

XXXX XXXX

v.

QUEEN ANNE'S COUNTY

PUBLIC SCHOOLS

\* BEFORE LORRAINE EBERT FRASER,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

\* OAH NO.: MSDE-QANN-OT-06-48995

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**CORRECTED DECISION<sup>1</sup>**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
ORDER

**STATEMENT OF THE CASE**

On November 14, 2006, XXXX and XXXX XXXX, (Parents), on behalf of XXXX XXXX (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation or placement of the Student by the Queen Anne's County Public Schools (QACPS).

On November 22, 2006, OAH scheduled a hearing for December 5, 8 and 12, 2006 based upon the dates identified by the parties.<sup>2</sup> On November 29, 2006, the parties jointly requested the December 8<sup>th</sup> date be removed and agreed to schedule additional hearing dates, if needed, at the hearing. On December 5 and 12, 2006, days one and two of the hearing were held. On December 12<sup>th</sup> the parties agreed<sup>3</sup> to two additional dates, January 12 and 24, 2007; days three

<sup>1</sup> A sentence was added at the top of page 2 regarding the parties' agreed decision due date.

<sup>2</sup> The Parents' request for hearing waived mediation and the resolution meeting required by 20 U.S.C.A. § 1415(f)(1)(B) (Supp. 2006) and 34 C.F.R. § 300.515(a). See, *Request for Mediation /Due Process Hearing*.

<sup>3</sup> Counsel for the Parents stated on the record that there was no prejudice to her clients in continuing the hearing to

and four of the hearing were held on those dates. On January 24<sup>th</sup>, the parties agreed to an additional date, January 30, 2007; the hearing concluded that day. The parties also agreed that the decision in this case would be due thirty days after the hearing concluded, on March 1, 2007. Lorraine Ebert Fraser, Administrative Law Judge (ALJ) held the hearing at the Queen Anne's County Board of Education. At the hearing, Manisha S. Kavadi, Reese & Carney, L.L.P., represented QACPS. Holly Parker, Parker & Starbuck, P.C., represented the Parents.

The hearing was held pursuant to the following laws: Individuals With Disabilities Education Improvement Act of 2004 (IDEIA), 20 U.S.C.A. § 1415 (Supp. 2006); 34 C.F.R. § 300.507 (2004); Md. Code Ann., Educ. § 8-413 (2006); Code of Maryland Regulations (COMAR) 13A.05.01; and Maryland State Department of Education Guidelines for Maryland Special Education Mediation/Due Process Hearings.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2006); COMAR 28.02.01.

### **ISSUE(S)**

The issues on appeal are whether the March 8, 2006 IEP was designed to provide some educational benefit to the Student in the least restrictive environment; and, if not, whether the Parents are entitled to tuition reimbursement for [School 1] for the 2006-07 school year.

### **SUMMARY OF THE EVIDENCE**

#### A. Exhibits

The following exhibits were admitted into evidence on behalf of the Parents:<sup>4</sup>

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the January dates.

<sup>4</sup> Unless otherwise noted. Also, note that the Parents' exhibits are not sequentially numbered. The parties had numbered their exhibits during their pre-hearing exchange of documents and that original numbering was

- Parents Ex. # 1 Alternative Intervention Strategies Plan for Kindergarten, NOT ADMITTED
- Parents Ex. # 21 Prior Written Notice for an IEP<sup>5</sup> meeting, dated 6/15/05; letter to the Parents from XXXX XXXX, School Psychologist, dated 6/21/05
- Parents Ex. # 47 Maryland School Assessments, 2006 Reading: Grade 4, 2005 Reading: Grade 3, and 2006 Mathematics: Grade 4
- Parents Ex. # 48 Speech-Language Goals and Objectives for 2006-07 school year at [School 1]
- Parents Ex. # 50A Student's work samples 2004-2005
- Parents Ex. # 51A Early Childhood Progress Report Kindergarten 2001/02 school year; Teacher Comments 2/03, 6/03, 7/03; Elementary Report Card 2003/04 school year; Teacher Comments 11/03, 1/04

The following exhibits were admitted into evidence jointly on behalf of both parties:

- Joint Ex. # 1 Prior Written Notice of an IEP meeting, dated 2/8/06
- Joint Ex. # 2 Prior Written Notice of an IEP meeting, dated 3/8/06
- Joint Ex. # 3 IEP, dated 3/8/06
- Joint Ex. # 4 Progress Report, dated 5/31/06; XXXX Intervention Progress Reports for marking periods 1-4
- Joint Ex. # 5 IEP, dated 4/19/06
- Joint Ex. # 6 Prior Written Notice of an IEP meeting, dated 4/19/06
- Joint Ex. # 7 Meeting Notice, dated 5/17/06
- Joint Ex. # 8 Prior Written Notice of an IEP meeting, dated 6/29/06; XXXX Intervention Progress Report for marking period 4
- Joint Ex. # 9 IEP, dated 6/15/05
- Joint Ex. # 10 Progress Report, dated 1/27/06
- Joint Ex. # 11 Prior Written Notice of an IEP meeting, dated 6/15/05

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maintained for ease of reference.

<sup>5</sup> Individualized Education Program (IEP).

- Joint Ex. # 12 Standardized Test results 2004-06
- Joint Ex. # 13 Report of Psychoeducational Evaluation by XXXX XXXX, Ph.D., dated 1/14/06
- Joint Ex. # 14 Spelling Performance Evaluation for Language and Literacy by XXXX XXXX, dated 2/8/06
- Joint Ex. # 15 Speech/Language Report by XXXX XXXX, Speech/Language Pathologist, dated 2/24/06
- Joint Ex. # 16 Annual School Performance Data Summary, 2003-04, 2004-05, 2005-06; Elementary Progress Report for the 2005-06 and 2004-05 school years
- Joint Ex. # 17 Request to Transfer Student Records, dated 3/26/04; Student Registration, dated 3/24/04
- Joint Ex. # 18 School Psychologist's Assessment Report, dated 2/26/04
- Joint Ex. # 19 Multidisciplinary Evaluation Review, 4/8/04
- Joint Ex. # 20 Referral, dated 2/4/04
- Joint Ex. # 21 IEP Team Meeting Report, dated 4/8/04
- Joint Ex. # 22 Rigby Reading Levels

B. Testimony

The following witnesses presented testimony on behalf of the Parents: XXXX XXXX, general educator, fourth grade, [School 2]; XXXX XXXX, special educator, fifth grade, IEP Chairperson, [School 2]; XXXX XXXX, Teacher Specialist, [School 2]; XXXX XXXX, Ph.D., accepted as an expert in psychology; XXXX XXXX, Speech-Language Pathologist, [School 1], accepted as an expert in speech and language pathology; XXXX XXXX, Director, [School 1], accepted as an expert in special education; XXXX XXXX, Learning Specialist, [School 1], accepted as an expert in special education; and XXXX XXXX, the Student's mother.

The following witnesses presented testimony on behalf of QACPS: XXXX XXXX,

School Psychologist, [School 2], accepted as an expert in school psychology; XXXX XXXX, Speech-Language Pathologist, [School 2], accepted as an expert in speech and language pathology; XXXX XXXX, special educator, [School 2], accepted as an expert in special education; and XXXX XXXX, special educator, fifth grade, IEP Chairperson, [School 2], accepted as an expert in special education.

### **FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

1. The Student was born in XXXX 1996.
2. The Student attended Anne Arundel County Public Schools (AACPS) for kindergarten, the first grade, and part of the second grade, the 2001-02, 2002-03, and 2003-04 school years respectively.
3. On March 24, 2004, the Parents enrolled the Student in Queen Anne's County Public Schools.
4. From March 2004 to the end of the school year, the Student attended [School 3] for the remainder of his second grade year.
5. During the 2004-05 and 2005-06 school years, the Student attended [School 2] ([School 2]) for third and fourth grade.
6. During the 2006-07 school year, the Student is attending [School 1] ([School 1]), a private school certified by the State of Maryland as a non-graded facility. [School 1] is not certified by the State of Maryland as a special education school.
7. On February 4, 2004, the Student's teacher, XXXX XXXX, AACPS, made a referral to the Educational Management Team in the Division of Special Education. Ms. XXXX identified the Student's problems as follows: very limited attention span, improved during the fall but

lapsed from November on, falling behind and becoming discouraged. She identified his strengths as being well liked by his peers and interested in the environment he lives in. She was seeking testing to determine whether there were any possible cognitive explanations for the Student's frustration with academic tasks.

