



VIRGINIA:

VIRGINIA DEPARTMENT OF EDUCATION

IN RE: [REDACTED])
V. [REDACTED])
PUBLIC SCHOOLS)

I. INTRODUCTION

A. Procedural History

The undersigned was appointed by the [REDACTED] School Board ([REDACTED]), as the hearing officer to preside over a Due Process Hearing concerning [REDACTED] (hereinafter referred to as [REDACTED]). The letter of appointment is dated [REDACTED] 2001 and signed by [REDACTED] Director of Special Education, for [REDACTED]. A Due Process Hearing was requested by [REDACTED] in a handwritten letter dated [REDACTED], 2001 ([REDACTED]-02).¹ [REDACTED] filed the request for a Due Process Hearing at [REDACTED] office in [REDACTED].²

A Pre-Hearing Conference was held by telephone on [REDACTED] 2001 involving this Hearing Officer, [REDACTED] Esq., counsel for [REDACTED] and [REDACTED] Esq., counsel for the parents. As a result of the Pre-Hearing, [REDACTED] filed a "Statement of

¹The parents exhibits are identified as " [REDACTED]-01 through [REDACTED] 40" and exhibits are identified as "SB-01 through SB-93".

²[REDACTED] and [REDACTED] are referred to collectively as the "parents" and individually as [REDACTED] and [REDACTED].

Issues and Remedies" dated [REDACTED] 2002, for the purpose of clarifying the issues and the specific allegations raised by [REDACTED] in the [REDACTED] 2001 letter requesting a Due Process Hearing. Additionally, the parties agreed to [REDACTED], 2002 as the date for submission of the 5-Day Disclosures and setting [REDACTED] 2002 as the first day for the Hearing.

On [REDACTED] 2002, pursuant to a request from [REDACTED] subpoenas were issued by this Hearing Officer to [REDACTED] for copies of certain documents relevant to the issues in this case perceived to be in their possession. Responses to the subpoenas were provided to [REDACTED] by [REDACTED] by letter dated [REDACTED], 2002.

The Hearing began [REDACTED] 2002 as scheduled with [REDACTED] presenting the parents' case; however, prior to any testimony, [REDACTED] presented a pre-hearing brief,³ in the form of a Motion that would have disposed of the case. However, [REDACTED] did not object to proceeding with the testimony scheduled for that day and [REDACTED] filed a response in opposition to the [REDACTED]'s Motion dated [REDACTED] 2002.⁴ This decision serves as a ruling on the Motion as well as the decision in this case.

At the conclusion of the testimony on [REDACTED] 2002, the Hearing continued to [REDACTED] 2002 as agreed and an additional day for the Hearing was set for [REDACTED] 2002. On [REDACTED] 2002, all parties appeared; however, [REDACTED] was ill upon his arrival and could not go forward with the Hearing that day; therefore, it was agreed that the Hearing would be continued to [REDACTED] 2002. On [REDACTED] 2002, the Hearing Officer learned that [REDACTED] was admitted into the hospital due to illness; therefore, it was agreed through separate discussions with [REDACTED]'s partner, [REDACTED], Esq. and [REDACTED] to cancel the Hearing set for [REDACTED], 2002 and to set a new date once [REDACTED] was available.

³ The brief entitled [REDACTED] Public Schools' Brief In Support Of Its Position That [REDACTED] Has No Obligation To Fund [REDACTED]' Placement At [REDACTED]," dated [REDACTED] 2002.

⁴ Parents brief is called "Response To [REDACTED] Public Schools Brief."

On [REDACTED] 2002, [REDACTED] and [REDACTED] discussed with this Hearing Officer by telephone, dates for reconvening the Hearing. The dates agreed to were [REDACTED] 2002. By letters dated [REDACTED] 2002,⁵ [REDACTED] stated that the parents intended to recall four(4) witnesses who had previously testified for the parents. On [REDACTED] and [REDACTED] 2002, [REDACTED] opposed this request by letter dated [REDACTED] 2002. After considering the request and response thereto, the Hearing Officer denied [REDACTED] request on the basis that the witnesses to be recalled had already been thoroughly examined by both counsel and allowing the recall of these witnesses would only further delay this proceeding.⁶

On [REDACTED] 2002, the Hearing went forward as agreed with [REDACTED] presenting [REDACTED] case. Testimony continued to [REDACTED] and [REDACTED] 2002, as scheduled. However, the parties agreed to another day of testimony because two [REDACTED] witnesses were still scheduled to testify. The Hearing was continued to [REDACTED] 2002 and concluded.

This Due Process Hearing, encompassed seven (7) days, involving the testimony of fourteen (14) witnesses, seven transcripts⁷ covering 1544 pages and a total of 133 Exhibits.

B. Background

[REDACTED] is a [REDACTED] year old student identified as eligible for special education and related services under the Individual with Disabilities Education Act, 20 U.S.C. § 1412 *et seq.*, ("IDEA"). [REDACTED] was determined to be eligible by [REDACTED] pursuant to an eligibility meeting on [REDACTED] 2000 (SB-49). As a result, an IEP was developed dated [REDACTED] 2000 (SB-71) and signed

⁵ [REDACTED] and [REDACTED] were requested to be recalled in the [REDACTED] 2002 letter, [REDACTED] was requested to be recalled in the letter dated [REDACTED] 2002.

⁶ "Decision of the Hearing Officer Regarding the Recall of Witnesses," [REDACTED] 2002.

⁷ Their are seven (7) transcripts, designated as follows: Day One, [REDACTED] 2002, "Tr 1"; Day Two, [REDACTED] 2002, "Tr 2"; Day Three, [REDACTED] 2002, "Tr 3"; Day Four, [REDACTED] 2002, "Tr 4"; Day Five, [REDACTED] 2002, "Tr 5"; Day Six, [REDACTED] 2002, "Tr 6"; Day Seven, [REDACTED] 2002, "Tr 7".

by the parents on [REDACTED] 2000. [REDACTED] was determined eligible for special education under the categories of Specific Learning Disability, Other Health Impaired, Hearing Impaired and Speech Language Impaired. [REDACTED] has a small hearing loss in [REDACTED] right ear and [REDACTED] wears a hearing aid (Tr. 1, p40, L9-11). [REDACTED] resides with [REDACTED] parents within [REDACTED], Virginia and [REDACTED] attended the [REDACTED] school ([REDACTED] until [REDACTED] was removed on [REDACTED] 2001 ([REDACTED] -05 and 06; SB-79 and 80). Prior to attending [REDACTED], [REDACTED] had been home schooled. After [REDACTED] was removed from [REDACTED], [REDACTED] was unilaterally placed by [REDACTED] parents in the [REDACTED] [REDACTED] Center in [REDACTED] Virginia ([REDACTED]) ([REDACTED] 05 and 06).

II. CONTENTIONS OF THE PARTIES AND QUESTIONS PRESENTED

A. Contentions of the Parties

The parents requested a Due Process Hearing alleging that [REDACTED] had denied [REDACTED] a Free and Appropriate Public Education ("FAPE") by failing to consider independent evaluations of [REDACTED] in developing an Individualized Educational Program ("IEP") for [REDACTED], that the IEP developed [REDACTED] 2001 (Hereinafter called the " [REDACTED] IEP," or "SB-77") was not an appropriate IEP and that [REDACTED] failed to determine an appropriate placement for [REDACTED] for the 2001-2002 School Year. As a result, among other things, the parents request that [REDACTED] fund [REDACTED] at a private placement unilaterally selected by the parents.

[REDACTED] contends that it has developed an appropriate IEP, that the parents failed to express any specific concerns about the [REDACTED] IEP and failed to reject it as being appropriate for [REDACTED]. Additionally, [REDACTED] contends that the parents provided an improper notice of the unilateral placement at [REDACTED]. As a result, [REDACTED] contends that it is not liable for funding the placement at [REDACTED].

B. Questions Presented

1. Did the parents fail to provide appropriate prior notice of [REDACTED]'s removal from [REDACTED] including notice of rejection of the IEP proposed?
2. Did the parents indicate specific concerns with [REDACTED] IEP at the IEP meetings?
3. Did the [REDACTED] IEP address all areas of suspected disability?
4. In developing the [REDACTED] IEP, were the evaluations of the parents' independent experts considered?
5. Is [REDACTED] an appropriate placement?

III. SUMMARY OF RELEVANT EVIDENCE

There were a total of fourteen (14) witnesses called to testify at this Hearing, nine (9) for the parents and five (5) for [REDACTED]. On the first day of the Hearing, [REDACTED], 2002, three witnesses testified for the parents: [REDACTED] on [REDACTED] own behalf, and two witnesses who testified as experts in their fields, [REDACTED] independent audiologist and speech pathologist and [REDACTED] Speech Pathologist at [REDACTED].

The first witness to testify was [REDACTED] who was asked about [REDACTED] experience at [REDACTED] and [REDACTED]. [REDACTED] said that [REDACTED] thought that there were too many kids in [REDACTED] classes at [REDACTED] and that it was difficult for [REDACTED] to concentrate. [REDACTED] said that at [REDACTED] [REDACTED] classes are smaller and there are less kids in a class and [REDACTED] can concentrate better. [REDACTED] testified that there are two teachers in [REDACTED] class rooms at [REDACTED] whereas at [REDACTED] [REDACTED] had one in each of [REDACTED] classes and up to 12 students. [REDACTED] testified that [REDACTED] wears a hearing aid in [REDACTED] right ear, but that [REDACTED] doesn't turn it on because it is too loud. (Tr. 1, p 40, L9-11).

