

Local Hearing

State Level Appeal



CASE CLOSURE SUMMARY REPORT

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

[Redacted] County  
School Division

[Redacted]  
Name of Parents

[Redacted]  
Name of Child

[Redacted] 2002  
Date of Decision

[Redacted]  
Counsel Representing LEA

[Redacted]  
Counsel Representing Parent/Child

Parents  
Party Initiating Hearing

Parents  
Prevailing Party

Hearing Officer's Determination of Issue(s):  
See Attached decision.

Hearing Officer's Orders and Outcome of Hearing:  
[Redacted] PS ordered to pay tuition of \$22,650.00 to Parents.  
Outcome of Hearing - Decision for Parents.

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.

[Redacted]  
Printed Name of Hearing Officer

[Redacted Signature]  
Signature

VIRGINIA DEPARTMENT OF EDUCATION  
[REDACTED] COUNTY PUBLIC SCHOOLS



In The Matter Of:

[REDACTED] v. [REDACTED] County Public Schools  
A Due Process Hearing

Hearing Officer Decision

Issues

In their due process hearing requests of [REDACTED] and [REDACTED] 2001, [REDACTED]'s parents seek (1) a declaration that their [REDACTED] involvement in a fight with another student was a manifestation of [REDACTED] Attention Deficit Hyperactivity Disorder (ADHD), (2) that because this disorder "adversely affected [REDACTED] educational performance" [REDACTED] had an ADHD-OHI learning disability, (3) that [REDACTED] IEPs for school year 2000-2001 failed to include the results of [REDACTED] "Functional Behavior Assessment", (4) that this resulted in a denial of [REDACTED] right to a Free Appropriate Public Education, FAPE, for 2000-2001 and an inappropriate IEP for 2001-2002 school year, (5) that the LEA's denial of educational benefits justified [REDACTED]'s removal to a private school placement, (6) that [REDACTED]'s private school placement provided [REDACTED] with educational benefits, (7) for which [REDACTED] parents are entitled to tuition reimbursement in the amount of \$22,656.00.

Procedural issues involve (1) the LEA's assertion that the tuition claim for the second half of the 2000-2001 school year is barred by laches, and (2) that the parents' concurrence in the IEP's of [REDACTED] 2000 and [REDACTED] 2001 bar their claim for tuition for the second half of the 2000-2001 school year. The

parents procedural claim is that the omission of a triennial psychoeducational evaluation in 2000 is an error that voids [REDACTED]'s IEP for the school year 2000-2001. Finally, the LEA claims that because [REDACTED] was found ineligible for an ADHD-OHI learning disability, [REDACTED] IEPs of 2000 and 2001 afforded [REDACTED] a FAPE and bars [REDACTED] parents' tuition claim.

#### Findings

##### The LEA's Laches Defense

The LEA claims that the parents delay in filing their request for a due process hearing for the last half of school year 2000-2001 is barred by laches. This is a rule designed to bar stale claims. In Virginia a due process claim is timely if filed within two years of the time the parents "knew of the event that is the basis for their claim". Richards v. Fairfax County Sch. Bd. 798 F. Supp. 338, 341 (E.D. Va. 1992), aff'd 7 F. 3d 225 (4th Cir. 1993); Va. Code 8.01-248. Here the record shows [REDACTED]'s parents did not "know" that [REDACTED] ADHD disorder was ineligible for an "other health impaired" or "specific learning disability" category until the Manifestation Review of [REDACTED] 2001. At that time [REDACTED] announced [REDACTED] intention to "seek reimbursement" for [REDACTED]'s private school placement. Tr. 654. In response the chairwoman, [REDACTED] handed [REDACTED] without comment, a copy of the Procedural Safeguards. [REDACTED] Exh. 35. Neither this document nor any other notice advised [REDACTED] of a limitation on filing appeal earlier than that specified in the Virginia statute of limitations. For these reasons, I find the parents' claim is not

barred by laches. See. DOE v. Carl D., 695 F.2d 1154 (9th Cir. 1963), (state has an obligation to advise unrepresented parents of non-statutory limitations on filing request for due process hearings); CM v. Bd. of Education of Henderson County, 34 IDELR 57 (4th Cir. 2001).

