

6.

Local Hearing x

State Level Appeal _____



CASE CLOSURE SUMMARY REPORT

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

School Division

Name of Parents

Name of Child

_____ 2001
Date of Decision

_____ Esq.
Counsel Representing LEA

_____ Esq.
Counsel Representing Parent/Child

Initiating Hearing

_____ LEA _____ Party
Prevailing Party

Hearing Officer's Determination of Issue(s): Must the IEP set forth the specific _____ Program course in which the student is to enroll

Hearing Officer's Orders and Outcome of Hearing: IDEA does not require that the specific _____ Program course in which the student is to enroll be set forth in the IEP. It is sufficient if the IEP merely identifies that _____ Program courses are to be taken.

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

Printed Name of Hearing Officer

Signature

VIRGINIA DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

In the Matter of:

[REDACTED]

v.

[REDACTED] Public Schools

[REDACTED] Esq. for [REDACTED]
[REDACTED] Esq. for [REDACTED] Public Schools

Hearing Officer Decision

Preliminary

This matter was instituted by a [REDACTED] 2001 letter from [REDACTED], mother of [REDACTED] ("Student"), to the [REDACTED] Public Schools ([REDACTED]) requesting a due process hearing. [REDACTED] alleged that [REDACTED] was not complying with the terms and provisions of the Individuals with Disabilities Education Act ("IDEA"), and the related federal and state regulations, was not complying with section 504 of the Rehabilitation Act of 1973, and was not providing the Student with a free and appropriate education, as required by IDEA.

By letter dated [REDACTED] 2001, the undersigned was appointed as the hearing officer for this proceeding.

On [REDACTED] 2001 a prehearing conference was held at the office of the hearing officer. The Student's parents attended, as did representatives of [REDACTED]. At the prehearing conference it developed that many of the problems between the parties had been resolved, and that most of the remaining problems were to be resolved by mutual agreement and cooperation between the parties. However, one problem remained unresolved, and that is the issue which is involved in this proceeding.

The parties agreed that an oral hearing was not necessary, and that they would submit their positions to the hearing officer

in writing. This decision is based upon those written submissions.

Statement of the Case

The Student has been a student in the [REDACTED] system since elementary school. Similarly, [REDACTED] has been receiving special education services since [REDACTED] elementary school days.

In the [REDACTED] 2001 a meeting of the Student's Individualized Education Program ("IEP") team was convened to discuss [REDACTED] placement for the upcoming school year, when [REDACTED] would be a [REDACTED] at [REDACTED] High School. After discussion, it was determined that it would be in the Student's best interest if [REDACTED] was placed in two [REDACTED] Program classes, in addition to the other classes. [REDACTED] the Student received [REDACTED] class schedule from [REDACTED] High, and discovered that [REDACTED] was not enrolled in the [REDACTED] Program classes. Discussions between the parties continued throughout the summer months, and by the time of the prehearing conference, the Student was scheduled to be enrolled in the the two [REDACTED] Program classes agreed upon by the IEP team.

However, the question of whether the Student's IEP should specifically include mention of the specific [REDACTED] Program classes was not resolved, and that is the basis for the issue to be decided in this proceeding.

Issue

Must the IEP set forth the specific [REDACTED] Program courses in which the student is to enroll.

Averments of the Parties

Initially [REDACTED] submits that it is sufficient for an IEP to make a general reference to the "[REDACTED] placement" or "[REDACTED] program" courses in particular curriculum areas which a student is going to take, as opposed to enumerating the specific courses

themselves. [REDACTED] finds support for this submission in the applicable IDEA regulation, 34 C.F.R. 300.347(b)(1), which speaks of "courses of study" which are to be included in an IEP. As the agency responsible for applying the regulations, [REDACTED] PS concludes that its interpretation of this regulation is entitled to significant weight.

[REDACTED] also contends that it would be impractical for specific courses to be included in the IEP. The course selection for high school students is a multi-step, fairly intricate process which takes several months to complete. The IEP is but a part of this process. Secondly, the timing of the IEP and the selection of a student's courses for the upcoming school year do not necessarily coincide. Finally, as students frequently change courses once the school year commences, [REDACTED] opines that if specific courses were written into a student's IEP, every time the student changed his or her schedule a new IEP meeting would have to be convened.

In response, the Student submits that the legislative intent of IDEA was to ensure that all disabled children receive a free appropriate public education ("FAPE"), and, to the extent possible, that these children be educated in regular classrooms along with their non-disabled peers¹. Similarly, the Student argues that section 504 of the Rehabilitation Act of 1973 prohibits discrimination against handicapped persons in federally funded programs.

The Student contends that in order to receive a FAPE, the IEP is the key tool in the process, as it develops each student's unique educational program.

The Student further contends that the 1997 amendments to IDEA, and the legislative history of the amendments, emphasize the importance of planning a student's courses of study during his or her secondary school experience, as these courses could be critical to a student's future.

