



VIRGINIA:

SPECIAL EDUCATION DUE PROCESS HEARING

, et al,

Complainants,

v.

PUBLIC SCHOOLS,

Respondent

DECISION OF HEARING OFFICER

Statement of Proceedings

This special education proceeding was initiated on _____, (Parent's Exhibit 98) pursuant to _____ and _____ request for a special education due process hearing. In their letter requesting this hearing, the parents assert that after several years of special education, their _____ was unable to read beyond the first grade level. For years, _____ School Division (SD) used a reading program, "Patterns for Success," with _____ which the parents deemed inappropriate. In _____ last year in _____, an aide, who the parents claimed was improperly trained, tried to teach to read with "Patterns for Success."

During the _____ school year when _____ would transfer to _____ school, _____ offered another program called "Reading Works." _____ advised the parents that SD does not have a reading specialist at the _____ school. (Parents' Exhibit 84, pg. 10). SD was unable to provide any information about the "Reading Works" program or how the staff should be trained. The parents had previously asked that their _____ be allowed to transfer to a neighboring school district that uses the Wilson-Orton-Gillingham reading program. SD refused the parents' request.

The parents removed _____ from the public school program and placed _____ in _____, a special education school in _____, Virginia, primarily for _____ to learn

to read through the Wilson-Orton-Gillingham reading program for dyslexic children. The parents are seeking tuition reimbursement for the school year and the additional related expenses incurred in placing at

The School Division has the position that benefited from education at its School and would have received an appropriate education at its School based on the Division's past performance with and the IEP written for grade education.

Findings of Fact

1. was born on , in , where father was stationed as an Air Force pilot. remained in the hospital for two months, and was closely monitored for several months. A neurologist told parents that would have "no intelligible qualities." When finally came home from the hospital, had a feeding tube and heart monitor. parents were told that "would never be able to feed self, walk, talk, or even be able to sit up." They were told they would "be unable to care for and that we should look at institutions for long term care. (Parents' Exhibit 98, pg. 1-2).

2. Mr. and Mrs. obtained occupational therapy, physical therapy and speech therapy for their . By the time was two years old, could feed self, walk, talk, and sit up. (Parents' Exhibit 98, pg. 2).

3. attended special education preschools and received special education services during Kindergarten and first grade. (Parent's Exhibit 98, pg. 2). In , was administered the Woodcock Johnson Achievement Test. "Broad Reading" score was at the tenth percentile level, which was at the 1.2 grade equivalent level. "Broad Written Language" score was at the eighteenth percentile, which was at the 1.3 grade equivalent level. (Parents' Exhibit 4, pg. 1).

4. In , and family moved to , Virginia. In , entered grade at School. soon began "having more and more difficulty keeping up with class on their lessons." told parents that "should be killed, because did not 'measure up'" parents were alarmed, sharing their concerns with the school staff, and obtained evaluations to "determine what was wrong." (Parents' Exhibit 98, pg. 2-3).

5. _____ was _____'s teacher during the first year at School. _____ testified that _____ problems were immediately apparent:

Q. But you saw drooling?

A. (Witness nodding head) I mean, the first day – I mean, when _____ first – when I first met _____ that first day open house, no, I did not see that, but the first day _____ walked into my class –

Q. But within the week or two –

A. Yes, you saw the drooling. You saw, you know, the arm flapping, which was hard to watch. You know, you just wanted to help _____ through it.

Q. Glasses, drooling, arm flapping.

A. He always kept _____ little head cocked to the side (indicating).

Q. Oh, really? A head tilt?

A. Uh-huh.

...

A. Definitely. _____'s a smart little _____. (TR. 1, pg. 75-76, 79).

6. _____ testified that _____ greatest disabilities were in reading and writing, (TR.1, pg. 81-82, 84). _____ could not explain why _____ IEP was not modified from orthopedically impaired to include _____ learning disabilities. (TR.1, pg. 83-84).

7. On _____ SD found that _____ reading skills were at the pre-primer level. (Parents' Ex. 6, pg. 2).

8. On _____, pediatric neurologist _____ reported that _____ suffered from "arthrogryposis" and has a processing disorder, learning disabilities, and an articulation disorder. (Parents' Ex. 7, pg. 2).