The next witness to testify for the parents was [REDACTED]. [REDACTED] testified that [REDACTED] has a Bachelor's degree in Speech/Language Pathology and Audiology, a Master's Degree in Audiology and Communication Sciences, and a Doctorate in Education. [REDACTED] testified that [REDACTED]

has worked in private practice as an Educational Audiologist and Speech/Language Pathologist. [REDACTED] has also worked in a clinical practice in speech and hearing centers and nursing homes. [REDACTED] testified that most of [REDACTED] work has been in education and that [REDACTED] taught as a professor for twelve years (Tr. 1, p 43-45). Dr. [REDACTED] testified as an expert in Audiology and Speech and Language Pathology (Tr. 1, p 54, L4-6).

[REDACTED] said that [REDACTED] got to know [REDACTED] through a program conducted by [REDACTED] office. The program was a four-hour a day, five day a week program for five weeks during the Summer 2001. It was designed for children identified as having learning problems in school, primarily auditory processing and language related and reading problems. (Tr. 1, p58, L 16-22). At the conclusion of the Summer program [REDACTED] said that [REDACTED] wrote a report for the parents reflecting [REDACTED] conclusions with regard to [REDACTED] ([REDACTED] 15) (Tr. 1, p 77, L 5-9).

[REDACTED] said that [REDACTED] has auditory decoding problems which [REDACTED] described as somewhere in the central nervous system the information getting through is not being decoded properly (Tr. 1, p 62 - 63). [REDACTED] stated that [REDACTED] wrote a report ([REDACTED] 14) about the testing that [REDACTED] performed on [REDACTED]. [REDACTED] said that the underlying deficit [REDACTED] has is auditory decoding in terms of auditory processing. [REDACTED] recommended that [REDACTED] needed work on listening skills, working on information and understanding how to use the auditory information and relate it to language. (Tr. 1, p64, L7-11)

[REDACTED] said that [REDACTED] observed [REDACTED] in an academic setting at [REDACTED] for about 15 minutes to twenty minutes. [REDACTED] said that [REDACTED] had not observed [REDACTED] at [REDACTED] [REDACTED] was not aware if [REDACTED] is using any of the methods recommended in [REDACTED] reports. (Tr. 1, p134, L12-16) [REDACTED] said that based on [REDACTED] observations and knowledge that [REDACTED] has an auditory processing problem that impacts [REDACTED] ability to get and understand the information that [REDACTED] is hearing as well as language. (Tr. 1, p79, L3-9) [REDACTED] testified that [REDACTED] had reviewed the [REDACTED] IEP that [REDACTED] had developed for [REDACTED]. It was [REDACTED] opinion that the IEP was not appropriate for [REDACTED] because it does not address [REDACTED] real academic issue which is [REDACTED] can't receive information due to

auditory processing deficits (Tr. 1, p 82, L 8-19).

█████ said that report (█████ 14) was written around ██████ 2001 and sent to the parents (Tr. 1, p116, L1-12). ██████ said that none of ██████ recommendations were in the IEP that was developed for ██████ on ██████ 2001 (Tr. 1, p145, L 11-15) (█████ 23; SB-77). ██████ said that the areas that needed to be covered for ██████ were auditor training, Speechreading, Phonemic Awareness, oral comprehension of language and spoken language. ██████ said that ██████ was not aware if these areas were being covered by ██████ (Tr. 1, p 162, L14-18).

The next witness to testify was ██████, a Speech/Language Pathologist with ██████ has a Bachelor's Degree and a Maser's Degree in Speech and Hearing sciences (Tr. 1, p172, L22 - p173, L18). ██████ testified that ██████ has a certificate of Clinical Competence from the American Speech/Language and Hearing Association and is Licensed in Virginia (Tr. 1, p174, L 12-15) ██████ further stated that ██████ is trained in Auditory Processing (Tr. 1, p174, L 16-20). ██████ was qualified as an expert in speech/language pathology (Tr. 1, p175, L 15-18).

█████ testified that ██████ reviewed the ██████ IEP developed by ██████ dated ██████ 2001. ██████ reviewed the speech/language goals (Tr. 1, p181, L 8-16) and said that they looked at ██████ output rather than ██████ input and did not adequately address ██████ receptive skills. Furthermore, ██████ testified that auditory processing and speechreading goals were not addressed in the ██████ IEP. (Tr. 1, p180, L 8-19) ██████ further stated that ██████ needs individual attention for things not covered in a classroom setting, and that ██████ required "pull out" sessions for such things as auditory processing, phonemic awareness and speechreading. (Tr. 1, p 182, L 14-18)

█████ testified that ██████ came to visit ██████ on ██████ 2001 to observe the school and classes. (Tr. 1, p193, L22-p194, L 2). ██████ said that ██████ was accepted by ██████ that ██████ was using the ██████ IEP as of the date of the Hearing and that ██████ had not developed its own IEP for ██████ (Tr. 1, p215, L 6-9). ██████ said that

had not conducted any tests or assessments of [REDACTED] (Tr. 1, p218, L 1-4) and that [REDACTED] wanted to get to know [REDACTED] first before testing [REDACTED] (Tr. 1, 224, L 6-15). [REDACTED] said that based on [REDACTED] observations of [REDACTED] speech, [REDACTED] appears to be a hearing impaired child by the way [REDACTED] pronounces sounds (Tr. 1. P225, L 9-18).

On the second day of the Hearing, [REDACTED] 2002, five witnesses testified for the parents. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] were qualified as experts in their respective fields.

[REDACTED] is one of [REDACTED] teacher at [REDACTED] (Tr. 2, p6, L 10, L20-21) received [REDACTED] Bachelor's degree from the University of Virginia in Geology and Physical Geology and is working on a Master' Degree in special education. [REDACTED] said that [REDACTED] has been a special education teacher at [REDACTED] since [REDACTED] 2001. (Tr. 2, p 5, L 14 - p 6, L 16) Prior to working at [REDACTED] [REDACTED] operated a child care facility. (Tr. 2, p 6, L 7-13) [REDACTED] said that [REDACTED] is in [REDACTED] and [REDACTED] grade English classes and that [REDACTED] has been seeing [REDACTED] 15 minutes per day in class since [REDACTED] enrollment on [REDACTED] 2001. (Tr. 2, p 6, L 14-22) [REDACTED] testified that there are seven other children in the class with [REDACTED] along with two teachers, one special education teacher and the other teacher with a degree in the subject matter. (Tr. 2, p 7, L 8-21)

[REDACTED] said that as of the date of [REDACTED] testimony [REDACTED] was using the [REDACTED] IEP (Tr. 2, p 8, L 14-17). [REDACTED] says that [REDACTED] is using it to work with [REDACTED] in writing and reading comprehension. [REDACTED] said that [REDACTED] has noticed some changes in [REDACTED] since [REDACTED] has been at [REDACTED] from being shy to being comfortable and happy. From not being able to write a paragraph, to being able to write a short story. [REDACTED] said that in [REDACTED] view, [REDACTED] appears more confident and will speak in class (Tr. 2, p 17, L 2-9).

[REDACTED] said that [REDACTED] uses the Wilson Reading program which is the same one that [REDACTED] uses. [REDACTED] said that [REDACTED] received [REDACTED] training in the Wilson Reading Method in-

house at [REDACTED] by viewing a six-hour video. [REDACTED] said that [REDACTED] class follows the Eighth grade curriculum Standards of Learning ("SOL's"). (Tr. 2, p35, L5-17)

Following [REDACTED], [REDACTED] testified. [REDACTED] is the Educational Director at [REDACTED]. (Tr. 2, P 38, L 14 - 16) [REDACTED] said that [REDACTED] is a certified special education teacher in Virginia. (Tr. 2, p 39, L 2-3) [REDACTED] has a Bachelors Degree in Elementary Special Education and a Master's Degree in Leadership in Teaching. (Tr. 2, p 38, L 19 -22) [REDACTED] said that [REDACTED] first met [REDACTED] when [REDACTED] visited the school on [REDACTED] 2001. (Tr. 2, p45, L14 - p 46, L5) The parents had visited [REDACTED] earlier on [REDACTED] 2001 (Tr. 2, p 46, L 14-17). [REDACTED] said that [REDACTED] was using the [REDACTED] IEP, but that it did not seem appropriate because it was incomplete (Tr. 2, p 51, L 9 - p 53, L 10, p 54, L 15-20) [REDACTED] said that when [REDACTED] first met the parents on [REDACTED] 2001, they had an IEP dated [REDACTED] 2000 (SB-71) with them. (Tr. 2, p83, L 4-14) [REDACTED] said that [REDACTED] first got the [REDACTED] IEP during a meeting with the parents on [REDACTED] 2001. (Tr. 2, p 84, L 8-12) [REDACTED] was accepted into [REDACTED] on [REDACTED] 2001. (WH-07)

Following [REDACTED], [REDACTED] testified. [REDACTED] is a Board Certified Developmental Neuropsychologist. (Tr. 2, p 123, L 20-21) [REDACTED] has an undergraduate degree in chemistry and Psychology, a Master's Degree in Neurophysiology, a dual doctorate in Child Development and Neuropsychology. [REDACTED] described Neuropsychology as the study of brain function and brain development. [REDACTED] said that [REDACTED] has been in private practice for over 20 years and has testified as an expert "hundreds of times." ([REDACTED] -37) (Tr. 2, p 124, L1 - 125, L23) [REDACTED] was qualified as an expert in the fields of Neuropsychology, social psychology, Clinical Psychology, Learning Disabled. (Tr. 2, p 128, L 22 - p 129, L 3)

[REDACTED] first met [REDACTED] during the [REDACTED] 2000 and conducted an independent Neuropsychological evaluation of [REDACTED] at the request of the parents, which was completed [REDACTED] 2001. (Tr. 2, p 131, L 4-12) ([REDACTED] -16) [REDACTED] conducted a second evaluation on [REDACTED] 2001. ([REDACTED] -13) (Tr. 2, p 132, L 2-9) [REDACTED] said that [REDACTED] disagrees with [REDACTED]

█████'s evaluation of █████ (Tr. 2, p138, L3 - p139, L11) because █████ principal diagnosis is a brain injury, secondary diagnosis is multiple cognitive deficits and thirdly, hearing loss. reviewed the IEP (Tr. 2, p 144, L 9-19) and said that based on review, there were no goals in it that addressed any of █████ concerns (Tr. 2, p 145, L 22- 146, L 11) and that it was opinion that the IEP was inappropriate. Tr. 2, p 146, L 7-12) █████ further stated that █████ requires one-on-one intervention in nearly every area (Tr. 2, 150, L 10-p 151, L 9) █████ has multiple disabilities that requires a self-contained program with an individualized instruction by specialist in brain injury, multiple handicapped children. (Tr. 2, p 172, L 12 -23)

█████ said that █████ has known of █████ on a general basis for several years. █████ has not visited █████, but has received brochures that describe the █████ Center. (Tr. 2, p 175, L 21-- p 178, L22) █████ said that █████ has neither observed █████ at █████ (Tr. 2, p 182, L 19-21), nor at █████ (Tr. 2, p 183, L 17-19). █████ said tha █████ report of █████ 2001 was available about the second week of █████ Tr. 2, p 228, L 14-22) did not have the IEP wher █████ wrote █████ report of the █████ 2001 testing.

