

COVER SHEET

BEFORE THE MISSISSIPPI DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION

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██████████ in the interest
of a minor child, ██████████

COMPLAINANT

v.

CASE NO. D02272018-10

Cleveland School District

RESPONDENT

The Parties to and Subject of this proceeding are:

1. ██████████, the Complainant, identified as the Guardian or the Child's Guardian, herein.
2. The Cleveland School District, the Respondent, identified as the District or the School District, herein.
3. The subject of the proceeding is ██████████, nephew of ██████████, referred to herein as the Child or the Student.
4. The family moved to Mississippi from Tennessee which later state is referred to herein as the family's "Former State of Residence."

The witnesses are as follows:

5. Witness #1. Markeita Brinkley, Special Education Director, identified as Witness #1, or as the Special Education Director, herein.
6. Witness #2. Dr. Randy Grierson, The Student's Principal, identified as Witness #2, or Principal, herein.
7. Witness #3. ██████████ aunt of the Student, identified as Witness #3, or Parent Advocate or the Expert, herein.

8. Witness #4. [REDACTED] Complainant/Guardian, identified as Witness #4, or the Guardian, herein.
9. Witness #5. Mary Washington, the Student's inclusion teacher, identified as Witness #5, or Special Education Inclusion teacher, herein.
10. Witness #6. Emily Meredith, The Student's English teacher, identified as Witness #6, or the English teacher, herein.
11. Witness #7, Bridgette Brown-Townsend, The Student's Algebra II teacher, identified as Witness #7, or the Algebra teacher, herein.
12. [REDACTED], the Student's mother, identified as Mother or Parent, herein.

Note: [REDACTED] were identified as witnesses by the Complainant but did not attend the hearing.

**BEFORE THE MISSISSIPPI DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION**

██████████, in the interest
of the minor child, ██████████

COMPLAINANT

v.

CASE NO. D02272018-10

Cleveland School District

RESPONDENT

DECISION AND ORDER

INTRODUCTION

1. This is a proceeding pursuant to the Mississippi “State Policies¹ Regarding Children with Disabilities Under ‘The Individuals with Disabilities Education Act Amendments of 2004’ (collectively referred to as the Policies or the IDEA, herein), and involving a minor child (the Student or Child, herein), initiated by the aunt² of the student by the filing of a Complaint for Due Process received by the school district and the Mississippi Department of Education on 27 February 2018.

PARTIES

2. The Student is a 15-year-old male in the School District with a special education eligibility ruling of Other Health Impairment/ADHD. The respondent is a Mississippi Public

¹ Policies were adopted under the authority of “The Individuals with Disabilities Act (IDEA), Public Law 101-476, reauthorized as “The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), Public Law 108-446 and 20 U.S.C. §1400 et seq., Title 34 of the Code of Federal Regulations, Part 300, and the Mississippi Standards and Procedures for the Education of Exceptional Children, Mississippi Code §§37-23-133 through 150. The hearing officer and the Mississippi Department of Education have jurisdiction over these proceedings pursuant to the statutes and code sections cited.

² Names of the Parties, the witnesses, and the School District are stated on a cover sheet to this document filed with the original of this document with the Mississippi Department of Education and are not stated within this document in order to protect the privacy of the minor child involved.

School District (District, herein) in which the student is enrolled. The student was enrolled in the District's high school at the time the due process hearing request was filed.

ISSUES AND RELIEF REQUESTED

3. The Guardian³ initially filed a REQUEST FOR DUE PROCESS HEARING UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004 AMENDMENTS received by the Mississippi Department of Education 27 February 2018.

During the course of the prehearing conference held 26 March 2018, the parties agreed that the issues in the Complaint appropriate for consideration requested in the due process hearing were:

- A. A Free Appropriate Public Education (FAPE, herein) has not been provided because of the failure to implement the Student's current Individualized Education Program (IEP, herein) accommodations in the following areas:
 - 1. Extended time for assignments, tests, and completing projects.
 - 2. Study guides and lesson plans addressing the skills to be covered for the week were to be emailed to the parent with a notebook maintaining the assignments.
 - 3. A Behavior Log kept by each of the Student's teachers.
- B. Based on The Family Educational Rights and Privacy Act (FERPA, herein), the Student's rights have been violated in the following ways:
 - 1. The Student's IEP was openly discussed in the presence of other students.
 - 2. The Student was video taped by the Principal without parental consent.

