

VIRGINIA DEPARTMENT OF EDUCATION
POST-HEARING REPORT
FORMAL DUE PROCESS HEARING



[REDACTED] PUBLIC SCHOOLS
School Division

[REDACTED]
Parents

[REDACTED]
Director of Special Education

[REDACTED]
Student

[REDACTED]
Hearing Officer

[REDACTED]
Hearing Initiator

I. ISSUE AND PURPOSE OF THE HEARING

This due process hearing was initiated by [REDACTED] and [REDACTED]e ("the parents"), parents of [REDACTED] ("the student"), in a Request for Due Process Hearing signed by [REDACTED] alone on [REDACTED] (J.E. 91). This request was made to [REDACTED], the Director of Special Education, [REDACTED] Schools ("PS").

In the request, the parents voiced these complaints: PS failed to inform them it had not received the student's prior education records from the school; [REDACTED] next immediately attended in [REDACTED], [REDACTED] was administered a psychological test without their prior consent in [REDACTED] grade; an Individualized Education Program ("IEP") was set up for [REDACTED] in [REDACTED] grade which they did not sign; and that though it is now recognized that the student is "borderline [REDACTED]" ("[REDACTED]"), the [REDACTED] education [REDACTED] was supposed to be provided from [REDACTED] were not carried out. The parents indicated that they had made inquiry of a private school, [REDACTED], and believed it to be a proper instructional institute for [REDACTED], and sought funds from PS to pay for this private placement.

In response to the request, the undersigned hearing officer was appointed by letter dated

[REDACTED]. A pre-hearing conference was scheduled for and held on [REDACTED]. PS was represented by [REDACTED] of the law firm of [REDACTED], LLP, [REDACTED] Virginia. The parents declined to retain counsel and represented themselves at the hearing.

Following the hearing on [REDACTED], the parties agreed to a schedule by which each side would have one week to review the hearing transcript and submit arguments in writing, with the final decision due one week thereafter (T. 249). The parents sought to have additional post-hearing evidence submitted, but that evidence was not considered, it being untimely and without the prior consent of [REDACTED].

II. FINDINGS OF FACT

Prior to the hearing the parties stipulated to the admission of 93 exhibits which are contained in a Joint Exhibit ("J.E.") binder. These exhibits document the student's history at PS quite completely.

The student is a [REDACTED] year old [REDACTED] currently attending [REDACTED] School in [REDACTED]. The student was first enrolled in PS in [REDACTED] grade soon after the start of the [REDACTED] academic year, transferring from [REDACTED] School in [REDACTED] (J.E. 1). Though PS made several attempts to obtain the student's academic records from [REDACTED] (J.E. 2), it was not until [REDACTED] that PS received a partial IEP from [REDACTED] (J.E. 3). That partial IEP, containing results of educational and psychological tests of the student conducted in [REDACTED] and [REDACTED] identified certain learning deficiencies in the student;

specifically, that [REDACTED] was performing at the [REDACTED] grade level in reading, language and math. and had some problems with maintaining attention. An IEP child study committee at the student's school took cognizance of this information and in its initial meeting on [REDACTED] recommended re-evaluation (J.E. 4).

The following day, [REDACTED] the school gave the parents written notice that having received information from [REDACTED], it was being recommended that the student receive exceptional education services through the IEP [REDACTED] program, and requested the parents execute a form enclosed granting permission for evaluation to determine the student's needs (J.E. 5). The student's [REDACTED] signed the form on [REDACTED] and returned it to the school (J.E. 6). Among the components identified (by circling) for action in the evaluation was "psychological."

A psycho-educational evaluation was performed during the following 6 weeks, and a report made on [REDACTED] by School Psychologist [REDACTED] (J.E. 7). Educational testing indicated that the student had made little or no progress in areas of reading and writing ability over the past academic year (compared to the levels reported in the [REDACTED] IEP), though the student's math scores had improved to a [REDACTED] grade level. In sum, [REDACTED] evaluation describes a child with [REDACTED] 2-4 years below [REDACTED] age group and grade setting, and WISC-III scores of 71 (full scale), 73 (verbal) and 74 (performance). The evaluation also notes problems with attentiveness, lack of self confidence in [REDACTED] ability to do the work, and a sometimes negative attitude towards the school environment. There was no apparent hearing or visual impairment noted at any time. The student was determined to have [REDACTED]

though improvement was noted in "activity level and concentration in school" as a result of low dosages of [REDACTED] in early [REDACTED] (J.E. 17).

The student's principal at [REDACTED] [REDACTED] (T. 42-105), and [REDACTED] grade teacher, [REDACTED] (T. 107-151), both testified that [REDACTED] was afforded instruction aimed at [REDACTED] level, which included placement in a small multi-age group setting of 19 students and three adults (a regular teacher, a special education teacher, and a paraprofessional trained to work with special education children). [REDACTED] weaknesses appeared most marked in word recognition and decoding; [REDACTED] strengths were in short term memory and verbal skills. [REDACTED] was being taught in a group of six to eight, and had daily instruction in reading in a group of two or three students with a paraprofessional or teacher. This allowed [REDACTED] one-on-one instruction as needed. The [REDACTED] reading instruction method was implemented, which uses audio and pictures to assist in word recognition. The evidence at the hearing implies this teaching approach was based on the learning deficiencies shown in the partial IEP from [REDACTED]. An IEP was developed in the late spring of [REDACTED] following the re-evaluation performed by [REDACTED] PS, which would be effective for the upcoming academic year, and to which the [REDACTED] agreed (J.E. 19).

