02-099

CASE CLOSURE SUMMARY REPORT

[redacted] Public Schools
School Division

Mrs [redacted]
Name of Parent

[redacted]
Name of Child

September 14, [redacted]
Date of Decision

Dr. [redacted]
Representing LEA

[redacted]
Representing Parent/Child, Advocate

Parent
Party Initiating Hearing

LEA on Merits and Parent on IEE Reimbursement Issue
Prevailing Party

Hearing Officer's Determination of Issue(s):

(1) Whether the five failures cited by Parent precluded FAPE;

(2) Whether a privately funded IEE evaluation should be paid for at public expense;

(3) Whether LEA's proposed 7/25/[redacted] IEP should govern the 2002-2003 school year and, if not, the changes to be made.

Hearing Officer's Orders and Outcome of Hearing:

All relief sought by Parent is denied, except for a grant of $1000 reimbursement to Parent for incurred private IEE expense, which shall be paid by [redacted]PS as soon as decision is final or Parent documents that no appeal will be taken. Child's placement for the 2002-2003 school year shall be at a [redacted] public high school, with any needed transportation, security or protection for Child arranged by [redacted]PS. LEA proposed 7/25/[redacted] IEP is appropriate and shall govern Child's education in the 2002-2003 school year.

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.

[redacted]
Hearing Officer

[redacted]

VIRGINIA DEPARTMENT OF EDUCATION
DIVISION OF INSTRUCTIONAL SUPPORT SERVICES
OFFICE OF DUE PROCESS AND COMPLAINTS

MS. [redacted],
Petitioner

VS

[redacted] PUBLIC SCHOOLS,
Respondent

[redacted]

Due Process Hearing

FINAL POST HEARING DECISION AND ORDER
BY [redacted], HEARING OFFICER,
ISSUED ON SEPTEMBER 14, [redacted]

A. Preliminary Statement

Hearings were held on June 17, July 29, 30, 31 and August 1, [redacted], pursuant to the Individuals With Disabilities Act (IDEA), as amended, 20 USC §§ 1400 *et seq.*, and Virginia Code §§ 22.1-213 to 22.1-221, involving [redacted]'s ("Parent" or "Petitioner") basic contention that the Virginia Department of Education ("VDOE") failed to provide [redacted] ("Child") a free and appropriate public education ("FAPE"), citing five specific failures.

The undersigned was appointed hearing officer on May 21, [redacted]. The school division here involved is [redacted] Public Schools ("[redacted]PS" or "Respondent"). Petitioner is represented by a non-attorney advocate, and [redacted]PS was also represented by a non-attorney.

By way of background, by letter dated May 14, [redacted], Petitioner requested a due process hearing to consider issues related to VDOE's failure to provide Child FAPE, citing eight specific allegations and requested relief. Subsequently, by

letter dated June 2, [redacted], Petitioner filed an Amended Complaint for Due Process listing five allegations (see Appendix 1 hereto). The Hearing Officer's memorandum of May 22, [redacted], enumerated the matters to be discussed in a telephonic prehearing conference call which transpired on May 28, [redacted]. Subsequently, a prehearing order was issued on May 29, [redacted] (HO Ex 13)*.

Hearing comenced on June 17, [redacted]. However, Petitioner requested continuances until July 29, [redacted], because of health and other specified reasons.

Exhibits of the parties were timely exchanged prior to hearing. Petitioner submitted 73 exhibits, all accepted into evidence except exhibits 61, 63, 67 (R 21-29), and 70 (in violation of five day rule, R 305). Respondent submitted 43 exhibits, all accepted into evidence. The Hearing Officer submitted 34 exhibits dealing largely with prehearing orders and other matters leading to the hearings herein. A total of 14 witnesses testified. The hearing transcript consists of 1344 pages. Both parties submitted opening briefs and [redacted]PS submitted a reply brief.

After due consideration of the evidence, the pleadings, and the law, I find for Respondent on all issues except the IEE issue.

B. Issues

The issues here involved are: (1) whether the five specific failures cited by Petitioner precluded Child from receiving a free

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* "R" refers to transcript page number. "Ex" refers to exhibit number and when preceded by "P" refers to Petitioner's Exhibit; when preceded by "R" refers to Respondent's Exhibit; and when preceded by "HO" refers to Hearing Officer Exhibit

and appropriate public education ("FAPE"); (2) whether the neuropsychological evaluation performed by Parent's expert, Dr. [redacted], qualifies as an independent educational evaluation ("IEE") which Parent should be paid for at public expense; and (3) whether [redacted]PS's proposed July 25, [redacted], IEP (individualized education program) (R Ex 43) is reasonably designed to provide Child educational benefit, should govern for the 2002-2003 school year, and, if not, what changes should be made*.

C. Findings of Fact

1. Child was born July 19, [redacted]. In April [redacted], [redacted] was found qualified as a student with disability under Section 504 of the Rehabilitation Act of 1973, based upon a medical diagnosis of attention deficit hyperactivity disorder (R Ex 25; R 223). At the end of the seventh grade at [redacted] Middle School, [redacted] was found eligible for special education services on June 13, [redacted], as a student with a learning disability ("LD") and other health impairment (P Ex 23). An IEP was written and agreed to by Petitioner in June, [redacted], for the 2000-2001 school year (R Ex 24).

2. On May 31, [redacted], Petitioner agreed to an IEP for the 2001-2002 school year (P Ex 37, 40). This IEP determined that 20.8 hours of special education in both the general and special education settings was the appropriate level of service for 2001-2002 (R Ex 2, p. 2).

3. At the end of the first quarter grading period in the fall of 2001, Child was not making progress in reaching [redacted] IEP

* The parties requested that the Hearing Officer resolve this IEP issue (R 518-19).

goals. Child was moody, tardy to class and failed to complete homework and school assignments during this time period (e.g., R Ex 1, p. 2).

4. An IEP meeting was held on February 8, [redacted] and Petitioner was accompanied by [redacted] advocate and Dr. [redacted], an audiologist/speech pathologist (R 299, 460). There were more than eight participants at this meeting (R 301-03). Total meeting time was about four hours (R 946-47).

5. During the IEP meeting of February 8, [redacted], Petitioner requested a neuropsychological evaluation as an IEE at public expense. Respondent did not believe that a neuropsychological evaluation was warranted (R 198-200, 641-42). The IEP team offered to do additional psychological testing but Petitioner refused to permit such (R 246-47). Parent had private neuropsychological testing done on April 4, [redacted], and a copy of the results was provided to [redacted]PS (R 201; P Ex 64). Respondent was willing to provide up to $1000 to offset the neuropsychological cost Petitioner incurred, which Petitioner refused to accept stating that her cost ($1500, P Ex 73) was greater than the amount offered (R 178, 255; P Ex 73).

