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Local Hearing

CASE CLOSURE SUMMARY REPORT

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

<u>Public Schools</u>	_____ and _____
School Division	Name of Parents
Name of Child	_____
Counsel Representing LEA	_____ Esq.
Counsel Representing Parent/Child	_____ Esq.
Party Initiating Hearing	_____ and _____

Hearing Officer's Determination of Issue(s): **The request of parents that LEA be required to provide through contract services _____ and _____ instruction is denied; LEA is required to provide a minimum of 90 minutes daily of specialized reading instruction and to reconvene IEP team on or before _____**

Date of Decision _____

Prevailing Party _____ Public Schools

Hearing Officer's Orders and Outcome of Hearing: See Determination of Issues above

This certifies that I have completed these hearings in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing has previously been sent to the parties .

_____	_____
Printed Name of Hearing Officer	Signature

cc: Parent(s); School Division; State Education Agency

VIRGINIA DEPARTMENT OF EDUCATION
LOCAL DUE PROCESS HEARING

IN RE: [REDACTED]

Decision of Hearing Officer

Statement of the Case

On [REDACTED] Counsel for [REDACTED] filed a request for a Due Process Hearing with [REDACTED] Public Schools ([REDACTED] PS). (Record #1). On [REDACTED] [REDACTED] was designated as the Hearing Officer. (Record #2). The request called for an expedited hearing under the provisions 8 VAC 20-80-76 B 3. The Hearing Officer conferred with counsel on [REDACTED]. Both counsel agreed that the matter before the Hearing Officer did not involve disciplinary actions as required by the regulation. Accordingly, the Hearing Officer ruled that the matter was not entitled to an expedited hearing. (Record 5) In addition a prehearing conference was then scheduled for [REDACTED], the hearing in the matter was scheduled for [REDACTED] with the Hearing Officer's decision to be rendered on or before [REDACTED]. At the prehearing conference counsel and the Hearing Officer agreed that the issues for decision were

- a. Whether the [REDACTED] School located in [REDACTED] County will provide the services for [REDACTED] as are called for in [REDACTED] IEP?
- b. Whether the social worker's report as contained in [REDACTED] private school application is incorrect and if so would a correction of the report result in [REDACTED] being

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admitted to other private schools?

c. Whether [REDACTED] is providing the services for [REDACTED] called for in [REDACTED] IEP in a public school setting?

The parties declined to mediate the matters before the hearing officer. As required by the Regulations the parties submitted in a timely fashion their exhibits and list of proposed witnesses. At the hearing on [REDACTED] the student, [REDACTED] was present but during the course of the hearing was excused. Counsel for [REDACTED] presented the testimony of [REDACTED] together with the testimony of speech pathologist, [REDACTED]. [REDACTED] PS presented the testimony of [REDACTED] a learning disability program specialist.

Statement of Facts

[REDACTED] at the time of the hearing was one month short of [REDACTED] birthday. [REDACTED] had previously been found eligible for special education services due to "Other Health Impaired, Multiple Disabilities, and Emotional Disabilities". ([REDACTED] #18). [REDACTED] had been provided services by [REDACTED] Public Schools ([REDACTED] PS) at [REDACTED] School. As the result of a series of IEP meetings concluding with an IEP meeting on [REDACTED] the IEP team, with the consent of [REDACTED] concluded that [REDACTED] required a "highly structured more therapeutic program" with "instruction in a Private Day School" ([REDACTED] PS #25, [REDACTED] #1)

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[REDACTED]

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[REDACTED] PS with the help of the parent attempted to place [REDACTED] in a number of local private schools. Initially these efforts were unsuccessful. ([REDACTED] #10-13, [REDACTED] PS 7-13) Subsequently the [REDACTED] School indicated that it had space to accept [REDACTED] [REDACTED] was visited on three occasions by [REDACTED] (Tr. p 34) During one of those occasions [REDACTED] accompanied [REDACTED] (Tr. p 34) During the course of these visits, [REDACTED] testified, that [REDACTED] had become concerned with the severity of the emotional disabilities of the young people attending [REDACTED] and concluded that [REDACTED] did not want [REDACTED] to attend [REDACTED] (Tr. p 41-42)

On [REDACTED] [REDACTED] PS had advised [REDACTED] that since placement in a private day school had not been finalized that interim services to implement the IEP to the extent possible would be provided by [REDACTED] PS at [REDACTED] School. ([REDACTED] PS Ex. 11) Further attempts were made during the month of [REDACTED] in a private day school but the attempts were also unsuccessful. After the filing of the request for a due process hearing and following the prehearing conference in this matter on [REDACTED] [REDACTED] counsel for [REDACTED] wrote to [REDACTED] PS suggesting that, pending the identification of a private day school that would accept [REDACTED] [REDACTED] be placed in "a fledgling program for [REDACTED] students headed by a new teacher, [REDACTED]" with the proviso that [REDACTED] not be labeled as [REDACTED]. ([REDACTED] PS #14) At a meeting on [REDACTED] with

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[REDACTED]

