

VIRGINIA DEPARTMENT OF EDUCATION  
Division of Special Education

[Redacted]  
School Division

[Redacted]  
Name of Parents

[Redacted]  
Division Superintendent

[Redacted]  
Name of Child

[Redacted]  
Counsel representing LEA

None  
Representing Parents/Child

[Redacted]  
Name of Hearing Officer

[Redacted]  
Party Initiating Hearing

POST HEARING REPORT AND DECISION

BACKGROUND

The request for a due process hearing in this matter was initiated by [Redacted], parents of [Redacted] (Parents), in a letter to the [Redacted] (School) dated [Redacted] and signed by [Redacted] on behalf of their child, [Redacted]. [Redacted] states therein that [Redacted] has a sensory integrated disorder which makes up [Redacted] foundation for learning and that [Redacted] needs occupational therapy or OT three times a week for [Redacted] problems. The undersigned was designated as hearing officer to conduct the proceeding by letter from the School dated [Redacted].

[Redacted] is a [Redacted] grade student at [Redacted]. [Redacted] has been found to have a disability and is receiving special education. The Parents are not represented by counsel and are appearing *pro se*.

A face to face prehearing conference was held in this matter on Friday, [Redacted] at the [Redacted] facility in [Redacted]. It was determined at that time there is but a single issue in the proceeding and that is whether [Redacted] should receive as part of [Redacted] schooling a technique which the Parents referred to as sensory integration based occupational therapy. Subsequently, telephone conferences were held on [Redacted] and [Redacted]. The principal point of contention at the conferences involved the requested testimony of [Redacted]. The Parents asked that [Redacted] be permitted to testify by telephone and the School objected. Briefs were filed on the question and the hearing officer at the [Redacted] conference denied the request under the circumstances cited. It appears that [Redacted] pleaded that [Redacted] was too busy with [Redacted] practice to make a personal appearance and the Parents decided not to subpoena [Redacted]. The hearing officer in accord with the general rule as well as the statute and regulations relating to special education held that the School has a right to confront the witness and therefore denied the request.

In special education matters in Virginia and upon request, due process hearings are provided for in the "Regulations Governing Special Education Programs for Children with Disabilities in Virginia" (Virginia Regulations) effective March 27, 2002, 8VAC 20-80-76 as well as under the Individuals with Disabilities Education Act (IDEA) 20 U. S. C. Sec. 1400 *et seq* and the Federal Regulations, 34 CFR 300.507 *et seq*.

ISSUE

Whether [REDACTED] is provided with an appropriate education and related services when denied sensory integration based occupational therapy or occupational therapy.

FINDINGS OF FACT

1. [REDACTED], a [REDACTED] grade student in [REDACTED] School, is eligible for and currently receiving special education service in a self-contained classroom for students with autism. [REDACTED] under [REDACTED] Individualized Education Program (IEP) for the [REDACTED] school year dated [REDACTED] is enrolled in [REDACTED] grade in special education and in general education for Social Studies. [REDACTED] also receives art, music, and physical education among other subjects. [REDACTED] also receives as a related service, speech and language therapy. (School Exh. 9).

2. [REDACTED]'s most recent placement as set out in the individualized education program for the school year [REDACTED] dated [REDACTED] is autism self-contained. [REDACTED] will spend 55.3% of [REDACTED] time in special setting, four periods, five times a week, 11% of [REDACTED] time, special setting for three periods a week in speech and language or SLI and 2% of [REDACTED] time in regular setting for two periods a month in adaptive physical education or APE. [REDACTED] will receive as related services speech and language therapy, APE and transportation. (School Exh. 30). [REDACTED] parent, signed this IEP on [REDACTED] requires a structured environment, established routines and visual strategies. [REDACTED] requires a small staff to student ratio to stay focused and on task. [REDACTED] will participate in social studies and related arts with [REDACTED] general education peers and a member of the special education team. (School Exh. 30).

2. While the Parents allege that [REDACTED] is in need of sensory integration-based occupational therapy, the record contains no definition or description of such a therapy. There is no specific type of occupational therapy known as sensory integrated based occupational therapy. ( Day 2, Tr. 291-292, 310, 286).

