

Special education student fights suspension

A 17-year-old Rockbridge County High School student claims that the county school board violated his rights and the law after he and three other students were accused of smoking pot in the boys' room during lunch.

The boy has steadfastly denied smoking the weed, and a drug test taken the day of the incident showed no signs of any illegal substances in his system.

Michael and the three other students were suspended for the rest of the year.

Michael's family and their lawyer, Shawna Cheney, of Blue Ridge Legal Services [Legal Aid], want the boy to be put back in school "immediately." They've demanded a hearing, and want that hearing open to the public.

County assistant school superintendent John Reynolds says there will be a hearing. The school system doesn't have any choice, he says.

At this point, school officials say they can't comment on the particular case.

The real issue raised in the case isn't the boy's guilt or innocence. Instead, it's whether or not the school board followed the law, and in particular the laws governing the education and the procedures that must be followed by the schools in dealing with special ed students.

Documents related to the case — provided to this publication on the condition that the boy's last name not be used — allege that school officials and the school board violated more than half a dozen provisions of the Virginia State Code in their dealings with the student.

The incident in the boys' room happened on February 19. Michael's parents were notified, and his father took him for a drug test the same day. The drug screening test found no trace of any illegal drugs in his system.

But, sources familiar with the incident say, a video tape captured him and the other boys going into and coming out of the bathroom together. After they came out, a teacher smelled something funny.

The school's resident deputy sheriff was called and grilled the kids.

The next day, RCHS principal Jennifer Weaver and assistant principal Rick Lollis sent Michael's father a letter. Michael had been suspended for 10 days. The decision could be appealed to the superintendent. But even if it wasn't appealed — and it wasn't — the county school board would review the case. (The board does so with all incidents involving drugs.) At the board meeting, says the letter, "[Y]ou and your son will be given the opportunity to explain the circumstances involved with this incident. After a review

by the board, a disposition will be issued that could result in, but is not limited to, expulsion, attendance at an alternative site, or a return to school."

The other three students received similar letters.

But Michael's legal status is different. He is, according to the request for "an expedited due process hearing" filed by his attorneys, "a child with a disability who ... needs special education and related services."

In short, he has a learning disability, which is something the school system determined. Once it is determined he has learning disability, his education falls under a set of state laws governing special education.

Those laws call for his placement in school and other accommodations to be determined by an Individual Education Plan [IEP], developed and administered by a team including the student, his parents, a counselor, a special ed teacher, and an administrator.

By all accounts, Michael's a good kid: "polite, thorough, completes tasks and [is] cooperative," is how one teacher puts it. He's quiet. His specific learning disability is "poor visual and auditory memory, and his understanding of material is affected." And, according to his IEP team, he should do OK in school as long as he gets a little extra time and one-on-one attention. He was enrolled in regular classes at the school.

And, if there were disciplinary problems, his IEP team is required to address them.

And so, after Michael and his cohorts were busted, his IEP team issued a series of reports. That was on February 22.

The team said Michael had caved in to peer pressure, and that he needs to be careful choosing friends. Michael's father says that his son started hanging around with the others when he was a student at Maury River Middle School, and that school authorities didn't do anything to separate them.

Michael's IEP team's reports don't go into any details about the incident at the high school.

But there is nothing in any of them indicating that the team overseeing his education thought any good would come from booting him out of school for the rest of the year. Removal is only mentioned as a possible consequence of further violations of the school's anti-drug rules.

Instead, one of the reports says, "Most importantly, teachers can give Michael clear, direct one-on-one instructions which help develop routine and structure for Michael. ... [He] should be seated near positive role models in his

classes." And, it says, he should be seated near the front of the class because when he was seated there, "his grades were better and he was not getting into trouble in the classroom."

"Educators can positively reinforce him for having positive peer relations, using his class time wisely to complete his assignments and assessments, sitting with positive role models in class, remaining in the cafeteria during lunch time, and following all rules and regulations of Rockbridge County Schools."

It goes on to suggest working with his parents to encourage him to follow the rules.

That all makes sense to Michael's father.

The same day it issued its reports, the IEP team amended his educational plan. "The team recommends that Michael go to cafeteria during lunch," was the harshest thing mentioned.

On March 5, the school board's discipline committee — Bob Gilbert, Laurie Macrae and Sarah Jane Deacon — met to consider the cases of Michael and the other three students.

Michael was there with his father. They did not have an attorney to represent them at the time.

Michael's father says the committee, during the closed hearing, repeatedly demanded that Michael tell just how he smoked the pot, and Michael consistently said that he didn't smoke it.

The dope, if that's what it was, was apparently burned in a tin-foil bowl.

Michael's father says that he told the committee they could have the boy tested again for drugs, but the committee didn't seem interested.

