



CASE CLOSURE SUMMARY REPORT

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

 PUBLIC SCHOOLS

School Division

Name of Parents

Name of Child

Date of Decision or Dismissal

 ESQ.
Counsel Representing LEA

PARENTS REPRESENTS SELF
Counsel Representing Parents

Party Initiating Hearing

Prevailing Party

Hearing Officer's Determination of Issues:

1. The statute of limitation bars determination of matters concerning the 20 -20 school year.
2. Public Schools provided an appropriate education during the 20 -20 school year.
3. Public Schools properly implemented the IEP for school year 20(-20) .
4. The Parents are not entitled to reimbursement of expensed incurred during the 20 - 20 school year for private school placement.
5. The parents are not entitled to payment of expenses incurred for School for the 20 -20 school year. to attend
6. Compensatory services are not awarded.

Hearing Officer's Orders and Outcome of Hearing:

Schools prevails on all issues.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The Final Report and Due Process hearing Decision is attached and I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 Calendar days.

Printed Name of Hearing Officer

Signature

Copies of this Case Closure Summary Report mailed to:

- 1.
2. , Esq.,
3. , Director of Pupil Services Public Schools,

Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218-2120



School Division PUBLIC SCHOOLS Name of Parents _____
Superintendent of Schools _____ Name of Child _____
Representing LEA _____ PARENTS REPRESENTS SELF
Representing Parents _____
Due Process Hearing Officer _____ Party Initiating hearing _____

FINAL HEARING REPORT AND DUE PROCESS HEARING DECISION:

I. ISSUES AND PURPOSE OF HEARING:

The undersigned was appointed hearing officer in this cause. By letter dated _____ and received by _____ Public Schools on _____ due process hearing was requested by _____ on behalf of _____ The following issues were presented:

1. WHETHER _____ PUBLIC SCHOOLS FAILED TO PROVIDE WITH AN APPROPRIATE EDUCATION DURING THE 20(20 AND 20 -20 SCHOOL YEARS?
2. WHETHER _____ PUBLIC SCHOOLS FAILED TO PROPERLY IMPLEMENT THE IEP FOR SCHOOL YEAR 20 -20 AND IF PARENTS ARE ENTITLED TO REIMBURSEMENT OF EXPENSES DURING 20 -20 SCHOOL YEAR INCURRED FOR PRIVATE SCHOOL PLACEMENT?
3. WHETHER PARENTS ARE ENTITLED TO PAYMENT OF EXPENSES FOR _____ TO ATTEND _____ SCHOOL FOR THE 20(20(SCHOOL YEAR?
4. WHETHER PARENTS ARE ENTITLED TO COMPENSATORY SERVICES? _____ SEEKS SPECIAL EDUCATION TUTORING FROM A QUALIFIED TEACHER FOR 1-3 HOURS PER WEEK AND SPEECH THERAPY?

II. PRE-HEARING MATTERS AND HEARING DATES:

A. One Extension Granted:

At the Pre-Hearing Conference held on _____, the parties moved to continue the due process hearing and to extend the final decision due date. It was found to be in the child's best interest:

1. that the parties have opportunity to proceed forward with and participate in an IEP meeting;
2. that parental participation as a member of the IEP team would afford an opportunity to resolve issues;
3. that the proposed IEP, if parents do not consent, would be available at the due process hearing; and
4. that the extension would allow the parents an opportunity to proceed to a full, complete, and fair due process hearing on all issues.

For the reasons stated above, it was found to be in the child's best interest that a continuance of the hearing date be granted and that the final decision date be extended from _____ to _____

B. Timeline:

- Request for due process hearing received by LEA
- Hearing Officer appointed in this cause
- First Pre-Hearing Conference held
- Written Motions of LEA due date
- Exhibits of Parents received by hearing officer
- Exhibits of LEA received by hearing officer
- Written Response of Parents due
- Second Pre-Hearing Conference held
- Additional submissions of evidence/witness list for continued hearing date
- Due Process Hearing held
- Estimated date of availability of hearing transcript (ie. 10 business days)
- Written Closings/Arguments of the parties due
- The Final Decision Due Date

C. Motions by

Public Schools and Determinations made on such motions:

Counsel for _____ Public Schools made certain motions as to matters at the first Pre-Hearing Conference (held _____). At the request of the hearing officer, all motions were reduced to writing and written motions provided to the hearing officer and _____ was afforded the opportunity to respond to the motions and a Second Pre-Hearing Conference (via telephone _____).

conference call) conducted .