4. Accordingly, those are the only issues that will be considered in this opinion and order.

PROCEEDINGS

5. The due process hearing convened 17 April 2018 in the District Board Room. The Complainant called seven witnesses, including herself. The witness list consisted of three district

³ Note: No evidence was presented whereby a court had determined the natural parent to be incapable, no "Letter of Office" to serve as certified proof of guardianship appointment, and no evidence of "Power of Attorney" granted to anyone other than the natural parent.

employees: The Special Education Director, a Special Education Inclusion teacher, and the Student's high school Principal. Witnesses identified on the Complainant's witness list who did not attend the hearing were the Student and the Student's natural mother. It is to be noted that the Guardian is also the Student's aunt and no court-ordered guardianship has been granted. According to the Guardian's testimony, a mutual agreement was reached between she and the natural parent in October 2017 at which time the student was placed in the care of the aunt. The District called the aforementioned district employees as well as the Student's English teacher and the Student's Algebra teacher.

APPLICABLE LAW

6. The IDEA requires each public-school district in Mississippi to have in effect policies and procedures to ensure that all children with disabilities residing in Mississippi who are in need of special education and related services are identified, located, and evaluated. §300.111 (a) (i).⁴ The District provided evidence of such policies and procedures.

7. The opening sentence of the complaint filed asserts "[The Child] is an EmD student..." The statutory and regulatory framework defines the term "child with an Emotional Disability" as a child having one or more of a number of conditions listed herein, including "a serious emotional disturbance," also known as "an emotional disability" (EmD, herein) in the State Procedures. §300.8 (a) (1). "Related Services" includes "...such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education," including psychological services, counseling services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel, medical

⁴ All section (§) references are to the Mississippi "State Policies Regarding Children with Disabilities Under 'The Individuals with Disabilities Education Act Amendments of 2004 unless otherwise noted.

services for diagnostic or evaluation purposes, school health services, and school nurse services §300.34. However, it was later discovered in testimony the Child was never diagnosed with an EmD ruling. This issue will be addressed in closing statements.

8. The State Procedures requires a school district, prior to the initiation of special education and related services, to conduct a full and individual initial evaluation, in accordance with §§300.305 (Additional Requirements for Evaluations and Reevaluations) and 300.306 (Determination of Eligibility) of the Procedures. That evaluation procedures must include assessments addressing “specific areas of educational need.” §300.304 (c) (2);

9. If, based on that evaluation, “a determination is made that a child has a disability and needs special education and related services, an IEP (*Individualized Education Program*) must be developed for the child in accordance with §§300.320 through 300.324 and §300.306 (c)(2). The IEP is drafted by the school’s IEP committee which is to include those persons specified in §300.321(a) and must contain those items specified in §300.320.

FACTS

10. The Student moved with his mother to the District from the family’s Former State of Residence in October 2016. The Former State of Residence conducted a comprehensive evaluation at the request of the Mother and determined the Student met the criteria for a ruling of Other Health Impairment/ADHD. That ruling, dated 9 November 2016, found that the Student:

(1) “...has difficulties with impulsivity, hyperactivity, classroom performance, timing, behavior, self-help, and self-control.”

(2) Displays unexpected and atypical affect for the situation.

11. The Former State of Residence ruling determined that the Student's Other Health Impairment/ADHD prevented the Student from receiving reasonable benefit from general education alone.⁵

12. The Former State of Residence IEP reflected Behavioral Assessment scores that fall in the range of clinically significant, indicating the Student's inability to focus and concentrate, and established and implemented Adaptive Behavior Goals.⁶

13. Once enrolled in the District, no Functional Behavioral Assessment was conducted and, therefore, no Behavioral Intervention Plan was created on behalf of the Student.

14. Testing indicated the Student to have average intelligence, with some challenges⁷ in mathematics and Language Arts.

15. The IEP Committee meeting on 9 November 2016 resulted in the Student's first IEP in the District. According to testimony from the District and the Guardian, all persons required by §300.321 of the Policies were present. However, there was no parental signature indicating her presence, nor a signature indicating receipt of Procedural Safeguards Notice. The IEP Committee found that the Student would continue to be served under the same ruling (OHI/ADHD) as from the Former State of Residence.

