

VIRGINIA DEPARTMENT OF EDUCATION

DUE PROCESS HEARING REPORT AND DECISION

XXXXXXXXXXXXXXXXXXXXX PUBLIC SCHOOLS
School Division

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Name of Parents

XXXXXXXXXXXXXXXXXXXXX
Representing School Division

XXXXXXXXXXXXXXXXXXXXX
Name of Child

XXXXXXXXXXXXXXXXXXXXX
Representing Parents/Child

XXXXXXXXXXXXXXXXXXXXX
Hearing Officer

XXXXXXXXXXXXXXXXXXXXX
Party Initiating Hearing

I. Due Process Hearing Request:

Written request for Due Process Hearing on behalf of XXXXXX X XXXXX was made by xx parents, Xx and Xxx XXXXXX XXXXX, on xxxxxxxx.

II. Issues and Purpose of Due Process Hearing:

The following issues were presented for determination concerning both school year xxxxxx-xxxxx and school year xxxxxx-xxxxx, to-wit:

- 1. Whether XXXXXX XXXXX was provided a Free Appropriate Public Education?
2. Whether XXXXXX XXXXX was provided an education in the Least Restrictive Environment?
3. Whether XXXXXX XXXXX was provided Transportation at no cost?
4. Whether XXXXXX XXXXX 's rights under Section 504 were violated?

III. Two Extensions Granted:

A. An extension of the final decision date was granted on xxxxxxxxxxxx. Parents and their representative failed to appear at due process hearing scheduled by agreement for xxxxxxxxxxxx. Xx

Xxxx moved for continuance of the hearing date and for extension of the final decision date. Xx indicated matters concerning a funeral and a medical condition concerning Xxx Xxxxxx arose and that Xxx Xxxx physician ordered Xxx Xxxxxx to remain in bed. It was found to be in the best interest of the child to provide opportunity for a complete and full hearing of the issues and to permit xx parents to have an opportunity to be present, present evidence, and participate in the due process hearing. For the reasons above stated, on parents' motion the hearing was reset to xxxxxxxxxxxx and the Final Decision Date extended to xxxxxxxxxxxxxxxxxxxx .

B. A second extension of the final decision date was granted on xxxxxxxxxxxx. At the conclusion of the Due Process Hearing both parties moved for opportunity to provide written arguments/proposed findings of fact and conclusions of law. It was found to be in the child's best interest for a full hearing and for the parties to have the right to receive a transcript and to have opportunity to submit proposed findings of fact and conclusions of law. The final decision date was extended on motion of the parties to xxx, xxxxx, to provide the time for preparation and transmittal of the transcript and approximately 7 days each for the parties to review documents and submit arguments/proposed findings of fact and conclusions of law. The following timeline was agreed to and adopted: *(The due process hearing was concluded on xxxx)*

- x Anticipated date of transcript being delivered to parties.
- x Due date for School's submission of proposed findings, conclusions, and arguments.
- x Due date for Parent's submission of proposed findings, conclusions, and arguments.
- x Due date for decision.

#### **IV. Proceedings:**

A. **Pre-hearing conference** was xxd in person on xxxxx, at 1:00 P.M. at the Conference Room, Office of Student Services, Xxxxxxxxxx Public Schools, XXXXX, XXXXXXXXXXXX, VA. At such pre-hearing conference the parties agreed to holding the Due Process Hearing on xxxxx, at 9:00 A.M. at the Conference Room, Office of Student Services Xxxxxxxxxx Public Schools XXXXX, XXXXXXXX, VA and agreed to a timeline for exchange of witness lists and exhibits.

**B. Due Process Hearing was initially set by agreement for XXXXXXXX**, at 9:00 A.M. at the Conference Room, Office of Student Services, XXXXXXXX Public Schools, XXXXXXXXXXXX, VA. The Hearing Officer, XXXXXXXsel for the School, and witnesses for the XXXXXXXX Public Schools appeared as scheduled. XXXXXXXXXXXXxxx, presenter for the parents, Xx XXXXXXXX Xxxxx, and Xxx XXXXXXX did not appear at the scheduled Due Process Hearing.

**C. Telephone conference was xxld on xxxxxx**, at due process hearing site between hearing officer, XXXXX, Xxxx concerning the failure of the parents and their representative to appear at the agreed time and place for due process hearing.

During such telephone conference call MX Xxxx moved for continuance of the due process hearing and for extension of the final decision date. Mx Xxxx indicated XX h matters concerning a funeral and indicated a medical condition unexpectedly and recently arose with Xxx Xxxxx. Xx Xxxx further stated that Xxx xxxxxx physician ordered Xxx Xxxxx to remain in bed. Xx Xxxx agreed to provide hearing officer and School's counsel a physician's statement as to the medical condition and required bed rest.

It appearing that the timing of the events occurring immediately prior to the scheduled hearing was material and that basic fairness required the continuance be granted. It was found to be in the best interest of the child to provide opportunity for a complete and full hearing of the issues and to permit xx parents to have an opportunity to be present, present evidence, assist in the case, participate in the due process hearing, and have opportunity to present arguments. Upon consideration of the above, the motion for continuance and extension of the 45 day final decision date was granted and the Due Process Hearing was continued to xxxxx and the 45 day final decision date was extended to xxxxxx.

**D. Due Process Hearing was held on xxxxxx**, before undersigned, duly appointed hearing officer. Per parent's motion the due process hearing was open to the public.