The undersigned hearing officer, upon consideration of the statutes and applicable law, motions, and arguments of the parties, made the following determinations on the motions. These determinations were presented to the parties orally at the Second Pre-Hearing Conference of

1. Motion to dismiss due statute of limitations:

Counsel for _____ Public Schools moved the hearing officer to dismiss all matters and issues raised by _____ that occurred prior to _____. Counsel alleged that all issues and incidents occurring prior to _____ are over 2 year old at the filing of the request for due process hearing and are thus time-barred by the statute of limitations.

Section 8.01-248 of the Code of Virginia provides for a two year statute of limitation in personal actions for which no limitation is otherwise prescribed. *Letter to Zimerlin*, 34 IDELR 150 (OSEP (2000)) noted a two year statute of limitations for requesting a due process hearing “may be consistent with the IDEA”. The statute begins to run when the party learns of the injury and not when a party learns the injury is actionable. (see _____ v. _____ *School Board*, 798 F. Supp. 228 (E.D. Va 1992) aff’d, 7 F.3d 225 (4th Cir.1993).

Upon motion of counsel matters and issues as to the 20 ____ -20 ____ school year and as to prior years were **dismissed with prejudice** as being time-barred by the statute of limitations.

2. Motion to dismiss for lack of sufficiency of the parent’s hearing request:

Counsel for _____ Public Schools moved to dismiss *without prejudice* this proceeding due to lack of sufficiency in the due process hearing request. Counsel’s motion alleged that the parents did not provide a sufficient notice of the nature of the problem leading to the due process hearing request, nor provided facts relating to the problem, nor proposed resolution of the problem to the extent known.

The *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* provides that either a parent or parents or a local educational agency may request a due process hearing when a disagreement arises regarding “... provision of a free appropriate public education to the child” (see 8 VAC 20-80-76 B. d.). It is further provided that the notice must include:

- a. The name of the child;
- b. The address of the residence of the child;
- c. The name of the school the child is attending;
- d. A description of the nature of the child’s problem relating to the proposed or refused initiation or change, including facts relating to the problem; and

- e. A proposed resolution of the problem to the extent known and available to the parent or parents at the time of the notice. (See 8 VAC-20-80-76 C. 2.)

letter of _____ requesting due process hearing stated that Public Schools “failed to provide an appropriate education” and “failed to properly implement the IEP”. The letter further stated a.) that on _____ put the school system on written notice of intent to place _____ child in a private school; b.) that _____ was asking for reimbursement of educational expenses and transportation expenses incurred the past year; c.) that _____ was asking to have the school pay for attendance at _____ School; and d.) that _____ was asking _____ Public Schools to provide for compensatory services in the form of special education tutoring.

After consideration of the rights of both parties to a fair hearing and upon consideration of the above requirements and _____ request for due process hearing the motion to dismiss without prejudice was denied. _____ letter of _____ requesting due process hearing provided sufficient compliance with the above standards to allow matters to proceed forward to due process hearing.

3. Motion that Parents are not entitled to the relief they requested:

Counsel for _____ Public Schools moved that the parents’ request for tuition payment to a sectarian school be dismissed as the request for tuition payment to a sectarian school is not authorized. Court decisions in support of its position were presented.

Both parties are entitled to a determination of issues based upon the evidence presented at the due process hearing. At the Second Pre-Hearing conference the hearing officer declined to dismiss or make a determination if the parents are or are not entitled to the relief requested.

The cause was allowed to proceed to due process hearing and after the presentation of evidence a determination as to the relief requested would be made.

4. Motion that the due process hearing request was premature:

Counsel for _____ Public Schools argued that, as to the 20____ -20____ school year, no IEP was developed nor required to be developed and that therefore there is no current disagreement regarding the proposed IEP or with FAPE being provided.