8. On her referral, Ms. XXXX described the interventions she had attempted as follows: daily modifications of instruction including small group, desk models, one-to-one, pre-teach; modifications of assignments including reduced number of assignments, extra time, read aloud/directions, daily student contract including arrival activities and daily work habits; and daily behavior management techniques including teacher verbal visual cues. She described the results as limited growth followed by regression. She held numerous conferences with the Student. She also had an in person conference with the Parents in November and several telephone conferences. She sent multiple notes and made multiple calls to the Parents. The Parents were positive and supportive. She noted the Student had received corrective reading and multiple modifications to support his academic growth but that he continued to fall behind.
9. On February 26, 2004, XXXX XXXX, M.A., School Psychologist, AACPS, assessed the Student. She used the following assessment tools: Wechsler Intelligence Scale for Children – Third Edition (WISC-III), Bender Gestalt Test of Visual-Motor Perception & Integration, Bender Memory, Conners' Parent Rating Scale – Revised (S), Conners' Teacher Rating Scale – Revised (S), Parent Interview, Student Interview, Teacher Interview, and Review of Records. She noted screening did not indicate the presence of significant vision, hearing, health, motor, speech, or language concerns.

10. On the WISC-III, the Student's scores were as follows: verbal IQ 100, performance IQ 104, full scale IQ 102, verbal comprehension 99, perceptual organization 97, and freedom from distractibility 104. The average range is 97-107. The Student's Verbal Scale Scores were: information 7, similarities 10, arithmetic 11, vocabulary 13, comprehension 9, and digit span 10. The Student's Performance Scale Scores were: picture completion 10, coding 15, picture arrangement 7, block design 12, and object assembly 9. The average range for these scales is 7-13.
11. On the Test of Visual-Motor Perception & Integration, the Student made 3 errors which placed him in the 70<sup>th</sup> percentile. On the Memory test, the Student scored in the 29<sup>th</sup> percentile.
12. On the Conners' Parent Rating Scale, the Parents identified very significant problems with cognition and inattention and moderate problems with hyperactivity. They did not identify any problems with oppositional behavior. They identified frequent difficulties with distractibility, task completion, restlessness, disorganization, engaging in tasks that require sustained mental effort, and concentrating, and noted that he was easily frustrated.
13. On the Conners' Teacher Rating Scale, Ms. XXXX identified clinically significant problems with cognition and inattention and moderate problems with hyperactivity. She did not identify any problems with oppositional behavior. She identified frequent difficulties with distractibility, attention span, restlessness, academic progress, task completion, and the ability to follow directions.
14. The testing revealed the Student had average cognitive ability, relative strengths in word knowledge and graphomotor speed in copying, and relative weaknesses in acquiring and retaining knowledge of facts in long-term memory and in visual analysis and sequencing.

His visual-motor perception and integration abilities were average. His behaviors were consistent with an Attention Deficit Hyperactivity Disorder – Combined Type.

15. Ms. XXXX made the following recommendations: share the information with the Individualized Education Plan (IEP) committee to establish the need for special education services; share the information with the Student's pediatrician to determine whether his attentional deficits require further evaluation or treatment; use multiple choice tests, provide a word bank for fill-in-the-blank tests; provide repetition and drill to ensure mastery, require mastery before moving on to the next skill; distribute periods of intense concentration such as several short sessions with breaks between tasks; present only a limited amount of information; teach memory strategies such as acronyms, mnemonic devices, and associating new information with current knowledge; short, frequent periods of review of academic material throughout the day to improve long term retention; use rephrasing, cues, prompts, and eye contact; seat the Student near the front of the class or otherwise limit environmental distractions; surround the Student with focused role models; provide a quiet area such as a study carrel screened from distractions; accompany oral instructions with visual cues; supplement instructions with a checklist on the board or a handout; provide clear, simply stated directions or explanations; ensure comprehension by having the Student paraphrase or repeat directions; repeat or rephrase directions and provide concrete examples; demonstrate a task with a sample item; plan more difficult lessons or tasks early in the class period; provide short assignments or break down longer ones into sections; help the Student chart work completion and provide positive feedback for completed tasks; allow the Student periodic movement within the classroom; provide positive feedback when the Student is

demonstrating good work habits; and use proximity control such as a touch on the shoulder, a tap on the desk, or softly speaking his name.

16. On March 11, 2004, XXXX XXXX, Special Education Teacher, AACPS, assessed the Student's academic performance using the Woodcock-Johnson Test of Achievement III (WJ III).
17. The Student had the following standard cluster scores: total achievement 77 – low; broad reading 68 – very low; broad math 103 – average; broad written language 84 – low average; basic reading skills 78 – low; math calculation skills 97 – average; written expression 94 – average; academic skills 81 – low average; academic fluency 70 – low; academic applications 93 – average.
18. The Student had the following standard individual subtest scores: letter-word identification 77 – low; reading fluency 0; calculation 98 – average; math fluency 94 – average; spelling 80 – low average; writing fluency 84 – low average; passage comprehension 74 – low; applied problems 110 – average; writing samples 109 – average; word attack 81 – low average.
19. The Student's reading strengths were his use of visual or context clues, he was able to retell information and understand what is happening when a story is read to him, and he knew consonant sounds and some vowel sounds. His reading weaknesses were his minimal sight vocabulary, loss of focus when sounding out unknown words, difficulty tracking sounds as he blended words, and giving up unless prompted to try unknown vowel sounds. When reading a sentence the words seemed to jump around for him and he had difficulty tracking the words.
20. The Student's writing strengths were his ability to write second grade sentences with or without a word bank, and most of his sentences included correct verb usage and punctuation

at the end of the sentence. When he freely wrote a sentence he could think of his own words and did not worry about spelling. His writing weaknesses were fluency, he almost never began sentences with a capital, he spelled one and two syllable words phonemically correct sometimes leaving out the vowel or an ending. He seemed to spell words better than he could recognize or decode them.

21. The Student's math strengths were his computational skills, broad math skills, ability to add and subtract basic facts (he used his fingers to compute the more difficult facts), ability to solve problems with basic time and money concepts, ability to add pennies, nickels and dimes and knowledge of the coins value, and his ability to recognize key words in word problems to decide whether to add or subtract. His math weaknesses were his difficulty maintaining focus for three minutes and tracking the math facts.
22. Although he transferred to QACPS on March 24, 2004, AACPS continued developing an IEP for the Student.
23. On April 8, 2004, a Multidisciplinary Evaluation Review/IEP Team Meeting was conducted by AACPS with the following individuals in attendance: the Parents; XXXX XXXX, Assistant Principal; XXXX XXXX, General Education Teacher; XXXX XXXX, Special Education Teacher; XXXX XXXX, General Education Teacher; and XXXX XXXX, School Psychologist. The team summarized its findings regarding the Student's academic performance, assessed the educational impact of his identified weaknesses, determined the Student had Specific Learning Disabilities, and found he qualified for services in reading and written language.
24. The Student was making progress in written language and math. He was an emergent reader knowing most of his letter sounds but was struggling to become a fluent and confident

reader. He had difficulty with vowel sounds, blending sounds to form a word, and tracking his words in a passage. He needed continued support through small group instruction and teacher praise. His difficulties with decoding, word recognition, tracking, and spelling would impact his ability to access the general education curriculum.

25. The IEP team recommended preferential seating close to the teacher and away from noise sources; gaining the Student's attention before giving oral instructions; utilizing visual aids such as charts, graphic organizers, webbing, flow charts, ven diagrams, and written handouts; improving his self confidence by allowing him to make decisions when appropriate, telling him others experience frustration when learning new things, and providing him with extra opportunities for recognition; and helping him to develop phonemic awareness skills, including exposure to and practice with structured tasks for each level of phonemic awareness in addition to daily small group instruction.
26. The IEP team provided the IEP it developed to the Parents so that it could be used to facilitate service for the Student in QACPS. The IEP provided the Student with four hours of special education in Language Arts, one hour of intensive phonemic awareness, and fifteen minutes of indirect service in math. Ms. XXXX recommended that the Student's hours of service be increased in the 2004-05 school year unless he was retained in the second grade.
27. From April 2004 through June 2005, QACPS implemented the IEP developed by AACPS.
28. On June 15, 2005, an annual review meeting was held to review the Student's progress, revise the proposed IEP, review placement, and discuss Extended School Year (ESY) Services. The following individuals attended the meeting: the Parents; XXXX XXXX, Special Educator, QACPS; XXXX XXXX, Psychologist, QACPS; and XXXX XXXX, Classroom Teacher, QACPS.

