

5/28

VIRGINIA:

STATE DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING APPEAL



[REDACTED]

Plaintiff

v.

[REDACTED]

PUBLIC SCHOOLS

Defendant

Case No. \_\_\_\_\_

*OPINION AND ORDER OF HEARING OFFICER*

I. INTRODUCTION AND CASE HISTORY

This is a reimbursement case. The amount in question is in excess of \$ [REDACTED]. This sum was paid by the Health Care Provider for [REDACTED], under the terms of the applicable health care policy. These costs were incurred when [REDACTED] was enrolled in the [REDACTED] from [REDACTED] to [REDACTED]. [REDACTED] was placed there by [REDACTED], without the consent of the [REDACTED] School System, following [REDACTED] enrollment in [REDACTED] and the [REDACTED] Center at [REDACTED] Center. Both of the placements in [REDACTED] and the [REDACTED] Center were with the consent of the School System, and pursuant to the terms of [REDACTED] IEP.

This case was first initiated by the [REDACTED] in [REDACTED]. However, the claim was dismissed without prejudice, when issues were raised about the standing of [REDACTED] to pursue this claim on behalf of [REDACTED]. Following the appointment of a guardian, [REDACTED], the matter was again initiated on [REDACTED].

A hearing was held on these issues in [REDACTED] on [REDACTED].

II. CONTINUATION OR EXTENSION OF TIME

It is noted at the outset that both parties repeatedly requested extensions of time and continuances for the purposes of coordinating schedules and preparation. Since [REDACTED] was not prejudiced in any way by these delays, the extensions were readily

granted. The date of this hearing was agreed upon by all parties involved. Further, both parties have agreed to waive any procedural requirements pertaining to the time period for rendering this decision.

### III. FACTUAL BACKGROUND INFORMATION

[REDACTED] was involved in a severe automobile accident on [REDACTED]. [REDACTED] was [REDACTED] years old at the time. As a result of this accident, [REDACTED] suffered traumatic brain injury. [REDACTED] Public schools found [REDACTED] eligible for special education services under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*, (IDEA) on [REDACTED]. At the time, [REDACTED] was found to be suffering from both learning and emotional disabilities.

Thereafter, [REDACTED] was placed in the emotionally disabled program at [REDACTED] School, in the [REDACTED] School System. Only days later, [REDACTED] was moved to the [REDACTED] Center at [REDACTED] Center. [REDACTED] appears to have done well there, and was making good grades, until [REDACTED] was expelled on [REDACTED] for behavior which placed the staff and other students in danger. The following Fall, on [REDACTED], [REDACTED]'s [REDACTED] admitted [REDACTED] to the [REDACTED]. The [REDACTED] School System did not participate in the decision to admit [REDACTED] to this facility. [REDACTED] was discharged from [REDACTED] on [REDACTED]. Thereafter, [REDACTED] enrolled in the [REDACTED] School on [REDACTED] 1993. There is no dispute over the School Board's compliance with IDEA after that date.

The dispute in this case is over the reimbursement of funds expended on [REDACTED] behalf while at the [REDACTED]. Without reaching a finding as to the exact amount, the amount in dispute is in excess of \$200,000. It is also undisputed that whatever the amount, these funds were paid to the [REDACTED] by the health care provider under [REDACTED] insurance policy.

### III. FINDINGS OF FACT AND ANALYSIS

Counsel have attempted to narrow the issues by stipulating to certain facts. Accordingly, both the School System's Stipulations of Fact and [REDACTED] Response to the Proposed Stipulations of Fact are attached to this Opinion, and incorporated herein.

The two basic legal issues in this matter are: (1) Is the claim barred by the applicable statute of limitations? And, (2) Were the services provided, and the expenses incurred, educational or medical?

Without reaching the question of whether the expenses were medical or educational, this Hearing Officer finds the first issue dispositive.

Under the particular facts and circumstances of this case, the statute of limitations issue is resolved, against ██████, in the Fourth Circuit case of *Manning v. Fairfax County School Board*, 176 F3rd 235 (4<sup>th</sup> Cir. 1999). In this opinion Judge Widner found: (1) as a matter of first impression, the parent's request for an administrative due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*, (IDEA) was subject to the state statute of limitations, and (2) such a request is subject to the (then existing) Virginia's general one-year limitation period on personal actions.

