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FROM :

FAX NO. :

Local Hearing

State Level Appeal



### CASE CLOSURE SUMMARY REPORT

*(This summary sheet must be used as a cover sheet for the hearing officer's decision at the special education hearing and submitted to the Department of Education before 6/30/08.)*

[Redacted] Public Schools  
School Division

[Redacted]  
Name of Parents

[Redacted]  
Name of Child

[Redacted]  
Date of Decision

[Redacted] ( [Redacted] )  
Counsel Representing LEA

Atty.) Pro Se  
Counsel Representing Parent/Child

Parent  
Party Initiating Hearing

LEA  
Prevailing Party

Hearing Officer's Determination of Issue(s):

LEA prevailed on all issues

Hearing Officer's Orders and Outcome of Hearing:

No orders to LEA, as prevailing party.

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.

[Redacted]  
Printed Name of Hearing Officer

[Redacted]  
Signature

VIRGINIA DEPARTMENT OF EDUCATION  
DUE PROCESS HEARING



██████████ v. ██████████ PUBLIC SCHOOLS

This Hearing Officer was appointed to hear the referenced due process hearing pursuant to the Individuals with Disabilities Education Act. The hearing was commenced on ██████████ continued on ██████████ and concluded on ██████████. Written closing arguments, by agreement of the parties, were submitted on ██████████. Transcripts of the hearing were received by this Hearing Officer on ██████████. The parent, ██████████ presented ██████████ case, and ██████████, Deputy ██████████ Attorney, represented the ██████████ Public Schools ( hereinafter the LEA ). ██████████, Director of Student Services for the LEA, was also present throughout the hearing. The primary issue was whether or not the LEA had rendered or can render a free and appropriate education to ██████████ or, alternatively, if ██████████ should be home schooled at the expense of the LEA.

PROCEDURAL BACKGROUND

On ██████████, the parents of ██████████ age ██████████, and a student at ██████████ School, in ██████████ Virginia, filed a request for a due process hearing under IDEA, noting several issues in contention. Specifically, ██████████ alleged that a) ██████████ was in an inappropriate learning environment; b) ██████████ disability label was incorrectly stated as ██████████ and should be changed to that of ██████████; and c) ██████████ educational needs were not being met in the setting agreed upon in mediation. The remedy sought was placement in a private school ( ██████████ or another such facility ) at the expense of the LEA. This Hearing Officer was appointed by the Virginia Supreme Court on ██████████

The hearing was initially scheduled for ██████████ and a pre-hearing conference was scheduled for ██████████. However, in the interim, the ██████████ obtained the services of ██████████. At the pre-hearing conference, which was actually held

on [REDACTED], the [REDACTED] advocate, requested a continuance on behalf of the parents, noting that not only did [REDACTED] need more time to familiarize [REDACTED] with the issues, but also that the parties were negotiating a possible resolution of the issues, the primary one being whether or not [REDACTED] should be considered a student with [REDACTED] and educated accordingly. The parents and the LEA had agreed to reconvene the school's eligibility committee to address a possible change in [REDACTED] category of disability. [REDACTED] further noted that the parents were also complaining of problems in [REDACTED] educational placement, which prevented [REDACTED] receipt of a free and appropriate education ( hereinafter FAPE ). [REDACTED] did not define these program issues, noting only that if [REDACTED] category of disability were changed to [REDACTED], [REDACTED] might be entitled to modifications in [REDACTED] educational program. For such good cause shown the undersigned continued the hearing to [REDACTED]. The parties then engaged in discussion to attempt to resolve the issues. Shortly before the hearing was to convene, [REDACTED] advised that [REDACTED] would not longer be able to assist [REDACTED] because of a health issue. As such, [REDACTED] requested a further continuance in order to prepare [REDACTED] case. No objection being noted by [REDACTED], and for good cause show, the hearing was continued to [REDACTED]. A second pre-hearing conference with [REDACTED] an [REDACTED] was convened on [REDACTED]. The following matters were addressed at the conference.

### **The Issues In The Hearing**

The parents amended their due process request to add additional issues. The following allegations were raised as issues::

#### **I Procedural Defects in the IEP/Eligibility Process:**

A) The [REDACTED] Child Eligibility Meeting was improperly conducted in that the parents were not provided full information as to eligibility categories to enable them to make informed consent to the educational plan:

B) The [REDACTED] IEP Meeting was improperly conducted in that the committee did not fully consider information provided by the parents.

C) The [REDACTED] IEP Meeting was improperly conducted in that the committee failed to consider the child's unique and individual needs when determining placement.

D) The [REDACTED] IEP Meeting was improperly conducted in that the parents were not presented with information to permit them to effectively represent the child.

E) The [REDACTED] IEP Meeting was improperly conducted in that the parents were not presented with information to permit them to effectively represent the child.

F) The [REDACTED] Eligibility Meeting was flawed in that committee members failed to consider the child's unique and individual needs in determining the category of eligibility, and committee members failed to engage in a full and impartial discussion of the issues.

G) The alleged failure of required persons to attend the IEP meeting of [REDACTED] and the failure to permit the parents to participate in that meeting.

II Failure to Provide a Free and Appropriate Public Education:

A) Failure of the LEA to implement an agreed-upon IEP

B) Failure of the LEA to provide an appropriate educational placement

C) Failure of the LEA to properly categorize the child's disability and provide educational services unique to that disability

Although the parents raised the issue of procedural defects in the child eligibility meeting of [REDACTED], this Hearing Officer did not allow this matter as an issue in the hearing as it was time barred under Code of Virginia, Section 8.01-248, which imposes a two year statute of limitations on issues to be presented at due process hearings. The parents also raised the issues of defects in the reporting of the IEP meeting of [REDACTED] an alleged failure to afford the parents an opportunity to participate at an IEP meeting on [REDACTED] the absence of required persons at said meeting and an alleged failure of the LEA to comply with a mediation agreement reached by the parties on [REDACTED]. This Hearing Officer, however, determined that these matters would be more appropriately addressed as complaints with the Virginia Department of Education. As such, they were disallowed as hearing issues. However, upon reconsideration, this Hearing Officer has decided to permit all matters respecting the IEP meeting on [REDACTED] [REDACTED] to be an issue in this due process hearing in light of the fact that those matters were addressed in the hearing as part of the parents' argument that the LEA has failed to provide a free and appropriate education to their [REDACTED]. As such, the evidence adduced at the hearing can establish whether or not there were irregularities at the IEP meeting on [REDACTED]. To that extent, the pre-hearing ruling is reversed, and the matters respecting the [REDACTED] IEP will be addressed in this decision.

#### STATEMENT OF FACTS

[REDACTED] is a [REDACTED] year-old, who attended [REDACTED] and [REDACTED] school in the [REDACTED] Public School system until [REDACTED], at which time [REDACTED] was withdrawn by [REDACTED] parents. [REDACTED] has been home schooled since that time. [REDACTED] last complete school year in the LEA was as a [REDACTED] grader at [REDACTED] School. [REDACTED] started [REDACTED] grade at [REDACTED] School, where [REDACTED] attended until [REDACTED] withdrawal. Because of complications during [REDACTED] birth, [REDACTED] suffered from a lack of oxygen. As a consequence, and possibly because of an adverse reaction to a DPT immunization, [REDACTED]

suffered from seizures as a young child. [REDACTED] has been followed by a neurologist since [REDACTED] was three months old. The neurologist diagnosed [REDACTED] with [REDACTED] [REDACTED] ( hereinafter [REDACTED]), for which [REDACTED] was prescribed [REDACTED] medications, such as [REDACTED]. While on medication, [REDACTED] did well in school. In fact, although [REDACTED] was referred for consideration for special education in [REDACTED] while in [REDACTED] grade, [REDACTED] was found not to be eligible. However, once [REDACTED] medication was discontinued in [REDACTED], because of the doctor's concern that the medications might precipitate additional seizures, [REDACTED] academic performance and behavior began to deteriorate. [REDACTED] was consequently referred to the Child Study Team at [REDACTED] School. After a series of educational and psychosocial evaluations and classroom observations in the [REDACTED] of the year [REDACTED] was found eligible for special education under IDEA. [REDACTED] was found to be eligible under the category of [REDACTED] [REDACTED], an [REDACTED], which [REDACTED], which considered to be [REDACTED] disability, based upon reports from [REDACTED] doctor. On [REDACTED] an IEP committee was convened to determine an appropriate educational program for [REDACTED]. Because no agreement was reached at that meeting, it was continued to [REDACTED]. Although an IEP was developed, the parents did not agree with it. The placement called for eighty-five minutes per day of academic instruction from a [REDACTED] [REDACTED] teacher. The IEP was, however, not implemented since it was the end of the school year. Moreover, because [REDACTED] experienced anaphylactic shock at [REDACTED] School from mold in the building, [REDACTED] was removed from school in the beginning of [REDACTED]. The parents decided to place [REDACTED] in another school for the next school year, that is, [REDACTED] School. Since the parents were not satisfied with the [REDACTED] IEP, the parents and the LEA engaged in mediation. As a result of a written mediation agreement, another IEP meeting was convened on [REDACTED]. The IEP was amended and met with the parents' approval, with certain modifications to [REDACTED] program. A further addendum was written on [REDACTED] by which the IEP was

