

IDEA DUE PROCESS HEARING REPORT

Calhoun County School District

CHILD'S NAME:

PARENTS:

LOCAL SCHOOL DISTRICT:

ADDRESS OF SCHOOL DISTRICT:

Mr. and Mrs. [redacted] and [redacted]
Calhoun County School District

Calhoun County School District
119 West Main Street
Pittsboro, MS 38951

DATE(S) OF HEARING:

DATE OF REPORT:

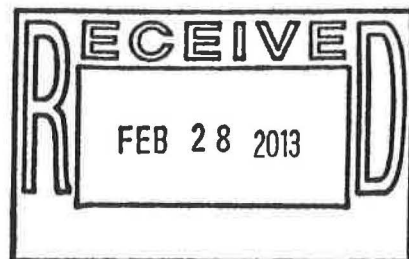
HEARING OFFICER:

February 5 and 6, 2013

February 28, 2013

David W. Walker, Ed.D

33 Paul Watkins Drive
Petal, MS 39465



INTRODUCTION

This is the due process hearing report for the case of [redacted] v. Calhoun County School District. [redacted] and [redacted] initiated a due process complaint under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The following substantive issue was before this hearing officer.

1. The district's alleged failure to find [redacted] eligible for special education services under the category of Other Health Impaired/Attention Deficit Hyperactivity Disorder. [§300.8(a)(1)]

FINDINGS and RULINGS

Requirements

The parents bore the burden of proof on the issue before this hearing officer. See Schaffer v. Weast, 546 U.S. 49, 51 (2005) (holding that the party seeking relief has the burden of proof). In order to meet their burden the parents needed to demonstrate that [redacted] meets the eligibility criteria for Other Health Impaired/Attention Deficit Hyperactivity Disorder (AD/HD) and who, by reason thereof, needs special education. Specifically, the parents and their

representative had to show that [REDACTED] meets all of the following criteria:

- a) The student must be diagnosed with AD/HD by the school district, or the diagnosis is rendered by another qualified professional;
- b) The AD/HD must result in limited alertness to academic tasks, due to heightened alertness to environmental stimuli;
- c) The effects of the AD/HD must be chronic (long-lasting) or acute (have a substantial impact);
- d) This must result in an adverse effect on educational performance; and
- e) The student must require special education services in order to address the AD/HD and its impact.

It should be noted that at the beginning of the hearing that school district attorney stipulated to the fact that [REDACTED] met item "a" above, specifically that [REDACTED] did have a diagnosis of AD/HD rendered by another qualified professional.

Facts

The facts as given in this case by testimony and exhibits will be presented below under each of the eligibility criteria listed above.

a. The student must be diagnosed with AD/HD by the school district, or the diagnosis is rendered by another qualified professional.

1. The District stipulated at the onset of the due process hearing that [REDACTED] has been diagnosed with ADHD. (Transcript Volume I, 10:23-11:1).
2. [REDACTED] testified that [REDACTED] ADHD diagnosis meets the criteria under the DSM-I. (Transcript Volume II, 118:4-22).

b. The AD/HD must result in limited alertness to academic tasks, due to heightened

alertness to environmental stimuli.

1. [REDACTED] report states that [REDACTED] has slower processing skills, which impacts the methodology [REDACTED] uses to solve a long division math problem. (Ex. 13, [REDACTED] Report at p. 13). However, the statement regarding [REDACTED] processing skills does not describe how his behavior adversely affects his education; therefore [REDACTED] does not document how [REDACTED] behaviors adversely affect his education. In addition to [REDACTED] not addressing how [REDACTED] behavior adversely affect his education, the testimony and evidence prove that [REDACTED] educational performance has not been adversely affected by his documented behaviors.
2. While [REDACTED] report states that [REDACTED] has a documented behavior of being "easily distracted by other activities in the classroom, other students, teacher, etc." (Id. at p. 10), [REDACTED] ADHD observation assessment does not support this documented behavior. As she reports that [REDACTED] was engaged in the classroom discussion, he attempted all items presented, followed classroom instruction, worked relatively well with sustained attention to task and attempted all items presented. (Id. at p. 7 and 13).
3. While [REDACTED] report states that [REDACTED] has a documented behavior of "rushes through assignments with little or no regard for accuracy of work." (Id at 11). This behavior is not supported by [REDACTED] observation of [REDACTED] in the classroom as she reports that [REDACTED] attempted all tasks and when the teacher asked [REDACTED] if [REDACTED] was finished, [REDACTED] indicated that [REDACTED] thought "there was one more step that he needed to do." (Id. at p. 7).
4. [REDACTED] report states that she observed [REDACTED] in the classroom setting and in a

testing environment. She reports that she observed h briefly doodling, picking at h nails while working a math problem, following classroom instruction, being engaged in the classroom discussion, attempting all items presented, working with relatively good sustained attention to task, and at times needing instructions repeated. (Id. at p.7 and 11).

