, Tr. 443.

60. The VQAS screening assesses a test taker's ability to voice and sign-referred to as

English patterned signing or transliterating-through a receptive, expressive, and interactive test. Vol.2, Tr. 444.

61. The receptive part of the test requires the test taker to (i) watch a deaf person on a videotape using English pattern signing or transliteration and (ii) voice fluently and accurately what the person on the videotape is signing. Vol.2, Tr. 445.

62. The expressive section of the test evaluates the test taker's ability to listen to a speaker on videotape and to physically sign and speak fluently and expressively what is being said by the speaker. Vol.2, Tr. 446.

63. The interactive section of the test, evaluates the test taker's ability to do both in a setting such as a deaf patient in a physician's office signing to a doctor. Using the doctor/patient model on the interactive section of the test, the test taker would voice for the deaf patient as he/she talked to the doctor and signed what the hearing doctor is voicing to the patient. Vol.2, Tr. 443-46.

64. Depending on the ability demonstrated on the transliteration screening, the test taker earns anywhere from a VQAS level one (I) through four (IV). A level I in transliteration means the test taker can give and receive fifty percent (50%) of the message; a level two (II) means the test taker can give and receive sixty-five percent (65%) of the message; a level three (III) eighty percent (80%); and a level IV ninety-five percent (95%) of the message. Vol.2, Tr. 445-46.

65. The VQAS also assesses the test taker's fluency and ability to use ASL.

66. The test format used to determine the transliteration level is the same for determining the test taker's ASL level. Vol.2, Tr. 448.

67. To qualify as a SLI under the VQAS screening process one must take both the

transliterating and interpreting portions of the test. Vol.2, Tr. 449.

68. The second method of qualification, which is separate from VQAS screening, is by obtaining a national level of certification as a SLI. The test to determine national certification is similar to the state screening process; however, it is more stringent in that the test is administered in five minute, ten minute increments and the topics are much more complex. Vol.2, Tr. 448. The national certification is called Registry of Interpreters for the Deaf (RID) or RID certification. Vol.2, Tr. 448. On the national level one can take the transliteration part of the test and not the ASL or interpreting section or both. Accordingly, nationally one can be certified in transliteration and not interpreting or vice versa or certified in both areas. Vol.2, Tr. 449.

69. Full National Certification is the highest qualification in sign language. If an individual is fully, nationally certified; that is an RID certification in transliteration and interpreting, he/she meets state screening requirements. Vol.2, Tr. 449.

70. Neither method used to qualify an individual as a SLI recognizes a communicative assistant as a SLI. Vol.2, Tr. 450.

71. At the request of _____'s parents, on July 7, _____, assessed the communication needs of _____ to determine if a SLI would be helpful in communicating _____'s expressive thoughts. Vol.2, Tr. 452, 486.

72. During the assessment _____ initially did not allow _____ to sign. _____ asked _____ about who _____ friends were at school, _____ involvements in Special Olympics, participation in sports, _____ family, etc. Vol.2, Tr. 455. When _____ mentioned names, the majority of the time _____ could not understand them. Vol.2, Tr. 454.

73. When _____ asked _____ about hobbies and _____ talked about the Special

Olympics. noted the vast majority of 's words were unintelligible. Out of the entire story about the special Olympics and playing basketball, the only words understand were "basketball" and "team." Vol.2, Tr. 454.

74. Each time asked to clarify what said, response got shorter and still did not understand anymore of the story. Vol. 2, Tr. 455-458.

75. attributed 's short responses to frustration felt by when had to continue to explain self because was not understood. Vol.2, Tr. 458. Irregardless of the subject, they talked about during the assessment, the result was the same. understood ten percent (10%) to twenty percent (20%) of what was being verbalized. Vol.2, Tr. 456.

76. When was allowed to sign to , understood virtually all of what was saying, with the exception of names/names signs, an established sign for a person. For example. 's name sign is T and it goes from the chin to cheek. Vol.2, Tr. 456.

77. Once the assessment was completed and was allowed to speak freely and sign, had a lot to say in sign and voice about plans for the future. talked about marriage. friend, what was doing during the summer. Vol.2, Tr. 459-60.

78. opined used English patterned signs. concided that 's ability to communicate expressively through speech alone is significantly compromised by articulation disorder; that although a few words may seem intelligible, the overall content of the message tries to convey is lost. found that when 's speech is paired with signs, the total intent of message is understood easily. recommended a VQAS level III SLI for . Vol.2, Tr. 460, 470-73, 486.

79. did not agree with the proposed IEP accommodation which utilizes

communication assistance to help express self. testified communicative assistance is incorrect terminology; that an interpreter is needed who meets requirements of the state regulations. testified the qualifications listed in the teacher assistant (basic sign language) job announcement are not sufficient to meet 's communication needs in an educational setting. Vol.2, Tr. 476-77.

80. opined that 's report focused primarily on 's ability to hear, not need to express self. stated of the seven observations noted to assess 's language needs only two were appropriate for the assessment. further opined that examples gave to indicate 's ability to express self. showed (1) 's responses were easily predictable by the teacher (such as 's holding up 10 fingers and counting 1-10) and (2) 's responses consisted of one syllable words such as "yes." a word did not have difficulty articulating. Vol.2, Tr. 467-69.

81. () is a speech language pathologist with the Chesapeake Center, Inc. works there with adolescents who are deaf. has a bachelor's degree in speech and hearing disorders. also has a masters degree in speech language pathology. has learned sign language and cued speech. While in graduate school worked part-time interpreting in a school system. studied sign language for eight years before becoming what would describe as fluent. started at James Madison University and has taken a summer course at Gallaudet University. has been a speech language pathologist for sixteen years. Vol.2, Tr. 374.

82. At the request of the LEA, evaluated 's speech and language skills and compared skills in sign language to skills in spoken English in March

Vol.2, Tr. 376. At the time evaluated, held a VQAS level III in transliterating and a level II in interpreting. was nationally certified as a speech language pathologist to evaluate speech and language disorder. Vol.2, Tr. 379.

83. During the evaluation found when speaking, substituted and distorted sounds and words; familiar topics were intelligible 50% to seventy five percent (75%) of the time and the intelligibility of unfamiliar topics was significantly below 50%. Vol.2, Tr. 377.

84. One test administered during the evaluation was language development. It was normed on hearing children. During that entire test, was spoken to and no sign language was used. 's average language skills performance was similar to that of a five or six year old child. Vol.2, Tr. 377-78.

85. was then given an expressive one-word picture vocabulary test. had to look at a picture and tell what saw first orally and then in sign. Vol.2, Tr. 378.

86. compared the two and found that a lot of times when, voiced what saw, had difficulty understanding did accept word approximations and in doing so, scored similar to a child who is five years and five months. Vol.2, Tr. 378.

