

4/19

VIRGINIA DEPARTMENT OF EDUCATION
DUE PROCESS HEARING



██████████ v. ██████████ PUBLIC SCHOOLS

This Hearing Officer was appointed to hear the referenced due process hearing pursuant to the Individuals with Disabilities Education Act (hereinafter IDEA). The hearing was commenced and concluded on ██████████ at the ██████████ School in ██████████. A transcript of the hearing was received by this Hearing Officer on ██████████. The parent, ██████████ presented case, and ██████████ Esq., ██████████ Attorney, represented ██████████ Public Schools (hereinafter the LEA). ██████████ Special Education Coordinator for the LEA, was also present throughout the hearing. The primary issue at this hearing was whether or not ██████████ was improperly given a long-term school suspension without the benefit of ██████████ rights pursuant to IDEA.

PROCEDURAL BACKGROUND

On ██████████, the parent of ██████████, age ██████████, and a former student at ██████████ School, in ██████████, filed a request for a due process hearing under IDEA. ██████████ specifically alleged that on ██████████, ██████████ received a one year suspension from the regular public school system, without having first been afforded a manifestation hearing and the other procedural safeguards under IDEA, in that the LEA had knowledge that ██████████ was a child with a disability which qualified ██████████ for special education, although ██████████ had not yet been identified as such. Since ██████████ suspension, ██████████ has not received any form of education.

A pre-hearing conference was held with the parties on ██████████. ██████████ was informed of the procedural aspects of the hearing and of ██████████ attendant rights to an public or closed hearing. ██████████ elected to have a closed hearing. At that time, ██████████ indicated that ██████████ would not be represented by counsel. ██████████ also advised this Hearing Officer that since ██████████ had filed the request for due process, the Child Study Committee had convened and found

██████ to be eligible for special education services, under the category of Other Health Impaired (OHI). ██████ further advised that an IEP (Individual Education Plan) meeting and a Manifestation Determination Review (MDR) were to be held before the day of the due process hearing. ██████ advised that ██████ would communicate with school personnel in order to facilitate the scheduling of the MDR on an expedited basis. In light of ██████ having been found to be eligible for special education, ██████, on behalf of the LEA, agreed that should the outcome of the MDR not be to ██████ liking, ██████ could include that as an issue in this due process hearing, thereby avoiding the need to file another request for due process. ██████ agreed with this. Both sides were advised of the need to present to each other and to this Hearing Officer all documents to be presented as evidence at least two days before the hearing. This was complied with. Given the fact that the hearing was to be convened after the end of the school year, and some potential witnesses might not be available to attend the hearing, the parties agreed to discuss further what LEA witnesses were needed and that ██████ would provide telephone numbers for any LEA personnel whose testimony was needed, but who could not be at the hearing. This Hearing Officer concurred that telephonic testimony would be permitted.

On the day of the hearing and prior to the record being opened, ██████ informed this Hearing Officer that a MDR had been commenced on ██████ and concluded on ██████. The committee found that ██████ misconduct was not a manifestation of ██████ disability and ██████ was, therefore, properly given a long-term (one year) suspension from school. ██████ objected to this finding. Although ██████ had not previously given a written request for due process on the manifestation determination, with the concurrence of the LEA, draft one at the table, and this issue was added to the other issue at the hearing.

The Issues In The Hearing

██████ has presented the following issues for determination:

1. Whether or not ██████ was given a one year suspension from school without having been afforded ██████ rights under IDEA. ██████ specifically alleges

that [REDACTED] School had knowledge that [REDACTED] had a disability, and should, therefore, have convened a MDR and continued to provide [REDACTED] with educational services, as provided under Federal and State law.

2. The MDR held on [REDACTED] and [REDACTED] was flawed in that [REDACTED] did not receive prior notice of the purpose of the meeting and was, therefore, unprepared for it. Further, the decision of the committee that [REDACTED] misconduct which resulted in [REDACTED] suspension was incorrect.

Although [REDACTED] was unable to particularize just what remedy [REDACTED] is seeking, it is clear to this Hearing Officer that should [REDACTED] prevail the appropriate remedy would be reinstatement into educational placement before the suspension and some form of compensatory services for the approximate three months of lost education.

