

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



CASE CLOSURE SUMMARY REPORT

[Redacted] _____
School Division

[Redacted] _____
Name of Parent

[Redacted] _____
Name of Child

[Redacted] _____
Date of Decision or Dismissal

[Redacted] Esq. _____
Counsel Representing LEA

[Redacted] Esq. _____
Counsel Representing Parent/Child

Parent _____
Party initiating Hearing

[Redacted] _____
Public Schools

Hearing Officer's Determination of Issue(s):

1. Whether [Redacted] proposed an IEP and placement appropriate for [Redacted] in the least restrictive environment for the [Redacted] School Year?
2. Whether the placement selected by the [Redacted] for [Redacted] for the [Redacted] School Year provides [Redacted] with educational benefit in the least restrictive environment?
3. Whether [Redacted] or the [Redacted] bear the burden of proof in this matter?

Hearing Officer's Orders and Outcome of Hearing:

Having proposed an appropriate IEP and placement for [Redacted], [Redacted] is not required to reimburse the [Redacted] for the placement at the [Redacted] School for the [Redacted] school year; therefore, it is Ordered that this matter is Dismissed.

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] _____
Printed Name of Hearing Officer

[Redacted] _____
Signature

cc: Parent(s)
School Division
State Education Agency

VIRGINIA:

VIRGINIA DEPARTMENT OF EDUCATION
SPECIAL EDUCATION APPEAL
DUE PROCESS HEARING



____ AND _____)
Petitioners,)
v.)
____ PUBLIC SCHOOLS)
Respondents.)

In Re: _____

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION

I. INTRODUCTION:

A. Procedural History

The undersigned was appointed by the _____ Public Schools ("_____") as the hearing officer to preside over a Due Process Hearing concerning _____ (Hereinafter "_____"). The letter of appointment is dated _____, signed by _____, Director of Student Services.

On _____ and _____ ("_____") through counsel, filed a request for a Due Process Hearing seeking funding from _____ for placing _____ at the _____ School of _____ ("_____"), for the _____ School Year. _____ School is a private school for the education of learning disabled students. In order to schedule the Due Process Hearing, pre-hearing conference calls were held on _____ and _____

however, as a result of the parties decision to proceed with the development on an Individualized Education Program ("IEP") for [REDACTED], the Due Process Hearing was postponed several times. The Due Process Hearing was finally held over a five-day period beginning [REDACTED] and continued on [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

B. The Record:

The Record in this matter consists of the following:

1. Transcripts of each day of the Hearing, Volumes I through V;
2. Exhibits submitted by the [REDACTED] on [REDACTED], designated as "SB-1 through SB-51";¹
3. Exhibits submitted by the [REDACTED] on [REDACTED], designated as MS-1 through MS-15;
4. Memorandum on Behalf of the School Board of the City of [REDACTED], dated [REDACTED];
5. Proposed Findings of Fact and Conclusions of Law Submitted on Behalf of [REDACTED] dated [REDACTED];
6. Reply Brief of the School Board of the City of [REDACTED] dated [REDACTED];
7. Reply to [REDACTED] Memorandum Submitted on Behalf of [REDACTED] [REDACTED], dated [REDACTED].

C. Background:

[REDACTED] is [REDACTED] years old and in the [REDACTED]-grade at the [REDACTED] School which [REDACTED] has attended since the [REDACTED] School Year. Prior to attending the [REDACTED] School [REDACTED] was educated in [REDACTED] through [REDACTED] when [REDACTED] completed the [REDACTED] grade. There is no dispute that

¹ School Board Exhibit 38 also includes Exhibit SB-38(a)

██████ qualifies for special education as a very bright learning disabled student; however, the parties disagree on the extent of ██████ learning disabilities and the appropriate placement for ██████. The parents contend that ██████ is severely learning disabled and therefore requires a full-time special education program in a private school setting. ██████ contends that ██████ learning disabilities are not severe and that the Least Restrictive Environment for ██████ is to be educated in a public school setting where ██████ would be educated in special and general education classes.

D. ISSUE(S)

1. Whether ██████ proposed an IEP and placement appropriate for ██████ in the least restrictive environment for the ██████ School Year?
2. Whether the placement selected by the ██████ for ██████ for the ██████ School Year provides ██████ with educational benefit in the least restrictive environment?
3. Whether ██████ or the ██████ bear the burden of proof in this matter?

SUMMARY OF RELEVANT EVIDENCE:

A. Parent's Case:

1. The first witness to testify at the Hearing was ██████, the mother of ██████. ██████ testified that ██████ and ██████ husband attended a ██████ IEP meeting scheduled by ██████. As a result of the meeting, an IEP document was developed for ██████ (SB-35) ██████. ██████ testified that ██████ School had developed an IEP on ██████ and that ██████ had attended the meeting. Tr. p. 81. ██████ School IEP called for a full-time special education placement. (MS-1) Tr. I, p. 33. ██████ School IEP was made available to

[redacted] at its IEP meeting on [redacted] Tr. I, p.32. [redacted] told the [redacted] IEP team that [redacted] felt [redacted] School IEP was an appropriate IEP for [redacted] Tr. P. 33.

