

2/26



CASE CLOSURE SUMMARY REPORT

Public Schools  
School Division

Parents

Name of Child

2002  
Date of Decision  
or Dismissal

Counsel Representing LEA

Unrepresented  
Counsel Representing  
Parent/Child

Parents  
Party Initiating Hearing

School Division  
Prevailing Party

Hearing Officer's Determination of Issues:  
Reimbursement of private placement for speech/  
language impaired student: Was FAPE provided  
by consultative service IEP?

Hearing Officer's Orders and Outcome of Hearing:  
Reimbursement denied; school division provided FAPE,  
Consultative services IEP sufficient

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 advised the LEA of its responsibility  
to submit an implementation plan to the parties, the hearing  
officer, and the LEA within 45 calendar days.

Hearing Officer

Signature

[REDACTED] PUBLIC SCHOOLS  
VIRGINIA STATE EDUCATIONAL AGENCY

[REDACTED], 2002



IN RE: [REDACTED]

D E C I S I O N

Introduction

The issue in this due process hearing is whether or not [REDACTED] (" [REDACTED]"), classified as speech impaired, required placement at [REDACTED] (" [REDACTED]"), for speech fluency services in order for [REDACTED] to benefit from an appropriate educational program in the least restrictive environment. Thus, the parents have initiated due process proceedings seeking to receive reimbursement for [REDACTED]'s program tuition, incidental expenses connected with [REDACTED] two-week hotel stay, and travel expenses to the fluency center during the placement. The parents contend that the current IEP was insufficient to meet their child's needs and that as a consequence of the flawed IEP, [REDACTED] has experienced an adverse educational impact. The parents assert that, over the years, technical violations have occurred in the IEP process which aberrations are contrary to the IDEA regulations.

[REDACTED] Public Schools (" [REDACTED]") maintains that the level of severity of [REDACTED]'s speech impairment did not warrant [REDACTED]'s placement at the fluency center. [REDACTED] asserts that the school system has continued to provide an

appropriate program in the least restrictive environment. [REDACTED] maintains that the current IEP has continued to adequately serve [REDACTED]'s academic needs and that [REDACTED] will, in fact, graduate with an advanced studies diploma. Further, the [REDACTED] invites scrutiny of the IEP process in the education of [REDACTED] and states that violations, if any, have occurred, have been minor and have not resulted in any adverse impact on [REDACTED]'s education. Finally, [REDACTED] states that the ten (10) day written notice prior to the removal of a child from the public school system for a unilateral placement, has not been given by the parents. On that ground, [REDACTED] asserts that reimbursement should be denied to the parents.

#### Background

[REDACTED] is now an [REDACTED]-year old adult who has graduated, with an advanced studies diploma from the [REDACTED] system. In the fall of 2002, [REDACTED] will attend college where [REDACTED] will study civil engineering, and, hopefully, earn a college degree. During [REDACTED] earlier education in [REDACTED], [REDACTED] qualified in [REDACTED] grade for special education services as a speech and language impaired student. Though [REDACTED] had not yet qualified for special education, [REDACTED]'s stuttering problem had been apparent to [REDACTED] teachers as early as first grade level in [REDACTED]. School records reflect that [REDACTED] [REDACTED] grade teacher requested speech/language evaluation to review the stuttering problem. School records also reveal that every teacher who has taught [REDACTED] has described [REDACTED] as a model student: conscientious, cooperative,

motivated, a hard worker, and a high achiever. [REDACTED] is an [REDACTED]. [REDACTED] current report card reflects all A's and B's though most of [REDACTED]'s courseload this past year has been comprised of advanced placement courses. School Administrator, [REDACTED] (" [REDACTED]"), recommended [REDACTED] for an award that was to be given to a student, who, in school exemplified good character traits. Notwithstanding the above described school record and achievement of personal goals, [REDACTED] has worked steadily for the family business, [REDACTED] parents' construction company. One day, [REDACTED] hopes to return to the [REDACTED] [REDACTED] where [REDACTED] will help operate the family business.

