

OCT 15 2013

Dispute Resolution &
Administrative Services

**COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION & STUDENT SERVICES
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES**

**Re: Child, , by and through his parent, , Parent v.
Public Schools (LEA)**

Child & Parent(s)/Guardian:	Administrative Hearing Officer:
Child,	Ternon Galloway Lee, Esquire
Mr. Parent, , parent(s)	215 McLaws Circle, Suite 3A
	Williamsburg, VA 23185
Child's Attorney Advocate:	(757) 253-1570
None	(757) 253-2345

Public Schools' Attorney

Kamala Lannetti, Esq.

Superintendent of LEA:

Dr.

Cover Page

LEA

Public Schools

Special Education Director/Coordinator

For ()

Department Chairperson for
Special Education

Assistant Principal

Social Worker

Donna Whiteside

Case Manager

Special Education teacher

Parent

Child

LEA's Attorney

Kamala Lannetti, Esq.

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Child, child
Mr. Parent, parent(s)

Administrative Hearing Officer:

Ternon Galloway Lee, Esquire
215 McLaws Circle, Suite 3A
Williamsburg, VA 23185

Child's Attorney Advocate:

None

(757) 253-1570
(757) 253-2345

Public Schools' Attorney

LEA Attorney, Esq.

Superintendent of LEA:

Dr. Superintendent

DECISION

I. PROCEDURAL HISTORY¹

Parent filed a request for an expedited due process hearing on September 10, 2013. (Exh. A1). LEA received the request on the same day. (HO Exh. 4, p. 3). The Hearing Officer was appointed in this matter on September 12, 2013, and she set, by agreement of the parties, the pre-hearing conference ("PHC") for September 16, 2013. (HO Exhs. 4, 5). As agreed to by the parties during the PHC, the hearing was scheduled for September 30, 2013, and October 3, 2013, if a second day was needed.

The entire hearing was held on September 30, 2013, where exhibits admitted were joint exhibits "A" through "F"² and HO Exhibits 1 through 6. The decision is set forth herein.

II. ISSUES

- I. Was the child's behavior a manifestation of his disability?

¹ Throughout the decision, the Hearing Officer will use the following abbreviations:

September 30, 2013 Transcript	-	Tr.
Joint Exhibit	-	Exh.
Local Educational Agency	-	LEA
Hearing Officer Exhibit	-	HO Exh.

² The LEA supplied Exhibits A through D, and F. Parent supplied Exhibit E.

III. BURDEN OF PROOF

The United States Supreme Court held in *Shaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed.2d 387 (2005), that the party seeking relief bears the burden of proof. Therefore, in this case the Parent bears the burden of proof because he is challenging the manifestation determination.

IV. FINDING OF FACTS

1. Student transferred from the Former Public School Division in the Other State to the Current Public School Division ("LEA") about May 18, 2012. (Exh. C105).

2. Child's last Individualized Education Program ("IEP") from the Former Public School Division noted that Child was eligible for Special Education and related services under the category of Specific Learning Disability ("SLD") due to Child's severe discrepancy between his ability and achievement in the area of reading comprehension. The IEP of the Former Public School Division also contained a Behavior Intervention Plan ("BIP"). (Exh. D 4, 18 -21).

3. After Child's transfer to the Current Public School Division the LEA's Special Education Committee ("SEC") met on June 12, 2012, and determined Child continued to qualify for special education services with a specific learning disability due to a severe discrepancy between his ability and achievement in the area of reading comprehension. (Exh. C102, 106). The SEC noted that the Child's father had reported Child had been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and he had taken Child off his medications two years ago and was putting him back on his medications. (Exh. C102, 106, 129).

4. In establishing Child's initial IEP with the LEA on November 14, 2012, information on Child's IEP from the Former Public School Division was transferred to the LEA's initial IEP. The November 14, 2012 IEP provided that Child would be educated in self-contained special education classes. The self-contained classes had fewer students, in Child's case no more than 10 students were enrolled in his classes. In addition in the self-contained classes there was another teacher and a teacher assistant to provide one-on-one assistant to students, if needed in their area of deficiency. Accommodations included in Child's IEP were testing in small groups, extra time on lengthy written assignments, use of a calculator for math computations, and extended time on tests. (Exh. C96,143; Tr. 208-209).