Following █████ was █████ █████ is the Director of Neuropsychology Service at █████ University. Tr. 2, p 248, L 3&4) █████ has a Master's Degree in Biological and Experimental Psychology, a doctorate in Clinical Psychology with a concentration in Neuropsychology and post doctoral work in Neuropsychology. (Tr. 2, p 247, L 20 - p 248, L 2) █████ has a License to practice psychology in Virginia. (Tr. 2, p 248, L23 - p 249, L 1 █████, worked at █████ Academy for two years after █████ postdoctoral studies and has been at Georgetown for over three years. (Tr. 2, p 248, L 7-9) █████ testified as an expert in Clinical Psychology with the main focus in Neuropsychology and also, over objection, as an expert in Educational Placement. (Tr. 2, p 250, L 16-18; p264, L1&2)

█████ said tha █████ has reviewed █████ records and observed █████ for about an hour during English class (Tr. 2, p 264, L 20-22) at █████ and also a writing class (Tr. 2, p 266, L 7-9). █████ also spoke with the staff at █████ about █████ including █████

██████████ said that it was ██████████ opinion that ██████████ primary disability is Language disorder and that ██████████ has a significant auditory processing disorder (Tr. 2, p 269, L 12-14). ██████████ also testified that it was ██████████ opinion that ██████████ is in critical need of a full time separate day program (Tr. 2, p 270, L2 - p 271, L 9). ██████████ said that ██████████ is a language based program where there is a small classroom setting and that ██████████ could get one-on-one attention. ██████████ said that it was ██████████ opinion that ██████████ was an appropriate placement for ██████████ (Tr. 2, p P272, L 7 - 15)

The next witness to testify was ██████████ ██████████ has a Bachelor' Degree and a Master's Degree in Psychology and a PH.D. in Clinical Psychology. (Tr. 2, p 291, L 9-11) ██████████ is also listed in the National Register of Health Services Providers in Psychology. Tr. 2, p 292, L 5-7) ██████████ is currently the Director of Clinical Services at ██████████ (Tr. 2, p 295, L 2) ██████████ became aware of ██████████ at the time of ██████████ intake processing and reviewed a packet of information about ██████████ including IEPs and a report by ██████████ (Tr. 2, p 297, L 1-6)

██████████ had not administered any testing to ██████████ prior to ██████████ testimony. (Tr. 2, p 341, L 22-23) ██████████ said that ██████████ is doing well at ██████████ partly because it is focused on hearing and the staff is working on language processing and auditory decoding processes in a hearing environment. (Tr. 2, p 336, L 3-19) ██████████ said that ██████████ believes that ██████████ is doing well at ██████████ on review of ██████████ records and observations of ██████████ believes that ██████████ is an appropriate placement for ██████████ (Tr. 2, p 340, L 22 & 23). ██████████ said that the decision to accept ██████████ at ██████████ was made by ██████████ the Educational Director by letter dated ██████████ 2001. (Tr. 2, p 365, L6-16) (██████████ -07)

The Hearing continued to ██████████ 2002 and the only witness called to testify was ██████████ ██████████ testified that ██████████ has had to constantly raise issues with ██████████ about ██████████ educational services since ██████████ 2000, during the 2000-2001 School Year. (TR. 3, p 27, L 7-23) ██████████ said that ██████████ also has consistently presented concerns about ██████████ education at ██████████ to various persons who work in the ██████████ School system. With respect to the 2001-2002 School Year, ██████████ testified that

presented list of IEP Needs (p. 39) to [REDACTED] in [REDACTED] 2000. (Tr. 3, p 56, L 22 & 23)

[REDACTED] testified that [REDACTED] could not provide specific dates, but that [REDACTED] expressed specific concerns about [REDACTED] education in correspondence with [REDACTED] [REDACTED] Assistant Principal at [REDACTED] [REDACTED] Special Education coordinator, who [REDACTED] says spoke with on a working basis. (Tr. 3, p 34, L16-21)

[REDACTED] said that [REDACTED] also spoke with [REDACTED] in the beginning of the Calendar year 2001 about [REDACTED] counseling and [REDACTED] concern about [REDACTED] depression and anxiety in the classroom. (Tr. 3, p 42, L 16-22) [REDACTED] said that [REDACTED] also spoke with [REDACTED] about [REDACTED] reading level. (Tr. 3, p 43-, L 8-11) Also, in [REDACTED] 2001, [REDACTED] and [REDACTED] decided to get outside counseling for [REDACTED] (Tr. 3, p 46, L 6-9)

[REDACTED] testified that while in the process of developing [REDACTED] 2000-2001 IEP expressed concerns about [REDACTED] math objectives and goals, reading comprehension, social emotional needs and vocabulary and expressive language. (Tr. 3, p 54, L 11-23)

[REDACTED] also expressed concerns beginning with the [REDACTED] 2001 IEP meeting about a phonic ear for [REDACTED] (Tr. 3, p 57, L 4-10) (p. 38) [REDACTED] also raised concerns about [REDACTED] being taught based on the inclusion of the SOL's across all subject areas. (Tr. 3, p 66, L 11- p 68, L 10)

[REDACTED] said that [REDACTED] and [REDACTED] attended the IEP meetings held for the purpose of developing an IEP for the 2001-2002 School Year. The meeting they attended were held on [REDACTED], [REDACTED] and [REDACTED] 2001. Nevertheless, the IEP was not completed. [REDACTED] testified that [REDACTED] and [REDACTED] kept going back to the IEP meetings because the IEP team was not addressing [REDACTED] concerns that [REDACTED] said raised in [REDACTED] 2000, such as [REDACTED] reading. (Tr3, p 71, L 2-19) [REDACTED] stated that [REDACTED] had also expressed [REDACTED] desire for a full-time program for [REDACTED] during the IEP meetings. (Tr. 3, p 76, L 1-3)

██████████ said that neither ██████████ nor ██████████ could attend the last IEP meeting that had been scheduled for ██████████ 2001. (Tr. 3, p 82, L 7-22) ██████████ said that ██████████ had called ██████████ and told ██████████ that there was a family emergency that prevented ██████████ from attending the meeting and that ██████████ did not want the meeting to go forward without ██████████ and ██████████ in attendance. ██████████ latter confirmed this in writing with a letter sent later that same day, ██████████ 2001. (██████████ -11) In this letter ██████████ also listed ██████████ and ██████████ as days that ██████████ could be available. ██████████ -11) (Tr3, p 82, L 4 - p84, L 18) ██████████ testified that while ██████████ was writing the letter to ██████████ ██████████ received a call from ██████████ in which ██████████ told ██████████ that ██████████ was going forward with the meeting. This was against ██████████ will and without ██████████ permission. (Tr. 3, p 83, L 4-19)

██████████ testified that ██████████ decided to place ██████████ at ██████████ after the series of IEP meetings and ██████████ felt that they were not going any where. (Tr. 3, p 86, L 19-23) ██████████ said that ██████████ spoke with ██████████ at ██████████ in the first week of ██████████ 2001 (Tr. 3, p 88, L 3-12) and placed ██████████ there ██████████ 2001 (Tr. 3, p 88, L 16)

██████████ testified that ██████████ sent two letters to ██████████ notifying them of decision to unilaterally place ██████████ at ██████████ (██████████ -05 and ██████████ -06) ██████████ said ██████████ gave both letters to ██████████ (Tr. 3, p 89, L 6-19)

The Hearing continued to ██████████ 2002 and ██████████ began its case in chief. ██████████ was the only witness called to testify. ██████████ is a speech therapist with ██████████ (SB-91) ██████████ testified that ██████████ works in the area of auditory processing disorders. (Tr. 4, p 6-8) ██████████ testified that ██████████ has a Bachelor's Degree and a Master's Degree in Speech Pathology. ██████████ is licensed in the State of Virginia to practice Speech Therapy. ██████████ has worked twenty - four years as a public school speech therapist dealing primarily with articulation disorders, expressive and receptive language, hearing impaired, voice disorders and fluency. (Tr. 5, p4, L3-234). ██████████ has administered about fifty evaluations annually in the middle and high school grades. Most of the evaluations are for expressive and receptive

language. (Tr. 5, p 5, L 12-21) [REDACTED] does not have certificates in auditory processing or audiology, but [REDACTED] has received formal education and training through programs offered by [REDACTED] (Tr. 5, p 6-8). [REDACTED] was qualified as an expert in the area of Speech Pathology. (Tr. 5, p 23, L 21-22).