16. The IEP Committee noted in its description of the impact of the Student's disability that his "...Other Health Impairment (ADHD), has an influence on his academics in the general education curriculum." The Student has difficulties with impulsivity, hyperactivity, classroom performance, timing, behavior, self-help and self-control. According to Moby Max⁸,

⁵ Exhibit P-5

⁶ Exhibit P-2.

⁷ Baseline performance in math two-grade levels below; baseline performance level in Language Arts four-grade levels below.

⁸ Software program used to assess skills in reading, math, and language arts.

November 2016, the IEP Committee determined the Student's baseline performance below grade level (6.0) in math reasoning and problem solving. The IEP Committee also determined the Student was functioning on a 4.3 grade level in Language Arts as measured by Moby Max⁹.

17. The Committee set three "Measurable Annual Goals" for the student – one goal in reading; one goal in mathematics; and, one Behavioral goal. Goal #1 provides that "When given the meaning of words and phrases as they are used in the text, including figurative and connotative meanings; analyze the cumulative impact of specific word choices on meaning and tone, the Student will determine how tone is set formal or informal in literary context 9 out of 10 times with a 90% accuracy or above by the end of the school calendar year. (RL.9.4). Goal #2 relates to academic performance in mathematics and states "When given particular formulas to master the correct answers to each problem in the general education curriculum of mathematics, the Student will gain knowledge and understanding of analyzing and explaining the process of solving equations and math reasoning in word problems with 85% accuracy or above within the school calendar year with suitable accommodations attached. (A-REI.1). Goal #3 is a Functional Performance goal dealing with Behavior and states "When involved in a stressful situation, the Student will avoid expressing frustration in inappropriate or physically aggressive ways 90% of the time in 3 out of 4 observations."¹⁰

18. The IEP Committee met again 17 May 2017 to prepare the IEP for the 2017-2018 academic year. The Parent was in attendance and signed indicating she had received Procedural Safeguards Notice. Revisions to the 2017-2018 IEP included: "(1) Lesson Plans/Study Guides with answers will be e-mailed to Inclusion Teacher by Friday of each week (continuing this week 10/6/17) and the inclusion Teacher will e-mail the Lesson Plans/Study Guides to the

⁹ Exhibit P-6.

¹⁰ Exhibit P-12.

following individuals – Parent, Expert, Guardian (this will be cc'd to Special Education Director and Principal). (2) Add School based counseling for strategies for coping skills as a Related Service on his IEP to begin 10/4/17, twice monthly. Counselor notified. (3) Teachers are to begin observing/recording on a Daily Behavior Checklist sheet. This will be done weekly. Copies of the document have been put in each teacher's mailbox today (10/4/17). These will be submitted weekly to a designated area. (4) Paraphrasing of all work/assignments/quiz/test directions. (5) Each teacher will e-mail copies of their weekly Lesson Plans/Study Guides with answers/Testing schedule to Inclusion Teacher by Friday of each week and the Lesson Plans/Study Guides/Testing schedule will be e-mailed to Parent, Expert, Guardian with cc'd to Special Education Director and Principal. (6) Principal to e-mail USA TestPrep and Reading Plus username and password to Parent, Expert, Guardian. Request extra time. The Teacher will leave the USA TestPrep assignments up an additional 24 hours to complete USA TestPrep and Reading Plus assignments.” The IEP Committee’s description of the impact of the Student’s disability was similar to that noted on the 2016-2017 IEP. The Committee continued to recognize impulsivity and hyperactivity as difficulties as well as similar challenges in the area of math. It was noted, “According to MAP/NWEA¹¹, Spring 2017, the Student performed on an 8th grade level in Math.” These scores represent a two-grade-level increase from the previous year.

DISCUSSION OF ISSUES

19. A hearing officer’s role is not to second guess state and local policy decisions, but to determine whether school officials have complied with applicable law, and if not, decide a proper remedy. *Flour Bluff Independent School Dist. v. Katherine M.*, 91 F.3d 689, 693 (5th Cir.

¹¹ Assessment used to pinpoint gaps in specific skills needed at different grade levels.

1996). The law does not require that a school district provide the best education possible. Rather, the law requires only that a district provide access to public education “sufficient to confer some educational benefit upon the handicapped child.” *Houston Independent School District v. Bobby R.*, 200 F. 3rd 341, ¶ 28, 31 IDELR 185 (5th Cir. 2000). That benefit must not be of a mere de minimis nature, but likely to result in progress, rather than “regression or trivial educational advancement.” *Cyprus Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245, ¶4 (5th Cir. 1997).