5. Additionally, report includes a summary of behaviors as reported on the rating scales h teachers, and h parents completed. (Id. at p. 10-12 and 17-19). However, report does not describe antecedents, if any, leading to behavior. Nor were the behaviors indicated by the parents or observed in the school setting, with the exception of "does not hear all of what is said".

6. testified that based on her review of the data, behaviors are typical for h age. (Test. , Volume II, 139:19-24).

7. testified that has problems "in completing assignments, and dealing with problems that require multiple tasks and multiple steps". However, has never observed in a classroom at school. (Test. , Volume I, 84:11-18).

8. testified that based on his review of and reports that has some concentration issues. However, has never observed in a classroom at school. (Test. , Volume I, 135:4-5).

c. **The effects of the AD/HD must be chronic (long-lasting) or acute (have a substantial impact).**

1. teachers and principal testified that behaviors are typical of h peers.

(Test. of [redacted]; Volume II, 89: 5-10; Test. [redacted], Volume II, 263:1-13; Test. [redacted], Volume II, 244:15-17).

2. [redacted] testified that based on her review of the data, [redacted] behaviors are typical for his age. (Test. [redacted], Volume II, 139:19-24).

3. [redacted] testified that based on his review of [redacted] report that [redacted] AD/HD has been both chronic and acute. (Test. [redacted], Volume I, 140:2-25, 141:1-4)

d. This [the diagnosis of AD/HD] must result in an adverse effect on educational performance.

1. [redacted], a District's expert witness and a special education director in another school district, testified that based on her review of the data, she does not believe that [redacted] ADHD has had an adverse effect on h[er] educational performance. (Test. [redacted] Volume II, 207:25- 208:12).

2. [redacted] testified that based on her review of the data, she saw no adverse impact on [redacted] social performance. (Test. [redacted] Volume I, 203:21-204:1).

3. [redacted], [redacted] expert witness, testified that [redacted] obtained a full scale composite score of 99 on the WISC-IV that [redacted] administered to h[im], which indicates [redacted] functions in the average range of intellectual functioning. [redacted] also testified that he would expect a student with an average IQ to function on grade level. (Test. [redacted], Volume I, 85:23-25).

4. [redacted], principal of [redacted], testified that when he spoke to [redacted] teacher's they informed him that [redacted] was performing at or above average in their classrooms. (Test. [redacted], Volume II, 264:20-265:1).

5. _____ teachers testified that _____ is currently performing at the average or above average range. (Test. of _____; Volume I, 40:18-23; _____; Volume II, 62:5-10; and _____; Volume II, 89:5-14).
6. _____ failed English II last semester. (Test. of _____; Volume I, 29:10-19).
7. _____ obtained a proficient score on the Algebra I test (Ex. 10, Test. _____; Volume II, 264:20-265:1).
8. _____ obtained a percentile rank of 73 on the Star Math test given on January 8, 2013. This equates to _____ performance being comparable to that of an average post-high school graduate. (Ex. 2)
9. _____ final grades from the first semester of the tenth grade are 63 in English II, 89 in Introduction to Biology, 67 in Geometry, and an 82 in Psychology. Respectively, these grades equate to an F, A, D, and a B. Therefore, _____ passed all _____ courses with the exception of English II. It should be noted that _____ was passing English II and that it was _____ final exam grade that pulled _____ final semester grade in English II to below a passing grade. (Ex. 3, Test. Of _____; Volume II, 117:21-25).
10. _____ ninth grade _____ teacher, testified that _____ was an average to above average student and was sometimes the first student to understand the math skill being taught. (Test. _____; Volume II, 42:21-23 and 55:16-56:13).
11. _____ testified that the Tier interventions being implemented with _____ were "affecting _____ grades in a positive way". (Test. _____; Volume I, 149:1-6).
12. Results of achievement testing conducted as part of a psycho-educational assessment by _____, at the Hattiesburg Clinic, in November of 2010 showed that _____ academic performance (Wechsler Individual Achievement Test – 2, WAIS-2) was

commensurate with his intellectual abilities (Reynolds Intellectual Assessment Scales - RAIS), with all standard scores being within the average range. Specifically, on the RAIS, [redacted] obtained a verbal standard score of 98, a nonverbal standard score of 120, and a composite standard score of 108. On the WAIS-2, [redacted] obtained standard scores of 99 in Basic Reading, 100 in Reading Comprehension, 90 in Numerical Operations, and 94 in Math Reasoning. (Ex. 5; Test. Of [redacted] Volume II, 116:12-120:13)

e. The student must require special education services in order to address the AD/HD and its impact.

