

MAR 03 2008

Dispute Resolution &
Administrative ServicesLocal Hearing _____

State Level Hearing _____

CASE CLOSURE SUMMARY REPORT*(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of the special education hearing and submitted to the Department of Education before billing.)*Public Schools
School Division

Name of Parents

Division Superintendent

Name of Child

Kathleen Mehfoud
Counsel Representing LEANone
Counsel Representing Parent / ChildRhonda J. S. Mitchell
Hearing Officer (Please Type/Print)

Party Initiating Hearing

Hearing Officer's Determination of Issues:

- Whether the Individual Education Program (IEP) being used by the LEA provides the student with a free appropriate public education (FAPE).
- Whether the student should be reevaluated and retested.
- Whether the current Behavior Implementation Plan (BIP) is sufficient and whether same has been appropriately implemented to provide the student with a FAPE.
- Whether the student should receive transitional services, extended school services, and/or extended school year services.
- Whether sufficient parental notifications were provided prior to the student's school suspension.
- Whether LEA has erred by failing to provide consultative services, behavior monitoring, and/or appropriate accommodations. If so, whether such failure(s) has denied the student a FAPE.

Hearing Officer's Orders and Outcome of the Hearing:

Case Dismissed. Student now being educated by the Department of Correctional Education. See attached decision.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached. There is no need for the LEA to submit an implementation plan to the

parties, the hearing officer, or the SEA within 45 calendar days since this action has been dismissed.

RHONDA J. S. MITCHELL
Printed Name of Hearing Officer


Signature

Date: February 29, 2008

and
PUBLIC SCHOOLS

AMENDED DECISION ON SECOND MOTION TO DISMISS

This matter came to be heard upon the filing of a request for a due process hearing by (parent) on behalf of her son, , against Public Schools (PS). The request for a due process hearing was filed on January 25, 2008. The Hearing Officer was appointed by letter dated January 30, 2008 from , Director of Special Education and Pupil Personnel, PS.

has been identified eligible for services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq.* is 17 years old. He transferred to PS on or about March 15, 2007. He has been found eligible for services under IDEA due to attention deficit hyperactivity disorder (ADHD).

On February 4, 2008, PS, by counsel, filed a substantive response to the due process hearing request and its first Motion to Dismiss. The *pro se* parent filed a response which included a lengthy enclosure. After considering all arguments and evidence presented, the Motion to Dismiss was denied.

On February 4, 2008, the first pre-hearing conference was conducted. Issues were identified and a hearing date was set for March 13, 2008. The parent requested that the hearing be public and April 9, 2008 was established as the decision due-date.

On February 15, 2008, PS, by counsel, submitted a second Motion to Dismiss. This decision is written in response to that motion.

The *pro se* parent again requested that the motion be denied and again submitted a lengthy enclosure with her response.

A second pre-hearing conference was held on February 21, 2008 at which 's incarceration was discussed as well as other matters relevant to the hearing. Counsel for PS indicated that would be detained or incarcerated for at least twelve months.

In its motion, PS summarily argues that this hearing should be dismissed for the following reasons:

* that since the filing of this request for a due process hearing, [redacted] has been convicted of criminal activity and as a consequence is no longer a student with PS, and is now being educated by the State Board of Education of the Commonwealth of Virginia;

* that the mother refused to participate in a resolution session scheduled for February 13, 2008; and

* that the relief sought in the request for a due process hearing is either premature, inappropriate, or outside the authority of the Hearing Officer.

The mother contends that the hearing should proceed and summarily argues in her request for a due process hearing and in her responses to the Motions to Dismiss, that PS failed to provide [redacted] with a free appropriate public education (FAPE) as required by IDEA. She makes the following allegations:

* that PS failed to evaluate [redacted] while he was being educated by their system;

* that PS failed to implement an Individualized Education Program (IEP) for [redacted], and in fact, simply changed the date on his previous school's IEP without convening an IEP team or having an IEP meeting;

* that PS refused to cooperate with the parent or honor parent requests regarding [redacted]'s education and educational needs;

* that some PS employees "picked on" [redacted] by singling him without cause; and

* that PS should not be allowed to use [redacted]'s detention/commitment as a means to have this hearing dismissed since the hearing relates to the education received while a student with the PS.