6. Petitioner filed a complaint with the Office of Due Process and Complaints, VDOE, which was received by VDOE on February 28, [redacted]. Petitioner alleged that Respondent illegally (a) failed to provide FAPE, (b) failed to provide the neuropsychological IEE requested, (c) failed to provide proper notice of the February 8, [redacted] IEP meeting, and (d) failed to have present at the IEP meeting of February 8, [redacted], all necessary

personnel (R Ex 1). Respondent was notified of this Complaint on March 14, [redacted] and replied on March 27, [redacted] (R Ex 2). VDOE's Letter of Findings resolved all issues in favor of Respondent, except issue (c), *supra*, because the Respondent's school "staff forgot to mail the notice to the parent prior to the [IEP] meeting" of February 8, [redacted], informing Petitioner of the names of all participants at this IEP meeting. However, appropriate written notice of the latter was hand delivered to Petitioner at the IEP meeting. Petitioner was not materially, adversely affected by this [redacted]PS oversight. No appeal of VDOE's rulings was taken by either party (R 127, 146, 937-38).

7. An IEP team met again on May 3, [redacted] (R Ex 21), which lasted about three hours (R 773). Petitioner contended that the IEP team did not have all the necessary participants needed to discuss Child's needs. An additional qualified person (Ms. [redacted], R 956) was brought into this meeting by [redacted]PS. Others present met the qualifications Petitioner demanded (R 117-18, 134, 767-71). Petitioner's prior counsel ([redacted]) agreed that the law does not require that the requested reading specialist or speech and language clinician is required to be present at an IEP meeting. (R 124-25). Child attempted to participate in this meeting but Parent precluded such (R 771-72). No final IEP was agreed upon.

8. [redacted]PS requested that an IEP team meet during the week of June 10, [redacted] to develop an IEP for the 2002-2003 school year (HO Ex 7). Petitioner did not object to this request. On June 10, [redacted], it was ordered, without Petitioner objection, that an IEP meeting be held sometime during the week of June 10, [redacted], and, if

Petitioner could not attend such an IEP meeting, that a draft IEP be prepared and forwarded to Petitioner (HO Ex 21). On June 12, [redacted], Petitioner belatedly objected and stated that Parent wished to attend such an IEP meeting. By order of June 14, [redacted] facsimiled to Parent's advocate on June 14, [redacted], it was directed that the IEP procedure earlier ordered, need not be followed because of short notice and Petitioner's desire to attend such an IEP meeting (HO Ex 26).

9. A meeting to develop a draft IEP occurred on June 14, [redacted], which Petitioner did not attend (R 774, 964-65). This meeting lasted about three hours (R 789). At this meeting the reports of Petitioner's experts, Dr. [redacted] and Dr. [redacted], were considered, along with other current evaluations and information (R 776-77, 964-68; P Ex 71).

10. An IEP team met again between 5:00-7:00 PM on Friday, July 25, [redacted], and Petitioner, her audiology expert, Dr. [redacted], and her advocate, Ms. [redacted], were present along with [redacted]PS members (R Ex 43; R 301-03). Petitioner refused to consent to this IEP because there were no goals and objectives that addressed Child's specific needs in auditory decoding, language processing, developmental dyslexia, dysgraphia, [redacted] anxiety and depression, and no related services were specified to provide [redacted] a reading specialist or addressing auditory training (R 513-14). [redacted]PS asserted that the above contended areas of need were not supported by the totality of Child's testing and condition, which was characterized in part as only a mild learning disability. [redacted]PS IEP members did not agree to all the conclusions of Petitioner's

experts (R 213, 968-69, 1210-11, 1257). [redacted]PS also contended that the related services alleged may be addressed within the classroom environment and occupational therapy was not needed (R 514-16). IEP changes made at an informal meeting of June 17, [redacted] (R 966) as a result of suggestions from Petitioner's experts, along with others added since the June 17 meeting (R 977), were carried over to and included in the July 25, [redacted] IEP, which had an adequate transition plan (R 803-04, 847, 1087).

11. The IEP of May 31, [redacted], remains in effect since Petitioner refused to consent to any subsequent IEP presented to her by [redacted]PS. Pending resolution of the issues herein, the proposed 7/25/[redacted] IEP may be implemented at [redacted] High School, Child's base school, when school begins in September 2002 (See R 790-91, and Brief of Petitioner, p. 2).

12. Petitioner contends that she concurred in the IEPs she signed because she believed she had no alternative and did not understand the procedural safeguard documentation she acknowledged receiving and signing at every IEP meeting (R 280-83). The documentation supplied to Petitioner by [redacted]PS is entitled *VA Special Education Procedural Safeguard Requirements Under IDEA* (R Ex 33) and *Procedural Safeguards and Parental Rights Pertaining To Special Education* (R Ex 34). This documentation advised Petitioner, in detail, of her legal rights to records, evaluation, eligibility procedures, IEPs, the right to a due process hearing, among others. Petitioner stated that she did not understand her rights, but acknowledged reviewing the documentation supplied and never called anyone at [redacted]PS or VDOE for any needed explanation (R

231-32). Petitioner has completed high school, has attended college, is five credits short of receiving a diploma, and works for a bank (R 296, 303-04). [redacted]PS is not required by law to provide training to Petitioner, or other parents, on Procedural Safeguard requirements.

13. Child has a verbal intelligence quotient (IQ) of 107, a performance IQ of 98, and a full scale IQ of 98. Child's IQ is within the average range (R 1096).

14. A diagnostic evaluation of Child was administered by [redacted] on May 13, [redacted] (P Ex 66), and it showed the following results: Woodcock Reading Mastery Test, 65th percentile which is high average and at eleventh grade level - Child is now entering ninth grade; eleventh grade level on the Slossom Oral Reading Test; average level on the Wide Range Achievement Test; average on the Gray Oral Reading Processing Test; average on the Comprehensive Test of Chronological Processing; below average on the Test of Written Language (R 367-370). [redacted] recommended treatment for Child from six to ten weeks, four hours per day at a cost of $300 per day (R 389). The [redacted] witness never met Child, never observed Child in the classroom, never talked to anyone in school who has worked with Child or any of [redacted] teachers, and never observed any of the testing of Child done by her organization (R 360-62). This witness was unaware whether Child has made educational progress in [redacted] existing school program and saw none of the evaluations conducted by [redacted]PS (R 374-75).

