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Dispute Resolution & Administrative Services

CASE CLOSURE SUMMARY REPORT

(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of the special education hearing and submitted to the Department of Education before billing.)

Public Schools
School Division

Name of Parent(s)

(for)
Division Superintendent

Name of Student

Rodney Young, Esq.
Counsel Representing LEA

Robert Augustine
Advocate Assisting Parent/Child

Parent
Party Initiating Hearing

School Division
Prevailing Party

Hearing Officer's Determination of Issue(s):

Whether student is eligible to continue to receive special education services under the IDEA or under Section 504 of the Rehabilitation Act of 1973

Hearing Officer's Orders and Outcome of Hearing:

Finding by Hearing Officer that student is not eligible for special education services as a child with a disability or qualified individual with a handicap.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing.

Peter B. Vaden
Printed Name of Hearing Officer

[Handwritten Signature]
Signature

August 6, 2007
Date

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EDUCATION

Received **COPY**

AUG 17 2007

Dispute Resolution &
Administrative Services

In Re:
Due Process Hearing

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Findings of Fact
and
Decision

Advocate for the Parent
and

Counsel for
Public Schools

Robert Augustine
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This matter came to be heard upon the request of parent, _____, for an Impartial Due Process hearing under the Individuals with Disabilities Education Act ("IDEA")¹, 20 U.S.C. §1400 et seq., and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia. The requirements of notice to the parents, Ms. _____ and Mr. _____, have been satisfied. In the coming school year, the child, _____, will be a 5th grade student in _____ Public Schools ("_____ " or the "School Board"). _____ has a history of developmental delay and has been diagnosed with Mood Disorder, Anxiety Disorder, Pervasive Developmental Disorder and Attention Deficit Hyperactivity Disorder. In

¹ The Individuals with Disabilities Education Act was amended and reauthorized by the Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446, most parts of which took effect on July 1, 2005.

2005 transferred into the school system with an existing Individualized Education Program ("IEP") based on a Developmental Delay disability. provided special education services to for the 2005-06 and 2006-07 school years. On May 2, 2007, 's Eligibility Committee determined that was no longer eligible for special education services under IDEA or for educational services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 ("Section 504")². Ms. asserts that is eligible to continue to receive special education services on the basis of disorders identified by his child psychiatrist and requested this due process hearing.

The due process hearing was held before the undersigned hearing officer on July 23-24, 2007 at the Office Building in . The hearing, which was closed to the public, was transcribed by a court reporter. Ms. appeared in person at the hearing and was assisted by advocate Robert Augustine. Ms. and her children reside with , who was also present for the hearing. The parent elected not to have present. The school system was represented by its Pupil Personnel Services Supervisor, , and by counsel. Both parties made opening and closing statements and elected not to submit post-hearing briefs.

FINDINGS OF FACT

I find that the burden of proof in this case should be upon the parent, Ms. , who is the party seeking relief. *Cf., Schaffer ex rel. Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005) (burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking

² 's Eligibility Committee also determined in December 2005 and in October 2006 that was not eligible for special education, but continued to provide services because the parent did not consent to termination.

public school system which implemented an IEP for him based upon the Developmental Delay disability. In its placement decision, the IEP team noted that showed strength in math, but reading/language arts continued to be an area of weakness and warranted special education support. In 2005, moved from to in and entered the third grade at 's Elementary School. At some point, before moving to , 's pediatrician diagnosed him with Attention Deficit Hyperactivity Disorder ("ADHD") and prescribed medications to manage this condition.

convened an IEP meeting on September 30, 2005 and developed an IEP for based upon the Developmental Delay disability identified by schools. In its IEP, the IEP team placed in the regular class room with inclusion services four hours per week in language arts. Accommodations in the initial 2005-06 IEP included, as needed, flexible schedule/breaks, tests read aloud, small group teaching, minimal distraction seating, markers to keep place and preferential seating near the teacher. 's father, , attended this IEP meeting and gave his permission to implement the IEP. (Prior to moving to , 's mother became estranged from his father. Both parents continue to take an active interest in 's education. Ms and her children now live together with . Mr is also very involved in 's education.) In November 2005, 's IEP was amended to provide additional accommodations including classroom and homework binders for to take home and provision for to go to the special education resource room at the end the class days for assistance with organizing his home work. Another addendum to the IEP was made on April 11, 2006 to provide for pullout services for 2 hours per week and in class

inclusion services for one hour per week. Ms. [redacted] consented to these addenda.

