

VIRGINIA DEPARTMENT OF EDUCATION

CASE NO: 23-001

██████████ PUBLIC SCHOOLS
School Division (LEA)

████████████████████
Parents

PATRICK ANDRIANO
Lawyer representing LEA

ELIZABETH LANCASTER
Lawyer representing Student/Parent

████████████████████
Student

RICHARD M. ALVEY
Hearing Officer

DECISION

Procedural History:

This matter was filed on June 23, 2022. On July 14, 2022, a pre-hearing conference was held. Participating in the conference were Richard M. Alvey, the hearing officer; Patrick Andriano, attorney for the LEA; ██████████, the parents; Elizabeth Lancaster, attorney for the parents/student; Sarah Kish, Debbie Rose, and Ellen Bachman, representatives for the LEA; and Reggie Frazier, monitor.

The parties discussed whether this hearing is to be regarded as expedited and the Hearing Officer decided it was not. A resolution attempt was made on July 8, 2022. The Parents declined mediation. The LEA filed a timely Answer. A hearing was scheduled for August 17, 2022, commencing at 9:30 a.m. at the ██████████ Administration Building. The parties were directed to exchange a list of witnesses and exhibits by August 10, 2022. The hearing was closed. Evidentiary issues were discussed and the parties agreed to use only the document submissions provided by the LEA. An LEA motion to dismiss at the beginning of the hearing was denied. Since the parties wished to file written briefs, the due date for a decision was extended to September 21, 2022 at the joint request of the parties.

Background:

The Student is ██████████ and in the ██████th grade. ██████ receives special education services through an Individual Education Program (IEP). The Student has been diagnosed with attention deficit disorder (ADD) and a severe processing deficit.

On February 7, 2022, a school mate reported to LEA staff that the Student had been sexually harassing her and on February 15, 2022 that school mate filed a formal Title IX complaint asking for an investigation into her allegations that the Student sexually harassed her in violation of school policies. The LEA then sent the Parents a letter stating their [REDACTED] would be removed from all classes on an emergency basis, restricted from the buildings and grounds and not allowed to take part in any school activities. The Student was directed to participate in distance learning classes provided through a virtual format until an investigation is completed. The emergency removal was effective immediately. An investigation by the local police department was concluded on March 4, 2022 without charges. The Title IX investigation ended on June 8, 2022 with a finding favorable to the Student. However the LEA continued with the virtual format for the remainder of the school year.

On March 10, 2022, the Parents attended an IEP amendment meeting to discuss necessary changes needed to implement the IEP in the Student's new virtual learning format. This was eighteen school days after the February 15 conversion to the virtual format. The Parents agreed to the changes in the IEP with the knowledge the virtual format would continue.

Commencing February 15, 2022, the Student was restricted from entering the LEA buildings and grounds. The Student was not permitted to attend or participate in school activities or extracurriculars with his nondisabled peers.

The Parents have enrolled the Student in a private school and seek compensation from the LEA for tuition.

Issues:

1. The Parents argue the removal of the Student to a virtual format was a disciplinary change that constituted a change of placement.
2. The Parents argue the removal of the Student to a virtual format triggered the requirement to conduct a manifestation determination review (MDR).
3. The Parents argue they are entitled to compensation for enrolling the Student in a private school.

Findings of Fact:

The Parents argue that the removal of the Student to a virtual format was a disciplinary change in placement and the LEA argues the removal was a change in platform. The LEA position is more persuasive. I find that simply moving a student from a brick and mortar school to a virtual platform does not constitute a disciplinary change in placement. During [REDACTED]

█ grade, the Student was moved to a virtual platform due to covid concerns. (See page 139 of the transcript) In the present situation, █ was moved to accommodate a Title IX investigation. In neither case was █ found to be deserving of disciplinary treatment.

The evidenced presented at the hearing clearly demonstrated that the Student was provided with special education services while in the virtual format, that █ made substantial progress and that the Parents consented to this platform when one parent signed the revised IEP. Whatever deficits existed while on the virtual format was not significant enough to induce the Parents to seek compensatory education services.

Though the Parents did not request a MDR when the Student's platform was changed, they certainly could have done so and the issue would have been joined then. And, if the Parents felt a MDR was required, they could have requested an expedited hearing. Instead, the Parents acquiesced in the move to a virtual platform and then formally agreed to its implementation when one Parent signed the revised IEP. I find the removal of the Student to a virtual format did not trigger a requirement to conduct a MDR.

No evidence was presented to justify the move from the LEA to a private school. The LEA correctly argues the Parents failed to show the virtual format was inappropriate and that the program offered by the private school was appropriate. Additionally, the Parents failed to present evidence demonstrating that the Student's least restrictive environment is a private day school. I find that the Parents are not entitled to compensation for unilaterally enrolling the Student in a private school.

This matter is dismissed with prejudice.

This decision will be final and binding unless either party appeals in a federal district court within 90 days of the date of this decision, or in a state circuit court within 180 days of the date of this decision.

ENTERED this 20th day of September, 2022.

Richard M. Alvey, Hearing Officer

By signature above, a copy was mailed to Patrick Andriano and Elizabeth Lancaster.