9. On _____, _____, developmental pediatrician, reported that _____ standard score in reading was 65 (the first percentile) (Parents' Ex. 8, p.3), as measured by the WRAT-3. (Parent's Ex. 104, pg. 2). This was at the beginning level. _____ found that _____ suffered from:

1. **Arthrogyposis** of neurologic nature with additional Neurodevelopmental impairments including visual perceptual deficits and learning disabilities.
 2. **Dyslexia.** has significant discrepancy between reading skills and overall cognitive functions.
 3. **Dysgraphia.** has a significant writing disability greater than expected for reading difficulties.
 4. **Speech difficulties.** is inefficient with expressive language. (Parents' Ex. 8, pg. 3).
10. On , occupational therapist reported that Cursive Handwriting Score was a standard score of 61, at the 0.05 percentile to the second percentile. (Parents' Ex. 9, pg. 2).
11. From through , of SD evaluated reading again. standard scores on Word Identification, Word Attack, Word Comprehension, and Passage Comprehension ranged from 55 to 72, i.e., from less than the first percentile to the second percentile. grade equivalent scores ranged from 1.4 to 1.7. (Parents' Ex. 11, pg. 2). Importantly, visual\auditory learning was age and grade appropriate.
12. While grader , e was years, months old and tested by , was still reading at the first grade level, and had fallen even further behind peer group.
13. On , school psychologist evaluated . On reading, earned a standard score of 73 (the 4th percentile) as measured by the WIAT Basic Reading Score. (Parents' Ex. 16). did not report a grade equivalent score for reading.
14. testified that: prefers to use standard scores and percentile ranks, not grade equivalent scores because they are "statistically impure." (TR 4, pg. 115).
15. In ; , was tested on the Stanford Achievement Test. In "Total Reading", grade equivalent score was 1.6, percentile rank was 1. (Parents' Ex. 18).
16. On SD reclassified as a child with a specific learning disability (Parents' Ex. 20).

17. On _____, _____ underwent a battery of testing by _____, a speech-language pathologist and reading specialist with _____ (TR. 1, pg. 164-168, Parents' Ex. 107). _____ report noted that many of _____'s scores on the Phonological Awareness Test were at the 2nd percentile level and lower. _____ scores above the 25th percentile in only one area, "Segmentation." _____ reported that:

The authors of this test have suggested that any skills with a score below the 25th percentile may need remediation . . . These test results confirm _____; dyslexia and the exact areas where _____ is breaking down. _____ must have a reading program administered by a trained professional that will remediate these specific deficits. (Parents' Ex. 22, pg. 4-5).

18. _____ testified that the Wilson Reading program used by neighboring school systems requires extensive teacher training and certification. _____ reported that the "Patterns for Success" program has no such training or certification requirements. (TR. 1, pg. 191-195).

19. Teacher training and certification for the Wilson reading program costs approximately \$1,200 for the first year and \$800 for the second year. (TR. 1, pg. 191). According to _____ SD special education teacher _____, the "Patterns for Success" program does not require teachers to undergo any specialized training or certification. "Patterns for Success" costs about \$54 for materials and supplies. (TR. 4, pg. 59). No information was proffered or known (TR. 4, pg. 64, 130). by _____ SD about the "Reading Works" program that was being used in the _____ school year, i.e. the year for which reimbursement is sought.

20. After _____ SD received _____ report, IEP meetings were held on _____ and _____. The parents explained that "_____ recommendations for a multi-sensory approach with specific remediation of phonemic awareness deficits had been disregarded ... We requested that _____ be permitted to attend a nearby _____ Public School 'Wilson' program for an hour a day." (Parents' Ex. 98, pg. 5).

21. _____, Assistant Principal at _____ School, advised the parents to talk with _____, Director of Student Services in regard to their request. On _____, _____ talked with _____ and was told

"they would not pay a different school division to provide services for a County student." (TR. 1, pg. 231, Parents' Ex. 98, pg. 5).

22. On [redacted], [redacted] wrote to SD and explained that "[redacted] must be instructed in a method described above administered by a teacher trained in the method or [redacted] will not learn to read." (Parents' Exhibit 25). SD did not provide [redacted] with intensive instruction as described by [redacted].

