

**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(s), Parent v. LEA

Child & Parent(s)/Guardian:

Child, child
Mr. Parent, parent(s)

Child's Attorney Advocate:

Child Attorney, Esq.
Advocate for Child

School Division Attorney
LEA Attorney, Esq.

Superintendent of LEA:
Dr. Superintendent

Administrative Hearing Officer:

Ternon Galloway Lee, Esquire
215 McLaws Circle, Suite 3A
Williamsburg, VA 23185
(757) 253-1570
(757) 253-2534

AMENDED DECISION

I. PROCEDURAL HISTORY¹

Parents filed a request for an expedited due process hearing on April 3, 2014. The pleading was received by the Local Educational Agency (LEA) on the same date. (HO Exh. 25, p. 2). The request contained issues subject to both the expedited and non-expedited adjudication process. Accordingly, the appointed Hearing Officer bifurcated the proceedings and first held a hearing that addressed the issue required to be expeditiously adjudicated.

Prior to holding the hearing, the Hearing Officer scheduled a pre-hearing conference (PHC) setting the hearing dates. (HO Exh. 3). Subsequent to the initial PHC, Parents retained an attorney. Accordingly, a second PHC was held. After hearing from the parties an April 15, 2014 scheduling order was issued which, among other matters, established the Child's stay put and set the hearing date to accommodate the availability of the parties and their attorneys. (HO Exh. 1). As set in this order, the expedited hearing took place on April 29, 30, 2014, and May 1, 2014. (HO Exh. 1).

During the expedited hearing, the Hearing Officer admitted Parents' Exhibits P1

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

Transcript	-	Tr.
Parents' Exhibit		P Exh.
Local Educational Agency Exhibit	-	LEA Exh.
Hearing Officer Exhibit	-	HO Exh.

through P 50; LEA's Exhibits A1 - A22, B 1 - B 46, C 1 - 55, D1 - 77; and Hearing Officer's Exhibits 1 through 25.

The Hearing Officer issued her decision regarding the expedited issue on May 15, 2014.² The decision here amends that expedited decision.

II. ISSUES

Was the February 11 and 14, 2014 Manifestation Determination Review flawed because the LEA considered only one of the child's disabilities?

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 Parents bear the burden of proof because they are challenging the manifestation determination.

IV. FINDINGS OF FACTS

1. On October 19, 2010, the LEA's Special Education Committee ("SEC") found Child eligible for special education and related services under the category Other Health Impaired (OHI) due to his Attention Deficit Hyperactive Disorder (ADHD) combined type, mood disorder, sleep problems, processing disorder and visual motor integration difficulties. (LEA Exh. D 23; P Exh. P 11 C, F).

Assessments and reports used to make the eligibility determination included a comprehensive June 23, 2010 Psychological Report (2010 Psychological Report) which contained cognitive and academic testing, a social history and a medical report. The parents provided the report to the LEA. Other information considered to make the eligibility determination included an educational report submitted from the child's teacher, a classroom observation and input from the parent. (LEA Exh. D 24; P Exh. P 11G).

2. Under the DSM-IV and AXIS I, the psychologist conducting the June, 2010 evaluation diagnosed Child with the following:

AXIS I:

296. 90 Mood Disorder Not Otherwise Specified with anxious, depressed features (w/emerging conduct disorder tendencies) - laid over an;

300. 9 Mental Disorder Not Otherwise Specified with Attachment and Stress Reactivity features - laid over a;

² The non-expedited hearing was held on May 12 and 13, 2014. A separate decision will be issued in that matter.

314. 01 Attention Deficit Hyperactivity Disorder, Combined type – coexisting with;

315.9 Learning Disorder Not Otherwise Specified expressive writing disability and relatively lower than expected reason, reasoning comprehension and written mathematic operations. (LEA Exh. D 50, 54).

The DSM referenced above is the Diagnostic and Statistical Manual used to classify mental and health disorders. The most current one at the time of the evaluation was the DSM IV. (Vol. I Tr., 244- 245; Vol. I , Tr. 243-244).

NOVEMBER 8, 2010 INITIAL IEP

3. Child's initial IEP was developed November 8, 2010. (P Exh. P 16). In that IEP, the team noted that Child was found eligible for special education and related services because of a disparity between his cognitive abilities and his academic performance. Further it noted he had been diagnosed with ADHD and comprehensive assessments showed he had difficulties with impulsiveness and lack of attentiveness. (P Exh. P 16E).

In addition the IEP noted that Child was extremely inattentive, whether in a one on one situation or in a larger group, he displayed aggressive behavior and anxiety over social situations. The team decided a behavior intervention plan (BIP) was appropriate and implemented one. (P Exh. 16E).

Under the Present Levels of Academic and Functional Performance (PLOP) section of the IEP, under the heading "Social Performance," the team noted in pertinent part that "[Child] exhibits low self-esteem and does not seem to understand social cues." (P Exh. P 16G).

4. One of the several goals established on the IEP addressed social/emotional development. It reads:

"By 11/14/2011, [Child] will increase social/emotional skills to a developmentally (sic) age appropriate level."

(P Exh. P 16 D)

5. Also, the IEP team determined benchmarks were appropriate for this goal and among others, set the following benchmarks regarding Child's behavior.

Objective/Benchmark #: 6 Maintain appropriate school skills

By 11/14/2011, review behavior checklist with teacher and parents. Have checklist signed

Objective/Benchmark #: 7 Maintain appropriate behavior

By 11/14/2011, continue to maintain appropriate behavior, by going to a quiet

place, talking to an adult, or ignoring others, even when frustrated or stressed

(P Exh. P 16 K)

6. Accommodations for Child included, among others, a behavioral plan/checklist, throughout the school building from November 15, 2010 to June 17, 2011, and from September 6, 2011 to November 14, 2011. (P Exh. P 16 P)

7. Special Education services listed on the IEP included services for social/emotional development for 30 minutes a week, five times a week in the ODC from November 11, 2010 to June 17, 2011, and September 6, 2011, to November 14, 2011. (P Exh. 16Q).