██████████'s Experience with the LEA's Special Education System

██████████ attended the ██████████ system from the ██████████ grade through one semester of the ██████████ grade. At the age of ██████████ in the ██████████ grade it was noted that ██████████ was reading at the "pre-primer level", with significant deficits in "written expression and visual motor integration." ██████████ Exhs. 12, 13, 15. In 1993, ██████████ was referred to the ██████████ Center for an Attention Deficit Disorder evaluation. Ibid. The results of the behavioral checklists,

which are designed to provide the most specific measure or rating of diagnostically significant symptoms, showed ██████████ had significant difficulties in the areas of inattention, impulsivity, and hyperactivity. The parent and teacher ADHD Rating Scales were significant for the total score and diagnostic symptoms. In addition the school and home versions of the ADDES indicated difficulties in all the areas of inattention, impulsivity, and hyperactivity, and the CAP was significant for inattention and overactivity. Id.

The ██████████ Center concluded that its evaluations provided:

"mixed support for the presence of an attention-deficit hyperactivity disorder, ADHD. The behavior checklists showed that ██████████ displayed behaviors that are characteristic of ADHD predominately at school, but also within the home environment." ██████████ Exh. 15.

██████████ recommended "██████████ undergo a comprehensive psychological evaluation to determine whether or not ██████████ present underachievement and dislike for school is partially related to the presence of a learning disability." ██████████ recommended eight

specific accommodations be tried with [REDACTED] and if these failed, "a course of medication may be appropriate to help [REDACTED] better control [REDACTED] impulsive responding." [REDACTED]'s pediatrician put [REDACTED] on Ritalin three times a day.

The [REDACTED] evaluation was considered by the School Psychologist at the time [REDACTED] performed [REDACTED]'s first Psycho-educational Evaluation by the LEA in [REDACTED] 1994. [REDACTED] Exh. 13. [REDACTED] was found to be a child of "average intelligence" whose "Overall test results indicate that [REDACTED] may be prone to impulsivity, distractability, and disorganization which appear to negatively impact [REDACTED] academic achievement". [REDACTED] Exh. 13, p. 6. Emphasis supplied. [REDACTED], a school psychologist for [REDACTED] testified this is the test the school district applies to determine eligibility for an ADHD-OHI learning disability. Tr. 269-270. On

1994, the [REDACTED] were advised that an eligibility committee had reviewed [REDACTED]'s educational, psychological, sociocultural, and medical evaluations and found [REDACTED] eligible for special education because of a "specific learning disability." [REDACTED] Exh. 16. The [REDACTED] were not advised that eligibility for services for a "specific learning disability" did not include services for [REDACTED] ADHD.

In 1997 [REDACTED] had [REDACTED] first triennial evaluation. At that time [REDACTED]'s psychoeducational evaluation noted that "50 percent of [REDACTED] educational program is delivered through" [REDACTED] specific learning disability classes. [REDACTED] Exh. 17 p.1. Once again, however, the school psychologist noted that "This is a child

who displays many of the characteristics of ADD. In the classroom [REDACTED] requires abundant structure and modification of academic subjects." Id at p.2. The school's social worker disagreed. [REDACTED] found that, on doctor's orders, [REDACTED] was taking Ritalin "three times a day", and that [REDACTED] "seems to be a child who is very impulsive and gets angry and frustrated very quickly"; nevertheless [REDACTED] concluded that [REDACTED] lack of academic progress stemmed more from "emotional difficulties" than "ADHD". [REDACTED] Exh. 18.

The LEA's rejection of the psychologists' ADHD evaluations were in conflict with a Joint Policy Statement of the Office of Civil Rights, Office of Special Education and Rehabilitative Services. 18 IDELR 116 (1991). There the OCR held that,

children with ADD, including those with ADHD, who require special education or related services are presently eligible under the IDEA categories of 'other health impairment', 'specific learning disability,' or 'serious emotional disturbance.' Therefore a separate category for ADD or ADHD conditions is not necessary under IDEA. Under Section 504, school districts are obligated to provide regular or special education programs, including necessary supplementary aids and services to qualified children with ADHD based on their individual needs.