[redacted] testified that [redacted] in developing its IEP for [redacted] had taken a significant number of goals and objectives from [redacted] School IEP and placed them in the [redacted] IEP, but [redacted] did not have a problem with this. Tr.p.34-35. [redacted] agreed that the goals and objectives that [redacted] placed in the IEP for [redacted] were acceptable to [redacted] Tr. p. 86.

[redacted] testified that [redacted] had an opportunity to visit the placement proposed by [redacted] the [redacted] School Tr. I, p. 35. [redacted] purpose in making the visits was to observe the classes that [redacted] would be taking to determine for [redacted] self if the placement was appropriate Tr. I, p. 35. [redacted] testified that [redacted] understood that [redacted] was offering a [redacted] grade education special education program for [redacted] at the [redacted] School. Tr. p. 30. [redacted] was aware that [redacted] is just a [redacted] school, but [redacted] did not agree with the philosophy of such a school. Tr. pp. 30-31. However, [redacted] said that [redacted] had not read any studies regarding the inappropriateness of a school designed solely for [redacted] grade school students. Tr. p. 77. [redacted] also stated that [redacted] was not familiar with the program at [redacted] as of the time of the [redacted] IEP meeting on [redacted] Tr. I, p. 83.

[redacted] said that on [redacted] visits to [redacted] [redacted] had an opportunity to talk to various staff members and ask questions. Tr. P 35. [redacted] said that [redacted] made three visits at [redacted] the first visit was [redacted] Based on [redacted] testimony, the second visit was [redacted] and the third visit was [redacted] Tr. I, p. 36.

[redacted] testified that on [redacted] first visit to [redacted] had an opportunity to visit several classes, including one taught by [redacted] Tr. p. 42. [redacted] said that [redacted] observe six kids in the class, with one teacher and an aide. [redacted] said that [redacted] did not have

problem with the class size (Tr. I, pp. 48-49) and felt that [REDACTED] was a good teacher. Tr. I, p. 71.

[REDACTED] testified that on [REDACTED] third visit to the school, [REDACTED] the Associate Principal, accompanied [REDACTED] through all the classes [REDACTED] saw. [REDACTED] talked with [REDACTED] about a Science classes because [REDACTED] was taking a Science class at [REDACTED] School and a Spanish class, but that [REDACTED] did not have a special education class in these subjects. Tr. I, p. 38. [REDACTED] also testified that [REDACTED] observed a class where the students were reading a world literature book that [REDACTED] thought was above [REDACTED] level. Tr. I, p. 47.

[REDACTED] testified that prior to the [REDACTED] IEP meeting [REDACTED] had advised [REDACTED] School that [REDACTED] would be returning to [REDACTED] School for the [REDACTED] School Year and that [REDACTED] had paid a deposit for [REDACTED] attendance. [REDACTED] testified that [REDACTED] was already in attendance at [REDACTED] School at the time of [REDACTED] first visit to [REDACTED] Tr. p. 83.

[REDACTED] testified that [REDACTED] has a college degree in visual communication, but is not a certified teacher and has not taught at a public school. Tr. I, p. 77.

2. The next witness to testify was [REDACTED], the coordinator of the high school program at [REDACTED] for the last nine years. Tr. I, p. 134, 136. [REDACTED] testified that [REDACTED] had been at [REDACTED] School for over twenty years and among other things, has been a special education teacher. Tr. I, p. 136. [REDACTED] current responsibilities include participating in IEP meetings. [REDACTED] testified that [REDACTED] was certified in learning disabilities in the District of Columbia and testified at the Hearing as an expert in learning disabilities. Tr. p. 139.

[REDACTED] said that [REDACTED] knew who [REDACTED] was from communication from the junior high. Tr. I, p. 144, 145. [REDACTED] testified that the IEP developed by [REDACTED] School on [REDACTED]

was appropriate for [REDACTED] and that it requires a full-time specialized program. Tr. I, pp. 162, 163.

[REDACTED] described [REDACTED] as having tremendous Math and Science strengths and acknowledged that [REDACTED] was in gifted class in these subject areas as well as Spanish. Tr. I, pp. 147, 148, 153. [REDACTED] said that [REDACTED] is doing great at [REDACTED] School that [REDACTED] described [REDACTED] greatest difficulty was in written language and English. Tr. I, p. 163.

[REDACTED] testified that [REDACTED] had no familiarity with the [REDACTED] School, either through observation or discussion with teachers. Tr. I, p. 168. [REDACTED] also said that [REDACTED] was not familiar with [REDACTED] proposed IEP. Tr. I, p. 169. It was [REDACTED] opinion that [REDACTED] could benefit from instruction by a regular education math teacher. Tr. I, p. 175, but that there was no opportunity at [REDACTED] School for [REDACTED] to participate in classes with regular education peers. Tr. I, p. 181. Also, [REDACTED] stated that [REDACTED] School program provided [REDACTED] with "the best that [REDACTED] can possibly get." Tr. I, p. 164.

[REDACTED] testified that [REDACTED] School had not prepared [REDACTED] class schedule prior to [REDACTED] IEP meeting. Tr. I, p. 145. [REDACTED] said that [REDACTED] begins to develop one in August after summer vacation. Tr. I, p. 145.

3. After [REDACTED], [REDACTED] testified. [REDACTED] is a senior speech and language pathologist at [REDACTED] School where [REDACTED] has been employed since [REDACTED]. Tr. II, p. 8. [REDACTED] stated that [REDACTED] is certified in the District of Columbia and Virginia and with the American Speech Language and Hearing Association. Tr. II, p. 10. [REDACTED] testified as an expert in speech/language pathology. Tr. II, p. 11.