8. The prior notice regarding the IEP in the sections about the actions proposed and the reason for the proposal states in pertinent part the following:

To implement the IEP as written under guidelines of IDEA. [Child] was found eligible for services this year due to extreme visual motor integration skills deficits, deficits in the area of writing and reading skills. In addition, writing skills are labor-intensive and very weak, so an occupational therapy evaluation will be conducted. [Child] has trouble staying on task and focusing on assignments. [Child] has been diagnosed with ADHD combined type as well as a mood disorder and a mental disorder NOS, with attachment and stress reactivity features. [Child's] grades have fallen and all areas of academics and social skills have been affected. Goals and objectives have been written to address following directions (written and oral), self clarification, demonstrating on task behavior of goals for visual motor integration and organization skills and behavior management.

(P Exh. P 16 T)

9. The IEP notes that its decisions were based on the comprehensive June 2010 Psychological report, socio-cultural assessment, classroom observations, report cards, SAT 10 scores, classwork and homework, and input from the teacher and parent. (P Exh. P 16 U)

MODIFICATION TO INITIAL IEP 1/20/11 TO 11/14/11 IEP

10. On January 20, 2011, an IEP team meeting was held and Child's IEP was modified. Accommodations in the modified IEP maintained the behavioral plan/checklist throughout the school building from January 20, 2011 to November 14, 2011, as well as the services, to include 30 minutes for social/emotional development 5 times a week. (P Exh. P 17E).

This modified IEP added a calculator, a more consistent communication system, and an extra set of textbooks for home were added as accommodations. (P Exh. P 16 H)

NOVEMBER 4, 2011 IEP AND TESTING FOR GIFTED EDUCATION SERVICES

11. Child's annual IEP was developed on November 4, 2011, by the IEP team. Meeting notes from that gathering reflect that, among other factors, the IEP team noted that Child's ADHD had not affected his academic work as in the past because he was on medication. Meeting notes also documented that Child was not exhibiting behaviors that impeded his learning or that of others. Further the meeting notes indicated that Child's mother was pleased with Child's progress. She expressed the desire for continued progress. (P Exh. 20C).

12. Regarding Child's social skills, the IEP's PLOP noted weaknesses in this area. Particularly notations indicated Child is very sensitive to others' perception of how he compares to his peers. And further, Child historically experiences anxiety and/or becomes depressed and withdraws from people around him when he fails to perform up to his expectations. The comment about Child's social skills concluded by stating Child has experienced some improvement in this area. (P Exh. 20E).

13. The November 4, 2011 IEP also modified the goals. It contained three goals addressing keyboarding, organizational skills, and writing. The social/emotional goals and relating benchmarks appearing on prior IEPs were removed from this IEP. (P Exh. 20 H, I).

Accommodations on this IEP from November 4, 2011 to June 17, 2012 and from September 7, 2012, to November 2, 2012 included the following:

General	Frequency	Location	Setting
Access to a word processor for all written assignments.	When written work is assigned.	ODC	General Education Classroom (Gen. Ed. Classroom)
Extra time to complete written work. (not more than one extra day).	When written work is assigned.	ODC	Gen. Ed. Classroom
Organizational check-in, checkout.	10 minutes at the Beginning and end of each school day.		Special Education Classroom

Testing Accommodations	Frequency	Location	Setting
Access to calculator for all math testing.	During all math testing.	ODC	Gen. Ed. Classroom
Extra time to complete tests with written responses.	During tests that require written responses.	ODC	Gen. Ed. Classroom

(P Exh. 20K).

14. The November 4, 2011 IEP contained the following services for the same duration mentioned above as the accommodations:

Services	Frequency	Location
Special Education		
Language Arts Inclusion	30 minutes/5 times weekly	ODC- Regular Ed. Classroom
Organizational Skills	20 minutes/5 times weekly	Special Ed. Classroom
Keyboarding Skills	20 minutes/3 times weekly	ODC- Special Ed. Classroom

(P Exh. 20 O).

15. The IEP did not include a behavior plan and time set aside for social/emotional development. (P Exh. 20K).

16. Parent was aware of the modifications made to the IEP and that the changes were made due to the IEP's team determination that Child had shown significant improvement in social skills, academic production, and focus. Parent signed the IEP agreeing to its modifications. (P Exh. 20 P through S).

FEBRUARY 24, 2012 PSYCHOLOGICAL REPORT

17. On February 24, 2012, the school psychologist conducted an evaluation for the sole purpose of determining if Child met eligibility requirements for gifted educational services. The report noted that IQ scores between 90 and 109 are considered average. Child's Verbal IQ score was 130 and his performance IQ score was 129, indicating very superior and superior intelligence in the respective areas. Child's full scale IQ was scored at 133, in the very superior range. (LEA Exh. D75).

During the intelligence testing, verbal subtest were administered to assess Child's vocabulary, and similarities. Performance subtest were conducted to assess Child's block design, and matrix reasoning. As such T-scores were determined in each area tested. The report noted that T scores between 40 and 60 are considered average. Child received a T-score of 65 on the vocabulary subtest, a T-score of 69 on the similarities subtest. These scores indicated Child's vocabulary and similarities intelligence in the superior range. In Block Design, Child's T-score was determined to be 72 or very superior. His Matrix reason T-score was 60, falling in the high average range. (LEA Exh. D76).

ADMISSION TO THE GIFTED PROGRAM AT MAGNET SCHOOL

18. Child applied for and was admitted as a sixth grader in the Magnet School for the gifted during the 2012/13 school year. He continued his enrollment as a seventh grader in the Magnet School at the beginning of the 2013/14 school year. (Vol. I, Tr. 129).

Child is twice exceptional because he is gifted and has a disability. (Vol. III, Tr. 6).

JUNE 8, 2012 IEP

19. On June 8, 2012, the IEP team met. The team retained the three goals in the prior IEP making minimal changes to them. (P Exh. P21 G).

20. Accommodations in the June 8, 2012 are as set forth below:

General	Frequency	Location	Setting
Access to a word processor for all written assignments.	When written work is assigned.	Public Day School	Gen./Special Ed. Classroom
Extra time to complete written work. (not more than one extra day).	When written work is assigned.	Public Day School	Gen./Special Ed. Classroom
Access to a keyboarding Program 3 times a week	3 times a week during school hours for at least 5 minutes a session	Public Day School	Gen./Special Ed. Classroom
Testing Accommodations	Frequency	Location	Setting
Extra time to complete tests with written responses.	During tests that with written responses.	Public Day School	Gen./Special Ed. Classroom

(P Exh. 21H).

21. June 8, 2012 IEP contained the following services:

Services	Frequency	Location
Special Education		
Consultation	30 minutes	Special Ed. Classroom in

One time a week a public day school

(P Exh. 21H).

