UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION
24 IDELR 1171

Mark HARTMANN, a minor by his parents and next friends,
Roxanna HARTMANN and Joseph Hartmann,
Plaintiffs

v.

LOUDOUN COUNTY BOARD OF EDUCATION,
Defendant

No. 95-1686-A

Prior due process rulings reported at 21 IDELR 1089 and 22 IDELR 833.

November 27, 1996

Counsel for Parents: Gerard Rugel.
Counsel for District: Kathleen Mehfoud, Hazel & Thomas.

LEONIE M. BRINKEMA, United States District Judge

Memorandum Opinion

To paraphrase an education commercial, "A mind is a terrible thing to waste." The challenge presented in this lawsuit ultimately focuses on just this concern. The issue is whether Mark Hartmann, an autistic eleven-year-old boy, should be educated in a regular education classroom which will expose him to a full range of academic subjects and allow him to interact with non-disabled children or be educated in a separate setting which will stress life skills over academic subjects and keep Mark with other disabled children for a significant portion of the day. This dispute pits Mark's parents, educators from Montgomery County, Virginia, and inclusion advocates against the Loudoun County Board of Education and some teachers who have worked with Mark.

Having carefully reviewed transcripts of the five-day due process hearing, the opinion of the Hearing Officer, the testimony presented before this Court in a two-day bench trial and the video

tape showing two of Mark's school days in the Montgomery County, Virginia, school system, the Court is convinced that Mark is able to receive significant educational benefits when included in a regular education setting as long as he has the help of a one-on-one aide and properly adapted curriculum. The Court also finds that when Mark is managed properly he is no more disruptive than his non-disabled classmates. Lastly, the Court finds that the Hearing Officer failed to consider extensive evidence showing that Mark can learn when included in the regular setting. Therefore, the decision of the Hearing Officer is reversed and judgment is entered in favor of the plaintiffs.

I. Procedural Background

The parents of Mark Hartmann ("Mark") have brought this lawsuit under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415, and the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794, 42 U.S.C. § 1983. Specifically, they ask the Court to reverse the findings of a due process Hearing Officer who concluded that the Loudoun County Board of Education ("the Board") had established that Mark could not be educated satisfactorily when he received all, or almost all, of his instruction in a regular education classroom, even with the use of supplementary aids and services. She also concluded that the Board's plan to place Mark in a self-contained autism class, located in a regular education school thereby providing opportunities for interaction with nondisabled peers, was appropriate and constituted the least restrictive educational environment for Mark.

At the outset, the Board opposed this lawsuit by arguing that it should be deemed moot because at the present time Mark is not being educated in Loudoun County. Rather than acquiescing to Loudoun County's decision, Mrs. Hartmann established residence in Montgomery County, Virginia, where Mark is presently enrolled in public school. Mr. Hartmann, however, continues to reside in Loudoun County; therefore, Mark remains eligible to attend school in Loudoun County. The parents have also stated they would re-enroll Mark if he is included in a regular classroom setting. Under these facts, the Court found that the core issues of this action are not moot because the problem is capable of repetition. See *Moore v. Ogilvie*`, 394 U.S. 814 (1969).

The Board also opposed the Court conducting a trial, arguing that the Court should base its decision solely on an evaluation of the adequacy of the due process hearing administrative record. However, the Court is required to make a "bounded, independent" decision in this case, "bounded by the administrative record and additional evidence, and independent by virtue of being based on a preponderance of the evidence before the court." *Town of Burlington v. Department of Education*, 736 F.2d 773, 791 (1st Cir. 1984), aff'd on other grounds, 471 U.S. 359 (1985). The evidence presented during the two-day trial was extremely relevant to evaluating the adequacy of the Hearing Officer's decision, and has played a significant role in the Court's decision. Receipt of such evidence is appropriate under the IDEA, 20 U.S.C. § 1415(e)(2).

Lastly, the Board argues that the Hearing Officer's decision was fully supported by the record and should not be overturned. It is this issue which will be addressed in detail in this opinion.