For most of [REDACTED]'s academic career, [REDACTED] received speech therapy in a self-contained resource room, on a weekly "as needed" basis. For the remainder of [REDACTED] daily time in school, [REDACTED] was taught in a regular education classroom. This latter mode for delivery of [REDACTED]'s speech therapy service was selected by the [REDACTED] because the IEP committee deemed this setting, to present the greatest opportunity for [REDACTED] to interact with non-disabled peers. Further, the regular education classroom was the most appropriate program in light of the severity of [REDACTED]'s stuttering and the interest of the IEP team in providing [REDACTED] with an education in the least restrictive environment.

It appears that [REDACTED]'s special education setting did suit [REDACTED] until the morning of [REDACTED], 2002: On that date, [REDACTED] was supposed to deliver a speech about the Spanish Inquisition to [REDACTED] Spanish class and [REDACTED] was unable

to do it. (TP 48, L.17) That morning, [REDACTED] reported to [REDACTED] Spanish teacher, [REDACTED] (" [REDACTED] "):

" [REDACTED] told me that [REDACTED] wasn't able to speak, to perform, to do [REDACTED] oral presentation.... That [REDACTED] was having a real bad day, and that [REDACTED] couldn't do it." (TP32, L8-15)

[REDACTED] was mystified. [REDACTED] had done "fine" (TP 41, L16-17) on prior presentations and [REDACTED] knew that [REDACTED] had prepared for this presentation. Yet [REDACTED] seemed to be having "emotional problems ...because [REDACTED] was so stressed and unable to do [REDACTED] presentation. (TP 41, L13-14) Testimony of [REDACTED] is notable in that [REDACTED] recalls that [REDACTED] stuttered only "a little bit." (TP 42, L10) [REDACTED] recollects [REDACTED]'s difficulties that morning as follows:

Q. "Did [REDACTED] explain to you or anyone else what was causing [REDACTED] to be upset that day?

A. "No. No, [REDACTED] didn't explain to me. It just---I just sensed that because of the way [REDACTED] was acting and the way [REDACTED] looked. I thought [REDACTED] had some emotional stress." (TP 41, L15-20)

[REDACTED] continued to testify: (TP 41, L25 -TP 42, L1-20)

Q. "... [REDACTED] had not looked upset on other occasions when [REDACTED] had made oral presentations, had [REDACTED]?"

A. " No."

Q. "[REDACTED] never had any difficulty with them?"

A. "No."

Q. "Did [REDACTED] stutter in your class?"

A. "No. I hadn't noticed that problem at all."

Q. "Even on this day that [REDACTED] was upset in [REDACTED] 2002, was [REDACTED] stuttering when [REDACTED] was talking to you?"

A. "[REDACTED] was a little bit. [REDACTED] was stuttering when [REDACTED] was telling me that [REDACTED] couldn't do [REDACTED] presentation."

Q. "Did you have any trouble understanding [REDACTED]?"

A. "No."

Q. "So you had never even noticed stuttering to be a problem?"

A. "No."

Q. "During the entire two years other than this one occasion?"

A. "No, I never knew [REDACTED] had that problem."

After [REDACTED] became aware of [REDACTED]'s inability to give the presentation, [REDACTED] allowed other team members to make the presentation. A week later, [REDACTED] was enrolled at the [REDACTED] Center. (TP 50, L14-23)

[REDACTED]'s IEP for the school year of 2001-2002 specified that speech related services would be provided to [REDACTED] by "consult" one (1) time per month based on student need. "Consult" was described by the notes printed onto the face of the IEP to mean "consultation within the general education classroom." Handwritten notes following the "Placement Decision" rationale state as follows: "[REDACTED] will fully participate in the regular curriculum & receive consultative services when [REDACTED] feels [REDACTED] is having a concern w/ speech fluency." (SBE No. 35)

This hearing occurred on [REDACTED] 2002, and was held at the [REDACTED] Public Schools in the Administration Building. The parents, [REDACTED], were present through the entire hearing. [REDACTED], who had recently attained the age of majority, designated [REDACTED] to act in [REDACTED] behalf at the hearing of this matter. [REDACTED] was not represented by counsel though [REDACTED] and [REDACTED] parents were properly advised of their right to counsel. The school system was represented by [REDACTED], and the [REDACTED] Public Schools, by their representative, [REDACTED], Director of Special Programs. It should be noted that this hearing occurred prior to [REDACTED]'s graduation from [REDACTED]. [REDACTED] elected to attend the hearing. At the hearing, [REDACTED] did testify: [REDACTED] speech was fluent and [REDACTED] did not stutter.