[REDACTED] testified about [REDACTED] knowledge of [REDACTED] said that [REDACTED] serviced [REDACTED] in speech therapy from [REDACTED] of [REDACTED] grade year (2000-2001 School Year), through [REDACTED] removal in [REDACTED] 2001. [REDACTED] testified that [REDACTED] saw [REDACTED] three times a week and performed evaluations on [REDACTED] (Tr. 5, p 24, L 7-22) [REDACTED] participated in the eligibility meetings concerning [REDACTED] (Tr. 5, p 25, L 8-12) and the IEP meetings. [REDACTED] said that based on [REDACTED] familiarity of [REDACTED] that [REDACTED] has articulation problems and auditory processing deficits. (Tr. 5, p27, L18 - p28, L2)

[REDACTED] said that [REDACTED] had talked with [REDACTED] teachers and has observed [REDACTED] in class (Tr. 5, p29, L15 - p30, L6) and reviewed the 2000-2001 IEP (SB-71) and the [REDACTED] IEP. [REDACTED] said that [REDACTED] also reviewed [REDACTED] reports (Tr. 5, p30, L21-22). [REDACTED] said that [REDACTED] serviced [REDACTED] three times a week for forty - five minutes each time. [REDACTED] worked with [REDACTED] articulation, receptive language and expressive language deficits. (Tr. 5, p36, L6-22). [REDACTED] said that [REDACTED] dealt with [REDACTED] auditory processing problems and (Tr. 5, p37, L8-21) that appropriate goals are included in the IEP. [REDACTED] said that it was [REDACTED] opinion that the [REDACTED] IEP was appropriate for [REDACTED] in that it addressed [REDACTED] areas of deficits' articulation, and receptive and expressive language and that there were goals to accommodate those deficits. (Tr. 5, p39, L5-18). [REDACTED] said that [REDACTED] was making improvements (Tr. 5, p41, L2-16) in [REDACTED] speech and language goals. (Tr. 5, p45, L17 - p46, L 5) (SB-73)

[REDACTED] said that [REDACTED] participated in the IEP meetings beginning [REDACTED] 2001 through [REDACTED] 2001 toward the development of the [REDACTED] IEP. (Tr. 5, p49, L 19-23) [REDACTED] said that the IEP contained speech and language goals that met [REDACTED] needs (Tr. 5, p50, L2-19)

██████████ said that ██████████ reviewed and considered ██████████'s report (██████████ 14 and -15) and considered auditory processing deficits in formulating goals for ██████████ (Tr. 5, p52, L1, -p53, L14) and included these goals in the IEP. ██████████ said that there were no objections from the parents about the speech and language goals in the IEP (Tr. 5, p55, L14 - 17 -p57, L7) ██████████ was asked if ██████████ had seen a written list of concerns prepared by ██████████ and reviewed ██████████ -39. ██████████ said that ██████████ had never seen it before. (Tr. 5, p58, L17 - p59, L7) ██████████ testified that based on ██████████ review of ██████████ reports, ██████████ would not make any changes to the IEP. (Tr. 5, p60, L 17-23)

██████████ said that in the area of speech/language services there were no changes to the IEP drafted at the ██████████ meeting to the ██████████ 2001 IEP draft. (Tr.5, p83, L6-14) ██████████ said that ██████████ felt that ██████████ has the expertise to interpret ██████████ report. (Tr.5, p89, L19-23)

On ██████████ 2002, two witnesses testified, ██████████ and ██████████. ██████████ is the Assistant Principal at ██████████ (SB-85) ██████████ testified that ██████████ is a two-year-old school and ██████████ is responsible for supervising the special education services. (Tr.6, p6, L1-19) ██████████ has a Bachelor's Degree in English Education and a Master's Degree in Educational Administration and supervision. ██████████ has been in education, teaching English and reading since 1975. ██████████ became an Assistant principal in 1995 and has been with ██████████ since 1981. (Tr. 6, p4, L4 - p5, L4) ██████████ testified as an expert in the field of Administration in the oversight of special Education. (Tr. 6, p12, L1-3)

██████████ testified that ██████████ is familiar with ██████████ and was the administrator in charge of ██████████ eligibility. (Tr. 6, p18, L 12-16) (SB-57). ██████████ testified that ██████████ has had ongoing discussions with ██████████ teachers both during the 2000-2001 and the 2001-2002 School Year, prior to ██████████ removal. (Tr. 6, p21, L5-18) (SB-21) ██████████ said that the IEP dated ██████████ 2000 (SB-71) was the IEP implemented throughout the 2000-2001 School year, except for three amendments, (SB-73, 74 and 76) (Tr. 6, P 23, L5-18). ██████████ was in a self-contained, small group

class in language arts, reading and math from a LD teacher. (Tr. 6, p25, L6-8) [REDACTED] also received assistance for organizational goals from a hearing impaired teacher that came to the building to assist [REDACTED] was in a small group of less than ten for math, language arts, reading.

[REDACTED] said that [REDACTED] had determined [REDACTED] as eligible for special education as having a Specific Learning Disability (Tr. 6, p27, L19&20) (see SB-57). [REDACTED] disability classification was later changed to Specific Learning Disabled, Other Health Impaired Hearing Impaired and Speech and Language Impaired. (Tr. 6, p28, L12-14) (SB-68). [REDACTED] said that additional disability designation were the result of request made by [REDACTED]. (Tr. 6, p28, L22 - p29, L16) [REDACTED] also stated that [REDACTED] wanted the IEP team for the 2000-2001 IEP to address [REDACTED] disabilities in the development of SB-71. (Tr. 6, p31, L9-18)

[REDACTED] also received one-on-one work for [REDACTED] organizational issues, provided by a Hearing Impaired teacher who came to the school to work with [REDACTED] (Tr. 6, p33, L5-20) [REDACTED] testified about [REDACTED] hearing aid. [REDACTED] was supposed to keep it on all the time, but [REDACTED] would often turn it off. [REDACTED] said that the responsibility for making sure the hearing aid was on is that of the child and if a hearing aid is not working properly, then the school will notify the parents. In any event, the school does not check hearing aids to see if they are working properly. (Tr. 6, p33, L21, p34, L23) [REDACTED] also testified that in the development of the IEP, they had input from an independent evaluation prepared by [REDACTED] (-16) [REDACTED] said that it was opinion that the IEP for School Year 2001-2002 (SB-77) was appropriate for [REDACTED] (Tr. 6, p35, L1-9).

[REDACTED] testified that [REDACTED] educational needs would include small groups. [REDACTED] did not believe an interpreter was necessary and therefore none was included in the IEP. (Tr. 6, p36, L10 - p37, L10) [REDACTED] said that during the second half of the 2000-2001 School Year, that neither [REDACTED] nor [REDACTED] made any objections known about their educational services that [REDACTED] was receiving based on the IEP. (Tr. 6, p37, L12 - p38, L13) [REDACTED] said that [REDACTED] always had strong concerns that [REDACTED] wanted [REDACTED] to pass the SOL's and that [REDACTED] be brought up to

grade level. [REDACTED] went on to say that the curriculum that [REDACTED] was being taught from was in most instances a grade level curriculum modified to [REDACTED] level. Nevertheless, that having [REDACTED] on grade level was not a realistic expectation in view of [REDACTED] disabilities. (Tr. 6, p38, L6 - p39, L 18)

With regard to the [REDACTED] IEP, (SB-77), [REDACTED] said that the IEP team began the process of developing the IEP on [REDACTED] [REDACTED] met with the IEP team and that the team met for four and a half hours. (Tr. 6, p40, L13-23) And that during that time, they developed the Present Level of Performance pages and closed out the IEP for the [REDACTED] School year. [REDACTED] was not present at the meeting, but [REDACTED] spoke extensively with [REDACTED] [REDACTED] who chaired the meeting on [REDACTED] behalf. (Tr. 6, p41, L14-17) [REDACTED] said that the IEP team concluded on [REDACTED] and reconvened on the [REDACTED] of [REDACTED] for another two hour meeting. (Tr. 6, p43, L8-19) [REDACTED] said that at this meeting they got stuck talking about SOL's and math. (Tr. 6, p43, L21 - p44, L4) [REDACTED] went on to say that math was a big concern of [REDACTED] and the team attempted to determine what type of goal they could put in the IEP for [REDACTED] that would also address the Sol? (Tr. 6, p44, L10-16)

[REDACTED] said that following the meeting on [REDACTED] after the team had already spent six and a half hours on drafting an IEP, [REDACTED] asked [REDACTED] to chair the next meeting. The concern was that the team had already spent six and a half hours and still had not finished, when the typical IEP runs from thirty minutes to an hour and a long IEP is an hour-and-a-half to two hours. (Tr. 6, p46, L14-21) [REDACTED] said that [REDACTED] then directed [REDACTED] to send a draft of an IEP, at least what they had finished, to [REDACTED] (Tr. 6, p47, L3-6) [REDACTED] said that the draft was essentially a completed document. (Tr. 6, p48, L3-8)

The draft was sent to the parents on [REDACTED] and the parents were asked to review the draft and make suggested changes (Tr. 6, p48, L3-8); however, the parents did not make any suggested changes to the draft. (Tr. 6, p49, L2-4) The IEP team was again scheduled to meet for an hour on [REDACTED] however that meeting was short as [REDACTED] said that [REDACTED] did not see any point in going forward with this meeting. (Tr. 6, p51, L7-16) [REDACTED]

██████████ said that ██████████ did not present any written list of concerns at the meeting. (Tr. 6, p51, L20- p52, L2)

The next IEP meeting was set for ██████████. ██████████ did not make comments to the draft that had been sent to ██████████ on ██████████ (Tr. 6, p52, L5-17) and ██████████ did not voice any concerns with the IEP. (Tr. 6, p53, L2 - p-54, L12).

