

VIRGINIA DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL PROGRAMS

POST HEARING REPORT



[Redacted] School Division

[Redacted] Name of Parents

[Redacted] Director, Special Education

[Redacted] Name of Child

[Redacted] Counsel Representing LEA

[Redacted] Counsel Representing Parent/Child

[Redacted] Hearing Officer

[Redacted] Party Initiating Hearing

ISSUE(S) AND PURPOSE OF HEARING

[Redacted] requested a hearing to resolve all issues that exist between the [Redacted] system and [Redacted] concerning implementation and execution of [Redacted] IEP. The issues presented for consideration are:

1. Has [Redacted] PS implemented [Redacted] individualized education plan ("IEP"), dated [Redacted] [Redacted] 2001?
2. Has [Redacted] PS used appropriate communication tools to inform Mrs. [Redacted] of [Redacted] educational progress?
3. Has [Redacted] PS provided appropriately qualified staff capable of implementing the goals and objectives of [Redacted] IEP?
4. Does Dr. [Redacted] observation of [Redacted] on [Redacted] 2001 require that [Redacted] 2001 IEP be revised?
5. Is attendance at the [Redacted] necessary to provide [Redacted] with a free appropriate public education (FAPE)?
6. Has [Redacted] PS provided [Redacted] with a free appropriate public education (FAPE)?
7. Must [Redacted] PS pay for [Redacted] evaluation by the [Redacted] Education Center?

PROCEEDINGS

A Due Process Hearing took place on Thursday and Friday, [REDACTED] 2002 at the [REDACTED] Administration Building. The hearing commenced at 9:30 a.m.

[REDACTED] introduced 29 exhibits. [REDACTED] Public Schools introduced 173 numbered exhibits and two lettered exhibits. All exhibits were admitted into the Record of this proceeding. Additionally, the Hearing Officer has received a Vocational Evaluation Report dated [REDACTED] 2002 for [REDACTED] from [REDACTED] Education Center. This Report will be received in the Record as Parents Exhibit 30.

Although [REDACTED] initiated the due process hearing, the parties agreed that Mrs. [REDACTED] could proceed first to accommodate the schedules of [REDACTED] witnesses. [REDACTED] called the following witnesses:

The [REDACTED]

[REDACTED]
[REDACTED] Family friend

[REDACTED]
Senior Teacher for Special Education
[REDACTED] Public Schools

[REDACTED]
Special Education Teacher
[REDACTED] Public Schools

[REDACTED]
Teacher, Education for Employment
[REDACTED] Public Schools

[REDACTED] Ph.D.
Associate Professor
[REDACTED]

[REDACTED]
Mother [REDACTED]

[REDACTED] Public Schools presented the following witnesses:

[REDACTED]
School psychologist
[REDACTED] Public Schools

[REDACTED]
Special Education Specialist
[REDACTED] Public Schools

[REDACTED]
Autism Positive Behavioral Support Specialist
[REDACTED] Public Schools

[REDACTED]
Lead Teacher Specialist for
Special Education Transition Services
[REDACTED] Public Schools

FINDINGS OF FACT

Documentary Evidence

[REDACTED] was born on [REDACTED] 1985 to [REDACTED]. [REDACTED] is autistic and also has Attention Deficit Hyperactivity Disorder ("ADHD"). [REDACTED] has received special education services from [REDACTED] since [REDACTED] was a preschooler. [REDACTED] Ex. Book B, Tab 16).

[REDACTED] 2000, [REDACTED] was suspended from [REDACTED] School for threatening [REDACTED] teacher and using abusive language. Subsequently, [REDACTED] received homebound instruction from [REDACTED] 2001. [REDACTED] Ex. Book B, Tab 44) Ms. [REDACTED] noted [REDACTED] slow but steady progress in a Progress Report dated February 15, 2001.

On or about [REDACTED] 2001, [REDACTED] complained to the Virginia Department of Education about the special education services [REDACTED] provided [REDACTED]. [REDACTED] complaint was mediated on [REDACTED] 2001 and resulted in a Mediation Memorandum of Agreement, executed [REDACTED] 2001. [REDACTED] Ex. Book B, Tab 1) The Mediation Memorandum of Agreement addressed, among other topics,

- (1) [REDACTED] transition to school based services, beginning [REDACTED] 2001 and continuing every Tuesday and Thursday thereafter at the [REDACTED] School Board office for the remainder of school year 2000 - 2001;

- (ii) daily communication regarding [REDACTED] through a communication notebook established by [REDACTED] and [REDACTED];
- (iii) consideration of [REDACTED] dietary needs; and
- (iv) convening an IEP meeting on [REDACTED] 2001, at which the parties would discuss the possibility of [REDACTED] attending class three days per week.