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representatives of [REDACTED] PS discussion of the nature of services to be provided by [REDACTED] PS was conducted and it was suggested that [REDACTED] would begin classes on [REDACTED] ([REDACTED] PS Ex 15). In the [REDACTED] PS letter it was stated that definite decisions were not made with regard to the provision of specified contract services for [REDACTED] and the witness, [REDACTED], who had been employed by [REDACTED] to evaluate [REDACTED] concluded that use of the proprietary [REDACTED] and [REDACTED] programs providing four hours per day of instruction involving "individual speech and language therapy" as well as a "intensive structured and rule based multi sensory reading program" were required for [REDACTED] (Tr. p 128-130) [REDACTED] PS declined to provide those precise services with the result that they matter went to a hearing as scheduled on [REDACTED]

At the hearing [REDACTED] testified in detail about [REDACTED] concerns about [REDACTED] and concluded by testifying about [REDACTED] preference for [REDACTED] placement provided [REDACTED] desires regarding the nature of the reading programs to be provided to [REDACTED] were met. (Tr. p 42)

At the same time counsel for [REDACTED] PS advised the hearing officer that although [REDACTED] PS felt that [REDACTED] was a proper placement for [REDACTED], [REDACTED] PS would not insist on that placement against the parent's wishes. (Tr. p161)

At the same time the parties acknowledged that the issue of whether the social

worker's report as contained in [REDACTED] private school application were correct or incorrect no longer was pertinent since all available schools other than [REDACTED] had declined to accept [REDACTED]

This left as the sole issue before the Hearing Officer the question of whether the type of program proposed by the parent at [REDACTED] on behalf of [REDACTED] should be implemented.

[REDACTED] testified concerning [REDACTED] three visits to [REDACTED]

Q. What is your overall impression of [REDACTED] as far as its appropriateness for [REDACTED] knowing your [REDACTED] learning disabilities and [REDACTED] needs?

A. I do not feel that [REDACTED] could be an asset to [REDACTED] learning disabilities. I believe their program is strong in what it has to offer. I believe academically there's a possibility that [REDACTED] could get help. But I believe that the surroundings and the level of the difficulties with the students would interfere I think it is counterproductive. I don't know how far you want me to expound, because I had one thing that is very concerning to me. [REDACTED] has been with [REDACTED] and highly emotionally disturbed children since [REDACTED] grade --

Q. [REDACTED]

A. [REDACTED] -- because [REDACTED] has been in noncategorical courses. And because the school told me there was no place for [REDACTED] I accepted [REDACTED]. And [REDACTED] has developed a wall of [REDACTED] understanding of these students. I never felt [REDACTED] should be placed with these students because [REDACTED] not acclimated to understand their problems any more than they are [REDACTED] but [REDACTED] gets a defensive feeling and [REDACTED] is scared. When [REDACTED] went to this school with me [REDACTED] was scared at [REDACTED] And I'm afraid that if [REDACTED] goes and [REDACTED] feels this kind of feeling, as I

have been told in the past about other programs, when a child is scared to go then [REDACTED] is not going to be productive academically. Does that answer your question?

Q. It does. Do you believe that [REDACTED] can provide [REDACTED] an environment where [REDACTED] is learning with [REDACTED] peers?

A. No, [REDACTED]

Q. Based on your observations of [REDACTED] behavior, would [REDACTED] fit in [REDACTED] behaviorally?

A. Behaviorally, [REDACTED] would not fit into [REDACTED]

Q. As between [REDACTED] and [REDACTED], where do you think is the more appropriate placement for [REDACTED]?

A. At present I believe [REDACTED]. I'm very impressed with [REDACTED]. They have really gone the nine yards to help with [REDACTED] last year and this year even though it was [REDACTED]

Q. And [REDACTED] has not been diagnosed as [REDACTED]?

A. No, [REDACTED]

Q. But you feel [REDACTED] is more comfortable in that setting than in [REDACTED]. Is that correct?

A. Yes, I do. In the class [REDACTED] has been placed in [REDACTED] is more comfortable. (Tr. p 40-43)

In [REDACTED] examination [REDACTED] explained that [REDACTED] greatest concern was the instruction in reading that was being provided to [REDACTED] testified

[REDACTED] I have a couple of questions. Considering the IEP that was in existence from [REDACTED] to [REDACTED], was that satisfactory to you?

THE WITNESS: Last year?

[REDACTED]. Yes.

THE WITNESS: Yes.

[REDACTED]. So, if we got back to the same thing for this year --

THE WITNESS: That is what we requested to begin with and they told us it wasn't possible.

[REDACTED]: Okay.

THE WITNESS: That's why we went to contract services.

[REDACTED]: So, if they continue to do for [REDACTED] this year what they were doing last year, that would satisfy you?

THE WITNESS: [REDACTED] would have to have more intensive reading. [REDACTED] told me last year [REDACTED] couldn't help [REDACTED] that much because [REDACTED] needed one on one. [REDACTED] did make some improvement but [REDACTED] needs more reading.