At the ██████████ meeting, the team reviewed a report that had been prepared by ██████████ (██████████-14) (Tr. 6, p55, L2 - p56, L5). ██████████ said that ██████████ never saw ██████████ report (██████████:13) and to ██████████ knowledge, the report was not provided to ██████████ (Tr. 6, p56, L6, L12). ██████████ said that ██████████ did recall seeing ██████████ report (██████████-14) and that it was discussed at the meeting held on ██████████ which meeting lasted one hour and fifteen minutes. (Tr. 6, p56, L21-23) ██████████ said that ██████████ agreed with ██████████ report except for the one-on-one teacher that ██████████ had recommended because the team felt that ██████████ was making good progress. (Tr. 6, p57, L5-12)

██████████ testified that the draft IEP developed as of ██████████ was complete with the exception of pages one and two and that there were no significant changes to the draft that they had presented to the parents on ██████████ and ██████████ and no changes between ██████████ and ██████████ (Tr. 6, p 58, L8-18). With respect to ██████████ report ██████████ said that the team did not specifically go over ██████████ report and identify where in the IEP ██████████ concerns were addressed; however, they read the last page of the report which was a summary at the meeting, which was a summary of ██████████ report. (Tr. 6, p58, L22 -p59, L8) ██████████ said that ██████████ also reviewed the ██████████ IEP and indicated that auditory processing is listed in the present level of performance pages. (Tr. 6, p59, L4-8) ██████████ also said that at the meeting on the ██████████ they discussed the math goals, because it was a concern of ██████████ ██████████ said that ██████████ did not express any concern with the present levels of performance or goals and objectives as stated in the IEP at that meeting. (Tr. 6, p59, L9-13)

██████████ testified that it was at the ██████████ meeting that they scheduled the next meeting for ██████████ (Tr. 6, p64, L21 - p65, L5) ██████████ said that it was decided to proceed with the meeting as scheduled on ██████████ in spite of the ██████████ not attending, because ██████████ believed "it was in ██████████ best interest that ██████████ have an IEP in place." (Tr. 6, p66, L1-6) Also, ██████████ said that they were spending a lot of time trying to generate an IEP. (Tr. 6, p 66, L 1-4) When asked if there was an IEP in place, ██████████ testified "We had a previous year's IEP, but we needed to have the current IEP." (Tr. 6, p66, L17-18)

██████████ further stated that the only difference between the draft IEP of ██████████ and ██████████ was the first two pages. (Tr. 6, p68, L2-5) ██████████ said that ██████████ believed that the IEP was appropriate. (Tr. 6, p68, L14 - p69, L8)

██████████ testified that the IEP team had spent numerous hours in closing out the IEP for ██████████ (SB-71) and they felt very comfortable that they knew what ██████████ had accomplished the previous year and what ██████████ needed to accomplish for the ██████████ school year. Also, ██████████ the individuals who had worked in developing the ██████████ IEP were the individuals who had worked with ██████████ in the classroom, they knew what ██████████ knew and didn't know.

██████████ said that they also had the benefit of the independent evaluations and significant parental input through hours of meeting with the parents. ██████████ said that ██████████ concluded that the team had developed an IEP that addressed ██████████ weaknesses and ██████████ strengths, both instructionally and ██████████ learning styles (Tr. 6, p 68, L12 - p69, L8).

██████████ testified that following the meeting, the parents were notified that the meeting had been held and the parents were provided copies of the first two pages of the October IEP that they didn't have. The parents were told that if there was anything that they felt needed to be changed that the IEP meeting could be reconvened. ██████████ said that ██████████ did not hear back from the parents. (Tr. 6, p70, L3-14) ██████████ said that the final version of the IEP as developed on ██████████ was sent to the parents within a few days after the meeting. ██████████

██████████ said that ██████████ never received from the parents there written statement of concerns following the ██████████ meeting and had not seen the parents written list (W-39) (Tr. 6, p75, L16-19)

Along with several other people from ██████████, ██████████ visited ██████████ to observe ██████████ (Tr. 6, p78, L19-20). ██████████ said that ██████████ looked for the instruction methods, classroom management and content of materials being utilized. ██████████ said that the visit in total was about two-and-a-half hours. ██████████ said that in ██████████ view the class sizes were comparable to ██████████ and that both ██████████ and ██████████ used the Wilson Reading Program. (Tr. 6, p89, L13) However, the ██████████ teachers receive sixteen hours of classroom training by a Wilson trainer, whereas, the ██████████ training consisted of viewing a video. Based on ██████████ observations and discussions with ██████████ personnel, ██████████ concluded that ██████████ could provide ██████████ the same level of education as ██████████. (Tr. 6, p89, L1-16) ██████████ said that ██████████ had not seen ██████████ ██████████ report ██████████-13) and that the IEP committee did not have a copy of the evaluation prior to the ██████████ meeting. (Tr. 6, p96, L 8-23)

Following ██████████, ██████████ testified. (SB-90) ██████████ is a School Psychologist under the special education program in ██████████ (Tr. 6, p191, L 12 & 13) ██████████ has an Bachelor's Degree in Psychology and a Master's Degree in School Psychology. ██████████ is licensed in Virginia as a School Psychologist and has a national certification through the National Association of School Psychologists "NASP." (Tr. 6, p191, L 18 - p192, L12) ██████████ is also licensed through the Virginia Department of Education as a School Psychologist. (Tr. 6, p192, L 13-16) ██████████ said that ██████████ has experience dealing with students who have auditory processing problems. ██████████ also evaluates students to see if there is an auditory processing problem. (Tr. 6, p193, L12 - p196, L7) ██████████ testified, without objection, as an expert in School Psychology. (Tr. 6, p198, L6 & 7)

██████████ testified that ██████████ knows ██████████ as a result of being involved in ██████████ educational progress since ██████████ started at ██████████ in the ██████████ of ██████████ following the completion of ██████████ IEP (Tr. 6,

p198, L12, p200, L3) (SB-71).

[REDACTED] was familiar with [REDACTED] reports ([REDACTED] 13 & 16) and [REDACTED] report Auditory Processing Report [REDACTED] 14), but had not [REDACTED] Summer Remediation Report (SB-15) (Tr. 6, p225, L8 - p226, L1). [REDACTED] had not seen [REDACTED] list of concerns. ([REDACTED] 39) (Tr. 6, p224, L2-6) [REDACTED] participated in the drafting of the [REDACTED] IEP and believed it to be appropriate for [REDACTED] and that [REDACTED] educational needs could be met with the IEP. (Tr. 6, p226, L5-23)

[REDACTED] testified that [REDACTED] was part of the team from [REDACTED] that went to [REDACTED] on [REDACTED] (Tr. 6, p231, L10-18) [REDACTED] said that [REDACTED] did not see any major differences between [REDACTED] program and the program at [REDACTED] (Tr. 6, p233, L7-15) It was [REDACTED] opinion that [REDACTED] did not require a private placement (Tr. 6, p237, L17-p234, L1). [REDACTED] testified about [REDACTED] intellectual functioning and concluded that [REDACTED] is in the low average range and disagreed with [REDACTED] findings that [REDACTED] IQ scores are at a higher level. (Tr. 6, p240, L14 - p241, L17) [REDACTED] said that [REDACTED] has reviewed [REDACTED] report [REDACTED] 13) since the IEP meeting but saw no significant difference between that report and [REDACTED] earlier report [REDACTED] 16) (Tr. 6, p263, L15-18)

Two witnesses testified on the final day of the Hearing, [REDACTED] and [REDACTED] [REDACTED] (SB-87) who was the first witness to testify, is a special education teacher in the LD program at [REDACTED]. (Tr. 7, p4, L1&2) [REDACTED] holds a Bachelor's Degree in Special Education. [REDACTED] participated in additional training provided by [REDACTED] [REDACTED] is certified to teach the Wilson Reading Program and is certified through the Virginia Department of Education. (Tr7, p5, L5-21) [REDACTED] has been licensed as a teacher in Virginia since [REDACTED] (Tr7, p6, L16 & 17) [REDACTED] was accepted, without objection, as an expert in teaching children with disabilities, learning disabled and multi-disabled children, teaching the Wilson Reading Program and IFP preparation and implementation. (Tr 7, p10, L22- p11, L3)

██████████ said that ██████████ was assigned to be ██████████ case manager when ██████████ started coming to ██████████ (Tr. 7, p12, L13-16) ██████████ said that ██████████ was enrolled in ██████████ Wilson Reading program. ██████████ was also in ██████████ math class. (Tr. 7, p13, L 16-19) ██████████ continued to be ██████████ case manager for the ██████████ (13) school year. ██████████ was in ██████████ self contained English and math programs. As ██████████ case manager, ██████████ checked with ██████████ teachers to see how ██████████ was doing. (Tr. 7, p14, L 1-21)

██████████ was present at the IEP meeting held on ██████████ Prior to enrolling at ██████████, ██████████ had been Homebound. (Tr. 7, p15, L3-12). ██████████ said that the IEP for ██████████ (SB-71) included interpreter services that had been requested by ██████████ (Tr. 7, p20, L7 -p21, L3)

██████████ participated in the development of the IEP for ██████████ and said that ██████████ was very unhappy with the math goals and felt that they were repetitive from the prior year. (Tr. 7, p52, L17 - p53, L5) ██████████ said that ██████████ wanted ██████████ working at grade level and that the team told ██████████ this was inappropriate for ██████████ (Tr. 7, p53, L6-23). ██████████ said that the team spent five to six hours discussing math goals. (Tr. 7, p54, L4-7) ██████████ said that ██████████ did not understand ██████████ concern with the math goals and that ██████████ was not specific about how ██████████ wanted the goals changed (Tr. 7, p56, L4-15) ██████████ said that ██████████ had not seen ██████████ list of concerns (██████████ 39). ██████████ was aware that ██████████ wanted the IEP to reflect the SOL's, but that this would not be appropriate for ██████████ because they are written for the general education population and not for LD students. (Tr. 7, p58, L11-16)

