

04-030

Local Hearing XX

State Level Appeal \_\_\_\_\_



### 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

\_\_\_\_\_  
, Esq.

\_\_\_\_\_  
Esq. Esq.

\_\_\_\_\_  
Counsel Representing LEA

\_\_\_\_\_  
Counsel Representing Parent/Child

\_\_\_\_\_  
Public Schools

\_\_\_\_\_  
Public Schools

\_\_\_\_\_  
Party Initiating Hearing

\_\_\_\_\_  
Prevailing Party

Hearing Officer's Determination of Issue(s):

Lea was providing FAPE.

Hearing Officer's Orders and Outcome of Hearing:

Request for reimbursement for private school expense was denied, and proceeding dismissed.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which 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

VIRGINIA DEPARTMENT OF EDUCATION  
DUE PROCESS HEARING



PUBLIC  
SCHOOLS (schools, LEA)

(Parents)

DATE OF DECISION

(child)

, ESQ.  
(attorney for Schools)

, ESQ.

(attorneys for Parents, Child)

ESQ.

DECISION OF HEARING OFFICER

This proceeding was initiated by Schools, by request for due process filed on or about Sept. 12, 20 . The undersigned was appointed Hearing Officer by letter from Schools dated Sept. 12, and had no conflict and accepted the appointment. The parties were consulted and had no objection. Prompt handling lead to arrangements for hearing all day on Thursday, Oct. 23, and Monday, Oct. 27, with hearings added for Tuesday Nov. 4, and 1/2 day on Nov. 5. A prehearing conference was arranged on Tuesday, Sept. 30, and a report was issued on Oct. 4. Time for decision was extended beyond the 45 days (Oct. 27) to Nov. 10, which is in the best interest of the Child as it will accomodate witnesses called by Parents from out of town, and the status of the Child will not change. Subpoenas were issued at the request of both parties.

Mediation was arranged, but was not sucessful.

The Parties got together and submitted 2 large notebooks of 124 exhibits, all of which were received. 3 more exhibits, through No. 127, were added at the Hearing. All were received. A court reporter was present at the hearings. The Parties made opening and closing statements, and supplied memos and copies of decisions at the close of the hearings on Nov. 5. The Hearing Officer did not want to allow added time for briefs, and did not ask for a transcript, as that would further delay decision beyond the 45 days.

The issue is whether the Parents are entitled to reimbursement for the cost of sending Child to a private school program in which offers Applied Behavior Analysis method. Related issues involve the adequacy of the program offered by the LEA, whether the child had been receiving, or would receive, educational benefit from the LEA program and the proposed IEP for the school year starting Sept. 20 , and whether the program proposed in was of sufficient benefit to the Child. Procedural issues were raised in Ex. 126.

THE EVIDENCE: Child was born , and is now over 10 years old. has been in various Schools special education programs since was 3 years old. is autistic, and

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has intelligence in the low average range. There has been much analysis, and various IEPs, and other handling by the Parents and Schools, with many meetings and exchanges of ideas and information. is described as a pleasant, cooperative child, with little or no disorder problems, but with difficulties frequently associated with autism. There is no dispute about need for special education services.

Exhibits 1-20 reflect extensive handling by Schools in 19 leading to an IEP for pre-school services, and conclusions about delayed speech, and developmentally delayed, and need for speech and language therapy. Exhibits 21-29 also show extensive handling leading to a further IEP in June 19 , with remarks indicating progress. Another IEP was in May 19 (Ex. 31) with extensive special education arrangements, and good progress reports. Triennial review took place and another IEP issued in May 19 , with reports of progress, and Parent approval (Exhibits. 38, 45, and 47). There was further evaluation at that time, including a Psychological Report which suggested autism (Ex. 39), and a revised IEP (Ex. 45) showing autism. In April 20 the Parents asked that Child have own aide, and that was included in the IEP which was signed in May 20 (Ex. 54). Progress report continued to show some progress (Ex. 57). Another IEP was agreed upon in May 20 (Ex. 62), Triennial review came up in 20 (Ex. 66) and there was question due to Child failure of the SOL tests (Ex. 69). There was a further psychological exam report (Ex. 73) and various other observations. A revised IEP was agreed upon 5/28/ for Child's 4th grade, and included regular classroom, special education class, speech therapy, and an aide (Ex. 79). The Progress Report for the 20 - School Year showed some progress on various details (Ex. 81).

