

CASE CLOSURE SUMMARY REPORT

(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of the special education hearing and submitted to the Department of Education before billing.)



<u>Public Schools</u> School Division	Name of Parents
Name of Child	Date of Decision or Dismissal
<u>Esq.</u> Counsel Representing LEA	<u>Esq.</u> Counsel Representing Parent/Child
<u>Parent</u> Party Initiating Hearing	<u>School</u> Prevailing Party

Hearing Officer's Determination of Issue(s):
Whether residential placement was required.

Hearing Officer's Orders and Outcome of Hearing:
No residential placement required as PS was providing FAPE.
Request denied

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within ~~45~~ calendar days.

Printed Name of Hearing Officer

Signature

VIRGINIA DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING



In the Matter of:

and

v.

Public Schools

, Esq. for
, Esq. for Public Schools

Hearing Officer Decision

Preliminary

This matter was instituted by an letter
from and , parents of
(" "), to Public Schools (" PS") requesting a
due process hearing.

By letter dated the undersigned was
appointed hearing officer for this proceeding.

The parties held a telephonic prehearing conference on
. The parties agreed that the only issue to be
resolved was that of placement, i.e., whether residential
placement was appropriate in the circumstances. The parties
also set hearing dates.

Prior to the hearing the parties engaged in several
discovery requests, and submitted their respective list of
witnesses and exhibits within the five-day rule*.

* 20 U.S.C. 1415(f)(2); 34 C.F.R. 300.509(b); 8 VAC 20-80-76(K)(2)

The hearing was held in _____, Virginia, on _____ and _____. Each party submitted its position on the issue by means of an oral argument on the last day of the hearing.

Statement of the Case

_____ was born in _____ in _____ and adopted when _____ was approximately seven weeks old. At six months of age _____ parents became concerned when _____ failed to develop early motor and language skills. A neurological assessment diagnosed severe hypotonia (Ex. 3, FCPS Ex. 75, Tr. 110).

The family moved to _____ in _____. _____ was evaluated at the _____ Preschool Diagnostic Center and found to be eligible for special education services. In _____ was reevaluated and again was found to be eligible for special education. In _____ was reevaluated and found to be eligible for special education under the label of "Orthopedic Impairment" (PS Exs. 1, 3, 4, 75).

In _____ was tested by _____, PhD, a Clinical Neuropsychologist. _____ gave the following tests to _____: Wechsler Intelligence Scale for Children - Partial, Personality Inventory for Children, Wide Range Assessment of Memory and Learning, Visual Memory Tests, Taylor Story Narratives, Receptive and Expressive Language Tasks, and Motor Function Tasks. _____ also reviewed _____'s history and _____ school records. _____ concluded that _____ was functioning with borderline low average intelligence and experienced considerable difficulties in visuoconstructional abilities. _____ had receptive language difficulties and articulation deficits. _____ was impulsive and had difficulty in concentrating (Ex. 5).

attended School from to . An Individualized Education Program ("IEP") was created for for each of those years. In each instance 's parents were in agreement with the goals and objectives set forth in the IEPs (PS Exs. 9-12; Tr. 121).

At the beginning of the school year entered School. The IEP for this year was prepared in the Spring of . It noted 's physical problems, discussed academic and behavioral strengths and weaknesses, and set forth goals and objectives for the upcoming school year. It placed in a general classroom setting with a modified curriculum. The parents agreed that this program was the least restrictive environment for (PS Ex. 12).

seems to be adapting well to . teachers testified that behavior and educational achievements were both improving (Tr. 182, 291-294, 299-300, 350, 356). However, on an IEP meeting was convened and the requested that a new IEP be prepared and that be put in residential placement (PS Ex. 13). The genesis of this request was the neuropsychological assessment of (Ex. 3).

A subsequent IEP meeting was held on to consider this request. The IEP team, with the dissenting, concluded that 's needs were being, and could continue to be, met under existing placement (PS Ex. 14).

is 's adoptive . was seven and one-half weeks old when was adopted, and is and years old now. was formerly a Spanish teacher in Public School System (Tr. 110-111).