20. The Parent/Guardian, as challenger of the District’s actions in this case, has the burden of proof as to all issues presented in this matter. *Adam J. v Keller Independent School District*, 328 F. 3d 804, 808 (5th Cir. 2003).

21. In deciding whether the requirements of the IDEA have been met, the first question to consider is whether the school district complied with the procedures of the IDEA. *Buser v. Corpus Christi Independent School District*, 51 F.3d 490, 492 (5th Cir. 1995). Procedural violations, in and of themselves, do not amount to a denial of free appropriate public education (FAPE) unless the violations result in the loss of educational opportunity to the student or seriously infringe upon the Parent’s opportunity to participate in the provision of FAPE to the student. *Adam J. v Keller Independent School District*, 328 F. 3d 804, 808 (5th Cir. 2003); State Policies, §300.513.

22. Second, the substantive question must be answered: was the IEP “reasonably calculated to enable the child to receive educational benefits.”¹² *Buser v. Corpus Christi Independent School District*, 51 F.3d 490, 492 (5th Cir. 1995)., citing *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982). Fundamental to that question is whether the District,

¹² It should be noted, at the time of the hearing, the Student was making Bs and Cs in all subjects.

through the implementation of the student's IEP, provided a free appropriate public education (FAPE) to the student.

ISSUE ONE: Whether the Student was denied FAPE because of failure to fully implement accommodations specified in the current IEP. The accommodations include: extended time for assignments, tests, and completing projects; Lesson Plans/Study Guides addressing the skills to be covered for the week emailed to the parent with a notebook maintaining the assignments; and, Behavior Log kept by each of the Student's teachers.

23. The Guardian's complaint poses both substantive and procedural issues. The Complainant argued that extended time for assignments, tests, and completing projects had not been afforded the Student. During the duration of the hearing, the District provided ample evidence¹³ verifying examples of these accommodations as being routine in their classrooms.

24. The Guardian's major complaint was that the District had not provided Lesson Plans/Study Guides and the skills to be covered for the week in each of the Student's classes. These were to be emailed by the general education teacher to the inclusion teacher who would email to the Parent/Guardian(s). Also cited in the complaint was the District had not provided answers to the Study Guides. During their testimonies, the Guardian and the Expert witnesses were provided examples of lesson plans and study guides that had been sent during the school year and submitted for evidence. Both complainants insisted that what they had received were not lesson plans as defined by the Mississippi Department of Education (MDE).¹⁴ However, at no time during the hearing were they able or willing to produce sample lesson plan forms for which they were referring. Regarding the issue of no answers provided, the Student's English teacher explained that her class is designed to assist students in developing analytical skills, the ability to compare and contrast ideas, and to make decisions based on best evidence. The English teacher very effectively made the argument that there is no one-correct answer for many of the

¹³ Included in Exhibit S-1; Exhibit S-2; Exhibit S-3; Exhibit S-4; Exhibit S-5; Exhibit S-7; Exhibit S-8; Exhibit S-9.

¹⁴ Page 67 of the Expert witness transcript.

questions in her class. She pointed out that her lesson plans and study guides typically include the development of ‘speaking and listening’ skills embedded in the *College and Career-Ready State Standards*, Mississippi Department of Education, in which a single answer is not expected.

25. Testimony provided by the District employees demonstrated a coordinated and collaborative effort that ensured services are in place, that services are administered in the least restrictive environment, the Student’s IEP was individualized on the basis of the student’s assessment and performance, and positive academic and non-academic benefits were demonstrated. *Cypress Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997).

26. According to her sworn testimony and Curriculum Vitae submitted as evidence, the Expert witness holds multiple graduate degrees in the fields of Psychology, Special Education, Psychometry, School Psychology, and Educational Administration. However, statements and answers provided during her testimony clearly indicated her lack of familiarity with terms and expected student outcomes in today’s classrooms.¹⁵ The Expert was uninformed on several educational issues and misinformed on others.¹⁶ In her testimony she insisted it to be the responsibility of the school to ensure parents understood what was expected in the classroom.¹⁷ An unreasonable burden would be placed on the District to provide training to the Guardian/Expert to help them understand the content of 10th grade courses, and thus the content of lesson plans that had been submitted. The District is responsible for providing a free appropriate public education to the students enrolled, but this guarantee is not jointly shared with the parents. “The intended beneficiary of the IDEA is not the parents of the individual with a

¹⁵ “A bell ringer is what you discussed the day before.” P 73 of Expert witness transcript.

