

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.)

School Division	Name of Parents
Name of Child	Date of Decision or Dismissal
None	6/9/05 none
Counsel Representing LEA	Counsel Representing Parent/Child
Party Initiating Hearing	Prevailing Party

Hearing Officer's Determination of Issue(s):

Refusal of parent to grant permission for an initial evaluation overridden by hearing officer.

Hearing Officer's Orders and Outcome of Hearing: may conduct an evaluation of child.

(see written decision of 6/24/05)

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.

Alan Docktermam

Printed Name of Hearing Officer

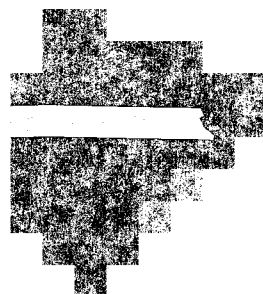
Signature

COMMONWEALTH OF VIRGINIA:

DUE PROCESS EDUCATIONAL APPEAL



_____)
)
 Appellant)
)
)
) In re:)
)
)
 Respondents)
)



DECISION

I. INTRODUCTION AND PROCEDURAL HISTORY

This due process was initiated by Schools,) in a letter from the principal of Elementary School,) on May 4, 2005. She sought a decision under the due process procedures to override the parents' refusal to grant permission for an initial evaluation of) who is a student at her school.

I was appointed as the hearing officer from a list supplied by the Supreme Court of the Commonwealth of Virginia and certified by the Virginia Department of Education.) , Coordinator of Monitoring and Compliance, represented) . The parents attended the pre-hearing conference but did not attend the hearing.

On May 23, 2005, the pre-hearing conference was conducted at my offices. The order of witnesses, issues

raised in the appeal, exploration of settlement, and procedures for the conduct of the hearing were among the matters discussed (See the letters of May 18, 2005 and May 24, 2005). Mr. and Ms. did not object to the hearing date, which had already been scheduled for June 9, 2005 (See letter of May 18, 2005), but stated they would not attend the hearing because of their dissatisfaction with and their intention to enroll in a private school for the 2005-2006 school year. (See, generally, letter of May 24, 2005).

The hearing was held on June 9, 2005 at the , Conference Room 7, ., VA.

introduced twenty-nine exhibits into evidence; the parents did not submit exhibits. Four witnesses for the school district testified via telephone.

At the request of , who wanted to evaluate prior to the end of the spring semester, I rendered an oral decision at the close of the hearing. I also stated that I would issue a written decision upon review of the transcript which would more formally set forth findings of fact and conclusions of law. The transcript of the hearing was received on June 21, 2005.

II. FINDINGS OF FACT

The following represents findings of fact based upon a preponderance of evidence derived from the testimony of the witnesses and the documents admitted into evidence. Additional findings will be found in other portions of this decision.

A. Factual Developments Prior to the 2004-2005 School Year

was born on . He repeated first grade at Elementary School. School officials were concerned about his progress in the language arts, social studies and science. (Exhs. 1-2). In second grade, demonstrated similar language arts deficiencies and exhibited poor behavior. (Exh. 3). When he was referred to a child study team to review his progress, his father refused both to attend the meetings and to consent to any assessments. (Exhs. 4-5; TR.14-15). According to the principal at ,

's academic progress and behavior deteriorated further in the fourth grade. (Tr.15-16). As a result, the school again referred to the child study committee, where the parents again refused to participate. (TR.15; Exhs. 6-11).

The school then sought an administrative review under Department of Special Services. On May 7, 2004, The review team upheld the determination of the screening committee to seek an evaluation of for special education services. (Exh.11). Despite this confirmation of the school's recommendation, the parents maintained its refusal to agree to an evaluation, and then transferred to another school, , when he finished fourth grade. (TR.16, 20).

B. 2004-2005 School Year.

is 's classroom teacher for fifth grade. By December of 2004, she had observed that he appeared confused about assignments and had difficulty writing, reading, and participating in classroom instruction. She testified he was preoccupied with personal activities instead of schoolwork and reacted negatively with his peers and teachers. (TR. 26-30; Exh.12).