87. When was given the opportunity to express self in sign compared to ability to express self in spoken language, scored like a child who was seven years and two months, almost 2 years difference. Vol.2, Tr. 378.

88. During the assessment, also administered the Carolina Picture Vocabulary Test. According to this is a test normed on children with hearing loss. Only sign language was used during this test. would sign a word and

had to look at four pictures and choose the correct picture. scored like a child who was six years one month to six years ten months. Vol.2, Tr. 379.

89. also conversed with . The conversation went beyond yes, no, responses and short, choppy sentences. automatically went into sign language.

described sign language as extensive, fluent, and clear. Vol.2, Tr. 378-79.

stated may use ASL signs sometimes and English Word order signs sometimes. but has the facial expression of someone who is using ASL. When was evaluated by was using the facial expressions of a deaf person who uses ASL. Vol. 2, Tr. 393.

did not observe in the school setting. The first time met was when evaluated . Vol.2, Tr. 396-97.

90. found fluent in ASL and did not agree with the comment on a draft IEP in the performance section which stated was not fluent in ASL. Vol.2, Tr. 381.

91. Since the evaluation. has seen on at least six (6) other occasions at the Mall, the prom. etc. and would voice and sign at the same time. Vol. 2, Tr. 384, 407.

92. stated that some of the misconceptions that people have in terms of sign language is that a person can take a few courses and become proficient in sign language and sign language consists of learning signs and putting them in English word order. testified years are needed to master the language. Vol.2, Tr. 384.

93. did not notice speaking quickly. believes articulation deficit is related to oral motor cavity and tongue. Vol.2, Tr. 412. found that did not have the exposure to sign language in school but was very fluent (used

more than short, choppy sentences). Vol.2, Tr. 430. If [redacted] were exposed to more [redacted]

believes [redacted] language skills would grow. Vol.2, Tr. 430-431.

94. [redacted] noticed a big discrepancy in what [redacted] could express using spoken language and what [redacted] could express using sign language. [redacted] concluded and recommended a VQAS Level III interpreter. [redacted] stated otherwise [redacted]'s language skills would not develop and [redacted] would be held back. Vol.2, Tr. 383, 406-09, Parent's (P)-Exh.9.

95. [redacted] made [redacted] self available to the LEA through [redacted] document dated December 9, [redacted] however, [redacted] was never contacted by the LEA. Vol. 2, Tr. 381.

96. At the request of [redacted]'s mother and to further clarify [redacted] March [redacted] report, [redacted] sent follow up correspondence to the LEA dated July [redacted]. Because the LEA was not following [redacted] recommendation to provide a VQAS SLI for [redacted], [redacted] again recommended to the LEA that [redacted] have a VQAS Level III interpreter to voice what [redacted] is saying. Subsequent to the letter no one from the LEA contacted [redacted]. Vol.2, Tr. 382-383.

97. [redacted] ([redacted]) is a board certified pediatrician and a board certified clinical and biochemical geneticist. Vol.4, Tr. 763.

98. [redacted] defines a board certified clinical geneticist as a physician who has trained three (3) years after residency to diagnose and treat people with genetic disorders. [redacted] has been a certified clinical geneticist for sixteen (16) years and board certified as a pediatrician for twenty-three (23) years. Vol.4, Tr. 763.

99. [redacted] did an eighteen (18) month fellowship which concentrated in behavior and developmental medicine at the University of Oklahoma. Vol.4, Tr. 764. In

practice, has taken care of individuals with mental retardation and developmental disabilities for twenty-three years. has authored medical papers regarding mental retardation and lectured and taught in the area of mental retardation and oral motor apraxia. Vol.4, Tr. 764.

100. treats approximately 1800 patients. The majority of practice is caring for patients with Downs syndrome. Vol.4, Tr. 765. has attended numerous IEP meetings in various school decisions observing in some incidences and providing input in others. Vol.4, Tr. 779.

101. was admitted as an expert in the area of clinical genetics. Vol.4, Tr. 766.

102. has treated since sees as a patient annually for about an hour. Typically during an annual visit with a Downs syndrome patient. performs medical and development evaluations and prescribes medical therapy, laboratory work and X rays. also gives guidance in terms of behavioral and educational criteria. Vol. 4, Tr. 766.

103. described as having Downs syndrome-a condition according to , where an extra 21st chromosome is present which causes a specific set of disabilities involving some medical disabilities, mental retardation and growth issues. Vol.4, Tr. 767.

104. stated 's Downs syndrome has caused, among other conditions, mental retardation. has also diagnosed with oral motor apraxia, a physical problem, secondary to Downs syndrome, not mental retardation. Vol. 4, Tr. 764, 772.

105. defined oral motor apraxia as a neurological condition often seen in people with Downs syndrome causing a failure for motor planning to speak properly.

testified that oral motor apraxia causes severe dissiliency.

testified that in 's case when tries to elevate pallet to make a sound, instead of the pallet moving smoothly up and down it deviates to the left and the right.

also testified that the hard portion of the pallet has a structural problem in that it is significantly arched. The pallet deformity causes improper closure. Therefore many letters and sounds do not come out correctly when spoken. This causes much of

's speech to be unintelligible. Vol.4, Tr. 767-69.

106. has authored medical papers regarding mental retardation and oral motor apraxia. Vol.4, Tr. 764, 772.

107. can only understand about 5% of 's speech language. communicates as best can with by signing. Vol.4, Tr. 770.

testified seeing more would only minimally increase ability to understand 's oral speech. Vol.4, Tr. 777.

108. On October 6, wrote two prescriptions for . One prescribed Occupational Therapy (OT) and Physical Therapy (PT), the other one prescribed a SLI. Vol.4, Tr. 771, 13. also wrote a letter to accompany the prescriptions requesting a secondary eligibility label of speech language impairment and a SLI in classroom. Vol.4, Tr. 772. No one from the LEA contacted regarding . Vol.4, Tr. 773. has never observed in school.

has never spoken to 's teachers. Vol. 4, Tr. 777.

109. was not compensated for testimony. testified because

believes [redacted] deserves to have a SLI. Vol.4, Tr. 774.

110. [redacted] testified that [redacted] had seen signs of depression in [redacted] in that

noticed [redacted] was sad about certain issues at school. Vol.4, Tr. 783.

111. [redacted] ([redacted]) is employed by the LEA as a speech language pathologist. [redacted] has a bachelor's degree in communicative disorder which was received in 1978 from Radford College and a master's degree in communicative sciences and disorders which was received from Hampton University. [redacted] also has a certificate of clinical competence received in 1995. Vol.1, Tr. 238-239. [redacted] is not a SLI. Vol.1, Tr. 246.