extended to [REDACTED], at which time the parties agreed to both review the IEP and to revisit [REDACTED] eligibility category. The IEP meeting was continued to [REDACTED] at which time the parents signed the IEP, which was to run through [REDACTED]. Although [REDACTED] has requested that [REDACTED] category of disability be changed to [REDACTED], the Eligibility Committee, which had also convened on [REDACTED] determined that [REDACTED] category should remain as [REDACTED]. Pursuant to the IEP dated [REDACTED] [REDACTED] was to receive [REDACTED] academics in a self-contained resource room, with [REDACTED] non-academics in the general education environment. [REDACTED] was, in fact, receiving services under this service delivery model at [REDACTED] School, when the parents filed their request for due process on [REDACTED]. In order to try and resolve the issue in contention, which centered on [REDACTED] categorization of disability under IDEA, the LEA convened an additional Eligibility Committee meeting on [REDACTED]. However, the committee did not change [REDACTED] category to [REDACTED] and the parents left the meeting and on that day withdrew [REDACTED] from the public school setting. Since that time, the parents have been educating [REDACTED] at home with the assistance of a privately paid special education teacher, a speech and an occupational therapist.

## **POSITION OF THE PARTIES**

### **The Parents**

The parents contend that the LEA has failed to and is not capable of rendering a FAPE to [REDACTED] because [REDACTED] has been mislabeled as [REDACTED] by virtue of [REDACTED], when [REDACTED] should have been labeled as [REDACTED]. According to [REDACTED] parents, [REDACTED] suffered a [REDACTED] [REDACTED] in [REDACTED] early years and requires an educational program driven by strategies specifically used to educate children with [REDACTED] in particular those strategies found in the [REDACTED] produced by the Virginia Department of Education. According to the parents, the medical reports from [REDACTED] neurologist and an

independent neuropsychological report, which were presented at all eligibility and IEP committee meetings, support this diagnosis. Given the LEA's refusal to change [REDACTED] category of disability, it is the parents' position that the IEP in place does not take into account [REDACTED] unique needs. They additionally allege that the LEA personnel failed to apprise them of the disability of [REDACTED] at the earlier eligibility meetings. As such, they were not provided the information they needed to fully and adequately participate in the decision making regarding how to educate [REDACTED]. As sub-issues, they argue that while [REDACTED] was at [REDACTED] School, the agreed-upon IEP was not implemented and that [REDACTED] was not making educational progress. Finally, although the parents agreed to the IEP in place, they now contend that a self-contained special education environment is too restrictive in that it fails to provide [REDACTED] the opportunity to establish social relationships. The [REDACTED] want the LEA to educate [REDACTED] in a small classroom setting with no more than ten students, who have abilities and disabilities similar to [REDACTED]. According to the [REDACTED], the LEA is unable to provide such a setting, and, therefore, [REDACTED] cannot be properly educated in the public schools in [REDACTED]. As such, they are seeking reimbursement for funds they have already spent to educate [REDACTED] at home and for future expenditures to educate [REDACTED] whether at home or in a private school setting.

#### The LEA

The LEA contends that [REDACTED] has been properly educated in the public school setting and they are capable of continuing to educate [REDACTED] under [REDACTED] current IEP. According to the LEA, in determining [REDACTED] category of disability and [REDACTED] specific special education placement, [REDACTED] schools have considered all information provided by the parents, including the reports of [REDACTED] doctor and [REDACTED] neuropsychologist. It is the LEA's argument that the parents have presented no medical evidence of a [REDACTED] [REDACTED] and that [REDACTED] is properly diagnosed as [REDACTED]. Further, despite [REDACTED] category of disability, the LEA notes that [REDACTED] educational program has been designed to fit [REDACTED]



unique needs, and, in fact, [REDACTED] was being properly educated and making progress when [REDACTED] parents withdrew [REDACTED] from school. Further, there have been no irregularities in any of the IEP or eligibility proceedings respecting [REDACTED] and the parents have had a full and fair opportunity to represent [REDACTED] interests at those meetings. The LEA would argue further that the parents have not shown that the LEA cannot educate [REDACTED] or that the parents' home school program or any private school placement they may select is appropriate for [REDACTED]. Since the parents cannot show either of these things, they cannot be reimbursed for expenses associated with educating [REDACTED] outside of the LEA. In a nutshell, the LEA urges that the parents have failed to give [REDACTED] IEP an chance to work because of their anger over disability category, which does not drive the educational program.

#### FINDINGS OF FACT

1. [REDACTED] is an individual with average to superior intellectual capacity, as indicated on testing performed by both the LEA's school psychologist and an independent neuropsychologist retained by [REDACTED] parents ( SB 10 and 12). An educational assessment determined that [REDACTED] has specific strengths in the areas of reading comprehension and general knowledge, with a below average performance in written expression ( SB 11). According to the neuropsychologist, [REDACTED] verbal reasoning abilities are significantly better developed than [REDACTED] visual reasoning abilities. All evaluators, however, agree that [REDACTED] suffers from attentional and focusing problems which are clinically significant.

2. [REDACTED] suffers from [REDACTED]. This diagnosis is supported by the reports of the independent neuropsychologist, the school psychologist and the neurologist who has treated [REDACTED] intermittently since [REDACTED] was very young. In reports of the neurologist in [REDACTED] and [REDACTED] ( SB 2 and 3), it is noted that [REDACTED] has a history of early epileptic seizures which resulted in mesial temporal sclerosis, or scar tissue on the brain. [REDACTED] was successfully treated with anti-seizure medication, but eventually removed from the medications. [REDACTED] additionally was treated in [REDACTED] for

chronic tension-type headaches which were resolved with medication. [REDACTED] primary diagnosis, however, was [REDACTED] for which [REDACTED] was treated with [REDACTED]. The neurologist specifically ruled out trauma to the brain as a cause of the mesial temporal sclerosis. There was further no evidence of intracranial pressure or subdural or subarachnoid blood, which have been consistent with trauma. This finding is despite the fact that [REDACTED] testified that during seizures, [REDACTED] hit his head many times ( Tr. 3/20, 66 ). To address some of the problems associated with [REDACTED] attention deficit disorder, the neurologist recommended that [REDACTED] be placed in a small classroom, with preferential seating ( SB 4 ).

3. Prior to [REDACTED] grade school year, [REDACTED] did well in school, earning above average grades. While [REDACTED] displayed some attentional and focusing problems in the early part of the [REDACTED] grade, these were not major problems and did not hinder [REDACTED] progress ( Tr. 3/2, p. 91 ).