STATEMENT OF FACTS

On [REDACTED], [REDACTED] was a [REDACTED] grade student at [REDACTED] School. [REDACTED] was in regular education, and had not been identified as eligible for special education. On that day, during a locker search of all student lockers, a knife approximately five inches in length was found in the bottom of a locker which [REDACTED] shared with another student. Both [REDACTED] and the other student were interviewed. [REDACTED] admitted, in writing, that the [REDACTED] belonged to [REDACTED]. Prior to this incident, [REDACTED] disciplinary record consisted of nine incidents, which were primarily related to truancy. [REDACTED] was, however, suspended in [REDACTED], [REDACTED] for having brought another knife to school. On [REDACTED] [REDACTED] was suspended from school for the present incident, with the Principal recommending that [REDACTED] be expelled from LEA schools. A disciplinary hearing was subsequently convened at the LEA's Office of School Leadership. The Hearing Officer found that discipline was warranted, however, [REDACTED] did not expel [REDACTED], but gave [REDACTED] a one-year suspension. It was recommended that [REDACTED] attend the LEA's [REDACTED], an alternative school. However, because it was so late in the school year and because [REDACTED] grades prior to being suspended were failing grades, the Hearing Officer determined that it would be appropriate

for [REDACTED] not to enroll in the current school year, but rather in the [REDACTED] school year. [REDACTED] therefore, has received no education since [REDACTED]. The LEA has, however, offered [REDACTED] the opportunity to go to summer school. [REDACTED] has purportedly rejected this offer.

THE PARENT'S POSITION

[REDACTED] contends that at the time of [REDACTED] long-term suspension, the school officials had knowledge that [REDACTED] was a child with a disability, and [REDACTED] was, therefore, entitled to a Manifestation Determination Review and to continued educational services, whether in [REDACTED] placement before the suspension or in an alternative setting, if the outcome of the MDR was that [REDACTED] misconduct was not a manifestation of [REDACTED] disability. [REDACTED] specifically argues that throughout the time of [REDACTED] enrollment at [REDACTED] School, [REDACTED] displayed poor academic performance and emotional/behavioral problems which of teachers and guidance counselor were aware. According to [REDACTED], school personnel should have suspected that [REDACTED] problems resulted from a disability and [REDACTED] should have been tested for eligibility for special education. [REDACTED] contends that [REDACTED] was unaware of [REDACTED] rights under IDEA and that school personnel had an obligation to pursue the matter and to give [REDACTED] some assistance.

Moreover, [REDACTED] objects to the outcome of the MDR held on [REDACTED] [REDACTED] argues that [REDACTED] procedural rights were violated in that [REDACTED] did not have notice of the purpose of the meeting and [REDACTED] was, therefore, unprepared for it. [REDACTED] further alleges that [REDACTED] was not given an opportunity to present a person or persons with special knowledge to assist [REDACTED] at the MDR. Finally, [REDACTED] objects to the committee's finding that [REDACTED] misconduct was not a manifestation of [REDACTED] disabilities of Attention Deficit/Hyperactivity Disorder and Depression.

THE LEA'S POSITION

The LEA first contends that [REDACTED] did not make a written request for a special education evaluation, pursuant to IDEA, prior to [REDACTED] suspension. Additionally, school personnel had no knowledge that [REDACTED] might have been suffering from a qualifying disability, as "knowledge" is defined under IDEA. [REDACTED] lack of academic progress was viewed as related to [REDACTED] numerous absences from school and/or class, which resulted from

both truancy and suspensions for misconduct. Further, there was no indication in prior school record of academic failure or of special education assessment, other than for speech. Finally, there was no report or communication from a treating clinician which put the school on notice that [REDACTED] suffered from any disability. Therefore, [REDACTED] was not entitled to the procedural safeguards of IDEA, as a child who had not yet been identified for special education.