23. That fall, [redacted] IEP goal in reading was changed to: "[redacted] will demonstrate 2 years growth in reading by improving [redacted] recognition and application of sound symbol relationships." (Parents' Ex. 26).

24. During the [redacted] academic year, [redacted] ability to read and write remained severely impaired.

25. By [redacted], [redacted] had not achieved "2 years growth in reading." IEP was modified to: "[redacted] will demonstrate at least one year's growth in reading by improving [redacted] recognition and application of sound/symbol relationships." (Parent's Ex. 36).

26. In [redacted], [redacted] began to see [redacted], (TR. 1, pg. 45, Parents' Ex. 108) a child neuropsychologist, because of "high anxiety". (TR.1, pg. 45-46).

27. In [redacted], [redacted] continued to attend [redacted] School where [redacted] was in [redacted] grade. [redacted] parents reported in their due process request letter that:

IEP meetings were held on [redacted], [redacted], and [redacted]. At the meetings, we voiced our concern that [redacted] is not learning how to read and is becoming more frustrated every day. We were told that the Patterns for Success program works for children with dyslexia. We asked for statistics on the expected reading progress from the Patterns program. Was [redacted] ahead of schedule or behind schedule? The staff replied that, according to informal assessments completed by the teacher, [redacted] had made almost a year's reading progress after being in the program for a year. We were skeptical. We had not seen any improvement at home.

In December, _____ of Student Services reported back to us that there was no statistical data on the success of the Patterns program. (Parents' Ex. 98, pg. 6).

28. On _____, the parents arranged for _____ to undergo a battery of testing to determine if _____ was making progress. _____ administered educational and psychological testing on _____ found that in reading, _____ received a standard score of 63, which was at the 1st percentile on the on the Wide Range Achievement Test. In broad reading, _____ earned a standard score of 60, which was at the 0.3 percentile, and the first grade level. (Parents' Ex. 53, pg. 4-5).

29. _____ was tested on the Woodcock Johnson test on _____ (Parents' Ex. 4) and _____. (Parents' Ex. 11). For four years, _____ grade equivalent scores remained at the first grade level. _____ standard scores and percentile ranks dropped as _____ fell further behind.

30. On _____, _____'s report was provided to _____ SD. (Parents' Ex. 54).

31. On _____, after receiving _____'s report, _____ SD prepared another IEP. This IEP proposed that _____ would "demonstrate at least one years growth in reading..." (Parents' Ex. 55). Although _____ SD proposed to measure _____'s growth in reading in the Brigance Test, the school district did not administer the Brigance to _____, so they had no baseline data to measure change or growth in reading. _____ SD already had Woodcock test data that they could use for baseline comparisons.

32. On _____, and _____, _____ was tested by _____ assessed _____ reading skills with the WIAT test. In reading, _____ found that _____'s standard score was 73, which was at the 4th percentile. (Parents' Ex. 57, pg. 7). Two years earlier, _____ was tested on the WIAT by Larkum. (Parents' Ex. 16). _____ scores in _____ and _____ were identical. _____ progress in reading, the area of _____ most significant deficiency, was limited to _____ remaining at the bottom percentiles of _____ age group.

33. _____ discussed several reading programs in _____ report, and wrote, "It is imperative that _____ be provided with such a program if _____ is going to be able to read."

recommended that [redacted] receive an intensive summer program in reading. (Parents' Ex. 57, pg. 13-14).

34. In [redacted], the parents arranged for [redacted] to begin individual, one on one tutoring with [redacted].

35. On [redacted], [redacted] SD administered the STAR Reading Test to [redacted]. [redacted] grade equivalent score was 1.9, which was at the 1st percentile. (Parents. Ex. 58).

36. On [redacted], [redacted] and [redacted] participated in an IEP meeting with [redacted] SD school personnel. [redacted] was told that the IEP team did not "make those decisions" to modify [redacted] reading program for [redacted] middle school. [redacted] was told that those decisions came from the central office. Eventually, the Division told the [redacted] that [redacted] School would be teaching [redacted] with "Reading Works 6." (Parents' Ex. 109).

37. On [redacted], a meeting was held to discuss the parents' request for Extended School Year services. The parents' request was denied.