The facts in Manning are similar. In Manning, the student, who was an adult at the time of the decision was contesting an alleged improper suspension that took place from March 19, 1993, to April 1, 1993. Manning's mother first brought an action in the Federal District Court on July 29, 1994. This action was dismissed for failure to exhaust administrative remedies. She then requested a due process hearing under IDEA, on January 12, 1995. The Hearing Officer who first heard the case applied the Virginia catch all statute of limitations (of one year), and dismissed the case. This decision was upheld by another Virginia Hearing Officer on administrative appeal. Manning's mother then filed a Declaratory Judgment action in Federal District Court seeking a declaratory judgment concerning the statute of limitations. The district court granted the school system's motion to dismiss the complaint, finding that the request for an administrative hearing under the IDEA was time barred. Like the state administrative officers, the district court applied the one-year, catch-all statute of limitations of Va. Code § 8.01-248. On appeal to the Fourth Circuit the sole issue was that the district court erred in applying the one-year statute of limitations to the request for an administrative due process hearing. Once again, the Fourth Circuit upheld the previous decisions. The Manning opinion addressed two issues: (1) What statute of limitations applies, and (2) Does this statute of limitations apply to an administrative proceedings as well as judicial actions. Finding that the Virginia one-year statute of limitations applied to the IDEA administrative proceedings, Judge Widner reasoned:

In this action, however, we must determine the appropriate limitations period, if any, controlling the original administrative due process hearing under the IDEA. This case is one of first impression in this circuit. As yet, only one other court of appeals has directly considered the question which has come to our attention. In *Murphy v. Timberlane Regional School District*, 22 F.3d 1186, 1192 (1st Cir.), *cert. denied*, 513 U.S. 987 (1994), the First Circuit determined that New Hampshire's six-year, catch-all limitation applicable to "personal actions" generally was the appropriate statute to be applied in IDEA administrative hearings. The court also concluded that application of this limitation did not conflict with the IDEA's purpose

of providing a procedure by which parents and school systems can efficiently resolve disputes over a disabled child's education. *Murphy*, 22 F.3d at 1193-94.

We agree with the First Circuit's decision on this issue. A statute of limitations may apply no matter whether proceedings are brought in a judicial forum or in an administrative one.

*Manning v. Fairfax County School Board*, 176 F.3d 235, 238 (4<sup>th</sup> Cir. 1999).

Conversely, [REDACTED] relies on *Shook v. Gaston County Board of Education*, 882 F.2d 119 (4<sup>th</sup> Cir. 1989). Although a North Carolina case, it is supportive of [REDACTED] position that even if the state statute of limitations applies, so do the state tolling provisions, which allow a minor to file within the statutory time limitation period after reaching the age of majority. (Under then existing law.)

This is a strong argument. And it is difficult, if not impossible, to reconcile the *Manning* and *Shook* opinions. This is even more puzzling when it is noted that both opinions are authored by Judge Widner. However, it is noted that the *Manning* opinion is 10 years later. Although [REDACTED] argues that the cases can be distinguished by the fact that the tolling issue was not presented in *Manning*, both the reviewing Hearing Officer and the District Court applied a different tolling provision (the filing of the initial Federal action) to stop the running of the one-year statute of limitations. Thus it would seem unlikely that the tolling issue relating to minors was not contemplated by the reviewing Hearing Officer and the court. In view of these facts, it is the holding of this Hearing Officer that the *Manning* decision overrules *Shook* on this issue. If this is incorrect, it is for the Federal Courts to decide the issue conversely.

Although both parties provided numerous other authorities that were reviewed, it is the decision of this Hearing Officer that the above opinions were controlling.

#### IV. LEGAL CONCLUSIONS

1. The child, who is now an adult, [REDACTED] was a student who was qualified, and in need of, special education services.
2. The claim for reimbursement for the unilateral placement of [REDACTED] in the [REDACTED] is time barred using any of the relevant dates for the determination of the statute of limitations.

3. In view of the holding that the action is time barred, it is not necessary to determine if the [REDACTED] School System had met its obligations under federal and state law.

### V. CONCLUSION

Since the claim is time barred, it is not necessary to determine if the [REDACTED] School Board substantially complied with the provisions of the Individuals with Disabilities Education Act (IDEA) 20 U. S. C. §1400 *et seq.*

Accordingly, [REDACTED] request for reimbursement for the unilateral private placement is denied.

A copy of this Order is being sent to the school system and counsel for all parties.

Given under my hand this [REDACTED] day of [REDACTED], 2002.

[REDACTED]  
[REDACTED]  
[REDACTED], Hearing Officer

[REDACTED], Esq.  
[REDACTED]  
[REDACTED]  
[REDACTED]

### CERTIFICATE OF SERVICE

I hereby certify that I have, this [REDACTED] day of [REDACTED], 2002, mailed the foregoing *Opinion and Order of Hearing Officer* to counsel of record, [REDACTED], Esq.