Mark Hartmann is an eleven-year-old autistic boy. Autism in a pervasive developmental disorder characterized by significant deficiencies in communication skills, social interaction and motor control.[1] An autistic person is not necessarily mentally retarded and may, in fact, be mentally normal or even a mental genius as in the case of "idiot savants." However, because of the extensive deficits in communication, it is often very difficult to determine an autistic person's intelligence. Mark is unable to speak and suffers severe problems with fine motor coordination. These problems prevent him from writing easily. These handicaps make any standardized testing extremely difficult. In Mark's case, those working the most closely with him, including Cathy Thornton, do not believe he is mentally retarded. All witnesses appear to agree that Mark's receptive language skills are much better than his expressive skills, and that his greatest need is to learn communication skills, including how to initiate appropriate social interaction.

Mark spent his pre-kindergarten years in a variety of programs which provided him with special education services in settings exclusively for disabled children. For his kindergarten year he spent half his time in a self-contained program for autistic children and half in a regular education

classroom at the Butterfield Elementary School in Lombard, Illinois. At Butterfield, Mark's first grade placement was in a regular education classroom with a full-time educational aide. Mark also received one-on-one assistance from speech and language therapists and occupational therapists. No services were provided in a self-contained setting.

Following first grade, Mark moved with his family to Loudoun County, Virginia, where he was enrolled at the Ashburn Elementary School for the 1993-94 school year. Ashburn Elementary School continued the individualized educational plan ("IEP") developed in Illinois and placed Mark in a regular education classroom with children his age. However, in June of 1994, the Board advised Mark's parents of its decision to change Mark's placement from inclusion at Ashburn to the self-contained autism class at Leesburg Elementary School. The parents did not agree with that decision and the school initiated a due process hearing.

The hearing included five days of testimony over August 15, September 26, 27, and 28 and October 27, 1994. At the request of the parents, the hearing was open and the testimony and exhibits are a matter of public record. The parents and the Board were each represented by counsel. On December 21, 1994, the Hearing Officer issued her decision which is the subject of this lawsuit.

II. The Hearing Officer's Findings

In evaluating the educational program and placement proposed by the Board, the Hearing Officer considered two issues:

> 1) whether the proposal to remove Mark from the regular classroom violates the Board's obligation to educate him, to the maximum extent appropriate, with nondisabled children; and
> 2) whether the proposed placement in a self-contained class is appropriate for Mark.

Under the IDEA, 20 U.S.C. § 1412, a child with a disability is entitled to a free appropriate education. An appropriate education is one that is tailored to the unique needs and disabilities of the individual child and is reasonably calculated to enable the child to receive educational benefits. *Board of Education v. Rowley*, 458 U.S. 176, 187-90 (1982).

The IDEA also contains a requirement that states establish

> . . . procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily . . . 20 U.S.C. § 1412(5)(b); 34 C.F.R. § 300.550(b).

It is clear from the language of the statute that there is a strong presumption favoring the education of disabled children in the regular education environment, alongside children who are not disabled. This requirement has traditionally been known as "mainstreaming," but is increasingly called "inclusion." Neither of these two terms is used in the IDEA.

Within this statutory framework, the Hearing Officer found on the first issue that the Board has met its burden of establishing by a preponderance of the evidence that its proposal to remove Mark from the regular classroom did not violate its obligation to educate him, to the maximum extent appropriate, with nondisabled children. To reach this finding, the Hearing Officer used a two-part

test developed in *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1048 (5th Cir. 1989). Although this test has been neither accepted nor rejected by the Fourth Circuit, it provides a logical framework for evaluating this issue. Under this test one first considers whether the student can receive educational benefit in the regular classroom with the use of supplementary aids and services. Second, if the fact finder concludes that placement outside the regular classroom is necessary for educational benefit, it must then decide whether the school has mainstreamed the child to the maximum extent appropriate.

In applying the first prong of the test, the Hearing Officer found that Mark cannot be educated satisfactorily when he receives all, or almost all, of his instruction and related services in the regular classroom, even with the use of supplementary aids and services. The factors used to make this finding were: the steps that the school had taken to try to include Mark in a regular classroom, a comparison between the educational benefits of the regular classroom and the educational benefits of the segregated, special education classroom, and the effects of including Mark on the regular classroom environment. Weighing into the Hearing Officer's decision on the first prong were her findings that although the Board made reasonable efforts to accommodate Mark in the regular classroom, he received virtually no educational benefit in the included setting and that Mark's behaviors were disruptive and had a negative effect on the environment in the classroom.