38. On [redacted], the parents wrote to [redacted], Director of Student Services, and advised that:

The first step in teaching [redacted] to read is ESY to stop [redacted] regression and provide the breakthrough to reduce the detrimental effects [redacted] has in being almost four years behind [redacted] peers in reading.

The parents provided notice of their intent to make a unilateral private summer school placement.

39. On [redacted], [redacted] was tested (Parents' Ex. 77) at [redacted] in [redacted], Virginia, for possible placement in their summer school program. [redacted] reading score was at the first percentile rank. [redacted] was rejected for the summer reading program because "[redacted] scores were too low." (TR. 1, pg. 183).

40. On [redacted], [redacted], Director of Student Services, wrote to the parents and denied their request for placing [redacted] in a private summer program for reading and writing. She claimed that [redacted] had made "substantial progress over 15

months and that she has seen "success with a number of students..." (Parents' Ex. 82). She added that she has planned a study of reading programs and would be employing an independent contractor. [redacted] offered no evidence to support that an independent contractor was employed, or that any study of reading programs was completed.

41. On [redacted] SD proffered yet another IEP with a reading goal. However, this IEP deleted the prior references to two years growth or one year of growth in reading. The IEP included test data from the Brigance Comprehensive Inventory of Basic Skills that [redacted] Basic Reading Composite was at the third percentile, and Comprehension was at the second percentile. (School Div. Ex. 15).

42. On [redacted] [redacted], principal of [redacted] School, wrote the parents a letter saying that [redacted] would be taught with "Reading Works 6." (Parents' Ex. 85).

43. [redacted] with SD Student Services gave testimony on the middle school remedial reading program titled "Reading Works". [redacted] testified it was an intensive approach for children who were reading "a little behind." (TR. 4, pg. 130). [redacted] was not a child reading a "little behind."

44. SD did not identify the specific remedial reading methodology its teachers would use for [redacted] in [redacted] grade except to identify "Reading Works 6."

45. No teacher or administrator who would teach [redacted] in [redacted] grade participated in the IEP team meeting that devised [redacted] s IEP for the [redacted] grade.

46. There is no direct evidence from the staff at [redacted] School on how [redacted] would be taught reading and writing at [redacted] School if [redacted] had attended school there.

47. On [redacted], the parents wrote a letter to [redacted] and provided notice of their intent to remove [redacted] from SD and place [redacted] in a private school at public expense. (Parents' Ex. 88).

48. During the summer of [redacted], [redacted] continued to work with [redacted] In their due process request letter, the parents explained that:

Through the summer continued with individual, one-on-one tutoring using the Wilson Reading System under became excited about reading with and was very willing to go to the sessions even though they were at 7:45 a.m. In August, at the conclusion of our session with , we asked for a Woodcock Reading Mastery test. advised that since had only completed 25 sessions, that there might not be any improvement in reading scores. Much to our pleasure had improved in all areas on the test and overall reading score was at the third grade level. In four months and the Wilson program were able to do what School Division had been unable to accomplish in three years. was finally learning how to read.

49. On , entered in , Virginia. is a small special education school that provides intensive specialized education for learning disabled children like has contracts with Virginia local school divisions for providing an appropriate education for children with disabilities. (TR. 2, pg. 320.)

50. , the Head of ; described initial difficulties at , which viewed as due to the inconsistency of prior teaching by untrained personnel.

51. testified that "Reading Works" is not appropriate for and the children at because it:

didn't stress enough with the phonemic awareness and it went to fast for them. Um, our children – the kinds of children that we have, um, if you have bright dyslexic children who can make inferences and make references quickly, a phonemic approach, such as Reading Works, would be helpful, um, but our kids need repetition, repetition, repetition, and then you need a highly-structured program with a highly-trained teacher, who is not going to vary from day to day on how that instruction is delivered. It is delivered the same way. It is predictable just like the language is predictable. (TR. 2, pg. 309.)

52. responded to a question about whether was the least restrictive environment for

Children who come to _____ fall through the cracks. Our kids can't compete with other kids without the disabilities. Um, they're not going to be able to keep up. However, many of our children have attention deficit disorders, and so if you want to call attention deficit disorder a disability, then you'd have to look at all the kids that are in public school who also have attention deficit disorders.