112. [redacted] has worked in school divisions as a speech pathologist for at least twenty-two years. School year [redacted] : [redacted] was [redacted] first year working in the [redacted] Public School Division and with [redacted]. Vol.1, Tr. 239. [redacted] worked with [redacted] three (3) times a week for individual fifteen (15) minute sessions and once weekly during a forty-five (45) group therapy minute session. Vol.1, Tr. 240. During the individual sessions worked mostly on articulation and had [redacted] repeat word sounds, which incorporated in some language activities. Vol.1, Tr. 240. [redacted] did not use gestures when working with [redacted]. Vol.1, Tr. 241.

113. [redacted] testified [redacted]'s language problems are related to [redacted] Downs syndrome evidenced by a low muscle tone. Problems consist of omitting ending sounds of words, difficulty pronouncing sibilant sounds (Z, Sh, Ch, J), and substituting sounds. Vol.1, Tr. 241.

114. The 45 minute speech language therapy sessions were conducted with [redacted] in groups with [redacted] classmates. During those sessions, [redacted] tried to incorporate the

articulation rehearsed during individual sessions so that [redacted] could be clear to classmates, [redacted] peers and teachers. Vol. 1, Tr. 241.

115. [redacted] drafted the last paragraph of the performance section of the May 5, [redacted] proposed IEP and [redacted] testified it reflected what [redacted] had seen in [redacted]'s improvement over the [redacted] school level. Vol. 1, Tr. 242. In pertinent part, the paragraph reads "articulation therapy three times a week for fifteen minute sessions since September [redacted] have shown minimal progress towards overall improved speech." LEA Exh. 1, p.6, second paragraph, sentence 1.

116. [redacted] would like to think that [redacted] will continue to improve to make [redacted] self clear so that the average person can understand [redacted]. Vol. 1, Tr. 242. [redacted] testified that from [redacted] group settings and observations, [redacted] does not have difficulty in the classroom and compensates for [redacted] speech deficit by slowing down [redacted] speech and making it clearer. Also, [redacted] noted that if [redacted] were motivated [redacted] is pretty clear about what [redacted] wants. Vol. 1, Tr. 242.

117. During the one on one speech language therapy sessions, [redacted] was usually not accompanied by the teacher's assistant. [redacted] testified that usually during those sessions if [redacted] did not understand [redacted], [redacted] would ask [redacted] to repeat what [redacted] said and [redacted] usually could understand the meaning, not necessarily every word. Vol. 1, Tr. 243.

118. [redacted] testified that during the group speech therapy sessions, [redacted] seldom used the communication assistant because [redacted] communication was effective. [redacted] does not believe [redacted] speech work with [redacted] was hindered because a SLI was not present. [redacted] testified that [redacted], at times, would get a "little frustrated" because [redacted] was not able to communicate effectively. Vol. 1, Tr. 244. [redacted] testified that pages nine (9) and ten (10)

of the proposed IEP contain the articulation goals which could be incorporated by others as well, including teachers and job coaches. Vol.1, Tr. 243-44.

119. According to , sounding words out for example is an appropriate goal.

believes one 45 minute speech therapy session a week and two (2) twenty minute sessions per week and "pullout" is an appropriate amount of time to address 's goals. Vol.1, Tr. 244-46.

120. testified that believes will have a difficult time reaching speech pathology goals and objectives; that is, annual measurable goals 1 and 2 on the proposed IEP. Vol.1, Tr. 247.

121. was employed with the LEA from December , to the end of the school year in June . Vol.1, Tr. 224. was the teaching assistant/communication assistant assigned to at HS. started learning sign language in 1996 and passed the written portion of the VQAS in May . has not attained a VQAS level.

is not a SLI. has taken courses at a recreation center and also attended workshops on ASL. Vol.1, Tr. 224-26, 232.

122. described assistance to as making sure understood the teacher's instructions, assisting with assignments, and communicating signed responses to the teacher or other students. Vol.1, Tr. 226. testified only voiced for once or twice a week. testified that and 's teacher often understood what was trying to say and therefore does not need a SLI. Vol.1, Tr. 226.

123. has known since September, holds a bachelor's of science degree in special education specializing in mental retardation. received

degree in 1979. 's first full time teaching job as a special education teacher was during the school year. Prior teaching experience includes one year of substituting during the school year. Vol.1, Tr. 113-14. has a provisional teaching certificate. To be fully certified must pass the national teacher's examination in its entirety and complete a college course focusing on learning disabilities and emotionally disturbed. is not a SLI. Vol.1, Tr. 113.

124. was mainstreamed in PE or keyboarding class during first period and was not teacher. From 9:00a.m. to 10:00a.m., was in 's life skills class. From 11:00a.m. to 11:45a.m., due to block scheduling, was in either 's practical Math or practical English class. Vol.1, Tr. 76-78.

125. In September, found 's speech understandable less than 50% of the time. Vol.1, Tr. 117. LEA Exh. 19.

126. testified that after a couple of weeks of school, could understand Vol. 1 Tr. 82. As the school year went on, testified became familiar with 's diction and could understand better. Vol.1, Tr. 118. However, stated intelligibility in conversation and speech was not much better. Vol.1, Tr. 101. called on 's communications assistant only once or twice a week to facilitate communication between and . The assistant's tasks included, among other tasks, interpreting 's signs. testified could communicate verbally with other students. Vol.1, Tr. 82-93.

127. made minimal progress in 's math and English class. Vol.1, Tr.

80. testified did not believe would make progress identifying coins. Vol.

1, Tr. 89. did not feel needed a SLI. Vol.1, Tr. 85. testified

did not feel [redacted]'s academic progress was hindered by the failure to have someone sign for [redacted]. Vol.1, Tr. 101.

128. [redacted] ([redacted]) is the coordinator of transitional services at [redacted]. [redacted] was not [redacted]'s teacher but saw [redacted] almost daily when [redacted] arrived at [redacted] for vocational training and [redacted] interacted with [redacted] almost daily upon [redacted]'s arrival. Vol.1, Tr. 164, 178. [redacted] testified while [redacted] may not understand 75% percent of the words spoke by [redacted]; [redacted] can usually obtain 75% of the meaning of [redacted] speech by asking for clarification. [redacted] had a one on one twenty (20) minute conversation with [redacted] about marriage outside of class. The percentage of the speech understood by [redacted] was typical. Vol.1, Tr. 172, 188. [redacted] testified [redacted] could understand more than 75% of what [redacted] is saying if the topic is familiar. Vol.1, Tr. 187-88. Through [redacted] use of gestures, [redacted] also believed [redacted] could understand [redacted]. Vol.1, Tr. 170-71, 198.

129. Licensed interpreters are not available at [redacted] but communicative assistants are (individuals who have taken course work in sign) Vol.1, Tr. 170. Either these assistants worked directly with [redacted] or were in adjacent shops and readily available to assist [redacted] by interpreting [redacted] signs. Vol.1, Tr. 170-171.

