

VIRGINIA DEPARTMENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES



Case Closing Summary Report

Local hearing X

State level appeal

Public Schools
School Division

Ms.
Parents

Child

April 9, 2004
Date of Decision

Leonard Wallin, Esq.
Counsel for School Division

None
Counsel for Parent/Child

Principal, School
Party Initiating Hearing

LEA
Prevailing Party

HEARING OFFICER'S DETERMINATION OF THE ISSUES:

The issue was 's behavior required a change of placement to an interim alternative educational setting. The manifestation determination and the evidence of her teachers and the staff proved substantially that 's behavior constituted a danger to herself and others, that it seriously interfered with her learning and that of others, and that she needed what a private day school could provide for her.

HEARING OFFICER'S ORDERS AND THE OUTCOME OF THE HEARING:

The Parties were ordered to place in a private day school effective Monday, April 12, 2004, for a period of 45 days.

The attorney for the LEA requested that this hearing officer retain jurisdiction of this case pending determination of the need for an additional expedited due process hearing in future. I advised him to advise the Virginia Department of Education, Office of Dispute Resolution and Administrative Services of his request and have the Department advise me whether retention of jurisdiction is permissible.

I hereby certify that I have completed this hearing in accordance with regulations and have advised the Parties in writing of their appeal rights. The written decision of this hearing was forwarded earlier. I advised the LEA, in the Initial Prehearing Report, of its responsibility to

submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.


F. Mather Archer April 28, 2004
Hearing Officer

VIRGINIA DEPARTMENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES



POST-HEARING REPORT

Public Schools
School Division

Ms.
Parents

Superintendent

Child

Leonard Wallin, Esq.
Counsel for School Division

Counsel for Parent/Child

F. Mather Archer
Hearing Officer

Principal, Middle School
Party Initiating Hearing

Hearing Requested 3/24/04

Hearing Officer Appointed 3/25/04

PURPOSE:

The purpose of this expedited due process hearing is to determine the appropriate placement for

ISSUES:

1. Whether _____'s behavior/disability requires a change of placement.

DECISION

Preliminary.

The hearing in this disciplinary matter took place on April 5th and April 9th of 2004. The _____ Public Schools representative, Mr. _____, was present with the School Board's counsel, Leonard Wallin, Esq. Ms. _____ was present, representing herself and her child, _____, who was also present, but only for the morning session of the hearing on April 5th.

By the adjournment for lunch on April 5th, it was apparent that Ms. _____ was not capable of serving as counsel for herself and _____. She said that she, Ms. _____, was also disabled, could not serve as counsel, and needed an attorney. Ms. _____ and _____ did not return to the hearing after lunch, and the hearing was adjourned to resume at 10 AM on the 9th.

Between hearing sessions, Mr. Wallin, Mr. _____ and I tried to obtain either an attorney or an advocate to represent her. She didn't have funds to retain an attorney. Mr. Jacob,

of PADDA, expressed willingness and ability to either represent her or attempt to obtain a representative for her. To that end, Mr. Jacob made an appointment to interview Ms [redacted] on Thursday, April 8th, preparatory to serving as her advocate at the hearing on the 9th. Mr. Jacob called me to say that Ms [redacted] did not keep her appointment with him, and that, therefore, he could not represent her in the hearing. Hence, there was no one to represent Ms [redacted] and

Since this case is an expedited hearing requested by the Schools on the basis of [redacted]'s behavioral problems, the Schools did not want the case dismissed. Ms [redacted] called Mr. Wallin and me to advise that she was not going to continue with the hearing. For this reason and because [redacted] needs an education, I ruled that the hearing would proceed on April 9th without Ms [redacted] and [redacted] being present.

After receiving the Schools' remaining evidence, having observed Ms [redacted]'s efforts at serving as counsel for [redacted] and herself, and observing the demeanor of the witnesses presented by the Schools, I decided that it was necessary that [redacted] be placed in an interim alternative educational setting in a private day school, and ordered that [redacted] be moved into such a setting immediately for a period of 45 days.

Findings of Fact.