The realized that had hypotonia shortly after adoption, and realized when was about three years old that

there were other problems in addition to the hypotonia (Tr. 120, 148).

attended School when was and years old, where first Individualized Education Program ("IEP") was prepared. Through the years there have been several IEPs prepared for (PS Exs. 9-14). For the most part, the have been satisfied with, and agreed with, the goals and objectives set forth in the IEPs. However, does not believe that has ever met any of the goals and objectives set forth in the IEPs, or that the IEPs have been successful in educating . Although has participated in IEP meetings, has not observed in special education classes (Tr. 120, 121, 122, 137, 147).

was always a difficult child, needing help in every aspect of daily life. is obstinate and battles with on a daily basis, sometimes resorting to physical violence. eats with hands, as is not able to handle utensils. yells at and is sometimes destructive. has a very short attention span and is difficult to manage. refuses to go to bed on time, and therefore is still tired when leaves for school in the morning. cannot dress and refuses to do homework (Tr. 111-116).

has spoken to 's teachers on numerous occasions in the past regarding these problems. However, in 's opinion, these conversations have come to naught, as 's behavior remains the same (Tr. 116).

According to has also had problems at school. has been inattentive and disruptive in class, and once was engaged in a fight with another student. was suspended for two days for inappropriate behavior. However, has apparently had no disciplinary problems at new school (Tr. 117, 124, 142; Ex. 10).

provides a Child Specific Team ("CST") service, which, in this case, provided Family Preservation Services ("FPS") at the home for a six-month period starting in . Basically these services would commence when arrived home from school in the afternoon and continue until the early evening hours. Two counselors would assist with homework and other matters, and counsel the parents. Periodically the FPS staff would prepare reports which would set goals for , report on progress towards achieving these goals, and make recommendations for further services (PS Exs. 45, 47, 51, 55). Although offered to continue the services for another three months in , declined the offer, as did not believe that the services had resulted in any improvement in 's behavior, and were intrusive on family (Tr. 118-119, 120, 130, 133-134, 135, 139, 150; PS Ex. 59).

The are of the opinion that should be placed in a residential facility. This request was formally presented to PS in an IEP meeting on , and repeated at an IEP meeting (Tr. 123, 150; PS Exs. 13, 14).

, PhD, is a clinical psychologist and neuropsychologist licensed in Virginia, specializing in child brain development. is a member of the , which maintains an office facility in , Virginia (Tr. 53-54, 76).

met with on , and , and administered a battery of tests and procedures, including the Wechsler Intelligence Scale for Children - Third Edition, Wechsler PreSchool & Primary Scale of Intelligence, Trails Tests Parts A & B, Wide Range Achievement Test - Third Edition, Peabody Individual Achievement Test - Revised, Woodcock Reading Master Test - Revised, Animal Naming Test, Peabody

Picture Vocabulary Test - Third Edition, Boston Naming Test, Fuld Object Naming Test, Wide Range Assessment of Memory & Learning, Beery-Buktenika Visual Motor Integration Test, Beery-Buktenika Visual Perception Test, Vineland Adaptive Behavior Test, Conners Teacher Rating Scale, Conners Parent Rating Scale, Achenbach Child Behavior Checklist, and Achenbach Teacher Report Form. However, did not observe in educational setting (Ex. 3, Tr. 55, 80, 87).

As a result of these endeavors concluded that suffers from severe organic brain impairment, which affected intelligence, language, academic achievement and concentration, and frustration control. suffers from moderate mental retardation, severe language disorder, motor hypotonia, and social skills impairment. 's IQ score places below the 0.1 percentile*. perceptual organization and verbal comprehension skills are severely impaired and within the range of moderate mental retardation (Ex. 3, Tr. 57).

's academic skills are commensurate with overall level of cognitive ability, all of them being at a level of less than one percent of children age. reading, arithmetic, and spelling skills are all within the range of mental retardation. Overall, academic skills are at a grade level ranging from the first month of kindergarten through the middle of the first grade, and at an age equivalency level ranging from below five years through six years, nine months (Ex. 3, Tr 59).