Respecting the MRD, the I EA argues that once [REDACTED] was identified as eligible for special education, they expeditiously convened a MDR, after noticing the parent of the date, time, place and purpose of the meeting. This was done orally at the eligibility meeting on the day before the scheduled MDR. Further, [REDACTED] was aware of the nature of an MDR, as [REDACTED] had received written communication of this from the LEA's Office of School Leadership. The LEA's position is that [REDACTED] participated in the MDR for almost an hour and shared [REDACTED] views and psychologist's report on [REDACTED] and that [REDACTED] only began to object to the meeting and noted [REDACTED] lack of preparation once the committee determined that [REDACTED] bringing a [REDACTED] to school was not a manifestation of [REDACTED] disability. They contend that [REDACTED] was subsequently communicated with on more than once occasion and given every opportunity to reconvene the meeting so that [REDACTED] could present additional information. However, [REDACTED] refused to attend the continued meeting. The committee, therefore, determined that based on the review at the first day of the MDR, [REDACTED] conduct was not a manifestation of [REDACTED] disability and [REDACTED] was, therefore, properly given a long term suspension from school.

FINDINGS OF FACT

1. [REDACTED] commenced [REDACTED] grade at [REDACTED] School in [REDACTED], having last attended [REDACTED] school in [REDACTED]. [REDACTED] had previously received special education, but only for speech. [REDACTED] school records show that [REDACTED] was passing. A Stanford Achievement Test administered on [REDACTED] shows that [REDACTED] scored in the average range in the core academic areas, with the exception of Math Procedures and Language Editing, in which areas [REDACTED] scored somewhat below average (LEA Exh. I-1.4).

2. During the course of the school year, [REDACTED] received several disciplinary referrals for frequently skipping classes, refusing to attend in-school detentions, stealing and bringing cigarettes and a knife to school on an occasion before the one at issue in this hearing (LEA Exh. I-5). After a disciplinary hearing in [REDACTED] respecting the first [REDACTED] incident, [REDACTED] received a one year suspension. That suspension was subsequently held in abeyance and was placed on probation for the remainder of the school year.

3. [REDACTED] started the school year with grades of A,C,C,D,E and E in [REDACTED] first marking period. [REDACTED] grades thereafter deteriorated to almost all E's for the next two marking periods. [REDACTED] class absences in each marking period ranged from eight to twelve times. Teachers commented on [REDACTED] report cards that showed inattentiveness in class, poor preparation and that [REDACTED] progress was affected by poor attendance. It was generally felt that [REDACTED] could do the work.

4. On [REDACTED], after a general search of student lockers, a [REDACTED] was found in the locker [REDACTED] shared with another student. [REDACTED] was interviewed by a security officer and Assistant Principal [REDACTED], the latter of whom testified at the hearing. [REDACTED] admitted to bringing the [REDACTED] to school and placing it in [REDACTED] locker so [REDACTED] would not get into trouble if it were found on [REDACTED]. [REDACTED] had originally placed the [REDACTED] in [REDACTED] backpack after using it to work on [REDACTED] skateboard. [REDACTED] wrote a statement attesting to these facts (Tr. 28-30; LEA Exh. I-5).

5. [REDACTED] was suspended with a recommendation of expulsion on [REDACTED]. A disciplinary hearing was held on [REDACTED] at the LEA's Office of Student Leadership. Disciplinary action against [REDACTED] was upheld, however, the recommended expulsion was reduced to a one year suspension. [REDACTED] was offered the opportunity to enroll in summer school. Further, the remainder of the suspension, beyond the current school year, was held in abeyance and [REDACTED] was given permission to enroll in the Fall at [REDACTED]

[REDACTED], an alternative school. It was also ordered that [REDACTED] be placed on strict probation at

██████████, ██████████ was directed to initiate testing for possible special education services (LEA Exh. I-5).

6. Subsequent to suspension, ██████████ requested ██████████ be assessed for special education eligibility. As part of that assessment, all of ██████████ teachers were asked to write evaluations of ██████████ class performance (LEA Exh. I-8). Generally, ██████████ teachers opinions were that ██████████ often failed to turn in assignments, displayed a bad attitude respecting rules or instruction, lacked motivation, refused to do work and that ██████████ failing grades were impacted by ██████████ poor attendance.

