

VIRGINIA: SPECIAL EDUCATION DUE PROCESS HEARING

[REDACTED] PUBLIC SCHOOLS,

Petitioner,

v.

[REDACTED]
PARENTS OF [REDACTED]

Respondents.



DECISION OF HEARING OFFICER

I. Proceedings.

This matter comes on the request of [REDACTED] Public Schools for a due process hearing. The school system requested a hearing because [REDACTED], [REDACTED] of student [REDACTED], withdrew parental consent for [REDACTED] continuing to receive special education services and placement.

The school system requested a due process hearing on [REDACTED]. On the same date the school system sent to the parents by certified mail a letter informing them that the school system was requesting a due process hearing in response to the parents' withdrawal of consent for the continuation of provision of special education services to [REDACTED], a copy of the request for due process hearing, a list of free and low-cost legal services, copy of [REDACTED] special education records, and a copy of the procedural safeguards.

The hearing officer accepted appointment on [REDACTED].

After appropriate notice was given, the hearing officer conducted a hearing in a conference room at the administrative offices of [REDACTED] Public Schools on [REDACTED]. [REDACTED] appeared and represented [REDACTED]. The representative for the school system was

██████████ Counsel for the school system was ██████████ of ██████████

At the conclusion of the hearing the parent elected to have an audio recording of the hearing instead of a transcript.

At the hearing, ██████████ special programs coordinator of the ██████████ Public Schools testified on behalf of the school system. The school system also called ██████████, the school psychologist, and ██████████, the student special education teacher. ██████████ provided testimony on his own behalf. The school system offered 45 exhibits, all of which were admitted without objection.

II. Issue Presented.

The issue presented is whether the placement of the student in a special education class with related special education services is needed to provide ██████████ with a free appropriate free education in accordance with the Individuals with Disabilities Education Act (IDEA) and regulations governing Special Education Programs for Children with Disabilities in Virginia effective January 1, 2001.

III. Pertinent Legal Authority.

The undisputed evidence is that ██████████ is a student to which the IDEA applies and to which Virginia's Regulations Governing Special Education Programs for Children with Disabilities apply. ██████████ is entitled to the benefits of the IDEA. ██████████ is entitled to a free appropriate public education which must provide ██████████ "a basic floor of opportunity" and be "reasonably calculated to offer ██████████ some education benefits." Board of Education v. Rowley, 458 U.S. 176 (1982).

Virginia Department of Education Regulation 8VAC 20-80-76.B.2 provides as follows:

A local educational agency may initiate a due process hearing to resolve a disagreement when the parent or parents withhold consent for an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability.

Regulation 8VAC20-80-58.B.3 provides the following:

If the parent or parents revoke consent for the child to continue to receive special education and related services, the local education agency must follow the procedures in 8VAC80-80-56 to terminate the child's eligibility or use other measures as necessary to insure that parental revocation of consent will not result in the withdrawal of a necessary free appropriate public education for the child. (Emphasis added)

Part of the definition of a "free appropriate public education" includes the provision of an individualized education program that meets the requirements of the state regulations. See 8VAC 20-80-10.

The applicable law is the Individuals with Disabilities Education Act (IDEA) and Virginia and Federal regulations promulgated pursuant to it.

The burden is upon the party challenging the placement of an eligible child to prove that the placement of the child and the provision of services under the proposed individualized education program fail to be a free and appropriate public education in accordance with applicable law and regulations. Johnson v. Independent School District No. 4 of Bixby, Tulsa City, Oklahoma, 929 F.2d 1022 (10th Cir. 1990). "Great deference" must be paid to the educators who develop the IEP. Todd D. v. Andrews, 933 F.2d, 576 (110th Cir. 1991).

IV. Findings of Fact.

1. The School System met all requirements of notice to the parents.
2. [REDACTED] is a student eligible for special education services and placement in a special education class pursuant to the IDEA and applicable state regulations.
3. On [REDACTED], pursuant to a appropriately convened eligibility meeting, [REDACTED]

[REDACTED] was found eligible for speech and language services. [REDACTED] as parent for [REDACTED], refused speech and language services for [REDACTED].