On December 2, 2004, she referred him to the local screening committee, who, on December 14, 2004, recommended that a full assessment be conducted (Exhs. 12, 13). The school's efforts over the next two months to obtain the father's consent for an evaluation ultimately failed. (Exh. 14, 15; TR. 47-49). On April 18, 2005, Ms. [redacted] prepared another referral, in which she identified a number of concerns: "trouble with transitions, makes inappropriate comments, struggles in working with groups on class projects, doesn't interact well with peers, makes no eye contact, poor social skills, avoids reading, struggles with multi-step directions, weak writing mechanics, difficulty organizing thoughts, and poor organization." She testified that she implemented a series of interventions, which, unfortunately, did not ameliorate these deficiencies. (Exh. 16; TR. 47-49).

The local screening committee basically adopted her conclusions on April 26, 2005, and implemented a Section 504 plan (which did not need the parents' consent, TR. 43). For the two months it was in effect, Ms. [redacted] testified, the interventions were not able to provide [redacted] enough support to overcome his difficulties. (TR. 31, 32). Her conclusion was corroborated by the school psychologist, [redacted]. (TR. 41-43). [redacted]'s report card for the first three periods of the 2004-2005 school year indicated that he did not meet grade expectations in mathematics or language arts and that his grades in many areas were "below average" and "need[ed] improvement." (Exh. 20).

Mr. [redacted] testified that he believed [redacted] might have a learning and/or an emotional disability. He further stated that it is difficult to determine exactly what

problems were, but that an evaluation would help the school system determine how best to help him. (TR. 44).

The final witness for was Dr. , the principal of . She detailed the various efforts the school system employed to address 's academic and social deficits and the unsuccessful attempts to convince the father to permit an evaluation. (TR. 47-49). She also testified that none of the notices sent to the parents had been returned from the United States Post Office. (TR. 51).

Ms. , Dr. and Ms. testified that the school system had an obligation to determine whether is eligible for special services. (Tr. 21, 43, 50). All four witnesses testified that they suspected that may have a disability and that he would benefit from special education services if found eligible. (TR. 22-23, 33-34, 42-44, 51-52).

III. ISSUE

Whether or not the refusal of the parents to grant consent to the school district to conduct an evaluation of their child for purposes of determining his eligibility for special education services should be overridden?

IV. CONCLUSIONS OF LAW AND FINAL ORDER

1. , is legally required to identify, locate, and evaluate all disabled children who reside in its jurisdiction under The Individuals with Disabilities Education Act (IDEA).

2. . is a student whose parents reside within the jurisdictional boundaries of County.

3. Mr. and Mrs. _____ have been afforded all procedural and notice protections required by IDEA and have had an opportunity to fully participate in the decision to have _____ evaluated for special education services.

4. _____'s negative behavior toward his peers and teachers and his academic difficulties and attention deficits extending consistently over a number of years provide ample evidence to justify _____ belief that he may well have a disability, that he is in need of an evaluation, and that such an evaluation should take place with or without the consent of the parents.

5. _____ has established that should _____ be found eligible for special education services, he would benefit from such services.

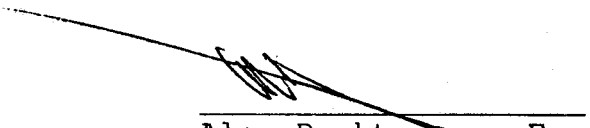
6. No documentary evidence was received on behalf of _____ and no testimony was offered as to why an evaluation should be postponed or not occur.

7. The decision of the parents not to grant consent for an evaluation of _____ to determine his eligibility for special education services is hereby overridden and _____ may conduct such an evaluation.

8. This decision is final and binding unless a party appeals within one year to a circuit court of the Commonwealth of Virginia or a federal district court. The one year period commences with the oral decision rendered on June 9, 2005, which is the effective date of this decision.

Date: _____

6-29-05



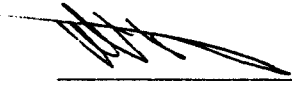
Alan Dockterman, Esq.
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that I have, this 24th day of June, 2005, caused this Decision to be sent via first-class mail, postage prepaid, to Mr. & Ms. :

, VA

Director Va. Dpt. of Education, P.O. Box 2120 Richmond, VA 23218.



Alan Dockterman