Consequently, ADHD children are eligible for special education services tailored to their ADHD disorder along with services for their specific learning disabilities. This means that,

if a child's behavior impedes learning (including the learning of others) the school must consider . . . strategies to address that behavior. This includes positive behavioral interventions, strategies, and supports. This proactive approach to addressing behavior problems is intended to help individual students minimize discipline problems that may arise as a result of the disability. (Briefing Paper, April 2002, National Information Center for Children with Disabilities, U.S. Office of Special Education, p.17.)

[REDACTED] 1997 sociocultural assessment showed a lack of awareness of the overlap in categories reflected in the Joint Policy statement. The LEA assessment found that [REDACTED]'s behavior was more "consistent with Oppositional Defiant or Anxiety Disorder" and that [REDACTED] "combination of behavioral difficulties, emotional difficulties, and school learning problems" were "not related to [REDACTED] ADHD." [REDACTED] Exh. 18. At the same time the social worker noted [REDACTED]'s "impulsivity and flash anger" and continued heavy dosage of Ritalin both at home and school. Once again the educators ignored [REDACTED]'s entitlement to an ADHD-OHI, specific learning and/or emotional disturbance category to deal with [REDACTED] ADHD deficits.

Dr. [REDACTED] the clinical psychologist who appeared as an expert witness for the parents, expressed surprise over the amount of time [REDACTED] was scheduled for participation in learning disability classes. Tr. 348. In [REDACTED] opinion, this showed [REDACTED] was suffering from a very high level of learning disability due to [REDACTED] ADHD. Tr. 350.

Students labeled ADHD-OHI by [REDACTED] receive essentially the same kinds of academic assistance as students with specific learning disabilities. The absence of an ADHD program tailored to promote proactive use of appropriate behavioral interventions may adversely affect the careers of ADHD students. [REDACTED]'s parents had no way to foresee the impact that the absence of an ADHD program tailored to promote the use of appropriate behavioral interventions for the disciplinary problems encountered by ADHD children may have on

their academic careers. According to Dr. [REDACTED]'s psychologist, it was reasonable for [REDACTED]'s parents to assume that [REDACTED] teachers and the LEA were aware of the significant difference between [REDACTED]'s "specific learning disability," and [REDACTED] "ADHD". Tr. 512. Even if [REDACTED]'s parents had realized [REDACTED] was not properly labelled, it would have made no difference prior to the recommendation for expulsion. Both counsel for [REDACTED] and Dr. [REDACTED] agreed that the LEA had "no separate OHI impaired program". Id. Thus "it would not have paid for [REDACTED]'s parents] to argue for a placement that did not exist." According to Dr. [REDACTED]

it was not a problem for the [REDACTED] when the learning disability label was providing about the same services as an OHI label would. It only became relevant once they were informed that the condition for which [REDACTED] had been recognized implicitly had nothing to do with the behavior for which [REDACTED] was being terminated from school. And, then, of course, all of a sudden, it did matter [whether] it was recognized or not recognized. But it had never been much of a problem in educational planning up to that point." Tr. 511-513.

At all times prior to [REDACTED] 2001, the date of [REDACTED] Manifestation hearing, [REDACTED]'s parents were unaware of the fact that [REDACTED]'s medical, psychological diagnosis of ADHD was deemed largely irrelevant by the LEA.

With the triennial eligibility evaluation of [REDACTED] 2000, Parents Exh. J., an eligibility committee for the first time acknowledged that [REDACTED]'s learning disabilities category needed to be supplemented with a "Functional Behavior Assessment". Ibid. p. 1A. A "Functional Behavior Assessment" is defined as "a process to determine the underlying cause or functions of a child's behavior that impede the learning of a child with a disability or the



learning of the child's peers." 8-VAC-20-80-10.

For the first time, an Eligibility Committee also found that "[redacted]'s behavior has a great impact on [redacted] academic success." Parents Exh. J, p. 1A. At this point, [redacted] was in the last half of [redacted] grade schooling, facing the social and academic rigors of [redacted] school.