Moving on to the second prong of the test, the Hearing Officer found that the Board's proposal for a self-contained program which allowed for mainstreaming in all non-academic activities gave Mark a significant opportunity to interact with nondisabled peers on a regular and daily basis, while offering him academic instruction and related services in a manner from which he would derive educational benefit.

Further, on the second issue, the Hearing Officer found that the proposed placement in a self-contained autism class, located in a regular education school and providing opportunities for interaction with nondisabled peers, would be appropriate and constituted the least restrictive environment. A placement is appropriate if it is reasonably calculated to provide educational benefit. *Rowley*, 458 U.S. at 206-07. The Hearing Officer determined that the self-contained autism class at Leesburg Elementary School, with mainstreaming for art, music, library, physical education and recess, was reasonably calculated to provide educational benefit for Mark. The findings relied on by the Hearing Officer were that the placement offered a structured program with a ratio of five students to one special education teacher and an aide, and that the classroom had instructional materials suited to Mark's learning style and offered break activities that would satisfy his sensory needs.

III. Analysis

At the outset of this analysis, the Court must stress what this case is not about. Although seen by some as a battle between proponents of inclusion and separation, this case is solely about what is in the best interests of one disabled boy. The answer for Mark does not necessarily mean that the same answer would be appropriate for all other autistic children. The wisdom behind the IDEA is its unwavering focus on the individual disabled child and his or her unique challenges and needs. This Court has no doubt that specialized centers and separate self-contained classes may be the least restrictive educational environment for some children whereas inclusion may be the answer for others. Thus, this decision is in no way meant to reflect the Court's view of the adequacy of the self-contained autism class at Leesburg Elementary School or at any other school. The decision in this case is limited solely to what is most appropriate for Mark Hartmann.

A. Obligation to Educate with Nondisabled Children

Although the Court finds that the Hearing Officer used the proper analytical framework to evaluate the Board's placement decision, the evidence in the administrative record, augmented by the evidence presented at trial, supports a different conclusion. The Board's proposal to remove Mark from the regular classroom did violate its obligation to educate him, to the maximum extent appropriate, with nondisabled children because the greater weight of the evidence establishes that Mark can receive and has received educational benefits when included in a regular classroom with the use of supplementary aids and services.

1. Reasonable Efforts to Accommodate

Although the Board initially made efforts to accommodate Mark's placement in a regular education classroom, these efforts were not sufficient to discharge its obligation under the IDEA. In the spring of 1993, the Hartmanns notified the school system that they were considering moving to Loudoun County, Virginia. (Transcript, Oct. 27 at 276).[2] The Hartmanns forwarded Mark's educational records at this time. *Id*. In June of 1993, the principal of Ashburn Elementary School, Laurie McDonald, approached a second grade teacher, Diane Johnson and asked whether she would be interested in having Mark join her class. Johnson indicated that she would be interested. (Tr. Aug. 15 at 106). The record shows that there was some confusion during the summer months as to whether the Hartmanns would actually move into Loudoun County. (Tr. Sept. 26 at 194, 232). Johnson, a regular education teacher, was not notified until the end of August that Mark would indeed be included in her class. (Tr. Aug. 15 at 105). Although Johnson had almost no experience dealing with autistic children, she was not offered any substantial training in autism or in the inclusion process. (Tr. Aug. 15 at 107). However, she was given help in accommodating Mark by having her class size reduced to a total of 21 students. Also, a full-time aide, Suz Leitner, was hired to work with Mark. (Tr. Sept. 26 at 194-97). The record does not reveal Leitner's qualifications.