5. On or about January 23, 2013, the LEA proposed placing Child in an inclusion Algebra I class instead of a self-contained setting because the educators believed Child's achievements in math indicated he was not challenged in the self-contained class and an inclusive Algebra I class that would include non-special education students would be more appropriate. Educators also thought Child's behavior would improve in an inclusive setting as he would have role models for appropriate behavior. Child's parent declined to consent to the change. Parent indicated that from past experiences with Child, he believed that such a change would exasperate Child's behavior problems and possibly cause Child to be expelled from school. (Tr. 41, 249-251, 274).

Functional Behavior Assessment/Behavior Intervention Plan

6. Although Child could be polite sometimes, by March 2013, Child had at least seven behavior incidents (mentioned more specifically below) during the 2012-2013 ("2012/13") school year. As a result, the LEA held a meeting for March 25, 2013, to conduct a Functional Behavior Assessment ("FBA"). Those in attendance included a general education teacher, the assistant principal, the principal/designee, and Child's special education teacher. Although Parent had been invited, he did not attend. (Exh. C 69, Tr. 210-211).

The established FBA noted that Child had already received eight (8) days of out of school suspension ("OSS") or in school suspension ("ISS") and a detention during the school year for failure to follow classroom and school rules. Specific behavioral infractions noted included instigating problems, using obscene language, inappropriate cell phone usage, leaving school grounds, causing class disruption, and defiance and insubordination. (Exh. C67-68).

The FBA also mentioned that Child's behaviors tended to occur when there was less structure and transition between activities; when individuals in authority such as teachers and staff were present; and at the beginning of class when the teacher is giving instructions. (Exh. C67-68).

7. On April 12, 2013 the LEA held an IEP meeting to review the FBA and to develop a BIP. The BIP was developed on April 12, 2013, and made a part of Child's IEP. This was done in Parent's absence, as Parent had previously confirmed he would attend this meeting but did not. (Exhs. B4;C51, 65-66). The BIP plan consisted of the following interventions:

- (i) verbal warning to re-focus child to task at hand;
- (ii) if behavior continues or escalates, one-on-one conferences with child by teacher/staff at time of disruptive incident to remind child of school/class expectations;
- (iii) teachers discussing alternate positive behaviors, possible consequences, and modeling appropriate behavior

Those that were responsible for implementing the plan included Child, teacher/staff, and the administration. (Exhs. C52,66).

8. Child's behavior persisted after implementation of the BIP. Even though strategies noted in the BIP (such as one on one conferences with Child after a behavior incident) were employed, often an argument ensued with Child, other staff in the room would need to intervene, and the class would become off task and not engaged in instruction because the teacher and staff had to deal with Child's disruptive behaviors. (Tr. 210-213).

Behavior incidents during the 2012/13 school year up to and including May 1, 2013, were comprised of the following:

- (i). November 12, 2012 – Child left lab class without permission; one day of in-school suspension (ISS) was assigned;

(ii). November 19, 2012 – While the teacher was calling the roll Child constantly blurted out in class even after being warned not to. When the teacher approached and warned him again he commented, “you better get out of my face!” in a threatening manner. When the teacher requested the Child accompany her to the main office, he refused and security was summons. Child received one day in ISS.

(iii). November 29, 2012- Child was on YouTube and watched a fight video. He insulted another student in math class without permission. The device was confiscated.

(iv). February 21, 2013 – Child was being disruptive in resource class from the moment he entered the classroom. Child continued to get out of his seat and talk out across the room. He kept his cell phone out and continued to ask if he could go next door knowing that such was not a choice. Child received one day in ISS.

(v). February 26, 2013 – While Child was serving a day of ISS, he was clutch scrolling through his cell phone without permission, he became upset and stated “this is bullshit.” Child also pulled out another cell phone he had in his right front pocket at 1:59 p.m. The release bell rang at 2:00 p.m. and staff was unable to retrieve the second cell phone. Child was assigned one day in ISS.

(vi). March 6, 2013 – Child told a female student that she was going to get” a fat ass if she kept eating that many M&Ms. Child was warned about his language. About 10 min. later, Child started wrapping lines about “Ya’ll bitch ass niggas” and “kick a nigga in his face” out loud in class, which disrupted class. Child was assigned one day in ISS.

(vii). Mar 12, 2013 – On the way to his desk, Child stated “I guess I can’t do shit in class.” The teacher reports that Child is constantly rude to the teaching assistant and daily his behavior disrupts the class environment. Child was assigned one day in ISS.

(viii). March 21, 2013 – Child postured to fight. Three days of ISS assigned.

(ix). April 22, 2013 – Child was redirected to task five times. Child refused and continued to disrupt the learning environment. One day of ISS assigned.