Consistent with the Mediation Memorandum of Agreement, [REDACTED] transition teacher for [REDACTED] presented a detailed statement of functional Academic Dates and Material Covered for [REDACTED] from [REDACTED] 2001 through [REDACTED] 2001. (Ex. Book B, Tabs 45, 46). [REDACTED] maintained a communications notebook from [REDACTED] through [REDACTED] 2001. (Ex. Book B, Tab 49)

Following the [REDACTED] 2001 IEP meeting, [REDACTED] for the first time asked that in-home residential services be included in [REDACTED] IEP. [REDACTED] agreed to discuss this request at its [REDACTED] 2001 IEP meeting. As a goal, [REDACTED] also requested that [REDACTED] be provided with assistance with food purchasing and preparation to meet [REDACTED] dietary needs. [REDACTED] did not raise in-home residential service as an issue when mediating [REDACTED] grievance in [REDACTED] 2001.

[REDACTED] participated in an IEP meeting for [REDACTED] on [REDACTED] 2001. At that meeting, the IEP team denied [REDACTED] request for in-home residential support services. (Ex. Book B, Tab 32)

By e-mail dated [REDACTED] 2001, [REDACTED] asked that the [REDACTED] 2001 mediation be reopened to consider [REDACTED] request for in-home residential services. [REDACTED] through [REDACTED] declined. (Ex. Book B, Tab 33) [REDACTED] then asked, on [REDACTED] 2001, for a full formal educational evaluation of [REDACTED]. (Ex. Book B, Tab 34)

[REDACTED] next IEP occurred on [REDACTED] 2001. The IEP team reported that [REDACTED] was progressing with [REDACTED] IEP goals/objectives and expressed the opinion that [REDACTED] time at school should be increased. As a means of transitioning [REDACTED] into [REDACTED] High School, the IEP team proposed that [REDACTED] attend the [REDACTED] School Board Office simulated classroom three days per week. (Ex. Book B, Tab 39) [REDACTED] objected to this proposal.

[REDACTED] 2001, [REDACTED] filed for a due process hearing. (Ex. Book C, Tab 1) At its core, [REDACTED] complained that [REDACTED] would not allow [REDACTED] to implement and follow the terms of the [REDACTED] 2001 Mediation Agreement. [REDACTED]S and [REDACTED] were in conflict in that [REDACTED] was working to return [REDACTED] to a classroom-based setting, contrary to the desire of [REDACTED]. (Ex. Book C, Tab 2) [REDACTED] countered by filing [REDACTED] own request for a due process hearing. (Ex. Book C, Tab 7) The due process requests of both parties were merged. (Ex. Book C, Tab 9)

██████████ next IEP occurred on ██████████ 2001, at which time the IEP team considered extended school year ("ESY") services for the summer 2001. ██████████ were in attendance; ██████████ signed the IEP Addendum. (██████████ Ex. Book C, Tab 15)

By correspondence dated ██████████ 2001, child psychiatrist ██████████ M.D. recommended homebound instruction and external training option ("ETO") for ██████████ (██████████ Ex. Book C, Tab 10)

The parties to this proceeding resolved their respective due process claims through a Settlement Agreement and Order, entered ██████████ 2001. The Agreement provided, among other things, that ██████████ would receive ██████████ educational services at ██████████ ██████████ High School for the 2001 – 2002 academic school year. ██████████ agreed to provide an orientation for ██████████ with ██████████ new case manager and teachers. It was agreed that an IEP team would meet no later than ██████████ 2001, to adopt the goals and objectives of ██████████ IEP which had been approved by the IEP team and authorized by ██████████ on ██████████ 2001. Further, the parties agreed that

- (i) the IEP team would not consider any new goals until the completion of at least one full academic semester in the 2001 – 2002 academic year; and
- (ii) ██████████ would focus ██████████ efforts on functional academics and vocational education. (██████████ Ex. Book C, Tab 30)

Following execution of the Settlement Agreement and Order, ██████████ raised questions about the transition services ██████████ would provide ██████████. (██████████ Ex. Book C, Tab 33). ██████████ responded on ██████████ 2001 to explain that ██████████ was required to provide extended school year service pursuant to the ██████████ 2001 Mediation Memorandum of Agreement. ██████████ explained that ██████████ was carrying out this directive by conducting assessments to determine ██████████ future work site experience. (██████████ Ex. Book C, Tab 34)