The parties consented to scheduling an IEP meeting concerning the 20____ -20____ school year. An IEP meeting was held on _____ concerning a proposed IEP for the 20____ -20____ school year.

participated in the IEP meeting but did not sign giving consent to implementation. (see S Ex. 32)
This matter was allowed to proceed forward to determination at due process hearing.

III. DUE PROCESS HEARING:

By agreement of the parties the Due Process Hearing was held on _____ at _____ A.M. at
the _____ Public School Board Offices, _____ At the request
of the parents the due process hearing was closed to the public.

A. Witnesses: The following witnesses were presented at due process hearing:

1. Witnesses for the Parents:

.... Parent of

2. Witnesses for _____ Public Schools:

.....Speech and Language Therapist
.....Learning Disabilities Specialist
.....Speech Therapist
....Special Education Teacher
.....Principal, _____ Elementary School

B. Exhibits: The following exhibits were admitted by, en mass, agreement of the parties:
Parents exhibits numbered 1 through 20.
School exhibits numbered 1 through 32.

C. Designations of Transcript and Exhibits: The transcript of the due process hearing, consisting of one volume, is referred to as "TR. ___" (with the page number inserted at "___"). The Parent's Exhibits are designated as "P Ex. ___" and the School's Exhibits are designated as "S Ex ___" (with the page number inserted at "___").

D. Post-Hearing Timeline: At the conclusion of the Due Process Hearing the parties did move to provide written proposed findings of fact and conclusions of law and arguments therefore after receipt of the transcript. No extension of the final decision due date heretofore established was required.

The court reporter indicated approximately 10 business days were required to provide a transcript to the parties. The parties requested and agreed to a 5 day period to draft and submit arguments. Upon motion and with agreement of the parties the following post-hearing timeline was proposed and agreed to:

Anticipated date of transcript being delivered to parties.
Due date for Parents and LEA's submission of written closing arguments.
Final Decision due date.

IV. FINDINGS OF FACT:

01. _____ is the 12 year old _____ child _____ of _____ and _____, at all times relevant to these proceedings, resides with _____ parents in _____ County Virginia.
02. A _____ Public Schools Eligibility Committee meeting of _____ determined _____ to be eligible for special education and/or related services. _____ was identified with Language Delay and testing showed possible ADD and anxiety concerns. No specific learning disability noted. (S Ex. 9)
03. The Eligibility Committee met on _____ (S Ex 12) and found _____ as being "Other Health Impaired" with Language Delay. _____ School Psychologist noted a dissenting opinion in which _____ disagrees with finding that _____ qualifies for special education services under "Other Health Impaired".
04. On _____ an IEP meeting was held to develop and IEP for _____. This IEP provided for speech and language services and classroom accommodations. _____ signed this IEP providing consent for its implementation.
05. On _____, an IEP meeting was held to develop an IEP for _____ to address "Other Health Impairment". This IEP was signed nor consented to by any parent.
06. On _____ an IEP meeting was held to develop and IEP for _____ to address "Other Health Impaired". Agreement was not reached, and no parental consent given to implement this IEP. Because of reservations about criteria on goal pages _____ requested the IEP committee reconvene at a later date after _____ had time to investigate different wording and stated _____ would contact the IEP committee when _____ felt prepared to meet again. (S Ex 15)
07. a. _____, M.Ed. provided an Educational Assessment for _____ with a Date of Testing of _____ and which assessment was admitted as an exhibit. (P Ex 8)