Considering [redacted]'s age, coupled with his projected commitment period of between twelve and eighteen months, it is unlikely that he will return to the PS system. Even if an award of compensatory education were determined appropriate relief in this case (See *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999)), the Department of Juvenile Justice would reject such an award for security purposes, and, because the Virginia Department of Correctional Education (DCE) has now taken charge of [redacted]'s education, including the development of an IEP.

The following direct quote from the DCE website clearly outlines the role they expect to play in [redacted]'s future education:

Schools of the Department of Correctional Education (DCE) teach youth and adults who have been unsuccessful in public schools and their communities. These individuals have been committed by the judicial system to the custody of the Department of Juvenile Justice (DJJ) or the Department of Corrections (DOC). DCE works in cooperation with but separate from DJJ and DOC. The agency has its own school board and serves as an independent, statewide prison education system for

offenders who have been assigned to juvenile correctional centers, juvenile and adult reception centers, adult correctional centers, adult field units, adult work centers, adult day-reporting centers, adult detention centers and adult diversion centers. The schools offer an array of education, training and personal/professional growth opportunities. All teachers and administrators must meet the same certification and endorsement standards established for public school personnel by the Virginia Department of Education. See http://dce.virginia.gov/School_Info/

Although this Hearing Officer is alarmed by the nature of the allegations made by the parent, her argument as to why this matter should proceed to hearing is rejected. [redacted]'s conviction and resulting commitment for a period of at least twelve months with the Department of Juvenile Justice make it necessary for this case to be dismissed. Additionally, the parent mentioned during the second pre-hearing conference that [redacted]'s commitment could be indefinite which further supports PS' position.

Therefore, the argument made by PS that the State Department of Education is now responsible for [redacted]'s education is a sound argument. Accordingly, I have decided to dismiss this case solely on that ground.

I find the two remaining arguments made by PS as to why this case should be dismissed without merit. On February 13, 2008, the parent came to attend the scheduled resolution session. Members from PS were not present. Therefore, I do not find that the parent was uncooperative nor do I find that she refused to participate in the resolution session.

At the time this request for a due process hearing was filed, I do not find the relief sought by the parent to have been either inappropriate, premature, nor outside the scope of the Hearing Officer's authority and refused to dismiss this case for this reason when PS filed its first Motion to Dismiss. However, I do find that such a decision could only be reasonably made after a hearing on the merits and issues of this case.

Accordingly, the motion to dismiss is granted and the filed request for a due process hearing is dismissed.

RIGHT OF APPEAL

§ VAC 20-80-76(O)(1) provides that this decision shall be final and binding unless either party appeals in a Federal District Court within 90 calendar days of the date of this decision, or in a State Circuit Court within one year of the date of this decision. The appeal may be filed in a State Circuit Court or in a Federal District Court without regard to the amount in controversy. If the Hearing Officer's decision is

appealed in a court, *imp*lementation of the Hearing Officer's order is *held* in abeyance except in those cases where the Hearing Officer has agreed with the child's parent or parents that a change of placement is appropriate in accordance with subsection E of this section. In those cases, the Hearing Officer's order must be implemented while the case is being appealed.

ENTERED: March 6, 2008


Rhonda J. S. Mitchell
Hearing Officer

Certificate of Service

I, Rhonda J. S. Mitchell, Hearing Officer in this cause, do hereby certify that a true copy of the above was mailed, postage paid, to Kathleen Mehfoud, counsel for Public Schools, and to Ms. complainant, on this 6th day of March, 2008.


Rhonda J. S. Mitchell
Hearing Officer

Cc: Ron Geiersbach, Office of Due Process and Complaints, VDOE