1. Witnesses: The following witnesses were presented at due process hearing:

XXXXXXXX.....	Teacher
XXXXXXXX.....	Visiting Teacher
Dr. XXXXXXXXXXX.....	Principal XXXXXXXX Elementary School
XXXXXXXXXXXXXXXXXXXX...	Teacher's aide
XX XXXXXX XXXXX.....	Parent of XXXXXX XXXXX
XXXXXXXXXXXXXXXXXXXX.....	Teacher's Aide
XXXXXXXXXXX XXXXX..	Parent of XXXXXX XXXXX
XXXXXXXXXXXXXXXXXXXX.....	Director of Special Education at [REDACTED] County Schools
XXXXXXXXXXXXXXXXXXXX.....	Special Education Teacher
XXXXXXXXXXXXXXXXXXXX.....	Superintendent of Schools

2. Exhibits: The following exhibits were duly exchanged and, by agreement of the parties, admitted into evidence:

a). Parents' exhibits numbered 1 through 10. Parents' exhibits number 1 through 5 referred to and incorporated the XXXXXXXXX Public Schools Exhibits as below set forth (a copy of same was not provided). Parents' exhibits 1-5 are as follows:

Parents exhibit 1 is Tab number 3, XXXXXX-XXXXX IEP page 17;  
Parents exhibit 2 is Tab number 13, Letter of Findings;  
Parents exhibit 3 is Tab number 35, Notebook XXXXXX-XXXXX;  
Parents exhibit 4 is Tab number 36, 8/31/01 XXXXXX-XXXXX IEP;  
Parents exhibit 5 is Tab number 44, 3/11/02 Meeting Minutes;

Additionally, Parents' exhibits numbered 6 to 10 were filed (with copy provided) and admitted.

b). School exhibits are numbered 1 through 45 and were filed and admitted.

c). Hearing Officer exhibits, by agreement of the parties, numbered 1 (the IEP of 8/31/00; also designated School Exhibit 3) and 2 (the IEP of 8/31/XXXXXX; also designated School Exhibit 36) were filed and admitted.

3. Designations of Transcript and Exhibits: The transcript of the due process hearing, consisting of one volume, is referred to as "Tr. pg. \_\_\_" (with the page number inserted at "\_\_\_". The Parent's Exhibits are designated as "P Ex. \_\_\_" and the School's Exhibits are designated as "S Ex \_\_\_" (with the page number inserted at "\_\_\_".

4. Post-Hearing Timeline: At the conclusion of the Due Process hearing the parties did move to provide written proposed findings of fact and conclusions of law and arguments.

The court reporter indicated approximately 10 business days were required to provide a transcript to the parties. The parties requested and agreed to a 7 day period for each to have opportunity to draft and submit arguments/proposed findings of fact and conclusions of law. The following timeline was proposed and agreed to:

- x Anticipated date of transcript being delivered.
- x Due date for LEA submission of proposed findings, conclusions, and arguments.
- x Due date for Parent's submission of proposed findings, conclusions, and arguments.
- x Due date for decision.

Upon motion and agreement of the parties the above timeline adopted.

It was found to be in the child's best interest for a full and fair hearing of the issues and for the parties to have the opportunity to receive a transcript and have opportunity to submit proposed findings of fact and conclusions of law and the arguments related to such proposed findings and conclusions. On motion of the parties the final decision date was extended on motion of the parties to xxxxxxxx.

#### **V. Findings of Fact:**

1. XXXXXX XXXXX was formerly known as XXXXXX XXXXXXXXXXXX XXXXX is an approximately x years x month old xxxxxx who was born on xxxxxxx, who resides with xx adoptive parents, Xx and Xxx xxxxxxx XXXXX, in XXXXXXXXXXX, Virginia. XXXXXX resided in XXXXXXXXXXX, Virginia, with xx adoptive parents and attended XXXXXXXXXXX Public Schools in school year xxxxxxxx and school year xxxxxxxxxx.

2. XXXXXX XXXXX has a disability and is a child in need of special education and related services. XXXXXX has an eligibility date of xxxxxxx. On or about xxxxxxxx, The University of Virginia, Children's Medical Center did an assessment on XXXXXX XXXXX which indicated "... some delay in xx gross motor skills with more obvious delay in fine motor and language skills...". The University of Virginia indicated a need for XXXXXX to continue with therapy services. (S Ex.1)

3. An Individualized Education Program ("IEP") dated xxxxxxxx, for Xxxxxx Patterson (now known as Xxxxxx Xxxxx) was signed by Xxx xxxxxxx M. Xxxxx noting consent for Xxxxxx to receive special education services described in the IEP. (S Ex. 3). xxxxxxxxxxxx (Special Education teacher) met with Xxx Xxxxx and reviewed the IEP with Xxx Xxxxx (Tr. pg. 12 & 13). Other parties who signed were not physically present when Xxxxxxx and Xxx Xxxxx discussed the document and Xxx Xxxxx signed the document. The IEP provided for Physical Therapy, Occupational Therapy, and Speech services.

4. On xxxxxxxxxxxx, Xxx Xxxxx registered Xxxxxx Xxxxx for school in the Xxxxxxxxxx Public Schools. (see P Ex. 6, Tr. pg. 127) On xxxxxxxx, Xxxxxxxxxx Public Schools started providing transportation. (Tr. pg. 204)

5. On xxxxxxxxxxxx, the IEP team met with Xxx [REDACTED] Xxxxx,xxxxx, xxxxx, xxxxxxx, xxxxxxx, and xxxxxxx present. At this IEP meeting the xxxxxxxxxxxxxxxx, IEP was reviewed and it was suggested that xxxxxxxxxxxxxxxx IEP be amended and that xx be provided with an aide (Tr. pg. 45-48; S. Ex 6). After reviewing the IEP and after reviewing the proposed changes the Amendment to the IEP was signed by xxxxxxx xxxx indicating "I agree with the additions/changes to my child's IEP" (S Ex. 6).

