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VIRGINIA: DEPARTMENT OF EDUCATION

SPECIAL EDUCATION DUE PROCESS HEARING

** **Public Schools**

v. **DECISION**

**

I. INTRODUCTION

** Public Schools initiated this due process hearing on [redacted] 2001, by mailing to the parents a letter and enclosed request for a due process hearing form. The School is requesting approval of a proposed IEP with a residential school placement. The parents declined permission to implement the IEP and placement. Mediation was also offered, but the Parents did not respond either requesting or declining mediation. This hearing officer was appointed by letter dated [redacted] 2001. The due process hearing was originally scheduled for [redacted] 2001 but continued at the request of both parties to [redacted] 2001. The Parents did not provide a list of witnesses and exhibits prior to the hearing. The Schools were represented by **. Mr. and Mrs. ** were both present but not represented by counsel. The hearing officer heard testimony from six school witnesses and from ** .

II. FINDINGS OF FACT

1. ** was born on [redacted] **. At the time of the hearing [redacted] was thirteen years old and

chronologically in the [redacted] grade.

2. ** attended regular education in ** Public Schools through [redacted] 1999, when [redacted] was found eligible for special education.

3. ** came to the attention of the special education director in 1995 as a result of numerous conduct reports and consequent disciplinary actions. (SB 1)

4. ** was referred to child study team in [redacted] 1996 for inappropriate behaviors which included class disruption, foul language and aggression. (SB 2). The child study team declined to intervene at that time but recommended that the student meet with an outside counselor and that [redacted] parents deny involvement in baseball until ** behavior improved. (SB 3)

5. ** aggressive and disruptive behaviors continued during the 1996 to 1997 school year (SB 4) and the 1997 to 1998 school year (SB 5). ** [redacted] grade teacher, **, described in a progress report how [redacted] poor attitude and acting out behaviors "consistently interfere with [redacted] ability to achieve as much a[redacted]ould academically". (SB 6).

6. ** was again evaluated for special education services in early 1998. The psychological evaluation suggested the possibility of a thought disorder and noted significant depression. The psychologist recommended referral to the child study team, referral to a psychiatrist and individual and family therapy. (SB 10)

7. ** was found "not eligible" for special education on [redacted] 1998 (SB 13); however, because of ongoing negative behaviors (SB 12) [redacted] was referred again in [redacted]. 1998. (SB 14).

8. On [redacted], 1998, ** had a clinical intake evaluation at the Community Services Board and was referred for psychiatric evaluation. On [redacted] 1998, ** made the following notes of [redacted] impressions: "major depression with psychotic features; borderline intellectual functioning versus learning disability - patient has a lot of scatter in [redacted] subtests from eleven to one". The doctor noted the following plan "strongly, emphatically recommend Paxil and Risperdal to start". The notes further indicate that the [redacted] was reluctant to give medication and stated [redacted] wanted to pray about it. (SB 16) Subsequent notes by the social worker state that [redacted] did not think medication was necessary because [redacted] is better. (SB 16)

9. ** attended a regular class at ** Elementary School in the [redacted] grade for the 1998 to 1999 school year. The principal, ** sent a letter to ** dated [redacted] 1998 describing the following behaviors:

> "** is frequently very aggressive with other students. [redacted] teases, pushes, and hits them, for what seems to be ... intimidation purposes. [redacted] disrupts instruction in the classroom, often getting up to say something to another student, to bump into them or to tap someone on the head, shoulder, etc. When [redacted] behavior is discussed with [redacted], [redacted] will most often refuse to talk. There are times ... [redacted] will admit that [redacted] did what [redacted] was accused of, but will tell [redacted] parents that [redacted] did not. [redacted] has admitted doing the following in the cafeteria] sticking [redacted] fingers in other students food, licked bottles of juice and then handed them back, licked another child's ice cream and handed it back to the child, etc. Several children said [redacted] blew [redacted] nose into a napkin, and then put it back onto another child's back. When I told [redacted] that I would like [redacted] to tell [redacted] what happened, [redacted] said that [redacted] did not do anything. This was just

a few seconds after ■ had admitted to this conduct. (SB 17)

10. During the 1998-1999 school year ** was taken off the regular bus because ■ would not stop bothering other students, would not stay in ■ seat and was disrespectful to the driver who attempted to correct these behaviors. The Principal spoke with ** ■ who responded that the devil was causing ** to act this way. (SB 17).