Ex. 83 is a report from the Center in dated 10/2/ which refers to another report of June 27, 20 (Ex. 127, a report dated July 1, 20 ). , the principal author, was a witness by agreed conference telephone call on Oct. 27. These reports were based on review of records, interview with the Mother, and for the 10/2/ report some meetings with the Child, in which Assessment of Basic Language and Learning Skills (ABLLS) was utilized for assessment which took place on Sept. 20, 20 . The gist of these reports is that Child needs special education, and they suggest using the Applied Behavior Analysis method instead of the TEACCH method used largely by Schools. There had been no contact with Schools by visit or otherwise to learn just what procedures were being used with Child.

There was a further IEP meeting called on 11/5/ by Schools to discuss private testing results, and to review or revise the current IEP. As result, a revised IEP was agreed on that date, which increased Child's special education time (Ex.85). Extensive notes are kept by Schools special education staff , and much is sent Parents (e.g. Ex. 87, 88, 94, 96 and 97).

Notice for IEP meeting on 5/16/ was sent (Ex. 89), and there followed several exchanges and detailed suggestions by Parents letter of May 4 (Ex. 91) who referred to the evaluation obtained from the Center, and requested that Child be held back a year, and

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that receive four hours of one on one teaching each day, and 2 hours of direct speech using the applied behavior analysis approach. Many details were submitted. A revised IEP was prepared, with the Parents participation, dated 6/30/ (Ex. 103), but the Parents did not sign the consent page. This IEP provided more special education class time and more speech time, but not as much as the parents had requested. The page of the IEP dealing with Present Level of Educational Performance set forth in some detail problems of Child, and various instructional modifications, prompting, and other efforts, by Schools staff to assist and deal with them. had been getting the assistance of an aide, and one was planned full time for the upcoming year. Reference was made to the Center evaluation, and to Child attending a 2 week summer session at the Center. The last sentence said that the "goals are being written on a short term basis rather than annually". Child had been attending Elementary School for several years, but was to be at the Elementary School in Fall 20 (Ex. 92).

Parents had also submitted additional comments, and listed many goals, by letter of June 3 (Ex. 98), and attended the IEP meeting on June 30, 20 report card for the year just finished showed passing grades, but with accomodations (Ex.101). The Progress Report for the 4th Grade year showed various progress, but many details of need for prompting, and various problems (Ex.102). The IEP on the pages dealing with Prior Notice said that "All options considered were included in the current IEP" but that Parents wanted more details about the upcoming year, and in another space said that other factors relevant to this proposal would be considered at the beginning of the 20 school year, and a meeting of the team would be held prior to Sept. 2.

There was further handling by the Principal with Parents (Ex.104), and the Parents submitted letter of July 29 (Ex. 105) which expressed strong concerns, and criticisms, and sought ABA method instruction, which they believed to be the best method, and stated that they had asked the Center to provide a full time teacher for Child to be taught at home. Child was said to have had a tutor for the past 2 years and to have responded well to teaching in a one on one setting. A further letter of August 13, 20 was sent by Parents to the Superintendent of Schools (Ex. 106) with a Notice of Intent to Provide Home Instruction, various academic credentials of proposed instructors, and a program of study prepared by the Center in , and stating that Parents would be seeking reimbursement.

The Principal of Elementary School replied August 21 (Ex. 108) expressing various concerns about an ABA program for Child, and that Schools does use ABA when appropriate, and that they would be glad to schedule another IEP meeting if desired.. By letter of Sept. 8 the attorney for Schools wrote to Parents advising that the School Board was requesting a due process hearing because the Parents said they would be seeking reimbursement.