██████████ was the next witness after ██████████. (SB-89) ██████████ is a special education LD teacher at ██████████ and also serves as a Special Education Department Coordinator at ██████████. (Tr. 7, p156, L15-19) ██████████ responsibilities include coordinating child study and eligibility meeting, assigning caseloads for all of the special education teachers, working on issues regarding the kids and coordinating SOL testing. ██████████ has a caseload for ██████████ and team-teaches. ██████████ is also responsible for doing the reevaluations on the students. (Tr. 7, p156, L15 - p157, L10)

██████████ has a Bachelor's Degree in Special Education and a Master's in Administration. ██████████ is licensed by the Virginia Department of Education. ██████████ has taught school for approximately fifteen years. ██████████ has taught in ██████████ for seven years. ██████████ taught as an Adjunct Professor for two Summers in which ██████████ taught an IEP class, introduction to special education class, a curriculum class and a collaboration course. (Tr. 7, p158, L5-22) ██████████ testified, without objection, as an expert in Learning Disabilities and IEP Development. (Tr. 7, p159, L3-22)

██████████ has known ██████████ since ██████████ was in ██████████ social studies class for the ██████████ school year. ██████████ also taught ██████████ math for a while. ██████████ was placed in ██████████ social studies class as a child with learning disabilities. (Tr. 7, p161, L7-17)

██████████ attended the IEP meetings for ██████████ in ██████████ and ██████████ leading to the development of SB-71 and the amendments thereto, (SB-73, 74 and 76). (Tr. 7, p164, L8-11) ██████████ believed the IEP to be appropriate for ██████████ and addressed all of ██████████ needs (Tr.7, p167) ██████████ said that ██████████ regularly communicated with the parents about ██████████ but ██████████ rarely had communication with ██████████ and that most of the time ██████████ talked with ██████████ ██████████ said that ██████████ would have questions about ██████████ program and might have a concern about something that wasn't being done or work that had been sent home. (Tr. 7, p162, L23 -p163, L11)

██████████ also participated in the development of the ██████████ IEP (SB-77) (Tr. 7, p167, L7-13). ██████████ said that the IEP did not address auditory processing as an area, but that ██████████ feels that the IEP supports that part of ██████████ disability. ██████████ said that the IEP addresses ██████████ needs in the area of listening comprehension and oral expression which supports ██████████ auditory processing deficits. (Tr. 7, p167, L14 - p169, L7)

██████████ testified that in connection with the development of the IEP for ██████████ the parents expressed concerns with the math goals set for ██████████ (Tr. 7, p176, L11-16) ██████████

██████████ wanted ██████████ to be work with algebra for example at grade level (Tr. 7, p177, L2-6); however, ██████████ said that ██████████ did not consider this appropriate because ██████████ was not at grade level in ██████████ math. ██████████ was making progress with what ██████████ was doing, but ██████████ was in approximately the fourth or the fifth grade level (Tr. 7, p177, L11-15).

██████████ said that ██████████ believes that the goals and objectives that are set out in the ██████████ IEP finalized on ██████████ are appropriate for ██████████ (Tr. 7, p169, L8-11). ██████████ testified that ██████████ received ██████████ evaluation on ██████████ from ██████████ (Tr. 7, p172, L11-14) ██████████ said that ██████████ did review the evaluation and concluded that the areas of concern were addressed in the IEP and that the IEP incorporated a lot of ██████████ recommendations. (Tr. 7, p17, L15-22)

██████████ said that the IEP team had a copy of ██████████ second report (██████████-14) in developing the IEP and that the team had an opportunity to review it prior to the meeting on ██████████ (Tr. 7, p174, L8) And that after reviewing it, that some changes to the IEP were made prior to the meeting on ██████████. ██████████ said that ██████████ did make some changes, but did not specifically say at the IEP meeting that certain changes were made based on ██████████ report. (Tr. 7, p175, L3-6) ██████████ said that ██████████ had not seen ██████████-15 while in the process of developing the ██████████ IEP. (Tr. 7, p176, L1-3)

██████████ recalled that the draft IEP was given to the parents ██████████ and they were asked to review it and note any concerns on it for any changes in the IEP. ██████████ said that the parents never gave back the IEP with their changes on it. (Tr. 7, p179, L 1-23) ██████████ was not familiar with ██████████ 39 (Tr.7, p178, L 17-20) ██████████ said that the parents did not give any specific concerns about the IEP such as problems they may have had with the present level of performance, and that the only thing that they got from ██████████ were general expressions of concerns, but nothing specific. (Tr. 7, p179, L1 - p180, L23) ██████████ said that if ██████████ felt like something needed to be added in the IEP ██████████ would make a suggestion and it would be considered or added. But that ██████████ did not comment about the IEP

being inappropriate (Tr. 7, p181, L2-12)

██████████ said that ██████████ had an opportunity to observe ██████████ at ██████████ and concluded that ██████████ needs could be adequately met at ██████████. ██████████ said that ██████████ has a program that can provide the services as stated in the IEP. ██████████ said that the difference between ██████████ and ██████████ was that ██████████ has at least two adults in a classromm at all times, but in other respects, even class size, there would not be much difference. (Tr. 7, p186, L3 - p187, L17)

IV. FINDING OF FACT

1. ██████████ has been determined eligible for special education services, pursuant to IDEA as having a Specific Learning Disability, Other Health Impaired, Hering Impaired and Speech/Language Impaired. ██████████ has a mild hearing loss in ██████████ right ear that requires ██████████ to wear a hearing aid. ██████████ will often turn off ██████████ hearing aid; however, having the hearing aid off is not a factor in ██████████ disability.

2. ██████████, in cooperation with the parents, developed an IEP for ██████████ upon ██████████ enrollment at the ██████████ School for the ██████████ School Year. The IEP was finalized on ██████████ and signed by th parents on ██████████ (SB-71)

3. SB-71 was amended three times during the ██████████ School Year (SB-73, 74, and 76)

4. In ██████████ ██████████ prepared a document that ██████████ called "IEP Needs" (H-39); however, ██████████ did not provide ██████████ representatives with a copy of this document after ██████████

5. Beginning ██████████, ██████████ appropriate representatives of ██████████ along with the parents constituting the IEP team, met to develop an IEP for ██████████ for the ██████████

School Year. The IEP was not completed on that day, so the team continued the meeting to [REDACTED], [REDACTED], and [REDACTED]. At the [REDACTED] meeting the team, including the parents, set [REDACTED] as the date to finalize the IEP.

6. On [REDACTED] prior to the scheduled meeting, [REDACTED] called [REDACTED] and left a message that due to a family emergency, neither [REDACTED] nor [REDACTED] could attend the meeting. [REDACTED] said that [REDACTED] got a call later that day from [REDACTED] while [REDACTED] was in the process of writing [REDACTED] a letter confirming the earlier message. [REDACTED] told [REDACTED] that the meeting would go forward without the [REDACTED] being in attendance. [REDACTED] said that [REDACTED] told [REDACTED] and then followed up in writing with a letter stating that [REDACTED] did not want the meeting to go forward without [REDACTED] and [REDACTED] being in attendance and [REDACTED] also offered two alternate dates for the meeting [REDACTED], and [REDACTED]. However, [REDACTED] finalized the School Year [REDACTED] IEP on [REDACTED], in the absence of the parents. The [REDACTED] IEP was signed by all IEP team members, except the parents

7. [REDACTED] attended all IEP meeting for School Year [REDACTED] except for the IEP meeting on [REDACTED]. [REDACTED] actively participated in all IEP meetings and expressed concern about [REDACTED] math, SOL's, phonic ear, interpreter, depression and anxiety, reading, counseling, expressive language skills, disability designation - Hearing Impaired.

8. [REDACTED] prepared [REDACTED] second report concerning [REDACTED] dated [REDACTED] ([REDACTED]-13). The report was not presented to [REDACTED] until [REDACTED] after the [REDACTED] IEP had been finalized. Therefore, the report was not considered in developing the [REDACTED] IEP.

9. [REDACTED] had a family emergency that prevented her from attending the [REDACTED] IEP meeting. [REDACTED] attendance was more essential than [REDACTED] because [REDACTED] was the one who communicated with [REDACTED] on matters concerning [REDACTED]

10. [REDACTED] did not respond to [REDACTED] request or concern as expressed in [REDACTED] letter to [REDACTED] dated [REDACTED] ([REDACTED]-11).

11. [REDACTED] visited [REDACTED] on [REDACTED] and [REDACTED] and sat in on classes while there. [REDACTED] met with [REDACTED] before [REDACTED] was accepted, on [REDACTED] and [REDACTED] was accepted into [REDACTED] on [REDACTED], ([REDACTED]-07) withdrawn from [REDACTED] on [REDACTED] and started at [REDACTED] on [REDACTED].

12. Prior to the [REDACTED] IEP meeting, [REDACTED] received two independent reports of [REDACTED] ([REDACTED]-14, dated [REDACTED] and [REDACTED]-15, dated [REDACTED]). [REDACTED] also had received a [REDACTED] report prepared by [REDACTED] ([REDACTED]-16).

13. On [REDACTED] [REDACTED] writes [REDACTED] that the "Stay Put" IEP would be in effect ([REDACTED]-09). [REDACTED] responded to the letter by letter also dated [REDACTED] stating that [REDACTED] did not know what a "Stay Put" IEP was. ([REDACTED]-10) The "Stay Put" IEP referred to the IEP for the [REDACTED] School Year.

14. On [REDACTED] [REDACTED] gave [REDACTED] a copy of [REDACTED] report. ([REDACTED]-13) It was available before the end of [REDACTED].

15. [REDACTED] sent the parents its "Notice of Proposed/Refused Action" dated [REDACTED], informing the parents that the IEP developed [REDACTED] would be implemented.