So I do believe that we are the least restrictive. However, we are a small structured environment. Our kids have plenty of time to go out into the world and participate. We have a basketball team. We have a soccer team. We go on field trips constantly. We believe in hands-on education. So if you're going to be studying pond water, you got to go to a pond to get the water. And so we go to the pond and we get the water.

So we have lots of time to interact in the community and we encourage our families to be interactive with their community, any kind of – anything that would be an engaging thing for a _____. Like _____, loves Hockey and likes to go to the hockey games, um and participate with brothers and sisters. We're only six hours a day. That's – that's not much in a 24-hour day. (TR. 2, pgs. 318-319).

53. _____ emphasized the significant gains _____ has made and _____ concerns that:

The window of opportunity for _____ is slamming shut. _____ is in the _____ – you know, _____; in the _____ grade. ... doesn't have much more time left. And if we don't continue on the same pattern that we're going, then, um, _____ 'll fail. _____ 'll fail. _____ will – _____ won't get much higher than _____ 's getting now.

This is a young _____ who can comprehend information. _____ can comprehend it orally. You read it to _____ and _____ got it. But the fact that _____ 's a curious learner. _____ wants to participate in _____ learning. And if you stop teaching _____ how to read, you're going to – you're going to stop _____ education, because nowadays you've got to be able to read. Even to use a computer, to use a word processor, to look up things on the Internet, you have got to be able to read that screen. It is – it is the age of technological advances, but that doesn't mean you can't read. You know,

you have to be able to read.

We have been working on different kinds of technology for [redacted] trying to find a good one that [redacted] able to be – [redacted] can be able to express information. This young [redacted] has a lot of information upstairs and wants to get it out. [redacted] hands don't allow [redacted] to do that. Um, [redacted] has difficulty with articulation. So, using speech-activated devices, we've been trying all kinds of speech-activated devices with [redacted] to be able to help [redacted], to be able to get out [redacted] information. (TR. 2, 313-314).

54. [redacted] SD has not obtained any specialized training for their staff on the level of Wilson Certification.

55. [redacted] can learn to read and write with the Wilson Reading Program for individuals who have dyslexia.

56. [redacted] ability to read and write at [redacted] improved at a rate that indicates [redacted] will write with computer accommodations and read at a high school level if [redacted] continues to receive instruction in the Wilson Reading Program.

57. [redacted] is an appropriate educational program for [redacted]

58. Without the proficiency in reading and writing that the Wilson Program will achieve for [redacted], [redacted] will be unable to progress academically to meet any standards of learning the Commonwealth of Virginia requires high school students to meet. (TR. 2, pgs. 349-350).

59. Reading and writing are essential skills a student needs to benefit educationally.

60. [redacted] education has cost [redacted] parents \$28,663.40 (Parents' Ex. 101, TR. 3, pg. 28). [redacted] received an appropriate education at [redacted]

61. [redacted] spent [redacted] first four years of primary education, two years of kindergarten, first and second grade, in Department of Defense schools in [redacted] (TR. 2, pgs. 53-54).

62. [redacted] was diagnosed as dyslexic after [redacted] grade year. (TR. 2, pg. 55,

Parent's Ex. 8).

63. received no specialized reading instruction until entered the School Division in grade year. (TR. 2, pgs. 208-209).

64. entered the grade significantly behind peers in reading. (TR. 3, pgs. 60-61; Parents' Ex. 6 and 11; School Div. Ex. 23 and 24).

65. first IEP in was a transfer IEP from School in (School Div. Ex. 1). This IEP included the goals and objectives developed by School at the end of grade year, and was agreed to by the parents. Id. received occupational, physical and speech therapy, as well as consultation with a teacher for the visually impaired. Id. This IEP listed primary disability as orthopedically impaired. Id.

66. In of grade year, the School Division drafted an IEP Addendum to add math goals, a speech therapy goal, and to modify physical therapy goals. (School Div. Ex. 2).

67. In December of 's grade year, the School Division drafted an IEP Addendum to add services for a functional educational vision. (School Div. Ex. 3).

68. An evaluation done by special education teacher in indicated that was not even at the first grade reading level in an informal reading inventory. (School Div. Ex. 23).

69. By the end of third grade year, in math, mastered all of the math goals established for (School Div. Ex. 2). Further, made huge social progress in the grade including delivering letters to other classrooms (TR. 2, pg. 58).