[REDACTED]: Then it wasn't satisfactory in totality.

THE WITNESS: No.

[REDACTED]: So, [REDACTED] is getting basically one hour a day, five days a week of the developmental reading, then [REDACTED] is getting the reading that [REDACTED] provides [REDACTED] which we would have to assume is one-third of the other hours that [REDACTED] is with [REDACTED] if there are three people. What more, or how much more reading do you think, well, are you asking for?

THE WITNESS: If it is up to me, I would ask that it be four hours a day. But that is impossible unless [REDACTED] goes through a different program. I would like to have [REDACTED] in a program reading daily, one on one, for a short period of time to try to catch [REDACTED] up. If it would be this way, I would want the same reading program because it is confusing to [REDACTED].

[REDACTED]: So is it your understanding that [REDACTED] program is different than [REDACTED] program?

THE WITNESS: Yes, sir.

[REDACTED]: And that is the confusing part?

THE WITNESS: That is confusing, yes. But [REDACTED] also needs one on one. It is very hard for a teacher when they have more students. I feel bad for teachers with [REDACTED] because [REDACTED] demands more attention and it is impossible for a teacher.

[REDACTED]: But is that another hour a day; is that what you are basically seeking?

THE WITNESS: If [REDACTED] could have an hour a day of intensive reading of one program, it would -- that's all I have fought for since the [REDACTED] grade, is just to have my [REDACTED] have intense one-on-one reading. And it is more imperative now than [REDACTED].

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grade because [REDACTED] hasn't made that much progress.

[REDACTED] Was that number [REDACTED] Which is the one that has the schedule?

[REDACTED] [REDACTED] schedule is in our exhibit two, complainant's exhibit two.

[REDACTED] So, these are 45 minute classes.

THE WITNESS: On Mondays.

[REDACTED] On Mondays. [REDACTED]

[REDACTED] On Monday it is about 45 minutes, then Tuesday through Friday it is every other day for 90 minutes.

[REDACTED] Looking at that schedule, there are only so many hours in the day.

THE WITNESS: Yes, sir.

[REDACTED] What would you take out? Or would you simply say would it be possible to substitute the developmental reading, instead of having it in the class, have it with one person?

THE WITNESS: Developmental reading would a good time, and it would be easier for the teacher and it would definitely benefit [REDACTED]

[REDACTED] So, instead of [REDACTED] going to that class with [REDACTED], if we could have someplace to have [REDACTED] have a one on one.

THE WITNESS: If they could have a one on one and I do believe [REDACTED] does need a special program, and that will be more explained by the experts. But if they could bring somebody in to contract for reading to help [REDACTED] doesn't need the expense of a private school. They don't need to put all that money out. [REDACTED] just needs to read. I would be happy to tend to [REDACTED] emotional aspect and counseling, as I do. (Tr. P 80-84)

In addition [REDACTED] testified

[REDACTED]: But again going back to [REDACTED] does the present circumstance, do you feel that that is meeting

the goals and objectives that are set forth in here? I mean from the social/emotional aspect of it.

THE WITNESS: I don't believe [REDACTED] has met with any counselor or EDR teacher at this time. The only thing I can express on that is in the short period of time [REDACTED] has been there -- and you could confer with [REDACTED] I imagine -- they have addressed these needs with [REDACTED] [REDACTED] has formed a relationship in this period of time with respect to [REDACTED] teacher and when [REDACTED] has difficulty [REDACTED] is going to somebody, which shows me that the school has made progress in the past with making [REDACTED] be responsible for what [REDACTED] does. But that is very hard to answer just for a two-week period. I would have to say yes for two weeks. (Tr. p 88-89)

The parents also presented the testimony of [REDACTED] a private speech and language pathologist, who had examined and tested [REDACTED] in the fall of [REDACTED] (PS #27, [REDACTED] #4). [REDACTED] had conferred with [REDACTED] 6 days prior to hearing but no written report was in the record. (Tr. p 131-132) [REDACTED] testified that in [REDACTED] opinion an intensive reading program utilizing the [REDACTED] and [REDACTED] reading programs was what was required to get [REDACTED] to a reading grade level where [REDACTED] would be able to take advantage of [REDACTED] other academic instruction. [REDACTED] stated

Q. [REDACTED] could you give us in your expert opinion your recommendation on what [REDACTED] needs in order to progress in reading?

[REDACTED] Excuse me. We have [REDACTED] report. Does that -- I mean, unless [REDACTED] is going to distinguish from that, I can read that.

[REDACTED] I believe [REDACTED] has some additional recommendations.

[REDACTED] Could we limit the question or ask [REDACTED] if the recommendations in the report are [REDACTED] recommendations and does [REDACTED] have anything additional?

[REDACTED] Certainly.