[REDACTED] testified that [REDACTED] had worked with [REDACTED] for two years, in school year [REDACTED] and school year [REDACTED] when [REDACTED] was in the [REDACTED] grade. [REDACTED] described

██████████ as comprehending in the above average to superior range and as having weaker retrieval of information skills. Tr. II, p. 22. ██████████ agreed with ██████████ that written language was the most difficult area for ██████████. Tr. II, p. 23. It was ██████████ recommendation that ██████████ be in small special education classes and integrated speech and language therapy. Tr. II, pp. 31-34.

At the time of the Hearing, ██████████ had not observed ██████████ at ██████████ School during the ██████████ school year. Tr. II, p. 46. ██████████ had no familiarity with ██████████ proposed placement for ██████████ the ██████████ School. Tr. II, pp. 45, 49-50. ██████████ described ██████████ as having a number of strengths that were average or above, p. 57, 58.

██████████ described ██████████ strength as including comprehension of reading, figurative language, receptive language and expressive language. Tr. II, pp. 51-55. However, ██████████ was concerned with ██████████'s ability to keep up in a class with non-disabled peers. Tr. II, p60, 61.

██████████ had not reviewed ██████████ IEP prior to the Hearing, but ██████████ participated by telephone in the development of the ██████████ IEP. Tr. II, p. 56, 57. ██████████ did not express any of ██████████ concerns or provide any comments to ██████████ about the IEP following the ██████████ IEP meeting. Tr. II,

4. Following ██████████ testified. ██████████ is the general administrator for ██████████ School. ██████████ duties include overseeing the coordinators of each of the divisions and heads of the related service departments. Tr. III, p. 9. ██████████ testified as an expert in special education. Tr. III, p. 9.

described School as a non-public day school approved by Virginia, Maryland and the District of Columbia. It serves learning disabled children from ages six to nineteen. Tr. III, p. 11.

said did not participate in the development of IEP at School. Tr. III, p. 10, but it was recommendation that be taught in small classes. Also, has never taught Tr. III, p. 26 and has not been intimately involved in's education for at least two and a half years. Tr. III, p. 27.

said that has no familiarity with the School and none of staff had any contacts with the School. Tr. III, pp. 28-29.

5. Following testified for the is the coordinator for the program at School. Tr. IV, pp. 4-5. testified that has been involved in special education as a teacher and administrator for 25 years. Tr. IV, p. 5. has been in charge of the program at School since 1994. duties include coordinating the curriculum, the program and hiring teachers. testified as an expert in special education. Tr. IV, p. 7.

testified that has known since was in the grade at School. said that has been involved in the development of IEPs Tr. IV, p. 8. described as being very bright with a high intellect. testified that is one of the best students in math, but was one of the weakest students in reading. Tr. IV, p. 9. further described as having difficulty with written language. described's needs as requiring a small class setting. Tr. IV, p. 18. testified that had not worked with since was in the grade. Tr. IV, p. 23.

██████████ testified that ██████████ had no familiarity with ██████████ School. Tr. IV, p. 19 and was not familiar with ██████████ proposed IEP for ██████████. Tr. IV, p. 23.

B. ██████████'s Case:

1. The first witness to testify for ██████████ was ██████████, the guidance counselor at the ██████████ School. Tr. IV, p. 30. (SB-46). ██████████ was also employed at ██████████ School and taught children there with learning disabilities for seven years. Tr. IV, p. 31. ██████████ testified as an expert in special education, specifically learning disabilities and guidance counseling. Tr. IV, p. 31.

██████████ testified that ██████████ provides transition and orientation for children who are transferring to ██████████ from a private school program. Tr. IV, p. 36. (SB-33). Also, ██████████ has a teacher advisory period, which provides the student with support throughout the school year in the academic program and other issues that come up during the school day. Tr. IV, pp. 39-40; (SB 39).

██████████ described the proposed program for ██████████ as being a special education program, but providing opportunity for ██████████ to have contact with regular education peers during physical education and teacher advisory. Tr. IV, p. 44.

██████████ participated in the ██████████ IEP meeting convened by ██████████ when ██████████'s classes were being discussed. ██████████ described the meeting as frustrating because there was limited participation from the ██████████. ██████████ said that the ██████████ did not request at the ██████████ meeting a Science class, an Algebra I class or a Spanish class. Tr. IV, pp. 44-45. ██████████ further testified that had the ██████████ asked for those classes, a special education class could have been set up. Tr. IV, pp. 44-46. ██████████ also stated that a proposed reading class for ██████████ would have a reading specialist and a special education teacher with no more than 10 students. An English

class would have been taught by a special education teacher ([REDACTED]) and an instructional assistant who is a teacher and would have had no more than eight to ten students in the class. Tr. IV, pp. 48-49. The special education classes would not have been larger than eight to ten students. The physical education class would have been as large as 16 students with two teachers. Tr. IV, p. 61.

It was [REDACTED] opinion that the proposed program that [REDACTED] offered [REDACTED] at [REDACTED] School adequately met [REDACTED] s needs and would have provided [REDACTED] with a strong foundation for [REDACTED] school career. Tr. IV, p. 50.