11. On ■ 1999, ** was found eligible for special education in the category "Serious emotional disturbance". Both parents were present at this meeting and agreed with the recommendation. (SB 20)

12. An IEP was developed on ■ 1999 to provide special education services for all subjects, for the total school day in a day treatment program. (SB 22)

13. The day treatment program is a cooperative venture of the **Public Schools and the Community Services Board. It is located in two trailers at the middle school/administration building complex in ** .(Tr. 134)

14. To provide funding for necessary services ** was referred to FAPT (Family Assessment and Planning Team) and CPMT (Community Policy and Management Team). CSB would provide crisis intervention, case management and group therapy. Plan recommendations indicate that ** was in need of these services to assist with ■ behavior problems at school. (SB 23).

15. On ■ 1999 ** and ■ signed a behavior intervention plan which prescribed a "timeout" for specified disruptive behaviors. If the student refused to cooperate with timeout procedures the school would contact ■ parents to remove ■ from school for the rest of the day. If ** presented a continuous disruption and refused to comply and the parents could not be

reached, the sheriff's office would be contacted to remove [redacted] from school property and a parents conference would be required prior to reentry. (SB 24)

16. ** behavior did not improve. Beginning in [redacted] 1999 [redacted] was being suspended from school and from the bus. (SB 25)

17. **, an instructional assistant in the day treatment program, testified that ** exhibited "very aggressive behavior on a daily basis". [redacted] constantly made threatening remarks to other students and staff, threw chairs and furniture, pulled a child out of a chair, put other children in headlocks. The instructional time for ** and all other students was hindered by this disruptive behavior. (Tr. 45-47)

18. Beginning [redacted] 1999, ** was assigned an individual one on one aide, ** (Tr. 42) [redacted] behavior did not improve, although [redacted] did get more work done with this constant supervision. [redacted] completed [redacted] work on average two out of five days. [redacted] threw a chair at Ms. ** but then denied this. (Tr. 47, 50)

19. On [redacted], 2000, ** was discharged from the day treatment program following an incident during therapy session when [redacted] because aggressive with [redacted] aide and threatened to kill [redacted] two therapists with a knife. (Tr. 27, SB 28)

20. ** did take prescribed medication sporadically in [redacted] 1999 but this was discontinued by [redacted]. (SB 26, 29). Psychiatrist Dr. ** concluded that since ** were opposed to psychotropic medications the only alternative was placement in a closed, residential setting where ** could be observed continuously and [redacted] response to behavioral interventions could be studied. (SB 29)

21. **, MSW, day treatment program supervisor, worked with ** from [redacted] 1999 to

2000 for the therapeutic part of day. testified that the only improvement in behavior was observed during the period was on medication. was hospitalized in 1999 with parents consent. Following another prescreening in 2000 voluntary hospitalization was recommended; however, the parents did not agree. (Tr. 18, 25-26). 22. ** noted a lack of parental involvement in the treatment process. report states that ** consistently refuse to believe reports of ** oppositional and aggressive behaviors, believing that was provoked by other students or that staff was exaggerating the incidents. The ** did not participate in family counseling; they attended meetings but failed to return sixty percent of the daily point sheets and did not use ** notebook, both techniques designed for communication between parents and therapists. Parents did not follow through with psychiatric appointments and stopped administering psychiatric medications. (SB 32) 23. Following discharge from the CSB day treatment program the public school requested funding for the day treatment program at ** Center and daily transportation to and from that center in Virginia. (SB 34)