3. Occupational therapy is a health professional medically based technique providing treatment and intervention for independent functioning. (Day 2, Tr. 191). In the field of occupational therapy, the School offers intervention, modalities, strategies to improve and visual motor components. (Day 2, Tr. 132). In consultation with a occupational therapist, the teacher has worked with [REDACTED] on teaching [REDACTED] to tie [REDACTED] shoes. (Day 2, Tr. 246).

4. Sensory integration is a term used to define the brain's ability to take in information from the environment, process it and use it. (Day 2, Tr. 191). Some of the sensory integration techniques used in [REDACTED] special education class include posting schedules, visual cues, music, quiet time and hand-over-hand and physical prompts to teach motor tasks. (Day 2, Tr. 231, 232). It is not necessary to be a licensed occupational therapist to provide sensory integration strategies. (Day 2, Tr. 268).

5. [REDACTED] is a medical doctor practicing in [REDACTED] who has evaluated [REDACTED] on several occasions but was not called as a witness in this proceeding. [REDACTED] reports, however, were received in evidence over the objection of the School. In a [REDACTED] report [REDACTED] recommended, among other things, a motor based program which, as [REDACTED] put it, might be useful for [REDACTED] offered through the [REDACTED] under director [REDACTED] (Parent's Exh. A2). In a letter dated [REDACTED] [REDACTED] recommended for [REDACTED] among other things, sensory integration based, individual occupational and/or physical therapy. (Parent's Exh. A3). In a follow-up evaluation of [REDACTED] [REDACTED] recommended individual occupational therapy three times a week for severe praxis, motor planning and sensory integration problems. (Parent's Exh. A1). Sensory processing is the organization of sensory input from the body and the environment for use. Praxis is the ability to plan and sequence unfamiliar actions or an inability to motor plan novel experiences. Motor performance is the actual execution of gross and fine motor coordination. (Parent's Exh. A4, Day 2, Tr. 185). [REDACTED], School occupational therapist, accepted [REDACTED]'s clinical opinion that these disabilities were present in making [REDACTED] assessment. (Day 2, Tr. 149).

6. [REDACTED] receives sensory related occupational therapy for two hours, three times per week at the [REDACTED] VA. (Tr. 65, Day 2, Tr. 267, 329). The program offered by [REDACTED] as described in its literature builds upon two key elements: (a) Sensory integration as a means to regulate and network the nervous system and (b) Motor development as a vehicle to achieve physical, cognitive, neuromuscular, body and space capabilities. (Parent's Exh. E1) The evidence in the record as to whether [REDACTED] benefited from this technique is anecdotal and comes from one parent who testified that [REDACTED] benefited. (Tr. 65, Day 2, Tr. 335). Because [REDACTED] director of [REDACTED] was not called as a witness, there is no documentation in the record as to the claimed benefit. I find therefore that there is no substantial evidence in the record that [REDACTED] benefited from [REDACTED] technique.

7. [REDACTED] was given an occupational therapy assessment by [REDACTED], school occupational therapist, in [REDACTED]. [REDACTED] was found to be independently mobile within the classroom and around [REDACTED] school with supervision. The therapist reported that [REDACTED] is able to participate in instruction activities for a functional period without significant sensory overload responses or withdrawal. (School Exh. 10, Day 2, Tr. 92).

8. An independent educational evaluation was conducted by [REDACTED] at the request of the parents in [REDACTED]. [REDACTED] found, presents a youngster whose overall level of cognitive ability falls in the Mildly Deficient Range. Measures of adaptive functioning are consistent with this level also falling in the Mildly Deficient Range. Taken together, [REDACTED] states, this data suggests that [REDACTED]'s overall functioning is in the mild range of mental retardation. The evaluator made no specific recommendations for [REDACTED] education nor did [REDACTED] appear as a witness. (School Exh. 20).