[REDACTED] was of the opinion that [REDACTED] would benefit greatly being in the least restrictive program that allowed [REDACTED] to participate with non-disabled peers and to develop self-esteem and self-confidence. Tr. IV, p. 57. [REDACTED] also observed [REDACTED] at [REDACTED] School (SB30).

[REDACTED] stated that [REDACTED] is very bright with learning disabilities. It was [REDACTED] opinion that [REDACTED] would benefit greatly being in a less restrictive program with in non-disabled classes.

[REDACTED] testified that there was no [REDACTED] schedule of classes for [REDACTED] available when [REDACTED] developed the IEP on [REDACTED] Tr. IV, p. 66. [REDACTED] stated that if [REDACTED] needed a special education Spanish class one would have been offered to [REDACTED] Tr. IV, p. 68.

[REDACTED] testified that there are approximately 120 disabled students at the [REDACTED] School out of a total of 750 students. Tr. IV, p. 89.

2. The next witness for [REDACTED] was [REDACTED]. [REDACTED] is licensed Mathematics and Sociology. (SB-47) [REDACTED] has 38 years of teaching experience and has been a teacher at [REDACTED] School for ten years. Tr. IV, p. 138. [REDACTED] testified

as an expert in Mathematics. Tr. IV, p. 38. [REDACTED] testified that [REDACTED] has taught learning disabled students for many years and has observed [REDACTED]. Tr. IV, p. 139. (SB-40). [REDACTED] participated in the IEP meeting on [REDACTED] and recalls that the [REDACTED] did not ask for a Geometry class and agreed on scheduling an Algebra class. Tr. IV, p. 142.

3. [REDACTED] is the Assistant Principal at [REDACTED] School. (SB-45). [REDACTED] has a master's degree in learning disabilities and is certified K-12 in learning disabilities and in administration. Tr. IV, p. 170. [REDACTED] testified at the Hearing as an expert in special education, specifically learning disabilities and school administration. Tr. IV, p. 171. It was [REDACTED] opinion that [REDACTED]'s proposed IEP was appropriate because it addressed [REDACTED] areas of weakness and provided [REDACTED] with all the necessary support. Tr. IV, p. 175. [REDACTED] testified that the IEP course work that was proposed for [REDACTED] offered [REDACTED] an appropriate schedule for a [REDACTED] grader. Tr. IV, p. 181. [REDACTED] said that [REDACTED] has a background in teaching students with learning disabilities. Tr. IV, p. 171. [REDACTED] also met with [REDACTED] when [REDACTED] visited the [REDACTED] School (AB-42).

4. The next witness to testify for [REDACTED] was [REDACTED]. (SB-50). [REDACTED] is a learning disabilities teacher with 23 years' experience. Tr. V, p. 5. [REDACTED] said that [REDACTED] has all of [REDACTED] course work for a Ph.D. Tr. V, p. 6. [REDACTED] said [REDACTED] had the benefit of observing [REDACTED] at [REDACTED] School. Tr. V, p. 9 (SB-41). [REDACTED] described [REDACTED] as being a bright learning disabled student with strong receptive language abilities, comprehension abilities and weaker expressive abilities. Tr. V, pp. 10-11. [REDACTED] also has trouble expressing [REDACTED] self in writing. Tr. V, p. 11. According to [REDACTED] [REDACTED] is a typical bright learning disabled child. Because of [REDACTED] intelligence, [REDACTED] is able to understand concepts and make inferences so [REDACTED] is able to understand grade level work. Tr. V, pp. 11-12.

██████████ testified about ██████ teaching methodology in the classroom. ██████ said that when ██████ teaches English, ██████ generally starts with a phonetics so that the children are familiar with their letter sounds, so that they can decode prefixes, suffixes, root words. ██████ said that the class works as a team and the kids encourage each other. Tr. V, p. 14.

██████████ testified that writing was an area of difficulty for ██████ and that ██████ oral reading is held back as a result of ██████ decoding deficits. Tr. V, p. 15. ██████ felt ██████ would succeed in the ██████ program and that the proposed program was an excellent program for ██████ Tr. V, p. 16. ██████ was of the opinion that ██████ is on the same level with other students in ██████ class. Tr. V, p. 17.

██████████ testified that in addition to ██████ self, ██████ class includes a full-time teaching assistant for all ██████ classes. This would have included the classes that ██████ had with ██████ Tr. V, p. 17. Also, ██████ class size consists of eight to ten students all taught with an assistant and that the size of ██████ class is similar to that at ██████ School. Tr. V, p. 18. ██████ said that ██████ has computers in ██████ class and other types of assistive technology, including a Kurzweil Reader, that will read a text to a student. Tr. V, p. 19.

It was ██████ opinion that ██████ would benefit from having interaction with non-disabled students. Tr. V, pp. 29-30. ██████ confirmed that the ██████ did not ask for Spanish or Science at the IEP meeting Tr. V, p. 34. It was ██████ belief that ██████ would benefit from a Spanish class with 19 students and two teachers because that would have been the same staff to student ratio as at ██████ School. Tr. V, p. 37.