70. In , special education teacher again administered an informal reading inventory, which noted improvement from the pre-primer level to the primer level in reading. (School Div. Ex. 24). ; made some progress in learning to read in the grade but could not read at a level that would enable to be appropriately appropriately educated in light of high intelligence.

71. An IEP for grade year was developed, signed and consented to by

the parents over the course of approximately four days at the end of [redacted] grade year. (School Div. Ex. 4). An eligibility committee meeting was held on [redacted] and [redacted] primary disability was changed to specific learning disability, with OT as secondary. (School Div. Ex. 6 and 7).

72. [redacted] received ESY services the summer after [redacted] grade. (School Div. Ex. 5). [redacted] received occupational therapy services one time per week, and individual or small group reading instructions two times per week for forty minutes, for five weeks. Id. The ESY Addendum notes “[d]ue to recent advances in reading . . . reading instruction is required over the summer to maintain skill level.” Id. (emphasis added). The parents agreed to this Addendum.

73. The one page of reading goals for the summer of [redacted] indicate that [redacted] mastered two of [redacted] goals and was making progress on the other two. Id. One goal that was mastered indicated that [redacted] read a passage at the 1.5 grade equivalency level. Id.

74. At the beginning of [redacted] grade year, the IEP team drafted a new IEP for [redacted] grade year which was signed and consented to by the parents on [redacted]. (School Div. Ex. 8 and 9). This IEP updated the identified disability and was drafted to take into account the recommendations of [redacted] and to address the concerns of the parents as a result of [redacted] report. (TR. 3, pgs. 28-29).

75. The new [redacted] IEP, agreed to by the parents, notes that [redacted] was reading at the early [redacted] grade level, and in written language [redacted] was below the first grade level. (School Div. Ex. 8).

76. The beginning of the [redacted] grade was the first time [redacted] SD identified specific reading disability and specific goals and objectives were developed to address [redacted] reading skills.

77. [redacted] grade teacher, testified as to the extraordinary progress [redacted] made socially throughout the [redacted] grade year, noting that [redacted] ran for and won a student elective office after making a speech to the entire student body, made announcements on the P.A. system, decreased [redacted] “flapping” and was able to interact better with the class. (TR. 3, pgs. 89-92).

78. In the 1 grade, received individual instruction in reading with a special education teacher, with nine years of reading teaching experience, one hour per day, five days per week (as recommended by), while also staying in class for reading comprehension activities. (TR. 3, pgs. 92-93; TR. 4, pgs. 4-6; School Div. Ex. 8). also did most of the math that grade peers did. (TR. 3, pg. 99).

79. reading objectives in the grade IEP consisted of four pages of goals and objectives under the goal of demonstrating two years growth in reading by improving recognition and application of sound-symbol relationships. (School Div. Exhibit 8). was responsible for implementing these objectives. (TR. 4, pg. 13). The goal of two years growth in reading was added by the IEP team with the participation of the parents. (Parents' Ex. 27).

80. mastered some grade goals. also made progress on all the reading goals that were implemented by , speech therapist. (TR. 3, pgs. 130-136).

81. For reading, the grade IEP indicates that would receive reading resource five times per week for two thirty minute sessions per day, with the special education staff. (School Div. Ex. 10). The parents consented to this IEP.

82. The summer after grade, received ESY services in the form of occupational therapy to continue working on keyboarding skills. (School. Div. Ex. 10, last two pgs.)

83. Approximately one month into grade year, the parents began requesting IEP meetings. (TR. 3, pgs. 33-34). Approximately four IEP Addenda were drafted during 's fifth grade year, (School Div. Ex. 11-14) and at least three draft IEP's were written. (Parents' Ex. 43, 55 and 83; School Div. Ex. 15).

84. : made progress on reading goals that the speech therapist was responsible for in grade year. (TR. 3, pgs. 137-144).

85. was responsible for testing each month in the 1 grade to chart progress in reading. (TR. 4, pg. 25). received one hour of reading instruction per day in grade with special education staff. (TR. 3, pg. 167).

86. In the _____ grade, _____ did much of the same material as _____ fellow classmates in math, and received two C's and two A's for the four marking periods. (TR. 3, pgs. 161-163, 177-179). _____ did not do much writing during _____ fifth grade year.