[REDACTED], [REDACTED], [REDACTED], [REDACTED]  
[REDACTED], and [REDACTED], Esq., [REDACTED], [REDACTED]  
[REDACTED]

VIRGINIA DEPARTMENT OF EDUCATION

DUE PROCESS HEARING

IN RE: [REDACTED]

STIPULATIONS OF FACT

1. [REDACTED] was born on [REDACTED], and is [REDACTED] years of age currently. [REDACTED] parents divorced in [REDACTED], and [REDACTED], [REDACTED] was initially granted custody of [REDACTED]. SB 1.
  2. In [REDACTED], [REDACTED], was granted joint custody of [REDACTED] with [REDACTED]. Id.
  3. Subsequently, custody was granted to [REDACTED] alone on [REDACTED]. SB 40.
  4. [REDACTED] turned [REDACTED] years of age on [REDACTED].
  5. When [REDACTED] turned [REDACTED] years of age [REDACTED] had no guardian appointed for [REDACTED] and no petition for guardianship was pending.
  6. The petition for guardianship was filed after [REDACTED], [REDACTED] and after [REDACTED] birthday.
  7. Upon reaching the age of [REDACTED], [REDACTED] had not been found to be incompetent by a court of law.
  8. On [REDACTED], [REDACTED] was appointed [REDACTED] guardian by the Circuit Court for the [REDACTED]. SB 49.
  9. The order was entered nunc pro tunc as of [REDACTED], [REDACTED]. Id.
- [REDACTED]

10. On [REDACTED], [REDACTED] sustained a traumatic brain injury and fractured [REDACTED] left femur after being struck by a car. SB 1.

11. [REDACTED] was admitted to [REDACTED] Hospital.

12. On [REDACTED], [REDACTED] was transferred to [REDACTED] Hospital. Id.

13. On [REDACTED], [REDACTED] transferred to [REDACTED] Center in [REDACTED] another hospital setting.

14. [REDACTED] was discharged from [REDACTED] on [REDACTED]. Id.

15. [REDACTED] Public Schools first found [REDACTED] eligible for special education services under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., ("IDEA") on [REDACTED]. SB 3, 5.

16. [REDACTED] was found eligible under the categories of learning disabled and emotionally disabled. Id.

17. [REDACTED] received educational services for [REDACTED] learning disability and emotional disturbance pursuant to an Individualized Educational Plan developed on [REDACTED] SB 6, 7.

18. The IEP was scheduled to be implemented from [REDACTED], [REDACTED] through [REDACTED] Id.

19. Additionally, [REDACTED] was provided with the related services of speech/language therapy and occupational therapy. Id.

20. Placement in a self-contained classroom was agreed upon by [REDACTED] [REDACTED]

21. [REDACTED] was placed at [REDACTED] School in the emotionally disabled program.

22. This public school is operated by the [REDACTED] Public Schools.

23. On [REDACTED], [REDACTED] transferred from [REDACTED] to the [REDACTED] Center at [REDACTED] at the expense of [REDACTED]

SB 12.

24. This program was more structured than [REDACTED] prior placement.

25. On [REDACTED], [REDACTED] gave permission for implementation of an Individualized Education Program for [REDACTED] for special education and related services from [REDACTED] to [REDACTED] at [REDACTED]. SB 8.

26. While at [REDACTED], [REDACTED] earned A's, B's and C's in [REDACTED] academic courses, with the exception of a D+ in spelling for the final quarter. SB 9.

27. [REDACTED] had good education achievement as a result of the services provided to [REDACTED]. SB 12.

28. On [REDACTED], [REDACTED] notified [REDACTED] that [REDACTED] had been expelled from [REDACTED]. SB 12A.

29. [REDACTED] was reported to be extremely violent and aggressive, which behavior placed the staff and other students in danger. Id.

30. On [REDACTED], [REDACTED] was hospitalized at [REDACTED], after taking a knife and a rope to school at [REDACTED]. SB 10.

31. [REDACTED] stated that [REDACTED] planned to tie up the staff and cut them. Id.

32. [REDACTED] went to [REDACTED] for one month following [REDACTED] discharge from [REDACTED]. SB 11, 13.



33. On [REDACTED], [REDACTED] admitted [REDACTED] to [REDACTED] [REDACTED] SB 14.

34. [REDACTED] did not participate in the admission. The admission was made solely by [REDACTED].

35. [REDACTED] used [REDACTED] medical insurance for the placement.

36. [REDACTED]'s medical services at [REDACTED] were funded by [REDACTED] medical insurance program. SB 22.

37. The medical insurance policy was issued by the [REDACTED] [REDACTED] as part of [REDACTED] employment with [REDACTED]. Id.