5. ████████████████████ is a school psychologist with 18 years' experience. (SB-38). ██████ testified as an expert in school psychology. Tr. V, p. 76. ██████ said that ██████ conducted a psychological evaluation of ██████ at ██████ School in ██████ as part of an reevaluation

process. Tr. V, p. 77. (SB-15) Additionally, [REDACTED] reviewed [REDACTED] file and participated in the [REDACTED] IEP meeting. Tr. V, p. 77.

In [REDACTED] opinion there is a significant discrepancy between [REDACTED] cognitive abilities, problem solving skills and areas of academic functioning. Tr. V, p. 78. [REDACTED] said that [REDACTED] also has phonological processing deficits and that has had an impact on [REDACTED] processing of text and in the generation of written text. Tr. V, p. 78. [REDACTED] said that [REDACTED] functions in the superior range of intellect. [REDACTED] verbal and non-verbal thinking skills are highly developed. [REDACTED] has excellent problem solving skills, good reasoning skills, and good perceptual organizational skills. Tr. V, p. 79. [REDACTED] weaknesses are in the decoding aspect of reading and in the production of written language. Tr. V, pp. 79-80. It was [REDACTED] opinion that [REDACTED] did not have a severe learning disability because [REDACTED] processing deficits are not across the board and has not had a significant impact in the area of math, where [REDACTED] skills are well above average. Tr. V, p. 81.

[REDACTED] also said that [REDACTED]'s profile indicates that [REDACTED] would benefit from some learning in a regular education setting. Tr. V, p. 82. It was [REDACTED] opinion that [REDACTED] would be able to function at grade level. Tr. V, p. 82 and that [REDACTED] needed to be at [REDACTED] School because, if [REDACTED] is not allowed to demonstrate [REDACTED] competence, [REDACTED] will not develop it. Tr. V, p. 84. [REDACTED] will grow socially if [REDACTED] is allowed to interact with a variety of individuals. Tr. V, p. 85.

[REDACTED] said that the [REDACTED] did not ask for specific classes for [REDACTED] at the [REDACTED] IEP meeting and that it was [REDACTED] understanding that they were to get back to [REDACTED] with information about classes. However, [REDACTED] testified that to [REDACTED] knowledge the [REDACTED] did not get back to [REDACTED] following the IEP meeting to request specific elective classes and other classes. Tr. V, p. 90.

It was [redacted]'s opinion that the [redacted] IEP offered [redacted] the appropriate amount of support services, an excellent transition to a less restrictive environment and would meet [redacted] needs. Tr. V, p. 96.

6. [redacted] is a speech and language pathologist and member of the assisted technology team. (SB-43). Tr. V, p. 114. [redacted] coordinates speech and language services for [redacted]. [redacted] said that [redacted] has been involved with [redacted] evaluations, observations and IEP development for approximately six years. Tr. V, p. 115. (SB-17). [redacted] has observed [redacted] in the classrooms in [redacted] and on three occasions in the last five years at [redacted] School. Tr. V, p. 116. [redacted] was of the opinion that [redacted] profile is similar now to what it was when [redacted] was attending school in [redacted]. Tr. V, p. 116. [redacted] said that [redacted] phonetic weaknesses have not been remedied since [redacted] has been at [redacted] School. Tr. V, pp. 117-118 and that [redacted] still struggles with the same weaknesses in decoding fluency. Tr. V, p. 120. [redacted] describes [redacted] learning disability as moderate. Tr. V, p. 138.

[redacted] testified that the IEP proposed by [redacted] provides [redacted] with comparable speech and language services to what is being offered at the [redacted]. Tr. V, p. 120. [redacted] believes the proposed IEP to be appropriate because it gives [redacted] the needed special education and related services. Tr. V, pp. 120-121. The speech and language program at [redacted] integrates services in the classes.

[redacted] said that [redacted] has a Kurzweil reader, which would allow [redacted] to have [redacted] textbooks read aloud to [redacted]. Tr. V, pp. 125-126. [redacted] said that [redacted] has other devices available to read information to [redacted] to accommodate for [redacted] poor decoding skills. Tr. V, pp. 126-127.

██████████ said that ██████████ obtained ██████████ School's class schedule for ██████████ from ██████████ ██████████ on a ██████████ visit to ██████████ School. Tr. V, pp. 129-130. ██████████ said that it was on this visit that ██████████ learned that ██████████ was in Spanish and Science classes. ██████████ recalled that the ██████████ had not asked for those classes at the ██████████ IEP meeting. Tr. V, p. 131. ██████████ also recalled that the parents were supposed to get back with the personnel in ██████████ about ██████████ proposed schedule for the ██████████ School Year, but they never did. Tr. V, p. 139.

FINDINGS OF FACT

Based on the evidence presented in this matter, I find that:

1. ██████████ is identified as both very bright and having a specific learning disability. Even though ██████████ intelligence has been measured in the superior range, ██████████ learning disability including language processing deficits and problems with attention and organization, have affected ██████████ academic skills, primarily reading and writing.
2. ██████████ and the ██████████ agree that ██████████ is both bright and learning disabled; however, they disagree as to the type and intensity of the special education services ██████████ requires. The ██████████ contend that ██████████ requires a full-time learning disabilities placement at ██████████ School; however, ██████████ contends that it has an appropriate program for ██████████ at its ██████████ School, which is a unique public school designed to serve only ██████████ grade students.
3. On ██████████, the ██████████ filed a Due Process Hearing Request seeking funding from ██████████ for placing ██████████ in ██████████ School for the ██████████ School Year. The parties agreed however, that ██████████ would proceed with drafting an IEP for ██████████ for

██████████ School Year, before proceeding with a Due Process Hearing, the IEP meeting was convened on ██████████, the Due Process Hearing began on ██████████

4. The ██████████ participated in the development of the ██████████ IEP as well as in the development of an IEP by ██████████ School. ██████████ School IEP was developed on ██████████ prior to the filing of the Due Process Hearing Request and prior to the IEP developed by ██████████. Also, the request for the due process hearing was initiated prior to asking for and developing the ██████████ IEP in ██████████ Tr. I, pp. 81-82, 89-90.