22. Similar to the November 4, 2011 IEP, the June 8, 2012 IEP contained no goals, accommodations, or services focusing on Child's behavior. Parent signed the IEP agreeing to the modifications. (P Exh. 21G, H).

Regarding Child's social skills, the IEP's PLOP noted weaknesses in this area. Particularly notations indicated Child is very sensitive to others' perception of how he compares to his peers. And further, Child historically experiences anxiety and/or becomes depressed and withdraws from people around him when he fails to perform up to his expectations. The comment about Child's social skills concluded by stating Child has experienced some improvement in this area. (P Exh. 21E).

OCTOBER 8, 2012 IEP

23. The IEP team developed another IEP on October 15, 2012. (P Exh. P 22B).

24. Goals in this IEP addressed Child's typing speed and accuracy, organizational skills, and writing skills. (PExh. 22F).

25. The IEP team determined child did not need positive behavioral interventions. (P22E).

26. Accommodations in the October 8, 2012 IEP are set forth below:

General	Frequency	Location	Setting
Access to a word processor for all lengthy written assignments.	When written work is assigned.	Public Day School	Gen./Special Ed. Classroom
Extra time to complete written work. (not more than one extra day).	When written work is assigned.	Public Day School	Gen./Special Ed. Classroom
Repeat and clarify instruction And check for understanding		Public Day School	Gen./Special Ed. Classroom
Testing Accommodations	Frequency	Location	Setting
Extra time to complete tests with written responses up to one class bell or block	During tests that require written responses.	Public Day School	Gen./Special Ed. Classroom

(P Exh. 22G).

27. The October 15, 2012 IEP contained the same services as the previous IEP as set forth below:

Services	Frequency	Location
Special Education		
Consultation	30 minutes One time a week	Special Ed. Classroom in * a public day school

(P Exh. 22G).

Regarding Child's social skills, the IEP's PLOP noted weaknesses in this area. Particularly notations indicated Child is very sensitive to others' perception of how he compares to his peers. And further, Child historically experiences anxiety and/or becomes depressed and withdraws from people around him when he fails to perform up to his expectations. The comment about Child's social skills concluded by stating Child has experienced some improvement in this area. (P Exh. 22D).

28. Parent agreed to the IEP and signed it. (P Exh. 22 K).

NOVEMBER 29, 2012 IEP

29. On November 29, 2012, Child's IEP was modified to add the Scholastic Math Inventory (SMI). The SMI is a division-wide assessment used to help teachers instructing students in Algebra in gathering assessment data about a student's strengths and weaknesses in math. (P Exh. 23 B).

TRIENNIAL REVIEW

30. On October 1, 2013, the LEA's SEC met and conducted a triennial review to determine if Child continued to be eligible for special education and related services. Those attending the meeting were the mother, general education teacher, assistant principal, school psychologist, social worker, case manager, and an intern. During the meeting, no concern for a mood disorder was expressed, nor were there any discussions about the child being autistic. (LEA Exh. D 30; Vol. III, Tr. 14, 19).

The committee determined that Child's ability to focus was affected by his ADHD and that his impairment resulted in an adverse impact on his educational performance. The SEC then found Child remained eligible for special education and related services under the category OHI. (LEA Exh. D 33-34).

In reaching the eligibility decision the SEC considered parental input; the June 2010

Psychological Report; a classroom observation from Child's case manager; educational summaries from a fourth grade teacher of child, Child's 7th grade English and Social Studies teachers, and another 7th grade teacher of child. (LEA Exh. D 33 – 66). The reports indicated that at the beginning of the 2013/14 school year, Child was not completing several of his assignments. Input from other SEC members was also considered. In addition, the SEC completed an OHI worksheet to assist it in determining eligibility. (P Exh. 13G-H; P Exh. 34.1 – 34.8).

Parents were made aware that they could request additional data be collected, but none was requested. The eligibility decision was accepted by Parent. (LEA Exh. D 33-34).

In making the eligibility decision, the SEC noted Child was taking Focalin for a mood disorder. (LEA Exh. 32; (P Exh. P 13 B).

OCTOBER 7, 2013 IEP

31. After the eligibility determination, the IEP met on October 7, 2013, and developed Child's IEP. Under PLOP, among other things, the strengths and weaknesses were noted in Child's social skills.

As a strength the IEP stated the following:

[Child] is very social and gets along with peers and teachers. He is eager to please and very considerate of others. He has the ability to cooperate with others in group situations.

(LEA Exh. C9).

As a weakness the IEP noted:

[Child] is a very sensitive to how he is perceived compared to his peers and has a history of becoming depressed when he does not perform to his expectations. When this happens he can become withdrawn from the people around him. This can also result in anxiety. These situations have improved over time.

(LEA Exh. C10).

32. The IEP team determined Child's behavior did not impede his learning or others. Therefore the team did not implement a behavior intervention plan. (LEA Exh. C 11).

33. Goals formulated addressed Child's organizational and writing skills. (LEA Exh. C 12).

34. Accommodations in the October 7, 2013 IEP are set forth below:

General	Frequency	Location	Setting
----------------	------------------	-----------------	----------------

Access to a word processor for all lengthy written assignments.	When written work is assigned.	Public Day School	Gen./Special Ed. Classroom
Extra time to complete written work. (not more than one extra day).	When written work is assigned.	Public Day School	Gen./Special Ed. Classroom
Repeat and clarify instruction and check for understanding	When instructions are given	Public Day School	Gen./Special Ed. Classroom

Testing Accommodations	Frequency	Location	Setting
Extra time to complete tests with written responses up to one class bell or block	During tests that require written responses.	Public Day School	Gen./Special Ed. Classroom

(LEA Exh. C 13).

35. Services included in the October 7, 2013 IEP included the following:

Services Special Education	Frequency	Location
Consultation	15 minutes two times every two weeks	Special Ed. Classroom in a public day school

(LEA Exh. C 13).

36. The Child's mother was unable to attend the subsequent IEP meeting held on October 7, 2013, the LEA provided her a copy of the proposed IEP and asked her to let the LEA know if any amendments were requested. None were sought and the IEP was implemented as parent agreed with it on October 9, 2013. (LEA Exh. C 7; P Exh. 24).