Ex. 111 was a letter of Sept. 10 from one of Schools staff who had contacted the Center and learned that they had no definite arrangements with Parents to work with Child. Ex. 112 was a letter from the Schools Supt. recognizing that the Mother was going to provide home instruction. Ex. 113 is a Center Assessment of Academic Skills/Recommendation on child dated 9/22/ based on meetings with Child on 9/10and 11/20 . This 9 page report

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indicated various testing, found that Child was behind, and needed specialized instruction, and concluded by noting that Child fortunately had already acquired many learning skills and habits. Ex. 114 is a psychiatric evaluation by the Center, 11 pages, which goes into great detail; refers to prior diagnosis of autism, but is uncertain if Child has autism and suggested that it was ADHD; and stated that knowledge and intelligence appear in the low average range. Most of the information seemed to be from the Maternal Grandmother in . Very few records were reviewed. The recommendations were quite vague, but did feature behavior interventions, and did strongly recommend return to more formal schooling in order to interact with other classmates.

Ex. 115 is a Center health record correction form signed by the Mother, giving a few details. Ex. 116-124 are resumes of witnesses. Ex. 125 is a letter from an Attorney for the Center expressing some reluctance to respond to the subpoena issued in this proceeding. Ex. 126 is a 6 page paper listing "The County's Procedural Violations". Ex. 127 is a Center Case Review/Consultation report dated 7/01/ , based on examining various evaluations and Child's then current IEP, and an interview with the Mother, but without being able to observe the Child in school environment, or interview teacher, and therefore the suggestions therein were said not to be recommendations, but merely points of departure for further inquiry.

Schools presented 5 witnesses. The first was the Principal of the Elementary School (resume Ex. 118) where Child had been in attendance in special education programs since 19 , and the Principal had known and had much contact with for several years, and had reviewed file and records, and been involved in IEP. seemed well informed about autism, and the individual problems of Child. Many details were discussed. felt Child needed to interact with peers. There was extensive handling with Parents. Felt that the ABA method of teaching was not best, but is used to some degree in Schools. TEACCH method is basic method used at , and is a combination of various approaches. felt that holding Child back a year would not help reach goals, due to autism. discussed at some length the handling with Parents in May 20 and later, and felt that much attention was given to their concerns. felt that one on one instruction all day was wrong, as child needed group involvement and generalization. did not think holding Child back a year was proper, and felt that due to the autism would never reach the same level as peers. felt that was showing progress. thought the IEP of June 30 (Ex, 103) had been agreed upon. discussed in detail many of the goals, etc. and noted that some goals do carry over, especially for autistic children. discussed many other details and exhibits. The Center had not contacted School. On cross examination dealt with many details. pointed out the desire to have the least restrictive environment. expressed concern about regression if Child was in one on one all day as suggested for program

The next witness was the Schools Psychologist, who has a Ph.D, and has been with Schools for 7 years. (resume, Ex. 117). did a report on Child in 19 (Ex. 39) with various

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tests, and concluded that [redacted] had autism. [redacted] did another report in 20 [redacted] (Ex. 73), which indicated low or low average range intelligence. [redacted] regularly saw Child, and felt [redacted] was progressing. [redacted] had some reservations about the [redacted] Center testing and report. They had not contacted [redacted]. [redacted] had seen no behavioral problems. [redacted] felt the 6/30/ [redacted] IEP was appropriate, and would benefit Child. On cross-examination [redacted] indicated that Schools uses a structured teaching method, not just TEACCH, and does use ABA method some. [redacted] discussed and compared the various tests.

The 3d Schools witness was Child's special education teacher for most of the 20 [redacted] - school year---until [redacted] when [redacted] went on maternity leave. [redacted] had 7 years experience in special education, was directly involved with Child 3 hours a day, with much one on one. Class had 7 students and 4 adults as staff. [redacted] described in detail some of the procedures with Child, and some of the problems. The relevant IEP (Ex. 79) was modified 11/8/ [redacted] (Ex. 85) to provide more special education time, and less time in regular education classes. [redacted] participated in preparation of the IEPs. [redacted] sent notes home daily to the Parents. [redacted] prepared progress reports, and felt that Child made progress, but had trouble with communication skills. [redacted] was cross examined at length about [redacted] notes on draft IEP (Ex. 86), and about various classroom teaching details. [redacted] had been interested in the efforts of Child's tutor, but Parents did not supply any information.