38. The policy was not listed in [REDACTED] separate name.

39. The stated cost of [REDACTED] hospitalization at [REDACTED] was \$ [REDACTED] SB 18.

40. In turn, [REDACTED] adjusted charges on [REDACTED] bill by crediting the account in the amount of \$ [REDACTED]

41. The full balance was paid by the insurance company under the [REDACTED] medical insurance policy.

42. The [REDACTED] concedes on page 9 of [REDACTED] brief that the insurance plan paid for the hospitalization.

43. There is also no claim that [REDACTED] paid any money [REDACTED] for the placement at [REDACTED].

44. [REDACTED] is no longer covered by [REDACTED] insurance plan.

45. [REDACTED] has [REDACTED] own insurance through [REDACTED]

46. [REDACTED] is eligible for medical insurance through [REDACTED] Medicaid.

47. [REDACTED]'s current insurance is not affected by the prior payments to

[REDACTED] under [REDACTED]'s policy.

48. [REDACTED] was discharged from [REDACTED] on [REDACTED].

49. [REDACTED] recommended that [REDACTED] be transitioned from the hospital to "a residential type of treatment program." (SB 17, p. 6).

50. [REDACTED] entered [REDACTED] on [REDACTED]. SB 19.

51. There is no dispute in this due process hearing over compliance with the IDEA by [REDACTED] after [REDACTED].

52. Extensive and costly services have been provided to [REDACTED] by [REDACTED] in multiple residential settings.

53. The case management notes at [REDACTED] from [REDACTED] through [REDACTED], reflect that the parents had an advocate who was to pursue a due process hearing against the school system. SB 16.

54. The advocate, [REDACTED], Human Rights Community Program Advocate at the Department of Rights for Virginians with Disabilities, wrote [REDACTED], Special Education Coordinator, on [REDACTED], regarding [REDACTED].

55. The advocate continued [REDACTED] work with [REDACTED] through [REDACTED]. SB 21, 24.

56. An attorney representing the [REDACTED] on behalf of [REDACTED] made an appearance in [REDACTED]. SB 26.

57. That attorney, [REDACTED], was providing representation in special education issues. Id.

58. [REDACTED] later, on [REDACTED], [REDACTED], made clear that [REDACTED] was questioning the failure to pay for the [REDACTED] hospitalization for the [REDACTED] period. SB 27-29.

59. [REDACTED] initiated no due process hearing despite [REDACTED] representation.

60. Other attorneys were involved as well.

61. [REDACTED] was representing [REDACTED] on a criminal matter. SB 30.

62. [REDACTED] did not file for a due process hearing.

63. The law firm of [REDACTED] later appeared in the case on [REDACTED] specifically on behalf of [REDACTED] in regard to "the provision of special education and related services to [REDACTED] ..." SB 31.

64. No hearing was initiated by [REDACTED] until [REDACTED].

65. The procedural safeguards or parental rights were provided to the parents in [REDACTED]. SB 4.

66. The parents also had advocates and attorneys who could have initiated a hearing.

67. The [REDACTED] note suggests that the prospect of a due process hearing was in the works even before [REDACTED] left [REDACTED]. SB 16.

68. [REDACTED] was in the custody of both of [REDACTED] parents during the [REDACTED] school year.

69. As noted above, [REDACTED] was discharged from [REDACTED] on [REDACTED].

70. Neither of [REDACTED] parents initiated a due process hearing regarding the funding for [REDACTED] hospitalization at [REDACTED] until [REDACTED] SB 41.

71. The hearing form was dated [REDACTED] over six years after the end of the [REDACTED] school year.

72. Issues were raised about the standing of [REDACTED] to bring a hearing on behalf of [REDACTED] adult [REDACTED]. SB 43-45.

73. Ultimately, the hearing was withdrawn to allow the guardianship issue to be resolved. SB 46, 47.

74. The order of dismissal was entered on [REDACTED] SB 48.

75. The current due process hearing was initiated on [REDACTED].  
SB 50.

76. The issue of reimbursement is identical with that of the earlier hearing.

77. [REDACTED], a major player in this case on behalf of the [REDACTED] Public Schools, is now deceased. [REDACTED] died on [REDACTED].

78. [REDACTED] was responsible for many of the contacts with the parents regarding [REDACTED] educational services.

79. [REDACTED] served as case manager of [REDACTED] case through [REDACTED] death in the year [REDACTED].

Respectfully submitted,

[REDACTED] PUBLIC SCHOOLS

By: [REDACTED]  
Counsel [REDACTED]

[REDACTED] (Va. Bar No. [REDACTED])  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
by [REDACTED]  
Counsel

[REDACTED], Esquire  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]