

### 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 the hearing process is closed.)

[Redacted] Public Schools  
School Division

[Redacted]  
Name of Parents

[Redacted]  
Name of Child

[Redacted] 2002  
Date of Decision or Dismissal

[Redacted]  
Counsel Representing LEA

None  
Counsel Representing Parent/Child

[Redacted], Parent  
Party Initiating Hearing

[Redacted] Public Schools  
Prevailing Party

Hearing Officer's Determination of Issue(s): LEA - The appropriateness of the IEP proposed by the [Redacted] Schools for the school year 2001-02 for [Redacted], previously diagnosed as an Emotionally Disabled child.

- Parent:
1. Child improperly labeled and subsequently improperly placed
  2. Mental anguish caused by improper placement
  3. Child was discriminated against

Hearing Officer's Orders and Outcome of Hearing: It was Ordered that the School Board promptly implement the IEP of [Redacted] 2002. It was further ORDERED that [Redacted] Public Schools may conduct such testing of [Redacted], both present and future, as it deems necessary in the performance of its responsibility as LEA.

Ap.

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

VIRGINIA DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION ADMINISTRATION



DUE PROCESS HEARING REPORT

████████████████████ Public Schools School Division	████████████████████ Name of Parents
████████████████████ Division Superintendent	████████████████████ Name of Child
████████████████████ Counsel Representing LEA	None Counsel Representing Parent/Child
████████████████████ Hearing Officer	████████████████████ Party Initiating Hearing

FINDING OF FACT AND CONCLUSION OF LAW

This matter came for hearing on ██████████ 2002, in the County of ██████████, Virginia, before Brian K. Miller, duly appointed Hearing Officer.

Appearances:

████████████████████ Mother  
████████████████████ Father  
████████████████████ Student  
████████████████████ Esquire  
████████████████████ Director  
████████████████████ Assistant Principal

The due process hearing was requested on ██████████ 2002, by ██████████, f ██████████, the student, as a result of disagreement with ██████████'s placement in the Special Education Program in ██████████ County.

The issues to be resolved concern the appropriateness of the Individual Education Program (IEP) proposed by the ██████████ Schools for the school year 2001-2002

for [REDACTED], previously diagnosed as an emotionally disturbed student. [REDACTED] having noted [REDACTED] objections to the IEP and challenging the appropriateness of the placement, has filed an appeal.

[REDACTED], proceeding without counsel, defined the issues from [REDACTED] perspective to be the following:

1. Child improperly labeled and subsequently improperly placed
2. Mental anguish caused by improper placement
3. Child was discriminated against

Upon receipt of this assignment, telephone calls were placed to the [REDACTED] and the School Board's counsel resulting in the hearing being set for [REDACTED] 2002 at 9:30 a.m. During this conversation, [REDACTED] advised that [REDACTED] did not feel [REDACTED] needed an attorney to represent [REDACTED]. In a subsequent telephone conversation, [REDACTED] advised [REDACTED] had an appointment with an attorney but refused to disclose who the person was. Attempts to arrange a pre-hearing conference were unsuccessful and a telephone conference call was scheduled for [REDACTED] 2002 at 3:00 p.m. This attempted conference call was also unsuccessful as the parent did not respond. Both parties were informed by a letter dated [REDACTED] 2002 that the hearing was still scheduled for [REDACTED] 2002 and it would be heard on that date.

At the hearing, the School Board presented 56 exhibits, all of which were admitted. [REDACTED] submitted no

exhibits. The School Board called the following witnesses:

[REDACTED] Assistant Principal and [REDACTED],  
Director of Special Education. [REDACTED] called the  
following witnesses: [REDACTED], parent, and [REDACTED]  
[REDACTED], student.

#### FINDING OF FACT

Based upon all the evidence presented, the Hearing Officer makes the following findings of fact:

1. The notice requirements have been met by

Public Schools

2. [REDACTED] was born on [REDACTED] and resides with [REDACTED] and a sister. [REDACTED] parents never married. [REDACTED] has been eligible to receive special education services since [REDACTED] the date of initial eligibility. [REDACTED] was placed in the ED program at the beginning of the 1999-2000 school year. [REDACTED] was evaluated on [REDACTED] by [REDACTED], M.D. at the [REDACTED] [REDACTED] Clinic. The evaluation was conducted because [REDACTED] was using a degree of voluntary mutism to frustrate, thwart, punish, and control adults, particularly at school. [REDACTED] was so oppositional and passively defiant that expulsion had been suggested. [REDACTED] would refuse to respond, refuse to do [REDACTED] work, or refuse to comply with simple directions such as go to the classroom or to sit down. [REDACTED] was diagnosed as "adjustment disorder with mixed disturbance of emotions and conduct" and "individual outpatient psychotherapy is clearly and strongly indicated." It was also recommended that the

should also receive regular counseling.