4. In [REDACTED] of [REDACTED] medication was stopped by [REDACTED] parents, upon the advise of [REDACTED] doctor. It was felt that such medications might lead to additional seizures. [REDACTED] neurologist felt that the [REDACTED] were causing more harm than good, including sleep disorders and weight loss. In lieu of medication, [REDACTED] determined to treat [REDACTED] behaviorally for [REDACTED] attentional problems. As such, in a communication to the Principal of [REDACTED] School on [REDACTED] [REDACTED] recommended certain accommodations for [REDACTED] in the school, including a small classroom environment, preferential seating and teaching techniques which would result in [REDACTED] being more focused on by [REDACTED] teachers ( P 4 ). The parent presented no documentary evidence from [REDACTED] which was dated after [REDACTED] which changed [REDACTED] diagnosis from [REDACTED]

5. Subsequent to the elimination of medication, [REDACTED] parents noticed a deterioration in [REDACTED] behavior both at home and at school ( Tr. 3/2, 20 ). All of [REDACTED] academic teachers noticed [REDACTED] deterioration in the last weeks and months following the

decision to stop [redacted] medication. [redacted] began to display characteristics typical of most children with [redacted]. [redacted] demonstrated attentional and focusing problems, as well as problems interacting with other students ( Tr. 3/2, p. 55, 60 et. seq.). At the start of the school year, [redacted] had been placed in [redacted] classes, the focus of which was to hone study and organizational skills for college-bound students. However, after [redacted] medication was discontinued, [redacted] had trouble keeping up with the work in this class, and [redacted] was eventually dropped from the class ( Tr. 3/2, 49 ). [redacted] also began to dislike school and became despondent and suffered from low self-esteem ( Tr. 3/20, 60 et. seq. ).

6. Despite interventions by [redacted] core teachers, such as, sending [redacted] to a small resource class for reading where [redacted] received more one on one attention, sending an extra set of books home , frequent conferences with the parent and having [redacted] agenda book signed by [redacted] teachers and [redacted] parents and giving [redacted] additional time to finish assignments, [redacted] performance for the remainder of the [redacted] grade continued to deteriorate ( Tr. 3/2, p. 49 et. seq.) In fact, [redacted] final grades in [redacted] four core courses for the [redacted] school year consisted of all "D"s, with "unsatisfactory" and "needs improvements" noted in work study habits and behavior ( P's 50 ).

7. Generally, all of [redacted] teachers had concerns respecting [redacted] failure to bring completed homework to class to bring [redacted] agenda book to class, [redacted] lack of attention, poor writing and organizational skills ( Tr. 3/2, p. 77 et. seq. ). In [redacted] [redacted] the Guidance Counselor, observed [redacted] in [redacted] Social Studies classroom. [redacted] observed [redacted] to be generally distracted and not participating, in marked contrast to how [redacted] performed in [redacted] small group for honing study skills, in which setting [redacted] received more attention and in which [redacted] was physically closer to [redacted] than [redacted] was to the teacher in [redacted] regular classroom ( Tr. 3/20, 175; P's 18 ).

8. With [redacted] progress steadily deteriorating, [redacted] was referred to the Child Study Team, which met to consider [redacted] case on [redacted]. All of [redacted] core teachers attended

the meeting ( Tr. 3/2, 63; P's 16 ). Given the discrepancy between [redacted] prior performance in school and [redacted] current poor performance, the Committee recommended, and the parent agreed to a full set of evaluations for [redacted], including sociocultural, educational and psychoeducational evaluations.

9. A second Child Study Team was convened on [redacted]. At that meeting, additional accommodations were decided on, such as assigning [redacted] a study buddy to help with writing down assignments, use of glued reminder chick lists on [redacted] binder and the use of pre-determined teacher signals to keep [redacted] focused ( P's 17 ).

10. As part of the evaluation process, School Psychologist, [redacted] observed [redacted] in class and did further testing of [redacted] ( SB 12 ). In [redacted] testimony, [redacted] noted that the Child Study Team felt that [redacted] had a wealth of knowledge [redacted] could share, but [redacted] frequently did not do so in written form ( Tr. 3/2, p. 213 ). As part of [redacted] evaluation conducted in [redacted] [redacted] reviewed an earlier evaluation performed in [redacted] as part of an earlier assessment of [redacted] for special education, which assessment indicated [redacted] was not eligible at that time. In addition to noting [redacted] characteristics, [redacted] commented that [redacted] developed [redacted] in response to some of the [redacted] characteristics, with demonstrated social problems and withdrawal in the classroom ( Tr. 3/2, p. 215 ).

11. Additionally the Child Study Team reviewed the reports from [redacted] neuropsychologist dated [redacted] [redacted] and [redacted] ( SB 2, 3 and 4 ), all of which were supplied by the parents.

12. [redacted] School Social Worker at [redacted] prepared an updated socio-cultural assessment on [redacted] ( SB 9 and 37 ). [redacted] noted that from the time of [redacted] previous evaluation in [redacted] grade and up to the early part of the [redacted] grade, [redacted] had been doing well in school, while taking [redacted] and generally earning superior grades. [redacted] demonstrated no problems with decision making and problem solving ( Tr. 3/20, 199 ).

13. [REDACTED] - the reading resource teacher at [REDACTED], conducted an educational assessment on [REDACTED] on [REDACTED] (SB 11). [REDACTED] administered both the PIAT ( Peabody Individual Achievement Test ) and the WRAT ( Wide Range Achievement Test. [REDACTED] did not feel a speech or language evaluation was necessary. The results showed that [REDACTED] strengths were in reading comprehension and knowledge, in which [REDACTED] was between three and five years beyond the level of [REDACTED] peers. [REDACTED] written responses were ,however, below average, at the [REDACTED] or [REDACTED] grade level. In addition to noting [REDACTED] typical [REDACTED] symptoms, [REDACTED] also found that [REDACTED] displayed a dislike of school ( Tr. 5/1, et. seq. ).

14. After the second meeting of the Child Study Team, [REDACTED] parents had [REDACTED] evaluated by Neuropsychologist [REDACTED]. [REDACTED] tested [REDACTED] in the following areas: visual immediate, visual delayed, verbal immediate, verbal delayed, general memory, attention/concentration, learning and delayed recognition. [REDACTED] found that [REDACTED] demonstrated problems associated with neurological disfunction, not just with [REDACTED]. [REDACTED] specifically found that while [REDACTED] has excellent verbal skills, [REDACTED] has significant problems with processing visual information and with the retention of verbal information. Thus, [REDACTED] determined that [REDACTED] loses a lot of information previously learned. As a consequence, [REDACTED] recommended certain accommodations for [REDACTED] in school, including untimed examinations, additional time to complete assignments and open book examinations ( SB 10 ). [REDACTED] did not testify at the hearing. Although [REDACTED] did not reach the same conclusions respecting [REDACTED] as did [REDACTED], it is noted that the thrust of [REDACTED] testing was more on [REDACTED] present level of academic achievement, with the administration of the WIAT test. Although [REDACTED] noted that [REDACTED] demonstrated relative weakness in the area of visual recall, [REDACTED] still considered [REDACTED] performance to be within normal limits. When questioned as to the difference between [REDACTED] and [REDACTED] perception of [REDACTED] in the area of memory, [REDACTED] noted that the testing devise used by [REDACTED] tested for rote memory, and [REDACTED] would expect a child with [REDACTED] to

perform poorly in this area because of focusing difficulty. However, when children with [REDACTED] are shown data which is more familiar or interesting or presented in context, they do better in recalling that data ( Tr. 3/20, 220 et. seq. ). [REDACTED] performance in school does not show a functional memory problem, in [REDACTED] view, given the fact that [REDACTED] is able to demonstrate [REDACTED] knowledge in a non-written form. [REDACTED] noted, for example, that the ability to win the [REDACTED] grade geography fair showed that [REDACTED] benefited from instruction and was able to recall what [REDACTED] learned and use it, although not in written form ( Tr. 3/20, 233).

15. During the course of [REDACTED] grade, [REDACTED] maintained regular contact with [REDACTED] teachers, both through [REDACTED] agenda book, which [REDACTED] and the teachers made entries and through conferences. [REDACTED] often suggested teaching strategies to the teachers, which were at times were implemented ( Tr. 3/20, 54 ).

16. A special education eligibility meeting respecting [REDACTED] convened on [REDACTED]. Based upon the information available about [REDACTED] the committee found [REDACTED] eligible for services under the category of "[REDACTED]", based upon [REDACTED] and [REDACTED] problems ( SB 14 ). The parents agreed with the chosen category and fully participated in the discussion. An IEP meeting was then immediately convened to draft an individual education plan for [REDACTED].