Soon after [redacted] moved to [redacted] in 2005, [redacted] initiated a Triennial Evaluation of [redacted] to determine his current level of ability and performance and whether special education services were still warranted. The assessment included an educational evaluation by special education teacher [redacted], a sociocultural evaluation by school social worker [redacted], a psychological evaluation by school psychologist [redacted], as well as in-class observations and reports from [redacted]'s teachers. The Eligibility Committee met on December 7, 2005 and determined that [redacted] was no longer eligible for special education on the grounds that [redacted] did not have a qualifying disability that had an impact on his educational performance. Ms. [redacted] and Mr. [redacted] attended the Eligibility Committee meeting and dissented from the committee's decision. Ms. [redacted] did not give her consent for [redacted] to dismiss [redacted] from special education and [redacted] agreed to leave [redacted]'s existing IEP in place for the rest of the school year. On January 20, 2006, [redacted] issued an IEP addendum changing [redacted]'s Disability from Developmental Delay to NOS (Not Otherwise Specified). Ms. [redacted] agreed to this addendum.

In January 2006, Ms. [redacted] took [redacted] for a psychological assessment by [redacted], Ph.D., a clinical psychologist at [redacted] Family Counseling in [redacted], Virginia. Dr. [redacted] administered a group of tests including, Behavior Assessment for Children – Parent Report (BASC-P), Behavior Assessment for Children – Teacher Report (BASC-T) Conners' Continuous Performance Test – Second Edition (CPT-II), Child Depression Inventory (CDI), Revised Child Manifest Anxiety Inventory (RCMAS) and Incomplete Sentences. Dr. [redacted] concluded that [redacted]'s ADHD symptoms were moderately well controlled. She noted

that while [redacted]'s teachers reported only mild problems with attention and no other behavioral problems, the mother had indicated clinically significant behavioral problems in multiple areas at home. Dr. [redacted] observed that [redacted]'s symptoms were consistent with an Adjustment Disorder with Anxiety and Depressed Mood. Dr. [redacted] recommended that [redacted] did not require placement in a special education classroom, but that he should receive appropriate services for ADHD. She also recommended that [redacted] would benefit from a social skills group, from participation in a social group such as scouts and that [redacted] might benefit from individual therapy to address his anxiety.

[redacted]'s IEP Committee met again on September 26, 2006 to develop [redacted]'s IEP for 4th grade. This IEP again identified Developmental Delay as [redacted]'s disability and provided for the following accommodations/modifications in the regular classroom: extra time for responses, clarify instructions/directions, agenda checks, read to student, small group, frequent/periodic breaks at approximate intervals, and seating near the teacher. Ms. [redacted] consented to implementing the IEP and the placement decision.

In October 2006, [redacted] convened [redacted]'s Eligibility Committee and, based upon the results of the 2005 Triennial Evaluation and upon [redacted]'s school performance in 3rd grade, the committee again determined that [redacted] did not need special education or Section 504 services. Ms. [redacted] attended the meeting but did not give her consent for [redacted] to discontinue special education services for [redacted].

After the October 2006 Eligibility Committee meeting, Ms. [redacted] requested an Independent Educational Evaluation ("IEE") for [redacted], which [redacted] arranged at James Madison University's Shenandoah Valley Child Development Clinic ("SVCDC"). SVCDC

conducted its evaluation over several days in January 2007.³ SVCDC administered an extensive battery of tests to _____, including, among others, the Woodcock-Johnson Tests of Cognitive Abilities (“WJ-III”), the SCAN-C test for auditory processing disorders, and the Woodcock-Johnson Tests of Academic Achievement-III (“WJ-III Ach”). SVCDC concluded that _____’s cognitive abilities were within the Average to Low Average ranges overall and that his current academic achievement skills fell into the Average range with significant scatter among his subtest scores.