130. [redacted] rarely used their assistance and rarely signed as at [redacted] while there were picture directions most teaching was via hands on experience and demonstration Vol.1, Tr. 170. [redacted] testified that during the [redacted] school year, [redacted] signed no more than 5 times Vol.1, Tr. 171. It was [redacted]'s opinion [redacted] did not show frustration because [redacted] could not be understood Vol.1, Tr. 172. [redacted] did not believe [redacted] was limited because [redacted] did not have a SLI. Vol.1, Tr.

173.

131. (), an assistant principal at HS, conversed with outside of the classroom about a disciplinary infraction. did not recall 's exact words during the conversation but did remember communicated did not like 's class and was going to kill testified the threat was not typical of and he did not think was serious, but as an administrator, had to take 's comments seriously. was referred to the school's psychologist and parents were informed. testified usually saw when arrived at school and would informally interact with by briefly greeting . Vol. 1, Tr. 251-56, LEA Exh. 59. testified is popular at school and communicates and interacts with peers. Vol. 1, Tr. 257.

132. () has been employed by the LEA for the past 2 years as a physical therapist. Vol. 2, Tr. 354. testified that when conducted the physical therapy evaluation of , could not understand word for word what said but could understand what meant ninety-five percent of the time. Vol 2, Tr. 363. During that time, has provided with direct PT services approximately once a month. Activities associated with those services included weight training, modifying exercises, and communicating with the assistant and the physical educational teacher on adaptations that could use in physical educational class. Vol. 2, Tr. 355.

133. testified that generally participated in PE and that since the May 5, IEP meeting, charts have been kept on logging level of participation. testified those charts showed participated 75-100% of the time. Vol. 2.

Tr. 357.

134. The proposed IEP recommends a consult model where [redacted] would be monitored and [redacted] would be consulted to address strength and endurance. Vol.2, Tr. 357. The parents agreed with the change. Vol.2, Tr. 358.

135. [redacted] ([redacted]) graduated from [redacted] University with a bachelor's degree in allied health professions, which is the adjunct medical programs that uses OT. Vol.3, Tr. 552-54.

136. [redacted] was employed with Rehabilitation Associates as an occupational therapist at the time of the due process hearing. Vol.3, Tr. 552. [redacted] testified that when [redacted] conducted a school assessment of [redacted] for Occupational Therapy Services in Spring [redacted], a SLI was not present and [redacted] understood [redacted] eighty percent.. LEA Exh. 7. Vol.3, Tr. 554-56, 578.

137. [redacted] noted in [redacted] evaluation summary that there were teacher concerns regarding [redacted] hitting multiple keys on the computer and [redacted] recommended a key guard and recommended wider keys if [redacted] experienced similar difficulty with the calculator. [redacted] concluded services were not needed because [redacted] appropriately performed functional fine motor skills to complete daily activities at school or [redacted] work. Vol. 3, Tr. 555. LEA Exh. 7. The evaluation consisted of a School Function Assessment and Observations at [redacted] s then work site under the job coach program offered by [redacted]. Vol. 3, Tr. 555-56. LEA Exh. 7.

138. However, after conferring with [redacted], the IEP team added to the June, [redacted] IEP, by way of an addendum, occupational services, which commenced October [redacted] .. OT services were provided at least twice weekly for 15 minutes. [redacted] observed

in vocational settings at [redacted] and presented [redacted] with assembly-type projects to determine if [redacted] was having any problems. [redacted] testified [redacted] has no dexterity [redacted] problems. [redacted] is slow in assembling. [redacted] attributed the slowness to [redacted] cognitive ability. LEA Exh. 2, Vol.3, Tr. 559-60.

139. The proposed IEP changes the occupational therapy related services from direct services to a consult service one time a quarter for 30 minutes. This provision was considered a compromised because the LEA believed OT services were not necessary, but the parents did not agree. Vol.3, Tr. 561-62. LEA Exh. 1, p. 24.

140. The occupational therapy consult model consists of the occupational therapist working with the teachers/job coaches to assist them with coming up with ways of helping [redacted] to be successful in using [redacted] fine motor skills if the need arises. Vol.3, Tr. 562.

141. During the evaluation [redacted] conducted [redacted] did not have a SLI there to facilitate communication because [redacted] could comprehend eighty percent (80%) of what [redacted] said. If [redacted] needed clarification, [redacted] testified [redacted] could obtain it by asking [redacted] to repeat [redacted] self. Vol.3, Tr. 578.

142. Occupational therapist [redacted] also evaluated [redacted] at the request of [redacted] parents on July 11, [redacted] to assess [redacted] needs for OT. An interpreter accompanied [redacted]. A medical model was used. [redacted] found deficits in fine motor skills and visual skills. For example, [redacted] demonstrated difficulty with bilateral tasks such as using both hands at the same time and stringing beads. [redacted] was reportedly slow when completing fine motor tasks. [redacted] also had difficulty catching a ball. The evaluation recommends direct OT services. P-Exh. 32.

143. [redacted] s parents, [redacted], have lived with [redacted] entire life.

testified that when [redacted] speaks, about fifty percent (50%) of [redacted] speech is intelligible. When [redacted] does not understand [redacted] signs to [redacted]. Vol.1, Tr.136.

[redacted] is not certified in sign language. Vol.4, Tr. 738. [redacted] testified that when [redacted] speaks, [redacted] understands [redacted] about 30 - 50% of the time. [redacted] is not a SLI. Vol.4, Tr. 619-20.

144. [redacted] and [redacted] testified that they were intimidated by school personnel at IEP meetings and they felt they had no input or their input was mostly ignored.

[redacted] testified [redacted] has not seen anything [redacted] has produced at wood shop classes. Vol.3, Tr. 520-526. According to [redacted], [redacted] has regressed and some of the objectives, such as learning to organize a notebook, on the proposed IEP will not help to educate or transition [redacted] because they include skills [redacted] have already acquired. Vol. 3, Tr. 605, 642-43.

145. [redacted] is the LEA's psychologist and [redacted] has worked in that position for eight years. [redacted] graduated with a bachelor's degree in psychology and sociology from Virginia Polytechnic Institute and State University. [redacted] has a master's degree in education in school psychology from the College of William and Mary. [redacted] also has an educational specialist degree in school psychology from the College of William and Mary. [redacted] is licensed by the Department of Education to practice school psychology. [redacted] is also licensed by the Board of Psychology of Virginia for independent practice. [redacted] is nationally certified as a school psychologist. Vol.1, Tr. 202.

146. [redacted] was admitted as an expert in the area of IQ testing. Vol.1, Tr. 203.

[redacted] administered an IQ test to [redacted]. [redacted] administered the Universal Non-Verbal Intelligence Test (UNIT). It is administered without the examiner or the subject speaking.