17. In attendance at the [REDACTED] IEP meeting were the Assistant Principal ( [REDACTED] ), the head of Special Education for the LEA ( [REDACTED] ), the School Social Worker ( [REDACTED] ), the School Psychologist ( [REDACTED] ), [REDACTED] regular education teacher ( [REDACTED] ) and the [REDACTED]. All of the aforesaid reports of school personnel and outside clinicians were fully discussed by the committee. Based upon these reports, the team felt that [REDACTED] would best be served by a learning disabled resource model. In this model, [REDACTED] would be serviced in either a resource room or in the general education classroom. This was determined to be the least restrictive

environment for [REDACTED]. However, because of [REDACTED] apparent confusion over the nature of the resource service delivery model, [REDACTED] refused to sign the any documents on that day. While the committee felt that the collaborative method, in which a resource teacher would go into the general education classroom to assist [REDACTED] with [REDACTED] academics, should be part of [REDACTED] educational program, the parents were not familiar with this methodology. [REDACTED] was also concerned that [REDACTED] would not be in a small class setting, as [REDACTED] was in for study skills with the guidance counselor and as was recommended by the doctor and neuropsychologist ( Tr. 3/20, 34 ). It was, therefore, suggested that the meeting be adjourned and continued on another date in order that the parent might observe the various special education settings at [REDACTED] ( Tr. 3/2, 172 et. seq. ). The parents were fully involved in discussion at the [REDACTED] IEP meeting. Educational goals and objectives for [REDACTED] were also discussed at this first IEP meeting, although none were written down at that point in time given the parents' refusal to reduce anything to writing ( TR. 3/2, 105 et. seq.; Tr. 3/20, 106-107 ).

18. There was on [REDACTED] a full discussion of [REDACTED] medical background, as detailed in the physician's reports and neuropsychologist's report. [REDACTED] was not discussed as a possible category of disability for [REDACTED]. According to [REDACTED] who has supervised special education services for the LEA for fifteen years, and who attends between one hundred and twenty five and one hundred and fifty IEP meetings per year, it is not typical to discuss all categories of disability at IEP meetings. Further, the committee saw no reason to discuss [REDACTED] as a possible category since all present felt that [REDACTED] met the criteria for [REDACTED] with those criteria having already been reviewed in the eligibility part of the meeting ( Tr. 3/2, 147 et. seq. ). Significantly, as noted by [REDACTED], the category of disability does not drive the IEP or the number of goals and objectives placed in an IEP. Nor is there an special education endorsement for either [REDACTED] or [REDACTED]. The child's actual placement is based upon the individual needs of each child ( TR. 3/2, 152 et. seq. ).

19. On [REDACTED], the IEP meeting reconvened. Only two of the original team members were present, that is [REDACTED], the school Social Worker, and [REDACTED] the school Guidance Counselor. However, [REDACTED] the reading specialist, attended as the regular education teacher. [REDACTED] had occasion to teach [REDACTED] during the school year ( Tr. 5/1, 14 ). [REDACTED] who is a special education teacher, attended as the LEA representative. [REDACTED], an ED resource teacher, also attended, although [REDACTED] role was primarily to transcribe the IEP ( Tr. 3/20, 250 ). It is not unusual for composition of the IEP team to change from one date to another ( Tr. 5/1, 50 ).

20. At the [REDACTED] IEP meeting, there was further discussion of the various written evaluations of [REDACTED]. On the first page of the resultant IEP, it was noted that [REDACTED] had a verbal memory disfunction, as noted in the neuropsychological report of [REDACTED]. The narrative portion of the IEP also refers to [REDACTED] having "significant difficulties in virtually all areas of learning and memory." The report also refers to the parents' concern that [REDACTED] teachers understand that the reported verbal memory disfunction is not associated with [REDACTED] ( Tr. 3/2, 103; SB 15 ). [REDACTED] was not present at the IEP meeting, although [REDACTED] recommendations were subsequently incorporated into the IEP which was developed ( SB 15 ).

21. The IEP team on [REDACTED] agreed on a service delivery model which would provide [REDACTED] with eighty-five minutes a day of resource instruction, which could include instruction in both a resource room with a limited number of students or in the general classroom with the [REDACTED] teacher assisting [REDACTED], as needed. The collaborative methodology was not specifically stated as part of the plan for [REDACTED], however, according to [REDACTED], the Guidance Counselor who attended the meeting this is not unusual. After an IEP is written, the school subsequently evaluates the student to see if the collaborative method or the resource room method is better for that particular student. Given staffing in any particular school year and the number of children to be serviced, a collaborative



teacher may not be available for a particular child in each of his or her academic subjects. The use of a collaborative teacher for [REDACTED] was not denied at the [REDACTED] IEP, since the resource model includes collaboration where appropriate ( Tr. 3/20, 184-185 ).

22. Although [REDACTED] signed the IEP on [REDACTED] [REDACTED] noted [REDACTED] disagreement with the placement and [REDACTED] belief that the school could not provide the services needed by [REDACTED]. The IEP was not, however, implemented because in early [REDACTED] [REDACTED] had been removed from school because of an allergic reaction to mold at [REDACTED] [REDACTED] received homebound instruction for the remainder of the school year.

23. As a consequence of the parent's dissatisfaction with the outcome of the IEP meeting and after phone discussion with [REDACTED] the LEA's Director of Student Services, another IEP meeting was convened on [REDACTED]. The purpose of the meeting was to add additional weaknesses of [REDACTED], as reported by [REDACTED] and to modify some of the goals and objectives in the IEP, taking into account these new areas of weakness ( SB 15 ). The committee continued to support the least restrictive environment of eighty-five minutes of resource instruction per day. Under the team's approach, [REDACTED] would meet with a resource teacher in the morning to help [REDACTED] get organized and started on [REDACTED] school day. A collaborative teacher would then go into [REDACTED] regular education classes, as available, to assist [REDACTED]. At the end of the day, [REDACTED] would again meet with the resource teacher to assure that [REDACTED] homework was written down and that [REDACTED] had the materials needed to take home ( Tr. 3/2, 120 ). The parent continued to disagree with this, noting that [REDACTED] wanted [REDACTED] to receive all of [REDACTED] academic subjects in a small class, with no more than ten to twelve students of similar strengths and disabilities. In addition, [REDACTED] wanted two teachers to be in this collaborative setting ( Tr. 3/20, 41-42 ). It was unclear whether [REDACTED] contemplated a regular or special education classroom. [REDACTED] also noted [REDACTED] objection that educating [REDACTED] in a pull-out methodology in which [REDACTED] would go to a resource room for eighty-five minutes per day would deprive [REDACTED] of physical education and related arts with the general student

population. The meeting lasted approximately three hours. Given the fact that the LEA could not accommodate this request, [REDACTED] was advised by letter of [REDACTED] on [REDACTED] of [REDACTED] right to proceed to a due process hearing ( SB 16 ). The parent then requested that the issues be mediated ( P's 11 ).

24. Subsequent to mediation, the parties reached a Mediation Agreement ( P's 11 ). Pursuant to that agreement, [REDACTED] was to be educated in a self-contained [REDACTED] setting for academics, with non-academic instruction with non-disabled students. Additionally, [REDACTED] was to receive an assistive technology evaluation, there was to be a review in [REDACTED] relative to the possibility of an extended school year, and the eligibility committee was to reconvene to consider reclassification of [REDACTED] disability. The elements of the Agreements were to be set to the IEP team for consideration of a possible change in IEP of [REDACTED]

25. For the first time, during the course of mediation, the parent raised the issue of [REDACTED] category of disability ( Tr. 3/20, 45 ).

26. An assistive technology evaluation was performed on [REDACTED] after mediation ( SB 20 ). The resultant report recommended that [REDACTED] use an Alpha Smart Keyboard at home and at school. Write Out Load software was also recommended to facilitate [REDACTED] written expression and to help with [REDACTED] handwriting problems, since [REDACTED] handwriting was deemed to be almost illegible. The Write Out Load program was to be used on a school computer so that [REDACTED] could download and print assignments [REDACTED] had completed at home on the Alpha Smart Keyboard. Given [REDACTED] difficulty with organizing ideas and elaborating on topics, the evaluator also recommended that [REDACTED] have Inspiration software available and that [REDACTED] teacher be trained in its use. It was also suggested that [REDACTED] receive accommodations for note taking, such as, the use of a scribe or a tape recorder. Finally, [REDACTED] was to perform handwriting activities both at school and at home.

27. The next IEP meeting was convened on [REDACTED]. The appropriate people were in attendance, including teaching staff from [REDACTED].