(x.) May 1, 2013 – In effective reading class, Child continued to talk even after being asked repeatedly not to do so. Child also repeatedly was getting out of his seat. When asked to sit down a subsequent time, Child responded by saying “Who says I was getting up for you?”.

May 1, 2013 was significant because students were taking their final scholastic reading inventory for the year and Child continued to disrupt the learning environment.

(xi) May 1, 2013 - in English class, Child walked into the class and yelled, “Goddamn it’s hot in here!” Child continued to disrupt class as noted in teacher’s detailed statement of what happened.³

³ Although the teacher’s detailed written statement identifies the incident as occurring on May 6, 2013, other

(Exh. B20-27).

9. For the May 1 incidents referenced above, Child was referred to the principal who suspended Child and recommended that he be expelled from the LEA school system for continuous disruption of the educational process; that is class disruption, incitement/instigation, obscene language/jesters, defiance and insubordination. (Exh. B23).

On May 17, 2013, the Office of Student Leadership ("OSL") decided to reduce the expulsion recommendation to a one year suspension, hold the suspension in abeyance, and recommend enroll in on strict probation. (Exh. B1, Tr. 45).

is an alternative program for students recommended for suspension or expulsion. The program has a behavior component with positive behavioral supports. The program permits students to earn their way back to their home school/comprehensive high school by improving their behaviors. Students wear uniforms and must earn their right to wear certain colored uniforms by positive behavior. The student-to-staff ratio is smaller than in a comprehensive high school as Child attended during the 2012/13 school year. Also, anger management groups allowing special education and general education students to attend together are available. Psychologists are assigned to the building to provide students with additional support if needed. The program is more structured than in Child's self-contained classes at the comprehensive high school he attended. Generally students must be escorted in the hallways. (Tr. 45-47; Exh. B 45- 51).

Manifestation Determination

10. Prior to the OSL decision, the LEA held a manifestation determination ("MD") meeting on May 8, 2013. The MD committee members who participated in the meeting were Parent, Child, Special Education Coordinator, General Education Teacher, Assistant Principal, Special Education Teacher, Special Education Teacher/Case Manager, and School Counselor. All individuals participating in the meeting were familiar with Child. (Exh. C50; Tr. 34, 43).

During the MD meeting, the IEP team considered Child as having ADHD, as reported by Parent, even though the LEA had not found Child to have a disability due to ADHD. The IEP team also took into account Child's behavior during the 2012/13 school year. The MD committee determined that Child's behaviors involving arguing, defiance, instigation, and use of obscene language were not related to impulsivity or ADHD symptoms, but were caused by Child choosing to be defiant and disrespectful. (Exh. C 45-50; Tr. 40, 210-211).

The MD committee also considered Child's identified SL/D in reading comprehension and determined this disability manifests itself in Child having difficulty comprehending grade level material when it has been read. (Exh. C 45).

In addition, the MD determined Child's behavior was not a direct result of the failure to

evidence of record is sufficient to show the incident described by the teacher was the one that occurred on May 1, 2013.

implement Child's IEP. (Exh. C 45).

During the meeting and on other occasions, Parent reported that there was other information he had for the team to consider. While the IEP team inquired about it and was will to consider it, Parent never provided additional information nor did he divulge the specific nature of the additional information. (Tr. 43, 114, 218-219,248). Parent offered at the due process hearing that he was delayed in providing the additional information because he could not obtain it directly and he did not trust the LEA to obtain it on his behalf. (Tr. 263-265).

The MD committee also considered a November 3, 2011 evaluation and a 2008 evaluation from the Former Public School Division. More consideration was given to the 2011 evaluation because it was more current. (Tr. 35, 113-114). D33, E2).

The MD committee decided that Child's behavior was not a manifestation of his disability, to which Parent agreed at the time of the meeting. (A Exh. C45).

The IEP team then attempted to hold another IEP meeting immediately following the manifestation determination meeting to implement home-based services for Child pending the decision of OSL, but Parent was too upset to remain for that meeting. (Tr. 44).

The IEP team met on June 6, 2013, and decided _____ was an appropriate placement for Child as it offered more structure and behavior supports and Child's special education services could be provided in that setting. Although Parent received prior notice of the June 6, 2013 meeting, he did not meet with IEP team on June 6, 2013. (Tr. 54-55; Exh. C17).