BY [REDACTED]

Q. [REDACTED] are the recommendations stated in your report, do those continue to be valid in your opinion?

A. The recommendations that were made at the time of the report were felt to be adequate or appropriate at that point. I think in looking at it this last year what we need to do is even more intensive. This is a [REDACTED] who is approaching [REDACTED] year and we do not have much more time to try to close the gap on this child. I think what we need to do at this point, especially given the fact of the weaknesses that were evident in [REDACTED] memory, in the area of memory it needs to be an intensive daily program. Because if we do not have something on a daily basis, by the time [REDACTED] comes in two or three days later we are reteaching what was taught that previous day and spending a lot of time reteaching instead of moving on. I did have a chance to visit with [REDACTED] last Friday and was able to see what changes have happened over the year, and I feel the intensity has not been enough to close the gap.

Q. [REDACTED] do you have an opinion on what methodology of reading teaching would be most appropriate for [REDACTED] disabilities?

A. The fact that this year it is my understanding that the [REDACTED] program is now offered through [REDACTED] Schools, I think it is essential that this child's auditory system be addressed. This is where so much of the root of [REDACTED] difficulty is, not only in reading but in language and understanding language, which then affects all of [REDACTED] academic instruction. Even if it is presented verbally and not even in the reading area, that needs to be addressed, and that needs to be addressed concurrently with a reading program that is multisensory. This is a child with deficits in auditory;

[REDACTED] needs to be presented with visual, auditory, and tactile information. So, in my professional opinion, something like the [REDACTED] program in an intensive, several hours a day program for the next two or three months or [REDACTED] is not going to move on academically. We are beating our heads against the wall trying to get [REDACTED] to move on academically if the language levels and reading levels do not progress at this point.

Q. Just to clarify, you are recommending [REDACTED] in conjunction with another type of reading program?

A. The fastest way to get this child on the track and closing this gaps is to take the next three months of [REDACTED] life using the [REDACTED] program, which is a two hour a day program at the adolescent level. And in conjunction with that I feel that something intensive like three to four hours a day of reading for the next two or three months to direct [REDACTED] reading on phonological awareness would be the fastest way. (Tr. 127-130)

* * * *

[REDACTED] Referring to number two, would a small classroom size, would a class of three satisfy that recommendation?

THE WITNESS: Yes, it would. I think at this point that was made meaning the overall academic environment. When we address the reading issues and get into the nitty-gritty of the auditory processing, I would wholeheartedly recommend one-on-one or no more than three students to one instructor.

[REDACTED] Now, your recommendation number three, as I read that, as of [REDACTED], you were recommending a minimum of two hours per week.

THE WITNESS: Of speech and language therapy. I think that a speech pathologist, or clinician as we are referred to in the schools, needs to support what is happening in the reading domain. We need to continue to improve [REDACTED] vocabulary, need to continue to improve [REDACTED] understanding

and [REDACTED] comprehension of language and begin to address like the phonic awareness, which is often done by the speech clinician as well.

[REDACTED]: Referring to number four, you recommended a reading program there of one on one three to five times per week.

THE WITNESS: Correct.

[REDACTED]: So, combined with the number three, isn't that basically one hour per day? Two hours of the individual

--
THE WITNESS: The recommendation was made that number three stand alone as speech language therapy and number four was addressing the reading per se. And at that point, this recommendation was made for what programs were felt to be available in the school program. And again, as I saw [REDACTED] last week, [REDACTED] did close the gap, but [REDACTED] closed the gap by only one year in a one-year period. And, looking at the rate of closure, we just don't have that kind of time for [REDACTED] and we need to do something much more intensive than was recommended a year ago. We gave it a year's shot and the gap only closed by one year. Something more intensive needs to happen.

[REDACTED]: If you could look at [REDACTED] academic schedule, are there at least, excluding the health and PE, are there not reading components in each one of those courses?

THE WITNESS: There are components. That does not suffice at this point. We are dealing with a larger class. We are not dealing with individualized instructions to where [REDACTED] needs are. Yes, there are individual reading components in much of these. My worry is with something like biology the vocabulary and reading instruction is far beyond what [REDACTED] can begin to handle. I do not know what the developmental reading class is like, but I'm willing to bet it is not -- (Tr. p 151-153)

* * * *

[REDACTED]:The issue in terms of the number of --

I think you are saying two to four hours a day, five days a week. Is that what you are saying.

THE WITNESS: Over the course of the next three months, that's what I professionally recommend. That we need to address this hard, address it quickly, get [REDACTED] to close that gap a little bit more and move on to something that would be more typical of a three-day a week kind of program.

[REDACTED] So that would delay -- I mean obviously it would have to replace some of the academic programs.

THE WITNESS: [REDACTED] not going to make that kind of academic progress if [REDACTED] is not understanding the written instruction and the language that is being --

[REDACTED] I understand.

THE WITNESS: My worry is that the academic instruction at this point to [REDACTED] is futile. [REDACTED] is stalled. [REDACTED] is at a point that the reading and verbal language is at a level and yet the academic instruction is at a completely different level. I don't know how much is actually going in anyway.

[REDACTED] So the answer to my question is yes, you would have to delay --

THE WITNESS: I would have to delay the academics until the reading was addressed. (Tr. 153-155)

* * * *

[REDACTED] All right. Now, in the program that you propose, what would you anticipate would be the results after the four months? What should we look to see?