"Our policy doesn't say that if you pass a drug test, you're fine," school board chairman Bob Gilbert says. "It depends on the circumstances. We have to act on the information we have and all of the circumstances." Sometimes, he says, it's "gray."

And the committee often comes under fire. It was criticized not long ago for doling out the same punishments in a set of alcohol violations. One of the students involved drank nearly lethal amounts, Gilbert says, while some of the others merely took a sip. "How do you quantify? Do you say 'one sip is fine, too much is not?'"


The disciplinary meeting did not record the closed session during which it considered Michael's case. The committee doesn't ordinarily do that. Nor does it have an attorney providing it with advice at its meetings. (Gilbert says the school board and its disciplinary committee members do get advice from an attorney.)

Michael and the three other students involved in the incident were suspended for the rest of the year. All of the votes were unanimous. All of the motions were made by Laurie Macrae.

The day after the hearing, the high school sent Michael's parents a letter detailing the punishment. It didn't include any mention of possible appeals. And, according to the demand for a hearing, Michael's parents were never provided with any notice about the state's legal safe- ➤

**Building
and rebuilding
Historic
Lexington.**

Custom Homes
◆
Building Restoration
◆
Commercial Construction




SILS
CONSTRUCTION
INC.

▲ DESIGN ▲
BUILDING &
RENOVATION

463-1706

Valley of Virginia Real Estate
Fine Homes, Horse Properties & Farms
www.ValleyofVirginiaRealEstate.com



Candy Lynn
is pleased welcome
Sally Claeys
to
Valley of Virginia Real Estate

Sally Claeys, REALTOR®
540.463.6322
Sally@CSally.com

Quality Professional Service in a Friendly Atmosphere
6872 N. Lee Hill Rd. - Raphine, VA 24472
Candy Lynn, Broker/Owner 540-460-0070 candy@candylinn.com

guards for disciplinary hearings.

The disciplinary committee's action included a provision for Michael to "receive homebound instruction for the remainder of the school year."

But when contacted by the tutor who was to provide that "homebound instruction," Michael and his parents learned that it would be just three hours a week, and at the public library. The instruction there is in English, biology and math. But there are no history lessons, and history, Michael's father says, is the only subject in which Michael is having particular difficulties.

Two weeks after the hearing, Michael's parents were notified that his IEP had been modified to say he will receive "home based instruction for the remainder of the 2006-2007 school year due to a disciplinary action as determined by the school board."

Michael's parents, Cheney says, were never notified that the IEP was going to be changed, had no input, and were not informed of their legal rights to participate or appeal the decision.

The demand for a hearing spells out the case in a series of questions and answers. All of the answers are backed-up with citations from state law.

■ Did Rockbridge County Schools provide ... [Michael and his parents] with adequate notice of his rights and the school's obligations under ... [the law]?"

No. ...

■ Must the School Board Disciplinary Committee consider the Special Education and disciplinary records of the student before making a final determination regarding the disciplinary action?

Yes. ...

■ May the School Board Disciplinary Committee determine the educational placement of a student with a disability when it takes disciplinary action against that student?

No. [State law says] "The interim alternative educational setting must be determined by an IEP team."

■ Does the change from in school instruction to three hours per week of homebound instruction constitute a change in placement?

Yes. ...

■ Does three hours per week of homebound instruction provide an "appropriate interim alternative education setting" as referenced in ... [state law]?"


No. ...

■ May a student with a disability be removed to an "appropriate interim alternative educational setting" for more than 45 days if the student knowingly possesses drugs while at school?

No.

■ Did the school provide [Michael and his parents] ... with all the due process rights that all students are entitled to under the Code of Virginia ... ?

No. The School Discipline Committee's decision to ignore ... [Michael's] evidence of his innocence was arbitrary and capricious and an abuse of discretion."

In short, Cheney says, "Either they don't know the rules or don't care what they are. This isn't skating close to the line; it's over the line." 



The Villas at Pikes Place

From \$235,000

These newly constructed villas feature one level living, three bedrooms, 2.5 baths, private porches, oak and tile floors, 9 ft ceilings. Minutes to I-81 and I-64 interchanges.



Painted Lady

\$465,000

Enjoy the feel of a California "Painted Lady" right here on Main Street in Lexington! Craftsman-inspired master suite, custom cabinetry, beautiful

hardwoods throughout. Home situated on two city lots. Call today for your private showing!

Custom Contemporary

\$549,500

Here's something you don't see every day - a contemporary home within Lexington city limits! Privately situated on a wooded hilltop, with open floor plan, vaulted ceilings, lots of glass. Call Ann Spice to see!



Ann.Spice@era.com

Call

Ann Spice

540.817.9018



Premier Partners

114 W Washington St Ste 102
Lexington VA 24450
540-464-3911

www.era-premierpartners.com



Each ERA® office is independently owned and operated.