Vol. 1, Tr. 204. This test was administered because [redacted] understood that sometimes [redacted]'s speech is unintelligible and [redacted] did not want [redacted] speech impairment to influence the test results. [redacted] testified that even if a SLI has accompanied [redacted] to the test, there would have been nothing to interpret. Vol. 1, Tr. 204.

147. During the UNIT test, [redacted] would try to sleep as the test became more difficult. [redacted] obtained a full scale IQ score of 41, which is consistent with diagnosis of mental retardation. [redacted]'s IQ score was consistent with a previous scoring of 40 in 1996 on the Wechler third edition, an IQ test for children. Vol. 1, Tr. 205.

148. [redacted] testified [redacted]'s full scale IQ score classifies [redacted] as moderately retarded and that trainable mental retardation and moderately retarded are often used interchangeably. Vol.-1, Tr.220.

149. [redacted] was also administered an achievement test, a word reading test, two math subtests, and a spelling subtest. [redacted] received a standard score of 40 on each. All were consistent with [redacted] IQ testing. [redacted]'s communication Assistant was in the room with [redacted] during the test. Vol. 1, Tr. 206-07.

150. Adaptive functioning tests were also administered. [redacted] showed weaknesses in being able to use money and access services in the community. [redacted] adaptation in social and personal adjustments scores were in the average range. [redacted] had no aggressive or anti-social behaviors. Vol. 1, Tr. 207.

151. During the observation section of the test, the teacher had to ask [redacted] to sign what [redacted] was saying on one occasion. Vol. 1, Tr. 211.

152. [redacted] testified that practicing, picking things from a menu, practicing shopping, could help [redacted] in obtaining self sufficiency and independent living skills. Vol. 1, Tr.

212, 213.

153. chaired most recent eligibility meeting where the committee
found ineligible for a second label of speech impairment. The consensus was
 s speech problems were a manifestation of MR. Tr. 313.

154. There was no certified sign language interpreter or speech pathologist present at
the eligibility meeting. Vol. 2, Tr. 324.

IV. ANALYSIS AND CONCLUSIONS OF LAW

A. **Whether the proposed IEP is appropriate under the IDEA**

A FAPE 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." *Board of Education of the Hendrick Hudson
Central School District, Westchester County, et. Al. v. Rowley*, 458 U.S. 176, 188-89
(1982). IDEA is meant to allow for more than a minimal amount of benefit. *Hall by Hall
v. Vance Cty. Bd. Of Educ.*, 774 F.2d 629 (1985)

1. **Measurable Annual Goals, Objectives, Benchmarks**

The mechanism used to provide a free appropriate public education (FAPE) is the
development and implementation of the IEP. Goals, objectives and benchmarks are one
component of the IEP. 8 VAC 20-80-10, 8 VAC 20-80-62.

Measurable annual goals one and two of the proposed IEP are (1) will
improve intelligibility in conversational speech to 75% accuracy when context is
known to the familiar listener and (2) will improve communication skills in
the area of expressive language to 75% accuracy when context is known to the familiar

listener by May FF 26.

is a board certified pediatrician and a board certified clinical biochemical geneticist. has attended numerous IEP meetings providing input in formulating the educational program for students with disabilities. FF 97, 100.

has seen since as a patient. has diagnosed with Downs syndrome and oral motor apraxia. The latter has been defined as failure of motor planning to speak which causes dysfluency or unintelligible speech. FF 102, 104-105. finds only five percent (5%) of 's speech intelligible and opines is unable to improve articulation any measurable amount. FF 107. The hearing officer gives great weight to the expert's opinion.

The hearing officer is mindful that has seen only on four occasions; however, each session lasted for more than a few minutes. Moreover the expert's opinion about 's unlikelihood of improving intelligible speech and expression by speech is supported by 's opinion that 's ability to express self solely by speech is impaired by articulation disorder. FF 78.

The hearing officer also notes the testimonies of supervisor, employees of the LEA and school requested evaluators which contradict 's and 's opinions. While 's testimony is credible, is not 's teacher. Moreover, the conversation had with about marriage did not take place in a classroom setting. Other conversations between and which described as "in-depth," depended in part on nonverbal explanations, unlike the classroom setting in the resource center, where several students, including, are listening to and responding to instruction. FF 128. Further,

and 's communications/interactions with were usually one on one. FF 128, 131, 132, 136.

The LEA contends was in the best position to assess 's communication skills. However holds only a provisional teaching license and has taught only one school year - having substituted one year prior to this teaching experience. knew for nine months at the writing of the IEP, unlike who has known as a patient since . FF 123, 124.

Further, 's testimony was not definitive and contradicting at times. On direct examination, testified that fairly quickly could understand the context of what was trying to say and that after a couple of weeks could understand . However, the Life Assessment report that authored states that within 2 weeks into the school year, 's speech was understandable less than 50% of the time. FF 126, LEA Exh. 19, p.7.

Additionally, in the performance section of the proposed IEP, wrote "without communication assistance, it is difficult to understand what says unless you are familiar with speaking style and the context of the conversation." LEA Exh. 1, p.3. Furthermore, nothing in the record indicated engaged in "in depth" conversations with . Accordingly, it appears from the record that may not have enough samplings to accurately assess articulation level.

Like 's speech pathologist for the - school year, was not definitive in assessing 's language skills. When asked if 's articulation would improve, testified, "I would like to think so..." , however, noted 's present level of performance as of May 5, , showed minimal

progress toward improved speech intelligibility. LEA Exh. 1, p. 6.

goes on and states was intelligible on an average 81% during four language samples. But qualified the results by saying the samples were subjective and results may be influenced by familiarity. LEA Exh. 1, p.6. Finally, testified that will have much difficulty mastering the articulation goals 1 and 2. FF 120.

The hearing officer is also troubled that LEA has set as an articulation goal what the LEA's own witnesses say can already do, and all testified they could understand what was trying to say between 75%-95% of the time. FF 128, 132, 136. Assuming their testimony is accurate, would not benefit from Annual Goal 2.

Moreover, because measurable goals 1 and 2 only address communication when the context is known to the familiar listener, there is no goal or objective for educating when there is an unfamiliar listener such as a substitute teacher or guest speaker or when attempts to communicate so that can (1) make the listener aware of a situation previously unknown to the listener and (2) ask for instruction on applying what is being taught to that situation previously unknown by the listener.

Further proposed annual goals 1 and 2 are similar if not identical to measurable annual goal 1 on 's previous IEP. From October to June, did not make sufficient progress to achieve this goal. Progress during this time period was noted as "emerging skill." The fact that for nine (9) months 's progress has been stified at the "emerging skill" level shows will not likely benefit from proposed measurable goals 1 and 2. LEA Exh. 2, p.14.

Measurable goals three (3) and five (5) purport to address 's daily living

and functional skills.