THE WITNESS: The research with [REDACTED], what we have seen is that the children, in a six to eight-week time, gain one and a half to two years in some of their phonological awareness areas. [REDACTED], I would imagine -- I can't give you a specific number, but I would like to see [REDACTED] up at a reading level of closer to [REDACTED] grade. In [REDACTED] area of phonological processing and awareness I would like to gain three or four years in [REDACTED] ability at this point and get [REDACTED] into

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a level where [REDACTED] has much more interest in the academics, where [REDACTED] can begin to understand more and be much more in line with the vocabulary that [REDACTED] has.

[REDACTED] Well are you saying -- and I'm going to use -- with a reasonable degree of professional certainty that that will occur if this is done?

THE WITNESS: Yes, sir. (Tr. p 155-156)

* * * *

BY [REDACTED]

Q. [REDACTED] let me be sure -- this is [REDACTED] again. So, it is your testimony that [REDACTED] is going to make, in the course of a couple of months, three to four years' worth of gain in [REDACTED] reading ability?

A. Yes, [REDACTED] I believe that, given the right program addressing the auditory from [REDACTED] and using the intensive [REDACTED] by a certified [REDACTED] program, that that can happen.

Q. Well, I guess anything can happen. But is it our testimony that that reasonably will happen?

A. That is a reasonable estimate of [REDACTED] progress, yes, [REDACTED] (Tr. 156-157)

[REDACTED] PS presented as its sole witness, [REDACTED] a learning disability program specialist. [REDACTED] had visited with [REDACTED] during the preceding school year and had visited with [REDACTED] in class on two occasions subsequent to the filing of the request for a due process hearing. [REDACTED] although familiar with the programs proposed by [REDACTED]

[REDACTED] and [REDACTED] did not believe that these programs were appropriate for [REDACTED]

[REDACTED] testified:

Q. Thank you. From your observation of [REDACTED] and from the discussions that you have had, and from your review of

the materials and the IEP, what is your recommendation as to appropriate reading instruction for [REDACTED] under the assumption that [REDACTED] is going to continue to be at [REDACTED]

A. I will say what I'm going to say. I do have some initial impressions. I have worked with [REDACTED] maybe a total of two hours, and I wouldn't say that we wouldn't redefine and move in different directions as time went along. But I feel pretty strongly that [REDACTED] is very frustrated with reading right now. When I tried activities that had to do with phonics and sounds, [REDACTED] was not very easy to engage and, in fact, was pretty reluctant to do anything like that. When we started doing more --

Q. What do you mean?

A. [REDACTED] would basically not respond too much, even when given a choice; is it this or this. When I used a more visual approach, an interest level -- when [REDACTED] started talking about the things [REDACTED] enjoys, which are cars and Hummer, the car, Hummer -- there must be another word.

Q. Humvee

A. [REDACTED] called it a Hummer. I wasn't too up, but [REDACTED] quickly taught me about Hummers because [REDACTED] brought in [REDACTED] magazine, and we started talking about Lamborghini's. And when you could get [REDACTED] engaged in those, and I had [REDACTED] write Hummer for example and [REDACTED] could get a visualization of moving sounds and letters, and [REDACTED] was much more involved and interested. And I think we should play to [REDACTED] visual strengths and then work the more auditory parts of the code in as we get [REDACTED] more confident that [REDACTED] is a reader. [REDACTED] did read to me. [REDACTED] doesn't read anywhere near grade level, but [REDACTED] does read. [REDACTED] read a passage about trucks to me and knew about 90 percent of the words, so [REDACTED] does read.

Q. Is the [REDACTED] program one you would recommend for [REDACTED] at this point?

A. I would be very hesitant to recommend that now.

Q. Why?

A. I think [REDACTED] did have some instruction in [REDACTED] with [REDACTED] last year, and in talking to [REDACTED], while [REDACTED] did see that it had some success with [REDACTED]. [REDACTED] told me that [REDACTED] still had to continuously review it and some of the things [REDACTED] had taught [REDACTED] needed constant review, and that concerns me quite a bit. If [REDACTED] was really using that as a system that was helping [REDACTED] with colored blocks and seeing them as representing sounds, I don't think so much review would be required and that [REDACTED] would have caught on to that as a technique. Maybe later, but I think right now [REDACTED] is pretty discouraged with that whole system of sounds. (Tr. P 176-179)

* * * *

Q. What you have outlined as an approach or related approach to instructions, would you see that as addressing or teaching [REDACTED] oriented to [REDACTED] areas of strength or weakness or --

A. Oriented to [REDACTED] areas of strength and then helping [REDACTED] weaknesses.

Q. Why would you do that?

A. So that [REDACTED] would feel good that [REDACTED] could do it and could make progress that way.

Q. Now, how would you recommend -- we've got classes, [REDACTED] has classes that [REDACTED] is in right now at [REDACTED]. How would you recommend that the reading instruction, how and how often, that the reading instruction be actually provided?