School, where [REDACTED] was enrolled for the [REDACTED] grade. The IEP was modified to include the contents of the Mediation Agreement. The recommendations of an assistive technology report dated [REDACTED] were incorporated into the IEP. There was further discussion relative to accommodating [REDACTED] food and other allergies and an agreement to change the school's bus schedule so that [REDACTED] could take the bus to school. As a consequence of the meeting, additional goals were added to the [REDACTED] IEP by addendum. Everyone, including the parent, concurred that the appropriate educational setting for [REDACTED] was a self-contained one. The committee felt that given the length of the goals and objectives in the revised IEP, the self-contained setting would be best since those goals and objectives probably could not be addressed in a general education collaborative setting ( Tr. 3/20, 50 ). [REDACTED] was to receive [REDACTED] non-academics in the general education setting. [REDACTED] was still concerned, however, that [REDACTED] would not receive what [REDACTED] considered appropriate social interaction in such a setting ( Tr., 3/20 53 ). It is noted on the addendum that the parent agrees that [REDACTED] was not denied anything that would require a prior written notice.

28. The issue of the category of disability was referred back to the eligibility committee. According to [REDACTED] pediatrician, as opposed to [REDACTED] neurologist, first suggested that [REDACTED] might have [REDACTED] however [REDACTED] was not diagnosing [REDACTED] with [REDACTED] from a medical standpoint. [REDACTED] was referring to [REDACTED] as a disabling condition under IDEA ( Tr. 3/20, 123, 144 ).

29. An additional IEP addendum was written on [REDACTED] in order to extend the IEP through [REDACTED] at which time, the parties would meet again for an annual IEP review and to reconsider [REDACTED] disability classification ( SB 15 ).

30. At the eligibility meeting on [REDACTED] the committee reviewed all available information on [REDACTED] medical history. The Guidelines for Educational Services for Students with [REDACTED], which is published by the Virginia Department of Education, was also reviewed, with close attention paid to the definition of [REDACTED] in the

Guidelines. The parent fully participated in the discussion, noting [redacted] exception to the committee's opinion that according to the definition of [redacted] an external force had to be applied to the brain for [redacted] to be categorized as having [redacted]. [redacted] believes that giving [redacted] the wrong medication, which may have caused [redacted] roll over seizures ( epilepsy ), was an external force which caused brain injury. Notably, [redacted] testified that the neurologist told [redacted] that the scarring of [redacted] brain did not come from hitting [redacted] head during seizures, but probably from the epilepsy itself. Nor could the neurologist conclude that an abnormal EEG for the frontal lobe of [redacted] brain resulted from a blow or blows to [redacted] head ( Tr. 3/20, 152 ). The committee did not agree with [redacted] and the [redacted] category was denied ( Tr. 3/20, 64 et. seq., SB 30 ).

31. The next IEP meeting was convened on [redacted] with all proper persons in attendance. This meeting was continued to [redacted] when the IEP was signed. [redacted] progress at [redacted] was fully discussed, and the parent was informed by [redacted] teacher, [redacted], that [redacted] was doing well and generally making progress toward [redacted] stated goals and objectives ( Tr. 3/20, 71 et. seq., SB 31 ). Although the IEP was signed by all in attendance on [redacted] the progress report section of the IEP was not filled in, although [redacted] was the end of the marking period. According to [redacted] [redacted] did not receive the completed IEP with the grades included until [redacted] ( Tr. 3/20, 72, SB 32 ). With the exception of one "NP" ( No Progress ) and eight "NI's" ( Not Introduced ), [redacted] received "P's" ( Progressing ) in all other areas of [redacted] IEP ( twenty-four ).

32. On [redacted] the IEP committee wanted to add a goal to [redacted] IEP whereby [redacted] would be placed in a regular education class for Math ( [redacted] strong subject ), with a collaborative teacher. [redacted] had in fact, added an additional [redacted] teacher to assure that [redacted] received instruction in all four of [redacted] core academic subjects from an [redacted] teacher ( Tr. 3/20, 115 ). [redacted] however, refused to agree to this modification because [redacted] was doing well in the self-contained class and [redacted] did not want [redacted] exposed

to the distractions in a regular education class ( Tr. 3/20, 75 et. seq. ). The collaborative methodology was being used at [REDACTED] for other special education students.

33. [REDACTED] thought things were going well for [REDACTED] at the beginning of the [REDACTED] school year, but [REDACTED] had concerns respecting "multi-sensory" or hands-on teaching, given [REDACTED]'s problem with memory and [REDACTED]'s compromised visual-motor perception of things. The "multi-sensory" approach was used in Math, but [REDACTED] did not believe they were used in [REDACTED] other academic subjects. [REDACTED] however, acknowledged that [REDACTED] did not observe all of [REDACTED] classes on a daily basis. Although [REDACTED] made other teaching suggestions, which were implemented by [REDACTED]'s teachers, [REDACTED] made no suggestions respecting multi-sensory techniques ( Tr. 3/20, 117 - 119 ).

34. [REDACTED] received all of [REDACTED] academic instruction in the resource room. Other disabled students came to and from the room during the course of the day for instruction in some of their classes. According to the Principal of [REDACTED] School, this self-contained class was created for [REDACTED] in order to accommodate the numerous goals and objectives in [REDACTED] IEP and to accommodate the parents' request that for a self-contained setting. Since the school had only had one full time [REDACTED] teacher, they added another teacher who spent sixty percent of [REDACTED] time in special education ( Tr. 5/1, 150-151 ). Because [REDACTED] did not have the same group of peers with whom to interact through the course of [REDACTED] day, [REDACTED] felt that the self-contained environment was harmful to [REDACTED] social development.

35. One of the goals stated in [REDACTED] IEP was that [REDACTED] was to keep [REDACTED] agenda book daily. [REDACTED] interpreted this to mean that [REDACTED] was to make the entries respecting [REDACTED] academic assignments in the book. The agenda book shows only a few entries made by [REDACTED] from [REDACTED] the day [REDACTED] was withdrawn from school ( P's 55 ). However, it was not until sometime in [REDACTED] that [REDACTED] complained to the Principal about this. As a consequence, [REDACTED] directed [REDACTED]

teacher that [REDACTED] was to write the agenda book entries for at least one of [REDACTED] subjects ( Tr. 5/1, 153. [REDACTED] teacher, [REDACTED] had not previously interpreted the goal of "keep [REDACTED] agenda book daily" to mean that [REDACTED] had to make the entries in the book. In [REDACTED] view the goal meant that [REDACTED] was to bring the book everyday ( Tr. 5/1, 215 ).

36. On two occasions, because of the absence of [REDACTED] teacher and other teachers, [REDACTED] was without instruction. On one of those occasion, [REDACTED] sat in the library; on the other occasion, [REDACTED] was in the care of a substitute teacher, who permitted [REDACTED] to play on the computer (Tr. 3/20, 62-63 ).

37. [REDACTED] complains that parts of [REDACTED] IEP were not implemented by [REDACTED] teacher at [REDACTED]. Specifically, [REDACTED] argues that various objectives were not introduced in the first nine weeks of school, including "breaking down assignments; writing paragraphs without a guide; writing compositions without a guide." Yet, [REDACTED] notes, [REDACTED] was given several projects at the same time, all of which projects required the aforesaid skills ( Tr. 3/20, 57 et. seq. ). Often, [REDACTED] had to write [REDACTED] work for [REDACTED] to make it acceptable.

38. [REDACTED] teacher testified that while it is true that [REDACTED] did not introduce all goals and objectives at the same time. For example, by the end of the first marking period, [REDACTED] had not yet introduced the objective of "writing a paragraph without a guide since [REDACTED] had not yet been successful in doing so with a guide ( TR. 5/1, 218 et. seq. ). Nor did [REDACTED] notice any major problems with [REDACTED] completing [REDACTED] science project, as testified to by [REDACTED] since much of it [REDACTED] worked on in class. According to [REDACTED] [REDACTED] expected that by the end of the school year, the goals as stated in the IEP would have been achieved, given [REDACTED] opinion that [REDACTED] was performing well in general ( tr. 5/1, 235 et. seq. ). Further, [REDACTED] also felt that [REDACTED] should have been partially mainstreamed in Math, noting that [REDACTED] also wanted this since [REDACTED] had a group of friends in regular education ( Tr. 5/1, 238 ).

39. [REDACTED] was using the assistive technology strategies recommended, specifically, the Alpha Smart Keyboard, the Write Out Loud program and a web design software for written expression ( Tr. 3/20, 152 ).