¹⁶ “Study Guides and Study Notes are interchangeable words.” P 67 of Expert witness transcript.

¹⁷ “Break this down for us because what are you saying?” p 69-70 of Expert witness transcript.

disability, but the disabled individual.” *Barnett v. Memphis City Schools*, No. 01-5050, 113 Fed. Appx. 124, 128-29 (6th Cir. Oct. 28, 2004). These procedural rights exist only to ensure that the child’s substantive right to FAPE is protected and do not confer on the parents a vicarious, substantive right to a FAPE. *Rowley*, 458 U.S. at 206. Based on the evidence presented, I find that the District provided appropriate and adequate lesson plans/study guides as specified in the Students current IEP. And, the District provided sufficient evidence of extended time for assignments, tests, and completing projects.

27. Procedural issues raised included the lack of behavior logs kept by the Student’s teachers, and the lack of parental signatures¹⁸ required. The evidence presented showed only one teacher’s Behavior Logs that had been kept on the Student, but no other evidence was provided from the remaining classroom teachers. This lack of evidence does not result in the loss of educational opportunity to the student or seriously infringe upon the parents’ opportunity to participate in the provision of FAPE to the student. Neither does the lack of Behavior Logs indicate the Student’s or Parent’s rights under IDEA caused a deprivation of any educational benefit. *Adam J. v. Keller Independent School District*, 328 F. 3d 804 (5th Cir. 2003); State Policies, §300.513.

28. I find the [REDACTED] has not met the burden of proof regarding her allegations that the District did not provide extended time, lesson plans/study guides, and behavior logs as specified accommodations in the Student’s IEP.

29. Therefore, the proposed resolution¹⁹ that the District should provide compensation for their behavior is DENIED.

¹⁸ The District received no notice of a change in guardianship, but, in due-diligence attempted to identify an adult acting on behalf of the Student.

¹⁹ Proposed Resolution: (1) The School District should provide compensation for their behavior. (2) The School District should pay for tutoring so the Student can gain the skills that were missed because of the lack of FAPE. (3)

30. The District provides tutoring for the Student for which he takes advantage.

Therefore, requests #2 and #4 are moot.

31. Because the Student's performance on State tests (i.e. biology, English II, US History, and algebra) determines pass or fail of those subjects, it is beyond the purview of the District to waive those requirements. Therefore, request #3 is moot.

ISSUE TWO: Based on The Family Educational Rights and Privacy Act (FERPA), the Student's rights have been violated in the following ways: (1) The Student's IEP was openly discussed in a classroom in the presence of other students. (2) The Student was video taped by the Principal without parental consent.

32. The complainant(s) testified that the student's IEP had been discussed with other students present but provided no proof or evidence that the Student's IEP had been discussed with anyone other than his current teachers, who have a direct "legitimate educational interest" in the Child. FERPA makes it clear that "school officials with legitimate educational interest" may be given access to personally identifiable information about a student.²⁰ No evidence was presented as proof the Student or the Student's IEP was discussed in the presence of anyone who did not have a legitimate educational interest in the Child.

33. Regarding the issue of videotaping, two primary questions are posed: (1) Does the District have the right to tape (audio or video) without parental consent? And, (2) What was the purpose of the taping – how was it to be used?

34. In a letter dated 7 December 2017, Michael B. Hawes, Director of Student Privacy Policy, U.S. Department of Education, confirms videotaping as an educational record.²¹ The letter was written to address concerns that arose from a videotape made by a principal

Because the Student' goal is to attend college, the School District should provide an opportunity for him to improve his grades without repeating the course. (4) The School District should provide special tutoring in biology and English seeing he has those two state tests to pass.