Mary Kearney, the Loudoun County Director of Special Education, was appointed to head the inclusion efforts. (Tr. Oct. 27 at 280-83). Kearney was chosen because of her experience with the Virginia Systems Change Project, a program in which she received training in inclusion. (Tr. Oct. 27 at 278). She also had some experience in developing educational programs for students who had been diagnosed with autism. (Tr. Oct. 27 at 279). Kearney was in charge of training the staff who would be working with Mark. This group became Mark's IEP team.[3] Initially, Mark's IEP team included his classroom teacher, Diane Johnson, his teacher's aide, Suz Leitner; the school principal, Laurie McDonald; and a speech and language pathologist, Carolyn Clement. None of them had any extensive experience working with an included autistic student. (Tr. Sept. 26 at 110). Their training in inclusion was limited to a one-day conference given by the Virginia Council for Administrators of Special Education. (Tr. Oct. 27 at 286). This team was charged with the responsibility of coordinating and implementing Mark's placement. Although the Hearing Officer found this team adequate, the Court rejects that conclusion. Autism is far too complex a disability, and the inclusion of autistic children is too challenging a project, to leave to persons lacking adequate training and experience. Mark's failure to function well at Ashburn is strong proof of the inadequacy of the training and experience of Mark's IEP team.

During the fall, Kearney arranged for the IEP team to receive outside consultations from educational consultants Jamie Ruppmann and Gail Mayfield. Both of these consultants had expertise in the areas of autism and inclusion. According to Ruppmann's testimony, Kearney was concerned that the individuals on Mark's IEP team did not have sufficient experience with the challenge of including a disabled student such as Mark. (Tr. Sept. 27 at 154). Kearney asked Ruppmann to observe Mark in the regular education classroom, participate in the IEP meetings and

offer suggestions to the IEP team. Ruppmann worked with the IEP team from November 2 to December 8, 1993. Mayfield visited Ashburn Elementary in November of 1993. Apparently, she gave advice regarding Mark's inclusion program, but she did not make an official report. Because Mayfield did not testify at the due process hearing and neither side offered any evidence from her, the value of her insights is not available. Only Ruppmann's testimony is in the record.

Kearney also involved Frank Johnson, Loudoun County's Supervisor of Special Education. Although Johnson had some experience working with autistic children in the 1970s, he had no experience working with an autistic child in a regular classroom setting. (Tr. Sept. 26 at 298-299, 302) Johnson became informally involved with Mark's placement during the first half of the year. Although Johnson did not attend meetings with the IEP team or observe Mark during this time, he did make himself available by phone to offer advice on how to develop strategies for dealing with Mark's behavior.

The record before the Hearing Officer shows that Kearney was concerned about the lack of experience of Mark's IEP team and tried to provide supplementary aids and services. Her efforts ceased, however, when she was removed from her supervisory role on Mark's IEP team in early December of 1993. The decision was announced at the December 8, 1993 IEP meeting. This meeting is a critical event in this case. There is some secrecy surrounding exactly what happened during the meeting. It is clear, however, that Ned Waterhouse, Director of Pupil Services, attended the meeting and that after this meeting Mary Kearney was no longer in a supervisory role on the IEP team and Jamie Ruppmann was no longer called in by the Board to participate in the IEP meetings.

Changes to the IEP team continued in 1994. Frank Johnson took on a more official role in January. He started to attend the weekly meetings and developed a behavior modification plan for Mark. Virginia McCullough, a special education teacher, was added to the team late in February, with little more than three months remaining in the school year. (Tr. Sept. 27 at 58, 108). McCullough had experience in implementing inclusion placements for preschool programs and providing one-on-one special education services in the regular classroom. Apparently she did not have experience with including children of Mark's age group. (Tr. Sept. 27 at 61). McCullough testified that when she began working with Mark she was also training the classroom teacher and the aide in methods of working with him. (Tr. Sept. 27 at 60). With just three months left in the school year, it was apparent that the individuals working with Mark still did not have sufficient training to give his placement a fair chance.

The Hartmanns point to the changes made to the IEP team as clear evidence that the Board was not strongly committed to inclusion. The Board counters that argument by pointing to, among other evidence, Johnson's testimony that at the time he was added to the IEP team, "staff from all over the county [was] involved in working with Mark to the point where the teachers felt like they were overloaded." (Tr. Sept. 26 at 262). Although the Court finds these efforts laudable, they were insufficient.