's visual-motor and visual perception ability skills are also severely impaired. tested below the first percentile in all the tests administered in these areas (Ex. 3).

's language skills are commensurate with mild mental retardation. displayed severe impairments in receptive

*The percentile score represents where stands with respect to others of age range (Tr. 58)

vocabulary, expressive vocabulary, and categorical fluency, test results again placing in the first percentile (Ex. 3).

's memory skills are better than other skills. However, this rote ability to acquire information is tempered by inability to use this learning in an appropriate manner (Ex. 3).

's adaptive living skills are also severely impaired. Using the Vineland test, 's communication skills, daily living skills, and socialization skills all tested in the one percentile range, with relative age levels in each of these areas being four years, six months, three years, five months, and two years, seven months, respectively. The Achenbach test results, which were based upon observations by parents and teachers, also suggest that has social skills impairments, deficits in thought and language control, and profound attention and concentration difficulty (Ex. 3, Tr. 60-61, 62, 63, 81-82, 100).

concluded that there had been no significant change in 's skills since administered many of the same tests and procedures to in (Tr. 60, 92).

studied the most recent psychological tests conducted by PS (PS Ex. 75) and concluded that there was nothing contained therein that would contradict findings regarding (Tr. 66-67, 82-83, 84-86, 92).

also concluded that, in opinion, requires residential placement in order that academic and domestic environments will be under one, organized, consistent setting where the different experiences, the training, and the behavior modification plan can be implemented by professionals. Outside of a closely structured and integrated academic and residential environment 's impairments make it difficult for to cope and therefore unable to learn. A failure to place in a

residential setting will, in _____ opinion, make no particular difference in _____'s academic achievements or _____ IQ, but would result in no increase in _____ practical domestic skills (Ex. 3, Tr. 65, 66, 68-69, 90).

_____ recommended to _____'s parents that they place _____ in Grafton, a residential treatment facility that would integrate his social and academic needs on an around-the-clock basis (Tr. 73).

_____ M.D. is a physician licensed in Virginia who specializes in child and adolescent psychiatry. He is a _____ P.L.C., which maintains an office in _____ Virginia (Tr. 12, 36).

Dr. _____ first met _____ in _____, and met with _____ on one other occasion during that month. Dr. _____ also met with _____'s parents, and spoke with several of _____ teachers. He has not personally observed _____ in the latter's school environment (Tr. 13, 38, 39, 44, 51-52).

Based upon his meetings with _____, his conversations with _____'s parents and teachers, and his review of _____'s medical and other documentation, Dr. _____ concluded that _____ suffers from brain damage and from auditory and visual problems, hypotonia, and a lack of motor coordination and concentration. _____ cannot dress _____ self, feed _____ self or go to the toilet by _____ self. In short, _____'s functioning in all areas has been compromised (Tr. 14, 28-29, 30, 43, 47-48, 103, 104-105).

As a child psychiatrist _____'s role is to take all of the available information, integrate the facts, and create a comprehensive plan for _____'s treatment (Tr. 17).

To this end _____ referred _____ to _____, a clinical psychologist, for testing. _____ test results, (Ex. 3), were discussed in more detail at a previous point in this decision. _____ also reviewed the report of _____,

PhD, who conducted a series of tests on [redacted] in [redacted] (Ex.5). [redacted] compared the testing results and the reports of [redacted] and [redacted] and concluded that there had been no growth in [redacted]'s educational activities and achievements, and no growth in [redacted] knowledge or skills since [redacted] earlier tests. [redacted]'s IQ scores remained somewhat static, which reflected a lack of growth, as opposed to an actual decrease in intelligence (Tr. 16, 19-20, 21, 41).

[redacted] testified that [redacted]'s mental problems were manifested in [redacted] daily activities. [redacted] found it difficult to work in a compliant fashion with others, and tended to be intolerant of things that did not interest [redacted]. [redacted] also has a low frustration level, and is not actually aware of [redacted] problems. [redacted] apparently has violent outbursts at home, but at school [redacted] outbursts have been of the "silly" variety (Tr. 21-22, 29, 50).