9. The Parent's request for sensory integrated occupational therapy as a related school service was rejected by the School. In an addendum dated [REDACTED], an IEP dated [REDACTED] the IEP team determined that occupational therapy service is not necessary at the time. It was determined specifically that [REDACTED] visual-motor skills

allow for participation in a classroom setting. (School Exh. 23). In a written notice to the Parent's dated [REDACTED], the School states that it refuses the addition of occupational therapy as a related service and that current OT assessment reveals visual-motor skills are adequate for current classroom instruction. The IEP team reported that there are no sensory issues with the hand over hand instruction. (School Exh. 24). A central office review committee of the School found that [REDACTED] does not meet [REDACTED] criteria for occupational therapy services and so notified the Parents. (School Exh. 25). Again in an addendum of [REDACTED] to the IEP of [REDACTED] the School continued to find [REDACTED] ineligible for O.T. under [REDACTED] guidelines for O.T. (School Exhibit 31). In the most recent IEP for the school year [REDACTED] 3 dated [REDACTED] there is no provision for O.T. as a related service. (School Exh. 30). The school occupational therapist and [REDACTED] special education teacher both testified that [REDACTED] did not need occupational therapy to benefit from [REDACTED] educational placement. (Day 2, Tr. 97, 238).

10. The School defines occupational therapy as a related service in the school setting which focuses on helping children achieve functional use of fine motor, visual motor and visual perception skills, specifically relating to their educational needs. To qualify the student must meet all of the following criteria: special education eligible, an indication in Occupational Therapy components of significant functional deficits that have direct educational impact, a minimum of one identified area of instructional focus and/or IEP benchmark directly related to the deficits and the accommodations/modifications needed to address the deficit areas that cannot be reasonably provided solely through the student's primary educational placement. (School Exh. 23, Day 2, Tr. 312-314).

11. Under the IEP for the school year [REDACTED] [REDACTED] has made educational progress. (School Exh. 9, Day 2, Tr. 204, 221-223, 335).

## DECISION

### I.

This matter concerns [REDACTED] a [REDACTED] year old student with a disability. [REDACTED] at the time of the hearing is in the [REDACTED] grade and will be promoted to the [REDACTED] grade at [REDACTED] School. Under the current IEP [REDACTED] attends a self-contained class part of the day and also attends regular classes with [REDACTED] peers in social studies and other activities. The school had designated [REDACTED] as autistic. The parents believe [REDACTED] is not autistic but that [REDACTED] has a severe regulatory/sensory-motor disorder. [REDACTED], psychologist, who evaluated [REDACTED] determined that [REDACTED] has a disorder consistent with autism.

The sole issue in this proceeding as determined at the prehearing conference is whether [REDACTED] entitled to sensory integration based occupational therapy as a related service in [REDACTED] education. The regulations define physical and occupational therapy as a "related service". (8VAC 280-10). The School provides occupational therapy in those cases which meet its guidelines. (See Finding No. 10). The School has determined that [REDACTED] has received academic and educational benefit without occupational therapy and has rejected the Parent's request for such service. (See Finding No. 7). In the new IEP for the school year [REDACTED] signed by the parent, there is no provision for occupational

therapy, though it appears that the Parents did not fully understand the implications of signing this IEP. [REDACTED] receives sensory integration services in the classroom which is designed to enable [REDACTED] to take in information from the environment, process it and use it functionally for an end result. This is not considered to be occupational therapy. ( See Findings No's 4 and 10).

The Parents in this school year have enrolled [REDACTED] in a course of training at the [REDACTED] in [REDACTED] VA for three times per week which course according to the literature provides sensory-motor integration described as a multi-sensory approach to addressing learning needs of children diagnosed with developmental delays including autism. (Parent's Exh. E1). This appears to be the type of service which the Parents request the School to provide. The technique was recommended to the Parents by [REDACTED] a psychologist located in [REDACTED] (Parent's Exhs. A2 and A3).