Another area of concern is that [redacted]'s Life Assessment shows [redacted] lacks basic knowledge for [redacted] to be independently safe in the community. [redacted] was unable to recall the state [redacted] lived in and [redacted] zip code. [redacted] could not remember [redacted] address. [redacted] was unable to read **Ambulance, Walk, Don't Walk** and a **Fire Alarm**; community signs; service and business signs. LEA Exh. 19.

[redacted] could only identify a penny, but [redacted] could not tell the value of it or any other coin. [redacted] was unable to read any of the food vocabularies. [redacted] correctly identified only a little over a third of food items. [redacted] could not read restaurant labels or food preparation vocabulary. [redacted] could not read words identifying clothing items. Out of thirty external body parts, [redacted] could only write one and was only able to identify approximately half of the external body parts. [redacted] could not read basic medical vocabularies. When [redacted] was asked to read traffic signs in a picture, [redacted] was able to identify only 5 out of 60. [redacted] could identify **Stop, No Left Turn, 4-way Stop, Do Not Enter** and **Handicapped Parking**. LEA Exh. 19.

The fact that [redacted] has attained some life skills shows [redacted] can learn. For example, [redacted] could identify 12 out of 16 items of clothing and [redacted] knew travel signs such as **Stop** and **Do Not Enter**. LEA Exh. 19.

The hearing officer finds the proposed IEP objectives and benchmarks of annual goal 3 fail to show likely progress beyond what [redacted] already knows and do not appropriately address [redacted]'s deficits in independent living skills.

Objective 1, for example, states in pertinent part that [redacted] will correctly

identify selected traffic and safety signs. LEA Exh. 1, p. 12. One has to guess if progress will be made, as the specific signs [redacted] will be required to identify have not been identified in the benchmark. Presumably, [redacted] will not be instructed to identify signs [redacted] has demonstrated [redacted] already knows; however, the proposed benchmark does not state otherwise. Accordingly, it is not clear that [redacted] will benefit from the objective. Objectives 2 and 5 lack the same type of clarity and specificity.

The assessment test indicates [redacted] is unable to read community signs. However, the assessment did not address whether [redacted] was capable of identifying community service personnel. Accordingly benchmarks and objections do not address the results of the life assessment. LEA Exhs 19 and 1, p. 12 - 13. Therefore, progress can not be determined. As previously stated, [redacted] is unable to read any food vocabulary and was unable to identify approximately fifty percent (50%) of the external body parts. While benchmark 6 indicates [redacted] will increase sign and word vocabulary by correctly identifying weekly vocabulary words, the benchmark and objectives do not reflect the results of the test; that is, that [redacted] will increase vocabulary in such areas as food and external body parts. Progress therefore cannot be determined. LEA Exhs 19 and 1, p. 12 - 13.

Benchmarks set forth in measurable goal 4 indicate [redacted] will identify coins and bills and compute change, write the numbers 1-50, and demonstrate comprehension of qualitative/quantitative concepts. Benchmark 2 is virtually identical to tasks [redacted] has attempted to do during school year [redacted]'s resource teacher, [redacted] testified [redacted]'s progression was minimal. FF 127. Specifically [redacted] stated [redacted] did not believe [redacted] would ever learn to identify coins and bills. FF 127. Yet this math

task/skill once again has been included as an objective. Accordingly, only minimal progress, at best is expected.

The evidence suggests [redacted] is not likely to benefit from learning to write numbers 1-50 correctly as is noted in benchmark 3 since the results of [redacted]'s life assessment suggest, [redacted] does not know the relationship between the number written and its value. LEA Exh. 19. Moreover, the objective of measurable goal 5, benchmark 2 is for [redacted] to maintain organization of [redacted] notebook, backpack and classroom supplies. The uncontradicted testimony of [redacted] was [redacted] can do this task. FF 144, Vol. 3, Tr. 605. Thus this benchmark is unbeneficial.

2. Transitional Planning

“ ‘Transition services’ means a coordinated set of activities for a student with a disability that is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.” 34 C.F.R. 303.344; 34 C.F.R. 300.29.

The LEA contends annual goals 1 through 6 are all transitional. FF 26. These goals and accompanying objectives may address vocational and transitional needs; however, a [redacted] year, ten month old teenager needs goals and objectives specific to transition to adult living in as independent a manner as possible.

While annual goal 6 may contain the specificity needed, the other goals appear to be too general. The hearing officer concludes that additional specific transitional goals and objectives are needed.

Moreover, for the reasons previously discussed herein Annual goals 1 through 5 and/or some of the accompanying objectives fail the "likely benefit test." of *Rowley*. Accordingly, for this reason also the hearing officer concludes they are not adequate as required transition planning for a year old.

As part of 's Transitional Planning, underwent a vocational evaluation. The Vocational Evaluation recommends, among other things, consider referring to ARC, the Topps Program, CSB, DRS. LEA Exh. 20. Providing Transition Services is the responsibility of the LEA. 8 VAC 20-80-62. In spite of the recommendations about referrals, the proposed IEP only links to CSB and DRS. LEA Exh. 1, p. 18. The parents have requested that the LEA submit a referral to DRS requesting that be considered for PERT, a 10 day extensive evaluation program of high school students. Vol. 3, Tr. 675. The LEA has not referred for the program. FF 47. Should be admitted would likely benefit as case would be activated at DRS prior to last year of school. Presently will not graduate until and normally DRS will not activate a case until the student's last year in high school. FF 44.

The hearing officer notes that the normal criteria for an applicant are no history of disciplinary infractions and an IQ of at least 60. FF 49. 's psychological evaluation shows a full scale IQ of 41. LEA Exh. 22. The hearing officer has given deference to the evaluation and finds accordingly. DRS, however will consider an applicant with a lower IQ and there are possible spaces available for 's participation in the program should be accepted. Furthermore, 's mental retardation is deemed moderate and is considered trainable. FF 148.

3. Present Level of Educational Performance and VAAP

(i) Performance Section

The performance section of the IEP, among other things, informs the reader of the disabled student's current functioning in school. 8 VAC 20-80-62. LEA Exh. 1.

In part, the proposed IEP's performance section states [redacted] has the ability to participate inclusively with peers in non-academic and elective classes; [redacted] s speech is intelligible at the word level; and [redacted] is capable of expressively communicating with teacher and peers. LEA Exh. 1, p. 46. [redacted] 's father observed [redacted] at school at least 20 times during the last 2 school years. four observations were of [redacted] in P.E. class.

[redacted] was sitting on the bench the entire time while other students were engaged in P.E. activities. Vol.3, Tr. 599. During the observations, interaction between [redacted] and other students usually consisted of [redacted] and another student exchanging a short greeting such as "Hey" or "How are you doing?". FF 21-22. Vol.3, Tr. 618, 656.