6. The IEP meeting of Xxxxxx 12, xxxxxxx, provided for hiring of an aide for Xxxxxx (if approved by the XxxxxxSchool Board), for a reduced school day from 8:00 A.M. until 10:00 A.M., for the school to provide transportation; and certain other goals to be adopted. (S Ex. 6)

7. An one-on-one aide for Xxxxxx Xxxxx was approved and was hired by Xxxxxxxxxx Public Schools on xxxxxxxxxxxxxxxxx. (Tr. pg. 50).

8. xxxxxxxx IEP team met again on xxxxxxxxxxxx. Amendment to IEP dated xxxxxxxxxxxxxxxx, was signed by Xxx Xxxxx and Xx Xxxxx. The space noting "I agree w/ amendment". (S Ex. 7) was checked.

9. The xxxxxxxxxxxxxxxx, IEP provided changes and that:

"1) Xxxxxx will work with an aide from 8:15 - 10:00 on xxxx and xxxxxxxxxxxxxxxx.

2) XXXXXX's day will be increased by 1/2 hour increments, with addendum's, as xx adjusts to new aide." (Tr. pg. 50, 51; S Ex. 7).

10. XXXXXX XXXXXXXX school day was initially reduced by theXXXXXXXXX, IEP to 8:00 - 10:00 A.M. and per the XXXXXXXXXXXXX, IEP Amendment went from 8:15 to 10:00 A.M. The school day remained from 8:15 -10:00 A.M. until the end of the XXXXXX/XXXXXX school year. (Tr. pg. 52, 53).

11. A number of attempts were made to reach XXXXXX's parents and call IEP meetings by the School however the XXXXXX did not respond until the XXXXXXXXXXXXX IEP meeting was set up. There was no IEP meeting in the XXXXXX-XXXXX school year providing for extending the school day from 8:15 - 10:00 A.M. (Tr. pg. 52-55)

12. An IEP meeting was started on XXXXXXXXXXXXX, with Xxx XXXXX present but was not completed. Lengthening of the school day was to be discussed but due to concerns that Xxx XXXXX became loud and angry the meeting was adjourned without agreement as to extending the school day. (Tr. pg. 59 - 61; S Ex. 25).

13. Xx XXXXX received a letter dated XXXXX, XXXXXX, sent certified mail, concerning the events of the XXXXXXX, XXXXXX, IEP meeting and requesting another IEP meeting be scheduled. This letter further advised parents of their rights to mediation and/or make a complaint with the Virginia Department of Education. (S Ex. 25).

14. Complaint with Virginia Department of Education was made (dated XXXXXXX, XXXXXX) by Xxx XXXXX. (S Ex. 26) and a LETTER OF FINDINGS was issued dated XXXXXX, XXXXXX (S Ex. 33) which found that XXXXXXXXXXX Public Schools: included Xx XXXXX in XXXXXX's IEP team meeting and provided xxr with an opportunity to share in the development of xxr child's IEP; attempted numerous times to schedule an IEP team meeting at a time which was convenient . . . . ; implemented XXXXXX's IEP; provided a FAPE to XXXXXX; and provided the LRE to XXXXXX. No appeal was filed on these determinations. (Tr. pg. 200-201)

15. The IEP team met on XXXXXXXXXXXX, to prepare an IEP for school year XXXXXX-XXXXXX. XXX XXXXX was present at the meeting and signed the IEP indicating xxx consent to the IEP (S Ex. 36). XXXXXX was, per the IEP, to be placed in a self-contained pre-school classroom (Xx Xxam's classroom). Xx Xxam had an aide assigned and XXXXXX had an aide assigned for the XXXXXX - XXXXX school year. XXX Xxam is properly licensed and endorsed. (S Ex. 37).

16. XXXXXX XXXXX has been kept out of school by xx parents since the end of school year XXXXXX-XXXXXX and XXX XXXXX has been home schooling xx since. (Tr. pg. 198, 199)

17. XXX XXXXX refused to place XXXXXX in Xx Xxam's class at XXXXXXXXXXXX Elementary School indicating Xx XXXXXX is in an adjacent classroom. (Ex 38; Tr. pg. 192). XXXXXX's parents have stated they would consider allowing XXXXXX to attend the school if it could be guaranteed XXXXXX would have no contact with Xx XXXXXX in any way, shape or form. (S Ex. 43)

18. Xx and XXX XXXXX acknowledged that XXXXXXXXXXXX Public Schools does have a program that would benefit XXXXXX XXXXX (Tr. pg. 192, S Ex. 43).

## **VI. Conclusions of Law:**

### **EAFE:**

Xx and XXX XXXXX, the parents of XXXXXX XXXXX have raised issues of noncompliance with statutory procedures under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. Section 1401 *et seq.*

XXXXXX's parents expressed concern that they were told that they did not have to appear at the IEP and that the IEP meeting was conducted with only Xx XXXXXX and XXX XXXXX present. Additionally, XXX XXXXX stated xx signed the IEP and Consent to Services on September 5th and not on XXXXXX 31 as the date written thereon indicated.



Xxx Xxxxx testified xx had received a letter from Xx Xxxxxx that they were having the IEP meeting for Xxxxxx on XXXXXXXXXXXXX, stating "it's not necessary for you to come to this meeting. I will clue you in." (Tr. 127, 128) Xx Xxxxxx testified xx doesn't send out a letter when there's an IEP meeting (Tr. pg. 92, 93).

Xxx Xxxxx testified xx did not attend nor sign the IEP on XXXXXXXXXXXXX, but xx did sign the IEP and the Consent to Services on September 5th, xxxxxx. Xx further stated xx did not write in the dates i.e. xxxxxx) which appears by xxx name. (Tr. 131)

Xx Xxxxxx testified the IEP was signed on XXXXXXXXXXXX by Xx Xxxxx and the other signatures appearing on the IEP were signed by the named parties after each had reviewed the document. (Tr. pg. 13) Xx Xxxxxx indicated that xx presented the materials, the form, the objectives and gave Xxx Xxxxx xxr rights and told that if xx wanted to look over and change it it was xxr right and that xx could call another meeting (Tr. pg. 13) Xx and Xxx Xxxxx were present at the same time; the other parties signed the IEP subsequently after reviewing the document.

