



VIRGINIA DEPARTMENT OF EDUCATION  
DIVISION OF ACCOUNTABILITY  
OFFICE OF SPECIAL PROGRAMS

Case Closing Summary Report

Local hearing  X

State level appeal      

*School Division* [Redacted] Public Schools

*Parents* [Redacted]

*Name of Child* [Redacted]

*Decision date* [Redacted] 2002

*Counsel for LEA* [Redacted]

(None)  
*Counsel for Parents/Child*

*Party initiating hearing* [Redacted] Public Schools

Split  
*Prevailing party*

**HEARING OFFICER'S DETERMINATION OF ISSUE(S):**

1. The child needs to be in the special education program in current school.
2. Immediate and continuing evaluations of the child are necessary.
3. [Redacted] Public Schools have not provided a FAPE because of failure to request a due process hearing in or

**HEARING OFFICER'S ORDERS AND OUTCOME OF HEARING:**

I found that the Parents' refusals to allow evaluations of their child seriously hindered the PS in providing educational benefit to [Redacted]. However, the PS were at fault in not providing a FAPE by failing to request a due process hearing years before they did. Thus, my decision was 90% for the PS and 10% for the Parents.

Accordingly, I ordered the PS to immediately evaluate [Redacted] and to continue to evaluate [Redacted] to the extent they deemed necessary regardless of the Parents' objections. I further ordered the Parents to make the child available for evaluations whenever the PS deem it necessary; and to cooperate with the school in establishing effective communications between them.

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

[Redacted Signature]  
*Hearing Officer*

*Date:* [Redacted]

VIRGINIA DEPARTMENT OF EDUCATION  
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POST-HEARING REPORT

[redacted] Public Schools  
School Division

Parents [redacted]

[redacted]  
Superintendent

[redacted]  
Child

[redacted]  
Counsel for Schools

(none)  
Counsel for Parents

Hearing Officer

[redacted] Public Schools  
Party Initiating Hearing

Hearing requested [redacted]

Hearing Officer appointed [redacted]

**PURPOSE:**

The purpose of this due process hearing is to obtain an evaluation of the child in order to determine placement in current school.

**ISSUES:**

1. Whether [redacted] needs to be in the special education program provided by current school.
2. Whether an evaluation of [redacted] is necessary.
3. Whether the [redacted] PS has provided a free appropriate public education for [redacted].

**PRELIMINARY MATTERS:**

Upon being appointed as hearing officer, I was able to have two brief conversations with [redacted] concerning dates and times for a prehearing conference and for the hearing itself. [redacted] is a long-haul trucker who is out of town, particularly in the springtime. As a result I was not able to contact [redacted] again, nor was [redacted] available for the purpose. After setting a tentative [redacted] date for a prehearing telephone conference with [redacted], I attempted, on several occasions and at various times of day, to call the Parents to arrange for [redacted] to participate in the conference call on a more suitable date, and to arrange a hearing date when [redacted] could attend the hearing, if [redacted] was not available. However, the telephone was never answered. Consequently I wrote a letter (on [redacted] by certified mail) to the Parents asking their cooperation with me and that they call me. That letter was returned as unclaimed. Nor did the Parents telephone me.

Therefore, I sent out the initial notice letter to the Parents (on [redacted] y UPS) and to

the Schools (on [REDACTED] by post) setting the conference date for [REDACTED] and the hearing date for [REDACTED]. I continued trying to call the Parents and the phone was never answered, nor did they respond in any way to the initial notice letter (which they received on [REDACTED]). I next sent out my letter confirming the telephone conference with Schools' counsel on [REDACTED] together with the Prehearing Report of [REDACTED]. Again, there was no response forthcoming from the Parents. It seems that the Parents, if they do receive the mail, either never read correspondence from me or ignore it, if they do read it.

My next contact was a telephone call to my office on [REDACTED], while I was out, from [REDACTED] inquiring about the conference which had been tentatively scheduled with [REDACTED] (out not with the Schools) for that date. I returned the call upon my return to the office, but again there was no answer. For some reason beyond my knowledge and understanding, neither of the parents will respond to my efforts to contact them by telephone or by correspondence. Apparently, [REDACTED] will take no part in these matters; while [REDACTED] alone handles them, despite [REDACTED] being almost 100% unavailable. They simply won't cooperate with me. As a result, the hearing proceeded on [REDACTED] without the presence of either [REDACTED].

The hearing was held on [REDACTED] 2002 in the [REDACTED] Schools Administration Building. The Parents did not appear, either in person or by counsel, and presented no evidence. The School Division was represented by counsel, presenting as evidence 50 exhibits, which were admitted in a group as Schools' Exhibit 1. [REDACTED], Director of Special Programs, was the only witness for the Schools.

Based upon my examination of the documentary evidence, and having heard the testimony of the Schools' sole witness and observed [REDACTED] demeanor, I find the facts and conclusions of law set out below. On the basis thereof, I find in favor of the [REDACTED] Public Schools on Issues 1 and 2; and against the [REDACTED] PS on Issue 3.