16. [REDACTED] sent [REDACTED] a letter dated [REDACTED] stating that it was their ten (10) day notice that they were removing [REDACTED] from [REDACTED] and placing [REDACTED] in a private school at public expense. The effective date of the removal was indicated as [REDACTED]. They amended this letter, by a letter dated [REDACTED] stating that

the effective date for removing [redacted] would be [redacted]. [redacted] denied the parent's request for funding the private placement by letter dated [redacted] ([redacted]-04). The parents' letter were sufficient notice of the unilateral placement in compliance with IDEA.

17. The IEP team that met to develop the [redacted] IEP spent over eight (8) hours trying to develop an IEP for [redacted] for the [redacted] School Year. The normal length of time that [redacted] devotes to this process ranges in time from one-half hour to as much as two (2) hours for a long meeting.

18. [redacted] implemented the IEP for School Year [redacted] (SB-71) as a "Stay-Put" IEP after the [redacted] IEP meeting and after the [redacted] IEP had been signed by all IEP team members except the parents.

19. [redacted] contends that [redacted] did not raise any specific concerns about their dissatisfaction with [redacted] IEP or the services [redacted] was receiving. [redacted] contends that [redacted] consistently raised [redacted] concerns about various matters all the while [redacted] was in attendance at [redacted]. [redacted] also expressed an interest in a private placement, and that the [redacted] IEP team members did not want to address this option for [redacted]. The testimony of all witnesses, particularly the testimony of [redacted], [redacted], and [redacted] support [redacted]' contention that [redacted] expressed [redacted] concerns. [redacted] may not have articulated [redacted] concerns with subject matter specificity; however, [redacted] expressed [redacted] clearly enough to require changes to the [redacted] IEP and to cause the meetings leading to the development of the [redacted] IEP to be four (4) times longer than the typical IEP meeting.

20. The [redacted] IEP does not list auditory processing as a specific deficit area to be addressed for which [redacted] should be provided special education services. However, based on the testimony of [redacted], [redacted], and [redacted], it should have been.

21. [redacted] can provide [redacted] with applicable special education services and can

provide [REDACTED] with educational benefit.

V. CONCLUSION

A. Parental Involvement

After four (4) prior meetings and over eight (8) hours of deliberations, the [REDACTED] IEP team, except for the parents, met on [REDACTED] and finalized the [REDACTED] IEP (SB-77). Prior to convening the meeting, [REDACTED] had communicated with [REDACTED] by voice mail, telephone conversation and by letter dated [REDACTED], that [REDACTED] and [REDACTED] would not attend the meeting, that they did not want the meeting to go forward without them and proposed two alternative days for the meeting, [REDACTED] and [REDACTED]. Notwithstanding [REDACTED] communications, the meeting proceeded and the IEP was signed by all the IEP team members, except for the parents.

Based on the record, it is clear tht [REDACTED] was extremely active in [REDACTED] education. Not only did [REDACTED] and [REDACTED] attend all but the last IEP meeting, [REDACTED] met with teachers, made suggestions about [REDACTED] IEPs and the progress [REDACTED] was making and independently arranged for counseling and evaluations. Obviously, as an active parent, it would seem extremely necessary for [REDACTED] continued inclusion in the process to finalize a document that both [REDACTED] and the parents had labored over for so many apparently frustrating hours, to develop an appropriate IEP for [REDACTED]. Therefore, in view of the history of the development of the [REDACTED] IEP, [REDACTED] request for a two week extension of the meeting should have been accepted by [REDACTED] particularly since extensions at the request of both sides had been agreed to in the past.

Furthermore, in view of [REDACTED] use of the prior IEP, as a "Stay Put" IEP after [REDACTED] there was no basis not to continue to do so, for two more weeks. Additionally, had the meeting been continued to a later date as suggested by [REDACTED] the

team would have had the benefit of [REDACTED] report for consideration.

The Hearing Officers concludes that IDEA clearly supports parental participation in the development of an appropriate IEP:

34 C.F.R. §300.345 Parental participation.

(a) Public agency responsibility - general. Each public agency shall take steps to *ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate.*

(c) Other methods to ensure parent participation. *If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.*

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance *if the public agency is unable to convince the parents that they should attend.* In this case the public agency must have a *record of its attempts to arrange a mutually agreed on time and place, such as-*

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any response received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(Emphasis Added)

It appears to the Hearing Officer that after so much time had already been devoted to developing an IEP, the draft of which [REDACTED] had determined was appropriate, it was apparently concluded that another delay, even if two more weeks would not have produced any better results and perhaps the parents may still have not been satisfied. However, it is clear that [REDACTED] wanted to participate in the meeting by [REDACTED] communications with [REDACTED] on the day of the meeting. Rather than attempt to convince [REDACTED] that it was necessary for the meeting to go forward with the parents, [REDACTED] simply said that the meeting will proceed.

Other than the one phone call that [REDACTED] made to [REDACTED] on [REDACTED] 2001, the record does not reflect efforts of [REDACTED] to convince the parents to attend the meeting and does not document the efforts to do so. Accordingly, the Hearing Officer concludes that [REDACTED] did not comply with the regulations cited above. Additionally, it is evident that [REDACTED] was still interested in developing an IEP for [REDACTED] at [REDACTED] in view of the fact that on [REDACTED] [REDACTED] gave [REDACTED] a copy of [REDACTED] [REDACTED] report ([REDACTED]-13). It is noted that this was before [REDACTED] had been accepted at [REDACTED] and before the parents' notification of the unilateral placement.

In developing the [REDACTED] IEP the team met four (4) times with the parents and one additional time without them. [REDACTED] asserted that neither [REDACTED] nor [REDACTED] could attend the meeting due to a family emergency. The family member was [REDACTED]. Presumably, [REDACTED] could have attended; however, [REDACTED] was the one who dealt with [REDACTED] concerning [REDACTED] and was clearly the parent most actively involved with [REDACTED] on matters concerning [REDACTED]. Accordingly, [REDACTED] attendance at any meeting was necessary.

At the Hearing, [REDACTED] questioned whether or not there was an actual emergency and if so, why couldn't another family member have dealt with it. Nevertheless, no evidence was presented that contradicted [REDACTED] assertion of an emergency and one that [REDACTED] had to deal with.

Additionally, the only evidence on the record concerning a basis for proceeding with the [REDACTED] meeting, was as [REDACTED] stated that [REDACTED] felt [REDACTED] needed a current IEP. Also, that the IEP was essentially completed except for the first two pages, a draft of which had been sent to the parents without any comments coming back.

The evidence is that [REDACTED] proceeded to implement the prior year IEP as a "stay put" IEP after the [REDACTED] meeting based on the letter from [REDACTED] to [REDACTED]

[REDACTED] dated [REDACTED]. Therefore, it is clear that [REDACTED] could have waited to hold another meeting in which to develop [REDACTED] IEP. If the meeting had been postponed, then [REDACTED] last report could have been available for the team to consider in finalizing the IEP.

In the final analysis, the Hearing Officer concludes that [REDACTED] should have either postponed the meeting or made appropriate efforts to get the parents to attend the meeting, even if by conference call. By not doing so, [REDACTED] failed to comply with the above cited regulations.

Although it can be argued that the failure to comply with 34 C.F.R. §300.345 may only constitute a procedural violation, it has been held that while a procedural violation of IDEA may constitute a *per se* denial of FAPE, the procedural violation must be so significant as to deny the education itself or prevent meaningful parental involvement, Fairfax County Pub. Schs., 29 IDLER 1096 (SEA 1998), *Hall v. Vance County Bd. Of Educ.*, 774 F. 2d 629 (4th Cir. 1985).

The Hearing Officer concludes that going forward with the meeting after the parents expressed their desire to attend and requested a continuation to two alternative days was such a procedural violation as to deny meaningful parental involvement, notwithstanding that this would have been the fifth meeting to finalize an essentially complete IEP.

B. Rejection of the IEP and Ten Day Notice

The IDEA and Supporting Regulations limit the parents' right to reimbursement if the provisions of the statute are not followed:

(iii) Limitation on reimbursement

The cost of reimbursement described in clause (ii) may be reduced or denied--

(1) if--

(aa) *at the most recent IEP meeting that the parents attended prior to removal* of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including *stating their concerns* and their intent to enroll their child in a private school at

public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

34 d.F.R.300.403 (d); 8 VAC 20-80-66(B)(4).

(Emphasis Added)

The last meeting that the parents attended was [REDACTED]. At that meeting, the parents did not say that they were rejecting the IEP that had been essentially completed. In fact, they participated in planning the date of [REDACTED] as the date of the next meeting. Accordingly, the parents, could not have rejected the IEP at the last meeting they attended. The rejection of the IEP occurred after [REDACTED] informed the parents by Notice of Proposed/Refused Action, dated [REDACTED] [REDACTED] ([REDACTED]-08) that even though they had not signed the IEP it would be implemented.

With regard to rejecting the IEP, it is noted that [REDACTED] asserted throughout the Hearing that [REDACTED] did not articulate [REDACTED] specific concerns with [REDACTED] IEP, or the services that [REDACTED] was receiving. [REDACTED] on the otherhand asserts that [REDACTED] consistently tried to inform the [REDACTED] staff of [REDACTED] concerns. A review of the record confirms [REDACTED] assertion. [REDACTED] may not have expressed [REDACTED] concerns with the degree of specificity that some could have done, nor to the satisfaction of the applicable [REDACTED] personnel. In any event, [REDACTED] was clear enough to cause IEPs to be amended and [REDACTED] concern with math was a major contributing factor in the length of the process of developing the [REDACTED] IEP. Although [REDACTED] intended to offer testimony with examples of how [REDACTED] did not specify [REDACTED] concerns, in the Hearing Officer's view, it had the opposite affect of supporting [REDACTED] assertion that, on a consistent basis, [REDACTED] expressed [REDACTED] concerns to [REDACTED].