15. Dr. [redacted], an audiologist/speech-language pathologist, did two evaluations of Child on January 9, [redacted], taking about three hours (R 472), one in auditory processing and the other in language processing. No specific deficit was found in language processing, but weakness was noted in expressive language and the syntactic area. Child was found to have problems processing auditory-verbal information at decoding levels, getting information into working memory, and organizing what [redacted] hears (P Ex 52). Dr. [redacted]'s conclusion that Child had decoding difficulty which caused Child phonemic awareness (ability to recognize sound-symbol relationship, R 1278) problems and ultimately reading difficulties was not verified by [redacted]PS testing (R 1197). The test given by Dr. [redacted] is not as reliable as, and does not meet the minimum requirements of, similar approved testing in the areas examined, as does that given by [redacted]PS (R 1193-1202; P Ex 73). Also, neither Dr. [redacted] nor Dr. [redacted], *infra*, gave Child CELF, which is the clinical evaluation of language functions test that measures comprehension of verbal information, which [redacted]PS gave and considers essential. Child's score on CELF was average (R 1184-85). Child's poor academic performance was not caused by [redacted] hearing impairment or processing (R 1020) or any other deficit (R 1156). Child's decoding needs can be met in a classroom environment with appropriate supports (R 1211-12). Dr. [redacted] observed Child in Music and Civics classes on May 30, [redacted] (R 457), did not know Child's reading ability level, talked to no one at Child's school before writing his reports, and had not reviewed recent testing and evaluations completed by [redacted]PS during

the May 31-June 7, [redacted] period (R 488-84). Dr. [redacted] does not believe there is any other expert in auditory processing in the greater [redacted] area (R 467) aside from himself. Dr. [redacted]'s bills to Petitioner totaled $3100 (P Ex 73).

16. Dr. [redacted], a neuropsychologist, did an evaluation of Child on April 4, [redacted], administering numerous tests. He shared offices with Dr. [redacted] and referenced findings made by [redacted]. He found that Child has multiple learning disabilities, and submitted extensive treatment recommendations, along with recommending twenty-five school accommodations (P Ex 64). He does not believe that a school psychologist can adequately interpret his testing results, nor can school personnel, stating that only another board certified person in his specialty is so qualified, adding that there are only two or three so qualified in the local area (R 698-701). However, Dr. [redacted] believes that Child's parent can understand his 24-page report (R 701). [redacted]'s program is overrated in his professional opinion (R 541). Dr. [redacted] gave Child the Gray Oral Reading Test and found Child to have a second grade equivalency in comprehension whereas [redacted] gave the same test a little over one month later and found Child to have a twelfth grade equivalency. In the Wide-Range Achievement Test, [redacted] and Dr. [redacted] had almost identical scores in spelling and arithmetic (R 686-93, 1040-41). Dr. [redacted] stated that the [redacted]PS evaluation testing of Child was inadequate. However, [redacted]PS' Woodcock Johnson Tests have met high standards, have been in use in [redacted] for 23 years, are used in [redacted], other

VA counties, [redacted] and [redacted] Counties, [redacted], and widely used in other states. Comparing Dr. [redacted]'s scores on the Weschler Individual Achievement Test with the Woodcock Johnson scores used by [redacted]PS shows that they are very similar (R 1084-86). Dr. [redacted] saw Child on one testing occasion for six to seven hours, never saw Child in a school environment or any setting other than his office, never spoke to any person or teacher at Child's school, did not visit the school, never participated in any IEP meeting, and did not ask for any school records, relying strictly on what Petitioner provided him (R 681-82, 696-97, 701, 725). Dr. [redacted] was under the assumption that Child was found eligible for special education based upon emotional disability and was surprised to learn that this was not the case (R 684). Dr. [redacted] recommended that Child receive 50 percent or more in self-contained classes, and was unaware that Child had been receiving more than fifty percent, Child being in all self-contained classes except for one (R 707). His testing found Child to be depressed and that [redacted] grandmother's death on September 29, 2001 (R 998) was a big shock to [redacted] (R 694). Dr. [redacted] charges $300 per hour when testifying, with a four hour minimum (R 727).

17. [redacted], a social worker, has counseled both Petitioner and Child, seeing the latter about twenty-five times since April 25, 2000 (R 71, 83). Child is depressed (R 74) and [redacted] spent much time with [redacted] grandmother, whose death saddened [redacted] (R 96-96). Child associates with youngsters involved in substance abuse and defiant behavior, [redacted] has sworn at [redacted] mother, has an intense rivalry with [redacted] younger sister, and Child and Parent have

a rocky relationship which can become volatile and sometimes mutually abusive (R 96-97). His treatment of Child has been ineffective (R 94) and he never contacted [redacted]PS to find out what was being provided Child (R 88).

18. Dr. [redacted], a Virginia certified school psychologist, testified telephonically from Copenhagen, Denmark (R 676). A [redacted]PS psychological report done in 2000 found that Child was a bright seventh grader doing very poorly in school and was depressed, needed counseling, and a psychiatric evaluation would be in order (R Ex 11). Testing showed deficits in written language, information processing deficits in auditory processing, and visual motor integration deficits (R 641-42). A neuropsychological assessment was not in order (R 641-42). Child's discussions with the school psychologist indicated that [redacted] did not do school work and otherwise "shut down" in part at least because of the big sense of loss [redacted] experienced after [redacted] grandmother's death (R 646). Child put forth more effort near the end of the eighth grade, and improved academically, being concerned about passing so [redacted] could enter ninth grade (R 647). A psychological assessment done on June 7, [redacted], was consistent with the earlier psychological evaluation and observations, suggesting continued depression and other problems previously noted (R Ex 9). Dr. [redacted] disagreed with Dr. [redacted]'s finding that Child's problems stem from [redacted] struggles in school, when instead it was believed that school difficulties stemmed from other personal matters and depression, causing problems that required therapy or other treatment (R 650). Depression can be dealt with by counseling

through the emotional disabilities program as it relates to education (R 653). Dr. [redacted] participated in the IEP meeting of June 14, [redacted], and thought that the goals and objectives set forth in the IEP, including the added social/emotional goals and counseling as a related service would address Child's needs (R 652, 676).

19. Among others, Child's school attendance was poor, [redacted] was tardy, [redacted] did not complete homework assigned, did not bring needed materials to class, did not do assignments and had to repeat seventh grade (R 274-275, 915-16, 929, 1140; R Exs 16, 27, 30). Child's mother was advised of these shortcomings (R 1157-59).

20. In the eighth grade, Child had special education, self-contained classes in english, civics, and math, which were small classes of eight to twelve students. Except for Band (music) and Physical Education, [redacted] remaining classes were "team taught", which were larger and had a special education teacher in the general education classroom (R 906-07). In every class Child had access to a computer, a word processor, was given teacher's notes, and preferential seating (R 908-09). Child can read and [redacted] can comprehend what [redacted] reads. [redacted] retains the information and can give it back orally to teachers. [redacted] participates in class discussions (R 970). Child is a bright student (R 1138-39) and made educational progress on [redacted] IEP goals (R 927, 1031-33) and is on grade level (R 971).