Since April 2006, _____ has been seen on a regular basis by _____, M.D., a child psychiatrist at Kaiser Permanente in _____, Virginia. Dr. _____, who appeared by telephone for the hearing, testified that she has diagnosed _____ with Pervasive Developmental Disorder – Not Otherwise Specified, Mood Disorder – Not Otherwise Specified, ADHD, and Anxiety Disorder – Not Otherwise Specified. Dr. _____ is treating _____ with the prescription medications Celexa, Strattera and Risperdal. At the hearing, the School Board accepted Dr. _____’s diagnoses.

_____’s mother, _____ testified that _____ needs special education services to help him be self-sufficient and independent as an adult.

_____, formerly _____’s Assistant Supervisor for Pupil Personnel Services, testified that the Developmental Delay identification is limited to children aged 2 through 8. It was _____’s practice to conduct a new evaluation after a Developmental

³ The _____ Child Development Clinic Multidisciplinary Team Report (School Exh. 10) states, in an apparent typographical error, that the Dates of Evaluation were 1/18/2006, 1/23/2006 & 1/25/2006. These evaluations were made in January 2007. See cover letter from _____ Child Development Clinic dated February 26, 2007 (Parent Exh. 20).

Delay child reaches age 8 to determine whether the child should be identified as having another specific disability. Ms. [redacted] was a member of [redacted]'s 2005 Eligibility Committee. The Committee thought that [redacted] was a child who was achieving where his intellectual ability would predict and concluded that [redacted] did not have any impairment that might have had a significant impact on his educational performance. With regard to Section 504, the committee concluded that [redacted]'s impairments were not having a significant impact on the major life function of learning.

[redacted] is a school psychologist for [redacted]. She completed the psychological evaluation part of [redacted]'s Triennial Evaluation in fall 2005, including testing [redacted]'s cognitive level. Her evaluation showed that verbally, [redacted] was functioning within the low average range. [redacted] functioned somewhat higher with perceptual reasoning or non-verbal. His working memory and processing speed were in the average range. Overall, [redacted] was functioning within the average range. Ms. [redacted] did not see any evidence of a disability when comparing [redacted]'s cognitive abilities to his performance on educational testing. In her opinion [redacted]'s weakness in verbal reasoning was not a significant weakness that would have an impact on his academic performance. Ms. [redacted] also analyzed the BASC-2 rating scales completed by [redacted]'s teachers and parents. The BASC-2 scales showed that there was a marked intensity in [redacted]'s problem behavior in the home setting that was not observed in the classroom. In Ms. [redacted]'s opinion, based upon her testing and on the information presented at the eligibility meeting in December 2005, [redacted] was not eligible for special education services because there was no evidence that [redacted]'s impairments were significantly impacting his ability to learn. [redacted] was [redacted]'s special education teacher at [redacted] School from

the fall of 2005 to the end of the 2005-06 school year. At first she taught in a self-contained classroom for language arts, but 's reading level was higher than that of the other self-contained students. Services were changed so that Ms would assist on an inclusion model for one hour per day, four days per week in the regular classroom. In Ms. 's opinion, by the end of his 3rd grade year (2005-06), could succeed in reading without special education. 's 3rd grade final grades were all at an average to above average level.

Ms. conducted the educational testing part of 's Triennial Evaluation in December 2005. She used the Woodcock-Johnson III Tests of Achievement. 's scores in reading, math and written expression were in the solid average range. showed a relative weakness in oral comprehension, but the discrepancy did not have a significant impact on his achievement in the content areas of reading, math and written language. In Ms. 's opinion, 's impairments did not significantly impact his ability to achieve on a level consistent with his abilities.

was 's Fourth Grade special education teacher. Ms. was responsible for providing one hour of inclusion services in his regular classroom four times per week for reading and language arts. By the end of the 2006-07 school year, was reading on the 4th grade level or above. His end-of-year reading grade was 84 – in the average range. Although failed his reading SOL in 3rd and 4th grades, in Ms. 's opinion, is an average reader and does not need special education services. benefitted from small group teaching in reading, received agenda checks, and was seated near the teacher. According to Ms. , all of these are basic accommodations which can be provided as

child in need of special education services.

