

5/1/02

CASE CLOSURE SUMMARY REPORT



[REDACTED] PUBLIC SCHOOLS [REDACTED] AND [REDACTED]  
School Division Name of Parents

[REDACTED]  
Name of Child Date of Decision

[REDACTED] COUNSEL REPRESENTING LEA PARENTS APPEARED PRO SE  
Counsel Representing LEA Counsel Representing Parent

PARENTS SCHOOL BOARD  
Party Initiating Hearing Prevailing Party

Hearing Officer's Determination of Issue(s)/: Was [REDACTED]'s behavior on [REDACTED] 2002 a manifestation of [REDACTED] disabling conditions, i.e. ADHD and OCD in that [REDACTED] struck a security guard at the [REDACTED] School.

Hearing Officer's Orders and Outcome of Hearing: [REDACTED] aggressive physical behavior toward the security guard was not a manifestation of [REDACTED] disability pursuant to the requirements and safeguards of 8 VAC 20-80-68 ([REDACTED] 2002), Code of Virginia § 22.1-277 C 5 (2) (a-c), 1950, as amended. The school board is within its rights to discipline [REDACTED] accordingly.

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], Esq.  
Printed Name of Hearing Officer

[REDACTED]  
Signature [REDACTED]

VIRGINIA: [REDACTED] PUBLIC SCHOOLS

IN RE: [REDACTED]



**HEARING OFFICER'S REPORT**

At the parents' request, Mr. And Mrs. [REDACTED] a local due process hearing was held in this matter on [REDACTED] 2002 at 9: 00 a.m. at the [REDACTED] School, [REDACTED], [REDACTED], Virginia [REDACTED]. Presiding at the hearing was a duly appointed local hearing officer, [REDACTED], Esquire. The [REDACTED] Public Schools System (hereinafter referred to as "[REDACTED]") was represented by [REDACTED], [REDACTED] Attorney. Mr. [REDACTED] appeared pro se on [REDACTED] behalf.

Prior to this hearing the parties participated in a disciplinary manifestation determination hearing. Based on the outcome of that hearing the parents timely requested a due process hearing.

There was one main issue presented by the parents for this hearing:

A. Whether [REDACTED] actions in hitting the security guard on [REDACTED] 2002 were a manifestation of [REDACTED] diagnosed disabling conditions of Attention Deficit Hyperactivity Disorder (ADHD) and/or Obsessive Compulsive Disorder (OCD)

**I. WITNESSES**

At the school board's request a subpoena was issued and properly served on [REDACTED] for [REDACTED] appearance at the hearing. The following witnesses appeared on behalf of the school board:

[REDACTED]: SECURITY SPECIALIST

[REDACTED]: STUDENT:

[REDACTED]: SCHOOL PSYCHOLOGIST.

[REDACTED] SPECIAL EDUCATION TEACHER

[REDACTED]: SPECIAL EDUCATION GUIDANCE COUNSELOR

[REDACTED]: SPANISH TEACHER

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**EXHIBITS**

**SCHOOL BOARD:**

1. Statement Affidavits re: Incident of [REDACTED]
2. Psychological Report completed by [REDACTED], Psy D
3. Progress Reports with accompanying letters
4. Binder of documents to include school records

**PARENTS:**

1. Screening follow-up document: [REDACTED]
2. Letter to Ms. [REDACTED] from [REDACTED], L. P.C [REDACTED]
3. Student Progress Reports: [REDACTED]
4. IEP dated [REDACTED]
5. Current IEP dated [REDACTED]
6. Dr. [REDACTED] letter date [REDACTED]
7. Transcript of [REDACTED] IEP meeting transcribed by Mr. [REDACTED]
8. Daily teacher goal sheets: [REDACTED]
9. Referral for Services: [REDACTED]
10. Student Progress Reports: [REDACTED]
11. [REDACTED] Handwritten letter
12. Dr. [REDACTED] letter of [REDACTED]
13. Mr. [REDACTED] Letter of [REDACTED] written to Mrs. [REDACTED]

██████████: ASSISTANT PRINCIPAL FOR DISCIPLINE

The only witness for the Parents' who testified was:

A. Mr. ██████████: ██████████ father

II. EXHIBITS FOR THE PARTIES (see attached listing)

III. WITNESS TESTIMONY:

A. ██████████: PARENT. Mr. ██████████ was extremely helpful in providing a background and history for ██████████. As an involved parent ██████████ knew the case well and was able to be an effective advocate for ██████████. In particular ██████████ described in some detail the difficulties ██████████ experienced in the sixth and seventh grade. He and his wife were supportive of the attempts by the ██████████ in developing IEP's developing behavioral goals and objectives and participating in family counseling to assist their ██████████. Mr. ██████████ characterized ██████████ problems as not specifically learning disabled but more of a behavioral issue. He did seem to be critical of the school system in that a specific plan of Behavioral Intervention had not been instituted prior to the ██████████ 2002 incident with Ms. ██████████. Also he seemed disappointed that ██████████ had never been rewarded with feeding the animals in school to encourage more positive behaviors on ██████████ part. This was not a hearing to address or challenge the particular IEP that was currently in place, but a hearing to challenge the decision of the manifestation determination hearing.

Mr. ██████████ recounted the numerous times he had met with school officials because of ██████████ unacceptable behaviors at school. He did not deny that ██████████ had had many, many in school suspensions, five day out of school suspensions, after school detentions, etc. His position was the behavioral strategies of the IEP were not consistent with the IEP-that they were never once given to ██████████. He did admit that ██████████ was able discern the consequences of ██████████ actions but he strongly believes that the death of ██████████ grandparents within weeks of each other coupled with the death's of some beloved pets impaired ██████████ ability to control ██████████ behavior based on the fact that, according to Mr. ██████████ impulsivity is characteristic of a child with ADHD.

B. [REDACTED]: SECURITY GUARD: [REDACTED] PS: A seven year veteran of working for the [REDACTED] PS, Ms. [REDACTED] has an extensive background of working with children. On [REDACTED] 2002, she approached [REDACTED] at a vending machine in the cafeteria to discuss with [REDACTED] complaints she had received from three [REDACTED] students regarding [REDACTED] behavior towards them. When she walked up to the machine [REDACTED] was putting money or making a selection. [REDACTED] was concentrating on the vending machine when I walked up. [REDACTED] turned and pushed me. (see Tr. Pg. 89)

The push in the center of her chest with [REDACTED] right hand made her step back and caused her to restrain [REDACTED] arms. Then [REDACTED] began to curse the security guard. Although she tried to get [REDACTED] to settle down, [REDACTED] never did.

C. [REDACTED]: STUDENT, [REDACTED] PS Having established that [REDACTED] knew the difference between the truth and a lie, [REDACTED] was asked several questions by counsel for the school board. [REDACTED] denied having any problems with the three [REDACTED] prior to the pushing incident with Ms. [REDACTED]. [REDACTED] asserted that [REDACTED] only touched Ms. [REDACTED] with the side of [REDACTED] body and arm. According to [REDACTED] version, Ms. [REDACTED] was the aggressor for some unknown reason towards [REDACTED]. [REDACTED] claimed to invaded [REDACTED] space when all he wanted to do was use the vending machine. [REDACTED] testimony was not very credible because [REDACTED] knew why we were having the hearing. [REDACTED] knew that [REDACTED] behavior had cause d [REDACTED] to be home schooled since [REDACTED] 2002.

D. [REDACTED]: SCHOOL PSYCHOLOGIST. Although Mr. [REDACTED] had had no direct contact with [REDACTED], [REDACTED] had read and reviewed Mr. [REDACTED] role in this particular case was to review the psychological report that Dr. [REDACTED] had done based on testing with [REDACTED]. (Tr. Pg. 129) (see School Board exhibit #2) After a discussion of the implications of a child having ADHD and OCD [REDACTED] specifically applied the meaning of these terms to [REDACTED] behaviors in school. For example in manifesting [REDACTED] OCD behavior, [REDACTED] engages in thinking that often interferes with delving into adaptive solutions to situations. [REDACTED] anxiety level causes both excessive thinking and compulsive behaviors to increase self-defeating behaviors. In terms of the ADHD, (the report says) it will often cause [REDACTED] to react in situations in a manner that may be out of step with what others would expect.