██████████ asked ██████████ to consider the summer program offered by the ██████████ ██████████ ("CVILC") to fill the hours ██████████ would otherwise have spent with ██████████ (██████████ Ex. Book C, Tab 33) ██████████ agreed to reschedule ██████████ August IEP to an earlier time to consider this request. (██████████ Ex. Book C, Tab 37) ██████████ convened an IEP on ██████████ 2001 and concluded that the ██████████ summer program was appropriate to support ██████████ IEP for the duration from ██████████ 2001 through ██████████ 2001. (██████████ Ex. Book C, Tab 38)

Following execution of the Settlement Agreement and Order, ██████████ requested an Educational Assessment for ██████████ (██████████ Ex. Book C, Tab 40). ██████████ conducted the evaluation and submitted ██████████ report to the IEP team. (██████████ Ex. Book C, Tab 60) On ██████████ 2001 ██████████ requested a Functional Behavioral Assessment and a Behavioral Intervention Plan for ██████████ (██████████ Ex. Book C, Tab 41) On ██████████ 2001, ██████████ expressed dissatisfaction that ██████████ was not assigned to ██████████ as a teacher. (██████████ Ex. Book C, Tab 44) On ██████████ 2001, ██████████

██████████ met with ██████████ Assistant Superintendent of Instructional Leadership, ██████████ to request a Functional Assessment of ██████████. They also asked that ██████████ be assigned to ██████████ rather than ██████████ for the 2001 – 2002 academic school year. (██████████ Ex. Book C, Tab 51)

██████████, ██████████, advised ██████████ that ██████████ would like to schedule an IEP on ██████████ 2001 to discuss the requested functional behavior assessment plan and behavior intervention plan. (██████████ Ex. Book C, Tab 49) That meeting was cancelled by ██████████ (██████████ Ex. Book C, Tab 50) and reconvened on ██████████ 2001. (██████████ Ex. Book C, Tab 59) The IEP team ultimately considered the functional assessment plan and behavioral intervention plan on ██████████ 2001. (██████████ Ex. Book C, Tab 69)

On ██████████ 2001, ██████████ IEP was amended to decrease ██████████ functional academic instruction from two (2) hours per day to one hour and twenty minutes per day. This was done to accommodate the demands of ██████████ part time paid competitive job and the concomitant additional support at the job site by ██████████ transition staff. (██████████ Ex. Book D, Tab 2)

██████████ IEP team met again on ██████████ 2001. The team proposed that the functional assessment be stopped because ██████████ was doing well behaviorally in both ██████████ school and work place. The IEP team also denied ██████████ request that ██████████ be placed in ██████████ as a replacement for "school based" IEP services or as an extended day service. The IEP team explained

The ██████████ is not an accredited program. Classes only meet 1x/week for one hour for the duration of 6 weeks. ██████████ current program provides 1 hr 20 minutes 5x/week and addresses all goals. ██████████ class would address only one topic. (██████████ Ex. Book D, Tab 28)

██████████ filed a Compliance Complaint with the Virginia Department of Education on ██████████ 2001. (██████████ Ex. Book D, Tab 32) Therein ██████████ expressed dismay generally about the services ██████████ was receiving from ██████████. On ██████████ 2001, ██████████ filed for a due process hearing. (██████████ Ex. Book D, Tab 37) The Department of Education placed ██████████ complaint in abeyance until the instant matter is concluded. (██████████ Ex. Book D, Tab 38)

██████████ participated in a Vocational Evaluation Program offered by ██████████ Education Center on ██████████ and ██████████ 2002. (Parents Ex. 30) ██████████ ██████████, M.Ed., authored the report of ██████████ evaluation. In ██████████ summary section, ██████████ noted

. . . Throughout the evaluation, ██████████ was generally cooperative, enthusiastic, willing to try suggested tasks, and appeared to put forth effort. ██████████ also displayed a sense of humor and was generally able to interact with the evaluation staff. ██████████ needed support to complete most tasks and had difficulty

remaining in [redacted] work area. [redacted] needed prompts and reminders to maintain eye contact, wait for instructions prior to initiating tasks and limit talking while working. . . Overall [redacted] was an enthusiastic, enjoyable hard working young [redacted] [redacted] would benefit from training that focuses on mastering suggested vocational/work preparatory skills and behaviors with opportunities to revisit goals during educational/transitional planning. This training should include monitoring and immediate feedback. Training goals should focus on preparing [redacted] for increased independence and future employment.