DECISION

I. Eligibility under the Individuals with Disabilities Education Act (IDEA)

In order for a child to be declared eligible for special education and related services it must be determined that the child is a “child with a disability” within the meaning of IDEA 2004 and is in need of special education and related services. The term “a child with a disability” means:

[A] child evaluated in accordance with §§ 300.304 through 300.311 [of the IDEA 2004 Regulations] as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness or multiple disabilities, and who, by reason thereof, needs special education and related services.

71 Fed. Reg. 46756 (to be codified at 34 C.F.R. § 300.8(a)(1)) Under the Virginia Department of Education’s *Regulations Governing Special Education Programs for Children With Disabilities in Virginia* (“Va. Regulations.”), a “child with a disability,” aged two through eight, may include a child who is experiencing developmental delays.⁴

⁴ “Developmental delay” means a disability affecting a child ages two through eight:

1. Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

2. Who, by reason thereof, needs special education and related services.

8 VAC 20-80-10.

When transferred to Public Schools in 2005 at the beginning of his 3rd grade year, he had been identified as eligible for special education services under the Developmental Delay category. was then over 8 years old. To remain eligible for special education services, had to be found to be a child with a disability under one or more of the other thirteen categories of disability listed in the IDEA. In her Request for Due Process Hearing, 's mother, Ms , suggests that should be identified as a child with a disability under the Emotional Disturbance ("ED"), Autism Spectrum Disorder ("ASD") and/or Other Health Impaired ("OHI") designations. counters that does not meet the IDEA definition criteria for ED, Autism or OHI and that is not eligible for special education services because none of his impairments has a significant adverse effect on his educational performance. For the reasons set forth below, I find that the evidence does not establish that is a "child with a disability" as defined in IDEA 2004 or the Virginia Regulations.

A. Emotional Disturbance

The U.S. Department of Education IDEA 2004 regulations define Emotional disturbance to mean:

- [A] condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
 - (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (C) Inappropriate types of behavior or feelings under normal circumstances.
 - (D) A general pervasive mood of unhappiness or depression.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

71 Fed. Reg. 46756 (to be codified at 34 C.F.R. § 300.8(c)(4)). *See also*, 8 VAC 20-80-10 (definition of “Emotional disturbance” in Virginia Regulations).

No professional testified that [redacted] has an emotional disturbance as defined by this regulation. Child psychiatrist, Dr. [redacted], who was called as a witness by Ms. [redacted], was equivocal. When asked her opinion of whether [redacted] “is emotionally disturbed,” Dr. [redacted] opined only that [redacted] has a lot of emotional and behavioral difficulties. The written report of clinical psychologist [redacted], Ph.D., who assessed [redacted] in 2006, stated that [redacted]’s responses on the Child Depression Inventory (CDI) were within the average range as were his responses to the Revised Child Manifest Anxiety Scale (RCMAS). Dr. [redacted]’s report concluded that [redacted] did not require placement in a special education classroom. [redacted], the staff psychologist at SVCDC, conducted a psychological evaluation of [redacted] as part of SVCDC’s January 2007 IEE. Ms. [redacted] testified that she did not see reason to believe that [redacted] has an emotional disturbance “as defined under special education.” [redacted] school psychiatrist [redacted], who completed the psychological evaluation portion of [redacted]’s 2005 Triennial Evaluation, likewise found no evidence of an emotional disturbance. [redacted] school counselor [redacted], who met with [redacted] weekly, did not see any behaviors in [redacted] that suggested he was an emotionally disturbed child in need of special education services. I find therefore that the evidence does not establish that [redacted] has an emotional disturbance disability that would make him eligible for special education services.

B. Autism Spectrum Disorder

The IDEA 2004 regulations define the Autism disability to mean “a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.” 71 Fed. Reg. 46756 (to be codified at 34 C.F.R. § 300.8(c)(1)). *See also*, 8 VAC 20-80-10 (definition of “Autism” in Virginia Regulations).

