[redacted]

VS.

DESOTO COUNTY SCHOOL DISTRICT

REPORT OF DUE PROCESS HEARING

[redacted]

MAY 24 & 25, 2006

DeSoto Central Middle School

Hernando, Mississippi

and

DECISION OF DUE PROCESS HEARING OFFICER

Submitted by: Roger Clifford Clapp, Due Process Hearing Officer
June 14, 2006

[redacted]

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I. Procedural History

On March 1, 2006 the Mississippi Department of Education ("MDE") received a due process hearing request notice dated February 22, 2006 submitted by [redacted] PhD. Ed., (hereinafter sometimes "[redacted] or "parent"), father of [redacted] (hereinafter "[redacted]"), a 1[redacted] concerning failure of the DeSoto County School District (hereinafter sometimes "the district") to identify [redacted] as entitled to benefits under the Individuals With Disabilities Education Improvement Act (IDEIA) and requesting identification of [redacted] under Section 504 of the Rehabilitation Act. MDE assigned the Due Process Hearing Officer (HO) on March 1, 2006.

On March 2 and 3, 2006, by telefax and U. S. Postal Service, the undersigned HO informed the parties that a pre-hearing telephone conference was set for April 13, 2006 and the due process hearing was set for April 28, 2006. The communication furnished a two-page detailed explanation of the purposes and expectations for the telephone conference and encouraged the parties to obtain representation and attempt to reach an agreement at the statutorily required resolution meeting or to participate in voluntary mediation. The parties later agreed to change these dates to April 3 and 11, respectively.

On March 8, 2006 the district filed with the HO, with a copy to the parent, a timely Notification to Hearing Officer of Insufficiency of Parent's Notice of Due Process, requesting determination of whether the parent's request was sufficient notice under the law as amended and whether the requested identification of [redacted] under Section 504 was within HO jurisdiction. The HO received the notification March 13, 2006 and on March 16, 2006 ruled that the parent's request was sufficient notice, requiring that the

matter proceed under IDEIA, but that the Section 504 request was not within HO jurisdiction. The letter ruling was sent to the parents, the district and counsel, and MDE.

In a March 17, 2006 letter, the HO asked the parties to be prepared at the pre-hearing conference to present legal positions on the parent's request for enforcement of a mediation agreement allegedly breached by the district concerning an issue related to the present request for due process.

On March 20, 2006 the HO received from the parent an email dated Monday, March 19, 2006 requesting information, with an attached letter, and a follow-up telephone call. The parent, who had not yet received the HO ruling on the district's Notice of Insufficiency, indicated confusion over the Notice and the requirement for a resolution meeting in view of previous failures of mediation efforts. The HO did not read the letter attached to the email (because there was no indication that it had been sent to the district or counsel), declined to discuss the matter ex parte by telephone, and responded by email, with copies to district counsel and MDE. The email directed the parent's attention to the ruling on the notice issue, explained that the district was required by statute to schedule a resolution meeting, and again urged the parent to obtain representation.

The Pre-Hearing Conference was held by telephone as scheduled on April 3, 2006. Both of [redacted] parents participated, as did [redacted] and counsel for the district. An attorney for the parents was identified by them but did not participate. The parties requested and agreed to change the Due Process Hearing date to May 24 and 25, 2006, and upon good cause shown the HO extended the forty-five day deadline to June 14, 2006. Various issues, including the central issue of [redacted]'s eligibility, were discussed at great length. In a letter to the participating parties dated April 4, 2006, the HO summarized the telephone conference, including the granting of an extension of time, the date and arrangements for a Due Process Hearing open to the public by parents' request, the issues to which the parties would be limited at the hearing, the format of the hearing and the burden of proof borne by the parents, the subpoena requirements, and the deadline for sharing documents and witness lists. A copy was sent to MDE and to the named counsel for the parents.

To give the child and the unrepresented parents the benefit of any doubt, the HO allowed the parties to agree to an expansive list of issues:

1. Whether the district should have determined that the child is qualified.
2. Whether parents were given appropriate opportunity to have the child identified by the district.
3. Whether the district failed to follow Child Find requirements, resulting in a late and erroneous determination of ineligibility.
4. Whether the district appropriately applied the TST process, including giving appropriate notice to parents of the identity of participants and allowing parents appropriate input.

5. Whether the district gave parents adequate notice of and sufficient information about meetings concerning the child.

6. Whether the district allowed parents appropriate participation in meetings when documents and opinions were considered and decisions were made concerning the child.

7. Whether district's decision regarding eligibility was based on appropriate consideration of input from parents and all members of the team.

8. Whether district wrongfully denied parents access to the Summary Report and identification of its author.

9. Whether the district missed deadlines, resulting in erroneous determination of ineligibility

10. Whether the psychological evaluation and report was appropriately considered by the district.

11. Whether the district appropriately considered evaluations by Dr. and Dr. furnished by the parents, in reaching its decision regarding eligibility.

