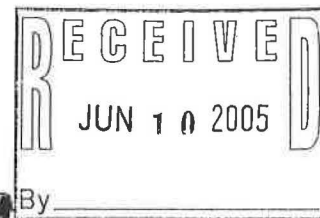


**IDEA DUE PROCESS HEARING REPORT**

**v Madison County School District**



CHILD'S NAME:

PARENTS:

LOCAL SCHOOL DISTRICT:

ADDRESS OF SCHOOL DISTRICT:

Mr. \_\_\_\_\_ and Mrs. \_\_\_\_\_

Madison County School District

Madison County School District

P.O. Box 159

Flora, MS 39071

May 10 and 26, 2005

June 9, 2005

David W. Walker, Ed.D



DATE(S) OF HEARING:

DATE OF REPORT:

HEARING OFFICER:

**INTRODUCTION**

This is the due process hearing report for the case of \_\_\_\_\_ v. **Madison County School District (MCSD)**. The following substantive issues were before this hearing officer.

1. The appropriateness of the district's eligibility evaluation, and
2. The district's decision to rule \_\_\_\_\_ ineligible for special education services.
3. Must Madison County School District (MCSD) provide an independent educational evaluation?

Note that the following exhibits submitted by the advocate for the \_\_\_\_\_ were objected to by the school district attorney, Mr. James Keith, because MCSD did not have them at, or prior to, the time that the \_\_\_\_\_ requested an independent educational evaluation, January 25, 2005. This is the issue which initiated the request by the school district for this hearing. Those parent exhibits not considered in this hearing officer's decision are:

1. P-1 Psychological Evaluation

2. P-15 Samples of \_\_\_\_\_ Handwriting
3. P-16 Psychiatric Outpatient E&M Progress Notes for 4/6/05; 1/6/05; 10/13/04; 9/17/04; 8/25/04; 7/26/04; 5/12/04; 3/8/04; 1/14/04; 4/15/04; 3/8/04; 3/3/04.
4. P-16 Letter dated 2/2/04 and letter dated 12/2/03 under the signature of \_\_\_\_\_ MD

## **FINDINGS and RULINGS**

### **Issue 1**

The first issue before this hearing officer is whether Madison County School District's evaluation for special education eligibility was conducted in a manner pursuant to 20 U.S.C. § 1412 (a)(6)(B).

### **Requirements**

The Individuals with Disabilities Education Act (IDEA) requires that prior to providing special education services to a child a school district must conduct an evaluation (1) to determine whether a child is a child with a disability; and (2) to determine the educational needs of such child. 20 U.S.C. § 1414(a)(1). Mississippi regulations pursuant to the IDEA require that a child study be conducted when a written or oral concern is received from a parent that the child is in need of special education and related services under IDEA. (MDE Policies and Procedures, III Child Find, p. 7).

In conducting initial evaluations and reevaluations, the school district' assessment team is required to:

1. Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, which may

assist in determining whether the child is a child with a disability and the content of the child's Individualized Education program. 20 U.S.C. § 1414 (b)(2)(A).

2. Not rely on a single procedure as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 C.F.R. § 300.532(f).
3. Review existing evaluation data on the child, including evaluations and information provided by the parents, current classroom-based assessments and observations, and teacher and related service provider observations. 20 U.S.C. § 1414 (c)(1).

**Facts**

1. The following areas of suspected disability had been identified by previous psychological testing and/or parent and teacher report; Asperger's Syndrome, inattention, disorganization, pragmatic language, fine motor skills required for handwriting, emotional and social behavior, visual perception, and academic achievement. *See* testimony of L. Slay.
2. Madison County School District conducted evaluations in the following suspected areas of disability; Asperger's Syndrome (*See* SD-5 pp. 28-30), Attention Deficit Hyperactivity Disorder (*See* SD-5 pp. 32-24), pragmatic and/or social language skills (*See* SD-5, pp. 25-26; *See also* Testimony of S. Brown), fine motor skills (*See* SD-5, p. 30), emotional and social behavior (*See* SD-5, p. 31), visual perception (*See* SD-5, p. 35), and academic achievement (*See*, SD-5 pp. 36-37)
3. \_\_\_\_\_ another gave the District permission to contact \_\_\_\_\_ doctors and counselors for their input into \_\_\_\_\_ evaluation. *See* P-6. However, shortly afterwards, Mrs. \_\_\_\_\_ verbally revoked that permission. *See*, Testimony of \_\_\_\_\_

4. Dr. Pruett gave Mrs. [redacted] medical records so that she could delivery them to the appropriate school personnel.
5. The MCSD had requested documentation from [redacted] at the Mississippi University Medical Center, however, no documentation was provided to MCSD prior to receiving the Parents Exhibits on or about May 5, and May 20, 2005. See Testimony of [redacted].