’s child psychiatrist, Dr. _____, testified that _____ has a diagnosis of Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS). _____ does not dispute this diagnosis. According to *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR)*, The PDD-NOS category should be used when there is a severe and pervasive impairment in the development of reciprocal social interaction associated with impairment in either verbal or nonverbal communication skills or with the presence of stereotyped behavior, interests, and activities – presentations that do not meet the criteria for Autistic Disorder because of late age at onset, atypical symptomatology, or subthreshold symptomatology, or all of these. *Id.*, Part 299.80 (School Exh. 19).

The U.S. Department of Education’s Office of Special Education Programs (“OSEP”) has provided some guidance on special education eligibility for children with PDD-NOS.

While [the IDEA] does not explicitly mention [Pervasive Developmental Disorder], we believe that a child with [Pervasive Developmental Disorder] could be found eligible for services under [the IDEA] if, through an appropriate evaluation, the team determines that the child's condition meets one of the disability categories described in § 300.7 ... and because of that disability, the child needs special education and related services.... [A] child [with Pervasive Developmental Disorder] who does not meet the definition and diagnostic criteria

for autism, may meet the definition and diagnostic criteria for another disability category, such as other health impairment.

See Letter to Coe, 32 IDELR 204 (Sept. 14, 1999).

I find that [redacted]'s PDD-NOS condition does not fit the definition of autism in § 300.7(c)(1)(i) of the IDEA 2004 regulations or in the Virginia Regulations. There was no evidence, for example, that [redacted]'s PDD-NOS condition significantly affected his verbal and nonverbal communication and social interaction. Dr. [redacted] testified unequivocally that [redacted] does not meet the DSM-IV criteria for autistic disorder. It is not suggested that [redacted]'s PDD-NOS diagnosis would meet the criteria for any other disability category except other health impairment ("OHI"). To establish eligibility under the OHI category, the following criteria must be met:

Other health impairment means 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—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

71 Fed. Reg. 46757 (to be codified at 34 C.F.R. § 300.8(c)(9)). *See also*, 8 VAC 20-80-10 (definition of "Other health impairment" in Virginia Regulations).

The evidence in this case does not support an OHI identification for [redacted]. [redacted] has a mild attentiveness issue. His fourth grade teacher, [redacted], testified that "every once in a while" she would need to put her hand on [redacted]'s desk to make sure he was paying attention and that [redacted] responded well. [redacted], [redacted]'s 4th grade special education teacher for reading and language arts, worked with [redacted] in the regular class room. According to Ms.

, was responsive to cues to stay on task because he “wanted to try and pay attention and he wanted to please the teacher. He wanted to make sure that he was participating with the rest of the class.” No evidence was presented that otherwise lacked strength, vitality or alertness in the educational environment.

C. Other Health Impaired --ADHD

In the IDEA 2004 regulations, Attention Deficit Hyperactivity Disorder (“ADHD”) is specifically referenced as a possible predicate disorder in the definition of Other Health Impaired.

was first diagnosed with ADHD by his pediatrician and now Dr. is treating with the drug, Strattera, for this condition.

In the previous section, I reviewed the eligibility criteria for Other Health Impaired (“OHI”) in connection with ’s PDD-NOS diagnosis and found that the hearing evidence does not support that is eligible for special education services under the OHI criteria because there was no evidence that lacked strength, vitality or alertness in the educational environment. With regard specifically to ’s ADHD impairment, ’s 4th grade teacher, , testified that exhibited only mild ADHD-like symptoms at school and that the condition did not significantly interfere with his ability to learn in the classroom. ’s 4th grade special education teacher, , testified that she did not observe to have any significant ADHD-like behaviors in the classroom that interfered with his ability to learn. school psychologist testified that during her testing of in December 2005, he focused well, did not have to be redirected to task and did not require additional breaks as she commonly sees with children with ADHD. The parent presented no contrary evidence. I find from the evidence therefore that ’s ADHD condition does not

result in a significant adverse effect on his educational performance and that does not require special education services in order to address the ADHD and its impact. For that reason, 's ADHD does not affect him such as to constitute an OHI impairment under the IDEA 2004 regulations or the Virginia Regulations.