██████████ participated in the manifestation determination hearing in this matter. When asked if ██████████ behavior at ██████████ vending machine was related to either OCD or ADHD, ██████████ indicated that nothing in ██████████'s report supported either diagnoses. In fact there was nothing in the report that clearly indicated that ██████████ had a history of being behaviorally impulsive.

It is interesting to note that Mr. ██████████, aside from the findings of the psychological report, emphasized that the best predictor of future behavior is past behavior. ██████████ had never been physically aggressive to any adult until ██████████ 2002. Based on ██████████ disciplinary history, ██████████ resisted the directions of authority figures but verbally not physically. ██████████ stated that ██████████ was a very bright child; therefore, there was nothing to indicate that ██████████ disability would have impaired ██████████ ability to understand the impact and consequences of ██████████ behavior. In addition there was nothing to substantiate any relationship between the behavior that he committed in the cafeteria and his impairment. Even techniques of allowing ██████████ to "cool down" prior to talking to ██████████ about ██████████ behavior is a coping mechanism to use "after a questionable behavior had occurred.

E. ██████████ **SPECIAL EDUCATION TEACHER.** Certified for MRED and LD, Ms. ██████████ was ██████████ Language Arts teacher. As she follows the regular ██████████ grade curriculum, she uses daily reports to communicate ██████████ in class behaviors to ██████████ parents. Academically ██████████ was very smart and very capable of doing the work; but there are times when ██████████ simply refuses to work. When ██████████ was not in a good mood she would leave ██████████ alone for a while and make sure that other kids were not bothering ██████████. Often she would let ██████████ go to see ██████████ guidance counselor as needed. On ██████████, the day before this incident she reported that there was nothing unusual about ██████████ behavior.

On the actual day of the incident she again reported that there was nothing unusual about ██████████ behavior. Ms. ██████████ felt the IEP that was in place for ██████████ was appropriate and the behavior modification techniques that were in place to assist ██████████ in learning was appropriate. Emphatically based on her history of teaching ██████████ she states: ██████████ could have stopped ██████████ and reasoned. (Tr. Pg. 168)

F. [REDACTED]: SPECIAL EDUCATION GUIDANCE COUNSELOR

Ms. [REDACTED] was [REDACTED] guidance counselor. Alerted by Mr. [REDACTED] that a favorite pet had died and that [REDACTED] might be depressed or upset, Ms. [REDACTED] found [REDACTED] to determine [REDACTED] mood and possible behavior difficulties on [REDACTED], 2002. Having spoken with [REDACTED], she had no particular concerns about [REDACTED] reactions that day. According to her. "[REDACTED] wasn't crying. [REDACTED] wasn't upset or anything." (Tr. Pg. 178)

Nothing in her testimony indicated that [REDACTED] did not know right from wrong, and [REDACTED] seemed to be able to control [REDACTED] with proper behavior techniques in place.

G. [REDACTED]: SPANISH TEACHER Ms. [REDACTED] is a veteran Spanish teacher. Even [REDACTED] admitted she was her favorite teacher. She is not a special education teacher.

With thirty children to attend to she did not tolerate [REDACTED] behaviors to disrupt her class. When [REDACTED] got wound up, she invited [REDACTED] outside her class where [REDACTED] stayed until [REDACTED] could control [REDACTED]. Her class is a [REDACTED] credit course, not a [REDACTED] but [REDACTED] progresses with her academically and emotionally. As she explained: "Oh yeah. I'm an in your face teacher...I'm a touchy teacher." (Tr. Pgs. 185-186) Although she admitted she discussed the death of [REDACTED] pet with [REDACTED] on [REDACTED] 2002, she did not feel that [REDACTED] was upset beyond control. ;

