

VIRGINIA:

SPECIAL EDUCATION DUE PROCESS HEARING



mother, by and through

Complainant,

v.

PUBLIC SCHOOLS,

Respondent.

DECISION OF HEARING OFFICER

Statement of Proceedings

This special education proceeding was initiated on November , (School Exhibit 15) pursuant to request for a due process hearing to complain of the special education services that the Public School System was providing . At the beginning of the - school year, transferred into the Public School System from Public Schools in Nebraska. is a suburb of Omaha, Nebraska.

On August , Ms. filed a new student placement form with , Principal of Middle School. It provided that would be placed in self-contained EMD services classes when transferred into Middle School.

As of , the Public Schools Special Education Services in Nebraska, had formulated an individualized education program (IEP) for . This IEP transferred with to the Public School System. Pursuant to the new student placement consent, was evaluated for eligibility for special education services on a permanent basis by personnel with the Public School system. A child study team meeting occurred on , . Appropriate evaluations were

ordered pursuant to an agreement arising from the team which included \_\_\_\_\_'s mother, \_\_\_\_\_. The parties agreed that \_\_\_\_\_'s IEP from \_\_\_\_\_ School System would continue for thirty days.

The Hearing Officer in preliminary proceedings informed \_\_\_\_\_ and her advisor, Dr. \_\_\_\_\_, of their rights in the due process hearing including the right to mediation. The mother and her advisor acknowledged full explanation of all rights consistent with the regulations of the Virginia Department of Education.

Ms. \_\_\_\_\_ acknowledged receipt of the November \_\_\_\_\_ letter from \_\_\_\_\_ of the \_\_\_\_\_ Public School System, wherein Ms. \_\_\_\_\_ explained Ms. \_\_\_\_\_ and \_\_\_\_\_'s rights, including the right to mediation. Ms. \_\_\_\_\_ also provided Ms. \_\_\_\_\_ a copy of the Procedural Safeguards/Parental Rights in Special Education brochure. The November \_\_\_\_\_ letter from Ms. \_\_\_\_\_ to Ms. \_\_\_\_\_ is Hearing Officer Exhibit 1. Ms. \_\_\_\_\_ acknowledged receipt of the letter together with the enclosures. (Transcript, Pg. 4).

The parties agreed that there were no procedural violations raised through the mother's request for a due process hearing. (Transcript, Pgs. 4-9). The issue to be resolved is whether \_\_\_\_\_ was provided a free appropriate public education pursuant to the regulations governing special education programs for children with disabilities in Virginia and the Individuals with Disabilities Education Act (IDEA). The evidence and the position of the mother and her advisor, Dr. \_\_\_\_\_, focused on whether the \_\_\_\_\_ Public School System had followed the IEP which came with \_\_\_\_\_ from Nebraska. Furthermore, if the \_\_\_\_\_ School System had failed to follow this IEP, had this failure constituted a deprivation of a free appropriate public education for \_\_\_\_\_.

On Wednesday, November \_\_\_\_\_, \_\_\_\_\_, the Hearing Officer convened a hearing at which Ms. \_\_\_\_\_ presented evidence on the issue. This was joined with the advice and assistance of Dr. \_\_\_\_\_. The \_\_\_\_\_ School System presented evidence through documentation and cross-examination of school personnel that Ms. \_\_\_\_\_ called as her witnesses on the issue joined. Mr. \_\_\_\_\_, Senior Deputy City Attorney of the City of \_\_\_\_\_ represented the \_\_\_\_\_ Public School System. The hearing began at 8:00 a.m. and concluded at approximately 6:00 p.m. on November \_\_\_\_\_.

Without placing the burden of proof on the parent, the Hearing Officer decided that the

parent would have the burden of going forward first because the parent would be in the better position of narrowing the factual issues which were related to the general issue she raised in the request for a due process hearing. The pre-hearing conferences indicated that the parent had specific evidence relating to the omissions and commissions of the School System that the parent alleged constituted a failure to comply with the IEP from Nebraska and constituted a deprivation of a free appropriate public education for

During the hearing, the mother, , indicated that her primary complaint with the Public School System is related to the identification of 's need for "one to one and small group assistance and small group instruction with reading, math, and written language skills" found at page 3 of the . School System's Individualized Education Program for . She stressed the need for "individualized as well as small group" interaction. (Transcript, pg. 287).

#### Findings of Fact

1. was born on . At the time of matriculation into the Public School System, was thirteen years old.
2. 's primary caregiver is mother,
3. They live in
4. Pursuant to Ms. ' request, was admitted into the seventh grade instead of the eighth grade at Middle School in , in
5. 's mother and the school system, through the principal of Middle School, agreed that pending the school system's experts' studying 's learning needs and eligibility for placement in special education programs, would be placed in a self-contained instructional setting to receive educable mentally disabled (EMD) services from the Public School System.
6. The person responsible for 's education would be a special education teacher for EMD students.