29. The IEP team reviewed the Student's needs in reading and written language and the draft goals and objectives, clarifying specific objectives. The team discussed ESY services and agreed that the Student did not meet the requirements for ESY because the main focus for the Student was progression and ESY focuses on preventing regression. The team noted the Student's eyes bother him tremendously when reading and focusing up close. The Student's mother commented on the Student's lack of attention to tasks and asked the team for input regarding medication. Ms. XXXX recommended the Connor's Scale be completed again before continuing to discuss medication. The Student's mother asked for recommendations for a summer tutor. Ms. XXXX agreed to locate resources, personnel, and programs to assist the Student during the summer. The IEP team members approved the IEP.
30. On June 15, 2005, the Student's level of performance was as follows. The Student's reading level was at a Rigby book eight, which is a first grade/pre-primer level. He had many emergent skills: he knew all of his letters, could identify beginning sounds, and had begun using phonics to decode unfamiliar words. He had difficulty retaining decoded words from one sentence to the next. He had difficulty comprehending what he had read and depended highly on a story's pictures for clarification. When material was read to him, the Student understood the main attributes of the story, such as the main idea and main characters, and could answer basic comprehension questions about the material. His writing was difficult to decipher because he was a poor speller, and did not use capitalization or punctuation. He could write one or two sentences on a given topic with modeling and guidance. He had difficulty expressing ideas. He could generate ideas, although his ideas tended to go off topic. He had difficulty focusing and following along with a lesson and needed many cues to

stay on task. He was very dependent on his teachers and peers to assist him with tasks. His eyes bothered him tremendously when he was focusing on an activity.

31. On June 15, 2005, the Student's educational needs were identified as follows. In reading, he needed to read on a first grade level, use a variety of strategies to help him decode unknown words, and use before, during and after reading strategies. In writing, he needed to learn how to correctly spell word families, to complete prewriting activities such as brainstorming and web writing, and to write a basic paragraph. In general, he needed redirection to tasks and peer and adult assistance.
32. The June 15<sup>th</sup> IEP identified two goals for the Student: improve basic reading and comprehension skills to the first grade level and improve his written language skills.
33. The reading goal identified five objectives. 1) Given instruction, modeling, use of various reading strategies (blank it, frame it, does it make sense, skip it/go back), and practice, the Student will be able to decode words on a first grade level both in and out of isolation 80% of the time. 2) Given drills, practice, and use of word recognition strategies, the Student will be able to read first grade words in and out of context with fluency and without hesitation 90% of the time. 3) Given pre-reading strategies to activate prior knowledge, class discussions, pre-taught vocabulary and concepts, the Student will be able to preview a story to generate predictions and set purposes 80% of the time. 4) Given instruction, class discussions, and review, the Student will identify the main character(s), sequence events, identify problem/solution, and tell the main idea of a story 80% of the time. 5) Given reading material on instructional level, stories of high interest, text read in chunks, and class discussions, the Student will be able to answer comprehension questions that address the main idea, story events, and supporting details 80% of the time.

34. The writing goal identified three objectives. 1) Given words from content, word families, or word patterns, and the use of a personal speller, the Student will spell these words correctly on weekly spelling assignments, spelling tests, and daily writing assignments 85% of the time. 2) Given modeling, instruction, a list of frequently used words, and an editing checklist, the Student will be able to write one to two complete sentences with correct spelling, grammar, and punctuation on his own 80% of the time. 3) Given instruction on paragraph writing, paragraph framework and graphic organizers, the Student will be able to verbally give the components of a paragraph – topic sentence, two detailed sentences, and a concluding sentence – that he will transcribe independently 75% of the time.
35. The IEP included the following accommodations and modifications: extra response and processing time; small group setting; verbatim repetition of scripted directions, as needed; verbatim reading of entire test; for constructed response (extended) items, the Student dictates response to examiner for verbatim transcription by school personnel; provide instructions in one or two steps at a time; and have the Student repeat or paraphrase instructions.
36. The IEP stated that the Student would receive five hours per day of direct special education instruction in reading and three hours per day of direct special education instruction in writing in the general education classroom. In addition, he would receive cueing to redirect and focus to task, modified assignments including a reduced number of assignments and spelling words, and modified test formats such as fewer questions, fill in the blank, color coded, and matching word bank. The general educator, special educator and paraeducator would provide the special education services and accommodations.

37. The IEP determined that the least restrictive placement for the Student was outside the general education classroom less than twenty-one percent of the day. The team noted that educating the Student individually or in small groups primarily with other students with disabilities may be harmful because he would not be exposed to the academic stimulation and positive role modeling offered in a general education environment.
38. For the third grade, the Student's grades were as follows: Reading C, Social Studies C, Science C, Math C, Physical Education A, Art A, Music A, and Media B.
39. In reading, the Student was working on the first grade instructional level. For each marking period, he demonstrated inconsistent fair performance and progress with assistance in the three subcategories of reading. In fluency, he needed more practice each marking period with using word recognition strategies, recognizing sight words, and reading smoothly, accurately, with expression, except he met expectations in the fourth period for reading smoothly, accurately, with expression. In comprehension, he needed more practice understanding what he read the first three marking periods and he met expectations in the fourth period; he needed more practice applying strategies to get meaning from text in all four periods; he needed more practice responding with accuracy using text support in all four periods; and he needed more practice gathering and expressing information from listening in the third period and met expectations in the first, second and fourth periods. In independent reading, he needed more practice self selecting appropriate level texts in the first and second periods and met expectations in the third and fourth periods.
40. In oral and written communication, the Student demonstrated inconsistent fair performance and progress with assistance each marking period in the three graded subcategories. In writing process, he met expectations in the first and second periods and needed more practice

in the third and fourth periods with using prewriting, drafting, revision, and editing; he needed more practice in the first, second and third periods and met expectations in the fourth period with using correct form, audience, topic, and purpose; he needed more practice in all four periods with applying spelling patterns; and he needed more practice in all four periods with organizing and delivering oral responses/presentations. In independent writing, he needed more practice in all four periods with writing using a variety of self selected topics; he met expectations in the first period and needed more practice in the second, third and fourth periods with writing independently for an extended period of time; and he met expectations in all four periods with using grade appropriate research resources. In language, he needed more practice in all four periods with understanding and using new vocabulary; he met expectations in the first and second periods and needed more practice in the third and fourth periods with using strategies and other resources to understand meanings of unknown words; he needed more practice in all four periods with using grammatical form; he needed more practice in all four periods with using punctuation and capitalization; and he needed more practice in all four periods with constructing complete sentences and paragraphs on grade level. In addition, he needed more practice in all four periods with using legible handwriting and correct letter formation and spacing.

41. During all four marking periods of Science and the second, third and fourth periods of Social Studies, the Student received reading instruction outside the regular class setting.
42. In Math, Art, Music, Media, and Physical Education, the Student's grades were earned without assistance.
43. As of October 31, 2005, the Student had made satisfactory progress on his reading goals. He had achieved objective three and made satisfactory progress on the others. He showed steady

progress in his reading ability. He made satisfactory progress on objective one –decode words in and out of isolation on a first grade level 80% of the time. He was reading at a Rigby level of ten, which is the last pre-primer level, with 93% accuracy and 100% comprehension. He put a lot of effort into decoding words and used blank it, frame it and does it make sense as his primary strategies. He made satisfactory progress on objective two –read first grade words in and out of context fluently 90% of the time. He was still sounding out the majority of words he was reading. He achieved objective three –preview a story to generate predictions and set purposes 80% of the time. He used prior knowledge and pretaught vocabulary to generate predictions prior to reading. He made satisfactory progress on objective four –identify the main character(s), sequence events, identify problem/solution, and tell the main idea of a story 80% of the time. He was able to identify the main characters and identify the problem/solution in a story; however, he had some difficulty identifying and sequencing the main events of a story. He made satisfactory progress on objective five – answer comprehension questions that address the main idea story events, and supporting details 80% of the time. He was able to respond to comprehension questions that addressed the main idea, story events, and supporting details with minimal teacher assistance.

44. As of November 4, 2005, the Student had made satisfactory progress on his writing goals. He was able to spell words on his spelling tests. He was able to write sentences but required prompting to correct spelling and punctuation. He was able to dictate a paragraph and copy it later. He made satisfactory progress on objective one – spell words correctly on weekly spelling assignments, spelling tests, and daily writing assignments 85% of the time. He was able to spell words on his spelling tests but could not apply the spelling pattern when writing. He made satisfactory progress on objective two – write one to two complete sentences with

correct spelling, grammar, and punctuation on his own 80% of the time. He needed repeated prompting in order to correct spelling, grammar, and punctuation errors throughout his writing. He made satisfactory progress on objective three – verbally give the components of a paragraph and transcribe it independently 75% of the time. He needed support in order to write topic and concluding sentences. He needed prompting to add detailed sentences to his writing.