A. I would think it would be pretty important to have one person delivering the reading instruction to [REDACTED]. If they happen to teach some of the other subjects, that would be even nicer. Because when [REDACTED] came to some of the words that [REDACTED] had learned in reading, if [REDACTED] was in history or whatever class the comment could be made, "Oh, you learned that so apply that here," I think [REDACTED] could start to see that [REDACTED] is becoming a reader. I think the fewer people that give [REDACTED]

directions about how to correct [REDACTED] errors in reading the better. I'm not sure how well [REDACTED] processes language, so the more direct and specific and consistent the language of correction is -- there are lots of ways to teach about long vowels. A lot of people do, "When two vowels goes walking the first one does the talking." There are probably three or four different ways to do that. And if several different people are telling [REDACTED] those in different ways, I think [REDACTED] will get more confused, instead of actually learn and practice the skills that [REDACTED] needs.

Q. What, if anything, does that say about whether the person teaching [REDACTED] reading or who that person teaching [REDACTED] reading ought to be, concretely at [REDACTED]?

A. It needs to be someone that cares about [REDACTED] who has a good background in diagnosing how things are going, can kind of have a structure in place that could be modified to meet [REDACTED] particular needs. Some children see that the [REDACTED] passages that we have some numbers down the side to help count words. Well, if that's a little distracting for [REDACTED] they could make that modification based on knowing [REDACTED] and [REDACTED] emotional needs and whatever other needs -- just the fact of being a [REDACTED] creates some needs. So certainly a person that knows something about [REDACTED] school, [REDACTED] school age children would be a good thing.

Q. Whose class do you think that ought to be?

A. [REDACTED]

Q. Is that instruction in reading something that [REDACTED] could get with [REDACTED] either through the English class or the basic skills class every day?

A. Yes.

Q. How much time would be available to do that?

A. I think their periods are about 90 minutes. You can ask [REDACTED] would have a better feeling for that than I would.

Q. Are they approximately 90 minutes?

A. About 90 minutes. [REDACTED] does need changed activities, it seems to me. After a few minutes on any activity [REDACTED] was

wondering how much longer is the period, which is very common for younger children. I have to deal with that all the time. So you practice a skill and put it in one context and maybe play a game or do a computer activity with it. It is all the same concept but a couple different formats to keep [REDACTED] attention. And that will usually lengthen as they become more successful. But I would think 90 minutes would be a nice length of time.

Q. Would you recommend working with [REDACTED] in the area of reading for three or four hours per day?

A. I would be very hesitant right now.

Q. Why?

A. I think [REDACTED] needs to see [REDACTED] as a student that can learn other things and be successful in learning some content. Whatever else [REDACTED] likes to do, I think [REDACTED] likes art, get to do some PE. I think when your whole day is made up of something that is very difficult for you, most of us as adults don't even do that. And to do it every day is really tough. So initially I think [REDACTED] needs to get some more successes. We can lengthen it a little bit later. To me it is more important that we do it every day. If there were a lot of absences and we don't see [REDACTED] every day, that would be my concern, rather than how often during the day.

Q. The [REDACTED] program, is that a program that you are familiar with?

A. Yes. (Tr. p 187-191)

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Q. Would you recommend using -- in your judgment, is the [REDACTED] program something that is going to be the answer to help [REDACTED] learn to read better?

A. I don't think so, no.

Q. Why not?

A. I really think you need to learn to read by reading, and I would like to see [REDACTED] spend that 90 minutes reading words, hearing words on tape or the computer. We have wonderful programs these days that you can scan in text that [REDACTED] is

interested in and have the computer say the words and highlight the words and [REDACTED] can follow along, and the more repetitive, [REDACTED] can go back and do it. We have talking spell checkers. When [REDACTED] comes to a word [REDACTED] can type in the letters and have it say it to [REDACTED] so [REDACTED] can become independent.

We are not going to fix all the reading problems, but we need to give [REDACTED] ways that [REDACTED] can read what [REDACTED] wants to read. We need to improve [REDACTED] spelling so [REDACTED] can go on the internet and search for what [REDACTED] wants and find things that [REDACTED] can read and is interested in. My experience has been when kids want to read about something they will take the extra energy.

It is hard work for [REDACTED] to read so [REDACTED] needs to get something of value out of it, and picking a story or game that isn't something that [REDACTED] is interested in is going to make it hard for [REDACTED] to overcome that part of being hard in something you are not good at.

Q. Is there any down side to the [REDACTED] approach? I mean, in your judgment, what is the harm, if any, in just taking a swing at it now if I can put it like that?

A. [REDACTED] is a child that has ability. I would rather have [REDACTED] sitting in a biology class soaking in some information about biology or whatever topic it is than sitting at a computer program and trying to listen to sounds that are very hard for [REDACTED] to hear.