#### Position of the Parties

##### The Parents

The parents assert that they were led to believe by [REDACTED] that [REDACTED] would "grow out of this problem." (TP 270, L20) By [REDACTED]'s [REDACTED] year, the parents remarked, [REDACTED] was "completely unable to give a presentation in class." (TP 270, L21-22) The parents attribute [REDACTED]'s inability to give an oral presentation to [REDACTED]'s long-term stuttering and to their perceived inadequacies inherent in the school's fluency program. Also, parents point to the school's failure to keep them informed through monthly notes on [REDACTED]'s progress. Regular IEP goals have not been met. Services provided by the school

have not been sufficient and "were not doing the job."  
(TP 271, L8) Further, the parents assert that [REDACTED]'s school record is incomplete. Regarding the ten (10) day written notice, the Parents state that they were never notified of such notice and the necessity that it be given in time for an additional IEP meeting to review the placement for financial reimbursement. (TP 273, L21-25 and TP 274, L 1-4, 18-21) The parents expressed concern that, at the IEP convened to consider reimbursement for the [REDACTED] program, not all required school personnel attended for the duration of the meeting.

The parents assert that [REDACTED]'s stuttering has caused great stress and that this factor has interfered with [REDACTED] ability to complete [REDACTED] studies, [REDACTED] level of school participation, and [REDACTED] rate of achievement in school. In retrospect, the parents maintain that [REDACTED] may not have excelled as much as [REDACTED] possibly could have if [REDACTED] had been able to stop stuttering.

Regarding the required Spanish class presentation and [REDACTED]'s stuttering, the Parents state that [REDACTED] had come to them "in tears over the fact that [REDACTED] was completely unable to give an oral presentation in class." (TP 270, L22-23) [REDACTED]'s [REDACTED] suggested that [REDACTED] speak to [REDACTED] about [REDACTED] stuttering problem and [REDACTED] fear of making fluency errors during presentations.

The Parents' position is that the [REDACTED] System offered by [REDACTED] Institute is superior



to the services that have been offered to [REDACTED] by [REDACTED]. Parents assert that [REDACTED] enthusiastically assisted them in their search for information to help their [REDACTED]. They allege that [REDACTED] had prior approval from the school to attend the program and that the spirit of IDEA suggests that students receive "special education services as needed" (TP 271, L20-21), and that they were therefore justified, as responsible parents, in removing their [REDACTED] from school and enrolling [REDACTED] in the [REDACTED] Institute in order to correct [REDACTED]'s stuttering. (TP 271, L7-16)

#### The School System

[REDACTED] asserts that the parents bear the burden of proof to show that [REDACTED] has not derived educational benefit from the regular education curriculum and related services offered to [REDACTED] by [REDACTED]. [REDACTED] has made much academic progress through the courseload and goals set before [REDACTED] by [REDACTED] own determination and through the related services offered to [REDACTED] as part of [REDACTED] IEP process. [REDACTED] is a leader, popular, a student who successfully achieved grade-to-grade progression, and, finally, a student who earned an advanced studies diploma. The placement specified for [REDACTED], consultative services on an "as needed" basis was a proper provision of services. Even if [REDACTED] did not come to regular speech therapy sessions, [REDACTED] knew that speech therapy sessions with [REDACTED] were available. It is the [REDACTED] position that it was sufficient for [REDACTED] to consult with [REDACTED]'s teachers one time per month.