Dr. [redacted] noted that throughout [redacted] career [redacted] had displayed and continued to display the characteristics of a child with a high degree of volatility and impulsivity. Between [redacted] 1999 and [redacted] 2001, [redacted]'s time for special ed. services had been increased from 2.5 to 4 hours per school day, much of it in small self contained classes. [redacted] Exh. 25, 26, 27, 28.

When [redacted]'s Functional Behavior Assessment did not appear in the record, a post-hearing review of the circumstances relating to its existence showed neither party could explain why the Functional Behavior Analysis consented to by [redacted] in [redacted] 2000 and ordered by the Eligibility Committee at the same time was not in [redacted]'s school record. See Counsels' Supplemental Briefs.

A further review by the hearing officer disclosed that the IEP of [redacted] 2001, [redacted] Exh. 11, contains a document labeled "Functional Behavior Assessment and Behavioral Intervention Plan." The origin of this document appears on page 6 of the same exhibit. There it is referred to as "The attached Behavior Plan that was developed last spring", presumably the spring of 2000.

From this, it seems fair to conclude that the "Behavior Plan" attached to [redacted] Exh. 11 was not considered by, and certainly was

never attached to, [REDACTED]'s [REDACTED] 2000 and [REDACTED] 2001 IEP's. The narratives of [REDACTED]'s [REDACTED] grade teachers paint a bleak picture of [REDACTED] conduct in and out of class. Parent Exh. J. [REDACTED]'s behavior after [REDACTED] entered high school became even more erratic. [REDACTED] Exh. 22, 23. The principal and [REDACTED] assistant, [REDACTED] were well aware of this but took no action to develop strategies for intervention.

During [REDACTED] first, and last, two quarters at [REDACTED] School [REDACTED] was failing or near failing in all of [REDACTED] academic subjects. Parent Exh. Q; [REDACTED] Exhibit 32. Diagnostic testing by the [REDACTED] Center in [REDACTED] 2001, showed "[REDACTED] demonstrated significant skill gaps in reading, writing, critical thinking, study skills and math." Parent Exh. R. The Center estimated that to improve [REDACTED]'s reading and math and other skills from the [REDACTED] to the [REDACTED] grade would take ten months. To do this [REDACTED] would be required to work in an independent setting with a 3 to 1 student-teacher ratio. In [REDACTED] 2001, [REDACTED] wrote to an official of the [REDACTED] and complained that "After attending the public schools in [REDACTED] County since [REDACTED] and rising to the [REDACTED] grade [REDACTED] has] the reading comprehension of a [REDACTED] grader [which is] appalling to me". Parents Exh. M.

The hallmark of an IEP that is not providing educational benefits is a student's failure to achieve passing grades. Within a year after [REDACTED] left [REDACTED] for the [REDACTED] Academy and began working in classes with a student-teacher ratio of 5 to 1, [REDACTED] was able to make notable improvement in [REDACTED] academic performance.

Parent Exh. 14; Tr. 581-582. The LEA does not deny that [REDACTED]'s [REDACTED] program provided [REDACTED] with educational benefits. Supp. Br. p. 7.

#### Least Restrictive Environment

IDEA prefers mainstreaming handicapped students with the general student population. [REDACTED] does not do this. The Fourth Circuit Court of Appeals has held that the least restrictive environment provision was meant to prevent schools from segregating handicapped students from the general population, not to restrict parental options. Carter v. Florence County Sch. Dist., 950 F. 2d. 156, 160 (4th Cir. 1991).

#### The [REDACTED] 2001 IEP

[REDACTED]'s parents rejected the IEP proposed by the LEA for school year 2001-2002. Whether the attached Functional Behavior Plan would have provided strategies to cope with [REDACTED]'s involvement in physical encounters with [REDACTED] peers is a matter of speculation since [REDACTED] remained at [REDACTED]. The IEP MDR report indicates that on [REDACTED] 2001, the committee reviewed a "Functional Behavior Assessment and/or Behavioral Intervention Plan". Because the "Plan" was not in [REDACTED]'s record before [REDACTED] [REDACTED] 2001, I find it could not have been reviewed by the IEP MDR committee when it reviewed [REDACTED] record on [REDACTED] 2001. Corroboration of this finding is found in [REDACTED] Exhibit 28 which shows the IEP Committee decided on [REDACTED] 2001, that [REDACTED] "was not in need of a behavior plan". [REDACTED] Exh. 28.