**Finding**

The parents' advocate in her closing statements alleged that MCSD did not conduct an assessment consistent with federal and Mississippi IDEA statutes and regulations because MCSD; 1) did not include a clinical psychologist, a psychiatrist, or Mississippi Department of Education (MDE) psychologist as a member of the assessment team; and 2) did not consider all necessary data relevant to [redacted]'s eligibility evaluation, specifically that MCSD did not consider all of [redacted]' medical records as a part of its evaluation. It is important to note that during the day of testimony the advocate did not produce any testimony or documentation to substantiate the allegation that MCSD did not include a clinical psychologist, a psychiatrist, or Mississippi Department of Education psychologist as a member of the assessment team. Therefore, this hearing officer is unable to determine whether this allegation is factual. On the second allegation, that MCSD did not consider all necessary data relevant to [redacted]'s eligibility evaluation. Specifically that MCSD did not consider all of [redacted]' medical records as a part of its evaluation. This hearing officer heard testimony from school district personnel, See testimony of L. Slay, that although Mrs. [redacted] initially gave signed written consent to obtain [redacted]' medical records from Mississippi University Medical Center, that later Mrs. [redacted] evoked her permission to release [redacted] records. And, while Dr. Pruett testified that he handed the documentation to Mrs. [redacted] to give to the school district. However,

MCS D states that they never received any medical records from Mrs. \_\_\_\_\_ herefore, this issue reduces to a “he said – she said” situation. Therefore, based on the above facts, it is this hearing officer’s decision that Madison County School District conducted an evaluation consistent with Federal and State statutes under the Individuals with Disabilities Act in that they used multiple assessment procedures, assessed all areas of suspected disability, and used what medical records they had at the time of the evaluation as part of the evaluation process.

**Issue 2**

The second issue before this hearing officer is whether \_\_\_\_\_ is eligible for special education services.

**Requirements**

Section 500.534 of the IDEA regulations require that upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in § 300.7. Additionally, the school district must provide a copy of the evaluation report and the documentation of determination of eligibility to the parents. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.7, and the educational needs of the child, the school district must (1) draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and (2) ensure that information obtained from all of these sources is documented and carefully considered.

The IDEA regulations define “child with a disability” as a child evaluated in accordance with §§ 300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment, including blindness, serious emotional

disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disability, and who by reason thereof, needs *special education* and related services.

Definitions of each disability category are found in §§ 300.7 (b)(1)-(13). Each definition states in order for the child to be considered a child with a disability under the IDEA, that the disability must *adversely affect a child's educational performance*. (34 C.F.R. p. 12543, Attachment 1).

### Facts

1. [REDACTED] has been diagnosed with the following psychiatric disorders by medical staff at the Mississippi University Medical Center; Pervasive Developmental Disorder (i.e., Asperger's Syndrome), Anxiety Disorder, Attention Deficit Hyperactivity Disorder – Inattentive Type, and Oppositional Defiant Disorder. *See* SD-16, p. 144; *See also* New Parent Documents submitted 5/31/05, UMC Treatment Notes, dated 4/6/05.
2. [REDACTED] is a regular education student taking accelerated classes and is currently enrolled in the gifted program. *See* Testimony of [REDACTED]. *See also* SD-17, p. 107
3. [REDACTED] grades at the time of the hearing request and throughout his [REDACTED] grade year were A's, B's and C's. *See*, SD-14, p. 117.a.
4. [REDACTED] classroom teachers testified that [REDACTED] is performing well in the regular education setting, both socially and academically, earning grades of A's, B's, and C's in regular and accelerated classes. *See*, Testimony of [REDACTED], Testimony of [REDACTED], and Testimony of [REDACTED]
5. [REDACTED] was scored "Advanced" on the Mississippi Curriculum Test (MCT) during every administration since fourth grade. *See* SD-13, pp. 106-109.

6. \_\_\_\_\_' teachers had not referred him to the office during the 2004-2005 school year for any violations of school or classroom disciplinary rules. See Testimony of B. Cofield.

**Finding**

While \_\_\_\_\_ has been diagnosed as having the following psychological disorders by physicians at the University Medical Center; Pervasive Developmental Disorder (i.e., Asperger's Syndrome), Anxiety Disorder, Attention Deficit Hyperactivity Disorder – Inattentive Type, and Oppositional Defiant Disorder; it is the school district's contention that these psychological disorders have not had an adverse impact on \_\_\_\_\_ educational performance as required by the statutes for eligibility.