Q. Well, is that something that you think is going to be effective with [REDACTED] or frustrating for [REDACTED] or --

A. I think it would be frustrating.

Q. How come?

A. [REDACTED] has a very difficult time hearing those sounds. [REDACTED] tried to write the word "Friday" and wanted to write very much "Friday" because was talking about homecoming and [REDACTED] wanted to be sure to remember when the game was, and wrote the "Friday" without the R. And that is a sound we can hear and is not too hard. If [REDACTED] was missing a vowel, that is a very common thing. But an R in Friday is pretty well there.

So it is hard for [REDACTED] to hear sounds. (Tr. p 195-197)

* * * *

Q. The research that you have seen, internal research I guess from [REDACTED] does that guarantee or create an expectation that a student is going to gain three or four years' worth of reading ability?

A. The last time I talked to [REDACTED], which was probably two years, the research that [REDACTED] showed on speech and language testing, their internal research showed some gains on some of the speech and language tests. But [REDACTED] said, "Of course, then you would have to teach the child to read." They would now be more ready to read because they could hear the sounds better. (Tr. p 198)

* * *

Q. You are familiar with -- [REDACTED] has auditory processing deficits. Is that correct?

A. Yes.

Q. Is the [REDACTED] program or any other reading program going to fix or cure [REDACTED] auditory processing deficits?

A. I don't think so.

Q. What do we have to do in order to help [REDACTED] learn to read better then?

A. I think we can give [REDACTED] more visual strategies. And it is not that [REDACTED] doesn't hear any sounds. I think [REDACTED] hears a lot of sounds. And if [REDACTED] can see some visual patterns in words, [REDACTED] will see a word [REDACTED] recognizes and [REDACTED] has enough auditory processing skills to be able to do consonants. Whether [REDACTED] will be able to spell a word and know whether it is short E or short I doesn't matter too much with all the wonderful technology. If they are getting close when they are writing and having a word with all the consonants and some vowels, even if they are not the right vowels, a computer spell checker will generate the right spellings, and many children can pick the right spelling if they are exposed to print.

What I see, as they get older it becomes so hard to read and the text that they are being asked to read at a higher school level is so difficult, they tend not to look at print, they have people read it to them, and they are not doing that match to the print.

So we need to get [REDACTED] into some print that [REDACTED] can really read and have [REDACTED] start looking at words a lot more. And a program like [REDACTED] that I think [REDACTED] is talking about using, isolating some of those words and drawing visual attention to those words so that when you have an A-I in the middle it does say "A," but it is a little more visual than a rule based approach.

Q. What do you mean rule based approach?

A. A and I, when they are together, say "A." Where if you just know that A and I and you know "sail" what does it say. Then "mail" it says the same thing and "jail" it says the same thing. So you are using a more visual approach. It isn't that you don't have any sounds, but it is because the A and I are together that it says "A." You just learn that by seeing it as a visual system.

Q. Do you think [REDACTED] as far as [REDACTED] reading instruction, should that be a full-time one-to-one scenario?

A. I certainly think [REDACTED] needs direct instruction with one person guiding that instruction. I do not think [REDACTED] has to deliver it all the time. I think if [REDACTED] plans it and plans the activities that go with it that somebody can practice it. I think at times [REDACTED] needs to practice it independently.

Q. Why?

A. In order to read, [REDACTED] is the one that actually has to do the reading, so [REDACTED] needs some time to practice it with a computer program that can give [REDACTED] the feedback, just independently, or with an auditory tape player that is helping [REDACTED] practice the words.

Certainly a lot of it needs to be directed by the teacher, and certainly selection of the material and the lesson needs to be directed by the teacher. But [REDACTED] needs to do the practicing

[REDACTED] needs to read out loud to somebody, so that would take somebody to listen to [REDACTED] read. You can't read into a computer and the computer can't hear what you are saying. So a lot of it has to be with a teacher guiding [REDACTED]. But whether the teacher has to be sitting with [REDACTED] all 90 minutes, I think there are lots of opportunities to make [REDACTED] an independent reader that [REDACTED] can practice.

Q. Would [REDACTED] have, in your view, sufficient instructional support in a class of, say, three students with two staff members?

A. Yes. (Tr. p 199-202)

* * * *

Q. Your recommendations were sight word approach and [REDACTED] for [REDACTED]. Is that correct?

A. That is a little overgeneralized. What we are going to develop is program based more on sight vocabulary, [REDACTED] interests and strengths, things [REDACTED] would like to be able to read and read about, then work on the phonics through solid word bases that [REDACTED] knows. You can make a lot of words out of car with some basic manipulation of sounds. So, start with things that [REDACTED] likes and is comfortable with and then build the bigger word base from those words.

Q. With respect to the sight word approach first, is there a method by which this is testable and progress can be measured?

A. Every ten words that are introduced there's a test so you see what kind of carryover there is. And you keep documenting any words that are missed on a day that already have been presented, so there is a daily tracking system of what words are needed to be retaught. So, yes.

Q. With respect to the [REDACTED] program, is there a testable, accountable way to measure [REDACTED] progress?

A. Yes. You do an initial reading after we place [REDACTED] in a particular level. You do a timed reading so you know how many words [REDACTED] is reading per minute that are correct. You

subtract out any errors, and do that every couple weeks. There is a very specific charting system involved in that.