²⁰ *National Center for Education Statistics*, 4.B. Defining "Legitimate Educational Interests"

²¹ Letter to Timothy S. Wachter. Knox McLaughlin Gornall & Sennett, P.C., Erie PA 16501

recording an altercation involving multiple students at school. Included in the case was the point the principal had maintained both the video and the witness statements and used them to discipline the students. Citing FERPA Provisions, Mr. Hawes writes:

FERPA is a Federal Law that protects the privacy of students' educational records and the Personally Identifiable Information (PII) contained therein. The term "educational records" means, with certain exceptions, those records that are (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency of institution. 20 U.S.C. 1232g(a)(4)(A); 34 CFR §99.3 "Educational records." FERPA affords parents and eligible students the right to have access to their education records, the right to seek to have their education records amended, and the right to have some control over the disclosure of PII from their education records... Under FERPA, an educational agency or institution is prohibited from disclosing student education records or the PII contained therein, without prior, written consent from the parent or eligible student, unless the disclosure meets an exception to FERPA's general consent requirement. 20 U.S.C. 1232g(b), (h), (i), and (j); 34 CFR §99.30 and §99.31.

35. It is noted that Mr. Hawes does not declare the act of videotaping a violation of FERPA, but directly ascertains that recordings become part of the student's educational records and are protected as such. He writes, "FERPA affords parents and eligible students the right to have access to their education records, the right to seek to have their education records amended, and the right to have some control over the disclosure of Personally Identifiable Information from their education records." No evidence was presented where the Parent (not the Guardian), or the Student had been denied access to the video, nor was any evidence presented where a request to amend the record was denied.

36. In his testimony, the Principal stated the video recording was placed on a jump drive by a District-employed Instructional Technology staff member because he did not have the technical skills to download a file that large. The jump drive was offered to the Guardian, but she declined. The tablet used to view the taping by the superintendent, and the special education director had been "scrubbed," and that tablet put away in a secure place in his office. The table is part of fixed assets and typically used by teachers as needed, but that specific tablet was taken

out of circulation. He testified under oath that he had shared the content of the tape only with the superintendent and the special education director. Both of these school personnel satisfy the definition of having a “legitimate educational interest” as defined by FERPA. Therefore, at this point, no FERPA violation has occurred.

OTHER ISSUES

37. The decisions rendered in this case are based solely on the testimony of the witnesses and evidence presented during the hearing. While not considered in the decision and ruling, other legal questions were raised. Evidence taken as a whole, whether specifically addressing an issue designated for hearing or otherwise, fails to establish any denial of FAPE to the Student, or that the Student’s FERPA rights have been violated in any way. Accordingly, the Complainant has failed to sustain her burden of proof as to all issues she raised.

38. The issue of guardianship and standing to initiate an IDEA action became apparent after the hearing had convened.²² The Guardian had been portrayed as the Parent on the claim form filed with the Mississippi Department of Education and had identified herself as the Parent during the Pre-hearing Conference. It was not until the hearing started that the hearing officer was informed of this miscommunication. No court order regarding custody or ruling limiting the natural mother’s or father’s legal authority to make educational decisions was presented as evidence. Therefore, the aunt is not considered a parent under the IDEA. *Michael P. v. Hawaii Department of Education* Civil No. 08-00146 (United States District Court, Hawaii (2009)).

39. During cross-examination, the Guardian stated the complaint had been authored by the Expert,²³ but the Guardian was present while it [the complaint form] was being drafted.

²² Page 25 of the Expert witness transcript.

²³ “She is more knowledgeable than I am in these areas and I asked for help.” Page 41 of the Guardian transcript.

Because of the Expert's extensive education and training in special education, psychometry, and psychology, it is not an assumption she was aware of the different categories for which students are identified to receive special services. Some of these categories require different tests to determine the severity of the disability and the related services needed to accommodate the child. As an expert witness she should be aware of the differences between *Other Health Impairment/ADHD* eligibility ruling and an Emotional Disability (*EmD*) eligibility ruling. Using the initials on the *Request for Due Process Hearing* indicates the identification of a very specific disability, and not general observations of the Student's behavior at home as was stated under oath.

CONCLUSION

40. Having considered the Complainant's allegations, the evidence presented at the hearing, and the arguments of both Parties, the hearing officer finds that the Student was not denied FAPE in any way, the District made appropriate accommodations as specified in the current IEP, and that there has been no violation of the Student's privacy as protected by FERPA.

41. There being no denial of FAPE and no FERPA violations, compensatory damages are not warranted. Accordingly, the Complainant's requests for relief are denied and the complaint is dismissed.

So ordered, this the 26th day of April, 2018.



David P. Daves, Ph.D.
Hearing Officer