While neither the Federal IDEA statutes nor implementation regulations define what is meant by "adverse impact on educational performance", it is doubtful that Congress intended this statement to apply to students who are receiving passing grades in the regular curriculum, or as in \_\_\_\_\_ case, in a gifted curriculum. This statement is supported by at least one court decision. In *Austin Independent School District v. Robert M.* (W.D. Tex. 2001) 168 F.Supp.2d 635 a district court judge stated that schools are not required to provide special accommodations to maximize students' potential, that schools simply have to offer a program that is reasonably calculated to confer educational benefit upon the student. This district court decision is also consistent with the decision by the U.S. Supreme court in the case of BOARD OF EDUCATION OF the HENDRICK HUDSON CENTRAL SCHOOL DISTRICT, WESTCHESTER COUNTY, et al., v. Amy ROWLEY (458 U.S. 176, 1982) . While the Rowley decision pertained to the issue of "When does an Individualized Education Plan provide a free appropriate public education?" It does provide some guidance as to when an educational program is appropriate. In the Rowley

case the Supreme Court ruled that a child's obtaining passing grades, in a regular classroom placement, is an indicator that the educational program is appropriate for that child. In the case before this hearing officer, the facts are that \_\_\_\_\_ is receiving passing grades; A's, B's, and C's, in his regular as well as gifted classes. In addition, independent of his classroom grades, \_\_\_\_\_ performance on standardized MCT achievement testing shows that \_\_\_\_\_ is receiving educational benefit from his enrollment in regular and gifted classes. In addition, special education is defined as "specially designed instruction designed to meet the needs of the individual child". Specially designed means curricular goals and/or instruction outside of the regular curriculum or instruction normally provided within the regular education classroom. While it does appear that \_\_\_\_\_ grades may be slightly reduced as a result of disabilities, disorganization and inflexibility, his overall semester grades indicate that he is achieving at a passing level and is not in need to any specially designed instruction or curricular goals. Therefore, based upon this evidence, this hearing officer rules that \_\_\_\_\_ is not eligible for special education services because his psychological disorders have not had an adverse impact on his educational performance.

### **Issue 3**

Must Madison County School District provide an independent educational evaluation?

### **Requirements**

Sections 300.502 (a) and 300.502 (b)(2) of the regulations provide that the parents of a child with a disability have the right to obtain an independent educational evaluation (IEE) of their child. When the parents request an IEE the district must either ensure that an independent educational evaluation is provided at public expense, or the district must initiate a hearing under § 300.507 to show that its evaluation is appropriate. If the public agency initiates a hearing and



the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent education evaluation, but not at public expense.

**Facts**

The facts for this issue are the same as those for issues 1 and 2 above.

**Finding**

Given this hearing officer's findings related to issues 1 and 2 above, this hearing officer finds that MCSD's evaluations of \_\_\_\_\_ were done in a manner consistent with federal and MDE regulations, and that \_\_\_\_\_ is not a child in need of special education services.

Therefore, if the parents of \_\_\_\_\_ want an IEE they must do so at their own expense.

**SUMMARY OF DECISION and ORDERS**

Based upon the evidence presented, I hereby decide the following with regard to the issues:

1. Madison County School District conducted an evaluation consistent with Federal and State statutes under the Individuals with Disabilities Act.
2. \_\_\_\_\_ is not eligible for special education services because his psychological disorders have not had an adverse impact on his educational performance.
3. If Mr. and Mrs. \_\_\_\_\_ want an independent educational evaluation of \_\_\_\_\_ they must do so at their own expense.

**RIGHT TO APPEAL**

Either party may make an appeal of this Hearing Officer's decision to the appropriate court within 30 days of receipt of the Written Decision of the Hearing Officer. If no appeal is made, the decision is binding on both parties.

**TRANSCRIPTIONS**

Copies of the official hearing transcriptions used in this hearing may be obtained from:

Special Disabilities and Due Process  
Department of Special Student Services  
Mississippi State Department of Education  
P.O. Box 771  
Jackson, Mississippi 39205-0771

Respectfully submitted,

Digitally signed by David W. Walker

DN: CN = David W. Walker, C = US

Date: 2005.06.10 15:16:12 -05'00'

David W. Walker, Ed.D.

IDEA Due Process Hearing Officer

State of Mississippi