45. As of January 27, 2006, the Student had made satisfactory progress on his annual reading goal. He was reading at a Rigby level of eleven, which is the first book of the first grade level, with 90% accuracy and 100% comprehension. He was able to read words faster and with greater fluency. He was able to generate and revise predictions. He was able to identify main characters and verbally summarize a story. He was able to respond to comprehension questions that addressed the main idea and story events as well as inferential questions regarding character feelings. He made satisfactory progress on objectives one and two and he achieved objectives four and five.

46. As of January 27, 2006, the Student had made satisfactory progress on his annual writing goal. He was able to write one to two complete sentences with correct punctuation and grammar. He did not spell words correctly on his weekly assignments and spelled them phonetically in his writing. He needed prompting when dictating a topic sentence, detailed sentences and a concluding sentence. He made minimal progress on objective one and satisfactory progress on objectives two and three.

47. Between November 2005 and January 2006, XXXX XXXX, Ph.D., evaluated the Student in his office. He conducted clinical interviews; reviewed records, a parent completed Child Behavior Checklist for Ages 6-18 (CBCL), and a Teacher' Report Form (TRF); and

administered the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), the Woodcock-Johnson Tests of Achievement – third Edition (WJ-III), the Conners' Continuous Performance Test – Second Edition (CPT-II), the Wisconsin Card Sorting Test (Wisconsin), the Rey-Osterreith Complex Figure (ROCF), the Matching Familiar Figures Test (MFFT), and the Rapid Automatized Naming and Rapid Alternating Stimulus Tests (RAN/RAS).

48. On the WISC-IV, the Student's standard scores were as follows: full scale IQ 99, verbal comprehension 110 (above average), perceptual reasoning 102 (average), working memory 97 (average), processing speed 78 (below average). His perceptual motor processing speed was far below average, with slow graphomotor speed and visual scanning speed. In addition, he had slow verbal processing speed and his pace was slow. His auditory memory function was adequate for both simple short-term recall and more complex working memory tasks, although his complex working memory was not as strong.
49. The Student was attentive and non-impulsive on the CPT-II, and he was highly reflective and careful on the MFFT. He demonstrated good cognitive flexibility on the Wisconsin. He was exceedingly slow and disorganized on the ROCF, with poor integration between holistic and part-oriented aspects.
50. On the RAN/RAS, the Student's standard scores were as follows: objects 76, colors 84, numbers 82, letters 83, two-set letters and numbers 76, and three-set letters, numbers, and colors 76. His scores were significantly below average, revealing generally slow and inefficient verbal fluency.
51. On the W-J III, the Student's standard scores were as follows: broad reading 65, broad math 100, broad written language 76, basic reading skills 75, reading comprehension 70, math calculation skills 93, written expression 88, academic skills 77, academic fluency 71,

academic applications 92, academic knowledge 90, and phonologic/graphic knowledge 85. His reading and writing skills were far below grade, age, and cognitive expectations. In addition, his academic fluency was far below expectation. He had minimal sight vocabulary and was attempting to decode even simple words. His decoding was hampered by his extremely weak phonologic skills. His fluency and comprehension were extremely low and comprehension required a great deal of perseverance. He had difficulty spelling known words and non-meaningful sounds. His knowledge of writing mechanics was significantly below expectation. He was able to render his ideas in writing at grade level; however, his spelling was highly problematic. His math skills were grade and age appropriate and consistent with his cognitive ability; however, his fluency for arithmetic calculation was below average.

52. Dr. XXXX's testing identified the Student as having a severe language based learning disability affecting phonology, reading, and writing; possible atypical Attention Deficit Hyperactivity Disorder, primarily inattentive type; and, when upset, symptoms of an Adjustment Disorder.

53. Dr. XXXX made the following recommendations: academic instruction in a highly specialized environment that is fine-tuned to the Student's particular, atypical learning profile; intensified remedial teaching focused on phonological skills, including the XXXX Program and the Orton-Gillingham Method; instruction in a very small classroom environment with a ratio no greater than four students to one teacher; extensive individualized instruction in all areas of the curriculum with repetition, rephrasing, multimodal presentations, and external structuring as needed; over time assistance in developing more functional strategies for addressing complex tasks; and integration of

special education across all components of his school experience, without sacrificing conventional curriculum. Dr. XXXX stated: “I believe that these educational recommendations could best be accomplished in a specialized setting such as [School 1] or [School 4].”<sup>6</sup>

54. Dr. XXXX also recommended a neurological evaluation with EEG because of ambiguous findings regarding the Student’s attentional function and a trial period with stimulant medication. In addition, he recommended a full language evaluation.

55. On February 8, 2006, an IEP meeting was held with the following individuals attending: the Parents; XXXX XXXX, Special Educator; XXXX XXXX, Psychologist; XXXX XXXX, General Educator; XXXX XXXX, Speech/Language Pathologist; XXXX XXXX, Special Educator; and Dr. XXXX. The team reviewed the results of Dr. XXXX’s assessments. Dr. XXXX recommended a more intense special education program, such as [School 4] and the Parents agreed, asserting that the Student had not made any progress in two years. Ms. XXXX maintained he had made progress. Dr. XXXX also recommended a language assessment and Ms. XXXX recommended assessments in the areas of vocabulary development, expressive and receptive language, and phonemic awareness. The Parents stated that they were pursuing Dr. XXXX’s recommendations for pharmaceutical intervention for attentional difficulties and for an EEG. The team scheduled another meeting to review the results of the language assessment and review a draft of the updated IEP.

56. On February 6, 2006, Ms. XXXX evaluated the Student’s language skills using the Clinical Evaluation of Language Fundamentals – 4 (CELF IV). The Student’s subtest scores were as follows: concepts and following directions 9, recalling sentences 11, formulated sentences 9,

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<sup>6</sup> Joint Ex. # 13g.

word classes – receptive 9, word classes – expressive 7, word classes – total 7, expressive vocabulary 3, and understanding spoken paragraphs 9. Subtest scores of 7-13 are within normal limits. His composite scores were as follows: core language 94, receptive language 93, expressive language 95, language content 78, and language memory 98. Composite scores of 85-115 are within normal limits.

57. On February 8, 2006, Ms. XXXX evaluated the Student's spelling skills using the XXXX (XXXX). The evaluation revealed the Student needed phonology based spelling instruction to improve his spelling of the short u, final 'ch, tch', 'th', and short e; needed pattern and rule based spelling instruction to improve spelling of 'wh', 'ck', long a, long i, and long o; and needed to develop clear and complete word images to improve the spelling of hard 'c', 'wh', final 'ch, tch', long a, long e, long i, and long u.
58. On February 10, 2006, Ms. XXXX evaluated the Student's understanding and use of standard American English Vocabulary using the Comprehensive Receptive and Expressive Vocabulary Test – 2. His standard scores were 106 for receptive vocabulary and 83 for expressive vocabulary. Standard scores of 90-110 are within normal limits.
59. On February 15, 2006, Ms. XXXX evaluated the Student's phonological processing skills using the Comprehensive Test of Phonological Processing. His subtest scores were as follows: elision 10, blending words 14, memory for digits 16, rapid digit naming 7, nonword repetition 11, and rapid letter naming 7. Subtest scores of 8-12 are within normal limits. His composite scores were as follows: phonological awareness 112, phonological memory 115, and rapid naming 82. Composite scores of 90-110 are within normal limits.
60. Overall, Ms. XXXX's testing revealed the Student's articulation, voice and fluency to be within normal limits. Further, the majority of his language scores were within normal limits;

however, he had difficulty rapidly and efficiently retrieving information from his memory. This difficulty interferes with the development of knowledge of common letter patterns in printed words and influences the degree to which phonological information is useful in decoding printed words.

61. Ms. XXXX found the Student's language was sufficient to allow him to access the general education curriculum, although he might struggle to relate his knowledge due to his pervasive retrieval difficulties. She recommended that interventions emphasize sound symbol relationships, building mental orthographic images and orthographic knowledge. Also, she recommended he receive support across the curriculum to address his retrieval problems. She suggested the use of text readers and other technology to assist him in accessing and responding to material that he cannot read independently but can understand.