5. According to a stipulation between the parties at the Hearing on ██████████, the ██████████ had no objections to the present level of performance or the goals and objectives of ██████████ proposed IEP. Tr. I, pp. 105-106.

6. ██████████ said that ██████████ had no familiarity with the ██████████ program at the time of the ██████████ IEP meeting. Tr. I, p. 83. ██████████ visited ██████████ three times however, these visits occurred after the filing of the request for a Due Process Hearing, and before the development of ██████████ IEP for ██████████ for and after the ██████████ school year had begun, while ██████████ had started the school year at ██████████ School. Tr. p.91.

7. ██████████ stated that ██████████ was committed to ██████████ attending ██████████ School for the ██████████ school year and had paid a deposit to insure ██████████ attendance there prior to ██████████ IEP meeting on ██████████ at which meeting ██████████ and the ██████████ finalized an IEP for ██████████ to be implemented at the ██████████ School for the ██████████ school year.

8. The IEP developed by ██████████ for ██████████ for placement at ██████████ d (SB-35), consisted of ██████████ receiving Reading, English, Study Skills, World Civilization and Algebra I in a special education setting. ██████████ was to receive Speech Language services of

90 minutes a week and occupational therapy consultation of sixty minutes monthly. The special education classes would have been no larger than eight to ten students with an aide. The aide in the main special education class was a certified teacher. Tr. V, pp31, 38.

9. The IEP was developed through a cooperative effort on the part of [REDACTED] and the representatives of [REDACTED] School who participated in the [REDACTED] IEP meeting by telephone. The [REDACTED] were present at the meeting but did not provide comments about the draft IEP that [REDACTED] had developed.

10. Many of the goals and objectives in the [REDACTED] IEP were incorporated from [REDACTED] School IEP developed for [REDACTED] on [REDACTED] for the [REDACTED] school year, primarily because [REDACTED] requested and was provided with a copy of [REDACTED] School IEP in preparation for the [REDACTED] meeting.

11. Following the [REDACTED] IEP meeting, [REDACTED] sent the [REDACTED] a letter (SB-36) referring to the IEP meeting and the draft IEP. The letter also requested that the [REDACTED] provide any comments to [REDACTED] and another IEP meeting could be arranged; however, the [REDACTED] made no comments about the IEP and no additional IEP meeting was requested.

12. At the [REDACTED] IEP meeting the participants discussed proposed classes for [REDACTED] however, the [REDACTED] did not request that particular classes such as Science or Math. Also, [REDACTED] School had not finalized [REDACTED] class schedule at the time of the [REDACTED] IEP meeting. [REDACTED] School class schedule was not developed until [REDACTED] prior to the start of the [REDACTED] school year.

13. The parties agree that the size, setting and the number of students around impacts [REDACTED] ability to learn; thus, there is no disagreement that [REDACTED] requires a small class

setting, which [REDACTED] offered at the [REDACTED] School; however the [REDACTED] contend that [REDACTED] School can more appropriately provide this kind of setting.

14. During the [REDACTED] IEP meeting, the [REDACTED] communicated to [REDACTED] that they felt that the IEP [REDACTED] School had developed was appropriate for [REDACTED] and that it should be implemented at [REDACTED] School in a full-time special education program.

15. Although the [REDACTED] did not contest the present level of performance or the goals and objectives as stated in the [REDACTED] IEP, at the Due Process Hearing, [REDACTED] expressed concern with whether or not the IEP could be implemented at [REDACTED] and whether or not [REDACTED] could benefit from contact with regular education students. However, the witnesses on behalf of [REDACTED], who testified as experts, were of the opinion that [REDACTED] is not severely learning disabled and would benefit in a program that includes contact with regular education students.

16. Based on the testimony of [REDACTED] expert witnesses, the IEP developed by [REDACTED] could be implemented at [REDACTED] and that [REDACTED] would receive appropriate services at [REDACTED] considering [REDACTED] learning disabilities and that [REDACTED] is the Least Restrictive Environment for [REDACTED]

17. [REDACTED] testified that [REDACTED] had concerns about whether there were any Spanish or Science classes at [REDACTED] appropriate for [REDACTED]. Based on [REDACTED] class schedule at [REDACTED] School, among other things, [REDACTED] is taking Spanish 1 and a Science class. However, the [REDACTED] did not request that [REDACTED] provide these classes for [REDACTED] at the [REDACTED] IEP meeting on [REDACTED]

18. [REDACTED] testified at the Hearing that prior to filing the Due Process Hearing Request, and prior to the development of the [REDACTED] IEP, that the [REDACTED] had already

committed to returning [REDACTED] to [REDACTED] School for the [REDACTED] School Year and had paid a deposit for [REDACTED] attendance. [REDACTED] also participated in the development of an IEP for [REDACTED] at [REDACTED] School. (Tr. Pp. 81,82,89,90)

19. The [REDACTED] School is a unique school in that it has only [REDACTED] grade students. [REDACTED] was not familiar with the [REDACTED] School at the time of the IEP meeting (Tr. 1, p.83). Even so, [REDACTED] testified that [REDACTED], who would have been [REDACTED] primary special education teacher at [REDACTED] was a good teacher. TR. 1,p.71.