Q. Are you suggesting that these two programs be implemented simultaneously?

A. Yes. (Tr p 214-215)

* * * *

Q. To follow up, how long do you envision [REDACTED] being on these two programs?

A. The --

Q. In terms of months or years.

A. We would have to see how that is going. And I said earlier, we have to keep looking at it. There are a particular number of sight words that the program teaches, and once [REDACTED] learned those [REDACTED] would be done with that program. The [REDACTED] program again is more of a strategy. The materials are sequenced so that you have lots of stories that are on the same level so that [REDACTED] can get lots of practice, as opposed to picking random books out of the library that have different levels. And we have children in all sorts of different levels of it and we would just keep moving [REDACTED] up in levels as [REDACTED] got more competent.

Q. Do you have an opinion on how many reading levels [REDACTED] could progress if [REDACTED] were on these two programs, in, say, the next six months?

A. I can never predict that for children. There are too many other variables. I think we would know pretty quickly how much progress we are making and we could regroup in nine weeks or so.

Q. You stated earlier that you would prefer, instead of [REDACTED] [REDACTED], you would rather see [REDACTED] in a biology class I think you said. Isn't that correct?

A. Learning some content.

Q. Don't you agree that until [REDACTED] learns to read [REDACTED] progress in biology or any other course that requires reading is going to be minimal at best?

A. Well, I really feel like there are people in this world that do not read but are very competent from participating in life because of the advent of taped text and books. And I think you can gain a lot of information from hearing information, listening to it. And I certainly hope that all children will read, but I don't think it's the end of the world because of the advent of talking, you know, computers that talk and books that talk and ways to get information auditorially.

Q. With [REDACTED] auditory processing difficulties, don't you agree [REDACTED] would have a hard time in fact understanding such courses as biology and math and so forth without a strong base of reading?

A. The basic concepts of biology, I think [REDACTED] can probably learn those. Whether [REDACTED] can understand photo-synthesis and metamorphosis, I don't know that that is necessary. But can [REDACTED] understand that there is change that happens in animals and plants and things at a level that would help [REDACTED] understand this world? I think [REDACTED] can learn those. (Tr. p 217-219)

DECISION

As the excerpts from the testimony given at the hearing cited above indicate, the parties are in issue over the level and type of reading instruction to be provided. There can be little question from the testimony of the witnesses and the test results noted in the exhibits that [REDACTED] does have reading difficulties. The parents in an effort to attach [REDACTED] weakness in auditory processing would ask that the Hearing Officer direct [REDACTED] PS to enroll [REDACTED] in both the [REDACTED] and the [REDACTED] programs for an intensive three month trial to improve [REDACTED] reading level. [REDACTED] PS on the other hand asserts

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[REDACTED]

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that by modifying [REDACTED] existing [REDACTED] schedule to provide individualized reading instruction for [REDACTED] in lieu of the existing developmental reading class with vast majority of [REDACTED] instruction coming from [REDACTED] primary teacher, [REDACTED] would meet their obligations to [REDACTED]

The level of education to be afforded to handicapped children under IDEA was spelled out nearly twenty year ago in the landmark Supreme Court case *Hendrick Hudson Dis. Bd. Of Ed v Rowley*, 458 US 176, 73 L. Ed 2d 690, 102 S Ct 3034 (1982). As defined by the Court in *Rowley*

“Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, ..., the child is receiving a “free appropriate public education” as defined under the Act”. 458 US 189 (*underlining added*)

* * * *

“The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided non handicapped children.” 458 US 200 (*underling added*)

“As already demonstrated, Congress’ intention was not that the ACT displace the primacy of States in the field of education, but that the States receive funds to assist them in extending their educational systems to the handicapped. Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States” 458 US 208

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It is clear from the testimony of [REDACTED], that a program individualized to [REDACTED]'s particular situation has been proposed by [REDACTED] PS. While it does not provide either the [REDACTED] or the [REDACTED] programs it does provide for near one on one instruction by a teacher with whom [REDACTED] has a good relationship. Indeed according to [REDACTED] [REDACTED] had received some benefit from the last year's instruction, although [REDACTED] felt the improvement could have been better. The more individualized instruction proposed for the current school year should provide an even greater benefit to [REDACTED]

Accordingly it is the decision of this Hearing Officer that the request by the parents of [REDACTED] that [REDACTED] PS provide [REDACTED] and [REDACTED] instruction is denied. In light of the representations contained in the testimony of [REDACTED] and the comments of counsel for [REDACTED] PS, it is the Hearing Officer's understanding and decision that (a) [REDACTED] will no longer attend the developmental reading class, (b) that [REDACTED] will receive specialized reading instruction from [REDACTED] or [REDACTED] of the type described by [REDACTED] such as [REDACTED] daily for a minimum of 90 minutes, and (c) that [REDACTED] PS will convene an IEP meeting on or before [REDACTED] 2002 to evaluate the progress being made by [REDACTED] under the new instructional program.

Dated: [REDACTED] 2001