[redacted] wants to be more socially involved with [redacted] peers and talk about BET, and the like. etc. FF 25. [redacted] 's geneticist testified that isolation in Downs syndrome leads to depression and [redacted] had exhibited some signs of sadness/depression when [redacted] discussed school issues with [redacted]. FF 110.

The hearing officer notes the LEA did institute a tracking log to document [redacted] 's participation in P.E. and the results so far have shown [redacted] 's participation at the end of the school year was 75%-100%. This monitoring mechanism, however was not instituted until sometime after the May 5, [redacted] IEP meeting when only a few weeks remained in the school year. FF 133. Because of the short time period the tracking log was used, the hearing officer finds there may not have been adequate time to accurately assess [redacted] 's overall participation in P.E.

The hearing officer also notes that several of the LEA's witnesses testified communicates verbally/orally with peers; however, there was no testimony from the LEA regarding the extent of those communications. FF 126, 131, 116.

Further, the hearing officer also notes and testified that they interacted with regularly. The witnesses, however, did not distinguish between verbal and nonverbal interactions with . FF 131, 128. The hearing officer notes, interactions which were nonverbal can not measure 's intelligible speech.

Moreover, for reasons discussed further herein, the hearing officer finds 's and 's testimony asserting can communicate with peers and teachers is not definitive.

Accordingly, the hearing officer finds that portions of the performance section of the IEP inaccurately state 's level of functioning.

(ii) **VAAP**

The purpose of the VAAP is to determine the performance of students who have traditionally been exempted from state assessment programs. The decision whether a student will or will not participate in the VAAP assessment is the responsibility of the IEP team. The consequences of the IEP team's decision must be clearly explained to the student's parent and the student, if appropriate. Further, the parents and student should be provided with an explanation of their due process rights. *See Virginia Department of Education's Procedures for Participation of Students with Disabilities in the Assessment Component of Virginia's Accountability System.*

discussed the VAAP during the May 5, IEP meeting and expressed the parents' desire for to participate in the alternative assessment. No

decision was made on [redacted]'s participation during the May 5, [redacted] IEP meeting. Sometime between May 5, [redacted] and the due process hearing held on July 22,23,24,30 and August 1, [redacted], the parents learned the LEA decided [redacted] would not participate in this assessment. FF 14.

The hearing officer finds the LEA neglected procedural requirements to (1) inform the parents and student of the consequences of the IEP team's decision and (2) provide the parents and student with an explanation of their due process rights.

Procedural violations that do not harm the student are not a denial of FAPE. *Dibuo v. Board of Education of Worcester County*, 309 F.3d 184 (4th Cir. 2002). The LEA contends [redacted]'s non-participation in the VAAP did not harm [redacted]. Vol. I, Tr. 96. The hearing officer finds otherwise. Had [redacted] participated in the VAAP educational performance would have been assessed and the IEP team could have used those findings to integrally assist the team in more appropriately formulating an educational plan that reflects the results of the assessment test and aids [redacted]'s transition to the adult world.

Moreover, the hearing officer finds the LEA's actions troubling. The LEA's promotion of [redacted] to the 12th grade appears to be one in name only as [redacted] made minimal progress, at best, in core subjects and [redacted] will remain a 12th grader for 3 years. FF 14. However, the LEA's "promotion in name only" has an adverse, substantive impact on [redacted] as discussed previously in this section.

4. Accommodations and Services

Personnel providing educational interpreting services for children using sign language must have a VQAS Level III. VAC 20-80-45. 8 VAC 20-80-45-E(1) provides in

pertinent part the following:

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services are as follows:

- a. Personnel providing educational interpreting services for children using sign language shall have a Virginia Quality Assurance Screening (VQAS) Level III, any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation), or any other state or national certification recognized by the Virginia Department for the Deaf and Hard-of-Hearing as equivalent to or exceeding the VQAS Level III.

Among other accommodations, the proposed IEP provides for Communicative Assistance to assist with expressive language and oral communication with peers and teachers. Communicative Assistance also includes the use of basic sign language.

LEA, Exh. 1, p. 19. During the school year provided this accommodating service for at HS. Personnel at provided communicative assistance when attended the vocational program there. Neither nor the assistants at were VQAS screened. FF 70, 121, 129.

Because has left employment with the LEA, the LEA now seeks to replace and has advertised the position as "teacher assistant (basic sign language)." The employee sought is not required to be VQAS screened. Vol.2, Tr. 92, 303, P-Exh. 33, FF 79.

Although the position is titled "teacher assistant (basic sign language)" the job description does not indicate proficiency in sign language as a necessary qualification. Vol.2, Tr. 92, 303, P-Exh. 33.

's articulation is not likely to improve any measurable degree because of pallet deformity causing severe dysfluency. , likely will continue to sign at school as a means of expressing self and signs require interpreting by individuals

proficient in sign language.

's geneticist finds 5% of 's spoken speech intelligible. , a fully certified sign language interpreter found 10%-20% of 's speech was intelligible. Allowing for word approximations, , a speech pathologist and VQAS screened interpreter, found 50%-75% of 's speech intelligible when the topic was familiar. 's testing showed 's sign language was 2 years superior to spoken English. FF 75, 83, 107, 87.

The hearing officer is mindful of the recommendations of the LEA's witnesses , an interpreter specialist, and , the LEA's speech pathologist. It is significant that was a VQAS Level II interpreter at the time observed to determine if needed a SLI and therefore was less proficient in sign language than either or 's reports are also inferior to and did not document every word that was intelligible as did. Of the 7 examples reported observing to determine whether needed a SLI, only 2 were appropriate to assess 's need for a SLI. Although stated 's articulation improved when slowed speech, did not observe speaking quickly and opined, as did , that 's articulation deficit is related to oral motor cavity and tongue. FF 52, 54, 80, 82, 93.

also disagreed with the present level of performance cited in one IEP stating that is not fluent in ASL. FF 90. In fact, , like , concluded that 's sign language was extensive, fluent, and clear. conversations with in sign went beyond yes, no responses and short, choppy sentences. Both and testified 's language skills would not develop and would regress without

a qualified interpreter. FF 78, 93, P-Exh. 9. Accordingly they both recommended a VQAS Level III interpreter.

The hearing officer gives more weight to the evaluations of [redacted] and [redacted] because both were more qualified to assess [redacted]'s language needs than [redacted] credentials also did not indicate [redacted] had experience assessing the sign language needs of children who can hear. [redacted] report was inferior for the reasons previously stated herein to [redacted]'s and [redacted]'s. Moreover the LEA's own evidence shows the intelligibility of [redacted]'s spoken language is not likely to improve.