24. ** Center accepted ** into their day treatment program on condition that the family accept a medication regime if recommended by the treatment team. (SB 35)

25. The ** Center has two self contained academic classes. Each class has six to eight students, one teacher and one counselor. ** ** also had a one to one aide. The center services students on a continuum from conduct disorders to extreme mental illness. The age range is six to eighteen. (Tr. 57-58)

26. Psychiatric evaluations of ** ** have noted auditory and visual hallucinations, enuresis and fear of the dark. (SB 37)

27. ** was admitted to ** 2000, no medications were prescribed initially at the

request of parents. (SB 38)

28. **, Clinical Director of ** testified that was involved with ** on a daily basis. described the following behaviors: aggressive with peers, disruptive, laughing, cursing, running from the room, instigating other children. also stated that ** was engaging, likeable and sometimes compliant, that was also sometimes tearful and made statements of suicide and self harm. During sister's pregnancy made statements of wanting to harm sister or the baby. (Tr. 60-63)

29. The treatment team at ** prescribed Adderall and Zoloft. ** testified that ** behavior was worse on Monday and Tuesday as did not receive medication at home over the weekend. During the week, received medications at school, administered by the nurse in the morning and in the afternoon. (Tr. 65)

30. ** received all D's and F's for first semester grades at **. teacher ** noted that ** behaviors interfered with completion of assignments, although did a good job when on task. (SB 43)

31. ** was suspended from ** on 2000, following a serious incident during the van ride from home to the center in **. ** was seated in the front seat, a female student was in the back. ** jumped over the seat and began fighting with the female student while the driver was on the . ** made threats to the young lady and told the driver would cause an accident on the bridge. (Tr. 68-69)

32. ** was readmitted to ** under the following conditions: (1.) ** will have a one to one male aide in the car transporting to and from the center; (2.) ** has agreed to comply with recommended medication treatment at all times including weekends and evenings; and (3.)

Assignment of new family therapist who has been a clergyman and can approach treatment from a religious and spiritual perspective. (SB 45)

33. ** was discharged from ** on 2001 following another incident. told staff was looking for a knife which left in the transport car. threatened to use the knife on a female student and staff at the school. The car was locked, but the driver subsequently found the knife. which had a three inch blade with a sharp tip and serrated edge. (Tr. 70) (** explained that ** had been eating an apple with the knife when was picked up by the driver; did not take the knife to school as a weapon. Tr. 196) The discharge summary from ** strongly recommends residential treatment. (SB 46, 47)

34. An IEP committee meeting was scheduled to revise ** IEP. The meeting was scheduled for 2001, the IEP was signed on 2001 providing for current IEP goals and objectives to continue during a period of homebound instruction pending a determination of the most appropriate placement. (SB 48, 49). The public school then developed an IEP for residential placement dated 2001. The parent did not give consent. (SB 50)

35. An IEP review committee was held on 2001. ** again denied permission for implementation. (SB 51). During the summer ** informed ** that the family was planning to move from ** in the near future. Consequently, the School did not pursue due process at that time. (SB 52).

36. At the end of the summer the family was still living in ** the Public School agreed to continue special education homebound services for an additional thirty days pending the **'s planned move. (SB 53).

37. On 2001, ** was still residing in **; the Public School had been providing homebound services since the previous March when ** was discharged from **. ** initiated this due process hearing. (SB 55)

38. ** academic skills are significantly below grade level. Reading and math are grade, spelling grade level. (Tr. 85, SB 50, page 2).