Had Parent attended the June 6, 2013, home-based services would have been provided for Child on the IEP until the end of the 2012/13 school year. Similarly, had Parent attended the May 8, 2013 IEP meeting following the manifestation determination, home-based services would have been provided for Child pending the OLS discipline determination. (Tr. 56-57; Exh. C31-32). Even though Parent did not attend the May 8 and June 6 IEP meetings, the LEA mailed assignments to Child's home. Some were completed and returned others were not. (Tr.58-59).

November 3, 2011 Evaluation

11. The November 3, 2011 evaluation ("2011 evaluation") considered during the MD meeting had been in existence for 18 months at the time of the MD meeting. Information provided at the top of the report that identified the student it was about listed Child as the subject of the report and provided his birthdate. Also, at the bottom of each page of the report, Child was identified by name as the subject of the report. The body of the evaluation provided testing data that was consistent with what educators at Child's Current school had observed about Child. (Tr. 247-248; Exh. D33-38).

The evaluation was comprised in part of reports from observations of two of Child's teachers. Teacher One ("Teacher 1") report indicated that Child was making A's and B's and capable of doing the work. Teacher 1 described child as having behaviors that interfered with

learning as he was easily distracted needed to be in control, was loud and argumentative, failed to follow rules and teacher instructions at times, had difficulty paying attention and concentrating, was hyperactive and impulsive, was defiant, and sought attention. (Exh. D34-35). A report in the evaluation from Teacher Two ("Teacher 2") indicated Child could do the work and had a C average. He needed redirecting, seeks attention, was off tasks a lot, and had inappropriate classroom behaviors. His social skills were deemed age appropriate. (Exh. D35).

The cognitive assessment reported in the 2011 evaluation indicated Child's Verbal memory and visual memory scores were within the superior range and Child's attention/concentration index was within the borderline range. Child's overall memory score was in the high average range. (Exh. D36).

The Achievement Assessment noted in the 2011 evaluation indicated that in the area of reading Child has far below average scores for reading comprehension. In Math Calculation, Math Reasoning, and Written Expression, Child was assessed in the low average range. Child was assessed as being average in all other academic areas that were tested. (Exh. C36).

The 2011 evaluation also revealed that Child has extremely low skills in coordinating visual perceptual abilities with motor abilities and average auditory processing skills. (Exh. D 36-37).

The evaluator concluded in the 2011 evaluation that Child has a severe discrepancy between his ability and achievement in the area of reading comprehension and that child continued to meet the eligibility criteria for specific learning disability in reading comprehension due to this discrepancy. The evaluation also reported that child's testing results suggest attention and visual motor processing deficits. (D 37).

Of other note, the 2011 evaluation also indicated that a prior evaluation in 2008 indicated Child had a highly significant ADHD index. And Child reported that he was not currently taking medications. (Exh. D33-34).

12. The 2011 evaluation was consistent with what educators at Child's Current Public School Division had observed or knew about him. (Tr. 247).

13. In September, 2013, Parent brought to the attention of the LEA that the name of the high school Child was currently attending at the time of the 2011 evaluation was not correctly stated on the report. Parent reported that the school named was one attended by Child's brother. (Tr.246).

Other

14. Child was provided with opportunities to redirect his behavior prior to the suspension and recommended expulsion. Other strategies employed during the 2012/2013 school year included conferencing with Child one on one, taking Child out for breaks outside the classroom with an adult in attendance, having Child go to the office and speak to an administrator, a behavior contract, and implementation of a BIP about two weeks before the May

1, 2013 behavior incidents. (Exhs. B1, C45, Tr.244-245, 252).

15. Child could be polite sometimes, but more often he misbehaved. (Tr. 210). The Case Manager/Special Education teacher did at times speak to Child's father by way of telephone regarding Child's behavior, but there was no significant change in the behavior. (Tr. 213-214).

16. The behavior contract used during the 2012/13 school year was developed by Child's English teacher for use in Child's English class. Under this contract, the teacher would place a sticky note on Child's desk for behavior that was disruptive and/or interfered with the learning of other students in the class. Once placed on Child's desk, Child was to correct the behavior immediately. The Child and Special Education Department Chairperson had one on one discussions about Child's behavior and this contract. During the discussions, Student expressed understanding the concerns of the English teacher, what was occurring in the classroom, and the consequences of his behavior. He was able to explain the behavior contract. Once it was implemented, Child's behavior improved for a few days, but then it regressed. (Tr. 244-245).