7. ██████████ refusal to perform was, moreover, testified to by ██████████ Math teacher, ██████████. According to this witness, ██████████ was passing early in the school year, but then simply stopped trying. Based upon the witness' observations, ██████████ lack of motivation seemed directly related to problems ██████████ had with ██████████. This opinion was shared with ██████████ at a meeting the witness attended in ██████████ with ██████████ and ██████████ other teachers. ██████████ saw no indication that ██████████ had a learning disability. ██████████ also did not observe in ██████████ any of the typical manifestations of ADHD. (██████████ noted that ██████████ has taught children with this condition.) At the meeting in question, ██████████ notably did not express any concern that ██████████ might have a learning disability; nor did ██████████ request a special education evaluation (Tr. 75-79).

8. ██████████ and ██████████ also had several phone conversation about ██████████. In those discussions, they did not discuss having ██████████ evaluated for a learning disability, but rather for possible drug or alcohol use, which ██████████ raised as an issue (Tr. 88-90).

9. The testimony of ██████████, ██████████ guidance counselor, established that ██████████ conferred with ██████████ in ██████████ at ██████████ request. ██████████ concern was with ██████████ lack of progress in school. They discussed the possible causes for the lack of progress, which consisted of a) ██████████ recent military deployment and b) ██████████ enrollment in a new school. They did not discuss a possible learning disability or any disability which would warrant a special education evaluation. ██████████ also conferred

with [REDACTED]. During that discussion, [REDACTED] advised [REDACTED] that [REDACTED] could handle the academic work. [REDACTED] also attended the meeting with [REDACTED] and the other teachers, which was held in [REDACTED] (Tr. 118-123).

10. [REDACTED] testified that [REDACTED] would work with [REDACTED] at home, but [REDACTED] was not able to retain the information [REDACTED] was given. Yet, [REDACTED] did not bring this fact to the attention of the school (Tr. 145-147).

11. In [REDACTED], prior to the misconduct at issue herein, [REDACTED] took [REDACTED] to a psychiatrist and a psychologist. [REDACTED] was diagnosed with ADHD and Depression and placed on Adderal and Prozac (Tr. 154; LEA Exh. I-6). [REDACTED] did not inform the school of [REDACTED] diagnosis prior to the second [REDACTED] incident.

12. [REDACTED] received an out of school suspension, and was placed on probation as a result of having cigarettes and a [REDACTED] at school in [REDACTED] (LEA Exh. I-5). Yet [REDACTED] continued to skip classes and [REDACTED] brought the second [REDACTED] to school. This was despite the fact that after the first disciplinary hearing, [REDACTED] had talked to [REDACTED] about [REDACTED] expected code of conduct in school (Tr. 155).

13. In [REDACTED], [REDACTED] requested that the school screen [REDACTED] for special education. An initial meeting with the Screening Committee was held on [REDACTED]. At that meeting, the parent presented a letter written by [REDACTED], dated [REDACTED], which diagnosed [REDACTED] with ADHD and Depression and suggested a possible learning disability (LEA Exh. I-6). The committee recommended [REDACTED] receive a psychological evaluation, social history, medical evaluation and that teacher observations be obtained. The matter was continued for review on [REDACTED].

14. School Social Worker [REDACTED] conducted a developmental-sociological history on [REDACTED] in the course of which [REDACTED] considered [REDACTED] special education screening, [REDACTED] cumulative records and comments made by [REDACTED]. In [REDACTED] report, which is dated [REDACTED], [REDACTED] notes that [REDACTED] has a history of emotional and behavioral problems, including defiance and running away for up to three days at a time (LEA Exh. I-11).

15. A psychological evaluation conducted on [REDACTED] by School Psychologist [REDACTED] on [REDACTED] concluded that a) [REDACTED] has average cognitive functioning, superior perceptual organizational skills, average verbal comprehension skills and below average attentional/memory skills and math achievement; b) [REDACTED] shows symptoms of ADHD, but [REDACTED] diagnosis of major depression is not substantiated in school reports; c) [REDACTED] demonstrates significant acting-out and disruptive behaviors and d) that [REDACTED] should be placed in special education, especially given [REDACTED] deficits in Math and ADHD (LEA Exh. I-12).