The record fails to make clear whether the service provided by the [REDACTED] under the direction of [REDACTED] is a generally recognized technique. The Parents, however, are convinced that the training is beneficial to [REDACTED]. They charge in effect the School is behind the times and slow to adopt new and helpful services. The School does provide occupational therapy under its guidelines but has concluded that educational needs do not come within these guidelines. If [REDACTED] did meet the School's guidelines, according to [REDACTED] occupational therapist, it would be provided in the school and would depend on the assessment component. The intervention would be whatever the assessment indicates is the significant component. (Day 2, Tr.313). It appears that the School does not recognize [REDACTED] technique as one which it would employ.

## II.

Reference is again made to the fact that the Parents appear in this proceeding *pro se*. They were given a list of attorneys that could provide free or low cost services but they indicated that none could or would take their case. The Parents, while pursuing their position with passion and vigor, failed to develop a convincing case even though they were given ample opportunity to produce evidence. They called no expert witnesses to testify as to [REDACTED] educational needs. The Parents consider themselves as experts on [REDACTED] situation because of their closeness to [REDACTED] and the studying they have done but their testimony was not received as expert testimony. Probably no outsider would know a child like the parents and their input is valuable but their testimony tends to be subjective and is not supported by documentation and reviewable data.

The Parents recognized their need for objective expert testimony and requested that [REDACTED] a child specialist who had evaluated [REDACTED] be permitted to testify by telephone as [REDACTED] did not want to leave [REDACTED] practice to appear at the proceeding. The School objected to telephonic testimony on several grounds including their right to "confront" the witness citing Farmington County Public Schools v. Lenhoff, 1989 U.S. Dist. LEXIS 17801 (E.D. Mi. 1989) among other authorities. The hearing officer denied the request on the ground that a party has a right to confront the witness as set out in the regulations. (8 VAC20-80-76 (F)). The Parents had ample opportunity to subpoena [REDACTED] and the hearing officer was willing to continue the hearing if necessary in order to receive [REDACTED] testimony. The Parents, however, decided not to call [REDACTED] nor did they call [REDACTED] of the [REDACTED] who in fact is a practitioner of the sensory

integration technique and provides this service to \_\_\_\_\_. In any event, \_\_\_\_\_ did not observe \_\_\_\_\_ in a classroom setting nor had \_\_\_\_\_ done any formal testing on \_\_\_\_\_ (Tr. 154). Finally, the Parents failed to call any other expert to testify in support of their claim for services. In addition to their own testimony, the Parents presented the testimony of \_\_\_\_\_, a homeschool assistant, who did not testify as an expert but related \_\_\_\_\_ experiences with \_\_\_\_\_. The Parents also offered some documentation such as the evaluations of \_\_\_\_\_ as well as other literature referring to the nature of the sensory integration, all of which was objected to by the School but received on the ground of general relevance as well as to permit the Parents to make some showing on the nature of their request.

### III.

The School presented two well qualified expert witnesses, \_\_\_\_\_ occupational therapist and \_\_\_\_\_ special education teacher. \_\_\_\_\_ testified that \_\_\_\_\_ evaluated \_\_\_\_\_ through testing, classroom observation and by reviewing \_\_\_\_\_ entire record. \_\_\_\_\_ stated that \_\_\_\_\_ was making progress in \_\_\_\_\_ education and that \_\_\_\_\_ did not need occupational therapy to function satisfactorily in the classroom. \_\_\_\_\_ similarly testified that \_\_\_\_\_ did not need occupational therapy to make educational progress. The record clearly supports the position of the School that \_\_\_\_\_ has the visual-motor skills to allow \_\_\_\_\_ to participate in a classroom setting. Both expert witnesses, \_\_\_\_\_ and \_\_\_\_\_ testified to that effect and that \_\_\_\_\_ has made progress on \_\_\_\_\_ objectives. (Day 2, Tr.204, 235, ). \_\_\_\_\_ also testified that \_\_\_\_\_ had made educational progress in the current school year. (Day 2, Tr. 335). \_\_\_\_\_ for \_\_\_\_\_ therapy data base observed \_\_\_\_\_ in a schoolroom setting, created a short sensory profile, made a school function assessment and interviewed the teacher and staff and the parent. \_\_\_\_\_ concluded, among other things, that \_\_\_\_\_'s visual-motor integration skills are adequate for instruction utilizing hand over hand and one-on-one strategies. (School Exh. 19, Day 2, Tr.92-93) \_\_\_\_\_ teacher is with \_\_\_\_\_ in an educational setting on a daily basis. \_\_\_\_\_ testified at length as to \_\_\_\_\_ teaching strategies with \_\_\_\_\_ and stated in \_\_\_\_\_ opinion \_\_\_\_\_ did not need occupation therapy to function in the classroom setting. (Day 2, Tr.238).