40. In [REDACTED], [REDACTED] complained to the Assistant Principal that [REDACTED] was not in a the type of self-contained class [REDACTED] had envisioned, and threatened to withdraw [REDACTED] from school if changes in [REDACTED] program were not made ( Tr. 5/1, 272 ). As recommended by [REDACTED] neurologist, who admittedly was not an educational specialist, [REDACTED] wanted [REDACTED] in small class of no more than ten or twelve students of like abilities and disabilities, with two teachers in the room ( Tr. 3/20, 159 ).

41. At some point in [REDACTED] or [REDACTED] the Principal gave [REDACTED] teacher a copy of the [REDACTED] Guidelines Manual since the parents continued to argue that [REDACTED] should be considered to have [REDACTED] ( Tr. 3/20, 79 ). [REDACTED] also mentioned the educational strategies in the Guidelines to [REDACTED]s teacher in early [REDACTED] ( Tr. 3/20, 123 ).

42. Pursuant to IDEA, [REDACTED] is defined as "an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech." 34 CFR 300.7(b)(12). Further, the Note to that section indicates that not included in the definition of [REDACTED] are brain injuries resulting from an internal occurrence, such as a stroke, aneurysm, infection or disease. The [REDACTED] Guidelines Manual mirrors this definition.

43. Page 6 of the Guidelines lists the usual problem areas seen in persons who have suffered [REDACTED] the only ones of which identified with [REDACTED] are also problems in persons suffering from [REDACTED]. These problems are in the areas of task orientation and

attention; organization and planning skills and information encoding and retention. These are only three of the fourteen problem areas typical of students who have suffered [REDACTED]. In fact, on page 4 of the manual, it states that children suffering from [REDACTED] and [REDACTED] share similarities in impulsive, inattentive behavior and their response to similar intervention strategies. However, unlike [REDACTED] injuries result in reduced activity or energy, consistent memory problems and decreased initiative, which impair the ability to learn strategies. The student with [REDACTED] also is unresponsive to many cues, cognitive strategies and insight-oriented approaches useful for the student with [REDACTED].” Additionally, students suffering from [REDACTED] are distinguished by their ability to retain information or quickly regain skills learned before the injury, but impaired ability to learn new information.” ( SB 46 ).

44. A final eligibility meeting occurred at [REDACTED] School on [REDACTED]. [REDACTED] entire file was reviewed by the voting members of the team ( TR. 5/1, 252 ). There was a full discussion and exchange of opinion ( Tr. 5/1, 240 ). Again, [REDACTED] was fully discussed by the committee. The committee were familiar with all of the reports previously completed on [REDACTED]. They were additionally familiar with the Guidelines, according to [REDACTED] the Principal of [REDACTED], a voting member of the committee ( Tr. 5/1, 161 et. seq. ). [REDACTED] presented no new evaluations. The committee had also received an interpretive letter from [REDACTED] based upon information [REDACTED] had received from someone who had been in the Policy and Planning Division of the Virginia Department of Education, which produced the Guidelines ( Tr. 3/20, 127 ). According to [REDACTED] the school frequently relies on [REDACTED] a resource on eligibility issues ( Tr. 5/1, 196 ). Notably, according to [REDACTED] LCSW, who attended both the [REDACTED] and [REDACTED] eligibility meetings ( [REDACTED] was a voting member at the [REDACTED] meeting ), there was general discussion respecting [REDACTED] parent-reported history of hitting [REDACTED] head, [REDACTED] need to wear a seizure helmet and [REDACTED] ingestion at an early age of a toxic substance ( TR. 5/1, 202 et.



seq.). Despite this information and based upon the definition of [REDACTED] in the Guidelines and the lack of any medical to the contrary, the committee determined that [REDACTED] was not a victim of [REDACTED] and that [REDACTED] disability category should remain as [REDACTED] ( Tr. 5/1, 256; SB 42 ).

45. According to [REDACTED], Supervisor of Special Education for the LEA, the Guidelines are not law in Virginia, but are advisory only and are used to assist committees or groups in making informed decisions respecting special education of students possibly suffering from [REDACTED]. Further, there is no requirement imposed by the Virginia Department of Education that the strategies in the Guidelines, if considered appropriate, be placed into a written IEP, as the services listed in an IEP are not driven by the disability label, but rather by the unique needs of each child. The role of the IEP committee is to address ways of resolving whatever problems are impeding a student's education (Tr. 3/2, 157 et. seq. ).

46. Given the Eligibility Committee's belief that [REDACTED] was not [REDACTED] they refused to specifically discuss the strategies outlined in the Guidelines. The [REDACTED] then left the [REDACTED] eligibility meeting without signing the minutes, subsequently withdrew [REDACTED] from school, following notice on that same day to the school ( SB 43 ).

47. Since [REDACTED] removal from school, the parents have been educating [REDACTED] at home, with the assistance of a private [REDACTED] teacher, a speech pathologist, an occupational therapist, a teacher from the [REDACTED] and a general education teacher ( Tr. 3/20, 135 et. seq. They plan to have [REDACTED] home schooling overseen by the [REDACTED]. However, the educational personnel presently in the home would continue in their respective capacities ( Tr. 3/20, 139 et. seq. ).

48. [REDACTED] academic record in the LEA shows that [REDACTED] received average to above average grades, including A's and B's from grades [REDACTED] ( P's 51 ). However, [REDACTED] final grades in [REDACTED], the year [REDACTED] was removed from [REDACTED] medication, included four "D's" in [REDACTED] academic subjects, with "U's" in the category of work/study

habits ( P's 50 ). Subsequent to [REDACTED] disenrollment from public school, [REDACTED] report card shows four "B's" and four "S's" in [REDACTED] academic subjects for the first marking period, and two "A's" one "B" and one "C" and for "S's" for the second marking period ( P's 48 ). Intellectual testing obtained by the [REDACTED] and standardized achievement testing performed by the LEA on [REDACTED] show that [REDACTED] is in the average range of intelligence and average to well above average in achievement ( P's 44, 45 and 46 ). It is noted, however, that the achievement test in question was administered while [REDACTED] was on [REDACTED] medication.

## CONCLUSIONS OF LAW

### I PROCEDURAL DEFECTS IN THE ELIGIBILITY/IEP PROCESS

#### A. The [REDACTED] Eligibility Meeting Was Properly Conducted.

The parents contend that the LEA conducted a flawed eligibility meeting on [REDACTED]. [REDACTED] The crux of their argument is that because they were not informed of all possible categories of disability, in particular that of [REDACTED], they were unable to make informed consent as to a proper educational plan for [REDACTED]. The parents' argument is not persuasive. Section 300.532 et. seq. of the Code of Federal Regulations, which interprets IDEA, sets out the standards for evaluating and determining special education eligibility for students suspected of having qualifying disabilities. This Hearing Officer can find no flaws in the initial evaluation of [REDACTED]. The members of that Eligibility Committee, all of whom testified at this hearing clearly indicate that there was a full discussion of [REDACTED] history, both medical and educational. Based upon that history which included classroom observations, comments from [REDACTED] teachers, comments from [REDACTED] parents and reports from [REDACTED] medical doctor, it was clear to all that [REDACTED] suffered from [REDACTED]. [REDACTED] was, therefore, properly identified under the disability category of [REDACTED]. The parent concurred with this label. If there were no

independent reports or observations which suggested that [REDACTED] suffered from another disability, there would have been no reason for the Committee to go down the list and describe the other categories to the parent. This Hearing Officer knows of no regulation or case law which would support the parents position in this respect.