#### FINDINGS OF FACT.

1. [REDACTED] is an [REDACTED]-year-old [REDACTED] child presently placed in a regular [REDACTED] grade class. [REDACTED] has been promoted to [REDACTED] grade through [REDACTED] grade and currently to [REDACTED] grade. (Ex 7; Tr p. 7)
2. In the [REDACTED] school year, the child study team referred [REDACTED] for assessment of a possible disability. The team recommended that [REDACTED] be retained for a second year in kindergarten, and [REDACTED] was retained. (Ex's 1, 3, 5, 6, 8; Tr p. 10)
3. The Parents gave permission to evaluate [REDACTED], in [REDACTED]. [REDACTED] was found to be speech impaired and was referred to the eligibility committee, which found [REDACTED] eligible for

special education for speech/language disability. (Ex's 9-13)

4. The child's [redacted] attended the IEP meeting in [redacted] of [redacted] preparatory for promotion to [redacted] grade, and gave permission for enrollment in special education in a regular class with resource services. The Parents have attended no other IEP meeting. (Ex's 14, 16, 17)

5. In each year since [redacted] first kindergarten year [redacted] has been found eligible for special education, first on the basis of speech/language disability, and later on the basis of mental retardation. (Ex's 13, 34)

6. During the annual IEP meeting for [redacted] grade year, other disabling conditions were apparent. Additional evaluations for these suspected conditions were recommended to the Parents, but they declined to give permission for any additional evaluations. (Ex's 14, 15, 16; Tr p.8)

7. [redacted] academic performance through [redacted] grade has been generally unsatisfactory. [redacted] has been steadily losing ground in academics, to the point that now, in [redacted] grade, [redacted] is three years behind; and [redacted] is actually regressing. However, [redacted] has made progress in speech, and [redacted] is performing satisfactorily in non-academic areas. (Ex's 7, 10-12, 15, 17, 20-22, 24-29, 31-32, 35, 37, 41; Tr pps.12, 50-51, 73-74)

8. [redacted] progress in [redacted] speech was such (by [redacted]) that the evaluation was expected to support the eligibility committee's termination of [redacted] special education program based on the speech problems. The committee met on [redacted] and determined that [redacted] remained eligible for special education, but for the disability of mental retardation rather than the previous speech disability. (Ex's 24, 34)

8. The Parents have failed to respond to the Schools' efforts to contact them for meetings or discussions concerning [redacted] disabilities; have declined to permit evaluations of [redacted] (except in [redacted] year); and have failed to attend meetings of which they received notices. (Ex's 4, 9, 19, 23, 30, 33, 34, 36, 38, 39, 40; Tr pp. 48-49)

9. The Parents disputed and withdrew the permission to evaluate that was signed by [redacted] on [redacted] and that evaluation was not accomplished. (Ex 30; Tr pp. 24, 33-34, 37-39)

10. [redacted] needs to be placed in a special education class for the academics portion of [redacted] schooling, with mainstreaming to the extent possible. In [redacted] case, that would allow [redacted] to be with [redacted] grade class for lunch, recess and non-academic classes in which [redacted] is making satisfactory progress. (Tr pp. 73-74)

11. The Schools have not requested a due process hearing until the current hearing was sought. (Ex. 42; Tr pp. 48-49)

## CONCLUSIONS OF LAW.

The requirements of notice to the Parents have been met.

██████████ has disabilities.

██████████ needs special education and related services.

The LEA has not provided to ██████████ a free appropriate public education since ██████████ second kindergarten year.

**ISSUE 1: Does ██████████ need to be in the special education program provided by ██████████ current school?**

The evidence is clear that ██████████ needs special education. ██████████ has been found eligible since ██████████ first kindergarten year, and ██████████ academic records leave no doubt about that necessity. ██████████ current school, ██████████ Elementary School in ██████████ home town of ██████████ has been ██████████ home school from the beginning. The teachers and staff have watched ██████████ struggle from ██████████ grade through ██████████ grade and into ██████████ grade and lose educational ground all the way. ██████████ is now at the point where ██████████ is three years behind – working on a ██████████ or ██████████ grade level in ██████████ grade.

After ██████████ kindergarten year (██████████ was retained for a ██████████ year) child study found ██████████ needed speech therapy. ██████████ granted permission for a speech/language assessment, and it confirmed the need for the therapy. An IEP team developed an IEP geared to that therapy, and placed ██████████ in a regular ██████████ grade class with resource assistance. The child's ██████████ participated in the IEP meeting and agreed to that placement.

██████████ parents have said they are providing tutoring for ██████████ and that ██████████ and sister help ██████████ with ██████████ homework. However, ██████████ homework, when turned in, has the appearance of being the work of someone other than ██████████. So, despite any tutoring and family help ██████████ has had, the child is gaining no benefit educationally in the academics. In short, ██████████ is learning little more than how to get along in the world socially, and this after being promoted into ██████████ grade.