Witness Testimony

[redacted]

Dr. [redacted] is a developmental pediatrician. [redacted] experience consists of three years of medical residency, three years of post residency fellowship working with children with developmental disabilities, and a twenty-year special interest in the field of autism.

Dr. [redacted] has treated [redacted] for several years. [redacted] testified that [redacted] is autistic and suffers from attention deficit hyperactivity disorder ("ADHD"). [redacted] also presents wheat and gluten intolerance.

Dr. [redacted] testified that diet can affect an autistic's behavior. Intolerance to wheat can produce a chronic inflammatory response in the gut wall. Gluten intolerance can lead to celiac disease and colon cancer. It is therefore important for [redacted] to understand what might happen to [redacted] health if [redacted] includes gluten in [redacted] diet.

Dr. [redacted] further testified of the importance of maintaining a schedule for [redacted] so [redacted] can anticipate the events in [redacted] daily life. In Dr. [redacted] opinion, [redacted] will need support to manage [redacted] diet, to obtain and retain employment, and to live independently.

Dr. [redacted] was not familiar with the services [redacted] PS provided [redacted]

[redacted]

[redacted] is a friend of the [redacted] family. [redacted] has attended training with the Autism Society and has known [redacted] and the [redacted] since 1991. [redacted] has witnessed [redacted] progression through the [redacted] School system.

[redacted] served as [redacted] PATH coach in [redacted] 2000. [redacted] testified that [redacted] was very excited about [redacted] PATH meeting. During the meeting, [redacted] was in control, focused and comfortable with [redacted] situation.

[redacted] testified that [redacted] told [redacted] did not want to attend [redacted] School.

██████████ frequently takes ██████████ with ██████████ on errands.

On ██████████ 2001, ██████████ took ██████████ to meet ██████████ and ██████████ at ██████████ High School. The purpose of the meeting was to acquaint ██████████ with the arrangements made for ██████████ transition back into the academic environment. ██████████ also met with Mr. ██████████, the school principal, and ██████████, ██████████ former Education for Employment teacher. They discussed classroom location, access to the bathroom, ██████████ drop-off at school and ██████████ cooking class. (Parents Ex. 25)

██████████ uses visual schedules, social stories and positive behavioral supports in ██████████ relationship with ██████████

██████████

██████████ holds a BS degree in Special Education, an MS degree in Counselor Education and is certified for grades K through 12.

██████████ worked with ██████████ in ██████████ extended summer program ("ESY") during the summer 2001. ██████████ communicated daily with ██████████ during the ESY, using a communications notebook format requested by ██████████ (Parents Ex. 7, 20).

██████████ provided information about ██████████ dietary needs, which ██████████ utilized during ██████████ ESY. (██████████ Ex. Book D, Tab 43) ██████████ testified that, in ██████████ opinion, ██████████ understood ██████████ dietary needs and limitations; i.e., ██████████ understood what ██████████ diet meant.

██████████ stated that ██████████ completed all the goals and objective set for ██████████ ESY.

██████████

██████████ holds a BS degree and a comprehensive Special Education EMH program for grades K through 12.

██████████ was ██████████ homebound tutor, from ██████████ 2001 through the end of the school year (██████████ 2001) ██████████ testified that ██████████ first sessions with ██████████ were "rough," but ██████████ and ██████████ developed a good relationship as time progressed.

██████████ exhibited great behavior during ██████████ cooking and functional skills training. ██████████ had a more difficult time with actual academics.

██████████ recalled a time when ██████████ had to instruct ██████████ at the Community Services Board rather than at ██████████ home. ██████████ observed that ██████████ did not function as well, attributing ██████████ performance on the change in location.

██████████ and ██████████ communicated regularly regarding ██████████ cooking instructions and cooking supplies appropriate for ██████████ diet.

██████████ testified that she was to begin teaching ██████████ at 4:00 pm. This turned out to be confusing for ██████████ because ██████████ thought ██████████ school day ended at 4:00 pm. After consultation with ██████████ IEP team, the instruction time was changed.

██████████ holds a Bachelor's degree in business administration and management and a Master's degree in rehabilitation counseling. ██████████ has also attended a number of postgraduate courses in education for special needs and in substance abuse. ██████████ has been a teacher for twenty years.

