

CASE CLOSURE SUMMARY REPORT

County Public Schools
School Division

Name of Guardian

Name of Child

March 6, 2019
Date of Decision or Dismissal

Nicole S. Cheuk, Esq.
Counsel Representing LEA

Pro Se
Counsel Representing Child

LEA
Party Initiating Hearing

LEA
Prevailing Party

Hearing Officer's Determination of Issue(s):

1. Is the child eligible under IDEA?

Hearing Officer's Orders and Outcome of Hearing:

LEA proved its case by a preponderance of the evidence that _____ is not eligible under IDEA. LEA was ordered to take appropriate action in accord with that finding and to refer the matter to a 504 committee for potential accommodations and to maintain a BIP as needed.

Frank G. Aschmann
Printed Name of Hearing Officer

Signature

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF EDUCATION

DUE PROCESS HEARING

In Re:

Case No. 19-037

, Pro Se
Presented by

County Public Schools represented by
Nicole S. Cheuk, Esq.

DECISION

This matter came to be heard upon the Request For A Due Process Hearing (complaint) filed by x County Public Schools () pursuant to the Individuals with Disabilities Education Act, 20 USC § 1400 et seq. (IDEA) and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81.

The complaint alleges () is not eligible under IDEA. As the moving party assumes the burden of proof in this matter. Schaffer v. Weast, 546 US 49 (2005). The standard of proof is upon a preponderance of the evidence. 8 VAC 20-81 O. 13. Eligibility was the sole issue presented in the complaint.

Issue Presented

- 1) Is eligible under IDEA?

Findings of Fact

is an eleven year old child enrolled in the system. has progressed steadily from grade to grade. attends a mainstream middle school. has been previously found eligible for special education services under IDEA as Other Health Impaired (OHI). has an Individualized Education Program (IEP) which dates back to 2017. The IEP has addendums but no agreement has been reached between 's Guardian and in regard to a new IEP. 's IEP does not provide for any specialized education instruction. participates in a mainstream classroom with standard curriculum for all of his subjects. 's grades are primarily As and Bs. has participated in gifted and talented lasses and is

young among his classmates. has participated in extracurricular activities including Cross-Country Team and a school play.

has Duane's Syndrome which is a physical condition that affects the movement of one of his eyes. 's eye condition is addressed by through accommodations with seating.

's IEP provides accommodations to his education program, such as allowing him to move about, access to a fidget, close proximity to instruction, tasks broken down into smaller parts, retests and additional time to do work. There are more than twenty accommodations in 's IEP. refuses to use many of the accommodations in his IEP. School personnel believe that is held back in his progress by some of the IEP accommodations because they provide an unnecessary crutch for . It is burdensome to provide accommodations which are not wanted and are unneeded for both and school staff.

A report of "psychoeducational functioning" was prepared in May 2018 by Dr. as an independent educational evaluation (IEE). The report lists a diagnosis identifying DSM-5 Diagnostic Codes 314.00 Attention-Deficit/Hyperactivity Disorder-Combined presentation, mild; without language impairment; 300.09 Other Specified Anxiety Disorder. Dr. did not testify at the hearing. has not been found eligible under any category other than OHI. displays common symptoms of Attention-Deficit/Hyperactivity Disorder (ADHD) such as making odd noises, "quirky" movements, being easily distracted, having high activity level, impulsive behavior and poor executive functioning in regard to organization and task completion.

has had several disciplinary violations. These violations have been personal conflicts between and other students over such issues as name calling. has been on a Behavior Improvement Plan (BIP). School personnel report that 's behavior has improved with the BIP. School personnel report that is not a problem in school and is courteous and respectful to them. is easily redirected to appropriate behavior.

Through documentation, 's Guardian has expressed that there are behavioral problems at home. Evaluation results based upon rating scales from 's caretakers are significantly elevated from evaluation results based upon rating scales given to school personnel. Ms. , a psychologist from Think Happy Live Healthy LLC, conducted an independent class observation of , at the Guardian's request. A school assembly was held on the day of Ms. 's observation. The school assembly altered the standard class schedule.