Having heard and observed the demeanor of the witnesses, and considered the documentary evidence presented by the Schools (Ms [redacted] presented no evidence as she hadn't enough time or ability to gather her evidence in the very brief time allowed), I find the following facts.

1. [redacted] is a 14 year-old child who is classified Emotionally Disturbed (ED) with diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Depressive Disorder, NOS. She has issues of behavior, impulsiveness, and problems with attention. (Ex SB 1, SB 2, SB 19; Tr - 4/5 pp. 29-38)
2. During this school year of 2003-2004 (this school year), she attends [redacted] Middle School and is placed in self-contained classrooms. Ms [redacted] was her teacher from September through on or about December 15th in the 8th grade class. She was then transferred to Ms [redacted]'s 7th grade class where she has been through this proceeding. (Tr - 4/9 pp. 9-10; 23-24)
3. In September and October, [redacted] was in the collaborative setting in Ms [redacted]'s class and was making good educational progress. In that setting, a number of the students, of whom [redacted] was one, are conducted to a regular education class along with Ms [redacted]

- and the assistant teacher to partake of a few regular courses of study with non-disabled students several times a week. The purpose is to work toward mainstreaming these children preparatory to their entering high school. (Tr - 4/9 pp. 22-32)
4. During that period, _____ made progress educationally, and her behavior problems were comparatively minimal. However, when her mother learned that _____ was being exposed to regular education in the collaborative program, she objected and Ms _____ had to remove her from the collaborative experience. From that point on, _____'s behavior got worse, escalating to the point where Ms _____ had to transfer her to Ms _____'s 7th grade class on or about 12/16/03. (Tr - 4/9 pp. 22-32)
 5. From the time that _____ transferred to Ms _____'s class, her behavior only worsened. The result of her misbehavior has been a progressive reduction in her ability to learn. (Ex SB 9; Tr - 4/9, pp 40-48)
 6. _____ has accumulated a series of 8 DISCIPLINE SYSTEM Inquiries, between 11/24/03 and 3/10/04 reporting _____'s behavior over that period. (Ex SB 25 -33; Tr - 4/9, pp 9-12). These discipline inquiries are written when all the behavior intervention efforts have failed to produce change. (Tr - 4/9, p. 25). _____ runs through the halls and up and down stairs, throws books and other objects at people, bumps roughly into people, curses, uses foul language and displays other behaviors which are a danger to herself and others. (Tr - 4/9, pp. 9-20 and 25-32)
 7. A Manifestation Determination was made on 3/24/04 wherein it was determined that _____'s behaviors are a manifestation of her disabilities. (Ex SB 19) A functional behavior assessment and a behavior intervention plan were prepared on 3/3/04 and were followed. (Exs SB 10 & 11; Tr - 4/9, pp. 14-15) Following the Manifestation Determination a new IEP was prepared which decided that _____ ought to be placed in a Private Day school. (Ex 19, p 8; Tr - 4/9, pp. 20, 44-45, 50-55)
 8. _____ received a 10-day out-of-school suspension on 3/10. (Ex SB 33); Tr - 4/5, pp. 18-23). This expedited due process hearing was then requested by the Schools to effect a change of placement.

CONCLUSIONS OF LAW.

Issue: Whether _____'s behavior/disability requires a change of placement.

As noted above, the child's mother was incapable of continuing with the hearing beyond midday on the 5th. She informed one of the witnesses and me that she, too, is disabled; and it was evident from her efforts to carry on without representation. Although Ms _____ tried to obtain

an attorney, she is without funds to do that. Her efforts to obtain an advocate also were not successful, despite the added effort of the school people, counsel for the Schools, and this hearing officer. Consequently, Ms [redacted] (exchanged no documents and presented no witnesses or exhibits. The hearing proceeded on the 9th without either Ms [redacted] or [redacted] present upon Ms [redacted] stating that she would not continue with the hearing. These conclusions of law are, therefore, based upon the Schools' documentary and witness' evidence.