16. At a eligibility meeting on [REDACTED], [REDACTED] was found eligible for special education under the category of Other Health Impaired. At the conclusion of the meeting, [REDACTED] was verbally advised that there would be a MDR on [REDACTED]. [REDACTED] testified to this (Tr. 34). It is also noted in the minutes of the MDR which was held on [REDACTED].

17. On [REDACTED], the MDR meeting, which was chaired by [REDACTED], was convened. At the outset, the purpose of the meeting was explained (Tr. 36). Additionally, the written invitation to the meeting and its purpose (two copies) was on the table. However, [REDACTED] neither signed the notification or took [REDACTED] copy. Notably, a letter was also sent to [REDACTED] on [REDACTED] by [REDACTED] Director of Programs for Exceptional Children, in which [REDACTED] advised [REDACTED] that an MDR would be held once [REDACTED] was found to be eligible for special education services (LEA Exh. 8).

18. The MDR lasted about forty minutes, during which the team discussed the [REDACTED] incident and responded to the questions on the form entitled "Manifestation Meeting Minutes for Students with Disability/IDEA" (LEA Exh I-16). When the team began to answer the questions adverse to [REDACTED], [REDACTED] objected to the team's findings. The team found that a) [REDACTED] educational placement was appropriate, b) [REDACTED] disability did not impair [REDACTED] ability to understand the impact and consequences of [REDACTED] behavior, c) [REDACTED] disability did not

impair [redacted] ability to control [redacted] behavior which was the subject of the disciplinary action and d) [redacted] misconduct was not a manifestation of [redacted] disability (LEA Exh. I-16).

19. In reaching its conclusions, the MDR team reviewed the documents and minutes from the eligibility meeting on the day before, [redacted] disciplinary history, school interventions made with respect to [redacted] and the report from [redacted] psychologist. They also talked to [redacted] who acknowledged that [redacted] knew it was wrong to bring a [redacted] to school and that [redacted] would be subjected to consequences for [redacted] behavior. Most of the team felt that [redacted] understood the nature and consequences of [redacted] behavior. They specifically considered whether or not the [redacted] incident involved any impulsivity, which could be a manifestation of [redacted] ADHD, and whether or not it involved any intent to use the [redacted] which could have been a manifestation of [redacted] depression. [redacted] had a full opportunity to participate in the discussion. It was only after the team had answered the pertinent questions on the form adversely to [redacted] that [redacted] alleged that [redacted] did not understand the purpose of the meeting and stated [redacted] had other persons whom [redacted] wanted present at the meeting (Tr. 102-105). Notably, [redacted] had previously been provided the written procedural safeguards. However, at the time [redacted] walked out of the MDR meeting, [redacted] failed to agree to a continuation date, as was offered by [redacted], the LEA's Special Education Coordinator, who attended the meeting. (Tr. 102-107).

20. Several attempts were made by LEA personnel over the next few days to schedule a continuation of the MDR for [redacted], immediately after the IEP meeting which was scheduled for 9:00 A.M. and which [redacted] attended. However, [redacted] refused to attend a continuation of the MDR (Tr. 71, 107, 128-132).

21. On [redacted] the MDR team reconvened, and after considering [redacted] refusal to participate or to provide additional information, proceeded to make a manifestation determination based on their discussions and review of [redacted] (Tr. 107).

22. [redacted] testified that when there is a disciplinary history such as [redacted], it is the LEA's practice to rule out other possible reasons for the misconduct before testing for special

education, unless the parent makes a specific request for testing. In this case, [REDACTED] parent did not request testing prior to [REDACTED] (Tr. 109-10).

23. Notifications of MDR's are frequently verbal, as opposed to written, given the short turn-around time for such meetings after a suspension (ten days). Written notification is then typically given at the actual meeting, according to [REDACTED] (Tr. 115-116).

24. [REDACTED] would have wanted to have [REDACTED] psychologist or psychiatrist present for the MDR, however, [REDACTED] did not want them to have to respond to questions respecting the personal business of [REDACTED] family. It is for this reason that [REDACTED] chose not to bring them to either the MDR or to the present hearing (Tr. 156-162).