H. [REDACTED]: ASSISTANT PRINCIPAL. Ms. [REDACTED] outlined a history of [REDACTED] disciplinary record for the hearing. Beginning with the [REDACTED] grade she attempted to characterize [REDACTED] behaviors as disobedience, disruption, disrespect, defiance and insubordination. None of this previous discretions involved assault or the physical touching of another person. She re-emphasized and detailed her numerous interactions with [REDACTED] especially [REDACTED] attempts to tell her that [REDACTED] acted the way [REDACTED] did because [REDACTED] was ADHD. Since the [REDACTED] BS has a zero tolerance policy in effect regarding a child hitting an adult, Ms. [REDACTED] outlined the various ways this message is relayed to the children and how the consequences of their actions are emphasized so that there would be no misunderstandings if an incident occurred. Each student is personally issued a code of conduct at registration time. Parents sign and students sign that they have read the materials, Meetings are held reviewing the policy in the cafeteria, during special assemblies. Based on [REDACTED] interactions with [REDACTED] Ms. [REDACTED] felt that [REDACTED] actions on the day of [REDACTED] 2002 were not a manifestation of [REDACTED] disabilities, the IEP

that was in place was appropriate, [REDACTED] was progressing academically and that he understood the consequences of pushing [REDACTED] in the chest.

#### IV. FINDINGS OF FACT

1. [REDACTED] is a [REDACTED] grader who at the time of the hearing was receiving homebound instruction as a result of [REDACTED] expulsion from the [REDACTED] School for physically assaulting an adult security guard on [REDACTED] 2002.

2. [REDACTED] receives special education and related services as an emotionally disturbed child diagnosed with Attention Deficit Hyperactivity Disorder and Obsessive Compulsive Disorder.

3. Having developed an IEP with the parent's input and assistance the [REDACTED] Public School System attempted to address [REDACTED] impulsive behaviors, mouthy outbursts and oppositional defiance by using behavior modification techniques along with a reward system of incentives.

4. [REDACTED] Public School System has a zero tolerance policy regarding physical aggression towards any person but particularly towards adult staff members which results in expulsion.

5. [REDACTED] did not act impulsively when [REDACTED] pushed [REDACTED] in the chest but made a thoughtful, conscious effort to assault her.

6. The IEP and the student's placement at the time of the incident was appropriate.

7. [REDACTED] disability did not impair [REDACTED] ability to understand the impact and consequences of the behavior subject to the disciplinary action; and

8. [REDACTED] disability did not impair [REDACTED] ability to control [REDACTED] when [REDACTED] decided to push [REDACTED] in the chest.

#### V. CONCLUSIONS OF LAW

1. Since [REDACTED] behavior of [REDACTED] 2002 was not a manifestation of [REDACTED] disability, [REDACTED] referral to home bound instruction, out of school suspension and eventual expulsion from the [REDACTED] School system is



relevant disciplinary procedures, consistent with the treatment of a student without a disability.

VI. **DISCUSSION:** A manifestation determination hearing was properly convened in this matter on [REDACTED] 2002. The subject of the hearing was a student named [REDACTED]. On [REDACTED] 2002, a [REDACTED] grade student at [REDACTED] School assaulted an adult security assistant in the cafeteria.

As a result of the findings at the hearing, the [REDACTED] timely filed their request for a due process hearing on [REDACTED] 2002. A due process hearing was convened in this matter on [REDACTED] 2002. One continuance was granted at the request of the [REDACTED] PS system for adequate time for a review of the transcript.

A review of the evidence established that [REDACTED] was a student receiving special education services for an emotional disability which interfered with [REDACTED] ability to receive a free appropriate education. Suffering with problems of developing social relationships, attention deficit hyperactivity disorder and obsessive compulsive disorder, [REDACTED] was no stranger to the disciplinary system established by the public school system. During [REDACTED] grade year [REDACTED] had no less than 32 different disciplinary referral for everything from disobedience to disorderly conduct.

Engaged in individual and family counseling, [REDACTED] takes several medications to adjust [REDACTED] chemical balances and assist [REDACTED] in adjusting to a structured environment. To correctly assess [REDACTED] needs the school administered the required testing to [REDACTED]. Of particular interest was the psychological report prepared by Dr. [REDACTED]. (School Board Exh. #3) Nowhere in the report did Dr. [REDACTED] notate that [REDACTED] had a proclivity towards physical violence towards anyone. [REDACTED] own therapists Dr. [REDACTED] and Dr. [REDACTED] never mentioned in their letters of [REDACTED] 2001 and [REDACTED] 2001 resepctively never alluded to physical violence as part  
In fact for whatever problems [REDACTED] was experiencing from [REDACTED] [REDACTED] seemed to be improving both academically and behaviorally in the [REDACTED] grade. A review of the teachers' reports by the parents' indicated decent grades academically but unacceptable class participation, work habits, attitude, general behavior and efforts to achieve. (Exh#3) In contrast the [REDACTED]

grade teacher reports dated [REDACTED], 2002 indicate "acceptable" in all areas. (Parents' exh #10) .