[Application of Law](#)

Eligibility under IDEA for OHI must meet a two part test. 8VAC20-81 S. The child must meet the definition of OHI as stated in 8VAC20-81-10 and there must be an adverse effect on the child's educational performance due to one or more documented characteristics of the condition. Id. OHI is defined as having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment,

that is due to chronic or acute health problems such as attention deficit hyperactivity disorder that adversely affects a child's educational performance. 8VAC20-81-10.

has a diagnosis of ADHD. regularly displays behaviors which are typical of the condition. This condition impacts 's social functioning. Significant social deficits are noted by 's home caregivers. xCPS personnel also notice 's social deficits but to a much lesser degree. It is not unusual for children to behave differently at school than they do at home. The school environment is highly structured and student behavior is closely monitored by numerous professionals creating a different set of circumstances for the child. 's behavioral issues at school have been addressed with typical remedies, such as a BIP, warnings, detention, redirection and corrective instruction. xCPS personnel have not found to be out of control and do not consider him to be a problem to work with in the mainstream school environment. can be educated in a mainstream setting in accord with IDEA's philosophy of a least restrictive environment. has had some minor disciplinary issues with some children at the school but these events are not outside of typical child behavior for 's age and maturity level. has developed friendships both with students and with staff. Has been able to benefit from extracurricular activities and socially interact with other students in these activities as well as at lunch and during his regular classes. Thus has been able to overcome his social deficits and participate in a mainstream school environment. Under IDEA the mainstream school is an appropriate placement for .

xCPS presented substantial evidence that 's behavior at school as not preventing him from accessing the educational material necessary to make reasonable progress under the circumstances. 's teachers testified that he is able to follow and comprehend the material presented to him. At times he needs to be redirected to the task at hand but is easily redirected to the work. The testimony of the teachers was forthright and sincere. xCPS presented sufficient evidence to meet its burden of proof.

's caregivers presented rebuttal evidence from Ms. who performed an observation of on one occasion. Ms. testified that she noted several behavioral problems during her observation. Ms. appeared sincere in her statements but conditioned her entire testimony, in response to a xCPS question, by stating her observations would not be an appropriate basis to determine eligibility if it was not a typical day. The day that Ms. observed was an unusual day. 's school was having an afternoon assembly that day as a reward for the students. To create the schedule time for the assembly classes were cut short. The students were excited as the assembly was intended to be a fun event. Ms. had never met or seen before and did not return for a follow up observation even though she was invited. Ms. did not observe at the assembly and simply notes that he ran off with the other children to the activity. Ms. acknowledged that she had been influenced by negative information provided by 's caregivers about . Ms. 's testimony is insufficient to rebut the evidence presented by xCPS. Her lack of knowledge about , her unfamiliarity with and her failure to do a full observation or any follow up render her testimony unreliable as a basis to determine 's eligibility under IDEA.

's caregivers presented one other significant piece of evidence to rebut xCPS's case, the IEE conducted by Dr. . Dr. did not testify thus his report stands alone without further explanation. The report is a clinical evaluation of in which batteries of tests were given to him and

rating scales to people who know him. Dr. _____ did not observe _____ at school. Dr. _____ received rating scales from the caregivers which were greatly elevated above those of school personnel. The report is influenced by these elevated assessments by the caregivers. _____'s behavior at home is not necessarily reflective of the experience by school personnel who have consistently observed less severe behavior at school. While the report is significant in identifying _____'s condition of ADHD, standing alone it fails to rebut the case of xCPS that _____ is able to perform effectively despite his ADHD condition.

The xCPS psychologist believes that _____ is intelligent enough to succeed academically despite his social deficits. The evidence supports this belief. _____ is progressing through school grades and making good marks. He is successful in academic classes that are on grade or above even though he is young among his peers. _____ Does not need any specialized instruction to benefit from his educational program. He is intellectually capable of participating in the standard curriculum and has shown educational progress in that curriculum. The evidence demonstrates that _____ is able to make educational progress despite his ADHD. _____'s ADHD condition affects his social skills but has not adversely impacted his educational performance. Thus _____ is not eligible under the standard set by IDEA.

CONCLUSION

For the above stated reasons it is found that _____ is not eligible under IDEA in the category of Other Health Impaired.

ORDER

IT IS HEREBY ORDERED that the findings of the eligibility team for _____ are sustained. County Public Schools may take all appropriate actions to terminate special education services, update and maintain its records in accord with the finding that _____ is not eligible under IDEA.

IT IS FURTHER ORDERED that _____ County Public Schools refer _____ to a 504 eligibility committee for assessment and development of a 504 plan if needed. _____ County Public Schools shall maintain a behavior improvement plan for _____ as needed.

Right of Appeal Notice

This decision is final and binding unless either party appeals in a federal district court within 90 calendar days of the date of this decision, or in a state circuit court within 180 calendar days of the date of this decision.

March 8, 2019

Frank G. Aschmann, Hearing Officer