- b. _____, M.Ed. provided an Educational Assessment for _____ with a Date of Testing of _____ and which assessment was admitted as an exhibit. (P Ex 20)
- c. _____, M.Ed. provided an Educational Assessment for _____ with a Date of Testing of _____ and which assessment was admitted as an exhibit. (P Ex 14)
- d. _____, M.Ed. reported in Parents Exhibit 14 that _____ provided an Educational Assessment for _____ with a Date of Testing of _____ assessment referred to but was not admitted as an exhibit. (P Ex. 14)
08. On _____ an IEP meeting was held to develop an IEP for _____. This proposed IEP was not signed by parents giving permission for its implementation. (TR 67)
09. On _____, after receipt of the evaluation of _____ M.Ed., _____ gave consent to an IEP for _____ and signed giving permission for implementation. (S Ex 22 and TR153). _____ was identified as "Other Health Impaired and Speech/Language Impaired". It was noted that ADD interferes with _____ ability to process information auditorily, follow directions, pay attention, problem solve, organize, and store information. The IEP provided _____ will take grade level classes with accommodations and receive 1:1 instruction of 45 minutes in the morning and afternoon (not to interfere with regular class instruction).
- a. Amendment to IEP dated _____ was made providing for certain accommodations and agreed to by _____ (S Ex 23)
- b. Amendment to IEP was agreed to by _____ (not dated) providing 6 hours per week ESY services. (S Ex 24)
10. On _____ and IEP meeting was held that _____ attended but; no parent signed the IEP agreeing to the IEP and giving permission for implementation. (S Ex 25)
11. On _____ an IEP meeting was held that _____ attended. _____ did not sign authorizing implementation of this IEP. (S Ex 32)
12. By letter dated _____ notified _____ Public Schools of decision to place _____ in a private school. (S Ex 26)
13. Parents refused to attend an IEP Meeting on _____ to discuss changes desired in IEP. (S Ex 27)

14. _____ was removed from _____ Public Schools on _____ and subsequently enrolled in _____ School for the remainder of the 20__-20__ school year and is currently enrolled at _____ School.

V. DISCUSSION AND CONCLUSIONS OF LAW:

ISSUE 1. WHETHER _____ PUBLIC SCHOOLS FAILED TO PROVIDE WITH AN APPROPRIATE EDUCATION DURING THE 20__-20__ AND 20__-20__ SCHOOL YEAR?

A. Provision of an appropriate education during the 20__-20__ school year:

Matters concerning the 20__-20__ school year and prior school years are barred by the statute of limitations. Counsel for _____ School moved for dismissal of matters that arose in the 20__-20__ school year and prior years as being time-barred due to the statute of limitation. A two year statute of limitation for special education issues is applicable. *_____ vs. _____ School Board*, 338 F.3d 325 (4th Cir. 2003) The request for due process hearing was made on _____ 20__ and all matters that arose more than two years prior to this date are time-barred by the applicable statute of limitation.

B. Provision of an appropriate education during the 20__-20__ school year:

A free appropriate public education is one designed to confer educational benefit and which is developed in accordance with the IDEA's procedures. The "free appropriate public education" requirement is satisfied by "providing personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction." *Board of Education of _____ Sch. Dist. v. _____*, 458 U.S. 176 (1982). To determine if an IEP is appropriate and whether the school system has fulfilled its obligation to provide a Free Appropriate Public Education ("FAPE") there is a twofold inquiry, a.) whether the School District has complied with the IDEA's procedural requirements in developing and implementing the IEP; and b.) whether the IEP is reasonably calculated to enable the child to receive educational benefit.

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. *_____ Public Schools*, 29 IDLER 1096 (1998), *_____ v. _____ Board of Education*, 774 F.

2d 629 (4th Cir. 1985). There must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parent's opportunity to participate in the formulation process, or caused a deprivation of educational benefits. _____ v. _____

Dpt. of Ed., 154 F.3d 14 (1st Cir. 1998)

_____ were present at the due process hearing. _____ was the only witness presented by parents at the due process hearing. _____ testified as to _____ concern that _____ was not making improvements under special education at _____ Public Schools and that, " _____ wasn't gaining anything. _____ might have been holding _____ own, but _____ wasn't gaining." (TR 36)

_____ further testified concerning matters addressed in the two "Letters of Finding" issued July 31, 20____ and _____ 20____ by the Department of Education. (P Ex. 16 and 17) The Letter of Findings dated _____, 20____ addressed matters of evaluation, eligibility determination procedures, and annual review of IEP. The Department of Education addressed _____ Public Schools' timeline compliance, provision of criteria, and following proper procedures. Certain corrective actions were provided to be complied with.

The Letter of Finding dated _____ 20____ IEP addressed, among other matters, Public Schools' procedures, continuum of alternative placements at the _____ 20____ IEP, and prior written notice. Corrective actions were provided for.