Based upon [REDACTED] past performance and evaluations from [REDACTED] educational record, input from [REDACTED] teachers, observations and consultative interactions recorded by the speech pathologist with [REDACTED] teachers, information presented by the parents and [REDACTED] about the [REDACTED] Program, and the child's home environment, the IEP team selected the consultation model as the least restrictive environment in which [REDACTED] may receive related special education services. (SBE No. 44) "The [IEP] committee rejected resource services, self-contained services and the [REDACTED] services because [REDACTED] IEP goals could be met through the consultation model." (SBE No. 44) "The services provided in the current IEP were appropriate and sufficient to permit [REDACTED] to be scheduled for graduation in [REDACTED] 2002 with a standard diploma." (SBE No. 44) Financial reimbursement for [REDACTED]'s private placement at [REDACTED] was not warranted by the severity of [REDACTED] speech impairment because the services being provided to [REDACTED] in the current IEP were appropriate and sufficient to meet [REDACTED] needs. [REDACTED]'s impairment did not call for unilateral placement in order for [REDACTED] to receive a free and appropriate education in the least restrictive environment.

#### Findings of Fact

1. [REDACTED] was first evaluated at the age of [REDACTED] years and [REDACTED] months . On the Goldman Fristoe Test of Articulation, [REDACTED] made no errors in the production

of single words or words in sentences. [REDACTED] was not diagnosed to have a fluency problem, however, because of parental concern and evidence of minimal "stuttering type dysfluencies" the speech pathologist recommended that [REDACTED] fluency be closely monitored. (SBE No. 2 & 3)

2. Skills evaluation chart for the [REDACTED] grade year reveal that [REDACTED] scored in the average to above-average range. (SBE No. 4)

3. [REDACTED] was given the Goldman-Fristoe Test of Articulation on [REDACTED] 1992. [REDACTED] correctly produced all sounds in words, sentences and conversation. Though [REDACTED] described [REDACTED] as "borderline", the speech pathologist recommended that [REDACTED] could benefit from speech therapy in order to maintain fluent speech (SBE No. 5)

4. [REDACTED] qualified for special education services on [REDACTED] [REDACTED] 1992 as speech and language impaired. The eligibility committee recommended a resource program as a related service. Parents were present at the meeting and they endorsed the form as evidence of their agreement with the determination. (SBE No.7)

5. By IEP endorsed by the committee and by a parent on [REDACTED] 1993, [REDACTED] began to receive special education services in the [REDACTED]. [REDACTED] was to receive speech therapy twice weekly in a resource room, the remainder of the day to be spent in the regular classroom setting. (SBE No. 8)

6. Standardized testing completed in [REDACTED] 1997, at the [REDACTED] grade level reflects scores in the average to above

average range of abilities, [REDACTED] having scored 92nd percentile in math- problem solving; 95th percentile in language-composing, and 95th percentile in science. (SBE No. 22)

7. Speech and Language Assessment completed by [REDACTED], [REDACTED] grade teacher on [REDACTED] 1996 noted that: [REDACTED] speech problem did not seem to have a major problem in [REDACTED] academic progress. However, I believe [REDACTED] does refrain from participating in class." (SBE No. 19)

8. [REDACTED] had passed all sections of the [REDACTED] by [REDACTED] grade. (SBE No. 21)

9. [REDACTED] Triennial Assessment dated [REDACTED] contained the following notes: "no articulation errors, spontaneous speech pattern-hesitation, better at school than at home." The section relating to educational performance joined with the section for teacher comment as follows: "Teacher's comments were mixed, [REDACTED] has worked with [REDACTED] two years and [REDACTED] feels [REDACTED] problem is worse" (SBE No.20)

10. IEP for [REDACTED] on [REDACTED] reveals that [REDACTED] received speech therapy during one (1) twenty minute session weekly in a resource room. A parent attended the meeting and gave consent to the placement. (SBE No. 21)

11. IEP for [REDACTED] on [REDACTED], described [REDACTED] as having "average academic skills," "articulation and language skills in the normal range." [REDACTED] utilizes "mild dysfluencies in stressful situations and [REDACTED] occasionally avoids speaking in situations in which [REDACTED] feels stressed. [REDACTED] uses slow easy speech and [is] quite aware of [REDACTED] dysfluencies.

According to classroom teachers, ██████████'s fluency has not affected ██████████ performance academically." A handwritten note on the IEP states: ██████████ has made progress but often avoids speaking in class." The IEP was signed by a parent giving consent for implementation of the IEP.