21. Child's attitude and motivation changed in April, [redacted] and [redacted] became concerned about passing the eighth grade. Child stayed after school, attempted to make up work [redacted] had not

completed earlier, and [redacted] got [redacted] grades up (R 931-35, 1140). Child passed six of the Standards of Learning Tests ("SOL"), failed two of them (R 275), and failed the Math SOL by one question (R 779-82). Child passed all required benchmarks for promotion to ninth grade. Child is capable of doing grade level work in high school (R 1045).

22. Child was last academically evaluated by [redacted]PS on June 4, [redacted] (R Ex 7). Comparing the latter with that done in May [redacted] (R Ex 10), shows that Child has made educational progress in all areas, including, among others, math, reading, and written expression (R 1032-35). [redacted]PS speech and language evaluation report of May 31, [redacted], confirms that Child does not have a communication disorder, has relatively mild language weaknesses which can be addressed effectively in the classroom, and [redacted] overall language competencies are adequate to above average for [redacted] to participate in the classroom curriculum (R Ex 8; R 1043-44). Writing , however, continues to be an area of concern along with processing deficits, but LD students are capable of learning what is expected of them and with special education support may access the general curriculum (R 1045-47). Writing difficulties can be handled in a classroom environment by a special education teacher (R 1058-60), using computer keyboarding skills, Alpha Smarts computer (to take classroom notes), spell and grammar checkers. [redacted]PS has a listing of suggestions for general and special education teachers to assist students with writing difficulties (R 912, 1058-62). Referrals for occupational therapy

are made by [redacted]PS teachers for LD students in need of such service (R 1081).

23. Child's writing deficiency, which has improved (R 971), may adequately be addressed by the contents of the draft July 25, [redacted] IEP (R 1087-1190). Based upon recent evaluations of Child and review of other available information, [redacted]PS' July 25, [redacted] IEP addresses all of Child's deficiencies, is appropriate to meet all of Child's needs and will permit educational progress and benefit (see R 972, 1055, 1123, 1215).

24 Petitioner was ordered to specify all issues relied upon in the instant Prehearing Order (HO Ex 13) and again by Hearing Officer direction during the hearing herein, with Petitioner expressly stating that there is no additional issue other than the five presented in Appendix 1 hereto (R 4, 30-32, 47, 164-171).

25. [redacted] High School is the least restrictive environment and an appropriate placement for Child for the 2002-2003 school year and such placement will provide educational benefit for Child (e.g., R 791-92).

26. Except for the February 8, [redacted], IEP meeting, *supra* at p. 5, Petitioner was given proper and adequate notice of all IEP meetings, the [redacted]PS IEP members at such meetings met all legal requirements, and Petitioner has seen all Child records requested (R 519).

27. The bills of Petitioner's experts total $8,010* which Petitioner requests reimbursement of from [redacted]PS (R 1333; P Ex 73).

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* This includes a [redacted] expert testimony bill ($125/hr. for 5 hours) of $625 submitted by Petitioner to the Hearing Officer on August 30, [redacted].

28. Petitioner submitted a Homebound Instruction application on September 5, [redacted], which is based upon Child's fear of being "assaulted by students" at [redacted] High School. By letter dated September 6, [redacted], Petitioner's advocate stated awareness of this issue since February [redacted], but this issue was never raised at the due process hearings. [redacted]PS advised Petitioner that the necessary security and safety of Child at [redacted] High would be provided, and if this was not acceptable, Child placement could be made at another high school, suggesting the Center at [redacted] High School, which Petitioner rejected. A conference call between the parties and Hearing Officer occurred on September 6, [redacted], and the parties agreed that Petitioner would not pursue her Homebound Instruction application during the interim period before the September 20, [redacted] due date of the Hearing Officer's decision in the due process case, but instead would agree to a Home-based Instruction program for Child during this interim period. [redacted]PS concurred in such an interim measure for Child. AN IEP meeting was held on September 9, [redacted], and Petitioner agreed to the IEP produced at that meeting for the interim period until the Hearing Officer's decision herein.

D. Burden of Proof

Petitioner alleges that [redacted]PS' procedural and other IDEA non-compliance has denied Child FAPE. Petitioner also alleges that [redacted]PS proposed IEP of July 25, [redacted], does not confer educational benefit, should not govern the 2002-2003 school year, and should be materially altered, among other allegations.

Petitioner has the burden of proving its allegations by a preponderance of the evidence, including the central issue of FAPE. *Bales v. Clark*, 523 F.Supp. 1366, 1370 (ED VA 1989);

> Plaintiff [Child] bears the burden to establish that the Regional School is inappropriate, that no other State facility is appropriate, and that Accotink Academy is appropriate.

See also, *Stemple v. Board*, 623 F.2d 893 (4th Cir., 1980), *cert. den.*, 450 US 911 (1981); *Speilberg v. Henrico*, 853 F.2d 256, 258 n.2 (4th Cir. 1988), *cert. den.*, 109 S. Ct. 1131 (1989)(a party which challenges a state administrative decision bears the burden of showing it should be altered); and *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983)(party attacking IEP should bear the burden of showing why the educational setting established by the IEP is not appropriate).

To the extent that [redacted]PS may have the burden of showing that it complied with any claimed procedural defects, I find that [redacted]PS' procedural compliance burden has been met. See *Hall v. Vance*, 774 F.2d 629 (4th Cir. 1985); *Speilberg v. Henrico*, *supra*.

E. Overview of IDEA and FAPE

The Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1400 et seq., provides federal funds to assist state and local agencies in educating disabled children. IDEA conditions the receipt of such funds upon a state's compliance with certain goals and procedures. The Virginia General Assembly has enacted a number of statutes to ensure compliance with IDEA requirements. See Code §§ 22.1-213 to 22.1-221. In addition, VDOE has developed regulations for implementing the statutory scheme. See 8 VAC 20-80-10, et seq.

Both IDEA and the Virginia Code require schools to make FAPE available to disabled children. 20 USC § 1412(a)(1)(A); Code §§ 22.1-214(A) and 22.1-215. Local agencies provide an appropriate education to each disabled child by means of an IEP. 20 USC § 1414(d); 8 VAC 20-80-10, 20-80-62. The IEP is a written document developed after a meeting attended by the disabled child's parents, his or her teacher(s), and local school division representatives. 20 USC § 1414(d); 8 VAC 20-80-62. The IEP contains, *inter alia*, a description of the specific educational services to be provided the child, annual goals, and objective criteria for evaluating progress. 20 USC § 1414(d); 8 VAC 20-80-62. IDEA favors mainstreaming children by requiring that disabled children be taught with non-disabled children, to the maximum extent possible, and by requiring that the disabled child be placed in the least restrictive environment, consistent with the child's needs. 20 USC §§ 1412(a)(5)(A) and 1414(d)(A); 8 VAC 20-80-64. The local agency must review each child's IEP at least annually, 20 USC §§ 1414(d)(4)(A)(i); 8 VAC 20-80-62, and is required to include the parents in the development of the child's IEP. 20 USC § 1414(f); 8 VAC 20-80-62(C). Parents have the right to an impartial due process hearing, through which to bring complaints regarding proposed services. 20 USC § 1415; 8 VAC 20-80-70. Lastly, any party aggrieved by the findings and decision at the state administrative hearing has the right to appeal to a state court of competent jurisdiction or a federal district court without regard to the amount in controversy.