20. [REDACTED] testified that [REDACTED] visited [REDACTED] School three times, the first time on [REDACTED] then two subsequent visits, which based on [REDACTED] testimony occurred on [REDACTED] and [REDACTED]. [REDACTED] testified that during [REDACTED] visits [REDACTED] observed a World Literature class, an English class and a Spanish class Tr. 1, pp. 36, 37, 82.

CONCLUSION

A. Whether [REDACTED] proposed an IEP and placement appropriate for [REDACTED] in the least restrictive environment for the [REDACTED] School Year?

The IDEA entitles disabled students to a Free and Appropriate Public Education ("FAPE). See 20 U.S.C. § 1412(a) (1997). Specifically, Section 1412(a) provides that, "[a] free appropriate public education is available to all children with disabilities residing in the State between ages 3 and 21, inclusive" Similarly, the accompanying regulation at 34 C.F.R. § 300.121(a) also requires each state to have "[i]n effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE"

The IDEA does not require a maximal educational opportunity. See Board of Educ. v. Rowley, 458 U.S. 176, 189 (1982) (holding that the school board was not required to provide an

interpreter to a deaf child who was progressing adequately without one). In fact, "the requirement that a State provide specialized educational services to handicapped children generates no additional requirements that the services be sufficient to maximize each child's potential 'commensurate with the opportunity provided other children.'" Id. at 198. Rather, FAPE only requires that a disabled student receive personalized instruction with sufficient support services to enable the handicapped child to benefit educationally from that instruction." Hessler v. State Bd. of Educ., 700 F.2d 134, 139 (4th Cir. 1983).

Based on the evidence, even the ██████ agree with the goals and objectives of the ██████ IEP and did not present any evidence through testimony or otherwise that they disagreed with the IEP that was drafted on ██████. This is largely due to the fact that the ██████ IEP incorporated goals and objectives of the IEP for ██████ that ██████ School had drafted prior to the ██████ IEP meeting.

The ██████ School is the placement offered by ██████ for ██████. This school contains only ██████ grade students and among other things, is designed to assist these students in transitioning from a junior high school environment to high school. This school has approximately 120 special education student out of a student body of approximately 750. Based on the evidence, staff and facilities are appropriate for students who do not require a full-time special education program. Although it is evident from the record that ██████ is very bright and learning disabled, the ██████ School is prepared to accommodate ██████ and the weight of the evidence is that ██████ does not require a full-time special education placement.

The evidence presented by the ██████ may support that ██████ School can provide ██████ with the best education ██████ can get, but that is not what IDEA requires. ██████ provided ██████ with the basic floor of opportunity that it is obligated to provide and has made

FAPE available to [REDACTED] through developing an appropriate IEP and determining an appropriate placement for [REDACTED] for the [REDACTED] school year.

B. Whether the placement selected by the [REDACTED] for [REDACTED] for the [REDACTED] School Year provides [REDACTED] with educational benefit in the least restrictive environment?

School divisions make FAPE available to students through the implementation of an IEP.

See 20 U.S.C. § 1414(d)(1997); see also 8 VAC 20-80-60(B) (1999). Here, tuition reimbursement is not appropriate unless the [REDACTED] prove [REDACTED] program is inappropriate and that [REDACTED] School's program is appropriate. See Martin v. Sch. Bd., 348 S.E.2d 857 (Va. Ct. App. 1986); see also Burlington Sch. Comm. v. Department of Educ., 471 U.S. 359 (1985); Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993). Reimbursement is not appropriate in this case because [REDACTED] had an appropriate program for [REDACTED]

The [REDACTED] IEP that the [REDACTED] IEP team designed for [REDACTED] offered educational and related services to [REDACTED] that were designed to enable [REDACTED] to receive appropriate services at the [REDACTED] School. In preparing to draft the IEP, [REDACTED] had access to the goals and objectives from [REDACTED] School IEP and other information regarding [REDACTED] educational progress and needs that had been compiled by [REDACTED] School and [REDACTED] during [REDACTED] attendance there. [REDACTED] was able to incorporate these goals and objectives in its IEP for implementation at the [REDACTED] School. There was no evidence presented that the staff at [REDACTED] could not implement the [REDACTED] IEP.

The [REDACTED] IEP offered [REDACTED] appropriate classes and the [REDACTED] staff was prepared to provide additional Science and Math classes that [REDACTED] was taking at [REDACTED] School; however, the [REDACTED] had not requested those classes. Accordingly, the [REDACTED] IEP offered FAPE to [REDACTED] in the least restrictive environment; whereas the IEP offered by the

█████ School requires a full-time placement in only special education classes and no opportunity for ██████ to participate in activities with non-disabled peers.

The IDEA requires that

[t]o 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 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 of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(a); see also 34 C.F.R. § 300.550(b); 8 VAC 20-80-10.