(SBE No. 23)

12. ██████████ passed 4 of 5 tests in the Virginia SOL at ██████████ grade level. (SBE No. 24)

13. IEP documentation on ██████████ reveals that ██████████ received speech therapy (1) time per week 20 minutes "as needed." Parent executed permission for this placement (SBE No. 25)

14. IEP documentation on ██████████ reflects ██████████ has "made a great deal of progress academically this year ... ██████████ fluency has improved. ██████████ has become more self-confident and ██████████ is less contentious about ██████████ dysfluencies. Stuttering was described as "mild" in "stressful situations" mostly "when ██████████ becomes tired (according to parent report). fluency does not appear to affect ██████████ performance academically." A parent executed consent to this IEP on ██████████. Speech therapy was to occur weekly one time for 20 minutes "as needed." (SBE No. 27)

15. IEP documentation on ██████████ states: "██████████ does not appear to be affected negatively due to ██████████ inconsistent dysfluencies. ██████████ chose not to attend speech therapy except on an "as needed" basis. ██████████ prefers not to be "singled out" for speech therapy. (SBE No. 31) A parent endorsed this IEP.

16. Annual Goals - Progress Report for the period of [REDACTED] 2000-[REDACTED] 2001 for [REDACTED] reports that [REDACTED] is not concerned about dysfluencies and has attended one session in six weeks. Measurable annual goal sets forth 90% accuracy in fluent speech. (SBE No. 32)

17. Skills evaluation tests for [REDACTED] s [REDACTED] grade year reflect passing grades for advanced placement level in U. S. History, English and Chemistry. (SBE No. 33)

18. IEP for [REDACTED] grade level completed on [REDACTED] indicates that [REDACTED] is expected to graduate in 2002 with an Advanced Studies Diploma. [REDACTED]'s related service was described as follows: "Consult 1x per month based on student need. Under "PLACEMENT DECISION" the committee stated "[REDACTED] will fully participate in the regular curriculum & receive consultative services when [REDACTED] feels [REDACTED] is having a concern with speech fluency." The Measurable Annual Goal was: "... production of fluent speech in all settings to 95% accuracy using data collection and annual post testing. (Currently fluent in most settings 90% of the time.) Parent executed consent to the IEP on [REDACTED]. (SBE No. 35)

19. Communications to Speech Pathologist, [REDACTED], from [REDACTED]'s senior teachers, [REDACTED] on [REDACTED], (SBE No. 37) and [REDACTED] on [REDACTED] (SBE No. 37) indicate that there are no problems with [REDACTED]'s stuttering in their classes.

20. Special Education Consultation Services Log dated [REDACTED] indicates that [REDACTED] has continued to do

well academically. (SBE No. 39)

21. Communications from teachers, [REDACTED], [REDACTED], and [REDACTED], on [REDACTED], to [REDACTED] indicate no academic problems with [REDACTED]. (SBE No. 39)

22. Letter from [REDACTED] to [REDACTED] dated [REDACTED] in which [REDACTED] relates interaction with [REDACTED] on [REDACTED] : [REDACTED] described "fights [REDACTED] had with [REDACTED] parents; one was about [REDACTED] responsibilities with regard to their family business, and the other had to do with how much [REDACTED] is eating ([REDACTED] having trouble with [REDACTED] weight and blood pressure.) [REDACTED] expressed agitation and upset about being personally stressed and went on to say that [REDACTED] was having trouble with [REDACTED] stuttering in a couple of classes. [REDACTED] had suggested [REDACTED] talk to me." (SBE No. 41)

23. Report card for the senior year reflects all A's, B's and one C. Three of the courses undertaken by [REDACTED] are on Advanced Placement level. (SBE No. 42)

23. [REDACTED] Institute and supplementary fluency system information indicates extensive research and proposed course to extinguish fluency problems. (Parents Exhibits) Program requires residency and intense courseload. Total immersion program directed toward eradication of stuttering.