The ten (10) day notice provision as stated in the above cited regulations allows the School division to address the parents' concerns before any removal. However, it is evident that

[REDACTED] was no longer willing to address the parents' concerns, since the decision was made to proceed with the meeting with out the parents in attendance. Also, [REDACTED] failed to consider the request for postponement of the meeting and then issued the [REDACTED] Notice to implement the IEP even though it was earlier stated that the "Stay Put" IEP would be used.

In any event, the [REDACTED] formally notified [REDACTED] of their decision to place [REDACTED] at [REDACTED] effective [REDACTED] by letter dated [REDACTED] as amended by letter dated [REDACTED] after [REDACTED] had been accepted at [REDACTED] by letter dated [REDACTED]. The Hearing Officer concludes that actions of [REDACTED] as stated herein and the letters of the parents constitute sufficient notice.

C. Consideration of Independent Evaluations

[REDACTED] and [REDACTED] testified that after reviewing the [REDACTED] IEP, they did not see their recommendations and concerns addressed. Yet, [REDACTED] witnesses testified as experts in their respective fields and testified that both of [REDACTED] reports had been considered as well as the first report by [REDACTED]. Whereas [REDACTED] does not have to accept the recommendations of outside experts or consider their concerns, here, [REDACTED] said that they did consider the reports; yet, two highly qualified experts said that they could not find their recommendations and concerns in the [REDACTED] IEP. It is difficult to believe that [REDACTED] and [REDACTED] could not find some of their recommendations in a report, if they were clearly expressed in the document.

Furthermore, the [REDACTED] IEP of [REDACTED] was not provided to [REDACTED] until after the IEP meeting. Even though some [REDACTED] witnesses testified that they had individually reviewed the report after the IEP meeting, but before the Hearing, they saw no need to make changes to the [REDACTED] IEP. However, there does not appear to have been any IEP team discussion of the report, even if the [REDACTED] team had individually read the

report. In view of [redacted] very credible testimony, the Hearing Officer agrees that [redacted] recommendations regarding auditory processing were not sufficiently addressed in the IEP. The Hearing Officer finds the testimony of [redacted] to be persuasive and that auditory processing is [redacted] primary deficit.

D. Appropriate IEP

It is noted that [redacted] was not [redacted] classroom teacher and only briefly observed [redacted] in class; however, [redacted] did more than just perform assessments and tests and evaluate [redacted] [redacted] [redacted] got to know [redacted] as a result of a five - week program in the Summer [redacted] and was able to see first hand how [redacted] reacts in an learning environment. [redacted] prepared two reports concerning [redacted] views regarding [redacted] [redacted] also prepared two reports, the first dated [redacted] (SH-16) and the second one dated [redacted] ([redacted]-13).

The [redacted] staff consisting of [redacted] teachers and other professionals, got to know [redacted] as a result of working with [redacted] in the classroom environment at [redacted]. It is clear that they were aware of [redacted] deficits, but with regard to auditory processing, [redacted] approached [redacted] as though auditory processing should not be a separate area to address, but included it among other deficits. Whereas the [redacted] staff had greater access to [redacted] and were in a position to observe [redacted] regularly, [redacted] is a highly skilled expert in the field of audiology and could make professional judgments regarding [redacted] hearing problems. [redacted] had sufficient access to personally observe [redacted] and determine, in [redacted] professional opinion, [redacted] primary deficit which should have been treated as a major area in the IEP.

Furthermore, [redacted] time with [redacted] was impacted by the fact that [redacted] started at [redacted] in late [redacted] and was absent from school a great deal in the beginning of the [redacted] School Year prior to [redacted] removal. Also, even though [redacted] asserted that [redacted] was improving, [redacted] mother, who is extremely active in [redacted] education stated the reverse, along with other experts for the parents.

Even though the [REDACTED] staff testified as experts in their fields, the Hearing Officer is more persuaded by the testimony of [REDACTED] and [REDACTED] about [REDACTED] major deficit being auditory processing and it should have been specifically set out as such in the IEP.

E. A Free And Appropriate Public Education "FAPE"

Under established Supreme Court decisions, a school system's failure to provide a student FAPE leads directly to the determination of whether [REDACTED] parents identified a placement that provided him with educational benefit.

A Free Appropriate Public Education does not mean that the student is to receive the best education possible; instead, the student must receive the "basic floor of opportunity" and which is "reasonably calculated to offer a child some educational benefit." Board of Education v. Rowley, 458 U.S. 176 (1982).

[REDACTED] would be correct in stating that under Rowley a school system is not required to provide the best education or to maximize each child's potential. However, it is difficult to understand how [REDACTED] could have drafted an appropriate IEP for [REDACTED] that was tailored to meet [REDACTED] particular needs, without the participation in the IEP process of all independent evaluations showing that [REDACTED] primary deficit is auditory processing. Also, it is particularly problematic that [REDACTED] proceeded with the [REDACTED] meeting in view of the history of the development of the [REDACTED] IEP. The Hearing Officer did not find that the educational program offered by [REDACTED] would maximize [REDACTED] education. In fact, the special education programs that [REDACTED] and [REDACTED] offer are quite similar. But here, with respect to [REDACTED] the difference in the Hearing Officer's opinion is that [REDACTED] will address [REDACTED] auditory processing deficit as suggested by [REDACTED] and [REDACTED]. Therefore, the private placement is to offer [REDACTED] that "basic floor of Opportunity".

It has been held that reimbursement for a private placement is not appropriate unless the

parent proves that the school's program is inappropriate and the private placement is appropriate. Burlington Sch. Comm. V. Department of Educ., et al, 471 U.S. 359 (1985), Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993). As stated herein, [REDACTED] primary deficit is auditory processing which should be a specific area addressed in [REDACTED] IEP. [REDACTED] has not demonstrated that it will approach [REDACTED] primary deficit as such, accordingly, the [REDACTED] program is inappropriate for [REDACTED]. The Hearing also believes that the conclusions reached here are consistent with key decisions regarding reimbursement for unilateral placements.

Reimbursement is not appropriate when the Student's placement is "necessary for medical, social or emotional problems that are segregable from the learning process . . ." Board of Educ. Of Montgomery County v. Brett Y., 28 IDLER 460, 466 (4th Cir. 1998), citing Burke County Bd of Educ. V. Denton, 895 F. 2nd 973 at 980 (4th Cir. 1990).

Under Burlington, the Supreme Court explained that "parents who disagree with the proposed {educational program} are faced with a choice: go along with the [proposed program] to the detriment of their child if it turns out to be inappropriate or pay for what they consider to be the appropriate placement." 471 U.S. at 370.

To avoid compromising a child's right to a FAPE, the Court concluded that if "a court determined that a private placement desired by the parents was proper under the Act and that [a proposed] placement in a public school was inappropriate, "the IDEA authorizes retroactive reimbursement to parents." Id. This is necessary because "[t]he Act was intended to give handicapped children both an appropriate education and a free one; it should not be interpreted to defeat one or the other of those objectives." Id.

When the parents have made a unilateral placement at a private school which is not state-approved, that fact will not bar reimbursement if the local school district was not providing FAPE, Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993).

In Carter, the Supreme Court reaffirmed its ruling in Burlington and explained that "public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State's choice." 510 U.S. at 13.

IDEA requires that children with disabilities be educated in the "Less Restrictive Environment" in that they are to be educated, to the maximum extent appropriate, with nondisabled children, including children in public or private institutions or other care facilities. Furthermore, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. 1412(a)(5); 34 C.F.R. 300.130; 8 VAC 20-80-64(A)(1)

█████ testified about █████ experience at █████ since ██████████ in comparison with █████. Among other things, █████ testified that the classes are smaller with two teachers and █████ can concentrate better. Furthermore, based on the testimony of the parents' expert witnesses, █████ requires a more restrictive environment to address not only █████ auditroy procesing problem, but also to address █████ anxiety, etc. In this regard, █████ was determined to be the Least Restrictive Environment for █████ by all of parents' expert witnesses, who the Hearing Officer find to be credible witnesses.

The test for whether a parental placement is "proper under the act" is whether "the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits." Carter, 950 F.2d at 163, quoting Rowley, 458 U.S. at 207. Accordingly, the question is whether the unilateral parental placement at █████ provided █████ with educational benefit. Parental placements are held to a less strict standard, since "it hardly seems

consistent with the Act's goals to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place." Carter, 950 F.2d at 164.

The Hearing Officer believes the same logic in Carter applies here and concludes: that the parents provided an appropriate notice of the unilateral placement; that the parents indicated their specific concerns to [REDACTED] about the IEP; that the [REDACTED] IEP did not sufficiently address all areas of suspected disability; that the [REDACTED] IEP failed to sufficiently consider the independent expert evaluations; that [REDACTED] is an appropriate placement for [REDACTED]. Accordingly, it is the decision of this Hearing Officer that the parents are entitled to reimbursement for [REDACTED] placement at [REDACTED] retroactive to [REDACTED], and reimbursement for the independent evaluations.

[REDACTED]
[REDACTED]
Hearing Officer

[REDACTED] 02

Date

ORDER

It is ORDERED that [REDACTED] place [REDACTED] at [REDACTED] and reimburse the parents for the placement retroactive to [REDACTED]. It is further ORDERED that [REDACTED] shall reimburse the parents for the independent expert educational evaluations. It is further ORDERED that [REDACTED] submit an implementation plan to the parties, the hearing officer and the SEA within 45 calendar days.

APPEAL INFORMATION

An appeal of this decision by either party must be instituted within 30 administrative days following the date below by request made to the Virginia Department of education.

[REDACTED]

Date

[REDACTED]

Hearing Officer