7. Twenty-six percent of time would be spent in the regular program of instruction at the school.
8. In August, , consented to an anticipated review date of 's disability and eligibility of , .
9. had been schooled in Nebraska until moved to in , .
10. The Public Schools Special Education Services evaluated 's academic, curricular, and instructional needs. The evaluation report is dated , .
11. 's Woodcock Johnson Test of Achievement - III for basic reading skills resulted in a score of 66 with a mean of 100. Woodcock Johnson Test of Achievement for reading comprehension resulted in a score of 46, indicating a 26 point discrepancy. 's mathematics reasoning under the Woodcock Johnson Test of Achievement was 69. mathematics calculation under the Woodcock Johnson Test of Achievement was 58. written expression was scored 59 under the Woodcock Johnson Test of Achievement. The testing was performed on February , in Nebraska.
12. Under the Wechsler Intelligence Scale for Children - III Edition (WISC-III), 's verbal score was 71, performance was 82, and full scale score was 75.
13. is friendly and cooperative. gets along well with peers, and participates in class discussions. will comply with teachers' requests, and generally wants to learn and try best.
14. needs remediation in all academic areas. reading and math skills at the time of testing in in Nebraska was K-first grade level. was easily frustrated and could become a behavior problem (talking out, being disruptive, non-compliant) when was overwhelmed by academic challenges.
16. needs very small group and/or one to one help with reading, writing, and math skills.
17. 's Individualized Education Program identified the following needs,

program modifications and accommodations for \_\_\_\_\_ :

\_\_\_\_\_ needs individual help and support in all academic areas. \_\_\_\_\_ will need the following modifications:

1. One to one and small group assistance and instruction with reading, math, and written language skills
  2. Concrete examples and directions broken down into small increments
  3. Repeated opportunities for practice and repetition of previously learned material
  4. Checks for understanding
  5. Assignments modified in length, and the amount of information be mastered at one time
  6. Review prerequisite skills, previous lessons, or activate prior knowledge before teaching a new concept
  7. Tests and quizzes read orally
  8. Adjustments made for district assessments
18. \_\_\_\_\_'s IEP identified \_\_\_\_\_ disability as mildly mentally disabled.
19. As of October \_\_\_\_\_, \_\_\_\_\_ needed additional help for reading assignments. \_\_\_\_\_ used manipulatives during math. In writing, \_\_\_\_\_ needed reminders to put in punctuation and to make a logical sentence. \_\_\_\_\_ also needed to have \_\_\_\_\_ teacher edit writing.
20. As of October \_\_\_\_\_, \_\_\_\_\_ was in a special education program. A behavior modification plan that \_\_\_\_\_ teacher implemented appeared to be successful.
21. From the beginning of the school year in \_\_\_\_\_; \_\_\_\_\_, until the end of \_\_\_\_\_, Ms. \_\_\_\_\_ was \_\_\_\_\_'s special education teacher. She found that during her period of instruction of \_\_\_\_\_ made educational progress.
22. At the end of \_\_\_\_\_, Ms. \_\_\_\_\_ became \_\_\_\_\_'s special education teacher. \_\_\_\_\_ also was assigned a special reading teacher who instructed \_\_\_\_\_ in the \_\_\_\_\_ School of Reading Remediation. This teacher was trained in reading remediation. Her name is \_\_\_\_\_

23. Ms. \_\_\_\_\_ observed educational progress during the time she instructed \_\_\_\_\_ beginning at the end of \_\_\_\_\_.
24. Ms. \_\_\_\_\_ identified educational progress in reading during the time she instructed \_\_\_\_\_ in the \_\_\_\_\_ method of reading remediation.
25. The \_\_\_\_\_ School System has qualified \_\_\_\_\_ for special education services.
26. \_\_\_\_\_, Senior Coordinator of Special and Gifted Education for the \_\_\_\_\_ Public School System, is of the opinion that the instruction \_\_\_\_\_ is receiving constitutes one to one and small group assistance and instruction with reading, math, and written language skills.
27. \_\_\_\_\_ has achieved educational benefit and progress in the areas of reading, math, and written language skills while attending \_\_\_\_\_ Public Schools and receiving special education services at \_\_\_\_\_ Middle School.
28. Based on cognitive ability of \_\_\_\_\_ and \_\_\_\_\_ academic achievement scores, \_\_\_\_\_ continues to function within the mentally deficient range.
29. According to the Woodcock Johnson III test of cognitive abilities, (W-J III Cog.), \_\_\_\_\_'s overall intellectual ability fell within the very low range (GIAss63). \_\_\_\_\_ GIA is at the first percentile indicating that \_\_\_\_\_ performed as well as or better than one out of one hundred children in the standardization sample. \_\_\_\_\_ verbal ability is in the second percentile and \_\_\_\_\_ cognitive efficiency is also in the second percentile. \_\_\_\_\_'s thinking ability is in the fifth percentile. These are the results of testing by \_\_\_\_\_ Ms. \_\_\_\_\_ is the school psychologist employed by the \_\_\_\_\_ Public School System.
30. \_\_\_\_\_ has a very supportive family which works with \_\_\_\_\_ with school work. \_\_\_\_\_ has excellent social skills and is not a discipline problem with the school system in \_\_\_\_\_.
31. \_\_\_\_\_ has a very positive, concerned family supporting \_\_\_\_\_.
32. \_\_\_\_\_ qualifies for special education services as an individual who is educable mentally disabled.