INCIDENT AND SUSPENSION OCTOBER 2013

37. On or about October 28, 2013, child showed his social studies' teacher sexually explicit comments that were written on one of the desk in her class. The teacher had a custodian take a picture of the written comments and asked him to transmit them to her via of his telephone so she could provide them to administration. Social Studies' teacher verbally provided her cell telephone number for this purpose while she was in the classroom. Child overheard the number and later that day sent Social Studies teacher sexually explicit text messages referencing the teacher's body parts. Some of the text messages were similar in content to those that appeared

on the desk. (LEA Exh. B 24; P Exh. P 32).

The text messages were from Child's mobile phone and stated the following at the times noted:

At 4:43 "Your but it's perfectly round have you been getting my notes"

At 4:44 "Butt"

At 4:50: "have you "

At 7:07: "Hi"

At 7:11: "I love you (. Y.) and I get an erection when I stare at your boobs during class"

(P Exh. 33A).

38. Child admitted to the LEA's administration that he sent the text. He received three days of out of school suspension, October 30, 2013 – November 1, 2013. (P Exh. 33 B – D; LEA Exh. B46). After the October incident, Child's mother obtained sessions with Child and a psychologist, Former Treating Psychologist. The former psychologist held sessions about understanding boundaries. (Vol. III, Tr. 16 and Vol. I, Tr. 259). Child began meeting with the private psychologist in mid-November 2013. (Vol. I Tr. 309).

NOVEMBER 19, 2013 MEETING

39. On November 19, 2013, the IEP team met to discuss Child's recent behavior problems involving the explicit text messages sent to Social Studies Teacher. Other inappropriate sexual behavior of Child was discussed as well regarding Child videoing a person in the shower with his cell phone. This behavior occurred outside the school setting. The team also discussed Child's poor grades, and his progress to determine if modifications were needed to his IEP. (LEA Exh. C 40; Vol. I, Tr. 227, 235, 364, 366; Vol III, Tr. 136).

Those in attendance at that meeting were the mother, assistant principal, Case Manager, Gifted Specialist, Social Studies teacher, and Science Teacher. (LEA Exh. C 46). Even though Child had only been suspended for three days, the IEP team considered whether the texting incident was a manifestation of Child's ADHD. The team considered that no option existed to move Child to a classroom with a male social studies teacher. Thus, it was decided that in the future Social Studies Teacher would not be alone with the child. As such, the academic support she previously provided Child after school would be conducted by someone else. In addition, it was decided that the Gifted Specialist, also a psychologist, would meet with Child about sexual inappropriate behavior and self-regulation. This was in addition to the specialist meeting with Child to work with him on organizational and work habits. Mom consented to Gifted Specialist providing these services to Child. None of the above tactics were incorporated in Child's IEP. Thus, no amendments were made to Child's IEP as a result of the November 19, 2013 IEP

meeting. (LEA Exh. C 29, 46 – 55; Vol. I, Tr. 230, 384; Vol. III, Tr. 37).

40. Gifted Specialist provided four (4) sessions before another inappropriate sexual incident occurred on February 3, 2014 between Child and Social Studies Teacher. The last session before the incident was January 13, 2014. Between that session and the February 3, 2014, sexual touching, two other “odd incidents” as described by Social Studies Teacher occurred with Child brushing up against the teacher. (P Exh. 44.2; LEA Exh. B. 23; Vol. 1, Tr. 374, 413, 410).

41. Even though the Gifted Specialist is a psychologist, he is not a clinician. (Vol. 1, Tr. 363).

42. During the November 19, 2013 meeting, Parent informed the team of Child’s exposure to pornography by his older sibling/father. Parent also informed the team that Child had videoed a naked female several years ago. Parent stated that she had started Child in therapy regarding his problems associated with his exposure to pornography. Parent consented to the Gifted Specialist Psychologist providing Child counseling. (Vol. I, 413; Vol. III, Tr. 18; P Exh. P 44.2; LEA Exh. C 29).

The IEP team did not add the counseling as a related service or accommodation. Case Manager states he failed to do so because he mistakenly believed he needed a special consent form signed by Parent, but sometime after November 19, 2013, he found out otherwise.³ (Vol. III, Tr. 32.). The counseling services were provided to Child on four occasions: November 30, 2013; December 4, 2013; December 11, 2013; and January 13, 2014. (P Exh. 44.2). Three weeks passed and no counseling was provided due to scheduling conflicts and school closures because of inclement weather. During that three week period, Child had two “odd incidents” where he touched Social Studies teacher and one incident of rubbing up against her bottom. (LEA Exh. B 23).

JANUARY TO FEBRUARY 3, 2014 INCIDENTS

43. On February 3, 2014, Child’s guidance counselor was in Child’s social studies’ class. Guidance Counselor instructed Child to ask his teacher if he could call his mother. Social Studies Teacher had her back to Child. Child walked up to Social Studies Teacher and positioned himself very close to the teacher’s behind. Although Guidance Counselor saw no hand movement by Child, it appeared to her that Child’s body was touching the teacher’s body. Social Studies Teacher felt Child touch her butt. As reported, this occurrence happened without delay. The incident along with two others were reported to the school administration as sexual harassment. (Testimonies of Guidance Counselor and Social Studies Teacher; LEA Exh. B 21, 23). Child stated he did not remember touching the teacher. (LEA Exh. B 22).

44. In one of the other incidents Social Studies Teacher also reported that about two weeks before the February 3, 2014 incident, that while in close proximity to Child, she “felt something brush her bottom.” And when she turned she observed that Child was seated behind her. After that incident, Social Studies Teacher reported that she was careful about avoiding walking directly around Child’s desk and making sure her back was not to Child. (Vol. I, Tr. 203-204;

³ The exact date Case Manager determined no special consent form was needed was not provided.

LEA Exh. B 23). Child reported he accidentally touched the teacher. (LEA Exh. B. 22).

45. Regarding the third incident, Social Studies Teacher reported that a week before February 3, 2014, Child brushed against her while walking back to his seat from doing group work. (Testimony of Social Studies Teacher; LEA Exh. B 23). Child reported he accidentally touched the teacher. (LEA Exh. B 22).

MANIFESTATION REVIEW MEETING AND DETERMINATION

46. Because the LEA contemplated a suspension of more than 10 consecutive school days due to the January/February incidents, a manifestation determination meeting was commenced on February 11, 2014, and concluded on February 14, 2014. (LEA Exh. B 28).