62. On March 8, 2006, an IEP team meeting was held with the following individuals attending: the Parents, Dr. XXXX, Ms. XXXX, Ms. XXXX, Ms. XXXX, XXXX XXXX, Instructional Specialist, and Ms. XXXX. The Parents stated that the Student's EEG results were within normal limits. The team reviewed Ms. XXXX's assessments and added two spelling objectives to the Student's IEP as a result. The team discussed the Student's classroom performance and his progress in the XXXX reading intervention group. The team noted he had achieved his reading goal in less than a year and had progressed from a Rigby book 9 to a book 12 since September. Also, at the beginning of the school year, he was only able to identify one to two letter sounds; he had progressed to identifying four and sometimes five different letter sounds found in a word.

63. As of February 21, 2006, the Student could read a Rigby book 12, which is a first grade level, with 93% word accuracy and 88% comprehension; read short phrases fluently; at times had

difficulty retaining decoded words from one sentence to the next; accurately responded to comprehension questions based on what he had read; identified the main idea, problem, solution and questions about the characters; and understood fourth grade material that was read to him. He could write several sentences about a given topic, tended to spell words phonetically, referred to resources such as the story to spell words correctly, and understood the mechanics of writing but needed reminders to capitalize. He had difficulty focusing and following along with a lesson and needed many cues to stay on task.

64. The team members approved the draft IEP. The team agreed that the Student qualified for Extended School Year (ESY) services and agreed to meet in April to draft an ESY IEP. They also agreed to meet at the end of the school year to review his progress on the new objectives.
65. The March 8<sup>th</sup> IEP identified two goals for the Student: use a variety of reading strategies and skills to construct meaning from text to improve his performance from a beginning first grade level to the second half of the second grade level and improve his written language skills to the fourth grade level.
66. The reading goal identified six objectives. 1) Given phonemic awareness instruction using a systematic approach, modeling, and practice, the Student will identify, blend, decode, read and write words using long and short vowel sound, medial, and final sounds 92% of the time. 2) Given drills, practice, and use of word recognition strategies, the Student will be able to read words on the primer level in and out of context with automaticity with 90% success. 3) Given explicit instruction, modeling, class discussion, graphic organizers, and text at his instructional reading level, the Student will make inferences and draw conclusions using supporting evidence from the text with 80% accuracy. 4) Given explicit instruction,

modeling, class discussion, graphic organizers, and text at the fourth to fifth grade reading level, the Student will make inferences and draw conclusions using supporting evidence from the text when the text is read to him with 80% accuracy. 5) Given explicit instruction, modeling, class discussion, graphic organizers, and text at his instructional reading level, the Student will identify compare and contrast and cause and effect relationships with 80% accuracy. 6) Given explicit instruction, modeling, class discussion, graphic organizers, and text at the fourth to fifth grade reading level, the Student will identify compare and contrast and cause and effect relationships when the text is read to him with 80% accuracy.

67. The writing goal identified five objectives. 1) Given differentiated spelling instruction for spelling patterns identified in the XXXX assessment, and five to ten spelling words with the consonant digraph patterns of 'wh', 'tch', 'th', and 'ck', the Student will develop the necessary orthographic knowledge of sound-symbol correspondences to spell these words correctly on weekly spelling tests and in daily writing assignments 80% of the time. 2) Given differentiated spelling instruction for spelling patterns identified in the XXXX assessment, and five to ten spelling words with the long vowel patterns that involve 'silent e', 'a' spelled as 'ey, ay, ai', 'e' spelled as 'ee, ea, y, ey, i, ie', 'i' spelled as 'y, ie, igh', and 'o' spelled as 'oa, ough, ow', the Student will develop the necessary orthographic knowledge of long versus short vowel principles to spell these words correctly on weekly spelling tests and in daily writing assignments with 80% accuracy. 3) Given modeling, instruction, a list of frequently used words, and an editing checklist, the Student will be able to write one to two complete sentences with correct spelling, grammar, capitalization, and punctuation with fading adult and peer assistance 80% of the time. 4) Given instruction on paragraph writing, paragraph framework and graphic organizers, the Student will be able to verbally give the

components of one to two paragraphs that include a topic sentence, three to five detailed sentences, and a concluding sentence – that he will transcribe independently 75% of the time.

5) Given instruction, modeling, and practice, the Student will revise his writing for clarity and completeness by extending ideas 80% of the time.

68. The IEP included the following accommodations and modifications: extra response and processing time; small group setting; verbatim repetition of scripted directions, as needed; verbatim reading of entire test; for constructed response (extended) items, the Student dictates response to examiner for verbatim transcription by school personnel; provide instructions in one or two steps at a time; and have the Student repeat or paraphrase instructions.

69. The IEP stated that the Student would receive five hours per day of direct special education instruction in reading and three hours per day of direct special education instruction in writing in the general education classroom. In addition, he would receive cueing to redirect and focus to task; verbatim reading of text above instructional level; dictation; technology; extra response and processing time; modified assignments including a reduced number of assignments and spelling words, and words need to follow a pattern/family; and modified test formats such as fewer questions, fill in the blank, color coded, and matching word bank. The general educator, special educator and paraeducator would provide the special education services and accommodations.

70. The IEP team determined that the least restrictive placement for the Student was outside the general education classroom less than twenty-one percent of the day. The team noted that educating the Student individually or in small groups primarily with other students with

disabilities may be harmful because he would not be exposed to the academic stimulation and positive role modeling offered in a general education environment.

71. As of March 24, 2006, the Student had made satisfactory progress on his annual reading goal.

He was reading at a Rigby level of twelve, which is the second book of the first grade level, with 93% accuracy and 88% comprehension. He was participating daily in the XXXX reading intervention program, which focuses on phonemic awareness. He had begun to read short phrases fluently. At times, he had difficulty retaining decoded words from one sentence to the next. He accurately responded to comprehension questions based on what he had read. He could identify the main idea, problem, solution, and questions about the characters. He could make inferences about characters and events in a story. He needed assistance when drawing conclusions with supporting evidence from the text. When material was read to him at the fourth grade level, the Student demonstrated that he understood the main attributes of the story but needed help in gathering supporting evidence from the text. He made progress with comparing/contrasting and cause/effect relationships on his instructional level and grade level. He made satisfactory progress on all six objectives.

72. As of March 24, 2006, the Student had made satisfactory progress on his annual writing goal.

He was working on the hard and soft sound of the letter c and was responding well to the one-on-one instruction. He was making progress with frequently used words. He needed teacher support to identify spelling errors but once identified would correct his mistakes. He could verbally give the components for a good paragraph and later write it on his own. He needed some help giving supporting sentences. Editing was difficult for him but he was able to add written ideas after discussion. He made satisfactory progress on objectives one, three, four and five; objective two was not addressed.

73. From February 27 through April 17, Ms. XXXX, who was the special educator directing the Student's small group reading instruction, was on maternity leave. During this time, the Student's small group reading instruction was directed by XXXX XXXX, who is a certified teacher but not a special educator; she was supervised by Ms. XXXX, a special educator.
74. On April 19, 2006, an IEP meeting was held with the following individuals in attendance: the Parents, Ms. XXXX, Ms. XXXX, and Ms. XXXX. The team found the Student was eligible to receive ESY services because he had shown evidence of emerging skills in reading and writing. He was beginning to form mental images of words. The team reviewed the March 8<sup>th</sup> IEP and selected objectives for the ESY IEP. He was to receive services over a four week period, twice a week for two one-hour sessions. The Student's mother requested a daily communication log on his progress for the remainder of the school year. The team also discussed the XXXX program that he had been participating in since March.
75. Specifically, the team selected from the March 8<sup>th</sup> IEP reading objectives one, two, three, and five and writing objectives one through five for the ESY IEP.
76. As of May 31, 2006, the Student had made satisfactory progress on his annual reading goal. He was reading at a Rigby level of sixteen, which is the last book of the first grade level, with 93% accuracy and 100% comprehension. He was participating daily in the XXXX reading intervention program. He was beginning to read longer phrases fluently. He was retaining decoded words more often from one sentence to the next but was not yet consistent. He accurately answered questions about the text he had read. He could make inferences about characters. He needed prompting to draw conclusions. When material was read to him at the fourth grade level, the Student demonstrated that he understood the main attributes of the text. He was able to make inferences about the characters after hearing and participating

in class discussion. He continued to need assistance to gather supporting evidence from grade level text. He made progress with comparing/contrasting and cause/effect relationships on his instructional level and grade level. He benefited from class discussion when working with grade level text. He made satisfactory progress on all six objectives.