Disillusioned over the revelation that [REDACTED]'s proposed IEP once again did not include services for [REDACTED] ADHD, the parents rejected the IEP of [REDACTED] 2001.

Clinical Psychologist

[REDACTED] a clinical psychologist, reviewed [REDACTED]'s IEPs and concluded they clearly established that [REDACTED] has ADHD, and that ADHD adversely affects [REDACTED]'s behavior and academic performance, even though Ritalin and other drugs prescribed by [REDACTED]'s pediatrician improve, to some extent, [REDACTED] behavior and performance. Tr. 349, 360-362, 364-366. [REDACTED] was most struck by the fact that [REDACTED]'s record shows that when [REDACTED] entered [REDACTED] freshman year of high school [REDACTED] "reading competency" was about a [REDACTED] grade level. Tr. 364-366. A comparison of [REDACTED]'s [REDACTED] grade marks with those [REDACTED] achieved at the end of [REDACTED] second quarter in the [REDACTED] grade shows [REDACTED] graduated from middle school with a C average but was failing at the end of [REDACTED] second quarter of high school. Tr. 375- 378, [REDACTED] PS Exh. 31, 32. The fact that [REDACTED] slipped from a B in Biology for [REDACTED] first quarter to an F in [REDACTED] second quarter shows [REDACTED] special education services were not working.

[REDACTED]'s review of the teachers' narratives that accompanied [REDACTED]'s year 2000 Triennial evaluation, Parent Exh. J, led [REDACTED] to conclude that they constituted a "textbook characterization of a child with an Attention Deficit Disorder that is [adversely] affecting [REDACTED] academic performance." Tr. 386.

[REDACTED] was particularly concerned over the fact that the

LEA's incomplete year 2000 evaluation, [REDACTED] Exh. 21, consisted only of a three page Eligibility Form, with no IEP or psychoeducational evaluation. Tr. 392. Further, when [REDACTED] Exh. 21 is compared with the parents' copy of the same document, Parents Exh. J, it appears that 1A, the page that called for a Functional Behavior Assessment, was omitted from the LEA exhibit.

In [REDACTED]'s opinion neither the [REDACTED] 2000, nor the [REDACTED] 2001, IEP committees attempted to deal with [REDACTED]'s "primary developmental handicap which has characterized this child's development since at least grade one." Tr. 416.

A point of striking disagreement between [REDACTED] and the LEA's special education personnel, [REDACTED] and [REDACTED] is [REDACTED] opinion that a propensity for physical aggression is an attribute of a "high degree of ADHD". Tr. 486-487, 491-494.

[REDACTED]'s judgment was that [REDACTED] is a "hot-head whose ADHD would contribute to [REDACTED] dyscontrol" especially where [REDACTED] felt [REDACTED] was the focus of aggression by certain of [REDACTED] classmates. Tr. 498. At the hearing on [REDACTED] expulsion, it was shown that [REDACTED] was involved in 12 instances of "immature and impulsive behavior" as well as "disrespect for adults" in middle school and [REDACTED] first semester in high school. [REDACTED] Exh. 7, 30. [REDACTED] pointed out that [REDACTED] thought [REDACTED]'s teachers knew or should have known [REDACTED] had a high degree of ADHD, that it interfered with [REDACTED] educational performance, and that they tried but failed to accommodate [REDACTED] through the limited services provided under the specific learning disability category assigned [REDACTED] Tr. 511-514. Because this did

not provide for the development of strategies for behavioral intervention, that category did not provide [REDACTED] with a critically needed service.

#### [REDACTED]'s Suspension

At 1:00 p.m. on Monday, [REDACTED] 2001, [REDACTED] a [REDACTED] year old student at [REDACTED] School, engaged in a fist fight with another [REDACTED] grade student. As a result of this violation of the rule against fighting, [REDACTED] was suspended for 10 days and recommended for expulsion by the principal, [REDACTED]. Parent Exh. 1. [REDACTED]'s letter to [REDACTED]'s parents advised that [REDACTED] was suspended for "ten school days, commencing Tuesday, [REDACTED] 2001 and ending on Wednesday [REDACTED] 2001".