17. Child's special education teacher determined that behavior strategies such as using a behavior chart, rewards for appropriate behavior, permitting Child to go to a designated cooling off area would not be appropriate strategies for Child. The basis for this assessment was the strategies mentioned are ones normally employed to curb misbehavior due to ADHD impulsivity. And much of Child's misbehavior was by choice. Further, because of past experiences with Child wandering off without permission, staff believed Child could not be trusted to go to a designated cooling off area due to the likelihood. (Tr. 214-215).

18. At the time Child was suspended, Child's grades were as follows:

Art foundations	A
Effective Reading Skills	E
Health and PE	E
Life Skills	D
English	B
Math	A
Driver's Education	P

(Exh. B5, 19).

19. Child did have difficulty focusing and paying attention. (Tr. 40).

20. The evidence does not establish that Child has an intellectual disability. (Tr. 249).

21. A letter from the Social Security Administration dated September 17, 2013, reports that Child has a disability disorder code for ADHD and speech and language delays. (Exh. E.8).

22. Chair of the special education department at Child's school during the 2012/13 school year holds undergraduate and a master degrees in special education. She worked with Child one on one (Tr. 243).

23. Child's Case Manager and Effective Reading Skills special education teacher during the 2012/13 school year had taught special education for 10 years. She holds undergraduate and master degrees in special education. (Tr. 207).

24. The Special Education Coordinator facilitated the MD meeting held on May 8, 2013, involving Child. She holds a master's degree in general education, a master's in special education, and she has been engaged in course work for Administration and Supervision for grades K-12. Prior to being a special education coordinator, she taught special education for 11 years. (Tr. 31-32).

V. CONCLUSIONS OF LAW

Based upon the above findings of fact, the arguments of the parties as well as this Hearing Officer's own legal research, the conclusions of law are as follows:

The issue before the Hearing Officer is "whether Child's behavior on or about May 1, 2013, was a manifestation of his disability."

Under the IDEA, the IEP team must conduct a manifestation determination meeting when a child with a disability has violated a code of student conduct and the LEA is contemplating removing the student for more than 10 consecutive school days. 34 C.F.R. §300.530; 34 C.F.R. §300.536. The IEP team must consist of the parent and relevant members of the IEP team, as determined by the parent and LEA. Moreover, the IEP team must review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent. 34 C.F.R. §300.530(e) (1).

Regarding whether a manifestation of the disability exists, the IEP team must determine the conduct to be a manifestation of the disability if

- (i) the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (ii) the conduct in question was the direct result of the LEA's failure to implement the child's IEP.

34 C.F.R. §300.530(e) (i), (ii).

In this matter, Parent contends that Child's behavior was a manifestation of his disability. Below the evidence is examined to determine if Parent's assertion is accurate.

The evidence shows that Child's behavior continuously disrupted the educational process

and impeded the learning of other students. Child was referred to the principal and ultimately recommended for a long term suspension from school for misconduct occurring on May 1, 2013. That misconduct is noted here in (i) "Statement of Facts #8," to include incitement, instigating incidents of misconduct, use of obscene language and gestures, disrespecting authority, defiance, and insubordination, and (ii) Exhibit B 20 – 22).

The IEP team timely met to determine if the behavior was a manifestation of Child's disability and considered relevant information. It reviewed Child's IEP, to include the BIP. The IEP team found the BIP appropriate. The team also noted that Parent had received notices and invitations to several IEP meetings about Child's behavior and proposed amendments to Child's IEP, but failed to attend. Also, the IEP team deliberated about Parent's report that Child had an ADHD diagnoses. It considered Child's symptoms of lack of impulse control and inattentiveness related to any ADHD. Further the team acknowledged the referenced symptoms would cause Child to talk out or walk around the classroom and not focus on assignments at times. However, it determined that other behaviors of Child – continuous defiance, insubordination, and use of obscene language and gestures, were choices made by Child and not related to ADHD or Child's Special Learning Disability in the area of reading comprehension.

In addition the IEP team considered a 2011 evaluation and a 2008 evaluation from Child's Former Public School Division. While the 2008 evaluation indicated Child had a high indicator for ADHD, the more recent 2011 evaluation (which the team gave more weight to because it was more current) did not. What is more, the 2011 evaluation was consistent with teachers' and staff's observations of Child during the 2012/13 school year. The more recent 2011 evaluation indicated Child's disability was SLD. As noted above, the IEP team found no relationship between the SLD disability and Child's defiance, insubordination, and use of obscene language exhibited on May 1, 2013.