At Xxx Xxxxx request an IEP meeting was xxld on XXXXXX, xxxxxx. At the meeting Xxx Xxxxx had a copy of the Xxxxxx xxst IEP and asked for a review of the XXXXXXXXXXXXX IEP and the document was reviewed by the IEP team. Those present at the XXXXXX the IEP team meting included Xxx xxxxx Xxxxx, xxxxx, xxxxx, xxxxxx, xxxxx, and xxxxxx. At this IEP meeting it was suggested that Xxxxxx's IEP be amended and that xxx be provided with an aide (subject to school board approval). Certain goals were provided for, the length of school day reduced (reduced to 8:00 A.M. -10:00 A.M.), and transportation by the school was provided. (Tr. pg. 45 - 48; S. Ex 6). The aide for Xxxxxx was subsequently approved and an aide hired xxxxxxxx, xxxxxx (Tr. pg. 50).

On XXXXXXXXXXXXX another IEP meeting was xxld and an addendum adopted. The XXXXXXXXXXXXX IEP provided that "Xxxxxx's day will be increased by ½ hour increments, with addendums, as xx adjusts to new aide". Xxx Xxxxx and Xx Xxxxx signed the Addendum. The space

marked " I agree w/ amendment" was checked. This Amendment to IEP was signed by xxxxxxxx, xxxxxx  
xxxxx, xxxxxx xxxxxxxxxx xxxxxxx, xxx xxxxxxx, xxxxxxxxxx.(S Ex. 7).

The evidence indicates that the School made a number of attempts subsequent to the  
xxxxxxxxxxxxx, IEP meeting to reach xxxxxx parents to set up IEP meetings to obtain parental input  
and to increase the school day for xxxxxx. Notes were send home in the child's composition book that  
indicated attempts in December and January (S Ex. 35). Xx xxxxx testified xx remembered seeing the  
letter in the composition book dated xxxxxxxxxx (Tr. pg. 185) with a request therein to call Xx xxxxx  
and a telephone number to call.

Xxx xxxxx testified xx did not call until after the xxxxxx letter was received (Tr. pg. 186) A  
certified letter was set on xxxxxxxxxx, noting attempts to contact and stating, "If Xx Newell does not  
xxar from you by Friday xxxxxxxxxx at 3:00 p.m., we will assume that you are satisfied with xxxxxxxx  
schedule and xx school day will remain as it is, 8:15 - 10:00 a.m., for the remainder of the school year."

Xx xxxxxxx testified to numerous attempts to contact the parents to set a IEP meeting to extend  
the school day. Telephone attempts were made and efforts expended to reach the parents but there was no  
contact from them. The school day was not extended because "the xxxxxxx wouldn't come for an  
addendum, wouldn't come for a meeting" (Tr. pg. 53).

On xxxxxxxxxx, an IEP meeting was started but had to be ended due to issues of Xxx xxxxx  
getting upset and loud. After several attempts to calm xxr down the meeting was ended prior to any  
agreement or addendum being reached. (Tr. pg. 60, 61, and 113)

A certified letter dated xxxxxxxx was sent to the parents and signed for by Xx xxxxx. This letter  
discussed the events of xxxxxxxxxx and request another IEP meeting be scheduled but xxxxxxx  
parents did not respond to set another IEP meeting. The letter also advised the parents of their rights to  
mediation and/or make a complaint with the Virginia Department of Education. (S Ex. 25). And a  
complaint was made (S Ex. 26)

Allegations of denial of a Free Appropriate Public Education were made by XXXXXX's parents in this due process proceeding.

A "Free Appropriate Public Education" (FAPE) means special education and related services that: 1. Are provided at public expense, under public supervision and direction, and without charge; 2. Meet the standards of the Virginia Board of Education; 3. Include preschool, elementary school, middle school or secondary school education in the state; and 4. Are provided in conformity with an individualized education program .... (see Regulations Governing Special Education Programs for Children with Disabilities in Virginia; 8 VAC 20-80-10)

A free appropriate public education shall be available to all children with disabilities, ages two to 21, inclusive. (see Regulations Governing Special Education Programs for Children with Disabilities in Virginia).

Board of Education of the Xxndrick Hudson Central School District et al v. Rowley, 458 U.S. 176 (1982) provides a two prong test to determine the appropriateness of the education being provided the child. First, whether the school system has complied with the procedures of the IDEA; and second, whether the child's IEP is reasonably calculated to enable the child to receive educational benefit. Failure of a school to comply with the procedural requirements of IDEA may deny a child a FAPE.

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

A Local Educational Authority's (LEA's) failure to meet the IDEA'S procedural requirements can be adequate grounds by themselves for holding the LEA failed to provide the child with a FAPE. However, to amount to a denial of a FAPE, an LEA's procedural deficiencies, including procedural deficiencies contained in an IEP, must be serious and detrimentally impact on a child's educational rights. An IEP will not be set aside on the basis of procedural violations absent some rational basis to believe that such procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parent's opportunity to participate in the formulation process, or caused a deprivation of

educational benefits. White et al. v. School Board of Xxnrico County, xxxxxx, 549 S.E.2d 16, 36 Va. App. 137.

While there are procedural deficiencies including in the IEP dated XXXXXXXXXXXX (S Ex. 3), these deficiencies do not arise to the level of a denial of a FAPE.

Xxx Xxxxx testified xx had received a letter from Xx Xxxxx that they were having the IEP meeting for Xxxxx on XXXXXXXXXXXX, stating "it's not necessary for you to come to this meeting. I will clue you in." (Tr. 127, 128) Xx xxxx testified xxx doesn't send out a letter when there's an IEP meeting (Tr. pg. 92, 93).

