

CASE CLOSURE SUMMARY REPORT

(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of special education hearing and submitted to the Department of Education before hearing.)



School Division

Name

Name of Child

July 20, 2004
Date of Decision or Dismissal

Counsel Representing LEA

none
Counsel Representing Parent/Child

Party Initiating Hearing

Prevailing Party

Hearing Officer's Determination of Issue(s):

Per agreement, extended school year services sought by mother were granted.

Hearing Officer's Orders and Outcome of Hearing:

1. Request for expedited hearing was granted.
2. Motion to dismiss proceeding was overruled
3. Requested extended school year services, and amendments of IEP, were ordered.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

James A. Eichner

Printed Name of Hearing Officer

Signature

HEARING OFFICER'S OPINION



This hearing officer was assigned by letter dated June 29, 2004, to hear a request by Ms. [redacted] for an expedited due process hearing to require the Public Schools to provide her son [redacted] with services.

[redacted] filed a motion to dismiss Exhibit 2), saying a parent like Mrs. [redacted] had no standing to file a due process request because state and federal law transferred parental rights under the special education laws to the student upon his reaching the age of majority: 18 years in both and Virginia and [redacted] where [redacted] lived and attended school until 2003.

By letter of July 3, 2004 the parties were advised that a pre-hearing conference call would commence at 10 a.m. on July 14, and that the hearing would be held July 30, unless another date should be selected during that call; were asked if mediation was desired, and requested responses from [redacted] and his parents. Mr. [redacted], father of [redacted], did not respond, but later relayed his approval of this decision

The mother's request (Exhibit 1) was non-specific, but in pre-hearing telephone conference calls it developed that she sought first extended school year counseling services similar to those included in the 2002-2003 individualized educational program of [redacted]'s former school in [redacted] (Exhibit 2).

At the first conference call July 14, the request for an expedited hearing was granted; it was agreed that the hearing date would be moved up to July 27, and the issues raised by the motion to dismiss were discussed.

became 18 on , 2003, while living and attending school in moved to , and began attending High School under its special education program, in 2003.

The motion to dismiss pointed out that under the Individuals With Disabilities Education Act, 28 U.S. Code Section 1415(1)(B) and the regulations of the United States Department of Education, 34 Code of Federal Regulations Section 300.517, a state (like Virginia receiving funds under the Act "may provide that, when a child with a disability reaches the age of majority under State law", generally rights "accorded to the parents under this part transfer to the child."

Under this grant of permission, pointed out the Virginia Department of Education enacted a regulation, 8 Virginia Administrative Code Section 20-80-72(A), which says: "All rights accorded to the parent or parents under the Individuals with Disabilities Education Act...transfer to children upon the age of majority age

This regulation goes on to state that such a transfer requires a Virginia school division to notify parents and child, at least one year before the child's 18th birthday, that such a transfer would take place. gave no such notice to or either of his parents. Indeed, it would have been impossible for to have done so, because when moved from his mother's home in to his father's in Virginia, he was already 18.

Research following the first pre-hearing conference call July 14 revealed that _____ unlike Virginia, had never provided, as permitted by the federal act, that there should be a transfer of parental rights to _____ students on their 18th birthdays (Exhibit 3). Therefore, of course, no Virginia-style transfer notice was given in _____

Thus _____'s parents continue to retain parental rights under the federal and state law, and will until his 21st birthday. Therefore _____'s motion to dismiss must be overruled.

It was also suggested during the July 14 conference without waiving its motion to dismiss, _____ consider voluntarily offering the requested summer services.

It did. By letter of July 15 (Exhibit 4), the assistant county attorney advised the parties that, without agreeing that those services were required, the student and his parents would be offered, at public expense, substantially what the school district had offered for the summer of 2003: two half-hour counseling sessions for _____ each week for six weeks, and two 45-minute family counseling sessions. _____'s offer included scheduling a special individualized education program team meeting to add this counseling to the IEP.

At the July 19 hearing, the offer was accepted, but Ms. _____ declined to withdraw her due process request.

_____ technically the case has not been settled, and this opinion and order are needed.

FINDINGS OF FACT

1. is a student with a disability has been attending High School in County, with special education services, during the 2003-2004 school year.

2. He was born

3. He was attending school under a special education program in when he became 18 years old

4. The Public Schools has offered the services ordered below, and he and both his parents agree to that.

CONCLUSIONS OF LAW

1. At all relevant times, and when became law did not permit parental rights under the Individuals with Disabilities Education Act to be transferred to the student at age 18.

2. Virginia law permits such a transfer, but only when the school division has given parents and child notice of such a proposed transfer no later than the child's 17th birthday.

4. and continue to have parental rights under the IDEA and state law, and will until 's 21st birthday.

5. 's motion to dismiss therefore is overruled.

6. shall as soon as possible provide with at least two half-hour counseling sessions each week for 6 weeks, and shall offer two 45-minute family counseling sessions as extended school year services this summer

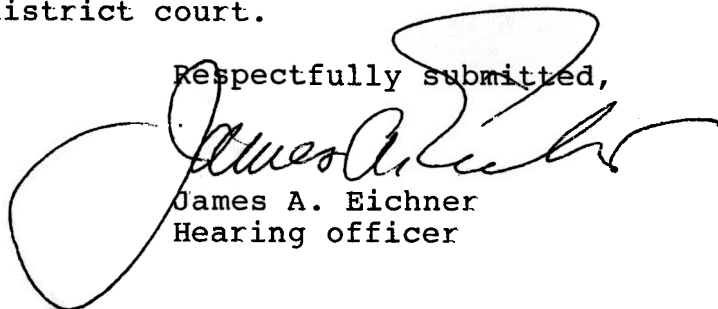
7. will promptly convene a special Individualized Education Program team meeting to amend the current IEP in accordance with paragraph 6.

8. will during the summer of 2004 convene a Individualized Education Program team meeting to further amend the current IEP for the 2004-2005 school year.

9. will issue the compliance plan required by law.

Regulations require me to notify the parties that an appeal may be made to a state circuit court within one year from this date or to a federal district court.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'James A. Eichner', is written over the typed name and title.

James A. Eichner
Hearing officer

July 20, 2004