4. On [REDACTED], [REDACTED] (hereafter sometimes referred to as "[REDACTED]") was referred to the child study team by [REDACTED] teacher because of reading difficulties.

5. On [REDACTED], [REDACTED] granted permission for [REDACTED] to receive a screening for hearing deficiencies. On [REDACTED], the school system informed [REDACTED] that the hearing test for [REDACTED] indicated that [REDACTED] hearing was within normal limits.

6. On [REDACTED], [REDACTED] referred [REDACTED] to the school system for an evaluation for the following reasons: "1. [REDACTED] reads and writes backwards. 2. [REDACTED] mixed up [REDACTED] letters. 3. [REDACTED] can't read that good."

7. On [REDACTED], [REDACTED] gave permission to the school system to evaluate [REDACTED] to determine whether [REDACTED] was eligible for special education and related services. [REDACTED] also acknowledged in writing [REDACTED] receiving a copy of the Procedural Safeguards and that [REDACTED] received those rights.

8. On [REDACTED], the school system contacted appropriate staff to begin the evaluation of [REDACTED].

9. On [REDACTED], [REDACTED], M.D., [REDACTED]'s family physician, assessed [REDACTED] as healthy with a learning disability.

10. Special education teacher [REDACTED] assessed [REDACTED] as performing poorly in the following categories:

1. Attending to instructions and tasks.
2. Following oral directions.
3. Beginning work promptly.

4. Completing work on time.
5. Contributing to class discussion.
6. Completing written assignments satisfactorily.

11. On [REDACTED] school system staff member [REDACTED] gave [REDACTED] the Peabody Individual Achievement Test - Revised. [REDACTED] was at the end of [REDACTED] second grade year in [REDACTED] Schools. [REDACTED] found that [REDACTED] was achieving below [REDACTED] expected level for [REDACTED] grade. The results which were a true reflection of [REDACTED] ability show that [REDACTED] was performing more than a year behind [REDACTED] peers in the following categories: General information, reading recognition, reading comprehension, total reading, and spelling. In mathematics, [REDACTED] was nearly two years behind [REDACTED] peers at a [REDACTED] level. The exact results of [REDACTED] evaluation are found in Exhibit A-29.

12. On [REDACTED] [REDACTED], the school psychologist, evaluated [REDACTED] psychologically. The evaluation included assessing [REDACTED]'s intelligence. [REDACTED]'s full scale I.Q. score was 62 which placed [REDACTED] in the first percentile. According to this test result, 99% of the people would test higher than [REDACTED]. [REDACTED]'s verbal skill I.Q. score was 72 which placed [REDACTED] in the third percentile. This was within the borderline range. [REDACTED] scored in the mildly deficient range under the performance (non-verbal) scale with a score of 57 which placed [REDACTED] in the .2 percentile. Under the wide range achievement test - revision 3, [REDACTED] scored 73 in reading which placed [REDACTED] in the fourth percentile, 77% in spelling which placed [REDACTED] in the sixth percentile, and 79 in arithmetic which placed [REDACTED] in the eighth percentile. [REDACTED] whose findings are valid and reliable, made the following summary and recommendation:

[REDACTED] is an [REDACTED] year-old [REDACTED] grader who is struggling in the classroom. Reading appears to be particularly difficult for [REDACTED] despite [REDACTED] participating in the Chapter I Program. Testing indicated

abilities in the mildly deficient range. Academic and adaptive functioning skills appear to be commensurately weak. Projective measures and conversation with [REDACTED] suggest a friendly but overly concrete-thinking child who appears considerably younger than [REDACTED] chronological age.

This report will be given consideration in the determination of the most appropriate academic placement for [REDACTED]. It appears, however, that [REDACTED] would benefit from inclusion in a program of specialized instructional assistance with children of similar age and ability.

13. On [REDACTED], the school system and staff found that [REDACTED] was eligible for services for the educable mentally disabled. The school system notified [REDACTED] of the individualized educational program meeting which was appropriately conducted the same day as the eligibility meeting. An individualized educational program was written for [REDACTED] with [REDACTED] participation. [REDACTED] approved the IEP and [REDACTED] placement in the program for the educable mentally disabled.