These "Letters of Finding" address issues which now are time-barred in this proceeding due to the statute of limitations. While the "Letters of Finding" raised procedural compliance issues, _____ did not raise procedural issues in the IEP process for periods at issue in this hearing.

The evidence indicated that _____ Schools was prepared to proceed with an IEP prior to the start of school year 20____ -20____ but _____ insisted on obtaining a independent evaluation from _____, M.Ed. prior to any IEP meeting being held. (TR 153) _____ written evaluation was not available until the latter part of _____, 20____ and on _____, 20____ an IEP was agreed to.

Between the _____ 20____ IEP and the next earlier IEP of _____, 20____ a number of efforts were taken to develop an IEP. A timeline of efforts include:

- a. _____, 20____ ...An IEP meeting held and IEP was consented to by a parent
- b. School year 20____ -20____ ... From the beginning of school year 20____ -20____ to _____, 20____ no IEP meetings held due to _____ request.
- c. _____, 20____ IEP meeting held - parents refused to sign (TR 120-122)
- d. _____, 20____ IEP scheduled not held - canceled by parents (TR 120)
- f. _____, 20____ Memorandum of Agreement signed re Mediation on IEP matters (P Ex 10)

- g. 200..... IEP meeting held - not signed by parents (S Ex 16)
- h. 20..... IEP consented to by both parents

It was not until after receipt of the evaluation of _____, (see TR 153) that _____ consented to an IEP which was utilized for the remainder of the 20__-20__ school year. (S Ex 22, TR 67)

The witnesses presented by _____ Public Schools testified as to their involvement with the IEP process, to their relationship and contact with _____, and provided opinion as to the appropriateness of the education and educational services provided _____

_____, worked as a speech and language therapist on a 1:1 basis with _____ for 30 minutes a week from _____ 20__ to the end of the 20__-20__ school year. _____ was classified as having a language processing disorder as well as an auditory memory disorder. (TR 64)

In _____ and _____ of 20__ missed three of the 30 minute sessions with _____. The first 30 minute session was missed on _____, 20__ and was made up by adding 10 minutes to the next three 30 minute sessions (TR 70). The remaining two thirty minute sessions missed on _____ 20__ and May 7, 20__ were made up by "previous evaluation time" in that _____ was given testing and evaluated in _____ and _____ of 20__ for three sessions of 1 ½ hrs. each for three separate days. (TR 71) _____ indicated _____ was making progress and improved _____ ability 1.) to answer questions in response to something _____ had read; 2.) to identify the main ideas and details of things read; and 3.) to repeat sequences of numbers and letters forwards and backwards. (TR. 66) Progress was being made by _____ in implementing the goals and objectives of the IEPs'. (TR. 68) _____ was a member of the IEP team in _____ 20__, and _____ explained the goals to _____ and felt _____ seemed to understand and agree to them. (TR 69)

_____ holds a master's degree in curriculum and instructions and in learning disabilities and is endorsed to teach children with learning disabilities from grades kindergarten through grade 12. _____ participated in the eligibility meetings, and IEP meetings including the _____, 20__ and the _____ IEP meetings (S Ex 16) for which no parental consent was obtained.

_____ affirmed that, at the request of _____ the recommendations of _____ were included into the IEP of 12/13/____ (S Ex 22; TR 84). _____ also believed the proposed IEP was appropriate and it addressed the issues that were listed in the report of _____ as being weaknesses. These include weakness in areas of attention and anxiety (TR 87). Inattention was addressed as _____ had difficulty with reading comprehension and decoding. _____ reading was affecting _____

ability to comprehend math story problems and math was addressed. written expression was weak according to report and a goal objective was developed to address written expression. The earlier IEP addresses similar areas and addressed strengths and weaknesses. (TR 88-90) parents requested that be pulled out and taught one on one by a teacher (TR 90). parents requested receive 1:1 services in an isolated environment free of the distractions of other children.

