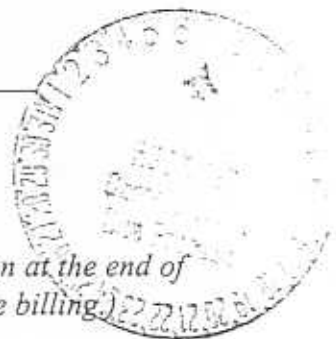


02-044 Local Hearing X

State Level Appeal



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

Name of Parents

Name of Child

Date of Decision

Counsel Representing LEA

_____, Esquire
Counsel Representing Parent/Child

Public Schools

Party Initiating Hearing

Prevailing Party

Hearing Officer's Determination of Issue(s):

Petitioners, _____, have failed to meet the burden of proof in their request for residential placement for _____, Public Schools is providing free and appropriate public education (FAPE) at _____, where I have ordered that continue _____ education.

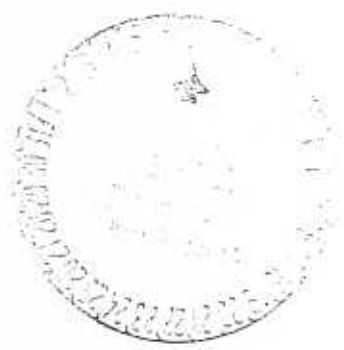
Hearing Officer's Orders and Outcome of Hearing:

The Petitioner's appeal of the IEP placement at _____ is denied and their request for residential placement is also denied. _____ will continue education at _____ where _____ is receiving educational benefit under IDEA, in the least restrictive environment..

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 this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days:

Printed Name of Hearing Officer

Signature



V I R G I N I A:

DUE PROCESS HEARING
(Special Education Appeal)

Complainants :
:
:
v. : In re:
PUBLIC SCHOOLS :
Respondent :

FINAL DECISION OF HEARING OFFICER,

This formal Due Process Hearing was conducted
and , at , VA.

Each side was represented by highly competent counsel, preeminent
experts in Special Education law and proceedings, namely, ,
Esquire, for , and , Esquire, with co-counsel,
, Esquire, for Public Schools.

called the following witnesses, namely,
and , petitioners, ,
, a friend and spiritual advisor to the family, and ,
M.D., board certified child and adolescent psychiatrist.

and called the following witnesses, namely,
, Ed.D., PS, psychoeducational assessment teacher, ,
PS contract services, , a special education teacher with
, counselor and family service worker at
, and , behavioral specialist administr-
ator with

proffered 46 Exhibits, all of which were admitted into evidence.

proffered 71 Exhibits, all of which were admitted into evidence

The Hearing Transcript consisted of 500 pages.

FINDINGS OF FACT

1. is a large, well built year old young who qualified for Special Education as being emotionally disturbed (ED), pursuant to the Individuals with Disabilities Education Act (IDEA), 20 USC 1400, as amended. suffers from bipolar disorder, Tourette Syndrome and inuresis (Tr. , P. 194, et seq.)

2. In , was placed at which is a private day school equipped to educate children with emotional and behavioral problems

THE ISSUE: Whether or not should remain at School or placed in a residential facility.

3. Without exception, all of the witnesses testified that is a good school. 's mother, , testified that is an excellent school, staffed with "wonderful" special education teachers, assistants and therapeutic staff, Tr. 47-48), except that it is not an appropriate placement for her

4. Since being enrolled at appears to be making progress, according to , Ed.D., a teacher with Public Schools. testified as an expert in the field of phycoeducational assessment, having had 30 years of experience in Special Education (Tr. 150-153). testified that is in a classroom with fewer than ten children and two staff members who have extensive experience working with students with Emotional Disturbances (ED).

testified that is one of the better behaved students and in every case standard scores have risen (Reading, math and written language), which means that is making better progress than the average child of age, (Tr. 172)

5. I find that [redacted] has continued to make progress, academically, at the [redacted] since [redacted], except for the 2nd quarter of the [redacted] school year, when [redacted] grades, though passing, decreased due to physical illness which reduced [redacted] attendance to about 50% (Ex.63 PS) [redacted]'s classroom teacher, [redacted], testified that [redacted] has increased reading level at [redacted], as well as in math where [redacted] has advanced to algebra I, and shown improvement in written language, punctuation, spelling, and grammar. [redacted] has even written an article which was printed in the school news letter. (TR. 385-87).

6. According to the testimony of [redacted], who has been [redacted]'s counselor at [redacted] has demonstrated marked improvement, behaviorally and socially (TR 403-04), and is considered a role model among [redacted] peers.

7. I find that notwithstanding [redacted] apparent progress at [redacted], [redacted] continues to demonstrate stressful emotional outbursts at home that at times have been violent in nature and have impacted adversely upon [redacted] younger brother, [redacted] father and especially, [redacted] mother. It is, indeed, a highly charged family situation.

8. [redacted]'s mental health problems have required periodic hospitalizations for treatment and changes in dosages or kinds of medication. Those problems and other physical health problems have resulted in absences from school attendance and have, of course, had some negative effect on academic progress.

9. Although residential placement is being requested by [redacted]'s parents, they offered no evidence from any such facility, nor to programs, curriculum, class sizes, qualification of teachers in special education or the nature or quality of facilities. Without that evidence this hearing officer would be limited in recommending residential placement to mere speculation.

10. [redacted], [redacted]'s psychiatrist, testified that [redacted] requires residential placement but did not discuss the educational program or special education facilities or personnel. [redacted] based [redacted] opinion on

conclusion that traveling back and forth to a day school is stressful to and that results in a Separation Anxiety which manifests itself adversely on family members and persistent invasive attachments to them. (TR.204-5). Although residential placement may be a valid mental health therapeutic remedy for family, no valid, credible educational benefit has been shown for .

11. In addition to being provided a good private day school education (a free and appropriate public education, FAPE), the family has been provided mentoring, in-home counseling and respite services under the Child Specific Team, or "CST"

12. I found the witnesses on both sides to be truthful and cooperative and without exception they testified with a minimum of adversarial bias.

CONCLUSIONS OF LAW

It is the conclusion of this Hearing Officer that the Petitioners, have failed to meet the burden of proof in their request for residential placement for and they have failed to prove that the Public Schools' program is inappropriate or to prove that residential placement is appropriate. See Bales v Clarke, 523 F. Supp. 1366.

Public Schools has complied with all of the procedural requirements under IDEA and that its individual education program (IEP) for is reasonably calculated to enable to receive educational benefits.

IDEA requires that a child's placement be in the "least restrictive environment" Rowley v Board of Education, 458 U.S. 202. Day programs are patently less restrictive than residential programs and the courts have so held.

While it is lamentable that the family suffers severe stress from 's behavioral difficulties and while I empathize with their pain and discomfort, I must, under the law, IDEA, as defined and interpreted by

the state and federal courts, deny their request for residential placement and affirm _____'s IEP and placement at the _____.

This decision is final and binding on all parties unless it is appealed by either party within one year from the issuance hereof. The appeal may be filed in a Virginia Circuit Court or a United States District Court.

Date of Issuance: _____

Respectfully submitted,

Hearing Officer

Copies mailed to:

Virginia Department of Education
_____, Esquire
_____, Esquire
_____, Esquire
_____, Ed.D., PS