¹ Citing 20 U.S.C. 1412 and 1414, and 34 C.F.R. 300.132

The Student opines that the language of the statute² and the applicable regulations³ is clear and concise, definite and precise, and requires specificity regarding the courses which a student is to take. For an IEP to simply state that a student was to participate in "[redacted] placement" or "[redacted] program" courses would fly in the face of the statutory requirements.

In interpreting the meaning of a statute, the Student argues that the primary objective must be to determine the intent of the legislators when the law was enacted⁴. As appropriate herein, When Congress passed IDEA it placed control of the disabled student's education in the hands of his or her IEP team. For the IEP team to properly perform its mission it has to specifically identify the [redacted] Program courses in which the Student was going to enroll.

The Student also notes that, contrary to the position of [redacted], the agency's interpretation of the regulations which it is administering is not entitled to any significant weight, especially where the involved language is not particularly ambiguous.

Finally, the Student suggests that any administrative difficulties envisioned by [redacted] in requiring that specific courses be enumerated in an IEP is hardly a defense to not properly following the statute and regulations.

In reply [redacted] submits that it actually offered to include the specific language sought by the Student in [redacted] IEP, but that this offer was not accepted. However, [redacted] continues, the IEP team should not be responsible for the selection of all of the Student's courses, given the number of courses and the complexity of the selection process. [redacted] also contends that, in actuality, there is very little disagreement between the parties.

Finally, [redacted] notes that the ultimate plan of the "transition service needs" requirement in the statute and regulations is to identify the student's post-secondary school goals, and focus

² 20 U.S.C. 1414(d)(1)(A)(vii)(I)

³ 34 C.F.R. 300.347(b)(1)

⁴ Citing Anglin v. Joyner, 181 Va, 660,667 (1943)

attention on how the student's educational program can be designed to meet these goals.

The Student, in reply, submits that the statute and regulations clearly require that the specific [REDACTED] Program courses which the Student is to be enrolled in must be specifically stated in [REDACTED] IEP. It is also contended that the contentions of [REDACTED] regarding the number of available courses and the complexity of course selection is irrelevant, and that the difference between the word "courses" and the phrase "courses of study", as advanced by [REDACTED] is non-existent.

Discussion and Conclusions

The issue involved in this proceeding is, to the best of the undersigned's knowledge, one of first impression in Virginia. The pertinent federal statute, 20 U.S.C. 1414(d)(1)(A)(vii)(I) reads as follows:

(A) "The term 'individualized education program' or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes -

(vii)(I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);"

The regulations promulgated pursuant to this statute, 34 C.F.R. 300.347(b)(i), read as follows:

"The IEP must include -

(i) For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition services needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced placement courses or a vocational education program);"

As the applicable Virginia regulations⁵ are virtually identical to the Federal regulations, they will not be discussed herein.

When it promulgated the federal regulations, the U. S. Department of Education also published, as Appendix A to those regulations, a series of interpretative questions and answers. As pertinent, question 11 and its answer read, in part, as follows:

"What must the IEP team do to meet the requirements that the IEP include 'a statement of * * * transition service needs beginning at age 14 [citation omitted]. . ."

"Beginning at age 14 and younger if appropriate and updated annually, each student's IEP must include * * * a statement of the transition services needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced placement courses or a vocational education program) [citation omitted]."

"The purpose of [the requirement in §300.347(1)(i)] is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school."

"Thus, beginning at age 14, the IEP team, in determining appropriate measurable annual goals (including benchmarks or short-term objectives) and services for a student, must determine what instruction and educational experiences will assist the student to prepare for transition from secondary education to post-secondary life."

Based upon these legal guidelines, I conclude that IDEA does not require that a school system enumerate in a student's IEP what specific [redacted] placement or [redacted] programs courses the student is going to be enrolled in. For purposes of the IEP I conclude that the mere identification of [redacted] or [redacted] program courses is sufficient.

⁵ 8 VAC 20-80-62 F 9

This conclusion is base upon what I perceive to be the clear an unambiguous language of the applicable statute and regulations, quoted from above. Indeed, the regulations themselves indicate that a generalized description, i.e., "advanced placement courses or a vocational education program" is sufficient for IEP purposes.

I perceive the "courses of study" language of the statute and regulations to be unambiguous. "Courses of study" obviously pertains to the general type of courses in which a student may enroll, such as English. Within the "courses of study" are the particular "courses", i.e., English 101, Honors English, etc., in which a student may enroll.

In the context of this proceeding, all that was required of the IEP was to specify that the Student was to have the opportunity to enroll in [REDACTED] Program courses. Obviously the IEP team would have great input on which particular [REDACTED] Program courses were to be involved, but this detail did not have to be specified in the IEP.

Appeal Information

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

Dated: [REDACTED] 2001

[REDACTED]
Hearing Officer

Certificate of Service

I certify that a copy of the foregoing Decision has been sent by first class mail, postage prepaid, on [REDACTED] 2001, to the following: [REDACTED], Esq., [REDACTED], [REDACTED], and [REDACTED], Esq., [REDACTED].