A 1:1 service of 90 minutes a day was proposed to the parents but this services was proposed to be delivered in the LD resource room with monitoring every 4 ½ weeks. School personnel raised concerns of Least Restrictive Environment ("LRE") and that the LRE for was in an LD class with other children (TR 114) and that the parents' request for teaching 1:1 in an isolated and barrier-free environment was not required and not necessary. (TR 103-105) The Resource room and other possible locations for 1:1 services were discussed but not agreed to by the parents.

, holds a masters degree in LD curriculum and a certificate in LD, K through 12. sociology and psychology, (TR 139) taught from 20 through 20 and from 20 through : 20 (TR 140-141). participated in the IEP's of , 20 , , 20 (S-22), and September 17, 20 (S-25).

provided services of 90 minutes per day to At the request of these services were provided to before and after the regular school day. (TR 148) even though there was an appropriate program available during the school day.

indicated progress was being made by in reading comprehension and writing and testified felt was making progress and that was making progress in the goals and objectives of IEP.

For the 5th grade (20 -20) grades include 86 in English, written composition, 82 in mathematics, 80 in reading, 82 in social studies, 89 in spelling. coordinated with teachers and talked to teacher's every day or couple of days to determine how things were going and how was progressing in the regular classroom. also looked at work at least weekly to monitor progress.

teachers provided study guides, notes from the board, at times did copy the notes for self, and the teacher would look at the notes to see if they were appropriate, if notes were inappropriate the teacher provided notes (TR.184-185)

Taking into consideration these contacts [redacted] believed [redacted] was progressing in educational program and mastering grade level work in a regular classroom with accommodations. With accommodations [redacted] was able to benefit from regular education instructions. (TR. 181-182)

[redacted] principal, 27 years experience in education, 12 years as principal, testified that Public Schools was prepared to have an IEP meeting for [redacted] prior to the start of the 20 [redacted]-20 [redacted] school year but was held up, as [redacted] insisted, for [redacted] evaluation. (TR. 200)

In reviewing the testimony of the witnesses and exhibits received, by a standard of preponderance of the evidence, there is sufficient evidence presented that the parents not only had the opportunity to participate in the IEP formulation process but did in fact actively and strongly participate in the process.

At [redacted] insistence it was only after the parents received their independent education evaluation from [redacted] that an IEP meeting able to be held and on [redacted] 20 [redacted] IEP was agreed and put in effect.

[redacted] requested before and after school services for [redacted] which were put into effect for 1 1/2 hours a day beginning in January, 20 [redacted]. (TR. 200). The parents requested an assistive technology evaluation and one was secured. An independent speech language evaluation was requested by the parents and provided. ESY services were additionally provided upon request of the parents.

The parents bear the burden of proving that the program established by the school system is inappropriate and the parents have not born that burden of proof. *[redacted] v. [redacted]*, 703 F.2d 823, 330 (5th Cir. 1983), aff'd 468 U.S. 883 (1984); *Board of Ed. of [redacted] v. [redacted]*, 162 F.3d 289, 292 (4th Cir. 1998). Insufficient evidence has been presented to establish that [redacted] Public Schools IEP is not appropriate and, in fact, the [redacted] Public Schools has proven the program presented [redacted] was appropriate.

For the reasons above stated, I find that concerning the school year 20 [redacted]-20 [redacted] :

1. [redacted] Public Schools has complied with procedural requirements in developing and implementing the 20 [redacted]-20 [redacted] school year IEP; and
2. the IEP is reasonably calculated to enable [redacted] to receive educational benefits.
3. [redacted] Public Schools has provided [redacted] an appropriate education.

ISSUE 2. WHETHER PUBLIC SCHOOLS FAILED TO PROPERLY IMPLEMENT THE IEP FOR SCHOOL YEAR 20 -20 AND IF PARENTS ARE ENTITLED TO REIMBURSEMENT OF EXPENSES DURING 20 -20 SCHOOL YEAR INCURRED FOR PRIVATE SCHOOL PLACEMENT?