The Court finds that the changes to the make-up of Mark's IEP team are evidence of the inadequacy of the Board's efforts to accommodate Mark in an inclusive setting. Mary Kearney has testified that before and after the December IEP meeting she was committed to inclusion for Mark. (Tr. Oct. 27 at 290-91) She made efforts to provide adequate services to make Mark's placement a success. Jamie Ruppmann testified that Mark's needs are best met in an inclusive setting because, among other considerations, he would benefit from being around normal verbal children. (Tr. Sept. 27 at 203, 210-213). Ruppmann was in favor of inclusion for Mark. She worked closely with the IEP team during the first half of the school year and continued to provide support afterwards when the

Hartmanns hired her as their educational advocate. Moreover, Johnson appears to the Court to be a philosophical opponent of inclusion. He testified in regards to Mark's academic progress, "I think there has been no progress academically in the inclusive settings. I see no evidence in the records that there's been any progress whatsoever." (Tr. Sept. 26 at 287).

It was obvious that by the middle of the school year, the Board had decreased its efforts to make Mark's inclusion program successful. The record before the Hearing Officer demonstrates how Mark's behavior became increasingly disruptive, with many temper tantrums and physical outbursts. The Hartmanns argue that these problems were the result of Mark's frustration. Although Mark's behavior regressed through the school year, the Board removed Mary Kearney from a supervisory role and stopped utilizing the services of outside consultants, until after Mark's IEP was changed to the self-contained program. The personnel changes and the cessation of supplementary consulting services by inclusion experts are key factors that convince the Court that the Board was no longer committed to Mark's inclusion. No autistic student had been fully included at Ashburn Elementary School before Mark. Mark was, in essence, a test case for Loudoun County. However, because there is abundant unequivocal evidence that other school systems have been able to educate Mark in the inclusive setting, the only conclusion is that the Board simply did not take enough appropriate steps to try to include Mark in a regular class.

2. Comparison of Educational Benefits

The Hearing Officer also found that the record did not establish that Mark received any educational benefit in an included setting and that Mark learns best when he is being taught in a one-to-one setting.

It is unclear to this Court how the Hearing Officer arrived at her conclusion that Mark did not learn anything while in an inclusive setting. Mark's disability significantly affects his ability to communicate. The record shows that Mark cannot be tested under standard conditions, yet the Hearing Officer appears to have discounted any evaluations based on adapted testing. This approach dooms Mark to constant failure.

The Hearing Officer notes that in assessing the educational benefit from regular education, the *Daniel R.R*. Court looked at "the student's ability to grasp the essential elements of the regular education curriculum." 874 F.2d at 1048. At the second grade level the essential elements are basic math, reading and writing skills. Mark's teacher at Ashburn Elementary, Diane Johnson, testified that she did not think that Mark was learning in her class and she doubted that Mark had the ability to do math or read.

However, Cathy Thornton, a tutor hired by the Hartmanns who worked with Mark after school during the 1993-94 school year, testified to the contrary. While tutoring Mark, Thornton was also employed by the Fairfax County public school system as a special education teacher for autistic students in a self-contained setting. Thornton made adaptations to standardized tests and was able to administer a portion of them to Mark. She concluded from this testing that Mark is not mentally retarded and is capable of making educational progress. She also testified that Mark does have the ability to do math and initiates social interaction. She observed that his attention spanned from ten minutes to forty-five minutes when engaging in an academic activity. (Tr. Aug. 15 at 170, 174).

Because Thornton appears to have no educational bias, the Court found her evidence to be especially credible and is perplexed by the Hearing Officer's failure to give this evidence due weight.[4] She may well be the witness with the most hands-on experience educating autistic children. She testified to having eleven years of special education experience with at least one autistic child

in her class each year. For the past five years she has taught in a Fairfax County autistic program in a self-contained classroom. (Tr. Sept. 28, at 141) She obviously has an open mind about the most appropriate setting for autistic children. For example, she testified she believes one student in her class would benefit from an inclusion program while the rest of her students belonged in the self-contained setting. (Id. at 178).