3. [REDACTED] began presentation with an opening statement and then called [REDACTED] as the first witness. It was very apparent that relations between [REDACTED] and the [REDACTED] Public Schools, particularly [REDACTED] School, have totally deteriorated. [REDACTED] accused [REDACTED] Middle of ruining [REDACTED] not letting [REDACTED] eat, ruining [REDACTED] self esteem, causing [REDACTED] depression and putting [REDACTED] in handcuffs and punishing [REDACTED] inappropriately. [REDACTED] maintained [REDACTED] had done well at [REDACTED] School but [REDACTED] attitude and progress have completely deteriorated at [REDACTED] Middle School.

4. During presentation, [REDACTED] acknowledged that [REDACTED] had been placed in the [REDACTED] House, for two weeks, had been hospitalized at [REDACTED] for five days and was taking Welbutin, an anti-depressant. While at [REDACTED] [REDACTED] was treated by [REDACTED] who told [REDACTED] that [REDACTED] wanted [REDACTED] in mainstream classes, there was nothing wrong with [REDACTED] except [REDACTED] is getting too big for [REDACTED] pants. [REDACTED] did not submit any written reports detailing [REDACTED] findings and recommendations to the [REDACTED] Schools nor did [REDACTED] submit any reports during hearing. [REDACTED] acknowledged that [REDACTED] was receiving therapy at [REDACTED] Clinic but they stopped going; [REDACTED] is not seeing Dr. [REDACTED]; [REDACTED] had seen [REDACTED] twice but stopped going because [REDACTED] did not like [REDACTED] and did not want to go back. Once [REDACTED]

makes up [redacted] mind that [redacted] does not want to do something, [redacted] refuses, and if [redacted] explains why to [redacted] [redacted] goes along with it.

Currently, [redacted] is not attending school. [redacted] completed a period of suspension for an incident in the bathroom at school and [redacted] is now eligible to return but [redacted] refuses to return. [redacted] said [redacted] doesn't agree with the decision, [redacted] has applied to enroll [redacted] in a Christian School and in the meantime is going along with [redacted] decision.

5. [redacted] testified after [redacted] completed [redacted] testimony. [redacted] is a very attractive young [redacted] who was well dressed in the latest fashions. During [redacted] appearance in the conference room and during [redacted] testimony [redacted] demeanor, facial expressions and body language indicated outright defiance. [redacted] was sullen and surly and [redacted] displayed an attitude of contempt to all those present with the possible exception of [redacted], who made no effort to correct [redacted]. During [redacted] testimony [redacted] spoke in a exceedingly low tone of voice which was nearly impossible to hear. [redacted] was requested to speak louder on numerous occasions but [redacted] made little or no effort to comply.

[redacted] described [redacted] difficulties at [redacted], [redacted] discussed [redacted] placement at [redacted] and described in great detail the bathroom incident which lead to [redacted] suspension. [redacted] felt [redacted] didn't belong in a Special Ed class so locked [redacted] in a bathroom stall and refused to

come out and go to class. [REDACTED] was threatened with arrest, was grabbed by the arm, taken to the office and awarded punishment which [REDACTED] considered too severe. [REDACTED] denied calling [REDACTED] home bound teacher names, claimed that [REDACTED] didn't get to eat lunch on three occasions and stated it wasn't all [REDACTED] fault that [REDACTED] didn't finish the make up work. When asked "do you think you should fail the grade", [REDACTED] responded, "no because they suspended me."

During cross examination [REDACTED] admitted having problems with another student, that [REDACTED] was written up for being in a fight, admitted cursing in class, threatening other students if they threaten [REDACTED] and denied that [REDACTED] wouldn't do [REDACTED] work in class. [REDACTED] denied that [REDACTED] didn't do [REDACTED] home bound work, claimed the teacher should have turned it in and stated [REDACTED] never called the teacher names or gave [REDACTED] trouble. In [REDACTED] opinion, [REDACTED] current problems are related to [REDACTED] placement in Special Ed. [REDACTED] claimed "I don't belong there" and this justifies [REDACTED] refusal to obey instructions to go to class. [REDACTED] explained "I have the authority to decide where I go" and "I have the right to decide not to go there." [REDACTED] is aware [REDACTED] suspension is concluded but [REDACTED] won't go back to school if it means going back to Special Ed, it is [REDACTED] decision to say if [REDACTED] go back to school. [REDACTED] also admitted being involved in a fight last summer while visiting in [REDACTED] which required calling the police.