**B. The IEP Committee Was Attended by All Appropriate Persons.**

The parents complain that appropriate persons did not attend the [REDACTED] IEP meeting. In addressing this issue, one must consider the parties present on both [REDACTED] and [REDACTED] as the IEP meeting started on [REDACTED] and concluded on [REDACTED]. Under Section 300.344, CFR, the IEP team must include the child's regular education teacher, the child's special education teacher, the parent and a representative of the LEA, who is knowledgeable in the areas of general curriculum and special education. In the instant case, the [REDACTED] complain that [REDACTED] one of [REDACTED] regular education teachers, attended only the first part of the meeting, but not the second part of the meeting. There is no question that [REDACTED] participated in consideration of the appropriate IEP for [REDACTED]. At the second meeting, however, [REDACTED] attended as the regular education teacher. According to [REDACTED] as a reading specialist, [REDACTED] taught children in the general education curriculum, including [REDACTED], at [REDACTED] School. This was not controverted by the parent. [REDACTED] was, therefore, a regular education teacher in attendance at the IEP. A review of Appendix A of Part 300 of the CFR, "Notes of Interpretation", indicates that any one of a student's regular education teachers may attend the IEP meeting, however, depending on the child's needs and the purpose of the meeting, that teacher need not attend the entire meeting or every continued meeting, or even participate in all decisions made by the IEP team. The matter is adjudged on a case by case basis. See Section 300.344 (a)(2). The facts indicate that at the [REDACTED] IEP meeting, the team had considered [REDACTED]'s strengths, weaknesses and the appropriate goals and objectives for [REDACTED], however, the goals and objectives and the service delivery model were not yet

reduced to writing. The purpose of the adjournment to [REDACTED] was simply to give the parent an opportunity to look at the various service delivery models at the school prior to the team concluding what model would be used for [REDACTED], given the parents' lack of knowledge respecting the various models, in particular the collaborative model, to which the team was leaning. Additionally, [REDACTED] was present as the LEA representative at the [REDACTED] meeting. As a teacher of twenty-nine years and the Special Education Specialist at [REDACTED] School, [REDACTED] was more than qualified to represent the LEA, pursuant to Section 33.344(a)(4), as [REDACTED] was knowledgeable about general curriculum, special education resources at [REDACTED] and qualified to render special education services. Finally, even though the special education teacher at the [REDACTED] meeting was not the same one at the [REDACTED] meeting, this is a moot point since the above section requires that the child's special education teacher be present, and [REDACTED] had not yet been rendered special education services. Consequently, the IEP team in question was properly composed.

**C. The [REDACTED] IEP Committee Considered Information Provided By The Parents.**

Under Section 300.346, CFR, "the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child." By [REDACTED] own testimony, the parent was present and fully involved in [REDACTED] discussion at the IEP meeting in question. Further, the parent's testimony and that of the other witnesses, as well as the completed IEP itself substantiate that all evaluations and reports provided by the parent were fully discussed, and their content used in creating the IEP. The resultant IEP, in fact, refer on page one to the neuropsychological reports submitted by the [REDACTED]

**D. The [REDACTED] IEP Meeting Fully Considered [REDACTED] Needs As Presented By [REDACTED] Parent.**

[REDACTED] IEP was modified on [REDACTED] in order to take into account additional problems which the parent felt warranted a modification of the goals and objectives in [REDACTED]

IEP. [redacted] fully participated in the discussion and modifications were made to the IEP. Although the parents' complaint on this issue is somewhat vague, it would appear from the testimony of [redacted] teacher who attended the [redacted] meeting, and from the written statement of [redacted] on the IEP Addendum, that [redacted] believes that because the IEP team kept the resource service delivery model for [redacted] the team did not consider [redacted] unique and individual needs. The team's approach, which was well thought out and contemplated the use of both services in the resource room and in a collaborative classroom, would appear to have been the least restrictive environment for [redacted]. [redacted] desired a self-contained, small classroom. However, there was no indication that [redacted] could not learn in the service delivery model proposed by the team. The fact that the IEP team did not agree with [redacted] does not mean that they were not taking [redacted] needs into account. Further, by law, the LEA had to use the least restrictive environment to educate [redacted]. If the chosen setting did not work out, then the IEP team would have been required to revisit the issue of placement.

**E. The [redacted] Eligibility Meeting Was Properly Conducted In That No Required Information Was Withheld From The Parents.**

The eligibility meeting in question was specifically requested by the parents in order to revisit the issue of category of eligibility. The record shows that no new reports or evaluations were presented by the parent, who had the obligation to support their contention that [redacted] had [redacted] with appropriate medical documentation. The only evaluative reports available to the committee were those which had previously been considered and found not to give a diagnosis of [redacted]. The parent argues that the committee should have presented and considered the Guidelines. Not only did the committee not have an obligation to do so, but had the Guidelines been considered, the committee would have concluded that [redacted] did not have [redacted] as defined in IDEA and in the Guidelines. The Committee found no reason to conclude that [redacted] major problem was not [redacted].

**F. The [REDACTED] IEP Meeting Was Properly Conducted**

The [REDACTED] contend that [REDACTED] special education teacher misrepresented [REDACTED] educational achievement or lack thereof at the referenced meeting. As such, they contend that they had insufficient information to make informed conclusions as to whether or not [REDACTED] IEP was appropriate. This Hearing Officer disagrees with the parents in this respect. According to [REDACTED] teacher, [REDACTED] was doing well and making progress toward most of [REDACTED] goals and objectives. [REDACTED] report card for the first quarter substantiates this. The fact that [REDACTED] had not yet achieved or been introduced to every objective is not dispositive. It is certainly within the discretion of the classroom teacher to plan [REDACTED] lessons based on [REDACTED] assessment of the child's strengths and weaknesses. Further, the IEP goals and objectives are written to be achieved over a period of time. There is no requirement that they all be achieved at the same time. There is no question that [REDACTED] was not excelling, but then IDEA does not require a special education student to excel.

**G. The [REDACTED] Eligibility Meeting Was Properly Conducted In That They Reached A Decision On Category Of Disability Based Upon Information Available To Them.**

As noted above with respect to previous eligibility meetings, the members of the Eligibility Committee of [REDACTED] did not agree with the parents that [REDACTED] had a [REDACTED]. The parents attach to the LEA's refusal to label [REDACTED] as [REDACTED] some consequential harm from not using the strategies in the Guidelines to educate [REDACTED]. Again, however, the committee had no evidence of [REDACTED] respecting [REDACTED]. The LEA is correct in its position that the label does not drive the education a child receives. Further, the parents confuse the role of the Eligibility Committee and the IEP team. It is the latter, not the former, which considers the child's unique and individual needs in determining the services he is to receive. It is, moreover, again reiterated that [REDACTED] did not meet the definition of [REDACTED]. The evidence additionally establishes that the Committee was familiar with the [REDACTED] category by the time the meeting convened. Not only had the Principal

reviewed the Guidelines, but [REDACTED] had also shared the comments of a member of the team which devised the Guidelines. The parent also argues that [REDACTED] serving as a resource in this respect biased the Committee. There is no evidence of this contention.

## II. FAILURE OF THE LEA TO PROVIDE A FREE AND APPROPRIATE PUBLIC EDUCATION.

### A. The LEA Implemented The Agreed-Upon IEP.

1. The parents complain that the LEA failed to implement the IEP which was formulated and agreed upon on [REDACTED]. Specifically, [REDACTED] takes exception to various items with respect to [REDACTED] day to day education at [REDACTED] School. One minor complaint is that on two occasions, [REDACTED] was without [REDACTED] special education teacher's assistance because of [REDACTED] absence. During those occasions, [REDACTED] spent time in the library or was with a substitute teacher and [REDACTED] received no substantive education. However, such isolated instances, which one might reasonably expect to occur given teacher absences, do not negate the fact that on a regular, on-going basis, [REDACTED] received appropriate education from teachers endorsed to teach children with [REDACTED] disability.

2. Further, [REDACTED] argues that [REDACTED] teachers did not adhere to the contents of [REDACTED] IEP and, therefore, violated [REDACTED] right to FAPE. [REDACTED] presented as an exhibit [REDACTED] grade daily agenda book. There is no question that the entries in the book were made by [REDACTED] teachers, up to mid-[REDACTED], at which time [REDACTED] started to make entries for one of [REDACTED] classes. This change was precipitated by the parent's complaint to the Assistant Principal. The fact that the teachers made the entries does not constitute a failure to comply with [REDACTED] agreed-upon IEP. The language in the IEP, that is, that [REDACTED] "shall keep [REDACTED] agenda book on a daily basis" is subject to more than one interpretation. It is not clear that the goal required [REDACTED] to make the actual entries in the book, or merely to have the book daily so that appropriate entries could be made by [REDACTED] teachers

and/or by [REDACTED]. Nor does this Hearing Officer find that the issue of who made the entries of any great significance. If arguendo, one concluded that [REDACTED] should have made the entries, the fact that [REDACTED] did not is harmless error. The purpose of this component of the IEP was clearly to assure that [REDACTED] and [REDACTED] parents knew what [REDACTED] assignments were on a daily basis, and to facilitate communication between the teachers and the parents. These goals were accomplished. It is also puzzling that the parent waited to raise this issue until very late in the academic semester, and after problems had arisen between the parents and the LEA vis a vis [REDACTED] category of disability. If the parents truly believed that [REDACTED] should have been annotating the agenda book, then the issue would likely have been raised earlier in the year.