██████████ teaches Education for Employment at ██████████ High School. ██████████ recalled ██████████ being in ██████████ class and that ██████████ did well. ██████████ found ██████████ easy to redirect, when needed, and offered the thought that ██████████ fared well because ██████████ class was less structured than others.

██████████ served as ██████████ coach, with ██████████ for ██████████ meeting on ██████████ 2000. ██████████ testified that ██████████ took great pride in the meeting and served as "host" for the gathering.

██████████ recounted a time when ██████████ asked ██████████ to write a letter of recommendation for the ██████████ Forum. ██████████ did not think this was appropriate and after some time explained to ██████████ at some length why ██████████ would not write the letter. ██████████ understood ██████████ position and expressed no hard feelings – either then or subsequently.

██████████ testified that ██████████ likes to fish. ██████████ was interested in obtaining a fishing license so ██████████ could accompany ██████████. ██████████ wrote to ██████████ communication notebook that ██████████) would take ██████████ to get a fishing license if ██████████ had the ██████████ permission. ██████████ received no reply to the inquiry.

Since then, ██████████ has expressed reluctance to maintaining ██████████ friendship with ██████████. ██████████ believes there is too much dissension with ██████████ and that this has interfered with ██████████ ability to learn. ██████████ also believes that ██████████ many and cumulative requests for services for ██████████ has demanded a disproportionate amount of school resources for ██████████ case management. By continuing ██████████ friendship/mentorship with ██████████ ██████████ may lose what free time ██████████ has to mentor other children with special needs.

[redacted] testified that [redacted] has responded to every request made by [redacted].

[redacted]

Dr. [redacted] received [redacted] Ph.D and is a licensed clinical psychologist. [redacted] is an associate professor in the Department of Psychiatry at the [redacted]

Dr. [redacted] first met with [redacted] following the [redacted] 2001 Mediation Agreement for the purpose of developing coping skills, anger management and distress. [redacted] has seen [redacted] approximately ten times.

Dr. [redacted] stated that [redacted] requires consistency and instructional tools, such as social stories. [redacted] has seen [redacted] IEP (Parent Ex. 20) and believes it is difficult to fulfil all of [redacted] goals with only one hour and twenty minutes of instructional time.

Dr. [redacted] stated that it was important for [redacted] staff to be trained in behavioral techniques. The Autism Program of Virginia and the Virginia Autism Resource Center are available resources.

Dr. [redacted] acknowledged that the Mediation Agreement sought ways to reinforce [redacted] transition back to school based services.

Dr. [redacted] believes that [redacted] has the capacity to demonstrate reasonable self-control in [redacted] behavior if [redacted] is given appropriate supports; i.e., [redacted] can acquire the skills to help [redacted] control [redacted] temper.

[redacted] currently works at the [redacted] Center about 5 1/2 hours per day. Dr. [redacted] understands that [redacted] supervisors are pleased with [redacted] progress in the work place. [redacted] understands also that [redacted] receives one-to-one assistance from [redacted] staff when working at the [redacted] Center.

Dr. [redacted] testified that [redacted] benefited from [redacted] ESY services. [redacted] was concerned that [redacted] had a negative fixation on one of [redacted] teachers - [redacted] - and that this might adversely affect [redacted] capacity to learn if [redacted] was [redacted] teacher in the future. However, Dr. [redacted] observed [redacted] responding well to [redacted] in class on [redacted] 2001 and wrote so in a letter dated [redacted] 2001 to [redacted] (Parent Ex. 26)

[redacted]

[redacted] is [redacted] mother. [redacted] has attended workshops throughout the United States on autism. [redacted] has been an active member of the [redacted]

Autism Society of America, for ten years. In addition to providing multiple volunteer services, [REDACTED] also served as the chapter's president from [REDACTED] through [REDACTED]

[REDACTED] also belongs to the [REDACTED] Support group. This organization meets monthly to share information about celiacs and their special dietary needs.

[REDACTED] stated that [REDACTED] has been in [REDACTED] Public Schools since [REDACTED] was three and one half. [REDACTED] has been very pro-active in [REDACTED] education, providing information and treatment plans to [REDACTED] teachers. [REDACTED] has attended [REDACTED] IEP meetings; professionals in the field of autism have also met with [REDACTED] IEP team on occasion.

[REDACTED] has special dietary needs. [REDACTED] testified that [REDACTED] family spends a large amount of its resources learning how to manage [REDACTED] diet successfully. [REDACTED] expressed frustration with the inconsistency in the information available.

