

CASE CLOSURE SUMMARY REPORT



(This summary sheet must be used as a cover sheet for the hearing officer's decision to the end of the special education hearing and submitted to the Department of Education before billing)

PUBLIC SCHOOLS

School Division

Name of Parents

JULY 5, 2004

Name of Child

Date of Decision or Dismissal

CAROL S. McCOSKRIE, ESQ.

HOWARD D. DEINER, ESQ.

Counsel Representing LEA

Counsel Representing Parent/Child

PARENTS

SCHOOL DIVISION

Party Initiating Hearing

Prevailing Party

Hearing Officer's Determination of Issue(s):

Whether the school superintendent's expelling of student for selling drug on school property is reviewable by the hearing officer.

Whether there was any connection between student's disability (ADD) and her illegal actions in selling drugs on school property.

Whether student was provided F.A.P.E. during her expulsion from school.

Hearing Officer's Orders and Outcome of Hearing:

That Hearing Officer does not have authority to review the action of School Superintendent in expelling of student.

That there was no connection between student's disability (ADD) and her actions in selling banned drugs on school property.

That student was given F.A.P.E. by the school during her expulsion.

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.

EDWARD R. JOHNSON

Edward R. Johnson

Printed Name of Hearing Officer

Signature

VIRGINIA DEPARTMENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES
PUBLIC SCHOOLS



AND
Parents

Student

PUBLIC SCHOOLS,
School Division

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for a Due Process Hearing in _____, Virginia before Edward R. Johnson, duly appointed hearing officer, on June 16, 2004, under the authorization of the Individuals with Disabilities Education Act (IDEA) at 20 U.S.C. Section 1400 et. Seq. and implementing State Regulations.

Appearances:

_____, Assistant Attorney
_____, Assistant Attorney
_____, Esq. Attorney for parents
_____, Intern
Dr. _____, Director Special Education
_____, Supervisor Special Programs
_____, mother
_____, father

_____ is 16 years of age and a student in the _____ Public Schools.

(_____ PS.) During the 2003-2004 school year she was enrolled in the 11th grade at _____ High School (_____ HS).

_____ had been diagnosed with attention deficit disorder (ADD) and had been prescribed Adderall, a prescription drug, for this condition.

On March 5, 2004, another student reported to _____ (_____), an assistant principal at _____ High School, that _____ was selling her Adderall to other students. Mr. _____ arranged a meeting with _____, _____, and _____, an _____ Police Officer

on duty at High School. At this meeting readily admitted to selling the drug to other students at High School on about 20 different occasions.

As a result of this finding was expelled by the Superintendent of schools for a period of ten days on March 5, 2004 and could not return to school until March 17, 2004.

A "casual" hearing was held on March 19, 2004 and it was determined that there was no connection between 's disability and her illegal actions in selling the drug Adderall.

The question has arisen as to whether the school superintendent's expelling of for selling drugs is reviewable by the hearing officer. It seems to be the law in Virginia and many other jurisdictions that a hearing officer does not have authority to review a school board's expulsion decision. If reviewed it must be done by the school superintendent.

20 USC /Sect. 1415(b)(6) spells out the issues which may be raised in a special education hearing. They are to provide the parents and students with "an opportunity to present complaints with respect to any matter regarding relating to identification, evaluation of educational placement of the child, or the provision of a free appropriate public education to such child."

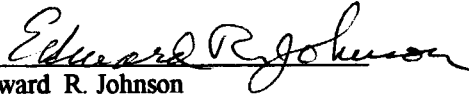
The parties are not without remedies. They may appeal to the circuit court having jurisdiction to review the action of the school board. Va. Code Ann. Section 22.1-87(Michie 2003). Therefore the hearing officer will not review the decision of the school superintendent.

There is a question of whether was given F.A.P.E. during her expulsion. The hearing officer believes that she was provided F.A.P.E. She was provided with appropriate study aids by PS personnel during this time. From the time of her first suspension beginning on March 8, 2004

, the Student's counselor at HS, and , 's special education monitor, worked to get 's school work sent home for her to do. Sometimes 's friends would pick up the work, but often packages of work were picked up by her friends and family members from the counseling office at HS.

RIGHT OF APPEAL. Right of Appeal is governed by 8VAC 20-76.0. This regulation provides 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 in a state circuit court within one year of the issuance of the decision or in a federal district court.

Dated this 5th day of July, 2004.


Edward R. Johnson
Hearing Officer

Copies furnished to:

, Ed. D., Director Special Education
Esq., Counsel for student and parents
, Esq. Counsel for Public Schools
, Esq. Counsel for Public Schools
Virginia Department of Education, Office of Dispute Resolution and Administrative Services