47. Those in attendance were School Psychologist, Parents, the Parents' Advocate, Social Worker, the special education coordinator, the science teacher, the principal designee, the case manager, and Gifted Specialist. (LEA Exh. B 29).

48. School Psychologist is a licensed clinical psychologist who has been employed by the LEA for 11 years. She holds a doctorate degree and master's degree in clinical psychology. School Psychologist was initially involved with Child in 2010 during his eligibility screening. In 2012, she conducted a psychological evaluation for the purpose of determining if Child met eligibility for the Magnet School. She was also involved in the re-evaluation of Child for special education and related services in October 2013. She was a member of the Manifestation Determination Review (MDR) committee. (Vol. I, Tr. 241-241).

School Psychologist recalled that during the MDR meeting the June 2010 Psychological Report was reviewed. She also recollected that whether Child displayed symptoms of a mood disorder was discussed. In addition she remembered that the former psychologist testified by telephone and mentioned Child had viewed pornography and child has a sexual fixation that may be an addiction. School Psychologist further noted that the former psychologist recommended behavior interventions. The former psychologist did not indicate that he had conducted any formal assessments of Child. School Psychologist also recalled the disability of OHI as a result of his ADHD was discussed and she felt Child's behavior was not a manifestation of the ADHD. (Vol. I, Tr. 257, 258, 262, 265, 308). Particularly, she noted that Child's behavior – touching the teacher's bottom – was planned as Child got up, walked in her direction, and touched Social Studies Teacher. (Vol. I, Tr.264).

School Psychologist recalled that her 2012 Psychological Evaluation to assist in determining Child's admission to the Magnet School was not discussed by the team. It was however in Child's cumulative folder. (Vol. I, Tr. 256).

49. Science Teacher is a general education teacher. She is endorsed to teach science and gifted students. She is also qualified to teach English and social studies up to grade level eight. (Vol. I, Tr. 347-348).

Science Teacher recalled that during the MDR meeting the team discussed Child's

ADHD and whether the sexual/inappropriate behavior was a manifestation of it. (Vol. I, Tr. 357 – 360. She did remember the former psychologist speaking at the MDR meeting about child's exposure to pornography and having a sexual fixation. (Vol. I, Tr. 358-359). She recalls the team did not discuss whether the behavior was a manifestation of any sexual fixation. Science Teacher had never seen the June 2010 Psychological Report and at the hearing was not aware of it, to include the diagnosis on the report regarding Child having a mood disorder. She could not remember what documents/records were reviewed during the MDR meeting and she did not feel she had a chance to say much at the MDR meeting. (Vol. I, Tr. 355-356).

Science Teacher decided the behavior was not a manifestation of Child's ADHD because she understood ADHD symptoms to consist of problems paying attention, focusing, having too much energy, and staying organized, and the Child's behavior did not correlate with those symptoms. (Vol. I, Tr. 358 – 360).

50. Case Manager is certified in special education and endorsed in the areas of learning and emotional disabilities. He is also certified to teach English and has been a special education case manager for 12 years. (Vol. III, Tr. 4-5).

During the MDR meeting, Case Manager recalls that Oppositional Defiance was discussed. Further, he recollected that the MDR committee considered the June 2010 Psychological Report and reviewed the AXIS I diagnoses mentioned in the report. Case Manager did not know how any of them manifested themselves in the behavior of Child and the MDR team found Child's behavior was not related to his ADHD. (Vol. III, Tr. 20).

He understood that the Mood Disorder NOS, Mental Disorder NOS, and Learning Disorder, NOS – diagnoses cited on the June 2010 Psychological Report - were emerging and not definitive. (Vol. III, Tr. 49).

Case Manager's impression was that while a lot of time was spent conducting the MDR meeting over a two day period, it was difficult and uncertain how much was accomplished because the meeting was very heated and emotional and it was "difficult to get a sense of what was going on." (Vol. III, Tr. 22).

51. The Committee also conferred with Child's former treating psychologist who provided therapy to child from November 2013, to sometime in February 2014. During the February 14, 2014 MDR meeting the former treating psychologist informed the MDR committee that Child's behavior was a moral problem rooted in part to Child not getting enough reinforcement from his father; that during therapy sessions Child had not shown any signs of mood disorder; that Child exhibited a sexual fixation and possibly a sex addition. Dr. Miller opined that Child's behavior was not a manifestation of Child's ADHD. Further, he noted Child was in need of behavior interventions. (Testimonies of Case Manager and School Psychologist; LEA Exh. B 28).

Dr. Miller provided Child therapy, but never formally evaluated Child. (Vol. III, Tr. 120).

52. Gifted Specialist holds a pupil personnel license in the Commonwealth of Virginia and is

endorsed as a school psychologist. Gifted Specialist is not a clinical psychologist. (Vol I, Tr. 362-363).

Gifted Specialist recalled that at the MDR meeting that the only disability category that applied was ADHD. (Tr. 398). He determined behavior was not a manifestation of the disability because he determined Child was aware of his need to control sexual urges. Further, he testified that from his experience, it is uncommon for a child with ADHD to engage in sexual inappropriate behavior. (Vol. 1 Tr. 383) Gifted Specialist defined ADHD as things happening so quickly child did not have a chance to stop himself. (Vol. 1, Tr. 380). He defined ADHD symptoms, particularly impulsivity as a "ready, shoot, aim" type behavior. (Vol. 1, Tr. 381. Gifted Specialist recalls Child's former psychologist discussing Child's exposure to pornography and expressing that the incident was one of moral judgment and child needed to be disciplined for his behavior. Formal psychologist also noted Child had a sexual fixation and maybe a sexual addiction and he recommended behavior intervention. Gifted Specialist could not recall if a mood disorder was considered during the MDR meeting and the only evaluation reviewed was the 2010 Psychological Report. (Vol. I, Tr. 385 - 398).

53. Special Educational Coordinator is endorsed in emotional disturbance, learning disabilities, and administration in the Commonwealth of Virginia. He has been a special education teacher for the LEA as well. (Vol. I, Tr. 8-9).

Special Educational Coordinator first interaction with the Child was at the MDR meeting. He reviewed Child's entire file prior to the MDR meeting. At the MDR meeting, he recalls that the June 2010 psychological report was reviewed in depth. He stated Child's behavior was not found a manifestation of ADHD or any of the other diagnoses mentioned on the report. (Vol. I, Tr. 9 - 11). Special Educational Coordinator also recalls the former psychologist providing information regarding Child. (Vol. I, Tr. 28-29).