The ADHD medicines taken by [redacted] do not work, and it is unlikely that any change will occur in this area as [redacted] ages (Tr. 25-26, 27).

[redacted] concluded that at this stage of [redacted] development [redacted]'s goals should be complete self-care, with a nominal degree of reading fluency, and the ability to handle simple financial transactions. (Tr. 30-31).

[redacted] testified that, in [redacted] opinion, [redacted] needs residential placement, as [redacted] existing program is not working. [redacted] needs fulltime integration of all of [redacted] activities or [redacted] will be doomed to failure. [redacted]'s day has to be highly structured, and will make no progress unless [redacted] is placed in a full time residential treatment program. If [redacted] is not placed in a supported living environment, [redacted] is of the opinion that [redacted] is going to be living in a nursing home or in a state hospital for the rest of [redacted] life (Tr. 24, 31-32, 33-34).

is a special education teacher at School who teaches math and life skills. has two years experience as special education teacher (PS Ex. 74 A, Tr. 267, 270).

's math class consists of six students with two staff, language class consists of eight students with three staff, and base class consists of fifteen students and five staff. is enrolled in a self-contained class, where participates in activities with special education classmates. also has a "peer buddies" program where other, non-special education students come into the classroom to assist the special education students. works well with peer buddies. also participates in the community based instruction program where the students do learning activities in the community (Tr. 271-272, 273-274, 278, 298-299).

Although 's skills are at but a first grade level, has access to, and enjoys using, Alpha Smart computer keyboard and also a computer. is able to sign onto and utilize the Internet (Tr. 282-283).

At the beginning of the school year noticed several behavioral problems with . However, as the year has progressed, these problems have abated. has a daily behavior chart (PS Ex. 71), which provides with rewards for good behavior. almost always achieves daily reward. is not a disciplinary problem, and responds positively to redirection requests by instructors. As behavior has improved, has participated in class to a greater extent (Tr. 284-286, 288-289, 291, 307).

testified that the primary emphasis for at this stage of education was working on life skills, such as coping with emergencies, community activities, personal

hygiene, and cooking. particularly enjoys cooking class, which is held on a weekly basis. is also working on bathroom and eating skills (Tr. 294-296, 300-303, 304-305).

is of the opinion that is receiving educational from program (Tr. 303).

is a special education resource teacher at , and has seventeen years experience in the special education field (PS Ex. 74 F, Tr. 341).

sees three times per week, for approximately thirty minutes per session. works with in increasing social-emotional skills and in meeting those goals as set forth in 's IEP (Tr. 341-343).

is of the opinion that is in the correct educational environment. is receiving instruction in those areas, which meet needs, and receiving services that provide the skills that is going to need in the future. has found to have a very positive attitude towards school and that the behavior plan put in place for is working (PS Ex. 35, Tr. 346-350).

is a physical and occupational therapist at . This is initial year in the world of academia (Tr. 366).

works with one time per week, for about thirty minutes per session. works with on improving motor activities. This includes things such as working with in using eating utensils, using a computer mouse, and improving bathroom skills. Since began seeing in , has noted progress in the areas in which has been working, but admits that could probably improve at a greater pace if worked with more frequently (PS Ex. 69, Tr. 367-369, 378).

is a special education pyramid resource specialist employed by PS. monitors and oversees the special education programs for several schools, including School. has been involved in the special education field since 1984, serving in such capacities as school psychologist and integrated services delivery model team leader.

participates in IEP meetings and monitors IEP compliance, and is in continual consultation with students and teachers.

is certified as a school psychologist and a special education teacher (PS Ex. 74 M; Tr. 157-160).

became involved with in the Spring of , when was advancing from to observed in grade class on several occasions and consulted with special education teachers. concluded that had physical disabilities and educational disabilities, and that a modified curriculum for in was the best way to assure that would make progress at own pace (Tr. 161-162, 168).