77. As of May 31, 2006, the Student had made satisfactory progress on his annual writing goal. He was finishing the unit on the 'ck' sound and was able to identify the letters that make this sound and spell those words correctly. He was still confusing the long and short vowel sounds. He was beginning to identify when frequently used words were misspelled. He needed some prompting to figure out how to correct the error. He needed reminders to check for capitalization and punctuation errors but was able to independently identify and correct those errors. He could verbally give the components for one good paragraph and later write it on his own. He was working toward writing two paragraphs but had difficulty extending his ideas. He needed a great deal of support with the editing process. He made satisfactory progress on all five objectives.

78. On June 9, 2006, an IEP team meeting was held with the following individuals in attendance: The Student's mother; XXXX XXXX, Administrator; Ms. XXXX, Special Educator; Ms. XXXX, Psychologist; XXXX XXXX, General Educator; XXXX XXXX, Teacher Specialist; Manisha Kavadi, counsel for QACPS; and Holly Parker, counsel for the Parents.

79. The team reviewed the Student's progress over the fourth grade year. He had improved from a Rigby book eight (a pre-primer level) to a Rigby book sixteen (the last book at the first grade level). He had begun to retain decoded words from one sentence to the next, but might decode it again if he encountered it on the next page. He accurately answered questions from text he read or grade level text read to him. He had begun to recognize misspelled frequently

used words but needed prompting to correct the error. He had the fundamentals for writing a paragraph but needed help adding details. He received XXXX instruction during his Science or Social Studies block; however, key concepts from these subjects were incorporated into his reading block.

80. During the June 29, 2006 meeting, Ms. Parker notified the IEP team that the Parents had enrolled the Student in [School 1] for the 2006-07 school year and were requesting QACPS fund that placement.
81. For the fourth grade, the Student's grades were as follows: Reading C, Social Studies C, Science no grade, Math B, Physical Education A, Art A, Music A, and Media B.
82. In reading, the Student was working on the pre-primer instructional level during the first and second marking periods, the first grade level during the third period, and the first grade second month level for the fourth period. In fluency, he demonstrated inconsistent fair performance and progress without assistance for each marking period. He needed more practice using word recognition strategies, recognizing sight words, and reading smoothly, accurately, with expression. In comprehension, he demonstrated good performance and progress the first period with assistance and consistently demonstrated excellent performance and progress the second, third, and fourth periods with assistance. He met expectations understanding what he read in all four periods; he needed more practice applying strategies to get meaning from text in all four periods; he needed more practice responding with accuracy using text support in all four periods; and he met expectations gathering and expressing information from listening in all four periods. In independent reading, he demonstrated inconsistent fair performance and progress without assistance in the first and second periods and consistently demonstrated excellent performance and progress in the third and fourth

periods without assistance. He needed more practice self selecting appropriate level texts in the second period and met expectations in the first, third and fourth periods.

83. In oral and written communication, in the subcategory of writing process the Student demonstrated inconsistent fair performance and progress with assistance each marking period. He needed more practice in all four periods with using prewriting, drafting, revision, and editing, using correct form, audience, topic, and purpose, applying spelling patterns; and he needed more practice in all four periods with organizing and delivering oral responses/presentations. In independent writing, he demonstrated inconsistent fair performance and progress with assistance the first period, consistently demonstrated excellent performance and progress without assistance in the second and third periods, and demonstrated good performance and progress without assistance the fourth period. He needed more practice the first, second and fourth periods and met expectations the third period with writing using a variety of self selected topics. He needed more practice the first, second and fourth periods and met expectations the third period with writing independently for an extended period of time. He met expectations in all four periods with using grade appropriate research resources. In language, he needed more practice in all four periods with understanding and using new vocabulary. He needed more practice in all four periods with using strategies and other resources to understand meanings of unknown words. He needed more practice in all four periods with using grammatical form. He needed more practice in the first three periods and met expectations in the fourth period with using punctuation and capitalization. He needed more practice in all four periods with constructing complete sentences and paragraphs on grade level. In addition, he needed more practice the first three

periods and met expectations in the fourth period with using legible handwriting and correct letter formation and spacing.

84. In Math, the Student's performance and progress were with assistance in all four periods. In content, he demonstrated good performance and progress the first, second and fourth periods and consistently demonstrated excellent performance and progress the third period. He met expectations demonstrating proficiency with computation all four periods. He needed practice demonstrating an understanding of number relationships all four periods. He met expectations demonstrating an understanding of geometry and measurement all four periods. He met expectations collecting, organizing and using data to make decisions and predictions all four periods. He needed practice the first two periods and met expectations the third and fourth periods with determining probability to make predictions and solve problems. He needed practice the first, second and third periods and met expectations the fourth period with demonstrating an understanding of patterns. In processes, he demonstrated inconsistent fair performance and progress the first and second periods and he demonstrated good performance and progress the third and fourth periods. He needed practice applying problem solving and reasoning strategies, relating math to real life and content areas, and communicating mathematical concepts and ideas.

85. During the first three marking periods of Science, the Student received reading instruction outside the regular class setting. During the fourth period, he demonstrated good performance and progress without assistance. He needed practice demonstrating understanding of unit content and vocabulary and met expectations in appropriately using scientific instruments and methods and using the scientific method to effectively collect, interpret, and explain data.

86. In Social Studies, Art, Music, Media, and Physical Education, the Student's grades were earned without assistance.
87. The Student did not participate in ESY services through QACPS during the summer of 2006.
88. In September 2006, XXXX XXXX, Speech-Language Pathologist at [School 1], evaluated the Student's speech and language skills using the following assessments: CELF-4, Test of Word Knowledge (TOWK), Test of Auditory Perceptual Skills – Revised (TAPS-R), Conversational Language Sample, Parent Questionnaire, Teacher Interview, and Classroom Observation.
89. On the CELF-4, the Student's subtest scores were as follows: word classes – receptive 9, concepts and following directions 6, understanding spoken paragraphs 10, formulated sentences 9, recalling sentences 10, word definitions 9, word classes – expressive 10, word classes – total 9. Subtest scores of 7-13 are within normal limits. His composite scores were as follows: core language 91, receptive language 85, expressive language 98, language content 96, and language memory 90. Composite scores of 85-115 are within normal limits.
90. On the TOWK, the Student's scores were as follows: synonyms 10 (average), multiple contexts 10 (average), and expressive vocabulary 8 (low average).
91. On the TAPS-R, the Student's scores were as follows: auditory number memory forward 86 (low average), auditory number memory reversed 78 (below average), auditory sentence memory 96 (average), auditory word memory 76 (below average), and auditory word discrimination 113 (high average).
92. Overall, Ms. XXXX's testing revealed the Student's articulation, voice and fluency to be within normal limits. Further, the majority of his scores were within normal limits; however, he had auditory processing and memory difficulties. These difficulties negatively impact his

ability to understand and remember curricular material presented orally, as well as his ability to participate in academic discourse. He also had difficulty following multi-step complex directions.

93. Ms. XXXX made a series of recommendations including speech/language therapy, receptive and expressive language instruction, a formal central auditory processing evaluation, use of auditory memory strategies, use of cueing when providing oral information, provision of oral information in short chunks with pauses, use of visual aids, small classroom size, one-on-one instruction, limitation of auditory distractions, use of word retrieval strategies, use of visual, tactile and kinesthetic cues, and use of hands-on and multi-sensory tasks. She also recommended the Student should accept responsibility for his therapy and monitor his own success.

## **DISCUSSION**

### *A. The Parties' Arguments*

The Parents in this case argue that the Student cannot read. He is a bright child with a severe learning disability. They assert that the intensive reading programs provided by QACPS are not working and he has regressed. They maintain that the Student is still reading on the first grade level and needs intensive services to close the gap with his age and grade level. They allege that QACPS provided only five hours of special education services per day. They argue that QACPS recommended the least amount of special education services and could have recommended more intensive services. They maintain QACPS did not perform a speech/language assessment until after Dr. XXXX recommended one. They contend that the Student's learning disability is being accommodated but that is insufficient; he needs remediation. They complain that the Student did not receive the full Science curriculum because

he was pulled out of Science to participate in the reading instruction. They allege he did not receive the services he was supposed to receive under his IEP because QACPS was short of resources, specifically, that Ms. XXXX was on maternity leave in 2006. They maintain that they did not make the decision to place the Student in private school lightly but want him to be a productive member of society. They assert [School 1] is an appropriate placement for him and are seeking tuition reimbursement for the 2006-07 school year.