██████████ School testified that ██████████ knew ██████████ from the prior year at ██████████ and ██████████ was having problems at the end of last year. ██████████ had been labeled as Emotionally Disabled by the Eligibility Committee on ██████████. While in the ██████████ grade ██████████ was placed in a "Consult" status but ██████████ demonstrated problems with mainstream classes. ██████████ did not want to do ██████████ work, would not comply, ██████████ just wouldn't do it. This refusal behavior began in the ██████████ grade.

When ██████████ began the ██████████ grade they again tried ██████████ out in Consult and in mainstream with the understanding if it did not go well they would put ██████████ in "Social Skills." In September ██████████ refused to do work and follow directions so ██████████ was referred to Social Skills. At the end of the first grading period ██████████ was failing everything, there had been office referrals for disrespect to teachers and refusals and very disruptive behavior. ██████████ who had been qualified as an expert witness stated that in opinion Emotionally Disabled designation was correct. ██████████ felt ██████████ was not able to learn because ██████████ is not able to interact and is withdrawn and moody. ██████████ noted that ██████████ was more communicative today during ██████████ testimony than ██████████ ever is in school and commented "we got more today than we ever get in school."

During ██████████'s problems the school tried different approaches to resolve them. They tried ██████████, for the first suspension of 3 days, it was done in school in



██████████'s office. For the second suspension which was for not following rules ██████████ was sent home. ██████████'s attitude was "██████████ way or no way." In the second half of ██████████ 2001, ██████████ spent two weeks at ██████████ because ██████████ did not want to go home as ██████████ was having problems with ██████████ and was threatening to run away. ██████████ school work was sent to ██████████ at ██████████ but due to a school system mistake not all of the work was sent over. ██████████ was given an opportunity to make up the missed work but they only got 3 pieces of work back. ██████████ missed 3 weeks of school; 2 weeks while at ██████████ and 1 week while at ██████████, they received no make up work while ██████████ was at ██████████.

On ██████████ 2001, ██████████ sent a note to the school requesting that ██████████ be allowed to return to ██████████ regular classes with the explanation ██████████ would like to start things over with a better attitude. This request was addressed at an IEP meeting on ██████████ 2001 and ██████████ was placed back in regular classes. This new placement was not successful because ██████████ refused to do the work and ██████████ behavior worsened. ██████████ discussed ██████████'s progress with ██████████ and told ██████████ ██████████ was failing, denied making the statement that ██████████ would fail for the year.

On ██████████ 2002 a Functional Behavior Assessment was conducted due to concerns about noncompliance, refusal to follow directions, failure to accept criticism, defiance

of school rules and aggressive behavior. The committee recommended that [REDACTED] be moved back to self contain. [REDACTED] was present at this meeting, [REDACTED] participated and signed the forms indicating [REDACTED] consent. The self contained program was never implemented as [REDACTED] stopped going to school. [REDACTED] was notified by letter dated [REDACTED] 2002 of the attendance problem and [REDACTED] brought [REDACTED] back to school. A plan was made to transition [REDACTED] to do more testing and ease [REDACTED] back into the mainstream. [REDACTED] believed that ED Self Contain was necessary because of behavior which [REDACTED] described as "totally destructive."

Another incident occurred when [REDACTED] locked [REDACTED] in a bathroom stall and refused to come out. Several personnel tried to get [REDACTED] to unlock the door and come out. Because [REDACTED] continued to refuse to leave the stall area the School Resource Officer was placed in a position of physically removing [REDACTED] and charging [REDACTED] with Disorderly Conduct. This charge was referred to the [REDACTED] Juvenile and Domestic Relations District Court and [REDACTED] was suspended from school for 10 days for refusing to follow directions of two administrators and the School Resource Officer. [REDACTED] was scheduled to return to [REDACTED] School on [REDACTED] 2002 after completion of the 10 day suspension but [REDACTED] has never returned.

[REDACTED] expressed the opinion that [REDACTED] needed a therapeutic placement and testified that [REDACTED] had

discussed the IDP Program with [REDACTED] on [REDACTED], 2002 during an IEP meeting. The IDP Program was designed for students who need a more intensive program, it has a small teacher to student ratio, a lot of 1:1 and a number of students have been successful.