's transitional IEP (PS Ex. 12) was designed to emphasize functional skills, including life skills. It was thought that the program would fulfill these needs.

provides a self-contained level of service, with a three-to-one student-teacher ratio. At times during the day, i.e., lunch, physical education, etc., would be integrated with other, non-special education students. During the remainder of the day would participate in classroom activities with other special education students (Tr. 169, 171).

The program would be more intensive than that of , and would include a community based instruction program, which would emphasize daily activities as a part of the functional life studies curriculum. The functional life skills program that participates in is new at

and was not offered at . A behavioral program was also put in place for (Tr. 170-171, 187, 196). observed in on two occasions. The first time, in early observed as worked in the library assisting the librarian. Several weeks later observed in the classroom, making a clay mask and then working on counting money. noticed that seemed to be interacting well with the other students (Tr. 173-177, 188). participated in the : and IEP meetings (PS Exs. 13 & 14), at which time 's parents requested residential placement and 's progress at was discussed with the parents (Tr. 178-180).

opined that 's IEP's for the past several years demonstrate slow but steady progress, and the goals and objectives contained therein are appropriate for .

conclusions regarding 's academic ability do not agree with conclusions, or with the formal and informal assessments of that has been privy to. believes that 's educational scores are consistent with cognitive ability scores (Tr. 182-183, 212-215).

Although has not spoken to 's doctors or the individuals administering the various tests to , is of the opinion that the program is appropriate for , as it is providing with needed educational benefits, therapy, and lifestyles skills. notes that participates in academics, is making progress in reading and math, and has no particular behavioral problems. does not think that needs to be in a residential placement program, and that the least restrictive environment for would be where is at the present time (Tr. 183, 195-196).

is a school psychologist employed by PS since 1989. has been a school psychologist since 1976,

and is currently stationed at the _____, where most of the students are mentally retarded (PS Ex. 74 R, Tr. 219-220).

_____ tested on _____, _____ used the following tests and evaluation procedures: Classroom observation, review of educational records and interviews with staff, Developmental Test of Visual Motor Integration, Draw a Person Test, Peabody Picture Vocabulary Test, Behavioral Assessment of Children, Connor's Behavior Rating Scale, Adaptive's Behavior Scale, Stanford-Binet Intelligence Scale, and the Vineland Adaptive Behavior Scales (Ex. 75, Tr. 224, 253).

_____ was observed at _____ by _____ on _____, _____ saw _____ in the library participating in a play rehearsal, eating a snack, wheeling _____ self around in _____ chair, and at physical education class, where _____ was able to put on tee shirt. _____ thought _____ behavior was satisfactory, although _____ could be easily distracted (PS Ex. 75, Tr. 225-228, 254).

The results of the intelligence test administered by _____ indicated that in the area of verbal reasoning scored a 55, in abstract/visual reasoning _____ scored 46, in quantitative reasoning _____ scored 60, and in short term memory scored 48, giving _____ a composite score of 46, which put _____ in the moderate mentally retarded range. _____ results in the intelligence testing area were similar to those recorded by _____ (PS Ex. 75, Tr. 229, 231-233, 238, 261).

_____ found _____'s expressive language intelligibility to be relatively poor. However, _____ was willing to repeat _____ self and demonstrated little frustration when others had problems understanding _____. _____'s receptive language ability was better, but _____ was still functioning at a five year, two-month age level (PS Ex. 75, Tr. 234-235).

's fine motor/visual perception skills were deficient, but hypotonia has a significant impact in this area (PS Ex. 75, Tr. 234).

's adaptive behavior skills range from borderline intelligence to the moderate range of mental retardation. In communication skills is functioning at a four year, eight month age equivalency level, in daily living skills is functioning at a two year, ten month age equivalency level, in socialization skills is functioning at a four year, two month age equivalency level, and in motor skills is functioning at a one year, four month age equivalency level.

opined that the slight difference between behavioral findings and those of might be attributed to the fact that were primarily based upon classroom observations by teachers, and were primarily based upon home observations by the parents (PS Ex. 75, Tr. 239-240).

expressed the opinion that there were no clinical difference between test results and those of (Tr. 262).