ISSUE 3. WHETHER PARENTS ARE ENTITLED TO PAYMENT OF EXPENSES FOR TO ATTEND SCHOOL FOR THE 20 -20 SCHOOL YEAR?

felt that was not making improvements under the special education at Schools. testified that, as to " wasn't gaining anything. might have been holding own, but wasn't gaining" (TR. 36) and concern was expressed that was two to three years behind in reading and comprehension.

was concerned that would go through the whole year not knowing whether is making progress or not. However, did not observe in classroom at Public Schools during the 20 -20 school year. (TR. 48)

Public Schools wanted to attend an IEP meeting before the 20 -20 school year began but wanted to get information from and other information before an IEP meeting was held. (TR. 52) Due to this it wasn't until 20 that an IEP meeting was held. attended this meeting but did not sign giving permission for implementation of the IEP. At this , 20 meeting indicated needed to take the proposed IEP home to let view it. A subsequent IEP meeting was scheduled for 20 but on , 20 canceled the meeting (TR. 167-168)

At the IEP meeting on 20 which was the last IEP meeting prior to removing from Public Schools, wanted to work on a way to monitor and make sure was making progress.

noted that the parents had no objections to goals and objectives but there were objections to services. wanted specific assistive technology which was provided (TR. 174) and wanted procedures in the IEP to help keep up with homework assignments and books needed at home. wanted weekly report with exact goals worked on and dates and time for speech therapy and tutoring.

normal practice was to look in assignment book every afternoon and make sure what assignment were and to work with teachers on a daily basis. had no objection for

this procedure to be written into the IEP. If addressed at longer intervals the reporting desire for reporting was considered appropriate by . In fact, a report was provided every 4 ½ weeks showing progress.

Even upon addressing these areas was not willing to sign an IEP. (TR. 178)

At the start of the 20 -20 school year requested records concerning dates and times of services as was concerned about speech therapy and the days missed by the speech therapist and missed LD services. (TR. 40) Nine days of services were not provided at the start of the school year. Public Schools, at the , 20 IEP meeting, offered to make up the nine days of services on a one-for-one basis.

, speech therapist, worked with at the beginning of the 20 -20 school year and provided services as per the 20 IEP. This IEP was the last IEP agreed to by the parents. There was an amendment to IEP signed by parents on . (S-23) concerning accommodations and an additional amendment for ESY services (S Ex 24). An IEP meeting was held on 20 (S Ex 25) but not signed by the parents.

believed that IEP of . (S-22) was appropriate and the 30 minutes a week worked on speech therapy was sufficient. (TR. 126-127) did indicate one 30 minute session was missed the first week of school (TR. 129) and the school offered to make this up in the IEP of 20 considered this a sufficient amount of services to compensate for missed services. (TR 129-131;S-32)

testified that accommodation were provided (TR 183-185) in the 20 -20 school year, that the IEP proposed was appropriate and met needs, and that was making progress (TR 178-179).

In both the 20 -20 and 20 -20 school years coordinated with teachers (excepting the 9 day period at the start of the 20 -20 school year) each day or two monitoring the status of matters and how was progressing in the regular classroom and also reviewed work at least weekly. On the basis of these observations believed was progressing in educational program and was mastering grade level work. was in a regular classroom with accommodations. (TR. 181-182)

was provided an "Alpha smart" (a portable word processing tool requested by) but appeared to be embarrassed by it and didn't take it into the classroom. (TR. 185)

teachers provided study guides and notes from the board or copied notes for self and the teacher would look at the notes and if notes were inappropriate the teacher provided notes. (TR.184-185)

Testimony established that was making educational progress under the proposed IEPs, that the IEPs proposed offered an appropriate education, and the IEP 20 -20 was properly implemented.

There were no expert witnesses called by the parents in support of their position that Public Schools did not offer an appropriate program nor indicating that School was appropriate as a placement. testified that at School does not receive any speech and language services and does not have a special education endorsed teacher. (TR. 48-49) further testified does not have information as to whether School is licensed and does not know about matters of accreditation. (TR. 50)

To obtain tuition reimbursement the parents are required to show that the school division failed to offer an appropriate program and that the program obtained was appropriate. School Committee vs. Department of Education, 471 U.S. 359 (1958) Parental placement at a school which is not state approved or does not meet the standards of the state does not itself bar public reimbursement under Dist. v., 114 S. Ct. 361, 20 IDELR 532 (U.S. 1993)

The Parents have not satisfied either requirement of No expert testimony was presented to show that Public Schools program was inappropriate. No evidence was presented establishing that the School program in which is placed was appropriate.