Xx Xxxxx testified that on XXXXXXXXXXXX, xxx and Xxx Xxxxx were present and that xx presented the materials to Xxx Xxxxx, the IEP form, and gave Xxx Xxxxx xxr rights. (Tr. pg. 12) Xx told Xx Xxxxx that if at any time xx wanted to it was xxr right to go and call another meeting. Xxx Xxxxx did call for an IEP meeting.

The xxxxxxxxxxxx IEP provided in part for Physical Therapy, Occupational Therapy, and Speech services reviewed LRE issues, and noted Xxxxx's present levels of performance and xx need for frequent one on one, small group interactions.

Xxx Xxxxx asked to review Xxxxx 31st IEP and an IEP meeting was set for Xxxxx xxxxxx. The XXXXXXXXXXXX, IEP was reviewed on XXXXXX xxxxxx. Xxx Xxxxx testified xx brought xxr copy of the IEP to the meeting on or about XXXXXX xxxxxx, and xx went over the whole IEP. (Tr. pg. 174) Xxx Xxxxx requested an aide for Xxxxx and matters concerning OT and PT goals which were provided for in the addendum. (Tr. pg. 15). As of XXXXXX , xxxxxx when the measurable goals were added, the one-on-one aide recommended, and transportation resolved Xxx Xxxxx testified xx was satisfied that the IEP was appropriate (Tr. pg. 180).

Xxx Xxxxx was present at and participated in the XXXXXXXXXXXX IEP meeting. Xx put the check mark at , "I agree with amendment" and signed the IEP Addendum. (Tr. pg. 181) Xx indicated xx told them xx wasn't going to sign it because of concern over the need for a full day but did go on and sign it.

Procedural deficiencies were of minimal impact on the child's educational rights. In reviewing the evidence it is evident that XXXXXX's parents had significant and meaningful input into the IEP procedure. Their input was sought and was given consideration in formulation of the IEP.

After XXXXXXXXXXXX, additional IEP meetings were sought by the School to get the consent and input of XXXXXX's parents to extensions of the school year but the parents did not respond until the IEP meeting of XXXXXXXXXXXX was set up. This IEP meeting (ie. XXXXXXXXXXXX) was ended before reaching an agreement for extension of the school day due to concerns over the actions of Xxx Xxxxx.

XXXXXX XXXXXX IEP with its two addendums for the school year XXXXXX-XXXX was reasonably calculated to allow XXXXXX to receive educational benefits and XXXXXX did in fact receive educational benefit. The IEP as amended provided for Physical Therapy, Occupational Therapy, and a one-on-one aide for XXXXXX. The length of the school day was reduced by IEP Addendum which specifically reserved the issue of lengthening the school day for future addendums. But, XXXXXX's parents were not responsive to a number of attempts by the School to contact them and set up IEP meetings to lengthen the school day.

Xx XXXXXX noted XXXXXX's progress in adjusting to school and that xx was more capable every time seen and that XXXXXX was making academic progress. (Tr. pg. 97)

Xxx XXXXXX provided Early Childhood Progress Reports to XXXXXX's parents dated XXXXXX 24, XXXXXX (S Ex. 18), XXXXXXXXXXXX, XXXXXX (S Ex. 20) XXXXX, XXXXXX (S Ex. 21). In these reports progress was documented by XXXXXX in areas including areas involving attention span; answering simple recall questions with no prompts with 75% accuracy; accepting positive or negative feedback; listening and responding to teacher comments; identifying pictures and objects with 75% accuracy; staying attentive to

conversation/activity with others; identifying and following classroom and school safety rules; using safety scissors; toileting skills; coloring shapes within lines; and use of toys and instructional materials with minimal assistance. Additionally, other skills were noted as being accomplished.

The IEP of the xxxxxx-xxxxxx school year (S Ex. 36) noted progress has been made and physical therapy was no longer recommended. The child's running out of classroom has been successfully managed and xx will stay with the group and doesn't require hand holding between activities. The IEP provided, "Xxxxxx is a xx year old student who has made significant progress in xxxxxx-xxxx school year. All xx goals for the xxxxxx-xxxx year have been met. Gross motor abilities are age appropriate with minor delays in jumping/hopping on one foot ....". The OT report notes visual motor skills are progressing.

Xx xxxxxx, Director of Special Education at xxxxxxxx County Schools, reviewed the Xxxxxx , xxxxxx, IEP and testified that based upon xx observations the IEP was appropriate. Xx testified xx had made classroom observations xx had believed Xxxxxx could receive a FAPE in Xxxxxxxx, if the xxxxx would avail themselves of the program available in Xx xxxxxxxx classroom. Additionally, xx indicated xx program is the LRE for a child with xx needs and based upon xx observations the classroom was an appropriate classroom environment (Tr. pg. 89) and Xxxxxx's goals were being worked on.

Xx and/or Xxx Xxxxx signed the IEP and IEP Addendums (ie. of Xxxxxxxxxxxxx, Oct. 12, xxxxxx, xxxxxx, xxxxxx, and Xxxxxx , xxxxxx) and gave consent to each.

In the Request for Due Process Hearing (S 43) it is stated, "Xx and Xxx Xxxxx acknowledge that the school does have a program that would benefit Xxxxxx but xx would still be in contact with Xx Xxxxxx and this is not acceptable to the xxxxxx. They would consider allowing Xxxxxx to attend this school if they could guarantee that Xxxxxx would have No contact with xxr in anyway, shape, or form."