During subsequent annual IEP meetings and eligibility reviews, the teachers and staff came to suspect that ██████████ suffers from additional disabilities. ██████████ speech had improved to the point that the eligibility committee, on ██████████ terminated ██████████ special education for the speech disability, but found ██████████ eligible for special education because of mental retardation. The ██████████ PS again requested of the Parents permission to conduct more extensive evaluations, again without success.

**ISSUE 2: Is there a need for further evaluations for [REDACTED]**

[REDACTED] has moved through the grades from kindergarten into [REDACTED] grade on the basis of the [REDACTED] valuation and an IEP developed for [REDACTED] entry into [REDACTED] grade. At that time, [REDACTED] had just been found eligible for special education for speech disability. The IEP placed [REDACTED] in a regular [REDACTED] grade class with resource services and with [REDACTED] parent's permission. From that point, [REDACTED] has struggled with [REDACTED] schoolwork grade after grade in the same placement and the same evaluation basis for that placement with little or no academic benefit. It is to [REDACTED] credit, and to that of [REDACTED] teachers and resource helpers, that [REDACTED] is performing only three grades below [REDACTED] [REDACTED] parents, since [REDACTED], have consistently refused to permit any evaluations of several assessment categories beyond the first evaluation which found [REDACTED] disabled in [REDACTED] speech. In [REDACTED] [REDACTED] granted permission to evaluate, but [REDACTED] parents subsequently withdrew the permission and the evaluation was never completed or made effective. To date, there have been no further effective evaluations. Hence, although [REDACTED] is eligible for special education as mentally retarded ([REDACTED] status as speech disabled having been terminated), the [REDACTED] PS is unable to go forward with [REDACTED] program. It is entirely possible, if not probable, that speech was only one of [REDACTED] disabilities from the time of [REDACTED] entry in [REDACTED] grade when additional disabilities were first suspected. But, because of the Parents' consistent refusal to allow evaluations, there was no possibility of providing special education for any other disability.

Given the obvious inability of [REDACTED] to benefit from the educational efforts of [REDACTED] PS, [REDACTED] suffers from a disability or disabilities not yet shown through evaluations to exist. If there are no evaluations, there will be no special education for [REDACTED] because of [REDACTED] parents' opposition to those evaluations. Therefore, it is absolutely necessary that [REDACTED] be evaluated to the extent necessary to determine whether [REDACTED] is eligible for special education on the basis of mental retardation and any other disability, and whether [REDACTED] so continues eligible in the future.

**ISSUE 3: Has [REDACTED] PS provided for [REDACTED] a free appropriate public education?**

Since [REDACTED] entered [REDACTED] grade in the [REDACTED] school year, [REDACTED] has been in a regular class with resource services on the basis of speech disability, and after speech therapy was no longer needed, [REDACTED] has been declared eligible for special education as a child with the disability of mental retardation. For all that time, through three years of promotions since [REDACTED] grade, there has not been a single effectual evaluation of the true status of [REDACTED] disability or disabilities because [REDACTED] parents have refused to allow the [REDACTED] PS to conduct evaluations.

The clear evidence shows that the child is in serious need of special education because [REDACTED] is unable to receive educational benefit due to [REDACTED] disabilities. [REDACTED] parents have failed to consider

[REDACTED] best interests, and they have frustrated the School's efforts to provide a FAPE. However, from about the [REDACTED] school year the [REDACTED] PS has been on notice that that they could not meet [REDACTED] needs without the evaluations that the Parents refused to permit. Yet the [REDACTED] PS neglected to take the one step available to them that might have overcome the Parents' neglect of their child's education: the [REDACTED] PS did not request a due process hearing until [REDACTED] years later. They continually tried to move the Parents to allow evaluations, and steadfastly hoped that permission would come forth. Thus, the [REDACTED] PS failed to *act for the child's best interests*. Both the Parents and the Schools have failed [REDACTED].

The School Division is to be commended for what they have accomplished for [REDACTED] in the face of the Parents' non-cooperation. However, the fact remains that the School Division was bound by the IDEA to serve [REDACTED] best interests. The fact that the Schools have given consideration to the Parents' best interests and have not wanted to tread on their toes has not served [REDACTED]. Hence, the [REDACTED] PS has not provided [REDACTED] with a free appropriate public education as required by law, because it did not request a due process hearing when the Parents evidenced a disposition, in [REDACTED] and [REDACTED] to refuse to allow the necessary evaluations.

#### DECISION:

Accordingly, it is ORDERED that the [REDACTED] Public Schools shall begin immediately to evaluate [REDACTED] to the extent and whenever they deem it necessary, regardless of the Parent's reluctance or opposition thereto, so that the child's best interests will be served.

It is FURTHER ORDERED that [REDACTED], the child's parents shall make [REDACTED] available for evaluations whenever the [REDACTED] Public Schools deem it necessary; and further that the Parents cooperate with the [REDACTED] in establishment of an effective system of communications between them for the benefit of their child.

[REDACTED]  
[REDACTED] 2002  
Hearing Officer

cc: Parties and Counsel  
Virginia Department of Education