By letter to the HO dated April 6, 2006, with copy to the parties and named counsel for the parents, counsel for the district questioned the HO's inclusion of rebuttal evidence in the hearing format that was mentioned in the summary of the pre-hearing conference. The HO responded at the hearing, stating that admission of rebuttal evidence was not allowed under the accepted hearing format and would not be anticipated.

The district made timely distribution of a large notebook of 414 pages of proposed documentary evidence and a list of thirty-nine possible witnesses with several curricula vitae, requesting a subpoena for only one witness. The parents did not submit any documents or witness list, although they had identified three potential witnesses during the pre-hearing conference, and they requested no subpoenas.

II. Due Process Hearing May 24 and 25, 2006

A. The hearing was attended by

[redacted]
Emily Nelson, Ed.S., district Director of Special Education
James A. Keith, Esq., legal counsel for the district
Ann Box, legal assistant to Mr. Keith
several members of the public as observers

B. At the beginning of the hearing on May 24, 2006, the HO overruled preliminary objections to several proposed district exhibits, objections to any parental testimony in the absence of a witness list, and parents' request for a delay of the hearing to afford them further opportunity to obtain counsel. The HO submitted a composite Exhibit HO-1 to include previous admonitions to the parents to obtain counsel and a letter received from

named counsel denying that she had been retained. The parents declined to make an opening statement. Mr. James A. Keith, Esq. made a statement for the district, and [redacted] briefly responded. After a break, the parents were invited to proceed. [redacted] called Ms. Emily Nelson, Director of Special Education, as the first witness. The parties stipulated that [redacted] had generally good grades, was well behaved, and was doing well in school. [redacted] was allowed to cross-examine Ms. Nelson extensively during approximately eight hours of testimony, and the HO asked some questions for clarification. Both parties were also allowed to present intervening argument from time to time for convenience and clarification of matters such as changes in the law and the parent's efforts to find and comply with the current law.

C. Certain documents among those provided by the district were introduced into evidence by the parents without objection, including the following Exhibits:

P-1: Emily Nelson c.v.
P-2: Kim Strickland's 4-5-05 Psychometrist Report
P-3: District exhibits SD-12 (Assessment Team Report and Data Considered by Eligibility Team) and SD-13 (Transcript and Documentation Regarding 2-13-06 Meeting to Determine Eligibility
P-4: August 29, letter from Middle School to [redacted]
P-5: Letter from [redacted]. to Emily Nelson
P-6: August 15, 2005 letter from district to [redacted]
P-7: August 10, 2005 email from [redacted] to district
P-8: Summary of Meeting 12-9-05
P-9: [redacted] s grade record in Grades 1,2 & 4 in Mississippi
P-10: [redacted] 's grade record in Grade 3 in Florida

After announcing that the hearing would continue the next morning, as part of an inquiry about what was anticipated in the way of testimony the next day, the HO offered an impression of the proceedings to that point, stating tentatively that it was not yet clear that sufficient evidence had been presented by the parents to carry the burden of proof on the issues that the parties had identified at the pre-hearing conference. The parties were encouraged to consider this observation in preparing for the second day of the hearing.

D. The hearing resumed on May 25, 2006 and continued for approximately three hours. At the parents' request, the HO summarized the previous day's off-record statements concerning the tentative impressions of the HO at that point, and the parties agreed that the statement was accurate. The following additional exhibits were admitted:

HO-2: Parent's Request for Due Process
HO-3: District's response to parent's request
HO-4: District's Notice of Insufficiency of Parents' Notice of Due Process
HO-5: Hearing Officer ruling on Notice
HO-6: Hearing Officer summary of telephone Pre-Hearing Conference

Ms. Nelson was again available as the witness, but [redacted] stated that the burden of proof was excessive and that they did not know how to proceed without counsel. The HO suggested addressing specifically the eleven issues that had been identified at the Pre-hearing Conference. [redacted] requested that the entire binder of documents produced by the district be admitted into evidence, and the HO denied the request. The parents declined to offer further evidence. Mr. Keith made a brief summary statement for the district, and the HO asked the parties for argument on each of the eleven issues identified, in reverse order. On each issue, the Mr. Keith addressed the topic for the district and the parents declined to offer anything further. The HO found that the parents had failed to meet the burden of proof on all eleven issues.

When asked to proceed, the district declined to put on any proof but asked for and received from the HO confirmation of a timely proffer of evidence considered unnecessary by counsel under the circumstances. The HO then gave the parents another opportunity to proceed further and they declined, and the evidentiary hearing was declared closed.

E. At the invitation of the HO, [redacted] s parents both made closing statements that were quite eloquent. They summarized their intense and lengthy personal efforts to first learn the law and procedure and then obtain advice from various government and educational agencies, as well as their constant efforts to insist on cooperation from the district in what they saw as [redacted] s needs and rights. [redacted] acknowledged that his "assertiveness," which he considered necessary and possibly misinterpreted, had caused tension, and he opined that his manner may have affected the district's handling of the parents' requests on behalf of [redacted]. He suggested indirectly that the burden of proof on parents was unfair. [redacted] explained their good faith interest in maximizing [redacted] s school progress for all of the reasons any good parents would have. She said they were familiar and experienced with IDEA, and she sincerely questioned how uneducated parents could keep their children from falling through the cracks, if PhDs like the [redacted] had such difficulty in getting necessary information to seek accommodations for their child.