F. Discussion and Rulings On Petitioner's Amended Complaint Errors (Appendix 1)

1. Alleged Failure To Provide Proper Notice

Petitioner alleges that "[redacted]PS failed to provide reasonable notice and the information set forth in the notices was insufficient" (Appendix 1 hereto, No. 2). The Hearing Officer requested that Petitioner supply particulars concerning this allegation:

Hearing Officer [redacted]:	Provide reasonable notice for what?
Ms [redacted]:	For meetings.
Hearing Officer [redacted]:	For the IEP meetings?
Ms. [redacted]:	It can be IEP meetings, it can be meetings for review - - -
Hearing Officer [redacted]:	But what are you claiming?
Ms. [redacted]:	I'm saying they failed to provide the parent reasonable notice.
Hearing Officer [redacted]:	For what?
Ms. [redacted]:	For meetings. In general there are meetings for IEP - - - the parent has asked for meetings dealing with educational issues, the IEP, testing. There were times the parent was asking for meetings by phone and in person - - -
Hearing Officer [redacted]:	Are you gong to put testimony on that's going to tell me what meetings you're talking about?
Ms. [redacted]:	Yes, I will. (R 166-67)

Petitioner never supplied the detailed evidence requested by the Hearing Officer. The only technnically deficient notice of record concerns the February 8, [redacted], IEP meeting referenced above in Finding of Fact No. 6, *supra* at p. 5, wherein [redacted]PS, through

oversight, failed to notify Petitioner before the IEP meeting of the names of all IEP team mambers. Petitioner was present at this IEP meeting. However, Petitioner did not prove how she was materially and adversely affected by such oversight. Adequate and sufficient notice was provided for other IEP meetings (R Ex 21, 22, 23, 24). Petitioner has not supplied any other evidence to support this general claim, nor shown how such claimed defect harmed her. In *Hampton v. Dobrowolski*, 19 EHLR 175 (1st Cir. 1992), it was stated:

> - - - procedural violations [will result in reversal] only if there is "some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits.

In *Thomas v. Cincinnati* BOE, 17 EHLR 113 (6th Cir. 1990), a required written notice was not given by the Cincinnati Board of Education. It was noted that Parent received oral notice and that any procedural violation was harmless, stating:

> Finally, although she may not have received written notice that a new IEP conference would be held, she did participate in the conference which is, after all, the notice requirement's purpose - - the only error [here] was one of technical noncompliance which did not result in any substantive deprivation. Therefore, the violation cannot be said to amount to prejudicial error. *Id.* at 112-113.*

In sum, Petitioner offers no underlying factual basis to support her contention that notice here was not supplied or was

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* See also *WG v. Board*, 18 IDELR 1019, 1021 (9th Cir. 1992) ("Procedural flaws do not automatically require a finding of a denial of FAPE.")

insufficient. Conjecture or surmise may not satisfy Petitioner's burden of proof. I also find that Petitioner has not shown the loss of educational opportunity to Child, or any other serious infringement of rights or that substantive deprivation has occurred by this assigned error. See *Burke County v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990)(a procedural violation must result in the loss of educational opportunity). Petitioner has failed to prove assigned error Number 2.

2. Alleged Failure To Provide Qualified IEP and Review Teams and Meet IDEA Criteria for IEP Content

Petitioner also alleges (a) that [redacted]PS failed to provide Child "with a qualified IEP team and qualified review team," and (b) the IEPs "failed to meet the specific criteria as set forth in IDEA." (Assigned errors 3 and 4, Appendix 1 hereto). Note the following colloquy:

> Hearing Officer [redacted]: - - - [redacted] failed to provide a qualified IEP team and qualified review team. How were the teams not qualified?
>
> Ms. [redacted]: They did not provide people that were representative of [redacted] [Child] identified needs,
>
> Hearing Officer [redacted]: You're going to tell me more about that.
>
> Ms. [redacted]: Yes, I will.
>
> Hearing Officer [redacted]: Number four - - - [redacted] content of the IEP failed to meet the specific criteria as set forth in IDEA. Where [what] are the specific criteria that you're talking about?
>
> Ms. [redacted]: IDEA identifies the content an IEP is supposed to have. Furthermore, it's supposed to address the specifically identified needs of the Child.
>
> Hearing Officer [redacted]: But what are you claiming? What criteria did they fail to meet as far as

you're concerned?

Ms. [redacted]: - - - we will go through and we will show you what the deficiencies are in the IEP. (R 168-69).

The deficiencies claimed appear to be that (a) Petitioner desired to have IEP members who specialized in the areas that Petitioner's experts found deficient, such as an occupational therapist, or a speech language pathologist (R 117); and (b) the IEPs developed or proposed for Child did not have the specific composition requested by Petitioner.

The IEP team composition issue was earlier raised in Petitioner's March [redacted] complaint and VDOE ruled against Petitioner on this issue and no appeal was taken by Petitioner (R 146). An attorney witness ([redacted]) for Petitioner admitted that there is no legal requirement that Petitioner's requested reading specialist or a speech and language clinician, among others, be present as IEP team members (R 124-25). The convincing evidence of record proves that [redacted]PS had the proper representatives and personnel at all IEP meetings (see Finding of Fact 7, p. 5, *supra*), and met the requirements of law. See 34 CFR §§ 300.344 and *Regulations Governing Special Education Programs for Children With Disabilities In Virginia*, 8 VAC 20-80-62.6. The latter regulations permit Petitioner to have others present with special knowledge of the Child to participate as team members and Petitioner took advantage of this provision in the form of Dr. [redacted]. Petitioner has failed to prove that the IEP teams were not composed as required by law.

Petitioner's second contention is that the content of the IEPs failed to meet legal requirements. All IEPs for Child contained all of the components required by law. See R Ex 23, 24, 43. The federal regulations governing what should be contained in an IEP are set forth in 34 CFR 300.347. Petitioner has presented no evidence which proves that these regulations, nor the comparable Virginia regulations, have been breached in any respect. On the contrary, the evidence conclusively proves that the involved IEPs contained all of the requisite components required by law and were tailored to meet Child's individualized needs.

Lastly, it is settled law that an IEP will not be set aside absent some rational basis to believe that inadequacies compromised the student'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 v. Henrico County*, 549 S.E. 2d 16 (VA App. 2001). There is no evidence of record here to prove any of the latter mandates were violated here. In short, these Petitioner alleged failures are without merit.