[REDACTED] also spoke of [REDACTED] medications. [REDACTED] noted the difficulty in finding the proper medications, in light of [REDACTED] hypoglycemic, celiac disease and other disabilities.

[REDACTED] also testified of their efforts at therapy and behavioral intervention for [REDACTED]. [REDACTED] recalled investigating occupational therapy, physical therapy and therapeutic recreation as possible protocols to benefit [REDACTED]

[REDACTED] described the [REDACTED] (" [REDACTED] ") process. [REDACTED] described it as a means whereby the participant describes [REDACTED] dreams, who [REDACTED] is and what [REDACTED] hopes to become. The participant is in charge of the meeting, supported by a facilitator and an artist. Once developed, the participant reviews the [REDACTED] to determine what is possible to accomplish within one year. The process is positive and supportive to the participant. [REDACTED] occurred on [REDACTED] 2000. (Parents Ex. 1)

Mrs. [REDACTED] testified to [REDACTED] efforts to assist [REDACTED] staff on autism. [REDACTED] has obtained scholarships for various workshops for [REDACTED] staff. [REDACTED] also worked on the committee that developed the autism handbook (Parents Ex. 12)

[REDACTED] expressed [REDACTED] concern about [REDACTED] development for independent living. [REDACTED] has tried to find resources that will help [REDACTED] and shares [REDACTED] discoveries with [REDACTED] staff. [REDACTED] recognizes that not all programs will be helpful, but wants to try as many techniques as possible to assist [REDACTED]. [REDACTED] frustration is that new information is available daily that might affect prior plans established for [REDACTED].

[REDACTED]

[REDACTED] is the school psychologist for [REDACTED] Public Schools. [REDACTED] holds a BA degree in psychology, an MA degree in school psychology and a certificate of advanced study in the field of school psychology.

[REDACTED] has known [REDACTED] for about twelve years. [REDACTED] current association with [REDACTED] began in the summer 1999. Since then [REDACTED] has worked with [REDACTED] in the Learn and Earn Program; [REDACTED] has provided individual counseling to transition [REDACTED] to [REDACTED] High School; [REDACTED] observed [REDACTED] during [REDACTED] work program at [REDACTED] ([REDACTED]); and observed [REDACTED] during [REDACTED] ESY program. [REDACTED] has counseled [REDACTED] since the summer 1999, with frequencies ranging from once per week to twice per month. [REDACTED] has participated in [REDACTED] IEP meeting since the summer 1999.

[REDACTED] is trained in autism and is familiar with autism resources.

[REDACTED] testified that [REDACTED] is a likable young [REDACTED] [REDACTED] enjoys talking about [REDACTED] accomplishments, working and earning money. [REDACTED] also enjoys working at the [REDACTED] Center.

[REDACTED] opined that [REDACTED] has made considerable academic progress. [REDACTED] has progressed both socially and behaviorally. [REDACTED] gets along well with most students and faculty members. [REDACTED] cognitive strengths are: good listening comprehension, the ability to process visual images and schedules and to remember isolated facts. [REDACTED] cognitive weaknesses are: verbal reasoning and comprehension, an inability to connect language concepts and memory difficulties.

[REDACTED] has found success with ALERT and story telling techniques.

[REDACTED] testified that [REDACTED] requires the following:

1. a continued focus on functional academics;
2. continuation of the IEP vocational components now in place;
3. continued work on problem-solving skills and conflict resolution; and
4. continued use of ALERT to help [REDACTED] ([REDACTED]) maintain appropriate levels of self-modulation.

[REDACTED] finds [REDACTED] happy and positive during their counseling sessions.

[REDACTED] believes [REDACTED] current IEP is appropriate to transition [REDACTED] into adulthood, in that [REDACTED] is learning vocational and independent living skills. [REDACTED] is also progressing in the [REDACTED] classroom.

[REDACTED]

[REDACTED] is a Special Education specialist for [REDACTED]. [REDACTED] holds BS and MS degrees in education; [REDACTED] has also received continuing course work in the area of administration. [REDACTED] is endorsed in emotional disturbance K through 12; mental retardation K through 12; special learning disabilities K through 12; and early education K through 4. [REDACTED] has received continuing education in the field of autism, TEACH training, positive behavioral support and behavioral intervention plans.

[REDACTED] helped to develop the [REDACTED] Autism Manual.