7. [REDACTED] Director of Special Education, was qualified as an expert witness and testified that [REDACTED] had discussed the IDP program with [REDACTED] and suggested go look at the program and facilities but [REDACTED] stated was not interested in any [REDACTED] program and will not send [REDACTED] back. [REDACTED] described IDP as an intermediate day program which is intensively staffed. There are 5 students or less in each class. The philosophy is to help students with severe emotional problems back into the mainstream and it is another option before considering a private setting. The IDP students do transition back to regular schools. [REDACTED] further testified that [REDACTED] had talked with [REDACTED]'s teachers and reviewed the records and recommended the self contained program at [REDACTED] Middle School as the appropriate placement before considering IDP.

On cross examination, [REDACTED] went on to state that [REDACTED] is a disabled child, that [REDACTED] has been properly identified and grouping [REDACTED] with other ED students is the correct placement. [REDACTED] strongly disagreed with these opinions and again restated "you have ruined my child."

8. [REDACTED] Public Schools educators conducted an

IEP meeting on [REDACTED] 2002 and determined that [REDACTED] continues to be eligible in the Special Education Program in the Emotional Disability category. They noted that [REDACTED] is able to perform on grade level but significant behaviors impede [REDACTED] access. [REDACTED] behavior was described as extreme withdrawal and conduct problems, significant anxiety, depression, aggression, internalizing pain and hurting emotionally. [REDACTED] isn't helping [REDACTED], but, unfortunately, [REDACTED] doesn't see [REDACTED] as having problems. [REDACTED] is weak in problem solving skills and has a tendency to shut down and withdraw.

Academically, [REDACTED] possesses average ability to perform on grade level. However, [REDACTED] significant and extreme behaviors have a direct impact on [REDACTED] ability to have access in a large group setting. The IEP team agreed that the present IEP continues to be appropriate and to continue the plan through the school year. The annual review was also found to be appropriate. [REDACTED] had indicated [REDACTED] intention to be present but due to a conflict at work [REDACTED] was unable to attend. [REDACTED] and [REDACTED] both testified that in their expert opinion this placement in the ED self contained program was appropriate.

#### CONCLUSION OF LAW

Based upon all of the evidence presented, the applicable statutes, regulations and case law, and the

arguments presented, the Hearing Officer makes the following conclusions of law:

1. The IEP of [REDACTED] 2002, which considered all prior reports, studies and IEP deliberations represents the most appropriate educational program for [REDACTED] the student. In Board of Education v. Rowley, 458 U.S. 176, 188 (1982), the United States Supreme Court concluded that the "free appropriate public education" requirement is satisfied by "providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction."

The IEP of [REDACTED] 2002 meets this requirement. It is a program that represents the results of much time and effort on the part of the IEP team and support staff, including the opinions of numerous school officials and professionals who have followed [REDACTED] and participated in programs over the years. These individuals have a personal and professional knowledge of [REDACTED]'s progress and needs more than others, including possibly [REDACTED] own

2. All notice requirements and all procedural requirements of the law and regulations have been met by the school.

3. [REDACTED] is handicapped, having specific emotional disabilities and comes within the purview of the IDEA.

4. [REDACTED] requires specific education

and related services from the school in order to derive benefit from education.

5. The [REDACTED] Middle School is an appropriate environment for providing FAPE (Free Appropriate Public Education).

6. In developing the IEP the school did consider the provision of supplemental aids and services and curricular modifications in the regular classroom.

7. That the Local Education Authority (LEA) did diligently strive to secure the cooperation of the [REDACTED]. They communicated frequently with [REDACTED] and explained their proposals in writing and verbally.

#### ORDER

It is ORDERED that the school promptly implement the IEP of [REDACTED] 2002 which it had developed after properly observing all procedural requirements. It is further ORDERED that [REDACTED] Public Schools may conduct such testing of [REDACTED] both present and future, as it deems necessary in the performance of its responsibility as LEA


#### APPEAL INFORMATION

The parties are hereby notified pursuant to 8 VAC 20-80-76 0 that a decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless the decision is appealed by a party within





one year of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under Section 1415 of the Individuals with Disabilities Education Act (20 USC Sec 1400 et seq) without regard to the amount in controversy.

Dated this        day of        , 2002.

  
Hearing Officer

c. Ramona Taylor, Due Process Specialists, Department of  
Education

 Esquire  
, Superintendent  
Director, Special Education