Based upon evaluation, is of the opinion that needs a classroom situation, a behavior management control program, and a functionally based curriculum. does not think that needs residential placement, as does not have severe behavioral problems, and is responding quite well to the behavioral problems that has. thinks that the program is appropriate and educationally beneficial for , as the behavioral program and the educational curriculum are specifically designed to meet needs (Tr. 243-245, 248).

noted that, based upon observations, would not be a satisfactory residential placement for . was of the opinion that most of the students

had much more severe behavioral and disciplinary problems than exhibited by (Tr. 250, 252).

is a special education resource teacher. In addition to administering evaluations, also trains other teachers to administer educational evaluations. has been involved in this profession for twenty years (PS Ex. 74 Q, Tr. 352-353).

did an evaluation of on , and observed the evaluation conducted by . Among the tests administered to was the Woodcock Johnson III. concluded that was functioning at approximately a first grade level, but was making educational progress vis a vis cognitive ability, and that achievements were commensurate with IQ. concluded that a comparison of 's earlier Woodcock Johnson test (PS Ex. 31) and later test (PS Ex. 76) demonstrated improvement in certain areas, but admitted that the differences between the two test results was not statistically significant (Tr. 355-356, 359, 362-363, 364).

is employed as a social worker by PS. has had twenty years experience in this area. is the liaison with the Child Specific Team service provided by (PS Ex. 74 C, Tr. 315, 317, 320).

first encounter with and parents was in the Fall of , when CST held a meeting to determine whether home based mentoring for and counseling for parents would be warranted. It was decided that it would be, and the were referred to ., a private entity that provided these services under contract with (PS Exs. 38-42, Tr. 318, 323-325).

The service was instituted in , and scheduled to last three months. Basically a mentor and a counselor went

to the home each weekday when returned home from school and provided the mentoring and counseling services for several hours. mentoring had specific goals in mind*, and each month the FPS team would issue a progress report. Basically the reports indicated progress on 's part, albeit on a limited basis. The service was extended for an additional three months in , with longer hours added. 's progress during the next three months was not quite as good as the first three months, and, although the had sought and received funding form the state for another three month period, the elected to cancel the program at the end of (PS Exs. 45, 47, 51, 52, 54, and 55, Tr. 327, 330-336).

Positions of the Parties

The position is that the burden of proof in this proceeding is upon PS to establish that is receiving a free appropriate public education, and that PS has failed to meet this burden. The further argue that cannot learn outside of the residential placement milieu, therefore such placement is mandated.

The aver that this conclusion is supported by the testimony of and , and that no one with equivalent academic credentials testified to the contrary. They submit that 's history demonstrates no educational progression for the past four years, but that could progress if properly instructed. They assert that the goals and objectives of the IEPs have not been met. Finally they maintain that the purpose of 's education is to enable to live normally, but that

*The three basic goals were (1) will decrease demanding behavior and act politely; (2) will improve social skills; and (3) will increase efforts to care for self (PS Exs. 45, 47, 51, and 55; Tr. 326).

cannot happen if cannot learn, and that will learn only if put in residential placement.

PS' position is that it is providing with a free appropriate public education at this time. PS argues that the burden is upon the parents to establish that the existing program is inadequate and that the proposed program is inadequate. PS asserts that the focus should be on what has accomplished, not what is unable to do. PS avers that 's skills have been developed and behavior has improved. It submits that level of educational achievement has been commensurate with cognitive ability.

PS maintains that residential placement is not proper for 's curriculum needs to be functional, and needs to be getting therapy and psychological services, which PS is providing. Finally, PS urges that 's current placement is in the least restrictive environment.

Discussion and Conclusions

The Virginia regulations require that the hearing officer must determine whether the (1) requirements of notice to the parents was satisfied, (2) child has a disability, (3) child needs special education and related services, and, (4) local education agency is providing a free appropriate public education ("FAPE"). 8 VAC 20-80-76-J-17. The parties agree that (1) - (3) have been met, and I so find.