The Record in this matter makes it clear that ██████ could achieve an appropriate education at the ██████ School. ██████ offered ██████ special education resources as well as the opportunity to interact with non-disabled peers in ██████ elective classes, at lunch and in physical education. On the other hand ██████ School services only disabled students. Placement at ██████ School would eliminate ██████ opportunity to interact with non-disabled peers.

In view of the testimony of ██████ and ██████ it is apparent that ██████ does not require a full-time special education program that ██████ School developed for ██████; accordingly, ██████ School is the least restrictive environment for ██████ under the IDEA and supporting regulations.

3. Whether ██████ or the ██████ bear the burden of proof in this matter?

Based on the Record in this case, on ██████, the ██████ participated in the development of an IEP at ██████ School. Subsequent to that, the ██████ authorized their

counsel to file for a Due Process Hearing on [REDACTED] requesting that [REDACTED] fund [REDACTED] at [REDACTED] School for the [REDACTED] School year. On [REDACTED] notwithstanding the pending Due Process Hearing, the parties agreed that [REDACTED] would develop an IEP for [REDACTED], which IEP was in fact developed. At the time of the IEP meeting, the [REDACTED] had not visited the proposed placement for [REDACTED], the [REDACTED] School. In fact, no such visit occurred until [REDACTED] and followed up with two additional visits in [REDACTED]. [REDACTED] testified that [REDACTED] had limited knowledge of [REDACTED] and had committed to placing [REDACTED] at [REDACTED] School even before participating in the [REDACTED] IEP meeting. In view of these facts, the Hearing Officer concludes the [REDACTED] had the burden of proving that [REDACTED] required a full-time special educational placement.

As stated above, school systems are obligated to provide students with a FAPE. The right to a FAPE under the IDEA consists of two parts, compliance with appropriate procedural requirements and a substantively appropriate individualized education program. As the Supreme Court observed in Board of Education of Hendrick Hudson Sch. Dist. V. Rowley, 458 U.S. 177, 206-7 (1982), a court must answer two questions to determine whether a child has been denied a free and appropriate public education under the requirements of the IDEA. The first question is concerned with whether the State complied with the procedures set forth in the Act. Here there were no allegations that [REDACTED] had violated any procedural requirements.

The second question is concerned with whether the individualized educational program developed is appropriate. Based on the testimony of [REDACTED] the [REDACTED] IEP for [REDACTED] contained goals and objectives that were acceptable to [REDACTED] and except for class scheduling, was substantially the same as [REDACTED] School IEP. [REDACTED] primary concern was not with the IEP, but a questions as to whether or not the IEP could be implemented at

Even though implementation was raised as a concern, [REDACTED] testified that [REDACTED], who would have served as [REDACTED] primary teacher was a good teacher. Other than to raise the question of an inability to implement the IEP, no evidence was presented that would indicate that the staff at [REDACTED] could not implement [REDACTED] IEP. In fact, the Hearing Officer concludes that the contrary was proved; that [REDACTED] staff is quite capable of implementing an appropriate special education program for [REDACTED]

Furthermore, it was clear from the testimony of [REDACTED] that the parents were committed to [REDACTED] returning to [REDACTED] School for the [REDACTED] school year, even while the [REDACTED] IEP was being developed. Also, even prior to the filing of the hearing request on [REDACTED], the IEP of [REDACTED] School had already been developed in [REDACTED]. Furthermore, [REDACTED] was not familiar with [REDACTED] and had not even visited [REDACTED] before rejecting it as an appropriate placement for [REDACTED]. In fact, [REDACTED] visits did not take place until approximately six weeks after the school year had started while [REDACTED] had already started attending [REDACTED] School.

Based on the testimony of the [REDACTED] expert witnesses, who the Hearing Officer found to be credible, the IEP developed by [REDACTED] was appropriate for [REDACTED] and appropriately dealt with [REDACTED] learning disabilities. Furthermore, the [REDACTED] School is equipped to meet [REDACTED]'s needs, including courses [REDACTED] desires to take, small classes and sufficient staffing in the classrooms to further assist [REDACTED]; therefore, [REDACTED] is an appropriate placement for [REDACTED]. Also, as testified by [REDACTED], [REDACTED] School program offered to [REDACTED] was the "the best that [REDACTED] can possibly get." Tr. p. 164, a standard that [REDACTED] is not required to meet.

Accordingly, in view of the Findings of Fact in this case, the Hearing Officer determines that [REDACTED] had the burden to prove that it had developed an appropriate IEP and determined an appropriate placement for [REDACTED]. As held in Weast v. Schaffer, 38 IDELR 124 (D. Md 2002) school district have the burden of proving its initial IEP offered FAPE to the child. Here, [REDACTED] met that burden.

On the other hand, the [REDACTED] had the burden of proving that the placement offered by [REDACTED] was inappropriate for [REDACTED], a burden they did not meet.

ORDER

Having proposed an appropriate IEP and placement for [REDACTED], [REDACTED] is not required to reimburse the [REDACTED] for the placement at [REDACTED] School for the [REDACTED] school year; therefore, it is hereby ORDERED that this matter is DISMISSED.

APPEAL INFORMATION

This decision is final and binding unless the decision is appealed by a party in a state circuit court within one year of the issuance of the decision or in a federal district court.

Date

Hearing Officer