54. During her testimony regarding the MDR meeting, Social Worker recalled that the committee discussed the 2010 Psychological Report, and that Child had viewed pornography. (Vol. I, Tr. 336-337).

Social Worker remembers the committee discussing the Child's ADHD and its symptoms as they relate to the child; that is, impulsivity, organizational difficulties, lack of focus, difficulty completing assignments. Social Worker then agreed that the behavior was not a manifestation of the ADHD. (Vol. I Tr. 338).

Social Worker could not remember if the MDR committee discussed Oppositional Defiance or behavioral interventions for Child. (Vol. 1, Tr. 337). She testified the committee did not discuss mood disorder or child's fixation with sex and whether either of the two caused the Child's behavior. (Vol. I, Tr. 338).

At the time of the February 2014 MDR meeting, Social Worker had not interacted with Child since the triennial eligibility process in early October 2013, and she was unaware of Child's difficulties in school since that time. (Vol. 1, Tr. 334).

There had been social cultural changes with Child since he initially became eligible for special education in 2010. Those changes included receiving counseling, changes in family structure, medication, and behavior. Social Worker had not conducted a sociological assessment since Child's 2010. (Vol. I, Tr. 333, 341 – 352).

As a result of the MDR committee obtaining additional information about Child at the MDR meeting, it was determined that formal assessments would be conducted on child. (Vol. I, Tr. 340).

55. Assistant Principal has functioned in that capacity for 13 years. She is endorsed in English 8 – 12 and administration. She also holds a gifted endorsement. Assistant Principal is not endorsed in special education. (Vol 1, Tr. 126-127).

The Assistant Principal determined during the MDR meeting that ADHD was the appropriate disability category to consider with regard to the conduct. (Vol. I Tr. 164). She did not consider Oppositional Defiance or Conduct disorder as a disability. (Vol. I tr. 162). She did consider the former psychologist's comment and the 2010 Psychological Report and determined that the other Axis I diagnoses listed on the report had not shown themselves in the school setting. (Vol. I Tr. 140, 146, 150).

56. The guidance counselor only attended the first day of the MDR meeting. She was not familiar with the 2010 Psychological Report. (Vol. I, Tr. 161; LEA B 29).

OTHER

57. Child's grades for the first semester of the 2013- 2014 School year are as follows:

Subject	1 st Marking Period	2 nd Marking Period	Semester Grade
Latin II	E	E	E
Algebra I Honors	C-	C	C-
Social Studies	C+	C+	C+
Health PE	B	B	B
Advance Science	E	C-	D
Advance English 7	C+	D	C

(P Exh. 32 J – O).

58. School Psychologist opined that hypersexuality may be a symptom of ADHD and an additional mental or mood disorder, such as being bipolar. (Vol. I, Tr. 263-64). She also opined that there is not causal relationship with ADHD and hypersexuality. (Vol. III, Tr. 75).

60. The LEA did not suspect Child had an autism spectrum disorder. (Vol. I, Tr. 272).

61. Parents' psychologist holds a doctorate degree in psychology and a master's degree in counseling. Her doctoral dissertation was devoted to ADHD. (Vol. II, Tr. 27-28). She is a licensed counselor and has been in practice for about 15 years. Parents' Psychologist is conducting her residency in psychology and is under the supervision of another licensed clinical psychologist. (Vol. II, Tr. 4). Currently she is not a licensed psychologist. 80 to 85% of her practice is working with children and adolescents. Before she became a counselor, she was a youth minister. (Vol. II, Tr. 12). Parents' Psychologist conducted formal psychological evaluation of Child April 2014. (P Exh. P 48). At the time of the due process hearing, Parents' Psychologist had been providing therapy to Child for about 10 weeks. (Vol. II, Tr. 57).

62. Parents' Psychologist opined that symptoms of ADHD, such as lack of self control, impulsivity, and drive for stimulation can lead to inappropriate sexual behavior or touching. (Vol. II, Tr. 81-83). She also stated that the exposure of one with ADHD to pornography can put the individual at a higher risk of developing an addiction to pornography. This is so due to the pornography arousing the pleasure center of the brain. (Vol. II, Tr. 84).

63. Child has oppositional defiant behavior and conduct which may be a diagnosis or underlying symptom of another problem. (Vol. II, Tr. 112-116).

V Legal Analysis

The Individuals with Disabilities Education Improvement Act (IDEA/Act), 20 U.S.C. § 1400 et seq., requires states, as a condition of acceptance of federal financial assistance, to ensure a "free appropriate public education" (FAPE) to all children with disabilities. 20 U.S.C. § 1400(d), § 1412(a)(1). The Commonwealth of Virginia has elected to participate in this program and has required its public schools, including the LEA here, to provide FAPE to all children with disabilities residing within its jurisdiction. Va. Code Ann., § 22.1-214-215.

The Act imposes extensive substantive and procedural requirements on states to ensure that children receive a FAPE. 20 U.S.C. § 1415. *See also Board of Education v. Rowley*, 458 U.S. 176 (1982). This includes, certain obligations of the LEA when a child with a disability is recommended for a long term suspension. 20 U.S.C. § 1415(k). In this case, the LEA recommended Child for a long term suspension and was therefore required to hold a manifestation determination review (MDR) meeting to decide if the conduct in question was a manifestation of Child's disability. Parents contend that the LEA failed to meet its obligations during the MDR meeting. Thus, here the Hearing Officer examines the evidence to determine if the MDR determination was flawed.

In determining whether Child's conduct was a manifestation of the disability, IDEA directs the team to determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or whether the conduct was the direct result of the failure of the LEA to implement Child's IEP. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e).

The MDR Committee is also required to review all relevant information in Child's file, including the child's IEP, any teacher observations, and relevant information provided by the parents. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e).