24. IEP Addendum dated [REDACTED] indicated that there were no changes to the current IEP although the committee did meet to consider change of placement. (SBE No. 43)

25. [REDACTED] correspondence to the parents on [REDACTED] properly enumerated the reasons for refusal to fund [REDACTED]'s placement by the parents at [REDACTED]. (SBE No. 44)

26. Resume of [REDACTED] indicates that [REDACTED] is a qualified and experienced Speech Pathologist. (SBE No. 47)

#### Conclusions

1. With the exception of monthly progress reports, the entire special education file for [REDACTED] is complete, all parties having been properly notified of IEP actions. Regarding the omission of monthly reports and the absence of some of teachers from the entire IEP proceeding, these facts have not resulted in material violations and have not interfered with [REDACTED]'s education. The [REDACTED] has fully complied with IDEA procedural requirements. Special education law does not automatically warrant an award of monetary reimbursement for procedural non-compliance.

2. The [REDACTED] Public Schools did not direct the placement of [REDACTED]. [REDACTED] provided assistance to the parents in order that the parents locate a fluency program for their child.

3. The parents did not provide the ten (10) business day notice prior to the removal of [REDACTED] from [REDACTED], however, reimbursement may not be denied to the parent on this ground. It is apparent that the school division knew that [REDACTED] would attend the [REDACTED] program because [REDACTED] parents had made arrangements with [REDACTED] for [REDACTED] to be excused from school for 15 days. Also, exception to the written notice



required by the Regulations Governing Special Education Programs For Children With Disabilities in Virginia, 8 VAC 20-80-66, may be made when the record does not reflect that the parents had received notice of the notice requirement in the section related to reimbursement for private placement.

- no 4

5. The parents bear the burden of proving by a preponderance of the evidence that [REDACTED] did not derive educational benefit from last IEP at [REDACTED]. Parents have not met this burden.

6. The requirements of notice to the parents and to [REDACTED] [REDACTED] have been satisfied.

7. [REDACTED] was disabled: Speech/Language Impaired.

8. [REDACTED] did require special education and services.

9. The [REDACTED] Public Schools did provide an appropriate program and related service: speech therapy consultation to [REDACTED] in the least restrictive environment during the 2001-2002 school year.

10. [REDACTED] is not entitled to reimbursement for the financial costs of the [REDACTED] program.

#### Analysis

The evidence presented by the parents in support of their private educational placement is legally irrelevant to the issue for determination by this hearing officer: Was the school system's program appropriate or not?

When the school system has provided an appropriate educational program, the parents are not entitled to

reimbursement merely because they are advocates of some alternative educational theory. Simply because the parents contend that a particular program is preferable to another does not mean that the other program is "more" appropriate. The parents bear the burden of proving that the program established by the school system is inappropriate, *Tatro v. Texas*, 703 F.2d 823, 830 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984)

Was [REDACTED] afforded a free and appropriate education in accordance with IDEA? In *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1984), the United States Supreme Court responded: "... a State is required to provide a handicapped child with a 'free and appropriate education,' we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." (73 L. Ed. 2nd at 710)

Although it may be quite difficult for a parent to understand and it may seem contrary to the notion of responsible parenting, the *Rowley* case sets the standard for determination: A "free and appropriate education" does not mean "a potential maximizing education" but only one that is reasonably calculated "to confer some educational benefit upon the handicapped child."

An "appropriate education" is not necessarily "an ideal education." "Even the best public schools lack the resources to enable every child to reach his full potential." *Rowley v. Board of Education*, 483 F. Supp. 528, 534 (S.D.N.Y. 1980)

RESPECTFULLY SUBMITTED,

[REDACTED]

Hearing Officer

[REDACTED]

Date of Decision: [REDACTED] 2002

[REDACTED]  
[REDACTED]  
[REDACTED] 2002



[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

RE: Due Process Hearing of [REDACTED]

Dear [REDACTED]:

Please be advised of your right to appeal the decision of a hearing officer:

A decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless the decision is appealed by you in a state circuit court within one (1) year of the issuance of the decision or in a federal district court. The appeal may be filed in either a state circuit court or in a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under Section 1415 of the Individuals With Disabilities Education Act (20 USC Section 1400 et seq.) without regard to the amount in controversy.

With kind regards,

Very truly yours,

[REDACTED]

[REDACTED]