This notice was not received by [REDACTED]'s parents until Wednesday, [REDACTED] 2001. This delay was a violation of [REDACTED]'s Public School Regulation 2610.14. Bench Exh. 1, p 11. It was not, however, a procedural violation that infringed [REDACTED]'s appeal rights.

[REDACTED]'s [REDACTED] was informed of the altercation by [REDACTED] and met with the principal's assistant, [REDACTED], on [REDACTED] and [REDACTED] 2001. In response to [REDACTED] inquiries [REDACTED] was informed by [REDACTED] of the action [REDACTED], the principal, had taken. Through [REDACTED] and [REDACTED], [REDACTED] had timely notice that the principal had suspended [REDACTED] for 10 days and recommended [REDACTED] expulsion for fighting. Tr. 50, 172, 188, 216, 780-781, 785. When [REDACTED] advised [REDACTED] that the "recommendation for expulsion" was "Out of [REDACTED]'s hands", [REDACTED] did not seek a meeting

with the principal nor did [REDACTED] "offer to meet with the student and parent, prior to the hearing to explain the expulsion process and to discuss the facts leading to the expulsion recommendation," as required by Regulation 2610.14P, p 14.

[REDACTED] was removed from the public school system by [REDACTED] parents prior to the expulsion hearing. After the hearing, [REDACTED], the hearing officer, affirmed the suspension and held in abeyance the recommendation for expulsion. [REDACTED] Exhs. 7-9. The principal's procedural oversight was not shown to be prejudicial to the rights of the parents to prepare for the expulsion hearing.

#### The Manifestation Determination

[REDACTED] a Special Education Resource Specialist for the [REDACTED] Public Schools, served as chairperson of the Manifestation Determination Review. The rules governing Long-term removals of special education students are set forth in 20 U.S.C. 1415(k)(4); 34 C.F.R. 300.519 to 529; and 8 VAC 20-80-68 C.

34 C.F.R. 519(b) provides that a change in placement of a child with a disability occurs if:

(b) the child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

8 VAC 20-80-68 C.1.b and C.2.a.. provide that if:

A series of removals constitutes a pattern because the removals cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

A student with a disability may be removed consistent with subdivision 1 of this section for any violation of school

rules to the extent removal would be applied to a student without disabilities.

8 VAC 20-8-68 C.2.d. then provides that:

The local education agency shall ensure that the following procedures are implemented either before or not later than 10 business days after either first removing the student for more than 10 school days in a school year or commencing a removal that constitutes a change in placement under subdivision 1 of this subsection . . .

And 8 VAC 20-80-68 C.2.d.(1) requires that

If the LEA did not conduct a [functional behavior] assessment and implement a behavioral intervention plan before the behavior that resulted in the removal . . . the agency shall convene an IEP meeting to develop an assessment plan."

In lieu thereof 8 VAC 20-80-68 C.d.(2), provides that,

The functional behavior assessment may be a review of existing data that can be completed at the IEP meeting.

The record is replete with factual documentation of the

██████████'s need for a behavioral intervention plan. Further, the LEA was at all times aware that ██████████ displayed the behavioral characteristics of ADHD. At least since ██████████ 2000 the LEA recognized that ██████████ needed behavioral intervention strategies. Parents Exh. J, IEP Team Report, p. 1-A.

After ██████████ entered high school at ██████████, ██████████'s behavior became more erratic. ██████████ Exh. 22, 23. ██████████, the principal's assistant at ██████████, closely observed ██████████'s behavior. ██████████ provided a first hand account of ██████████ need for a "very structured environment" and of ██████████ inability to attend ██████████ classes. Tr. 214. On ██████████ 2000, ██████████'s IEP noted that ██████████ "behavior impedes ██████████ learning or that of others" and that "positive intervention strategies, and supports have been considered". Parents Exh. K. But,



as the record shows, at the IEP meeting of ██████████ 2001, at a time when ██████████'s behavior over the fall demonstrated the greatest need for intervention strategies, the IEP committee decided that "a behavior plan was not necessary." ██████████ Exh. 28. Five days later ██████████ was suspended and recommended for expulsion for inappropriate behavior. ██████████ Exh. 4.