Thornton's evaluation of Mark's potential was corroborated by Kenna Colley, an inclusion specialist teacher who has been working with Mark at Kipps Elementary School in Montgomery County, Virginia. She testified that by the end of fourth grade Mark could independently do simple addition skills and was working on subtraction skills. Colley also testified that Mark engaged in social interaction with his classmates. He would bring things over to them in class, dance with them in music class and sled with them after school. Colley believed that Mark knew his classmates by name as evidenced by his properly pointing to a picture of a classmate when given a name and asked who the person was. Patrick Schwartz, an autism expert hired by the Hartmanns to observe Mark in his classroom, testified that based on his observations he determined that Mark had an attention span of approximately fifty minutes. Beverly Strager, Mark's fourth grade teacher at Kipps Elementary, testified at trial that Mark did make educational progress during the year in her regular education classroom. Similarly, Greg Paynter, Mark's fourth grade aide at Kipps Elementary, testified at trial that Mark made educational progress over the year and was able to work independently on adapted academic lessons by, for example, answering questions about a subject by selecting the proper answer from a word bank.

Besides the testimony of several Montgomery County, Virginia, educators concerning Mark's successful inclusion in their program, the Court also observed at trial a videotape taken of Mark over a two-day period. That tape contains the best evidence of Mark's educational accomplishments because it shows Mark himself. For example, the Court saw Mark correctly point to a picture of Monticello out of a series of choices when asked for the home of Thomas Jefferson. He was able to point correctly to pictures of the appropriate coins when asked to give his aide 35 cents. As for Mark's behavior, outside of some cooing noises and limb movement, Mark exhibited no more disruptive behavior than his classmates. There was no evidence of uncontrollable behavior. Mark learned to tolerate change better. For example, he was no longer afraid of the lunchroom, and was able to cope with calendar changes. He interacted better with peers and was sometimes seen to mimic smiles of classmates. He correctly labeled pictures of the school gym and playground.

The Board's witnesses tried to diminish the value of these accomplishments by essentially testifying to all the age appropriate things Mark does not appear to be doing. Although no witness claimed that Mark was working at his age level, as plaintiffs correctly argue, Mark is learning in the inclusive setting and he has more chance of fulfilling his unknown potential in such a setting than in the less enriched one of the self-contained class.

If Mark were placed in the self-contained autism class at Leesburg, he would be competing with five other autistic students for the attention of the special education teacher and the aide, he would not be exposed to a large number of verbal, normally social students whose behaviors he could pattern, and he would not get the academic content he is presently receiving.

3. Effect on the Regular Classroom Environment

The Hearing Officer found that Mark engages in very disruptive behavior which has a negative effect on the environment in the classroom. She noted that while this factor standing alone would not be sufficient to justify removing Mark from the classroom, it weighs in with the other factors

and contributed to her determination that it would be proper to remove Mark from the inclusion setting.

The record demonstrates that Mark had some behavioral problems at Ashburn Elementary. For example, Frank Johnson was contacted by phone early on to suggest behavior modification strategies. However, Johnson did not have any significant experience with teaching autistic children. When his credentials are compared with those of Thornton, Ruppmann, and Kearney it is obvious that he would be unable to come up with successful strategies. Although the problems continued, a behavior modification plan was not developed until February, 1994. Cathy Thornton testified that she did not have problems with Mark's behavior during their tutoring sessions that year after school. Moreover, after Mark left Ashburn Elementary his behavior greatly improved. His Montgomery County, Virginia, fourth grade teacher, Beverly Strager, testified that Mark had a mild level of distractibility but never interfered with her teaching. She stated that when Mark made noises he would follow her instructions or the instructions of his classmates to quiet down. His aide, Greg Paynter, testified that Mark's behavior improved throughout that year, except during the period around the time when his mother became ill.

Given the strong presumption for inclusion under the IDEA, disruptive behavior should not be a significant factor in determining the appropriate educational placement for a disabled child. In Mark's case, there is strong evidence that his behaviors do not have a negative impact on his current environment. The videotape showed Mark engaging appropriately in many different activities; preparing for the day by taking the chairs off the desks, having lunch with his classmates, looking through a book with a classmate, working on the computer, raising his hand in response to a question by his teacher, and working one-on-one with his speech and language teacher. At no time did Mark's behavior become a disruption in the classroom. He seems to function as an integral member of the class. He also seems to take directions very well. In one instance Mark became tired and took a break by lying on the floor while working with his speech and language teacher. As soon as the teacher indicated that the break was over, Mark returned to his seat and resumed working. This evidence, together with evidence that Mark has made educational progress in an included setting, favors an included educational placement for Mark.