3. Alleged Failure to Inform or Train Petitioner Regarding IDEA or VA Procedural Safeguards

Petitioner also contends that [redacted]PS failed to inform or train parent concerning the provisions of IDEA or Virginia's procedural safeguards. Note the following colloquy:

> Hearing Officer [redacted]: - - -. I don't know what that [this error assignment] means.

Ms. [redacted]: - - - both the federal and state regulations require parent training. The parent didn't get any training to understand what her rights are as a parent - - - it was never explained to her when the school identified certain disabilities, they never provided any training - - -

Hearing Officer [redacted]: Training for what?

Ms. [redacted]: Parent training that deals with IDEA, that deals with her Child's needs, that deals with the educational needs of the Child. If you go in and look in the regulations, it speaks to that - -

Hearing Officer [redacted]: If we brief this case, you're going to have to tell me more than you're telling me now.

Ms. [redacted]: That's fine. (R 170-71).

On Brief, Petitioner has not elucidated on this contention. The evidence proves that Petitioner was supplied with Virginia's *Procedural Safeguard* documentation at every IEP meeting which advised her fully of her rights, and she acknowledged written receipt thereof. Petitioner never contacted anyone at [redacted]PS or VDOE for any needed explanation. See Finding of Fact No. 12, *supra* at p. 7. Petitioner is a high school graduate, is five credits short of receiving a college diploma and works for a bank. *Ibid.* Thus, to the charge that Petitioner did not understand her rights, I find that [redacted]PS provided Petitioner with notice of her rights and safeguards on numerous occasions, that since at least February 8, [redacted], Petitioner was represented by an advocate who was also trained and capable of informing Petitioner of her rights, and that Petitioner was of sufficient intelligence and education to understand her rights and, in fact, did so understand her due process rights and was fully capable of making inquiry if she did not. I also find that Petitioner's claim to the contrary

lacks credibility. See *Morrow County*, 31 IDELR 243, 244 (5/18/99). Lastly, Petitioner has not proven or cited to this Hearing Office any law which requires [redacted]PS to conduct an IDEA training program for Petitioner. This alleged error is also without merit.

4. [redacted]PS IEE Failure

Petitioner's last Appendix 1 assignment of error is that [redacted]PS failed to reimburse Petitioner for the independent educational evaluation (IEE) secured by Petitioner from a neuropsychologist. See Factual Finding No. 5, *supra* at p. 4.

Child was psychologically evaluated by [redacted]PS on May 25, [redacted], (R Ex 11) and Petitioner disagreed with this evaluation (R 1323). [redacted]PS does not employ a neuropsychologist (R 1313). At the IEP meeting of February 8, [redacted], Petitioner requested a neuro-psychological evaluation as an IEE at public expense which request [redacted]PS denied (R 198-200). Petitioner had private neuropsychological testing done on April 4, [redacted], and a copy thereof was provided to [redacted]PS (R 201, R Ex 13) and this evaluation was used at least in part by [redacted]PS in its IEP preparation (R 776, 965). [redacted]PS places an unwritten upper limit or cap on IEE psychological evaluations of one-thousand dollars (R 1292-93, R Ex 3, p. 6), which was offered to Petitioner who declined such because her cost was greater, i.e., fifteen hundred dollars (P Ex 73, R 1332). [redacted]PS is still willing to pay one-thousand dollars (R 1331).

The *Regulations Governing Special Education Programs for Children With Disabilities In Virginia* (VA Special Education

Regulations) (effective 3/27/02), *supra*, state on page 62, para. 2a, as follows concerning an IEE:

> The parent or parents have the right to an independent educational evaluation at public expense if the parent or parents disagree with an evaluation obtained by the local education agency [citing 34 CFR § 300.502(b),(e)].*

Regulation paragraph 2(e) states in part:

> Except for the criteria [e.g. location of evaluation, qualifications of examiner], a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation. (emphasis added). (8 VAC 20-80-70 B2e)

"Evaluation" is defined in the *Regulations* on page 9 as follows:

> "Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of special education and related services that the child needs as described in 8 VAC 20-80-54 [citing 34 CFR § 300.500(b)(2)].

The foregoing three *Regulations* quotations were in effect in the *VA Special Education Regulations* effective January 1, 2001.

Initially, public payment for this IEE was refused because "[redacted]PS did not conduct a neuropsychological evaluation with which Mrs. [redacted] could disagree. Therefore, there was no entitlement to an IEE." (R Ex 2, p. 4, [redacted]PS Letter of 3/27/[redacted] to VDOE [redacted]).

On Brief, the basis for IEE denial changed. [redacted]PS now states at p. 17:

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* The quoted language was construed in *Mullen v. DC*, 16 EHLR 792 (DDC 1990)("This means that parents are entitled to reimbursement when, as here, they initiate an independent evaluation because they disagree with a school district's evaluation"); *Hudson v. Wilson*, 828 F.2d 1059, 1065 (4th Cir. 1987)(authorized IEE payment for parents' cost of private psychological testing hired because of disagreement with school's psychiatric determination of Child).

> Because the evaluations conducted by the school system were two years old, and the Parent had never expressed her disagreement with them prior to February 8, [redacted], the Parent was not entitled to an IEE. The school system, desiring to undertake new evaluations itself, had no evaluations to defend as appropriate in a due process proceeding. However, had the school system been allowed to proceed with the evaluations it wanted to conduct, and the Parent disagreed with them, then there would have been entitlement to an IEE at public expense.

Petitioner apparently was advised that a neuropsychological evaluation was warranted given Child's circumstances. Child had been psychologically evaluated by [redacted]PS in May [redacted] and Petitioner's IEE request was made in February [redacted]. [redacted]PS now justifies refusal to pay for a neuropsychological IEE on the grounds: (a) [redacted]PS May [redacted] evaluations were two years old and Petitioner's "disagreement" request was too late; and (b) if Petitioner had agreed to [redacted]PS new evaluations desired to be conducted, then [redacted]PS would have paid for such an IEE if Petitioner then disagreed with any such new evaluations.

The problem with [redacted]PS' position is twofold, i.e., it is imposing "timelines" concerning (a), *supra*, and "conditions" concerning (b), *supra*. Both are precluded by *Virginia's Special Education Regulations* (8 VAC 20-80-70 B2e, *supra*,) and the Code of Federal Regulations (34 CFR § 300.502(e)), the former in effect at the time Petitioner undertook the instant IEE, and the latter effective from March 12, 1999 onward. In other words, Petitioner has a "right" to an IEE at public expense if Petitioner disagrees with a [redacted]PS evaluation - not only an evaluation conducted within a specified period of time or one obtained subject to [redacted]PS imposed conditions.