The evidence shows that the only comprehensive psychological report in Child's file was the 2010 Psychological Report. Further, the evidence demonstrates that this report was a major consideration in determining Child's initial and continued eligibility for special education and related services. In addition, it was utilized to establish all of Child's IEPs. Yet, Science Teacher acknowledged only seeing it for the first time at the due process hearing and therefore was not aware of all Child's Axis I diagnoses, identified in the report. In addition to the ADHD diagnosis, they included Mood Disorder NOS, Mental Disorder NOS, and Learning Disability NOS. Science Teacher could not recall if Child's Mood Disorder was discussed during the meeting nor what documents/records were reviewed. Further, she perceived that her input was limited as she did not have the opportunity to say as much as some other committee members. Moreover, Science Teacher testified that she never put ADHD and sexually inappropriate behavior together. She acknowledged during her testimony that the MDR team did not discuss whether the behavior was a manifestation of any sexual fixation. She concluded that sexually inappropriate behavior could not relate to Child's ADHD.

The Hearing Officer observed the demeanor of Science Teacher and has determined her testimony is credible. Considering the evidence mentioned above, the Hearing Officer finds, Science Teacher had limited input during the MDR meeting and made a decision without being able to review or consider all relevant information, to include Child's diagnoses/disabilities mentioned in the 2010 Psychological Report.

Of note as well, the evidence demonstrates that Guidance Counselor attended at least the first day of the MDR meeting. And like Science Teacher she did not view the 2010 Psychological Report.

In addition, Social Worker, another member of the MDR team testified that the team did not discuss Child's Mood Disorder diagnosis or his fixation with sex and whether either caused Child's behavior that subjected him to the discipline. Further, Social Worker could not recall if the team discussed child being oppositional defiant or requiring the implementation of behavior interventions. Similarly, Gifted Specialist could not recall if the MDR committee considered Child's Mood Disorder diagnosis. Clearly this testimonial evidence of Social Worker and Gifted Specialist shows the LEA failed to consider all relevant information in violation of 34 C.F.R. § 300.530 (e).

The Hearing Officer also observed that Case Manager who was taking notes of the meeting assessed that not much was accomplished in the two day meeting because it was very heated and emotional, and thus "difficult to get a sense of what was going on." This also supports a breakdown of the LEA's fulfilling its obligation to consider all relevant information.

At the end of the meeting Parents disagreed with the decision and stated that not all of Child's disabilities were considered.

After observing the demeanor of all the witnesses mentioned above and considering the stated evidence, the Hearing Officer finds that the team as a whole failed to review and consider all required information. This is so because the MDR committee must consider all relevant information, not simply the disability on which the Child's eligibility is based. Here the evidence establishes that the MDR committee as a whole neglected to consider all diagnoses of the child, to include, but not necessarily limited to Child's Mood Disorder. Plainly, this neglect violated 34 C.F.R. 300.530 (e). Further, at least one committee member never reviewed the 2010 Psychological Report which was critical to determining Child's eligibility and receipt of special education and related services.

What is more, the Hearing Officer finds the MDR committee did not review the 2012 Psychological Report to assist in determining Child's admission to the Magnet School. While the Hearing Officer notes that this report was not comprehensive, it did make some observations regarding Child's behavior during testing and was therefore relevant. Moreover, the evidence shows that not much was accomplished during the MDR meeting due to high emotions and heated exchanges. Therefore, the Hearing Officer finds that the type of consideration and ensuing decision reasonably contemplated by the IDEA failed to take place during the MDR meeting.

Further, the Hearing Officer has determined that the MDR committee was ill equipped to decide if the conduct was a manifestation of the disability. This is so because the LEA had not conducted any additional formal, comprehensive, and standardized evaluations of the Child for almost four years with the exception of the 2012 Psychological Report which was for the sole purpose of determining Child's eligibility for the Magnet School. Even so, the evidence establishes that the 2012 psychological report was not reviewed by the committee. In addition, the only comprehensive psychological report was the 2010 Psychological Report and as stated previously, at least one member of the committee never saw this report. No current Sociological Evaluation had been conducted for four years even though the evidence established that there had been changes in this area. Granted, the LEA is not necessarily required to conduct "formal evaluations" when conducting annual reviews of a child with a disability or the triennial review, meetings to formulate IEPs, or the like. But in this case, the facts dictate the LEA should have updated its evaluations of Child and not simply reviewed existing data. This is so considering the evidence shows that the child was disciplined for texting sexually explicit statements to his teacher, that Parent informed the LEA of Child's early exposure to pornography and sexually inappropriate behavior including videoing someone in the shower. In addition, the evidence demonstrated that consistently Child was not turning in or completing assignments. This resulted in his receiving poor grades.

In carefully reviewing the evidence in this case, the Hearing Officer has also considered the LEA's argument that it did not suspect Child had a Mood Disorder. The contention is not persuasive for reasons stated below.

First, as noted above, Child had been diagnosed with Mood Disorder NOS as noted in the 2010 Psychological Report. The evidence shows child was prescribed medication for a mood disorder and the LEA was aware of this. Further, although social improvement had been noted, Child's IEPs consistently reported that Child experiences anxiety, depression, and withdrawal

symptoms when he does not perform to his expectations. The evidence illustrates that this gifted Child was not academically successful in several of his classes due in part to his not turning in assignments. In Latin, he consistently earned a failing grade of "E." and in advance science, his semester grade was "D." Child also failed the first quarter in one of his classes. Child was enrolled in a gifted magnet school based on an application process. He possesses superior intellect. Thus, it is reasonable to assume he was not meeting his expectations in this setting and therefore his mood was adversely affected.

Second, regarding the Mood Disorder NOS diagnosis, the evidence illustrates that some members of the MDR team interpreted the NOS label to mean the disorder was only emerging. Considering the NOS assessment was four years old, it is reasonable to find that by the time of the conduct (four years later) which subjected Child to a long term removal, the emerging diagnosis noted in the four year old report may have evolved. Thus, consideration of the Mood Disorder NOS, of which the LEA should have had notice of, was warranted before the MDR team made a decision on whether Child's behavior was caused by his disability.

For this reason, the Hearing Officer finds that the LEA had reason to suspect Child was experiencing a mood disorder and was required to consider this disability in determining whether Child's behavior was a manifestation of his disability. As referenced previously, because the LEA failed to do so it violated 34 C.F.R. § 300.530.