The starting point for discussion regarding (4) is the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. The objectives of that Act are "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education

and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. 1400(d)(1)(A).

A "free appropriate public education" is defined by the Act as "special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and, (D) are provided in conformity with the individualized education program required under section 614(d)." 20 U.S.C. 1401(8).

Perhaps the seminal case regarding FAPE is Board of Education v. Rowley, 458 US 176 (1982). In that case, the Court concluded that,

"Implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." [Pg. 200]

The "some educational benefit" referred to in Rowley has been interpreted as meaning more than a trivial or *de minimus* benefit. Oberti v. Board of Education, 995 F.2d 1204 (C.A. 3, 1994).

has been evaluated on numerous occasions, starting with in and continuing through and in . Both sides agree that the results of the evaluations are fairly consistent (Tr. 67, 238, 240), and that seems to be progressing commensurately to cognitive abilities (Tr. 89, 238, 240). Where the parties diverge on the evaluation issue is what inferences are to be drawn from them. Complainants argue that has made virtually no progress over

the past four years, whereas PS argues that has made slow but steady progress over the past four years.

As 's evaluation and 's evaluation were only about six months apart, it would not serve much purpose to attempt to ascertain whether any rapid progress had been made during that period of time. Given 's cognitive abilities, no such progress could be expected. However, one could compare 's evaluation with ' and 's, although the undersigned is not overly sanguine that this will give a reliable indication of 's progress. Be that as it may, as far as behavioral observations are concerned, concluded that was significantly impulsive, had severe articulation difficulty, and that the testing had to halt every few minutes for to calm down (Ex. 5). noted 's physical handicaps, but did not seem to find too impulsive. noted 's language disorder and impairment, but did not seem to find it as severe as did (Ex. 4). noted that appeared at times to be excitable, and found speech intelligibility to be poor, but not to the same extent as did (PS Ex. 75). Thus it appears that has made some progress in the behavioral observation area since .

In the intellectual functioning area, 's IQ has actually decreased from the mid-seventies found by to the forties or fifties found by and (Exs. 5, 3, PS Ex. 75). However, as explained, this does not mean that is losing intelligence, but rather that simply is not growing when compared to peers (Tr. 20-21).

In other areas such as motor and visual perception ability, memory, etc., it is difficult to compare the findings of with those of and , as the

tests they administered were different. Broadly speaking, it does appear to the undersigned that has made some, albeit small progress since .

Another area of comparison could be 's IEPs through the years. While it is true that the goals have remained relatively consistent through the past four years, the objective have become more complex and intellectually challenging, as the following indicates:

IEP (PS Ex. 9)

Reading Goals: Apply phonetic principles, meaning clues, and language structure while reading with 80% accuracy in 4/5 trials.

Objectives: Identify and decode short vowel sounds, digraphs, blends, and welded sounds; blend and segment up to six sounds to read and spell real and nonsense words; recognize and use word patterns to decode single syllable words; use picture clues and knowledge of sentence structure, story, and topic; answer who, what, why, and where questions about material read; relay story events in chronological order.

Math Goals: Follow selected (modified) objectives from the math SOL/POS at the first to second grade levels successfully with 80% accuracy.

Objectives: Use place value to read, write and demonstrate with manipulative whole numbers through hundreds; create and solve addition and subtraction word problems (sums to 18); tell time to hour and half hour; count a collection of pennies, nickels, dimes and quarters up to \$1.00; identify and describe triangles, squares, rectangles, and circles according to the number of sides, corners, and square corners.

IEP (PS Ex. 10)

Reading Goals: Apply phonetic principles and comprehensive skills when reading with 80%.

Objectives: Identify and decode short vowel sounds, long vowels, double vowels, digraphs, and blends; answer a variety of "wh" questions about presented information; use picture clues and contextual clues; relay story events in chronological order; identify the main idea in a story.