With respect to [redacted]PS' establishment of an IEE fee cap, I agree with the ruling in *Letter to Thorne*, 16 IDELR 606 (1990):

> In order to avoid unreasonable charges for IEE, a district may establish maximum allowable charges for specific tests.

I find that [redacted]PS maximum charge of one-thousand dollars for the neuropsychological IEE here involved is reasonable. I further find that Petitioner should be paid one-thousand dollars for the neuropsychological IEE it undertook privately in the circumstances earlier described, particularly since [redacted]PS made use of this IEE evaluation in preparing its final IEP of July 25, [redacted] (R Ex 43).

G. [redacted]PS Has Provided, and Proposes To Provide, Child FAPE

IDEA guarantees all students with disabilities in participating states the right to FAPE. 20 USC § 1412(a)(1), 1401(8). FAPE includes special education and related services that are reasonably calculated to provide the student with educational benefit. 20 USC § 1414(a)(5); *Hudson v. Rowley*, 458 US 176, 206-07 (1982). FAPE is tailored to the unique needs of the disabled child by means of an IEP. (20 USC § 1401), which is prepared at a meeting between school, the child's teachers, the child's parents or guardian, and where appropriate, the child. It consists of a written document containing, *inter alia*:

a) a statement of the present levels of educational performance of such child;
b) a statement of annual goals, including short-term instructional objectives;
c) a statement of the specific educational services to be provided to such child, and the extent to which the child will be able to participate in regular educational programs

d) the projected date of the initiation and anticipated duration of such services; and
e) appropriate objective criteria and evaluation procedures and schedules for determining, on a least an annual basis, whether instructional objectives are being achieved. 20 USC § 1401

IDEA does not prescribe any substantive standard regarding the level of education to be accorded to disabled children, *Rowley, supra* at 189, 195, *Fort Zumwalt v. Clynes*, 119 F.3d 607, 611-12 (8th Cir. 1997), and does not require "strict equality of opportunity or services." *Rowley, supra* at 198. Rather, a local educational agency fulfills the requirements of providing FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction." *Rowley, supra* at 203.

Furthermore, the program provided by the IEP is not required to maximize the educational benefit to the child, or to provide each and every service and accommodation that could conceivably be of some educational benefit. *Rowley, supra* at 199. Moreover, an educational benefit must be more than *de minimis* to be appropriate, *Doe v. Tullahoma*, 9 F.3d 455, 459 (6th Cir. 1993). In articulating the standard for FAPE, *Rowley* concluded that "Congress did not impose any greater substantive educational standard than would be necessary to make such access meaningful." *Rowley, supra* at 192. *Rowley* found Congress' intent was "more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside." *Ibid.*

Given this purpose, IDEA defines FAPE in broad, general terms, without dictating substantive educational policy mandating

specific educational methods. The imprecise nature of IDEA's mandate reflects two important underpinnings of FAPE. First, "Congress chose to leave the selection of educational policy and methods where they have traditionally resided-with state and local officials." *Daniel v. State* , 874 F.2d 1036, 1044 (5th Cir. 1989). Second, Congress sought to bring children with disabilities into the mainstream of the public school system. *Mark A. v. Grant Wood*, 795 F.2d 52, 54 (8th Cir. 1986); *Rowley, supra* at 1889.

The key inquiry in determining whether a school is providing FAPE is to assess "whether a proposed IEP is adequate and appropriate for a particular child at a given point in time." *Burlington v. Dep't of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984), *aff'd*, 471 US 359 (1985).

As noted earlier, Petitioner contends that [redacted]PS committed procedural violations in conjunction with its development of IEPs, used improper IEP personnel, failed to give IDEA training, and others, all as described earlier herein.

Petitioner relies upon expert testimony introduced at the hearing to support the contention that the IEPs herein are deficient and inappropriate to provide FAPE. The opinions of Petitioner's experts were in conflict with those of [redacted]PS experts and other school personnel. [redacted]PS witnesses had more experience and interaction with Child than Petitioner's experts. [redacted]PS presented witnesses thoroughly familiar with Child's file, background, home life, school work, and school activities, among others. Their experience and opinions are entitled to great weight. On the other hand, Petitioner's experts largely did not

visit Child's school, observe Child's program, or see Child in a school environment and with other students, nor did they review Child's entire school file or talk with [redacted] teachers, assistants, or other service providers. The exception was Dr. [redacted] who saw Child in school for a brief period on one day, after Petitioner's Complaint was filed. These Child evaluations by Petitioner's experts outside the school setting are not comparable to those provided by [redacted]PS witnesses whose experience and interactions with Child were made on a regular basis in a school environment. Thus, I give greater weight to the evidence provided by [redacted]PS witnesses, who were also more persuasive and creditable than Petitioner's experts. See *Faulders v. Henrico*, 190 F.Supp. 849 2d (ED VA 2002); *Doyle v. Arlington*, 806 F.Supp. 1253 (ED VA 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994).

Turning next to procedural violations, these alone may constitute a failure to provide an appropriate education under certain circumstances, *Rowley, supra* at 206-07, but each case must be reviewed in the context of the particular facts presented. An IEP will not be set aside absent "some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits." See *Roland M. v. Concord*, 910 F.2d 983, 994 (1st Cir. 1990)(finding procedural violations insufficient to render the IEP inadequate); see also, *Burke v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990)(finding a procedural violation did not deprive the child of educational benefits or opportunity).

For reasons detailed earlier in discussing each of Petitioner's five assignments of error (Appendix 1 hereto), I find that no procedural error or other Petitioner alleged inadequacy hampered Petitioner's opportunity to participate in the development of Child's IEP and did not result in a loss of an educational opportunity or benefit for Child. As such, I find that Petitioner's alleged violations and failures did not invalidate any of Child's IEPs or deny Child FAPE.

H. Proposed IEP of July 25, [redacted] and Placement at [redacted] High School are Appropriate and Will Provide FAPE

Both parties requested that the Hearing Officer resolve their dispute concerning the sufficiency and appropriateness of the proposed IEP of July 25, [redacted], (see R 518-23). Petitioner has requested that I order the incorporation of the comments that Petitioner has suggested be inserted into this IEP (see R 513-14, 519). For reasons stated earlier, I find that the IEP of July 25, [redacted], has been lawfully and properly developed, complies with all requirements of IDEA and the *Virginia Special Education Regulations*, *supra*, is appropriate for Child, is reasonably calculated to provide Child some educational benefit, and will provide FAPE for Child.

Moreover, I find that Child's proposed program and placement at [redacted] High School (see e.g. R 789-93) would be appropriate for Child in that educational benefit will be provided Child in the least restrictive environment.