The 4th witness was the Speech-Language Pathologist (Resume, Ex. 119), who had been doing that work for 15 years, with 7 years regular in autism. [redacted] saw Child twice a week all last school year, and felt [redacted] had progressed. [redacted] was full time at [redacted] school, and saw Child at other times during day. [redacted] pragmatic skills were [redacted] worst problem, and they were worse with [redacted] peers than with adults. Goals frequently carry over for years with autistic children. [redacted] had seen the [redacted] Center 10/2/ [redacted] report (Ex. 83), and did not feel that Child needed ABA approach. [redacted] felt that the 6/30/ [redacted] IEP (Ex. 103) would have helped Child and provided educational benefit. On cross examination [redacted] elaborated on details of [redacted] services to Child, indicated that [redacted] kept notes and data. The speech teacher for the 20 [redacted] - year at the other school was well qualified. [redacted] was present at the May-June 20 [redacted] IEP meetings and recalled the Parents request for ABA method, but [redacted] felt that Schools should not be limited to ABA, but that Schools does use Behavioral Approach regularly. On redirect, [redacted] noted that a speech consultant was added to the services in the 6/30/ [redacted] IEP.

The 5th and last witness for Schools was the Director of Exceptional Education for Schools. [redacted] has a Ph.D, with 20 years experience (resume, Ex. 116). [redacted] explained that Schools uses the TEACCH method, and that components were Discrete Trial Procedures, and ABA, and Picture Exchange, and [redacted] discussed other instructional details, particularly those of autistic children. [redacted] did not know of any research comparing TEACCH and ABA methods. The special education program at the school proposed for Child for 20 [redacted] - had a qualified teacher, and other autistic students, and [redacted] felt that it would benefit Child. [redacted] had reviewed Child's file but had not seen [redacted] would not recommend home school for [redacted]. The Center reports did not change [redacted] view. On cross examination [redacted] repeated that Schools uses

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TEACCH as a basis, but uses other methods to try to help students. recognized that the progress notes showed that Child was not doing well, but was making some progress; that modifications and accommodations were made to try to achieve success. Schools uses both data and anecdotal evidence to measure progress. described in more detail the qualifications of the teacher at the new school for the fall 20 ; that the class would have 7 adults for 9 students; and said that the IEP was to be reviewed after that teacher had become involved. On redirect, stated that TEACCH method had worked with autistic students; that the modifications were a form of individualization; and that most of Child's day would be spent in special education.

Parents presented 6 witnesses. The 1st was who did Ex 83. testified by agreed conference phone call on Oct. 27, from location in where is employed by the Center (resume, Ex. 122). had been at the Center since 19 , and had worked extensively in autism since 19 , and much with children. is a certified Behavior Analyst. prepares treatment plans, which are like an IEP. had made no contact with Schools. favored the Applied Behavioral Analysis, and Discrete Trial Instruction, and one on one methods, but had no reference to any peer review that indicated ABA to be better than TEACCH. discussed details of ABA method. Gave Child an Assessment of Basic Language and Learning Skills (ABLLS) and made recommendations and concluded that needed help with social interaction , and would benefit from work with peers. saw Mother and Child in August 20 , and saw Child a month ago in . The great aunt has had 2 weeks training with Center, and will work with Child 6 hours each day, using the ABA method. will supervise about 1 hour a week. The class is in a modified office space. felt their system would help Child, and provide educational benefit. felt that the Schools proposed IEP (Ex. 103) would not help Child, and discussed various details.