QACPS maintains that [School 2] is the appropriate placement for the Student because it is his home school and the least restrictive environment. QACPS notes the parties agreed regarding the Student's present levels of educational performance, his goals and objectives, the modifications to be provided and his need for special education services. QACPS asserts his passing grades constitute educational progress and are consistent with his abilities. Further, QACPS contends he made progress in all areas. QACPS argues that standardized tests are age normed tests; therefore, similar scores over time show continued progress. QACPS asserts that he can work on grade level curriculum with his non-disabled peers in Math and specials, such as Art and Music. QACPS notes he has very strong oral reading comprehension and can access grade level curriculum. QACPS maintains that its personnel worked with the Student over time in a variety of settings; in contrast Dr. XXXX never saw him outside of the clinical setting, and had never seen the programs at QACPS or [School 1]. QACPS alleges [School 1] is not an appropriate placement for the Student. It notes it offered ESY services to the Student for summer 2006 but he did not participate. QACPS asserts he was provided with eight hours of special education per day; five hours of reading and three hours of writing instruction. QACPS contends whether the Student received Science or Social Studies is not an issue under IDEA; however, he did receive these subjects because the curriculum was woven into the reading block.

B. *Legal Standards*

The governing statute is the Individuals With Disabilities Education Improvement Act of 2004 (IDEIA), 20 U.S.C.A. §§ 1400 – 1419 (Supp. 2006). Congress identified as one of the primary purposes of this law “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). The Fourth Circuit has explained that “a FAPE requires the school district to provide instruction that suits the child’s needs as well as related services to ensure that the child receives some educational benefit from instruction.” *A.B. v. Lawson*, 354 F.3d 315, 319 (4<sup>th</sup> Cir. 2004). The court in *Lawson* explained:

Under the act, the state must provide children with “meaningful access” to public education. [Bd. of Ed. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 192, 102 S.Ct. 3034, 73 L.Ed.2d 690 \(1982\)](#). The FAPE must only be “calculated to confer *some* educational benefit on a disabled child.” [MM, 303 F.3d at 526](#) (citing [Rowley, 458 U.S. at 207, 102 S.Ct. 3034](#)) (emphasis added). The Supreme Court has held that under IDEA Congress intended to provide a satisfactory level of educational opportunity, not the best education that money could buy. See [Rowley, 458 U.S. at 189, 102 S.Ct. 3034](#). The Court noted that “[w]hatever Congress meant by an ‘appropriate’ education, it is clear that it did not mean a potential-maximizing education.” *Id.* at 197 n. 21, [102 S.Ct. 3034](#); see also [Hartmann v. Loudoun County Bd. of Ed., 118 F.3d 996, 1001 \(4th Cir.1997\)](#) (“States must ... confer some educational benefit upon the handicapped child, but the Act does not require the furnishing of every special service necessary to maximize each handicapped child's potential.”) (internal citations and quotation marks omitted).

In addition to IDEA's requirement that the state provide each student with some educational benefit, the student must be placed in the least restrictive environment to achieve the FAPE. The disabled child is to participate in the same activities as non-disabled children to the “maximum extent appropriate.” [20 U.S.C. § 1412\(a\)\(5\)\(A\)](#); see also [34 C.F.R. § 300.550](#) (“That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily.”); [Md.](#)

[Regs. Code tit. 13A § 05.01.10<sup>7</sup>](#) (regulations concerning least restrictive environments). We stated in [DeVries v. Fairfax County Sch. Bd.](#), 882 F.2d 876, 878 (4th Cir.1989), “mainstreaming of handicapped children into regular school programs ... is not only a laudable goal but is also a requirement of the Act.”

*Id.* (all citations and comments in original).

The burden of proof in this case lies with the Parents because they are the party challenging the IEP and its implementation. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 535 and 537 (2005).

*C. The Merits*

The question presented in this case is whether the March 8, 2006 IEP was designed to provide some educational benefit to the Student in the least restrictive environment. For the reasons that follow, I find that the March 8<sup>th</sup> IEP was appropriate and the Parents have failed to meet their burden. Therefore, the Parents are not entitled to tuition reimbursement for [School 1] for the 2006-07 school year.

Dr. XXXX, the Parents’ expert in psychology, evaluated the Student between November 2005 and January 2006. He identified the Student as having a severe language based learning disability affecting phonology, reading, and writing; possible atypical Attention Deficit Hyperactivity Disorder, primarily inattentive type. Dr. XXXX made the following recommendations: academic instruction in a highly specialized environment that is fine-tuned to the Student’s particular, atypical learning profile; intensified remedial teaching focused on phonological skills, including the XXXX Program and the Orton-Gillingham Method; instruction in a very small classroom environment with a ratio no greater than four students to one teacher; extensive individualized instruction in all areas of the curriculum with repetition, rephrasing, multimodal presentations, and external structuring as needed; over time assistance in developing

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<sup>7</sup> COMAR 13A.05.01.10.

more functional strategies for addressing complex tasks; and integration of special education across all components of his school experience, without sacrificing conventional curriculum. Dr. XXXX stated in his report: “I believe that these educational recommendations could best be accomplished in a specialized setting such as [School 1] or [School 4].”<sup>8</sup>

The IEP team met on February 8, 2006, considered Dr. XXXX’s assessments and agreed to have Ms. XXXX conduct a Speech/Language assessment. Dr. XXXX participated in this team meeting.

Ms. XXXX, QACPS’s Speech and Language expert, found the majority of the Student’s language scores were within normal limits; however, he had difficulty rapidly and efficiently retrieving information from his memory. She noted this difficulty interferes with the development of knowledge of common letter patterns in printed words and influences the degree to which phonological information is useful in decoding printed words. She found the Student’s language was sufficient to allow him to access the general education curriculum, although he might struggle to relate his knowledge due to his pervasive retrieval difficulties. She recommended that interventions emphasize sound symbol relationships, building mental orthographic images and orthographic knowledge. Also, she recommended he receive support across the curriculum to address his retrieval problems. She suggested the use of text readers and other technology to assist him in accessing and responding to material that he cannot read independently but can understand.

The IEP team met again on March 8, 2006, considered the Speech/Language assessment, and discussed the Student’s classroom performance and his progress in the XXXX reading intervention group. Dr. XXXX also participated in this team meeting. The team noted he had

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<sup>8</sup> Joint Ex. # 13g.

achieved his reading goal on the June 15, 2005 IEP in less than a year and had progressed from a Rigby book 9 to a book 12 since September 2005. Also, at the beginning of the school year, he was only able to identify one to two letter sounds; he had progressed to identifying four and sometimes five different letter sounds found in a word. The IEP team drafted an IEP that contained specific reading and writing goals and objectives, as detailed in the findings of fact above, tailored to address the Student's strengths and weaknesses in reading and writing. The IEP also contained the following accommodations and modifications: extra response and processing time; small group setting; verbatim repetition of scripted directions, as needed; verbatim reading of entire test; for constructed response (extended) items, the Student dictates response to examiner for verbatim transcription by school personnel; provide instructions in one or two steps at a time; and have the Student repeat or paraphrase instructions. Under the IEP, the Student would receive five hours per day of direct special education instruction in reading and three hours per day of direct special education instruction in writing in the general education classroom. In addition, he would receive cueing to redirect and focus to task; verbatim reading of text above instructional level; dictation; technology; extra response and processing time; modified assignments including a reduced number of assignments and spelling words, and words need to follow a pattern/family; and modified test formats such as fewer questions, fill in the blank, color coded, and matching word bank. The general educator, special educator and paraeducator would provide the special education services and accommodations. The IEP team determined that the least restrictive placement for the Student was outside the general education classroom less than twenty-one percent of the day. The team noted that educating the Student individually or in small groups primarily with other students with disabilities may be harmful because he would not be exposed to the academic stimulation and positive role modeling offered

in a general education environment.

Thus, the IEP team incorporated all of Dr. XXXX's recommendations except placement and location. Specifically, the IEP team rejected Dr. XXXX's recommendation that all of the Student's instruction occur in a very small classroom environment with a ratio of four students to one teacher because the team found the Student could participate in the regular education classroom for most subjects with small group instruction reserved for specific reading and writing instruction, his identified areas of weakness. In addition, the team rejected Dr. XXXX's recommendation for [School 1] or [School 4]. I find the team's rejection of Dr. XXXX's recommendations regarding placement and location was appropriate for a number of reasons. First, Dr. XXXX is an expert in psychology, not education, and I find the opinions of the educators who had been working with the Student in the classroom environment are entitled to more deference than the opinion of the clinician who had never observed the Student in the classroom. Second, Dr. XXXX's recommendations did not address IDEIA's least restrictive environment requirement or explain why the Student could not be educated in a less restrictive environment. Third, Dr. XXXX's own statement in his report reveals that his opinion was not based on the applicable standard of some educational benefit from instruction. Dr. XXXX's belief is that his "educational recommendations could best be accomplished in a specialized setting such as [School 1] or [School 4]."<sup>9</sup> IDEIA does not require that a child be educated in the best setting. Finally, the evidence shows that the Student did make educational progress under the IEPs that were in place during the 2005-06 school year.