Based on the foregoing, the hearing officer finds the communicative assistance accommodation is an inadequate accommodation and does not meet the requirements of the regulations governing special education programs. 8 VAC 20-80-45. The hearing officer concludes a screened VQAS Level III or an interpreter with superior qualifications as noted by the Virginia Regulations Governing Special Education is necessary to allow [redacted] equal opportunity to access the curriculum, demonstrate proficiency, and develop [redacted] language skills.

5. Occupational Therapy Services and Physical Therapy Services

The hearing officer notes that the recommendations of the LEA's OT evaluation and the parents' OT evaluation are contradictory. FF 137, 142, LEA Exh. 7, P-Exh. 32.

The parent's OT evaluation was conducted on July 11, [redacted], and it shows [redacted] has a deficit in fine motor and visual skills. The evaluator recommends direct OT services. P-Exh. 32.

The LEA's evaluation was a school function assessment and conducted over two years ago. It concluded [redacted] displays functional fine motor skills to complete daily

activities at school or work site. LEA Exh. 7.

Although the parents' evaluation utilized a medical model, the hearing officer notes that the deficits are likely to impact school performance and vocational training since they are skills needed at school and work places. By way of example, the evaluation showed [redacted] was slow. [redacted] demonstrated difficulty with bilateral tasks. [redacted] had difficulty with bilateral hand use. Moreover, the parents' OT evaluation was the most recent of the two and the hearing officer will give deference to it. The evaluation shows [redacted] needs direct OT services now to address present deficits noted in the report.

Accordingly, the hearing officer finds [redacted] needs direct OT services. This is so because the proposed IEP consult OT services, recommended on [redacted]'s finding over 2 years ago that [redacted] had no fine motor and visual deficits, are inadequate.

The parties agreed to the PT services proposed in the IEP. Accordingly, the hearing officer finds the issue regarding the appropriateness of PT services is resolved.

6. Homework

Moreover the hearing officer is concerned that the IEP does not reflect [redacted]'s progress toward [redacted] goals will be measured, in part, by utilization of homework in light of the fact that the LEA's own psychologist recommended that [redacted] practice tasks to enhance learning. LEA Exh. 1, pp.9-17, FF 152.

7. Parent's Input in Proposed IEP

The parents assert they were denied participation in the formation of the proposed IEP. Several IEP meetings were scheduled. The LEA provided the parents with reasonable advanced notice of all scheduled IEP meetings and made a good faith effort to schedule them at times mutually agreeable with all parties. The parents also were

provided a draft of the proposed IEP during the school year. Moreover, the parents attended at least four of the scheduled meetings from September to May 5, FF 4-13.

During the May 5, IEP meeting, the parents expressed their desire that participate in the VAAP. Sometime after that meeting, the LEA decided would not participate in that testing. FF 125. The parents point to the LEA's decision about 's participation in the VAAP as one example out of many which shows they have been denied input in the formation of 's IEP. Vol. 3, Tr. 587. The fact that the LEA or the majority of the IEP team members may not have agreed with the parents on various issues concerning the IEP does not equate to denial of participation. The record shows, the parents did express their desires and concerns about 's IEP, or had an opportunity to do so, throughout the previous school years. FF 4-13. Accordingly, the hearing officer finds the parents had significant participation in the development of the proposed IEP.

B. Whether the Proposed IEP is appropriate under Section 504

The purpose of Section 504 is to prohibit discrimination on the basis of a disability in any program receiving federal funds. A student is eligible so long as he/she meets the definition of qualified handicapped person; that is, has or had a physical or mental impairment which substantially limit's a major life activity, has a record of or is regarded as handicap by others. A local educational agency receiving federal funds is required to provide an education to handicap students that is comparable to the education provided to non-handicap students. A student is eligible so long as he/she meets the definition of a qualified handicapped person; that is, has or had a physical or mental impairment which

substantially limit's a major life activity, has a record of or is regarded as handicap by others. The student is not required to need special education in order to be protected. 34 C.F.R. Sections 104.1, 104.3, 104.4, 104.33, 104.34, 104.35, 104.36.

has been diagnosed with oral motor apraxia. FF 104. This condition causes severe distortions of sounds and significantly impaired speech. FF 103 - 107. Accordingly, is a qualified handicapped person under Section 504 because this speech impairment substantially limit's a major life activity, speaking intelligibly.

Under Section 504, the LEA as a recipient of federal funds is required to provide a FAPE to . For reasons previous discussed herein, the hearing officer finds a screened VQAS Level III interpreter or one with superior credentials is necessary to provide with an education comparable to the education provided to non-handicap students; that is, the opportunity to express self to teachers and peers and to develop language skills. The proposed IEP does not provide for a VQAS Level III SLI as is required by Section 504. LEA Exh. 1. Accordingly, the hearing officer finds the proposed IEP is not appropriate under Section 504.

V. DECISION and ORDER

The hearing officer finds that the LEA did not notify the parents of the consequences of the IEP team's/LEA's decision that would not participate in the VAAP and the LEA failed to provide the parents and student with an explanation of their due process rights after making that decision. The hearing officer also finds the impact of these violations are substantial for the reason stated previously herein.

The hearing officer finds that all the other requirements of notice to the parents

and student have been satisfied that medical and school records report [redacted] is moderately mentally retarded and diagnosed with Downs syndrome and oral motor apraxia. Further the hearing officer finds the LEA has the burden of proof and has not met that burden.

Moreover, the hearing officer finds the LEA's proposed IEP does not provide [redacted] with a FAPE under the IDEA or Section 504 and the parents and student are the prevailing party.

Accordingly, the hearing officer orders the LEA to:

1. reconvene further IEP meetings within 2 weeks of this decision and develop an IEP that (i) sets goals, benchmarks, and objectives calculated to provide [redacted] an educational benefit, (ii) accurately reflects [redacted]'s present level of educational functioning, (iii) measures progress by means that will enhance [redacted]'s learning and facilitate informing the parents of [redacted]'s school work and progress, and (iv) adequately plans for [redacted]'s transition, to include, but not limited to formulating and setting transitional goals that are specific to a [redacted] year old student like moving from school to post-school activities, including post secondary education, vocational training, employment, continuing adult education, adult services, and independent living;
2. provide direct occupational therapy services to address deficits identified in [redacted]'s and [redacted]'s Occupational Therapy Services evaluations;
3. conduct an Assistant Technology Evaluation to determine if any devices are needed to address [redacted]'s fine motor and visual deficits and implement recommendations;

4. provide _____ with a VQAS Level III Sign Language Interpreter or a SLI with qualifications superior to VQAS Level III interpreter at all times in school.

5. conduct an Independent Vocational Evaluation for consideration for transitional planning;

6. if not already provided, provide to the parents a list of individuals who can conduct vocational evaluations.

Further, the hearing officer dismisses the Motion to Compel filed by counsel for the parents/student because the issue presented has been addressed in this order.

VI. APPEAL INFORMATION

This decision 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.

Dated: August 25,

, Hearing Officer