If Petitioner chooses not to place Child at [redacted] High School because of Child's fear of being assaulted there, Child's

placement at another [redacted] High School, utilizing [redacted]PS' July 25, [redacted] IEP, is strongly advocated by this Hearing Officer since believed to be in Child's best interest and will also provide education for Child in a least restrictive environment. [redacted]PS should provide any needed assistance to Petitioner and Child to accomplish this result.

I. Child's Private Placement at Public Expense at [redacted] Not Warranted

Petitioner seeks (Brief, p. 33) private placement at public expense at [redacted], [redacted], VA, and reimbursement of all associated expenses.

It is settled law that private school tuition and related expenses are not reimbursable to a parent for sending a student to a private school unless the State denies such student FAPE. See 20 USC § 14(a)(10)(c); *Jennings v. Fairfax*, 35 IDELR 158 (ED VA 2001), *aff'd*, 2002 WL 1544711 (4th Cir. 7/16/02); *Ankney v. MD*, 243 F.3d 535 (4th Cir. 2001).

Petitioner has not carried her burden proving FAPE denial, or that the proposed placement and program at [redacted] High School, or an alternative high school, will deny FAPE to Child. Also, as required,* Petitioner has not presented a scintilla of evidence to prove that [redacted] is an appropriate placement or will provide an appropriate program for Child, i.e., an educational program reasonably calculated to provide Child with some educational benefit.

* See VA Special Education Regulations, 8 VAC 20-80-66A2.

As such, Petitioner's request for private placement at public expense at [redacted] is denied.

Conclusions

In summary, all of the defects alleged by Petitioner, procedural and otherwise, have been evaluated to determine whether the alleged defects have resulted in the deprivation of FAPE, Petitioner's central contention. In doing so, the impact of the defects was considered to the extent that such existed and not merely the alleged defects *per se*. *Doe v. Al Doe*, 915 F2. 651, 661-62 (11th Cir. 1990). After such analysis, I find no deprivation of FAPE proven here by Petitioner, or other material error, aside from IEE denial, *supra*. Based upon a preponderance of the evidence, I conclude:

1. The requirement of notice to Parent was satisfied.
2. Petitioner was provided all records requested.
3. Child is disabled, i.e., learning disability and other health impairment.
4. Child needs special education and other services proposed by [redacted]PS. [redacted]PS' evidence demonstrates clearly and convincingly that it has met, and is able to meet, all of the requirements of its special educational offering to Child.
5. With the exception of the requested IEE at public expense, the procedural and other deficiencies claimed by Petitioner have not been proven and, in any event, such deficiencies or inadequacies did not hamper Petitioner's opportunities to participate in the development of Child's IEPs, result in the loss of any Child educational opportunity or benefit, and do not invalidate any of Child's IEPs.
6. [redacted]PS has complied with the procedures set forth in IDEA and VA law, except for Petitioner's denial of IEE at public expense.
7. [redacted]PS has provided, and proposes to provide in the future, FAPE for Child.

8. Petitioner has not sustained her burden of proving the inadequacy or inappropriateness of Child's past IEPs and the proposed IEP of July 25, [redacted].

9. [redacted]PS had proper and lawful representatives and personnel at at all IEP meetings and its IEPs have been appropriate under law.

10. [redacted]PS' proposed IEP of July 25, [redacted], is reasonably calculated to provide Child educational instruction designed to meet Child's unique needs and is supported by such services as are necessary to permit Child to benefit from such instruction.

11. [redacted]PS' IEP of July 25, [redacted], shall govern Child's education for the 2002-2003 school year, regardless of which [redacted] public high school Child attends and shall govern to the fullest extent possible if Homebound or Home-based instruction is provided Child.

12. Since [redacted]PS has provided and proposes to provide FAPE, Petitioner's request for reimbursement of expenses incurred, including bills of Petitioner's experts of $8,010, is denied.

13. Petitioner's requests for private placement at public expense at [redacted], related expenses, and an order for [redacted] enrollment, are all denied.

14. Petitioner's request for compensatory services (tutor) is denied.

15. Petitioner's request for reimbursement for IEE services performed by Dr. [redacted] is granted to the extent of one-thousand dollars. Petitioner's request for such reimbursement in excess of the latter amount is denied.

16. [redacted] High School, or an alternate public high school placement in [redacted] if [redacted] is unsuitable because of Child's assault fear, is an appropriate placement for Child for the 2002-2003 school year.

17. All other relief requested by Petitioner is denied.

18. This Hearing Officer has jurisdiction over this matter.

Order

Wherefore, the premises considered, it is ORDERED that all of the relief requested by Petitioner is denied, except for the one-thousand dollar reimbursement to Petitioner for partial IEE incurred expense which is granted. [redacted]PS shall take the necessary

steps to reimburse Petitioner for one-thousand dollars as soon as this decision becomes final or Petitioner documents that no appeal will be taken. Child's placement for the 2002-2003 school year shall be at a [redacted] public high school, with any needed transportation, security, or protection for Child arranged by [redacted]PS, unless and until another authority having jurisdiction finds that a different placement is warranted. [redacted]PS's proposed IEP, dated July 25, [redacted], is appropriate for Child and it shall govern Child's education in the 2002-2003 school year, including, to the fullest extent possible, any Homebound or Home-based instruction Child may receive.

Right of Appeal

This decision is final and binding unless appealed by a party in a state circuit court within one year from the issuance date of this decision, or in a federal court. The appeal may be filed in either a state circuit or federal district court without regard to the amount in controversy.

September 14, [redacted]
Decision Date Issuance

[redacted]
Hearing Officer

Certificate of Service

This is to certify that on September 14, [redacted], a copy of the foregoing decision and order was served by US Mail upon the following persons:

Dr. [redacted]
Representative for [redacted]
[redacted] Public Schools
[redacted]
[redacted], VA [redacted]

[redacted]
Advocate for Petitioner
Mrs. [redacted]
[redacted]
[redacted], VA [redacted]

[redacted]
Due Process Specialist
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218-2120

[redacted]
Hearing Officer

APPENDIX 1

PETITIONER'S AMENDED COMPLAINT
FOR DUE PROCESS (6/2/[redacted])*

1. On an ongoing basis, [redacted]PS failed to implement the provisions as set forth in the Virginia's procedural safeguards regarding Independent Education Evaluations.

2. On an ongoing basis, [redacted]PS failed to provide reasonable [notice] and the information set forth in the Notices were[sic] insufficient.

3. On an ongoing basis, [redacted]PS failed to provide the student in question with a qualified IEP team and qualified Review team.

4. On an ongoing basis, the [redacted]PS content of the IEPs failed to meet the specific criteria as set forth in IDEA

5. On an ongoing basis, [redacted]PS has failed to provide to the Parent any information or training regarding the interpretation or the implementation of either the provisions set forth in the IDEA or the provisions set forth in the Virginia procedural safeguards.

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* See R 164-171.