CONCLUSIONS OF LAW

I. [REDACTED] RIGHTS WERE NOT VIOLATED UNDER IDEA WHEN [REDACTED] WAS SUSPENDED.

[REDACTED] contention that [REDACTED] should have been afforded [REDACTED] rights pursuant to IDEA before receiving a long-term suspension is without merit. The Regulations Governing Special Education Programs for Children with Disabilities in Virginia, Section 8 VAC 20-80-68 (C) 8 (see also 34 CFR 300.121), provided that in the case of a child who has not yet been identified as eligible for special education, if the school has knowledge that [REDACTED] has a disability, [REDACTED] must be given [REDACTED] procedural rights under this chapter, as would any child already identified as eligible. Therefore, if the school had knowledge of [REDACTED] disability, pursuant to 8 VAC 20-80-68 (C) 5, [REDACTED] would have been entitled to receive a manifestation determination review prior to the imposition of a long-term suspension. If it had been determined that [REDACTED] conduct in bringing the [REDACTED] to school was a manifestation of [REDACTED] disability and that the disability prevented [REDACTED] from knowing that [REDACTED] behavior was inappropriate, then the LEA would not have been able to impose the suspension. Had the MDR found no manifestation of [REDACTED] disability in [REDACTED] misconduct, then [REDACTED] could have been suspended, however, [REDACTED] would have been entitled to receive on-going educational services by the LEA, although in another setting.

The question is whether or not the school had prior knowledge of [REDACTED] disability before [REDACTED] was suspended. Under 8 VAC 20-80-68 (C) 8 (B), " a local educational agency shall be deemed to have knowledge that a child is a child with a disability if (i) the parent has expressed concern in writing ... to personnel of the appropriate educational agency that the child is in need of special education and related services; (ii) the behavior or performance of the child demonstrates the need for such services; (iii) the parent .. has requested an evaluation of the child....; or (iv) the teacher of the child or other personnel of the local educational agency has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency."

Clearly subsections (i), (iii) and (iv) do not apply in this case. The only question is whether or not [REDACTED] performance or behavior indicated a need for special education services. [REDACTED] contends that [REDACTED] poor academic performance throughout the school year and [REDACTED] communications with [REDACTED] teachers and guidance counselor, in which expressed concern about [REDACTED] academic performance, [REDACTED] emotional problems and [REDACTED] running away from home, put the school on notice that [REDACTED] needed special education services. However, the facts in this case simply do not support this position. The school records show that [REDACTED] was frequently truant from [REDACTED] classes. This in and of itself could have accounted for [REDACTED] poor academic performance. Notably, [REDACTED] prior school record shows that [REDACTED] was capable of doing [REDACTED] school work. Further, there was some evidence that [REDACTED] was having problems with [REDACTED], which could have caused [REDACTED] to be emotionally upset. Notably, at the start of the school year, [REDACTED] had an adequate academic performance, and [REDACTED] teachers generally deemed [REDACTED] capable of doing the work. This would not have been the case with a child who was suffering from a learning or other disability which negatively affected [REDACTED] school performance.

Moreover, at no point did the parent present any documentation from a clinician which noted that [REDACTED] was suffering from a physical or mental disability. One cannot assume that all poor performance or misconduct in school results from a disability

recognized under IDEA. Interestingly, it is noted that [REDACTED] is knowledgeable about IDEA and its requirements, given the fact that in [REDACTED] written request for due process, quotes IDEA verbatim. Additionally, [REDACTED] was able to request that [REDACTED] be screened for eligibility for special education in [REDACTED], after [REDACTED] suspension. Given [REDACTED] apparent knowledge basis, it, therefore, seems that if [REDACTED] had previously felt [REDACTED] had a disability,

[REDACTED] would have requested a review by the eligibility team. One can only conclude that prior to [REDACTED], [REDACTED] had no suspicion that [REDACTED] had a disability. If the parent [REDACTED] did not have such a suspicion, this Hearing Officer is hard pressed to believe that [REDACTED] teachers would have had knowledge of any possible disability. In fact, [REDACTED] apparently was concerned that drugs or alcohol had something to do with [REDACTED] problems.