14. The school system placed [REDACTED] in a class of ten students with comparable abilities and similarly in need of services for the educable mentally disabled. [REDACTED] class had a teacher and a teacher assistant. [REDACTED] teacher, [REDACTED], gave special attention to [REDACTED] during the year, especially working with [REDACTED] reading deficiencies. [REDACTED] made progress in [REDACTED] special education class. [REDACTED] benefitted educationally from the class. The services [REDACTED] received during [REDACTED] [REDACTED] grade in [REDACTED] [REDACTED] Schools constituted a free and appropriate public education.

15. On [REDACTED], the school system convened an IEP team meeting. The purpose of the meeting was to evaluate [REDACTED] progress, [REDACTED] current status, and to devise an appropriate individualized educational program for [REDACTED] attendance in [REDACTED] grade.

16. At the [REDACTED] meeting, [REDACTED] signed "no" to [REDACTED]'s placement in a special

education class. The parent indicated [REDACTED] was withdrawing consent for [REDACTED] receiving special education services.

17. The parent, [REDACTED], wishes for the school system to place [REDACTED] in a regular education class when [REDACTED] begins [REDACTED] grade.

18. [REDACTED] testified that [REDACTED] was of the opinion that [REDACTED] special education teacher was not pushing [REDACTED] enough. [REDACTED] felt like [REDACTED] needed a more forceful teacher, perhaps a male teacher, to push [REDACTED]. [REDACTED] stated that [REDACTED] expected [REDACTED] to fail [REDACTED] grade with the understanding that [REDACTED] would be held back to repeat the [REDACTED] grade. [REDACTED] disputed the intelligence test results. [REDACTED] explained that [REDACTED]s sister does very well in school. [REDACTED] further explained that [REDACTED] has facility on the computer.

19. [REDACTED], the school psychologist, rendered the opinion that [REDACTED] would be unable to perform the work that students in regular education [REDACTED] grade classes must perform to pass. [REDACTED] predicted that [REDACTED] would fail, would lose [REDACTED] motivation to learn, have [REDACTED] self esteem undermined, and would be subjected to stresses which would probably cause [REDACTED] to act out [REDACTED] frustrations in behaviorally inappropriate ways.

20. If [REDACTED] was placed in a regular education [REDACTED] grade class as [REDACTED] requests, [REDACTED] would fail and [REDACTED] would not receive an appropriate public education.

V. Conclusion

1. All notice requirements and all procedural requirements of the law and regulations have been met by the school system.

2. [REDACTED] is an eligible student entitled to the benefits of the Individuals With Disabilities Education Act because [REDACTED] is [REDACTED]

3. [REDACTED] requires special education and related services from the school system to derive benefit from [REDACTED] education and so that [REDACTED] receives a free appropriate public education.

4. The placement of [REDACTED], in a regular education [REDACTED] grade class as [REDACTED] parent requests would be harmful to the student, including undermining [REDACTED] motivation to learn and damaging [REDACTED] self esteem. [REDACTED] would be unable to meet the minimum standards of performance in a regular education [REDACTED] grade class. [REDACTED] is able to learn, but at a markedly slower rate than [REDACTED] age group, even with specialized assistance.

5. The placement of [REDACTED] in a special education class with other students who are [REDACTED] with a teacher and a teacher's assistant will benefit [REDACTED] educationally and will provide [REDACTED] an appropriate public education within the meaning of the Individuals with Disabilities Education Act and applicable federal and state laws and regulations.

It is ORDERED that the school system implement its individual education program for [REDACTED] [REDACTED], which includes placement in a special education class and [REDACTED] receiving the continuation of special education services.

It is further ORDERED that the school system, through appropriate staff, address and assess whether [REDACTED] is receiving an appropriate public education in the least restrictive environment at the next IEP meeting that the school system convenes.

VI. Appeal Information.

An appeal of this Decision by either party must be instituted in either a state or federal court within one year of the date of this Decision.

[REDACTED]
Date

[REDACTED]
Hearing Officer

I hereby certify that copies of the foregoing Decision were mailed to [REDACTED] counsel for [REDACTED] Public Schools, [REDACTED], and [REDACTED] Department of Education, this [REDACTED] day of [REDACTED]

[REDACTED]
[REDACTED]