When the IEP team drafted the Student's IEP on June 15, 2005 his reading level was at a Rigby book eight, which is a first grade/pre-primer level. He had many emergent skills: he

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<sup>9</sup> Joint Ex. # 13g.

knew all of his letters, could identify beginning sounds, and had begun using phonics to decode unfamiliar words. He had difficulty retaining decoded words from one sentence to the next. He had difficulty comprehending what he had read and depended highly on a story's pictures for clarification. When material was read to him, the Student understood the main attributes of the story, such as the main idea and main characters, and could answer basic comprehension questions about the material. His writing was difficult to decipher because he was a poor speller, and did not use capitalization or punctuation. He could write one or two sentences on a given topic with modeling and guidance. He had difficulty expressing ideas. He could generate ideas, although his ideas tended to go off topic. He had difficulty focusing and following along with a lesson and needed many cues to stay on task. He was very dependent on his teachers and peers to assist him with tasks. As of October 31, 2005, the Student had made satisfactory progress on his reading goals, had achieved objective three, and made satisfactory progress on the others. He was reading at a Rigby level of ten, which is the last pre-primer level, with 93% accuracy and 100% comprehension. As of November 4, 2005, the Student had made satisfactory progress on his writing goals and objectives. He was able to spell words on his spelling tests, and able to write sentences but required prompting to correct spelling and punctuation. He was also able to dictate a paragraph and copy it later. As of January 27, 2006, the Student had made satisfactory progress on his annual reading goal, made satisfactory progress on objectives one and two and achieved objectives four and five.. He was reading at a Rigby level of eleven, which is the first book of the first grade level, with 90% accuracy and 100% comprehension. He was able to read words faster and with greater fluency. He was able to generate and revise predictions. He was able to identify main characters and verbally summarize a story. He was able to respond to comprehension questions that addressed the main idea and story events as well as inferential

questions regarding character feelings. Also, as of January 27, 2006, the Student had made satisfactory progress on his annual writing goal, minimal progress on objective one, and satisfactory progress on objectives two and three.. He was able to write one to two complete sentences with correct punctuation and grammar. He did not spell words correctly on his weekly assignments and spelled them phonetically in his writing. He needed prompting when dictating a topic sentence, detailed sentences and a concluding sentence. As of February 21, 2006, the Student could read a Rigby book 12, which is a first grade level, with 93% word accuracy and 88% comprehension; read short phrases fluently; at times had difficulty retaining decoded words from one sentence to the next; accurately responded to comprehension questions based on what he had read; identified the main idea, problem, solution and questions about the characters; and understood fourth grade material that was read to him. He could write several sentences about a given topic, tended to spell words phonetically, referred to resources such as the story to spell words correctly, and understood the mechanics of writing but needed reminders to capitalize. He had difficulty focusing and following along with a lesson and needed many cues to stay on task. Thus, when the IEP team met on March 8, 2006, the team found the Student had demonstrated progress on the June 2005 IEP.

Once the new IEP was implemented on March 8, 2006, the Student continued to make progress. As of March 24, 2006, the Student had made satisfactory progress on his annual reading goal and objectives. He was reading at a Rigby level of twelve, which is the second book of the first grade level, with 93% accuracy and 88% comprehension. He had begun to read short phrases fluently. At times, he had difficulty retaining decoded words from one sentence to the next. He accurately responded to comprehension questions based on what he had read. He could identify the main idea, problem, solution, and questions about the characters, and could

make inferences about characters and events in a story. He needed assistance when drawing conclusions with supporting evidence from the text. When material was read to him at the fourth grade level, he understood the main attributes of the story but needed help in gathering supporting evidence from the text. He made progress with comparing/contrasting and cause/effect relationships on his instructional level and grade level. Also, as of March 24, 2006, the Student had made satisfactory progress on his annual writing goal and on objectives one, three, four and five. He was working on the hard and soft sound of the letter c and making progress with frequently used words. He needed teacher support to identify spelling errors but once identified would correct his mistakes. He could verbally give the components for a good paragraph and later write it on his own, but needed some help giving supporting sentences. Editing was difficult for him but he was able to add written ideas after discussion. As of May 31, 2006, the Student had made satisfactory progress on his annual reading goal and objectives. He was reading at a Rigby level of sixteen, which is the last book of the first grade level, with 93% accuracy and 100% comprehension. He was beginning to read longer phrases fluently. He was retaining decoded words more often from one sentence to the next but was not yet consistent. He accurately answered questions about the text he had read and could make inferences about characters. He needed prompting to draw conclusions. When material was read to him at the fourth grade level, he understood the main attributes of the text and was able to make inferences about the characters after hearing and participating in class discussion. He continued to need assistance to gather supporting evidence from grade level text. He made progress with comparing/contrasting and cause/effect relationships on his instructional level and grade level. Also, as of May 31, 2006, the Student had made satisfactory progress on his annual writing goal and objectives. He was finishing the unit on the 'ck' sound and was able to identify

the letters that make this sound and spell those words correctly. He was still confusing the long and short vowel sounds. He was beginning to identify when frequently used words were misspelled, but needed some prompting to figure out how to correct the error. He needed reminders to check for capitalization and punctuation errors but was able to independently identify and correct those errors. He could verbally give the components for one good paragraph and later write it on his own. He was working toward writing two paragraphs but had difficulty extending his ideas. He needed a great deal of support with the editing process.

In sum, the Student progressed from reading on a pre-primer level at the beginning of the 2005-06 school year to reading on an end of first grade level at the end of the school year. His writing progressed from one or two sentences with poor spelling, no capitalization or punctuation, and requiring modeling and guidance, to an increased number of correctly spelled words, identification of misspelled words, and identification and correction of capitalization and punctuation errors. While the Parents may have wished for more progress, I cannot find that the Student did not receive any educational benefit.

I find the Parents' remaining arguments without merit. The Parents' allegation that QACPS provided only five hours of special education services per day is unsupported by the evidence. The IEP shows that the Student was provided with eight hours of special education per day, five hours of reading and three hours of writing and the testimony of the Student's teachers demonstrates that special education services were incorporated into his instruction throughout his school day. The assertion that QACPS did not perform a speech/language assessment until after Dr. XXXX recommended one does not prove the March 8, 2006 IEP was inappropriate. Rather, it shows QACPS was being responsive to the Parents. The Parents contention that the Student needs more than accommodation, that he needs remediation, ignores

the progress the Student made and is inconsistent with the Parents refusal of the ESY services offered for the summer of 2006. Their complaint that the Student did not receive the full Science curriculum because he was pulled out of Science to participate in the reading instruction is not an issue before me under IDEIA. Their allegation he did not receive the services he was supposed to receive under his IEP because Ms. XXXX was on maternity leave in 2006 is unsupported by the evidence. Ms. XXXX, who was the special educator directing the Student's small group reading instruction, was on maternity leave from February 27 through April 17, 2006. During this time, the Student's small group reading instruction was directed by XXXX XXXX, who is a certified teacher but not a special educator; she was supervised by Ms. XXXX, a special educator. The Student continued to make progress in reading during this time. Thus, there is no evidence Ms. XXXX' absence prevented the Student from receiving educational benefit.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the March 8, 2006 IEP was designed to provide some educational benefit to the Student in the least restrictive environment; therefore, the Parents are not entitled to tuition reimbursement for [School 1] for the 2006-07 school year. Individuals With Disabilities Education Improvement Act of 2004 (IDEIA), 20 U.S.C.A. §§ 1400 – 1419 (Supp. 2006); *A.B. v. Lawson*, 354 F.3d 315, 319 (4<sup>th</sup> Cir. 2004).

### **ORDER**

I **ORDER** that the Parents' appeal be dismissed.

February 28, 2007  
Date Decision Mailed

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Lorraine Ebert Fraser  
Administrative Law Judge

### **REVIEW RIGHTS**

Within 120 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final review decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the student resides. Md. Code Ann., Educ. §8-413(j) (2006).

Should a party file an appeal of the hearing decision, that party must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing, of the filing of the court action. The written notification of the filing of the court action must include the OAH case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

The Office of Administrative Hearings is not a party to any review process.