On cross examination, admitted had not visited Schools, had never used TEACCH method, recognized that there were various methods , but felt that the only effective method was ABA. could not cite any study to support conclusion that ABA was best method. is not trained as a speech pathologist. recognized that TEACCH can be successful if done correctly. admitted that did not know what Schools did or did not do. also recognized that autistic children vary from week to week, and cannot be cured. was not aware of ABLLS being used anywhere but in connection with ABA programs.

On redirect, noted that Child had a good arrangement with Grandmother where was staying in , was getting one on one instruction 6 hours a day from great aunt, taking piano lessons, and was not in an isolated environment. Again felt that ABA was best method, and that Schools efforts were not working.

Next witness was the Grandmother from , (resume Ex. 124). had taught school, 2d grade mainly, for 32 years, but had little involvement with special education, or with autism, except with Child. had been involved with heavily since was 2 1/2 years old. had reviewed all IEPs, and other records, had worked with Child on academics, and was involved with current instruction in had worked specially with on reading, using materials up to 4th grade, and felt needed to read orally and got good comprehension

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then, and made progress. By 3d grade was falling behind in reading, and also in math. attended some parent teacher conference, and felt should repeat a grade, preferably 2d grade, but teacher thought Child should go on to next grade, and felt that teacher opinion should be respected. In the schools allow special education students to repeat. had observed some classes, and felt that was getting too dependent on the aide, and was using bathroom too much as excuse. felt the Schools were not pushing.

Child currently lives in with and daughter and 2 other grandchildren, ages 10 and 15. is doing fine, takes piano lessons, takes swim lessons, plays outside. sister, a lawyer and a nun, has arranged for use of spare law office for classroom, and another sister is doing the instruction, as an employee of Center, with 2 weeks training, and some supervision. Aunt works with social skills, and works with academics. Child has a full schedule each day. All instruction is one on one. They keep logs. believes has ability and Schools have not forced to produce. has made progress in.

On cross examination, indicated did not feel that feel that Child had a low IQ, but recognized that had autism. The speech instruction is from sister and self. was not at the 20 IEP meetings.

On redirect, said from Center sees Child every two weeks, and that monitors work of sister who handles instruction. was not acquainted with IDEA, or with ABA.

The next witness was the tutor of Child for about 2 years. had much special education teaching experience (resume, Ex. 123). Saw Child twice a week teacher had supplied with SRA materials to work with. They would go over homework agenda, spelling and math, and made progress. had serious problems with distractions. uses various prompts. Child can read well books in which is interested. frequently came home with no idea of homework, and could not do homework on own, as could not focus that long.

The 4th witness was from the Center staff (resume, Ex. 120). was working with autistic children, doing some instructing, and had some training in autism. favored the behavioral approach, but had not contacted Schools. report was Ex. 113, which was based on several tests conducted 9/10-11/. felt Child was not reading well and would have trouble comprehending. was critical of the 6/30/ IEP (Ex. 103). On cross examination qualifications appeared very limited, and had not read fully a report had cited to support view that ABA was better. had not observed Schools programs, or talked to the special education teachers, or to the Schools Psychologist. seemed to recognize that ABA is not the only useful method of instruction for autistic.

The 5th witness was the detailed the history of Child, problems first noticed before age 3. Much handling with Schools starting 7 years ago, and much cooperation, and various acceptable programs, and much effort by Schools. Child could read early, knew alphabet, but had social, language deficits. Good teachers and aide in 2d grade. Various



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significant modifications to accommodate Child were not listed in IEP. Parents hired a person to help with homework. Discussed repeating 2d grade with Schools, but staff felt Child should go to 3d grade. Had good teacher and good aide. Hired tutor, and felt that helped progress. 4th grade was not so good---Child failed all SOLs. Was advised that Schools did not fail special education children. Much handling with IEP committee for 201 - school year, 5th grade. Had many concerns about details of IEP. Center said Child could be helped with social and language skills. Had some complications with the 11/ IEP (Ex. 85), which signed, but expected to get some revisions, based on a teachers notes (Ex.86) (which the teacher had explained in earlier testimony were notes for use at the meeting). Had many more comments about details at the May-June 20 IEP meetings, and that Schools did not want to do all that Parents requested. Said Parents wanted Child to stay at 4th grade level. Staff said they wanted too many goals. There was some feeling that Schools staff were misrepresenting things, and being intimidating.. Parents began handling with Center.