Testimony of the witnesses for Public Schools and the evidence admitted indicated that IEPs were appropriate, was making progress and receiving educational benefit, and the parents participated actively in the IEP process.

Additionally, the Parents are not entitled to payment/reimbursement for School, a sectarian school placement. Public Schools is prohibited under state law and the Virginia constitution from providing public funding for sectarian school placement.

Section 22.1-216 of the Code of Virginia provides,

“A school board may provide special education for children with disabilities either directly with its own facilities and personnel or under contract with another school division or divisions or any other public or private nonsectarian school, agency or institution licensed or certified by the Board of Education or by a licensing authority in the state where the facility is located. Special education for children below the compulsory school attendance age may be provided in nonsectarian child-day programs license in accordance with state law.” *(emphasis added)*

Article VIII, Section 10 of the Virginia Constitution provides,
“No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may, and the governing bodies of the several counties, cities and towns may, subject to such limitations as may be imposed by the General Assembly, appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and **nonsectarian private schools and institutions of learning**”
(*emphasis added*)

For the reasons stated above I find that:

1. The 20 20 - IEP was properly implemented by Public Schools.
2. The parents are not entitled to reimbursement of expenses during the 20 -20 school year incurred for private school placement.
3. The parents are not entitled to payment of expenses for to attend School for the 20 -20 school year.

**ISSUE 4. WHETHER PARENTS ARE ENTITLED TO COMPENSATORY SERVICES?
. SEEKS SPECIAL EDUCATION TUTORING FROM A
QUALIFIED TEACHER FOR 1-3 HOURS PER WEEK AND SPEECH THERAPY?**

For the reasons above stated and upon the considerations above set forth it has been found that did receive an appropriate education at Public Schools. received an appropriate education and the IEP proposed and developed for the 20 -20 school year by Public provides an appropriate education for . The proposed IEP presents offers a FAPE, “educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child “to benefit” from the instruction.

Any missed services from prior years were compensated for in the proposed IEP.

An award of compensatory education is an appropriate relief under the IDEA to cure a deprivation of a disabled child’s statutory rights. *v. Dept of Ed.* 9 F 3d 184 (1st Cir. 1993)

The parents are seeking compensatory educational services but the parents have not presented expert witnesses nor other evidence to establish the basis for such request, need for such services, services required, nor what the services are compensatory in nature for. The parents actions over time in withholding

consent to services, delaying IEP meetings, canceling meetings, and actions of withdrawal from school are considerations. The parents cannot use their own actions and refusals to services as a basis for compensatory education. *v. School Dist of*, 303 F. 3d 523(4th Cir. 2002). The requested award of compensatory services is, for the reasons above stated, denied. The request for special education tutoring and speech therapy is denied.

V. SUMMARY:

In Summary, upon review of the evidence including testimony of witnesses, exhibits admitted, applicable law, statutes, regulations, arguments presented, and for the reasons above set forth the following conclusions of law are made:

A. Determinations required by Regulations:

- 1.) The requirements of notice to the parents were satisfied;
- 2.) has a disability;
- 3.) needs special education and related services.; and
- 4.) The LEA is providing a free appropriate public education.

B. Summary:

1. The statute of limitation bars determination of matters concerning the 20 -20 school year.
2. Public Schools provided an appropriate education during the 20 -20 school year.
3. Public Schools properly implemented the IEP for school year 20 -20 .
4. The Parents are not entitled to reimbursement of expensed incurred during the 20 - 20 school year for private school placement.
5. The parents are not entitled to payment of expenses incurred for to attend School for the 20 -20 school year.
6. Compensatory services are not awarded.

Appeal Information

A decision by the hearing officer in any hearing is final and binding unless the decision is appealed by a party in a state circuit court within one year of the issuance of the decision or in a federal district court.

Date: 20

, Hearing Officer

Copies of this Final Hearing Report and Decision mailed to:

- 1.
2. Esq.,
3. , Director of Pupil Services . Public Schools,