Because the functional behavior analysis or plan that may or may not have been developed in the spring of 2000 at ██████████

School was not adopted or made part of ██████████'s IEP's of ██████████ 2000 or ██████████ 2001, ██████████ Exh. 26, 27, it could not have been reviewed by the IEP MDR Committee. There is no evidence that the Manifestation Committee itself made a Functional Behavioral Assessment as required by 8 VAC 80-68 C.2.d.(1)(2). Insofar as the record shows, neither, ██████████ the school psychologist nor ██████████ reviewed or discussed a behavioral assessment plan or intervention strategy with the IEP MDR committee.

Without developing or reviewing a functional assessment plan and/or intervention strategy, the IEP MDR of ██████████ 2001, was without jurisdiction to find ██████████'s conduct "was not" a manifestation of ██████████ learning disability. 20 U.S.C. 1415(K)(4), (C)(i)(ii)(I); 34 C.F.R 523(d). Accordingly, I find the IEP MDR committee failed to carry the burden of showing that ██████████'s behavior was not a manifestation of ██████████ ADHD, learning disability. 34 CFR 300.523(d), 524; 8 VAC 20-80-50.C.5.c.

#### Conclusions

Based on a preponderance of the probative evidence, I find:

1. [REDACTED] has an ADHD-OHI, specific learning disability.
2. The LEA's denial of special education services for [REDACTED]'s ADHD-OHI, specific learning disability adversely impacted [REDACTED] educational performance.
3. The LEA's IEPs for the 2000-2001 and 2001-2002 school years were inappropriate and failed to provide [REDACTED] with a FAPE.
4. Absent the parents' request, the LEA was not required to seek a psychoeducational evaluation of [REDACTED] in the year 2000.
5. [REDACTED]'s ADHD-OHI specific learning disability was responsible for the behavior that led to [REDACTED] suspension on 2001.
6. The parents' request for a due process hearing in 2001 was not barred by laches.
7. [REDACTED]'s private placement at [REDACTED] Academy provided [REDACTED] with educational benefits.
8. The IEP MDR committee lacked authority to find [REDACTED]'s behavior was not a manifestation of [REDACTED] ADHD specific learning disability.
9. [REDACTED]'s parents are entitled to reimbursement for their tuition expenses in the amount of \$22,656.00.

So Ordered this [REDACTED] day of [REDACTED] 2002.

[REDACTED]  
[REDACTED], ALJ Ret.  
Supreme Court Hearing Officer

Local Hearing

State Level Appeal



**CASE COVER SUMMARY REPORT**

[Redacted] Public Schools  
School Division

[Redacted]  
Name of Parent

[Redacted]  
Name of Child

[Redacted] 2002  
Date of Decision

[Redacted]  
Counsel Representing LEA

[Redacted]  
Counsel Representing Parent/Child

Parents  
Party Initiating Hearing

Parent  
Prevailing Party

**Hearing Officer's Determination of Issue(s):**

1. Did the parents fail to provide appropriate prior notice of [Redacted] removal from [Redacted], including notice of rejection of the IEP proposed?
2. Did the parents indicate specific concerns with [Redacted] IEP at the IEP meetings?
3. Did the [Redacted] IEP address all areas of suspected disability?
4. In developing the [Redacted] IEP, were the evaluations of the parents' independent experts considered?
5. Is [Redacted] an appropriate placement?

**Hearing Officer's Orders and Outcome of Hearing:**

That the parents provided an appropriate notice of the unilateral placement; that the parents indicated their specific concerns to [Redacted] about the IEP; that the [Redacted] IEP did not sufficiently address all areas of suspected disability; that the [Redacted] IEP failed to sufficiently consider the independent expert evaluations; that [Redacted] is an appropriate placement.

ORDER: that the parents be reimbursement for [Redacted] placement at [Redacted] retroactive to [Redacted] 2001 and reimbursement for the independent evaluations.

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.

[Redacted]  
Printed Name of Hearing Officer

[Redacted]  
Signature