### IV.

The Parents who in this case are asking for a specific relief, have the burden of showing with a preponderance of the evidence that \_\_\_\_\_ is not receiving an "appropriate" education without the addition of occupational therapy as a related service. They have failed to produce evidence beyond their own testimony and that of a homeschool assistant as to \_\_\_\_\_ educational needs while the School has produced two experts both in education and one in occupational therapy who gave testimony that \_\_\_\_\_ under the current IEP is receiving an appropriate education. It is clear in these circumstances that the Parents have not made an adequate showing to meet their burden.

Furthermore, the case law is well established that an appropriate education program is one which is reasonably calculated to offer a child some educational benefit. Board of Education v. Rowley, 458 U.S.156, 203 (1982). An appropriate program need not maximize a child's potential or provide the best possible education, it need only provide educational benefit in the least restrictive environment. Likewise, the law does not require the furnishing of every special service necessary to maximize each handicapped

child's potential. Faulders v. Henrico County School Board, 190 Fed. Supp. 2nd 849 (E.D. Va, March 20, 2002). The District Court also pointed out that local educators deserve latitude in determining the individualized education program most appropriate for a disabled child. See also Alexander K v. Virginia Board of Ed., Fairfax County School Board, 30 IDELR 967 (E.D. Va, July 27, 1999)

In this case, since the Parents did not produce an expert, there is no controversy among experts. The School produced as expert witnesses an occupational therapist as well as [REDACTED] teacher. Both testified as to [REDACTED] educational needs and they appeared to this hearing officer as professional and dedicated people devoted to the interests of the children in their care, including [REDACTED]. Consequently, I give substantial weight to their views that [REDACTED] educational needs are being met and that [REDACTED] does not need occupational therapy to function in the classroom.

V.

The Parent's apparent frustration with the actions of the School is noted. In further elaboration of their request for relief, they assert a failure of the schools to adopt new programs and techniques and claim that change can come only through the administrative law process. (Tr. 28-29). [REDACTED] in closing statement accuses the School of not being flexible in meeting special needs children and argues that the only way to attain improvement is through the process of a due process hearing. (Day 2, Tr. 340-342). The hearing officer has a responsibility only to hear and decide on the issue or issues presented in the case. In this instance the single issue concerns a question of the use of occupational therapy or OT. The School in fact provides OT if certain guidelines are met and the record supports a finding that [REDACTED] does not need or qualify for OT. If there are other problems with the School failing to consider new or different techniques, a charge not developed on this record, that is not an issue or a concern in this hearing.

However, it should be pointed out that [REDACTED] has devoted substantial resources and effort toward providing [REDACTED] with an appropriate education. [REDACTED] is in a small class of six students with a teacher and either two or three assistants and receives almost one on one attention, not only in special education class but in regular classes as well. (Day 2, Tr. 223). [REDACTED] receives special education for four periods a day, five days a week, speech and language therapy for three periods a week, adaptive physical education or APE for two periods a month and transportation. (School Exhibit 30, Day 2, Tr. 228). The sensory integration services given to [REDACTED] and the other students are set forth in Finding No. 4. A member of the special education team attends physical education class with [REDACTED]. Twice a month [REDACTED] receives adaptive physical education with a teacher that works only with [REDACTED] (Day 2, Tr. 249). [REDACTED] under this program is making progress in [REDACTED] education and meeting [REDACTED] goals.

### CONCLUSIONS

1. [REDACTED] has a disability and is entitled to an appropriate education and related services under IDEA.
2. [REDACTED] Schools has provided [REDACTED] with an appropriate education and with related services.