[REDACTED] does not manage [REDACTED] case, but [REDACTED] has attended all of [REDACTED] IEPs.

[REDACTED] testified that [REDACTED] was suspended from [REDACTED] High School in the [REDACTED] 2000. In [REDACTED] 2000, [REDACTED] staff and [REDACTED] looked into private placement for [REDACTED]. [REDACTED] School is well-versed in autism and [REDACTED] IEP team thought placement at [REDACTED] School would be appropriate. While [REDACTED] application to [REDACTED] School was in process, the IEP team proposed that [REDACTED] receive homebound services for functional academics and work adjustment training. [REDACTED] initially voiced support for the [REDACTED] School proposal, but withdrew [REDACTED] support following a visit to the school. The application process was not completed, therefore, and [REDACTED] began receiving homebound instruction.

[REDACTED] recognized that [REDACTED] had to be educated in the least restrictive environment possible. To that end, [REDACTED] testified that [REDACTED] established a classroom setting at the [REDACTED] School Board Office to simulate a classroom setting. [REDACTED] selected the students to attend the class, which was taught by [REDACTED]. Following [REDACTED] 2001, [REDACTED] was to attend the [REDACTED] classroom on Tuesdays and Thursdays and to receive homebound instruction on the remaining days. [REDACTED] testified that [REDACTED] performed well in the class, to the point that [REDACTED] wanted [REDACTED] to attend [REDACTED] class three days per week. [REDACTED] refused permission for [REDACTED] to attend [REDACTED] class three days per week.

[REDACTED] defined ALERT as a specially designed program to help students self-regulate. ALERT training was available to [REDACTED] and [REDACTED] professionals. [REDACTED], [REDACTED] occupational therapist, conducted ALERT training in [REDACTED] 2001.

[REDACTED] testified that [REDACTED] received a telephone call from [REDACTED] in [REDACTED] 2001, in which [REDACTED] asked for [REDACTED] functional assessment. [REDACTED] stated [REDACTED] was unaware that [REDACTED] had requested a functional assessment. Further, [REDACTED] was not aware of anything [REDACTED] had done to necessitate a functional assessment.

[REDACTED]

[REDACTED] is the autism positive behavioral support specialist for [REDACTED]. [REDACTED] holds teaching degrees in art education, K through 12, and early childhood special education, birth to five. [REDACTED] has completed TEACH training, levels 1 and 2. [REDACTED] has received training in applied behavioral analysis, social stories, sensory integration and positive behavioral support. [REDACTED] has facilitated autism workshops and assisted in the development of [REDACTED] Autism Manual. [REDACTED] facilitated four workshops for teachers and parents in [REDACTED] on the Manual (Parents Ex. 12) and personally reviewed the material in the Manual with [REDACTED].

[REDACTED] taught story telling techniques to [REDACTED] and observed [REDACTED] using these techniques with [REDACTED].

[REDACTED] is the lead teacher specialist for Special Education, transition services. [REDACTED] holds an associate degree in applied science and occupational therapy, a bachelor's degree in rehabilitation and an MS in vocational rehabilitation counseling. [REDACTED] has received extensive post-graduate training.

[REDACTED] employment task is to ensure the proper rendition of transition services to prepare students for the transition from school to work. To that end, she teaches the social and work behaviors necessary to obtain and maintain employment. [REDACTED] is currently working with eight children with autism.

[REDACTED] describes [REDACTED] as a delightful young [REDACTED] who has much going for [REDACTED] is eager to please and wants to work.

[REDACTED] has been the service provider for [REDACTED] since fall 1999. [REDACTED] gave [REDACTED] an Interest Inventory-Vocational Assessment in the summer 2001.

[REDACTED] testified that [REDACTED] made "unbelievable" progress in [REDACTED] vocational skills while working at [REDACTED]. [REDACTED] has worked at the [REDACTED] Center since [REDACTED] 2001 and has made good progress with this employment, as well.

[REDACTED] agreed with [REDACTED] that [REDACTED] was not an appropriate placement for [REDACTED] as a primary service provider.

CONCLUSIONS OF LAW

It is without question that [REDACTED] and [REDACTED] have a common interest - the delivery of services that will enable [REDACTED] to become self-reliant and employable. It is also clear that [REDACTED], through its personnel, has been open and supportive of [REDACTED]. [REDACTED] has given serious consideration to [REDACTED] requests and has provided intensive and supportive services to [REDACTED].