II. THE MANIFESTATION DETERMINATION REVIEW WAS NOT FLAWED AND THE OUTCOME IS SUPPORTED BY THE RECORD

[REDACTED] contends that [REDACTED] had no notice of the purpose of the meeting on [REDACTED], specifically, that it was to determine if [REDACTED] bringing the knife to school was a manifestation of [REDACTED] disability. 8 VAC 20-80-70 (A)(1)(b) provides that a parent must be given notice of the purpose of all meetings relative to the placement of children found to be eligible for special education. However, there is no requirement that the notice be in writing. In fact, subsection (c)(3) requires that an LEA keep records of attempts to ensure a parent's involvement in placement meetings, in a manner consistent with the notification requirements for IEP meetings, as addressed in 8 VAC 20-80-62 (D)(2)(a)(1). The latter section provides that the "notice should be in writing, but may be given by telephone or in person with proper documentation." Additionally, 34 CFR 300.345 (3)(d)(1) provides that the LEA keep detailed records of telephone calls or visits to parents' homes to show a record of attempts to arrange for a parent to participate in meetings regarding children with disabilities. This hearing officer has no doubt that [REDACTED] knew of the meeting on [REDACTED] and its purpose.

In the case of a MDR, in which the Virginia Department of Education Regulations require the LEA to act quickly, there is often insufficient time to give a parent written notice. However, the testimony was that the written notice of the purpose of the meeting and the procedural safeguards were presented to [REDACTED] at the [REDACTED] meeting. The matter is however moot, since [REDACTED] received verbal notification the day before, which under the above-referenced statutory cites was sufficient. Based on the testimony of [REDACTED] and [REDACTED] the MDR had gone on for almost an hour and the committee had answered the relevant questions before [REDACTED] objected to the meeting and alleged that [REDACTED] was unprepared for it. Further, [REDACTED] was given ample opportunity to resume the meeting on [REDACTED] and bring any expert of [REDACTED] choice, but [REDACTED] elected not to do so. [REDACTED] cannot now claim that the proceeding was flawed.

III THE OUTCOME OF THE MDR IS JUSTIFIED IN THAT THE MISCONDUCT WAS NOT A MANIFESTATION OF [REDACTED] DISABILITY

After [REDACTED] suspension from school, [REDACTED] was found to be eligible for special education given [REDACTED] diagnoses of ADHD and Depression. There is absolutely nothing in the record or [REDACTED] testimony to support the contention that bringing the knife to school was a manifestation of these disabilities. The testimony of [REDACTED] a special education expert, states the case well. The act was not an act of impulsivity associated with ADHD; nor was it an act showing intent to harm [REDACTED], as might be the case if it were related to [REDACTED] depression. [REDACTED] did not present an expert at the hearing to counter this view. Moreover, from [REDACTED] own statement [REDACTED] knew that it was wrong to bring the knife to school. In fact, [REDACTED] stated that [REDACTED] left it in the locker because [REDACTED] did not want to get in trouble if it were found on [REDACTED]. The fact that [REDACTED] forgot it was in the locker for two weeks has not been proven to be a consequence of [REDACTED] disabilities.

CONCLUSION

This Hearing Officer finds that [REDACTED] was properly given a long term suspension from school, and that the LEA did not violate [REDACTED] rights under IDEA since [REDACTED] had not yet been found eligible for special education and the school had no knowledge that [REDACTED] required special education because of a disabling condition. Further, the parent's notice rights were not violated when the manifestation determination review was convened, and the decision that [REDACTED] misconduct was not a manifestation of [REDACTED] disability was supported by the facts in this case. The LEA has, therefore, prevailed on all issues in this hearing. The parties are notified that they have one year from the date of this decision to appeal it to either the Virginia Circuit Court or the United States District Court

Dated: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Hearing Officer

CERTIFICATION

I hereby certify that a true copy of the aforesaid Decision was mailed to the parties of record this [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]