Regarding the 2011 evaluation, Parent argues that the IEP team members' deference to it was misplaced. In support of his position, Parent asserts that the 2011 evaluation could not be about Child as the home school of the student identified on the evaluation was not that of Child, but of his brother. The Hearing Officer notes that the educators who had worked with Child during the 2012/13 school year testified that the report was consistent with their observations and assessment of Child. Further the evaluation correctly identified the birth date of Child and listed Child as the subject of the report on every page of the document. Thus, the Hearing Officer finds the evaluation was about Child and relevant information to be considered by the IEP team.

The Hearing Officer does note that during the MD meeting and at other times during the 2012/13 school year, Parent did inform the LEA that Child had other diagnoses and he had additional information. The evidence shows the LEA was willing to consider other evidence if supplied by Parent and the LEA requested Parent provide the information. But Parent never did. Nor did he provide any specifics about any other diagnoses.

Accordingly, the Hearing Officer finds the LEA/IEP team met the requirement of considering all relevant information in making its manifestation determination.

In addition to considering the above mentioned information, the IEP team also

deliberated about whether Child's behavior was a direct result of the LEA's failure to implement Child's IEP. The team found such was not the case. And the Hearing Officer find's Parent has not met his burden to show otherwise.

As previously referenced, Parent essentially argues that Child's behavior was a manifestation of his disability and/or some other diagnoses not disclosed to the IEP team making the manifestation decision. Further he seems to assert all relevant information was not considered even though Parent failed to provide and identify what additional information he asserts should have been reviewed by the IEP team. While Parent now opposes the educators' manifestation determination which he previously supported when the decision was made, Parent fails to provide the evidence to support his now changed position. The Hearing Officer recognizes precedent in this federal judicial circuit, requiring that due deference be given to the opinion of the professional educators. *See, e.g., County School Bd. Of Henrico County, Virginia v. Z.P. ex rel. R.P., 1399 f.3d 298, 313 (4th Cir. 2005)*. Further, she notes that the evidence of record fails to provide the Hearing Officer reason to give little weight to the educators' assessment. Thus, the Hearing Officer finds Parent cannot meet his burden and show Child's behavior was not a manifestation of his disability.⁴

Under 34 C.F.R. §300.330 (d) (1) special educational services must be provided to a child who is removed from his current placement for more than 10 consecutive school days due to a finding that the conduct exhibited by the child was not a manifestation of his disability. In this case, pursuant to 34 C.F.R. §300.330 (d) (5), the IEP team determined the appropriate services for Child and that an appropriate placement to receive those services was Program. The evidence demonstrates that this program consists of, among other components, small classroom enrollment, a very structured setting, escorts for students while traveling in the hallway, increased behavior supports, very low student to staff ratio, and additional professionals such as psychologists on hand to assist students regularly with behavior problems. Parent argues the is not safe and may subject Child to bad influences. The Hearing Officer does not find Parent's argument persuasive and finds the interim placement is appropriate.

VI. DECISION AND ORDER

I have reviewed and considered all the evidence of record whether specifically mentioned in the decision or not and I find the following:

The LEA manifestation determination was proper and Program is an appropriate placement for Child to receive his special education services in the interim. I also find all requirements of notice to the parent have been satisfied and that the school reports Child is a child with a disability as defined by applicable law 34 C.F.R. §300.8 and is in need of special education and related services. I also find the LEA has provided Child a FAPE since he enrolled

⁴ The Hearing Officer does have concerns, however, that Child arrived in the fall of 2012 at the school with an IEP from the Former Public School Division that contained a BIP, and the LEA did not develop and implement a BIP for Child until April 12, 2013. This timing was only about three weeks before Child was recommended for expulsion. But considering the totality of the evidence, the Hearing Officer finds that the belated BIP does not derail the IEP team's manifestation determination.

in the LEA.

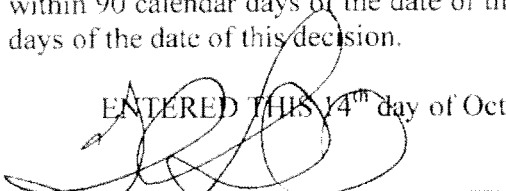
VII. PREVAILING PARTY

I have the authority to determine the prevailing party on the issue and find it is the LEA.

VIII. APPEAL INFORMATION

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

ENTERED THIS 14th day of October, 2013.


Ternon Galloway Lee, Hearing Officer)

Cc: Parent
Counsel for LEA
Dir. of Special Education for LEA
VDOE Coordinator of Due Process Services, Dispute Res. and Admin. Services