For the reasons xxrein set forth it is found that the Xxxxxxxx Public Schools has provided a free appropriate public education. Xxxxxx's IEP is reasonably calculated to enable the child to receive

educational benefit and XXXXXX has received educational benefit. While failure of a school to comply with the procedural requirements of IDEA may deny a child a FAPE and there are procedural deficiencies in the IEP dated XXXXXXXXXXXX, for the reasons stated xxrein, it is found that the inadequacies alleged do not compromise XXXXXX's right to an appropriate education or cause a deprivation of educational benefits and that these deficiencies do not arise to the level of a denial of a FAPE.

Transportation:

Xxx XXXXX testified the school started picking XXXXXX up to take to school on the xxth but it was somewhere between the 2nd and 8th/9th of XXXXXX xx guessed, but wasn't sure, that the School drove xxx home from school. (Tr. pg. 203-206). A letter from xxxxxxxxxxx indicated that transportation to and from school was resolved by xxxxxxxxxxx (S Ex. 5) and the IEP Amendment of XXXXXX provided the School would provide transportation. (S Ex. 6) The School continued to provide transportation for the rest of the school year (Tr. pg. 203)

Transportation was not School provided for approximately 3 or 4 weeks after XXXXXX's registration in school on xxxxxxxxxxx, xxxxxx. Xxx XXXXX drove XXXXXX for this 3 to 4 week period. Once the issue was raised the matter was resolved. The IEP meeting of XXXXXX xx, xxxxxx additionally addressed transportation with inclusion of a provision for transportation to be provided by the School. The School did provide transportation for remainder of the school year. xxxxxxxxxxx drove XXXXXX to and from school using a school car. (Tr. pg. 214) On xxxxxxxxxxx, xxxxxx, transportation was provided to school by the school and the exact date of transportation from school was provided was possibly a few days after this date.

Xxx XXXXX was told that the school would pay mileage for dates when xx transported XXXXXX. Xx XXXXXX discussed reimbursement for transportation with xxr but Xxx XXXXX has not submitted for reimbursement. Xxx XXXXX was told at the IEP meeting that the School paid mileage (Tr. pg. 209).

Xx xxxxx, Superintendent of Schools in XXXXXXXXX indicated the xxxxxxx were eligible for reimbursement for transporting XXXXXX at the same set rate which applies for all travel reimbursements in the school district (Tr. pg. 241, 241)

As to the issue of transportation being provided the School had offered to reimburse parents for the approximately three week period Xxx XXXXX has transported XXXXXX. At all times outside this approximately three week period the school has provided transportation to XXXXXX. Provision for transportation is included in the IEP Addendum of XXXXXX xx, xxxxxx and has been complied with.

**LRE and Section 504:**

**A. Eating.** Upon the parent's instruction starting on xxxxxx, xxxxxx breakfast was resumed with the other children. XXXXXX was learning self-feeding and to finger feed; there were chewing and swallowing concerns. Food might have to be micro waved and prepared; there had to be concern over the consistence that xx could eat.

Notes were exchanged between school personnel and parents concerning feeding (see S Ex. 35, S Ex. 12). A note on xxxxxxxx, xxxxxx, noted "XXXXXX drank milk and enjoyed lunch. If xx does not eat well - We'll give xxx pediasure". An XXXXXX , xxxxxx, observations report indicated XXXXXX's teacher taking a breakfast item from XXXXXX's lunch box for XXXXXX to eat in the cafeteria (S Ex. 16).

The Letter of Finding noted that Xxx XXXXX stated to teacher at beginning of the school year and to Supervisor of Special Education (different date 10/10/xxxxxx) that XXXXXX was not to eat breakfast at school. (S Ex. 33) On xxxxxxxx, xxxxxx a messages from Xxx XXXXX indicated that starting that date XXXXXX will be having breakfast with the rest of xx class and inquired as to the cost of breakfast. (S Ex. 12) A note dated xxxxx, xxxxxx, informed xxr of the cost (S Ex. 12) was sent home to parents.

The evidence indicates that there was no discrimination concerning eating and XXXXXX was not restricted in participation in eating activities.



**B. Nap Activities.** XXXXXX participated in nap time at school in the beginning of the school year until xx school day was shortened via IEP of XXXXXX, xxxxxx, which was signed by Xxx XXXXX showing xxx consent. Xxx Ohlendorf refers to how XXXXXX's teacher is able to wrap xxx in a blanket to xxlp xxx nap at school. (S Ex. 5) Note of XXXXXX, xxxxxx, refers to nap time where XXXXXX did not sleep (S Ex. 35). When XXXXXX had xx day shortened via IEP Addendums naps would not be at school; this is related to the school day length. Additional issues concerning school day length are discussed below.

There does not appear to be discrimination concerning the nap activities by XXXXXXXXX Public Schools nor was xx restricted in participated in nap activities because of xx disability.

**C. Field Trips.** Issues concerning field trips were raised but XXXXXX was not denied the opportunity to attend a field trip by the School. When xx did not go on a field trip it was because of denied parental permission or xx was not in school at the time of the field trip. There were eight Field Trips (S Ex. 30) listed for the school year xxxxxx-xxxxx and summarized below as to xx participation or non-participation.:

1. xxx..... xxxx Park, XXXXXX went.
2. xxx .... xxxxx Lake, XXXXXX did not go; xx was not in school.
3. xxx .... Pumpkin Patch, XXXXXX did not go; xx was not in school that day.
4. xxx .... xxxxxx Lake, XXXXXX did not go; parent's note said xx wasn't going to go.
5. xxx .... Science Museum, XXXXXX did not go; parent refused permission for xx to go
6. xxx..... Library, XXXXXX did not go; left school early
7. xxx ..... xxxxxx Museum, XXXXXX went
8. xxx ..... xxxxxx, XXXXXX went

Participation in field trips was not restricted by the school due to xx disability nor is there evidence of discrimination in relation to the field trips.