Mr. Keith likewise gave an eloquent closing statement. He defended the district's reputation as a leader in IDEIA and MDE policy compliance and its reactions to what the single witness had described as unprecedented "aggressiveness" by [redacted]'s father, but he pledged self-examination by the district to learn from the [redacted] experience. He distinguished between medical diagnoses and educational evaluations, asserting that the proof showed, among other things, that [redacted]'s admitted medical diagnoses had not manifested in anything near a learning disability qualifying her for special education under IDEIA, even after extraordinary efforts by the district to be sure in her case. Mr. Keith recalled that the identification process described by Ms. Nelson and begun in [redacted]'s case had been MDE policy since 1997. Finally, he repeated the district's offer to continue the intervention program with [redacted] with a Teacher Support Team effort designed to take her through the normal three-tier process concerning her mathematical

inconclusive. Normal procedure never calls for a vote but merely seeks consensus without numerical analysis, and the special education director takes responsibility for the final determination of eligibility or non-eligibility after considering all the input. Judging from Ms. Nelson's testimony and the minutes of the meeting, it was unusually tense and adversarial, apparently because of previous aggressiveness on the part of [redacted] toward some teachers and other attendees. The minutes also suggest a somewhat defensive manner in which the meeting was led by Dr. Angela Bolden, Assistant Director of Special Education for the district, probably because of previous unpleasant experiences with [redacted] Nevertheless, there was adequate opportunity for input by the parents, before, during, and after the meeting, even if they and their attorney did not get the "audience" they reportedly desired on that occasion. It does appear that parents who already have differences with the district could have a legitimate concern if not provided with a copy of the Draft Summary Report (DSR) before such a meeting. The DSR is routinely prepared based on earlier information that is merely summarized and not always specifically referred to therein, and it is signed beforehand to identify the preparer. It would only be changed if something very significant and unexpected came up in the meeting, and since the attendees (including parents) normally have already been interviewed in preparation for drafting the report, the DSR is seldom changed. The DSR may be augmented by attaching material submitted after the meeting. To suspicious and overtly critical parents like the [redacted] this procedure seems to cast doubt on the legitimacy of the meeting itself. However, in [redacted] 's case there is no evidence to suggest that the report was incorrect, and the parents were invited to offer further input in writing following the meeting but declined.

In summary, the "point in time" test and evaluation data relied upon by the parents as "red flags" indicating [redacted] has an LD are less important than the many other ingredients of a district determination of eligibility for IDEIA. [redacted] s admirable ability to compensate for her math deficiencies is one of many important factors appreciated by the district more than by her parents. While the [redacted] understandably considere[redacted] unique and exceptional, the rapidly growing DeSoto County School District has many "twice exceptional" pupils, gifted children with LD as determined by time-honored procedures, and the evidence shows that they are following proper procedures in [redacted] s case. The district process for identification rightly places professional assessments of the individual student later in the process than demanded by [redacted] s parents. The district remains open to continuing educational intervention with [redacted] if the parents should chose to return her to the school. Regrettably, [redacted] 's parents consider this approach as "waiting for her to fail" before doing anything about the problem, and they have not accepted the district's offer.

The parents professed great personal indignation at many things said and done and left undone by [redacted] s school. On the other hand, [redacted] eportedly offended some of the teachers and other staff continually by his aggressive style and persistence, according to the witness. Especially offensive to both parents at one point in this long battle was a letter from the middle school to [redacted], directing all future

communications to the district. While this letter and other events were considered by the parents as indicative of a prejudicial attitude toward [redacted] and while the admitted tension did make the district's job harder, no evidence was presented to indicate that any of these unfortunate human frictions had any substantial bearing on the ultimate determination of [redacted]'s non-eligibility at the time it was decided.

IV. Decision and Order

The preponderance of the credible evidence in this case show that [redacted]

(a) does not have Attention Deficit Disorder,
(b) has a developmental math disorder, dyscalculia,
(c) even if she has ADD and Dyscalculia, is not IDEIA eligible at this time,
(d) has not been shown to have and does not have a learning disability that makes her eligible for services under IDEIA, and
(e) the district did not err in making its determination on eligibility.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the relief sought in the parents' request for due process in the form of IDEIA accommodations for [redacted] should be and is hereby denied, and this matter is hereby dismissed.

V. Rights of Appeal

Within 45 calendar days of this date, either party may appeal this decision to a state court of competent jurisdiction or to a United States District Court pursuant to 34 C.F.R. 300.512 and 20 U.S.C. 1415(i)(2), 1415(i)(3)(A), and 1415(l).

SO ORDERED AND ADJUDGED this 14th day of June 2006.

ROGER CLIFFORD CLAPP
DUE PROCESS HEARING OFFICER

DecisionDeSotoCounty-[redacted]