Math Goals: Follow selected (modified) objectives from the math SOL/POS at the second to third grade levels successfully with 80% accuracy.

Objectives: Use place value to read, write and demonstrate with manipulative whole numbers to 1,000; solve addition, subtraction, multiplication and division problems using a calculator; solve problems involving time, money and measurement; count a collection of pennies, nickels, dimes and quarters up to \$5.00.

IEP (PS Ex. 11)

Reading Goals: Apply phonetic principles, meaning clues, and comprehensive skills when reading with 80%.

Objectives: Blend beginning, middle, and ending sounds to recognize and read all words; use knowledge of sentence structure, the story, and topic to read words; answer factual and inferential questions about material read; retell stories and events, using beginning, middle and end.

Math Goals: Improve math calculation skills and demonstrate mastery of those skills with 80% accuracy.

Objectives: Read, write and show (with manipulative) numbers to 200; solve simple story problems involving addition, subtraction, multiplication and division problems using a calculator; tell time up to the $\frac{1}{4}$ hour; count a collection of coins up to \$1.00.

IEP (PS Ex. 12)

Reading Goals: Apply meaning clues, recognition of sight words and basic comprehensive skills to read at an appropriate grade level with 75% accuracy on 3 out of 5 observations.

Objectives: Make predictions about story content using pictures to sequence events; talk about character, setting and events; use story language in discussion and settings; continue to review basic sight words and selected informational signs.

It should be remembered that _____ is of the opinion that these goals and objectives have never actually been met (Tr. 122), but it would appear that the IEP team - with the exception of the _____ - and _____'s teachers have a contrary opinion (Tr. 198).

The final area of progress measurement would be the testimony of 's teachers. Even though they had been observing for only about three months prior to the hearing, the special education resource teachers, who teach on a daily basis, testified that has progressed, particularly in the area of behavior (Tr. 291-294, 299-300, 350). Recent court decisions have mandated that the observations of teachers and others who interact with the student on a daily basis be entitled to a significant amount of consideration. Faulders v. Henrico County School Board, 190 F. Supp. 2d 849 (E.D. Va., 2002).

Thus the undersigned concludes that has made educational progress over the past several years. Furthermore, the conclusion to be drawn from this is that PS is providing with a free appropriate public education. Devine v. Indian River County School Board, 34 IDELR 203 (C.A. 11, 2001).

This conclusion is especially true in this case where the experts, the IEP team, and the teachers all agree that 's educational achievement should be geared towards improving life skills, i.e., those skills needs to function in the community, such as purchasing groceries, spending money, recognizing road signs, etc. The educational program for is specifically designed to achieve this goal. math classes involve teaching to use money. class goes on outings to places such as grocery stores, where the students learn to shop.

PS is working with to help develop basic motor skills, such as dressing self. The behavioral modification plan is designed to assist in improving social interactions (Tr. 170, 171-172, 278-279, 343).

Granted, 's progress over the past four years has not been meteoric. But, given 's cognitive abilities limitations, one cannot expect overnight, positive changes. Rome was not

built in a day. Moreover, 's progress since started in new school, , in September, , has been duly noted by teachers (Tr. 291-294, 299-300, 350). Thus my ineluctable conclusion is that PS is providing a program that is educationally benefiting .

There was also testimony, by both parties to this proceeding, about the FPS program provided by in which the participated. As the program itself is not operated by PS, its existence and operations are of doubtful relevance herein. However, in passing, it perhaps should be noted that if the are desirous of obtaining additional, after school assistance for that clearly has an educational component, appears to be willing and able to provide such assistance.

Therefore, I find that PS is providing FAPE for , and deny the request for relief of the .

Appeal Information

This decision is final and binding upon the parties. Any party may appeal this decision within one year of the date of the decision in either a state circuit court or a federal district court. See 8 VAC 20-80-76(O).

Dated:

Hearing Officer

Certificate of Service

A copy of the foregoing decision has been served by first class mail, postage prepaid, on _____ on the following:

_____, Esq.

_____, Esq.