The Record is also clear that the [REDACTED] and [REDACTED], through mediation, agreed to services [REDACTED] would receive. Following the mediation agreement, [REDACTED] requested new services. These requests ultimately resulted in another agreement, following which [REDACTED] again requested additional services for [REDACTED]. The unfortunate result is that [REDACTED] cannot implement [REDACTED] 2001 IEP and provide the requisite support to [REDACTED] in the face of [REDACTED] changing demands. Regretfully, it appears that [REDACTED] advocacy for [REDACTED] has badly impeded [REDACTED] ability to service [REDACTED] needs.

A recurring fact throughout the Record is that [REDACTED] is making progress in the [REDACTED] system. The school system provides [REDACTED] with support and feedback to help [REDACTED] become employable and independent. [REDACTED] is given instruction and assistance with [REDACTED] dietary needs, shopping, finances, time management and goal setting. Parent and teachers have used a communications notebook to keep each informed of [REDACTED] daily experiences and needs. ([REDACTED] Ex. Book D, Tab 43, 44, 45) The Record further establishes that [REDACTED] teachers are highly qualified with professional licenses appropriate to the services they provide. ([REDACTED] Ex. Book D, Tab 46) The evidence is overwhelming that [REDACTED] staff has devoted tremendous energy and talent to provide [REDACTED] with appropriate academic, functional and vocational training.

One of the ironies of this proceeding is that the controversy between the [REDACTED] and [REDACTED] from [REDACTED] 2001 to date runs counter to [REDACTED] need for consistency in environment and activity. Notwithstanding this upheaval, the Record establishes that [REDACTED] has been successful with [REDACTED] employment at the [REDACTED] Center. The Record establishes that [REDACTED] is receiving training in appropriate behavioral responses from [REDACTED] staff. The Record establishes, also, that [REDACTED] enjoyed success with [REDACTED] homebound instructor, [REDACTED].

In *Board of Education v. Rowley*, 458 U.S. 176, 73 L. Ed. 690, 102 S. Ct. 3034 (1982), the Court established two standards for determining if the State (a school system) has met the requirements of the Individuals with Disabilities Education Act ("IDEA"):

First, has the State complied with the procedures set forth in the Act [IDEA]? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the

obligations imposed by Congress and the courts can require no more. See *id.* at 206-207.

As stated in *Board of Education of Montgomery County v. Brett Y*, 155 F.3d 557, _____, 1998 WL 390553 (4th Cir. 1998 (Md.))

The IDEA does not require, however, that a school system fund the best possible placement for a child. "The [IDEA] requires only that the child be able to benefit from the instruction that [he] receives, not that [he] be able to maximize [his] potential commensurate with the opportunity provided non-handicapped children." Citing *Burke County Board of Education v. Denton*, 895 F.2d 973 (4th Cir. 1990).

In my opinion, [REDACTED] has shown by clear and convincing evidence that its programs and personnel provide the level of assistance necessary to meet [REDACTED] [REDACTED] 2001 IEP. While [REDACTED] may disagree with [REDACTED] services, [REDACTED] need only develop procedures reasonably calculated to enable [REDACTED] to receive educational benefits. [REDACTED] has gone well beyond the minimum limits set by federal law and [REDACTED] has demonstrably benefited from [REDACTED] PS's services.

Last, [REDACTED] has requested that [REDACTED] pay for the Individual Education Evaluation (Vocational Evaluation Program) conducted by [REDACTED] Regional Education Center. I find nothing in the Vocational Evaluation Report that adds to the knowledge already developed by [REDACTED] through its testing, meetings, and working with [REDACTED]

Accordingly, I make the following findings of law.

1. [REDACTED] has implemented [REDACTED] IEP, dated [REDACTED] 2001.
2. [REDACTED] has used appropriate communication tools to inform [REDACTED] of [REDACTED] progress.
3. [REDACTED] has provided appropriately qualified staff capable of implementing the goals and objectives of [REDACTED] IEP.
4. Dr. [REDACTED] observations of [REDACTED] on [REDACTED] 2001 do not affect [REDACTED] 2001 IEP.
5. [REDACTED] Independent Living Center, Inc. is not an appropriate substitute for [REDACTED] school based training.
6. The placement and services offered by [REDACTED] to [REDACTED] constitute a free appropriate public education (FAPE).

7. [REDACTED] is not required to pay [REDACTED] evaluation by the [REDACTED] Regional Education Center.

Respectfully submitted,

[REDACTED]
[REDACTED]

Hearing Officer

Dated: [REDACTED] 2002