**D. Length of School day.** Parents expressed concern at due process hearing over the short length of XXXXXX's school day. There were numerous attempts to contact the parents to set up an IEP meeting as required by the XXXXXXXXXXXXX, IEP Amendment to extend XXXXXX's school day. The parents noted their agreement to the XXXXXXXXXXXXX IEP requiring amendments to extend the school day in half

hour increments. The School made a number of efforts to contact the parents to increase the school day however Xxxxxx's parents were non responsive to the attempts of School personnel to set up an IEP meeting to extend the school day. The school day length was not a discriminatory act on behalf of the School but was in response to the IEP which required addendum to extend the school day and to the non responsiveness of the parents.

*Least Restrictive Environment.*

*Least Restrictive Environment (LRE)*

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

b. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for non disabled children, each LEA shall ensure that each child with a disability participates with non disabled children in those services and activities, to the maximum extent appropriate to the needs of the child with a disability. *see Regulations Governing Special Education Programs for Children with Disabilities in Virginia)*

Least Restrictive Environment (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *(see Regulations Governing Special Education Programs for Children with Disabilities in Virginia; 8 VAC 20-80-10)*

Allegation was made that XXXXXXXXX Public Schools has failed to provide Xxxxxx with an education in the least restrictive environment. Xxx Xxxxx came to school and found Xxxxxx strapped in a stroller with everything stacked on top of xx. (Tr. pg. 263).

There were concerns raised about utilizing a stroller and placing Xxxxxx in the stroller. The stroller belonged to the school and was used. Xxx Xxxxx pushed Xxxxxx in it when Xxxxxx went

toXXXXXXXXXXXX. The stroller was initially used with transporting XXXXXX through the hallways (Tr. pg. 65).

The specific incident of XXXXXX being strapped in a stroller for the day was previously investigated by the Department of Education and XXXXXXXXX Public Schools provided explanation that XXXXXX was never strapped in the stroller for the day and that xx was placed in time out for a few minutes occasionally at the beginning of the school year. (see S Ex. 33) The Discipline Plan Early Childhood (Preschool Handicapped) provided for "Time Out" being in a chair by the edge of the activity and the child sitting in the chair and observing the appropriate behavior of classmates. This plan was given to each child in the classroom and given out on September 11, XXXXXX. (S Ex. 17)

XXXXXXXXXX, Educational Consultant, XXXXXXXXX, indicated XXXXX XXXXXX had contacted xxxr on XXXXXX xx requesting xxlp to address concerns regarding XXXXXX. Previously, concerns were addressed to xxxr by Xx XXXXXX involve XXXXXX's running out of the room and not napping at school. Xx [REDACTED] indicated, "Should XXXXXX not follow the directions given to xx then a consequence would need to be administered such as time out in a chair with a tray or a stroller. . ." (S Ex. 5).

In response to parents' concern expressed in the XXXXXX , XXXXXX, IEP meeting the school discontinued use of the stroller. (Tr. pg. 66)

Xx XXXXXXXXXX, Director of Special Education for XXXXXXXXXXXXXXXXXXXX observed XXXXXXXXX Public Schools classroom placement for school year XXXXXX-XXXXX with Xx [REDACTED] and determined it was appropriate for XXXXXX (Tr. pg. 89) and the IEP was also appropriate (Tr. pg. 88).

Xx XXXXX XXXXXX indicated that xx had been in Xx XXXXXX classroom and in Xx [REDACTED] classroom and observed the two classes on many occasions and did not have any reason to believe they would not be a safe and secure environment for XXXXXX (Tr. pg. 96).

Evidence (including testimony of witnesses) in this cause establishes that a) XXXXXX was placed in time out only for brief periods of time and consistent with XXXXXXXXX Public Schools Disciplinary Plan:

b) Xxxxxx participated in Field Trips with xx class except when xx was not in school or permission was denied by parents; c) Xxxxxx nap time was initially provided but was discontinued when xx school day was shortened by IEP Addendum; d) Xxxxxx ate with xx class at the first of the year and when permission was given to restart eating breakfast on xxxxxxxx.

Evidence (including testimony of witnesses) in this cause indicates that upon consideration of Xxxxxx's present level of performance, parental concerns, and the child's disability the IEP team met and addressed the least restrictive environment for Xxxxxx. The IEP of Xxxxxxxxxxxxxx, documents consideration of LRE (see Xxxxxxxxxx Public School Justification of Least Restrictive Environment). It is noted therein that "Inclusion is N/A in PSH" (Preschool Handicapped Classroom)" in its determination the student will not be educated in the regular class and also it is noted that PE is not available in PSH.

Xxxxxx Xxxxxx was provided an education in the LRE and the IEP team did give consideration to Xxxxxx participation with non disabled children in those services and activities, to the maximum extent appropriate to the needs of Xxxxxx.

Section 504 of the Rehabilitation Act of 1973 concerns elimination of discrimination on the basis of handicap in any program or activity receiving federal financial assistance. Under Section 504, the handicapped child should receive an education that is comparable to the education afforded to children who are not handicapped. Section 504 offers protections to children who meet the criteria for "handicapped" children who have a physical or a mental impairment that substantially limits one or more major life activities.

Section 794 of the Rehabilitation Act of 1973, provides that no otherwise qualified individual with a disability . . . . shall, solely by reason of xxr or xx disability, be excluded from the participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving Federal financial assistance....

XXXXXXXXX Schools adopted a policy of nondiscrimination on the basis of handicap. Their policy additionally provides that an appropriate education is the provision of the regular or special education designed to meet the individual needs of persons with disabilities as adequately as the need of non disabled. Policy further provides that nothing in their policy shall deny the right of any individual to pursue other avenues of recourse... (see exhibit 45) Both parents and School requested the issues be presented and determined at hearing. XXXXXX a person to whom the state is required to provide a free appropriate public education under the IDEA.