Whatever triggered [REDACTED] to push [REDACTED] in the chest on [REDACTED] 2002 perhaps only [REDACTED] will ever know. [REDACTED] parents' tried to offer an explanation involving [REDACTED] love of pets and the death of a favorite pet a few days before. But that cannot explain that none of [REDACTED] teachers could substantiate any behaviors prior to or even after the incident that could explain [REDACTED] outburst. [REDACTED] father offered childhood depression as an explanation. But again there was no specific findings on [REDACTED], 2002 that would link a depressive mood to a physical assault on an adult.

The key to this entire hearing is the test that must be examined during the manifestation hearing as outlined in the Code of Virginia. (see 8 VAC 20-80-68.)

The public school system convened the IEP team within ten days after the date on which the decision was made to expel [REDACTED]. Those convened were asked to review the relationship between [REDACTED] disability and [REDACTED] pushing [REDACTED]. In this instance the persons convened determined that the behavior was not a manifestation of [REDACTED]'s disability. Members of the team reviewed all relevant information including information supplied by the parents, evaluation and diagnostic test results. Teachers provided their observations of [REDACTED]. And the team considered the IEP in effect on the date of the incident as well as [REDACTED] placement as an ED student receiving language arts resource in special education.

Once the team discussed the above criteria they moved into the second phase of the inquiry. Having determined that [REDACTED] IEP and placement were appropriate and the special education services and individual behavioral intervention strategies [REDACTED] was receiving from [REDACTED] teachers' e.g. a reward system in Ms. [REDACTED] class and a no nonsense, time-out approach in Ms. [REDACTED] class were appropriate, they reviewed [REDACTED] assault towards Ms. [REDACTED]. They found there was no relationship between [REDACTED] ADHD and/or OCD that would have predicted or correlated to [REDACTED] physical assault on her.

Neither [REDACTED] father nor [REDACTED] accepted the hypothesis that [REDACTED] disability impaired [REDACTED] ability to understand the impact and consequences of [REDACTED] actions on that day or any other day.

Was [redacted] able to control [redacted] behaviors in spite of his ADHD and /or [redacted] OCD? According to every witness at the due process hearing the answer was a resounding "yes." [redacted] knew the rules in Ms. [redacted] class. [redacted] knew the rules in Ms. [redacted] class. [redacted] encounters with Ms. [redacted] were varied and numerous. [redacted] knew her rules. [redacted] knew the school rules as well. Never before this date had [redacted] struck an adult. [redacted] might have wanted to; but [redacted] never acted. [redacted] might have placed a chair in the way for a child to trip but [redacted] never once was [redacted] the instrument of an assault. Neither one of [redacted] treating psychologists were able to say with any certainty that [redacted] would lash out physically toward an authority figure. [redacted] actions were always confined to being "mouthy" and "disrespectful" but not physical. They spoke of giving [redacted] "space" and "time out" before anyone confronted [redacted] but nothing Ms. [redacted] could have done on that day could have prevented [redacted] from lashing out at [redacted]

When [redacted] wanted to [redacted] could control [redacted] behavior. From the [redacted] grade to the [redacted] grade, the number of referrals for disciplinary reasons was on the decrease. [redacted] was learning. Some interventions were working. [redacted] just went too far testing the system.

With a zero tolerance policy regarding physical touching of an adult in effect in the [redacted] PS , that every child is intimately made aware of, there was no excuse for [redacted] behavior on this day. Unfortunately when a student makes a poor judgment choice, the best anyone can do for them is to teach them to accept the responsibilities of their actions.

IT IS HEREBY ORDERED that the findings of the [redacted] Public Schools that [redacted] behavior on [redacted] 2002 was not a manifestation of [redacted] disability, the decision to discipline [redacted] as if [redacted] was a non-disabled student is **AFFIRMED** and this case is **DISMISSED**.

[redacted signature]  
[redacted name]  
HEARING OFFICER

DATE: [redacted] 2002