In addition, the Hearing Officer has considered testimony presented by the LEA that Oppositional Defiance and sexual fixation are conduct disorders and therefore the LEA was not required to consider them during the MDR. The IDEA requires the MDR team to deliberate on all relevant information. The testimony of the School Psychologist and Parents' Psychologist demonstrate that ADHD combined with another disorder such as a mood disorder could cause sexual hyperactivity. As such, sexual misconduct could be a symptom of ADHD, the disability category for which Child was found eligible. The Hearing Officer found the referenced testimony by the two psychologists credible. Their testimony as well as the 2010 Psychological Report provides an axis to determine that Oppositional Defiance could be a symptom of an IDEA disability such as ADHD as well. Considering the testimony of the psychologists, the Hearing Officer finds the evidence insufficient to establish that both oppositional defiance and sexual fixation are conduct disorders only and not symptoms of an IDEA disability. This is so especially observing that in addition to ADHD, under the 2010 Psychological Report, Child carried diagnosis of Mood Disorder NOS with anxious, depressed features (w/emerging conduct disorder tendencies). Accordingly, both the Mood Disorder and Oppositional Defiance data about Child were relevant information that the MDR committee should have considered, but the evidence shows that not all committee members did so. Thus, the LEA violated 34 C.F.R. § 300.530.

What is more, the Hearing Officer is not persuaded that the behavior on February 3, 2014, was not due to ADHD impulsivity. That said, 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).* The Hearing officer finds, the evidence of record provides sufficient reason for her to give little weight to the educators' assessment that the

conduct was not a manifestation of Child's disability. As noted here the MDR review violated 34 CFR §300.530 (e) and substantially flawed.

In addition, the facts support Child's actions on February 3, 2014, may have been impulsive. Particularly, they show that Child was in his social studies class and had been instructed by the guidance counselor to ask his teacher if he could contact his mother and inquire if he could stay after school that day for a meeting. Child without delay walked up very closely to his teacher whose back was turned to him. The teacher felt her bottom being touched. No hand movement was observed. The actions of Child occurred quickly and do not suggest Child deliberately and with premeditation made contact with the teacher's bottom, but rather the action was in response to sudden stimulus typical of the reaction of an ADHD child. *See, generally, Fitzgerald v. Fairfax County School Board*, 556 F. Supp. 2d 543 (E.D. 2008). Given this conclusion, the Hearing Officer cannot find Child was cognizant of his behavior at the time. In fact a description of Child's behavior and careful scrutiny of it matches the Gifted Specialist's and School's Psychologist's definitions of what ADHD impulsivity can entail; that is unplanned and quick actions. Further, although it may be considered self-serving, Child's statement of what occurred does not support the claim that he was aware of his actions.

The Hearing Officer is cognizant of the court's ruling in this judicial circuit in the *Fitzgerald* case where the MD decision was upheld. *Fitzgerald* at 556. The case at bar contains distinguishable facts. Thus, a similar ruling is not warranted.

For one, in *Fitzgerald* the court noted that parents have a right to participate in the MD meeting and be heard. It found that the parents were afforded those rights. *Fitzgerald* at 558. In contrast to *Fitzgerald*, the parents in the case at bar were not heard during the MD meeting because they requested all Child's disabilities be considered. The LEA ignored the request. Consequently and secondly, all relevant information was not considered in the case before this Hearing Officer. This factor is also opposite to what occurred in *Fitzgerald*.

Third, in *Fitzgerald* the court found the MD committee did not approach the MD meeting with a closed mind. *Fitzgerald* at 560. The evidence in the case before the Hearing Officer illustrates as previously noted that the Assistant Principal, supervisory personnel, came to the meeting with the belief that a conduct disorder could not be a disability and therefore would not be considered. She did not consider it. As such the assessments of sexual fixation and oppositional defiance were not considered by at least several committee members. Science Teacher testified that she did not associate ADHD with hypersexual activity. The testimony of Gifted Specialist and School Psychologist also indicated a fixed definition for impulsivity that could not relate itself to hypersexual activity. Accordingly, unlike *Fitzgerald* an atmosphere of open-mindedness was absent at the MD meeting.

Fourth, in *Fitzgerald* the court noted that the student, Kevin Fitzgerald (Kevin), played a dominant role in planning and executing the spray painting of the school with paint balls. Kevin was a junior in high school and receiving special education and related services. On December 16, 2006, he suggested to four other boys that they drive to his high school and spray paint the school. The boys went to the high school and did so. A paint ball malfunctioned and Kevin drove the boys to retrieve additional paint balls. Kevin drove the boys back to the school where

they proceeded to spray the school again. After the second trip to school, two of the boys decided they no longer wanted to participate and Kevin drove them home. Kevin returned with the other two boys and spray painted the school again. The incident lasted several hours. Kevin was eventually linked to the vandalism at the school and when questioned by the school's police officer and told the school would not pursue criminal charges, Kevin admitted his involvement. *Fitzgerald* at 547. The MD committee found Kevin's behavior was not a manifestation of his disability. The court in *Fitzgerald* found that Kevin played a predominate role in planning and executing the activity. It noted the activity lasted several hours. The court found Kevin's actions were not due to impulsivity.

As noted above, the facts in the case at bar fall short of showing planning by Child, but impulsivity on February 3, 2014.

In sum, the *Fitzgerald* ruling upholding the MD is inapplicable here because the facts are different.

Further, the Hearing Officer has considered the reported statements made by former psychologist of Child and she is not persuaded by them. The Hearing Officer does note the evidence fails to show Child was evaluated by the former psychologist. Also, no credentials of this psychologist were provided.

VI. DECISION AND ORDER

For reasons stated above, the Hearing Officer finds the manifestation determination review was conducted in violation of 34 C.F.R. § 300.530 (e) and substantially flawed. Therefore the determination that Child's conduct was not a manifestation of his disability is not upheld.

Further, the Hearing Officer finds with regard to the issue before her that all requirements of notice to the parents have been satisfied and that the school reports Child is one with a disability as defined by applicable law 34 C.F.R. Section 300.8 and that Child is in need of special education and related services. The Hearing Officer also with respect to the issue before her finds that the LEA has failed to provide Child with a FAPE since his long term removal commenced on or about February 6, 2014.

Accordingly, the LEA is ordered to immediately return Child to Magnet School, where Child was enrolled as a seventh grader before his long term removal on or about February 6, 2014.

VII. PREVAILING PARTY

I have the authority to determine the prevailing party on the issue and find the prevailing party are Parents.

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 4th day of June, 2014.


Teron Galloway Lee, Hearing Officer

Cc: Parents
Counsel for Parents and Advocate for Parents
Counsel for LEA
Dir. of Special Education for LEA
VDOE Coordinator

Certified true copy