1. [redacted] teachers and principal testified that based on their interaction with and observation of [redacted] is an average to above average student and does not need special education services. (See Test [redacted], Volume II, 48:10-18; [redacted], Volume II, 92:17-23; [redacted], Volume II, 62:11-19; and [redacted], Volume II, 265:11-17).
2. The school counselor and the counselor intern testified that [redacted] is achieving social success at school; he does not have self-esteem issues; and [redacted] exhibits behavior typical of a high school student. (Test. [redacted], Volume II, 16:24 - 18:4; Test. [redacted], Volume II, 244:7-17).
3. The recommendations from the independent assessment conducted by the Hattiesburg Clinic, at the [redacted] initiation, provide that [redacted] should remain in the regular education program. (Ex 11, page 4 of 4).
4. [redacted] expert, [redacted] testified that he agrees with the Hattiesburg Clinic's recommendation that [redacted] continue with regular education. (Test. [redacted], Volume I, 143:23-144-8).

5. [redacted] testified that [redacted] should be in the regular classroom, general ed. classrooms, and there should be interventions designed to help him work on grade level." (Id. at 144:21-25). However, [redacted] was unable to identify any special education services (i.e., specially designed instructional goals) needed by [redacted]. (Test. [redacted] Volume I, 157:1-158:9).

6. [redacted] testified that [redacted] needed special education services. However, he was unable to state what special education services (i.e., specially designed instructional goals) [redacted] needed. (Test. [redacted] Volume I, 92:1-129:25).

Finding

Based on the above facts this due process hearing officer finds that Calhoun County School District was correct in finding that [redacted] is not eligible for special education services under the category of Other Health Impaired/Attention Deficit Hyperactivity Disorder (AD/HD).

SUMMARY OF DECISION and ORDERS

There is a two prong test to determine whether a student is eligible for special education services. The first prong is to determine whether the student has a qualifying disability under IDEA and State regulations (IDEA §§300.304 – 300.312). If the first prong is met then one must turn to the second prong, which is whether "the student as having ... [a qualifying disability], and who, by reason thereof, needs special education and related services." (IDEA §300.8). [redacted] is not eligible for services under the IDEA because he does not satisfy this two prong eligibility test. In the following sections I will explain, given the facts presented earlier, how I have come to this conclusion.

The first prong is to determine whether the student has a qualifying disability under IDEIA and State regulations (IDEA §§300.304 – 300.312).

In order to meet this first prong the parents have to provide evidence to satisfy both IDEIA and State criteria for the qualifying disability category of Other Health Impaired – Attention Deficit Hyperactivity Disorder – Inattentive Type. The IDEIA and Mississippi’s criteria are shown in Table 1, as well as the relationship between IDEIA and the Mississippi criteria.

Table 1. IDEIA and State regulations for the qualifying disability category of Other Health Impaired – Attention Deficit Hyperactivity Disorder – Inattentive Type.

Criteria	IDEIA	Mississippi
1	The student must be diagnosed with AD/HD by the school district, or the diagnosis is rendered by another qualified professional.	Generally a statement from a psychologist, psychiatrist, nurse practitioner, physician, or otherwise qualified professional using criteria from the Diagnostic and Statistical Manual of Mental Disorders (DSM) and/or International Statistical Classification of Diseases and Related Health Problems (ICD-9 Codes) is not required to determine special education eligibility, nor is such a diagnosis alone sufficient to determine eligibility for special education.
2	The AD/HD must result in limited alertness to academic tasks, due to heightened alertness to environmental stimuli.	B. Adversely affects a child’s educational performance.... When an evaluation team is considering eligibility under ADD/ADHD the comprehensive evaluation/eligibility report must include the following: A. A description of the student’s behaviors, settings in which the behaviors occur, antecedents leading to the behaviors, and consequences immediately following the behaviors. E. The correlation between documented behaviors and results of ADHD assessments
3	The effects of the AD/HD must be	A. Is due to chronic or acute health problems such as ...attention (ADD) or attention deficit hyperactivity

	chronic (long-lasting) or acute (have a substantial impact).	disorder (ADHD) D. A statement as to whether the behaviors are atypical for the student's age, setting, circumstances, and peer group.
4	This [the diagnosis of AD/HD] must result in an adverse effect on educational performance.	E. Adversely affects a child's educational performance.... When an evaluation team is considering eligibility under ADD/ADHD the comprehensive evaluation/eligibility report must include the following: a. Attempts to address the behaviors and the results, including office discipline referrals and disciplinary actions b. A description of how the behaviors adversely affect educational performance.