On cross exam admitted that the 6/30/ IEP (Ex.103) increased the special ed and speech services. Great aunt in is trying to do all these things, with only 2 weeks training.

The 6th and last witness for Parents was the went over in some detail the letters from Parents to Schools starting with 5/4/ (Ex. 91), and their desire for much one on one instruction and more speech. They were concerned that Child was not progressing, and wanted held back in 4th grade. Parents wanted measurable goals. Other correspondence was Parents letter of June 3 (Ex.98) setting out many goals; and letter of 7/29/ (Ex.105); and 8/13/ (Ex. 106). felt that Child was progressing in discussed many other details. Cross exam went over many of details, and developed some recognition that special education is supposed to meet individual needs, and that being on grade level is only one component of progress. Some goals were added to IEP, which was to be short term and be reviewed in Sept. The desire for a better trained aide by Schools was compared with aunt doing full instruction in with only 2 weeks of training. No information was presented about the reimbursement sought, but on question by the Hearing Officer it apparently would exceed \$1000.00 per week. Alleged procedural violations are on Ex. 126.

#### DISCUSSION, AND FINDINGS OF FACT-----

Parents are seeking reimbursement for the costs in connection with sending Child to a Center school arrangement in . The critical issues in this case are whether Schools has provided a program which offers Child a Free Appropriate Public Education (FAPE), and whether the IEP is reasonably calculated to enable the Child to receive educational benefits. Procedural issues have been raised. It may also be important to determine if the arrangements selected by the Parents do provide educational benefits.

Parents have raised many issues, and complained of many details. They have specified many goals they felt should be included in the IEP: have asked for more one on one time and more speech instruction; have complained that Child was making no progress; have asked that

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Child be held back for a year; have complained that there were not proper arrangements to measure progress toward the goals, and that the same goals were there in successive years; that there were too many modifications and that they were not in the IEP; that no aide was proposed for the 20 - school year; that the TEACCH method used by Schools was not as effective as the ABA method they preferred and hoped to get in ; they complained about the assignment to a new school, , and about the class arrangements there, and they alleged some misrepresentations and improper remarks by Schools staff.

Parents contend that Schools are not providing FAPE; that there are procedural violations; and that the arrangements they have selected in , in conjunction with the Center do provide educational progress.

Schools contends that they did offer FAPE; that the IEP must be considered as of the time it was done, and that there are no procedural violations.

The Hearing Officer has heard the evidence of all the witnesses over 3 1/2 days, and has carefully reviewed all 127 exhibits (over 4 inches), has listened to the arguments at closing, and read the memos supplied, and has studied the matter, and concludes as follows:

- (1) Child is 10 years old and has mild autism and low average intelligence. educational experience reflects these conditions. is having difficulties and performing below grade level to some extent. is described as a pleasant, likeable child. is involved in various activities such as swimming.
- (2) has been in Schools special education programs for 6-7 years, and has received much attention in preparing IEPs, and providing special education services. does participate in some regular education program.
- (3) The Parents have been involved at every stage, and have received much cooperation and consideration from Schools staff.
- (4) Adjustments have been made in IEPs to meet Parents requests and suggestions---more special education time, more speech, more aide assistance, and other details have been included. The numerous goals submitted by Parents (Ex. 98) were reviewed.
- (5) The only IEP in issue is the one drafted in May-June 20 (Exs. 93, 95, and 103), which the Parents did not sign, even though significant additional services were added based on their comments, and it was specified that there would be further IEP meetings in the fall.
- (6) There were no procedural defects, and , if there were any, they were not sufficient to support a finding that Schools had not provided a FAPE. The regulation cited, 34 CFR

(10)

Sect. 300.503 applies to changes in identification, evaluation, or educational placement, which are not involved here. The change to \_\_\_\_\_ school does not violate the regulations, because it is not a change in placement.