There is no question of [redacted]'s disabilities. The witness' testimony presented in detail her misbehaviors: running through halls, up and down stairs endangering herself and others, without regard for her own safety or that of others; foul language directed at peers, staff and faculty; invasions of classrooms other than her own and disrupting the school work going on in those classes; throwing books and other objects at people. The manifestation determination in April made it clear that her behaviors were and are dangerous and a manifestation of (caused by) her ADHD and ED disabilities.

At the beginning of this school year, [redacted] was in Ms [redacted]'s 8th grade self-contained special education class, comprised of a mix of 8th grade students (the majority) and 7th grade students. Although she exhibited some misbehavior, it was nothing like her "activities" after October. She was performing well and progressing in her learning. She was involved in the collaborative group of students in Ms [redacted]'s class who visited regular education classes in language arts and math, along with Ms [redacted] and her assistant teacher, for the purpose of enabling the students to become incorporated into the general education setting. Thus, [redacted] was receiving both a special education curriculum and, to a lesser extent a general education curriculum. The evidence is clear that she was receiving educational benefit from that mix of curriculums.

So what happened to bring about the misbehavior the evidence shows began in the October-November period? Ms [redacted]'s testimony points to the time in October when Ms [redacted] learned that [redacted] was in the collaborative setting. Ms [redacted] objected to that placement for [redacted] and demanded that she not be involved in the general education setting at all. Ms [redacted] thereupon withdrew [redacted] from the collaborative setting, and her misbehavior escalated. In short, [redacted] wanted to remain in the collaborative setting and, being frustrated in her wishes, she acted out that frustration on an increasing scale fueled by her disabilities. Finally, it was determined that [redacted] might do better if she was transferred to Ms [redacted]'s 7th grade class, which was a mirror image of Ms [redacted]'s 8th grade class. That effort to find a solution for [redacted] was unsuccessful, and no matter what behavior interventions were applied for

, her misbehaviors not only did not change, but continued to escalate.

By March, 's teachers and other staff personnel concluded that was no longer able to learn because of her behaviors. They evidently determined that for 's sake suspension was called for followed immediately by a due process hearing. After several in school suspensions, on April 10th was suspended for 10 days beginning on the 11th until April 25th. On April 24th, the Schools requested a due process hearing.

's work effort and desire to learn are without question. Her teachers, and those staff working with her, testified that she is a very bright child who is intelligent and capable of learning and graduating into high school. It is most unfortunate that she was not allowed to continue to receive regular education, along with her special education, in the collaborative setting provided for her in Middle School. 's frustrations with her placement in a 7th grade class when she is an 8th grader, and the frustration of her desire to continue receiving some regular education along with the special education, have triggered actions and behaviors that the Schools have shown are dangerous to her and to others.

Accordingly, the Schools' evidence substantially shows that if were to remain in her current setting, and now even in the collaborative setting she experienced early in this school year, her current placement is seriously likely to result in physical harm to herself and others. Her current placement with the collaborative setting included, but for the unfortunate turn of events in October-November, is appropriate for for it was moving her to readiness for high school. In addition, the Schools efforts not only minimized the risk of harm, but I believe prevented harm because of their use of all appropriate aids and services available to the teachers and staff.

The IEP team determined the interim alternative educational setting, namely the change of placement to a private day school. That placement will enable to recover from the damage done by denying to her the collaborative setting for her education, and to progress in the general curriculum with all the services and modifications appropriate to her education so as to meet the goals set for her in the current IEP. The alternative setting chosen for includes the necessary services and modifications to address 's behavior to prevent it's recurring.

Accordingly, it is **ORDERED** that be placed in a private day school for a period of 45 calendar days from and after April 12, 2004.

The summary of this decision set forth in the Addendum to Prehearing Report dated April 15, 2004 is incorporated herein by reference.

NOTICE: This decision is final and binding unless it is appealed by either party to a State circuit court within one (1) year following the issuance of this decision on April 15, 2004, or to a Federal district court, without regard to any amount in controversy.

 April 21, 2004
F. Mather Archer
Hearing Officer

cc: Parties and Counsel or advocate
Virginia Department of Education