33. \_\_\_\_\_ is receiving special education services from the \_\_\_\_\_ School System consistent with \_\_\_\_\_ individualized education program.

34. \_\_\_\_\_ has substantially benefitted educationally from the special education services that the \_\_\_\_\_ Public School System has provided \_\_\_\_\_. Special education instructor \_\_\_\_\_ had \_\_\_\_\_ in a class the size of eleven and worked with an assistant. Ms. \_\_\_\_\_ had a class size of ten and also had a teaching assistant. Since November \_\_\_\_\_, \_\_\_\_\_ has had the benefit of Ms. \_\_\_\_\_ as a reading remediation teacher who is especially schooled in the \_\_\_\_\_ School of Reading Remediation.

35. \_\_\_\_\_'s individualized education program was written to identify objectives, goals, and benchmarks to be achieved over the course of an academic year.

36. The multidisciplinary team report of \_\_\_\_\_ Public Schools Special Education Services identified April \_\_\_\_\_, \_\_\_\_\_ as the recommended reassessment date for \_\_\_\_\_. The duration of the IEP ends on April \_\_\_\_\_, \_\_\_\_\_.

37. \_\_\_\_\_ was making progress towards all of the objectives, goals, and benchmarks identified in the individualized education program for \_\_\_\_\_ written on April \_\_\_\_\_, \_\_\_\_\_.

#### Conclusions of Law

1. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq. requires the \_\_\_\_\_ Public School System to provide \_\_\_\_\_, \_\_\_\_\_, a free appropriate public education during \_\_\_\_\_ - \_\_\_\_\_ school year at \_\_\_\_\_ Middle School.

2. The IDEA requires a school district to provide an individualized education program (IEP), for each disabled child. An appropriate IEP must contain statements concerning a disabled child's level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child's progress.

3. The IDEA defines an IEP as a written statement for a disabled child, developed in accordance with the statute, that includes, inter alia:

1. A statement of the child's present levels of educational performance;
  2. A statement of measurable annual goals, including benchmarks or short term objectives;
  3. A statement of the special education related services and supplementary aids and services to be provided to the child;
  4. An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in activities described in 3 above; and
  5. A statement of how the child's progress towards the annual goals described in 2 above will be measured. (20 U.S.C. Sec. 1414 (d) (1)(A).
4. An appropriate education is one that provides a child with educational benefit.
  5. More than minimal educational benefit is necessary to comply with IDEA. Congress did not intend that a school district could discharge its duty under the IDEA by providing a program that produces some minimal academic advancement, no matter how trivial. Carter v. Florence County School District 4, 950 F.2d 156, 160 (4<sup>th</sup> Cir. 1991).
  6. \_\_\_\_\_, has received a free appropriate public education from the \_\_\_\_\_ Public School System during \_\_\_\_\_ period of instruction at \_\_\_\_\_ Middle School beginning in \_\_\_\_\_, \_\_\_\_\_.

#### Discussion of the Law and Facts

The Individuals with Disabilities Education Act (IDEA) requires that children with disabilities be offered a free appropriate public education (FAPE). The school system satisfies the requirements of the IDEA to provide a free appropriate education to a child when appropriate procedures under the act are followed and the specially designed education program for the child with special needs provides the child with an education that achieves educational benefit for the child of more than a minimal nature.



The parent did not identify in the request for a due process hearing or in preliminary procedures any procedural violations on the part of the \_\_\_\_\_ Public School System.

According to the expert testimony from \_\_\_\_\_'s teachers and special education personnel of the \_\_\_\_\_ Public School System, \_\_\_\_\_ has made educational progress while attending \_\_\_\_\_ Middle School. According to expert testimony, \_\_\_\_\_ has received one on one and small group instruction in reading, math, and writing skills. All of the individuals of the \_\_\_\_\_ Public School System involved in the education of \_\_\_\_\_ demonstrated sincere interest in \_\_\_\_\_'s welfare and \_\_\_\_\_ educational advancement and demonstrated the application of their expertise and skills to facilitate \_\_\_\_\_'s academic progress since \_\_\_\_\_ has attended \_\_\_\_\_ Public Schools.

#### Decision

\_\_\_\_\_, has received a free appropriate public education from the \_\_\_\_\_ Public School System since \_\_\_\_\_ attended \_\_\_\_\_ Middle School beginning in \_\_\_\_\_.

#### Right of Appeal

A decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless the decision is appealed by a party within one year of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under Sec. 1415 of the Individuals with Disabilities Education Act (20 USC Sec. 1400 et seq.) without regard to the amount in controversy.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hearing Officer