39. The Homebound Instruction that ** currently receives does not provide an appropriate education. gets two hours per day, five days per week (for a time only three days per week due to staffing requirements) from an instructor who is not certified in special education (Tr. 99-100, 107, 165-166) Even the parents agree that Homebound is not sufficient (Tr. 205)

40. **, the Homebound Instructor, testified that ** is capable of doing better work. Although is generally well-behaved and respectful during their sessions, is not prepared for the lesson, gets distracted and cannot stay focused and has trouble paying attention. (Tr. 99-101 opined that would do better in a residential setting because could make more progress if stayed on task and needs to be around other students. (Tr. 103)

41. ** are opposed to medication and they want returned the public school. (Tr. 6-7) ** suggested a thirty day trial period. (Tr. 196) They noted that ** does have good days and argued that only negative behaviors were addressed by the public schools. Both parents testified that these behaviors were in the past and that has changed. ** testified that has seen a change in child since discharge from **. (Tr. 195-196) ** testified that the reported hallucinations could have been spirits in body which were removed through prayer at the family's church; too has seen recent improvement in ** behavior. (Tr. 198-199, 202)

42. The parents do not dispute eligibility for special education or the designation

of serious emotional disturbance.

CONCLUSIONS

** is a child with a disability, namely emotional disturbance, who needs special education and related services. ** Public Schools has tried various settings to provide ** with a free appropriate education. has not been successful in a regular classroom, a day treatment program in community, even with a one-to-one aide, and a private day treatment program at **. Both ** have had numerous conferences with school personnel about anti-social and aggressive behaviors. Although the parents suggest that school officials may have targeted ** for disciplinary action, when other students are also disruptive, they acknowledge that has been difficult to manage in the past. They believe that through prayer and God's intervention has recovered and can now function in a regular classroom.

Unfortunately, the evidence in this case compels a contrary conclusion. ** has been diagnosed with a mental illness by psychiatrists at the Community Services Board and **. Although there have been some changes in the diagnoses, upon discharge from ** was deemed to have major Depression (in partial remission), ADHD, History of Psychosis NOS, Learning Disability and Borderline Intellectual Functioning. ** is not receiving medication or therapy. has not attended school since 2001, and so has not had to interact with peers and adults outside family and church. In all prior school settings behavior has presented a danger to and to others. ** is functioning significantly below peers in all academic subjects. needs intensive help in a

very structured environment which can address both inappropriate behaviors and academic deficits.

It is important that ** have a successful school experience and learn to establish satisfactory relationships with peers and teachers. If continues on present course, will likely become involved with the criminal justice system. ** identified the following benefits of a residential setting: exposure to other peers and adults, opportunity to learn appropriate behaviors and social skills, positive role models, intensive academic instruction by teachers certified in special education, incidental learning which will result form team work and problem solving.

** identified three residential options and testified that wanted the parents to visit the schools and communicate their preference. ** in and **Hospital in are medication oriented. ** have indicated their opposition to medication. **, in **, on the other hand, will not accept a child on medication. This facility relies on personal behavior management and encourages a team approach to establish trust with peers and staff. The estimated time frame for any residential program is twelve to eighteen months. It is hoped that following this period of intensive services ** will return to family and community school.

The Public Schools are mandated by federal and state law to provide all students with a free, appropriate public education, in the least restrictive environment necessary for that child to receive educational benefit. ** was unable to function in a regular classroom or in a self contained special education class of 7-8 students, even with a full time aide. aggressive, disruptive and anti-social behaviors consistently interfered with ability to learn and progress academically. Homebound Instruction is less stressful and problematic from a discipline perspective, but does not provide sufficient academic benefits or social skill development. The IEP has both academic and

social/emotional components. The parents do not disagree with the Goals and Objectives, only with the placement. But the schools have proved by a preponderance of the evidence that it is not possible to implement this IEP in any setting except a residential placement. Consequently, I find that the IEP is appropriate and order that it be implemented as written in a residential placement.

This Decision is final and binding unless appealed by either party to a state circuit court or federal district court within one (1) year.

DATE: [redacted], 2001

[redacted]
[redacted] - Hearing Officer