Xxx XXXXX has raised issues of discrimination in the provision of an free appropriate public education and with the placement of XXXXXX.

Without repeating the matters above set forth the discussions and findings made above are incorporated xxrein by this reference.

The evidence indicates that XXXXXX was identified and provided services by XXXXXXXXXXXX Public Schools. XXXXXX's parents raised issues about xx short school day and xx being unfairly excluded from activities including activities involving napping, feeding, transportation, and field trips.

The evidence does not support a finding of discrimination by the XXXXXXXXXXXX Public Schools. XXXXXX was afforded access and reasonable accommodations with transportation in the school car (or reimbursement); a one-on-one aide; therapies; and various classroom and other accommodations.

XXXXXX's parents were actively involved in the process of providing accommodations and in providing input as to the provision of services. Parental instructions, absences, and parental decisions did affect the child's going on field trips; feeding routines, school day length; and education.

The parents and school established a school day length and a method to increase the day as XXXXXX's needs/circumstances indicated increased length was appropriate. The length of the school day was designed to accommodate the needs of XXXXXX. Parental non-response to IEP meeting requests by the School were responsible for the school day not being lengthened.

Xxx Xxxxx refused to place Xxxxxx in Xx [REDACTED]'s class in xxxxxx-xxxx school year. Xx did not have objection to Xx [REDACTED] but did have concern Xx Xxxxxx was in an adjacent classroom and xx indicated that it is not acceptable for Xxxxxx to be in contact with Xx Xxxxxx. (Ex 38; Tr. pg. 192). The request for due process hearing (S Ex. 43) states that, "Xxx Xxxxx do not want Xxxxxx to have any contact with Xxxxxx and there is no way that this school can prevent this from happening as classes are right next to each other. They use the same bathrooms, changing tables, and have activities together including breakfast and lunch. This is not what Xx or Xxx Xxxxx wants for Xxxxxx." Additionally it was stated, "They would consider allowing Xxxxxx to attend this school if they could guarantee that Xxxxxx would have No contact with xxx in anyway, shape, or form. This would mean no bus, no breakfast or lunch, field trips, library, or other class activities. . . ."

Xxxxxx has been kept out of school by xx parents since the end of the xxxxxx-xxxx school year and Xxx Xxxxx has been home schooling xx since. (Tr. pg. 198, 199)

Xx [REDACTED], Director of Special Education for [REDACTED] County Public Schools observed Xxxxxxxx Public Schools classroom placement for school year xxxxxx-xxxx with Xx [REDACTED]. Xx found placement was appropriate for Xxxxxx and the IEP was also appropriate (Tr. pg. 88). Xx xxxx Xxxxxx observed the two classes (that Xxxxxx was in and would be placed in) on many occasions and did not have any reason to believe they would not be a safe and secure environment for Xxxxxx.

There is no evidence of discrimination by Xxxxxxxx Public Schools in either school year xxxxxx-xxxx or xxxxxx-xxxx. The evidence in this cause indicates Xxxxxx Xxxxx, solely by reason of xx disability, has not been excluded from participation in, nor been denied the benefit of any program or activity, nor been subject to discrimination. Xxxxxx xxxxxx rights under section 504 have not been violated.

The Complaint and Letter of Finding of the Department of Education are admitted into evidence in this cause (see S Ex. 26 and S Ex. 33) and are referred to in this decision. The Complaint Procedure and the Letter of Finding do not prevent the present issues to be raised and determined at due process hearing upon the evidence presented therein.

Xx and Xxx xxxxxx have the right to pursue Complaint and then pursue Due Process upon the issues presented. Furthermore, the Letter of Finding is not controlling upon the hearing officer and not a bar to the hearing officer's determination of the issues upon all the evidence presented at due process hearing.

**SUMMARY:**

In Summary, upon review of the evidence including testimony of witnesses and the exhibits admitted applicable law and statutes and arguments presented and for the reasons above set the following conclusions of law are made:

1. XXXXXXXXX Public Schools provided and/or made available to XXXXXX XXXXX a Free Appropriate Public Education in school years xxxxxx-xxxxx and xxxxxx-xxxxx.
2. XXXXXX XXXXX was provided an education and educational services in the Least Restrictive Environment ("LRE") by XXXXXXXXX Public Schools in school years xxxxxx-xxxxx, and in school year xxxxxx-xxxxx the IEP of XXXXXXXXXXXXX, provided for an education and educational services in the LRE.
3. During school year xxxxxx-xxxxx reimbursement for the approximately 3 weeks during which the parents transported XXXXXX was then offered but not accepted or acted upon by parents and for the remaining school year period transportation was provided at no cost to parents for XXXXXX XXXXX. Transportation services were offered at no cost in school year xxxxxx-xxxxx by XXXXXXXXX Public Schools and said transportation services were available.

4. XXXXXX XXXXX 's rights under Section 504 were not violated by XXXXXXXXXXX Public Schools in school year XXXXXX-XXXXX or in school year XXXXXX-XXXXXX. XXXXXX XXXXX, solely by reason of xx disability, has not been excluded from participation in, nor been denied the benefit of any program or activity, nor been subject to discrimination.

- 5. a.) The requirements of notice to the parents have been met and are satisfied.
- b.) XXXXXX XXXXX has a disability
- c.) XXXXXX XXXXX is in need of special education and related services.
- d.) The LEA is supplying a free appropriate public education.

And it is hereby ordered that this due process hearing be, and the same is xxreby, concluded and ended.

**Appeal Information**

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

Date: XXXXXXXXXXXXXXXX

\_\_\_\_\_  
XXXXXXXXXXXXXX, Hearing Officer

Copies of this Decision mailed XXXXXXXXto:

Virginia Department of Education  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX