

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

May 21, 2004
Date of Decision or Dismissal

John Cafferky, Esq.
Counsel Representing LEA

Michael Fig, Esq.
Counsel Representing Parent/Child

Parents
Party Initiating Hearing

Public Schools
Prevailing Party

Hearing Officer's Determination of Issue(s):

- 1) Is Public Schools providing a free appropriate public education to _____?
- 2) Will the school placement proposed by _____'s parents provide him with a free appropriate public education?
- 3) Are _____'s parents entitled to reimbursement for the costs of placement at a private school?

Hearing Officer's Orders and Outcome of Hearing:

Finding made that PS was offering _____ FAPE at its own facility and therefor no reimbursement or change of placement was required. Case 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.

Frank G. Aschmann
Printed Name of Hearing Officer

Frank G. Aschmann
Signature

VIRGINIA:

DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING
DECISION



and)
Parents)
vs) In Re:
PUBLIC SCHOOLS)

Introduction

Upon the request of _____ and _____, the parents of _____, a due process hearing was conducted on April 13, 14, 15 and 27, 2004. Three issues were agreed to by both parties as the subject of the hearing. First, is _____ Public Schools (hereafter PS) providing a free appropriate public education (hereafter FAPE) to _____? Second, will the school placement proposed by _____'s parents provide him with FAPE? Third, are _____'s parents entitled to reimbursement for the costs of placement at a private school?

PS maintains that it has offered _____ FAPE at its own facilities and therefore is not obligated to place _____ in a private school or pay past and future costs for such a placement. _____'s parents contend that the placement offered by PS cannot meet the requirements of _____'s Individualized Education Program (hereafter IEP) and thus denies him FAPE. _____'s parents further contend that placement at The School (hereafter _____) is appropriate to meet the requirements of _____'s IEP and they are entitled to reimbursement for the costs they have incurred placing _____ at _____

Findings of Fact

_____ is an eight year old boy, born on _____, who has been found eligible for special education services under the Individuals with Disabilities Education Act (hereafter IDEA). _____'s area of eligibility has been categorized as "multiple disability." Extensive efforts have been made to diagnose and identify _____'s disabilities both by his parents and the PS. To date no clear diagnosis has been made.

_____ 's disabilities present a very complex picture in which many factors interact making it difficult to identify any single cause or condition which has created the disabilities found in _____. _____ has deficits in speech and language. _____ has _____

deficits in gross and fine motor skills.
has attention deficits.
developmental delays. These factors all impact
performance and socialization.

has deficits in his cognitive abilities.
has emotional deficits. has
's educational ability, academic

is a generally well behaved child who attends a wide variety of activities including day school, a day care program, church, athletics, dining out, summer camp and playing in the neighborhood. Of concern with 's activities is how much he actually engages in them. is noted for withdrawing and not necessarily focusing, absorbing or participating in the activities around him. This is particularly true with peer interactions. is far more attentive and responsive to adult interaction.

began attending the PS preschool program in September 1998. The program attended was located at the Elementary School. Elementary School is a mainstream educational facility which also includes the special education preschool program attended. The special education preschool program is in a self-contained classroom with a small number of students and qualified special education teachers and aids. attended this program for three years. During that three years, educational testing was conducted with demonstrating some educational progress was made. During the time was at Elementary School, his parents provided many additional services including sensory integration occupational therapy, speech therapy, visual therapy, floor time therapy, neurofeedback therapy, sensory integration physical therapy, audiological therapy, medical services and tutoring.

The 2001-2002 school year marks the period when was scheduled for transition from preschool to kindergarten. In the winter of 2000-2001, 's parents contacted and applied to offered admission to its program to and his parents accepted in April 2001, sending in a deposit on the tuition for the upcoming year. Subsequently, IEP meetings were held by PS. PS offered placement at two different PS facilities. The IEPs were rejected by 's parents and he was unilaterally placed at

has been at for almost three school years. has made some educational progress while at experts believe he has not made as much progress as expected. The program at is in a self-contained classroom with eight students. There are two co-teachers and an assistant teacher in the class. All of the students at have special education needs. 's classmates at participate in academics, lunch and recess as a group. The students do participate in individual therapy break outs, individual tasks, and small group activities as called for by their IEPs. There are occupational therapists and physical therapists on staff at the school. remains with the same group of children throughout his school day at operates on a transdisciplinary model which uses modifications of curriculum to apply to a wide variety of disabilities. Most of the students at are multiply disabled.

PS' proposal for [redacted] for the 2003-2004 school year was placement at the [redacted] Elementary School in the school's noncategorical special education program. This is a self-contained class within a mainstream elementary school. The class proposed by PS for [redacted] has five students, a qualified special education teacher and two instructional assistants. The students attend the academic portions of the program as a group. Some of the children attend mainstream activities such as music, art, P.E., recess, morning routines and lunch. The students also participate in small group activities and individual therapy as required by their IEPs. Speech and occupational therapy are often given in the classroom setting. Three of the children have lunch in the classroom with the teacher. At this time all five of the children go to mainstream morning routine. This period is approximately thirty minutes. The classroom is divided into well defined areas called work stations where different activities take place. The students engage in various group activities in the work stations and are given opportunities for independent work with tasks they have mastered.

In 2003 an IEP was developed for [redacted] Meetings were held in April, May and June by the PS IEP team and included members of the [redacted] staff, educational consultants, legal professionals and [redacted]'s parents. The team cooperatively reached a consensus on the IEP goals and objectives. Consensus was also reached on the related services appropriate for [redacted]. Also agreed upon was a classroom accommodation providing for "an appropriate instructional and social peer group with teacher support, modeling and facilitation." An additional classroom accommodation calls for "small group and/or individualized instruction or support throughout the school day - especially for transitions." The IEP calls for all services to be provided in a special education setting on a regular basis. A difference of opinion exists between the PS experts and the parents' privately retained experts on the issue of an exclusively self-contained setting or a less restrictive environment which would allow [redacted] to participate in some mainstream activities. [redacted]'s parents and their experts advocated for a self-contained setting at all times. The PS experts advocated for inclusion opportunities. The PS members of the team agreed to support the parent's desire for an exclusively self-contained setting to build consensus but wanted to revisit the issue to permit inclusion as soon as possible. These positions have not changed. PS experts believe some mainstreaming is appropriate for [redacted]; his parents and their experts do not believe [redacted] is ready for any level of inclusion. The only issue where no consensus was reached was the location where the IEP services would be provided. PS designated [redacted] Elementary School as an appropriate facility for the delivery of services. [redacted]'s parents requested [redacted]. The IEP was ultimately rejected because of this disagreement over placement.

Conclusions of Law

[redacted] has a disability and is eligible for special education services under IDEA. There are no procedural issues contested in this matter; all notice requirements have been met. The goals and objectives, accommodations and related services in the IEP are all agreed upon. The matter has come to hearing over the location where these services will be delivered.

A good deal of evidence was presented on the issue of the educational philosophy of mainstreaming versus self-contained special education. PS disagrees with the parents and their experts on this issue. The school experts are entitled to exercise their professional judgment in designing a special education program to meet the needs of a child's IEP. Hartmann v Loudoun Co Board of Education, 118 F.3d 996 (4th Cir. 1997). However, in this matter PS has essentially waived any right to deference on this issue by agreeing with the parents to write [redacted]'s IEP so that it requires [redacted] to be in a self-contained special education setting at all times. Even if [redacted] would benefit from inclusion in mainstream programs he is prohibited from doing so without a modification to his IEP. Thus, the issue of how [redacted] would benefit from mainstream activities at school is irrelevant to this decision.

Because [redacted] is not allowed to participate in mainstream activities by his IEP, the issue is narrowed to deciding if PS can deliver the services required by [redacted]'s IEP in a self-contained special education class in one of its facilities thereby meeting its obligation to provide [redacted] with FAPE. PS is obligated to provide [redacted] with an educational program which provides him with some educational benefit. Board of Education v. Rowley, 458 US 176 (1982).

The Rowley standard is typically in conflict with the desires of parents who generally want what is best for their children. The [redacted] are clearly devoted to seeing that their children receive a high quality education and have spent large amounts of money and time in this endeavor. The [redacted] have the right to choose the educational method and facility they prefer. However, they cannot require PS to fund these choices unless PS is unable to provide the base level of services required by Rowley.

PS has offered [redacted] a self-contained special education program at its [redacted] Elementary School. This program provides [redacted] the opportunity to take academic instruction from a highly qualified special education teacher. The methods and techniques of instruction are typical for addressing the needs of students with multiple disabilities. The class offers a low student teacher ratio. There are five other students in the class which are peer equivalents for [redacted]. The class academic program provides both group interaction and modeling as well as individual work where possible. The [redacted] program would allow [redacted] small group and individualized instruction in a special education setting. The academic portion of the [redacted] program clearly meets the requirements of [redacted]'s IEP.

[redacted]'s IEP also requires socialization training. This is the area which has been highlighted in the parents presentation of the evidence and is an area where [redacted] has significant deficits which are intertwined with his ability to learn and must be addressed. In this component the [redacted] program is superior to [redacted] gets to spend more time with a consistent and larger group of children than he would at [redacted]. At [redacted] gets to have lunch with the same eight children he takes academics

with. At [redacted] gets to go to recess with the same eight children. This consistency makes him comfortable and provides him with socialization opportunities.

The [redacted] program's socialization opportunities are tremendously reduced by the limitation in [redacted]'s IEP that he remain in the self-contained special education class at all times. At [redacted] will be deprived of participating with his peers in "morning routines." He would not be allowed to go to mainstream art, P.E., puppet shows and all other special activities. These activities provide a large portion of the socialization component at the [redacted] school. The strength of the [redacted] program is its ability to allow inclusion as the children progress. As a purely self-contained special education setting is not as good as [redacted] because its design is to work towards inclusion. [redacted] is designed as a self-contained special education program and has no ability to even attempt inclusion. The evidence presented by both parties clearly drew this comparison of the programs.

Comparing programs is not the appropriate test for FAPE. Rowley, id. The superiority of [redacted] as a self-contained special education school is not what is at issue. Rowley requires that the test be simply, does the school system offer a basic floor of opportunity, without regard to what other programs are available which might be better.

The [redacted] program would offer [redacted] socialization opportunities during the academic portion of his day. He would have socialization opportunities at lunch with the three children who remain in the class. He would have additional socialization opportunities when the class goes to recess together. While these socialization opportunities are not as great as at [redacted], they do meet the basic standard set by Rowley for some educational benefit. They are also consistent with the language in [redacted]'s IEP which calls for an appropriate peer group.

[redacted]'s IEP allows for individual instruction in addition to his peer group activities. The time in the morning when all of [redacted]'s peers are in a mainstream activity, "morning routine," [redacted] would receive his individual instruction which is consistent with his IEP. For the [redacted] program to work in its ideal form, [redacted] would need modification to his IEP but the program is adaptable and all of the [redacted] PS staff expressed their ability to modify the program to accommodate [redacted]'s individual needs. The [redacted] program can provide some educational benefit to [redacted] in the area of socialization training.

Another factor that was raised in the evidence was that [redacted] would be distracted by the children at [redacted] leaving for mainstream activities. This factor is not significant enough to cancel the basic educational opportunity offered at [redacted]. Special education teachers are trained in refocusing their students and bringing them back on task. [redacted] would have a skilled teacher at [redacted] as well as a low teacher-student ratio to address this problem. [redacted] deals with students leaving for break out therapy at

and also does individual exercises as well. These experiences are very similar to what he would deal with at [redacted] and do not constitute a denial of FAPE.

The PS have offered [redacted] a FAPE in its noncategorical special education program at the [redacted] Elementary School. Because PS has offered [redacted] a FAPE at its own facility it is irrelevant and unnecessary to reach any conclusions as to whether [redacted] is an appropriate placement for [redacted]. Likewise, because PS has demonstrated it has offered [redacted] a FAPE, the [redacted] are not entitled to reimbursement for the costs of their unilateral placement of [redacted] at [redacted].

Order

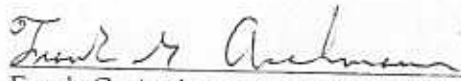
Upon the evidence presented by both parties and the finding that PS has offered a FAPE, this matter is hereby dismissed.

Notice

This decision is final and binding unless appealed by a party in a State Circuit Court within one year of this decision's issuance date, or in a Federal Court.

May 21, 2004

Date


Frank G. Aschmann, Hearing Officer

copies to:

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