Applying the facts presented in this case to the criteria shown in Table 1, the parents met their burden for criterion #1; "The student must be diagnosed with AD/HD by the school district, or the diagnosis is rendered by another qualified professional." (Facts a.1 and a.2).

On the second criterion, while witnesses for the family stated that had behaviors that were typical of individuals with attention deficit disorder -- inattentive type (ADD), neither of the witnesses were able to provide a description of how these ADD behaviors presented in the classroom/educational settings, nor were they able to state how behaviors in the classroom correlated with the results of ADHD assessments (Facts b.7 and b.8). In addition, the psycho-educational assessment conducted by while describing behaviors typical of individuals with ADD lack any data showing how these ADD behaviors were correlated with observed behaviors in the classroom. (Facts b.1 – b.5). In fact there are several places in report where she describes observing as being engaged and attentive to what was occurring in the instructional environment. (Facts b.2 – b.4).

Also, _____ testified that based on her review of the data, _____ behaviors are typical for his age. (Fact b.6). Therefore, the _____ did not meet their burden on this criterion.

On the third eligibility criterion, the facts presented in this case show that while _____ ADD has been both chronic and acute (Fact c.3), the effects of the ADD have not been chronic and acute as several witnesses described _____ learning and social behaviors are being typical of his age peers. (Facts c.1 and c.2). Therefore, the _____ family did not meet their burden on this eligibility criterion.

On the fourth eligibility criterion, the facts presented show that with the exception of a failing grade in English II during the Fall 2012-13 school year (Fact d.6), _____ has received passing grades in all of his classes (Facts d.1, d.2, d.4, d.5, d.10). This hearing officer would agree with the statement made by the district its brief that just because a student fails one course does not automatically qualify that student for special education services. See *M.P. v. North East Independent School Dist.*, 2006 WL2880513 (S.D. Tex. 2006). In addition, _____ performance on district-wide assessments, as well as on psycho-educational assessment conducted by _____, has also shown that his ADD has not had a negative impact on learning. (Fact d.7, d.8, d.12). _____, a witness for the _____ family, also testified that the Tier interventions being implemented with _____ were "affecting his grades in a positive way". (Fact d.11). Therefore, the _____ family did not meet their burden on this eligibility criterion.

To summarize with regard to whether _____ has a qualifying disability under IDEA, specifically, does _____ meet the eligibility criteria for the disability of Other Health Impaired – Attention Deficit Disorder (ADD), the _____ family only meet the first criteria – that of a

diagnosis of ADD. On the other three criteria for ADD the [redacted] family did not meet their burden.

The second prong, "the student as having ... [a qualifying disability], and who, by reason thereof, needs special education and related services."

Because the [redacted] family did not meet its burden on the first prong it is not necessary to progress to the second prong. However, let's assume, for the sake of argument, that the family had meet their burden pertaining to [redacted] having a qualified disability. Then this hearing officer would turn to the second prong of whether [redacted] needed special education services. Looking at the facts presented, this hearing officer would come to the conclusion that [redacted] does not need special education services. This is because the facts as presented show that [redacted] is being successful, and has received benefit in [redacted] current educational placement. (Facts e.1 – e.4). See Board of Education of Hendrick Hudson Cent. Sch. Dist. V. Rowley, 458 LS. 176, 207 n. 28 (" The achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit"). Furthermore, the recommendations from the independent assessment conducted by the Hattiesburg Clinic (Fact e.3), as well as testimony from [redacted] (Fact e.4 and e.5) were that [redacted] should remain in the regular education program. [redacted] was the only person who stated that [redacted] needed "special education services", however, [redacted] was unable to state what special education goals would be addressed on an Individualized Education Plan (IEP). (Fact e.6).

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

1. Calhoun County School District was correct in determining that [redacted] did not meet the eligibility criteria for AD/HD, and therefore, does not need special education services.

I hereby order, that [redacted] remain in his present educational placement and not receive special education services. Accordingly, the [redacted] are not entitled to any relief.

RIGHT TO APPEAL

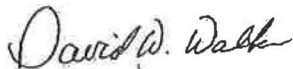
Either party may make an appeal of this Hearing Officer's decision to the appropriate court within 30 days of receipt of the Written Decision of the Hearing Officer. If no appeal is made, the decision is binding on both parties. If the decision of the Hearing Officer is not fully implemented, the aggrieved party may enforce it through a proceeding in the appropriate court.

TRANSCRIPTIONS

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

Susan Davis, Director
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,



David W. Walker, Ed.D.
IDEA Due Process Hearing Officer
State of Mississippi