3. The parents additionally argue that the classroom teacher's failure to introduce all goals in the IEP at the start of the school year constitutes a deviation from the IEP. There is no rational basis for such a position. Clearly, a teacher is limited by the time in a school day. [REDACTED] cannot address all issues at the same time. Additionally, the learning process is cumulative. For example, although the teacher was criticized for not introducing to [REDACTED] the concept of writing a paragraph without a guide, this was appropriate since [REDACTED] had not yet mastered writing a paragraph with a guide. Moreover, the IEP is a periodic document. There is no requirement that each goal be addressed in each marking period, just that it be addressed within the time period of the IEP, which is the school year. It is clear from the testimony of [REDACTED] teachers, that [REDACTED] was making progress with respect to most of the goals at the time [REDACTED] was withdrawn from school. The parents' argument in this respect is, therefore, not persuasive.

4. The [REDACTED] also complain that the [REDACTED] teacher misrepresented the child's achievements. This was addressed in the findings of facts previously, and will not be belabored at this point. There is simply no evidence of this. [REDACTED] progress reports speak for themselves.



5. Although the parent does not raise the issue in [redacted] closing argument, during the course of the hearing [redacted] alluded to the failure of [redacted] teacher to have specific teaching strategies included in the IEP, and that this somehow rendered the IEP inappropriate. On this point, it suffices to say that a) the parent signed and agreed to the IEP and b) there is no requirement under IDEA that specific teaching strategies be included on the IEP. The IEP form is, in fact, very specific as to what categories are included. There is no area for teaching strategies, nor should there be. To require teachers to detail their day-to-day strategies on an IEP would be a tremendous burden on the teacher and would stifle the creativity that goes on in the classroom. Certainly, this was not one of the intents when IDEA was enacted. An educator needs to be able to adjust and modify teaching techniques as each situation requires. To restrict teachers to strategies listed on an IEP would be tantamount to tying his or her hands as teachers.

**B. [redacted] Placement In A Self-Contained Classroom Was Appropriate**

According to [redacted], [redacted] was not provided an appropriate education because [redacted] was in an isolated classroom without interaction with peers. The record in this case indicates that from the outset of the IEP process, the parents did not want [redacted] in a regular education classroom, where [redacted] would be distracted by other students and unable to concentrate on [redacted] work. In attempting to adhere to the legal requirement to place the child in the least restrictive environment, the IEP team attempted to convince [redacted] to at least try the collaborative service delivery model, where [redacted] would have a resource teacher's services for at least some ( if not all ) of [redacted] academic subjects, and would receive some instruction in the resource room. However, the parents would not even agree to try this method. The issue was ultimately mediated and the parents and the LEA agreed to educate [redacted] in the resource room for [redacted] academic subjects and for [redacted] to be mainstreamed for non-academic subjects. Now, however, despite [redacted] agreement to this placement, [redacted] complaints of it. [redacted] placement was, in fact, as close to what [redacted] actually envisioned for [redacted] as was possible in a public school setting. [redacted]

Testified that [redacted] argued for [redacted] to be in a small classroom setting with children with disabilities and strengths similar to [redacted]. On the one hand, the public schools do not match students by intellectual strengths unless they are in a gifted program. On the other hand, the LEA could not legally place other disabled students in a more restrictive environment in order to accommodate the social development needs of another student. Yet, that is apparently what [redacted] wanted the LEA to do. Moreover, the facts do not substantiate the allegation that [redacted] was isolated in [redacted] classroom. Even though [redacted] stayed in the resource room for all of [redacted] academics, other children came and went during the course of the day, and were educated collaboratively for part of their program. [redacted] certainly could have developed relationships with these children. Moreover, [redacted] was mainstreamed for non-academic subjects, as a consequence of which [redacted] had ample opportunity to develop peer relationships. In fact, the testimony of [redacted] teacher indicated that [redacted] had a group of friends in regular education. Because of these friendships, [redacted] was especially eager to mainstream into the regular education math class. The parent, however, would not agree to this. This last point highlights what this Hearing Officer finds problematic in the parent's argument on placement. Although [redacted] was given the opportunity and indeed encouraged to place [redacted] in a less restrictive environment, [redacted] chose not to do so. Yet, [redacted] now argues that the placement that [redacted] desired for [redacted] was too restrictive. This Hearing Officer does not follow the logic of the parents on this issue.

**C. FAPE Was Provided To [redacted] By The LEA.**

The parents finally allege that FAPE was denied to [redacted] in [redacted] educational placement. This position is, however, inconsistent with the evidence in this case. There is no question that [redacted] was doing well in school prior to the decision to stop the medication which was controlling [redacted]. [redacted] was making progress in school even after [redacted] medication was stopped. While it may have appeared initially to the IEP team that a self-contained [redacted] setting was too restrictive for [redacted] it was apparently working for

judging by grades and teachers' comments. There is no indication that was excelling or performing above grade level, which perhaps what parents wanted. However, IDEA does not require that a disabled student's education be maximized, only that the student receive some educational benefit, as well as social development. The LEA's reliance on Board of Education v. Rowley, 458 U.S. 176, 206-207 is absolutely appropriate. The IEP's which were developed for were reasonably calculated to provide educational benefit and, in fact, did not provide such a benefit.

The parents rely on the failure to categorize as traumatically brain injured in arguing that education did not provide FAPE. This reliance is inappropriate. As all the experienced educational witnesses testified, the IEP is based on the strengths and weaknesses of the student in question. It is not category or label driven. Whatever a child's category of disability, after full discussion of the child's particular learning problems, an IEP is developed. That is exactly what happened in this case. There were many lengthy meetings between the parents and LEA personnel, where every aspect of intellectual, medical and social skills/problems were discussed. The parents fully participated in these meetings and presented medical and neuropsychological reports for review. These reports were fully reviewed and where appropriate, recommendations from the reports were incorporated into IEP's.

Clearly, children with present a unique set of challenges with respect to educating them. It was obviously with this in mind that the Virginia Department of Education created the Guideline for educating such children. However, not only are the guidelines non-mandatory in nature, but more importantly, does not appear to suffer from. There has been no evidence offered to prove or even suggest that's. In fact, by own neurologist's written report, did not have a as defined by IDEA. 's position and opinion on this is without merit. Moreover, as required by IDEA, IEP was developed with unique needs in

mind, as demonstrated by input from [REDACTED] teachers and the various evaluative tools which are utilized as part of the eligibility process.

The parents have also belatedly in their closing brief raised the issue of a denial of FAPE by virtue of the LEA's failure to provide Speech and Occupational Therapy to [REDACTED]. However, these issues were not raised as issues in the due process hearing, and will not now be entertained. They are also moot, since the parent presented no evidence that the LEA was ever on notice that [REDACTED] had a speech or an OT problem or that [REDACTED] has problems in these areas.

### CONCLUSION

The parents have failed to prove their case with respect to any of the numerous issues raised. The [REDACTED] Public Schools has prevailed on all issues. The LEA was and is capable of providing a free and appropriate education to [REDACTED]. The parents have failed to prove that the educational program devised for [REDACTED] is inappropriate or that their program at home or in a private school is appropriate. As such, the parents are not entitled to reimbursement of the costs of educating [REDACTED] at home or through the use of a private school.. It is also noted that the other monetary remedies sought are inappropriate. The parents' costs of proceeding to due process, including the cost of missed work and copy fees are not reimbursable. Additionally, the LEA's representative accurately states the case respecting reimbursement for the independent evaluation the parents opted to have. They did not raise the issue of the LEA's evaluation of [REDACTED] being inappropriate, nor did they request an independent evaluation from the LEA, which must happen before an LEA is obligated to pay for such an evaluation.

The parties herein are noticed on their right to appeal this decision. Pursuant to the Virginia Special Education Regulations in effect at the time the request for due process was made, this decision may be appealed to the Virginia Department of Education for review by a State-level review officer.

Dated:

[REDACTED]

[REDACTED]

Hearing Officer