D. Effect of Impairments on 's Educational Performance

Under all three of the disabilities for which Ms. argues that is eligible for special education services, Educational Disturbance, Autism Spectrum Disorder and Other Health Impaired, IDEA eligibility criteria include not only the presence of the condition but also a causal connection between the condition and an adverse effect on 's educational performance. The evidence establishes no such connection in this case. In the 2007 IEE performed by SVCDC, 's cognitive abilities were found to be in the low average to average range. These scores were very similar to the scores that were obtained on 's achievement assessment and did not indicate to SVCDC any sign that has a disability or disorder that is affecting his ability to learn in the school environment.

In his two years at Elementary School, has made steady educational progress advancing from third grade to fifth grade on schedule. *Cf. School Dist., Westchester County v. Rowley*, 458 U.S. 176, 210; 102 S.Ct. 3034, 3052 (1982) (evidence that student was advancing from grade to grade indicated educational progress). passed all of his 3rd grade courses with average or higher marks. In 4th grade, attained average or higher final averages in all courses except Virginia Studies which he failed with a 68. Finally 's educational experts testified uniformly that 's impairments, to the extent they exist, were not significantly impacting his ability to learn in the classroom. *See County School Bd. of Henrico*

County, Virginia v. Z.P. ex rel. R.P. 399 F.3d 298, 313 (4th Cir. 2005) (appropriate deference required to the School Board witnesses as professional educators). The parents offered no expert evidence to the contrary. I find that the evidence fails to establish that [redacted]’s impairments have had a significant adverse effect on his educational performance at [redacted] Elementary School.

II. Eligibility for Section 504 Services

In order to establish a handicap discrimination claim under the Rehabilitation Act. *See* 29 U.S.C. § 794(a), the parent must offer evidence that [redacted] is an “individual with a disability.” The Rehabilitation Act defines an “individual with a disability” as any person who “(i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment.” 29 U.S.C. § 706(8)(B). The corresponding federal regulations further define “major life activities” as “functions, such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” 29 C.F.R. § 1613.702(c). *See Hughes v. Bedsole*, 48 F.3d 1376, 1388 (4th Cir. 1995). Section 504 regulations do not define the term “substantially limiting”, however the U.S. Department of Education Office for Civil Rights opined that by definition, “a person who is succeeding in regular education does not have a disability which substantially limits the ability to learn.” *Saginaw City (MI) School District*, 352 IDELR 413 (OCR 1987). [redacted] is clearly succeeding in his educational program at [redacted] Elementary School. [redacted] continued to provide limited special education services to [redacted] through his 4th grade year, but only because the parent denied consent to terminate those services after the Eligibility Committee found [redacted] no longer eligible. [redacted] determined in

December 2005 that no longer required special education services to succeed in school and confirmed that decision in meetings of the Eligibility Committee in October 2006 and in May 2007. I have found that the evidence adduced at the hearing in this case does not establish that 's impairments, including those diagnosed by Dr. (Mood disorder NOS, Pervasive Developmental Disorder NOS and ADHD), have had a significant adverse effect on 's educational performance. Accordingly, I find that does not have an physical or mental impairment which substantially limits the major life activity of learning within the meaning of the Rehabilitation Act of 1973.

SUMMARY

In summary, I find the evidence establishes that exhibits troubling behavior outside of school, but that in school, appears to be well adjusted, compliant, motivated to learn and generally performing at a level commensurate with his cognitive abilities. has been diagnosed with several psychological conditions for which he is medicated and these conditions may manifest outside of school, but, again, the evidence establishes that these conditions do not significantly affect his educational performance. I find that the parent has not shown that is a child with a disability as defined in the IDEA or the Virginia Regulations, or that has an impairment that substantially limits a major life activity. Accordingly, the parent has not met her burden of establishing that is eligible for special education services under the IDEA or that he is an individual with a disability within the meaning of the Rehabilitation Act of 1973.

ORDER

For the reasons set forth above, it is hereby ordered as follows:

is not eligible for special education services under the IDEA, the

Virginia Regulations or Section 504 of the Rehabilitation Act of 1973.

Right of Appeal Notice

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



Peter B. Vaden, Hearing Officer
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Date of Decision: August 6, 2007