(7) There was no misrepresentation or deceit or dishonesty on the part of Schools staff in the IEP process, and the alleged improper remarks are questionable, and possibly out of context.

(8) The proposed staffing at the new \_\_\_\_\_ School in Sept. 20 \_\_\_\_\_ seemed adequate, and the IEP was to be reviewed after the teacher had a chance to appraise the situation.

(9) The IEP provided details regarding measurement of the annual goals.

(10) Schools responsible, experienced, well educated, professional staff felt it was not a good idea to hold back a special education student.

(11) A full time aide was specified in the 20 \_\_\_\_\_ IEP.

(12) Some of the numerous services and details requested by Parents were not included in the IEP, but there were provisions in the IEP for revision in Sept. and the Parents did not take advantage of the offer to have further meetings in the summer. Instead they proceeded with arrangements for schooling in \_\_\_\_\_ in conjunction with the \_\_\_\_\_ Center.

(13) The several well qualified and involved Schools staff persons who testified all felt that the IEP would benefit Child, and that \_\_\_\_\_ had been making progress in several different areas.

(14) It is not uncommon to repeat goals for children with autism.

(15) There is no evidence that the ABA procedure purported to be used by the \_\_\_\_\_ Center is any more effective with autistic children than the TEACCH method use by Schools, which also uses other methods as may be helpful to a child.

(16) Modifications and accomodations were made each year to try to help Child. It is not necessary that they be listed in the IEP.

(17) It is quite possible that the arrangements in \_\_\_\_\_, and the intensive effort being made by the grandmother, the great aunt, and the \_\_\_\_\_ Center and others, including the use of the ABA procedures, will be of assistance and lead to progress. However, this does not mean that Schools proposed IEP does not provide FAPE, etc.

(18) The several witnesses from the \_\_\_\_\_ Center who felt that their procedure was better than Schools did not have as much background and credentials, or involvement with Child

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and records, or with the practices at Schools, etc. as did those persons who testified for Schools.

(19) The arrangements in where Child is living with grandmother, and spending nearly all day in an office receiving instruction from great aunt, who has had 2 weeks of training by the Center, and receives a little supervision from them, is not a better situation than that offered by Schools. It is not the least restrictive environment, and does not give Child the opportunity would have in Schools program to have involvement with regular students in recess, art, lunch, etc. It separates Child from Parents and siblings, and from friends and regular contacts and activity.

(20) The Notice of Intent to Provide Home Instruction (Ex. 106) was related to the home in the area. Parents were trying to arrange for an instructor from the Center to come here, or for some one from a local school. The Notice did not specify

(21) Schools have not written Child off, but are trying to educate in the face of recognized disability. Children do not outgrow autism. Schools program helps children cope with autism.

(22) Parents hope to return Child to the area in , and hope can go back to Schools with some mainstreaming.

(23) Child has benefitted from Schools special education program to extent consistent with ability.

#### CONCLUSIONS OF LAW-----

(1) The June 20 IEP does provide a free appropriate public education (FAPE) and is designed to provide Child with a program reasonably calculated to provide with educational benefit.

(2) There were no procedural errors of any substance, if at all.

(3) There is no need to decide if the program in in connection with the Center will provide educational benefit consistent with FAPE.

(4) Reimbursement is denied.

(5) The proceeding is closed.

Either party has the right to appeal this decision by filing the appropriate action in a Virginia Circuit Court or U.S. District Court with jurisdiction. Any party wishing to appeal is advised to consult with counsel as to procedure and deadlines. See Virginia Regulation 8 VAC

(12)

20-80-76 O Right of Appeal. Schools has a responsibility to submit an implementation plan to the parties, the Hearing Officer, and the SEA, within 45 days.

Dated:

Hearing Officer

cc:

attorney for Schools

, and

, Schools

attorneys for Parents, Child

Virginia Department of Education, Dr. Judith Douglas