Considering that the efforts made by the Board to successfully accommodate Mark's placement decreased over the 1993-94 school year, this Court finds that Loudoun County Public Schools violated its obligation under the IDEA to educate Mark, to the maximum extent possible, with nondisabled children.

B. Appropriateness of the Proposed Placement

The Hearing Officer addressed the second issue regarding the appropriateness of the proposed placement after her determination that Loudoun County had not violated its duty under the IDEA. This Court, having found a violation of the IDEA, need not address this issue but shall address it briefly for the sake of completeness.

The Board's proposed placement of Mark in a self-contained autism class would not be appropriate. The evidence demonstrates that Mark's greatest need is to improve his communication skills. The best environment for developing these skills is with children who communicate normally. Moreover, mainstreaming opportunities provided during the "specials," such as physical education, music, art and library classes, would not be appropriate for Mark. As Dr. Swart testified, these classes are less structured than core classes. Because Mark needs structure, he would not achieve the same improvements in his communication skills if the only mainstreaming opportunities provided were during unstructured and often chaotic classes.

Schwartz also testified that taking Mark out of his normal, included setting and placing him in the self-contained class would not be appropriate and would be a setback. This is because in the self-contained classroom there are fewer routines, much less student initiation, and very limited interaction with age-appropriate peers. Kenna Colley testified that inclusion is very important for Mark if he is to learn skills necessary for his future. Such skills include how to stay on a task and engage in social interaction and certain academic skills. Colley believes that inclusion has been beneficial to Mark because his social skills have improved and his self-esteem has been heightened.

There was much discussion at trial about the skills important for Mark's future. Witnesses for the Board testified that Mark needs to focus on life skills including skills involving interaction in the community, such as going to the store or riding public transportation. There is unrefuted evidence that Mark is receiving such opportunities at home. Joseph Hartmann testified that he and his wife spend a lot of time teaching Mark about the community. Mark is often taken to the library, grocery store, bookstore and similar places. He was taught how to ride a bus. Further, Mark has been taught at home to complete tasks such as doing the dishes and taking out the garbage. Because Mark gets abundant training in life skills at home, this should not be the focus of his academic curriculum.

Conclusion

For the foregoing reasons, the Court REVERSES the decision of the Hearing Officer regarding the appropriate program and placement for Mark Hartmann. The Court finds that if the Board implemented its placement plan it would violate its duty under the IDEA to educate Mark, to the maximum extent appropriate, with children who are not disabled. The Court also finds that the Board's efforts to include Mark were inadequate because the Board failed to follow the advice of properly qualified experts like Ruppmann and Kearney, and instead placed staff on the IEP team who had inadequate training and experience, thereby dooming their inclusion efforts to failure. Therefore, judgment is entered in favor of plaintiffs and an appropriate Order will issue enjoining further violations of the IDEA and the Rehabilitation Act. Plaintiffs are awarded reasonable attorneys' fees and costs pursuant to 20 U.S.C. § 1415(4)(b), for both this matter and the administrative proceedings.

The Clerk is directed to forward copies of this Memorandum Opinion to counsel of record.

Footnotes

[1] See generally the trial testimony of Dr. Schwartz.

[2] References to the transcripts of testimony taken during the administrative due process hearing will be referred to as "Tr." followed by the month and day.

[3] IEP stands for "individualized education program." The IDEA requires that an individualized education program be developed for each child with a disability. The plan must be reduced to a written statement which includes the present levels of educational performance, annual goals and instrumental objectives, the specific educational services to be provided, the projected dates for the initiation and duration of such services, and objective criteria and evaluation procedures. The IEP should be developed in meetings with an appropriate representative of the local educational agency, the teacher, the parents or guardians of the child, and whenever appropriate, the child. 20 U.S.C.§ 1401(a)(20).

[4] The Hearing Officer also failed to give any weight to the previous education of Mark in an inclusion setting in Illinois.

WRIGHTSLAW NOTE: On July 8, 1997, this decision was reversed by the Fourth Circuit.