87. _____ final proposed _____ grade IEP was rejected by the parents. (School Div. Ex. 15).

Conclusions of Law

1. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., required the _____ School Division to provide _____ a free appropriate public education during _____ school year at _____ School where _____ would have been in the _____ grade.

2. The IDEA requires a school district to provide an individualized education program (IEP), for each disabled child. An appropriate IEP must contain statements concerning a disabled child's level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child's progress.

3. The IDEA defines an IEP as a written statement for a disabled child, developed in accordance with the statute, that includes, inter alia:

1. A statement of the child's present levels of educational performance;
2. A statement of measurable annual goals, including benchmarks or short term objectives;
3. A statement of the special education related services and supplementary aids and services to be provided to the child;
4. An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in activities described in 3 above; and
5. A statement of how the child's progress towards the annual goals

described in 2 above will be measured. (20 U.S.C. Sec. 1414 (d) (1)(A))

4. An appropriate education is one that provides a child with educational benefit.
5. More than minimal educational benefit is necessary to comply with IDEA. Congress did not intend that a school district could discharge its duty under the IDEA by providing a program that produces some minimal academic advancement, no matter how trivial. Carter v. Florence County School District 4, 950 F.2d 156, 160 (4th Cir. 1991).
6. The IDEA imposes two prerequisites for parents to obtain reimbursement for private educational services provided to their disabled child. One is that the program proposed by the school district fails to provide the student with a free appropriate public education, and that the private program in which the parents place the disabled child is reasonably calculated to enable the child to receive educational benefits as required by the IDEA.
7. _____ would not have received a free appropriate public education from _____ School District if he had attended _____ School during _____ grade,
8. _____ and _____ placement of _____ at _____ was appropriate under the IDEA, because _____ received substantial educational benefits at _____ during the school year _____
9. The _____ are entitled to reimbursement for reasonable costs associated with placement at _____ in the amount of \$28,663.40.

Discussion of the Law and Facts

The Individuals with Disabilities Education Act (IDEA) requires that children with disabilities be offered a free appropriate public education (FAPE). If a school system defaults on its obligation to provide a disabled child a free appropriate public education, then the Act allows parents to place the child in a private setting and obtain appropriate reimbursement for expenses related to that placement if the private school provides the disabled child an education whereby the child receives educational benefit.

Criteria for a parent's entitlement to reimbursement for educational expenses when the parents place their child in a private setting are set forth in Town of Burlington v. Department of Education for the Commonwealth of Massachusetts, 471 U.S. 359 (1985) and was further addressed in Florence County School District 4 v. Shannon Carter, 950 F.2d 156 (4th Cir. 1991).

Reading and writing are essential skills a child needs to benefit educationally from school. If the child has the intelligence to learn to read and write, but also has a handicap that requires special remediation to enable a child to read and write, that child is not receiving an appropriate education if _____ is denied that special remediation.

_____ has the intelligence to learn to read and write and go on to college if _____ does learn to read and write. _____ school is a crucial stage for any child's transition into the competitive world of academia. The overwhelming evidence from the experts was that _____ could learn and did learn to read and write from the Wilson-Orton-Gillingham methodology of remediating dyslexia. _____ School Division refused to give _____ that special education service _____ needed to learn to read and write appropriately. It would be pure speculation to say what reading and writing remediation _____ would have actually received at _____ School for dyslexia, but it is certain it would not have been the Wilson method of remediation. The only evidence the school division provided on the appropriateness of Reading Works 6 was from _____ who said it was a reading program for students who were "a little behind."

If a child has the intelligence to learn to read and write like children without disabilities but is denied the services that would allow _____ to excel beyond the lower two percentile of his peer group, then that child is not getting an appropriate education. If a child is taught only how to read "cat" and "dog" on _____ own, but has the intelligence to learn to read and write at the high school level, then that child, albeit receiving some minimal educational benefit, is not receiving the educational benefit that the IDEA requires.

Decision

_____ and _____ are awarded reimbursement for the costs associated with _____ placement at _____ in the amount of \$28,663.40.

Right of Appeal

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

Date / _____

_____ / _____
Hearing Officer

VA