An IEP developed and approved by the [REDACTED] for the following academic year ([REDACTED] [REDACTED] addressed again [REDACTED] continued deficiencies in reading, math and language (J.E. 28). The student's IEP for the next academic year ([REDACTED] noted again [REDACTED] weaknesses in those same areas, and recommended placement in a special education setting, to which the parents agreed in writing (J.E. 32). An interim IEP was agreed to by the [REDACTED] for the student's participation in a summer program in year [REDACTED] (J.E. 43). The triennial IEP (J.E. 51) for the student's [REDACTED] grade

academic year () noted the same deficiencies in reading, writing and math, and proposed an assessment during the year at the () and after school tutoring when it becomes available at () current school. The () signed this IEP.

The parties did not dispute that the student showed some improvement the first year in the () PS school, and with the parents' consent, the student repeated the () grade to reinforce the progress () made. However, progress the second year was minimal, and the student's weaknesses in math, reading and language appeared to stagnate or retrogress in subsequent years. Teacher comments from academic years () to () indicate the student was losing focus in the classroom and was not following up on homework assignments (and therefore, not reinforcing classroom progress).

This fall, the student's eligibility team determined () would be best served by classification as a () student and an IEP was proposed (J.E. 90). Only the () attended this IEP team meeting. Though it purports to provide the student more individualized instruction in weak areas, the parents objected to its implementation and filed this due process hearing request. The student remains *status quo* as an () student at () pending the results of this matter.

III. CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 *et seq.* And the implementing regulations (34 C.F.R. Parts 300 and 303 and *Virginia Regulations*), is intended to provide a free and appropriate public education (FAPE) for every child with a

disability. *Timothy W. v. Rochester New Hampshire School District*, IDLR 441:393

(1st Cir. 1989). While the Supreme Court has held that the requirement of a FAPE is met if the child is able to "benefit educationally from that instruction," that does not impose a duty on the state to maximize the potential of the child. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176 (1982). The *Rowley* standards for a FAPE are met in this case if the preponderance of the evidence shows that [redacted] PS has complied with the procedural requirements of the IDEA and if the IEP developed according to the IDEA procedures is reasonably calculated to enable the student to receive educational benefits. *Id.*, 203-204.

A preponderance of the evidence presented at the hearing demonstrates no serious procedural violations by [redacted] PS. The parents were timely apprised of all relevant steps taken by [redacted] PS, as is amply documented in the exhibits. The signature of one or both parents appears on all IEPs in evidence (with the exception of the last one at issue).

While [redacted] PS never obtained the student's file from the [redacted] school, blame cannot be laid at the doorstep of [redacted] PS because its employees apparently made numerous attempts to obtain the student's records for grades [redacted] through [redacted] at the time of [redacted] enrollment at [redacted]. The partial IEP [redacted] PS finally received from [redacted] placed it on alert of the student's deficiencies and appropriate educational measures were implemented to address those until further evaluations could be performed and IEPs developed.

To the extent the parents complained that they did not give prior consent to the [redacted] psychological evaluation of the student requested by [redacted] PS, the parents are wrong. The request

form was signed by the [REDACTED] and the form itself indicated a psychological evaluation would be conducted.

While it is alarming that the student has not progressed to a level expected by [REDACTED] parents and [REDACTED] teachers, and remains woefully weak in basic educational skills, *Rowley* does not require [REDACTED] PS or any school district to provide more than reasonable specialized instruction and related services. The proposed IEP to which the parents object, based upon the evidence presented at the hearing, appears reasonably calculated to afford the student specialized instruction and related services tailored to [REDACTED] needs as a learning-disabled child. No evidence was offered by the parents to substantially contradict the evidence of [REDACTED] PS that the IEP proposed was appropriate and reasonable for the student's needs, and evidence was adduced that implicates the student's lack of cooperativeness as a contributing factor.

While the parents believe private placement at the [REDACTED] (" [REDACTED] ") is necessary and the cost should be borne by [REDACTED] PS, the evidence does not support that conclusion. The sole witness called by the parents on this proposed placement, [REDACTED], Head of School at [REDACTED], testified only in general terms of what could be offered the student *if accepted for admission*. Much of what the witness testified might be provided the student was already available to [REDACTED] through the specialized instruction and programs afforded [REDACTED] by [REDACTED] PS.. The Supreme Court has held that reimbursement of private school tuition is inappropriate absent proof that the school district's program *is* inappropriate and the parents' proposed program is appropriate. *Burlington Sch. Comm., et al. v. Dept. Of Education, et al.*, 471 U.S. 359 (1985). It is impossible from the evidence presented to make that determination at this time.

IV. SUMMARY

In summary, the Hearing Officer finds that the [redacted] PS committed no procedural or substantive violations of IDEA which have denied the student a free and appropriate public education, that the proposed IEP appears reasonably calculated to enable the student to receive educational benefit as appropriate to meet [redacted] educational needs, and that should the student be enrolled at the [redacted], PS is not required to reimburse the parents for the costs of such education at this time.

This decision is final unless a party to the hearing appeals to the state for an administrative review. An appeal by either party must be instituted within 30 administrative working days of the date of *issuance* of this decision.

Dated: [redacted] (Mailed/Issued [redacted])

[redacted signature]

Hearing Officer

Certificate

I certify that I caused a true copy of the foregoing to be mailed, postage pre-paid, to the following persons, this [redacted]

[redacted]
[redacted]
[redacted] VA [redacted]
[redacted]
[redacted]

[REDACTED] VA [REDACTED]

Coordinator, Due Process and Complaints
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[REDACTED]